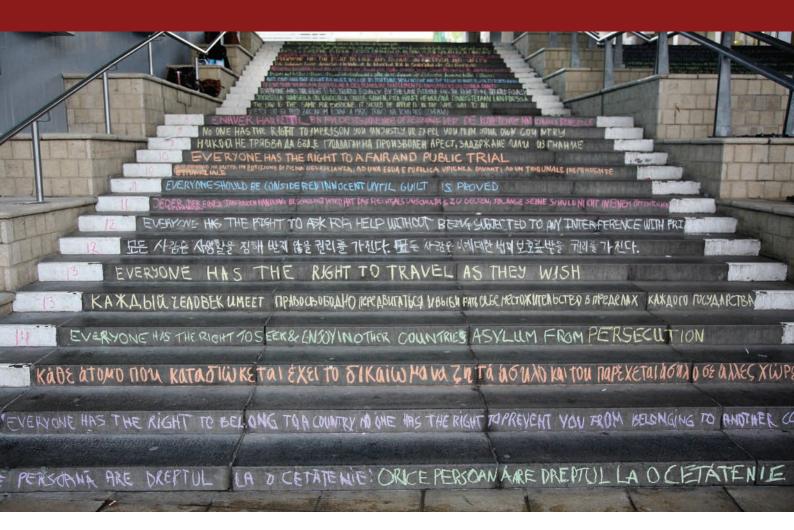# How human rights and the rule of law can address terrorism

Cheryl Frank

Efforts to address terrorism and violent extremism have violated human rights, contributing to cycles of violence and the complexity of these global problems. The international community must revitalise its efforts at both the political and operational levels. Commitment to rights-based criminal justice approaches and greater accountability amongst governments are essential to renewed efforts. Ensuring criminal justice functionality and accountability are equally important. Evidence-based methodologies and effective communications are also key elements for a renewed approach. A diverse range of institutions is required to support this, with civil society as a core stakeholder.

Key points

▶ New approaches to addressing violent extremism and terrorism are necessary to achieve more sustainable solutions. Changes are necessary in both the political and operational domains.

▶ Political accountability should be emphasised through a mix of institutions, with greater collective commitment to human rights and the rule of law.

▶ A greater focus on criminal justice approaches can produce valuable results, if equal attention is given to promoting efficiency and accountability in these processes.

▶ Relating to preventive approaches, caution is advised given the risks to human rights that these might present. Prevention approaches should give equal attention to factors in local communities, as well as structural problems that might perpetuate risks for terrorism.

▶ Civil society should be accorded core roles including participation in policymaking, promoting accountability, as well as programme implementation.

▶ Better methodologies, based on existing work in other fields, should be sought.

▶ Evidence-based approaches should be emphasised, including the documentation and communication of results.

Introduction

As the threats associated with violent extremism and terrorism continue to defy prediction, the pressure to find sustainable solutions has never been higher or more complex. According to the United Nations (UN) 'development, peace and security, and human rights are interlinked and mutually reinforcing'[1] and human rights and the rule of law are central to addressing the threats posed by violent extremism and terrorism.[2] The UN has asserted that 'responses to violent extremism that respect and protect human rights are more effective and sustainable.'[3] Nonetheless, counter-terrorism practices have largely ignored these values and principles. Counter-terrorism campaigns have taken a significant toll on civilian lives and there is substantial evidence of abuses of human rights and freedoms. These have been committed by nondemocratic and democratic governments alike. Global responses to terrorism seem have compounded these problems, rather than resolved them, perpetuating cycles of violence.

> Counter-terrorism campaigns have taken a significant toll on civilian lives and there is substantial evidence of human rights abuses

States continue to rely on securitised and militarised actions, centred on the use of force, as core responses to security threats. This is despite the general view that regaining territory from extremist groups, or eliminating "terrorists" through violent means will not provide long-term solutions. The expansive international framework for addressing terrorism (much of which predates the 2001 attacks on the United States) criminalises a range of actions associated with terrorism and asserts criminal justice frameworks to deal with suspected perpetrators. The comprehensive international architecture of human rights law that supports this has been widely accepted by states.[4] Despite this general consensus, bringing these criminal justice-based approaches to the centre of counter-terrorism efforts has been a significant challenge. This report argues that greater emphasis on these strategies, under specific conditions, will likely bring more stability and sustainability to global efforts to address terrorism.

In 2015, then UN Secretary-General Ban Ki-moon released the Plan of Action to Prevent Violent Extremism (PVE), which brought a more expansive approach to global efforts to address violent extremism. This approach goes beyond 'law enforcement, military or security measures to address development, good governance, human rights and humanitarian concerns.'[5] Preventive approaches broadly seek to address the factors associated with violent extremism and terrorism at their origins and substantially broaden the set of measures against violent extremism and terrorism to include social and development interventions. PVE also recognises non-state actors as essential for sustainable solutions to the problems associated with

violent extremism. While the possible benefits of PVE seem obvious, critical examination of this approach is necessary to understand the possible risks to global efforts to address violent extremism and terrorism.

This report focuses on how criminal justice measures, rooted in democratic values, would support more sustainable solutions to terrorism and violent extremism. It considers the domains of both politics and operational practices; and highlights measures, based on criminal justice, human rights and the rule of law, which might contribute to greater sustainability and safety in global responses. Subsequent recommendations highlight priorities for action.

Use of terminology

Several terms used here are contested and do not have generally accepted definitions. Terms used in this report are defined as follows:

Human rights: This refers to a vast spectrum of rights, freedoms and responsibilities contained in a substantial international framework of human rights law. This framework consists of a wide range of conventions and instruments. An elaboration of these can be found in the Office of High Commissioner on Human Rights (OHCHR) Digest of Jurisprudence of the UN and Regional Organisations on the Protection of Human Rights while Countering Terrorism.[6]

Rule of Law: This report uses the UN definition: 'a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making processes, legal certainty, avoidance of arbitrariness and procedural and legal transparency.'[7]

Violent Extremism: This indicates 'a willingness to use or support the use of violence to further particular beliefs, including those of a political, social or ideological nature and may include acts of terrorism'.[8]

Terrorism: This denotes 'the physical act or threat of an act, use or threat of violence to advance a political, religious, or ideological cause.'[9]

Continuing challenges and potential new directions

Building political will for sustainable solutions

There are several political impediments to addressing violent extremism globally. Not the least of these is establishing a collective vision and approach for the future, to which state and non-state actors may generally subscribe. Participating actors must also take collective ownership and responsibility for the situation the global community faces – as both targets of terrorism and as facilitators of solutions.

States must first acknowledge their role in violence and abuses committed in the context of counter-terrorism actions, either directly or indirectly. Focusing only on the actions of non-state actors ignores the intractable dynamics of violent actions and violent responses – where uninvolved civilians often carry the highest costs. Rule of law and rights-based action should be brought to the centre, especially given evidence that repressive actions can actively facilitate pathways towards violent extremism.[10]

> Bringing criminal justice-based approaches to the centre of counter-terrorism efforts has been a challenge

A key political objective is to maintain the impetus and incentives for states and non-state actors to behave in accordance with the collective values associated with democracy, the rule of law and human rights, and to live up to their rhetoric in this regard. Lack of accountability by governments is likely to be as significant a problem to addressing terrorism as the challenge of terrorism itself. A related challenge is decoupling the tension that has been established between security objectives and democratic freedoms, and to demonstrate their alignment. States also need to design and implement policies for long-term security and development rather than focusing on short-term gains, as many of the factors associated with violent extremism are long-standing political and structural

issues that require long-term solutions.[11] Resolving some of the vexing definitional problems in this environment will also aid longer term solutions.

How do we collectively move towards more sustainable solutions, beyond political statements? Where do incentives for broad consensus come from? While there is some optimism that states are beginning to see that dealing with terrorism is no longer a Western imposed agenda,[12] the dynamic of Western dominance, as the holders and providers of solutions, must shift towards greater parity, in both political and practical terms, including the financing of responses.

A constellation of complementary institutions and networks is needed for states and their partners to meet collective objectives

These political shifts are an exceptionally tall order in the current terrain and leadership from a diverse range of institutions and people is necessary. While great faith has been placed in existing institutions such as the UN and the Global Counterterrorism Forum (GCTF) to offer leadership, such institutions should be part of a matrix of actors that works towards sustainable solutions.[13] A constellation of complementary and effective institutions and networks is needed for states and their partners to build the required will and meet collective objectives. Intergovernmental institutions need to apply peer pressure beyond traditional diplomatic measures to bring collective accountability. The objective of eliminating the harm associated with terrorism is seriously compromised when states continue to shy away from holding one another accountable for their actions, and for empty rhetoric. Institutions also need to sustain the involvement of a wide diversity of actors with different cultural, political and ideological views, without compromising key values. They also need to strive towards practicality and agility and avoid unnecessary intergovernmental protocol, where possible.

New tools for assessing progress, which are more specific than current reporting mechanisms, are likely to contribute to greater accountability and political will. This will be particularly true if independent assessments are undertaken by external agencies and results are made public. Rosand, a key opinion leader on policy solutions and institutional arrangements in this environment, proposes the establishment of a global P/CVE index, as a means to track states' risks to violent extremism, assess compliance with existing human rights and other international obligations and norms, and collect information on steps taken to implement the UN Secretary-General's PVE Plan of Action.[14] While such tools can be useful in contributing to a progress-oriented approach and greater public transparency, as with many other such efforts, they will not be enough to achieve the accountability required.

One institution that has promoted valuable progress is The Global Counterterrorism Forum (GCTF). The GCTF was established in September

THE GCTF WAS ESTABLISHED IN SEPTEMBER 2011 AND IS COMPRISED OF 30 MEMBER COUNTRIES AND THE EUROPEAN UNION

2011 and is comprised of 30 member countries and the European Union.[15] It is an informal multilateral institution that complements the work of the UN, engaging its members and others in collective actions aimed at the implementation of 'good practices' relating to counter-terrorism and P/CVE. It is notable that many of initiatives of the GCTF focus on strengthening criminal justice responses to terrorism that are rooted in human rights and the rule of law. This GCTF works through six thematic working groups (one of which focuses on criminal justice and the rule of law)[16] and three GCTF-inspired institutions (one of which focuses on strengthening criminal justice responses to terrorism),[17] It has development a number of "good practice" documents and guiding instruments; and promoted a series of training and other implementation activities in countries across the globe. The less formal nature of the GCTF has allowed a number of programmes to develop under its auspices, and served to focus many donor efforts. The instruments produced by the GCTF are designed for global use and to be of practical value. For example, the Lifecycle Toolkit is a helpful tool that offers a conceptual framework and practical instruments represented as a cycle of prevention, intervention and rehabilitation and reintegration relating to CT and PVE.

The GCTF has achieved much in its short lifespan, but these achievements need to be expanded and deepened. An important shift needs to be made from producing outputs (e.g. providing training) to a greater focus on measuring outcomes and the reproducing the methodologies associated with achieving results in different contexts. Most critically, notwithstanding its focus on practical implementation, much more is required of this institution in asserting greater political influence among its members to put its many values and principles into practice. The GCTF remains state-centred in terms of governance and decision-making processes, and civil society organisations (CSOs) are viewed as implementers rather than as political partners in joint efforts. This is also an important area for its evolution.

Criminal justice responses: building legitimacy and making systems work

Delivering justice in the context of counter-terrorism actions is a key pillar of the Global Counter Terrorism Strategy. The strategy and other UN resolutions assert the criminal nature of acts of terrorism, and this implies a focus on bringing terror suspects to justice in public proceedings that assert the due process of the law, respect for the rights of suspects and victims, and ultimately, the dispensing of appropriate sanctions to those found to be guilty. For the public, such processes have the potential to humanise 'terrorists' as criminal suspects, rather than as shadowy figures that are the subject of secretive security operations. The processes and outcomes of justice become visible, and amendable to scrutiny; and the practices of human rights and the rule of law are placed on display.

> Delivering justice in the context of counter-terrorism actions is a key pillar of the Global Counter Terrorism Strategy

Here again, contributing to sustainable responses to terrorism is dependent on national regimes having both political commitment to rights-based actions, and the operational capabilities to apprehend, investigate, prosecute, adjudicate and penalise these crimes based on international standards. Ensuring the functionality of criminal justice systems and agencies, as well as their legitimacy (particularly in terms of public accountability) are therefore mutually reinforcing outcomes that need to be sought. The international framework to do this constitutes a staggeringly wide range of law, policy and specialised knowledge, functions and infrastructure, enumerated in the UNODC's Handbook on Criminal Justice Responses to Terrorism.[18] In addition, a wide range of more specialised knowledge, skills and services might be required in areas such as: addressing Foreign Terrorist Fighters, terrorism financing, cyber-investigations, rehabilitation and reintegration programmes in prisons, forensic services and witness protection services.

This implies considerably sophisticated criminal justice institutions and skills, and functional institutions for oversight and accountability. However, countries have more fundamental and persistent problems including case management weaknesses, a shortage of staff and skills, and other limitations in resources.[19] Other systemic problems could also include constitutional and legislative weaknesses, political interference, and corruption.[20]

Human rights abuses, repressive practices and discrimination in terms of race and socio-economic circumstances currently also undermine the legitimacy of criminal justice agencies. In addition, the existence of informal, traditional and customary systems alongside formal systems brings more complexity to the tasks at hand.[21] Where states are not the primary or only providers of security and justice services, far more expansive and long-term efforts are required to eliminate abuses and to align values, principles and practices.

Evidence-based methodological approaches are not the norm in counter-terrorism support efforts

Strengthening the functionality and legitimacy of criminal justice systems has been a longstanding international project. For example, Security Sector Reform (SSR), which has involved external assistance in post-conflict and fragile states, stands out for the commonality of its principles and objectives with many institutional strengthening efforts in the counter-terrorism domain. Efforts have included designing and implementing legislative regimes; improving policing, justice and correctional systems, procedures and infrastructure, strengthening the institutions for accountability for these functions, including complaints mechanisms and oversight measures; and capacity-building for practitioners and legislators. Despite these efforts in many countries affected by terrorism, these systems are incomplete, and often weak, and it is a significant challenge to develop counter-terrorism and accountability systems in such conditions.

At the operational level, the methodologies used to achieve more effective and efficient agencies and systems, have been significantly underdeveloped in counter-terrorism and PVE efforts. Much has been learned from years of implementation in fields such as criminal violence prevention and security sector reform, and lessons from these practices have been well documented.[22] While methodologies used in the field of development can be insightful – few lessons from 'human rights approaches to development' can be observed in counter-terrorism actions to strengthen criminal justice.[23] In fact, few practitioners working on strengthening criminal justice responses would be likely to define their work in a development paradigm. Evidence-based methodological approaches that emphasise elements such as building local ownership of programmes, defining programme goals together with recipients, or problem-solving with local practitioners rather than prescribing responses, are not the norm in counter-terrorism support efforts. Apart from these approaches having the intrinsic value of being right in the context of human rights, evidence indicates that such approaches achieve more sustainable outcomes.[24]

Several methodological weaknesses have been observed in capacity-building efforts to strengthen criminal justice responses to terrorism, many of which

STRENGTHENING THE FUNCTIONALITY AND LEGITIMACY OF CRIMINAL JUSTICE SYSTEMS HAS BEEN A LONGSTANDING INTERNATIONAL PROJECT

emphasise training. These include: limited assessments of the ability and willingness of recipient agencies to enable new skills to be absorbed into institutional processes and daily practices; little attention is given to the prevailing power relations and institutional culture, and how these might affect the uptake of training efforts; there is significant reliance on the use of 'expert' trainers with little knowledge or prior experience of the people and contexts that they are seeking to influence; once-off training programmes are implemented, that are disconnected from broader change efforts, with little or no follow-up; and there are weak procedures for the selection of trainees.[25] At best, many of these initiatives can be assessed to have raised awareness about an issue amongst trainees, rather than fundamentally changed skills, institutional frameworks or actual practices.

This does not argue, however, that systems that experience some of the problems noted above are incapable of successfully prosecuting complex crimes such as terrorism. In Africa, for example, countries including Kenya, Uganda and South Africa have showed their capacity to prosecute complex cases. Kenya has successfully prosecuted difficult piracy cases, demonstrating its ability to prosecute these and other cases using highly specialised investigation and court procedures (e.g. pioneering video testimony).[26] Uganda and Kenya have also established specialisation among prosecutors and the judiciary and continue to prosecute complex terrorism cases. South Africa and Nigeria have also demonstrated effective investigative and prosecutorial specialisation in terrorism-related offences. The primary example here was the high profile and successful prosecution of Henry Okah, a Nigerian national convicted in South Africa of terrorism offences committed in Nigeria.[27] Criminal justice agencies in South Africa and Nigeria conducted a complex investigation in both countries, collaborated to protect Nigerian witnesses in South Africa and successfully managed complex forensic evidence, based on effective international cooperation mechanisms. Yet, all these countries continue to experience difficulties relating to the accountability of governments, and in criminal justice institutions, as demonstrated by reports of continued rights abuses by criminal justice agencies, and political interference.[28] This confirms the need for

increased functionality and accountability be given equal weight as efforts to strengthen criminal justice systems develop. Without equal attention to accountability, stronger criminal justice agencies are likely to heighten risks to rights.

Regional and other specialised institutions can play important roles in achieving the outcomes of greater accountability, as they seek greater effectiveness. The Eastern African Police Chiefs Cooperation Organisation (EAPCCO) represents an example the evolution of these efforts. EAPCCO is an international police cooperation agency comprised of policing agencies of the East and Horn of Africa, and is INTERPOL's regional bureau for East Africa. The EAPCCO promotes cooperation among 13 national policing agencies in this region.[29] Representation is at the level of the police ministers from member states and it works to enhance and build police cooperation on selected priorities, including counter-terrorism. This entity is unusual in that it actively sustains progress towards CT objectives through meetings and activities involving both political and operational officials.

> Without equal attention to accountability, stronger criminal justice agencies are likely to heighten risks to rights

The focus of these meetings is evaluating progress, the identification of new priorities, and collective planning forward. The heads of counter-terrorism units, criminal investigations departments and training departments from countries all contribute to these discussions, build active cooperative, and seek to progress collectively towards the achievement of objectives. EAPCCO selects partnerships with CSOs that are able to contribute to its annual work plan, such as FIIAPP, the Institute for Security Studies, and others. These relationships actively bring greater emphasis to rights-based considerations and embed these into regionally endorsed training materials, Standard Operating Procedures, competency assessments of CT trainees, and field-training exercises.

It is worth highlighting here that the definitional problems noted earlier have significant implications for both the political and operational matters noted here. The lack of universally accepted definitions for a number of terms,

including for 'terrorism' and 'violent extremism', increases the risk of rights abuses, primarily due to how these might be differentially defined and applied by those in criminal justice agencies. While some descriptions are provided for in policy,[30] an expanded range of terms has emerged and their definitions will become important as prevention efforts expand. The UN Special Rapporteur on Human Rights specifically highlighted concerns on these matters in his report in 2016. Later that year, the OHCHR stated that 'a legal or policy framework that fails to clearly define the phenomenon it seeks to address not only risks leading to inefficient measures, but may also become harmful. Vague concepts such as "violent extremism", "extremism" or "radicalisation" are open to interpretation and may easily be abused.'[31] Most critical are the risks associated with criminalising acts that are lawful under international human rights law.[32]

> The choice on whether and how to criminalise acts associated with terrorism is central to whether rights and freedoms will be respected

An important measure of criminal justice and rule of law-based processes is what actions a country chooses to criminalise and whether this stands up to scrutiny in terms of international human rights and humanitarian law. For example, violent extremism is defined by some governments (such as Australia) as relating to both beliefs and actions,[33] while some, such as the United States Federal Bureau of Investigation, define specific actions within this term i.e. 'encouraging, condoning, justifying, or supporting the commission of a violent act to achieve political, ideological, religious, social, or economic goals".[34] This has resulted in a disparate set of descriptions and definitions, which are likely to create difficulties at a number of levels, including for international legal cooperation amongst criminal justice agencies. The choice on whether and how to criminalise acts associated with terrorism is central to whether rights and freedoms will be respected.[35]

A prevention agenda consonant with the rule of law

The UN PVE Plan of Action promotes a wide range of actions, including: dialogue and conflict prevention, strengthening good governance, human rights and the rule of law, engaging communities, empowering youth, gender equality and empowering women, education, skills development and employment facilitation and strategic communications, the Internet and social media.[36] The PVE Plan of Action focuses specifically on activities that are considered precursors to terrorism. Quoting from UN Resolution 2178, the PVE Plan of Action states, '"violent extremism, which can be conducive to terrorism", requires collective efforts, "including preventing radicalization, recruitment and mobilization of individuals into terrorist groups and becoming foreign terrorist fighters". In that resolution, the Council "calls upon Member States to enhance efforts to counter this kind of violent extremism."' [37]

THE LACK OF UNIVERSALLY ACCEPTED DEFINITIONS FOR A NUMBER OF TERMS INCLUDING 'TERRORISM' AND 'VIOLENT EXTREMISM' INCREASES THE RISK OF RIGHTS ABUSES

This emphasis on prevention holds great promise. These ideas have been expanded into a wide range of programme ideas that are included in various policy frameworks and believed to promote prevention. However, there is still much to be learnt about the application and results of this agenda and the risks that PVE might present to human rights, particularly at the community level. The UN Special Rapporteur on Human Rights and Counter-Terrorism has noted the risks to human rights associated with the use of undefined terms in this context, including the criminalisation of lawful actions. The manipulation of terms, such as extremism, against political opponents and journalists is an area of risk.[38]

> Programmes on PVE tend to be community-focused, rather than addressing the structural problems that studies identify as factors associated with violent extremism

Preventive approaches have been the subject of considerable criticism for their potential to securitise matters relating to development and compromise the delivery of essential services (such as health, education and social services). This is especially true when resources are prioritised for communities and individuals where there are perceived risks for violent extremism or where resources allocated to social programmes are diverted to security sector counter-terrorism actions.[39] Also concerning are potential net-widening effects,[40] where more and more people are brought under the scrutiny of states, as the range of behaviours associated with violent extremism continues to expand.

Programmes on PVE tend to be community-focused, rather than addressing the structural problems that studies have identified as factors associated with violent extremism.[41] While there is only limited information about the implementation of PVE and CVE programmes, a scan of programmes defined as PVE or CVE programmes in Kenya, for example, indicates that most if not all are focused on programmes with youth, counter-radicalisation education and communications.[42,43] It is worth investigating whether a focus on citizens and communities as the sources of these problems, rather than states themselves, will further exacerbate rather than improve attempts to address extremism. However, much more publicly reported information on PVE programmes needs to become available to enable this assessment.

Given the emergent nature of PVE activity, a series of implications are worth highlighting. As has been the experience in the field of criminal violence prevention, it is necessary to build a body of knowledge to enable the identification of lessons and effective practices. Otherwise, little can be understood about the effects of such programmes. While research has identified a series of generic factors associated with violent extremism, a necessary precursor to the design of PVE programmes should be context-specific research to understand the dynamics associated with violent

THE UN PVE PLAN OF ACTION FOCUSES ON ADDRESSING THE DYNAMICS ASSOCIATED WITH THE CAUSES OF VIOLENT EXTREMISM AND TERRORISM

extremism. The design of programmes following from this should also be a specialised endeavour, as these programmes should guard against a range of risks, such as the stigmatisation of specific groups (e.g. young people), the unfair targeting of religious and ethnic groups, and assumptions associated with women (e.g. only as maternal and caring figures).

Given the need to carefully gather and document the results of programmes, it is important for new programmes to be designed with clear results-based indicators. They should be evaluated and the results documented and made publicly available. While there is much investment currently in a range of localised PVE programmes, there is limited evidence of a culture of evaluation, documentation and communication of results. These practices need shift quickly as this body of knowledge will be central to directing the design of future preventive policies and programmes. Donors have a key role to play in investing in these evidence-building activities.

Researchers are challenged by the complexities of feeding research evidence into policymaking and operational practices

Much can be gained in this environment from adopting a learning orientation to preventive initiatives. Scaling programmes up from small localised projects, and understanding what might be transferable to other contexts will depend centrally on the processes indicated above. Research and evaluation methodologies have been developed over many years in related fields, for example, criminal violence prevention, and many are transferable to this learning endeavour, and should not be developed from scratch.

It is critical to note, however, that all programming is likely to be subject to government or donor interests, rather than objective criteria generated from research. How problems are defined, who is targeted, and what to done to address these problems will likely be defined by those in power, rather than what is in evidence. This seriously compromises efforts to truly address the problems associated with terrorism and violent extremism. It is a core risk that needs to managed in an active and intentional manner.

The useful example of a complementary institutional effort is the RESOLVE network. This brings together a network of international researchers who contribute to research on violent extremism and evaluation. The mission of the network is to 'connect, capture, curate, and catalyse locally informed research on violent extremism to promote effective policy and practice.'[44] The network shares publications and other documentation through a dedicated website. Importantly, it already recognises the value of focusing on matters relating to local communities, as well as those relating to broader structural matters including governance. Networks of this kind are challenged, however, by the complexities of feeding research evidence into policymaking and ultimately into operational practices. This speaks again to the need, as described above,

EVIDENCE-BUILDING
AND EVIDENCE-BASED
APPROACHES ARE CRITICAL
FOR FUTURE SUCCESS

for a wide range of institutions and networks to collaborate to bring stronger solutions to addressing terrorism.

Civil society as a non-negotiable stakeholder in solutions

Millar, a respected international expert in this field, has emphatically stated that, 'too many states continue to view the challenge of violent extremism exclusively through a security lens and thus as one that should be addressed exclusively by national government actors, and principally the security sector.'[45] He argues persuasively for more expansive and inclusive approaches to involve civil society in CT and PVE measures. In its many forms, civil society has always played a central role in the achievement of goals relating to human rights and the rule of law. It also plays a key role in balancing systems and politics to maintain these achievements.

Much is to be gained from ensuring a more central role for CSOs and representatives in politics, governance and programmes relating to violent extremism and terrorism. For example, CSOs in South Asia and Africa have included contributions as advocates, 'monitors, technical experts, trainers, service providers, and information hubs'.[46] This has led to a more democratised and accountable security sector, greater political accountability of leaders and the ability to monitor and report on community activity.[47]

> The imperative for communications on matters relating to violent extremism has never been higher

Informal and customary justice systems are often influential in countries affected by violent extremism. The private sector might also bring new skills, resources and innovations into this domain. Yet many states, including democracies and key players in counter-terrorism institutions, remain suspicious of CSOs and some have actively repressed their involvement in this area. While the preventive approach argued in the PVE Action Plan, for example, includes civil society actors, this role can be defined too narrowly as only in the realm of community-based programme delivery, with limited ability to influence politics and policy. This approach instrumentalises civil society as a means to achieve the objectives of states,

is short-sighted and limits the potential contributions of civil society actors as practitioners, advocates and policy experts.

A recent letter to the UN Secretary-General pointed out the weakness of his UN reform efforts relating to CT and PVE institutions, which once again excluded civil society from global institutional reform.[48] A key future objective is the promotion of greater civil society participation and decision-making processes in global and national forums to address terrorism and violent extremism. This should include efforts to define key terms and to design policy and programmes. Current global dynamics will continue to prevent achievements on this objective, unless fundamental shifts are affected by states themselves.

Communications to strengthen democratic processes

The broad global imperative for communications on matters relating to violent extremism and terrorism has never been higher. Current state-centred approaches to security matters are often centred on secrecy. The new approach sought from the arguments presented in this report, however, is predicated on the broad availability of information and increased awareness on terrorism and violent extremism. Public transparency on how governments define security problems and solutions are a starting point and can serve as a means through which to equalise knowledge and encourage debate. This is true even where opportunities for public participation in policymaking are limited.

Human rights, freedom of opinion and expression are also essential in this context. This necessitates a significant increase in communications investments.[49] While the PVE agenda expects much from local communities and organisations, these groups might be the most neglected in terms of general information relating to these problems. Engaging media organisations and using electronic media are means to ramp up these communications activities and reach a wide audience.

The role of donors as key actors

A final yet critical range of responsibilities lies with donors, and these transverse the range of issues raised above. Donors countries that define themselves as democracies, can offer leadership through principled domestic and international actions, and embody and model

the values and actions that they espouse. They should also hold funding recipients accountable for their results, processes and methodologies, using authoritative measures to do so.

Donors also have a responsibility to assess the effectiveness of policies and programmes relating to violent extremism and terrorism. This implies adopting a broad evidence-building approach including support towards the evidence-based design, implementation and evaluation of programmes and policies. Donors are in a unique position to take up lessons from past initiatives into their own practices, discourage outdated and inappropriate methodologies and encourage the documentation and public dissemination of the programme results.

Political institutions and processes should prioritise greater accountability from governments in their responses to terrorism

Examining the political and operational barriers to these actions is an important exercise for donor groups and coordination mechanisms to prioritise.

Conclusion

This report has argued that current efforts to address terrorism have contributed to the intractability of the problem, through perpetuating cycles of violence and rights abuses. These have brought short-term wins, but have offered few pathways to sustainable global solutions. This report asserts that new approaches need to be adopted by the global community and that these need to promote substantial changes in both the political and operational domains.

Political institutions and processes should prioritise greater accountability from governments in their responses to terrorism. It is argued here that more sustainable results are likely to be gained from a greater focus on criminal justice approaches, if these are implemented with equal attention to efficiency and accountability amongst criminal justice actors. The centrality of civil society as a stakeholder at both the political and operational levels is emphasised here. This report recommends caution related to emerging preventive policies and practices, given the risks to rights that these are likely to present. Caution is also advised in relation to emphasising prevention efforts focused on local communities only, without equal attention to the structural problems in governments that might perpetuate risks for violent extremism and terrorism.

At the operational level, the dual objectives of accountability and functionality of measures to address terrorism and violent extremism are emphasised. It is argued here that new approaches need to emphasise longer-term

CRIMINAL JUSTICE RESPONSES TO TERRORISM CANNOT BE EFFECTIVE UNLESS APPROACHES ARE FOCUSED ON THE DUAL PRIORITIES OF EFFECTIVENESS AND ACCOUNTABILITY

approaches to achieving outcomes, use results-based methodologies, promote learning from related fields, as well as the documentation and communication of results. Donors are identified as being specifically well-positioned to promote these approaches.

Democracies are noted to have particular responsibilities in this context, to live up their rhetoric, and provide examples to others as to how values and principles may be translated into action.

Recommendations

Build political will and accountability through political institutions

The international community needs to renew and redirect efforts towards more sustainable approaches to addressing violent extremism and terrorism. There must be driven by a collective of global, regional, national and local institutions and networks working to promote political commitment for rights-based approaches, and emphasising the use of criminal justice systems to bring terror suspects to justice. New approaches must be established towards achieving greater accountability among members, including rejecting empty rhetoric related to human rights and the rule of law and embracing stronger measurement tools to assess accountability.

Strengthen legitimacy and capacity as mutually reinforcing objectives in criminal justice systems, with a focus on methodology and learning from implementation

Criminal justice responses to terrorism cannot be effective unless criminal justice agencies become more effective at investigations, prosecutions and adjudication. These efforts fail in the absence of accountability and legitimacy to the citizens they are meant to serve. Much is expected from efforts to strengthen legitimacy and capacity among criminal justice institutions. Donors, national governments and programme implementers should seek improvements in the methodologies used to achieve these objectives. They should also pursue learning and exchange with institutions in fields that have been engaged in similar actions over many years. These fields include security section reform, criminal violence prevention and general development practice.

Exercise vigilance relating the abuse of rights in the context of PVE

While PVE has emerged as a promising new approach aligned with development and security objectives, international institutions and national governments should exercise great caution in its application. There are significant risks to rights that have been identified among many proposed PVE actions, despite its softer appearance. Specific efforts should be made to ensure that PVE actions are strongly located in rights-based frameworks; and that they do not criminalise lawful actions and that they give equal attention to issues related to violent extremism in communities and structural factors associated with governance and the rule of law.

Evidence-building and communications

Donors, programme practitioners and institutions should adopt an evidence-building approach, including: context-specific research to understand the dynamics associated with the problem; monitoring, evaluation and documentation of results and ensuring that results are clearly communicated. Obligations should be placed on all involved to take into account the evidence and lessons from related fields. Additional specialists should be involved in all aspects of programming where there is appropriate exchange across established fields. These actors should also invest in communications to support public education on the rights of citizens, and obligations of practitioners and policymakers on rights-based issues relating to terrorism and violent extremism.

Respect civil society as an actor in solutions and ensure participation in policymaking and implementation

Governments and intergovernmental institutions need to ensure the meaningful participation of civil society in its many forms, including in political decision-making processes, accountability and the implementation of programmatic activities. CSOs are often relegated to the role of implementers without due regard for the significant contribution that they can play in the more effective policymaking and building greater accountability.

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