SPACES FOR CHANGE | S4C

COMMENTS ON SPECIAL RAPPORTEUR'S CALL FOR INPUTS: DEFINITIONS OF "TERRORISM", "TERRORIST ORGANISATION" AND "VIOLENT EXTREMISM"

ABOUT THE CONTRIBUTOR

SPACES FOR CHANGE | S4C is a non-profit organization working across West Africa, delivering cutting-edge research, policy advocacy, knowledge-building and campaigning initiatives to defend the civil society from excessive securitization and governmental restrictions usually framed around the objectives of anti-money (AML) laundering and countering financing of terrorism (CFT). S4C welcomes the opportunity to contribute to the public consultation on on the definitions of "terrorism", "terrorist organisation" and "violent extremism". S4C's contributions are informed by the organization's extensive research work which has mainly focused on deepening understanding of how counter-terrorism legislation and policies affect human rights, civil society and civic freedoms in Nigeria and across West Africa.

INTRODUCTION

Defining "terrorism" is a difficult task, given the current polarized understanding and application of countermeasures in both democratic and undemocratic contexts across West Africa. This difficulty finds specific expression in the overly broad definition of terrorism in many national anti-terrorism regimes, the controversial terrorist designation/proscription procedures, the violent clampdowns on dissenting voices and opposition groups under the pretext of counter-terrorism, the repurposing of counterterrorism measures to achieve other political ends unrelated to national security and so forth.

Although nations unanimously[1] condemn international terrorism and violent extremism in very strong terms, there is no corresponding consensus regarding the applicable sanctions and rules governing the enforcement of counter-terrorism measures in specific situations. It is hoped that the proposed definition of terrorism by the Special Rapporteur on the promotion

[1] Unanimity finds expression in wide-ranging regional anti-terror treaties and instruments such as the Organization of African Union (OAU) Convention on the Prevention and Combating of Terrorism, 1999; Organization of American States' (OAS) Declaration on Strengthening Cooperation in the Fight Against Terrorism and the Impunity of its Perpetrators, 2007; Association of South East Asian Nations (ASEAN) Convention on Counter Terrorism, 2007; Cooperation Council for the Arab States of the Gulf (GOC) Convention against terrorism, 2004; Shanghai Cooperation Organization (SCO) Shanghai Convention on Combating Terrorism, Separatism and Extremism, 2001 and the European Convention on the suppression of terrorism, 1977

and protection of human rights and fundamental freedoms while countering terrorism [2]will potentially provide guidance to states combating terrorism and violent extremism, ensuring that human rights are not relegated. Our submissions contained in this brief proceed upon the premise that a unified definition of terrorism, which can be adopted globally, will promote clarity, uphold shared normative standards on security, and ensure the global protection of human rights. It is against this backdrop that we make the following submissions:

Overview of the existing definition of terrorism

The Special Rapporteur defines terrorism as follows:

> *Terrorism means an action or attempted action where:*
>
> *1. The action: (a) Constituted the intentional taking of hostages; or (b) is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it;*
>
> *2. The action is done or attempted with the intention of: (a) provoking a state of terror in the general public or a segment of it; or (b) compelling a Government or international organization to do or abstain from doing something; and*
>
> *3. The action corresponds to: (a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or (b) All elements of a serious crime defined by national law.**[3]***

Evidently, the definition captures the principal elements of a crime – *actus reus* and *mens rea*– noting how collectively the act and the intention to commit the act must be present to constitute acts of terror. Additionally, the definition considered the principle of state sovereignty, ensuring that states are offered the option of applying the definition in line with their respective national criminal laws. However, sovereignty is a very subjective concept, requiring more guidance, nuancing and clarity. Recourse to sovereignty also invites plurality of actions and legalistic complexities that produce problematic consequences which are easily justified by local circumstances.

Rather than sovereignty, emphasis should be placed on prescribing the minimum standards and principles of national and international law governing the containment measures adopted by countries combating terrorism. This approach ensures that countries, no matter the nature and character of the tensions they contend with–do not invoke their contextual peculiarities as an excuse to sacrifice human rights at the altar of countermeasures. Because the development of counter-terrorism responses might involve restrictions on human rights, the proposed

[2] A/HRC/16/51, paras. 26-28

[3] Ibid

definition should focus on providing guidelines specifying the extent a sovereign state defending its territory against attacks by local terrorist groups can modify its international human rights obligation towards persons and communities under its jurisdiction. It should use international human rights norms to provide states with clear steps, action plans, principles [of legality, necessity, proportionality, adequacy, fairness] and absolute clarity on the appropriate balance between permissible and impermissible behavior in non-international counter-terrorism operations.

- **Criminalization of Citizen Action/Social Movement**

The Special Rapporteur's second part definition of terrorism (2b) posits that terrorism means an action or attempted action with the intention of:

*"**Compelling** a Government or international organization to do or abstain from doing something."*[4]

A semantic examination of the term ''compelling'' suggests that the meaning transcends beyond mere use of force and also means the use of pressure. Many countries accept the idea that pressure is not inherently bad, which explains why pressure groups are allowed to exist and operate. Although this proposed definition connotes the use of excessive force to influence a national or international government to achieve a particular outcome, we take the view that this language is broad, and a more measured definition is recommended.

Making governments do or abstain from doing something requires the deployment of various forms of pressure. Civil society groups, political parties and other interest groups employ varying degrees of pressure to influence policies or to effect social change in their contexts. As state practice has shown, the broad language suggested above may be overstretched to categorize certain acts involving pressure as terrorism. Overstretching the meaning of terms in security laws beyond their original meaning is commonplace in West Africa. Vague phrases, *"defence", "public safety", "public order", "public morality" or "public health"* have been routinely overstretched to bring legitimate expressions or demonstration of organized dissent under the ambit of the terrorism offences.[5]

In this regard, inspiration of a measured language can be drawn from the Nigerian Terrorism Prevention (Prohibition) Act 2022 which exempts the stoppage of work or disruptive acts committed in pursuance of a protest or demonstration subject to certain conditions.[6] In other words, Nigeria's anti-terrorism legislation recognizes citizens' right to protest, subsumed under the tripartite rights to free expression, assembly, and association. This exemption aligns with the constitutional recognition of these freedoms as essential components of a democratic society. Any limitations or derogations placed on these freedoms must satisfy certain conditions and must be reasonably justifiable.[7]

[4] See **A/HRC/16/51**, paras. 26-28

[5] Action Group on Free Civic Space ~ NIGERIA: Shrinking Civic Space in the Name of Security, https://closingspaces.org/7965-2/

[6] Spaces for Change | S4C **POLICY BRIEF: ANALYSIS OF THE TERRORISM (PREVENTION & PROHIBITION) ACT 2022, https://spacesforchange.org/policy-brief-analysis-of-the-terrorism-prevention-prohibition-act-2022/**

[7] See. Section 45(2) of the 1999 Nigerian Constitution. See also Victoria Ibezim-Ohaeri, COVID-19: The Legality And Limits Of The President's Emergency Powers

As a result, it is recommended that the Special Rapporteur's 2b definition of terrorism should alternatively adopt terms like "coercing" or "threatening." These alternative terms describe conventional terrorist-related tactics. Whereas the word "compelling" can be broad, spanning beyond the conceptual framework of terrorism, thereby enabling misapplication. However, if retaining the word "compelling" is essential for a nuanced understanding of terrorism, it is important to establish exemptions—as with Nigeria—that protect civic actors, such as pressure groups and social movements that engage in civic demonstrations (e.g., protests) to compel state actors to meet social demands.

- **Potential Grounds for Enforcing Draconian National Laws**

The Special Rapporteur's definition recognizes the power of States to define terrorism in line with their national laws.[8] The Special Rapporteur's submission also took a further step, providing that, in addition to its previously stated conditions that qualify terrorist acts, an action that:

"Corresponds to the definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or all elements of a serious crime defined by national law" are terrorist acts.

While it is crucial to recognize national laws consistent with their political sovereignty, evidence is showing that this approach is permissive and prone to abuse. Experience shows that this might provide countries with the impetus to develop and enforce draconian national counterterrorism/security laws. An independent report[9] chronicles how national anti-terrorism legislations in West Africa vaguely defined "terrorism" and "terrorist activities" in ways that do not even align with the definitions established by the Security Council. For instance, Burkina Faso's modified Penal Code criminalizes certain ambiguous offences such as "criminal association" or other "offenses involving the use of dangerous materials"; "offenses relating to weapons and explosive products"; "demoralization"; the dissemination of "false information"; restrictions on publishing information about military operations and the requirement of prior authorization to share content related to "images and scenes of offenses of a terrorist nature."

In light of the foregoing, current realities in West Africa suggest that deferring to states to define terrorism poses significant risks and difficulties. The constitutional upheavals and the incursion of military into politics further aggravate the situation in the subregion. It is commonplace for military-led countries to suspend the constitution and adopt alternative rule-based systems, such as codes, edicts, and decrees, eroding pre-existing national laws. These alternative rule-based systems (including those aimed at countering terrorism) are often bereft of human rights safeguards. The implication is that rooting terrorism definition in national laws inadvertently provides legitimate ground for the enforcement of militarized rules that are anti-human rights and inconsistent with the tenets of democracy.

[8] Ibid

[9] Spaces for Change. (2025). Security First! The Impact of Security Laws on Civic Space in West Africa. https://spacesforchange.org/security-first-impact-of-security-laws-on-the-civic-space-in-west-africa/

Conclusion

While the Special Rapporteur's definition of terrorism is commendable, especially given its attempts toward including explicit acts that correspond to terrorism, there remains a salient need for further review. As enunciated in this brief, terms like "compelling" in terrorism definition are prone to abuse and misinterpretation, which ultimately could lead to the criminalization of social movements and citizen actions aimed at compelling governments to meet social demands. As a result, it is fundamental to adopt alternative terms or phrases, such as those suggested in the analysis. In a similar vein, connecting the international terrorism definition to existing national laws may inadvertently give force to flawed counterterrorism laws in domestic contexts, which have been repeatedly weaponized to criminalize dissenting voices or groups, as evident across the West African region.

REFERENCES:

- Action Group on Free Civic Space ~ NIGERIA: Shrinking Civic Space in the Name of Security
- SPACES FOR CHANGE: Security First! The Impact of Security Laws on Civic Space in West Africa
- SPACES FOR CHANGE: POLICY BRIEF: ANALYSIS OF THE TERRORISM (PREVENTION & PROHIBITION) ACT 2022
- Victoria Ibezim-Ohaeri, COVID-19: The Legality And Limits Of The President's Emergency Powers
- ✓ SPACES FOR CHANGE: Harms From Abroad: Impact of Global Security Measures on Civic Space in Nigeria (2025)