

First Regional Workshop for Law Enforcement Officers and Prosecutors in East Africa on Effectively Countering Terrorism and Bringing Terrorists to Justice

Kampala, Uganda

7-9 May 2013

SUMMARY OF DISCUSSIONS

On 7-9 May 2013, the first in a series of five subregional workshops for East African law enforcement officers and prosecutors on effectively countering terrorism and bringing terrorists to justice was held in Kampala, Uganda. The three-day event, hosted by the Government of Uganda, brought together practitioners from Burundi, Kenya, Rwanda, Tanzania and Uganda to discuss practical ways to enhance domestic and cross-border criminal justice cooperation to prevent and counter terrorism.

The workshop was organized by the United Nations Counter-Terrorism Committee Executive Directorate (CTED), in partnership with the Center on Global Counterterrorism Cooperation (CGCC), and held with the generous support of the Governments of Australia and New Zealand. The series builds on CTED's global practitioners' seminars for prosecutors involved in terrorism cases, which have highlighted the importance of the key relationship between investigators and prosecutors. Experts from the African Union's African Centre for the Studies and Research on Terrorism, the Australian Attorney-General's Department, INTERPOL, the Institute for Security Studies, the Intergovernmental Authority on Development's Security Sector Program, and the Office of the United Nations High Commissioner for Human Rights in Uganda also participated in the meeting.

This first subregional workshop aimed to: identify the main challenges and needs of criminal justice practitioners in the subregion charged with bringing terrorists to justice based on the perspectives of law enforcement officers and prosecutors in the East African Community (EAC); provide a forum for informal networking among the participants; and define the priority areas to focus on in future workshops. The event was welcomed as part of an ongoing process to strengthen counter-terrorism capacity in East Africa, and to support cooperation and coordination between police and prosecutors in the subregion.

The following summary was prepared by the organizers. It is not an official or complete record of the proceedings and does not necessarily reflect all the views of the organizers, workshop participants, or meeting sponsors.

BACKGROUND

Security Council Resolution 1373 (2001) requires all Member States to bring terrorists to justice, focussing attention on the capacity and legal framework of national criminal justice systems.

At the same time, the investigation and prosecution of terrorism-related cases can present significant challenges, even to the most robust criminal justice institutions. The complex, multi-jurisdictional, and transnational nature of many terrorism-related activities place a wide range of demands on national criminal justice actors, including: advanced and specialized skillsets, sufficient institutional capacity, a comprehensive legal framework, and effective mechanisms for inter-agency, bilateral, and multilateral cooperation.

Representing two of the core pillars of criminal justice systems, law enforcement officers and prosecutors are at the forefront of national efforts to proactively investigate and prosecute suspected terrorists, and to prevent, where possible, acts of terrorism by pursuing the range of preventive offences. Cooperation and coordination between them is essential in order to increase the effectiveness of domestic criminal justice efforts as well as international and regional efforts to counter transnational terrorism-related challenges.

TERRORISM-RELATED CHALLENGES IN EAST AFRICA

Although threats posed by terrorism and terrorism-related crime vary in different contexts, East African countries share similar vulnerabilities to terrorism, organized crime, and armed non-state actors. Among those identified by the participants were:

- The ongoing threat of **al-Shabaab** and its sympathizers remains a serious concern among East African States. Deployments from Burundi, Kenya, and Uganda comprise the bulk of AMISOM military forces, resulting in increased threats against their countries from Somali-based terrorist groups and their affiliates.
- The growing **links between terrorism and other criminal activity**, including the direct engagement of terrorists groups in illicit activities, such as: kidnapping for ransom; cross-border narcotics, weapons, and human trafficking; as well as counterfeiting, bribery, and extortion.
- The widespread use of poorly regulated informal money/value transfer services and the growing use of mobile banking in the region, often beyond the reach of financial monitors, make the sector vulnerable to **money laundering and terrorist financing**.

- The rise of extremist narratives that, by effectively playing upon a range of social, political, and economic grievances, can serve as driving factors behind the **indoctrination** and **violent radicalization** of community members.

CAPACITY GAPS, EFFECTIVE TOOLS, GOOD PRACTICES IN CRIMINAL JUSTICE RESPONSES TO TERRORISM

Due to the evolving and complex nature of terrorist offences, proper investigations and successful prosecutions require cooperation and coordination between investigators and prosecutors. Based on their experience, many participants asserted that legally mandated institutional structures would be essential to empower both inter-agency coordination and international cooperation, and also ensure that complex criminal investigations are driven by requirement to bring terrorists to justice in court in compliance with human rights standards and the rule of law. Throughout the workshop, participants discussed these challenges in the context of investigating domestic incidents, and in relation to regional cooperation. A range of **challenges** and **capacity gaps** frequently cited by participants in the investigation and prosecution of terrorism cases, generally fell under four categories:

- **Procedural:** weaknesses in institutional cooperation, and a lack of established mechanisms for information sharing (lack of trust and reciprocity, for example, between prosecution, law enforcement, and intelligence services); weak or a lack of standard operating procedures for internal coordination between relevant domestic actors; prolonged hearings on terrorism-related cases which could undermine witness testimony or weaken availability of other forms of evidence.
- **Legislative:** specific counter-terrorism legislation in certain national contexts is new and/or untested; gaps between international standards and national law, with particular regard to human rights and due process related guarantees; differences in national criminal law regarding mutual legal assistance or extradition; the principle of “extradite or prosecute” is not fully reflected in national legislation; inadequate MLA and extradition legislation; weak and/or unclear terms for inter-agency cooperation.
- **Operational:** challenges in crime-scene management, including ensuring the integrity of the scene, preservation of all available evidence, and continuity of exhibits; lack of measures for ensuring protection of witness; inadequate access to forensic laboratories, and inability to expeditiously process and analyze physical evidence; management of fusion (intelligence) centres and other inter-agency coordination mechanisms; a lack of clear guidelines for information and intelligence sharing; and difficulties transforming intelligence into evidence for use in court.
- **Capacity:** need to enhance the strength and effectiveness of national training capacity, including: the availability and expertise of local trainers; the existence of relevant training manuals; the availability and regularity of training and practical training exercises for criminal justice practitioners; a lack of capacity among

essential administrative personnel (for example, certified interpreters, court officers, clerks, and data technicians); and limited financial and technical resources.

Tools and good practices for overcoming these challenges were discussed by participants in both national and cross-border contexts.

At the **national** level, these included:

- **Involving prosecutors** in the earliest stages of an investigation was highlighted as essential to ensure that the maximum amount of admissible evidence is captured for the court process – whether from the crime scene or from interviews of suspects and witnesses. The prosecution, it was suggested, rather than law enforcement or intelligence services, should take the lead in inter-agency criminal justice approaches to counter-terrorism.
- All East African countries maintain platforms or frameworks for **inter-agency cooperation**. However, many participants felt that such platforms could be made more effective if there was greater clarity and coherence in their mandates, including clearly defining the roles and responsibilities of each partnering agency and establishing mandatory guidelines on the manner and degree of information sharing.
- Bringing together law enforcement and the prosecution for a **joint debriefing** following the conclusion of criminal proceedings, no matter the outcome, was highlighted as practical and effective way to increase police and prosecutor interaction and mutual trust for enhancing operational coordination in the long run.

In the **cross-border** context, tools and good practices discussed included:

- INTERPOL's law enforcement communications tools and information sharing databases are available to States through its global network of national bureaus. As with all domestic or **cross-border cooperation platforms**, their efficacy/utility depends on the quality of engagement through, and contributions to, such platforms. The more actively these tools are used, the greater the benefits for all parties that use them.
- **Joint investigation teams (JITs)** were highlighted as potentially extremely effective, but also considered to be a complex tool for cross-border police cooperation in terrorism-related investigations. Sample memorandum of understandings and guidance notes developed by, *inter alia*, INTERPOL, Eurojust & Europol, or the FBI, could be useful for identifying a range of relevant issues and good practices.
- Developing procedures for internal **assessment, evaluation, and review of capacity gaps** to inform training and capacity development needs would be useful.

Developing a program for subregional mutual evaluation (for example, one similar to that used by FATF-style regional bodies in accordance with Financial Action Task Force (FATF) Recommendations) covering legal, procedural, and operational aspects of criminal justice-oriented counter-terrorism practices might prove useful to identify gaps, tailor solutions, and build stronger subregional cooperation.

- Legal cooperation to counter terrorism with built-in **human rights protections** can help ensure that evidence gathered in an investigation can be successfully used to prosecute suspects in court. Ensuring clear procedures for authorizing electronic surveillance, ensuring suspects' access to legal counsel, and recording suspect interviews, are measures that can contribute to the integrity and success of a prosecution. Establishing a clear legal framework and operational procedures on extradition and legal assistance will complement and mutually reinforce cross-border efforts to bring suspected terrorists to justice.

THE WAY FORWARD

Discussions over the course of the three-day workshop highlighted the importance of strengthening coordination and collaboration among law enforcement and prosecutors to effectively bring terrorists to justice. In particular, four areas stood out for further exploration:

- **Formal and informal forms of cross-border cooperation, mutual legal assistance, extradition:** The EAC does not have a comprehensive subregional legal framework for cross-border criminal justice cooperation. At the same time, Member States have established bilateral agreements with neighbouring countries to facilitate better cooperation; are party to a number of regional and multilateral agreements and legal instruments on mutual legal assistance, extradition, and law enforcement cooperation through, *inter alia*, INTERPOL and the Eastern Africa Police Chiefs Cooperation Organisation (EAPCCO); engage in cooperation on specific cases; and must abide by their own national laws regarding the conduct of cross-border cooperation in criminal matters. There was a great deal of interest to clarify and make better use of these platforms to improve cross-border cooperation and to strengthen investigations and prosecutions.

Converting intelligence into evidence: National intelligence agencies play different roles in the counter-terrorism activities of East African countries. At the same time, intelligence does not necessarily lead to admissible evidence. Successful prosecutions, particularly for planning and preparatory offences, may depend on the ability of investigators to actively follow up on leads identified through intelligence sources in order to produce evidence that is admissible in court. Participants expressed an interest to explore the use of different investigations techniques and options to better transform intelligence into evidence.

Preventive approaches: While reacting effectively to terrorism-related incidents is extremely important, the need to strengthen prevention-oriented approaches in bringing suspected terrorists to justice before a violent act is committed is equally important. Depending on national legislation, the investigation and prosecution of offenses related to planning of, and preparation to commit acts of terrorism were identified as essential to a prevention-based approach. The use of specialized prosecutors in directing the investigations process can help ensure that the right evidence is gathered to prosecute suspected terrorists before the commission of violence.

- **Witness protection:** In many cases, the testimony of witnesses and victims of terrorism-related crimes is essential for the successful prosecution of suspected perpetrators. Ensuring that witnesses feel safe and are protected from those that may wish to keep them silent will increase the likelihood they will come forward with evidence and testimony in court. Most States in the region, it was noted, do not have legislative frameworks for witness protection. Where legislative frameworks are in place, participants suggested much more could be done to operationalize them in practice.