

POLICING REFORM IN AFRICA

Moving towards a rights-based approach in
a climate of terrorism, insurgency and
serious violent crime



Edited by Etannibi E.O. Alemika, Mutuma Ruteere & Simon Howell



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serious violent crime**



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Acknowledgements

This publication is funded by the Ford Foundation, the United Nations Development Programme, and the Open Societies Foundation. The findings and conclusions do not necessarily reflect their positions or policies.



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Published by African Policing Civilian Oversight Forum (APCOF)

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ISBN 978-1-928332-33-6

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Cover photo taken in Nyeri, Kenya © George Mulala/PictureNET Africa



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Foreword

Contemporary police forces in African states are all facing new challenges, some of them unique to the African continent. Whether it be in confronting their own historical origins or facing increasingly organized criminal networks, these challenges are re-shaping and redefining the purpose and operations of African police organizations. A challenge that is frequently overlooked, and yet magnifies these questions of purpose and operations, emerges at the juncture at which police organizations confront terrorism, insurgency and serious violent crime. How, for instance, do police organizations productively liaise with military forces deployed against terrorist organizations, what is their mandate when dealing with threats that are invariably regional in nature, and how do they ensure their investigative obligations are met when operating in environments of war? More importantly, how do police organizations prioritise the protection of human rights on the continent and how do they hold accountable themselves and other security forces so that they do not themselves become platforms for further abuse? Meeting these challenges is made even more complex when responses to terrorism or insurgent activity occur in civilian spaces, as the police may be required to yield to military command and are expected to provide the investigative capacity required to hold terrorist suspects accountable to the rule of law.

This publication engages with these and many other challenges as they relate to the rights-based reform of police organizations in climates of terrorism, insurgency and serious violent crime. Taking seriously the complexity of these challenges and in recognising that police are themselves important bearers of knowledge, contributions to the publication are from a range of African academics, civil society experts, as well as very senior police officers from police organizations on the continent. This assemblage of authors is entirely unique – there has not been a publication with such a number of senior police officers writing about challenges facing policing in Africa before. Complementing this breadth, the book's analytical depth is bolstered by incorporating both theoretically nuanced contributions from the leaders in the subject field and pragmatic reflections on the employment of such concerns in the field.

Finally, we remain especially grateful to the funders who made this project possible, and for the continued support and guidance they have provided throughout it – the Ford Foundation, the United Nations Development Programme and the Open Societies Foundation.

Sean Tait
Director
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Section 1

Overview

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Chapter 1

Imperatives of and tensions within rights-based policing

Etannibi E.O. Alemika

Criminal justice and human rights

Criminal justice systems are established by society or the state to prevent and control crime and violence and thereby protect and promote fundamental rights. They are equipped to respond to crime and criminals through the investigation of these crimes and, if necessary, through the arrest, prosecution, detention and trial of any suspects or accused persons. To perform these functions, criminal justice agencies are vested with enormous and often intrusive powers which impact on the fundamental rights guaranteed in international and national human rights instruments. Therefore, if the powers exercised by the criminal justice agencies are not regulated and if the relevant agencies are not subjected to democratic political and legal oversight and accountability, they can be abused to entrench oppression, exploitation and impunity. Crime constitutes harm to individual citizens, the erosion of social order and injury or loss to victims. As such, the rights of these three parties are involved in any criminal incident and each deserves equal recognition. It is for this reason that reflections on police services and policing strategies – as a function of and in contributing to the building of democratic states – are so important. Policing shortfalls and problems, moreover, are often most clearly seen when policing organizations are forced to operate at their limits, such as when engaging with counter-terrorism and counter-insurgency operations. And it is precisely for this reason that this book focuses on the interface between policing and terrorism in the context of policing reform.

Public policing services, mediated by undercurrents of political and socio-economic power and relations, are unequally delivered in most societies. In their operations and decisions, criminal justice systems unevenly protect the rights of citizens in relation to their different class, economic, demographic, racial, ethnic and religious backgrounds. And while the three most significant parties in a criminal process are the communities or countries, victims and offenders, the rights associated with each are not always given adequate and proportionate consideration by existing

international and national constitutional human rights instruments. Understandably, because the contending parties are reduced to the state and the suspects, the rights of the latter are given greater weight in order to moderate the enormous coercive powers of the former. Logical as this reasoning may be, justice is not actually served if offenders are the bearers of rights to the exclusion of the state, communities and victims.

Rights-based policing is a valuable safeguard against oppression, exploitation and impunity. However, conceived as a universal duty, it engenders tension when confronted with the demands of justice in specific contexts and by normative complexity and pluralism. Ignoring this tension by assuming and promoting the universal and immutable rights of suspects, defendants and criminals as transcontextual policing norms may in fact engender economic, political and socio-cultural imperialism. The articulation and advocacy of substantive and formal or procedural rights should not be considered complete or finished – the pursuit of justice must always be an ongoing effort. It must, like scientific and philosophical knowledge, remain tentative, with the constant quest for development nurtured by rational scepticism, critical scholarship and the democratic political struggle for the advancement of human security and solidarity.

Challenges and constraints

Police forces and services in Africa are confronted with several critical challenges and constraints that impact on rights-based policing, including the political heritage of authoritarianism; an inherited colonial policing culture characterized by repression and impunity; violent conflicts and crimes, insurgency and terrorism; widespread disrespect for the law; and the distrust of law enforcement officials. They also experience a lack of operational autonomy from political interference as well as inadequate resources and facilities necessary for effective crime prevention, fair and efficient law enforcement, the maintenance of public order, and the humane treatment of suspects and offenders. Other constraints include: corruption; defective recruitment processes due to unwarranted interference and influence; antiquated criminal laws and procedures; poor remuneration and personnel welfare; weak organizational leadership; and inadequate scientific and technological aids to law enforcement and criminal justice administration. The challenges and constraints have been aggravated by increasing incidents of violent crime, intergroup conflict and violence, and armed insurrection by ethnic and/or religious groups.

In many African countries, especially in Eastern and Southern Africa, independence was only achieved after prolonged guerrilla warfare. The struggle for independence was viciously suppressed in several countries such as Kenya, Angola, Mozambique and South Africa. The culture and practice of employing security forces to suppress the opposition and protect the regimes in power has been engrained in rulers' psyches before and after independence such that the attainment of independence did not mark the end of repressive policing. Many countries in West Africa

witnessed military coups and protracted military rule. In some countries, especially in Eastern and Southern Africa, the victorious freedom fighters refused to yield to democratic government but introduced and entrenched single-party systems that lasted several years before transitioning to multi-party ones.

Authoritarian systems of government were pervasive across Africa until the late 1980s, when foreign and domestic forces exerted pressure on them to embrace political and economic liberalism characterized respectively by electoral liberal democracy and free enterprise or capitalism. The pressure for reforms resulted from the end of the Cold War, the disintegration of the Soviet Union, and the 'pyrrhic triumph' of capitalism as the hegemonic ideology. As a consequence, advanced capitalist economies took it upon themselves to promote liberal democracy, free enterprise, the rule of law and human rights across the globe.

Police and policing

'Police' has a dual meaning. Broadly, the term refers to agencies established by government for the purposes of enforcing laws and preventing crime and civil disorder by arresting, detecting, investigating and prosecuting any persons suspected or accused of crimes. It also refers to government officials employed in law enforcement departments and vested with the responsibility and powers to enforce laws, maintain public order, investigate crimes and arrest offenders. These twin concepts are different from actual policing. Police agencies and officials are not the only actors in policing, that is, the activities and measures aimed at ensuring law, order and security in a society or community. Apart from the police, there are several community-based actors (groups and organizations) and commercial enterprises involved in policing that also provide security. As such,

Policing broadly refers to measures and actions taken by a variety of institutions and groups in society to regulate social relations and practices so as to secure the safety of members of the community as well as conformity to the dominant norms and values of society. (Alemika 2009: 483–484)

Around the world, the police are vested with powers, generally referred to as police powers, which include the discretionary use of force. These key powers may include:

- Search – of persons and properties;
- Arrest with or without warrants as may be prescribed in law;
- Detention of suspected persons in accordance with provisions of law;
- Interrogation of suspects;
- Taking photographs and fingerprints of persons arrested as may be prescribed in law;
- Prosecution of suspects (in many countries, including Nigeria);
- Regulation of public assemblies and gatherings; and
- Regulation of traffic.

The exercise of these powers is expected to enhance security, safety and human rights in society. However, the abuse of police powers occurs to varying degrees in all societies and requires effective oversight to prevent or punish law enforcement officers' misconduct, including human rights violations. While mechanisms for the oversight and accountability of police agencies and officials do exist, they are seldom effective. In addition, there has been no serious effort as yet to regulate and oversee the burgeoning non-state security providers in Africa.

Insurgency, violent conflict and crime

Since the dawn of the 21st century, insurgency and terrorism have increasingly spread throughout the world's nations, along with a panoply of attendant calamities. National responses have been as severe, resulting, in most cases, in the curtailment of civil liberties through legislation, judicial decisions and the actions of security forces. Several African countries have experienced devastating civil wars over the past three decades. Countries in North Africa have recently witnessed widespread popular insurrection, initially tagged the 'Arab Spring'. In some of these countries, the declared struggle for change morphed into large-scale terrorism. In sub-Saharan Africa, in countries like Nigeria, Kenya, Chad, Cameroon, Niger and Uganda, extremist Islamic terrorist groups have unleashed violent terror on security forces and the population.

In Nigeria, it is estimated that attacks by Boko Haram have led to the deaths of tens of thousands and the abduction of thousands; 276 female secondary students were abducted in April 2014, with 113 still unaccounted for as of November 2017.¹ Several hundred students in secondary and tertiary educational institutions were killed by Boko Haram terrorists in Yobe and Borno states (Nigeria) between 2010 and 2015. More than two million people have been displaced, mostly in Borno, Yobe and Adamawa states in north-eastern Nigeria because of Boko Haram disruption. While its capacity has been substantially restricted under the Buhari administration with the support of a regional multi-national force and the international community, the group is still killing people on a regular basis through suicide bombers. Cameroon and Chad, which share borders with Nigeria, have also suffered substantial casualties and losses at the hands of Boko Haram.

Kenya has suffered terrorist attacks by the Al-Shabaab terrorist group, which carried out attacks at a shopping mall in Nairobi (67 deaths), at Garissa University (147 deaths), at churches, public institutions (including security formations) and private establishments in different parts of the country. Uganda has suffered terrorist attacks by extremist Islamic terrorist groups as well as by the Lord's Resistance Army.

¹ The Council of Foreign Relations estimates that 51,567 persons have been killed and about two million people have been internally displaced since 2011. See www.cfr.org/interactives/global-conflict-tracker#!/conflict/boko-haram-in-Nigeria [accessed 3 December 2017].

Terrorism has been widespread in Africa. Most African countries lack the necessary capacity for surveillance, intelligence gathering and investigation for the effective disruption and undermining of terrorist organizations and the ability to bring them under control within a short period. Governments almost always resort to military responses, which aggravate insecurity and instability. Some commentators point out that terrorism was in fact re-energized in Nigeria and Kenya because of the brutal killings of violent extremists. That explanation can only be sustained as an aggravating rather than a causal factor because terror attacks occurred before the state's cited repressive reactions in the two countries.

According to the Institute of Economics and Peace in its *Global Terrorism Index 2016*,

[n]inety-three per cent of all terrorist attacks between 1989 and 2014 occurred in countries with high levels of state sponsored terror – extra-judicial deaths, torture and imprisonment without trial. Over 90 per cent of all terrorism attacks occurred in countries engaged in violent conflicts. Only 0.5 per cent of terrorist attacks occurred in countries that did not suffer from conflict or political terror. Terrorism is more likely to occur in OECD [Organization for Economic Co-operation and Development] member countries with poorer performance on socio-economic factors such as opportunities for youth, belief in the electoral system, levels of criminality and access to weapons. In both OECD and non-OECD countries terrorism is statistically related to the acceptance of the rights of others, good relations with neighbours, likelihood of violent demonstrations and political terror. (Institute of Economics and Peace 2016: 5).

These correlations are statistical associations and do not provide causal explanations. However, there is a tendency to adopt military repression without giving adequate attention to the introduction and implementation of measures to mitigate the political and socio-economic grievances enunciated by the terrorists. This approach tends to result in the violation of the rights of suspects and other citizens who are profiled as collaborators. Responses by African governments confronted by terrorism should therefore be partly understood as the consequences of deficits in capacity and resources as well as the weakness of governance institutions and policies as conceptual entities.

Violent conflicts between ethnic and religious groups – as well as violent crimes such as murder, political assassination, kidnapping, robbery, banditry and cattle-rustling – are prevalent in many African countries. Given the colonial legacy of the paramilitary organization of police forces and violent policing tactics, efforts to curtail these crimes often result in violations of the rights of suspects and citizens. Lack of the requisite skills, facilities, incentives and effective supervision often result in the violation of rights by police and security forces in Africa.

Rights-based policing

The primary duty of criminal justice agencies and officials is the protection of the rights of citizens and the promotion of community safety. Law enforcement and adjudication are aimed at protecting citizens and communities from the predations of criminals as well as ensuring the safety of lives, property and community peace. Therefore, there ought not to be any dissonance between policing and human rights protections.

Rights-based policing requires that law enforcement and security agencies should respect the rights of citizens, especially suspects, guaranteed in the United Nations and African Union human rights instruments and in all national constitutions. Most significant among them are the rights to life, liberty, association, conscience, thought, free speech and freedom from inhuman and degrading treatment. Persons subject to criminal law enforcement and process are guaranteed the right to:

- Be informed promptly and in detail in a language which they understand of the nature and cause of the charge against them;
- Have adequate time and the facilities for the preparation of their defence and to communicate with counsel of their own choosing;
- Be tried without undue delay;
- Defend themselves in person or through legal assistance of their own choosing;
- Examine, or have examined, the witnesses against them and obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
- Have the free assistance of an interpreter if they cannot understand or speak the language used in court; and
- Protection from being compelled to testify against themselves or to confess guilt.

The obligation to observe these rights should not be limited to police forces and services, but should apply to all security, law enforcement and regulatory agencies carrying out policing functions.

Chapter summaries

The challenges and constraints of policing enumerated above are discussed in greater detail and scale, with theoretical and empirical substantiation, by the authors in this book, which is organized into four sections of thirteen chapters, including an introduction and conclusion. Section one comprises three chapters. The first chapter is an introduction. The second chapter examines the tension of transcultural and transcontextual promotion of rights-based policing while the third chapter discusses the logic, goals and actors involved in policing in apartheid South Africa and outlines some lessons for countering terrorism.

In chapter two, Etannibi Alemika provides a broad analysis of the historical and temporal political, socio-economic and global forces that have shaped and are shaping police forces, policing and rights-based policing in Africa. He discusses the contentious narratives around policing by the state and criminal process rights given the divergence of interests of different actors. Despite the entrenchment of international human rights in the national constitutions of African countries, he identifies ontological and epistemological tensions between the Western conception of rights and the practice of dispute resolutions predicated on individualism, on the one hand, and on African indigenous values that emphasize communalism and social solidarity, on the other. He calls for the articulation of rights that address the concerns of communities and nations, victims and suspects/offenders. Alemika concludes the argument that the emphasis on advocacy in rights-based policing without greater attention to the structural economic and political determinants of injustice, inequality, exclusion and denial of fundamental rights more broadly is focusing on symptoms to the neglect of causes of chronic social, political and economic dysfunctions.

Elrena van der Spuy, in Chapter 3, analyzes diverse sources of information on the South African apartheid government infrastructure that was established to suppress any insurgency against it. As such, the chapter offers historical insight into the logic, practices, actors and casualties involved in countering insurgency during apartheid rule. The distinctive feature of the era was a militaristic ethos and a repressive political agenda meant to suppress opposition to apartheid. She draws out useful lessons for policing terrorism that can be learnt from the insidious features of policing under apartheid rule.

The second section of the book comprises two chapters that examine the community–police nexus. They also investigate the roles of communities in mobilizing citizens and resources in order to prevent and deter terrorism. Chirambwi and Nare in Chapter 4 argue that police misconduct in the border posts of Zimbabwe is influenced by deep structural forces. In explaining the phenomenon of police criminality at the country's borders, they deploy three analytical perspectives on state fragility, the survivalist economy and the radicalization of the police. They identify, through a content analysis of newspapers, the following crimes committed by border police: corruption and bribery, smuggling, involvement in gang-related activities, heists and the illegal possession of firearms. The two predominant crimes are smuggling and corruption. Border police misconduct has grave consequences for the rights of citizens residing in or carrying out activities at border communities.

Chapter 5, by Olugbuo and Ojewale, analyzes the roles and relationships among various security forces and civilian security groups involved in counter-terrorism operations against Boko Haram in north-eastern Nigeria. Their contribution underscores the need for security architecture in Africa to include the involvement of citizens' security initiatives and to develop guidelines for their accountability and collaboration with public security agencies.

The third section addresses policing responses to insurgency, terrorism and violent crimes. Koundy, in Chapter 6, analyzes the challenges of human rights protection while tackling Boko Haram in the countries in the Lake Chad basin – Nigeria, Cameroon, Chad and Niger. The activities of Boko Haram terrorist groups have resulted in the deaths of thousands of people and the displacement of millions of residents, especially in Nigeria, since 2009. In the circumstances, rights-based policing has been hard to sell, but is nonetheless an obligation. Koundy discusses the various rights that should be protected during the policing of terrorism. He identifies factors that erode such rights to include the derogation of rights and the introduction of state of emergency legislation, the lack of independence of law enforcement and judicial systems, the militarization of operations and judicial proceedings, and the lack of clarity in the definition of terrorism. He argues that the legal frameworks for tackling terrorism that grant exceptional law enforcement and judicial powers threaten rights-based policing in an environment of terrorism and serious violent crime.

The need for effective internal control systems, including the development and utilization of standard operating procedures to control police rights violations during counter-terrorism operations, is underscored by John Kamyia, Commissioner of Police in the Uganda Police Force, in Chapter 7. He highlights the crises engendered by terrorism and terrorist groups in East Africa since the 1980s – especially Al-Shabaab, the Allied Democratic Forces and the Lord's Resistance Army. These crises notwithstanding, he argues that police forces should ensure effective internal control mechanisms to prevent the violation of rights and to bring police officers involved in the abuse of power to account for their behaviour. After a discussion on the legal framework for tackling terrorism in East Africa, Kamyia recommends the following measures for the promotion of rights-based policing: clear standard operating procedures for interviewing suspects of terrorism and other crimes; establishing an effective oversight mechanism for the investigation of misconduct by police and monitoring standards and operations; establishing and enforcing guidelines on the use of force and firearms; effective mechanisms for ensuring accountability of officers for abuse of power and to stem impunity; and adequate resources for the training of officers.

Polycarp Ngufor Forkum, a senior police officer in Cameroon, in his contribution in Chapter 8 discusses the activities of Boko Haram and the resulting problems in Cameroon. According to him, the atrocities of the terrorist group are grave and have violated the rights of citizens. He examines the response of the government and observes that their militaristic approach has resulted in poor observance of the rule of law and violations of the rights of suspects. He recommends appropriate training for officers to enhance rights-based policing.

A retired inspector-general of the Nigeria Police Force, Solomon Arase, in Chapter 9 draws attention to the constraints imposed on the police by their lack of capacity. He identifies several factors that inhibit the full protection of citizens' and suspects' rights. Among the factors identified are multi-dimensional security challenges and pressure from the public to tackle them; lack of citizen

support and partnership due to colonial legacies; the absence of effective police reform since independence; gross deficits in human and financial resources and in the technological and operational facilities required for effectiveness; and a widespread disrespect for the law. He underscores the imperative of strong police–public partnerships for police effectiveness and the capacity to ensure rights-based policing.

The contribution by Jimam T. Lar in Chapter 10 analyzes the response to collective violence in the form of intra-communal violence, intergroup conflicts and high rates of serious violent crimes in Nigeria. Violence, conflict and violent crime have given rise to plural policing beyond the country's official security architecture. What has developed – as described in his contribution and by other contributors, such as Olugbuo and Ojewale (Chapter 5) and Gulleng and Hunduh (Chapter 12) – is increasing networking among security forces, and between public security agencies and civilian security groups. In this context, Lar argues, the state no longer exercises a monopoly over the provision of security in Nigeria. Against this background, Lar analyzes the nature of collaboration and coordination among state security agencies as well as with citizen security providers. He also discusses the extent to which the active role of vigilante groups either undermines the police or enhances police–community partnerships.

Counter-insurgency operations against Boko Haram in Nigeria have involved frequent joint operations by security forces and community-based vigilante groups. Although there initially was mistrust and conflict among the actors, cooperation has gradually developed to a point of near-fusion in several operations.

The fourth section comprises three chapters of case studies from Kenya and Nigeria. Biegon and Songa in Chapter 11 analyze the factors that influence police reform in Kenya and its impact on policing in the country. They argue that efforts to entrench rights-based policing through police reforms have not yielded the desired results, especially due to terrorism and the adoption of a repressive counter-terrorism strategy. Biegon and Songa identify a lack of political will to implement the recommendations of police reform committees as a constraint on rights-based policing in the country. They attribute the lack of political will to the involvement of some influential politicians in organized crime.

Gulleng and Hunduh in their contribution (Chapter 12) investigate how the security task forces deployed to stem conflicts between herders and farmers are perceived by these communities. They find that the armed security task forces are perceived differently and that these perceptions are mediated by ethnic and religious affinities. Significantly, the indigenous communities perceive the security forces to be biased. They cite as evidence the constant attacks on indigenous communities, who are farmers, by either settler or nomadic cattle herders without any arrests while their settlements are constantly raided by security agencies in search of arms. The local communities also accuse the security agencies, who are meant to protect them, of abuse and rights violations. Gulleng and Hunduh find that the security forces and the Berom ethnic group, who are predominantly

farmers, and the Fulani, who are predominantly herdsman, are involved in activities that constitute human rights violations. They also find distrust between members of the security forces and community-based vigilante groups, which undermine efforts to achieve and sustain security and safety.

Mutuma Ruteere's concluding chapter provides an overview and analysis of rights-based policing in Africa and the pathways towards reform that would strengthen security while protecting human rights.

Prospects for rights-based policing in Africa

The various contributions in this book underscore the historical, structural and organizational antecedents of police forces as well as the evolving landscapes and challenges that impact on rights-based policing in Africa. Critical lessons include the insight that policing is embedded in the deeper social, economic and political structures and relations in society. Therefore, reform measures will be ineffective if solely aimed at enhancing the legitimacy, efficiency, accountability and professionalism of the various security and judicial agencies without due consideration of structural enablers and threats. State policing agencies are diverse in their functions, powers and jurisdictions. The imperative of rights-based policing is not limited to mainline police forces or departments and should include the operations of all specialized law enforcement and regulatory agencies that exercise police powers of surveillance, arrest, search, seizure, detention and prosecution.

The provision of security in Africa is increasingly being recognized as an 'all society responsibility' which has the potential to not only improve security and safety but also to democratize policing. However, this recognition has not been accompanied by conscious legislative and policy instruments to define the roles, relationships and coordination among actors from public and community sectors that now frequently collaborate to tackle insecurity. Civilian security providers do not have enforceable codes of conduct and mechanisms guiding their actions. These gaps have serious consequences for the protection of citizens' rights as well as the rights of those accused of terrorism and violent crimes, who are often subjected to torture, trial by ordeal and extrajudicial punishment, including summary execution.

Rights-based policing should not be conceived or construed in the narrow sense to only mean the protection of the criminal-process rights of suspects, defendants and convicts. It should be construed more broadly to also include the right of nations, communities and victims to justice, restitution, safety and security. Such a conception will reduce citizens' alienation from criminal justice systems and their resort to instant self-help justice. This is analogous to the broadening of security from traditional state-centred security to the broader paradigm of human security.

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Chapter 2

The constraints of rights-based policing in Africa

Etannibi E.O. Alemika

The police, like laws, reflect the nature of the society which they serve. Corrupt societies deserve, and get, corrupt police. Totalitarian societies acquire omnipotent police. Violent societies get violent police. Tolerant societies get tolerant police. Wise societies bridle police powers. (J.C. Alderson, in Nsereko 1993: 484)

[...] a student of the political institutions of any country desirous of understanding the 'ethos' of any country's government can hardly do better than make a close study of its police system, which will provide him with a good measuring rod of the actual extent to which its government is free or authoritarian. (Coatman 1959: 8)

Introduction

Policing is a dynamic practice that has dire consequences. It is a practice that is constantly in tension and a field of study in which debates are often tense. The result is often rhetoric in which the outcome can be limited to buzzwords – 'invented, innovative' approaches to conceiving and delivering police services. Moreover, policing does not operate in a vacuum or beyond society. Forms of police organization and policing are determined by the political, economic and socio-cultural systems and the embedded social relations among individuals and between groups. The two opening epigraphs above illustrate how policing becomes the product of socio-economic and political forces in/of society. Aspirations for democratic policing in an undemocratic polity and in an economic system plagued by entrenched inequality are unrealistic.

Ideally, policing is aimed at ensuring the protection of human rights. At its best, it represents an ongoing effort to maintain public security and safety in order to protect individuals and ensure community safety and social harmony. Indeed, the primary responsibility of the police in most countries is the enforcement of the law and the

maintenance of order, which are prerequisites for human rights. In contexts where the laws and order reflect the consensus of the citizens, policing reaffirms and maintains such consensus even when under strain. Inversely, however, if the laws of the land are dictatorial, so too will be their enforcement. The antinomy between police, policing and human rights that dominates the discourse on policing is one often underpinned by tensions arising from the lack of consensus on the content of law, definitions of order, and what constitutes successful policing.

Organized, full-time professional police forces were largely absent in most African societies before the second half of the 19th century, when they began to be occupied by European imperialist powers, notably Britain, France, Portugal and Germany. This is not to say that these societies were not policed, but rather that the organizational arrangements required for centralized policing structures were not utilized for this purpose. African societies with centralized political authorities employed officials of the kings and chieftains to enforce social norms, and were mainly deployed to summon persons accused of misconduct for the determination of complaints against them through the dispute resolution mechanisms within the communities.

Contemporary policing in Africa incorporates pre-colonial dispute resolution norms, goals and practices. However, the colonial legacy of organized, paramilitary and repressive policing, and political contestations among post-colonial rulers exercise the most decisive influence on policing in contemporary Africa. Therefore, modern policing practices are a product of a complex intermeshing of historical, political, economic and social factors. Perhaps most significant among these factors was the colonial amalgamation of distinct societies into single political entities. Indeed, the colonial strategy of divide and rule and the contingent challenge of nation-building since independence continue to haunt several African states, as does the critical role of the violence and force in colonial administration, and memories of police brutality.

Other important experiences and conditions that impact on policing in contemporary Africa include:

- The strategies of decolonizing movements that fuelled ethnic, religious and regional divisions;
- Persistent socio-political and economic struggles between the rulers and the ruled resulting in intractable conflicts, themselves products of post-colonial governments under single-party systems and military rule;
- Corruption and divisions that weaken the legitimacy of the state and the capability of the government to deliver basic services, including security; and
- The struggle for the control of government and its key institutions, including the police, by ethnic, religious and regional elites.

In addition to these macro-structural factors are dysfunctional legal and institutional factors such as:

- Antiquated legal and philosophical frameworks for police management and operations;

- Partisan interference from political and economic power-holders;
- A lack of resources and capacity, corruption, weak or ineffective oversight and accountability; and
- Poor remuneration and lack of incentives for police professionalism and effectiveness.

Policing in Africa, as in other continents, has also been influenced by the economic, political, social and security challenges of globalization over the past three decades. Transnational organized crime and terrorism have shaped policing within and across countries since the beginning of the 20th century.

The officials and politicians to whom departing colonial officers handed over power were socialized and mentored through colonial and Western values and educational systems. Most of them internalized the values, tastes and lifestyles of the colonizers. Indoctrinated to sustain a neo-colonial political economy, they replaced the colonial officers but not their repressive and exploitative governance styles and thereby failed to reform the inherited legal and police systems. In many cases, they strengthened the repressive capability of the police and other security agencies through wide powers or the proliferation of agencies, ostensibly, as they were coached by the departing colonizers, because strong governments were necessary to hold together the disparate ethno-linguistic nationalities that had been forcefully amalgamated.

As a result, and as this chapter attempts to demonstrate, analyses of the culture and practices of police forces in contemporary African countries should proceed from an appreciation of the import and impact of the origin, purpose, culture, context and practices of police forces and policing in colonial Africa. This chapter examines the context of policing and the constraints of rights-based policing in Africa. Key discussion and arguments in the chapter are as follow:

- Policing by the state is a dynamic and contentious practice determined by the socio-political and economic structure and relations in society and, in Africa, rights-based policing is a contested concept and practice due to the multiplicity of interests, rights and actors involved in the quest for criminal justice.
- Conventional human rights provisions in the United Nations Charter, conventions and protocols on the rights of suspects and offenders are inadequate because they do not give adequate or commensurate attention to the rights of communities and victims to security, safety, restitution and deterrence. The inadequacy is attributed to the dominance of a few countries in the United Nations Organization (UNO, aka UN) over the articulation of human rights doctrine shaped by a world view and culture predicated on individualism as opposed to the values of collectivism and social solidarity of many countries, especially in Africa.
- Several international legal instruments, the African Union (AU) Charter on Human and Peoples' Rights, as well as the conventions and protocols of regional economic communities and the constitutions and criminal evidence codes of countries in Africa, contain provisions that implicitly articulate rights-based policing, with their emphasis on the rights to life, protection

from degrading and inhuman treatment, and due process rights like the presumption of innocence, access to an impartial and independent tribunal, the right to bail and legal representation, and an adequate opportunity for defence and protection against self-incrimination. Two instruments developed under the auspices of the UN – the Code of Conduct of Law Enforcement Officers and the Basic Principles on the Use of Force and Firearms – directly address aspects of rights-based policing.

- Colonial policing culture in Africa, which continues to exercise a strong influence on the continent, was characterized by violence, incivility and impunity towards the colonized indigenous peoples. The culture persists in varying degrees in contemporary African countries because post-colonial rulers failed to undertake fundamental police reforms but rather appropriated police powers to serve their interests and oppress their fellow citizens.
- The rights of the police, whose work puts them in constant danger, are not adequately recognized in international human rights provisions, and by the constitutions and governments of African countries. This contributes to the violation of the rights of suspects by the police due to inadequate resources and poor facilities, low remuneration and lack of support from citizens.
- Rights-based policing and the reform of African police forces and services are confronted by historical, structural and institutional constraints, while police reform driven by foreign assistance in Africa has recorded limited success due to inadequate contextualization and local ownership.
- Critical thinking towards robust frameworks for the articulation and protection of the rights of communities, victims, suspects and offenders as well as the reform of the wider political economy of countries are essential for rights-based policing in Africa.

These issues are discussed in greater detail in this chapter, leading to the assertion of some conceptual challenges which form the foundation for the larger discussion of the book as a whole.

Concepts and practice of rights-based policing

The organization, goals, powers, conduct, legitimacy and performance of the police and the effectiveness of policing are determined by political and economic systems and the associated existential conditions of different groups within society. Rights-based policing is not limited to the activities of police organizations, but also applies to other law enforcement agencies, such as customs and immigration services; special hybrid and task forces deployed to combat violent and serious crimes; traffic, health and environmental control agencies, with each of these bodies being delegated with the power of search, arrest, surveillance and intelligence gathering, investigation, detention and prosecution; as well as judicial and penal agencies.

Concern about rights-based policing in Africa has been heightened by the spread of insurrection, violent extremism, terrorism, violent conflicts and crime and the deployment of forces to quell them. Terrorism has claimed tens of thousands of

lives in several countries in Africa, particularly in Nigeria, Kenya and Somalia, over the past decade. Several European- and American-based human rights advocacy organizations, like Amnesty International and Human Rights Watch, have invested considerable energy and resources into publishing and disseminating allegations of the violations of the rights of citizens and terrorists in theatres of conflict, terrorism and counter-terrorism in Africa. The reports often evoke contentious viewpoints, with some people questioning the motive for such publications as they are perceived to be both subversive and insensitive to the misery of victims of terrorism and to the efforts of governments and their security forces. These developments have brought to the fore the challenges and constraints of, and the perspectives on, rights-based policing.

The practice of rights-based policing is problematic, especially in the African context, as it raises several questions:

- What and whose rights? Who articulated those rights?
- What and whose values inform the articulation of those rights and what is the extent of consensus about the significance of the rights?
- Is rights-based policing only about the procedural rights of the suspects during law enforcement, police operations and criminal proceedings or, in a different sense, should the concern be about the rights of suspects and offenders to the exclusion of the rights of victims and society?
- Which of the three contending rights – offenders, victims and society/community – should be prioritized?
- Is the order of significance of individual rights similar for societies with individualistic libertarian values and those with the predominant values of communitarianism and social solidarity?
- To what extent do the contemporary global human rights norms and regime reflect an individualistic libertarian ideology or communitarian values grounded in notions of solidarity? Do these norms reflect the primacy of the values of individualism of the leading Western countries that enslaved or colonized Africa, some of which drafted the Universal Declaration of Human Rights in 1948 and remained influential in the articulation and promotion of the conventions and protocols on civil, political, social and economic rights?
- To what extent is the survival and periodic revival of informal and community-based policing with high legitimacy and patronage in Africa a reflection of the significance of the underlying values of mediation, arbitration, conciliation and restoration as well as the priority of community safety and solidarity over individual rights?

Doctrines and ideologies are of course not neutral, but are invariably products of political processes. They reflect the interests of certain groups and countries that can articulate their values as universal norms or ethics and then impose them on others through their economic and political control and influence over ideological apparatuses, especially education, media, entertainment and other cultural diffusion systems. It is not an accident that Western media and human rights organizations pay more attention to documenting perceived rights violations in non-Western societies

than atrocities committed in Africa, Asia and Latin America in the name of promoting democracy and human rights by major Western powers and the United States of America.

Human rights discourses, despite the normative blanket, are not exempt from self-serving doctrines. Contemporary global human rights instruments and agendas reflect, for instance, the values and interests of the powerful Western countries that established the UN and formulated the Universal Declaration of Human Rights in 1948. The same countries continue to exercise decisive influence over the content of subsequent human rights, conventions, declarations, charters and protocols. International legal instruments reflect the inequalities between countries that constitute the UN. All or any of the five countries that maintain permanent seats on the UN Security Council can frustrate the aspirations of the remaining 188 countries. This singular factor of the veto power of five countries is an undemocratic provision that ignores the rights of countries to equal recognition and representation. The legitimacy of UN-based instruments for rights protection is tainted by the provision that accords veto power to five countries, notwithstanding the symbolic equal voting rights in the General Assembly, which is an annual congregation for theatrical speech-making by presidents and heads of state.

The rights articulated in many global human rights-based frameworks and normative prescripts were deduced from a wide range of documents, especially the Magna Carta declaration of 1215, which was articulated and signed after vicious struggles between the monarchy, the church and barons in England. Paradoxically, the framers of the Magna Carta only granted rights to 'free men' and categories of 'noble' people in society. The intellectual and ideological parameters of fundamental rights can be traced to the propositions of the natural law philosophy on natural justice and rights, and especially to the enlightenment philosophy of the 17th and 18th centuries. The politics of the rights evolved from the political struggles in Europe, which challenged the extant philosophies and politics of the divine rights of kings, and advocated the precedence of individuality over collectivism, and the emergence of representative government (Carpenter & Prior 2015; Marley 2015). The underlying philosophy, principles and proclamation of contemporary human rights that inform the law enforcement and punishment that evolved under the auspices of the UN since 1948, in many respects differ fundamentally from the core values that informed social organization, dispute resolution, social control and policing in Africa before colonial occupation. The christening of Africa's primary human rights instrument as the African Human and Peoples' Rights stems from the recognition of the need to protect the rights of communities and peoples alongside those of individuals.

The foregoing narrative does not make a case for an African exceptionalism. On the contrary, there has been longstanding worldwide debate on which level of existence should be accorded primacy in the promotion of rights and security. The fundamental ideological fault line across the capitalist, social democratic and socialist political economies is the varying significance attached to individual and community rights and security. Even in Western societies, the reinvention of policing philosophies (such as community policing and community-oriented policing) indicates the rediscovery

of the significance of community in guaranteeing security, safety and rights (against which terrorism, violent conflicts and crime constitute gross violations). Further, the cyclical reinvention of perspectives like human security, citizen security, people-centred development and community voices testifies to the contestation of paradigms that privilege the rights of individual suspects and offenders above the interests of communities and victims. In Africa, the resort to vigilante policing and justice over the past two decades during a period of increasing conflicts, violent crimes and terrorism often results from the perception that in guaranteeing the rights of suspects and offenders, the police and courts are pampering criminals. Further, police officers in Nigeria sometimes express their frustration that violent crime suspects are released on bail only for them to turn around and kill law enforcement officers and witnesses. This partly accounts for the extrajudicial killing of 'notorious criminals' by police.

International legal instruments and standards

The cardinal international, regional and national human rights declarations and instruments that have implications for rights-based policing in Africa include the UN's Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and the African Charter on Human and Peoples' Rights adopted by the Organization of African Unity (OAU) in 1981 and entered into force in 1986. Together, these cardinal rules provide a normative platform on which the relevance of international organizations such as the UN are based.

Several UN declarations and conventions require member states to guarantee and uphold certain rights of crime suspects and convicts. Article 11(1) of the UDHR states that everyone 'charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantee necessary for his defence'. The doctrine of 'presumption of innocence' prescribes that an accused or suspect should be treated as innocent until his or her guilt or culpability is proven before an impartial tribunal during which due process is observed.

Section 9 of the UDHR provides that, 'No one shall be subject to arbitrary arrest, detention or exile.' Further, Section 10 states that, 'Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.' Article 11(2) provides that, 'No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.'

The ICCPR contains more explicit provisions on the rights of suspects, offenders and prisoners. Article 9 provides for the right to liberty and security of a person and the prohibition of arbitrary arrest or detention. It also provides that anyone arrested 'shall be informed, at the time of his arrest, of the reasons for his arrest and shall be promptly informed of any charges against him'. The ICCPR also provides for prompt

trial by an independent and impartial judge or another official vested with judicial power. Further, Article 14 provides for equality before the law, the presumption of innocence and a fair hearing. Significantly, it prescribes that:

- In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
- a. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - b. To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - c. To be tried without undue delay;
 - d. To be tried in his presence, and to defend himself in person through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - e. To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - f. To have the free assistance of an interpreter if he cannot understand or speak the language used in court; and
 - g. Not to be compelled to testify against himself or herself or to confess guilt.

These provisions have been entrenched in the constitutions of most African countries.

The UN's Standard Minimum Rules for the Treatment of Prisoners, adopted in Geneva in 1955, prescribe guidelines for the treatment of prisoners and persons in detention. Its provisions cover the minimum custodial standards in respect of accommodation, personal hygiene, clothing and bedding, food, medical services, discipline and punishment, restraint, contact with the outside world, books and religion of inmates. The Minimum Rules contain specific provisions in respect of non-convicted or untried prisoners. It provides that, 'Unconvicted prisoners are presumed to be innocent and shall be treated as such' (Principle 85(1)).

The Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are UN instruments that directly provide for some of the most significant aspects of rights-based policing (Alemika 2005b). The Code of Conduct for Law Enforcement Officials was adopted by General Assembly Resolution 34/169 of 17 December 1979. The Code provides that police or law enforcement officials 'may use force only when strictly necessary and to the extent required for the performance of their duty' (Article 3). Further, law enforcement officials may 'not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment'. It also provides that any law enforcement official may not 'invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political

stability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment' (Article 5). The Code provides that the health of persons in custody must be fully protected by law enforcement officials, who 'shall take action to secure medical attention when required' (Article 6).

The use of firearms is addressed by the provisions of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which was adopted at the 8th UN Congress on the Prevention of Crime and Treatment of Offenders, in Havana, Cuba, from 27 August to 7 September 1990. The Principles require that law enforcement officials 'shall, as far as possible, apply non-violent means before resorting to the use of force and firearms' and may 'use force and firearms only if other means remain ineffective or without any promise of achieving the intended result' (Principle 4). They also provide that where and when the 'lawful use of firearms is unavoidable', law enforcement officials 'shall act in proportion to the seriousness of the offence and the legitimate objective to be achieved' and ensure 'minimum damage and injury, and respect and preserve human life' (Principle 5b). The Principles state that law enforcement officials must ensure that 'assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment' and notify at the earliest opportunity 'relatives and close friends of the injured or affected person' (Principle 5). They require that in case of injury or death 'by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors in accordance with principle 22' (Principle 6).

Under the provisions of the Principles, states are required to criminalize 'arbitrary or abusive use of force and firearms by law enforcement officials' (Principle 7). The broad principle of the instrument is that:

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particular serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. (Principle 7)

The Principles confer on police wide discretion in the use of firearms, but nonetheless provide normative parameters or guidelines. Domestic legislation is necessary to provide guidance for law enforcement officers on the use of lethal firearms.

In Africa, of primary importance is the AU and the various prescriptions it has authorized. For instance, the African Charter on Human and Peoples' Rights,¹ in Article 3(1) provides that, 'Every individual shall be equal before the law.' Article 3(2) provides that, 'Every individual shall be entitled to equal protection of the law.' Arbitrary arrest and detention is prohibited by Article 6 of the Charter. Article 7(1)(b) provides

¹ As mentioned earlier, the Charter was adopted by the OAU in 1981 and came into force in 1986.

that every individual has 'the right to be presumed innocent until proven guilty by a competent court or tribunal', while Article 7(1)(d) prescribes the 'right to be tried within a reasonable time by an impartial court or tribunal'.

The values about the sanctity of human lives; the dignity of human persons; the freedoms and liberties of association, thought, religion, assembly, association and privacy; the protection of individuals from repressive law enforcement and criminal proceedings are legitimate and widely shared across human societies, even if expressed in different ways. However, there is a danger in promoting these rights to the exclusion of the rights of communities, societies and nations to collective security, development and solidarity.

The adoption of a universal mission for policing and human rights without any consideration of cultural, political and socio-economic diversity is fraught with the danger of ignoring the variations in the cultures and contexts of human existence and experience. Imported reforms that entrench Western concepts of policing and human rights – emphasizing individualism and its associated rights in Euro-American culture and ignoring the strong emphasis on community solidarity in African societies – will be received with scepticism by the general population.

Human beings, as social beings, require rights and liberties to develop. But human beings can only develop to the fullest in association with other human beings, a reality that prompted some Enlightenment social and political philosophers to invoke the fictive origin of the state in order to articulate the relationships between society and its members, state–citizen relations and forms of government. Therefore, in the discourse and promotion of rights-based policing, in order to unravel and restrain cultural imperialism through the doctrine and ideology of rights, of absolute necessity is the critical engagement and the deconstruction of articulated rights and the prioritization of the rights of different actors and parties within law enforcement and criminal proceedings.

Current global human rights advocacy should constantly reflect on several questions, including the following:

- Given that the cultural contexts and underlying values of nations vary considerably, is the application of a monolithic and privileged set of rights in such diverse contexts warranted?
- Should the promotion, adoption and application of international human rights be undertaken without adequate and critical reflections on the diverse contexts?
- Should the rights of individuals, victims and communities not receive balanced or proportionate treatment in international human rights instruments?
- Why do transnational human rights advocacy and monitoring organizations focus on the perception and incidence of violations of the rights of suspects and criminals by security agencies without paying adequate attention to the impact of the heinous crimes of dangerous criminals, insurgents and terrorists on victims and society?
- Is the observance of the rule of law limited to persons acting for the government and not to individuals as citizens?

- How appropriate is the legal system that demands that police officers be hamstrung and judicial officers blindfolded by the presumption of innocence in countries where the looting of public resources is blatant, endemic and widespread among political and economic power-holders, resulting in violent conflicts, high levels of misery and forms of human insecurity?

Continuing reflection on these questions holds the prospect for strengthening the security and rights of diverse groups in society.

Politics, police and policing

Bayley observes that 'police forces are creatures of politics' (1971: 100). It is therefore not surprising that the organization and command of police vary across countries. In many countries, police are under the control of central government while in others they are under the control of sub-national (state and local) political authorities. In some countries, police are accountable to local political authorities while in others they are answerable to professional and bureaucratic organs which are believed to better protect or insulate police from partisan control and local prejudices. Bayley notes, however, that the structure and organization of police has little effect on their protection or violation of human rights and freedom. He argues that (1992: 539):

Neither the number of autonomous forces nor the extent of command centralization/decentralization within forces has any effect on human rights and political freedom. Australia, Britain, Canada, India, and the United States are all vibrant democracies, but they vary considerably in the multiplicity of forces as well as the command organization within them [...] Furthermore, authoritarian polities sometimes have decentralized police systems – for example, Prussia, The Soviet Union, and the American South before the civil rights movements, while notable democratic countries have centralized ones – such as Denmark, Ireland, Sweden, New Zealand, and France.

In contrast, Nserenko (1993) argues that decentralized police structures rather than centralized national police systems are more effective and conducive to rights-based policing because of the better knowledge of local conditions and stronger ties to communities. But Bayley argues that there is enormous variety in the organization, functions, powers and oversight of the police across countries (Bayley 1971). He observes that police and policing influence social, political and economic relations in society (1971). According to him, police organizations and officials 'have not generally been independent political actors. They rarely act on their own in politics, but usually as instruments of others' (1971: 103). He argues that during 'great national political crisis the record of police forces is quite mixed'. In some circumstances the police 'have been opportunistic, throwing their support to an apparent winner; sometimes they have defended the existing government, which is their bounden charge; and sometimes they have simply faded away, being no force to reckon with at all' (1971: 104–105).

Bayley identifies three factors that influence the extent of police involvement 'in political activity, whether open or clandestine: (1) the manner of their creation, (2) the location of police authority with respect to police power, and (3) the exigencies of political life' (1971: 107). He further notes that, 'Police forces created by colonial regimes, no matter the heritage of the metropolitan country, have been closely tied to political purposes' (1971: 107). The arguments by Hills and Bayley indicate that police reform at organizational level without an enabling political and socio-economic environment will achieve few results. The suboptimal outcomes of foreign, donor-assisted police reforms in Africa, Latin America and Eastern Europe significantly support this observation.

Colonial powers occupied African societies by actual or threatened military violence. They proceeded to introduce paramilitary forces to maintain their occupation for the purposes of economic exploitation. Colonial rule turned the values and norms of co-existence and dispute resolution in Africa on their heads, thus eroding the purposes and channels of mediation, arbitration, adjudication and conciliation. They substituted them with force and violence as tools of subjugation and the maintenance of an alien social order. The laws and police forces introduced by colonial governments were in contrast and in conflict with those employed by pre-colonial African societies for maintaining harmonious social relations, social control and solidarity. Colonial governments in Africa created police forces to control and coerce the colonized in the interests of the colonizers and not to serve, or account to, the public. Colonial policing was not therefore for the indigenous people but instead was used against them. Inheriting and embracing this legacy, post-colonial rulers sustained the colonial policing aims and culture as policing for the rulers and against the citizens (Alemika 1993).

Context

Context matters in determining the functions of the public police in any community, society and country. Since contexts vary considerably, attempts to define such roles based on the values, experiences and practices derived from a limited number of contexts with similar historical, political and economic genealogy may result in the imposition of imperialist policing ideology. This risk is more potent in Africa, where formal state policing establishments were the creation of colonial governments which used them for the advancement of their imperialist goals and for the suppression of the economic, cultural and socio-political organizations that defended and advanced the aspirations of the indigenous people. Colonial police forces were not established to promote human rights but to pacify the indigenous people. Formal state policing structures since independence in Africa sustain the colonial traditions, that is, to serve the socio-political and economic interests of despotic indigenous rulers. The protection and promotion of human rights was not a major concern of colonial governments and their post-colonial despotic offspring. Policing and police cultures in Africa have evolved over a long period and have been influenced by several forces before, during and after colonialism. They were significantly shaped by contexts embodying the political and economic interests and practices on the continent since the creation of police forces by colonial rulers. The contexts, interests and practices that shaped and continue to shape policing by the state in Africa should be factored into any analysis and discourse.

Pre-colonial policing

Prior to colonialism, most African societies did not maintain a professional police force, in the sense of a group of people organized, trained, uniformed, deployed and remunerated solely for policing criminality and civil disorder. Societies with centralized political authorities, such as kingdoms and emirates, had palace officers, who, among other functions, performed the duties of summoning suspects before the ruler and enforcing orders. But generally, social control and order were achieved through multiple channels of surveillance, dispute resolution, arbitration, mediation, adjudication and punishment (Tamuno 1993). Social control and policing reflected the economic and socio-political structures and relations in pre-colonial societies. As Omafume Onoge has observed (1993: 168), in pre-colonial Africa, there

were societies which did not need houses secured with heavy doors with secure locks, or compounds with high walled enclosures to prevent a thief from gaining entrance [...] which did not need to organize vigilante groups to watch over farm crops. For the security of farm products, hanging simple ritual symbols were sufficient to ward off thieves. Such symbols include [...] bundle of short sticks, hanging from a cross-bar placed across the path of the farm [...] snail shell tied to the trunk of a fruit tree.

Pre-colonial social control and dispute resolution systems and processes were designed to achieve order, cooperation, social harmony and community solidarity through mediation, conciliation, arbitration and, as a last resort, coercive adjudication. Procedurally, dispute resolution mechanisms guaranteed the participation of individuals and groups as suspects, victims, witnesses and adjudicators. According to Tankebe, ‘ancestral spirits and other divinities that were believed to exercise omniscient and omnipresent surveillance, rewarding conforming behaviour with good health and prosperity, and visiting punishments of various kinds on deviant behaviour’ (2008: 67–68) were central to pre-colonial African penology.

Social control and dispute resolution were undertaken through diffuse, transparent and participatory platforms. Tekena Tamuno, a renowned Nigerian police historian, has reported that pre-colonial African societies did not require ‘the services of any formal police including messengers’ because they were capable of policing themselves and adopted certain “‘native restraints” upon anti-social behaviour’ (1970: 71). Among the native restraints ‘were the fear of retaliation by injured persons, the sanctions of gossip and public opinion, customary law and belief, and considerations of esteem and similar institutional, economic and moral pressures’ and the societies ‘encouraged the development and expression of sympathy, sociability and a sense of justice as social ideals’ (1970: 71).

Increasing populations and the complexity of economic, political and social systems would no doubt have changed the traditional social control, policing and dispute resolution systems discussed above. But it would not likely have been in the form of the alien police and policing systems imposed on colonial and post-colonial Africa.

The popularity and resurgence of traditional, vigilante and informal policing systems to curtail crime and violence in different parts of contemporary Africa are partly due to the alien features, inaccessibility, injustice and ineffectiveness of inherited colonial legal and policing systems (Abrahams 1987; Anderson 2002; Baker 2002, 2006, 2007, 2008; Bukurura 1994; Fleisher 2000; Scharf 2000; Sekhonyane 2002; Shaw 2002).

Some of the institutions and mechanisms through which social control was maintained in pre-colonial African societies were the family, religion, cults, age grade system and occupational groups. Nsereko reports that:

Among the Baganda of Uganda when there was trouble in a village the affected people or their neighbors raised an alarm and the chief sounded the *ggwangamujje* drum. All able-bodied males were expected to respond to the emergency. Failure so to respond without reasonable excuse was always taken seriously and was considered to be an offense. (1993: 466)

Professor Tamuno reports that prior to colonial rule, residents of African villages and towns 'were responsible for their own police matters' (1970: 83; see also Tamuno 1993). The ambience of the trial session is aptly captured as follows:

The trial sessions were conducted like a moot. Anyone could participate; up to direct questioning of plaintiff and defendant. The decision of the leaders when it came, took account of the public opinion, and when the punishment was announced and complied with, the elders sought immediately to rehabilitate the offender to the group. (Onoge 1993: 169)

The purposes of dispute resolution were mediation, arbitration, conciliation and restoration for the sustenance of cooperation and solidarity among members of society. These goals do not require force or violence, but rather a cultural value system that concurrently promotes the rights of community, victims, suspects and offenders.

Colonialism, police forces and policing

History is to society what genes are to human beings. They both have long-term decisive influence on the course of the development and health of their respective entities. Policing by state agencies does not occur in a vacuum. It is determined by the relationships between the state and society, rulers and citizens. Several scholars have observed that police forces were established in colonies for pacification, domination and exploitation (Ahire 1991; Alemika 1993; Deflem 1994; Killingray 1986; Tamuno 1970). Organized police forces were established in most African countries by the imperialist governments that participated in the colonization of and scramble for Africa, notably Britain, France, Portugal, Belgium and Germany. Mazrui (1969) identifies the main purposes of colonialism as curiosity and adventurism by scholars and explorers; the Eurocentric racist and religious ideas of the superiority of white people and their burdensome duty to civilize and evangelize others; and, most

importantly, imperialism – the exploitation and appropriation of resources of other peoples and lands as well as political domination and territorial expansion.

The colonists, in creating economic and political units that can be effectively dominated and exploited, carried out the piecemeal amalgamation of several societies as they were subdued. In Nigeria, for example, hundreds of nationalities were amalgamated at various times between 1861 and 1914 into a colony, protectorates and a country. The acquisition of territories was carried out by force through the establishment of police forces, constabularies, gendarmeries and armed forces. Their nomenclature notwithstanding, most of the colonial forces were armed. Crowder has pointed out that colonial rule was not administered based on democracy or human rights protection. On the contrary, 'the colonial state was conceived in violence rather than by negotiation' (Crowder 1981: 11–12). The colonial police provided the coercive force required 'to effect the seizure and abrogation of African property rights, especially in land and their labour services' (Mbaku & Kimenyi 1995: 282). The colonial police forces were instruments of conquest, exploitation and the oppression of Africans.

The police forces introduced into British colonies were not modelled on Britain's unarmed civilian police but rather on a replication of the paramilitary Royal Irish Constabulary. Colonial police forces were also not professional and autonomous organizations, but were organized and deployed to serve and protect the person, property and interests of white colonial officers and merchants. The establishment of police forces in colonial Africa was driven by several factors and the convergence of the interests of missionaries, merchants and colonial officials, respectively, for proselytization, commerce under exploitative conditions and domination with minimal effective resistance of colonized peoples (Alemika 1993; Mbaku & Kimenyi 1995).

The police forces established during colonial rule were responsible for the suppression of agitation by indigenous peoples. They enforced colonial rule and the obnoxious economic policies of forced labour, taxation, land appropriation and the criminalization of traditional customs, occupations and social control mechanisms. Police and policing were aimed at protecting the interests of the colonizers while criminalizing and suppressing the rights, interests, values, norms and practices of indigenous African peoples. Tankebe has observed that colonial police forces were established and administered in Ghana to 'secure [...] an untrammelled expansion and exploitation of the agricultural and mineral resources of the Gold Coast' and to facilitate the protection of 'the property and personal safety of the colonial capitalists as well as securing certain of the conditions of labour discipline' (2008: 69–70).

Several colonial governments in Africa criminalized the African values, institutions, practices and products that competed with those of the colonists. Thomas (2012) documents the widespread use of violence by colonial police forces in Africa, especially over the three decades spanning the 1920s to the late 1940s, partly in response to the challenges of war economies and the depression of the 1930s. Violent colonial policing was directed at quelling protests against exploitative and oppressive economic and labour policies. Colonial violence against protesting workers was more intense in countries like South Africa, Kenya, Algeria and Tunisia (Thomas 2012).

Colonial police were employed to cut 'down protesters with bullets and bayonets' (Thomas 2012: 73). In Algeria and other French colonies, the gendarmerie 'were the colonial authorities' first resort in the repression of the commonest form of organized dissent, namely rural and workplace protests arising from labour disputes, foodstuff shortages, or other adverse economic conditions' (Thomas 2012: 90). In British colonies in Africa, locally produced gins were banned in order to expand the market for imported gins, with these regulations enforced by the police. In the early 1900s, the German colonial government in Eastern Africa (Tanzania) and South-Western Africa (Namibia) introduced the racist 'native regulation' law to segregate residences and impose forced labour (Zollmann 2011).

Many colonial governments mobilized and manipulated ethnic differences in the recruitment, deployment and administration of colonial police force personnel. Colonial police employed Africans to police communities where they were strangers and were despised to fuel hostility between the police and the policed and to entrench the dependence and loyalty of the police personnel to the colonial officers and merchants (Alemika 1993; Mbaku & Kimenyi 1995; Tamuno 1970; Thomas 2012). Inter-ethnic hostility was actively promoted by colonial officers, as reflected in official correspondence. A colonial consul in Nigeria, Freeman, in a letter to his superior in Britain, reported that the people recruited into the Armed Police Force were Hausas and Muslims from the interior parts of the territory who were hated by the natives of Lagos, 'who have hitherto only known them as their slaves'. He said that the Hausas were 'disliked also by the Europeans as being of a more independent character than Lagos people'. Therefore, persons recruited into the Force 'have only the government to depend on and if properly managed will prove a valuable resource to this *settlement*' (emphasis added).² Denton, a colonial governor of Lagos Colony, also in a letter to Rippon in 1893, 30 years later, reported that the Hausa force deployed to police Lagos comprised of a 'body of men dissociated from the countries immediately around Lagos both by birth and religion, and who are as a matter of fact hereditary enemies of the Yorubas. This is such an enormous advantage in any interior *complications*' (emphasis added).³ The personnel of the colonial government-established police forces were 'alien to, alienated from and hostile to, the population among whom they are deployed' (Alemika 1993: 204).

There is abundant evidence in the literature that colonial powers inscribed racism within colonial police forces and between the police and the communities they served (Alemika 1993; Killingray 1986). Until almost the end of colonial rule, citizens of the colonizing nations were the senior officers of the militaries and police forces while Africans were relegated to junior ranks. In many countries, colonial officers recruited strangers to police a community and justified the practice as the need to exploit the enmity between ethnic groups to ensure that police officers were only loyal and accountable to the colonizers.

Colonialism, according to Mbaku and Kimenyi, was alien, 'it was forced upon the African people and was full of contradictions. Since it involved forced subjugation of the local

2 Freeman to the Duke of Newcastle, 31 December 1863 in CSO/1/1/1 (National Archives, Ibadan).

3 CRC Press, quoting a letter from Denton to Rippon on 2 August 1893 in CSO/1/1/1 (National Archives, Ibadan).

people and abrogation of their property rights, it could only be implemented through force' (1995: 282). Therefore, with ample evidence from Nigeria and Cameroon, Mbaku and Kimenyi (1995) have argued that the colonial police in Africa were employed by colonists to impose their domination, to effect and sustain the appropriation of land and natural resources, to impose taxation and forced labour, and to repress any resistance of indigenous people to alien economic exploitation and political oppression. Shivji has argued (2001: 3) that colonial police forces were

directed against the recalcitrant and restless 'native'. The colonial police (sic) was (a) accountable to the ruler, (b) hierarchically organized, (c) armed and paramilitary in nature, (d) alienated from the community with the primary purpose of (e) instilling fear of authority in the entire population. These formed the building blocks of the legal framework and institutional organization of the colonial police force.

The colonial police forces in Africa were reported to be ruthless, brutal, corrupt, dishonest and prone to brutalising the colonized peoples and vandalizing their properties (Alemika 1988, 1993; Mbaku & Kimenyi 1995; Odekunle 1979; Thomas 2012). In Nigeria, the numerous incidents of police killings in several protests between 1927 and 1950 in different parts of the country demonstrated the violent policing culture of the colonial police. Some of the incidents were anti-tax protests in Warri Province (1927–1928); women's anti-tax protests in 1929–1930 in parts of eastern Nigeria, during which 55 women were killed; women's protests against taxation and for political reform in Egbaland (Tamuno 1970). The United Africa Company workers' strike over the non-payment of salaries and poor working conditions in Burutu (1947); the workers' strike in the country for better economic conditions in 1945; and the Enugu Colliery strike in 1949, which led to protests in various parts of eastern Nigeria and during which more than 20 people were killed (Alemika 1993; Mbaku & Kimenyi 1995; Tamuno 1970).

Violence against the colonized was not limited to the colonies. A massacre of Algerian protesters took place in France in 1961. In pursuit of the liberation struggle waged by Algerians mobilized by the National Liberation Front (FLN) against French colonists, the FLN organized demonstrations of Algerians in Paris on 17 October 1961. The demonstrators were attacked by the police, who killed scores, with some sources reporting as many as 200 persons killed in different parts of Paris (Rennell 2011). Mbaku and Kimenyi have argued that the 'colonial police, rather than being agents of peace and order, used their comparative advantage in the use of violence to subdue the indigenous peoples and allow European settlers to maintain their political and economic privileges' (1995: 278).

Indiscipline and unprofessional conduct were prevalent among colonial police forces in Africa. They were accused of theft, rape, robbery and looting. Members of various colonial police forces in Nigeria were accused of 'looting, stealing and generally taking advantage of their positions'.⁴ Rather than keeping the peace for the community, they 'turned themselves loose upon the people, filling up the role

4 This was in respect of the police force in the Colony of Lagos between the 1860s and 1890s. See letter from McCallum to Chamberlain on 9 July 1897 in CSO/1/1/1/9 (National Archives, Ibadan).

vacated by kidnappers, and rioters [...] marauders and free booters' (Ukpabi 1987: 53–54). The intent of colonial policing, according to Onoge, 'was the subordination of the national interests of the people to the political and economic interest of the state' (1993: 178). He argues that by means of 'armed patrols, raids, arrests and detention, the colonial police protected the colonial economy by policing labour' (1993: 178). He also observes that the colonial police 'ensured the creation, supply and discipline of the proletarian labour force required by colonial capitalism' by enforcing 'unpopular direct taxation, the raiding of labour camps, and the violent suppression of strikes'. As a result, the colonial police as 'the most visible enforcer of colonial diktat remained immensely unpopular' (1993: 178). Onoge argues that in view of their activities, the 'police, in the consciousness of the people, became the symbol of the dictatorial establishment rather than the protector of the people's rights' (1993: 178). Relationships between the citizens and the police were mediated by corruption: 'Due to absence of effective "checks" over the arbitrariness of the police, the citizens either avoided "police trouble" or mediated inevitable contacts with bribe offerings' (Onoge 1993: 178). Shivji (1990, 2001) observes that the legal order in colonial Africa bequeathed to post-colonial rulers

was exactly the opposite of that prescribed by constitutionalism [...] fundamental human rights, particularly those which might have had any political impact, were conspicuous by their absence [...] Forced labour and unlimited power of arrest by administrators completed the armoury of an essentially quasi-military colonial state. (1990: 383)

Encounters between the public and the colonial/apartheid police forces were more frequently characterized by hostility and violence. Resistance to colonial rule and apartheid was crushed with excessive force. These encounters were embedded in citizens' memories. Protests and demonstrations by workers and women against repressive and exploitative policies were violently suppressed by colonial governments. Torture and the extrajudicial killings of indigenous people were widely employed to enforce or maintain colonial law and order.

Colonial rule did not bequeath rights-based policing to the colonies.

Post-colonial policing

The fragility of many African countries can be significantly explained by the triple tragedies they have encountered: trans-Sahara and trans-Atlantic trade; Islamic and Christian proselytization that embedded religious violence in African countries; and colonial occupation and incorporation into the world economic system. These have made them vulnerable to contentious politics, violent conflicts and instability.

Since independence, most African countries have been confronted with the challenges of nation-building arising from the amalgamation of multitudes of societies into a single country by the colonial governments. The challenges have not been effectively resolved in most African countries and the legitimacy of post-colonial rulers is often weak. Post-colonial and prebendal politics, as well as corruption and 'kleptocracy', have fostered ethnic and religious cleavages, rivalry and conflict. In their struggles to

gain or retain political power and control of the economy, rulers and elites construct, activate, amplify and manipulate ethnic and religious identities to fragment and polarize the citizenry, thereby precipitating crises, violent conflicts and civil wars. To maintain order, the military and police are deployed to crush opposition, as was the case during colonial rule. As a result, interaction between the police and citizens continues to be characterized by control and resistance, respectively.

Marenin observes that police forces 'in all African states began as instruments for colonial domination and control, a perspective and practice largely taken over wholesale by local and national political elites after independence' (2011: 71). Police accountability to the community was non-existent during colonial rule, and the lack of democratic police responsiveness and accountability to citizens has been reinforced and sustained by successive post-colonial governments, despite political rhetoric and the legislative frameworks meant to end brutality and impunity by law enforcement and security forces. Prolonged authoritarian rule in the form of one-party or military rule after independence sustained unaccountable and paramilitary police forces. African police forces and personnel have been seen to lack commitment to professionalism, civility, the rule of law, the protection of rights and a good relationship with the public. Political elites have failed to ensure the articulation and implementation of policing philosophy and practices that are congruent with democratic policing norms and have denied the police the professional autonomy and capacity necessary for effectiveness.

The legitimacy of African police forces is under constant threat by the existence of non-state, armed policing groups, such as vigilante, ethnic and religious militias, which administer mob and vigilante justice to the admiration of a citizenry constantly traumatized by violent crime and conflict. From the late 1980s, the transition from conflict or authoritarian single-party or military rule to electoral democracy has been shallow, and in some cases has stagnated or regressed. The transition has aggravated old rivalries and divisions between ethnic and religious groups and regions in many countries, including Nigeria and Kenya. In these circumstances, the party and politicians in power hold onto the control of the police and armed forces as weapons against opposition and cannot be persuaded to transform the police from regime police to people police and their operational culture from regime policing to democratic policing (Alemika 2003).⁵

Corruption is a widespread problem plaguing African police forces. Corruption occurs among police officers as the inducement for favourable posting, promotion and other favours. In the Ghanaian Police Service,

corruption often takes many forms including refusal to investigate cases or attempts to obstruct investigations, arrests and prosecution of a suspect; improper closure of dockets of suspects; circumvention of specified procedures; defrauding by false pretences; and bribery, cronyism, nepotism and extortion. (Tankebe 2008: 79)

5 In many countries where there are 'long-term reigning' presidents, members of the president's ethnic group are over-represented in the armed forces, police, intelligence agencies and other law enforcement agencies, especially at the highest ranks.

Similarly, the members of the police and security agencies in Nigeria have been variously criticized for their various acts of misconduct (Alemika 1993; Alemika & Chukwuma 2000; Odekunle 1979), including 'eroding the liberty, freedom, security, human rights, and welfare of the citizens [...] non-observance of the rule of law and for poor performance in their tasks of preventing, investigating, detecting and prosecuting crimes' (Alemika 1993: 188). They have also been accused of 'brutality, corruption, political repression and partisanship, and of failure to protect life and property and to curb public disorder without inflicting unnecessary injury; causing avoidable killing of citizens, and without escalating protests into riots' (Alemika 1993: 188).

Partisan control of the police by the party and politicians in power, and their frequent deployment to suppress opposition, coupled with their ineffectiveness in guaranteeing security and safety, has engendered the emergence of ethnic and religious militias and vigilantes in many African countries, which lack regulation and accountability to any constituted authority. There is resistance by some critical actors within the police services in Africa to the idea of accountability to the public or citizens through democratic mechanisms instead of through governmental control. Many national police chiefs value the benefits (financial gain and the absence of effective democratic oversight and accountability) that accrue from their close proximity to the heads of government (presidents and prime ministers) more than they value the confidence and support of their fellow citizens.

Respect for human rights was not a tradition of colonial police forces, which were deployed to deny indigenous peoples their freedoms of association, assembly, expression and democratic representation. Many indigenous rulers that succeeded colonial imperialists were themselves victims of police brutality and oppression. Contrary to expectation, post-colonial rulers did not reform the police to serve the citizens (Alemika 1993, 2005a). Instead, they maintained the control of police as a tool for the repression of any opposition to their bad governance.

In recent decades, most African countries have witnessed civil conflict and widespread violent crime. Some have recorded the emergence of terrorist groups and incidents of terrorist attack. These have engendered the demand and support for repressive policing by the public. In response to these challenges, citizens in many countries expect their police to act like vigilante groups that kill and maim suspects without the due process of the law or even the opportunity for defence. The acclaimed effectiveness of vigilante justice has spurred the proliferation of ethnic and religious militias and community-based vigilantes that have assumed responsibility for crime prevention and the control as well as the promotion and protection of the rights of ethnic and religious groups. This development has contributed to insecurity, political instability, civil war and the undermining of efforts to institutionalize democratic governance. In response to the pressure for effective control of violent conflicts and crimes (such as insurgency, terrorism, murder, armed robbery, banditry, cattle-rustling and kidnapping), the police in many African countries, including Nigeria, routinely carry out and announce the extrajudicial killing of criminals and insurgents in order to gain public attention and good law enforcement performance ratings.

Denial and violation of police personnels' rights

Discussion on police and human rights often concentrates on how citizens' rights are violated by the police. Attention is rarely given to the rights of police, who are often violated through multiple channels and by several actors (Alemika & Chukwuma 2000). The rights of the police are violated by legislation and political environments that deny professional autonomy and adequate resources commensurate with functions and occupational risks; engender victimization by fellow officers (especially superiors); promote corruption and nepotism in promotion and postings; and tolerate unwarranted assault and insult by civilians. Osse has observed in Kenya 'not just that police violate the rights of others and fail to provide security, [but that] internal abuses and violations are equally abundant. Police officers are being harassed, intimidated and denied their rights by other police officers, including their superiors' (2014: 1). In most African countries, police are prohibited by legislation from organizing and pursuing their interests through police associations or unions.

Challenges, constraints and police misconduct

African police forces are plagued by diverse challenges and constraints that have structural and institutional origins, which also promote police misconduct. They are under-resourced and thereby denied the personnel and resources for surveillance, intelligence and investigation. These shortfalls often predispose them to extrajudicial killing, unlawful arrest and detention, and torture (Alemika 2003). Police officials in many African countries are poorly trained, equipped and remunerated. Indeed, Robins argues 'that the colonial roots of African police forces created with a mandate dominated by the need to stifle dissent and maintain colonial rule' continue to affect 'the political independence of police forces' and 'their capacity and [...] how they were perceived by the public' (2009: 1). He further notes that the 'police forces are battling the legacy of their past, and still struggling to enforce the highest ethical standards in an environment where their political masters appear not to prioritise the independence and capacity of the police' (Robins 2009: 1).

According to Nsereko, police powers are 'liable to be abused or misused, [...] to oppress citizens, to invade their rights, to perpetrate injustice, to spread terror, [...] subvert popular will' (1993: 468). He cites cases of dictatorial rulers in Africa who abused police powers to oppress citizens after independence (Nsereko 1993). He observes that the police and kindred security organizations in Ethiopia, such as the Revolutionary Guards and the Kebelles, were effectively used by Haile Mengistu Mariam to spread 'revolutionary terror' and to eliminate 'counter-revolutionaries' – real or imagined opponents of Mengistu's regime. He also reports that 'in Uganda, Milton Obote and Idi Amin used security agencies such as the General Service Unit, the State Research Bureau, the Public Safety Unit, and the National Security Agency to effectively suppress popular will and to maintain these two men in power' (Nsereko 1993: 468).

An analysis of the Kenyan police in the Strategic Plan: 2003–2007 revealed the deficiencies which subsequent reforms since 2008 have not significantly eliminated. They include slow responses to the scene of crime; ineffective crime prevention

and detection; inadequate personnel; low investigation capacity; the absence of professional and efficient human resources management; political interference and poor conditions of service, including low remuneration, grossly inadequate resources and an inefficient procurement system (Kenya Police Service 2003: 8). The results of the analysis were substantially substantiated by other studies and reports (CHRI & KHRC 2006a). One of the consequences of the deficits is that inadequate criminal investigation training and the lack of forensic facilities encourage reliance on evidence gathering through the extraction of confessions by means of torture (Kenya Police Service 2003).

The Kenya Police Service's Strategic Plan highlights the challenging relationship between police and community as well as police officers' unprofessional conduct and human rights violations as follows:

The public lack confidence in KPF's [Kenya Police Force's] competence and integrity. The public's perceptions are in many respects justifiable and results to low reporting levels of crime. The public complains about police inaction and giving excuses for doing nothing in the face of crime and victimization. They also complain of police brutality, torture, assault, rape, trigger-happiness, illegitimate arrest, harassment, incivility, disregard for human rights, corruption and extortion, among other things. (Kenya Police Service 2003: 10)

The Commonwealth Human Rights Initiative's report (CHRI 2006) identifies several problems in the KPF, including corruption in police operations in the areas of arrest, bail, investigation, charging and prosecution; the excessive use of force; impunity, due to ineffective internal disciplinary mechanisms and external oversight agencies; and partisan political interference. Some of the problems associated with the statutory and institutional mechanisms for oversight and relative autonomy have been addressed through the Constitution of Kenya and laws that have resulted from the reform efforts started in 2008. However, the effectiveness of the measures is not yet significant. It was observed in a recent publication that the

Police in Kenya have rarely been held accountable, internally or externally. For a long time, there was no effective independent police oversight organ, and disciplinary proceedings were all too often applied in an unjust manner, if at all [...] Rather than investigating a case and examining the causes of alleged or proven police misconduct in order to prevent its recurrence, the officer involved was often transferred without further action. (Osse 2014: 1–2)

The problems identified in Kenya are to a very significant extent similar to those observed in many African countries, such as Uganda, Tanzania and Ghana (CHRI 2006, 2007; CHRI & KHRC 2006a, 2006b); Nigeria (Ahire 1991; Alemika 1988, 2003; Alemika & Chukwuma 2000; Odekunle 1979); Sierra Leone, Tanzania and Zambia (Robins 2009) and Ghana (Tankebe 2008). According to Tankebe, corruption in the Ghanaian Police Service 'often takes many forms including refusal to investigate cases or attempts to obstruct investigations, arrests and prosecution of a suspect; improper

closure of dockets of suspects; circumvention of specified procedures; defrauding by false pretences; and bribery, cronyism, nepotism and extortion' (2008: 79).

Robins, in his analyses of the police forces in Sierra Leone, Tanzania and Zambia, found the following problems (2009: 3):

1. Politicisation: Members of government and politicians abuse the police for their own agendas; recruitment is politicized, and oversight bodies are partisan;
2. Lack of resources: Forces are universally understaffed; communications and transport infrastructures are inadequate, impacting on the quality of police work; evidence handling, and forensic capacities are inadequate;
3. Personnel: Recruits are not well-educated on intake and training does not address all elements required; human rights violations persist;
4. Community policing is frustrated by a lack of trust in the police; public perception of the police is largely negative;
5. Corruption: Poor pay and conditions lead officers to take bribes; efforts to address corruption are inadequate and inconsistent; and
6. Oversight remains limited or insufficiently independent.

Police reform

There have been efforts to reform the police forces in several countries since the early 2000s (Berg 2005a, 2005b; Rauch & Van der Spuy 2006). Donors and UN development agencies have supported police reform as an adjunct to reforms aimed at promoting political and economic liberalism on the continent. Civil society organizations in several countries, especially Nigeria, Ghana and Kenya, have campaigned for the establishment of civilian police oversight mechanisms. At the continental level, the African Policing Civilian Oversight Forum (APCOF), comprising members from civil society and the police service commission and oversight agencies, was established to promote policing standards and oversight.

These efforts have yielded some results in areas of legislation and the establishment of accountability and oversight institutions (APCOF 2005). Paradoxically, significant changes have not been recorded in the operational culture, conduct and professionalism of the police forces. A major reason for this is the lack of political will of the regimes and politicians in power to democratize policing. Reforms towards the introduction of community policing were perhaps most discussed and experimented with in South Africa, Kenya, Uganda and Nigeria. But initial progress seems to have been significantly eroded. Remilitarization occurred in South Africa, where military ranks were reintroduced, and police violence against citizens remains a problem. The brutal murder of protesting Marikana mining workers in South Africa signifies continuity with, or at best an atavistic retreat towards, a colonial and apartheid policing culture. Uganda and Kenya (until recently) remilitarized their police forces by appointing military leaders to head the organizations.

The discourse of European and North American policy-makers and researchers on why reforms fail in Africa reflects the lack of the necessary depth of knowledge. They ignore the significance of context and attempt to translocate policing traditions and trending practices from Europe and North America to Africa. More than five decades ago, outstanding research by Wilson (1968) demonstrated how context determines policing practices within the same jurisdiction. However, this lesson is often lost on reformers seeking to introduce a 'one size fits all' policing model.

African countries, which are often the recipients of police reform assistance, are frequently blamed for the inability of poorly conceived reform programmes to achieve intended objectives. While the failures of such efforts are often framed as the result of an incompetent state, the reality is that many reform programmes have been resistant to changes in policing purposes, culture, organization and styles, and largely ignored the position taken by many African conservatives who are bent on defending their policing culture. In fact, discussions surrounding the failure of reforms in Africa almost resemble a form of 'victim-blaming', in that the underlying motives of such efforts – i.e. to impose a set of instruments to promote and defend imperialist (colonial and neo-colonial) exploitation of African societies – are completely ignored.

Hills observes that 'sub-Saharan Africa countries are *under increasing international pressure to adopt democratic policing styles, priorities and structures*' (2008: 215, emphasis added). She notes that the 'language and organizational features of community-oriented policing have proved particularly popular amongst donors and recipients'. According to her, 'partnerships and fora for the civilian oversight of policing are now as common in Ethiopia as in the Democratic Republic of Congo (DRC), Ghana, Mozambique or South Africa'. However, and to her dismay, '*most police in most African countries are fundamentally unchanged from what they were ten years ago. Most remain politicised, under-resourced and inadequately trained*' (Hills 2008: 215–216, emphasis added). She further observes that despite 'decades of police assistance and the recent introduction of reform plans, Nigeria's public police remain notoriously brutal and corrupt' (Hills 2008: 215). The implied conclusion of the discourse on the failure of police reform by donors and many Western police scholars is that African institutions, including the police, are difficult to reform. But what or how else should it be? How easy would it be to reform an American or European family system to function like an African family?

The failure of police reform as conceived by foreign organizations and donors cannot be expected to yield any substantial positive results for at least three reasons. First, foreign-conceived reforms ignore the significance of the relativity of the historical and political contexts of the evolution of police forces in Africa as compared with the colonial metropolises in Europe, especially the United Kingdom, France, Belgium and Portugal, whose police forces were not established by alien forces for the purpose of suppressing and exploiting indigenous peoples.

Second, only a fraction of the assistance goes towards the implementation of reforms. The greater proportion goes towards paying the consultants from donor countries who are exported to teach Africans the European method of policing. The consultants often

lack any understanding of or appreciation for the contextual differences associated with the historical, political and economic evolution of African states, not least the coercive amalgamation of people into arbitrarily drawn territorial boundaries. As we have seen, policing in contexts such as these is complicated by the challenges and constraints of nation-building, governance, development and security.

Third, the programmes are exported by donors who frame the goals and design the implementation without any meaningful consultation and the involvement of governments, police agencies and relevant civil society organizations. National governments and police agencies are then required to accept the efforts of expatriate consultants to augment resources for policing and other needs rather than transforming policing styles that protect their interests. The lesson is that effective reform requires proper contextualization, broad-based consultation, partnership and a commitment to reform from the national governments and police agencies.

Conclusion

Ideally, police are the frontline defenders of human rights. Their powers are intended to be exercised to guarantee the security of citizens, the safety of property and peace in communities and nations. These are the fundamental aims of human rights and liberties. Policing is not only about individual rights, but is also about community safety and peace, without which individual liberties and rights cannot be guaranteed and enjoyed in contemporary societies. Police constitute the hub around which policing revolves in contemporary nation states.

As an occupation, police work is daunting and dangerous. In many societies and communities, police officers on the street or on patrol routinely encounter violent people violating or intending to violate the rights of other citizens within the communities. They are under pressure from communities and victims to ensure that their security and safety is guaranteed within reasonable time, and to ensure that justice is visibly carried out in order to demonstrate that crime does not pay. However, the international human rights instruments and laws of many national jurisdictions demand that the police treat suspects as innocent until convicted by a judge, who is also expected to be convinced beyond reasonable doubt that the suspect is guilty of an infraction of the law. This is a source of tension in police work – enforcing the law and simultaneously protecting the rights of individuals and communities in a legal regime where the rights of suspects are privileged over community safety.

To achieve the purpose for which they are employed, police are vested with enormous powers to interrogate, stop, search, arrest, detain and prosecute citizens suspected of committing crimes, threatening public order and security or violating the rights of fellow citizens. Under conditions specified by law, police are empowered to use non-lethal and lethal weapons to ensure safety and security, as well as guarantee the rule of law and human rights.

One of the major challenges is balancing the two fundamental responsibilities assigned to the police – promoting safety and respecting the rights of citizens. International

human rights instruments disproportionately pay attention to the protection of the fundamental rights of individuals relative to the rights that collectives, such as neighbourhoods, communities and nations, have to peace, security and order. Not surprisingly, therefore, the UN as well as continental and regional organizations like the AU and the Economic Community of West African States devote considerable energy to developing conventions and protocols on how police should treat citizens suspected of crime. Human rights instruments at international and national levels pay little attention to the importance of developing codes that outline citizens' corresponding responsibilities to ensure the effective realization of their rights and liberties. This gap is a major source of tension in police efforts to enforce the law.

The lopsided emphasis on the rights of citizens may be traced to two factors: the historical development of international human rights after the war among European and Asian nations in 1919–1921 and 1939–1945; and the existence of coercive state institutions and the enormous power and violence states can deploy. The international instruments were designed to restrain the state from exercising its coercive powers. However, contemporary developments demand that international organizations pay attention to the development of instruments that curtail the capability of non-state armed groups that threaten the security of individuals, groups and communities. Non-state armed groups using highly lethal mechanical, electronic and biological weapons are often ignored by global human rights instruments and monitors that condemn the alleged 'extra-legal' state responses and their threats and atrocities.

Human rights violation was ingrained in the establishment and administration of police forces ever since their emergence during colonialism. Efforts to change the police culture therefore must first confront its history and evolution instead of denying, concealing or under-estimating the impact of the inherited legacy by arguing that post-colonial rulers ought to have changed the inherited system.

Nsereko proposes that police human rights violations can be curbed through the following measures: the insulation of the police from partisan political interference; the institutionalization of professionalism within the police service; the decentralization of police structures; effective oversight mechanisms, especially to address complaints; the entrenchment and justiciability of fundamental rights in the country's constitution; the empowerment and independence of courts to grant 'effective relief'; the obligation of the executive branch of government to respect and obey the decisions of the courts; impartial, independent and efficient courts which ensure that security is maintained with due justice to the individual, and lawyers constitutionally empowered to defend their clients (Nsereko 1993). These are sound proposals, although they only constitute necessary but not sufficient conditions. Police are 'agents' that are responsible to a 'principal' or 'principals' – the government and society. Police conduct depends on the dominant culture and group relationships within the state, the nature of the government and its relationship with citizens, and the nature of social and economic relations.

Community policing has been touted as the solution to the problems with, and encountered by, African police forces. Over the past three decades, there has been academic, professional, public and government interest in fostering a partnership

between the public and the police in order to enhance security, justice and order. In this quest, several related approaches have been conceived and introduced. They include community- and problem-oriented policing. These buzzwords are a reaffirmation of the features and functions of the police, explicitly enunciated as the principles of policing by Robert Peel in 1829, when the London Metropolitan Police was established. Community policing, which became popular from the 1980s, especially in the United States of America, has witnessed a rise and fall in its implementation during periods of decrease and increase in crime rates.

Community policing entails the democratization of public policing by promoting accountability and participation. It seeks to give practical effect to the idea of a 'people's police', which is not the 'public police' controlled by federal, state or local governments, but instead by citizens and the communities it serves.

Partnership between police and the public in the articulation of security concerns and priorities and the production of safety and security is desirable. The literature indicates that while community policing promotes accountability and sometimes decreases the fear of crime, it does not often achieve decreases in the incidence and prevalence of crime. Community-police partnerships can promote rights-based policing. Nonetheless, the literature indicates that community policing rhetoric and programmes can be hijacked, for example by the police in order to co-opt citizens, and by dominant elements in the community to criminalize and exclude groups whose lifestyles, values and beliefs differ from theirs. African countries should therefore adopt and adapt community policing with attention to their particular cultures, history, political evolution and specific challenges, rather than purchasing the concept and practice as, is or, accepting it unconditionally from foreign donors.

To expect the police to protect and promote the rights of citizens and ensure equal protection of all citizens under the law in a society with wide economic, political and social inequalities is somewhat delusional. Such an expectation neglects the embedded dysfunctions of capitalism or the 'free market' in which inequality is ingrained but ideologically portrayed as natural and inevitable and shifts the blame to the police. The opposite is true, however. The UN Development Programme's Human Development Index has revealed that social-democratic political economies provide a better guarantee of human security, including rights-based policing. The struggle for rights-based policing must be embedded in a wider struggle for social, economic and political rights and justice. Focusing advocacy on rights-based policing without greater attention to the structural economic and political determinants of injustice, inequality, exclusion and the denial of fundamental rights more broadly is focusing on the symptoms and not on the causes of chronic social, political and economic dysfunctions.

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Chapter 3

Policing insurgency: Remembering apartheid



Elrena van der Spuy

Introduction

In a context where the war on terror and organized crime have moved centre stage, one can be forgiven for the impulse to hark back to Brodeur's (1983) seminal piece on 'high' (i.e. political) policing. Crafted almost 40 years ago, the distinction between high and low policing and his discussion of the defining features of high policing have lost none of their relevance.

The developments prompted by the attack on the United States (US) World Trade Center, combined with international efforts to reconstitute order in Afghanistan and Iraq, have led to a resurgence of interest in high policing. The search for a high policing theory which is receptive to global changes in the security terrain now draws various commentators. For Brodeur (1983), four features define high policing, namely:

- Absorbent policing (meaning the collation of data, the production of intelligence and threat assessments, the dissemination of such intelligence on a 'need to know' basis);
- A tendency for power at legal, judicial and executive levels to become conflated;
- The overwhelming emphasis on the protection of national security (or the political regime) as the *raison d'être* of high policing; and
- The systematic use of informants and undercover operatives of various types.

In an attempt to adapt Brodeur's (1983) model of high policing to the dynamics of current global security arrangements, critics have argued for a reconceptualization of high policing theory so as to better accommodate the blending of high and low policing on the one hand, and the contracting out of high policing functions to the private security industry on the other. In response, Brodeur (2010) has warned against the over-dramatization of the supposed fusion of high and low policing (which suggests increasing fusion between the uniform and intelligence branches of the public police) as well as the degree of 'interpenetration' of public and private intelligence actors.

In Africa, because of the exigencies of colonial rule and post-colonial state formation, the model of high policing has long been the defining feature of the system of public policing. Given such legacies, post-conflict reconstruction of security sectors in Africa invariably aims at curtailing high policing practices and the institutional arrangements on which those practices are based. The study of the South African example that follows provides an illustrative case in point.

In South Africa, 'Project Police Reform' is more than two decades old. During this period much has changed. Complex processes of amalgamation and integration have resulted in the formation of a single national police agency to serve the post-apartheid nation. At a very early stage of reform, the security branch was dissolved and its members redeployed into crime intelligence divisions. The shutting down of various covert units followed in the wake of the Goldstone commission of inquiry into political violence. The exodus of a cadre of senior police generals in the early 1990s created opportunities for personnel changes at the senior level. Redress in employment has resulted in a radical change in the demographic composition of police personnel. Changes in name, uniform, rank structure and training content have been pursued so as to demilitarize the institution.¹ In line with constitutional imperatives, the principles of human rights and due process have been formally adopted by the police agency. Together with a change in legal mandate, the philosophy of community-based policing has also shaped institutional arrangements and operational practices. Furthermore, modern management systems have brought changes to systems and procedures. Technological infrastructure has also been modernized. Critically, the emphasis on democratic accountability has led to the creation of elaborate systems of oversight.

The policy frameworks within which the police agency operates today bear little resemblance to those which guided the operational actions of its institutional forerunner, the South African Police (SAP). Such changes, however, have not insulated the police from the invidious challenges relating to high rates of violent organized crime and to a capacity deficit in critical areas such as crime detection and investigation. Weak systems of discipline combine with high levels of corruption that permeate to the top of the organization. Furthermore, the post-apartheid era has become associated with a degree of politicization of the senior command. Evidence of political interference in investigations has, amongst other factors, contributed to the erosion of accountability. Allegations of the abuse of police power have remained a feature of the new police agency. Inter-agency rivalries within the larger security establishment have had further invidious consequences. The growth in organized crime, together with the rapid growth of public disorder, places additional demands on an organization subject to case overload. It is in this embattled context that a renewed emphasis on the virtues of 'discipline', 'intelligence' and 'hierarchical command' may suggest a yearning for a policing past. But what, one may ask, constitutes the 'policing past' in the colony of apartheid? One critical feature of

1 More recently, of course, we have seen attempts to undo some of those earlier changes. In a way the demilitarization of the early period has given way to remilitarization. This about-turn, it is often argued, is necessitated by a policing environment characterized by high rates of organized violent criminality.

the policing past is of course that of counter-insurgency, the subject to which the discussion now turns.²

Policing insurgency under apartheid

This paper revisits a particularly difficult period of South African policing, 1960 to 1990, during which the SAP played a key role in the state's counter-insurgency and counter-revolutionary strategy to disrupt and/or silence political opposition. It seeks to reflect on the evolution of a counter-insurgency form of policing, identify its key facets and consider its impact on the police and the job of policing. For this excursion, we explore the contribution of different bodies of literature. Each source contributes in very specific ways to our grasp of the salient features of, and consequences associated with, policing insurgency under apartheid.³

Critical scholarship on the police constitutes one important source of information. Written in the detached style of academia, academic research is concerned with structural context and organizational exigencies, that is, with the nature of the apartheid state, the political context of the insurrection against racial rule and the strategic policy of total strategy. This body of literature examines the impact of a counter-insurgency war in ruling party circles on the institutional arrangements, ethos and operational practices of the police.

A second source of information is provided by the rich South African tradition of investigative journalism. From this genre emerges, in considerable detail, the dirty tactics of the state as it ballooned during the last two decades of apartheid rule. Through investigative journalism, one encounters the personalities of death squad operators and their bosses. Key operators, such as Dirk Coetzee and Eugene de Kock, amongst others, are brought to life, their upbringing and personalities described, their policing careers charted and their repertoire of skills as 'violence workers' laid bare.

A third source of information is the professional biographies⁴ compiled by former members of the senior command of the apartheid police, a number of which have been published in recent years. These biographies-cum-institutional histories provide an insider view on the history of policing as understood and reconstructed by a cadre of former senior police. The narratives of the insiders are very different to those

2 According to US military doctrine, says David Kilcullen (2010: 1), an insurgency is 'an organized movement aimed at the overthrow of a constituted government through the use of subversion and armed conflict [...] Stated another way, an insurgency is an organized, protracted politico-military struggle designed to weaken the control and legitimacy of an established government, occupying power, or other political authority while increasing insurgent control'. The same source defines 'counterinsurgency' as the 'military, paramilitary, political, economic, psychological, and civic actions taken by a government to defeat insurgency'.

3 This paper is a first step in a longer research journey which involves in-depth interviews with a sample of former police generals and counter-insurgent operatives which I have been conducting over the past two years. A review of the literature on the policing of counter-insurgency, I thought, would provide a substantive context within which the thematic issues emerging from the interviews could and should be located.

4 These may constitute a form of ethnography – or 'copnography' if you wish.

analyzing the police from the outside – a function, no doubt, of distinct world views shaped by political ideology, sub-cultural dynamics and the occupational realities of being apartheid's 'thin blue line'.

A fourth source of relevance to this discussion is located in the deliberations of the Truth and Reconciliation Commission (TRC) and the body of oral testimonies and analysis to which they have given rise. The TRC's findings on gross human rights violations, in particular, introduce new perspectives on the relational dynamics of 'state' versus 'people's' violence. In the sections below, the four genres are considered, key texts identified and the particular contribution of each to our grasp of counter-insurgency policing considered.

Critical scholarship

Our understanding of the politics and logistics of policing under high apartheid has grown considerably. The critical, and often sweeping, commentaries of apartheid policing, of which Cawthra (1993) and Brogden and Shearing (1993) are good examples, have given way to more comprehensive investigations. So, for example, the more expansive historical analysis of John Brewer (1994) has added many more particulars to the general understanding of the institutional evolution of the police and policing in modern South Africa.

In critical scholarship there has been consensus on the political parameters within which apartheid policing has to be appreciated. The formation of the South African state laid a foundation for a colonial model of policing. Industrial development steered the state's security apparatus in particular directions. Furthermore, Afrikaner nationalism and the project of ethnic state-building shaped policing practices on the ground in definitive ways. Popular resistance and armed struggle again exerted a powerful influence over the role of the police in the defence of state security. Thus, a complex range of factors mixed and combined to shape the structural context within which the state and its armed formations developed, and a paramilitary police culture took root. What has been lacking from these broad-based accounts has been the finer detail of how the drift toward securitization within the state shaped the structures, mentality and behaviour of its security organs.

This gap in texture and detail has been filled more recently by the work of scholars such as Stephen Ellis (1998) and Kevin O'Brien (2001a, 2001b, 2011). Both provide excursions into the dynamics of securitization, political and organizational, of the apartheid state. O'Brien's (2011) recent work deserves explicit mention here as it exposes the intersections between the broader political context, the securitization of the apartheid state and the militarization of policing. What O'Brien captures is the institutionalization – step by step – of counter-insurgent policing from the 1960s onwards. In this authoritative account, one confronts the overarching dominance of the security branch in the SAP and the development of a centralized intelligence and infiltration capacity. Access to secret funds, we are reminded, created the very conditions from which specialized units would rapidly grow and become corrupt

from within. Specialist units (both overt and covert) morphed over time, mixing and combining in various ways. Between 1974 and 1989, as O'Brien demonstrates, the utilization of dirty tactics expanded exponentially. During this period, he argues, the practice of (selective) assassination of political opponents in defence of state security became entrenched. In his work the empirical evidence for this claim is neatly assembled. Covert operatives utilized the room for manoeuvre that they were given. The ideological justification of fighting a 'just war' would serve as a powerful legitimating device for street-level operatives taking ever greater licence to silence political opposition. But, argues O'Brien (2011: 137), the political authorization for violence – that is, for the security community 'to take the gloves off' in an all-out counter-revolutionary war – came from the very top.

Once the strategy of counter-revolutionary war was adopted in 1986, the conditions for covert activities expanded in many more directions. One consequence of the development of a more 'integrated approach' was the establishment of a 'Third Force' situated between the SAP and the South African Defence Force (SADF). With regards to the Third Force, Ellis (1998: 264) opts to 'use the term to designate a substantial, organized group of security officials or former security officials intent on perpetrating violence in the service of a counter-revolutionary perspective'. He goes on to say that

[t]he state-organized and state-connected covert and clandestine networks known as the Third Force were not responsible for all the political violence which occurred in this period, but there is reason to believe that they were in some way its most important sponsors.

He traces the origins of such units to the early period of the war in the 1960s; first in Rhodesia, then South West Africa and then reorganized for counter-revolutionary warfare inside South Africa in the 1980s. The lessons learnt in the border wars – particularly around intelligence gathering from active guerrillas, and the use of 'turned guerrillas as troopers in the security forces' (Ellis 1998: 269) – became copied back home. The promulgation of wide-ranging security legislation and successive states of emergency in the 1980s provided the very conditions within which a culture of impunity proliferated and the use of torture expanded. Official denial of such practices simply confounded the abuse of police powers. The consequences for bureaucratic forms of accountability are spelt out as follow:

The need-to-know principle generally used in covert operations precluded knowledge of the trade from circulating through normal managerial channels [...] covert operations not only increased enormously the possibilities of corruption, but covert units had a tendency to fracture into vertically integrated patronage systems whereby covert operators in the field could carry out illegal operations on the authority of just one senior central official, by-passing various committees designed to coordinate government action. (Ellis 1998: 276)

In this way then ‘total war simply meant war without rules’ (Ellis 1998: 279). Front companies were set up and false identities adopted, not only to pursue covert activities on a wide terrain but also to cash in on the prospects for criminal profit which opened up. By 1992, state control over the Third Force, the loose conglomeration of covert units criss-crossing the security sector, had effectively been eroded. ‘Thereafter’, says Ellis (1998: 293), ‘it was privatised.’ At this point the stage was set for former covert operators to morph into professional criminals and to utilize their political connections and warrior skills in the burgeoning illegal economy of the new democracy.

The analyses of both O’Brien and Ellis contribute to our understanding of the way in which political context and systemic factors create enabling conditions (or ‘atrocities environments’ as Huggins and associates [2002] would put it), for ‘violence workers’. Here, of course, comparative research has much to contribute to our understanding of the kinds of structural conditions under which police become murderers and torturers. As elsewhere (Latin America), secrecy, occupational insularity, operational culture and organizational fragmentation created the very conditions within which violent security operatives flourished (Huggins et al. 2002).

Uncovering the ‘heart of darkness’

For those interested in counter-insurgency as dramatic spectacle, the tradition of investigative journalism in South Africa has much to offer. Investigative journalism made a critical contribution to the exposé of ‘dirty tricks’ and of the men behind those tricks at a time when allegations of state abuse of power were met with forthright denial.⁵ For composite accounts woven together from newspaper reports in the mid-1980s, there are a number of texts worth considering here.

First in line to bring us revelations from apartheid’s death squads was Jacques Pauw’s *In the Heart of the Whore: The Story of Apartheid’s Death Squads*. Published in 1991, it was billed as the product of ‘a two-year investigation into state-sponsored death squads’. The 16 chapters are structured around different police personae, carefully positioned in time and space. Each chapter recounts an incident when covert operatives were going about their business of disrupting and silencing political opposition. The stories are told with an emphasis on contextual details, of the orders given by superiors and executed by foot soldiers. There is much bravado and swagger to be found in the stories. Gratuitous violence seems to accompany the actors and their actions everywhere. Pauw (1991) provides an inventory of clandestine operations involving kidnapping, cross-border raids, the use of torture (here, there and then almost everywhere), the assassination of insurgents and the disappearance of bodies. A story thus unfolds in which the ‘licence to kill’ gained ever wider momentum.

5 Investigative journalists, for example, succeeded in forcing the state’s hand to establish commissions of inquiry into the existence of Third Force activities. Both the Harms and Goldstone commissions of inquiry were instituted after newspaper reports of clandestine activities.

The life histories of two central characters, Dirk Coetzee and Eugene de Kock, are central to the story which unfolds *In the Heart of the Whore*. Both were erstwhile commanders of a police death squad⁶ which operated from a farm called Vlakplaas. In the career trajectories of both operatives, early exposure to military policing in Ian Smith's Rhodesia and then later South West Africa is seen as a defining influence. In both cases, the formative 'apprenticeship' in the security branch is followed by commanding officer positions at the covert police unit, C1, stationed at Vlakplaas. The policing skills acquired along the way are the very stuff of high (i.e. political) policing: intelligence gathering, infiltration of enemy lines, sabotage and counter-terrorism. From Pauw's (1991) account emerge the sub-cultural dynamics associated with a secret brotherhood and the code of silence within which it operated. But beyond the surface of a cohesive whole, a tight-knit policing family, there also lurk inter-agency rivalry and interpersonal back-stabbing.

In the Heart of the Whore reveals an organization whose specialist tentacles became embroiled in the messiness of counter-insurgency policing. As the struggle heated up, the formal tools provided by permissive security legislation were increasingly supplemented by informal mechanisms in an all-out counter-revolutionary war against insurgents. By the late 1980s this strategy had resulted in the sub-contracting of violence to various conservatively aligned vigilante groupings (Pauw 1997). By then, state misinformation, denial and deceit provided an almost impermeable curtain through which the Harms Commission of Inquiry could not penetrate.⁷

Pauw's sequel – *Into the Heart of Darkness: Confessions of Apartheid's Assassins* – followed in 1997. By then the context had changed dramatically. The 'war' against communism and the possibility of black majority rule had been lost and the efforts of the past seemed senseless. It was at this point that there emerged evidence of post-traumatic stress and of recurring nightmares amongst counter-insurgency operatives. Of the earlier swagger and bravado there was now little to be seen. If the adrenaline had waned, the use of drugs and alcohol increased. A pitiful picture emerged. Stigma and marginalization now seemed to accompany the apartheid state's covert operatives. With a criminal trial looming and the deliberations of the TRC almost under way, the monolithic brotherhood was being challenged from within.

On the front cover of *Into the Heart of Darkness* one finds photographs of 30 of the state's key assassins. Inside, the reader is not spared the characters' excesses. They often appear 'fat, drunk and disorderly' (Pauw 1997: 58). They have strange nicknames, ranging from the 'quaint and playful – Brood (Bread), Balletjies (little Balls) and Chappies – to the more manly and warlike – Duiwel (Devil) and Snorre (Moustache)' (1997: 58). The portraits are anything but flattering. Take the case of Chappies Kloppe:

6 From 1980 onwards the C1 unit operated from Vlakplaas and was used as an operational base and for housing 'rehabilitated terrorists' or 'askaris'.

7 The Harms Commission investigated allegations of officially authorized and funded police death squads. The Commission was seriously flawed in both design and practice. The Harms Commission report failed to name any special units of the army or police, or individual officers, as participants in death squads and was widely denounced by opposition groups.

[He] may be the size of a rugby scrumhalf and have the appearance of innocence, but according to his own evidence he is a boyish killer with itchy fingers. He is furthermore, a thief who stole tens of thousands of rands from the police secret fund. According to evidence in court, Kloppe was heavily involved in the underworld where he became a drug smuggler and fraudster. (Pauw 1997: 103)

Apartheid's henchmen emerge not as disciplined professionals but rather as murderous thugs. As the author puts it:

Killing was their business. And business was good. These men represent the banality of evil which was South Africa's culture [...] They were Apartheid's ultimate and most secret weapon [...] They acquired the power to decide over life and death. In the process, they not only abandoned their police or SADF oaths to serve and uphold law and order, but were also forced to abandon their own morality. (Pauw 1997: 16)

And yet it is their humanness which Pauw takes care to reinsert into the conversation. Underneath the bravado are deeply damaged men (Pauw 1997).

A decade later, De Wet Potgieter's (2007) *Total Onslaught: Apartheid's Dirty Tricks Exposed* would continue the revelations of police and military actions so as to provide 'a rare and fascinating glimpse into the behind the scenes machinations of South Africa's security apparatus in the apartheid era'. This dense book describes the chain of command between foot soldier, immediate superior and police headquarters. The forcefulness of the characters and the sheer weight of their destructive habits (involving drugs, prostitutes, crime and gun running) momentarily tend to crowd out the broader context within which apartheid's assassins operated. As a consequence, there is real danger here that the political context which 'facilitated the production of state-sanctioned evil' (Huggins et al. 2002: xxi) does not receive the attention it should. It is to this context that Pauw (1997: 21) speaks:

I have often grappled with the question: did apartheid create these monsters? Or are they simply evil? What drives one to push the barrel of a gun against somebody's head and blow his brains away? Or pull a car tube over somebody's face and suffocate him while he moans and pleads: 'Asseblief, my baas, asseblief' (please, boss, please). Or push an iron rod into somebody's anus or electrocute him with a power generator?

Pauw turns to Hannah Arendt for some insight and consolation:

The trouble with Eichmann was precisely that so many were like him, and the many were neither perverted nor sadistic, but they were, and still are, terribly and terrifyingly normal [...] this normality was much more terrifying than all the atrocities put together. (Arendt 1963: 276)

Lastly, another examination of the internal workings of specialist units within the security apparatus is provided by Jacob Dlamini (2014). In *Askari: A Story of Collaboration and Betrayal in the Anti-Apartheid Struggle*, Dlamini tracks the life of an African National Congress (ANC) insurgent (Mr X1) who was captured by the police in August 1986, interrogated for three months and then became a turncoat (a 'rehabilitated terrorist') working for the police and against his former ANC colleagues. Dlamini describes the dirty tricks perpetrated by Mr X1 in some detail before he explores the psychology of collaboration and betrayal which lurks under the surface. *Askari* brings more details to bear on the logic of counter-insurgency and the politics of collaboration as experienced through the body and mind of the collaborator (or traitor), Glory Lefoshie Sedibe.

Looking back from the inside

Police biographies constitute a third source of material relevant to our search for accounts of the policing of counter-insurgency. Four publications have seen the light in this category, and more are likely to follow as a generation of former security personnel of the apartheid state put past experience to paper. These accounts vary in style and purpose, from the heroic depictions of an all-mighty institution battling the forces of 'communist evil' to more muted attempts to capture the demands placed on the police in a time of 'war'. All provide a view of the complex and sometimes competing 'vocabularies of motives' (Huggins 2000) which drove policing actions. All four texts constitute insider views (i.e. police views) of an institution taxed by political exigencies and operating in the theatre of counter-insurgency. These insider narratives are worth considering for the world view they espouse and the vantage point from which the story about the police caught in the throes of a counter-revolutionary war is told.

The first publication of relevance is *Uit Nood Gebore* (Born out of Need) compiled by a senior officer of the former Counter-Insurgency and Riot Units of the SAP. Wessels (2009) provides a historical overview of the counter-insurgency unit. The geographical deployment of the unit in Southern Africa between 1966 and 1994 is provided in a map at the back of the text. The map reveals police-cum-military activity across time and space. One is struck by the sheer scale of counter-insurgency policing activities over three decades – first in Rhodesia, then in South West Africa, thereafter all along the borders and finally inside the country. Photographs of force deployment in the 'theatre' of counter-insurgency capture high-tech tools such as armoured vehicles and heavy artillery. The casualties in security circles are also documented here. Photographs capture the damage the war inflicted on police equipment and personnel. There are burnt-out Caspirs. There are dismembered policemen staring out from the discomfort of their wheelchairs. The story told through these images is one of the policeman-as-soldier exposed to the ravages of war and of 'the unbelievable demands which were placed on the SAP at a time where political change became all the more violent' (Wessels 2009: 7). Completely absent from this kind of history, one cannot help but note, are the ordinary civilian duties of the police in peace time.

Subsequent sections provide more detail on the context from which counter-insurgency training emerged and the impact of police deployment to Rhodesia and

South West Africa. From this account one learns about the ways in which the border war engaged the police and exposed them to hardship, injury and death. Wessels (2009) provides a blow-by-blow account of contacts with the 'enemy', of being caught in crossfire, of being led into ambushes, of landmines going off, of endless skirmishes between protagonists and of the many injuries suffered. One is instructed in the hostility associated with the 'theatre' of this 'war'. It is under harsh environmental and political conditions that a paramilitary mentality took shape. The police, as the author puts it, 'did an almost impossible job in a foreign country under strange circumstances' for which they did not receive enough credit (Wessels 2009: 178).

A second text of bearing is one published in 1997 by a former general within the SAP, Herman Stadler. Titled *The Other Side of the Story: A True Perspective*, it claims that there is 'always more than one version of the truth' (Stadler 1997: 6). What is presented here then is the police version of the truth based 'on facts'.⁸ There is 'no singular attempt', the reader is assured, 'to justify either the means or the ends with regard to what was imposed upon the security forces in terms of that which was expected of them, but rather an honest attempt to put things into proper perspective' (Stadler 1997: 6). The reader is taken on a guided tour of the 'difficult' situation faced by the 'law and order' community. The opening chapter is taken up by a detailed discussion of the concept of 'revolutionary warfare' pursued in liberation circles to effect radical change through violent tactics directed at military and paramilitary targets. Decision-making in liberation circles is tracked in order to chart the evolution of 'revolutionary warfare', the adoption of a 'people's war' and the strategy of 'ungovernability' (1997: 40). In this version, it is the police who are at the receiving end of 'endless intimidation'. This is the 'practical reality', the 'factual situation' on the ground with which police as 'practical realists' had to deal, within the 'confines of the law' (1997: 40), argues the author.

Looking back, Stadler reassures us that 'all along the SAP said that the solutions had to be political'. All the police were trying to do was to 'create' a measure of 'order' from which solutions could be realized. The account of history presented here is based on a linear view of politics. There is cause and then there is effect. The cause of policing events was located in revolutionary circles. The police were introduced into an already existing situation – of propaganda onslaught, sabotage and mass mobilization – in which they had to fulfil their task. The security situation dictated the promulgation of security legislation. External developments in 'revolutionary' circles resulted in a shift towards counter-insurgency policing and paramilitary training. Under such conditions, a combative mindset of 'survival of the fittest' developed. Take into account, says Stadler (1997: 175), that between 1976 and 1990 the police had to respond to 1,400 acts of terrorism. Such infractions, the author laments, were never considered as violations of human rights or crimes against humanity. Neither did the opposition abide by the Geneva Conventions. The police confronted physical danger day after day. Thousands of police were 'maimed leaving widows

8 This publication constitutes a shorter version of a detailed submission compiled by the Foundation for Equality Before the Law for the TRC. The Foundation constituted an association of former senior officers in the SAP and SADF, whose mission was to protect the interests of apartheid security force personnel during the TRC process.

and orphans behind'. The police suffered severe psychological damage. Regardless of such damage, it was the duty of law enforcement agencies to stop or at least contain the 'monster' which had been created in the 'name of freedom' (1997: 181). Elsewhere in the text there is the acknowledgement that 'on occasion' there was 'overreaction' on the part of the police. Under the conditions, what else could one expect? The author continues to note that such overreaction suited the propaganda machine of the liberation movement, which was bent on 'discrediting' the police and making the country 'ungovernable'.

A third text in this genre is former commissioner of police Johan van der Merwe's professional autobiography (2010) with the rather emotive title *Trou tot die Dood toe* (Loyal until Death). Van der Merwe's account is a heroic one in which the SAP maintained 'law and order' amidst terror and political conflict with the view 'to protect and to serve' (2010: 5). From there onwards it provides an account – as recounted through the personalized lens of the most senior of police – of the policing of decades of conflict.

If clinical detachment characterizes the reconstruction of policing insurgency amongst senior police command, a very different account of the monster inside the belly of the state itself comes from a much decorated (but eventually discarded) covert operative, Eugene de Kock. The autobiography *A Long Night's Damage: Working for the Apartheid State* (1998) follows De Kock's career within the police from 1968 to 1993. It is a career shaped by hands-on counter-insurgency training in the Rhodesian bush. Later, as a founder member of Koevoet, 'who became entangled in the madness of Ovamboland' (1998: 30), it was his job to 'hunt' terrorists by the hundreds. He did so with considerable conviction and much success. After six years of 'hunting terrorists', he was transferred to Vlakplaas (mentioned earlier) where he eventually became the commanding officer of the notorious CI covert unit. The confessions of two colleagues about the death squads which operated from the Vlakplaas base would change his fortunes. In May 1994 he was arrested and charged with 129 offences. In 1996 he was sent to prison for 212 years.

This account brings full circle the rise and decline of a three-times decorated counter-insurgent operator. The story raises critical questions about the links between such street-level operatives, senior police and their political masters. After all, De Kock did not 'operate in a vacuum' (De Kock 1998: 26). On the contrary, he formed part of a 'brutal national security apparatus', becoming the 'executioner' of the state (1998: 16). It is thus in De Kock's biography that the proclivities of the state and its political masters engaged with a total onslaught are assembled. Again we are reminded that security legislation and emergency regulations created the very conditions for indemnity. Within this context, dirty tactics escalated. Access to secret funds further oiled the semi-autonomy of covert units. The career trajectory of De Kock is situated against the wider organizational and larger political context from which covert units operated. By portraying him as a maverick, a 'common criminal', so the argument goes, he became a useful scapegoat, a 'sacrificial lamb' for his superiors, who claimed he took excessive 'licence' in interpreting their orders.

The professional autobiographies of Van der Merwe (2010) and Stadler (1997) represent the histories of a cadre of senior officers who plotted from the luxury of their offices. In contrast, De Kock's story (1998) presents the murky world of the executioner and the dirty hands of the covert operative offered, in the end, on the altar of truth and reconciliation in exchange for the amnesty enjoyed by others.

Truth, reconciliation and policing insurgency

Lastly, and briefly, there are the oral testimonies, primary records, submissions and many secondary commentaries (both popular and academic) contained within the records of the TRC. So what light does this source shed on the politics, logistics and ethics of insurgency policing during the high days of apartheid? Before answering this question, a brief note on police submissions to the TRC seems in order.

Of the 1,500 individuals who applied for amnesty, 293 were from the security sector. Of those, 256 were from the SAP, of whom 229 were members of the security branch.⁹ Of those, all were male, 86% were white and only three were top-ranking officials. The disclosures of Eugene de Kock were pivotal to the broader process of disclosure. As the TRC report¹⁰ puts it:

In reviewing its efforts to uncover the deeper truth behind the violations of the apartheid era, the Commission frankly acknowledges that much of its success is due to the fact that large numbers of security police members grasped at the possibility of amnesty in exchange for full disclosure. The Commission is not, however, so naïve as to believe that it was this alone that persuaded them to 'blow the whistle' on their past actions. The fact is that they would have preferred the cloak of silence. The ironic truth is that what brought them to the Commission was the fullness of the disclosures made by an individual often painted as the arch-villain of the apartheid era – Mr Eugene de Kock. Whatever his motives, the Commission acknowledges that it was largely he who broke the code of silence.

The TRC found 'the state responsible for a range of human rights violations closely associated with counter-insurgency initiatives' (Pigou 2001: 222). Torture, the TRC remarked, was particularly widespread within the security branch, but was also common in other divisions of the police. For the 'professionalization' of torture, the SAP borrowed from elsewhere (France, Argentina, Chile and Taiwan). The testimony of Jeff Benzien, a security policeman, and his demonstration of the wet bag method of torture, constituted a critical moment in the public acknowledgement of torture as routine practice. Afrikaans writer Antjie Krog (1998: 93) captures the event thus:

⁹ TRC Report Vol. 6, No. 3.

¹⁰ TRC Report Vol. 5, Chapter 6, Paragraph 32.

At Yengeni's insistence, Benzien demonstrates the wet bag method. 'I want to see it with my own eyes.' The judges, who have come a long way from meticulously sticking to court procedures, jump up so as not to miss the spectacle. Photographers come running, not believing their luck. And the sight of this bluntly built white man squatting on the back of a black victim, who lies face down on the floor, and pulling a blue bag over his head will remain one of the most loaded and disturbing images in the life of the Truth Commission.

The demonstration, captured on video, provided a glimpse into the workings of the security branch, but failed to do justice to police abuse as a collective and deeply political affair. As one commentator put it:

As the commission continues its work, the brutality of South Africa's past is being itemized, not in the grand sweep of a history book, but in the individual stories of victims and torturers, of murderers and mothers of the murdered, of high commanders who made their decisions over tea trays and foot soldiers who made theirs beside fresh bloodstains. (Daley 1997)

But the TRC did go further than a mere theatrical, hands-on display of torture techniques. The final report took care to capture (again) the broader structural violence of apartheid in which the specificity of police violence in the long moment of insurgency needed to be situated. There is the acknowledgement that violence upheld the regime and served the struggle. Whilst fingering the state as the principal perpetrator of gross human rights violations, the TRC also found striking parallels in its examination of the causes, motives and perspectives of perpetrators of violence. All sides (the state, the ANC and affiliates, and other political groupings) got their hands dirty. All parties justified their actions in terms of the broader political context and in terms of the primacy of the political motive. All appealed to situational exigencies and situational triggers in explaining excesses. From these accounts, brutalization emerges as a condition suffered by many communities constitutive of the larger society.

Conclusion

This paper set out to explore the dynamics of insurgency policing – South African style. With that purpose in mind, we made our way through four genres of literature. Now, in conclusion, the question is whether we have come closer to unravelling the tale of insurgency policing.

Academic analyses of the praetorian state and its bodies of armed men capture the way in which political context shapes institutional evolution. There is ample evidence of the centralization of the 'total strategy' and the methodical and rational way in which the security sector as a bureaucracy was moulded to fulfil its role in the overall political objective. As the conflict intensified, a counter-tendency involving

the decentralization of social control into increasingly privatized and extra-legal formations presented itself. As this process gained momentum, the centre forfeited (some) control. And those operatives working on the messy fringes got sucked into an orbit of destruction.

Investigative journalism entered the orbit and recounted a story of nasty intrigue. It is an intrigue which consisted of sinister plots and shady characters. In the name of state security and Christian civilization, the forces of law and order battled against an 'enemy'. Branded as a folk devil, the enemy was kidnapped, tortured, poisoned, shot and blown up, bodies burnt beyond recognition and the leftovers buried in shallow sand. The commanders and foot soldiers of specialist counter-insurgency units inhabiting that liminal and lawless space marched where they thought the political masters wanted them to go in defence of state security. The end justified whatever means was required.

Police biographies turned the binoculars the other way round. This source provided a view onto the theatre of insurgency from the trenches of the police itself. The accounts did not enter the 'belly of the beast' or the 'heart of the whore'. On the contrary, the voice of an almost dignified professionalism emerged from this body of literature. Have empathy, the reader is implored, the institution battled against great odds in the heated struggle between the apartheid state and a communist-backed terror onslaught. The external policing environment contained a heady combination of illegal opposition, public protests and dangerous insurgency. The job at hand was complex and messy. The 'mistakes' made along the way provided testimony to the human frailties of security operatives under difficult conditions. *Mea culpa*, because I too am human. It was left up to the turncoat from within (Dirk Coetzee) to expose how the logic of state security itself forged increasingly violent and criminal practices.

Finally, there is the past as captured by the TRC. With reconciliation as a political objective, violence emerged here as multi-dimensional and multi-purposive in its instrumentality.

We have navigated four genres of literature only to come to the not surprising conclusion that the policing of insurgency and the insurgency of policing are locked into a dynamic and fateful co-existence. The features of high (i.e. political) policing – South African style – echoed to a large extent what Brodeur (1983) outlined as integral to models of high policing: absorbent policing; the conflation of power at legal, judicial and executive levels; the trumping of national security over other interests; and the systematic use of informants and undercover operatives of various types. It should not come as a surprise that, under conditions of authoritarian rule, the systematic abuse of police power, and the routinization of dirty tactics in specialist divisions in particular, become enduring features of counter-insurgency policing. Once entrenched, such institutional legacies pose challenges to any attempt to reform the police to fit democratic and constitutional templates.

None of the four bodies of literature reviewed above considered the wider international context within which counter-insurgency policing has evolved in South Africa, or the external influences (crude or subtle, overt or clandestine) which shaped

South Africa's security strategy during the Cold War. More research is required to evaluate the complex interplay between the domestic and international pressures that contributed to a South African model of high policing. South Africa's military intervention in Angola, for example, inserted it into a geopolitical conflict involving the Americans, Russians and Cubans (Hallett 1978). The strategic importance of South Africa, its pariah status notwithstanding, provided the very conditions out of which strategic alliances with Western partners were forged. As elsewhere, the importance of foreign assistance to security forces abroad in terms of ideology, technology and skills is not to be disputed. The unsavoury history of US assistance to the security sectors of Latin American juntas is well documented (Cottam & Marenin 1989). Critical engagement with current patterns of Western assistance in support of the 'War on Terror' add to our appreciation of the internal-external nexus. Alice Hills' case study on the broadening of the mandate of the US's prime developmental agency (USAID) alerts us to the external exigencies which help shape security ideology and actions in African states. As she puts it:

The notion of using an organization such as USAID to improve the counterterrorist capacity of Africa's police forces in the pursuit of US national security is, then, seriously flawed. Rather than fulfilling Washington's stated objectives of strengthening democracy and good governance across the continent, such programmes are more likely to undermine transition. They may (as in Kenya) support the Bush administration's concerns, and the USA's longer-term geostrategic interests, but they will also further exacerbate the politicisation of policing, thereby deepening a long-standing obstacle to the political and economic freedom thought to underpin not just stability, but also state and individual security. (Hills 2006: 629)

From Hills' observation we conclude that international assistance to police in Africa constitutes a critical variable in the trajectory of such agencies, their orientations and practices.

Of what use, we may ask, is a South African study of insurgency policing under apartheid rule in the post-colonial context of contemporary Africa? The answer is as follows. The logic of high policing is deeply embedded in the colonial roots of Africa's police. In the context of political democratization, security-sector reform has underlined the normative imperatives for human rights-compliant policing in pursuit of citizen security. Two decades of experimentation have contributed to our understanding of the legal and organizational changes required to render security-sector institutions accountable as well as of the challenges encountered along the way. New security demands all too often dilute the incremental reforms as security responses to organized crime, terrorism and violent extremism reintroduce the logic of 'high policing'. It is at this delicate point that the South African case study of counter-insurgency policing under apartheid allows us to appreciate the dangers ahead. Counter-insurgent policing has much potential to develop a political and institutional logic of its own. Criminals and terrorists easily become 'right-less

subjects'. As folk devils, they are deserving of arbitrary arrest, pre-trial detention, torture and extrajudicial killing. The normalization of such practices by the state and its surrogate forces has corrosive effects on the police and its emerging systems of oversight and accountability. Such corrosion negatively affects the very prospects of democracy in policing.

The call for making 'war' on terrorists, extremists and/or organized criminals creates new opportunities for security agencies to be mobilized against the 'enemy'. Their mobilization will be facilitated by political ideology, material resources and discretionary powers. In the absence of strong checks and balances, such agencies will tend to operate in secretive and extra-legal ways. This history of insurgency policing in South Africa provides testimony to the ease with which atrocities become routinized. History is likely to repeat itself unless the doctrine of human rights-compliant policing succeeds in shaping the principles, structures and operational practices of the police as they engage with new security challenges. For that doctrine to have traction, both domestic and foreign commitment is of critical importance.

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Section 2

Community– police nexus

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Chapter 4

Policing in the borderlands of Zimbabwe

Kudakwashe Chirambwi & Ronald Nare



Introduction

As a function of their core purpose, the police are sanctioned, authorized and empowered by the state to use legitimate force as they protect life and property and prevent civil disorder. Police behaviour therefore often reflects the state's approach to governance, which may be a further reflection of problematic politics. The desire to assume such roles in society, however, may mask deeper sources of insecurity, which can come to light when officers infringe on or undermine the rule of law themselves through corruption or maladministration, for example.

In terms of highlighting such activities, a state's borders are especially useful as it is here that there is a higher concentration and intersection of security cluster personnel, including immigration officials, military border guards, uniformed police, crime investigation officers, and the more concentrated deployment of objects and technologies of security such as CCTV cameras. While the interface of all these actors and assemblages may serve to shape the behaviour of individuals, this chapter focuses solely on the conduct of police officers mandated to fulfil their duties at postings on Zimbabwe's borders. While there is a growing literature on the topic of police corruption and violence, there is far less known about the drivers of said illegality in the context of border policing, which in Zimbabwe is a considerable aspect of policing itself. As we argue, the context in which policing occurs is critical in shaping the activities of individuals, and in the Zimbabwean instance, police malpractice and the ongoing economic challenges experienced in the country are seemingly related.

The research findings reveal increasing levels of criminality by officers in the Zimbabwe Republic Police (ZRP) at border posts, ranging from heists and human trafficking to illicit flows of drugs and wildlife. Such worrying and unprecedented criminality calls for in-depth investigations, in particular threading out debates that seek to build towards a better understanding of the dynamics underlying

corruption in the intersecting spaces of rights-based policing, criminal groups and tribal communities in the borderlands of Zimbabwe and the ways in which they connect to state fragility and debilitating economic problems. The research findings conclude by observing state fragility and a weak economy as two significantly crucial elements that drive policing malpractice and illegality in their functions on the borders of Zimbabwe.

Although scholars have become increasingly convinced about the implications of police corruption for members of the public, what has evaded their attention is the link between state and economic fragility and radical policing, the central idea in which this study is located. This chapter examines police corruption in the context of ill-governance in the borderlands of Zimbabwe, and in particular how the effects of corruption impact on the promotion of human rights more broadly.

In order to sufficiently explore the nature and patterns of police criminality in the borderlands of Zimbabwe and their impact on the enjoyment of human rights by the general public, this chapter advances state fragility and related economic concerns as the theoretical framework in which problematic policing in Zimbabwe is embedded. The second part of the chapter, which builds from the first, foregrounds the patterns of organized crime and police corruption (smuggling, bribery, gangs, firearms) and their attendant problems with human rights violations. Here, we argue that crime involving police is sub-divided into three analytical strands, each with a particular focus. We then explore potential links between the public, police and criminal groups in these spaces. We argue that the police and criminal groups are mutually reinforcing, inherently interconnected and interdependent, all of which conspire against safeguarding human rights. Thereafter we explore the role of border communities in promoting police criminality, before offering possible practical interventions on rights-based approaches to policing.

Policing context

Although there is a significant amount of research which theorizes state fragility and the attendant relationships with corruption, there has not been any significant research on the link between fragility, economic survival and police criminality (Rotberg 2003; see also Alexander & McGregor 2013; Stapleton 2011; Zoellick 2008). As this chapter argues, state fragility may set the parameters in which police conceptualize their own roles and responsibilities. In the context of Zimbabwe, fragility has resulted in ill-governance and weak state responses to more broadly related concerns, such as policing and defence. This has spurred economic survival through criminality, and in particular the radicalization of police officers.

Subsequent sections will show how the significant increase in disadvantageous socio-economic conditions triggered by state fragility has not simply reconfigured the police but has created the conditions for corruption, organized crime, illicit financial flows and the abuse of human rights. Inversely, the survivalist economy increases the potential for further fragility as police officers retaliate against and/

or frustrate efforts to facilitate the ease of doing business. Unlike earlier takes that conceptualized state fragility and the survivalist economy as distinctly unique, the nexus should be conceived as sequential, with one being a precondition for the other. Clearly, what manifests in Zimbabwe is the intricate link between economic fragility and police criminality, where criminality surges as economic poverty grows.

However, this framework runs counter to the primary argument of colonialism that prefigures current police practice. Though this argument has some merit, a cursory analysis of the literature further points to the mutually constitutive link between policing, fragility and economic survival. For instance, Sabet (2015) claims that economic conditions are significant for the process of identifying insecurity and the places where threats may originate, the rationale being that individuals are less aggrieved the more money they possess. This theorization places more emphasis on the economy's capability to not only reduce fragility but also limit potential opportunities for corruption. In Africa, poverty continues to be portrayed as a mobilizing factor compelling state security to either engage in illicit activities or to turn into illicit groups. This 'rooted-in-poverty' thesis connects poverty to violence, heralding the belief that the economically vulnerable members of society are likely, more than other economically better-off members, to participate in violence (Sambanis 2004). The thesis further argues that the unpredictability of the environments in which the police live makes them more inclined to take risks, which is consistent with Collier's greed and grievance thesis (Collier & Hoeffler 2004). For instance, the past experiences of economic decline in Zimbabwe have fed into the anticipation of economic crisis and the subsequent action of accumulation by the police. Arguably, the police are citizens in uniform and as such are equally gripped by the fear of uncertainty. What unfolding crisis does is to create anticipation, which then creates boundaries around either being safe or in danger. The police are always trying to balance opposing societal forces, confronted with the tension of having to survive while also needing to fulfil their professional responsibilities, and meet people's expectations of security and justice, while also enduring the consequences of corruption and violations of people's rights. The extent to which the survival factor competes with professional demands in terms of policing has received marginal scholarly attention, however. Although scholars have offered a theoretical exploration into the tension between professionalism and survival, little is known about the impact of this 'balancing act' on police accountability, efficiency and rights-based policing. As a point of departure to applied theoretical analysis, the following section foregrounds the patterns of police corruption and organized crime by showing how both have a negative bearing on human rights.

Empirical data were systematically collected from the archives of both public and private media sources covering the period 2013 to 2017. Using a Boolean logic, the first systematic database run involved searches of terms such as police 'corruption/bribery', 'smuggling', 'heists', 'gangs' and 'firearms' from each of the following dominant newspapers in Zimbabwe: *The Herald*, *Financial Gazette*, *The Chronicles*, *The Daily News*, *Manica Post* and other sources. The selection of newspapers was primarily guided by the need to maintain a good balance of viewpoints as

well as a thematic and geographical coverage of issues. Based on the feedback from the searches, the authors also followed the same story to ascertain the frequency of occurrence in other newspapers. The search was further reinforced and complemented with a search combining ‘fragility’ and ‘economic survival’, ‘organized crime’ and ‘borderlands’. The second stage of the search included narrowing and aligning terms to a specific border. For instance, search terms like ‘firearms’, ‘Beitbridge’, ‘gangs’, ‘Plumtree’, ‘smuggling’ and ‘Kazungula’ yielded more relevant results than the first search. However, while Zimbabwe has nine official border posts, organized crime has taken place at both official and unofficial crossing points, mostly facilitated by border security officials, and involving criminal groups and borderland communities to a significant extent.

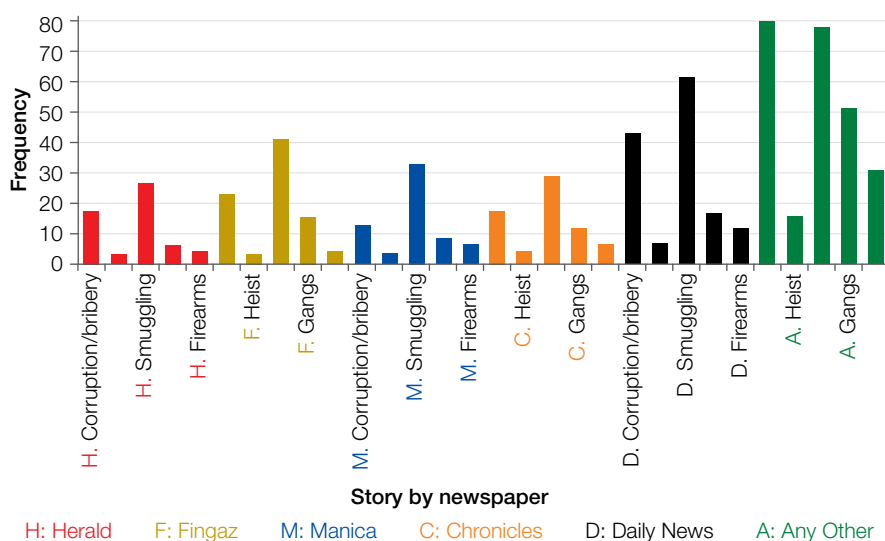
Police criminality

As the preceding section on the theoretical framework argued, the relationship between state fragility and economic survival shapes individual behaviours. The sub-sections below aim to unpack this further, with a focus on bribery, smuggling, firearms and criminal gangs.

As evidenced by other scholarly accounts, the police collect ‘economic rent’ through strategies that draw on their position and power, and include filtering goods, capital and profiling people (Pophiwa 2010; see also, Barton 2013; Brown 2013). The following sub-sections provide illustrations of this, although it should be noted that they are not positioned as universally applicable, either in Zimbabwe as a whole or more broadly.

Below is a graphic representation of the research findings showing the confluence of reports on border policing and criminality in the context of ill-governance. The research findings complement and corroborate theoretical approaches to the intricate relationship between fragility and police criminality as exemplified by police involvement in corruption, heists and smuggling as part of *socii criminis*. Out of the five forms of organized crime for which database searches were conducted, smuggling recorded the highest frequency with a total of 191 newspaper stories across the media divide. Although the *Daily News* (private media) recorded the highest number of stories in nearly all five organized crimes, the common pattern of a surge in smuggling, corruption and bribery reported by the two newspaper clusters (state and private media) represents a disjuncture given that they are generally viewed as proxies for perennially antithetical political ideologies in Zimbabwe. A second major observation from the dataset is that stories of corruption/bribery recorded the second highest level of frequency after smuggling in all participating newspapers, although the actual number of corruption cases reported by the various newspapers varied. Thirdly, stories about gangs recorded the third highest level of frequency after smuggling and corruption/bribery, whilst cases of firearms and heist came fourth and fifth respectively. Although thinking in dichotomies of forms of police criminality is helpful for analytical purposes, such categorization should not ignore the overlapping connections that exist.

Figure 1: Frequency of stories as reported by various newspapers, 2013–2017



Note: Analysis focused on five newspaper sources, which is a composite of different sources and could have distorted the trend and validity of the research findings. Other sources graphically validate the prevalence of acquisitive organized crime.

Table 1: Overall frequency per story, 2013–2017

Types of police misconduct	Newspapers				
	The Daily News	The Chronicles	Manica Post	The Fingaz	The Herald
Corruption & bribery	40	17	14	24	18
Heist	7	6	6	4	4
Smuggling	60	29	32	41	29
Gangs	14	11	8	15	7
Firearms	14	6	5	5	5

Smuggling

An analysis of the nature of prevailing smuggling practices in Zimbabwe revealed that, in the majority of cases, border security agencies, including immigration, police and military officers, have been complicit, with the adverse effect of producing a large swathe of human rights violations. For instance, the people smuggled across Beitbridge border post are the locus of numerous reports of force, retribution, victimization, suffocation to death in overcrowded trucks and drownings in the Limpopo River.

Consistent with our thematic motif of smuggling/trafficking, insight into the use of expansive force can be drawn from the United Nations Convention against Transnational Organized Crime, Article 4, on human trafficking, which promulgates:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

In that regard, several newspaper stories reviewed as part of this research have reported numerous instances in which corrupt police officers provided some form of insurance mechanism for smugglers in return for personal financial gain. As shown in Table 1, and consistent with findings of the study by Pophiwa in 2010, smuggling is the most prevalent form of organized crime that has increasingly implicated police officers, particularly along the country's borders. The following newspaper stories sampled from the results of database searches conducted as part of this research are reflective of the nature of smuggling practices in Zimbabwe: 'Police officers arrested for smuggling'; 'Police officers involved in cigarette smuggling'; 'Arms smugglers assisted by police officers'; 'Police officers tried for smuggling 2,750/ of petrol from Botswana'; and 'Police arrested for firearms smuggling'.

Such stories suggest that police involvement in smuggling has been both direct and indirect. Using actor-network theory, it may be argued that human and non-human security assemblages conspire to actuate smuggling and trafficking at borders (Latour 2005). One can see the rogue police also riding on mobility infrastructures (transportation networks, including buses, trains and haulage trucks) as Zimbabwe is a transit hub (connecting Zambia, Botswana, Malawi, South Africa, Mozambique and Namibia) that provides services for the embarkation and disembarkation of goods and human beings. It is here that miscreant police officers increasingly share with criminal gangs the use of transportation networks and logistics as they transport goods from one place to another.

However, actor-network theory mostly accounts for indirect police involvement in smuggling (Latour 2005). On the other hand, increasing incidences of direct police involvement in smuggling are arguably a sign of economic vulnerability/desperation by police officers as they attempt to cope with an impending/anticipated economic crisis in Zimbabwe. This finding confirms assertions by the rooted-in-poverty thesis which illustrate the link between economic fragility and police criminality. However, it is also possible that police officers have become complicit in smuggling owing to mere greediness and not necessarily because of economic fragility.

Corruption/bribery

This research has revealed that corruption/bribery at the country's borders entails mostly border officials and non-state criminal groups conniving to evade paying taxes. As shown in Table 1, bribery is the second most frequent criminal activity involving the police. This finding corroborates conclusions by an Afrobarometer study conducted between 2011–2013 in which Zimbabwe ranked fourth highest in public perceptions of police corruption (Afrobarometer 2015). In essence, through corruption/bribery, border officials (including corrupt police officers) literally operate a parallel tax system whose proceeds are directed towards personal enrichment at the expense of the national treasury. More importantly, corruption obstructs the protection of human rights when security services are only rendered to those able to pay.

However, research findings also show that both formal and informal traders generally prefer this parallel tax system because it is relatively less costly (Pophiwa 2010). For instance, 50% of second-hand tyres sold in the market were smuggled through the country's porous borders (Manayiti 2017). Further, a parliamentary portfolio committee report on human trafficking and smuggling expressed concern over the increasing involvement of border officials in smuggling activities at the country's borders (Parliament of Zimbabwe 2014). Thus, the findings of this research confirm the existence of a 'user-pays' form of policing which projects police officers as private security vendors (Ayling & Shearing 2008).

Research findings also reveal how some state police officers are sub-contracted as a private resource by anti-state actors. At most borderlands in Zimbabwe, privately paid public policing involves police selling their services to private interests, turning themselves into commercial security vendors. It also points to how some police officers act like a private security firm that buys and sells security services for profit. Police sell security skills such as knowledge of how to manipulate the law, a monopoly on violence and immunity from prosecution. The assumption is that any enterprising and entrepreneurial police officer has the potential to be hired by criminal groups.

We also argue that illicit and illegitimate monies get legitimized when they are injected into formal businesses, blurring the distinction between illicit and legal money. Research findings elsewhere unequivocally show that some elements in the police position themselves for a more business-oriented future, as a 'business-savvy policing' despite the fact that private sources of funding carry the risk 'that public safety and security may be sacrificed to private agendas' (Ayling & Shearing 2008: 40). Evidently, in Zimbabwe, some public police personnel have transformed into a private resource, using their uniforms and power to mask their nefarious activities.

The following newspaper stories gleaned from a combination of state-owned and privately owned media houses paint a picture of the nature of police corruption, both in the national force (ZRP) as well as in the Zimbabwe Revenue Authority

(Zimra): 'ZRP cops in trouble after being caught on camera demanding bribes'; 'Immigration, Zimra and ZRP officers caught on camera taking bribes'; 'Cop arrested for \$12,000'. Although newspaper stories seldom mention what could have triggered the police involvement in corruption, it is apparent that, for corruption to take place, rogue police officers would have consciously decided to disregard their constitutional mandate to enforce the law, deciding rather to be their own paymasters in response to economic fragility.

Easy passage over borders often depends on corrupt and corruptible police and Zimra officials, as both security forces are involved in complex materialist accumulation. It is argued that Zimbabwe loses four times the amount of official development assistance through the corrupt activities of diverse security divisions at various border posts. Though heterogeneous, the border security cluster constitutes a hybrid form of public-private security that includes non-human security surveillance tools/objects such as CCTV cameras. The securitization of borders through such security groupings has, in contradiction of their mandate, facilitated further formations of organized crime. The police, criminal gangs, private security guards, Zimra officers, forms of knowledge, tools and technologies intersect to produce materiality in complex ways as they target high-value goods and capital and high-value customers. Drawing from Englebert's research findings, African borders suffer from 'negative sovereignty' where 'the state is both no longer there and yet still overwhelmingly present' (2009: 43). This implies that the security groupings do exist but have stopped providing the services enshrined in the Constitution of Zimbabwe and the Police Act. In this way, border posts have become the physical space where state authority and control is either partial or absent. However, opinion is divided among scholars on the efficacy of securitizing ungoverned spaces.

Dawson and Kelsall are of the view that the police may operate protection rackets, forcing members of the public through what they call 'regulatory predation', a form of corruption which increases 'insecurity for capital and raising costs of doing business' (2012: 53). Where the relationship is consumer-based, policing becomes a private and not a public good. Where consumer-based relationships are not possible, police create monopolies and make extra judicial arrests. In the process, those who do not pay protection fees could jeopardize their civic and economic rights.

There is a considerable body of literature that has shown how corruption disfigures the state in the eyes of the public, and severely limits its capacity to provide basic political goods to the masses (Alexander & McGregor 2013; see also, Chingozha & Mawere 2015). Alexander and McGregor argue that the police are state officials or persons recruited and trained by the state and empowered by the state to enforce the law, protect life and property and prevent or reduce civil disorder (2013).

Das and Marenin (2000: xii), however, are of the view that 'much of the deviance exhibited by the police mirrors that which continues to be displayed by ruling elites in the new "democratized" societies they now serve'. Such scholarly arguments

help us to explore the intersections of policing, state fragility and criminality by asking: What kind of state is present in Zimbabwe and how do the police behave if state bureaucrats are corrupt? Although state fragility, and in particular economic fragility, cannot account for all cases of corruption involving police officers posted to Zimbabwe's borders, the recent upsurge in police corruption and bribery cases suggests that some officers have resorted to the scourge as a survival strategy, especially given the heightened economic decline experienced in the past two decades.

Gangs

As illustrated by the data collected, the involvement of police officers in the activities of gangs operating across the borders of Zimbabwe is mostly covert, through providing information and other forms of support such as firearms and logistics in return for protection fees. For instance, the violent protests of 2016 at Beitbridge border post started with a small group of gangs and escalated into a major demonstration whose underlying motive had more to do with the initial gang's pursuit of economic interests than those of the protesting public. While the nature and objectives of gangs may overlap with those of other categories of organized crime, a salient feature of the phenomenon of gangs is their propensity for radicalization, which in turn represents a violent threat to life and property. Gangs exist for many different reasons. Some, for economic accumulation, and others for simple survival. Some gangs may appear to pursue the objectives of certain political elites, when their real objectives are the accumulation of power, which they pursue by inflicting fear and intimidation on the masses, violating citizens' right to a safe and secure environment.

Gangs thrive in a context characterized by unemployment and poverty (Ayling & Shearing 2008). Therefore, poverty and economic deprivation theorization does account, to a greater extent, for police involvement in the activities of gangs in the borderlands of Zimbabwe. The predominant idea among scholars is that organized crime is characterized, more generally, by smuggling networks trafficking in drugs, firearms and people.

Although policing scholars may reject the thesis of police and criminal-gang collusion and that merging the two is problematic conceptually and operationally, they ignore the fact that both can combine their efforts as 'unsavoury and illiberal actors' to pursue the same goals of accumulation, rent-seeking and rights abuse (Chingozha & Mawere 2015: 145). Articles that draw on empirical observations, and those that offer theoretical and methodological discussions relevant to police human rights abuses, consistently overlook the increasingly growing phenomenon of some elements in the police service transmuting into criminal groups. What continues to evade the notice of scholars is the increasing formation of armed criminal groups of borderland police, possibly due to the unavailability of data on police criminality. Rarely do we think of the police as *socii criminis*, working as syndicates, racketeers and getting involved in crimes of fraud, theft and the abuse of office. A counter view is that the police service is the mirror image of a society and, as such, their

involvement in criminal activities reflects the corruption of top government and private officials at different levels, as suggested earlier. Criminal networks are known for engaging in money laundering, facilitating payments within and across supply chains and then concealing their illegally acquired wealth. Zimbabwe's case rejects, as empirical evidence reveals, the long-held view that criminal networks minimize contact with law enforcement agents and regulatory authorities. Instead, both are the warp and weft that constitute a sophisticated criminal gang. They dominate the criminal economy as criminal entrepreneurs through trade in guns, smuggling, drug peddling, protection rackets and contraband trafficking.

Even empirical evidence on heists illuminates police–criminal groups as co-constitutive elements, as criminal groups need the police and the police need criminal groups in a mutually reinforcing relationship. Some elements in the police provide safe spaces where anti-state actors can indoctrinate and train new recruits, as well as access weapons and communications equipment. Besides violating the sacred right to life, the police have also threatened the regional balance of power. This compels the need to examine the efficacy of the South African Regional Police Chiefs Cooperation Organization (SARPPCO) in reigning in borderland officers. On the basis of this evidence, this chapter argues that the police and criminal groups are mutually supportive.

Firearms

This study has established that in a context of fragility and ill-governance at the country's borders, some police officers have been hiring out guns to poachers and other criminal groups as an economic survival strategy. Clearly, human life is being traded for economic survival. Some of the newspapers surveyed had the following stories: 'Arms smugglers assisted by police officers'; 'Police officers arrested for firearms smuggling'; 'Police arrested for firearms smuggling'; 'Gokwe police "hire out guns to poachers"'. When police officers begin to exchange firearms with criminal groups the implications for human rights abuse can be calamitous. The increase in the illegal circulation of firearms may partly explain the surge in armed robberies in most cities and towns in Zimbabwe over the last five years. The mere circulation of illegal firearms in the market is a real threat to the right to life and could also lead to a breach of citizens' socio-economic rights. The state's failure to control the means of violence is a sign of state fragility, hence the imperative to arrest the growing problem of the illegal circulation of small and light weapons. Police officers have a legitimate monopoly on violence and the power to define threats. However, such powers have been abrogated for primitive accumulation. Therefore, the involvement of rogue police personnel in organized crime should be understood as the intention to seek out business opportunities in order to obtain alternative sources of extra money.

Armed heists

Although this study shows that armed heists are a less common form of police criminality in Zimbabwe's borderlands, the increasing involvement of police and military officers in robberies is a possible explanation for this life threatening

behaviour. Newspaper stories – such as ‘Police officer and immigration officials stole cash and property from a suspected human trafficker’; ‘Zimbabwe: Presidential guards nabbed for armed robbery’; ‘Criminal gang slapped with new charges’; ‘Gold ore heist cop sues Chihuri’; ‘Cops guilty of \$56k heist’ and ‘Elite police officer arms self with AK47 and robs Total service station’ – clearly suggest an urgent obligation to strengthen internal and external accountability mechanisms in the police and military in Zimbabwe. The following newspaper excerpt (Machakaire 2017) illustrates the growing menace of armed robbery:

Inside Chikara's 22-roomed farm house was recovered an AK 47 assault rifle that had been stolen from a cop, 3 Noringo pistols with live rounds of ammunition, one Lama pistol, another Noringo pistol without bullets, a Vector pistol with five rounds, axes, iron bars and spikes which were used during the heists. The AK 47 rifle will go back to Zimbabwe Republic Police where it was robbed and one pistol will be returned to its rightful owner.

Although Zimbabwe has not recorded a single case of terrorism to date, the ever-increasing levels of impoverishment and inequality, coupled with high incidences of police criminality as a survival strategy, are themselves suitable conditions for the emergence of terrorist activity (Ayling & Shearing 2008). Collier views terrorism as a function of greed and grievance while other scholars put forward deficiencies in governance and development as the main cause (Collier & Hoeffler 2004). From Collier's perspective, it could be posited that the continued marginalization of the borderlands in terms of their participation in public policy processes and the state's failure to provide political goods (including safety and security) may increase the chances of violence in these communities. Thus, economic fragility, police criminality and the general disenfranchisement of the masses in the borderlands are significant risk factors for the genesis of violence and terrorism in Zimbabwe.

While some may argue that the presence of formal state institutions such as the police can create less order, leading to ungoverned border areas, others reject this argument by asserting that the discourse on ‘failed states’, ungoverned spaces and incompetent security agents is misleading and Eurocentric as it misrepresents the African conception of order and therefore ignores the contextual peculiarities of African borders. The Eurocentric view is purely the Westphalian conception of order, with its emphasis on secure and durable boundaries and territories, which, inadvertently, overlooks the unique socio-economic and political context that shapes the securitization of borders in Africa. Albrecht cogently argues that the roles of security institutions in fragile realities are blurred (Albrecht & Das 2011). However, the scholarly debates nevertheless fail to explain why the police engage in criminality, and tend to overlook the impact that the lack of organizational cohesion, morale, skills, adequate pay, facilities and equipment in the police has on their ability to effectively deliver broad-based security. The section that follows explores the mutual relationship between rogue police and ethnic borderland communities, and further argues that state fragility and the drive for economic survival predispose miscreant officers and members of the public to engage in corruption.

Border communities

The assumption here is that the mutual relationship between cause and effect, between police and borderland ethnic communities and cross-border traders, affects the structure of the police themselves. Incessantly, security policy has ignored local communities' security arrangements as a potential source of alternative security structures that could enhance the provision of security in cases where the state police service lacks legitimacy. Rarely are African tribal communities along borderlands conceived as potential providers of their own safety and security; instead, this is normally viewed as the exclusive domain of police and military forces. However, observations on the pluralization of security increasingly show communities providing multi-choice policing at borders as vigilantes, neighbourhood watches, private militias and tribal militias for purposes of the communities' survival, protection, surveillance, development and self-determination (Baker 2008).

Border regions are often contested spaces and, as such, are often ungovernable, to the detriment of people's rights. Given that the police cannot operate without the assistance of tribal communities and that criminal groups cannot settle, link and operate freely and openly without police assistance, it is imperative to examine how such a complex, interwoven web impacts on rights-based policing. Anecdotal evidence points to two competing scenarios. When police officers are not willing to exert their professional authority, free speech, the right to life, and cultural, economic and political rights are all replaced by fear, violence, prejudice and deprivation. In the second scenario, as in the case of Machipanda and Sango border post, tribal communities have killed security officers, violating their sacred right to life. These tribal communities are worried about statelessness, repression, the absence of property rights and other forms of insecurity as major impediments to their development. To reveal the complexity of the tension, ethnic communities have raised questions such as whose security and what security is being provided by the police. Research findings further reveal that some isolated areas of the Zimbabwean borderlands are inhospitable to the state police, compelling local communities to rely on one another for security. As such, police are viewed as strangers, making it extremely difficult to blend with local communities. Because the Zimbabwean state security establishment has been complicit in the violence that occurred since independence, state–society relationships are characterized by mistrust and suspicion.

In Zimbabwe, ethnic leaders wear official medals that symbolically reinforce their power to ensure community safety and security. For the chiefs, the legitimacy to provide safety and security comes from their communities whereas the legitimacy of the police comes from the state. In the clan-based, sectarian (ethnic) power structure, culture and rights can be susceptible to police exploitation and violation. For example, some police take advantage of the cross-border links that exist between ethnic communities. However, these routes are contested spaces between local militia and the police. At the Sango border post, for example, four police officers were captured by Renamo militia (on the Mozambican side) as the local militia always crosses the border to Mutare and Manicaland (on the Zimbabwean side) to buy medicine and

food. Following on from that incident, it is prudent to examine the policing methods practised in tribal communities, and be guided by the assumption that no area is completely ungoverned, only that there are alternative governance structures.

Community policing authorities such as mambos (kings), paramount chiefs, vassal chiefs and subordinates, and spirit mediums have always functioned to regulate societal order. Zimbabwe's commissioner-general of police calls this 'a policing system that ensured strangers were well received and dealt with in a fair and transparent manner' (Chihuri 2015: 3). It is therefore not true that some areas are ungoverned; at least some form of governance exists (Baker 2008). This fact serves to refute the long-held state-centric assumption that only states govern. The discourse on the securitization of ungoverned spaces and the failed state is, accordingly, deceptive, as it ignores alternative authority structures that provide people-oriented security. When borderlands are said to be poorly governed or under-governed, it means that state authority is heavily contested. Traditional structures may even provide safe havens for terrorists, as in the case of the Renamo militia operating between the borders between Mozambique and Zimbabwe.

However, there is sufficient evidence to show that tribal communities are increasingly creating conditions that are attractive to criminal groups operated by the police. Ethnic communities in borderlands are underdeveloped – which can make strengthening economic and political ties with gangs and militias seem justifiable. Ethnic and clan communities feel ignored, starved and prejudiced, which are all preconditions for violence. Some borderland ethnic communities nurse deep-seated historical grievances against government authority, the police included, in favour of localized ethnic militias, which often degenerate into criminal gangs. This is consistent with Bruce Baker's concept of multi-choice policing – a form of and method of policing, whether it is 'formal or informal, legal or illegal, effective or inept, fair or partisan, restrained or brutal' (2008: 5) – which can be supported and given legitimacy by local people. The local ethnic gangs in the borderlands of Zimbabwe provide security and safe passage to immigrants so that they can more easily traverse trade routes in hazardous areas covered in minefields. The liberation wars of the 1970s turned borderlands into impenetrable barriers. The Rhodesian armed forces extensively used minefields (popularized as 'Cordon Sanitaire') as barriers to seal borders with South Africa and Mozambique, with the latter recording the highest density of 5,000 anti-personnel mines per square kilometre. Knowing where the minefields are, the gangs continue to offer valuable services to the immigrants.

The pluralization of border security through the involvement of non-state actors obviously reconfigures the conceptualization of security, as it diffuses state security practices and resources. These non-state groups help to fill gaps in governance and provide security services to communities in areas under their control. However, because of economic hardship, they have increasingly transmuted into criminal groups (armed robbers, traffickers). In contexts of debilitating economic fragility, there is a lack of order and governance from state and non-statutory security providers and immigrants. It is here where new relationships between community security providers and public security providers (police, army),

and between security providers and immigrants are forged. Therefore, it is the presence of security providers, not their absence, which contributes to disorder and criminality. This observation compels us to argue that ungoverned spaces in the borderlands of Zimbabwe are not necessarily a result of state absence but a result of police inadequacy, corruption and criminality, all of which project signs of state fragility. How order and crime are projected on borderlands demands scholarly attention.

Newspapers are full of stories such as: '*The Standard* exposed how Zimbabwe Revenue Authority (Zimra) officials, police and soldiers were working in cahoots with smuggling syndicates both at the border post and through illegal entry points, and on the South Africa side'; 'Police officers, immigration officers and clearing agents stationed at the border with Zimbabwe were arrested on charges of fraud and corruption'; and 'Smuggling cops busted after exposé – River Range area'. Evidently, user-pays policing has transformed border law enforcers into 'police for profit', characterized by extortion. This also includes unsanctioned roadblocks and parallel tax systems operating at border entry points. Some police are alleged to own donkey carts for transporting contraband. Those who do not have such carts are seen protecting smugglers who do, ensuring the contraband gets to its owners without being intercepted.

Recommendations

Given the mutually reinforcing link between policing, state fragility and economic survival, Zimbabwe's National Security Strategy needs to contain safeguards that preempt and discourage borderland police officers from criminality. The Zimbabwe Anti-Corruption Commission is clearly inadequate on its own, thus a financial intelligence unit and an organized crime agency need to be established and institutionalized as well.

As provided for in Section 210 of the Constitution of Zimbabwe, the government should establish an independent complaints mechanism for the security sector, with the clear mandate of preventing, detecting, investigating and prosecuting all forms of criminality and human rights violations by the police, including at the country's borders. Using a robust and well-managed system, the proposed organization could conduct regular lifestyle audits during which border security officers' suspicious-looking assets are traced and frozen if deemed criminally obtained. Although it can be counter-argued that ending illicit financial flows, tax evasion, money laundering, smuggling, trafficking and the abuse of entrusted power speaks more directly to state fragility and therefore represents more of a political than an operational issue, it is nevertheless true that Zimbabwe requires a comprehensive menu of policies and operating procedures guided by the organizing principles of a human rights framework.

It is equally important to have a well-structured, victim-friendly and accessible process for receiving and responding to immigrants' complaints and to ensure that

members of the public are aware of said process, detailing some of the potential border abuses, ways of reporting them and to whom. For instance, an independent complaints commission could assess allegations and incidences related to security issues and ensure that law enforcement agents are held accountable for any rights abuses and corrupt behaviour. The complaints commission could enforce the court's responsiveness to urgent cases affecting human rights protection. Judicial inaction is alleged to exacerbate police criminality. Efforts to root out police criminality should be complemented by the courts.

Although unspoken, one insidious organizational problem in the police service is loyalty. To ensure professional, accountable, efficient and rights-based policing at borderlands, the ZRP should transform its culture of loyalty. It is extremely difficult for police officers to challenge their superiors and report misconduct. Miscreant officers take advantage of this code of silence for rent-seeking purposes. However, it is also argued that the only reason officers do not report their colleagues' misconduct is because they themselves are looking out for similar opportunities to cheat the system and therefore do not want to 'rock the boat'.

The ZRP leadership should continue to listen to the complaints and grievances of honest members of the police and the public. Any transformation in police behaviour must involve dialogue with, and oversight by, the recipients of the policing service. The ZRP would be advised to increase the female workforce at borderlands, as research shows that female police officers are less predisposed to engage in criminal activity than their male counterparts.

Another potentially effective intervention could come from SARPCCO, which has a peer-review mechanism for checking adherence to its code of conduct. SARPCCO can call on the ZRP to investigate allegations of serious breaches of this code.

In addition, public security experts and policy-makers should consider the potential roles of traditional security bodies and parliamentary committees, as representatives of the people, in ensuring effective rights-based policing in the borderlands.

Conclusion

The intricate link between the border economy and police criminality in the context of economic fragility has not been fully explored. There is a fundamental lacuna in our theoretical knowledge of how the police fit into this complex terrain. Research findings may compel researchers, policing architects and policy-makers to make a theoretical shift from the old mechanistic Peelian view of policing (people-centred) to one which views the 21st-century police officer as materialistic. As Grabosky puts it, 'the notion of policing as a public good, available to all, and paid for by all through the system of taxation and government appropriations, seem to have faded considerably' (2007: 14) or, as argued by Gans, 'that privately paid public policing is a means of preserving the present level and mode of public policing' (2000: 183). If these claims are true, the police then cease to be professional, accountable and rights-focused, to the detriment of security and development.

This chapter has attempted to provide explanations to a key question: What leads some police onto a path of criminality? The answers depend on the assumption that miscreant police officers are found in weak, 'rogue', 'fragile', 'stressed' and 'failed' states with a shadow economy. This assumption is consistent with Rotberg's observation that weak states fail to perform a state's primary functions, namely to provide security; establish institutions to regulate and adjudicate conflicts; maintain the rule of law; secure property rights; carry out law enforcement; permit political participation; facilitate service delivery and infrastructure development; and regulate the economy (Rotberg 2003). This failure results in rights violations. Kaplan (2014) adds that weakly governed states are prone to terrorism.

A rethink of Zimbabwe's National Security Strategy is required, with the view to fostering an inclusive and people-driven approach to policing, particularly through the establishment of an independent complaints and oversight mechanism as provided for in Section 210 of the 2013 Constitution. However, for this to be effective, the criminal justice system would need to be sensitized and strengthened. In addition, the country's development policies should embrace a 'growth with equity' stance in order to address the challenges of economic deprivation and abject poverty, which increase the likelihood of criminality.

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Chapter 5

Multiple counter-insurgency groups in north-eastern Nigeria



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Introduction

The year 1999 marked a watershed in the history of modern Nigeria as it ushered in what is now regarded in several quarters as an enduring regime of democratic governance. Governance – as a concept and an experience – remains a central feature of the mainstream conversation on the internal threats that have dominated the polity for over a decade. Nigeria faces internal security challenges characterized by ethno-religious tensions, rising incidences of violent extremism among marginalized communities, communal conflicts, militancy, terrorism and insurgency and weak police professionalism. Of late, these challenges have been further compounded by the rise of ethnic nationalism and identity politics. In many instances these security concerns are, in fact, symptoms of weak, exclusionary or exploitative governance mechanisms and systems (Africa Center for Strategic Studies 2015). In short, Nigeria's security challenges are a product of poor governance (Abdul & Okoro 2016).

Many reasons have been advanced to explain the continued deterioration of security in Nigeria. These include weak institutional capacity resulting in security failures; the gaping chasm of inequality and lack of fairness and justice; ethno-religious conflicts; and the disconnection between the people and the government. These and many proximate factors – porous borders, rural–urban drift, poverty and unemployment – have combined to further aggravate the problem of insecurity in Nigeria (Abdul & Okoro 2016).

This deterioration of internal security has driven the proliferation and involvement of non-state actors in security provision across the different states. These include the Civilian Joint Task Force (CJTF) in Adamawa, Borno and Yobe states in the North East, and the Vigilante Group of Nigeria (VGN), which maintains formation

across the 36 states of Nigeria, with its headquarters in the Federal Capital Territory (Hills 2012). The rising tide of insecurity in the North East since 2009 has given prominence to these security actors, particularly in the war against insurgency. For instance, statistical data from the Global Terrorism Database revealed that 3% of terrorist attacks in the world in 2013 took place in Nigeria, adding that between 2004 and 2013, Nigeria ranked fifth globally in terms of casualties from terrorist attacks (*The Cable* 2015).

This chapter attempts to explore the nexus between the rise of insurgency and the emergence of multiple policing groups in north-eastern Nigeria. In the following sections, we present a brief theoretical perspective distinguishing between the narrow set of functions performed by the institution of the police service and the broader processes of social regulation and reproduction that govern everyday lives in the context of security. The chapter also presents an overview of the Boko Haram insurgency as a disruption of the security architecture of north-eastern Nigeria. Within the framework of community partnerships in policing, this chapter examines distinct models of policing and the actors influencing community partnerships with the police. The chapter analyzes the drawbacks of community partnerships in policing and offers a critique of police reforms and counter-insurgency strategy, and proposes strategies for redressing notable problems associated with community partnerships in policing in north-eastern Nigeria.

The methodology of the study was the use of secondary data with the aid of content analysis and key informant interviews. It is important to note that the risks and volatility of violent conflict in north-eastern Nigeria made ethnographic data collection rather difficult. Instead, we corroborated the information from informants with a review of authoritative literature and relevant media reports.

Theoretical perspectives

Before attempting to answer the question ‘What is policing?’, a few points of clarification need to be made. Most important is the need to distinguish between the narrow set of functions performed by the institution of the police service and the broader processes of social regulation and reproduction that govern everyday lives in the context of security. The wider account of policing as a social function stresses that many institutions that are not necessarily accorded formal recognition and legitimacy in the maintenance of law and order and the regulation of social life in practice, contribute to the development of social norms and standards of behaviour that underpin the ordinary social interaction of everyday activity (Rowe 2014). Historically, the word ‘policing’ is etymologically related to ‘politics’, the governance of the city or state, and was used in broad terms to signify social regulation in the widest sense. In many societies, ‘policing’ did not come to be associated with the particular activities of a specific state institution (the police) until relatively recently. For instance, the historical development of the police in Britain shows that demand for a particular organization to police the society emerged in that country during the 18th century (Rowe 2014).

Traditionally, policing in most communities was the responsibility of all adults. In medieval society, all adult males were obliged to contribute towards the prevention and control of crime and civil disorder under the systems of 'hue, cry and pursuit' and the 'watch and ward' that preceded the emergence of specialized police forces as organs of the state (Etannibi & Chukwuma 2003). The emergence of the state as an entity with claims to a monopoly over the means of legitimate violence in society resulted in the creation of specialized agencies, such as the police, for controlling the use of violence by other groups. Therefore, policing in the narrow definition of state construction is a legitimate law enforcement institution charged with the maintenance of order and social norms and as such is a permanent feature of every human society, in so far as every nation has within its ranks disruptive elements that must be controlled (Hall 1953).

The police constitute an essential civil component of the security architecture of any nation. Therefore, any pro-poor reform initiatives must take into account the facilitative and inhibitive roles of the police in society. The primary role of the police is policing – securing compliance with existing laws and conformity with the precepts of social order. But the police are not the only agency involved in policing, in the broad sense of the term. Policing has always been necessary in all societies for the preservation of order, safety and social relations. In Nigeria, the necessity of policing becomes even more evident in modern societies characterized by diversity and the contradictions arising from population heterogeneity, urbanization, industrialization, conflicting ideologies, identity politics, violent crimes and conflicts, among others (Etannibi & Chukwuma 2004). The heightened incidences of this insecurity coupled with the limited capacity of the state to deal with the issues effectively have given rise to the active mobilization of the population to embrace some forms of community partnerships in policing.

The philosophy of community partnerships in policing has been inspired by different sociological theories, such as social control, social contract, social order, social organization and structural functionalism theories. Earlier social contract theory basically argues that security and order can only be achieved by a contract in which all citizens give up all their individual power to a central power, the sovereign, in return for the protection of life and property (Scott & Marshall 1998). Conversely, as society has progressed, this ideology has proven disagreeable to modern crime prevention and security strategies, and created room for advocacy in support of an alternative strategy such as structural functionalism theory. The proponents postulate that it is not only the consequences of formalized social institutions that make a society work, but that other functioning cultural institutions can play the same role. Thus, people should be willing to admit that there exist various structural and functional alternatives that can perform the same task (Ritzer 2010).

This reality makes room for the adoption of the partnership theory of crime prevention, which states that the criminal justice system cannot, by itself, solve the complex problems of crime and civil disorder, and that resources from outside the system are desperately needed, as well as new ways of thinking about diverse problems from the inside (Inyang & Abraham 2013). To achieve this, the theory advocates the creation of

'partnerships' – a group of organizations that can bring distinctive but complementary skills and resources on board and can produce coordinated and targeted responses to public safety problems (Rosenbaum 2002). It is against this background that the Nigeria Police Force (NPF) has identified, recognized and partnered with community-based policing to help them improve and secure the personal security and safety of their communities through the delivery of capable, accountable and responsible policing that is fair, equitable and accessible. This approach aims to use the principles of community-based policing in order to increase citizens' confidence, engagement, respect and trust in policing groups and organizations (Justice For All Nigeria 2017).

Brief history of policing

Prior to the advent of British colonization in 1861, traditional African policing methods were closely interlinked with social and religious structures. Traditional customs and beliefs were enforced by community structures such as age-specific cohorts (formal organizations whose membership is based on a predetermined age range), secret societies or occupational 'guilds' such as hunters, farmers and fishermen. Through these dispersed systems of crime control, law and order was maintained, largely without the use of violence (HRW 2005).

In north-eastern Nigeria, the pre-colonial system of policing was centralized and formalized. For example, in the Hausa–Fulani empire of the region, the *dogaris*, who were the bodyguards of the emir, performed a full-time policing function in the community. The *sarkin dogari* was the head of this traditional policing organization. The duties of the *dogaris* included the arrest and disciplining of offenders and, together with warders, the guarding of the town. Most importantly, the *dogaris* performed the duty of crime prevention through detective work and by facilitating the appearance of offenders before the customary court of the palace for the administration of justice. The *dogaris* were also saddled with the responsibility of executing the judgments pronounced against offenders. Therefore, the duties of the *dogaris* were not limited to crime prevention and control, but included the enforcement of offenders' punishments. In addition, they were also responsible for collecting taxes on behalf of the *sarkin*, and for traffic control. However, the history of the Sayfawa dynasty in Kanem, Borno, in pre-colonial north-eastern Nigeria has shown that the *talba*, who was the judge in the *sheu*'s (king's) court, was in addition the head of police affairs. In north-eastern Nigeria, traditional policing agencies:

- Were generally drawn from palace slaves, who were appointed by and responsible to the kings or emirs;
- Had a political head who was a senior official of government;
- Had a distinctive attire and hairstyle;
- Combined the triple roles of bodyguards, messengers and executioners; and
- Performed diplomatic and revenue collection functions (Rotimi 2014).

As the British embarked on an expansionary colonial drive across the territories later amalgamated into Nigeria, they established local, decentralized police forces. The

first of such forces was created to police the Lagos colony in 1861 (Rotimi 2014). Subsequently, other constabularies were formed in what became the northern and southern protectorates. The composition of these police forces varied depending on location. For example, in the Lagos colony, the strategy was to engage officers from the linguistically and culturally distinct Hausa ethnic group from the north of the country. This practice isolated the police from the local community they were employed to administer. By contrast, in the northern protectorate, a system of indirect rule depended on the Hausa chiefs and emirs, and thus the emir's existing police system was strengthened (Tamuno 1970).

The primary purpose of the police during this time was to advance the economic and political agenda of the colonizers. In many areas, the police engaged in the brutal subjugation of communities and the suppression of resistance. The use of violence and repression from the beginning of the colonial era marked a dislocation from the traditional relationship between the police and local communities – a separation which has characterized law enforcement practices in Nigeria ever since (Etannibi & Chukwuma 2003).

In 1930, the northern and southern police forces were merged into the first national police force, christened the NPF and headed by an inspector-general of police. The subsequent years saw further changes in the organization of the force, such as the introduction of regional commands to reflect the federalism of Nigeria. Responsibility for maintaining law and order was now shared by federal and regional governments. The same basic structure was retained after Nigeria gained independence from the British in 1960. By this time, public perceptions of the police were firmly grounded in their experience of the use of the police force to extend colonial domination, for example, in the suppression of demonstrations from the late 1920s, workers' strikes in the 1940s and communal violence from the 1950s (Tamuno 1970).

It is important to recognize and comprehend three significant historical factors that have shaped the development and character of police forces and police–public relations in Nigeria. First, the colonial conquest of Nigerian nationalities took place piecemeal over a long period (1861–1903). Nigeria's constituent nationalities were conquered at different periods. As ethnic nationalities were conquered, a British colonial presence was established by creating a police force for that territory. Second, violence and fraud were used to subdue populations, and police forces under various names were established and employed as instruments of violence and oppression against indigenous populations. Third, given the character of colonial rule, police forces were the instrument used to sustain colonial rule (Etannibi & Chukwuma 2003). After independence, successive military regimes used the police to enforce their own authoritarian rule, further entrenching a culture of violence and inhibiting the development of democratic institutions founded on the rule of law (HRW 2012).

However, as a result of the emerging security challenges in Nigeria, particularly in the North East region of the country, the post-colonial police and state governments have opened up the space for a reformed policing strategy in a bid to improve the

security architecture of the states ravaged by insurgency. Essentially, this renewed policing strategy in the North East fosters community partnerships in policing, and brings informal security actors and state security agencies together in response to the disruption created by the Boko Haram insurgency.

Boko Haram's disruption of security

There are various narratives that explain the history, formation and rise of Boko Haram. An earlier version of the story suggested that the sect derived its name from *Jamā'at ahl al-sunnah li'l-da'wah wa'l-jihād*, meaning 'The association of the people of the Sunna for proselytization and armed struggle' (Higazi 2013). A more recent history argues that the organization had been founded by Mohammed Yusuf in Maiduguri, the capital of Borno, by 2002. Current literature also concludes that the founder established a religious complex and school that attracted poor Muslim families from across Nigeria and neighbouring countries, with the official Arabic name *Jama'atu Ahlis Sunna Lidda'awatiwal-Jihad*, widely known as Boko Haram.

Boko Haram activity ballooned into a full-blown insurgency in 2009 following violent clashes in Bauchi with the state's security officers after the enforcement of a new law on the mandatory use of motorcycle helmets (HRW 2012). The ensuing confrontation assumed a transboundary dimension as Boko Haram's network cut across the six states of the North East. For instance, on 11 June in the city of Maiduguri, the security officers clashed with participants in a Boko Haram funeral procession over the mourners' refusal to wear motorcycle helmets. Consequently, members of an anti-robbery task force comprised of military and police personnel opened fire on the procession, leading to the death of 17 Boko Haram members (HRW 2012).

Subsequently, Boko Haram mobilized its members for reprisal attacks that led to the deaths of several policemen and civilians. The riot was temporarily quelled in mid-2009 after the security forces captured the Boko Haram leader, Mohammed Yusuf (Agbibo 2015). Following his death in police custody, and the arrest of hundreds of Boko Haram members, the group went underground and transformed itself into a network of underground cells with a hidden leadership (Mustapha 2012). The sect announced its re-emergence in 2010 with more advanced tactics and sophisticated attacks, including the bombing of police headquarters and a United Nations building in Abuja in 2011.

Boko Haram initially focused on opposing Western education and, in 2009, launched military operations to create an Islamic state. It was designated a terrorist group by the United States (US) in 2013, and, in 2014, the sect declared a caliphate in areas it controlled, with the town of Gwoza as its seat of power. Later, Shekau, the lieutenant who replaced Mohammed Yusuf, formally pledged allegiance to Islamic State (IS), turning his back on al-Qaeda. IS accepted the pledge, naming the territory under Boko Haram's control as the Islamic State of West Africa Province and as part of the global caliphate it was trying to establish. Between January and October 2012, more than 900 people died in attacks perpetrated by the group,

outstripping the fatalities recorded between 2010 and 2011 (Agbibo 2012). Over the years, Boko Haram's modus operandi has involved gunmen on motorbikes as well as the assassination of policemen, politicians or anyone critical of the group, including Muslim clerics who disclose information regarding their whereabouts to state security services (HRW 2012).

Besides the psychology of vengeance, the relative poverty and inequality in the north has created a fertile ground for the growth of Boko Haram (Agbibo 2015). Studies argue that these communities are wracked by chronic poverty, deteriorating social services and infrastructure, educational backwardness, rising numbers of unemployed graduates, massive numbers of unemployed youths, dwindling fortunes in agriculture and the weak and dwindling productive base of the economy in the North East (Isa 2010). Boko Haram is the symptom of state failure and the politics of poverty in Nigeria, and can be seen as the angry response of disaffected youth first marginalized by the socio-economic system and then repressed by the state (Mustapha 2012). It is this perceived injustice that has delegitimized the modern secular state in Nigeria in the eyes of Boko Haram members (Mustapha 2014). Contrary to the poverty narrative as the explanatory factor for the rise of Boko Haram, others have also posited that the state of alienation from the secular state explains the emergence of 'God's warriors', dedicated to cleansing society of corruption and injustice through *Sharia*, and who view jihad as a legitimate method of resistance and embrace death in the process. As Kashim Shettima, the Borno state governor, argues in an interview (Abbah & Idris 2014):

for me, there are two major factors that drive the Boko Haram sect, which are spiritual belief and economic desires. Those with spiritual beliefs are led into believing that when they kill, they obtain rewards from Allah and the rewards translate into houses in paradise.

Since 2009, the government has devised the strategy of military deployments to the states affected by incessant Boko Haram attacks. A significant development that brought commendable success in complementing the efforts of the military was the introduction of community policing partnerships and their significance cannot be over-emphasized. The philosophy of community partnerships in policing shares the idea that the police and the public must work together to define and develop solutions to emerging security challenges in a given locality. Thus, over the years, a variety of community policing partnerships have emerged in north-eastern Nigeria.

Community policing typology

The call for proactive strategies to control violent crime and for adapting theories and strategies to local contexts has given rise to a proliferation of community policing formations in most communities of the North East. Within this framework, this study identifies two distinct models of community policing: semi-formal and state-sponsored community policing.

Semi-formal community policing

The VGN is a voluntary security operation that assists in the maintenance of law and order in Nigeria. Its self-ascribed roles are to reduce criminal acts; protect lives and properties; assist in accidents or any other occurrence of natural disasters; arrest and hand over suspected criminals to the police; and provide intelligence information to the police.

The structure of the VGN in Nigeria contains the national executive council (headed by the commander general), national patrons and state commanders.¹ The mode of operations involves working in conjunction with the NPF and other security agencies; performing joint patrols day and night; and providing information to the NPF and other security agencies for prompt action. The organization asserts that all its activities and functions are endorsed by the NPF. The VGN is on call 24 hours a day but, for normal operational duties, an appropriate schedule is followed. The VGN provides guard services for government installations, corporate organizations, markets, traditional rulers and approved individuals. These security services can be subject to abuse if not well managed and regulated.

Recruitment involves screening the prospective member for good behaviour, mental and physical health, social interaction and communication skills. The prospective member is investigated, and information on him or her is properly recorded and preserved; references have to be provided by at least two persons with good standing in the community; police clearance must be obtained before the membership of any individual can be confirmed; and finally, the recruited member is issued with an official identity card. The VGN remains the most visible community policing structure in Nigeria. It has a presence in all 774 local government areas (LGAs) in Nigeria, and therefore makes a significant contribution towards enhancing the security architecture across the whole federation.

The sharing of intelligence between formal security actors (the military and the police) and the VGN has contributed significantly to the success in counter-insurgency in the North East. Because of their presence in all communities across the region, intelligence is easily gathered and analyzed, which in turn allows security agents to respond in a timely manner. Considerable success in Adamawa, Borno and Yobe states notwithstanding, there are nevertheless concerns that mechanisms for control and oversight should be put in place.

However, the VGN lacks funding and enabling laws that would formalize and regulate it. Although human rights violations have been reported, the VGN boasts that it has effective internal mechanisms to investigate members' infractions. The organization has taken the right steps to secure state backing and, as of late 2017, a bill seeking the establishment of the VGN as a community-based security institution went before the national assembly and passed the first and second readings. The proposed legislation would empower the VGN to deliver fully on its mandate to support other security agencies in north-eastern Nigeria.

1 More information on the VGN is available online at <http://vigilantgroupnig.com/about-us/> [accessed 14 August 2017].

State-sponsored community policing

The centralization of policing under the federal government has remained a perennial problem in Nigeria. Under the 1999 Constitution of the Federal Republic, the president and the inspector general of police are vested with the power and responsibility to preserve harmony, community security and civic serenity. The Constitution, in Section 214, provides for a central police force, declaring that:

There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.

The call for the devolution of police power has triggered an ongoing conversation about state policing in Nigeria. This debate is particularly driven by the sub-national (state) government. Since the return to democracy in 1999, there has been a persistent clamour for the establishment of state police forces – rather than the centralized force stipulated in the 1999 Constitution. This debate has been fuelled by the deteriorating security situation in Nigeria. Proponents of state policing have argued that Nigeria is too large for a central police command (Bulus 2012) and that policing should be the joint responsibility of the respective states and the federal government. It is also argued that it is easier to operate local systems, which have fewer chains of command and are capable of far more efficient local intelligence-gathering.

Essentially, this argument for state policing in Nigeria is aligned with the nodal model of policing as advanced by Clifford Shearing (1995). The nodal model is based on the premise that modern society comprises multiple centres of security governance, and thus envisages policing actors from different sectors of society and not just levels of government. The nodal governance model is relevant to explaining the activities and coordination of the various groups – military, police, the CJTF, hunters and many other vigilante and community-based security mechanisms – that have been involved in quelling terrorism in north-eastern Nigeria. This approach has been criticized by those (Ekundayo 2014) who argue that Nigeria is not yet ripe for state policing because of the potential political conflicts between the central and sub-national governments as well as the constitutional impasse. However, in a developing country such as Nigeria, the central government does not have the capacity for total control over security. Neither does it have the policing networks required to cover the entire geographical area. Consequently, the nodal approach – which recognizes both the central and sub-national governments as complementary actors – is better suited as it recognizes that different policing actors play unique roles in security provision. Hence, we now examine more closely selected community policing networks that are carrying out prominent quasi-policing functions in Adamawa, Borno and Yobe states. These states have constituted a flashpoint for conflict in the past and have suffered unprecedented attacks by the insurgent Islamist group Boko Haram.

Ibn Fadlallah vigilante group

The multifaceted security crisis in north-eastern Nigeria since 2009 has prompted some state governments to open up the space for multiple forms of policing within their borders. The embrace of these local vigilante groups constitutes an admission at the highest levels of the glaring inadequacies in combating the pervasive security challenges in the region. In Adamawa, the state government has also moved to co-opt some vigilante groups to strengthen the security architecture of the state against insurgency. Although the state is yet to provide any enabling law for the operation of these vigilante groups, the *Ibn Fadlallah* vigilante group is spearheading a crusade against Boko Haram in the state.

The Adamawa state government is assisting the vigilante groups with stipends, procurement and the supply of orthodox weapons. The vigilantes include hunters drawn from Madagali, Mubi, Gombi, Maiha and other towns and villages affected by insurgency in the state. The decision to co-opt this group is premised on the view that they know the terrain and can outmanoeuvre the insurgents. They wield machetes, locally made guns and other locally made weapons. Adamawa, Borno and Yobe states have borne most of the brunt of the Boko Haram insurgency and counter-insurgency operations in north-eastern Nigeria. The state governments have also devised the strategy of vigilante security to diffuse the tension and reinforce the Joint Task Force (JTF), led by the Nigerian army. The usefulness and disadvantages of this hybrid security strategy (between the formal and informal security agencies) are analyzed in subsequent sections.

Civilian Joint Task Force

The emergence of the CJTF can be traced to May 2013 in Maiduguri, the capital of Borno state. It emerged out of the frustration experienced by youths in Maiduguri when they suffered a double-edged tragedy, from Boko Haram fighters on the one hand, and the excesses of the Nigerian military personnel on the other, who engaged in indiscriminate detention, torture and killing of suspects during the early stages of the insurgency. Faced with this harrowing experience, a handful of youths from Hausari ward in Maiduguri, under the leadership of Lawan Ja'afar, collaborated with the military in order to rid their neighbourhood of Boko Haram. The military argued that troops were engaging in asymmetrical warfare – fighting with an enemy that lived among an unsuspecting public in densely populated cities, towns and villages in the North East. During the period, insurgents identified specific targets and launched attacks with precision (Idris et al. 2014). Thus, the CJTF – locally known as 'yangora' (men with sticks) – was set up and loosely organized into sectors under the supervision of the federal JTF state command.

The CJTF has a presence in all the LGAs in Borno state except for Bayo, Kwayakusar and Shani in southern Borno (the LGAs that have recorded the fewest Boko Haram attacks [KII 2017b]). The CJTF in the other LGAs continues to operate in Maiduguri among the internally displaced persons (IDPs) living in the camps in communities afflicted by Boko Haram violence and displacement, such as Abadam, Marte and Guzamala.

The rise of the CJTF is seen as a manifestation of state weakness and is likely to remain as the insurgency itself becomes more convoluted and complicated (International Crisis Group 2017). Perhaps the most confusing aspect of the CJTF is its typology and mode of operation. Currently, it consists of 1,850 trained and equipped Borno Youth Empowerment Scheme (BOYES) members and Youth Vanguard. The creation of BOYES is the state government's attempt to organize and streamline the activities of the restive and overzealous youth population that initially helped to drive Boko Haram out of Maiduguri. Members were selected from the highly volatile LGAs and given low-level military training and a monthly stipend of N15,000 (USD50), which was an attempt to prevent the CJTF from transforming into a youth gang, as observed elsewhere (Ukiwo et al. 2012). While hundreds of CJTF members are illiterate, many have degrees, diplomas and NCEs (Nigeria Certificate in Education), the latter being the national certification of professionalism. Some operate small-scale businesses.

The CJTF operates in Borno and Adamawa states and often complements the effort of the military in counter-insurgency operations across these states' boundaries. Although their weapons are inferior to the sophisticated ones used by the insurgents or the military, and in spite of the obvious disadvantage in firepower, the CJTF has managed remarkable success in fighting off major assaults and has raided the homes of suspected members of Boko Haram to make arrests on behalf of the military.

An estimated 680 CJTF members died trying to repel Boko Haram terrorists attacks in Borno from 2012 to June 2017 (*Vanguard* 2017). A more recent Boko Haram attack was launched against personnel of the Nigerian National Petroleum Corporation and the University of Maiduguri who were prospecting for oil in the Chad Basin. Twenty-seven people were reportedly killed, including soldiers, CJTF members and university staff (Haruna 2017).

Yobe Peace Group

The Yobe Peace Group (YPG) is a counter-insurgency vigilante group created by the Yobe state government in 2012 to counter the Boko Haram insurgency. Members are recruited from existing vigilante groups and hunters found in most communities in the state. The core mandate is to contribute to the security of Yobe state by working hand in hand with the state's JTF in securing towns and villages from Boko Haram attacks. Volunteers are recruited on the basis of character references supplied by local traditional leaders such as district heads. Members of the YPG are often attached to military battalions, and deployed to the military counter-insurgency operations in the state. The desire to protect communities from Boko Haram insurgency was identified as the most important reason why residents joined the group. Although there are female members, their numbers are marginal. The state government is ultimately responsible for funding, paying allowances and generally maintaining the YPG. It pays members a monthly allowance of N50,000 (USD160) in addition to providing other logistics. Most residents see the relationship between the organization and the government as extremely cordial. Community members observe that the government is supportive of vigilante groups, particularly in the area of funding, but cite cases of corruption in which captured insurgents are sometimes set free after bribing vigilantes (KII 2017b).

Influencers of community policing partnerships

The actors influencing community partnerships in policing in north-eastern Nigeria vary according to the specific experiences across the communities affected by the Boko Haram insurgency. The primary influencers in this regard include state governments, the NPF, traditional institutions, the military, civil society organizations (CSOs) and international development partners. These agents conduct counter-insurgency operations both in isolation and in concert, depending on each situation's particular challenges.

Traditional institutions

The traditional institutions comprise emirs, local chiefs, village heads, religious leaders, women's groups and the heads of the local vigilante groups in the community. North-eastern Nigeria is a large and populous community with a complex history of pre-colonial politics, a system of multiple administrative strategies during the colonial era and a post-independence history marked by the alternation of military and civilian rule. The sheer size, influence and population of the region drove a specific process during the colonial era, that is, the use of indirect rule to manage the communities in the region. This led to a formalization of the position of traditional rulers which is unique to this region. The traditional rulers were assigned a particular status, with certain privileges, as an arm of government. Such systems of government were rooted in the long-established social structures of the peoples over whom the governments were set to rule.

Apparently, such rulers continue to have influence in the 21st century, where power has become diffuse and chaotic. One reason for this is that traditional institutions are often more trusted than local and state government officials during conflict situations, which are extremely common in the war against insurgency in the North East. For instance, as the army defended or reclaimed territories from the Boko Haram insurgents throughout Borno state, it encouraged the formation of CJTF units, and Baba Jafar Lawan (the pioneer CJTF commander) toured the state to recruit them. Where there was scepticism, military officers visited communities to assure them that this was the government's wish. The deputy governor publicly pressed the emir of Biu, a city in southern Borno where the CJTF was not well received, to encourage youth in his domain to form a vigilante group as a form of community policing partnership with the state security organs involved in the war against insurgency in the North East. The security services rely strongly on the support of the traditional leaders in the formation of CJTF units across the communities predominantly ravaged by the Boko Haram insurgency, in Borno state especially. This underscores the pivotal role local community leaders play as gatekeepers of community policing partnerships in the climate of insurgency (International Crisis Group 2017).

State governments

The governments of the states confronted with insurgency in the North East have also proven pivotal as important influencers of community policing partnerships within

and outside their borders. On many occasions, the volatility and transboundary nature of the insurgency crisis has also spurred the governors of the various states to collaborate on many fronts. The governments of Adamawa, Borno and Yobe states particularly, faced with worsened insurgency, have been involved in the formation, recruiting and funding of the CJTF and other local vigilante groups such as hunter brotherhoods² to combat the insurgency in the rural and urban communities in these states. As early as September 2013, a government scheme, the aforementioned BOYES, selected and screened young men who then received some military training. State authorities gave them uniforms, patrol cars and identification documents, as well as a stipend. It was eventually announced that BOYES would train up to 6,000 recruits, but it stopped at around 1,850, apparently due to the army's uncertainty about training so many potentially unreliable individuals. Some recruits, suspected of association with Boko Haram and of trying to get training or intelligence, were arrested (International Crisis Group 2017).

Security institutions

The Nigerian army and police have also proven pivotal in the formation, coordination and regulation of all the arrangements pertaining to community policing partnerships formed to halt insurgency in north-eastern Nigeria. The JTF led by the Nigerian army quickly realized the vigilantes' potential as a source of local knowledge, intelligence and manpower and set out to help organize them, with the assistance of local and traditional authorities. The CTJF that came about was endorsed by the army, which was quick to appreciate the potential of the initiative and thus organized the civilian groups along its own lines of command, with Maiduguri divided into ten sectors. The JTF officers were also involved in the selection, vetting and training of CJTF leaders for each sector, with whom they worked closely. Subsequently, a number of initial JTF checkpoints on the intra-state roads were handed over to the CJTF (International Crisis Group 2017).

CSOs and international development partners

While government and military actors bear the ultimate responsibility for protecting civilians, the interventions made by CSOs in strengthening the security architecture of communities in the states affected by Boko Haram insurgency have been remarkable. The CSOs play a significant role by strengthening local communities' coping mechanisms and self-protection strategies (Dietrich 2015). Civilians in affected communities agree that CSOs should do more to promote awareness campaigns and sensitization to early signs of conflict, and to collaborate with as well as strengthen relationships between civilians, security agencies and international development partners. CSOs are encouraged to create a platform where they and state representatives from different sectors can meet monthly to discuss issues pertaining to security and governance and offer solutions. Community residents want CSOs to work with security actors to better

2 Multi-ethnic hunter brotherhoods, found in many West African areas, are particularly strong in Adamawa, a forested region with much game. There are hunters in Borno state, and some became vigilantes, but the CJTF did not follow the brotherhoods' organization. This may be because the Borno state CJTF initially mobilized urban youths.

track conflict indicators and protection concerns. This is pivotal as most of the affected victims of insurgency do not know how to go about reporting misconduct by the military, the CJTF and Boko Haram. CSOs and some communities are consequently helping to report violations and conflict to human rights networks, security agencies and the CJTF units (Dietrich 2015).

It has also been argued that contemporary vigilantism in Nigeria has been influenced by the general promotion of community policing by US and European development partners (Pratten 2008).

Patterns of rights violation

The Boko Haram insurgency is winding down as military operations – by Nigerian forces and Nigeria's north-eastern neighbours through a Multinational Joint Task Force – intensify against the insurgents.

Boko Haram has perpetrated more human rights abuses against the civilian population than other actors involved in the conflict. An estimated 550 civilians died in Boko Haram attacks in 2016 (HRW 2017), and almost 3,500 in 2015 (HRW 2016) according to Human Rights Watch. The security tracker report from the Council on Foreign Relations (CFR n.d.) indicated that over 16,000 lives have been lost as a result of the violent attacks by Boko Haram insurgents in the North East. The insurgents often resort to suicide bombers in crowded places such as IDP camps, markets and mosques, using mostly women and girls in order to bypass security. Security forces have retaken control over most areas controlled by the group, and rescued thousands of residents. However, 197 of the 276 Chibok schoolgirls abducted in April 2014, as well as over 300 elementary school students abducted in November 2014 from Damasak, Borno, are still missing.

The insurgency attacks coupled with ineffective policing have given impetus to the emergence of a plethora of non-state policing groups in Nigeria. Consequently, the Nigerian state has shared its security responsibility with a variety of these non-state security actors in the North East, including with vigilante groups and ethnic militias. The activities of these multiple actors are characterized by cooperation, co-option and, in some cases, conflict (Lar 2015). The emergence and co-option of these actors has left a trail of wanton abuse in diverse communities (Malik 2015). For instance, the CJTF units set up to work with the security forces in the North East have been involved in mass arbitrary arrests and in screening operations during which informants point out Boko Haram suspects. CJTF members have been involved in the beating and killing of suspects after their arrests (Amnesty International 2015).

Foregoing sections in this chapter have alluded to weak internal accountability mechanisms, inadequate training and weak oversight on the part of the state in the administration and regulation of the CJTF in community policing partnerships against insurgency. Furthermore, the incorporation of various types of vigilante groups into community policing partnerships has also paved the way for the

emergence of warlords and frequent conflicts between the local hunters, involved in combating the Boko Haram insurgency in the city of Yola, Gombi town and other neighbouring rural communities (Anwar 2016). According to Yola residents, the hunters' association has formations in each of the LGAs in Adamawa state and they have assisted in counter-insurgency operations. Respondents further pointed out that some individuals among the hunters have become warlords and have clashed with each other in battles for supremacy and leadership. Thus, community members are afraid that the aftermath of this insurgency might trigger arms proliferation, intra-group rivalry and reprisal attacks (KII 2017a).

Moreover, the Nigerian army has also been accused of human rights abuses including arbitrary arrests and detention, torture, forced disappearances and extrajudicial killings in the North East. In the course of security operations against Boko Haram in the region, Nigerian military forces are alleged to have executed more than 1,200 persons; arbitrarily arrested at least 20,000 people, mostly young men and boys; and committed countless acts of torture. Hundreds of Nigerians have become victims of enforced disappearances, while at least 7,000 people have died in military detention as a result of starvation, extreme overcrowding and the denial of medical assistance. Apparently, the federal government has instituted a commission of inquiry to investigate alleged violations of international humanitarian and human rights laws by the armed forces in local conflicts and insurgencies in the North East under various statutes, including the Constitution of the Federal Republic of Nigeria 1999 as amended, the Geneva Convention Act, the African Charter on Human and Peoples' Rights, and the Ratification and Enforcement Act, amongst other relevant laws.

Rights-protection constraints

Throughout the world, constraints on the use of force during military operations, including counter-insurgency, depend on international laws and policies as well as on individual national laws and directives. In Nigeria, the counter-insurgency strategy and structure of the military and police is complex and largely influenced by the terrain, culture and custom of the community affected by the operations. Notably, one of the requirements of the use of force under the law of armed conflict is that combatants must distinguish between innocent civilians and those individuals presenting a threat. This basic principle is accepted by all disciplined militaries. In spite of these norms, challenges to protecting human rights remain. These are exacerbated by a minimal awareness of human rights and high levels of illiteracy.

The North East region of Nigeria has suffered an ongoing crisis of mass illiteracy over the years in comparison with other states and regions. Education in the North East states has lagged behind the 36 states of the federation. Data from the literacy index recently published by the National Bureau of Statistics reveal that the gap in educational development between southern and northern Nigeria is still wide, nearly 60 years after independence. According to the data, the states where the majority of people can neither read nor write are in the North East. The data show

that Yobe state has a literacy level of only 7.23%, the lowest in the country, followed by Bauchi (19.26%), Adamawa (40.5%) and Borno at 14.5% (Amzat 2017). There is a worldwide correlation between literacy and citizens' capacity to appreciate their basic human rights as articulated in readily available legal documents, such as constitutions and relevant international statutes. The North East presents a situation where low literacy levels undermine citizens' collective capacity to engage with the relevant security actors in order to address any violations of their rights.

Other factors inhibiting human rights protection in the region are the overall weakness of governance, weak oversight and low operational accountability, and the opacity of the military and allied security forces' rules of engagement in counter-insurgency operations in the North East.

Enhancing rights-based policing

A complex mixture of economic, social and political factors provided a fertile environment for Boko Haram in northern Nigeria. While religion and poverty definitely played a part in the emergence of Boko Haram, there is also empirical evidence that links police brutality to their rise (HRW 2012). By all accounts, the NPF has also inflicted severe harm during the fight against insurgency in the region. Indeed, the police's extrajudicial execution of Boko Haram's leader, Mohammed Yusuf, and dozens of other suspected members in July 2009 became a rallying cry for the group's subsequent violent campaign (HRW 2012). As police pressure against the sect began to grow toward the end of that period, the group morphed into more of an urban phenomenon practising *al-amr bi-l-ma'ruf wa-l-nahy 'an al-munkar* (enjoining the good and forbidding the evil) (Cook 2011).

The last period of Boko Haram's first phase was a direct confrontation with the NPF and the military, which culminated in the military's assault upon Mohammed Yusuf's compound, associated mosques and his extrajudicial killing. Hundreds of members of the group were killed with him. As a consequence, in their subsequent phase, Boko Haram avoided having a traceable location. The group's first targets were the police, who were attacked at their own checkpoints and robbed of their weapons (Walker 2016). These revenge attacks against the police reinforce the argument that police actions have fuelled the rapid rise of Boko Haram in north-eastern Nigeria (Dogara 2012).

The government's strategy to counter the threat of insurgency has proven efficient in recent times as a result of the robust application of the National Counter Terrorism Strategy. Nonetheless, the strategy is still ridden with flaws – such as the domiciling of its driving organ, the Counter Terrorism Centre, under the Office of the National Security Adviser (ONSA). This could inhibit the effective implementation of the strategy because ONSA does not have statutory executive functions but instead plays an advisory role to the president. Furthermore, the ambiguity of the government's overall strategic approach could result in a disconnection among policy-makers, implementation agencies and the public (Eji 2016). Above all, the

counter-insurgency efforts of the Nigerian government are mainly conducted through the military and are not really connected to the ongoing police reform agenda in Nigeria.

The history of insurgency in the North East presents overwhelming evidence that there is widespread public mistrust towards the NPF in the region and particularly in the states and communities ravaged by the Boko Haram insurgency. Across the region, police have been deployed not only against the Boko Haram insurgency, but also in disparate local conflicts – some between religious or ethnic groups and others over land use (United States Institute for Peace 2016). However, the police are often implicated in security breakdowns because of the extrajudicial killings carried out in response to Boko Haram violence.

Furthermore, the apparent failure of the NPF to provide adequate security and justice has encouraged alternative providers, such as the vigilante groups that currently complement military efforts against the insurgency in the North East. Although these groups are often viewed by the NPF as being in competition with them (Malik 2015). The NPF is yet to embrace the CJTF and other non-state security actors as complementary security tools for building safer communities in the North East. This becomes pivotal because the NPF is the critical actor in ensuring the legitimacy and capacity of state–community partnerships in security. However, these are not possible without police reform strategies that would mainstream community policing into the security architecture.

In addition, the human rights desk of the NPF must be strengthened and staffed with knowledgeable personnel whose training on the rights-based approach to policing in times of insurgency is constantly updated.

Another fundamental factor for effective policing in the North East is to reimagine the strategy of community policing so that it puts trust, professionalism and accountability at the centre of security and public safety. This is pivotal because a trustworthy and accountable police force is one which acknowledges the rights of the citizens living in the territories plagued by insurgency.

Conclusion and recommendations

The advent of community policing partnerships in counter-insurgency operations in north-eastern Nigeria presently risks weakening the security architecture of the region, and could trigger a new cycle of violence. Until this potential danger is addressed through a holistic review of the region's security architecture via policing reform, any security benefits gained in the region might prove elusive in the short term.

The NPF sits at the apex of government institutions vested with the constitutional mandate for internal security and social cohesion in the country at large. Thus, there is a need for a radical counter-insurgency community policing partnership (CCPP). This is not intended to be the same as community policing in the traditional

criminal context. Rather than fundamentally changing relationships between law enforcement and communities into a partnership, a CCPP would perpetuate preventive counter-terrorism strategies that prioritize surveillance, particularly in the territory regained from Boko Haram insurgents.

Furthermore, ongoing police reform and the framework for preventing and countering violent extremism should be undergirded by the long-term strategy of establishing community policing partnerships. The starting point for this is to strengthen police oversight to make sure they uphold the rule of law. This is necessary because the NPF's conduct during the insurgency crisis has given local communities cause for complaint. Police officers should, accordingly, be provided with community policing skills.

Trust, reconciliation, tolerance, community engagement and rehabilitation efforts championed by the police at the grassroots can prevent citizen radicalization. The community policing strategy should co-opt community leaders into gathering and sharing intelligence on potential security challenges, conflicts and other information that is otherwise unavailable to law enforcement due to lack of familiarity with the local terrain and culture. If citizens believed the police actually served the best interests of local communities, many would disclose information useful to them.

Lastly, when the situation stabilizes in states affected by the insurgency, any plans to transform vigilante units should involve the creation of a transitional auxiliary body to ensure that only those vigilantes who meet educational and other requirements are kept on.

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Section 3

Policing responses

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Chapter 6

Terrorism and rights protection in the Lake Chad basin

Amadou Koundy

Introduction

Terrorism – one of the major contemporary global concerns – was first seen as a unilateral threat before becoming what it is today, a strategic threat to peace and collective security. This is especially true of the fragile societies and states of the Lake Chad basin¹ as a result of the cruelties perpetrated by Boko Haram.² The terrorism in this area, with its death toll and extraordinary destruction,³ was a brutal return to the violence experienced by some of the region's countries in the 1990s.⁴ However, it only worsened as it transformed into a new paradigm of violence, one that required the state to undertake the renewal of its primary security practices and mechanisms, including the criminal law enforcement system.

The multifaceted nature of Boko Haram terror, as such, poses serious difficulties in qualifying and defining the threat, on the one hand, and in proposing to prevent it on the other. Boko Haram's activities, and indeed all other pseudo-Islamist forms of terrorism, enshrine a practice of violence that cannot be equated with, nor easily dealt with, by state actor practices or strategies; these activities occur outside any conventional framework. The defence of the Westphalia-based state does not have the conceptual tools with which to adequately engage in forms of conflict that are fundamentally different in design and operation; nor is the traditional criminal justice system able to adequately hold to account those whose crimes have transcended the state's very logic. So how is it possible to plan and implement a response to this threat that is neither inappropriate nor disproportionate, one that is both a

1 Cameroon, Niger, Nigeria and Chad.

2 For information on Boko Haram, see De Monteclos (2012), Ademwo and Olusola (2012) and Adibe (2013).

3 According to the Institute for Economics and Peace (2015: 2), 'Boko Haram, which pledged its allegiance to ISIL as the Islamic State's West Africa Province (ISWAP) in March 2015, has become the world's deadliest terrorist group, causing 6,644 deaths compared to ISIL's 6,073.'

4 Niger, Mali and Chad experienced different types of armed violence, including rebellions, during this period.

product of the logic of the state and yet tasked with managing a phenomenon that transcends the state?

In this context, the governments in the Lake Chad basin region seemingly have but one option – even if anti-terror responses are politically very sensitive – that is expressed by Colombe (2007) about Europe's counter-terrorism strategy, but which is also true of the Lake Chad basin. On this view, rulers feel they have to adopt leniency, which thus aggravates security concerns. This perceived insecurity then calls for an increase in coercive, criminal and repressive power.

Counter-terrorism practices (understood as public policies, coercive actions and legal and judicial mechanisms) risk involving attacks on, or the undermining of, human rights and public freedoms, and as such raise numerous issues relating to the future of the rule of law in the region – both conceptually and procedurally.

Law enforcement and national security now clearly have some obligation to undertake forms of social control work where the vaguest denunciation can now lead to arrests or, worse, to deaths.⁵ Moreover, as is the case elsewhere, despite the weakness of their means, security professionals in this region are determined to 'listen to everything and, if possible, be aware of everything' (Sarkozy 2005). These preventive and proactive practices are a major challenge to democratic rule and individual freedoms.

Under the pretence of an appropriate legislative and institutional framework, disturbing practices are established that violate fundamental freedoms (the protection of freedom and the right to privacy, fair treatment, a public hearing by an impartial judge, the prohibition of arbitrary detention, equality before the law). Perhaps less than elsewhere in the world, due to the fragility of the states of the region, security systems have transformed from being conventional reactive systems into proactive systems based on surveillance, tailing, identification and information techniques and thus the systematic intrusion into the privacy of citizens. The main characteristic of the response to terrorism in the area is that it is conducted in a state of emergency, in a climate of fear and suspicion.

Faced with an existential challenge due to a growing and ever more violent terrorist threat, with a tendency towards metastasizing in society,⁶ states have felt that they should respond vigorously by constantly undermining the basis on which human rights are protected. Specific anti-terrorism legislation, inspired by the perception of fighting against a mighty enemy (Bikie 2017), has gradually separated itself from common law and serves as a rationale for repeated violations of human rights. There is a tendency for the rule of law to be overtaken by the rule of the police, and anti-terrorism laws, exceptional in the past, have now become and are accepted as normal.

5 Many people killed in anti-terrorist operations have turned out to be simple, honest citizens who do not pose any threat to the defence and security forces. See Amnesty International (2015a, 2015b).

6 The assertion that 'West Africa offers the spectacle of a volcanic area with erupting centres and others dormant. Every national space carries with it the ingredients of a recipe only waiting for a spark to explode' (Bathilly 2005: 26), does indeed apply to the Lake Chad region.

However, 'the principles of common law, except for the convenience and the ulterior motives of the rulers, make it possible to face all situations in terms of endangering of state security'.⁷ Of course, adjustments to the common law are inevitably necessary for an appropriate fight against terrorism; but these must ensure the protective balance of fundamental rights. It is indeed essential that all efforts to contain insurgency are based in law. While it should be acknowledged that 'by itself, the law can provide only a very partial answer to the issue of terrorism it does not in any way mean that the answer to terrorism must be freed from the law: if the answer to illegalism is illegality, the law does not exist anymore for anyone' (Soulie 2001: 40) and thus endangers the current democratic foundations of the states in the region.

Yet, the most simple of the situational analyses in the area reveal that both the operational conduct of the fight against Boko Haram by the states of the Lake Chad basin and the legislative system of criminal repression and its implementation lead to serious shortcomings in the respect of citizens' rights and freedoms. On this second aspect, it appears that some guiding principles of criminal law in a state governed by the rule of law are eroded, on the one hand, and, on the other, the trial mechanisms and procedures prove to be an attack on the fundamental rights of the respondents.

Terrorism and criminal law

In a state governed by the rule of law, the principles of respect for human rights are subject to special legal and judicial protection which enshrines and adapts their inviolability, including in the fight against terrorism. While it is true that the state has authority, it nevertheless complies with a set of legal standards which impose limits in the exercise of its official powers. The compliance with these limits is what defines democracy, grounding the legitimacy of the state's power, and therefore the legitimacy of its actions. Ultimately, the state's constant search for a balance between security and freedom, which guarantees the proper functioning of the rule of law, is, as a reminder, the basis of the social contract. The entire architecture of the protection of public freedoms in a state governed by the rule of law must then be preserved by the state, including the establishment and implementation of policies on crime, understood as 'all the processes by which society organizes responses to the criminal phenomenon' (Delmas-Marty 1983: 13). Weighed against the obligation of states to protect their citizens against terrorism within the general framework of their obligation to provide security to all persons under their jurisdiction, there is a strong temptation to think that the response to exceptional criminality, as is the case of terrorism in the Lake Chad basin area, is the implementation of exceptional processes:

It is not through laws and courts of exception that freedom is protected against its enemies. This would be a trap that history

⁷ R. Badinter in his famous speech for the abolition of the death penalty before the French National Assembly in 1981.

already set to democracies. Those who gave into it have gained nothing in terms of repressive effectiveness, but have lost much in terms of freedom and sometimes of honour.⁸

Yet, the governments in this region have established criminal mechanisms to fight terrorism that manifestly violate criminal law principles such as the principle of the legality of offences and sentences, and have deprived persons of their rights as a result.

Judging terrorists

International human rights law prescribes that a person shall not be deprived of his or her right to a fair trial and legal process, including in the context of the fight against terrorism (Tigroudja 2009). Yet, from the striking diversity of institutional mechanisms used to judge terrorism from one country to another in the Lake Chad basin, the establishment of jurisdictions seems to suggest depriving the alleged terrorist of a fair trial. While it may be assumed that exceptional jurisdictions could be avoided, understood in the strict sense as being created for particular factual circumstances and to try offences related thereto (Tigroudja 2009), states faced with Boko Haram's terrorism have either established special mechanisms to judge terrorism involving aspects that violate the rights of the persons prosecuted, or have left the judgement of terrorism to military courts, whose independence is questionable, or have entrusted this capacity to ordinary courts with special powers.

Justice systems in Niger and Chad

The establishment of specialized jurisdictions, created because of certain special requirements and with specific substantive powers and setting themselves apart from extraordinary courts, does not in itself derogate from the principle of the right to a fair trial. Rather, it is an accepted option for adjusting the said principle for the need for efficiency in particular. The criminalization of terrorism can certainly only be done by adjusting the law to adjust the mechanism. The choice of specialization is one of the options available to the states. Niger and Chad have opted for it and have instituted a specialized and centralized criminal justice system (Picardi 2010).

Indeed, these two countries have each established a centre specialized in conducting criminal proceedings related to terrorism. For example, in Niger, a specialist anti-terrorism centre was established under Ordinance No. 2011-11, special procedural rules were adopted in accordance with Ordinance No. 2011-13, and the Criminal Code was amended to incriminate various terrorism offences by Ordinance No. 2011-12, on the same day, 27 January 2011. In Chad, the Specialized Counter-Terrorism Unit was established by the Single Act No. 034/PR/2015 of 5 August 2015, the procedure before this Unit was provided for and the terrorist offences were incriminated.

8 See 'Le terrorisme et la loi', Conference on Robert Badinter, University of Geneva, 11 November 2015, <https://mediaserver.unige.ch/collection/VN4-2541-2015-2016> [accessed 4 July 2017]

The mechanisms of the two countries, although both special, are significantly different. However, the mechanisms are characterized by the centralization of procedures, understood as the conferment of jurisdiction to deal with terrorism to a single jurisdiction. For example, Ordinance No. 2011-11 of Niger stipulates that the specialized pole has a national jurisdiction (Article 91.1) in terms of terrorism and Article 10 of Law No. 032/2015 of Chad provides that only the public prosecutor of the Republic of the Ndjamena High Court has jurisdiction to initiate and carry out the public prosecution of terrorism. This centralization erodes the principle of the right to a hearing in that people living in very distant countries, and actions committed in such countries, fall under a court sitting very far away. Thus, those accused of terrorism are detained and held very far from their usual setting, which can certainly lead to disorientation that is detrimental to their defence and, worse, does not allow them to bring the evidence to their defence in the proceedings, particularly the testimonies of those who can corroborate their alibis, especially since the legal aid that assists them, very often, will have neither the will nor the financial motivation to make the effort to defend them.

Moreover, it should be noted that the specialization of the criminal system in terms of terrorism in the two countries has not been established to the same degree. Indeed, in Niger, the whole criminal system, from the investigation and prosecution, up to the trial has been specialized, while in Chad, only the investigation and the prosecution were considered for specialization. In the case of this country, this led to giving jurisdiction to a Special Criminal Court (Article 35) for the judgment of all terrorist cases, the only one having jurisdiction to deal with terrorist crimes. In addition, the devolution of exclusive jurisdiction to the Special Criminal Court has cast a very serious shadow over the entire criminal procedure against terrorism in Chad. It seems that this court is more an exceptional rather than a specialized court. Indeed, apart from the indication of the number of judges to sit at this court, no procedural law clarifies the conduct of the proceedings before it, even if only by reference to any pre-existing law. Moreover, one of the essential rights of persons prosecuted in criminal matters is questioned by the proceedings before that court. Indeed, as the judgments of the Special Criminal Court are handed down at first and last instance, no option is offered to the persons prosecuted to have their guilt and conviction examined by a higher jurisdiction, in contradiction of the provisions of international human rights law, including Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

In Niger also, integral specialization with its centralization corollary is not without reproach; indeed, it led to congestion in the criminal system, which is failing to deal with proceedings⁹ within a reasonable timeframe.¹⁰ Thus, while specialization is not in itself an infringement of the requirements of international human rights law, it is clear that, as it stands, it undoubtedly undermines the rights of those before the anti-terrorist jurisdictions of these countries. However, it seems that the infringements in this category of jurisdiction are less obvious than those before the competent military court in the fight against terrorism in Cameroon.

9 Indeed, more than 1,400 people are in custody and their cases are handled by a judicial mechanism that includes only about 20 magistrates, including only five examining magistrates.

10 Some persons prosecuted were detained for more than three years before they were tried for often simple offences, requalified at the end of the proceedings as ordinary offences.

Militarization of the law in Cameroon

The Cameroonian Law No. 2014/028 of 23 December 2014 on the repression of acts of terrorism, in its Article 1(3), gives exclusive jurisdiction to the military courts for the repression of terrorism. Those special jurisdictions which apply a derogated legal regime are not as such prohibited by international human rights law.¹¹ Nevertheless, it is by examining them in the light of certain principles, in particular the independence of judges and their accessibility, that the compliance of the procedures they conduct with the requirements of human rights rules can be assessed, as well as their legitimacy.¹²

Thus, on the issue of the independence of Cameroon's military judges, if we can assume that as professional magistrates they offer guarantees of independence, it is necessary to question their capacity to resist the orders of their superiors. This is especially true when one considers the fact that their rating and ranking is done by these people, these corps being known to be very demanding in terms of discipline and loyalty. However, while debate is allowed as far as judges are concerned, it is very clear that the capture of the prosecution of Cameroon's military courts questions the independence of a whole section of the criminal system, and this impacts on the independence of the entire system. Indeed, the minister of military justice is, by law, the only one to decide on the prosecution before the military courts in the entire territory of Cameroon (Law No. 2008/015 of 29 December 2008, Article 12 paras. 3 and 13, para. 1). In practice, the government commissioners of the ten military courts, and the representatives of the prosecution, must refer to this authority, which decides which cases shall face prosecution even though Law No. 2008/015 has not provided for any special criteria for prosecution – thus conferring 'absolute powers' on 'prosecuting authorities in terms of stays of proceedings mechanisms, where no legal condition determines their action or inaction'.

In these circumstances, then, it appears that the judicial machinery for the repression of terrorism is not in compliance with the requirements of international human rights law, in that the intrusion and thus the influence of the authorities of the executive power heavily influences the relevant proceedings. Moreover, the exclusive jurisdiction of the minister of justice in the decision to prosecute may lead to delays in the processing of proceedings, which is prejudicial to the persons who, in the meantime, are deprived of their freedom (Bikie 2017).

On the question of the accessibility of the courts, it appears that – compared with the Nigerian and Chadian justice mechanisms – the Cameroon system is relatively less centralized and can provide for better accessibility of the litigants, with a total of ten military courts established in the various provinces of the country. However, it has

11 However, Principle 5 of the United Nations (UN) Sub-Commission on the Promotion and Protection of Human Rights on the Jurisdiction of Military Courts states that military courts should not try civilians. See also Callejon (2006).

12 The military courts in Cameroon are governed by rules outside the scope of ordinary law, enacted by Law No. 2008/015 of 29 December 2008 on military judicial organization and establishing the rules of procedure applicable before military courts.

been estimated that the establishment of only one court per province is insufficient, does not facilitate access to the courts and that such a situation seems conducive to a high risk of judicial delays and, therefore, to a violation of the right to be tried within a reasonable period of time, considering that the military court's jurisdiction extends to offences other than terrorism (Bikie 2017).

Furthermore, it should be noted that only Nigeria has maintained its ordinary judicial machinery for the purpose of judging terrorism, endowing it with specific procedural rules through the Terrorism Preventive Act adopted in 2011 and amended in 2013, in order to adjust it to the specificities of terrorist investigation and judgment. Thus, according to this Act, the federal courts, especially the Federal High Court, have jurisdiction in this matter (Section 32), which is a guarantee both of independence and of the quality of the proceedings, since the judges serving there very often have extensive experience before holding positions at the federal level. However, the mechanisms of all four countries are questionable in their approach to the criminalization of terrorism, which defies the principle of the legality of offences and sentences.

Legality of offences and penalties

The principle of the legality of offences and sentences (*nullum crimen, nulla poena sine lege*) is included in most international human rights instruments. It means that there can be no crime without law, no sentence without law, or the retroactive application of criminal law. To comply with this principle, a crime must be defined with sufficient precision to warn people in advance that a particular conduct is classified as a crime.¹³ States must comply with this principle, including within the framework of the fight against terrorism, as stated in the Report of the Independent Expert on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism to the UN Commission on Human Rights on 7 February 2005. It appears that in the Lake Chad basin, states are suppressing terrorism without defining it adequately as well as criminalizing it with imprecise wording.

Suppression without a definition of terrorism

The principle of the legality of offences and penalties is an essential component of the rule of law in criminal matters: the offence must be defined with the utmost precision so that sanctions can be applied. It cannot be derogated from derogation and 'It should be construed and applied as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment'.¹⁴ However, the fact is that the anti-terrorist criminal

¹³ See African Commission on Human and Peoples' Rights (ACHPR) 48/90-50/91-52/91-89/93, *Amnesty International, Loosli Bachelard Committee, Lawyer's Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan* (November 1999), para. 59; UNCHR, General Comment No. 29, para. 7; UN High Commissioner for Refugees (UNHCR), General Comment No. 27, para. 13.

¹⁴ European Court of Human Rights, *Kafkaris v. Cyprus*, judgment of 12 February 2008, § 137.

laws of the countries of the Lake Chad basin prohibit a series of actions without providing a general definition of terrorism. Infringements are often defined in vague or very general terms. Worse, some international texts, such as the Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism,¹⁵ to which the national legislator of the area must refer, give a definition of terrorism sometimes so extensive that it encompasses a wide range of acts, the seriousness of which varies considerably. Some crimes or offences which, by their very nature, do not fall within the category of terrorist acts might therefore be integrated therein, and a crime or offence committed in a political context can be considered a terrorist act.¹⁶

However, in view of the scepticism arising from the difficulty of having a generally accepted definition of terrorism, some wonder whether any definition of terrorist offence is not condemned to incompatibility with the principle of legality and immediately answer in the affirmative (Robert 2012). This position would imply that the current fight against terrorism would then be done in violation of that principle and would be illegal. Yet it is not so. Indeed, 'this vision can, in my opinion, be defined as fundamentally incorrect, since it is based on a misunderstanding of the exact meaning of the principle in question' (Robert 2012: 87). This principle 'in no way implies that, in the absence of a detailed provision of international law [...] repression could not be legitimately exercised, whether by an international court or by the national court' (2012: 87). In this sense, an offence does not need to be defined with all the precision required by the principle of legality for a lawful response to be engendered. It is sufficient for the author of the act in question to be subjected, during the *tempus commissi delicti*, to clear and accessible legal norms, be it national and/or international, establishing such a definition *ante factum*. Indeed,

It is not necessary to have an exact legal definition if terrorism is dealt with as a common crime. Concentration on the elements of the *actus reus* may be all that is needed by way of definition, for murder, arson, kidnapping, serious bodily harm, and the infliction of severe mental distress are criminal acts in themselves and need only be proved as such. Thus, a precise legal formulation needs not to be required to confront the terrorist menace for the preservation of societal and world order. (Bernhardt 2002: 846)

As the legitimacy of the struggle is well accepted, even in the absence of a definition accepted by all, states cannot make definitions that go beyond the broader scope of the fight against terrorism. In doing so, the struggle would lose all legitimacy because it would violate one of the principles ensuring respect for human rights. However, it

15 The International Federation for Human Rights (FIDH) considers that 'the Algiers Convention, by its imprecise wording, does not meet the criterion of legality' (FIDH 2007: 7).

16 The ACHPR held that laws were at odds with the rights enshrined in the Charter because they did not respect the principle of legality; cf. *Media Rights Agenda and Others v. Nigeria*, Comm. Nos. 105/93, 128/94, 130/94, 152/96 (1998), para. 71; *Constitutional Rights Project and Others v. Nigeria*, Comm. Nos. 140/94, 141/94 and 145/95 (1999), paras. 43–44; *Constitutional Rights Project and Another v. Nigeria*, Comm. No. 102/93 (1998), para. 59. See also, FIDH (2005: 22).

appears from the analysis of the laws of the countries of the Lake Chad basin that the definitions of terrorist offences do not respect the principle of legality of offences and sentences.

Vagueness of the criminalization of terrorism

It seems that on a national level, some laws of the Lake Chad basin countries followed the definitional outline provided for in the OAU Convention on the Prevention and Combating of Terrorism and are receiving the same criticisms (see, for example, FIDH 2007). Thus, Article 2 of the Cameroon Law states that:

Whoever, acting alone as an accomplice or accessory, commits or threatens to commit an act likely to cause death, endanger physical integrity, cause bodily injury or material damage, destroy natural resources, the environment or cultural heritage with intent to:

- a. Intimidate the public, provoke a situation of terror or face the victim, the government and/or a national or international organization to carry out or refrain from carrying out an act, adopt or renounce a particular position;
- b. Disrupt the national functioning of public services, the delivery of essential services to the public to create a crisis situation among the public;
- c. Create widespread insurrection in the country; and
- d. Shall be punished with the death penalty.

This provision, as formulated, creates confusion and leaves the door open to serious violations of human rights, including the right to freedom of assembly and public demonstration. Indeed, it does not make it possible to determine precisely the outlines of the criminalization of terrorism as to its object and its subject matter and consequently does not make it possible to determine with certainty the field of application of the criminal rule it enshrines, even though the will to incriminate, both symbolic and strategic, requires a clear definition of the offence (Missoffe 2016). By criminalizing terrorism in general terms, the Cameroon legislature violates the principle of legality, which makes the anti-terrorism legislation of this country liable to sanction.¹⁷ Certain expressions, such as 'serious disturbances', 'intimidation' or 'terror', which are found in all the laws of the region, are too vague and leave the door open to various interpretations.¹⁸ In this regard, Jean Pradel (1987a: 41) wrote:

[...] the mention of the notion of a serious disturbance to public order does not make much sense since this notion is not very precise – albeit rather restrictive since the disorder must be major and serious. On the other hand, the words 'intimidation' and 'terror' are more important.

¹⁷ See footnote 16.

¹⁸ These types of legislation are in the countries of the common law sanctioned by 'nullity for vagueness'; see, for example, US Supreme Court, *Grayned v. City of Rockford*, 408 US Supreme Court 104 (1972), paras. 108 and 109; or High Court of Uganda, *Uganda v. Sekabira and 10 others*, judgment of 14 May 2012.

Ordinance No. 2011-12 on the fight against terrorism of Niger and the Terrorism Preventive Act of Nigeria also give the same type of definition. But these laws, in their defence, proceed immediately afterwards to provide a list of the offences that fall within the scope of this definition when they are denoted as terrorist. Indeed, the definitions adopted by the Nigerian government and Nigerian legislators are of a 'binary' type, meaning that offences already punishable under common law are referred to and become terrorist offences if committed for a specific purpose, under special circumstances (Desportes & Le Gunehec 2000). However, this way of proceeding includes two flaws. It introduces, on the one hand, too much rigidity to the legislation in that an act which it did not list, even when committed with terrorist intent, cannot be the subject of prosecution on the basis of terrorism, even though we know the nature of the phenomenon continues to evolve. On the other hand, in cases of alleged terrorist acts not referred to by the law, the prosecuting authorities may be tempted to proceed to draw an analogy to suppress such acts, which would then constitute a violation of the principle of legality of offences and sentences.

Moreover, there have already been indications of deviations from the broad definition of terrorism in practice. Indeed, after politico-religious demonstrations protesting against French support of the government following the terrorist attacks at the headquarters of the newspaper *Charlie Hebdo* in France,¹⁹ violence including the destruction of public and private property was committed in various cities of Niger.²⁰ After the arrest of several persons involved, including opposition politicians, the procedure was entrusted by the incumbent power to the Central Counter-Terrorism Department for a preliminary terrorist investigation. Fortunately, at the end of the day, both the Central Department and the Judicial Department's prosecution, in their focus on the fight against terrorism, concluded that these were not terrorist offences, apparently much to the discontent of the ruling power.

Extending criminal responsibility to the expression of an adherence to a terrorist *ideology* by certain anti-terrorist laws in the Lake Chad region is contrary to the principle that only certain *actions* shall be subject to a penalty, and not expressions of thoughts, intentions or sympathy, so far as they are not statements of incitement to violence or hatred. Offences such as the advocacy of terrorism have been introduced into legislation without being defined.²¹ While it is a matter of principle in criminal law that an offence involves an action or omission, these types of offences involve only a statement or reflection. It therefore reduces the rights of suspects. Indeed, in practice, it is very difficult to defend oneself against

19 For more details, see <https://atelier.leparisien.fr/sites/Je-Suis-Charlie/>.

20 For more details, see <http://www.jeuneafrique.com/34958/politique/niger-for-the-manifestations-anti-charlie-hebdo-ont-t-si-violentes/>.

21 Thus Article 30 of Chad's Anti-Terrorism Law No. 034/PR/2015 of 30 July 2015 provides that: 'Shall be punished with imprisonment of eight (8) to ten (10) years and a fine of twenty-five million (25,000,000) to fifty million (50,000,000) CFA francs or one of these two sentences only, the persons publicly advocating terrorist acts', or Article 8 of the Cameroon law which provides that 'Whoever publicly acclaims acts of terrorism shall be punished with imprisonment of, from fifteen to twenty years or a fine of, from twenty-five million francs (25,000,000) FCFA to fifty million (50,000,000) or both such imprisonment and fine' without even providing a definition of what is meant by the term 'acclaims'!

a prosecution that is not based on a fact or an act but on the expression of a terrorist ideology or the expression of support for terrorism or for criminal acts of a terrorist nature in a context where no legal definition was provided by the legislator. These types of offences, as noted, have a high potential to infringe on the right to freedom of expression, go well beyond incitement and will clearly suppress, among others, the dissemination, publication and possession of potentially incriminating documents. They tend to relax the causal link usually required by legislation between a speech act (or other forms of expression) and the risk of any wrongdoing being committed (ICJ 2009), using vague phrases such as the 'disturbance of public order' even though it is yet to be heard in the region. As has been recommended elsewhere, since human rights norms are universal, 'incitement to violence or disturbance of public order should be clearly defined'²² and should only be prohibited in limited situations in the context of a particular national situation.²³

Obviously, the countries of the Lake Chad region have succumbed to the temptation to curtail the rights and freedoms of citizens in the criminalization of terrorist offences. This same trend can be observed through the rules of criminal procedure which determine the fairness of a criminal trial and other measures affecting freedom, which clearly show that the balance between the security objective and the need to preserve certain freedoms in a democracy is in favour of the former.

Threats to fundamental rights

Faced with the disastrous consequences of Boko Haram's terrorism, the states of the Lake Chad basin, like other states in the world, have a duty to protect their citizens by preventing it, and when acts of terrorism are committed, to bring their perpetrators to justice. In doing so, they must not lose sight of the fact that 'an effective action against terrorism and the protection of human rights are not contradictory objectives, but complementary and synergistic' (A/RES/60/288). Indeed, respect for human rights and for fundamental freedoms is an essential component of any criminal procedure against terrorism. Where the aim of the procedure to investigate, find, prosecute and judge offenders infringes upon the rights of individuals, criminal law will be poorly enforced and the victims and society will be poorly protected. Unfortunately, the countries of the Lake Chad basin have not sufficiently taken these considerations into account and have seemingly yielded to the temptation of unnecessary severity in the suppression of terrorism associated with the high potential for violating human rights.

22 Guidelines of the Committee of Ministers of the Council of Europe on the protection of freedom of expression and information in times of crisis, adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies, Guideline V, § 19.

23 See, for example, European Court of Human Rights, *Leroy v. France*, judgment of 6 April 2009, §§ 44–45; *Karatas v. Turkey*, judgment of 8 July 1999, § 51; Article 8 of the Cameroon Law (see fn 21).

Infringements on rights and freedoms

Notwithstanding the understandable need and willingness to achieve results in terms of the arrest of offenders and gathering of evidence against them, the framework of the rule of law requires consideration of certain principles, including when the states draft legislation to fight terrorism. In addition to their legality, they should ensure that the laws passed are only taken to the extent strictly necessary and proportionate to the threat, to maintain a balance between accepted breaches, breaches restrictive of human rights and the preservation of society's safety. Yet, some legal arrangements established by the Lake Chad basin states have obviously ignored this imperative.

Questionable custodial measures

The issue of deprivation of liberty in the case of persons associated with terrorist activities is of particular interest in terms of the recognized procedural safeguards and the conditions under which such measures may be applied. In some countries in the Lake Chad basin, custody for persons involved in terrorist offences is of an exceptional nature because of the length of custody and the lesser guarantee of rights of the defence of persons placed in custody, even though personal freedom must remain a cornerstone of any society based on the rule of law. This right to liberty requires that a person shall not be arrested or detained by a state without lawful grounds, in an arbitrary manner. This protection applies in the context of criminal proceedings as well as in other areas where the state may threaten the liberty of persons.

It must be admitted that it is legitimate for a state which intends to fight terrorism to detain individuals suspected of terrorist activities, as is the case with any other offence. However, once a measure involves the deprivation of a person's liberty, it is essential that international and regional rules regarding the liberty and security of persons are respected. Article 10 of the ICCPR stipulates that, 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.' To meet this requirement, many international standards have been established to ensure the protection of the fundamental rights of detainees and to ensure that the primary objective of their detention is their social reintegration.

While it may well be appreciated that the Sahelian states avoided adopting the most deplorable measures, those which are made outside any judicial framework, one can note that the measures established within this framework – custody and pre-trial detention during judicial inquiry – are challenging freedom since they do not respect international guidelines in this area. Thus, on the one hand, on the measure related to custody, certain requirements such as the presence of a lawyer without delay have been excessively restricted. For example, the Nigerian law does not allow the respondent to be notified of his right to be assisted by a lawyer until the 48th hour (Article 605.5 of the Code of Criminal Procedure), even though the international guidelines recommend doing so from the time of arrest. It should also be noted that protective measures such as the right to be immediately informed of the grounds for arrest, to warn someone of their arrest or to request a medical examination were not

explicitly prescribed by the laws of the countries of the Lake Chad basin, with the sole exception of Nigeria (Section 28, Terrorism Prevention Act [amended] 2013), which could lead to their violation, given the particularly sensitive nature of the terrorist matter. However, it is above all in relation to time limits for police custody that the states of the Lake Chad basin have established an excessive mechanism which far exceeds the indicative time limit set out in the guidelines on the conditions of arrest, police custody and pre-trial detention of the African Commission on Human and Peoples' Rights, which is 48 hours. The Cameroon and Nigerian laws provide for a 15-day police custody time limit, renewable with the authorization of the public prosecutor. Regarding renewal, while the Nigerian law has limited its number to only one, the Cameroon law does not specify this and thus authorizes renewals, the number of which will depend solely on the investigators and the government commissioner. Nevertheless, it is the Nigerian and Chadian laws that hold the record of the longest custody. In Chad, it is established at '30 days renewable once or twice with the authorization of the public prosecution', which implies that it can last up to 90 days, whereas in Nigeria it is 90 days, renewable once. This is completely unusual. However, for the latter country, this exception must be tempered in view of the fact that there is no period of pre-trial detention as known in the Roman legal systems.

On the other hand, regarding the period of pre-trial detention, the legislation of Niger, which is an exception in this respect (the other countries have not prescribed any particular time limits, in which case they may refer to ordinary legislation), provides, in cases of terrorism, for excessive time limits derogating to common law, and seems to call into question the principle that liberty should be the rule. Thus, for criminal offences (those liable to be punished by sentences of over ten years, pre-trial detention may last up to four years before the alleged perpetrator can claim to be brought before trial courts or be released; the time limit is two years for those charged with criminal offences punishable by a sentence of less than ten years). These provisions cast doubt on the presumption of innocence, in addition to depriving persons – who, at the end of the proceedings, see their case dismissed, or are discharged or acquitted – of their liberty for such a long time. They are very damaging to human rights and should be reviewed in order to comply with the respect due to the fundamental rights in a state governed by the rule of law.

Proactive investigation as a threat to human rights

Proactive investigative policing techniques may be defined as the use of certain methods and techniques in the context of a criminal investigation, including surveillance, infiltration and interception of communications (wiretaps, interception of electronic exchanges). They are effective only when they are conducted secretly. In this respect, these methods violate the fundamental right of protection against intrusion by the state into the privacy of individuals, and are admissible only when based on the law and are necessary for the protection of the democratic society.

There is no doubt that these types of investigation can legitimately be based in law, with limits against abuses. These investigative policing methods are necessary and almost indispensable for the fight against acts of terrorism which, in view of the horrors

they produce, must be stopped before they are committed. Two of the countries in the Lake Chad basin have specifically provided for these types of provisions in their anti-terrorism laws, namely Niger and Nigeria. They provide that the measures of infiltration and interception of communications that they authorize be made with the authorization of a judge, which is reassuring. However, if the Nigerian law indicates that these measures are kept within a renewable three-month period, which is very long for an intrusion into a person's private life, it does not limit the number of renewal times, which can therefore be indefinite, even if, as a result of the application for renewal, the judge or the public prosecutor who authorized it exercises some control that may alleviate the abuse.

Regarding the Nigerian law, it is to be deplored in that it does not consider any time limit, and carries the high risk of violating the rights of those it is used against. In addition, another question relates to the fairness of evidence gathered by the investigators since evidence gathering has not been sufficiently framed by legislation. And, in a context where the legislature has imposed very severe sentences, it is to be feared that many prosecuted persons will suffer during extended periods of detention.

Exalting in the guilt of 'the enemy'

'Criminal law is dominated by three principles which are those of legality, individualization and equality' (Pradel 1987b: 1). But the cruelties of terrorist crimes have called into question the tenuous balance between the requirements of liberty and security, bringing into question certain aspects of these three principles of criminal law. Often as a result of social pressure, and in order not to appear to have done anything to stop it, the political powers of the Lake Chad basin have taken steps that have resulted in a transformation of criminal law, giving priority to security to the detriment of freedom. In this, they join the list of countries which have elaborated an exceptional criminal law, called 'law of the enemy', systematized by Günther Jakobs (2009). This criminal law is characterized, among other things, by the severity of sentences, thus defying the principles of necessity and proportionality, and by the weakening of the guarantees of a fair trial. Upon analysis, the anti-terrorist legislation of the countries of the Lake Chad basin unfortunately falls into this category of criminal law.

Customized sentences

Some universal anti-terrorist laws have, by requiring state parties to criminalize terrorist acts, added an obligation to introduce 'effective, proportionate and dissuasive' sentences, and also require states to demonstrate, in this context, the severity of the cruelty of the acts of terrorism. Governments in the Lake Chad basin apparently understood this and passed legal provisions indicating the level of severity to the judge and ultimately prescribing heavy sentences in their anti-terrorist laws.

First, it should be noted that terrorist offences and sentences in this area are not subject to statutory limitations in Chad and Cameroon, depriving any suspects of the normal statutory limitation of offences. Secondly, it can be noted that the

Nigerian law excludes any possibility of deferment or extenuating circumstances for persons convicted of terrorism; and all the laws of the countries of the Lake Chad basin have provided for heavy criminal sanctions without giving the judge any margin of discretion in assessing and adapting the sentence to the offender's personality and the circumstances of the offence. In so doing, they are unaware of the virtues of an adapted punishment as prescribed by international guidelines,²⁴ stigmatizing the sentenced persons by depriving them of the option of a rapid reintegration, even when making amends or when the acts committed are of no real seriousness. In addition, categories of persons considered vulnerable, such as minors, have not seen their specificities considered by the laws of the sub-region, apart from in Niger, and they receive the same penalties as adults, which is in violation of the provisions of international law, in a context where criminal legislation provides for sentences up to the death penalty.

Death penalty ineffectiveness

In the context of the Lake Chad basin, in view of the cruelties of the Boko Haram sect, the death penalty as a punishment for certain terrorist crimes meets the conventional requirements while satisfying the security concerns of public opinion. All countries in this region have provided for this type of sentence for certain terrorist crimes despite the fact that these provisions go against trends in international human rights law. Indeed, the history of the death penalty is that of its progressive abolition in the practice of the states,²⁵ the discourse of which is supported by the evolution of its apprehension by international and regional human rights law. The International Covenant on Civil and Political Right (ICCPR) pointed this way, prescribing that only those countries which had not yet abolished the death penalty at the time of signing had the option of making use of it, and only death sentences handed down against persons over the age of 18 and within the framework of a state court were considered as not violating the ICCPR. Subsequently, under the impetus of the UN, a more straightforward position against the death sentence was observed²⁶ and resulted in the adoption of the Second Optional Protocol to the ICCPR on 15 December 1989. This Protocol on the Abolition of the Death Penalty prohibits states from applying this sentence (Breillat 1991). Furthermore, since 2007, the UN General Assembly requires a moratorium on the death penalty.²⁷

24 See ACHPR, *Directives et principes sur le droit à un procès équitable et à l'assistance judiciaire en Afrique*, Section N(7) (*Droit de bénéficier d'une peine plus légère ou d'une mesure administrative*) and Section N(9)(b) (*Condamnations et peines*); Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa of the ACHPR, Progress Report by the Vice President, 51st Session of ACHPR, paras. 16 and 18.

25 More than two-thirds of the world's countries have abolished the death penalty in law or in practice. As of 31 December 2012: countries abolitionist for all crimes: 97; countries abolitionist for ordinary crimes: 8; countries abolitionist in practice: 35; total of countries abolitionist in their legislation or in practice: 140; countries and territories non-abolitionist: 58. See Amnesty International (2013).

26 See for example Resolution 2857-XXVI of 20 December 1971 of the General Assembly, or Commission of Human Rights Resolution No. 1997/12.

27 See the resolutions adopted by the General Assembly based on the Report of the Third Committee: A/62/439/(Add.2); A/62/149; A/63/430/(Add.2); A/65/456/(Add.2 [Part II]); A/65/206, A/69/288; among others.

The criminal provisions providing for the death penalty in the countries of the region are also questionable from a legal point of view, as is their effectiveness. Indeed, the evolution of international law has called into question the arguments legitimizing the death penalty and a new perception of the role and purposes of criminal law. More specifically, the standards of the rule of law have made the practice of the death penalty increasingly problematic. These standards have challenged the main arguments of the proponents of the death penalty. Thus, the rational framework imposed by the rule of law discredits the need for revenge often invoked to defend the death penalty. As Beccaria wrote at the end of the 18th century, 'it is absurd that the laws, which are the expression of the public will, which hate and punish murder, should themselves commit one and that to divert citizens from the murder they themselves declare a public murder'. In this context, the death penalty is not a guarantee of social order but, on the contrary, its practice is a factor in the disintegration of communities. Only the exemplarity, of the state enables the maintenance of this order, and the death penalty is in contradiction with this principle of exemplarity, especially knowing that human justice is not infallible and that the death penalty can be handed down in conditions of trial characterized by inequity, as has already been demonstrated by a well-known example in the region.

Conclusion and recommendations

This study, which focuses on anti-terrorism legislation in one of the regions most affected by terrorism in Africa, highlights the glaring inadequacies of the legal framework for upholding the principles of the rule of law. The principle of legality, so precious for the legal security of citizens, is not sufficiently taken into account, which has led to the introduction of legislation with a high potential for infringing citizens' rights. Since terrorism is not universally defined, states have made imprecise definitions, opening the door to misapplication in the prosecution of ordinary offences. Moreover, most states have put in place an exceptional penal mechanism, militarized or at least special, depriving the litigants of an ordinary legal process more able to conduct a procedure with all the guarantees required for the respect of their rights. The intrusive nature of investigations only adds a shadow to these failings, with an increased risk of delegitimizing criminal apprehension of terrorism. Because of the destructive nature of the phenomenon, states' robust handling of terrorist offences is quite acceptable. But if, when doing so, states erode the rights of citizens, they risk contributing to achieving the objectives of terrorist groups, challenging the principles of the rule of law, and thereby unintentionally backing up the terrorists' recruitment arguments. In addition, ignoring the virtues of the individualization of sentences, excessive severity is advocated by legislation, leading these countries to go against the global trend that seeks to abolish the death penalty.

As we have seen, the concern for balance between the respect for human rights and the preservation of the security of people was obviously not the driving force in the drafting of criminal legislation related to terrorism in the Lake Chad basin. States have succumbed to the temptation to curtail rights and freedoms, thus giving an initial and

important victory to the terrorists, who aim to undermine the rule of law. Furthermore, these derogatory laws, often passed during a state of emergency, tend to perpetuate and infuse the entire criminal law, extending (almost insidiously in some respects) towards organized transnational criminality in some countries,²⁸ with all that it entails in terms of intrusions into fundamental freedoms.

Considering the multiplicity of actors, the following recommendations are made. For policy-makers, and on the basis of the above, it may be of relevance to:

- Ensure that anti-terrorist legislation is in line with international human rights standards;
- Carry out an evaluation of existing penal systems in order to make changes to maximize compliance with human rights norms and standards; and
- Ensure that any legislation adopted under a state of emergency is regularly reviewed and repealed as soon as the situation has normalized.

Considering the legislative focus of the above argument, members of the judiciary would do well to consider the following:

- Fulfilling their role as guardians of freedom by amending any legislation that is not respectful of human rights;
- Guaranteeing the rights of persons prosecuted under anti-terrorist legislation by rescinding any prosecution or evidence that is not respectful of human rights; and
- Ensuring that human rights violations do not go unpunished.

Finally, considering the wide-ranging challenges that terrorism brings to the fore, civil society should consider:

- Taking up their mandate to hold power accountable by denouncing both the laws and practices that violate human rights in the fight against terrorism;
- Establishing a mechanism to assist persons accused of terrorism to ensure respect for their human rights; and
- Appealing against any anti-terrorist legislation that violates human rights and getting such legislation set aside by courts.

28 In Niger, for example, a reform introduced by laws dated 16 June 2016 extended the jurisdiction of the judicial department specialized in the fight against terrorism to include transnational organized crime, and extended the application of certain rules to these types of non-terrorist crimes.

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Chapter 7

Counter-terrorism and rights-based policing in East Africa

John Kamya

Introduction and overview

Many countries in the greater East Africa region have suffered several acts of terrorism inflicted by various internally and externally originating groupings. The region, commonly referred to by its economic pseudonym the East African Community (EAC), traditionally comprised of just three countries: Uganda, Kenya and Tanzania. It was, however, later joined by Rwanda, Burundi and South Sudan. Contemporarily, Somalia has also applied to join the bloc, although its application is pending consideration by the bloc members. Although the bloc is presently composed of six member states, this chapter will focus on the three traditional EAC member states, as it is these three countries that have suffered the most significant incursions by terrorism and have developed the most robust counter-terrorism policing and legislative responses.

During the 1990s in Uganda, a group by the name of the Allied Democratic Forces (ADF) unleashed several acts of terror on the population, including bombings in public transport hubs and parks, the burning of schools and the indiscriminate killing of people in their villages, especially in the Rwenzori Region. In July 2010, two terror attacks occurred in Kampala on unsuspecting revellers who were watching final matches of the soccer World Cup. In another example, 70 people were killed in an attack committed by the Somalia-based regional terror group, Al-Shabaab. Several of the suspects, including a few of the leaders, were successfully arrested, prosecuted and convicted of terror-related crimes. Many of the people arrested in response to this attack were from Kenya and Tanzania. Another recent example occurred in March 2017, when a senior police officer, Andrew Felix Kaweesi, together with his armed guard and driver, were shot dead in Kampala in broad daylight. This was preceded by several similar shootings of senior government officials and Muslim religious clerics.

Perhaps most widely known, in 1998 the twin bombings of the United States (US) embassies in Nairobi and Dar-es-Salaam killed over 200 people. The Al-Qaeda

terror group claimed responsibility for these attacks. In April 2013, the Westgate Shopping Mall in Nairobi was attacked, while in April 2015 the Garissa University College and several other places in Mombasa and Nairobi were attacked by the Al-Shabaab militant group. From these examples, in short, it is clear that terrorism is a significant threat to the safety and stability of countries in the EAC.

All of the above-named incidents were responded to by police and security agencies. Problematically, however, in many instances the suspects have been arrested, tortured, detained in sub-standard facilities, or detained for far longer than the requisite 48 hours. As a function of their suspected involvement in terrorism, such reprisals draw little sympathy or concern, the result of which is that many of their rights, both procedural and substantive, are violated or are in conflict with United Nations (UN) Security Council Resolution 1456 (2003)(6), which states:

States must ensure that any measure taken to combat terrorism comply with all their obligations under international law [...] in particular, international refugee, human rights and humanitarian law.

This chapter explores the phenomenon of terrorism and terror incidents in the region in relation to policing and the detainment of suspects. In so doing, it provides a critical analysis of the current anti-terror laws, the handling of suspects, and the administration of justice and compliance thereof in terms of international human rights legislation. On this basis, possible safeguards will be pragmatically situated, such as through the development of standard operating procedures (SOPs) in the investigation and interrogation of terror suspects as well as a range of internal measures that police organizations need to put in place.

Defining terrorism

There is no one universally accepted definition of terrorism. Several attempts have been made to define terrorism and despite numerous working definitions in circulation, the international community has until now not been unable to agree on a shared definition. In part, this is due to the emotional nature and frequent political use of the term in the broader freedom-fighter debate. It is moreover the result of the ever-evolving nature of terrorism as both operational tactic and reasoned political strategy (Botha 2012). As remarked on by the Commonwealth Secretariat, an unequivocal definition of terrorism would essentially remove the political distinctions on which numerous political histories rely to justify their continuation. The ongoing need to find such a definition remains important, however, as emphasized by a panel of 16 assembled by then UN Secretary-General Kofi Annan to study threats to global security in 2003.

As a result, numerous definitions of terrorism can be found in the many international, regional and national legal instruments developed to address the problem of terrorism and which are penned to define the act or the crime thereof

(Commonwealth Secretariat 2005). There are numerous inconsistencies between these, however, directly stunting regional and international dialogue and the development of shared legislative responses. The majority of the existing definitions of terrorism do, however, have three common elements: The method (violence or the threat to use violence), the target (civilian, government and non-combatants) and purpose (to intimidate or instil fear to cause change) (Botha 2012). It is this very broad definition that is drawn upon in this chapter.

The failure to maintain an internationally agreed definition of terrorism was articulated by Boaz Ganor (2005: 8) when he stated:

According to those who oppose any definition, the decision makers – and certainly security establishments – get along quite well without an accepted definition for terrorism based on the assumption that ‘when you see terrorism you know it is terrorism’. Terrorists, they claim, are committing ordinary criminal acts – they extort, carry out arson, murder, and commit crimes that are prohibited according to the standard Penal Code. Therefore, they can be brought to justice without needing to define a crime that particularises terrorism.

This argument is also voiced with regard to the architecture of international legislation. The accepted trend in this sphere in recent decades is to maintain that terrorism can be addressed more successfully from a legal and normative perspective through legislation that prohibits particular actions, such as those listed above. In this regard, the UN, the European Union (EU), the African Union (AU), different regional blocs, as well as individual countries, have come up with different legal instruments and resolutions that list those acts that would amount to terrorism, and thereby criminalize them. These will be discussed in the following section of this article.

Of the wide range of activities undertaken by combatants who operate under the moniker of terrorism, many of these have been outlawed as an interim response by states to their activities. Amongst others, in Africa these frequently include the hijacking of airplanes and ships, attacks on ships and ports, targeting of diplomatic personnel, hostage taking, bombings, financing of terror groups, endangering nuclear materials and indiscriminate attacks on civilians (Ganor 2005).

Terror groups and their atrocities

The East African region has been a victim of both local and foreign-based terror groups. The Lord's Resistance Army (LRA) and ADF, for example, have terrorized Uganda since 1986 and 1996, respectively, while the Somali-based Al-Shabaab has been operating in Uganda and Kenya for a number of years. Al-Qaeda also previously conducted terror operations in Kenya and Tanzania in 1998 and has continued to provide support to its affiliates, the Al-Shabaab group.

Allied Democratic Forces

The ADF is an Islamic fundamentalist terror group that was declared a terrorist organization under Uganda's Anti-Terrorism Act in 2002. The group was formed around 1995, starting its operations in Uganda in November 1996 when it launched an armed attack at the Mpondwe border post, Kasese District, from a base in the Democratic Republic of Congo (DRC). The Ugandan government at the time alleged that this group was supported by the Sudanese government, a claim Sudan continues to deny.¹ Apart from killing innocent civilians in western Uganda in different incidents between 1996 and 2002, the ADF is also responsible for some 48 bomb blasts between 1997 and 2001 in Kampala and Jinja which claimed 84 lives and generated 262 injuries.

The group's leader, Jamil Mukulu, was arrested in Tanzania in April 2015 and extradited to Uganda. At the time of writing, he is currently on trial for charges of terrorism and murder. Among the most prominent of the attacks launched in Uganda was the attack on the Uganda Technical College in Kichwamba on 8 June 1998, during which they burnt 80 students alive in three dormitories and abducted 100 others. On 16 August 1997, the ADF attacked St. John's Catholic Seminary in Kiburara, abducting 19 seminarians aged between 12 and 20, as well as two young employees, as reported by Human Rights Watch (HRW 1998). Several other attacks on schools, churches and villages have been conducted by the group in Uganda and in eastern DRC, where the group has had numerous bases for some years.

More recently (2015–2017), the group has conducted targeted assassinations and murders of Muslim clerics in Uganda, in which over 14 sheiks have been killed. Indeed, Uganda's President Yoweri Kaguta Museveni has publicly linked the killing of clerics to the ADF (Mugerwa 2016). Several of the group's operatives have been arrested and are currently being prosecuted in courts of law for these murders (Kato & Bagala 2017). The group remains active in the region, and continues to pose a security threat to public safety and security.

Lord's Resistance Army

The LRA is a listed terrorist organization under Uganda's Anti-Terrorism Act 2002 as amended. It is led by Joseph Kony, a self-proclaimed 'General' who has terrorized the people of Uganda for more than 20 years. The LRA conducted a brutal campaign of killing, rape, mutilation and mass abductions of children. They had sanctuaries in South Sudan from where they would spring up to attack and wreak havoc in the Northern and Eastern administrative divisions, leaving thousands dead and about two million people internally displaced to live in camps in squalid conditions. The LRA's aim was to rule Uganda according to the ideology of God's Ten Commandments as listed in the Christian Bible. Strict principles were followed by the group earlier in the conflict, when looting, rape and adultery were banned. However, Kony later allowed his followers to loot and burn villages and to kill people they attacked.

1 For more on this group and claim, see Global Security Organization at <http://www.globalsecurity.org/military/world/para/adf.htm>.

In 2005, the LRA was finally defeated by the armed forces of the Ugandan government. Its fighters fled Uganda through South Sudan into the Garamba forests of the DRC and further into the Central African Republic (CAR) where the group have continued to brutalize the local population. A joint operation code-named Operation Lightning Thunder by the combined armies of Uganda, South Sudan and the DRC in Garamba forests failed to kill or capture Kony but weakened his army substantially. Some of his commanders were either killed or captured.

They were also sent in disarray into splinter groups of fighters roaming the vast remote areas of the DRC, the CAR and South Sudan. As of March 2017, the group had greatly been weakened by a joint operation of the Uganda Peoples' Defence Forces, assisted by the US army. According to a Human Rights Watch report (HRW 2010), the LRA have killed about 2,400 people and abducted 3,400. Some of these were in the DRC, the CAR and South Sudan since 2008.

Al-Shabaab

The origin of Al-Shabaab (also known as *al-Mujahidini* or the Youth) can be traced back to *al-Ittihad al-islamiyya* and *Ittihad al-mahakim al-islamiyya*, commonly known as the Islamic Courts Union (ICU) of Somalia (Botha 2012). The ICU is comprised of both moderate and external elements and the coalition also includes Al-Shabaab, a group that is based in Somalia but active in the East Africa region. Some of the most horrendous terror attacks the group has conducted in East Africa were the Kampala (Uganda) twin bombing of entertainment places where revellers were watching the July 2010 soccer World Cup finals. One of the attacks occurred at the Kyadondo rugby club and the other at an Ethiopian village restaurant in Kabalagala, both suburbs in Kampala. Seventy-four people died in the two attacks combined, and hundreds sustained injuries. Al-Shabaab claimed responsibility for the incidents.

In Kenya, Al-Shabaab has conducted numerous terror attacks too. Prominent among them is when gunmen attacked the Westgate Shopping Mall in Nairobi on 21 September 2013 and indiscriminately shot at people, leaving 67 dead and 175 wounded. Two years later, on 2 April 2015, the group carried out an attack on Garissa University and shot indiscriminately, killing 148 people and injuring scores of others. The majority of the victims and survivors were students of the university. In both incidents, Al-Shabaab claimed responsibility, justifying the attacks as acts of retribution for Kenya's decision to deploy their military in Somalia.² There were several other attacks, such as the one at Gikombe market in Nairobi (16 May 2015) and the beheading of nine civilians at Jima village in Lamu county in Kenya that were all attributed to the Al-Shabaab terror group.³

Tanzania has also not been spared by the Islamic terror group Al-Shabaab. In Arusha on 5 May 2013, a church congregation was bombed. Three worshippers died on the spot and scores were injured, some critically. On 13 April 2017, explosives went off at Night Park in Arusha, injuring 14 people who were watching the English Premier

2 For more details, see https://en.wikipedia.org/wiki/westgate_shopping_Mall_attack.

3 Associated Press, 8 July 2017, 7:00 A.M. E.D.T.

League, and on 3 July 2014, a grenade attack occurred again in Arusha at the home of a Muslim preacher. The Al-Shabaab group was blamed. Several other attacks took place in Zanzibar, mainly targeting places frequented by foreign white tourists.

All the above attacks are a clear indication that the Al-Shabaab group is active in the East African region.

Al-Qaeda in East Africa

Al-Qaeda is an international terror organization operating in different parts of the world. In East Africa, the group attacked US embassies in Nairobi and Dar-es-Salaam on 7 August 1998. Two hundred people were killed and hundreds wounded in the incident. The group, through its leader Osama bin Laden, claimed responsibility for the attacks, which prompted the US to mount a manhunt for him, eventually killing him in Pakistan on 2 May 2011. The group accused the Tanzanian and Kenyan governments of collaboration with the US and therefore deserving of the punishment. This attack signalled the beginning of frequent terror attacks in the region. The Al-Qaeda terror group has also been accused of sponsoring the activities of the Al-Shabaab group, with which they share an ideology, offering them financial support, training and weapons.

International framework

As discussed above, there is no universally agreed definition of terrorism. Different legal regimes define acts of terrorism that constitute the different offences relating to terrorism. The UN system, the EU system, the AU system, etc., have put into place legal regimes to fight terrorism. These regimes, however, have to work in consonance with acceptable human rights standards.

United Nations

The UN has, through different resolutions, re-emphasized that it cannot be justified, and indeed it would be self-defeating, if international laws, norms and values were to be abandoned in the name of the war against terror (Nwagu 2009).

Since 1972, the UN has put into place measures to address the problem of international terrorism. This has been mainly done through the adoption of different treaties and resolutions of the General Assembly. The drafting and eventual adoption of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents (1973, annexed to General Assembly Resolution 3166 (xviii)) marked a major beginning of the UN's protracted efforts to fight international terrorism. This was followed by adoption of the International Convention Against the Taking of Hostages (1979) and the Declaration on Measures to Eliminate International Terrorism (1994), as well as the passing of a resolution in 1996 (A/RES/51/210) to supplement the 1994 Declaration in which the UN created an ad hoc committee tasked with the continuous development of comprehensive international anti-terror legal frameworks.

The UN has since adopted numerous additional instruments to fight specific terror acts. Among these are the International Convention for the Suppression of Terrorist Bombings (1997), the International Convention for the Suppression of the Financing of Terrorism (1999) and the International Convention for the Suppression of Acts of Nuclear Terrorism (2005). In a landmark effort to fight global terrorism, in 2006 the General Assembly, through a resolution, adopted the UN Global Counter-Terrorism Strategy (A/RES/60/288). In the Strategy, member states agreed on a common strategy to combat terrorism, with an annexure of a plan of action. With reference to the Strategy, one writer has remarked (Nwagu 2009: 29):

This strategy marks the first time UN member states are agreeing on a common approach to eliminating terrorism and thus enhance national, regional and international counter terrorism efforts. The strategy provides a wide array of measures to address conditions favourable to the spread of terrorism, to prevent and combat terrorism, to build states' capacity and strengthen the role of the UN system in the fight against terrorism.

The UN has, in addition to establishing legal frameworks, committed enormous resources, both human and non-human, in the fight against global terrorism.

Africa

Efforts to regulate violent extremism and terrorism in Africa can be traced back to 1992 when the Organization of African Unity (OAU) adopted the Resolution on the Strengthening of Cooperation and Coordination among African States. This resolution was almost immediately followed by the adoption of the 1994 Declaration on a Code of Conduct for Inter-African Relations. The 1992 Resolution called on member states to refrain from supporting terrorism and to cooperate in combating extremism and terrorism, while the 1994 Declaration condemned as 'criminal' all terrorist attacks and activities.

In addition to these earlier efforts, there are a number of other recent, and not so recent, instruments which set forth the basic framework for combating terrorism in Africa. These instruments are reaffirmed and enumerated in the Preamble to the 2004 Protocol to the OAU Convention on the Prevention and Combating of Terrorism. They are: the 1977 OAU Convention for the Elimination of Mercenaries in Africa, the 1999 OAU Convention on the Prevention and Combating of Terrorism, the 2001 Dakar Declaration Against Terrorism and the 2002 Plan of Action for the Prevention and Combating of Terrorism. These instruments are discussed below.

OAU Convention on the Prevention and Combating of Terrorism

This was adopted in 1999. The Convention, in Article 1(3), defines a terrorist act as:

- (a) Any act which is a violation of the criminal laws of a state party and 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 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 disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or 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).

Plan of Action of the AU for the Prevention and Combating of Terrorism

This was adopted in 2002 by an AU high-level intergovernmental meeting on the prevention and combating of terrorism in Africa that sat in Algiers, Algeria, from 11–14 September. In its general provisions, the Plan of Action instructs member states to sign, ratify and fully implement the Algiers convention on the prevention and combating of terrorism, and to amend national legislation so as to align such legislation with the provisions of the convention, to sign, ratify and fully implement international instruments relating to terrorism and to encourage coordination among government agencies to fight terrorism.

It calls for strengthening of police border controls by member states, undertaking legislative and judicial measures to strengthen laws and court actions relating to terrorism and to take measures to suppress the financing of terrorism. The Plan of Action calls for information exchange and the sharing of intelligence among member states in the fight against terrorism in Africa.

Protocol to the OAU Convention on the Prevention and Combating of Terrorism

The Protocol was adopted on 4 July 2004 by the heads of state and government of the AU member states as a way of reaffirming their commitment to the implementation of the OAU Convention on the Prevention and Combating of Terrorism adopted by the 35th OAU Summit in Algiers, Algeria, in July 1999 and other related continental instruments, such as the Dakar Declaration Against Terrorism (2001) and the Plan of Action for the Prevention and Combating of Terrorism adopted by the high-level intergovernmental meeting of AU member states held in Algiers in 2002.

The Protocol reaffirms the commitment of state parties to implement fully the provisions of the OAU Convention; to take all necessary measures to protect the fundamental human rights of their populations against all acts of terrorism; to prevent the entry into and the training of terrorist groups in their territories; to identify, detect, confiscate and freeze or seize any funds meant for terrorist activities; and to enhance cooperation and the timely exchange of information in the fight against terrorism on

the continent. It also calls for victim support and the establishment of national focal points in the fight against terror.

Other sub-regional frameworks

The AU in 2004 established the African Centre for the Study and Research on Terrorism (ACSRT), in Algiers, Algeria. The ACSRT is a structure of the AU Commission and the Peace and Security Council and its mandate includes sensitizing AU members to the threat of terrorism in Africa, providing training and capacity-building assistance to member states and enhancing cooperation among AU members in the fight against terrorism.

Uganda's legal framework on terrorism

In Uganda, the offences of terrorism were formerly dealt with under the Penal Code Act (PCA), Cap 120. In 2002, the PCA was reinforced with the enactment of the Anti-Terrorism Act (ATA), which was aimed at addressing the increasing cases of terrorism and terrorist activity that were occurring in the country. This Act has also been amended several times to address new trends of terrorism. The Act defines the offence of terrorism and acts that amount to terrorism. It also provides for the punishments for the respective terrorist acts.

Section 7 of the ATA, 2002, as amended, defines terrorism to mean and include 'all activities that are considered criminal under it and makes it a crime for any person who engages in, or carries out any act of terrorism and on conviction, such a person is: (a) Liable to suffer death if the offence directly results in the death of any person; and (b) In any other case, liable to imprisonment for life'.

Among the acts that constitute terrorism in Uganda are intimidation of the public for a political, religious, social or economic aim; the manufacture or detonation of explosives; committing mass murder, kidnappings, abducting diplomats; training for terrorism; taking people hostage with the intention of causing harm; hijacking aircraft for ransom; manufacturing, importing or distributing firearms for terror activities; and many other related acts (Section 7 of the ATA, 2002, as amended). Other acts include the use of chemical or biological weapons and related offences that cause mass suffering and death. The Act also declared some organizations terrorist organizations, including the Lord's Resistance Movement, the LRA, the ADF, Al-Qaeda, Al-Shabaab, Al-Qaeda in the Islamic Maghreb and Boko Haram in West Africa (second schedule of the ATA, 2002, as amended).

However, despite its wide-ranging provisions covering terrorism, the ATA has been criticized for granting too much power to the state and is therefore likely to be abused. Critics say that blanket provisions such as Section 7(xiv) that criminalizes any acts prejudicial to national security or public safety, without defining public safety and security, would give government agencies carte blanche to frame political opponents conducting genuine political activities, and charge them with acts of terrorism. The Act was further criticized for giving the inspector-general of police (I-GP) overwhelming powers to freeze the funds and bank accounts of individuals and organizations suspected of engaging in terrorism. In their response to the 2015 ATA, the Human Rights Centre-Uganda (2015) remarked:

Apart from the perception by the opposition members that the law was targeting them which would be discriminatory, there were also issues with the wide powers given to the I-GP to order the freezing of suspected terrorist activity accounts. There is a danger in giving broad discretionary powers to the I-GP without first recourse to independent courts of law. The powers can be used arbitrarily and indiscriminately with the potential for discrimination.

Another group of people who have criticized the 2002 ATA is the journalism fraternity. They reason that the law curtailed their freedom of expression and reporting when it criminalized acts of information dissemination. In this regard, the Human Rights Network for Journalists-Uganda (n.d.) remarked:

Enacted at the peak of global efforts and debates on how to combat terrorism, Section 9 (1) criminalizes the publication and dissemination of news materials ‘that promote terrorism’, an expression that is obscurely defined and is predisposed to misuse and exploitation by the echelons of power. Further chillingly though, the Act provides that journalists’ material can be subjected to terrorism investigations and cannot profit from exclusion/immunity. This offends journalism and its attendant ideas of confidentiality and fortification of sources.

Other critics of the Ugandan ATA say that the law mainly targets Muslims and their faith due to the fact that most of the organizations it mentions as terrorist are Muslim based.

Kenya’s Prevention of Terrorism Act, 2012

Like Uganda, Kenya too enacted a comprehensive law on terrorism following persistent incidences of acts of terror in the country. The Prevention of Terrorism Act 2012 was enacted to take a firm grip on the problem of terrorism, consolidate the hitherto fragmented laws and offer appropriate punishments to those convicted of the offences relating to terrorism. Like the Ugandan law, the Kenya Prevention of Terrorism Act does not offer a specific definition of terrorism; rather, it outlines a list of individual acts that constitute the offence of terrorism. It states that a ‘terrorist act’ means an act or threat of action which involves the use of violence against a person; the use of firearms and explosives; the use of dangerous, hazardous, toxic or radioactive substances; and other such acts that are aimed at intimidating government or destabilizing the country (Section 2(m)). The same section of the Act defines a terrorist group to mean an entity that has as one of its activities and purposes, the committing or facilitation of the commission of a terrorist act.

Like its Ugandan counterpart, Kenya’s Prevention of Terrorism Act has been criticized for being so vague in its definition of terrorism, which critics say is prone to misuse and abuse by security agencies cracking down on government critics. On its passing in 2012, the East African Law Society (EALS) charged that the definition of terrorism as stipulated was ‘too wide and can be used to victimize victims or political enemies’ (Mwazighe 2012: 1).

On the other hand, EALS condemned the definition of terrorism in the Act as ‘so absurdly wide as to mean anything and would in its current form include domestic violence, bar brawls, street or school violence’ (Mwazighe 2012: 5-6). This is particularly so in reference to Section 2(1) that defines a terrorist act to mean any act that ‘involves the use of violence against a person’ (2012: 1). EALS contends that the definition leaves room for wide interpretation and can thus be used to victimize citizens or political enemies.

Critics say that the state has used the Act to crack down on non-governmental organizations (NGOs) and other groups with dissenting views and that the law has failed to put many actual terrorists behind bars.

Tanzania’s Prevention of Terrorism Act

Like its two neighbours, the Tanzanian law on terrorism does not define terrorism, but rather lists those actions that, if committed, constitute the offence of terrorism. Section 4 of the Prevention of Terrorism Act lists acts of terrorism to include those intended to seriously intimidate a population; seriously destabilize political, economic and social structures of a country; and such attacks that involve the death of persons. Like its Ugandan and Kenyan counterparts, the Tanzanian anti-terrorism law has been criticized for being too general in its definition of acts of terrorism, thereby being prone to abuse by state agencies to punish dissenting views, and its inability to effectively bring to book those who commit terrorist acts.

The three East African states under review have a robust anti-terrorism legal regime. The laws have been successfully used to try and convict terror suspects. In Uganda, for example, seven suspects of the 2010 Kampala twin bombings were convicted under the anti-terrorism Act and are serving jail sentences. The suspects were a mix of Ugandan Kenyan and Tanzanian nationals. There were 13 suspects on trial and six of them were acquitted. In Kenya and Tanzania, several court trials have been concluded using the existing national anti-terror laws. However, different human rights and civil society groups have criticized the anti-terror laws as infringing on the rights of individuals and being prone to abuse by state agencies against political opponents and dissenting views.

Terrorism and rights-based policing

The existence of the various terror groups as well as the occurrence of terror incidents in the region over the past years make anti-terror policing very active. All police organizations in the region have made efforts to build capacity to conduct anti-terror operations and investigations. It can be observed, however, that no single police organization in the region has been credited with respecting the rights of terror suspects. Civil society and human rights organizations have heaped blame on the police in the region, with accusations ranging from the use of excessive force (that includes unnecessary lethal force during anti-terror operations) to indiscriminate arrests, long detentions that often stretch to months before trials, and the torture of suspects during interrogations and interviews (UHRC 2016).

In Kenya, for example, civil society organizations have criticized government for the way anti-terror operations have been conducted vis-à-vis human rights protections. In his research paper *Counter-Terrorism and Human Rights in Kenya*, Jumah Daniel (2014) remarks thus:

Civil society and watchdog groups have raised the alarm about Kenya's anti-terrorism legislation, especially on human-rights grounds. Various observers, domestically and abroad, have accused the security forces of heavy handedness in the interrogation of terror detainees. Amnesty International accused the government of torture, detaining persons without charge, and harassment of families of people suspected of terrorism.

In the same vein, Human Rights Watch, a US-based human rights watchdog, criticized Uganda's Joint Anti-terrorism Task Force for its illegal detention and torture of terror suspects at its Kololo-based detention centres (HRW 2009).

Detention facilities for terror suspects are often not up to internationally acceptable standards. Rights such as access to medical facilities are often denied, leaving suspects with grave physical and emotional illnesses that often result in their deaths or leave permanent scars. The right of access to legal representation is rarely granted. Terror suspects are not often granted visiting rights and are often detained incommunicado on the pretext that they will interfere with investigations if allowed to talk to other people. This state of affairs must be reversed. The principle of the presumption of innocence must be applied to all persons irrespective of the offences committed. The right to equal treatment before the law as stipulated in the various international human rights instruments (for example, Articles 6 and 7 of the UN Universal Declaration of Human Rights 1948) must be respected and observed.

Rights-based policing constraints

Policing terrorism in East Africa, while respecting the principles of rights-based policing, poses tremendous challenges, detailed below.

Lack of scientific capacity for investigations. The investigation of terrorism requires sophisticated scientific methods. These include both the analysis of the nature of weapons used and the materials contained in the weapons, and the analysis of the DNA left behind by the suspects as well as the DNA of the victims. Unfortunately, many of the East African police forces and other security organs that usually participate in the investigation of terror cases lack this scientific capacity. The regions lack the police laboratories to conduct such sophisticated analyses. The Uganda police forensic laboratory, for example, does not have DNA-testing equipment, although plans are under way to establish this capacity with assistance from the EAC Secretariat. As a result, samples requiring DNA analysis are taken to the Government Analytical Laboratory, which takes a long time to post results, and usually lacks the necessary consumables to conduct the analysis.

Lack of professional capacity to conduct terror-related investigations. It is common practice that when there is a terror attack in the region, foreign expertise (the Federal Bureau of Investigation, Scotland Yard, etc.) is usually called in to assist the local police to conduct the investigation and the interrogation of suspects. Local investigators tend to rely on the suspects themselves to produce evidence. This often results in the torture of suspects, forced confessions and/or long detentions due to delayed investigations.

Interference from the military and other security agencies in anti-terror operations and investigations. In many counter-terrorism operations in the region, the police force is not left to do its professional job. Other security agencies – especially the military, intelligence, internal security organizations – tend to feel a responsibility to be seen to act. In the September 2013 Westgate Mall terror attack in Nairobi, the police commenced negotiations with the hostage takers in one section of the mall, and moved in and secured another section of the mall. However, when the (Kenya) military arrived, they opposed the idea of hostage negotiation, refusing to negotiate with terrorists. This kind of interference does not stop at operational distortions; it usually extends to poor evidence handling (especially guns) and the killing of terrorists rather than arresting them, leading to the loss of valuable evidence and information, and often affecting the quality of witnesses and evidence in courts of law. The police should therefore be left to do their job, and the military should only come in when called upon by the police to perform specific tasks.

Poor detention facilities. Many police detention facilities in East Africa do not meet the necessary human rights standards. Terror suspects are often detained in separate detention facilities which are regularly criticized by human rights organizations as lacking basic necessities, such as adequate ventilation, toilet and water facilities, and proper bedding. In Uganda, for example, a special facility at Nalufenya in Jinja District established as a detention centre for terror and other dangerous suspects has been severely criticized by human rights organizations.

Poor resourcing and lack of adequate equipment. As a region of developing countries, police forces in East Africa face the common problem of poor resourcing and lack of adequate equipment. The money allocated to police organizations is often inadequate, and yet anti-terror operations and investigations require enormous amounts of financial and other resources due to their complexity. In addition, they require sophisticated equipment such as bomb suits, bomb detonators, gas masks, biological and chemical substance detectors, etc. This tends to affect the professional handling of anti-terror operations and investigations, thereby affecting the rights of the police officers involved, as well as those of suspects.

Controlling police excesses

With the aforementioned arguments, it is clear that there is an adequate legal counter-terrorism regime at the international, regional and local levels. All the three East African countries under discussion have adequate and robust laws relating to terrorism. The

laws are clear on the prohibition of the excessive use of force against, and the ill-treatment of, terror suspects. Despite this, accusations of police excesses during counter-terror operations continue to occur. It is my view that what is lacking are strong, clear and functional internal mechanisms within the police organizations. Such measures are discussed below. These, if well enforced, will keep police officers in check, thereby preventing incidences of abuse, and, where such abuses have occurred, they will create a mechanism to bring the errant officers to account.

Interviewing terror suspects

In all the stages of anti-terrorism operations, it is the stage of interviewing, or rather interrogating, suspects that is the most susceptible to abuse. The temptation for the interviewing officer to extract confessions is high and, in most cases, cruel methods of extracting information tend to be used. In Uganda, for example, the Uganda Human Rights Commission (UHRC) has repeatedly reported the existence of torture as a method of interrogation among the security agencies, including the police, and has called for its total elimination. For the last ten years running, torture has been the leading form of human rights abuse reported by the UHRC. In its 18th Annual Report to Parliament, the UHRC (2015: 7) reported:

In 2015, the highest number of allegations was on violation of freedom from torture and other cruel, inhuman or degrading treatment or punishment, that stood at 345 cases [...] which constituted 37.95% of the total complaints registered. The highest number of complaints on torture [...] totalling 198 were against the Uganda Police Force (UPF), followed by the Uganda People's Defence Forces (UPDF) [...] the commission is worried about this high number of complaints.

The UHRC recommended that security officers who violate provisions of the Prevention and Prohibition of Torture Act be held personally accountable for their actions. It should be noted that torture is prohibited by a number of international and regional instruments to which the majority of East African countries are signatories. The most significant of these is the UN Convention Against Torture (UN CAT), which prohibits torture in all its forms. Uganda enacted the Prevention and Prohibition of Torture Act (2012). Similarly, Kenya's Prevention of Torture Act became law on 13 April 2017. However, Tanzania does not have a domestic anti-torture law, nor has it ratified the UN CAT. However, its national Constitution prohibits acts of torture and ill-treatment.

Interviewing crime suspects

It should be noted that there are several international instruments that set standards on interviewing crime suspects, including the crime of terrorism. Article 6 of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment requires states to keep interrogation methods and practices under systematic review in order to prevent torture or other ill-treatment prohibited

under the Declaration. The same Article also requires the systematic review of arrangements for the custody and treatment of persons deprived of their liberty (Crawshaw et al. 2007). The UN CAT on the other hand, in Article 11, imposes a similar obligation on each state party to the convention, although it additionally requires systematic reviews of interrogation rules and instructions as well as of methods and practices (Crawshaw et al. 2007).

The UN CAT requires that any evidence obtained through torture should not be admissible in courts of law. In regard to statements obtained through torture, Article 15 of the UN CAT states:

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

In addition, the UN CAT prohibits the use of such statements as evidence in any proceedings (Article 12). The UN CAT, in Article 10, requires state parties to:

Ensure that education and information regarding the prohibition against torture are included in the training of law enforcement personnel and other persons involved in the custody, interrogation or treatment of detainees.

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment further stipulates in Principle 21 (Paragraphs 1 and 2) that:

It shall be prohibited to take undue advantage of the situation of a detained person for the purpose of compelling him or her to confess, to incriminate himself other-wise or to testify against any other person [...] No detained person while being interrogated is to be subjected to violence, threats or methods of interrogation which impair his or her capacity of decision or judgement.

Law enforcement institutions should therefore try as much as possible to include these standards and principles in the training programmes of their personnel. While offering technical assistance to the UPF in the area of counter terrorism, the US Department of State, through the Office of Counter-Terrorism Assistance, offered specialized training on interviewing terrorist suspects.

The training, which focused on specialist techniques of interviewing terrorist suspects, had little focus on human rights standards. A participants' manual was provided (US Department of State 2016). However, out of the 12 modules in the guide, only one (module 12) touched on human rights. However, even in that module, no single phrase from UN CAT, the UN Declaration on Torture or any phrase on the prohibition of torture was mentioned. This approach to training is likely to produce counter-terrorism investigators who are not well sensitized on the prohibition of torture during their work.

On 17 March 2017, a senior police officer, Assistant Inspector General of Police Andrew Felix Kaweesi, was gunned down in a style reminiscent of terrorist methods. Police investigators followed the terrorist link (Kato & Bagala 2017) and several suspects were arrested and interrogated. When they appeared in court, the suspects complained of torture by security agencies while in detention. They displayed torture wounds to the magistrate and requested medical attention. One suspect, Geoffrey Byamukama, claimed his torturers were police officers. The UPF then arrested four of its officers and charged them with torture, contrary to the country's Prevention and Prohibition of Torture Act (2012). The torture victims have also filed a suit in court protesting acts of torture at the hands of government agents.

Neither has Kenya been spared allegations of torture, especially the torture of terror suspects. In its alternative report to the UN CAT, the Independent Medico-Legal Unit⁴ accused the government of Kenya of torturing its citizens in the guise of fighting terrorism, and called upon the government to stop the practice and prosecute all security officers involved (IMLU 2015).

Interview guidelines

The police and any other security agency involved in interrogating and interviewing suspects should put in place standard interview guidelines and procedures to be followed while interviewing all suspects, including terror suspects. The guidelines should spell out the interview procedures that conform to established international human rights standards and national laws.

All articles of the UN CAT, the UN Declaration Against Torture, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (especially principles 21–23) and the Robben Island Guidelines (especially Part 11, Section 28 that prohibits torture during interrogation) must be respected in the guidelines. The guidelines must spell out the procedures police officers have to follow while interviewing suspects. These include recording the names of all persons present during the interrogation as well as recording the interrogation proceedings themselves. Records should be kept of the time, place and length of interrogations, and any breaks allowed. The guidelines must stipulate that any interrogation should not exceed two hours, with appropriate breaks, in accordance with the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 23). The guidelines should state that suspects should not be compelled to confess or to testify against themselves and that no physical or mental pressure should be exerted on suspects, witnesses or victims during attempts to obtain information.

Torture and other cruel, inhuman or degrading treatment or punishment must be absolutely prohibited during interrogations/interviews as this would violate the UN CAT and the local laws on torture. Officers should be reminded of the consequences of their actions in this regard. The principle of personal accountability should be

4 A local Kenyan NGO dedicated to the fight against torture and ill-treatment.

emphasized in the guidelines. Rather than vicarious liability, officers should carry personal liability.

The guidelines must emphasize the principle of the presumption of innocence and the protection of the right to a fair trial. It is also good practice to always inform suspects and/or witnesses of their rights before the interview, including the right to remain silent. Interpreters or translators must be provided when necessary. Team interrogations should be encouraged where more than one detective is handling the same case. Confidentiality is important for the protection of the suspect's privacy and officers should be instructed to ensure this.

It is important to note that proper training is crucial. Law enforcement agencies should ensure that their officers are adequately equipped with the requisite knowledge, skills and attitudes to conduct professional interrogations. On top of inculcating investigative skills, officers must be taken through human rights training, especially on the basic human rights standards for interviewing/interrogating suspects. They must also be reminded that any interrogation which is obtained through torture or duress is not acceptable in law and will not be admissible in any kind of proceeding.

Suspects of terrorism must be protected from torture and ill-treatment. It has been observed that this kind of mistreatment is most commonly inflicted on suspects during interrogation, especially with an aim of forcing confessions. Setting up clear interview guidelines is key to making sure that this vice is stamped out. The guidelines should give a step-by-step way of conducting the interview, set up the minimum requirements for the interview, and spell out the sanctions the officer is likely to face if he/she violates the guidelines. The principle of personal accountability must be emphasized to the officers in case of any violations. That way, law enforcement agencies will be able to reduce, or eradicate, torture and ill-treatment of suspects during the stage of investigations.

Police oversight mechanisms

For the police to be accountable, there must be checks and balances as stipulated in UN General Assembly Resolution 34/169 of 17 December 1979 and in other relevant UN human rights instruments.

Setting up internal and external police oversight mechanisms is key to ensuring that police excesses do not go unchecked. The independence of these mechanisms needs to be guaranteed. Internal oversight mechanisms involve those structures established within a police organization to address cases of misconduct by its officers. These mechanisms need to be independent and impartial so as to effectively address complaints raised by victims of police abuse. External oversight mechanisms include those mechanisms that are independent of the police. In Kenya, for example, the Independent Policing Oversight Authority (IPOA) was established by an act of parliament, the IPOA Act, 2011. The authority offers civilian oversight over the work of the police in the country and receives and handles all complaints against police officers by both civilians and members of the force. The IPOA Act, for

example, mandates the authority to undertake the key functions so as to investigate deaths and serious injuries caused by police action; police misconduct; monitor, review and audit investigations and actions by the internal affairs unit of the police; conduct inspections of police premises; monitor and investigate policing operations and deployment; review the functioning of the internal disciplinary process and report findings (Maina Ayiera 2015).

Uganda established the Police Human Rights and Complaints Desk in 1998, which was eventually upgraded to the Professional Standards Unit (PSU) in 2006. The PSU's role is to ensure the observance of professional standards within the force. The PSU can handle any complaint against a police officer, including torture, ill-treatment and other human rights abuses, corruption and bribery, case mismanagement, and any other acts of misconduct by police officers. The PSU is located in Bukoto, a Kampala civilian suburb, so as to allow the public easy access, and has representatives at all police regional headquarters throughout the country. The PSU has investigated and recommended for prosecution many police officers who have violated the police ethical code. However, in addition to the internal mechanisms, there exist external oversight mechanisms. The UHRC, for example, has a mandate to receive any complaint of human rights violation against individual police officers as well as against the police organization as a whole.

In addition, civil society has been active in keeping the police in check. The Human Rights Network, a local human rights NGO, has run a programme for the last ten years called the Police Accountability and Reform Programme. The NGO takes up cases of police human rights violations and conducts other activities such as documentation and training. Other NGOs, such as the Foundation for Human Rights Initiatives, have also effectively performed police oversight roles in Uganda.⁵

Ethical codes and disciplinary courts

One of the precursors of police excess is a lack of discipline. When police officers do not follow a professional code of conduct, the temptation to misuse their power is great. The codes, which must clearly state the dos and don'ts, must be reinforced with strong and functional disciplinary mechanisms that are capable of bringing to book those who violate them. It must also be made clear that where the excess of a police officer amounts to an infringement of criminal law, the officer should be tried in criminal courts of law and punished. In emphasizing the importance of the ethical codes, Ralph Crawshaw et al. (2007: 60) have remarked:

Professional codes of behaviour, or ethical codes, are intended to elicit a set of desired attitudes and responses in each member of the group to which they are addressed. As guided to action, they serve to remind members of the group what is expected of them, they provide a common vocabulary for the discussion of difficult cases, they establish and reinforce shared values, and

5 African Policing Civilian Oversight Forum Country Data, available at <https://apcof.org/country-data/uganda/>.

they militate against adverse aspects of the occupational culture and malign external influence.

The UN General Assembly and the Committee of Ministers of the Council of Europe have developed codes of conduct for police officers.⁶ These two codes have given guidance to member states that develop national ethical codes for their police forces/services. This is because it is being increasingly recognized that the promulgation of codes of behaviour is one of a number of means whereby an ethos conducive to lawful and ethical behaviour, humanity and high standards of professional competence can be fostered within police agencies (Crawshaw et al. 2007).

The UN Code of Conduct for Law Enforcement Officials has eight articles that address different policing issues but, most importantly, Article 2 endorses the notion that, in addition to respecting human rights when carrying out their duties, police are enjoined to protect human rights as a substantive function of policing. It requires all law enforcement officials to respect and protect human dignity and maintain and uphold human rights. Other articles address police behaviour in the use of force and firearms, confidentiality in law enforcement, the prohibition of torture and ill-treatment, the protection of the health of people detained in custody, the prohibition of corrupt practices, and respect for the law and the Code itself (Articles 3–8).

When establishing professional and/or disciplinary codes of conduct, police agencies should ensure that the codes are clear about to whom they apply. These may include any attested member of the force, any serving member of the force, police officers on contract, special police constables, personnel who are undergoing training to become police officers, members of other security forces who conduct operations with the police, civilians who work with the police and any other person who performs the work of the police. This is important because in many anti-terror operations, one is likely to find other people from other security agencies, especially intelligence agencies. Such people get involved in arrests and the interrogation of suspects. If their conduct is not subject to the police professional code, it is difficult to hold them accountable for their actions.

The professional code of conduct should further spell out the obligations of the police officers in the performance of their duties. These obligations should include not violating the rights of other persons without reasonable or lawful cause.⁷ It must address issues of corruption and abuse of office. In addition, the code must create clear offences that arise out of the violation of its provisions. This should be accompanied with clear penalties that should be punitive enough to discourage officers from violating the code.

Such punishments should include dismissal from the force/service, discharge, demotion or reduction in rank, withholding of salaries, imprisonment in police

6 See UN Code of Conduct for Law Enforcement Officials. General Assembly Resolution 34/169 of 1979 and European Code of Police Ethics 2001.

7 Section 44(2)(b) of the Police Act, Cap. 303 (Uganda), Disciplinary Code of Conduct.

custody, confinement to residence or barracks, severe reprimand, communal labour, etc.⁸ In that vein, the police organizations must create strong disciplinary mechanisms such as disciplinary courts to try the errant officers who violate the code. The disciplinary courts should be established at all police units, from the lowest, with an appellant mechanism that reaches police headquarters, and up to civil courts. Senior officers should subject their subordinates to these courts whenever they commit excesses.

Standard operating procedures

Terrorism as a crime is a relatively new phenomenon to the traditional law enforcement officer. Although most police officers and investigators are familiar with how to go about handling familiar crimes such as murder, rape or assault, they find themselves at a crossroads when faced with a terrorist situation. The mass and indiscriminate suffering that terror incidents inflict on victims and survivors tends to invoke public reactions that view the perpetrators not as ordinary criminals, and therefore not deserving of mercy. Officers are left to use their discretion on how to handle suspects of terror incidents. Some hold them in detention for long periods while others torture and ill-treat them so as to extract confessions or to 'punish' them.

It is common knowledge and a legal requirement that suspects should not be held in police detention for more than 48 hours before they appear in court or are released on bail. While this rule is generally followed for most other suspects, terror suspects are often detained for months, sometimes years, before appearing in front of a court of law. This situation can carry on indefinitely without comment from civil society or the general public.

This state of affairs could be addressed with the development of proper SOPs on how to handle suspects of terrorism. The need for SOPs was emphasized by the African Commission on Human and Peoples' Rights (ACHPR 2014: guideline 36):

States should have in place, and make known, laws, policies and Standard Operating Procedures to set enforceable standards of conduct for police officers, prison officials and other law enforcement or judicial officers that are consistent with internationally recognised standards of conduct for law enforcement personnel and other law enforcement officials responsible for the care or supervision of persons who are in conflict with the law and deprived of their liberty [...] Non Compliance on the rules of arrest and custody should be a disciplinary offence, subject to disciplinary and, where appropriate, criminal procedures that accord with international law and standards on procedural fairness.

In East Africa, the existing SOPs on counter-terrorism tend to address the operational aspect of the crime without due regard to the treatment of suspects.

⁸ Punishments prescribed in the UPF Disciplinary Code of Conduct, p. 28.

Police organizations should establish SOPs that give clear guidelines on the arrest of suspects, detention, treatment, interrogation and appearances in court. The SOPs must prohibit the torture of terror suspects. The use of video to record all interrogation sessions must be emphasized.⁹ The SOPs must also regulate how to handle victims and witnesses of terror attacks.

Use of force and firearms

The use of force and firearms during terrorist incidents must be regulated. Police officers should use force only when absolutely necessary and to the extent required for the performance of their duties.¹⁰ Use of force is most likely to be abused when arresting terror suspects. However, the UN Standard Minimum Rules on the Use of Force and Firearms gives clear guidelines on how police should use force. For example, the use of firearms is permissible in self-defence or in the defence of others against the imminent threat of death or serious injury, or to arrest a person presenting such a threat, when less extreme means are insufficient. Intentional lethal use of firearms is forbidden except when strictly unavoidable in order to protect life (OHCHR 1997). It should be noted that use of force on detainees is strictly prohibited. Force may not be used on persons in detention except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened. The UN Basic Principles on the Use of Force and Firearms (UN BPUFF) provide that firearms may not be used against such persons except in self-defence or defence of others against the immediate threat of death or serious injury, or to prevent escape by a detainee presenting such a threat, and where force is used, there must be proper reporting and review procedures established by the police authorities. Persons affected must have full access to independent judicial processes (Principles 15 and 16).

Individual accountability and fighting impunity

One of the factors fuelling human rights violations by state actors is the tendency of abusers to hide behind their organizations or governments. This usually happens when police officers are aware that aggrieved parties will sue the police organization or the government rather than the individual; in other words, they commit excesses knowing that they are not personally liable. This state of affairs tends to encourage abuse and to promote impunity.

It is crucial that police organizations hold police officers personally accountable for any violation of human rights, as has been emphasized by the UN High Commissioner on Human Rights (OHCHR 1997). Legislation can categorically state that individual state actors who violate human rights will be held personally accountable for their own actions. Furthermore, police organizations can sensitize their personnel through circulars and SOPs, making it clear they will be held responsible for their own actions in cases of rights violation.

⁹ For more details, see ISS (2013).

¹⁰ UN Code of Conduct for Law Enforcement Officials, Article 3.

Training

It is obvious that training is key. Officers who handle counter-terrorism operations need to undergo two important aspects of training. First, they have to be equipped with operational and investigative skills in counter-terrorism so as to boost their capabilities and confidence, thereby reducing possible misconduct.

Secondly, officers need training relating to human rights, and the ethical and legal conduct required while dealing with suspects. They must be exposed to the prohibitions on torture and ill-treatment as well as to the international minimum standards governing arrest, investigation and the use of force. They need to learn the minimum standards for treating people in detention. The UN BPUFF (Principles 18 and 19) provides that:

Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review; and

Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

With proper and continuous training, it is envisaged that police officers can respect the rights of suspects and adhere to the professional standards required of them in this regard.

Supervision

The role of supervision is key to minimizing police excesses in handling terror suspects. Police organizations must establish proper and effective supervision structures. Supervisors must be made aware of their responsibilities and the vicarious liability they carry for the actions of people under their command. Article 24 of the UN BPUFF requires governments and law enforcement agencies to ensure that senior officers are responsible for the unlawful use of force and firearms by law enforcement officials under their command. This responsibility is dependent on whether police officers knew, or should have known, of the circumstances, and whether they took sufficient preventive action or reported such unlawful use. As Crawshaw et al. (2007: 153) remark, 'The terminology of Principle 24 is similar to that used in the articles of the statutes of international tribunals and the International Criminal Court relating to responsibilities of commanders and other superiors in rank.' In the same vein, subordinate officers

need to be made aware that they are immune from prosecution if they refuse unlawful orders from superiors (UN BPUFF, Rule 25).

Conclusion

The East African region has suffered persistent acts of terrorism perpetrated by both internal and external terror groups. The enormous amount of suffering inflicted on the citizenry and the political, economic and social disruptions caused by these terror groups tend to justify strong action against the people that perpetrate these acts. The police are often under pressure to handle suspects of terrorism with an iron hand, and they (the police) often fall into this trap. However, police officers should always be seen to act professionally by following the due processes of the law. One of the most effective ways of preventing and addressing these possible excesses is for police organizations to institutionalize effective and efficient internal mechanisms.

Such measures should include the establishment of clear interview guidelines, setting up clear internal oversight mechanisms, and establishing strong and robust ethical codes and disciplinary courts that can try those who violate the codes. In addition, SOPs relating to the management of terror incidents and their aftermath need to be put in place to guide the officers on the handling of suspects, victims and witnesses. Other measures such as the regulation of the use of force and firearms, putting emphasis on personal accountability for the actions of individual police officers, proper training and improving supervision can lead to reduced violations and excesses likely to be committed by police officers against terror suspects. This will in turn improve the rule of law and the respect for human rights among our communities.

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Chapter 8

Boko Haram and rights-based policing in Cameroon

Polycarp Ngufor Forkum



Introduction

This chapter grapples with the all-important and challenging issue of respecting human rights in the fight against terrorism. Terrorism has debilitating effects on the enjoyment of all rights. Policing during terrorism brings new challenges to traditional policing. The population looks up to the police to be tougher in the fight against terrorism, insurgency and violent crime. The question remains: How do the police strike a just balance between these two conflicting but compelling objectives? As such, striking the proper balance between competing rights and interests is persistently seen as one of the most challenging aspects in the realization of human rights generally and during terrorism in particular.

This chapter will look at the evolution and ideological narratives of Boko Haram, its atrocities, and detail Cameroon's purely military response. We will further look at terrorism and human rights violations by security forces in Cameroon. During our research, we were confronted with consistent accusations and a refusal to act by Cameroonian authorities. As such, the constraints of the Cameroon security forces in protecting human rights during terrorism will be highlighted. In an attempt to see how existing policing cultures can be aligned to the broader culture of the state, the chapter concludes with some recommendations for enhancing rights-based policing in Cameroon. Here we will propose training modules in countering terrorism (Boko Haram) rather than only focusing on strengthening military capacity. As such, emphasis will be on the need for the police to build their intelligence-gathering, investigation and general rights-protection capacities.

Conceptual framework

Terrorism

Out of the 13 international conventions related to terrorism so far adopted within the United Nations (UN) context, none has a commonly agreed definition of terrorism. The phenomenon of terrorism, described as 'plurimorphic', dynamic and lacking interdisciplinary consistency (Bertouk 2008), has so far attracted a series of attempts at definition, thereby illustrating differing perceptions. Existing definitions include, amongst others, those of the International Law Commission, Russian Federation, United Kingdom Terrorism Act, 2000 (Extracts and Basics), United States (US) Department of Defence, US Federal Bureau of Investigation, US State Department, the Penal Code of the Democratic and Popular Republic of Algeria, and of A.P. Schmid (the officer-in-charge of the UN Terrorism Prevention Branch) (Medhurst 2008).

Terrorism is described as including 'criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes' (Medhurst 2008: 89). As such, 'terrorism' refers to criminal offences (murder, wounding, destruction and damage) which produce widespread popular uprising through overt and ruthless violence. These offences are mostly committed by groups, against random innocent victims or specific structures or resources, using military weaponry, usually in order to coerce or punish governmental authorities or commercial enterprises (Medhurst 2008), for political, philosophical, ideological, racial, ethnic, religious or social reasons.

The Global Terrorism Index (GTI) defines terrorism as 'the threatened or actual use of illegal force and violence by a non-state actor to attain a political, economic, religious, or social goal through fear, coercion, or intimidation' (Institute for Economics & Peace 2015: 6). Terrorism as a tactic can be used by non-state armed groups or by states themselves. Its characteristics include the threat or use of violence, a political objective used to justify violence, the intention to spread fear by dramatic violent acts and the intentional targeting of civilians (Cooper 2007). All groups may refer to people that use terrorism as 'terrorists'. But the definition of this term remains subjective. Some would view the actions of a repressive state and call that state a 'terrorist'. Others only use the term 'terrorist' to refer to non-state armed groups (Schirch 2015). A similar act by the same group can generate differing descriptions depending on the speaker. A politician will use the word 'terrorist', the military will use 'enemy or adversary', the police will use 'criminal', the human rights officer will use 'perpetrator' while civil society will use the word 'stake holder' (Schirch 2015: 154). Terrorism thus described, Boko Haram certainly fits into this framework.

Boko Haram

Boko Haram emerged in the early 2000s as a small Sunni Islamic sect advocating a strict interpretation and implementation of Islamic law for Nigeria (Blanchard 2016). Thus, standing out as a Nigerian creation (Botha et al. 2017), Boko Haram is a radical version of Islam based on the fundamentalist Wahhabi theological

system and opposes the Islam of the traditional northern Nigerian establishment, which is broadly tolerant (Campbell 2014). Under the leadership of Abubakar Shekau and Abu Musab al-Barnawi, the group sought to establish an Islamic caliphate in place of the Nigerian government (Stanford University n.d.). The Boko Haram narrative contends that the state built on the ruins of the Kanem–Bornu Empire brought nothing but corruption, immorality, inequality, injustice and neglect (Barkindo 2016).

The conflict

Evolution of Boko Haram

Boko Haram's presence on Cameroonian territory can be traced to July 2009 when many Boko Haram fighters fled to Cameroon to escape a major military crackdown in Nigeria that led to the killing of the then leader, Mohammed Yusuf (International Crisis Group 2014). While some scholars link Boko Haram with the new wave of transnational terrorism, others connect the insurgency with the internal political power struggle in Nigeria. The conflict is undoubtedly connected to socio-economic concerns such as poverty, unemployment and inadequate education (Joy 2015). In the Far North region (Cameroon), where Boko Haram is most active, more than half of the population is poor (International Monetary Fund 2014), 76% are illiterate (World Bank 2014), having the lowest school enrolment rate (International Crisis Group 2016), and the industrial sector is extremely underdeveloped. The above coupled with social divisions and the weak presence of the state and border porosity (Salifu 2012) are factors that increase vulnerability (*IRIN News* 2014a). Cameroon is also seen as a genuine source of further 'funding' thanks to the ransoms paid by its authorities after a kidnapping (*Vanguard* 2009).

Boko Haram initially engaged in conventional warfare but later on switched to an asymmetric mode of attack. The group repeatedly attacked the localities of Achigachia, Amchide, Limani, Fotokol, Waza and Kolofata, found along the Cameroonian/Nigerian border, as well as Kousseri and Maroua towns (Amnesty International 2015a). The catastrophic effects of this climate of insecurity on the economy, and the displacement of approximately 237,966 (OCHA 2015) people in addition to 626,681 refugees (by 31 August 2017), only serve to exacerbate these problems (OHCHR 2017a).

Boko Haram terrorism

Amnesty International has reported serious crimes under international law and other crimes alleged to have been committed by Boko Haram, including suicide bomb attacks, summary/wilful killings, torture, hostage taking, mass displacement, abductions, recruitment of child soldiers, looting and burning/destruction (OHCHR 2017a) of public, private and religious property. These crimes are alleged to appear to also be taking place as part of a widespread, as well as systematic, attack against the civilian population. Some of these acts are reported to constitute not only serious abuses of human rights but may amount to crimes against humanity

(Amnesty International 2015a). Boko Haram has also abducted hundreds of people and, by 2015, more than 1,000 children had been abducted (*Vanguard* 2014).

According to the Armed Conflict Location and Event Data Project (ACLED), a total of 3,428 and 1,009 people fell victim to Boko Haram in 2013 and 2014, respectively. Boko Haram was responsible for around a third of all civilian casualties in conflicts in Africa in 2014.¹ According to the GTI, it was the deadliest terrorist group in 2014, killing 6,644 people, injuring 1,742 in attacks located in Cameroon, Chad and Nigeria (Institute for Economics & Peace 2015). Two of its attacks in Cameroon are quoted as amongst the 50 worst terrorist attacks in 2014. Examples include: Fotokol (6 September 2014) and Amchide (15 October 2014) with, respectively, 101 and 117 deaths by explosives, bombs and dynamite; Bia (17 April 2015) (Amnesty International 2015a); suicide bombings in Maroua Central Market and Barmare district (22 July 2015); and Pont Vert (25 July 2015). In 2014, Boko Haram killed 520 people in 46 attacks in Cameroon and six people in one attack in Chad. In 2014/15 it launched at least 460 attacks and about 50 suicide bombings, causing 1,500 deaths, 155,000 displaced persons and 73,000 refugees. More than 15,000 people are estimated to have been killed by Boko Haram, including more than 6,000 in 2015 alone, confirming it as one of the world's deadliest terrorist groups (Amnesty International 2015a). According to the UN Children's Fund (UNICEF), as of December 2015, over 2,000 schools in Nigeria, Cameroon, Chad and Niger were closed due to the conflict (UNICEF 2015). By UN estimates, roughly 2.8 million people have been displaced by Boko Haram-related violence in the Lake Chad basin, where approximately 5.6 million are in need of emergency food aid (UNICEF 2015).

Between July 2015 and July 2016, Boko Haram conducted at least 200 attacks (in markets, mosques, transport hubs, bars, restaurants, churches, schools and bus stations), including 46 suicide bombings, killing over 500 civilians and 67 members of the security forces in the Far North region of Cameroon (Amnesty International 2015b). The frequency of Boko Haram's attacks in northern Cameroon peaked between November 2015 and the end of January 2016, with a record of one attack every three days (Amnesty International 2016; KII 2016). January 2016 was also the worst month, with at least nine suicide attacks killing over 60 civilians (*IRIN News* 2013). Between July 2016 and June 2017, Boko Haram conducted at least 120 attacks, including 23 suicide bombings, in the Far North region of Cameroon, killing over 150 civilians (Amnesty International 2017).

One of the most disturbing aspects of Boko Haram's use of suicide attacks is the use of children to perpetrate these attacks. In over half of these suicide attacks, girls were used to carry and detonate the explosives (Amnesty International 2016). UNICEF has documented 40 suicide attacks (21 occurred in Cameroon) involving one child or more in all Boko Haram-affected countries between January 2014 and February 2016 (UNICEF 2016). It is believed, rightly or wrongly, that girls on foot have increasingly been used to carry out attacks in crowded areas, as they can pass through security

1 Data from ACLED, the University of Sussex.

checks more easily than boys (UNICEF 2016). Jacob Zenn and Elizabeth Pearson have made an attempt to explore the gender-based changes in Boko Haram's tactics and its instrumental use of women, by abductions and detentions resulting in increasing gender-based violence targeted at Christians (Zenn & Pearson 2017). Besides women, especially children remain tools in the hands of Boko Haram as they are used as suicide bombers and sexual slaves. The state of Cameroon summarizes Boko Haram atrocities thus:

In effect, Cameroon has since 2013 been the subject of attacks from the terrorist group Boko Haram, whose repeated attacks have already taken more than 2,000 lives, kidnappings, destruction of property, and use of children as human shields, combatants or sexual slaves. (OHCHR 2017a)

The human rights community considers the fight between governmental forces and members of Boko Haram in the Far North region of Cameroon as a non-international armed conflict (Amnesty International 2015a). Consequently, international humanitarian law (IHL) – and, in particular, common Article 3 of the Geneva Conventions of 12 August 1949 – should be applied. Additional Protocol II to the Geneva Conventions, to which Cameroon is a state party, may also be applicable to the conflict, should the conditions of its application be met.²

Government response

The Cameroon government has responded to the Boko Haram threat by seeking to mobilize the population behind a war effort, and behind President Paul Biya, who has framed his country's struggle as one of good versus evil (Amnesty International 2015a).

The reality is simple. On one side, there are our forces, defenders of a modern and tolerant society which guarantees the exercise of human rights, including that of religion, as well as representative democracy. On the other side, namely Boko Haram and similar movements, there are partisans of an obscurantist and tyrannical society which has no consideration for human dignity. (Biya 2015)

As such, Cameroonian authorities have responded to the escalation of Boko Haram attacks by strengthening the presence of security forces in the Far North region. At least 2,000 troops of the Battalion d'Intervention Rapide (BIR) were deployed alongside units of the regular army as well as the police (and the gendarmes) to protect the border region (Amnesty International 2015a). This supplemented regular units in the region.

Cameroon's response has been structured around Operation Alpha, led by the BIR (BIR-Alpha); Operation Emergence 4, led by the fourth inter-service military

² The Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Cameroon has been a state party to it since 16 March 1984.

region (RMIA4, the regular army); and the Multinational Joint Task Force (MNJTF) deployed in October 2015. Chad hosts the headquarters of the MNJTF, authorized by the African Union with over 8,700 troops. By many accounts, the national forces of its troop contributors continue to operate largely independently under their own respective national commands (*IRIN News* 2013). Its mandate includes to create a safe and secure environment in the areas affected by the activities of Boko Haram and other terrorist groups; facilitate the implementation of overall stabilization programmes by the Lake Chad Basin Commission member states and Benin in the affected areas, including the full restoration of state authority and the return of internally displaced persons and refugees; and facilitate, within the limit of its capabilities, humanitarian operations and the delivery of assistance to the affected populations (AU 2015). It was also tasked to undertake specific actions in the areas of intelligence, human rights, information and the media (Assanvo et al. 2016). Offensive and robust military operations aided by the MNJTF have significantly weakened Boko Haram (Ewi & Salifu 2017).

Rights violations by security forces

Critics have condemned the fact that states trapped in such guerrilla warfare become equally violent in combating such groups. The situation becomes one of violence against violence, even by states that know they are obliged to respect IHL in conflict. It would be out of place to assume that one set of laws be applied to states and another to armed groups involved in the same confrontation. The asymmetric mode of action of these groups notwithstanding, it would be awful to solve violence with violence. By and large, the concept of a proportionate (Wright 2012), belligerent response in reprisal against an adversary's violation of IHL would mean that, if a party in a conflict decided to ignore and use disproportionate means in an attack, the response should still be proportionate. In which case, violations of IHL by Boko Haram should not be a reason for the state to do the same.

As such, Cameroonian military forces are alleged to have resorted to fighting fire with fire, setting aside the legal safeguards that exist in a democratic state, thereby falling into the trap set by terrorism for democracy and the rule of law (Council of Europe 2004). As the US Supreme Court Justice Sandra Day O'Connor commented in 2004:³

It is during our most challenging and uncertain moments that our Nation's commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad.

Thus, it goes without saying that it is precisely in situations of crisis, such as those brought about by terrorism (Boko Haram), that respect for human rights is even more important and that even greater vigilance is called for.

3 US Supreme Court (2004). *Hamdi v. Rumsfeld*, (03-6696) 542 U.S. 50, *Opinion of O'Connor, J.* Available at <https://www.supremecourt.gov/opinions/03pdf/03-6696.pdf> [accessed 21 March 2018].

Various reports by the UN Human Rights the Committee, the Committee on the Rights of the Child and Amnesty International allege violations by Cameroonian state security forces, such as mass arbitrary arrests (and detention of family members), unfair trials, extrajudicial killings, excessive use of force, enforced disappearances, incommunicado detention, deaths in custody, torture and inhumane and degrading treatment, destruction of property, abuses against civilians and detainees, unfair military trial and indiscriminate use of the death penalty, besides the forceful return of refugees. It also alleged that there is equally a complete undermining of international and national guarantees of a fair trial, manifested in the extension of the jurisdiction of military courts beyond the reaches of military discipline by military personnel to the extent of imposing the death penalty on civilians.⁴ According to Essadia Belmir, expert of the UN Committee Against Torture and co-rapporteur for Cameroon, military courts could be tolerated in the prosecution of war crimes, crimes against humanity and genocide, but military justice should only be applied to crimes committed by military forces (OHCHR 2017b). The trend of the cases heard by the military court in Maroua, shows that a majority are Boko Haram suspects and by the close of 2016 at least 100 people had been sentenced to death, though no one has yet been executed (Amnesty International 2015a).

These alleged accusations of human rights violations by Cameroonian security forces detailed and variously documented by Amnesty International are corroborated by the Network of Central African Human Rights Defenders, better known in French as *Réseau des Défenseurs des Droits Humains en Afrique Centrale*. Amnesty International reiterated its stance in a briefing submitted in advance of the UN Committee Against Torture's review of Cameroon's fifth period report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In effect, during consideration of the report, experts raised concerns about allegations of, amongst others, lenient sentences for the crime of torture, the use of secret detention centres and military courts as part of the anti-terrorist struggle, detainees' access to legal aid and independent medical examinations, forcible defilement of Nigerian refugees on the pretext that they were members of Boko Haram, and harassment of journalists and human rights defenders (OHCHR 2017b), all allegations found in Amnesty International's report.

It is also worthy of note that in a press release dated 15 September 2017, signed by Dr Banda, chairman of the National Commission for Human Rights and Freedom (NCHRF), the Commission had written to the government commissioner of the Yaoundé military court of the intention to visit some detention centres, especially the Secretariat of State for Defence, the Directorate General of External Research and the National Surveillance Directorate, pursuant to the Amnesty International report that torture was taking place in these facilities. The government commissioner is reported to have explained that he had not been authorized by his superiors

4 UN Working Group on arbitrary detention report, UN Doc. E/CN.4/1999/63 (1998). Available at <http://www.ohchr.org/EN/Issues/Detention/Pages/Annual.aspx> [accessed 15 May 2017].

and he backed up his stance in correspondence from the Secretariat of State for Defence in which he suggested that the NCHRF should refer the matter to the minister of defence under whose jurisdiction military justice falls. This refusal may be interpreted, rightly or wrongly, as mere negligence or as a genuine intention to hide something.

Faced with these consistent accusations, the Cameroon government has not been silent. Its spokesperson, Issa Tchiroma Bakary, minister of communication, has consistently refuted all these allegations. Pursuant to Amnesty International's reports, *Human Rights under Fire: Attacks and violations in Cameroons struggle with Boko Haram* (2015a), and *Cameroon's Secret Torture Chambers* (2017), Tchiroma is quoted as having described the report as 'exaggerated, and in some cases, ungrounded' (Kinsai 2015), noting that 'the accusations are baseless and aimed at weakening the morale of the Cameroonian defence and security forces' (*Cameroon NewsOnline* 2017), and 'are based on fictitious or instrumentalized witness accounts while trying to sustain the allegations with inconsistent evidence that does not stand up to reality', and thus that 'this report is aimed at tarnishing the image of the security and defence forces of Cameroon in the eyes of their international partners' and was '[a] way of discrediting the Cameroon Government and its army'. Tchiroma insists that 'the mechanisms put in place in general and specifically related to the fight against Boko Haram in Cameroon, leave no room for anyone, be it the defence and security forces or the civilian and military judicial system to violate human rights without being punished' (2017). He noted further that the slowness of the judicial system mentioned by Amnesty International is not specific to cases involving Boko Haram suspects, but that as a general rule, government is sparing no effort to find solutions that could speed up pending proceedings in Cameroonian law courts (*Cameroon NewsOnline* 2017). While accepting that chains are used to restrain suspects, he justifies this as a disciplinary measure regulated under Article 45(c) of Decree No. 92/052 of 27 March 1992 on the prison system in Cameroon. It must be cautioned, however, that though this is a measure that goes contrary to Cameroon's international obligations, the relevant provisions in the Decree insist that the measure 'may not be inflicted on the detainee for longer than 15 days in five-day periods, each followed by a period of ordinary regime'.

Tchiroma says that when arrested, suspected Boko Haram fighters are investigated and taken to a competent court for judgment, in accordance with the rules of the law, and that 'significant financial resources' are made available for their care and rehabilitation while in detention (Ndi 2017). The Cameroon government's denial of the torture allegations was corroborated by Anatole Fabien Nkou, Permanent Representative of Cameroon to the UN office at Geneva, during his presentation (8 November 2017) as the UN Committee Against Torture considered Cameroon's fifth periodic report on its implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He went beyond Tchiroma to add that judiciary, administrative and disciplinary sanctions have been meted out to law enforcement officers guilty of acts of torture (OHCHR 2017a). Within the logic of denial, Nkou intimated that in order to fight the threat of Boko Haram,

Cameroon had aligned itself with the Global Strategy to Fight Terrorism. The Government had reiterated its will to use proportionate force when fighting terrorism, and it had respected its international commitments under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Allegations of the existence of secret detention places were surprising, and one of the alleged torture chambers was, in fact, a bakery. The Government was fighting terrorism; it was not trying to systematically destroy perpetrators. (OHCHR 2017a: 6)

It is curious to see differing perspectives in the fight against terrorism. While civil society sees the law on terrorism in spirit and practice to be aimed at silencing opponents, the government sees the laws as a legislative means of putting into practice their commitments in the fight against torture.

At the institutional level, Nkou makes mention of the Ordinance of 16 February 2016, providing for a reparations committee, lodged at the Supreme Court, to look into illegal detention or custody. This brings to question the sweeping statement by Amnesty International that torture victims have no avenue for recourse. It must be cautioned that civil society has the right, through judicial activism, to test the effectiveness of this new structure. From a purely scientific point of view, it must be cautioned that the above allegations of torture, both by the Cameroon security forces and members of Boko Haram, remain mere allegations because they are yet to be proven by a competent tribunal.

Rights-protection constraints

Conditions of detention

Originally built to house 300 people, the Maroua prison holds between 708 and 1,525 prisoners accused of supporting Boko Haram and, as of July 2017, more than 70% were yet to face trial. The resultant effect is life-threatening levels of overcrowding, malnutrition, lack of hygiene and sanitation and poor medical care. Prison authorities estimate that an average of between six and eight prisoners die each month as a result of insanitary conditions and extreme overcrowding. Conditions at the main prison in Yaoundé are better, but detainees accused of supporting Boko Haram are alleged to be chained. However, according to Tchiroma, significant financial resources are being made available for Boko Haram cases as well as for improving the places of detention. The Human Rights Committee has expressed, amongst other concerns, the difficulties of family members to visit detainees, especially those condemned by military tribunal where authorization from the government commissioner is required.

The UN Committee Against Torture believes strongly that while economic arguments could justify the poor detention conditions in the country, the same could not be said about cases of torture taking place in the prison system.

Military approach

The exclusive military dimension of this fight has been a call for concern. The military and paramilitary approach has impacted negatively on civilian policing practices. The fight against Boko Haram entails, for the most part, dealing with citizens of the country. The police force stands out as the most appropriate, for it is a civilian corps trained to deal with citizens, who, even if they behave excessively, remain citizens. Hence community policing. The military are trained to defend the fatherland from enemies. In other words, they 'shoot to kill'. Securing arrests, and possibly the ensuing procedure after the arrest, is totally unfamiliar to the military. This may partly account for the apparently many alleged violations. The police shoot in purely extreme cases of legitimate defence where, for example, failure to do so could lead to the loss of lives. Hence, the over-reliance on the military in the fight against Boko Haram is a mismatch. The Cameroonian government's focus on a military response has been partly successful, but the structural problems that allowed this threat to arise, as analyzed earlier in this chapter, have not been addressed. It goes without saying that the group can be crushed militarily, yet state violence fuels Boko Haram's narrative of victimhood. The fight against Boko Haram requires adapting and improving security structures, and long-term crisis resolution policies that will prevent a revival of this threat in a different form, and prevent insecurity in the region from being reignited. This requires paying attention not just to the material problems in the Lake Chad region, but also to the cyclical violence that has reinforced Boko Haram's sense of victimhood (Thursto 2016). This long-term investment and commitment can only be carried out by police personnel who receive training in human rights, community policing and negotiation, amongst other skills.

Vigilante groups

As in Nigeria, some local communities in Cameroon have formed 'self-defence groups' to patrol Boko Haram-affected areas. The Cameroonian government has repeatedly praised such groups, but has urged them to focus on monitoring their villages and to leave more dangerous activities, such as landmine removal, to the security services (Kindzeka 2016).

In Cameroon, self-defence groups and vigilante groups (Tilouine 2016) have existed since the 1960s and, in the Far North, these vigilante groups, activated either by the authorities or through local initiatives, came into being in July 2015, after the first suicide attacks. Placed under the authority of sub-prefects and traditional chiefs, they generally provide local intelligence to the army, sometimes also operating checkpoints or forming self-defence militias. They are reported to have foiled about 15 suicide attacks and helped to secure the arrest of about 100 alleged Boko Haram members.

In 2016, they became involved in some army operations against the jihadist group, including in Nigeria (*Le Monde* 2016; *L'oeil du Sahel* 2016). Though effective at times as a potential 'source of local knowledge, intelligence and manpower' (International Crisis Group 2017), reliance on these groups does carry some risks. False accusations have been made to the security forces as a way of settling scores

(International Crisis Group 2016). Despite prior personal background checks, there have been cases of complicity between some group members and Boko Haram, while others have engaged in extortion on religious grounds (International Crisis Group 2016). For example, in Amchide, Christian members of the first vigilante group set up by the BIR in 2014 made false accusations against Muslim residents and subjected them to extortion and blackmail. After six months, the group was dissolved and then formed again with religious parity (International Crisis Group 2016). There is also a risk that some members facing economic problems could veer into criminality (Tilouine 2016). Thus, it is important to limit reliance on vigilante groups, and to plan for their gradual dissolution and the socio-economic reintegration of their members.

Indeed, *Africa Report* outlines a range of possible responses to the vigilante groups, which, amongst others, include prioritizing cases of individuals suspected of sexual and gender-based violence and the creation of a temporary auxiliary body under the army or Police Mobile Force to integrate those who have received weapons training and served directly with security forces, providing for their potential integration into the security forces if they meet the educational and other requirements/undergo retraining (International Crisis Group 2017).

Recommendations

This chapter posits that to mitigate the deleterious effects of the scourge of terrorism, apart from carrying out development and economic programmes in the Far North and notwithstanding the traditional obligations of other stakeholders (civil society, elected and traditional chiefs, other countries of the sub-region, Cameroon's donors and the government of Cameroon) (International Crisis group 2016), there should be continuous training of the security forces, and more particularly the police, in the thematic area of human rights and counter-terrorism. This is in line with the opinion expressed by Belmir, who, during the consideration of Cameroons report (8 November 2017), suggested more training and workshops for the police force on human rights, international humanitarian law and in identifying cases of torture (International Crisis group 2016). Government spokesperson Issa Tchiroma is quoted as saying that 'the obligation to respect human rights, whether in time of peace or war, is part of the training of our defence and security forces [...] That each time they have been on the battlefield, they have always complied to this obligation' (Kinzai 2015: n.p.).

It is recommended that this training should include capacity-building components to impart training skills to participants in addition to the substantive content of the courses. As Amnesty International (n.d.) aptly claims:

The area of policing and human rights is in constant evolution. The last two decades of the past century saw growing recognition for human rights in the area of policing and in that vein numerous human rights documents were adopted at international and

regional level. On the other hand, since the year 2000 we have seen more and more tendencies aiming to weaken the very same international human rights rules and standards in response to perceived or actual threats to security. However, whatever the security situation may look like, it is our conviction that only human rights compliant policing is good policing. Therefore it is our endeavour to continuously strengthen and promote the respect for human rights in policing at all levels – in international reference documents, domestic legislation and operational policies, as well as in policing training and practice.

The inclusion of human rights issues in the curriculum for law enforcement officials should span the full period of the training and should be linked with, and mainstreamed into, other subjects so as to ensure that trainees successfully acquire human rights competencies across the full range of operational and administrative duties, regardless of their rank (Amnesty International & Oxfam International 2003). These trainings have to be conceived and executed within the broader framework of human rights compliant-policing. Modern training means as well as methodologies should be employed to achieve the desired overall objective of ensuring respect for human rights during the fight against terrorism.

Conclusion

Boko Haram's activities can clearly be defined as terrorism using the definition outlined above. Both Boko Haram and the Cameroon security forces are alleged to have committed violations of human rights and IHL amounting to war crimes and crimes against humanity. Acts of terrorism can be countered in ways that uphold human rights standards. In 2005, UN Secretary General Kofi Annan emphasized that:

Human rights law makes ample provision for counter-terrorist action, even in the most exceptional circumstances. But compromising human rights cannot serve the struggle against terrorism. On the contrary, it facilitates achievement of the terrorist's objective – by ceding to him the moral high ground, and provoking tension, hatred and mistrust of government among precisely those parts of the population where he is most likely to find recruits. Upholding human rights is not merely compatible with successful counter-terrorism strategy. It is an essential element. (Annan 2005)

He continued,

Our responses to terrorism as well as our efforts to thwart it and prevent it, should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism – not privileges to be sacrificed at a time of tension. (Annan 2005)

He concluded,

I do not believe there can be a trade-off between the effective fight against terrorism and protection of civil liberties. If, as individuals we are asked to give up our freedom, our liberties and human rights, for protection against terrorism, and we do it, do we in the end have protection? I think we need to be careful not to undermine human rights and civil liberties in this fight against terrorism because if we do, we are handing the terrorists a victory they cannot win on their own. (Annan 2005)

The response of Cameroon, as well as Nigeria, to Boko Haram has been predominantly military, with little investment in civilian outreach or counter-radicalization. It has been argued that military solutions alone cannot win this war. The international human rights framework is therefore recommended as applicable in dealing with the terrorist threat: from addressing its causes to dealing with its perpetrators, protecting its victims and limiting its consequences (Cooper 2007). This chapter applauds the military approach in the fight, but strongly believes this could be complemented by training the forces in general and the police in particular as a way of pre-empting violations of human rights and humanitarian law.

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Chapter 9

Police organizational capacity and rights-based policing in Nigeria

Solomon E. Arase



Introduction

Rights-based policing is influenced by the socio-political and economic structures of society. Human rights violations by the police are often attributed to the political system of society, police culture, corruption, ignorance of human rights provisions and lack of effective oversight. Consequently, recommendations for addressing the problem emphasize legal reforms, human rights training, prosecution of police personnel involved in rights violations and the establishment of effective oversight. These recommendations often fail to consider the impact of organizational capabilities and capacities on police services. Lack of capacity has a significant impact on rights protection and service delivery by the police.

Police require resources and competencies for effective training, management, planning patrol, order maintenance, operations, surveillance, intelligence gathering, and investigations. A police force deprived of resources by government and society cannot effectively respect and protect human rights while policing terrorism and violent crimes, when risks to life and property are at the highest levels, demand for safety by citizens is high and pressure by government on the police to curtail insecurity is acute.

Responsibilities for providing resources for rights-based policing of terrorism and violent crimes rest on the government, society and the police. Recommendations for strengthening rights-based policing should take account of the macro-structural factors that influence levels of capacity for the police. In this chapter, we examine the challenge of violent extremism and crimes in Nigeria, constraints of inadequate capacity and weak cooperation between the police and public, and the impact of these challenges and constraints on rights-based policing in the country.

Nigeria Police Force

Police organizations and officials in a democratic society are charged with the responsibilities of promoting human rights, the rule of law and security through law enforcement and order maintenance. Several factors influence policing. Significant factors include political and economic structures and conditions; the legal framework; dominant values that are promoted and transmitted by the family, cultural and religious institutions; relationships between the leaders in the various sectors of society and citizens; conditions and standards of living of citizens; quality of infrastructure for producing goods, delivering services and guaranteeing human security and welfare; the organizational capacity and resources of the police; and the extent of partnership between the police and citizens.

The history of the Nigeria Police Force (NPF)¹ began with a 30-member Consular Guard formed in Lagos Colony in 1861 by the then British Consul. In 1879 a 1,200-member armed paramilitary Hausa Constabulary was constituted in Lagos Colony, and in 1896 the Lagos Police was established. The Niger Coast Constabulary was established in Calabar in 1894 in the newly proclaimed Niger Coast Protectorate. Likewise, in the northern part of the territory, the Royal Niger Company set up the Royal Niger Company Constabulary in 1888 with headquarters at Lokoja in North Central Nigeria.

When the protectorates of northern and southern Nigeria were proclaimed in the early 1900s, the Royal Niger Company Constabulary became the Northern Nigeria Police, and the Niger Coast Constabulary and the police forces in Lagos Colony were merged as the Southern Nigeria Police. After the amalgamation of the Colony of Lagos and the protectorates of northern and southern Nigeria in 1914, both police forces continued to operate separately until 1 April 1930, when they were merged to form the present Nigerian Police.

The NPF has evolved into a huge law enforcement organization with omnibus powers and a nationwide area of responsibility. As at 2016, the Nigerian Police had more than 320,000 personnel and operated through 5,000 village posts; 5,515 police stations; 1,115 divisional headquarters; 123 area commands; 37 state commands, including the Federal Capital Territory; 12 zonal commands; and a force headquarters which is the overall administrative and operational headquarters. The organizational structure and personnel strength of the NPF, according to Arase (2007), make it the largest law enforcement agency in Africa. The Nigerian Police is a national police agency established under Section 214 of the Constitution for the Nigerian Federation. The Constitution provides that there shall not be any other police force for the country aside from the NPF.

Researchers on policing in Nigeria have argued that the circumstance of colonial rule in which the police emerged in the country has created distrust between the police and the community. The argument is that colonial police forces which gave birth to the

1 It should be noted that before 1979 the police in Nigeria were officially known as the NPF, whereas after this they were termed the Nigerian Police (NP).

NPF were established by alien colonial powers to subjugate the indigenous peoples. Police forces, according to Tamuno (1970) and Alemika (1993), were introduced to the Nigerian territories by colonial rulers to promote their interests of exploiting and oppressing the indigenous peoples. Chukwuma (2000) has argued that the primary purpose of the police during colonial rule was to advance the economic and political agenda of the colonizers. This was achieved by deploying the police to brutally suppress communities and groups opposed to colonial oppression and exploitation. Against this historical background of its evolution, the Nigerian Police is not generally seen as a product of the consent of the citizens of Nigeria, accepted as reflective of their values and expectations, or embraced as a friendly force with the right orientation to protect their interests. This situation creates an 'us' and 'them' mentality between the police and the citizens that engenders rights violations that continually feed mutual distrust.

The role of the Nigerian Police, defined in terms of functions and powers, is contained in the Constitution, Police Act and regulations and other statutes of the country. Section 214 of the Constitution of the Federal Republic of Nigeria provides that 'there shall be a Police Force for Nigeria, which shall be known as the NPF, and subject to the provisions of this section, no other police force shall be established for the Federation or any part thereof'. There are several policing agencies in the country established by federal, state and local governments for the regulation of specific activities or enforcement of specific laws on drugs, traffic, environmental sanitation, economic and financial crimes. However, the NPF is the primary agency responsible for internal security in the country. This is an enormous and daunting task, which requires enormous resources, inter-agency collaboration as well as partnerships with citizens as individuals and in groups.

Violent extremism, conflict and crimes

Since the country returned to democratic rule in May 1999, there has been a significant upsurge in violent extremism, conflicts and crimes. Violent conflicts between ethnic and religious groups have claimed thousands of lives. Boko Haram terrorists have killed tens of thousands of citizens in the north-eastern parts of the country since 2009. Violent crimes of armed robbery, kidnapping, banditry and rustling have also claimed the lives of thousands of citizens over the past two decades. The upsurge in intergroup conflicts in which thousands of lives have been lost has been attributed to the opportunity provided by the democratic environment for aggrieved citizens and groups to vent their grievances that were suppressed during military rule.

Violent extremism includes not just acts of terrorism, but also covers consistent and coordinated communal violence designed to achieve a preconceived group interest which could be economic, cultural or political. Hence, if a person or group decides that fear, terror and violence are justified to achieve ideological, political or social or cultural change, and then acts accordingly, this is violent extremism (Glazzard & Zeuthen 2016).

There are three basic threads in the literature on responses to violent extremism (Glazzard & Zeuthen 2016). The first is counter-terrorism initiatives which involve the deployment of military or policing assets to deter, disrupt and crush violent extremist groups. The second is the 'countering violent extremism' approach, which encompasses sets of actions and policies involving mostly non-coercive means by the state towards addressing threats by violent extremists. This incorporates the hearts and minds and diplomatic actions aimed at weakening public acceptance of violent extremist actors as well as building international networks towards defeating violent extremist groups.

The third response to violent extremism is the risk reduction approach, which seeks to ensure that violent extremists do not cause harm through efforts to change behaviour. The deradicalization and reintegration process of violent extremists and deployment of intelligence assets towards undertaking risk analysis in support of proactive actions of the state can be categorized under this category. The efficacy of these responses depends on partnerships between various stakeholders in society.

Violent extremism in Nigeria often manifests along ethnic and religious identity lines. Consequently, several incidences of inter-ethnic violent conflict have occurred in different parts of the country, during which thousands of citizens were killed. There are more than 300 ethnic groups in Nigeria. There is widespread agitation by groups who claim to have been marginalized from the economic and political opportunities and resources within the country or its constituent states and communities.

Major violent extremist groups whose activities have threatened socio-political and economic insecurity in the country since 1999 include O'odua Peoples' Congress; Ombatse Group; Movement for the Actualisation of the Sovereign State of Biafra; Indigenous People of Biafra; Biafran Zionist Front; *Jama'atu Ahlis Sunna Lidda'awatiwal-Jihad* (Boko Haram); *Jama'atu Ansarul Musilimina Fi Biladis Sudan*; Movement for the Emancipation of the Niger Delta; and Niger Delta Avengers.

The Boko Haram terrorist group claims to be fighting to transform Nigeria into an Islamic state and to purge it of influences of Western education and culture. The terrorist group virtually overran three states – Borno, Yobe and Adamawa – in the north-eastern part of the country between 2012 and 2015, carried out suicide bombing in different cities in northern Nigeria, including the attack on the United Nations building and headquarters of the NPF in Abuja, the country's capital city. Violent extremism in Nigeria is viewed within the context of terrorism and hence classified under the Terrorism Prevention Act (as amended), 2011 (Section 2(a)(b)(c)), which imposes the responsibility of coordinating the national response to violent extremism on the Office of the National Security Adviser while ascribing specific roles to law enforcement agencies and the intelligence community (Terrorism (Prevention) Amendment Act, 2013).

The manifestations and incidences of violent extremism, conflict and crimes in the country include:

- Insurgency, terrorism, proliferation of ethnic and religious militias;
- Widespread incidence of violent religious and ethnic conflicts;

- Oil theft and piracy;
- Cattle-rustling and banditry;
- Violent conflicts between farmers and herders;
- Sabotage, disruption and vandalizing of critical infrastructure;
- Intra- and inter-communal violence over land, water bodies and chieftaincy titles;
- Political violence, especially election-related violence; and
- Violent crimes of armed robbery and kidnapping.

Because of frequent incidences of death, displacement and losses associated with violent extremism, conflicts and crimes, there has been widespread fear of crime in the country (Alemika 2014). In response, many citizens have resorted to organizing vigilante groups and the illegal acquisition of weapons, with the attendant proliferation of small and light weapons. There has also been increased pressure on the police to take measures to ensure the safety and security of citizens. Lack of capacity to meet the demand has aggravated a lack of trust in the police and tempts the law enforcement agencies to adopt extrajudicial measures that negatively impact on rights-based policing. Inadequate police capacity to deal with the challenges of violent extremism, conflict and crimes has led to the deployment of armed forces (army, navy and air force) in internal security operations in most of the states in the country, resulting in the militarization of internal security policing.

Police culture

Police culture, according to Manning (1989), includes core skills, cognitions, affect, accepted practices, generalized rationales, beliefs, rules and principles of conduct, which are situationally applied during policing. For Schein (1985), police culture consists of values, norms, perspectives and craft rules that inform police conduct and shape how an organization views itself and its environment. Police culture is acquired and transmitted through a systematic process of socialization at the training institutions, exposure to the realities of the policing world and interaction with professional colleagues (Van Mannen 1973).

Police occupational culture influences rights-based policing. Three basic assumptions, however, are implicit in discussions on police culture in relation to rights violations in the line of duty. First, that 'there is a close relationship between the demand of police work and the existence of the culture'; second, that 'the culture is relatively stable and uniform over time and space'; and third, 'that the culture has a negative influence on police practice' (Chan 1999: 100). The relationship between police work and societal variables produces sets of particular 'cop cultures' (Reiner 2000) and 'canteen sub-cultures' (Fielding 1994), whether it be in terms of 'street cops' or 'management cops' (Ianni & Ianni 2005), and engenders a 'working personality' (Skolnick 2005) that shapes and accounts for police conduct (Waddington 1999).

Many interrelated factors determine cop culture. Reiner (2000) speaks of the perception of danger, a sense of mission and feelings that the police represent a 'thin blue line' between order and chaos, while Skolnick (2005) identifies danger, suspicion

and social isolation, and Foster (2003) notes that the policing environment is laced with unpredictable and sometimes dangerous behaviours where outcomes can be difficult to predict. Other scholars have located police culture within the masculine and command-based structure of police organization and policing and the enormous power, discretion and authority vested in officers (Punch 1985).

A major extraneous factor underlying police culture is the pressure imposed on the police to 'produce'. This pressure, which Harriet Sergeant (2008) refers to in the *Daily Mail* of 11 February 2008 as the 'target culture', emanates primarily from the political class (in search of legitimacy) and the citizens (in need of security). This tends to underscore Chan's (1997) suggestion that a sense of mission about police work, an orientation towards action, a cynical or pessimistic perspective of the social environment, a 'siege mentality' and 'code of silence' which engender the concealment and proliferation of police misconduct, are significant features of police culture. Accordingly, the police evolve a culture of solidarity in the face of isolation, masculinity (mental and physical toughness) in the face of danger, discretion in the face of unpredictability, suppression of emotion in the face of challenges to their authority and collusion in the face of public scrutiny (Skolnick 2005). Police culture, according to Innes (2003), is mediated by the working environments of the various departments within a police institution. The different strands of culture between the specialist departments, street cops and management cops tend to evolve out of this assertion.

Police culture offers a framework for analyzing and explaining police behaviours, especially any misconduct associated with rights violations. In Nigeria, a combination of police culture and lack of capacity accounts to a large extent for police deviance and the violation of rights. Alleged police misconduct that is related to rights violations in the country includes abuse of the powers of arrest, pre-trial detention, misuse of firearms, extra-professional methods for evidence gathering and unjustified use of force. These are significantly engendered by police occupational culture as well as societal pressures, political influences, institutional inadequacies and the psychological state of the street cop.

Organizational capacity

Policing in any society is a very difficult, complex and dangerous vocation. The expectations of members of the public in Nigeria are many and varied and exceed the resources and support given to the police (Kayode 1976). Failures on the part of the police are easily observed and widely reported and condemned while their achievements are rarely recognized, applauded and rewarded. Despite the inherent hostile policing environment and sundry challenges, the NPF continues to struggle to discharge its responsibility of guaranteeing the safety of the lives and property of citizens, even at the risk of their own lives.

Between January 2014 and December 2015, 278 police officers paid the supreme sacrifice in the discharge of their statutory mandate. In addition, 194 officers

sustained varying degrees of injury. Similarly, between January and April 2016, a total of 72 police personnel lost their lives in countering violent extremism, with 78 others injured in similar circumstances. The killing of police personnel has increased since 2009 due to terrorist attacks by Boko Haram.

To perform their function of effectively preventing and controlling crimes, the police require diverse skills. As an American police chief wrote in 1947:

Policemen are challenged at every turn to render skilled services to the public. In a routine day a policeman may have to render first aid to an injured motorist, deliver a safety address, trail and apprehend a dangerous criminal, convince a runaway boy of the error of his ways, assist in the prosecution of a criminal case. These and many more are the abilities that the public confidently expects of policemen. Ideally, policemen must have some of the knowledges and skills of the lawyer, doctor, and the engineer; they must possess the endurance of an athlete; have the insight of the sociologist and psychologist and the compassion of a minister. They must present resolute, dynamic personalities particularly characterized by magnanimity. (Kooker 1947: 179)

The work of the police is very difficult in societies like Nigeria where there is mutual distrust between the police and the public, and assistance to the police is often withheld by citizens (Alemika 1988).

Policing in Nigeria is particularly difficult because of several inadequacies. Many scholars and government police reform committees in the country have identified several factors and inadequacies that inhibit their efficiency and ability to protect the rights of citizens and suspects (Tamuno 1970). Some of the major problems identified are:

- Inadequate logistics and resources (especially transportation, telecommunication, arms and ammunition, accommodation, etc.) for police services;
- Inadequate personnel with the appropriate training, skill and orientation required for policing a country with complex security challenges;
- Inadequate resources for effective law enforcement, intelligence-gathering, criminal investigation and prosecution;
- Lack of adequate and appropriate police stations, offices, facilities and accommodation;
- Lack of modern forensic laboratories and other technological aids to law enforcement;
- Inadequate and inappropriate arms and ammunition;
- Lack of a reliable and comprehensive criminal database; and
- Poor conditions of service, including lack of appropriate offices, transport and communication facilities, office and residential accommodation, and low remuneration and pension benefits (Federal Government of Nigeria 2006, 2008, 2012).

There have been numerous suggestions by government committees on police reform as well as by scholars and citizens on how these deficiencies can be addressed. Some of the recommendations are being considered for implementation by the government and the leadership of the Nigerian Police. Critical requirements for effective implementation of the recommendations are funding, effective leadership and support by the government through the Nigerian Police Council, relevant committees in the National Assembly, the Police Service Commission and the Ministry of the Interior. The most fundamental is the greater support from citizens necessary for the effective resolution of the challenges inhibiting optimal efficiency of the NPF.

Partnerships and effective rights-based policing

The imperative of partnerships between the police and the public for police legitimacy and effectiveness was underscored by the principle of law enforcement articulated by Robert Peel, the pioneer chief of London Metropolitan Police, in 1829. The principle comprises nine statements, with the first two particularly relevant to our discussion of the imperative of police–public partnerships in securing police legitimacy and effectiveness.

The first statement reads: ‘The basic mission for which police exist is to prevent crime and disorder as an alternative to the repression of crime and disorder by military force and severity of legal punishment.’² This emphasizes the significance of the prevention of crime and civil disorder instead of reacting to these problems. In order to do this in modern times, police require citizens to supply them with information for the production of actionable and timely intelligence to guide operations aimed at preventing and disrupting the occurrence of crime and civil disorder.

The second Peelian principle emphasizes that ‘[t]he ability of the police to perform their duties is dependent upon public approval of police existence, actions, behaviour and the ability of the police to secure and maintain public respect’. This stresses that police efficiency is dependent on citizens’ approval of the existence, actions and behaviour of the police. One of the problems encountered by the police forces in Nigeria since British colonial rulers established the first police force in 1861 in Lagos is the lack of approval of police existence, action and behaviours by significant sectors of the society.

The relationships and partnerships between the police and citizens in Nigeria are generally unsatisfactory because of several factors (see Arase 2013). Some of the factors are lack of organizational resources and the capability for effective service delivery; poor conditions of service that affect personnel performance and their relationship with suspects and complainants; inadequate social interaction between the police and citizens; indiscipline by some police personnel and the flagrant violation of law by a significant proportion of Nigerians who resent police action to curtail criminality; and citizens’ lack of appreciation for the nature of police work (Alemika & Chukwuma 2000).

2 See https://www.durham.police.uk/About-us/Documents/Peels_Principles_Of_Law_Enforcement.pdf.

As earlier noted, police are employed by the society, through its government, to enforce the law and maintain order in order to guarantee security and social development. The police will only be effective if the society provides the police with a clear mandate, adequate resources, and support for its operations by providing information about factors and individuals responsible for violent conflicts and crime. Intelligence-led policing is the most efficient approach to preventing crime and civil disorder.

Intelligence-led policing significantly depends on the willingness of members of the public to provide the police with information to produce and use intelligence (Arase 2013). If members of the public protect criminals in their midst, police work will be ineffective, and society will be plagued by insecurity. The consequence is that society will be unsafe because of the presence of violent criminals in their midst. This is a problem that has persisted in the country. Distrust between the police and the public has been to the benefit of criminals, as it inhibits police efficiency while citizens live at the mercy of criminals.

Several factors inhibit effective partnerships between citizens and the police in Nigeria. The first factor is the circumstance in which the police emerged in the country. Some NPF historians believe that police forces were introduced into the territories that were occupied by the colonial rulers to promote their interests of exploiting and oppressing the indigenous peoples, and hence, by origin, police forces were established as instruments of colonization (Alemika 1993; Tamuno 1970). This presents the mistaken perception held of the police by the citizens. Unfortunately, this mentality has been carried over into the post-colonial policing era in Nigeria.

The second factor that affects relationships between the police and the public has been the inability of the country to introduce required reforms for the reorientation of the inherited police forces in a manner that enhances collaboration between the police and the community. Although successive leaders have attempted to introduce varied reforms through several parliamentary committees, the reform initiatives have neither led to significant organizational changes in the force nor significantly enhanced police–public partnerships in crime prevention.

The third factor is the lack of resources and skills to ensure the efficiency of the police. Efficiency is a critical factor in developing and sustaining confidence in the police. Sources of inefficiency in the Nigerian Police include the huge gap between the human and non-human resources needed and those provided (Federal Government of Nigeria 2006, 2008, 2012); the deficit in operational competencies; poor remuneration and conditions of service; misconduct by some officers; and the public's unrelenting and demoralizing criticism.

The fourth factor is the widespread disrespect for the rule of law across all sectors and strata of society. Attempts to enforce the law are often resisted by a significant proportion of the population. Many citizens also do not understand the law and the functions and powers of the police. Therefore, the enforcement of certain laws is considered unacceptable by an uninformed public.

Further, many citizens expect the police to act swiftly on any complaints, irrespective of the nature of the allegations, some of which may not constitute a breach of criminal law. When police refuse to act in such cases, they are accused of corruption or ineffectiveness. Several Nigerians act as if they are above the law. When the law is enforced, they use various media to discredit the police and other criminal justice agencies.

These and other factors all contribute to the generally poor relationships between the police and the public and have an impact on police effectiveness, their legitimacy and on rights-based policing.

Concluding remarks

Successive reform initiatives in Nigeria have introduced policies and strategies to ensure rights-based policing and to strengthen police–community partnerships. Human rights violations of concern are brutality, corruption, wrongful arrest and detention, denial of bail and the delay of suspects’ arraignment in courts of law.

The Police Service Commission was established by both the Constitution and a statute of the parliament. It has wide functions and powers, including the appointment, promotion and discipline of all police officers, except the police inspector-general. There are internal mechanisms within the police for the discipline of both senior and junior officers. Nonetheless, the problems enumerated above persist due to several factors, including the lack of capacity to ensure proper training and supervision of officers, and the absence of the necessary equipment and facilities for operations, intelligence-gathering and investigations without having to resort to ‘hard tactics’, such as forced confessions, in order to control violent crime and extremism.

To prevent corruption, the leadership of the Nigerian Police at various times has introduced measures to reduce the opportunities for extortion by prohibiting unnecessary stop-and-search points on highways and by informing the public that bail for suspects is free. There is also a police complaints bureau as well as complaint boxes in strategic public and private places.

During my tenure as the inspector-general of the NPF (April 2015–June 2016), I introduced several measures to promote rights-based policing and to enhance partnerships between the police and the public. Among the measures was the convening of the National Security Summit in August 2015. It was opened by the president of the Federation, Muhammadu Buhari, and attracted over 500 participants, including important traditional rulers, public officials, non-state actors and other strategic security stakeholders. The purpose was to discuss the challenge of police–community partnerships with a view to developing pathways for strengthening the concept of citizen-led policing in Nigeria. The summit was later replicated at state and divisional command levels across the country.

Other measures included the dismantling of roadblocks and the introduction of a safer motorized highway-patrol system to reduce the extortion of motorists. In addition, two ICT-driven platforms that provided a real-time avenue for members of

the public to report professional misconduct and hold their police accountable were introduced. These were Stop the Bribes and the Complaint Response Unit. These channels were effectively used by aggrieved citizens to report erring officers.

Significant efforts were made to enhance intelligence-gathering, strategic management and operational capacity through training and the acquisition of equipment to aid crime prevention and enhance the efficiency of and public confidence in the police. Attention was given to the welfare of officers, which is critical to their effectiveness and professionalism. Realizing this, major efforts aimed at improving officers' welfare were introduced. House ownership schemes for officers across the ranks were given priority.

Strong police organizational capacity and partnerships between the police and the public are critical preconditions for the effectiveness and protection of the rights of citizens and suspects by any police organization. Police effectiveness and rights-based policing demand that the government, the leadership of the police and citizens work together to ensure a safe and free society.

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Chapter 10

Policing by task force in post-conflict Nigeria

Jimam T. Lar



Introduction

When several years of military rule came to an end in 1999, there was hope that Nigeria's security sector would be reformed to respond to the expectations of citizens. However, after more than 17 years, the implementation of such reforms not only remains elusive, but the insecurity challenges seem to have become more intractable. There are two significant challenges to restoring and sustaining peace – the inter-religious and inter-ethnic relationships. Considering their importance, understanding these dynamics as they exist in the country generally, and in northern Nigeria in particular, is important not only in itself but as a case study of intergroup relations. Although numerous social groups co-exist peacefully across large areas of the country, there have also been intermittent periods of violent conflict, more concentrated in some areas than others. In the wake of the violence, state institutions, particularly the police with the statutory mandate to provide security and to guarantee the safety of citizens, have been unable to meet the expectations of the growing populace in the provision of safety and security.

The traditional Westphalian concept of state sovereignty not only depends on a state's ability to maintain its territorial integrity by securing its borders, but also requires the presence of institutions designated to protect its citizens. This traditional understanding of the state and security was further influenced by the work of Max Weber – the 'Weberian state' was perceived to require a monopoly on the legitimate use of violence in order to be considered sovereign. Contemporarily, such understandings of the modern state have been thoroughly questioned (Adebawli & Obadare 2010; Sharma & Gupta 2006). Joel Migdal, for instance, notes that 'while the state may occupy a privileged place in our collective thinking, its empirical reality in large parts of the world is much more complex' (1988: 15). One may, for instance, find few useful answers if one were to measure the state in Africa by the yardstick of a Weberian ideal – the state that has presence, authority and reach – yet equally, the same seems apparent if one were to define such states

as weak, unable to govern their territory and people in a meaningful way. In such instances, minimally, they still exist and are recognized as sovereign by other states. Perhaps more adaptive, Bierschenk and De Sardan (2014) use the metaphor of states and public services as a working site, an ongoing construction site. As they note, they:

proceed from the premise that processes of state formation in Africa were not completed once and for all with the establishment of the colonial states, with the achievement of independence in these countries, or with the recent emergence of democratic (and civil) regimes. (2014: 7)

They do not, however, limit this argument to African states, but find the model equally applicable in developed contexts:

If one considers, from a Weberian perspective, the institutionalisation of violence, the local anchoring of central power and the self-limitation of the rulers qua codification of the law as the core of the development of the modern Western-type state, state building processes are never ending. (2014: 7)

Both conceptually and pragmatically, the task of modern political analysis is therefore to identify how these dynamics manifest in specific state contexts and in particular institutional settings. This chapter attempts to speak to this concern by focusing on some of the complex institutional dynamics which have helped define the post-conflict Nigerian state.

Of particular interest, and as a useful means of understanding the complexity of contemporary state sovereignty, is the role of the Nigeria Police Force in relation to civil disputes. In the context of violent conflict and insurgency, the statutory role of guaranteeing internal security is shared between the Nigeria Police Force and other state security agencies, principal of which is the Nigerian army, and select non-state security actors. Embedded in the very architecture of the Nigerian state is then a pluralist security landscape, itself in immediate contrast to the traditional understanding of statehood. Not only this, but such a conception of the state's anathema, conflict, serves as a driver of a more nuanced understanding of the pluralized state. Plurality is then in itself an important concept deployed to understand this interesting violent security landscape, which at its core in Nigeria is the police force. Such plurality finds extension beyond the state's architecture, moreover, and is frequently seen in the functional dynamics of the security landscape. The Nigerian military, particularly the army, is involved in peace enforcement and peacekeeping operations, and thus their role also extends to the civil policing of a post-conflict society. Vigilante groups, decidedly *non*-state actors, also represent one of the components of this present-day plurality, pragmatically embodied in Nigeria by the joint task forces (JTFs), which consist of the army, the police and local vigilante groups. Indeed, the JTFs, as they are commonly known, are charged with an essential task of the state despite including non-state actors – that is, restoring peace and maintaining security in violent contexts.

Should this example be seen as pointing to a new form of state configuration, or inversely, represent the ascendancy of the military in internal security operations? On the contrary, it could be suggested that it provides us with a viable example of inter-agency partnerships, where the military supports the police in providing civil policing duties during and after episodes of violent conflict. Further questions arise beyond this. Does it expose the gaps that exist in inter-agency collaboration? Moreover, to what extent does the active role of vigilante groups undermine the police, or rather, does it provide evidence of police–community partnerships? Perhaps the core concern focuses not on the structure of the modern state, but on its purpose, with the example bringing into question its capacity, accountability and the rule of law as a whole. As a result, how these relations and interactions manifest in processes of conflict management, conflict resolution and peace-building remains unclear; however, this chapter aims to at least contribute to the ongoing conversations around these issues.

Methodologically, this chapter is informed by my research on the histories of plural policing practice in contemporary Nigeria. I primarily employed a qualitative approach based on extensive fieldwork, with several weeks spent in the urban metropolises of Jos and Maiduguri. During these research trips, I recorded many personal accounts and the experiences of individuals and groups, including police officers, military officers, local government officials, community leaders, and vigilante group leaders and members.

In sharpening focus, it should be noted that I adopt a broad definition of policing and internal security, in which all organized activity and services provided by statutory and non-statutory institutions that seek to ensure and maintain law, order and security in each society can be considered forms of policing. As referred to earlier, in a traditional state-centric sense, the provision of security and the maintenance of law and order for citizens are the responsibility of the state. State security and judicial institutions are therefore statutorily mandated to provide security, guarantee the safety of citizens and secure public and private property. This is not in doubt; the point, however, is that they do not act alone. Such dynamics have come under analysis in the literature before, with a number of scholarly works speaking to relationships and interactions between state and non-state actors in relation to security functions, with notions like ‘twilight institutions’ (Lund 2007), ‘heterarchy’ (Klute & Mbalo 2011), multi-choice policing (Baker 2008) and ‘hybridity’ (Bagayoko et al. 2016) frequently being mentioned. The Nigerian example is, however, not commonly used, despite there being a long history of vigilante practice in the country. Moreover, this is not to suggest that the presence of vigilante groups is a manifestation of police failure, but rather that these non-state actors support the police in carrying out state functions. They are also officiated as legitimate state representatives, with vigilante members vetted by community leaders, registered with the police and given uniforms and identification cards. They provide information to the police and join the police on patrol – on occasion arresting suspects and handing them over to the police. It is to these concerns and contexts that this chapter now speaks.

Collective violence in Plateau state

Plateau state, and in particular the capital, Jos, and the northern senatorial zone, represents one of the most volatile theatres of violent conflict in Nigeria. Jos is the capital city of the central region and home to approximately 1.6 million people. It is part of the middle belt, an ethnically diverse zone made up mostly of minority ethnic groups running across central Nigeria. A major centre of tin mining during British colonial rule, Jos attracted a huge flow of labour migrants from other parts of Nigeria. As the city continued to grow in the decades after Nigeria's independence, tensions and mutual suspicion developed between locally based autonomous groups, frequently referred to in the literature as 'indigenes' and distinguished from some of the migrant groups represented in the literature as 'settlers'. The tensions between these groups culminated in violent conflicts at the turn of the millennium, being driven by historical social relations and contemporary political contestation, and resulting in incessant episodes of sectarian violence (Higazi 2007).

The first of these collective violent conflicts erupted on 7 September 2001, and another episode took place in 2004. This was followed by a relative respite. However, in November 2008, there was renewed violence in Jos during local government elections in which at least 800 people were killed. This conflict was not definitively resolved and more violence broke out in January 2010, the worst-affected areas this time being in the rural areas on the edge of Jos. While the urban metropolis of Jos has not witnessed further major outbreaks of conflict since 2010, there have been continued episodes of rural violence in parts of the state. The conflict and violence in Plateau is characterized by ethno-religious mobilization, emerging from intergroup disputes, often drawing on historical narratives and contestations over belonging, with variations between urban and rural areas.

While there is substantial literature on the violence in Jos specifically, there is less that conceptually embeds the violence in broader concerns with the place and function of the state (Danfulani & Fwatshak 2002; Higazi 2007, 2011; Mustapha et al. 2018a, 2018b; Ostien 2009; PIDAN 2010). While factors such as the perennial contestation over the founding and ownership of Jos, and who is an indigene and who is a settler, are critical issues in understanding the violence, they do not explain why the city of Jos has been periodically convulsed by violence since 2001. Mustapha et al. (2018a, 2018b) have suggested a historical basis for the conflict, in that the political and administrative trajectory of changes from 1976 onwards began to reshape how social groups reinterpreted the characteristics of their shared city and contributed to a change in political and social relations. From another perspective, Jana Krause (2016) explores the agency and leadership of community leaders in preventing outbreaks of violence in some quarters of Jos. Krause's specific case of the Dadin Kowa community is convincing and shows the role of local agency in protecting civilians during episodes of violent conflict. Following several episodes of violence, previously mixed quarters of the city have become segregated along mainly religious lines. This is, however, not to suggest that all neighbourhoods of Jos have always been mixed; it should be emphasized that residential differentiation along religious and ethnic lines has always

been a feature of some parts of the city in some instances. The ongoing violence has, however, magnified and made more tangible these differences. Neighbourhoods like Angwa Rogo-Angwan Rimi have since 2001 lost many of their Christian residents, most of whom were employees of the University of Jos. Equally, Muslims have been forced to vacate neighbourhoods like Eto Baba and Jenta. The resulting reality of 'no go areas' has drastically altered patterns of residency, transportation and business and these serve to reinforce differences which were once not as important.¹ The situation has, however, improved in recent years, particularly regarding transportation and business transactions; residential areas, however, remain largely segregated, with just a few exceptions.

The Boko Haram insurgency

Since 2009 the Nigerian government has been battling an Islamist insurgency, orchestrated by the *Jama'atu Ahlis Sunna Lidda'awatiwal-Jihad*, colloquially known as Boko Haram. A state crackdown by Nigerian security forces in Maiduguri forced the insurgents underground, which preceded the present strategies and attacks characterized by suicide bombings and guerrilla tactics – these are usually undertaken against military, civilian and vulnerable targets such as churches, mosques, palaces, schools and markets. Conflict assessments of these insurgent activities have generally attributed the convergence of religious, economic, social and political factors as the primary driver (Higazi 2015; Mustapha 2014).

The key factor that has underpinned the insurgency is the group's extreme interpretation of Islamic doctrine. Boko Haram conveniently mobilized support, and in some instances demanded compulsory conscription, by harnessing the notion that broader Islamic piety had been fundamentally undermined and thus needed to be fought for. Furthermore, the group's anti-establishment position was welcomed by frustrated young men who saw recruitment into the ranks as an opportunity to oppose the ruling class. Thus, in Nigeria, the dynamics of socio-economic exclusion and religiosity are crucial drivers of the pathways towards radicalization (see Monguno & Umaru 2014). Indeed, understanding social and economic dynamics in Borno state, and other parts of the North East, generally highlights some of the drivers of radicalization (Monguno & Umaru 2014). Boko Haram's most significant atrocities occurred in late 2014, when a significant humanitarian crisis occurred in the territory it controlled. In fleeing the attacks, more than two million internally displaced persons (IDPs) were created, with tens of hundreds killed. The insurgency was initially exacerbated by the nature of the military's response, which was characterized by indiscriminate attacks on civilians in response to attacks on personnel.

Both the insurgency and the efforts of the Nigerian government to combat its spread have impacted on cross-border mobility, particularly with reference to Niger, Cameroon and Chad. In all these countries there has also been a significant impact on cross-border commerce, itself essential to the livelihoods of groups that live

1 For more sustained analysis on this, see Krause (2011) and Best and Rakodi (2011).

near the Nigerian border, especially the major towns and cities in the Lake Chad basin. Indeed, the violence has predictably spread across the borders into Niger, Cameroon and Chad, which were initially used by Boko Haram as reserve bases. In response, Nigeria and its neighbours have revived the Multi-National Joint Task Force (MNJTF), which was initially established to combat border smuggling and banditry in the early 1990s. The MNJTF has made substantial gains in combatting the insurgency, with Boko Haram having been driven out of Maiduguri and most of the towns and villages they had taken. While the peaks of the insurgency seem to have passed, the continued threat of attacks by suicide bombings remains a major concern. There is also a continuing humanitarian effort, led by the Nigerian government's North-East Development Commission, the Presidential Initiative for the North East, the Victims Support Fund and the Safe Schools Initiative. Additionally, there is also a large international non-governmental organization presence. In my latest trip to Maiduguri in September 2017, the IDP camps still had substantial populations, and the volatile mix that creates a cohabitation of threats and opportunities characterized by insecurity, migration and violent extremism remained a risk factor in Nigeria's north-eastern zone and the borderlands.

Thus, even a cursory consideration of the Nigerian security landscape shows a plethora of collaborative forms of response to internal security challenges, albeit primarily characterized by deployment of the military. Of interest to this chapter is the JTF, code-named 'Operation Lafiya Dole', which was operationalized in response to Boko Haram, and the special task force, named 'Operation Safe Haven', which was deployed in response to the violence and insecurity in Plateau state, central Nigeria.

Federal task forces and state security agencies

Operation Safe Haven, set up by then president Goodluck Jonathan in 2009, was primarily a security grouping devised in response to the escalation of violence in the rural areas of the Northern Senatorial Zone of Plateau and parts of southern Bauchi. Southern Kaduna was added to the spatial area of the task force in 2017. The task force's primary objective was contributing to the return of peace on the Plateau, a mission of re-establishing a 'safe haven' on the Plateau, and initially consisted of the army and the Nigeria Police Force. Ongoing instability resulted, however, in the JTF being replaced by a special task force in September 2011 – this consisted of the army, navy, air force, mobile police force, the state security service and the civil defence core. To enable this, a state of emergency was declared in five local governments.

The commander responsible for setting up the special task force, Major General Oluwasuen Oshinowo, described the mandate of the grouping as 'strange':

In my opinion, the mandate of the special task force I was setting up was a strange one, strange because you will recall a state of emergency was declared in five local government areas most affected by the rural violence, the mandate of the mission

maintained the governor and the state authorities, but removed the security from their authority. This as you could imagine made engagements with Governor Jang very awkward – I remember the governor was not too pleased when I told him I was in Plateau state to work with him but not under him or for him. (KII 2017a)

It seemed clear that, in the rural areas of Jos South, Barkin Ladi, Riyom and Bokkos Local Government Area, the continued escalation of insecurity – further aggravated by the links between drugs, arms and criminality (see Kwaja 2017) – necessitated the deployment of a robust security framework. This was magnified by the extensive proliferation of arms (mostly AK47s) that had accompanied the decade of collective violence, and the demand for a resolution driven by the increasing number of IDPs from the Plateau in addition to those fleeing the Boko Haram insurgency in the North East.

The special task force was initially deployed as a peacekeeping/enforcement operation in 2010, and continued officially as such at the time of writing (September 2017). From the outset, the Nigerian military was accused of various abuses and bias, the resulting community protests spurring on the incorporation of the Mobile Police Force (Higazi 2016). In most of these areas, vigilante group members had positioned themselves in critical roles in the prevailing security landscape and were mobilized to cooperate and collaborate with state security forces, patrolling with operatives of the special task force. In line with this, Gen. Oshinowo notes that the vigilante groups were a great resource to his men, particularly in the rural areas. Specifically, drawing on their local knowledge, vigilante members understood the local terrain, the customs and spoke the local languages. By being part of the security operation, vigilante group members helped bridge the gap between the state security agencies and the communities (KII 2017a). Indeed, Higazi shows how in some villages:

The vigilante units and their leader formed the main line of communication between the villagers and the security personnel. The perspectives of the vigilantes and the quality of information and intelligence which they provided, influenced the nature of the STF [special task force] patrols and the peacekeeping efforts. (2016: 378)

Such relationships were not, however, unique to the area, and can also be seen in the case of the military and the Civilian Joint Task Force (CJTF) operatives in Maiduguri, Borno state. At the community level, emphasis was frequently placed on ‘defending’ and protecting people against violence, with many attempting to further bolster their personal safety or the safety of their immediate dependants by obtaining firearms, the extent of which explains the growing sophistication of weapons employed in the several episodes of violence. Today, Plateau and Borno states are flushed with many light weapons, most of which are acquired through smuggling networks by religious, ethnic and community development organizations. Non-state actors across the Nigerian urban landscape have been restructured and reorganized in parts of the states as quasi ‘defence forces’ as a response to violent conflict.

Another challenge that emerged concerned the leadership dynamics and shared operational mandates of the newly deployed task force and the ongoing operations of the Police State Command. Such tensions did not, however, deter resourceful and dynamic commanders who were keen to increase collaboration and devise coherent operational engagements with the police. Speaking to this, Gen. Oshinowo (KII 2017a) accounts for his efforts to establish and maintain a good working relationship with the state police command in this manner:

When I took over, one of my priorities was to have a smooth professional and operational relationship with the police. I made concrete attempts to breach the barrier between the police, the civil defence, the DSS [Directorate of State Security] and the task force. I called for regular meetings and deliberately suggested that same should hold at the state police commissioner's office. Additionally, we went on operations together, to show unity.

Operation Rainbow and the Neighbourhood Watch Agency

The Plateau state government established both Operation Rainbow and the Neighbourhood Watch Agency in March 2013, as auxiliary security groupings aimed at enhancing the conflict-management and peace-building processes. In this vein, the Plateau state government had secured presidential approval to establish Operation Rainbow as a hybrid security framework, the driver of which was a concern by the Plateau state government with the military personnel deployed to command positions in the state, indicative of the 'politicization of security'. The Bill establishing Operation Rainbow outlines the composition of personnel from security services as follows: the Nigerian army, the navy, the air force, the Nigeria Police Force, state security services, Nigerian immigration service, the Nigerian prison service and the Nigerian security and civil defence corps. However, the reality on the ground presents a somewhat different picture, as serving military personnel are not a part of the group; the majority of operatives are from the police, the Nigerian prison service, the security and civil defence core, the DSS and a civilian component (also known as the 'Civilian Rainbow') (KII 2017b). Structurally, the grouping is headed by a coordinator legally mandated to be a retired general, not below the rank of brigadier general. The coordinator is supported by several directors, amongst whom are the director of administration, director of intelligence and the director of operations (the latter two are retired security personnel of the rank or equivalence of colonel). The grouping is structured and organized according to departments, such as operations, intelligence, planning research and statistics, and the department of economic empowerment and peace-building. The functions and mandates of the grouping were similar to the joint task force (Operation Safe Haven). The grouping's operational focus and functions, as legally delineated, include:

- Stop and search at borders and entry checks into the state;
- Cordon and search of suspected persons;

- Arrest of suspects and handing them over to appropriate agencies for prosecution;
- Joint intelligence-gathering with neighbouring states;
- Dialogue with relevant authorities;
- Measures that will enhance peace and security within the state; and
- Coordinating activities of the Neighbourhood Watch Agency in the state.

Though commanded by a retired major general, the Nigeria Police Force is at the core of these operations, and is deployed to all major flashpoints while also providing security more generally, such as at events. The Bill mandated for an inclusive approach, including community input – ten individuals were selected from each ward across the state, constituting the local government detachment of the grouping in the 17 local government areas. The leading role of the Civilian Rainbow is focused on conducting early-warning patrols and response. In terms of everyday practice, civilian operatives provide a platform for state security operatives to collaborate with locals who know and understand the terrain better.

The DSS detachment in Operation Rainbow is saddled with manning the cyber patrol hub aimed at gathering information and providing early-warning support. Operation Rainbow is funded by the local government areas via the joint state and local government accounts. Operatives receive a daily allowance, which is often accumulated before payment. A police officer working with Operation Rainbow noted that the payments were often not regular or consistent (KII 2017c). Alongside the Operation Rainbow group, the government, through the Plateau state's Operation Rainbow and Neighbourhood Watch Law, 2013, also established a Neighbourhood Watch Agency, colloquially known as 'Civilian Rainbow', community-based safety collectives registered and coordinated by communities themselves at the local government council level. Neighbourhood Watch members are diverse, but must be able-bodied persons not below the age of 18. Furthermore, a person to be recruited as an operative of the Neighbourhood Watch Agency should possess the following qualifications:

- A minimum of First Leaving School Certificate;
- Must be of sound mind and character;
- Must not have been convicted of a crime by any court of law; and
- Must not have been declared bankrupt by a court of law.

The law provides for a maximum of 400 operatives in a local government area. As a check and oversight measure, the local government chairman is required to obtain confirmation from the divisional police officer that the proposed operative has never been convicted, and determine the desirability of the proposed operative after consultation with the traditional ruler or ward head where the proposed operative resides. The Neighbourhood Watch Agency is in practice a vehicle for the legalization and legitimation of existing vigilante groups. The role and functions of a Neighbourhood Watch include the following:

- Identify and report persons that are likely to constitute a threat to the peace and security of their neighbourhood to the appropriate authority;

- Gather information on the general security situation within the neighbourhood;
- Ensure the security of the community;
- Patrol and keep surveillance within the community;
- Monitor the movement of persons and give information to the police and Operation Rainbow in the event of any reasonable cause for suspicion of such movement;
- Arrest or cause to be arrested any person found within the community reasonably believed to intend the commission of an offence or to have committed an offence;
- Hand over such a person arrested to the nearest police station or Operation Rainbow within the community; and
- Give evidence in the case of prosecution of an offender.

The operational dynamics of Operation Rainbow and the Neighbourhood Watch Agency seem straightforward yet have been beset with hurdles. At the top of the command, control and supervision, the law provides that the coordinator should report to the state governor, mediated by the position of the permanent secretary, who is in control administratively of coordinating the security portfolio within the state government machinery. I gathered from my interviews at the Operation Rainbow headquarters that the working relationship between the permanent secretary and the coordinator of Operation Rainbow in the past has not been very cordial (GI 2017a). The coordinator of Operation Rainbow has not been keen to acknowledge the mediating role of the permanent secretary, preferring rather to report to and be answerable directly to the state governor. Clearly, these personality clashes at the level of command and control of Operation Rainbow undermine the grouping's ability to achieve its mandate, which seems to be the general opinion of officers and personnel of Operation Rainbow (GI 2017a). The relationship between the special task force and Operation Rainbow also seems to have numerous problems, primary of which is that they were not designed to be collaborative. While the task force is a federal government responsibility, Operation Rainbow was established and directly functions under the supervision of the Plateau state government. Ultimately then, they may share many of the same functions and objectives, but vary in support base and levels of operation (GI 2017a).

Operation Lafiya Dole and the CJTF

In response to the activities of Boko Haram, citizens began to organize and mobilize, initially only with the objective of self-defence. This, however, soon evolved into seeking out the insurgents in the communities and in some instances attacking and killing them, or at least arresting and handing them over to security agencies (GI 2017b). Non-state security actors' participation in the counter-insurgency effort are varied in terms of both organization and effort. The mobilization against Boko Haram by communities in Maiduguri and nearby towns resulted in an escalation of violence by Boko Haram against civilians, further driving the mobilization of communities. Largely collaborating with the military, and to a lesser extent with the police, the main non-state security actors in Maiduguri and Borno state are the CJTF, the Borno State Youth Empowerment

Scheme (BOYES), the Vigilante Group of Nigeria, and hunters' associations. The CJTF, inspired by the military's joint task force, was founded in 2013 to fight Boko Haram. The CJTF began their operations by first combing through neighbourhoods in Maiduguri in search of Boko Haram members, whom they would report to security personnel. Following on from this, they then began setting up and manning check-points, armed with rudimentary weapons such as sticks, clubs and machetes. Their ranks quickly swelled, with BOYES becoming a detachment of the CJTF, and as a result they received additional training and support from the state government.²

The military quickly recognized the operational utility of the CJTF in the counter-insurgency effort. So as to strengthen the organization, the CJTF was then organized according to the military task force's command structure, establishing units within the communities, all of which were reflected by the ten JTF sectors of the metropolis. The lowest level of command is the sub-unit, with the sub-unit chairman reporting to the sub-overall chairman, who reports to the overall chairman, who oversees the sectors. The ten sectors are organized as military battalions, with two battalions in Maiduguri metropolis (215 and 195). Sectors 3 to 7 are under the 215 battalion and the 195 battalion has sectors 1, 2, 8 and 10. The CJTF coordinating body is made up of the state executive (15 officials), and the ten sector commanders. The CJTF have a general uniform, with black top and black trousers, and blue strips on the shoulders and pockets with the Lafiya Dole logo, the specificity of which is unique to each sector. For example, the Bolori sector (no. 6) wears a blue shirt and the government reservation area sector (no. 5) wears red shirts.

The CJTF operational functions range from gathering intelligence and supporting surveillance missions to patrolling and manning checkpoints. That the CJTF are locals and have public support from their communities not only provides social legitimacy to the CJTF, but also helps bridge the gaps that had existed between the military and the communities. In this role, they served as intermediaries and made sincere efforts to build trust between the two. In the process, the CJTF became a means of embedding local ownership of the security process by employing a community policing model which sought to integrate aspects of local ownership and participation. While conducting field research in Maiduguri, there were several accounts of the usefulness of the CJTF in bolstering the ongoing military operation. Being mobilized to serve as a member of the CJTF comes with obvious risk – a CJTF leader lamented that they had recorded over 700 casualties between 2014 and August 2017 (KII 2017d). Additionally, not all CJTF members were provided a monthly stipend, forcing some of the vigilantes to depend on community goodwill, monetary gifts and other forms of support from local authorities. The BOYES programme offers professional training to the CJTF, but this benefits only a fraction of the whole group, estimated to be over 20,000 people in Borno alone. In recognition of their efforts, the Borno state government signed the Youth Empowerment Agency Law in May 2015, which aside from legalizing the CJTF, also facilitated job creation programmes for members of the CJTF. After two years, the state government has not delivered on the resulting promises, however (GI 2017b).

2 Trained for three weeks by the military, and paid a monthly allowance of 15,000 Naira.

A critical consideration of the above analysis of the Borno context, and particularly in Maiduguri, is that of where the police fit in this security landscape of counter-insurgency operations. The Nigeria Police Force was once at the forefront of countering Boko Haram, particularly in the early phase of the insurgency. The Mobile Police Force, a paramilitary wing of the Nigeria Police Force, were the main state security agents when the insurgents unleashed a wave of urban violence in Maiduguri and Damaturu. While the wave of insurgent violence has limited police presence and operations somewhat, they still contribute to the JTF operation with a substantial deployment of the Mobile Police Force as a critical component of the larger task force. Additionally, the 53rd squadron of the Mobile Police Force is deployed to Bama town, and works closely with the military. At the time of writing, police involvement was generally restricted to the metropolitan areas of Maiduguri and the liberated local government headquarters. The police have also moved back to areas where residents have returned, although the regular police personnel are supported by the Mobile Police Force. These forces are also deployed in liberated areas like Baga, Konduga and Monguno (GI 2017b).

Lessons and implications

The plurality of security actors that may exist in a state may also differ in form and function. As Loader (2000) has argued, it could be through private policing forms secured through government; it can also be transitional police arrangements taking place above government; to markets in policing and security services unfolding beyond government; and policing activities engaged in by institutions organized by citizens alongside government. There is as such also a pluralized landscape of actors and purposes when they develop in response to violent conflicts.

What clearly emerges from these two cases, however, are scenarios where supplementary state agencies and non-state actors carry daily internal security duties, most of which occur beyond instances of collaboration with the Nigerian police. In heightened levels of insecurity, some of the primary weaknesses of the Nigerian police are exposed. With a force estimated at 308,000 personnel responsible for providing security to approximately 182 million citizens (see Abdu 2017), it is obvious that the police will struggle to cope with the plethora of security challenges that emerge, even more so when violent conflict emerges.

Understanding these challenges from the viewpoint of the Nigeria Police Force requires one to consider the origins and historical development of the police as the state agency responsible for ensuring internal security. It is critical to understand that the police, the military and the non-state actors involved in internal security operations do not exist in isolation from one another, but are products of a security socialization continuum, in which each learns and is supplemented by the practices of the others. The basis of this is the understanding that socialization in this context speaks to the process of gaining competencies to practise security provisioning. The mannerisms and behaviour of the police as an institution have been influenced by the long years of military rule and the legacies thereof, for

instance. This experience has various manifestations, such as citizens having experienced a police force that is known for its culture of brutality, which in turn has alienated the police from the population. As I have noted elsewhere (Lar 2017), police practice in Nigeria is rife with accounts and cases of brutality and violence, characterized by physical assault, harassment, illegal arrests and detentions. There are reports of police excesses during crime control operations, which range from the control of demonstrations and protests to harassment at checkpoints. Police brutality also occurs in the form of extrajudicial killings and the summary execution of suspects.³ The resulting lack of social legitimacy explains, to a considerable extent, why communities do not trust the police, especially during times of conflict. As we have seen with some of the narratives referenced above, police engagement with communities through the participation of vigilante groups in internal security operations provides an opportunity to embed civil and lawful measures relating to policing practice so that the organizational responses are in tune with the specific needs of communities. It should also be mentioned that the Nigeria Police Force has suffered from many years of underfunding. This has come to manifest itself most significantly in gaps in training and the lack of adequate technical equipment, and has also contributed to the inability of the Nigeria Police Force to respond satisfactorily to internal security challenges.

While the narratives, evidence and accounts that informed this study may have shown the limited role of the police in internal security operations, it may still be that the police have a significant role to play in the post-conflict context. As the main state agency mandated with the responsibility to provide and guarantee internal security, police detachments like the mobile police units operating in Borno and Plateau states have both the training and mandate to operate in military-like operations. They are, however, still also expected to perform everyday civil policing work and collaborate with communities emerging from violent conflict.⁴

The argument that emerges from this chapter supports the insights already raised by Hills (2009) and Thurmann (2017). The challenges that are encountered within the internal security landscape in Nigeria demand of us to reconsider the nature, form and training of the police. To insist on the development of a universal model of police work as it relates to internal security is to refuse to acknowledge our current realities, with the in-depth training the mobile police receive perhaps a privilege that should be extended to all personnel of the Nigeria Police Force. If the ultimate objective is for the police to reverse the ascendant role of the military in internal security operations, then the police will have to also reconsider the modes, features and processes which it draws on in training. Consequently, the policy implication is not to simply continue to demand the further demilitarization of the Nigerian police, but rather to find a creative way of providing para-military training in line with that developed for the Mobile Police Force. The police will therefore be better equipped, trained and prepared to be deployed in response to outbreaks of collective violence and insurgency.

3 For statistics and more detail on police brutality and violence in Nigeria, see Alemika and Chukwuma (2000) and Okeshola (2013).

4 See Thurmann's excellent contribution (2017) on a military police unit in Kinshasa.

Another lingering matter regarding the organization and performance of the Nigeria Police Force relates to the challenges found in debates on devolution and decentralization. The Constitution of the Federal Republic of Nigeria, 1999, gives state governors authority to directly deploy the police when such action is considered necessary to secure public order and secure public safety, with the commissioner of police mandated to comply. In the same Act, however, there exists a confusing caveat that can blur the chain of command. As it reads:

Subject to the provisions of this section, the Governor of a state or such Commissioner of the Government of the state as he may authorise in that behalf, may give to the Commissioner of Police of that state such lawful directions with respect to the maintenance and securing of public safety and public order within the state as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with: Provided that before carrying out any such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such minister of the Government of the Federation as may be authorised in that behalf by the President for his directions. (Section 215, Articles 4 and 5)

When sectarian violence emerges, state governors are held accountable as they are regarded as the ‘chief security officers’ of their states. Such accountability is, however, imprecise as the governors can clearly excuse themselves from liability in noting that they do not have direct control over or are not responsible for the police. While there have been cases where the state governors were clearly culpable because of their specific actions or lack thereof, many have unfortunately regularly hidden under the guise of not having constitutional control over the police.⁵

The monopoly of policing responsibilities by the Federal Government of Nigeria has thus contributed to the inability of the Nigerian government to resolve lingering security challenges. Few would doubt that if the Nigeria Police Force is to engender trust and improve on the way it carries out its duties, there are many other areas that would require drastic reform and change. In supporting this, Ekeh (2002: n.p.) convincingly argues the following:

The Nigerian Police Force cannot cope with the expansive security needs of Abuja and all state capitals; deal with the severe domestic security circumstances of such major cities as Lagos, Kano, Ibadan, Onitsha, Warri, Port Harcourt, Kaduna, and indeed Jos, and more recently Maiduguri; and then still take care of the domestic security need of small towns and villages that are now bearing the brunt of armed robbery and severe forms of crime.

⁵ Such examples are Joshua Dariye, governor of Plateau state (1999–2007), and more recently Isa Yuguda, former governor of Bauchi state (2007–2015).

The Nigerian National Assembly has a vital role then in pursuing the reform process in relation to devolving policing powers. Going forward, the reform of security sector oversight will have to devise a process of institutionalizing vigilante practices. The question that policy-makers should answer is as such twofold: firstly, how to proceed with institutionalizing and legalizing the practice of non-state security and justice providers, and secondly, how to supervise, monitor and provide oversight of non-state security and justice providers. In the Nigerian context, the institutionalization of non-state security and justice providers can only be achieved by a collaborative effort between the police and the National Assembly. This entails considering the full range of options available to them, including non-state security and justice providers as role-players in the processes of devolving policing practice.

Conclusion

The principal focus of this chapter has been to explore and understand the dynamics of internal security operations after episodes of civil violence in Nigeria. To illustrate Nigeria's contemporary issues, the chapter's spatial focus has been on two geographic areas that have played host to major conflicts and violence – the collective violence in Plateau state and the insecurity that has accompanied the Boko Haram insurgency in Borno state. In exploring the facets of each, this chapter has attempted to underline the importance of local specificities in understanding the varying typologies of violent conflict. This is often overlooked, often resulting in distinct types of conflict being conflated. The chapter discusses how collaborative security groupings of both state and non-state actors have engaged in conflict management, resolution and policing. Of interest for this enquiry has been the nature of response to these extreme levels of insecurity, and the role, or the lack thereof, of the Nigeria Police Force.

The chapter reveals a complex context in which multiple and layered security groupings operate in a hybrid manner. At the most prominent points we find the joint and special task forces, a federal government security deployment, led by the army and consisting of the police and other security agencies. On the ground, and normally with a presence in all local governments, is the Nigeria Police Force. Within the same spatial landscape, and actively involved in security issues, we find security groups established by state governments that have similar mandates to those of the federal government – the Plateau state's Operation Rainbow being a case in point. Moreover, we also find community-based and civilian organizations that are also mobilized and actively involved in the provision of security. In this category, we find the Neighbourhood Watch Agency (such as Civilian Rainbow) in Plateau state and the CJTF in Borno having been directly involved in peace enforcement and peacekeeping efforts. The proliferation of security operatives within these conflict landscapes constitutes a challenge because of the limited collaboration between security agencies. The case of the security operations in Plateau state illustrates this point. The inquiry established how the special task force and the state government's Operation Rainbow Agency were not meant to collaborate, nor were the Nigeria Police Force and the task force in Borno, yet on a positive note we find concrete instances of collaboration between these agencies and local community vigilante groups.

Moreover, it was noted that security agencies have actively cultivated relationships with local communities, and while this is clearly driven by the support that these non-state actors bring to the operation, it has also helped develop important relationships between the security agencies and the communities they operate in.

In conclusion, the chapter has attempted to explain why the Nigeria Police Force has found itself largely excluded from internal security operations, often playing second fiddle to the military. Such contemporary failures have historical roots, such as the history and legacy of military rule and the concomitant negligence of police needs and requirements. The police, as an institution and responsive agency, suffered greatly during the years of military rule, for instance. The chapter thus draws attention to areas where the Nigerian police can still be relevant in internal security operations. There are opportunities to reform the status quo by reconsidering legal frameworks, the structuring of the police and exploring current forms of police training, and ultimately institutionalizing vigilante practices – first and foremost in policing, but equally in internal security operations more broadly.

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Section 4

Case studies and general conclusions

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Chapter 11

Kenya: The impact of counter-terrorism measures on police reform

Japhet Biegon & Andrew Songa

Introduction

Police reform in Kenya has been the subject of scrutiny since its inception about 15 years ago. Recent studies have examined or critiqued a relatively wide array of issues related to the reform programme, including the depth and reach of the reform (KNCHR & CHRP 2015; Ogada 2016); the impact of the reform on service delivery by the police (Mutua 2014); the overarching approach taken in implementing the reform (Amnesty International 2013); the extent of inclusivity and stakeholder participation in the reform process (Simbiri-Jaoko 2016); and the challenges facing the process (Osse 2016). One particular concern stands out in virtually all of these studies: the slow pace of institutionalizing rights-based policing, or more broadly, entrenching the professionalism, integrity and accountability of the police service. In 2015, an audit of the entire reform process conducted jointly by the Kenya National Commission on Human Rights (KNCHR) and the Centre for Human Rights and Peace (CHRP, University of Nairobi) concluded that '[t]he mindset and institutional culture of the police has not changed even though the law, policies and guidelines are new' and that '[t]he old police still remains in place' (KNCHR & CHRP 2015: 62).

The 'old police' is particularly remembered for its rampant violations of human rights, a grim reality that forcefully came to the fore during the 2007/2008 post-election violence. According to the Report of the Commission of Inquiry into Post Election Violence (Waki Report), the police accounted for the highest percentage of deaths, 35.7% to be exact, which occurred during the post-election violence (Republic of Kenya 2008). Ten years after the 2007/2008 post-election violence, the police continue to be implicated in systematic human rights violations, lending credence to the assertion that there is yet to be a significant paradigm shift in the nature and standards of policing in Kenya. Both government agencies and non-governmental

organizations (NGOs) have constantly lamented the deteriorating human rights record of the police. Frequently documented violations include arbitrary detention, ill-treatment, torture, extrajudicial killings and enforced disappearances. Indeed, the high prevalence and systemic nature of extrajudicial killings in the country prompted a number of NGOs to petition the president in December 2016 to establish a special commission of inquiry (Amnesty International 2016). The prevalence of such killings has also attracted the attention of international and regional mechanisms such as the African Commission on Human and Peoples' Rights (ACHPR, see 2017a, 2017b and 2017c).

There are several reasons for the failure of the reform programme to entrench a human rights culture into the practices and attitudes of the police in Kenya. According to a 2013 Amnesty International report on the status of police reform, this failure is partly attributed to the fact that the reform has taken an overly legalistic approach: '[t]oo great a focus on laws and legislation, though important, has left little room for emphasis on social change or policy development' (Amnesty International 2013: 17). The organization adds that '[t]he challenge with this approach is that it is rather narrow and leaves little room for locating reforms within the challenges of the real lived experience of policing in Kenya' (2013: 17). Writing three years later in 2016, Osse concurred with this analysis. However, she additionally argues that the real problem is the lack of political support for this aspect of reform. In other words, the relevant state actors involved or leading the reform process are only keen to implement those aspects of the programme that pose little threat to the status quo:

In effect, what is called 'reform' is actually stabilization. By establishing new institutions, the administration has created a veil of enhanced accountability. Although they have adopted 'reform-speak' and taken on the language of accountability and transparency, the actors involved seem highly conscious of the power dynamics in the country and seem wary of disturbing that balance. (Osse 2016: 919)

In this chapter, we suggest one more reason as to why efforts to entrench rights-based policing through police reform are not yielding the expected results in Kenya. In particular, we argue that in the wake of an upsurge of terrorist activities in the country, successive Kenyan governments have adopted counter-terrorism measures which have had the effect of seriously undermining the ongoing police reform. It is thus not surprising that major human rights reports published in the recent past predominantly focus on and highlight the nature and patterns of violations and abuses committed by the police in the context of counter-terrorism (HRW 2014, 2016a, 2016b; HRW & KHRC 2015; IPOA 2014a; KNCHR 2015; OSJI & MUHURI 2013).

The chapter proceeds from the premise that in evaluating the progress of police reform in any given country, it is vital to take into account the prevailing security situation and the state responses to the situation. We argue that the timing of police reform is pertinent to understanding its successes, failures and challenges. In this

regard, we draw attention to the fact that police reform in Kenya emerged around the same time that the country was shaping its counter-terrorism strategy. In effect, police reform has evolved side by side with Kenya's responses to the scourge of terrorism which was and still remains the 'biggest security threat facing the nation' (Republic of Kenya 2006: 19).

The chapter is structured into five main sections. This section introduced the subject and scope of the analysis. The second traces the historical evolution of police reform in Kenya, albeit briefly. Then, section three looks into the development of a counter-terrorism agenda in Kenya. The fourth section evaluates the impact of counter-terrorism measures on police reform in Kenya while the final section brings the chapter to a conclusion.

Brief history and assessment of police reform

The introduction of a police force in Kenya was an imperative of colonialism. Following the 1884–1885 Berlin Conference, the territory which comprises modern-day Kenya became a British protectorate. The protectorate was initially placed under the control of the Imperial East Africa Trading Company, which introduced an armed security force to safeguard its trading interests and staff at the Kenyan coast (CHRI & KHRC 2006). These interests expanded with the construction of the Kenya–Uganda railway. The security arrangements during this period were 'chaotic', with a two-branch police system consisting of the Railway Police (established to protect the massive investment of the railway) and autonomous police forces (emerging with every informal trade centre along the railway line that was converted into an administrative post) (KTJRC 2013). The police force was essentially a punitive tool used to pacify the resistance of local communities rather than a service-oriented organization (KHRC 1998). Indeed, up to 1906 when the force was formally constituted through a police ordinance, the Kenya police was militarized in its structure and training (Kenya Police Service n.d.).

One of the immediate prominent features of the Kenya police force was its racial composition. The initial police force consisted of European leadership and Indian officers who were already on the Kenyan coast or recruited from India (Wolf 1973). Africans would eventually be recruited into the low ranks of the police force as the railway moved inland. More importantly, the police force operated on a two-tier structure. A European police force was at the apex of the system. It catered exclusively to the needs of colonial settlers. The second tier, comprised mainly of Africans, was called the Tribal and Administration Police. It governed the native reserves where African communities resided. Its role was to enforce punitive colonial edicts (KTJRC 2013). The Indians in the force maintained a virtual monopoly on the clerical aspects of policing (Wolf 1973).

In terms of institutional and operational developments, the police force underwent significant changes after the Kenyan territory transitioned from a protectorate to a formal colony in 1920. The police force became a key instrument in the 'maintenance of law and order to uphold the authority of the administration' as a key pillar for colonial government (Killingray 1986: 411). Notable developments included the establishment

of the Criminal Intelligence Unit, Fingerprint Bureau and Railway Police Unit in 1926 (Republic of Kenya 2009). Subsequently, the Kenya Police Reserve, Dog Section, General Service Unit and the Police Air Wing were also established (Republic of Kenya 2009).

The evolution of the Kenya police was also significantly impacted by the rise of African nationalism, which had become fervent in the aftermath of the Second World War and triggered the period of emergency in the colony from October 1952 to January 1960. This period deepened the role of the police as a tool of suppression against African communities and saw its ranks expand from 6,057 men in 1952 to 14,000 by mid-1954 (KHRC 1998). In this period, the police, alongside other security agencies, were responsible for mass detentions, torture and sexual violence targeting persons associated with the *Mau Mau* liberation movement (KTJRC 2013).

When Kenya eventually gained its independence in 1963, it inherited a police force that was primarily a violent and coercive instrument, driven by a racial approach to criminal enforcement and lacking in institutional resources and oversight (KTJRC 2013). In an attempt to remedy this legacy, the 1963 Constitution sought to put in place a 'professional, neutral police force' through legislation and institutional prescriptions such as a Police Service Commission, National Security Council and the Office of the Inspector General (IG) of Police (Republic of Kenya 2009). These provisions were, however, not implemented as the emergent post-independent political elite found it useful to maintain a Kenya police that could serve as the 'state's principal organ of domination, repression, [and] oppression' (Kivoi & Mbae 2013: 189). In 1966, constitutional amendments were introduced to eliminate the Police Service Commission and remove the security of tenure for the IG (Constitution of Kenya Review Commission 2005).

For most of the post-independence period, the police force has remained a tool for political repression. During the reign of the Kenya African National Union (KANU), led by President Jomo Kenyatta and his successor Daniel Arap Moi for a combined period of 42 years, the police force was responsible for, inter alia, acts of torture, detentions without trial, assassinations and massacres (KHRC 2009). It is these violations that saw concerted public calls for police reform emerge in the 1990s as part of the wider clamour for democratization, good governance, rule of law and respect for human rights. The change of the country's political leadership from KANU to the National Rainbow Coalition (NARC) in 2003 marked a turning point in the state's response to calls for police reform. In the historical account that follows, the relevant developments are split into the two major periods under which they fall. The first sub-section looks into the period between 2002 and 2007 while the second sub-section examines the period after the post-2007/2008 election violence. A third sub-section provides an overall assessment of the police reform undertaken so far.

Piecemeal reform: 2002–2007

From the onset, the NARC administration made it clear that reforming the police force was a key national priority. In its policy for economic recovery issued in June 2003

(Republic of Kenya 2003), the government recognized that the police force was in urgent need of reform. It committed to take seven specific steps, including retraining the police to ensure they 'operate within the law' (2003: 9). While this policy document placed the country on the path of police reform, it entirely focused on the operational capacity of the police and ignored relevant steps for ensuring accountability and rights-based policing (CHRI & KHRC 2006).

For its part, the Kenya police acknowledged in the Draft Police Strategic Plan (2003–2007) that it had previously 'practised regime policing, focusing substantial institutional energy on sustaining the power of the ruling party' (Kenya Police Service 2003: 24). It committed to shift from 'regime policing' to 'democratic policing' by 'focusing its efforts on providing service to the Kenyan people through the promotion of the respect of the rule of law and human rights' (Kenya Police Service 2003: 24). The final Police Strategic Plan (2004–2008) was adopted in early 2004. Unfortunately, it did not suggest concrete action plans for ensuring that the shift from regime policing to democratic policing is realized in practice. As such, the Strategic Plan was criticized for placing 'much more emphasis on strengthening the operational capabilities of an unreformed and largely unaccountable force than it does purging itself of malpractice' (CHRI & KHRC 2006: 61).

In April 2004, the NARC government established a 15-member Police Reforms Taskforce to review the Police Strategic Plan and to recommend reforms for the police force. In its work, the Taskforce relied heavily on the Kenya Police Reforms Framework, a document containing the results of a survey carried out by the Security Research Information Centre (Kenya Police Service & SRIC 2004). The Taskforce has been credited for initiating a number of administrative and operational reforms in the police force (MICNG 2015). At the same time, it has been criticized for placing 'little emphasis' on police discipline (CHRI & KHRC 2006: 62). Fortunately, such gaps were partially addressed by the Governance, Justice, Law and Order Reform Programme under which police officers were trained on expected standards of behaviour and appropriate culture and attitude (Kameri-Mbote & Akech 2011).

Comprehensive reform: 2008–2017

Police reform in the country received a new impetus in the aftermath of the 2007/2008 post-election violence. It is this tragic episode in Kenya's history which pushed the country to shift from a piecemeal to a comprehensive approach to police reform, such that it is now said that Kenya has 'the largest police reform programme in Africa' (MICNG 2015: 6). The post-election violence was sparked by a dispute between President Mwai Kibaki of the Party of National Unity and Raila Odinga of the Orange Democratic Movement over the results of the 2007 presidential election. To bring the violence to an end, Kibaki and Odinga signed an internationally mediated power-sharing agreement. They also signed a series of other agreements in order to address the consequences of the post-election violence and its immediate as well as root causes. One of these dealt with 'long-term issues and solutions' under which the parties agreed that police reform would be an integral part of the institutional reform

to be undertaken.¹ The inclusion of police reform in this agreement is rightly said to have been inspired by 'a strong feeling that the level of post-election violence and destruction would have been minimized had the police responded in a professional non-partisan manner' (Republic of Kenya 2009: 1).

Two particular institutions established in the wake of the post-election violence were key in defining the scope and trajectory of police reform. These included the Commission of Inquiry into Post Election Violence (Waki Commission) and the National Taskforce on Police Reforms (Ransley Taskforce). The Waki Commission was tasked to, *inter alia*, investigate the actions and omissions of security agencies during the post-election violence. In its report issued in October 2008, the Waki Commission found that police response, and specifically the use of force by the police, resulted in 'the senseless death of scores of innocent citizens' (Republic of Kenya 2008: 417). The Commission found that 962 people were shot by the police, 405 of whom consequently died (Republic of Kenya 2008). As mentioned earlier, the police accounted for the highest percentage of deaths (35.7%) which occurred during the post-election violence (Republic of Kenya 2008). The Commission recommended that the police force undergo a comprehensive reform which would entail, *inter alia*, a review of the guidelines for the use of force by the police (Republic of Kenya 2008). The Waki Commission also recommended the establishment of an independent civilian oversight body and a police service commission.

In order to implement the recommendations of the Waki Report, Kibaki and Odinga signed yet another agreement on 16 December 2008. This agreement² contained a clause titled 'Comprehensive Reform of the Kenya Police and Administrative Police'. In its Article 3, it stated as follows:

The Parties shall initiate urgent and comprehensive reform of the Kenya Police and the Administration Police. Such reforms shall be undertaken by a panel of policing experts and will include but not be limited to a review of all tactics, weapons, and the use of force, establishment of an independent Police Service Commission to oversee both the Kenya Police and the Administration Police, an Independent Police Conduct authority for both the Kenya Police and Administration Police, creation of a modern Code of Conduct for the Kenya Police and the Administration Police, and achieving ethnic and tribal balance in the Force.

In May 2009, the Ransley Taskforce was established with the mandate to propose 'comprehensive reforms' of the police force, taking into account the proposals contained in the Waki Report and other relevant documents such as the above-mentioned 16 December 2008 agreement. It issued an interim report in August 2009

1 Statement of Principles on Long-Term Issues and Solutions Updated with Implementation Matrix, 23 May 2008, reprinted in AU Panel of Eminent African Personalities & KAF (2010: 885).

2 Agreement for the Implementation of the Recommendations of the Commission of Inquiry into Post Election Violence, 16 December 2008, Article 3.

and a final one in October 2009. The report contains about 200 recommendations touching on six broad areas: organizational structure; police accountability, culture and image; professionalism and terms and conditions of service; logistical capacity and operational preparedness; community policing and partnerships; and national policing policy. A review of the specific recommendations is beyond the scope of this analysis. Suffice it to note that on police accountability, the report recommended that both an internal and external accountability mechanism be established for the police service; on community policing, the report recommended that the process of developing a national policy on community policing that was under way be fast-tracked; it also recommended that community policing should be anchored on a legal framework (Republic of Kenya 2009).

With the clear delineation of its scope and direction, the current reform process kicked off in January 2010 when the Police Reforms Implementation Committee was established to coordinate and supervise the process. A three-year plan was adopted outlining the priorities for the period between 2011 and 2014. During this first phase, the reform programme had four substantive objectives: developing the legal and policy framework; building institutional structures; enhancing professionalism, integrity and accountability; and strengthening operational preparedness, logistical capacity and police capability (KNCHR & CHRP 2015). The second phase of the reform programme (2015–2018), estimated to eventually cost KES 95.5 billion, focuses on building on the progress of the first phase (MICNG 2015).

Thus far, the greatest achievement of the reform process is the enactment of relevant laws and the establishment of new institutions. In particular, three new pieces of legislation, discussed in detail shortly, were enacted in the course of 2011: the National Police Service Act (NPS Act), National Police Service Commission Act (NPSC Act) and the Independence Policing Oversight Authority Act (IPOA Act). These three laws are anchored in the 2010 Constitution of Kenya, which contains a robust bill of rights and an enforcement mechanism for the same. The Constitution also establishes a new institutional arrangement in so far as policing is concerned. Under Article 238(1) (b), the principles of national security include respect for the rule of law, democracy, human rights and fundamental freedoms. Article 239 identifies the National Police Service (NPS) as one of the national security organs while Article 243 provides for its establishment. The NPS comprises the Kenya Police Service (KPS) and the Administration Police Service (APS).

Under the old constitutional dispensation, two separate police forces, the Kenya Police and the Administration Police, operated completely independently of each other. Under the new structure, the KPS and the APS are branches of a single police service headed by and operating under the independent authority or command of the IG of Police. The KPS and the APS are each headed by a deputy IG who reports to the IG. The 2010 Constitution also provides, at Article 246, for the establishment of the National Police Service Commission (NPSC) with the mandate of recruiting, disciplining, dismissing and managing the welfare of police officers. Perhaps more importantly, the Constitution places an obligation on the police to, *inter alia*, strive for

the highest standards of professionalism and comply with constitutional standards of human rights.

The NPS Act gives effect to Article 243 of the Constitution. Amongst other things, it spells out the functions and powers of the NPS and the procedure for the appointment and removal of the IG and his or her deputies. In terms of the Act, the first IG and his deputies were appointed into office in the course of 2012. Since then, the independence of the service, and that of the IG in particular, has been questioned multiple times (Osse 2016). The vision of a single service as envisaged in the Constitution and the NPS Act has not been easy to implement in practice. The KPS and the APS continue to work in silos; they operate as two completely separate institutions (Hope 2015). In a survey (KNCHR & CHRP 2015) to analyze how police officers identify themselves, only a paltry 1.3% of the respondents indicated that they belonged to the NPS. The rest of the respondents either associated themselves with the KPS (45%) or the APS (51.3%). As such, the project to create a single service has been described as 'a case of failed implementation' (KNCHR & CHRP 2015: 23).

The NPS Act also provides for the establishment of an Internal Affairs Unit (IAU), county policing authorities, and community policing forums and committees. The IAU is a new entity within the police service and serves as its internal accountability mechanism. It is specifically charged with the function of receiving and investigating complaints against the police. The 2015 audit of the police reform conducted by the KNCHR and CHRP showed that the operationalization of the IAU was too slow (KNCHR & CHRP 2015).

The NPSC Act gives effect to Article 246 of the Constitution. In addition to its core function of recruiting police officers, the NPSC is also responsible for the vetting of all police officers for suitability and competence. Indeed, police vetting has become the most visible and publicized function of the NPSC. It commenced this process towards the end of 2013. From July 2015 to the end of June 2016, the NPSC vetted a total of 1,566 police officers of the ranks of Senior Superintendent of Police, Superintendent of Police and Assistant Superintendent of Police (NPSC 2017). The vetting process has been criticized for failing to consider the human rights record of police officers. It has been found to contribute little to the objective of promoting rights-based policing. It is particularly disappointing that police officers find the process to be of little significant value. According to the 2015 audit report of the police reform (KNCHR & CHRP 2015: 42):

Of the police officers interviewed, 76.4% indicated that the vetting of the officers had no positive results on the service. Though the public supported the vetting exercise, there is little to show in terms of quality service by the police. In other words, the vetting process has not helped in ensuring professionalism and accountability in the police service. It started on a wrong footing. Although it is a noble initiative, the implementation process is flawed. The main focus of the vetting has been on cases of suspected corruption

by police officers, instead of integrating other vital issues such as merit, professional qualifications and professional performance of the officers.

The IPOA Act establishes a policing civilian oversight body which, as is apparent from the title of the Act, is known as the Independent Policing Oversight Authority (IPOA). The IPOA is the civilian body responsible for investigating police misconduct and cases of death or serious injury at the hands of the police. It has the power to refer and, if necessary, take over the investigation of a complaint pending before the IAU. In the first six months of its existence (June to December 2012), IPOA received a total of 148 complaints (IPOA 2014b). As at the end of 2016, the number of complaints had risen to 8,232, of which IPOA had completed investigations into 465 (IPOA 2016). IPOA has previously stated that its progress has been inhibited by insufficient budgetary allocations, a lack of cooperation from the NPS and political interference such as attempts at legislative amendments to curb its powers of oversight (FIDH & KHRC 2017).

Overall assessment of reform

Reports evaluating the overall progress of implementing police reform in Kenya acknowledge that great strides have been made since 2003. Still, the reports generally make for depressing and sombre reading. A May 2014 study by the Usalama Reforms Forum (2014) indicated that the level of implementation of the various aspects of police reform stood at an impressive 60%. However, the report also notes that the impact of the reform on the lived realities of Kenyans is negligible: 'Things have merely been done without demonstrated results' (2014: 9). A public opinion survey conducted for purposes of the report revealed that the level of public confidence in the police was at its lowest since 2008 (36%) (2014: 10). Exactly the same percentage of respondents believed that the standard of policing had worsened between 2013 and 2015 (2014: 11). In 2012, 31% of the respondents to a similar survey believed that the policing standard had deteriorated (2014: 11).

Another study published by Saferworld and Usalama Reforms Forum concluded that as a consequence of 'many bad practices' by the police, 'there is strong public perception that police reform is yet to deliver the kind of policing people want – the police policing together with the locals to improve the safety and security of communities' (Otieno, C. 2015: 5). Similarly, the KNCHR and CHRP assert that '[t]he public are [sic] yet to be convinced that the police have changed as they continue to operate in old ways' (KNCHR & CHRP 2015: 62).

The declining public confidence in the police, at a time when the country is implementing one of the biggest police reform programmes in Africa, is ironic but not surprising. Many would readily agree with Kivoi and Mbae when they observe that the police have failed to inspire confidence because of 'wanton cases of police brutality, impunity and malignant cases of corruption in the service' (2013: 189–190) or with Ogada when he says that human rights violations by the police persist because the NPS itself 'sustain[s] a culture of impunity by protecting members accused of

misconduct' (2016: 4). In 2016 alone, it is reported that the police shot and killed 204 persons, 41 of whom were unarmed at the time they were confronted by the police (Deadly Force 2016). The Independent Medico-Legal Unit estimates that from 2013 to 2016, the police were responsible for at least 612 extrajudicial killings (IMLU 2017). Police torture and brutality is also rampant (IMLU 2016). As will be discussed below, most of these violations have occurred in the context of the 'war on terror'.

The failure of the NPS to hold its members accountable for human rights violations, as pointed out by Kivoi and Mbae (2013), reflects a larger challenge bedevilling police reform in Kenya: the lack of commitment or political will on the part of the country's political leadership to implement those aspects of the reform that are likely to enhance rights-based policing, accountability and transparency. Osse (2016) argues that there are three main reasons why political actors in Kenya are not keen to support the kind of police reform that will ensure rights-based policing. First, given the tribal nature of Kenyan politics, those in power deliberately ensure that the police service is loyal to the regime so that it can be used to quell opposition. The second reason is the involvement of the political class in organized crime and corruption (Osse 2016). It would thus go against the interests of this class to have a truly professional police. Third, she links the poor implementation of police reform to the fact that from 2013, the country's president and deputy president were suspects before the International Criminal Court (ICC). They publicly claimed to support police reform in order to make an impression on the ICC. In reality, the executive supports only those aspects of reform that do not fundamentally change police practices and attitudes. In other words, they engage in what Osse refers to as 'reform speak' (Osse 2016: 918).

Osse's reasoning explains why the reform process in Kenya is 'rather legalistic' (Amnesty International 2013: 17). Investment in police reform has focused almost entirely on enacting laws and establishing institutions. Little has been done to reform the culture of human rights violations and abuses which necessitated the reform in the first place. A legalistic approach to police reform has meant that the challenges of real lived experience of policing in Kenya are not addressed (Amnesty International 2013). The new laws and institutions have not led to a new police culture embedded in the concept of rights-based or democratic policing. As the KNCHR (2014: 74) has observed:

The overarching goal for creation of the IPOA, the NPS and the NPSC was to make policing work in the country professional, accountable, service-oriented and above all entrench the principle of democratic policing which is an emerging concept in policing the world over. However, the extent to which this has been achieved has largely remained a mirage. The number of killings and wanton destruction of property has continued to be witnessed in different parts of the country by both criminal elements and the law enforcement agencies. Accountability has continued to sink to new lows within the Service as these reforms seem to have no significance to the citizens who indicate that it is business as usual

in the manner in which security is handled at the local levels which has greatly contributed to the situation that is currently witnessed in the Country. The overall aim of creating a paradigm shift from regime policing to democratic policing is [yet] to be achieved and this greatly compromises human rights situation in the Country.

To the above reasons suggested by Osse and Amnesty International, the adverse impact of the war on terror on policing and police reform in Kenya must be added. The pace and scope of police reform in any country is likely to be affected by the prevailing security situation. In many cases, rights-based policing as an aspect of police reform is the hardest hit because of the (misplaced) notion that respecting human rights is incompatible with ensuring the security of a population. This argument is particularly and generally accepted in the context of the war on terror.

Since 2001, when the United States of America (US) declared a global war on terror and rallied countries around the world to join the war, countering terrorism has been on a perceived collision course with human rights.³ Human rights are more than ever before seen as impediments to countering terrorism. Many governments have not only maintained that certain practices prohibited under international human rights law (e.g. torture and extrajudicial killing) are justified in the specific context of the war on terror, but they have also exerted immense pressure on the police to use legal, extra-legal and illegal means to prevent and respond to terrorism. They have enacted anti-terrorism laws which expand police powers and discretion and shielded special anti-terrorism police units from oversight mechanisms. They have also placed impermissible limits on the rights of suspected terrorists and discriminated against minority groups on racial, religious or other prohibited grounds.

The end result is that in the present 'age of terror', the concept of rights-based policing is at grave risk in many parts of the world (CHRI 2004). Terrorism and measures taken to counter the phenomenon have adversely affected country efforts to entrench a culture of rights-based policing. In Africa, the ACHPR noted in November 2013 that the 'growing demands' placed on the police to combat national and transnational crimes, and in particular terrorism, had led to a situation of 'non-compliance by the police with basic human rights standards in the execution of their duties, including the use of excessive and disproportionate force, extrajudicial killings and summary executions, arbitrary and illegal arrest, torture and mistreatment'.⁴ In November 2015, the ACHPR Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa called upon relevant actors to reflect on the factors that contribute to human rights violations by the police while countering terrorism (ACHPR 2015).

The most comprehensive statement of the ACHPR in this area, however, is the *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa* (ACHPR n.d.). This normative document sets out the human rights obligations of states in the context of countering terrorism. It touches on the protection of a

3 For analyses that challenge this perception, see Hoffman (2004), Eicke (2002) and Stewart (2005).

4 Resolution 259 on Police and Human Rights in Africa, adopted at the 54th ordinary session of the African Commission on Human and Peoples' Rights, 22 October to 5 November 2013, Banjul, The Gambia.

number of rights during counter-terrorism operations: the right to life; right to liberty and freedom from torture; right to fair trial; right to privacy; and the right of access to information.

As a critical player in the global war on terror (see Aronson 2013), Kenya has been involved in counter-terrorism for close to two decades now. It is one of the countries on the African continent that has experienced an upsurge of terrorism in recent years. It is estimated that from 1975 to September 2015, Kenya was targeted by 449 terror attacks in which 1,593 deaths and 5,956 injuries were recorded (Otieno, D. 2015). In a bid to prevent and respond to such attacks, the Kenyan government has in place a relatively comprehensive counter-terrorism institutional architecture comprised of, inter alia, the NPS, Kenya Defence Forces, National Intelligence Service, Kenya Wildlife Service and the National Security Council.⁵ This chapter is mainly concerned with the role of the NPS in countering terrorism. As the primary state agency responsible for the enforcement of law and order, the NPS often deploys counter-terrorism operations. These operations have had a profound impact on policing and police reform in Kenya.

Policing and counter-terrorism

Globally, the police play a critical role in countering terrorism. This role has provoked a considerable body of literature, especially following the declaration of the 'global war on terror' by the US in September 2001 (see Clarke & Newman 2007; Waddington 2007). In fact, policing terrorism, like policing public assemblies, has emerged as a special area of policing. This section looks into the events which have pulled Kenyan police into the realm of counter-terrorism. It also examines the most critical laws and institutions relating to counter-terrorism in the country.

Police involvement in counter-terrorism in Kenya dates back to the colonial period when the colonial administration designated the *Mau Mau* militant liberation movement as a 'terrorist group' and consequently deployed the police to neutralize it. Historical accounts of this period show that the police deployed terror tactics as part of its strategy to defeat the *Mau Mau* (Mogire & Agade 2011). In the post-independence period, the police under the Kenyatta and Moi governments dealt predominantly with attacks and activities which were considered to be domestic terrorism.⁶ The few exceptions include the 1980 and 1998 Nairobi bomb attacks on the Norfolk Hotel and the US embassy, respectively. Police responses to these terrorist acts were never deployed as part of a broader counter-terrorism strategy or operation. Such responses were simply reactionary in nature, activated on a case-by-case basis.

The 1998 bombing of the US embassy by the Al-Qaeda terror network marked the beginning of the country's robust engagement with the concept of counter-terrorism, as evidenced by the establishment of an anti-terrorism unit within the

5 For a critical review of this architecture, see Mwangi (2017).

6 Groups which carried out terrorist attacks during this period include the February Eighteen Movement and Mungiki. See Mogire and Agade (2011).

police. Coming not so long after the 11 September 2001 terrorist attack in the US, a 2002 attack on a hotel on the Kenyan coast and an Israeli commercial aircraft (Kikambala attack) confirmed that the Horn of Africa, and Kenya in particular, was a soft target for transnational terrorist groups such as Al-Qaeda (Kagwanja 2006). As such, Kenya received both pressure and support from the US and other international actors to develop a comprehensive counter-terrorism strategy. From here onwards, the evolution of the country's counter-terrorism work intersected with that of police reform as described above. Enhancing the capabilities of the police force to prevent and respond to terrorism and other transnational crimes became one of the goals of police reform.

Kenya's engagement in counter-terrorism rose to an entirely new level in October 2011 when the country's military was deployed into Somalia with the mission of neutralizing Al-Shabaab, a Somali-based terrorist group affiliated to Al-Qaeda. This unprecedented response was prompted by a series of kidnappings and killings at Kenya's coast and north-eastern region by Al-Shabaab in September and October 2011. The incursion into Somalia, named Operation Linda Nchi, was expected to reduce the rate of terror attacks in Kenya. Instead, it had the exact opposite effect as Al-Shabaab has significantly increased its activities in the country.

From October 2011 to September 2014, the country experienced 133 terror attacks which resulted in the deaths of 264 persons. A total of 923 persons suffered injuries from these attacks. The Westgate Mall shooting (July 2013) and Mpeketoni attacks (June–July 2014) recorded significantly high deaths, 67 and 60, respectively. From September 2014, Al-Shabaab has carried out many more attacks in the country, particularly in the counties of Garissa, Kilifi, Kwale, Lamu, Mandera, Tana River and Wajir. One of the most notable of these attacks was the April 2015 Garissa University attack in which 147 people, mainly students, were killed.

In tandem with the October 2011 deployment of the military into Somalia, Kenya considerably increased its counter-terrorism measures domestically. The most visible of these are security operations or crackdowns in areas believed to harbour terrorists. Notable counter-terrorism security operations include Operation Usalama Watch in Eastleigh, Nairobi, and Operation Linda Boni in Boni forest, Lamu. Numerous security operations have also been carried out in Mombasa.

Relevant laws and institutions

Counter-terrorism operations in Kenya are conducted pursuant to a number of laws and regulations, but the most critical ones are the 2012 Prevention of Terrorism Act and the 2014 Security Laws (Amendment) Act (SLAA). The Prevention of Terrorism Act defines, amongst other things, what constitutes terrorism, the applicable sanctions for committing terrorism, and the scope of powers of security agencies in respect of investigating terrorism. It has been criticized for containing an overly broad definition of terrorism and for granting security agencies sweeping powers and discretion (OSJI & MUHURI 2013). Still, the 2014 SLAA purported to broaden the powers and discretion of security agencies and create new offences.

Some of the provisions of the SLAA were struck down by the Kenya High Court in early 2015. In particular, the High Court declared unconstitutional a provision of the Act which criminalized publication of photographs of victims of terrorism without the consent of their families. It also struck down another provision which criminalized publication of information on counter-terrorism operations without the prior authorization of the NPS. The High Court found that these twin provisions were overbroad and would have a chilling effect on the right to freedom of expression and media freedom. However, it should be noted that an amendment authorizing national security organs to intercept communications for the purpose of detecting, deterring and disrupting terrorism was declared constitutional by the High Court (see Section 36A of the Prevention of Terrorism Act, 2012).

The NPS is the primary security agency responsible for the enforcement of the Prevention of Terrorism Act and the SLAA. Within the NPS, the Anti-Terrorism Police Unit (ATPU) takes the lead in combating terror. The ATPU has a multi-pronged mandate: prevent, detect, disrupt and interdict imminent terrorist activities within the country; exhaustively investigate all terrorism and terrorism-related cases; take control, secure and cordon off all scenes of terrorist incidents; create profiles for suspected terrorists and establish a databank; share intelligence with other security-related agencies operating within the country; and review and monitor security of foreign missions accredited to Kenya (OSJI & MUHURI 2013). The ATPU has offices in Nairobi and Mombasa but its operations extend to other regions of the country.

As mentioned above, other state agencies involved in countering terrorism include the Kenya Defence Forces, National Intelligence Service, Kenya Wildlife Service and the National Security Council. The National Counter Terrorism Centre is responsible for coordinating the activities of all these agencies, a feat that has been rather difficult to achieve. Although the Centre has been operational for more than a decade now, it was only anchored in law in 2014 with the enactment of the SLAA.

Police reform and counter-terrorism

The counter-terrorism measures listed above have had several adverse effects on police reform in Kenya. Here, the impact of these measures on four areas targeted for police reform are examined. These are: use of force; surveillance; oversight and accountability; and police–community relations. Reform of policing practices in these areas is intended to ensure that rights-based policing is ingrained in Kenya.

One major outcome that the architects of police reform in Kenya expected to see was an end or significant reduction to excessive use of force by the police as well as practices such as arbitrary detention, torture, extrajudicial killings and enforced disappearances. As discussed above, the ongoing police reform in Kenya was initiated as a direct response to the excessive use of force by the police immediately after the 2007 general elections. Kenya has held two more general elections since then, in 2013 and 2017. The large-scale police violence witnessed in 2007 was

largely absent in the 2013 and 2017 general elections. However, excessive use of force in the context of elections has not entirely gone away. Police have been implicated in killings of citizens during both 2013 and 2017 (HRW 2013; KNCHR 2017). Between 2008 and now, the greatest concern, however, has been the use of force in the context of countering terrorism.

The NPS Act sets clear boundaries and conditions on the use of force (Sixth Schedule, Conditions as to the Use of Force). Any use of force should strictly meet the proportionality and necessity test. However, all recent counter-terrorism security operations have been marked, without exception, by excessive use of force. Available statistics of terror suspects killed or forcefully disappeared are staggering and shocking. It is estimated that between 2012 and November 2016, the ATPU and other specialized police units were responsible for at least 81 extrajudicial killings and enforced disappearances of terror suspects in the coastal region alone (Haki Africa 2016). Of these, 22 terror suspects were killed during police operations, four died in police custody, 31 were executed in cold blood and 24 were forcefully disappeared (Haki Africa 2016). In the north-eastern region of the country, it is estimated that at least 34 terror suspects were disappeared between December 2013 and December 2015 (HRW 2016b). A KNCHR (2015) report documented over 120 cases of extrajudicial killings and enforced disappearances of terror suspects in Nairobi, Coast and the North East.

Extrajudicial killings and enforced disappearances committed by the ATPU have been part of a deliberate and well-thought-out counter-terrorism tactic, apparently necessitated by the difficulty of gathering evidence for prosecution purposes (OSJI & MUHURI 2013). Indeed, on at least one occasion, a county commissioner issued a shoot-to-kill order in respect of terror suspects (Mwahanga 2014). In essence, police killings have been perpetuated not because the police are unaware of the new standards introduced by police reform and embodied in the NPS Act. Rather, these violations are motivated by a feeling that the standards, or human rights generally, impede counter-terrorism and should be consequently ignored.

State surveillance is emerging as one of the prominent features of Kenya's counter-terrorism strategy. As already cited, the SLAA provides a legal basis for increased discretion for the state to undertake surveillance in furtherance of investigations on terror activities. Such enhanced discretion on surveillance has facilitated the perpetration of grave human rights violations by state agencies involved in counter-terrorism operations. Privacy International in a recent report states that communications surveillance in Kenya has been utilized to facilitate the torture, killing and disappearance of suspects (Privacy International 2017). More specifically, there are linkages between surveillance and extrajudicial killings experienced in the coastal region targeting Muslim clerics and young men suspected of joining Al-Shabaab. A particularly chilling account relates to the death of Abubakar Shariff Ahmed, alias 'Makaburi', in Mombasa. Described as a radical Muslim cleric, Makaburi was reportedly killed by a state-sanctioned death squad that identifies its targets through unregulated surveillance (INCLO 2016).

In many ways, Kenya's counter-terrorism measures have undermined the goal to establish an accountable and transparent police service. One of the key objectives of police reform is to restore public confidence in the police service. As the Ransley Taskforce observed, '[r]eforms need to impact positively on confidence levels of the public as well as on the morale of the Police members' (Republic of Kenya 2009: 26). Yet, as discussed above, human rights violations and abuses perpetrated by the police have led to declining public confidence in the police. This has in turn negatively impacted on police accountability. Low confidence in the police has not only resulted in low expectations of police accountability (CHRIPS & APCOF 2015), but it has also deterred victims of police violations or their relatives from seeking justice or accountability. This is particularly the case for relatives of terror suspects who have been killed or disappeared by the police. Such relatives are either afraid that they will be targeted themselves or believe that they would not get justice from the NPS or the IAU (HRW 2016a). In any event, the IAU remains largely inoperative as it has not been properly resourced with staff and the requisite tools and infrastructure.

The lack of trust in the IAU has meant that the bulk of complaints from the public against the police are channelled to the IPOA, which enjoys considerable public confidence. The unexpected effect of this justified and understandable preference for the IPOA over the IAU is that the former's efficiency as an external oversight mechanism has been significantly slowed down by a heavy burden of cases. As mentioned above, as at the end of 2016, the IPOA had received a total of 8,232 cases, of which it had completed investigations into only 465 or 5.65% of the cases. A huge case backlog, however, has not been the IPOA's biggest worry. The institution's major concern has been the attempts by the executive to reduce its independence and powers. These attempts have come hot on the heels of the IPOA's investigations into police violations committed during counter-terrorism operations in Eastleigh, Nairobi, and Mpeketoni, Lamu (IPOA 2014a, 2014c). Reports of these twin investigations found that human rights violations were rampant during the security operations.

In 2015, the executive unsuccessfully tried to remove the security of tenure enjoyed by the IPOA's board through an amendment to the IPOA Act. If the amendment had been successfully enacted, the IPOA would have lost its independence as its board members would have had to serve at the pleasure of the president (Amollo 2016). Towards the end of 2016, the executive sought to clip the powers of the IPOA to summon police officers to produce evidence. The amendment was withdrawn after a huge public outcry (Ombati 2017). Long before this proposal, the IG had instructed police officers not to cooperate with the IPOA's investigators or allow them entry into police stations without his express authority (Ombati 2017). This unlawful instruction falls within a wider pattern of actions intended to frustrate the work of the IPOA and, more generally, to shield the NPS from external scrutiny.

In this context, it is instructive that the ATPU largely operates outside the command channel established in the NPS Act. Human rights groups, such as Haki Africa and MUHURI, have repeatedly exposed the human rights violations committed by the ATPU and demanded for it to be accountable and transparent. They have paid a costly price for this kind of work. In April 2015, the IG indicated that he intended

to classify these groups as 'terrorist organizations'. The government proceeded to freeze the bank accounts of the two groups.

Given its poor human rights record, lack of professionalism and bias in the discharge of its mandate, the KPS has historically failed to foster a cordial relationship with communities and the public in general. For a long time, police did not actually think that such a relationship was necessary or feasible. For this reason, one of the key goals of police reform is to foster good police–community relations and to specifically entrench the concept and practice of community policing. From April 2005, the NARC government rolled out community policing in several parts of the country, building on initial steps taken by the Moi government⁷ and civil society actors such as the Kenya Human Rights Commission and the Nairobi Central Business District Association (Ruteere & Pommerolle 2003). The programme encountered a myriad of challenges, one of which struck at its very heart: the lack of trust between the police and communities. In particular, implementation of the programme was riddled with accusations: members of community policing committees accused the police of failing to maintain confidentiality while the police accused such members of leaking privileged information (Republic of Kenya 2009).

The need to entrench community policing in Kenya became acutely apparent and urgent in the aftermath of the 2007/2008 post-election violence. In its report, the Waki Commission (Republic of Kenya 2008: 423) underscored the need for community policing when it observed as follows:

In the final analysis, it appeared to the Commission that the police agencies regarded the term security as synonymous with secrecy. They failed to grasp the concept adopted by most contemporary law enforcement agencies that being open and interactive with communities is not only the right of citizens but fundamental to ensuring community support and in developing their trust and confidence. The provision of information should be a two-way street with Kenyans receiving timely and relevant information on safety and security issues from police about what is happening in their communities.

As such, and as already mentioned above, the Ransley Taskforce recommended that the development of a national policy on community policing should be expedited and that the concept should be anchored in a legal framework. In terms of this recommendation, the 2010 Constitution requires the NPS to 'foster and promote relationships with the broader society' (Article 244(e)). The NPS Act goes further to place a specific obligation on the NPS to practise community policing with a view to establishing and maintaining partnership, communication and cooperation with communities (Section 96(a)–(c)). Other stipulated goals of community policing are to improve the delivery of services to communities, and to promote police accountability and transparency as well as joint problem identification and solving

⁷ In March 2002, the Moi government established a national steering committee on community policing. See Saferworld (2008).

between the police and communities (Section 96(d)–(f)). County Policing Authorities are responsible for implementing community policing (Section 97). The NPS Act also provides for the establishment of area community policing committees (Sections 98–100).

In compliance with the NPS Act, community policing has been implemented in several parts of the country with varied success (see, for example, Mwachidudu & Likaka 2014; Skilling 2016). The National Taskforce on Community Policing was established in November 2013 to assess the progress in implementing community policing. At the same time, the government launched the *Nyumba Kumi* initiative to strengthen community policing. Under this initiative, each person in a community is encouraged to know at least ten neighbours. The idea of *Nyumba Kumi* was largely triggered by and expected to tame the string of terror attacks which had hit the country from 2011. Where it has been effectively implemented, empirical evidence suggests that community policing is a force for good (Kiprono & Karungari 2016; Leting & Chepchirchir 2017).

Any community policing programme, like rights-based or democratic policing, is bound to face challenges. Deliberate and targeted efforts must be taken to mitigate these challenges. As expected, Kenya's community policing programme, rolled out as part of the ongoing police reform, has faced its share of challenges, including delays in the establishment of county policing authorities and adoption of a national policy,⁸ lack of public awareness of the programme,⁹ and resource constraints (see Mwaura 2014). The elephant in the room, however, remains poor police–community relations. In this context, counter-terrorism measures in Kenya have thrown more hurdles into what is already difficult terrain for community policing. In the 2015 police reform audit, the KNCHR and CHRP observe that one of the challenges facing community policing in the country is '[t]he reluctance by some communities, especially Muslims, to share intelligence on criminals' (KNCHR & CHRP 2015: 58). The fact that Muslims were specifically singled out in the report is telling.

The war on terror in Kenya, like in other parts of the world, has disproportionately targeted the Muslim population. The consequence is obvious. Implementing community policing in areas where counter-terrorism operations have taken place has been significantly undermined, if not completely thwarted. Consider, for instance, the impact of Usalama Watch on police–community relations in Eastleigh, Nairobi. The operation was not only characterized by ethnic and religious profiling, but it was also conducted in a manner that violated a wide range of human rights (Amnesty International 2014). According to the IPOA, the discriminatory and abusive nature of the operation had the effect of antagonizing the local community, and more importantly, it was 'counter-productive to the spirit of community policing and may erode the gains made in the public-police partnership in the fight against crime' (IPOA 2014a: 7).

8 The Draft Guidelines for Implementation of Community Policing-Nyumba Kumi is yet to be formally approved.

9 A May 2014 survey shows that 74% of the respondents had not heard of community policing in their area and 91% did not know any area police officer.

In Mombasa, where the ATPU is perhaps most active, counter-terrorism operations have largely alienated the community. Riots have erupted in the city following killings which are believed to be part of counter-terrorism operations (OSJI & MUHURI 2013). In fact, these operations have had a much more direct and devastating impact on community policing. At least two members of community policing committees in Mombasa were gunned down in 2014 in a series of killings targeting state security agents and perceived state informers (Ndungu 2014). In Lamu, where Operation Linda Boni is ongoing, the local Awer community are victims of both the Al-Shabaab terrorists and the security officers undertaking the operation (Kiser 2017).

While counter-terrorism measures have ruined police–community relations in areas where such measures have been deployed, it is important to note that fostering good police–community relations requires much more than rethinking present counter-terrorism measures. In particular, changing tack in countering terrorism must go hand in hand with improving police welfare and their working environment. Yet, despite improvements over the years, the police in Kenya continue to not only operate in difficult working environments but also live in dismal housing conditions. Terrorism has exacerbated the risks to which the police are exposed in Kenya. Al-Shabaab is particularly known for targeting police officers and police stations. Many police officers have been killed in such attacks. Yet, for a long time, the police did not have life, injury and medical insurance policies commensurate with the risk they are exposed to in their work (Republic of Kenya 2009). In recent years, there have been efforts to provide the police with appropriate insurance cover, but these efforts have constantly faced setbacks and hitches (see, for example, Odour 2017). In relation to police housing, it is important to recall that in its visits to police residential areas (commonly known as ‘police lines’) around the country, the Ransley Taskforce found that:

Current police housing is inadequate and where available they are overcrowded with married and single police officers being forced to share single rooms. Many of these quarters are dilapidated. In many instances, police officers, especially the subordinate ranks are forced to live in tents, poor timber structures, temporary houses, or share rooms. (Republic of Kenya 2009: 114)

At least one study has shown that poor police accountability and relations with communities is somehow linked to poor police welfare and working environment. In a 2014 survey conducted by the Centre for Human Rights and Policy Studies and the African Policing Civilian Oversight Forum, community members noted that ‘when police officers are living in squalid conditions, with poor incomes and welfare options, they are more likely to be abrasive, hostile and bullying in how they deal with civilians’ (CHRIPS & APCOF 2015: 22). Moreover, the fact that the majority of police officers live in police lines has alienated them from communities. This has made it difficult to improve police–community relations. For this reason, the Ransley Report recommended that ‘the Government should consider in the long term providing adequate housing allowances to enable police officers to rent accommodation within the community’ (Republic of Kenya 2009: 177). In February 2016, noting that there

was a shortfall of about 30,000 police housing units, the IPOA similarly recommended that police officers should be allowed and provided with sufficient financial resources to live with the communities they serve (Njenga 2016). This recommendation is unfortunately yet to be acted upon.

Conclusion

This chapter has taken stock of the status of police reform in Kenya with the country's counter-terrorism practice as its backdrop. It has evaluated the impact of counter-terrorism measures on efforts to ensure that a culture of rights-based policing is ingrained in Kenya. Departing from the premise that counter-terrorism operations in Kenya are invariably characterized by rampant human rights violations, including torture, extrajudicial killings and enforced disappearances, the analysis finds that these operations have seriously undermined four areas of police reform: use of force; surveillance; oversight and accountability; and police-community relations. In essence, counter-terrorism operations are contributing to the evident failure of the country to foster a culture of rights-based policing, close to ten years after it rolled out what may well be regarded as the largest police reform in Africa.

Every state has a duty to prevent and respond to the threat of terrorism. This duty must be discharged in a manner that is respectful and protective of human rights. Yet, Kenya's responses to terror are anchored on the false notion that counter-terrorism, security and human rights are mutually exclusive. This approach has to be abandoned if the goals of police reform are to be realized, and perhaps more importantly, if the war on terror is to be won. Experience has shown that counter-terrorism operations which violate human rights are counter-productive in the end; they only serve to radicalize individuals and communities. If the present trend continues, Kenya will achieve neither the goals of police reform nor of its strategy to counter terror and violent extremism. Building a culture of rights-based policing in general, and in the context of counter-terrorism in particular, also requires that significantly more resources are channelled towards improving police welfare and their working environments. Without a doubt, good working and living conditions have direct positive effects on the professionalism, morale and performance of the police. In this context, it is noteworthy that the age of terror has brought with it new and numerous challenges and risks for the police. A well-resourced and professional police service, with members of generally high morale and esteem, is likely to face such challenges and risks with a greater degree of success.

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Chapter 12

Nigeria: Human rights and internal security operations



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Introduction

Over the last two decades, the Nigerian armed forces have increasingly been deployed in internal security operations. Primarily, these operations have been in response to incidences of terrorism, violent conflict and serious crime in different parts of the country, and which are beyond the capacity of the Nigeria police in terms of scale, intensity and arms. However, the Nigerian military was not ever intended to be substantially deployed in internal security matters over long periods of time, and as a result, their strategies, training and rules of engagement are not always suited to, and may be damaging in, internal operational undertakings. The rules of engagement they have used, for instance, have been developed for a different suite of conflict scenarios; so too have the officers been primarily trained to follow tactics traditionally suited for conflicts over sovereignty and territory.

Consequently, the deployment of the military has resulted in numerous collateral concerns arising, especially with regards to human rights violations committed both against those suspected of terrorism or criminal activity, but also against the civilian population and policing organizations. In their defence, military leaders have noted that they continue to observe internationally accepted rules of engagement, and that such accusations are baseless. Given the seriousness of the accusations, however, and keeping in mind that the internal deployment of the military is likely to continue for some years, further investigation is required.

The Nigerian military is, however, not the only security force involved in internal operations. The operations are frequently supplemented by policing agencies, paramilitary units and self-defence groups. Deployment of multiple agencies to suppress conflicts makes regulation difficult, and accountability less clear-cut. In such conflicts, the proliferation of arms and armaments increases, making opportunistic forms of serious crime more likely and frequent, as well as making it possible for policing organizations to commit serious crimes without fear of sanction.

The resulting environments of violence may become crucibles for violence against the civilian population and the abuse of human rights by all parties. The Nigerian example provides an opportunity to understand the factors and forces which shape military capability in observing or transgressing the norms related to human rights and their protection.

A relevant example can be drawn from the protracted and multidimensional conflict in Riyom, local government area (LGA) of Plateau state, which has continued unabated since 2001 (Alubo 2006; Best 2011). The primary conflict, between farmers and herders, also has ethnic and religious dimensions and has led to the loss of thousands of lives and the wide-spread destruction of property. Plateau state can be described as sharply polarized on the basis of religion – Christians and Muslims. While a joint military task force has been deployed to the area for a number of years, they have not managed to achieve a lasting cessation to the conflict, which is seemingly religious in nature. Accusations of partiality on the basis of religious affiliation and human rights violations have been brought against members of the task force by many of the parties at different points, including forms of public protests against the operations. Considering their length and breadth, the activities of the security forces in the area thus provide an opportunity for investigating and understanding relationships between actors involved in policing violent conflicts, and between them and communities and civilians.

With the above in mind, this chapter seeks to investigate these claims by examining the extent of human rights protection by the military, other security forces and community self-help groups in their operations to prevent and deter violent conflict, while also examining the relationship dynamics between the security forces, communities and civilians so as to further understand what factors encourage or inhibit adherence to human rights provisions. The following specific research questions guided the research which informs this chapter:

- To what extent are human rights protected and/or violated by security forces and non-state actors involved in the preventing and/or countering of violent attacks in the Riyom LGA of Plateau state, Nigeria?
- What is the nature of the relationship between security forces, community-based vigilante groups and suspects of terror attacks in the community?
- What factors influence conflict and/or cooperation between security forces and community groups involved in preventing and countering terror attacks?
- Why is the process by which the eradication of surplus or unaccounted for armaments left after the conflict frequently seen as a problematic collaboration between various forces and some of the parties involved in the conflict?

The data utilized by the study were obtained from both primary and secondary sources. Primary sources of data were solicited from communities affected by the persisting violence using focus group discussions (FGDs) and individual in-depth interviews. Both FGDs and individual interviews were conducted with farmers, herders, Christian and Muslim community members, opinion leaders, as well as members of the security agencies tasked with the quelling of violence in the area. Observations relating to the

conduct of personnel were also informally undertaken at military checkpoints, so as to gauge the conduct of members. Secondary data and information were also sourced from the broader academic and policy literature, government publications, and from outputs by international organizations and civil society. The discussion of results and findings from this study is presented thematically and follows the same pattern as the research questions contained in the interviews. The sections below provide both a synopsis of responses and highlight significant results from both the FGDs and the individual interviews.

The findings of the study ultimately aim to support recommendations for reform in the deployment of security forces in internal security operations and the protection of human rights in Nigeria.

Rights violations by security forces and other parties

Human rights violations against civilians by security forces involved in armed conflict frequently occur. In the Nigerian instance, the military has been implicated in such abuse before, such as when deployed to counter Boko Haram terrorism in the North East, as was reported by Amnesty International (2017). The extent, form and frequency of such violations may, however, vary contextually. From the fieldwork conducted for this study, cases of human rights violations were recorded as having been committed by both the military and other security forces involved in the conflict, as well as by other parties – these are recorded below in two categories, firstly by the military and then by the other parties involved.

The military

It should be noted from the outset that the definition of a human rights abuse is drawn from Article 3 of the Geneva Convention of 1949, which makes provisions for the regulation of the conduct of actors involved in domestic armed conflicts. It noted that each party:

Shall be bound to apply, as a minimum, the provision that persons taking no active part in the hostilities shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

If this definition is used, there are numerous allegations of abuse and, indeed, concerns that inadequate measures to protect the civilian population in the Riyom LGA have been put in place by the military. Although the Nigerian military has succeeded in restoring varying levels of peace in the LGA of the Plateau state in Nigeria, such peace may have come at a cost. Respondents observed that the Nigerian military deployed for peacekeeping operations in Riyom did not always respond promptly to distress calls, creating spaces for abuse. Some community members believed that there are in fact forms of subversive collaboration between the rival groups and government security forces deployed there, which are used to delay responses.

As has been recorded elsewhere in the country (Amnesty International 2017; HRW 2017), allegations in Riyom also include arbitrary arrest, detention, torture, intimidation and rape. Some members also noted the right to freedom of religious expression had been curtailed, and that civilians were often mistreated or threatened both directly and indirectly by being told the military would withdraw and leave them to be attacked by rival groups. Suprajudicial restrictions on the freedom of movement of people and goods have also been imposed, as well as extrajudicial forms of trial and penalty imposition. Such occurrences were especially prevalent in 2013, when a military-imposed curfew was implemented. Charges of torture were also made, as the direct result of soldiers' actions or as a result of allowing individuals to be handed over to vigilante groups or other community members. In such instances, punishments including caning could also result in individuals being shot. Participants frequently spoke of the arbitrary nature of arrests, and that in some instances, dwellings had been razed by the military. Many mentioned that rape frequently occurred and alleged that the military used sexual violence as a means of inducing compliance. The Nigerian military has denied these claims; however, there is further testimony indicating the use of terror-related tactics to induce fear in the local population. For instance, in Rim, a village in the Riyom LGA, a man complained to a soldier who was interested in his daughter that he was unhappy with this, resulting in the angry soldier shooting the man. A traditional ruler further lamented that the soldiers were going after his peoples' daughters.

Findings also revealed that the security forces sometimes conduct unauthorized searches for arms, which community members believed was enacted in a biased way with only one party, usually the one that does not profess the same faith as the commander at the time, being frequently searched. Such searches are also conducted in a manner that is maximally disruptive to communities. As one group noted, security forces come early at dawn, at about 5am, to conduct searches. During such exercises, they roughly force their way into houses even when they do not encounter resistance. In one such operation, participants described how more than 20 military Hilux vehicles carrying government security forces were used. The security forces went from house to house searching every room till 4am in the morning; they broke doors and beat some of the younger people, causing injury. Villagers further argued that the government security forces sometimes assist those from the same religion as them against their opponents. It was noted that some suspects were caught in possession of arms and handed over to security forces, but after two weeks they were simply released and never prosecuted.

Such allegations are perhaps a reflection of divisions which have emerged in the Nigerian security forces, especially when violence and religion find mutual expression. For example, if an officer deployed to the community is a Christian, Christian community members may support the individual in order to protect themselves, despite offences being committed. Inversely, the same may occur when a Muslim officer is deployed to a community. In reflecting these divisions, villagers in Riyom describe such postings as either 'good' or 'bad'. An illustration of this can be drawn from a Berom respondent, a Christian and a farmer, who observed that:

The security forces have rather helped in destroying the peace. Some security men are biased in terms of religion. Most of them that were brought to this community some time back were Muslims and you know that our community is mixed with both Christians and Muslims. Because they are mostly Muslims, they only arrest us the Christians.

The Fulani community, on the other hand, is also accusing the security forces of being biased. Commenting on whether security forces are neutral or biased, a Fulani respondent argued thus:

Instead for the security forces to come and be neutral; instead for them to chase the Berom people whom we are fighting with, they will leave them to pursue us and anybody they catch, they will just kill the person. See, we are Nigerians and we have the right to stay anywhere. If they are saying that we should leave, where do they expect us to go to? Do they want us to leave Nigeria?

The Fulani further observed that in some instances the military would support rival conflicts between groups or villagers that resulted in conflict and damage to property. Fulani respondents argued, for instance, that when the security forces arrived at the community they arbitrarily detained and prosecuted individuals for no apparent reason. The military officials interviewed, however, denied their involvement in such acts. Nigerian authorities have yet to open investigations into allegations of abusive responses of the security forces, and no independent and impartial investigations into operations and crimes committed by the military in the Riyom LGA of Plateau state, Nigeria, have taken place.

Other perpetrators

In the Riyom LGA, the nature of human rights violations noted in the interviews by the parties in the conflict range from attacks on villages or settlements to forced disappearances, rape, cattle theft and the destruction of farm crops by herders. For instance, a Berom woman in the Rim village – where the conflict was most intense for some time – reported the case of a woman who was abducted by Fulani herdsman and allegedly raped for two weeks, until she died. In another instance that took place in 2017, a Berom woman was raped repeatedly by Fulani herdsman when they met her alone on the farm. The matter was reported to the divisional police office in Riyom town and the accused were handed over to the security forces. The human rights violations committed by other parties in the conflict in Riyom are not, however, restricted to rape and killing of victims. Many complained of criminal trespassing and the invasion of their privacy. In another interview, the Berom in Rim village alleged that during the dry seasons, the Fulani graze their cattle right into their homes, the animals often kicking over cooking utensils displayed in the courtyard. The Nigerian military deployed to restore peace within the LGA has worked relentlessly to prevent attacks, restore normalcy in the area and protect human rights. However, their successes remain debatable.

Efforts at protecting human rights

Security forces

Despite several allegations of human rights violations perpetuated by the security forces, there is evidence of the same agencies also protecting the rights of individuals. Findings from the interviews revealed that the government security forces frequently take proactive steps to prevent terror attacks. For instance, they hold monthly meetings with the parties embroiled in the conflict to tackle issues that might trigger fresh fights and attacks. When terror attacks occur, they mobilize and move in to ensure that they stop the attacks from escalating. These measures have succeeded in preventing some of the terror attacks, while also preventing those that do occur from further escalating. They have furthermore forged greater understandings between the farmers and the herders, both of whom are also participants in the terror attacks within the Riyom LGA. The security forces have prevented scores of terror attacks on either side from taking place, although there have been sporadic cases of successful incursions by terrorists. Whenever there is an attack that soldiers stationed nearby are not able to contain, they frequently call for reinforcement to combat the situation. However, some community members are convinced that some of the government security personnel are not sincere in performing their duties. For instance, some people noted that sometimes when there is a terror attack and community people call for help, the government security forces do not respond promptly as they allow the enemy to wreak havoc and escape before they intervene, despite being able to intervene earlier. A former youth leader in Rim village, a community that has experienced several attacks, observed:

The government security personnel have been trying to contain attacks in this local government area, but there are good and bad ones among them. Most times when there are attacks or threat of attacks we do inform them to be on alert, but they do not react quickly. And when they do not respond quickly, the damage would have been done before their arrival.

Vigilante groups

The rate at which acts of terrorism and insurgency have increased has given rise to a proliferation of militant vigilante groups whose activities have introduced another dimension to the abuse and violation of human rights, acting as significant contributors to the violence. Such accusations have brought into question the utility and function of these organizations in preventing or mitigating conflict. According to Okenyodo and Ugwu (2014), for instance, community members tend to have more confidence in community vigilante groups than other policing agencies, yet their actions may lack strategic oversight. This makes their involvement fraught with tension and may generate harsh reprisals by the military that affect civilians. For instance, in the Riyom LGA, there are vigilante groups that participate in preventing terror attacks. Their involvement is very similar in design to those in the North East, where Boko Haram is reigning terror on citizens. According to Human Rights

Watch (HRW 2017), vigilante groups in the North East serve as foremen in guiding security forces through the difficult terrain of the zone when hunting for terrorists. In the context of the violence in the Riyom LGA, which centres on land occupation and ownership as well as herders and farmers clashing over grazing fields, the vigilantes help in securing crops on farms from herders. Moreover, when there were frequent attacks from 2014 to 2016, the vigilante groups used to mount roadblocks or manned posts to guard against incursions by outsiders, or patrol communities. Many respondents were satisfied with these actions by the vigilante groups, despite the group's lacking significant levels of oversight or accountability. However, the government security forces accuse the vigilante groups of doing little to control crime and violence in Riyom. The security forces assert that the vigilante personnel do not protect human rights. A soldier stated:

It is for them to work with the military and the joint forces with other agencies but we are not seeing them. I have not seen them here but I know that somewhere else, they collaborate to the extent that they have even arrested some terrorists and handed them over. But here, their activities are silent. We have more of them but since they are doing this kind of work we are doing, we should feel their presence but we don't.

In summation, many participants felt that while the military forces worked well with other state organizations, they did not maximize the potential offered by vigilante groups. This finding supports the literature's assertion that the military is often suspicious of the vigilante activities as they are often accused of involvement in the violence, which sometimes leads to violent clashes between them (Harnischfeger 2003; Pratten 2008).

Meanwhile, community groups and villagers in the LGA that the vigilante members provide security information to the state security forces, and lead them to places where there are attacks but they do not participate in countering terror, directly. When the vigilante personnel arrest a suspect of terror, for example, they do not torture them but they hand them over to the state security forces. This underscores the very important roles they play in preventing terror attacks and the need for them to be incorporated into the peace-building process in Riyom.

Conflict factors

The military versus the police

Clashes between security forces and civilian community groupings and/or non-state actors are common occurrences in violent crises. Whether those security forces involved in preventing terror attacks cooperate with community groups or are in confrontation is a function of their educational, cultural and operational characteristics (Friesendorf 2012). Comparing the conduct of the police and the military in managing violence, Friesendorf has argued that the military are ultimately

trained to be combat-ready while the police are prepared to use force only exceptionally and as a last resort. The police are in short trained to use persuasion first, and treat offenders as citizens and not as enemies. Culturally, the attributes of military and police leadership also vary. The language of the military, their appearance, the fact that they are housed in barracks and their belief systems are cultural traits which create friction between soldiers and communities; this may not be the case with police officers. Moreover, the latter frequently draw on managerial models that are inclusive rather than divisive, such as community policing, which is hinged on public support and aimed at legitimizing the police so as to prevent crime effectively and expedite investigations. Such measures also help prevent conflict from arising and make the use of force less necessary (Friesendorf 2012). Such differences provide a useful basis for understanding the factors that could influence conflict or cooperation between security forces and community groups involved in countering violence and terrorism.

Repressive military conduct

There are several further factors responsible for conflict between the military and community groups in conflict scenarios. Within the context of this study, however, we have focused on their different approaches to professional conduct and the strategies/approaches they adopt in managing violence and interfacing with civilians at checkpoints, in allowing them freedom to access their land for cultivation and offering healthcare services for those desperately in need. The United Nations (UN) Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights identified a number of best practices and measures to guide the conduct of security forces involved in countering violent attacks and terrorism within the ambits of human rights requirements and in compliance with international law (UN CTITF 2014). These measures are as follows:

- Checkpoints and other such measures must not have a disproportionate impact on human rights, like unnecessary delays.
- Checkpoints and other such measures should not prevent persons from travelling to and from their homes. In other words, checkpoints should not be used to unduly interfere with the ability of persons to take part in cultural life with their families and to also attend school.
- Measures should be adopted to ensure access to social services and medical treatment, particularly in emergencies and in the case of pregnant women.
- Immediate, safe and unimpeded access to humanitarian assistance for those in need must be guaranteed.
- Access to land, water and other natural resources should not be impeded, since this may have significant effects on the lives of individuals and family units and may, in some cases, violate the enjoyment of economic, social and cultural rights by affected individuals and have a devastating socio-economic impact on communities.
- The screening of persons at checkpoints must be conducted in compliance with international human rights law. This requires that all individuals should be treated with equal respect and professionalism, taking into account sensitivities

linked to the gender, religion, age and any other special need of the person being screened.

- The establishment of separation barriers should not involve the destruction or confiscation of property or land belonging to individuals without prompt and adequate compensation being given to such individuals.
- The imposition of control orders should never be a substitute for criminal proceedings. Where criminal proceedings cannot be brought, or a conviction maintained, a control order may (depending on the facts and conditions of that order) be justifiable where new information or the urgency of a situation call for action to prevent the commission of a terrorist act.

For now, many of the above issues have remained major challenges for the security operations of the military in the Riyom LGA. Adherence to these provisions by the security forces may help in enhancing cooperation between them and community groups. However, where repressive security measures are adopted, community groups would be severely restricted in terms of their ability to collaborate with the forces while also providing for themselves some level of protection. Their right to work, their right to education, health services and a family life are frequently also violated. In such environments antagonism between the public and the military becomes more likely.

Disputes about restraint

Although the military personnel deployed to Riyom reported that they conduct themselves with restraint, residents observed a number of examples in which this is brought into question. According to the military participants, there is a protocol in place to ensure they engage with the public fairly and in accordance with prescripts defined internationally. In the words of an officer:

Even when the Berom or the Fulani, who are the major parties involved in the conflict, did something wrong and they are mandated to pay some compensation, you will still see the same people doing the same thing again tomorrow, especially the issue of the use of cattle to destroy farmland and crops. This can easily get you provoked but you don't have any choice than to restrain yourself because we know that they are civilians and they are not like us. There are times we beg them. You know that the best way to handle this situation is to calm them since you cannot quench violence with violence. Sometimes you know that they have gone wrong but because we are working with them, we don't have any choice than to go closer to them and they will have confidence in you.

The opinions of residents within communities in Riyom differed substantially, however. Moreover, they preferred the mobilization of the police to protect their community rather than the deployment of the military. As one community respondent noted:

I believe that policemen can control this violence more than the military because policemen have human relationship while the military do not have human relationship. In managing violence,

you know that we also need peace. Remember that violence cannot be used to quench violence. Rather, it is peace that would quail violence. So, if the government would say, soldiers, go back to the barracks; policemen come, we will appreciate. Policemen are trained to settle while soldiers are trained to kill. If you bring a soldier to settle, he will rather start shooting and, from shooting, the violence will continue. Like our own conflict here, the police will settle us because we know ourselves.

Community groups further reported that cooperation with the military and other security forces in countering terrorism is largely dependent on the leadership capacity of the state military and especially that of the special task force. The reactive tendency of the security forces could be seen by many vulnerable populations as politically motivated as they often see themselves as targets, especially when the leadership is ethnically or religiously biased towards particular groups involved in the conflict. They observed that some of the commanders posted to the area conducted themselves well while others did not.

Perceptions of exclusion

According to the UN Development Programme (UNDP 2016), community groups that are socio-economically excluded by governments frequently blame this exclusion on the immediate representatives of the state, such as security services. Respondents within the villages of this study often pointed out that they preferred the previous regime to the contemporary one, which for them was more responsive to their needs. They felt excluded from the processes and benefit of governance as there was a different political party in control, and they did not believe the government wished to restore peace and normalcy. They further argued that the claim by the government that peace had returned to the LGA was merely political posturing, arguing that:

We the indigenes here know that peace has not returned. If peace had returned, the Fulani would have gone back to where they come from and our people would have also gone back to the villages where they were displaced.

Also, when the security forces are perceived to be corrupt – to the extent that justice is not dispensed to suspects handed over by community groups – conflict may continue to occur between security forces and community groups. There were reports that some of the security forces were corrupt as ‘they go and take money from the Fulani to go and kill us’. Reiterating this point, another Berom respondent argued that ‘the soldiers receive all kinds of gifts from the Fulani. They give them gifts like turkey, cows, goats, etc.’. This practice of gift giving by parties in conflict has numerous implications for the perceived neutrality of the security forces. The military, however, disagrees with these assertions on the basis that they are involved in the process of negotiation between the parties involved in the conflict and, as a result, often provide relief materials or services to both parties.

Possession of illegal arms

Another factor responsible for conflict between community members and the security forces relates to community members' illegal possession of arms and other military-related equipment. According to one of the military officers interviewed:

What differentiates us with community members who are civilians is the uniform we wear but we have seen several of them wearing the camouflage. This kind of behaviour could cause violence. There was a time we saw some of them wearing military camouflage vests and when we accosted them, the entire youth of the village came out to fight us and we had to leave. We had to go to the traditional ruler who called the youth to order. If we had taken any action, violence would have erupted. But you know that we are on our rights. How can you wear military uniform?

The military believed that it was a mark of disrespect that many of the youth refused to wear their military uniform. Inversely, it is clear that the public frequently accords more respect to the police than the military. Probing further to know what they mean by lack of respect, an officer interviewed observed that:

The military of today is different from the military of yesterday. Before, the military is so hot that you cannot even break their ranks maybe because it was their regime. But now, the military has been infiltrated with bad eggs and based on what they exhibit while trying to manage violence in communities, people don't respect them anymore.

This scenario has been revealed to be one of the main causes of conflict between security forces and community groups. Reports indicate that sometimes the security forces look down on members of the community, which creates antagonism and mutual disrespect. This antagonism is expressed in terms of bias. For example, 'if a Fulani man enters somebody's farm and the security forces will not tell the man the truth, then there will be problem and vice versa'.

Despite the issues raised, some level of cooperation exists between the military and community groups. The military and other security forces do, for instance, organize events that aim to bring the parties in conflict together, such as football matches. The military is also involved in other civil-military activities, including the provision of healthcare and medical services. Some community members reinforced this by noting that they have very cordial relationships with military personnel.

Problematic post-conflict disarmament

Armed violence is rarely random. Acts of armed violence in Nigeria are purposeful in intent and directed at key targets, whether ethnic, religious, economic or political (Hazen & Horner 2007). The continuous persistence of violent attacks in the form of terrorism, insurgency and communal conflicts and the inability of the military and the

police to manage the resulting insecurity among the population have made some individuals and communities acquire arms for protection. According to an officer of the military,

In a crisis-prone community, like Riyom LGA, if you say they don't have arms, and then what are they using. Several times we have arrested people with arms. We know they have arms and in some parts of the local government, there has been this report of armed robbery and when we go after them, they also engage us.

That community groups in conflict possess arms is well known by the government. That is why Nigeria is party to international provisions on disarming communities in conflict. It has also expressed support to limit illicit arms proliferation by putting in place laws to restrict the ownership and use of small arms. However, these laws are poorly enforced and as a result largely ineffective. In Riyom, where violent conflicts and terror attacks have continued unabated, there are no indications that the 'mopping up' of arms has been initiated by the government. Military officers interviewed on their knowledge of any step taken by the government in that direction noted that there is no evidence that the government has started any disarmament process. An officer argued thus:

Disarmament is usually initiated by the government. If the Plateau state government is interested in mopping up arms, she [the government] will initiate the process, and we will comply in executing it. We are here only to act on order. Disarmament is only initiated when there is peace, but if there is no peace you cannot begin to talk of disarmament. Disarmament can also commence when the parties to a conflict agree during a dialogue that peace has returned and they are willing to disarm. But in situations where the parties to a conflict are not willing to dialogue and come to agreement to disarm, government cannot initiate anything like that.

Another said soldiers have been coming and going from house to house to check for arms for two years now, but was not sure whether they found arms:

I heard they found three empty shells of ammunitions in the house of one of the youths; but he explained that he picked the empty shells during one of the attacks the enemy launched on Rim village and showed to the people the type of weapons the enemy uses. The youth in whose house the empty shells were found was taken away but he eventually returned after negotiations.

The soldiers have explained that the checking for arms is not one-sided; however, community members dispute this. A forced disarmament could be initiated by the government even when the parties in conflict have not agreed to terms of peace. This is partly because both parties have not shown any sign or willingness to give way to genuine peace that would lead to any party actually disarming. Such

an occurrence would also need to be systematic and not ad hoc as is presently attempted. Security forces, participants in the research also observed that any issue relating to arms is treated confidentially but that if there is anything of such, the state is supposed to initiate the process.

Recommendations

From the above analysis, and based on the empirical evidence gathered for this chapter, the following policy recommendations can be derived:

- The Plateau state government in alliance with the Nigerian armed forces should create a human rights desk for formal security forces composed of legal officers from the Nigerian Bar Association and the legal section of the military, which will investigate allegations of human rights abuses perpetrated by the government security forces. The desk will work to improve on the security forces' capacity to respect and protect human rights and report periodically on progress. The office will help to bridge the human rights gap between the security forces and civil society. Similarly, government should provide channels for victims of terror whose rights have been violated to seek redress, and legal aid should be made available to those in need.
- The nature of violent conflict and terror attacks common in Nigeria is such that a civil police security organization may not have the capability to adequately manage or handle such events. This deficiency calls for the inclusion of the military. However, whether the military deployed there have been trained in special aspects of human rights protection is an issue of great concern. This study therefore recommends that Nigeria should devise a special security task force comprising of all the security forces (including the Department of State Security, the military, Department of Civil Defence, the police and other allied forces) trained in human rights protection values as enshrined in the UN Human Rights Provision and the African Union Charter on Human Rights Protection, one that is different to the special task force we have in Riyom, which is drawn from conventional security forces in barracks. This would help reduce the rate of cases of human rights violations if such a task force were deployed to manage violence in communities.
- The special task forces should also be trained in aspects of community–military relationships in view of the nature of communities' reaction when the military is deployed. It should be noted that collaboration between security forces and community groups in tackling violence and terror attacks of this nature is often required and can best be achieved when communities cooperate in providing information relevant to identifying suspects of terror who are also members of the community.
- Governments (at the federal, state and local levels) should devise a legal framework that would empower security forces to embark on removing illegal arms in conflict areas as soon as conflicts have subsided. This would aim to reduce the rate and number of casualties in the event of the recurrence of any form of violence among parties in conflict within these communities.

- Findings from the study indicated that the military is very sceptical of involving community vigilante groups in mitigating violence despite evidence of their usefulness in providing information and guidance in communities where the terrain is difficult to access. There is a need for legal support in the Constitution to define the precise extent of vigilante group involvement alongside security forces in managing violence and terrorism in communities. This would help reduce the tension existing between the security forces and the vigilante groups, especially in situations where the military accuses the vigilante groups of involvement in the violence and related criminal activities.

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Chapter 13

Summary and conclusions

Mutuma Ruteere



Introduction

Since Otwin Marenin's lament (1982) that little was known about African police, the situation has changed considerably. In the last three decades or so, there has been an appreciable growth in research and scholarship on the subject and an even larger volume of policy- and activist-oriented publications, particularly touching on the human rights record and accountability deficiencies in African police organizations. Broadly, however, the dominant ideas on policing in Africa continue to flow fully formed from the West and often as a critical evaluation of the nature and practice of African police and policing. The global shifts in the ideas and practice of policing have also permeated the policing scholarship of various African states, demonstrating the increased global mobility of ideas and technologies of security governance – for instance, ideas and approaches such as community policing and problem-solving policing are now increasingly part of the policing lexicon and toolkits in various countries in Africa. Ideas on policing and security in Africa have also changed as African states themselves have undergone socio-political and economic changes.

The chapters in this collection are therefore an important and timely addition to the scholarship and policy knowledge on policing in Africa at a time when many African states are grappling with the challenge of new security threats, and particularly those posed by terrorism. These contributions critically examine and explore ideas shaping African policing of terrorism, emerging processes and practices, the changing contexts of security governance, and the efforts, successes and failures in promoting effective, accountable security in various countries.

Thematically, the collection is about how the norms of human rights shape policing in counter-terrorism interventions and measures in Africa, and how the policing of this context impacts on human rights and indeed the fate and future of human rights under these circumstances. The threat of terrorism globally, and in Africa particularly, has introduced a new security context which consequently poses challenges to the approaches that African police services have traditionally used to provide security. The geographical space to be policed has also shifted from purely internal to cross-

border in some cases, as a few of the studies in the collection demonstrate. Another issue that this collection provides a new angle on is the changing nature of the actors involved in the policing of terrorism. The nature and complexity of terrorism has led to the enlistment of multiple actors such as the military and community self-help initiatives in counter-terrorism interventions. This has brought with it new challenges to the operations of the police and posed new dilemmas with respect to human rights and accountability.

Overview

Etannibi Alemika's chapter – 'The constraints of rights-based policing in Africa' – traces the evolution of African public policing from the pre-colonial period to the post-colonial. He underscores the contextualized nature of policing in pre-colonial Africa which was disrupted by and substituted with the colonial police. The colonial police were a force for pacification and domination of Africans in order to ensure the safety and security of the colonial state and the colonialists. Post-independence African states inherited the DNA of the colonial police and reproduced their logic and structures. The pathologies of inequality, repression and exclusion that have characterized the contemporary African state are reproduced in the policing mentalities and practices of contemporary African police forces.

Alemika critically examines the growing popularity of police reform programmes supported by Western development agencies. These programmes are heavy on democratization of police, improvement of the police–community relations, accountability and human rights. Decades of these programmes, Alemika notes, have failed to effect a significant change in the public police services in African countries. Alemika concludes that this failure is a consequence of three factors. First is that reform programmes ignore the political history and contexts out of which African police services emerged in contrast to European ones. Second, only limited resources actually go to programme work with the bulk of the resources channelled to 'paying consultants from donor countries who are exported to teach Africans how to police'. Third, those who promote these police reform programmes rarely undertake meaningful consultations with local state and non-state actors.

Alemika rightly concludes that promotion of human rights policing in Africa – in a decontextualized manner that fails to take into account the socio-economic and political contexts determining and shaping the nature of policing – is bound to fail. To expect police to reflect the ideals of the Universal Declaration of Human Rights in contexts where large populations are brutalized by grinding poverty and disempowered by inequality and lack of basic services is to fail to understand how rights are themselves interconnected and how power actually operates in society.

Elrena van der Spuy reflects on counter-insurgency under apartheid and its impact on policing in chapter 3. She draws from critical academic literature, investigative journalism, professional biographies of former security professionals and the proceedings of the Truth and Reconciliation Commission. The political system of

apartheid and the very nature of the state itself inevitably produced a paramilitary culture to counter opposition. Counter-insurgency led to the emergence of covert forces which waged a war without rules, straddling an ambiguous boundary between the criminal and the official. Counter-insurgency grew from a strategy of centralization to decentralization and the privatization of violence. The literature reveals the construction of the enemy of the apartheid state as 'folk devils' that could only be defeated through a violent onslaught. The chapter then presents a second view of the police, one in which they saw themselves as professionals trying to do the best they could under the circumstances. A third view emanates from the Truth and Reconciliation Commission, which sees the violence as 'multi-dimensional and multi-purposive' and as instrumentalized. These perspectives provide useful insights into how the policing of difficult contexts such as terrorism can be framed in multiple perspectives depending on the location and placing of the actors involved. The chapter also serves as a cautionary tale on how fragile citizen recourse to their rights can become when policing in times of counter-insurgency or terrorism.

In their chapter on policing in the borderlands of Zimbabwe, Kudakwashe Chirambwi and Ronald Nare look at police involvement in criminal activities and in particular at corruption in these regions. Drawing from newspaper reports, they look at police corruption and how it aids and abets smuggling, the proliferation of criminal groups, and the links between the police and such criminal groups. The chapter explores the extent to which economic deprivation intersects with state fragility to then exacerbate police corruption and their involvement in other criminal activities. These contexts have also seen an emergence of a plurality of security actors, including criminal gangs, who 'help in filling governance vacuums' created by a weakening state. In the absence of effective regulation, these groups inevitably lead to greater insecurity. Although not specifically about terrorism, this study is relevant to the broader debate on how such spaces can easily become the new arenas and bases for terrorist activity given the borders' porous nature as well as the proliferation of cross-border criminal networks.

Benson Olugbuo and Samuel Ojewale's chapter examines the emergence of multiple actors in counter-insurgency in north-eastern Nigeria. These actors include non-state actors who partner with state agencies in the fight against Boko Haram. In Nigeria, like elsewhere in Africa, police forces were established as part of the colonial apparatus for domination of the colony. These origins meant that violence was imprinted into the culture of the police institutions and policing in general. Community partnership was therefore not a priority for such violent institutions. However, the violence in the North East region has forced the state and the security services to provide the space for community partnerships as a strategy for arresting and containing the violence. The authors note that a variety of community police partnerships have emerged which are now involved in intelligence gathering, neighbourhood watch and patrols, among others, in partnership and with the consent of the police and security agencies.

Traditional institutions of emirs and chiefs and government officials have served to provide legitimization of the community–security partnership in the policing of

terrorism. They enjoy community trust and confidence and have therefore become important actors shaping community policing partnerships. However, the authors note that the Nigerian Police Force is yet to fully embrace community security associations and other non-state security actors and still treats them with suspicion. As a result, the police have failed to take full advantage of the potential that these partnerships offer.

Amadou Koundy's chapter focuses on counter-terrorism measures against the Boko Haram violence in the Lake Chad basin by Nigeria, Chad, Cameroon and Niger, and the human rights challenges that it has spawned. The chapter notes that terrorism presents threats that the state has not traditionally been confronted with and thus tests the capacities and limits of the criminal justice system. That threat, with its spectacular violence, has left states navigating a delicate line between the demands for decisive response and the demand for protection of human rights. As often happens when security forces see rights and laws as an unnecessary encumbrance, the emerging practice is for 'the rule of law to be overtaken by the rule of the police'.

In Niger and Chad, the states have established specialized and centralized criminal justice systems for dealing with terrorism matters, with accused persons sometimes detained and tried far away from their places of residence. For its part, Cameroon has given exclusive jurisdiction to military courts to try terrorism cases. Questions have been raised regarding the independence of the judges in these courts as well as the practice of trying non-combatants in military courts. Moreover, the vague definitions of terrorism in the legislation of various Lake Chad basin states have placed individuals at the risk of prosecution for offences that may not necessarily meet a clear definition of terrorism. These vague definitions have also placed the rights to assembly and association in peril as individuals are easily labelled as supporters of terrorist groups.

There have also been allegations of arrests and detentions of individuals without access to counsel. In Cameroon, individuals can be held for 15 days in police custody before trial while Nigerian law allows the pre-trial detention of individuals for 90 days and Chadian law for 30 days. Increased surveillance of individuals and communities is also part of human rights concerns. In all the Lake Chad basin countries – Nigeria, Chad, Cameroon, Niger – there is a mandatory death penalty for terrorism convictions. These mandatory sentences do not allow judges the discretion to take into account the offender's personality or circumstances of the offence in sentencing. Overall, a fight against terrorism, the author concludes, has failed to strike a balance between the preservation of security and respect for people's rights.

It is this discrete balancing act that also underpins John Kamya's observations on the manner with which terrorism has been engaged by the Uganda Police Force. Here he notes that the challenges presented by the policing of terrorism are not only limited to the operational but have demanded new procedural frameworks and forced the organization as a whole to reflect on its core values and principles. Such exercises have, however, resulted in a number of positive and concrete changes to the police force as a whole, with new frameworks for the use of force, detainment of arrestees and accountability mechanisms having been formulated in response. What

remains in need of further reform, he notes, is the relationship between the legal and policing frameworks so that they are consistent in their application and fair in their conclusions – a theme further explored with reference to Cameroon in the following chapter.

Polycarp Forkum's chapter explores the human rights challenges posed by the militarization of counter-terrorism measures against Boko Haram in Cameroon. The political leadership in Cameroon has framed the fight against Boko Haram as one of good versus evil as a means of mobilizing public support against Boko Haram. Human rights groups have accused the Cameroonian military of countless violations of human rights and international humanitarian law. These include arbitrary arrests, incommunicado detentions, torture, enforced disappearances and extrajudicial executions, among others. Non-military suspects have been tried in military courts, raising concern over the fairness of such trials. The government has also been accused of promoting the operations of local vigilante groups against Boko Haram, which have themselves provoked complaints of human rights violations. As part of the mitigation of these violations, the author proposes the comprehensive training of security agencies on human rights.

In his chapter on Nigeria, Solomon Arase examines how the problem of inadequate police capacity and poor police–community partnership impacts on the policing of terrorism. Arase argues that the Nigerian police are constrained by the legacy of a poor organizational culture that tolerates ill-discipline and the poor treatment of the public, by the police among others. The police are not equipped with the appropriate skills nor provided with the resources necessary for professional and rights-respecting policing. As a result, the public has little confidence and trust in the police, which is compounded by a limited understanding of the challenging context within which the police operate. So far, the many efforts to reform the Nigerian police forces have not succeeded in transforming them into a rights-respecting service.

Jimam Lar's chapter focuses on the complexity of policing insurgency and violent conflict in a terrain where the public police are one of many policing actors. Lar notes that pluralism in policing, where the Nigerian Police Force shares roles with other state security agencies like the military, is embedded in the historical development of the Nigerian state.

Drawing from both secondary and field research on the policing of collective violence in Plateau state and the Boko Haram insurgency in Nigeria's Borno state, Lar notes that in addition to the military and the Nigerian Police Force, there are also community-based groups that are organized to provide security. Because of its poor history of effective provision of security and lack of popular legitimacy, the Nigerian Police Force has in many cases been forced to play second fiddle to the military. Moreover, Nigeria's history of military rule has provided the military with an upper hand in security leadership. The emerging practice of partnerships between the police and community-based groups, and even vigilante groups, provides the police with the opportunity to rebuild broken trust with communities and to regain legitimacy. Lar suggests that the police have an opportunity to regain relevance in

internal security and to rebuild public trust through comprehensive internal reforms and the better training of police officers. In addition, there is a need for the police to ensure that their organizational responses are in tune with the community needs as part of the restoration of public confidence in the service.

In their chapter on Kenya, Japhet Biegon and Andrew Songa explore how counter-terrorism measures have shaped the police reform process that has been under way in the country for several years. The authors trace the long journey for police reforms and point out that considerable success has been made with regard to the enactment of new laws and the establishment of new policing institutions – including the Independent Policing Oversight Authority (IPOA). The upsurge of terrorist attacks in Kenya in the last few years has, however, put a strain on the police services and considerably slowed down the pace of reforms.

Counter-terrorism measures have led to allegations of extrajudicial killings and enforced disappearances committed by the Anti-Terrorism Police Unit. In addition, the police have stepped up surveillance on individuals and even communities. Moreover, there have been instances of mass arrests and detentions of individuals without the due process of the law. Complaints against the police have not been satisfactorily resolved. The Internal Affairs Unit within the police service is largely inoperative and most complaints against the police are usually passed on to the IPOA. However, the Authority has faced considerable challenges in its operations and in particular hostility and non-cooperation from the police. Kenya's Police Service has also done little to redress its record of poor public engagement and low levels of trust. The authors conclude that the existential nature in which the threat of terrorism has been framed and the consequent counter-terrorism measures have considerably derailed the efforts to transform the Kenyan police into a rights-respecting and accountable service.

Daskyes Gulleng and Anande Hunduh focus on the policing of the conflict in the Riyom local government area of Plateau state in Nigeria where, since 2001, there has been violence pitting farmers against herders and a polarization between Christian and Muslim populations. The authors draw from primary data collected through focus group discussions and individual in-depth interviews in the area and report many allegations of human rights violations in the form of unauthorized searches by security forces, damage to property, arbitrary arrests and irregular detentions of individuals. In addition, community members reported that military officers sometimes demonstrated ethnic and religious bias.

In addition to the military, there has been a proliferation of vigilante groups in the region, which have come into conflict with the military and are also accused of widespread violations of human rights. Unsurprisingly, the military sees these vigilante groups as usurpers to their security mandate. The authors note that the military has lost the opportunity to tap into and maximize on the potential these community groups offer. Attempts at disarming these groups have not been successful.

Multiple ideas

The chapter by Etannibi Alemika grapples with questions of the relevance, limits and potentials of the human rights framework in thinking about policing and the policing of terrorism in Africa. It sketches out the dilemmas faced by security actors in securing the public while respecting human rights. It is to be remembered that public police forces were introduced in Africa as part of the strategy of domination and pacification of the colonized populations. At independence, the logic of these forces was passed on and inherited by colonial governments without sufficient transformation (see Mamdani 1996). The problem of policing and rights that is often underlined by scholarly and activist literature with respect to African police forces should therefore be properly contextualized and historicized. Alemika's chapter is a theoretical but also policy invitation to students of African policing as well as human rights to critically contextualize studies on the policing beyond global prescriptions. More than any other bureaucracy, the police reflect the politics and the ethos of the government and the nature of the political state (Mamdani 1996).

Consequently, interventions to change the police cannot be imported into an incongruent context and be expected to succeed. To fix what is broken about African policing, in the context of terrorism and in other contexts, it is therefore imperative that the socio-political, economic and political contexts be equally transformed. A contextualized perspective is a reminder that the security challenges posed by terrorism in Africa, as indeed elsewhere, are not per se the explanation for the dismal human rights record of African police services in their counter-terrorism measures. Rather, terrorism is just one of the many challenges confronting these troubled bureaucracies that rest on an uncertain foundation of violent colonial legacies, the unaccountable contemporary political state as well as on a human and financial resource that is often struggling to meet the needs of the population.

The problem of regulating police power, not just in Africa but globally, is essentially a problem of the regulation of the power of the state itself. Where power is not accountable to the citizens, the police cannot be expected to be accountable either, as police services typically reflect how power is organized and regulated in a particular state. Historically, human rights were devised as a form of critique and as a measure for regulating state power – of which the police are the bureaucratic face. Human rights in policing speaks to the existence of norms in the exercise of state power. It is, however, important to remember that those norms are not ideologically uncontroversial, neither are they insulated from the politics of power at national and international levels.

The fragility of human rights norms in the face of state measures to confront terrorism is identified and discussed in the various studies on police and military operations in this collection. In the studies on Nigerian police and military responses to the Boko Haram violence and in the Kenyan police responses to terrorist attacks by Al-Shabaab, the security agencies are accused of committing serious violations such as summary executions, illegal detentions and arbitrary arrests. The limits of the criminal justice processes and protections are severely tested by the complexities that

terrorism poses to Africa's fledgling constitutional orders. The legal and normative prohibitions against various violations prescribed in national constitutions as well as in international conventions appear to have little restraining power on security actors confronting terrorist violence. Yet, it is in those very circumstances of such violence that human rights norms are most needed and, paradoxically, when they are most fragile and seem almost futile.

Despite the dismal human rights record in counter-terrorism measures, however, the validity and relevance of human rights is neither questioned nor rejected in any of the studies. Indeed, it is a testament to the global acceptability of these ideas that police forces in all the countries studied do accept the responsibility to protect rights. To the extent that these ideas and norms have become part and parcel of internal police accountability logic, they can be said to have gained indigeneity. What remains contested and must continue to be the subject of ongoing studies are the conditions under which human rights are best protected in policing situations such as those posed by terrorism. There is a suggestion, emerging from some of the chapters, that internal controls as well as transformation of police and security bureaucracies might be the key to better protections of human rights (see chapters 9 and 11). External accountability as well as training are also seen as contributing to a better human rights outcome. However, more concrete studies are still necessary to give us an idea of how these interventions shape both the mentalities of police and other security actors and their practice and conduct. For the moment, what these studies tell us is that human rights violations are widespread, human rights matter and they should continue to be promoted despite the poor record posted by police services.

From a policy perspective also, there is a need to pay attention to how human rights norms are integrated into policing work. The challenge is to translate the values of human rights norms into the routine, everyday practices of police and security actors involved in policing.

Changing contexts

Like elsewhere in the world, the changing nature of security threats in Africa compounds the challenges confronting African policing. The threat and violence from terrorism that purports to speak from within Islam has brought to the fore the capacity and normative challenges that contemporary policing in Africa must address. Unlike the armed internal conflicts that some of the countries have experienced in the past, terrorism remains a law and order problem that at the same time generates levels of violence akin to an armed conflict. Moreover, the fact that terrorist movements such as Boko Haram and Al-Shabaab are militarized, means that the police are faced with a challenge that is sometimes considerably beyond their capacities. Policing militarized contexts raises questions of capacities available to police services and, where the military are involved, as in the case of Nigeria, Cameroon, Chad, Niger and Kenya, the problem of coordination. Whereas militaries are typically in a supporting role to the police in domestic situations, in practical terms both forces operate under

parallel commands. In addition, the practical tasks of countering terrorists militarily do not sit comfortably with policing practices that call for evidence gathering and investigations. This discordance has opened the doors for security lapses and failures as well as created an accountability lacuna that allows various violations to proliferate with limited possibilities for assigning culpability.

Policing terrorism is also confronted by the view that the threat that terrorism poses presents an exceptional threat to the very survival of the state and open societies, thus necessitating exceptional responses. The human rights argument for humane treatment of terrorism suspects and for the rule of law in policing terrorism has often run into the headwinds of this claim, not just from the police and security leaders but from politicians and even scholars. The human rights scholar Michael Ignatieff (2005) has advanced the argument that open democracies must accept the lesser evil of some extreme measures that might offend human rights to preserve open, liberal societies. In many places in Africa where in the policing of ordinary crimes the police struggle with limited resources, protection of the rights of terrorism suspects becomes a low priority for many security actors as well as policy-makers.

In addition, the policing of counter-terrorism has had a major impact on police–community relations. In various countries the relationship between the police and Muslim communities has deteriorated following increased surveillance of communities, arrests, detentions and killings of individuals suspected of terrorism. Communities where the police and security agencies have implemented these counter-terrorism measures have grown increasingly suspicious of the police putting in peril community–police cooperation measures and policies such as community policing (see chapters 5 and 11).

Policy interventions for reforms must consider these shifting contexts in policing. There is a need for more clarity regarding whether counter-terrorism is to be treated as a law and order challenge to be dealt with by the police or as a military issue properly within the jurisdiction of the armed forces. The ambiguous approach to the challenge without proper procedures increases the possibility for violations without accountability. Moreover, where it is not clear as to what rules are applicable – military or police – effectiveness is placed in jeopardy.

Further policy knowledge is also needed to address the argument that the norms of human rights and accountability may jeopardize the effectiveness of counter-terrorism measures. This calls for more case-by-case analysis of specific terrorism situations and the generation of relevant data, including from actors such as the judiciary and prosecution services. Data and concrete studies beyond the normative appeals are also necessary to convince policy-makers of the value of accountable, professional and rights-respecting policing of terrorism.

Policy strategies and programmes to improve police–community relations have to confront the increased challenge that has been presented by counter-terrorism measures. Policing work in areas affected by terrorism now calls for community confidence-building, which must involve measures such as diversifying the police service to ensure that locals and Muslim communities are sufficiently represented.

A diversity of actors

The chapters in this collection also speak to the diversity and changing nature of actors involved in the policing of terrorism in Africa. Indeed, globally, a growing body of scholarship on policing points to this shift in policing, from a function exclusively located within the public police to a role that is distributed and shared among a wide range of actors, both formal and informal, public and private – see Ruteere et al. (2017), Shearing and Wood (2007), Burris et al. (2005), Abrahamsen and Williams (2011) and Baker (2004). This multiplicity of actors presents new challenges and dilemmas with respect to human rights and accountability. The complexities that arise from multi-agency operations in counter-terrorism in various countries have been given prominence by various studies in this collection.

The complexity of security challenges, particularly in counter-terrorism where perpetrators are embedded in communities that they recruit into extremism, calls for much more than formal security forces. Not surprisingly, therefore, we see in places like north-eastern Nigeria that security agencies involved in counter-terrorism have embraced and encouraged the efforts of local vigilante organizations (see chapters 5 and 12). The inclusion of local community initiatives in security has the advantage of leveraging local knowledge that the formal public police do not enjoy. Scholarship on multi-actor policing has argued that this approach is a practical appreciation of the unique and complementary roles played by various actors in generating security outcomes in the society without necessarily privileging public security. The challenge for human rights in many cases is that, whereas the norms of human rights, codes of conduct, standard operating procedures and mechanisms for accountability are often established with respect to public police, community security groups are largely outside this framework.

Beyond the community groups and the military, it is clear from the various studies that the broader policing role is shared with actors such as customs officials, as in the borderlands of Zimbabwe. Similarly, policing accountability and the promotion of human rights in policing engages a wide range of actors, including police internal mechanisms, external oversight institutions, prosecution agencies and judiciaries, among others.

What this multi-actor view of policing suggests is that in thinking about reforms and change, the public police are just one of the many actors to be taken into consideration. The network of policing actors and its human rights credentials and record are as strong as its weakest member. The promotion of human rights values, training and other interventions must therefore reflect this appreciation of a ‘whole society’ approach to transformation and change. This includes the following requirements.

Need for better knowledge of police and security institutions

The various chapters in this collection have demonstrated the complexity of how police and security institutions function in concrete contexts such as in the policing of terrorism. They have also highlighted that there is a need to understand both

the structure and agency of police services in policy reforms and institutional transformation. Police institutions are led by individuals who could be promoters and champions of a vision for reform. These individuals and their capacities, interests, attitudes and ambitions therefore need to be taken seriously. There is still significant ground to be covered on situations and contexts that work well. Such knowledge is important since reforms and change must be predicated upon what is already in place internally within the police and within the state.

The politics of reform and reform as politics

The studies in this collection also underscore the point that police organizations are linked to the politics of the state. Security, more than any other area of state service, reflects the interests, capabilities and ambitions of the governments of the day. Reform of the security services such as the police is therefore not isolated from the politics of the state. Moreover, resources that are key to any successful reform initiative are always subject to political negotiation and approval from elected leaders. Yet, in many cases, reform initiatives and projects do not enlist the support of elected representatives, who hold the keys to the necessary local and national buy-in towards the reform agenda. Moreover, most police reform initiatives tend to be technical and programmatic, without sufficient regard for police institutions as bureaucracies with their own agency and shaped by the interests, visions and ambitions of their leaders. Thinking 'politically' means that policy entrepreneurs should understand such politics to ensure the success and long-term sustainability of their reform interventions.

Building police–community partnerships

Most of the studies in this collection have underscored the centrality of public confidence, popular legitimacy and community consent to effective policing in Africa. In every country studied, this police–community partnership is strikingly weak. The police seem to recognize its importance but do not have many successful initiatives to achieve and sustain it. There is considerable and understandable scepticism as to whether the police can win public confidence and legitimacy within political systems that are themselves struggling with the same crisis. For those interested in police and security reforms in general, there is, however, no easy way of avoiding this challenge. Building community trust, confidence and acceptability is where successful policing must begin. As these studies show, there is no direct line of success and on many occasions, reform efforts are likely to be upended by new challenges such as terrorism and insurgency.

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ISBN 978-1-928332-33-6



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