



**Pan-African Human Rights and Social Justice Conference  
on Human Rights and Counter-terrorism**

Nairobi, 9 June 2024

**Keynote Address of the Special Rapporteur on the Promotion and Protection of  
Human Rights and Fundamental Freedoms while Countering Terrorism, Ben Saul**

Your Excellency the former Prime Minister of Kenya, Distinguished Guests,

It is an honour for me to participate in this Pan-African Conference on Human Rights and Terrorism in my capacity as the UN Special Rapporteur on human rights and counter-terrorism and to strengthen the partnership of my mandate with African civil society organizations.

I would like to begin by thanking the organizers, VOCAL Africa, Haki Africa, Spaces for Change and Civic Advisory Hub. Without your hard work and support, this conference would not have taken place. I am told that we are hosted in an Australian-run hotel, so thank you for making me feel at home! The traditional African dancing this morning has also been a treat – in Australia, white people can't dance, so perhaps we need "African solutions to Australian problems".

The Conference is timely in light of the growing threat of terrorism across this continent and the recent Africa–United Nations summit in Abuja. I have made Africa the first geographic priority of my mandate and have already met many African ambassadors in Geneva and New York. This week I visited Banjul and Addis Ababa, where I engaged with regional organisations, including the African Commission on Human and Peoples' Rights, the African Union and ECOWAS. I also met United Nations country teams, national human rights institutions, civil society organizations and victims of human rights violations. I intend to meet soon the Southern African Development Community, the Intergovernmental Authority on Development and other sub-regional organizations in Africa. These visits will inform my forthcoming report to the General Assembly on the role of regional organisations in countering terrorism and are also relevant in preparing for my official country visits in Africa and to forge links with civil society in the region.

The grave threat posed by terrorism in Africa today is undeniable. I express my solidarity with the victims of terrorism and affected governments and populations. Terrorism is indeed a threat to many human rights, including life and security of person, as well as to socio-economic rights and development. Effective state counter-terrorism laws and policies are essential to fulfilling the duty of states to prevent violations of the right to life, security of person and liberty and to protect the victims of terrorism.

At the same time, counter-terrorism measures themselves must fully respect human rights, as required by international law and affirmed by the General Assembly and Security Council. Respect for human rights is not only a legal and moral imperative to protect the dignity of all human beings – even people suspected of terrorism – but is also necessary to ensure the legitimacy and effectiveness of counter-terrorism efforts. Historically there was much understandable suspicion in Africa about counter-terrorism, given that anti-colonial resistance was often harshly condemned as terrorism, whether in French Algeria, apartheid South Africa, or with the Mau Mau insurgency here in Kenya. This history is a cautionary tale against excessive counter-terrorism responses.

Regrettably, in the two decades since the terrorist attacks of 11 September 2001, the misuse of counter-terrorism laws has proliferated globally, including here in Africa. Every week my office receives complaints from victims worldwide. Abuses have included arbitrary arrests and detention, torture, enforced disappearances and summary executions, unfair trials and disproportionate penalties (including the death penalty where it is not for the “most serious crimes” as required by international law), irregular terrorism courts, and violations of the right to privacy and freedoms of expression, assembly and association. Almost no human right has been left untouched by counter-terrorism law.

The misuse of counter-terrorism law has affected not only terrorist suspects but entirely innocent people. In some places, there has been rampant use of overly broad measures against civil society, including political opponents, environmental activists, human rights defenders, journalists, minorities, indigenous peoples, social movements, trade unionists and students. Counter-terrorist financing measures have restricted legitimate non-profit activities and hampered humanitarian aid.

Given the lack of an agreed international definition of terrorism overly broad definitions in national and regional law have infringed the principle of legality – that criminal offences should be precise and certain – and enabled violations of fundamental rights and freedoms, including freedoms of expression, assembly and association. Recently the United Nations Counter-terrorism Executive Directorate observed that around 65 per cent of the national definitions it has reviewed in its country assessments have been too broad or unclear. At the African level, the 1999 Organization of African Unity Convention against terrorism still contains a vague definition that is susceptible to abuse and departs from the rights-respecting suggested definition in Security Council Resolution 1566. There is an equally alarming lack of definition of so-called “violent extremism”, as well as “extremism” without the qualifier “violent”, concepts which increasingly trigger coercive interventions of various kinds by state authorities.

Further, unjustified and prolonged states of emergency continue to undermine human rights. Excessive military violence in response to terrorism also destroys fundamental rights, including through violations of international humanitarian law and international criminal law. At times, other states have been complicit in such violence, for example, through arms transfers. Some states are increasingly resorting to cross-border military violence, even when it is not justified under international law of self-defence.

With an excessive emphasis on law enforcement, security and military responses to terrorism, many states have failed to seriously address the root causes of terrorism, as demanded by Pillar I of the United Nations Global Counter-terrorism Strategy. These include, for example, protracted

unresolved conflicts, state violations of human rights, poverty and inequality, lack of good governance and the rule of law, and lack of life opportunities. Impunity for violations committed in the name of countering terrorism leads to further grievances and violence. Terrorist and violent extremist groups often take root in marginalised areas, exploiting local grievances to recruit young citizens in vulnerable situations. There is an urgent need to improve effective governance and development by addressing the aggravating factors and underlying conditions that can give rise to grievances and lead individuals to join violent extremist groups.

I would like to now address the role of all of you in this room – civil society – in protecting human rights in counter-terrorism. Civil society has a vital role to play in channeling discontent and enabling constructive engagement with States, as well as indirectly undermining the factors that attract people to terrorism and violent extremism. By advancing the promotion and protection of human rights around the world, civil society engagement paves the way for more effective prevention strategies, both by countering terrorist acts and by reducing the appeal of violent extremism. When civil society organisations give voice to the marginalized and vulnerable, including victims of terrorism, they provide a constructive avenue for accountability and transparency in counter-terrorism work, including through activism, education, research, monitoring and engagement with governments.

My predecessor's recent Global Study documented the negative impacts of counter-terrorism measures on civil society and civic space, with more specific detail in its outcome document for the West, East and Central Africa civil society consultations. Some key findings include that:

- Measures to combat terrorist financing, as well as other administrative and registration or licensing restrictions, have created unduly burdensome regulations and reporting requirements for civil society organizations and have been used to persecute political dissent, adversely affecting their ability to work;
- Counter-terrorism sanctions have impeded the ability of humanitarian actors to deliver humanitarian relief, including in armed conflict where such relief is guaranteed under international humanitarian law;
- Some states in the region have used the judicial system to intimidate human rights defenders and civil society organisations, and more generally there are inadequate mechanisms to prevent and protect human rights defenders from reprisals;
- Many African states are investing heavily in new technologies for border security without adopting an adequate legal framework to protect privacy rights and in some states, measures are being used to disproportionately monitor NGOs and human rights defenders;
- In some states (particularly in West and Central Africa) there has been an increasing militarization of counter-terrorism and a move away from civilian policing, which has resulted in increasing political and physical control over populations, restrictions on dissent, the labelling and targeting of civil society as “terrorists”, and counter-productive violations of international humanitarian and human rights law that stimulate more reactionary violence;

- Counter-terrorism measures have distinct adverse impacts for women and girls, as well as ethnic, religious and linguistic minorities; and
- Many countries in the region have deficits in meaningful civil society participation in law and public policy-making; as emphasized by a Global Scoping Study launched in New York last week, civil society participation in counter-terrorism can enhance not only the legitimacy but also the effectiveness of counter-terrorism measures.

Finally, I would like to highlight that national and regional oversight and accountability mechanisms play a vital role in effectively checking that counterterrorism actors respect human rights. My predecessors have made recommendations for oversight and accountability in a range of contexts, from reviewing counterterrorism legislation to supervising intelligence agencies to the independent investigation of human rights violations when countering terrorism.

Oversight mechanisms can help to ensure that counter-terrorism measures are lawful, strictly necessary and proportionate in pursuit of a legitimate security aim, and non-discriminatory. They can help prevent and remedy inadvertent breaches and deliberate violations. They can prevent arbitrary detention and arbitrary killings, torture and forced confessions in custody, unfair trials, and violations of privacy or political freedoms. They can ensure due process and independent judicial safeguards, thereby protecting other rights and freedoms. They can also contribute to fulfilling the duty to provide effective remedies for human rights violations in countering terrorism, including reparation, compensation, truth and accountability.

Throughout my mandate, in line with Pillar IV of the United Nations Global Counter-Terrorism Strategy, I will encourage African States to adopt a human rights and rule of law-based approach in their fight against international terrorism. I will also continue urging all states to move beyond rhetorical commitment to human rights and instead place them at the heart of their counter-terrorism measures. Finally, I will continue to advocate for meaningful civil society participation in international, regional and national decision-making fora when countering terrorism and violent extremism.

Combating terrorism is complex and requires the collaboration of a range of stakeholders. It is my hope that this conference will be a platform for ideas on the manner in which we can apply human rights in the fight against terrorism.

Thank you.