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A regulatory misfit? A closer look at the counter-terrorist financing strategies in African states

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Abstract This article undertakes a multivariate empirical study in examining the correlation between compliance levels with the Financial Action Task Force standards on counter-terrorist financing (CFT) and the frequency of terror activities in African states. Results indicated that irrespective of compliance levels to specific CFT recommendations, assessed independently, terror levels remained unaffected. This is suggestive of misguided CFT recommendations which are mainly focused on the banking sector and blindsided to the position in African states where alternative means of conduits prevail. Consequently, the viability of home-grown, targeted solutions to CFT, is explored as crucial for reduced terror activities in the continent.

Keywords Countering terrorist financing · Terrorism · Cash transfers

Introduction

The occurrence of terror activities, advanced by global interconnectedness, triggered international and national political responses to end the menace. Responses were predicated on the assumption that the war on terror could be won by identifying and curtailing the conduit of transfer of terror funding. Although regulatory focus was initially on terror fundraising, there was the increasing realisation that the channels for transferring such funds are a crucial intermediary step in orchestrating terror attacks. This was

based on the acknowledgement that the effectiveness of terror organisations is dependent on their ability to move raised funds to their operational areas and tracking this process can disrupt the operations of these groups. Hence, this occasioned heightened supervision of financial institutions within African states and countries across the globe. The compulsion of African states to comply with the global counter-terrorist financing (CFT) regime is predicated on the perception that as the weakest link in the global finance chain, Africa is a fertile ground for illicit transfers.

In order to understand the compliance deficiencies in African states and its impact on curtailing channels of terror funding I conducted an empirical study. This multivariate empirical study examined the correlation between compliance levels and the frequency of terror activities in African states. Results indicated that irrespective of compliance levels to specific CFT recommendations, assessed independently, terror levels remained unaffected. These findings reveal misguided CFT recommendations which are mainly focused on the banking sector. This is blindsided to the position within African states where financial institutions are not necessarily the sole conduit for movement of funds. Statistically, 76% of her population are financially excluded and thus, they employ the use of alternative conduit structures to transfer funding.¹ Terror organisations also exploit the opportunities that the alternative transfer system presents.

To this end, the first part of this article attempts to define terrorism and the financing of the same in Africa. The adopted definition reveals that historical experiences, cultural and socio-economic and political peculiarities

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influence the definition and perception of these terms. It then discusses the development of the CFT regime on an international, continental and regional level whilst conceding to the fact that sovereignty demands that implementation occurs only at the national level. It argues that although international measures have played a crucial role in combatting CFT, home-grown solutions are essential to combat terrorist financing in Africa. An appraisal of the pioneering structure in Africa, however, illustrates a weak and ineffectual structure due to the absence of an enforcement structure and the wholesale transplantation of international standards.

The second part of this article assesses the impact of three vital CFT recommendation on the frequency of terror attacks. It starts by reviewing the sparse literature in this area. Then it proceeds to enumerate its empirical financings which are crucial in revealing that the impact of CFT recommendations is albeit minimal. These results have implications for the type of policies that would improve long-run financial stability in Africa. Furthermore, it recognises that the manner in which African countries respond to combatting terrorist financing (FT) is important for the future of the international CFT regulation.

Realising the need to combat terrorist financing in Africa

Africa was once assumed to be immune from terrorist activities due to the scarce nature of terror-like activities within the continent.² Assertions of 'terrorism' were dispelled as ethnic or political conflicts which resulted in ritualistic killings.³ Therefore, it was argued that African states were contending with the remnants of colonisation which occasioned the haphazard division of states by colonial masters, a situation which led to a political, ethnic and religious crisis.⁴ Consequently, it was contended that

² Nigerian Muse, 'Reaction of Various Nigerians' and Organizations' to Umar Farouk Abdul Mutallab's Terrorism Attempt' <<http://www.nigerianmuse.com/20091230090205zg/nigeria-watch/star-information-reaction-of-various-nigerians-and-organizations-to-umar-farouk-abdulmutallabs/>> accessed 23 July 2016.

³ Beth Elise Whitaker, 'Reluctant Partners: Fighting Terrorism and Promoting Democracy in Kenya' [2008] 9.3 International Studies Perspectives; Chris Oxtoby and C.H Powell, 'Terrorism and Governance in South Africa and Eastern Africa' in Victor Ramraj et al. (eds), *Global Anti-Terrorism Law and Policy* (Cambridge: Cambridge University Press, 2012 edition); David Pillings, Gabon Leader Calls For Western Help to Combat Terrorist Threat (Financial Times, 16 May 2016) <<https://next.ft.com/content/d529e802-1b45-11e6-b286-cdde55ca122>> accessed 30 June 2016.

⁴ Nuhu Othman, 'Why Terrorism Thrives in West Africa' (Gatestone Institute, International Policy Council) <https://www.gatestoneinstitute.org/8020/terrorism-west-africa#comment_submit> accessed 10 June 2016; James J.F Forest and Jennifer Giroux, 'Terrorism and

priority should be focused on existential social and security issues so identified by the government.⁵

However, classifying decolonisation conflicts as non-terrorist is debatable due to the inconsistencies that occasion the definition of terrorism.⁶ Irrespective of variations in the definitions of terrorism, there is agreement that it entails, 'violence', 'force', 'political agenda and 'threat'.⁷ This is further enumerated by the Global Terrorism Database which defines terrorism as the, 'threatened or actual use of force and violence by a non-state actor to attain a political, economic, religious or social goal through fear, coercion or intimidation'.⁸ Although vague and open-ended, conceding to this definition indicates that decolonisation conflicts can be regarded as acts of terror and thus mandate sanctions accorded to terrorism. According to this, Celikpala classifies decolonisation clashes as nationalist terrorism.⁹ The African Union (AU),¹⁰ however, exempts decolonisation struggles for self-determination from its definition of terrorism.¹¹ This highlights the fact that the definition of terrorism in Africa is contextualised within the political history of the continent. These differing perspectives indicate that although the definition of terror has been reconstructed by the AU, terror is not a novel phenomenon in Africa,¹² neither is the financing of same.

Footnote 4 continued

Political Violence in Africa: Contemporary Trends in a Shifting Terrain,' [2011] 5 Perspectives on Terrorism; Nick Riley, *Terrorism in East and West Africa* (EE Publishers 2014).

⁵ Andrew Zerzan, 'Policing Financial Services: Surveying the Anti-Money Laundering Regulatory Regime' Bill and Melinda Gates Foundation (pages 21–22); Martin Ewi, Kwesi Aning, 'Assessing the role of the African Union in Preventing and Combating Terrorism in Africa' (2006) 15.3 African Security Review—Institute for Security Studies.

⁶ Martin Ewi, Kwesi Aning, 'Assessing the role of the African Union in Preventing and Combating Terrorism in Africa' [2006] 15.3 African Security Review—Institute for Security Studies.

⁷ Leonard Weinberg, Ami Pedahzur, Sivan Hirsch-Hoefler, 'The Challenges of Conceptualizing Terrorism', [2004] 16.4 Terrorism and Political Violence.

⁸ See Global Terrorism Database-Codebook: Inclusion Criteria and Variables (2006).

⁹ Mitat Celikpala, 'Countering the Ideology of Terrorism' in Kenan Tokgos (eds), *Enhancing Cooperation in Defence against Terrorism* (IOS Press, NATO Science for Peace and Security Series, 2012).

Ian Lesser, 'Countering the New Terrorism: Implications for Strategy' in Ian O. Lesser, Bruce Hoffman, John Arquilla, David Ronfeldt, Michele Zanini (eds), *Countering the new Terrorism* (RAND 1999).

¹⁰ Previously the Organisation of African Unity (OAU).

¹¹ Article 3 Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism, 1999.

¹² Jakkie Cilliers, 'Africa—Root Causes and the "War on Terror"' [2006] 15 (3) African Security Review.



Irrespective of the longevity of terrorist financing and its damaging effects on Africa,¹³ the involvement of International Financial Institutions (IFIs) and Transgovernmental Regulatory Networks (TRNs) to address the threat is fairly recent. For the sake of clarity, 'terrorist financing' is established when a person, 'by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they will be used in full or in part, in order to carry out a terrorist act'.¹⁴ This United Nations definition encapsulates the criminalisation of persons involved in the process of transfer to facilitate the use of funds for terrorist purposes. This definition does not, however, reflect the true picture in Africa, a continent still moving away from the barter- and cash-based system, which although considered largely fitting to the modern capitalist environment—is still prevalent. Investigative trails have reinforced this argument as findings have revealed that terror is sometimes funded 'in kind'.¹⁵ Therefore, certain African countries have redefined 'financing' to encapsulate other types of 'support' that terror organisations may be privy to besides financial assistance.¹⁶

The focus on 'financial assistance' has occasioned the presumption that financial institutions are the basic conduit for terror funding and that informal transfer systems such as cash couriers and value transfer services can be regulated effectively.¹⁷ This dangerous assumption has placed financial institutions at the frontline in the war against CFT. Furthermore, proponents of this assumption argued that terror funders have a preference for the banking system in particular due to the safety, speed and expertise it offers.¹⁸ Interestingly, this is not always the case in Africa where there is a preference for alternative means of transfers which are not subject of effective regulation. These include underground banking, black market dealings, cash couriers or kidnapping ransoms in cash. The inclination towards these informal structures is based on

the fact that they not only provide anonymity but guarantee convenience, speed and safety.¹⁹

This illustrates the array of options available to terrorist groups within Africa. For instance, there is evidence that Boko Haram, a US -designated terror organisation based primarily in the North-Eastern region in Nigeria utilise these alternative means to transfer terror funding to its operation sites.²⁰ These alternatives thrive due to the cash-based economy in Nigeria.²¹ Ansar al Sharia, another US-designated group, not only exploits the financial exclusion levels in Tunisia, but also the low border control through which it smuggles goods and receives funds.²² A more complicated conduit is noticed in Kenya and Somalia where Al-Shabaab engages in unregulated taxation of people in cash.²³ These openings have given these terror groups access to funding, which has heightened their capability to cause catastrophic harm in these countries. This, coupled with the deficiencies in governance and dearth of capacity to tackle the degree of security, and developmental challenges emphasise the importance of home-grown terrorist financing measures to address

¹³ 2015 Global Terrorism Index; HIS Jane's Terrorism Centre (2014) <http://globalcenter.org/wp-content/uploads/2010/09/West_Africa_Report_Final.pdf> accessed 21 June 2016.

¹⁴ United Nations Convention for the Suppression of the Financing of Terrorism; United Nations Security Council Resolutions.

¹⁵ Nigerian Financial Intelligence Unit, Annual Report 2011 <<http://www.nfiu.gov.ng/images/Downloads/downloads/annualreport.pdf>> accessed 3 August 2016.

¹⁶ See Nigeria for instance—Section 5 (1) and (2) of the Terrorism Prevention (Amendment) Act 2013.

¹⁷ Nicholas Ryder, *The Financial War on Terrorism: A Review of Counter-Terrorist Financing Strategies since 2001* (Routledge, 2015).

¹⁸ FATF Report, *Emerging Terrorist Financing Risk*, (October 2015) <<http://www.fatf-gafi.org/media/fatf/documents/reports/Emerging-Terrorist-Financing-Risks.pdf>> accessed 21 June 2016 p 20; Arabininda Acharya, *Targeting Terrorist Financing: International Cooperation and New Regimes* (First Published 2009, Routledge) p 71.

¹⁹ Asia/Pacific Group on Money Laundering, 'APG Yearly Typologies Report 2010: Methods and Trends of Money Laundering and Terrorist Financing' (APG, 16 July 2010) <http://eurasiangroup.org/APG_Typologies_Report_2010_FINAL.pdf> accessed 3 August cf. FATF Report, 'Organised Maritime Piracy and Related Kidnapping for Ransom' (FATF, July 2011) which argues that banks played a prominent role in the transmission of ransom mainly because those with the ability to pay the ransom were located in developed areas with sophisticated banking systems; Virginia Comolli, *Boko Haram: Nigeria's Islamist Insurgency* (Hurst & Company, London, 2015); Yemi Itodo, 'My Family Paid N2 M Ransom Before I Was Released—Kidnap Victim, Adayi Omale' (Daily Post, 19 December 2016) <<http://dailypost.ng/2016/12/19/family-paid-n2m-ransom-released-kidnap-victim-adoyi-omale/>> accessed 1 August 2017; Peter Apps, 'Kidnap and Ransom: Negotiating Lives for Cash' (Reuters, 17 February 2011) <<http://www.reuters.com/article/us-crime-kidnap-ransom-idUSTRE71G3U520110217>> accessed 2 August 2017.

²⁰ FATF Report, *Terrorist Financing in West Africa* (FATF, October 2013) <<http://www.fatf-gafi.org/media/fatf/documents/reports/TF-in-west-africa.pdf>> accessed 21 June 2016, pp. 32–33.

²¹ FATF, *Consolidated FATF Strategy on Combatting Terrorist Financing* (FATF, 19 February 2016) <<http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Terrorist-Financing-Strategy.pdf>> accessed 31 July 2016; FATF Report, *Terrorist Financing in West Africa* (FATF, October 2013) <<http://www.fatf-gafi.org/media/fatf/documents/reports/TF-in-west-africa.pdf>> accessed 21 June 2016, pp. 32–33.

²² See U.S Department of State: *Diplomacy in Action*, 'Chapter 2. Country Reports: Middle East and North Africa Overview—Bureau of Counterterrorism and Countering Violent Extremism—Country Report on Terrorism 2015' (U.S Department of State: *Diplomacy in Action*, 2015) <<https://www.state.gov/jct/rls/crt/2015/257517.htm>> accessed 29 July 2017.

²³ Tom Keatinge, 'Finances of Jihad: How Extremist Groups Raise Money' (BBC News, 12 December 2014) <<http://www.bbc.co.uk/news/world-middle-east-30393832>> accessed 29 July 2017.



specific challenges intrinsic to Africa.²⁴ An indigenous regulatory system will identify cracks in the system and provide tailored solutions or may indeed address the root cause of the cracks.²⁵ However, these nations cannot fight terror financing in isolation. Hence, indigenous solutions to combating same must be reflected at the international level which would not only provide a minimum standard for all African countries but some measure of compulsion for all affected countries to comply with the standards.

Responsive counter-terrorist financing regime

TGNs, such as the Financial Action Task Force (FATF) has responded by setting and revising standards on CFT which are informed by the United Nations Conventions. This served as a move towards ensuring improved security and financial stability in Africa. Consequently, the development of CFT regulations has occurred on three fronts: the global level, the continental level and the regional level, but with the implicit recognition that implementation and compliance take place only at the country level.²⁶ Although the approach of the regulatory institutions at various levels differed, the unison agreement by these bodies is the agreement to curtail terror financing through institutional guidance, advice and capacity building.

The global level: the United Nations and the FATF

The global level responses which are highly influenced by the USA,²⁷ have standards which range from soft law instruments such as the Financial Action Task Force (FATF) recommendations on CFT, to the legally binding international norms, as contained in the Resolution of the United Nations (UN) Security Council and the International Convention for the Suppression of the Financing of Terrorism.

The FATF CFT recommendations, established in response to the 9/11 attacks, provides a coordinated

platform for starving terrorist of their funds.²⁸ This marked an extension of FATF's central focus on anti-money laundering (AML) regulations. Scholars resisted this regulatory fusion on the ground of non-commonality of purpose between launderers and funders.²⁹ CFT is known as reverse money laundering, as whilst launderers are profit motivated, coupled with the illegal origination of their funds—with TF, this is not the case.³⁰ The pragmatic and prevailing stance, however, is that—pre-existing AML communication and implementation framework provides a platform for CFT measures to advance rapidly.³¹ The FATF has necessitated the development of an intrinsic commercial position towards CFT from financial and non-financial institutions. As a self-protective reflex against regulatory sanctions and reputational risks, these institutions have engaged in compliance. In the absence of legally binding authority and direct supervisory enforcement ability to bind countries to its recommendations,³² the FATF employs soft law techniques to ensure compliance by placing failing countries on a Non-Cooperative Countries and Territories List (NCCT),³³ a list that comes with attendant consequences, including financial isolation.³⁴ The effect of this sanction, however, gains its vitality from the FATF's linkages with the IMF, United Nations Security Council, World Bank and other related international institutions³⁵ which have given it force of compliance.³⁶ On this basis, various scholars have argued that its relationship with established supranational bodies has 'hardened' the trajectory of the soft laws of the FATF by placing it on a platform that allows it

²⁴ The differences within African states and regions however warrant the adoption of distinctive strategies as terrorist organisations within such states have unique agendas.

²⁵ Aimen Dean, Edwina Thompson, Tom Keatinge, 'Draining the Ocean to Catch One Type of Fish: Evaluating the Global Counter-Terrorism Financing Regime' [2013] 7.4 Perspectives on Terrorism.

²⁶ Eleni Tsiogou, 'Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime' [2005]161/05 CSGR Working Paper.

²⁷ Dr. Nicholas Ryder, Dr. Umut Turksen, 'Banks in Defense of the Homeland: Nexus of Ethics, Legality and Suspicious Activity Reporting in the United States of America' [2014] 12.4 Special Issue in Law, Ethics and Counter-Terrorism.

²⁸ FATF, History of the FATF, (FATF, 2017) <<http://www.fatf-gafi.org/about/historyofthefatf/>> accessed 21 June 2016.

²⁹ Tim Krieger, Daniel Meierrieks, 'Terrorist Financing and Money Laundering' [2011].

³⁰ Jimmy Gurule, *Unfunding Terror: The Legal Response to the Financing of Global Terrorism* (1st Edn, EE 2009).

³¹ International Monetary Fund, 'Anti-Money Laundering/Combating the Financing of Terrorism-Topics' <<https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm>> accessed 21 June 2016.

³² Navin Beekarry, 'The International Anti-Money Laundering and Combatting the Financing Of terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law' [2010] 31 NW.J. INT'L L & BUS, 137, 155–66; James T. Gathii, 'The Financial Action Task Force and Global Administrative law' [2010] 197 Law, J. Prof. Law.

³³ Now 'High-Risk and non-cooperative jurisdictions'.

³⁴ Chris Brummer, *Soft Law and The Global Financial System: Rule Making In The 21st Century* (CUP 2012).

³⁵ Eleni Tsiogou, 'Global Governance and Transnational Financial Crime: Opportunities and Tensions in the Global Anti-Money Laundering Regime' [2005] 161/05CSGR Working Paper; International Monetary Fund, 'Suppressing the Financing of Terrorism: A Handbook for Legislative Drafting' <<https://www.imf.org/external/pubs/nft/2003/SFTH/pdf/SFTH.pdf>> accessed 12 August 2016.

³⁶ James T. Gathii, 'The Financial Action Task Force and Global Administrative law' [2010] 197 Law, J. Prof. Law.



exert sufficient authority as a legitimate supervisory body capable of setting international standards.³⁷

The FATF has endorsed the UN CFT efforts under the International Convention for the Suppression of the Financing of Terrorism ('the Convention')³⁸ and the UN Security Council Resolution on Terrorism (UNSCR).³⁹ The Convention was the first comprehensive treaty which encompassed measures targeted at curtailing the movement of suspected terrorist funds.⁴⁰ As the most universally applicable Convention on terror funding with ratification from 187 countries, the Convention called for improved cooperation through bilateral and multilateral instruments to curtail terror activities.⁴¹ The 9/11 mandated a more strategic approach utilised by terrorist to raise funds, warranting the establishment of the UNSCR 1267, 1333 and 1373.⁴² These resolutions served as a clarion call on all UN member states to criminalise the financing of terrorism and implement regimes to detect, deter, freeze and seize terrorist funds.⁴³ Fulfilment of these instruments mandates the enactment of domestic legislation and foists responsibilities on financial institutions to implement same to curtail FT⁴⁴ with provision for technical assistance by the

UN.⁴⁵ Furthermore, both treaties cover areas which the FATF is blinded to, such as police and judicial cooperation to prevent, investigate and sanction terror funding.⁴⁶

There is, however, uncertainty that treaty-based solutions would be suitable as it would be inflexible and unable to meet up with evolving strategies employed by terrorists that require immediate changes to the treaty agreement to effectively checkmate terror groups. This indicates the impracticality of having a hard law regulatory framework. Therefore, given the increasing significance and flexibility of trans-governmental networks, the soft law approach of the FATF cannot be underestimated.⁴⁷

The continental level: African Union (AU)

However well intentioned, the international instruments have paid limited attention to the peculiarities of African states—most particularly, its informal banking sector. Ryder asserts that the global financial war on terror utilised mechanisms such as the criminalisation of terrorist financing, freezing or forfeiture of assets which, due to its hasty creation, are unable to limit the funding activities of Boko Haram.⁴⁸ Brisard exemplifies this with the exclusion kidnapping ransom in cash, one of the conduits of transmitting terror funding from 'the Convention'.⁴⁹ Such crucial omission is a cause for concern because it may be an indication of the absence of concrete consultation of African states in the formation of the FATF standards. It may also be an indication of power play in the discussions that lead up to the selected standards. Whilst the latter situation is more likely, the standards are arguably unable to ensure the adoption of adequate counter-terrorist financing strategies in African states. The absence of input in the standards is worsened by the lack of capability within African states to effectively comply with the standards. These conjoined root causes of non-compliance cannot be divorced.

African countries have, however, had to come to terms with the crisis of home-grown terrorism worsened by the

³⁷ Dr. Saby Ghoshray Compliance Convergence in FATF Rulemaking: The Conflict Between Agency Capture and Soft Law [2014–2015] 59 N.Y.L. Sch. L. Rev. 521; Dieter Kerwer and Rainer Hulse, 'How International Organisations Rule the World: The Case of the Financial Action Task Force on Money Laundering' [2011] 2 J Int'l Org. Stud. 50.

³⁸ The 1999 Convention is only applicable to 'terrorist acts with an international element.

³⁹ 1267 and 1373 (2001).

⁴⁰ The measures included outlawing the collection of funds for terrorist purposes (article 2) and the freezing and forfeiture of terrorist funds (article 8(1) and (2)); Gilmore William C, *Dirty Money: The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*. (3rd Edn, 2004).

⁴¹ SC Res, 1373, UN SCOR, 56th Sess, 4385th Mtg Article 1(c).

⁴² The central tenet of the UN's legislative stance towards terrorist financing was Security Council resolution 1373 which was published on September 28 2001—the response from the international community from the 9/11 was instantaneous, swift, severe and controversial.

⁴³ SC Res, 1373, UN SCOR, 56th Sess, 4385th Mtg Article 1(a); U.S Department of State Diplomacy in Action, 'Chapter 2. Country Reports: Africa Overview' <<http://www.state.gov/j/ct/rls/crt/2014/239404.htm>> accessed 10 August 2016; International Monetary Fund, 'Suppressing the Financing of Terrorism: A Handbook for Legislative Drafting' <<https://www.imf.org/external/pubs/nft/2003/SFTH/pdf/SFTH.pdf>> accessed 12 August 2016; Aufhauser S, 'Terrorist financing: Foxes Run to Ground' [2002] 6(4) Journal of Money Laundering Control.

⁴⁴ Jimmy Gurule, *Unfunding Terror: The Legal Response to the Financing of Global Terrorism* (1st Edn, EE 2009) 2008; SC Res, 1373, UN SCOR, 56th Sess, 4385th Mtg Article 1(c); See United Nations, 'Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression' (United Nations) <<http://www.un.org/en/sections/un-charter/chapter-vii/>> Accessed 19 July 2017.

⁴⁵ Through the UNSCR Counter-Terrorism Committee.

⁴⁶ NB: Most governments do not consider themselves bound by Article 24, Paragraph 1 and 2–24 (1) Countries resist the fact that it states that cases would be submitted to the International Court of Justice (ICJ)—Stating instead that consent of the parties to the case should determine of arbitration or referral to the ICJ should suffice. This illustrates the want for sovereignty and autonomy.

⁴⁷ Richard O'Brien, *Global Financial Integration: The End of Geography* [1992] Royal Institute of International Affairs.

⁴⁸ Nicholas Ryder, *The Financial War on Terrorism: A Review of Counter-Terrorist Financing Strategies since 2001* (Routledge, 2015).

⁴⁹ Jean-Charles Brisard, 'Terrorist Financing in North Africa' (American Centre for Democracy, 28 November 2013) <<http://acdemocracy.org/terrorism-financing-in-north-africa/>> accessed 1 August 2017.



growing trends in globalisation—a situation that has necessitated a response from the AU. The Algiers Convention, a continental legislative instrument on preventing and combatting terrorism⁵⁰ was the first comprehensive counter-terrorism strategy for Africa. A perusal of this convention illustrates acknowledgement of terrorist financing strategies via financial institutions, an issue consolidated within the AU's 'Plan of Action' ('POA')⁵¹ The POA expressly commits member countries to criminalise and suppress the financing of terrorism particularly through the establishment of Financial Intelligence Units (FIUs) to facilitate cross-border exchange of intelligence.⁵² It also mandated increased regulatory scrutiny on financial institutions and public collection of money.⁵³ Furthermore, the implementation of the POA prompted the establishment of the African Centre for the Study and Research on Terrorism (ACSRT) which serves as a hub for centralised information, research and analysis on terrorism with the aim of facilitating the AU's CFT efforts.⁵⁴ In addition, the AU provides a model legislation to assist member states in constructing their domestic legislation to meet acceptable standards,⁵⁵ thus serving as a prescriptive guide to countries.⁵⁶ This model not only fosters joint action and firm commitments by member states to pursue common objectives,⁵⁷ but also ensures that countries engage in due diligence, empower FIUs,⁵⁸ track payments and strengthen

interagency communications amongst other steps. These steps signalled a decision by African countries to ensure their security and stability. The Algiers convention signalled a political victory for Africa, as it fosters compliance and co-corporation amongst agencies.⁵⁹

The extent of the supposed victory is debatable. An appraisal of the pioneering structure in Africa illustrates a weak and ineffectual structure that is probably incapable of achieving its objective of curbing terror funding. Pivotal to this argument is the fact that the Algiers Convention derived its standards from international and regional conventions, with minimal amendment to incorporate home-grown terror funding transfer options.⁶⁰ Therefore, though the Algiers Convention was seemingly Africa's way of distancing itself from its funders, in reality, its focus on terrorism and the funding of same is influenced by the United Nations.⁶¹ So, in effect, its strategies simply reflect the global strategies.

Consequently, Algiers Convention and other CFT regimes have not gained overwhelming popularity in Africa. Such unpopularity has largely stalled the ratification of the Convention, as till date, 13 member states have not ratified it.⁶² Similarly, the Model Law on terrorism and CFT which was effectively disseminated in 2011 has only had three countries (Ghana, Mauritius and Burkina Faso) request for the AU's assistance in transplanting the Law into their national legislation.⁶³ The lapse in ratification may signify the absence of political will within certain countries coupled with the lack of resources. Additionally, it may reflect the AU's limited enforcement or monitoring system to ensure ratification or compliance. Although there are arguments that the lack of enforcement standards is

⁵⁰ The OAU Convention on the Prevention and Combating of Terrorism (the Algiers Convention) by the 35th Ordinary Session of Heads of State and Government held in Algiers, Algeria, in July 1999; Prior to the Algiers convention, there was the Declaration on a code of Conduct for inter-African Relations at the 30th Ordinary Session of the Assembly in June—it became an offence to organize, instigate, facilitate, finance, terrorist activities.

⁵¹ AU High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa, held in Algiers in September 2002, adopted the AU Plan of Action on the Prevention and Combating of Terrorism; Plan of Action on the Prevention and Combating of Terrorism (the Plan of Action)—See the African Union Counter Terrorism Framework (African Union Peace and Security—November 2015) <<http://www.peaceau.org/en/page/64-counter-terrorism-ct#sthash.pfRU6fvy.dpuf>> accessed 20 July 2016.

⁵² Part III (C) *ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ The African Union (AU) have also been influential in necessitating the implementation and compliance of African countries to FATF recommendations.

⁵⁶ The African Model Anti-Terrorism Law—Final Draft as Endorsed by the 17th Ordinary Session of the Assembly of the Union, Malabo, 30th June–1st July 2011 see <<http://caert.org.dz/official-documents/african-model-law-en.pdf>> accessed 20 July 2016.

⁵⁷ An innovative contribution of the Plan of Action is its provision for the establishment, in Algiers, of an African Centre for the Study and Research on Terrorism (ACSRT).

⁵⁸ See the African Union Counter Terrorism Framework (African Union Peace and Security—November 2015) <<http://www.peaceau.org>>

Footnote 58 continued
<<http://www.peaceau.org/en/page/64-counter-terrorism-ct#sthash.pfRU6fvy.dpuf>> accessed 20 July 2016.

⁵⁹ Hamid Boukrif, Quelques commentaires et observations sur la Convention de l'Organisation de l'Unité africaine sur la Prévention et la Lutte Contre le Terrorisme, *The African Society of International and Comparative Law*, Bell and Bain, Scotland, 1999, p 764.

⁶⁰ Martin Ewi, 'The Role of Regional Organizations in Promoting Cooperation on Counter-Terrorism Matters: The European and the African Institutions in a Comparative Perspective' in Larissa Van Den Herik and Nico Schrijver, *Counter-Terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges* (CUP, 2013)—particularly those adopted by the league of Arab states and the OIC (organization for Islamic conference) in 1998 and 1999.

⁶¹ Sturman, Kathryn. "The AU plan on terrorism-joining the global war or leading an African battle?: essay." *African Security Review* 11.4 (2002).

⁶² John Mukum Mbaku, 'Africa in Focus—The African Union: Which Way Forward' (Brookings, 11 February 2016) <<https://www.brookings.edu/blog/africa-in-focus/2016/02/11/the-african-union-which-way-forward/>> accessed 1 August 2017.

⁶³ Richard Chelin, 'Africa: Falling Behind on Safety' (All Africa, 27 February 2017) <http://allafrica.com/stories/201703070563.html>.



resolved by the Constitutive Act of the African Union 2000, Article 23 (2), in practice, the AU has limited enforcement powers and no precedence. Thus revealing vast discrepancies between the legislations and implementations of the regime.⁶⁴

Furthermore, the reluctance to imbibing the model law can be due to the perceived unsuitability of one model law to effectively encapsulate the differences in various regions within Africa. An overhaul was not needed but rather a recognition of differences between regions in Africa and the issues they confront.

The regional level: financial sector regional bodies (FSRB)

The FATF responded through the creation of its FATF-Styled Regional Bodies (FSRBs). These included

- The Inter-Governmental Action Group Against Money Laundering and Terrorist Financing (GIABA)—West African body.
- The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).
- The Central African Anti-Money Laundering Group (GABAC), and
- The Middle East and North Africa Financial Action Task Force (MENAFATF).

However, contentious as regards the historical underpinnings of their establishment as offspring of pressure meted out on developing countries, the importance of this development lies in the fact that it connects the regional to the continental and global efforts, therefore further constricting terrorist financing.

Literature review on the correlation between the level of terror attacks in African countries and compliance with CFT recommendations

This literature evaluates the correlation between the level of terror attacks in African countries and compliance levels to the CTF recommendations by the FATF. The correlation contends for two bases; the ability to track potential terror funding through compliance with the CFT recommendations and the extent to which such compliance can avert or minimise terror attacks. This evaluation which is done against the background of specific FATF CFT

recommendations ('Rec') 7–9⁶⁵ that encapsulate the UN and continental response to CFT challenges the application of the recommendations to African states.

Rec. 7 is a generally applicable standard which is specifically focused on combatting terror funding and the terror that may arise thereof by disrupting the proliferation of weapons of mass destruction and its financing.⁶⁶ The standard set by Rec. 8 is, however, predicated on findings that charitable funds are diverted to terror activities; hence, it is focused on curtailing the exploitation of charities through laws and regulations.⁶⁷ Consequently, Rec. 8 requires countries to monitor financial transactions and impose sanctions where there is reasonable suspicion or evidence that the charitable funds in question are to be used by terror organisations.⁶⁸ These standards, coupled with the laundering opportunities through shell and offshore companies, inform the application of Rec. 9 which recommends that financial secrecy laws enacted by countries do not in any way conflict with the FATF recs on CFT so as to ensure financial transparency.⁶⁹ These recommendations are underpinned by the assumption that financial institutions are used as a conduit of terror funding and that the informal sector can be effectively regulated.

Therefore, as earlier stated, countries have placed banks at the forefront of the battle against terror funding, mandating these institutions to engage in deciphering suspicious transfers⁷⁰ and granting them the power to apply sanctions such as freezing of assets and confiscation.⁷¹ The focus on banks was predicated on findings from the 9/11 attack which indicated that al-Qaeda utilised this means of transfer because it provided a convenient, simple and risk adverse way of transferring terror funding.⁷² Hence, the

⁶⁵ See the FATF Recommendations, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. (February 2012) <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf> accessed 15 July 2016.

⁶⁶ FATF Guidance, 'The Implementation of Financial Provisions of United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction' [2013].

⁶⁷ The FATF, 'Best Practices: Combating the abuse of non-profit organizations (recommendation 8)' (2015).

⁶⁸ Ibid.

⁶⁹ Jayesh D' Souza, *Terrorist Financing, Money Laundering and Tax Evasion: Examining the Performance of the Financial Intelligence Units* (CRC Press, 2011); Global Financial Integrity, 'Tax Havens/Bank Secrecy' <<http://www.gfintegrity.org/issue/tax-havens-bank-secrecy/>> accessed 10 July 2016.

⁷⁰ FATF Recommendations 7.

⁷¹ FATF Recommendations 7.

⁷² Michael Freeman and Moyara Ruehsen, 'Terrorism Financing Methods: An Overview' [2013] 7.4 Perspectives on Terrorism; Note that—The ease was particularly with banks that asked customers minimal questions, retained untrustworthy employees who facilitated illicit transfers and engaged in contaminated correspondent banking

⁶⁴ The International Centre for the Study of Radicalization and Political Violence (ICSR), 'The Challenge of Counter-Terrorism in Africa' (April 2014) <<http://icsr.info/2011/04/the-challenge-of-counter-terrorism-in-africa/>> accessed 21 June 2016.



FATF hypothesised that country compliance with these standards will not only hinder the operation of terrorist activities, but it would also create financial intelligence that can unearth the logistics and facilitation networks of terror groups.⁷³ Krieger and Meierrieks affirm this stance, noting that the financial capacity of any terror group is expected to correlate with its effectiveness in striving towards its terror agenda.⁷⁴

However, placing banks at the forefront of CFT comes with its perils and runs the risk of being shortsighted. Transfers can become frustratingly slow for innocent and criminally minded customers alike, hence, potentially crippling the profitability of banks. So also, there are substantial expenses involved in transferring huge sums through the banks as opposed to other means of transfers such as cash couriers or hawala—a deterrence to terror groups.⁷⁵ Against this backdrop, banks have resisted this gatekeeping role. Studies, however, reveal that the systemic risk posed by banks to the economy warrant increased supervision and compliance with the CFT recommendations, as terror financing can undermine the bank's stable deposit base.⁷⁶ Highlighting the ability of compliance with CFT recommendations by financial institutions to curtail terrorism, Diaw, the previous Director General of GIABA stated that sanctions such as asset freezing utilised by banks will 'starve terrorist of the supply of goods, funds, assets, equipment and everything else that permits or facilitates the perpetration of their criminal acts'.⁷⁷ Affirming the importance of this measure, she argued that the utilisation of the tools so provided by the FATF is paramount to curtailing terrorist movements,

which certain African regions and states are besieged with.⁷⁸ This indicates that the tracking and confiscation of terrorist funding is a mission to bankrupt the underpinnings of terrorism in Africa. Verdugo-Yepes affirms the fight against terror funding with an empirical study which implies that there is a positive correlation between terror hotspots which are grown as a result of limited institutional efforts at curtailing TF, and terrorist financing havens.⁷⁹ The position of these scholars conjures an image of large sums of funds flowing through banks in Africa and this is not necessarily the case.

The case is that 76% of the Sub-Saharan African population is unbanked, 25% of whom cannot satisfy the regulatory requirements of banks in respect of documentary requirements for opening a bank account.⁸⁰ It follows that persons restricted from using the formal banking system would utilise the informal transfer systems which not only provide the advantages akin to banks but are less transparent, usually unregulated, unlicensed and unlikely to provide a trail.⁸¹ For this reason, the FATF mandated the regulation of alternative remittance, cash couriers and wire transfers.⁸² It also empowered the regulatory bodies with powers to report, freeze or confiscate terror funding when suspicion was raised or ascertained.⁸³ Although aimed at ensuring transparency, an examination of the FATF's language and purpose revealed the superimposition of existing formal financial sector regulatory and supervisory practices onto the informal transfer systems.⁸⁴

Consequently, scholars have argued that this regulatory framework introduced in 2001 is ill-fitting to curb illicit transfers through informal transfer systems which usually

Footnote 72 continued

due to negligent due diligence see Tom Krieger and Daniel Meierrieks, 'Terrorist Financing and Money Laundering' [2011].

⁷³ Financial Action Tax Force, 'Combating Terrorist Financing as a Part of a Complete Strategy to Defeat ISIL and Prevent Terrorist Attacks' <<http://www.fatf-gafi.org/publications/fatfgeneral/documents/chatham-counter-terrorist-financing.html>> accessed 19 July 2016; Sener Dalyan, 'Combating the Financing of Terrorism: Rethinking Strategies for Success' [2008]1.1 Defense Against Terrorism Review.

⁷⁴ Tom Krieger and Daniel Meierrieks, 'Terrorist Financing and Money Laundering' [2011].

⁷⁵ John Roth, Douglas Greenburg and Serena Wille, *Monograph on Terrorist Financing* (Staff Report on the Commission 106) National Commission on Terrorist Attacks Upon the United States (Washington D.C.: Gov't Printing Office 2004).

⁷⁶ Rosa Maria Lastra, 'Systemic Risk, SIFIs and Financial Stability' [2011] 6.2 Capital Markets Law Journal; Casare Calari, Frannie Leautier, Stefan Ingves, 'A World Wide Challenge' in World Bank and IMF Global Dialogue Series (eds), *Anti-Money Laundering and Combating the Financing of Terrorism* (2003).

⁷⁷ See, Freezing Terrorist Assets in West Africa (Security Council Counter-Terrorism Committee, December 2012) <http://www.un.org/en/sc/ctc/news/2012-12-24_dakar.html> accessed 12 July 2016.

⁷⁸ Ibid.

⁷⁹ Concepcion Verdugo-Yepes, 'Enhancing International Cooperation in the Fight Against the Financing of Terrorism' [2008] 1.3 Journal of Global Change and Governance; Tom Krieger and Daniel Meierrieks, 'Terrorist Financing and Money Laundering' [2011].

⁸⁰ Brett King, *Breaking Banks: The Inventors, Rogues and Strategists—Rebooting Banking* (1st edn. John Wiley & Sons, 2014).

⁸¹ Marcy Forman, 'Combating Terrorist Financing and other Financial Crimes through Private Sector Partnerships' [2006] 9.1 Journal of Money Laundering Control.

⁸² FATF, 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations' [2012] <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf> accessed 7 August 2012.

⁸³ FATF, 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations' [2012] <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf> accessed 7 August 2012.

⁸⁴ Samuel Munzele Maimbo, 'The Regulation and Supervision of Informal Remittance Systems: Emerging Oversight Strategies' [2004] Seminar on Current Developments in Monetary and Financial Law.



operate through a complex web of transactions.⁸⁵ Consequently, there is the fear that the regulation has only succeeded in pushing these services underground.⁸⁶ This can be gleaned from the more recent terror activities across African countries, which as evidence indicates, is usually utilised as conduits to facilitate terror activities.

Buttressing this, Forman stated that non-transparent trade, underground banking, black market dealings, cash couriers or kidnapping ransoms in cash or charity transfers are usually used to convey terror funding to sites of operation.⁸⁷ The sustainability of underground banking systems, such as Hawala, is predicated on a system of 'trust' ingrained in traditional roots and ethnic ties in communities where the formal banking sector is less established.⁸⁸ This alternative or parallel remittance system has been cited as a safe haven for terrorist funds due to the misapplication of regulation and licensing.⁸⁹ The shroud provided by this transfer system occasioned its exploitation by Al-Qaeda during the 9/11 attack and subsequent operations.⁹⁰ Evidence also indicates that it was used to channel funds to Al-Shabaab to execute the 2015 Garissa University College attack in Kenya.⁹¹ Hawala operators have also been able to reinvent themselves by engaging in smuggling of goods or

bribing enforcement officers to remain in business.⁹² Surely, the mechanisms in place would be inadequate to track, monitor or freeze such transactions.

Other forms of remittance structures, inclusive of carrier companies and transport operators have also been used to transfer terror funding, causing scholars to argue that strong correlation exists between informal remittance inflows and the financing of terrorism in Sub-Saharan Africa.⁹³ Elu and Price buttress this with empirical findings which reveal that the expected number of terror incidents in Sub-Saharan Africa increases with respect to remittances inflows.⁹⁴ More particularly, their study estimates suggest that approximately one terrorist incident is financed in Sub-Saharan Africa from remittance inflows that range between approximately one-quarter of a million dollars and one million dollars.⁹⁵ The effect of this is the recognised need for improved regulation of remittances, which may cause patronisers to move further underground as it becomes more costly to business owners. More so, it may usurp the otherwise apparent advantages of remittances, which include improvements in economic growth and living standards in Sub-Saharan Africa.⁹⁶ What is noticed is a tradeoff between the advantages of remittances and its disadvantages, a compromise that can occasion the diversion of funds, thus causing significant harm to the security of a state and deterring the drivers of economic growth.⁹⁷

⁸⁵ Ibid.

⁸⁶ Ibid; Walter Perkel, 'Money Laundering and Terrorism: Informal Value Transfer System' [2004] AM Crim. L Rev.

⁸⁷ Marcy Forman, 'Combating Terrorist Financing and other Financial Crimes through Private Sector Partnerships' [2006] 9.1 Journal of Money Laundering Control.

⁸⁸ The Economist, 'New Rivers of Gold: Remittances from Unlikely Places are Helping Poor Countries in the Downturn' (The Economist, 28 April 2012) <<http://www.economist.com/node/21553458>> accessed 10 July 2017; The Economist, 'How Hawala Money Transfer Schemes are Changing' (The Economist, 16 October 2015) <<https://www.economist.com/blogs/economist-explains/2015/10/economist-explains-12>> accessed 1 August 2017—For heuristic purposes, Hawala is a money transfer system that allows for the transfer of cash locally and overseas where formal banking is expensive, heavily regulated or absent. So for instance, Mr. Ayariga in the United States wants to send \$1000 to his family in Togo. He finds a Hawala business man and transfers the funds to him. The Hawala contacts a fellow business man in Togo to inform him of the need for funds in Togo. The Halawa in US gives his fellow business man in Togo and Mr Ayariga a code. Mr Ayariga gives this code to his family who use this code to withdraw the \$1000. At no point do funds cross borders.

⁸⁹ Jyoti Trehan, 'Underground and Parallel Banking System' [2003]10.1 Journal of Financial Crime.

⁹⁰ John Roth, Douglas Greenburg and Serena Wille, *Monograph on Terrorist Financing* (Staff Report on the Commission 106) National Commission on Terrorist Attacks Upon the United States (Washington D.C.: Gov't Printing Office 2004); Michael Freeman and Moyara Ruehsen, 'Terrorism Financing Methods: An Overview' [2013] 7.4 Perspectives on Terrorism.

⁹¹ Angira Zadock, 'Hawala Used to Disguise Terrorism Funds, Police Say' (Daily Nation, 24 April 2015) <<http://mobile.nation.co.ke/news/Hawalas-used-to-disguise-terrorism-funds-police-say/1950946-2696502-format-xhtml-yormu7/index.html>> accessed 8 August 2017.

⁹² Jeemon Jacob, 'Hawala 2.0' (India Today, 6 April 2017) <<http://indiatoday.intoday.in/story/hawala-kerala-black-money-gulf-countries-demonetisation-rbi/1/921741.html>> accessed 8 August 2017.

⁹³ Lyman, Princeton N, Morrison Stephen J, 'The Terrorist Threat in Africa' [2004 83.1]Foreign Affairs; Medani Khalid, 'Financing Terrorism or Survival?: Informal Finance and State Collapse in Somalia, and the US War on Terrorism' [2002] Middle East Report, 233; Raju Singh, Markus Haacker, Kynug woo Lee, 'Determinants and Macroeconomic Impact of Remittances in Sub-Saharan Africa' [2009] 09/216 IMF Working Paper, International Monetary Fund, Washington DC, USA; IMF External, Chapter 2, 'Understanding Remittances: Demography, Transaction Channels and Regulatory Aspects' (IMF) <<https://www.imf.org/external/np/sta/bop/2008/rcg/pdf/ch2.pdf>> accessed 20 July 2017.

⁹⁴ Juliet U. Elu, Gregory N Price, 'Do Remittances Finance Terrorism in Sub-Saharan Africa' (February 2011) Presentation at the Centre of the Study of African Economics (CSAE) Conference on 'Economic Development in Africa'.

⁹⁵ Anyanwu John C, Andrew Erhijakpor, 'Do International Remittances Affect Poverty in Africa' [2010] 22 African Development Review; Fayissa Bichaka, Christian Nsiah, 'The Impact of Remittances on Economic Growth and Development in Africa' [2010] American Economist.

⁹⁶ Juliet U. Elu, Gregory N Price, 'Do Remittances Finance Terrorism in Sub-Saharan Africa' (2011) Presentation at the Centre for Study of African Studies Conference on 'Economic Development in Africa'.

⁹⁷ Kagochi John M, Ellene Kebede, David Summers, 'Are Remittances a Source of Development Capital?' The Case of Sub Saharan Africa' [2010] 47 International Research Journal of Finance and Economics.



The physical movement of cash or arms is still prevalent irrespective of the ban. It is referred to as courier or cash courier, which is the 'simplest and oldest way of moving value.'⁹⁸ The Nigerian Financial Intelligence Unit (NFIU) noted that Boko Haram usually engaged in this means of transfer by cleverly concealing their funds, arms or other assets when crossing porous borders towards their destination.⁹⁹ Imrana Alhaji Buba, founder of the Youth Coalition Against Terrorism, a non-governmental organisation that interacts with previous Boko Haram members with the aim of fostering peace, stated that

As at 2015...Boko Haram did not utilize the banks because they are aware of the money trail, they usually used cash couriers and dealt in cash and arms exchange. When their camps are raided, cash and arms are usually found'¹⁰⁰

Although the FATF seemingly renounced this assumption in its 2015 report on 'Emerging Terrorist Financing Risk'¹⁰¹ by stating that financial institutions were mostly used to transfer terrorist funding. Its earlier report focused particularly on West Africa stated that, *in almost all the cases studied (in West Africa)*, cash was used and terror suspects were often in possession of large amounts of cash.¹⁰² Further disturbing was the recent findings of a large amount of funds buried in farmlands and desolate houses in Nigeria with no forthcoming owner.¹⁰³ These reveal the potential for exploitation of the cash-based economy by terror originations and its funders in Africa, as the prevalent cash-based system occasions difficulty in tracing or recovering funds. This further illustrates the cash culture in African countries a culture that has hindered compliance with the recommendation on financial secrecy.

A perusal of the 'FATF methodology for assessing technical compliance with the FATF recommendations' reveals the spirit of rec. 9 which warrants that financial

secrecy laws should not inhibit the implementation of the FATF recommendations. More so, it requires that in the absence of such hindering laws, regulatory bodies and financial institutions can share information on suspicious transactions where necessary.¹⁰⁴ This seeming proactive detection tactic to combat terror transfers, however, fails to take into account the cash-based nature of terror funding which operates under the radar of financial institutions and regulatory bodies. Such situation further perpetuates financial secrecy due to their unregulated undocumented systems that do not permit for the regulatory exchange of information.

The listed forms of unregulated and undocumented structures utilised by terror funders are indicative of the financial exclusion problem in African states, are likely to detract from security solutions.¹⁰⁵ This is basically because they foster underhand financing of terror, arms exchange and exploitation of charities, especially in areas which have once faced insurgency. Riley asserts that states formerly exploited for localised wars are being perceived to be effective locations for safe havens and operations for terror organisations.¹⁰⁶ The importance of curbing this is predicated on the fact that about 73% of African terror attacks are home grown¹⁰⁷ as opposed to countries like the USA where most terror attacks are external. Hence, there is a need to have targeted recommendations that can ensure adequate capture of terror funding but within and outside the financial institutions.

As indicated, the war on terror funding is reliant on mechanisms that include the criminalisation of terror funding, consequent upon which assets or finances can be traced, frozen or confiscated.¹⁰⁸ However, the absence of suitable recommendations on CFT makes tracing, freezing or indeed estimating the funds utilised by terror groups problematic given the secrecy of the process of funding which recommendations do not adequately address. Thus, for instance, the 2002 global estimates indicate that about US\$116 million had been frozen worldwide and over 160 countries and jurisdictions had taken action to freeze terror

⁹⁸ Nikos Passas, 'Informal Value Transfer Systems, Terrorism and Money Laundering,' [2003] A report to the National Institute of Justice.

⁹⁹ Nigerian Financial Intelligence Unit, 'Trends and Typologies Report on Terrorism Financing in Nigeria' [2013] 1.1 NFIU.

¹⁰⁰ Interview with Imrana Alhaji Buba, Founder, Youth Coalition Against Terrorism (Online, 28 July 2017).

¹⁰¹ Financial Action Task Force, 'FATF Report; Emerging Terrorist Financing Risk' (October 2015) <<http://www.fatf-gafi.org/media/fatf/documents/reports/Emerging-Terrorist-Financing-Risks.pdf>> accessed 31 June 2017.

¹⁰² Financial Action Task Force, 'FATF Report; Emerging Terrorist Financing Risk' (October 2015) <<http://www.fatf-gafi.org/media/fatf/documents/reports/Emerging-Terrorist-Financing-Risks.pdf>> accessed 31 June 2017.

¹⁰³ Jide Ajani, 'Looters Hide Billions in Farms—Dogara' (Vanguard, 11 July 2016) <<http://www.vanguardngr.com/2016/07/looters-hide-billions-in-farms-dogara/>> accessed August 2016.

¹⁰⁴ FATF, 'FATF Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems' (February 2013).

¹⁰⁵ Jimmy Gurule, *Unfunding Terror: The Legal Response to the Financing of Global Terrorism* (1st Edn, EE 2009).

¹⁰⁶ Nick Riley, *Terrorism in East and West Africa* (EE Publishers 2014).

¹⁰⁷ Nick Riley, *Terrorism in East and West Africa* (EE Publishers 2014).

¹⁰⁸ Nicholas Ryder, *The Financial War on Terrorism: A Review of Counter-Terrorist Financing Strategies Since 2001* (Routledge, 2015).



assets.¹⁰⁹ The dataset seemed promising as it pointed to the effectiveness of the existing recommendations. However, since 2004, scholars have signalled the dearth of credible data in this area to make estimations.¹¹⁰ Various factors come into play to contribute to the absence of credible data. Firstly, it may be an indication of the lack of expertise by staff of financial institutions to decipher terror funds which mimic regular transactions. Secondly, it may be a case of a charity made practically exempt from the application of the recommendations because it is backed by influential members of the society who are considered to be above the law. Thirdly, it may be that such transactions slip through the regulatory cracks in way unpremeditated by the FATF and reach terror funders by means that do not create a trail. Whilst not limited to these three scenarios, the third scenario must not be discounted for discussions on the initial scenarios simply because whilst the initial ones may be resolved through adherence to standards applicable to the banking sector—the third cannot. Consequently, it follows that the FATF CFT mechanisms are inadequate to effectively combat terror funding in a continent that is still moving away from the customary barter- and cash-based system, which although considered largely unfitting in a modern capitalist environment, is still predominant.¹¹¹ Consequently, Ryder rightly concluded that the current financial war on terror will have little or no effect on these terror groups in Africa.¹¹²

Irrespective of these findings, there are arguments that a large sum of money is required to fund terror activities and the gamble of transferring such sums outside the banking system is too large a risk of terrorist.¹¹³ Butressing this,

Gurule argues that although the execution of terror is cost-effective, the operative cost is usually high-priced.¹¹⁴ The operative cost which is difficult to estimate usually comprises of recruitment, upkeep, and wages costs.¹¹⁵ Gurule notes that Al-Qaeda which provides support and assistance to terror organisations in Africa usually requires an estimated \$30–\$50 million per year to thrive.¹¹⁶ The absence of measures to combat the movement of these funds would lead to further proliferation of terrorist activities and funding. Consequently, Gurule argues that measures to trace and freeze these funds may cause potential donors to reconsider funding terror activities as it becomes easier to detect and sanction.¹¹⁷ Furthermore, it may restrict plans which incur operative cost.¹¹⁸ This indicates that certain terror attacks in Africa may indeed be orchestrated with huge funding, thus the continuous need for tracing and confiscation of terror funding. Acceding to this, Levi asserts that ‘follow-the-money’ methods are crucial in that it creates a broader picture of terrorist linkages and increases the risks inherent in financial transfers.¹¹⁹

Whilst there is truth in this, there is always a danger of a single story. Hence the position that indicates that only large amounts of funding are used to orchestrate terror attacks has come under attack.¹²⁰ Parkman and Peeling argue that the sum spent in orchestrating terror attacks are usually so small as to be mere droplets in the ocean of daily transactions.¹²¹ Acceding to this, Ryder postulates that the execution of large terror attacks in Africa only requires a limited sum.¹²² Waszak estimated that the cost of making a suicide bomb can be as low as \$5, whilst the deployment of a suicide bomber, including transportation and

¹⁰⁹ Sommet G8 Kananaskis Summit, ‘G8 Counter-Terrorism Cooperation Since September 11’ (2002) <<http://ahibo.com/G8/en/terrorism.htm>> accessed 10 July 2016.

¹¹⁰ Nicholas Ryder, *The Financial War on Terrorism: A Review of Counter-Terrorist Financing Strategies Since 2001* (Routledge, 2015). In fact, the trend is going in the opposite direction. At the end of 2007, approximately \$85 million remained frozen under the sanctions regime, down from a previous high of 91.4 million.

¹¹¹ Barter trade is still prevalent in developing and developed countries, see, Mercy Mpinganjira, Portia Oliver, ‘Impediments to Barter Trading: Analysis of Practitioners and Non-Practitioners Perceptions’ [2011] 3.1 African Journal of Marketing Management.; See, Annie Scott, ‘Bartering in Africa—Bring Socks and Other Tips’ (Gadling, 2010) <<http://gadling.com/2010/11/05/bartering-in-africa-bring-socks-and-other-tips/>> accessed 15 July 2016; In various regions, regional bodies have worked to bring in automated cash flows has proven very effective.

¹¹² Nicholas Ryder, *The Financial War on Terrorism: A Review of Counter-Terrorist Financing Strategies Since 2001* (Routledge, 2015).

¹¹³ Eric Lichtblau and James Risen, ‘Bank Data is Sifted by U.S. in Secret to Block Terror’ (The New York Times, 23 June 2006) <<http://www.nytimes.com/2006/06/23/washington/23intel.html>> accessed 10 July 2017; Patrick Hardouin, ‘Banks Governance and Public-Private Partnership in Preventing and Confronting Organised Crime,

Footnote 113 continued

Corruption and Terrorism Financing’ [2009] 16.3 Journal of Financial Crime.

¹¹⁴ Jimmy Gurule, *Unfunding Terror: The Legal Response to the Financing of Global Terrorism* (1st Edn, EE 2009).

¹¹⁵ Schneider Friedrich, ‘The (Hidden) Flows of Terrorist and Organized Crime Organizations: A Literature Review and Some Preliminary Empirical Results’ [2010] IZA Discussion Paper No. 4860.

¹¹⁶ Jimmy Gurule, *Unfunding Terror: The Legal Response to the Financing of Global Terrorism* (1st Edn, EE 2009).

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Michael Levi, ‘Combating the Financing of Terrorism: A History and Assessment of the Control of ‘Threat Finance’ [2010] Brit. J. Criminol.

¹²⁰ Nicholas Ryder, Umut Turksen, ‘Banks in Defence of the Home Land: Nexus of Ethics, Legality and Suspicious Activity Reporting in the United States of America’ [2014] 12.4 CIL.

¹²¹ Tim Parkman, Gill Peeling, *Counter Terrorist Finance—A Training Handbook for Financial Services* (Gower Publishing 2007).

¹²² Nicholas Ryder, Umut Turksen, ‘Banks in Defense of the Home Land: Nexus of Ethics, Legality and Suspicious Activity Reporting in the United States of America’ [2014] 12.4 CIL.



reconnaissance, can cost as little as \$200.¹²³ Within Africa, this is attributable to the widespread use of locally constructed Improvised Explosive Devices (IEDs) which have the capacity to cause catastrophic damage.¹²⁴ The materials for these devices are usually stolen or derived from barter exchanges from farmers, miners, road builders, quarries or educational institutes.¹²⁵ These literature reveal that terrorists are becoming self-sufficient through reliance on cheap acts of terrorism.

Consequently, Eckert and Biersteker have argued that due to the low operational cost involved in the execution of terror, the formal sector institutions cannot be the sole focus for effective regulation aimed at curbing terrorism.¹²⁶ The reason is that funds channelled through financial institutions are usually in placements that mimic the transactions of non-terrorists, and as such, are usually difficult to trace. The FATF acknowledges this difficulty, stating that financial institutions are most probably incapable of detecting TF except when transfers are made by listed terrorist or terrorist organisations.¹²⁷ Mylonaki validates this, stating that less than one per cent of terrorist funds have been recovered so far.¹²⁸ On this basis, Dionysious argues that the CFT efforts are a farce.¹²⁹ Ryder and Turken expatiate on this, taking the view that the war on CFT has done nothing to limit the sources of finance available to terrorist groups.¹³⁰ They postulate that the legislation, investigation mechanisms and invasive regulatory powers and international cooperation are incapable of hindering terrorist funding as terrorist always know the cracks in these structures and thus, how to evade

them.¹³¹ Sener, however, argues that, although this is the case, it does not call for reduced action, rather for a re-evaluation of strategies.¹³² According to Wittig, such re-evaluation is necessary as the effectiveness of regulatory bodies is dependent on their ability to comprehend the economies of individual activities which occur within the underground economy.¹³³ Consequently, an appreciation of the challenges that the continent is faced with is imperative to engineer reform of the recommendations and the loopholes which occasion non-compliance with the current recommendations may possibly correlate with heightened terror attacks in Africa.

The literature outline reveals unresolved debates, inconsistencies and pending questions on the effectiveness of CFT recommendations on terror levels in Africa, given the scarce empirical literature created by the absence of concrete evidence. This article seeks to resolve existing debates by its multivariate empirical analysis, which considers the correlation between compliance with CFT recommendations on terror and the level of terror in thirty-eight African states. This article postulates that if better understood, the international community may consider altering its regime to inculcate a system that is targeted and more proportionate.

Empirical findings on the correlation between CFT compliance and frequency of terror levels

Empirical studies in this area are sparse as regards analyses on the correlation between compliance with CFT recommendations and the effect on the frequency of terrorist attacks in Africa. Hence this article conducts an indirect study using data from the formal sector to buttress its arguments on the informal sector. This is due to the absence of compliance data on the informal systems of transfer. Findings from the study aim to build on the existing literature discussed above.

Research question

Does increased compliance with the independent variables lead to a reduction in the frequency of terror attacks in African states?

¹²³ John Waszak, 'The Obstacles to Suppressing Radical Islamic Terrorist Financing' [2004] 36 Case Western Reserve Journal of International Law.

¹²⁴ Freedom Onuona, 'Boko Haram and the Evolving Salafi Jihadist Threat in Nigeria' [2014] *Islamist, Politics, Security and the State in Nigeria*.

¹²⁵ Vox Peccavi, 'Boko Haram's IED Campaign 2015' (March 6, 2016) <<https://peccaviconsulting.wordpress.com/2016/03/06/boko-harams-ied-campaign-2015/>> accessed 6 July 2016.

¹²⁶ Thiman J Biersteker, Sue E. Eckert, *Countering the Financing of Terrorism* (Routledge Taylor & Francis Group) 2008.

¹²⁷ see the FATF Guidance for Detecting of Terrorist Financing (2002) <FATF Guidance Notes for Detection of Terrorist Financing by Financial Institutions 2002> accessed 10 July 2016.

¹²⁸ Emmanouela Mylonaki, 'The Manipulation of Organised Crime by Terrorist: legal and factual perspective' [2002] 2 *The International Criminal Law Review* 213.

¹²⁹ Sener Dalyan, 'Combating the Financing of Terrorism: Rethinking Strategies for Success' [2008] 1.1 *Defence Against Terrorism Review*.

¹³⁰ Dr. Nicholas Ryder and Dr. Umut Turksen, 'Banks in Defense of the Homeland: Nexus of Ethics, Legality and Suspicious Activity Reporting in the United States of America' [2013] 12.4 *Contemporary Issues in Law*.

¹³¹ Dr. Nicholas Ryder and Dr. Umut Turksen, 'Banks in defence of the Homeland: Nexus of Ethics, Legality and Suspicious Activity Reporting in the United States of America' [2013] 12.4 *Contemporary Issues in Law*.

¹³² Sener Dalyan, 'Combating the Financing of Terrorism: Rethinking Strategies for Success' [2008] 1.1 *Defense Against Terrorism Review*.

¹³³ Timothy Wittig, *Understanding Terrorist Finance* (Palgrave Macmillan, 2011).



Research design

The relationship between compliance with Recs 7–9 CFT and the frequency of terrorist attacks in 38 African countries is tested using a binary logistic regression technique. These analyses are undertaken to decipher if compliance with the independent variables by financial and regulatory institutions would lead to reduced terror activities. The data for compliance is derived from the most comprehensive dataset available—the FATF Mutual Evaluation Reports (MERs).¹³⁴ MERs compliance ratings are deduced from in-country analysis of institutions, regulatory bodies and government ministries of compliance ratings. The specific recommendations chosen are on targeted financial sanctions related to proliferation, regulation of non-profit organisations and financial secrecy laws.

These recommendations are selected because of their direct relationship with terrorist financing compliance and consequently on the frequency/limitation of terrorist attacks.

Data on the frequency of terrorist activities within each particular jurisdiction is garnered from research on each country’s history of terrorist activities from 2001 to 2015 and also from the United States Country Report on Terrorism.¹³⁵ The terror incidences counted fall into the AU’s definition of terrorism.

Dependent variables

The dependent variable as earlier mentioned is the frequency of terror activities in African states. These variables are recoded into 0 (for countries that have experienced less than 3 terrorist attacks since 2001) and 1 (for countries that have experienced more than 3 terrorist attacks. This recoding is done on the basis of the fact that once a country has experienced over 3 terrorist attacks within a period, concerns are raised as to the security of that state.¹³⁶

Independent variables

The independent variables which are recommendations of the FATF directly related to terrorist financing from categorical variables. They are:

¹³⁴ See Appendix 1 for compliance levels of African Countries—Author’s compilation.

¹³⁵ U.S Department of State, ‘Country Reports on Terrorism 2015’ <<http://www.state.gov/j/ct/rls/crt/2015/index.htm>> accessed 16 July 2016.

¹³⁶ Sushil Aaron, ‘Three Terror Attacks in Two Years: Why is France a Target’ (Hindustan Times 2016) <<http://www.hindustantimes.com/analysis/three-attacks-in-two-years-why-is-france-a-terrorist-target/story-e7sYiMpJhs2naFLZoUC5gO.html>> accessed 10 July 2016.

Table 1 Classification table

Observed	Predicted			
	Frequency of terror		Percentage correct	
	0	1		
Step 1				
Frequency of terror	0	17	2	89.5
	1	6	8	57.1
Overall Percentage				75.8

^aThe cut value is .500

- Recommendation 7: Targeted financial sanctions related to proliferation
- Recommendation 8: Regulation of non-profit organisations; and
- Recommendation 9: Financial secrecy laws

SPSS analysis

The predictor variables (independent variables) are tested on the likelihood that compliance with recommendations 7, 8, and 9 are likely to curtail terror levels (Table 1).

The omnibus test of model coefficients (goodness of fit test), the full model containing all predictors indicates statistical significance as $\chi^2 = 8.748$ and $P = .033$, indicating that the model was able to distinguish between countries that had high terror activities and those that did not (as $P < 0.005$).

Omnibus tests of model coefficients

	Chi-square	df	Sig.
Step 1			
Step	8.748	3	.033
Block	8.748	3	.033
Model	8.748	3	.033

The model as a whole experienced between 23.3% (Cox & Snell R Square) and 31.3% (Nagalkerke R Square)¹³⁷ of the difference in frequency of terror activities and correctly classified same as 75.8% of cases.

¹³⁷ The cox and snell r square and the nagalkerke r square values provide an indication of the amount of variation in the dependent variable explained by the model (from a minimum value of 0 to a maximum of approximately 1) these are described as pseudo R square statistics rather than the true R square values. In this example the two values are .233 and .313 (suggesting that between 23.1% and 31% of the variability is explained by this set of variables).



Table 2 Variables in the equation

	<i>B</i>	SE	Wald	<i>df</i>	Sig.	Exp(<i>B</i>)	95% CI for EXP(<i>B</i>)	
							Lower	Upper
Step 1 ^a								
rec7	− .681	.421	2.611	1	.106	.506	.222	1.156
rec8	− .838	.438	3.654	1	.056	.433	.183	1.021
rec9	.261	.346	.568	1	.451	1.298	.658	2.560
Constant	4.487	2.322	3.733	1	.053	88.866		

^aVariable(s) entered on step 1: rec7, rec8, rec9

The variables in the equation (Table 2) indicate that there are no significant predictor variables as recs 7, 8 9 all have *P* values that are > than 0.05, indicating that, individually, none of these variables contributes significantly to the predictive ability of the model.¹³⁸

The closest predictor to being significant is rec 8 = 0.56, indicating that increased regulation and compliance of Non-Governmental Organisations (NGOs) may result in reduced terrorist activities. The association is, however, borderline, failing to establish a concrete relationship between the frequency of terror activities and the exploitation of NGOs to raise and transfer funds.

The odds ratio for rec. 9 at 1.298 is a strong predictor of terror activities. Indicating that countries more compliant with rec. 9 have 1.3 times higher odd of experiencing high levels of terror, although this does not reach conventional levels of terror significance at a 5% level with *p* = .451

Findings

The pivotal findings of this study are that none of the independent variables has a convincing impact on the level of terror activities in African countries. Meaning that—irrespective of the compliance levels of a country to the CFT recs, their terror levels remained unchanged. This indicates the need for the FATF to re-strategise and remodel its recommendations so as to give equivalent focus to the informal and formal banking sector. This is based on the argument that most African countries are unbanked. Thus the current model which places banks at the forefront of the fight against terror funding not only risk undermining the peculiarities of African states but gives arms terror groups with the avenue to transfer their terror funding unnoticed.

An important finding of this analysis is that new organisational forms of terrorism, such as the trend towards network structures or home-grown terrorism,¹³⁹ may

¹³⁸ Note that, if assessed collectively, as opposed to individually, these values may indicate that compliance may have an impact on the level of terror activities. Additionally, more data would be required for a more comprehensive assessment.

render the AML framework less important as a tool against terrorism. This is due to the fact that tactics employed by terrorists include placement of fewer and smaller financial transfers, or cash movement, which may not usually be easily detected by money laundering prosecutors, crucial in revealing that the impact of CFT recommendations is albeit minimal. These results have implications for the type of policies that would improve long-term financial stability in Africa. Furthermore, it recognises that how African countries respond to countering TF is important for the future of the international CFT regulation.

Conclusion

The recommendations and international instruments on CFT are largely dependent on the criminalisation of terror funding, freezing, seizure and confiscation of funds in question. However, an examination of this counter-terrorist financing regime reveals that it does not advance practical and realistic strategies for preventing and detecting terror funding in a predominantly cash-based economy. This is also the case in countries where reliance is on a parallel banking system and informal value transfer is the norm. Consequently, indicating that the international regime on CFT has had minimal or no effect on terrorist groups and their transfer of funding processes. Hence, this article argues that these issues are peculiar to African states and deserves 'independent' indigenous solutions recognisable at the global level.

To buttress this point, I carry out an empirical study drawing on available data on the compliance of financial institutions given the lack of data on the underground banking system. Findings from its empirical study reveal that compliance with the FATF recs. 7–9 (assessed individually) by 38 African countries have proved ineffectual in curtailing terrorism or the funding of same within these countries. Meaning that—irrespective of the compliance

¹³⁹ Tim Krieger, Daniel Meierrieks, 'Terrorist Financing and Money Laundering' [2011].



levels of a country to the CFT recs, their terror levels remained unchanged. So for instance, although Kenya's compliance with these recs ranks higher than Nigeria's, their terror levels are comparable. This simply demonstrates that the current CFT recs has made limited progress in curtailing the sources of funding available to terrorist financiers.

To this end, this article argues for tailored CFT measures to ensure that terrorism is combatted, as irrespective of the resources and legislation tailored to improving the

current regime, the threat of a well-organised criminal organisation operating outside the radar of the banking system persists.

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