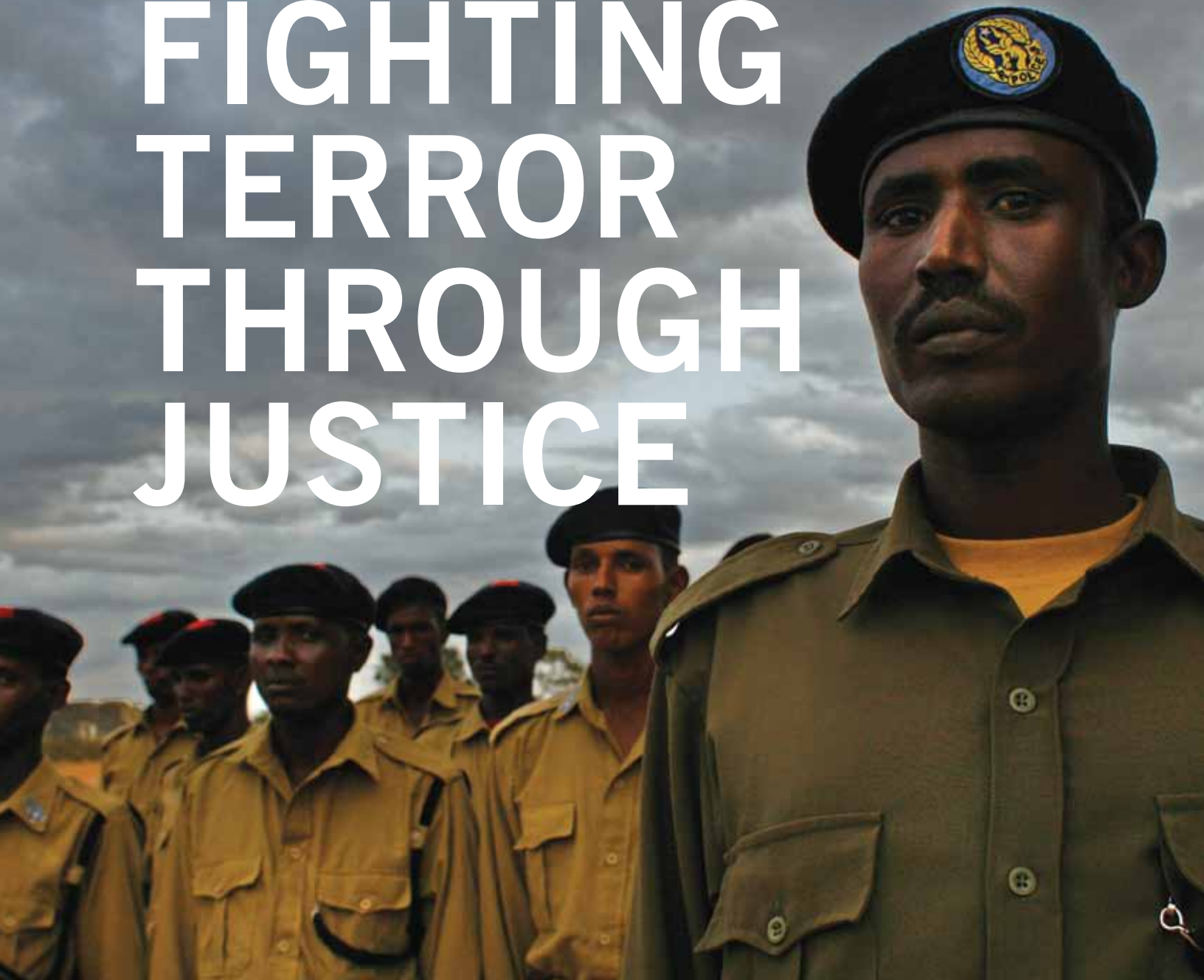


# FIGHTING TERROR THROUGH JUSTICE



## Implementing the IGAD Framework for Legal Cooperation Against Terrorism

FINAL REPORT OF THE TASK FORCE ON LEGAL COOPERATION AGAINST TERRORISM IN THE IGAD SUBREGION  
MAY 2012

ISSP



Center on Global  
Counterterrorism  
Cooperation

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Members of the local police force stand in formation before setting out on night patrols through Baidoa, Somalia, to enforce the 9PM curfew in July 2006.

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MINISTRY OF FOREIGN  
AFFAIRS OF DENMARK



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## Acronyms

**ACSRT** African Centre for Studies and Research on Terrorism

**AMISOM** African Union Mission to Somalia

**AML/CFT** anti–money laundering/countering the financing of terrorism

**ASEAN** Association of Southeast Asian Nations

**ASFLU** Al-Shabaab Fusion and Liaison Unit

**AU** African Union

**CGCC** Center on Global Counterterrorism Cooperation

**CNCP** Commonwealth Network of Contact Persons

**EAC** East African Community

**EAPCCO** Eastern Africa Police Chiefs Cooperation Organization

**EJN** European Judicial Network

**ESAAMLG** Eastern and South African Anti–Money Laundering Group

**EU** European Union

**FATF** Financial Action Task Force

**FIU** financial intelligence unit

**FLU/UFL** Fusion and Liaison Unit/Unité de Fusion et de Liaison

**GJLOS** Governance, Law and Order Sector (Kenya)

**ICPAT** IGAD Capacity Building Programme Against Terrorism

**IGAD** Intergovernmental Authority on Development

**ISSP** IGAD Security Sector Program

**JATT** Joint Anti-Terrorism Task Force (Uganda)

**JCLEC** Jakarta Centre for Law Enforcement Cooperation

**JIT** Joint Investigation Team (EU)

**JLOS** Justice, Law and Order Sector (Uganda)

**LRA** Lord’s Resistance Army

**MLA** mutual legal assistance

**NCTC** National Counter Terrorism Centre (Kenya)

**NISS** National Intelligence and Security Services (Sudan)

**OUA** Organization of African Unity

**OIC** Organisation of Islamic Cooperation

**POCAMLA** Proceeds of Crime and Anti–Money Laundering Act (Kenya)

**TFG** Transitional Federal Government (Somalia)

**UFL/FLU** Unité de Fusion et de Liaison/Fusion and Liaison Unit

**UN** United Nations

**UNODC** UN Office on Drugs and Crime

# HORN OF AFRICA



|  |                        |
|--|------------------------|
|  | National capital       |
|  | Town, village          |
|  | Airport                |
|  | International boundary |
|  | Road                   |
|  | Railroad               |

The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Final boundary between the Republic of Sudan and the Republic of South Sudan has not yet been determined.

## Executive Summary

East Africa and the Horn face a number of transnational security threats, including terrorism, transnational crime, and piracy. In recent years, particularly following the July 2010 attacks in Kampala, al-Shabaab has been increasingly viewed as a threat not only to Somalia, but to the greater subregion. Tourism has declined and shipping costs have risen due to the threat of piracy from Somalia. Lawless pockets where government reach is weak, together with rampant corruption, have turned the region into a major transit point for black market financial flows and various forms of illicit trafficking.

Terrorism and transnational crime increasingly threaten security in the subregion of the Intergovernmental Authority on Development (IGAD). Because of their transnational nature, no individual IGAD member state will single-handedly be able to deal effectively with these threats. As the IGAD Security Strategy adopted in December 2010 makes clear, effective cooperation will be crucial to winning the struggle against terrorism and to ensuring that other forms of transnational crime do not similarly jeopardize the IGAD subregion's growth, prosperity, and stability.

### BACKGROUND

The 2002 Implementation Plan to Counter Terrorism in the IGAD Region recognized the need for cross-border law enforcement and criminal justice activity to be placed within a robust legal framework. With the adoption of the IGAD Mutual Legal Assistance (MLA) and Extradition Conventions by the IGAD Council of Ministers in 2009, the subregion established locally owned legal frameworks for interstate cooperation in matters of law enforcement and criminal justice. Yet, implementing that framework remains a work in progress. Multilateral law enforcement and criminal justice cooperation in East Africa suffer from weak national institutions and internal coordination, a political environment of distrust across borders and with respect to domestic judiciaries, and spotty implementation of legal and institutional mechanisms for cross-border legal assistance and information sharing.

As a result, much of the cooperation against terrorism in the subregion remains informal, based on personal initiatives between political authorities and operational agencies. Some authorities perceive that legal cooperation against terrorism, including MLA and extradition, is slow, cumbersome, and ineffective. At the same time, there is a growing recognition that informal cooperation can be unreliable and unpredictable, potentially eroding government credibility and public support for state action against terrorism and failing to protect human rights. Recognizing this, the IGAD Security Sector Program (ISSP) has worked with national partners and external partners such as the Center on Global Counterterrorism Cooperation (CGCC) to encourage IGAD member states to domesticate the IGAD MLA and Extradition Conventions. Legislative developments, however, must be matched by an increased ability of officials and institutions to implement them in practice. Now more than ever, there is a critical need to ensure that subregional law enforcement and criminal justice institutions are equipped with the requisite infrastructure to capitalize on these legal cooperation tools.

### ABOUT THE TASK FORCE

In March 2012, the ISSP and the CGCC convened the Task Force on Legal Cooperation Against Terrorism in the IGAD Subregion to explore innovative ways to rapidly scale up legal cooperation against terrorism and related transnational crime. During 4–14 March 2012, this task force of eight senior security and criminal justice officials from Djibouti, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Uganda, and IGAD embarked on a study tour of East Africa. The task force sought to identify challenges for IGAD member states in the effective implementation of the IGAD MLA and Extradition



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Conventions and develop concrete recommendations for IGAD and IGAD stakeholders (member states, donors, and civil society) on additional practical, concrete steps to strengthen legal cooperation against terrorism in the IGAD subregion.

This report presents the final observations and recommendations of that task force. It is based on consultations with delegations from IGAD and all IGAD member states and discussions with a number of external partners, including the African Union Commission and the UN Office on Drugs and Crime. To further understand the legislative dynamics of cross-border law enforcement cooperation, the task force met with senior Ethiopian, Kenyan, and Ugandan members of parliament. Institutional, legal, and operational issues were discussed in closed meetings with diplomatic, criminal justice, law enforcement, military, and intelligence officials.

Over the course of their consultations with member states, the task force generally focused on four main areas of discussion.

- 1. Mechanisms in place for internal cooperation.** What are the central legal and practical mechanisms that provide internal coordination for legal cooperation against terrorism and transnational crime?
- 2. Mechanisms in place for interstate cooperation.** What are the central legal and practical mechanisms that provide legal cooperation with external partners against terrorism and transnational crime?
- 3. Challenges to internal and external cooperation.** What are the main challenges for legal cooperation against terrorism and transnational crime?
- 4. Opportunities for subregional engagement.** How can IGAD and its member states assist to help overcome these challenges?

These areas of discussion form the basis of the structure of this report. In **section 1**, the task force describes the existing arrangements within each IGAD member state and at the subregional level for legal cooperation against terrorism and related transnational crime. These consultations emphasized that building effective mechanisms for cross-border cooperation is just as important as building robust internal capacity at the national level. In fact, strengthening both at once can have positive feedback effects.

Section 1 also includes perspectives gleaned from the task force discussion on the role of civil society in strengthening a rule of law–based counterterrorism agenda. Because terrorism is often perceived as an extraordinary threat, extraordinary measures may be seen as necessary to defend the state against it. Coercive tactics by government agents in the name of counterterrorism, however, can be detrimental not only to the long-term struggle against terrorism, but also to the development of stronger, more responsive law enforcement and criminal justice institutions. Excessively coercive counterterrorism efforts can undermine public perception of the state as a source of justice. On the other hand, justice-based counterterrorism efforts may strengthen civil society support for states.

Although each country in the subregion faces unique challenges, the task force was struck by a number of common themes that emerged from the responses heard from across the region to questions asked during the consultations. In **section 2**, the task force identifies those challenges that appear to recur in multiple different venues and contexts in the subregion. Recognizing the particularly dire situations faced by their colleagues in Somalia and South Sudan, their focus on recurring challenges provided a basis for developing thinking on joint action and shared solutions.

The task force was told time and time again that the central problem is a deficit of trust between countries in the region. At the same time, many member states differ in their perception and definition of terrorist and criminal threats, prioritizing action against domestic entities that are not seen as a threat by neighbors in the region. A resulting challenge has been the weak integration of policing cooperation into broader legal cooperation frameworks. The task force noted, however, an

increasing recognition that al-Shabaab and transnational crime pose a common threat to all IGAD member states. Joint investigation and analysis, even joint police operations in the face of common threats, could be an entry point for building trust and reciprocity between states, leading in time to more systematic cooperation.

Another main thread of challenges in the region stems from weak criminal justice sector capacity, although the nature of these weaknesses vary. Combined with a lack of awareness of alternative legal tools among law enforcement officials, counterterrorism measures are often characterized by an overreliance on hard power and the use of military and extrajudicial options to deal with violent extremists and terrorists. In certain IGAD countries, these problems can be intimately connected to the impact of politics on the judicial process and the influence of external security interests. Obligations imposed by the international community can often overstretch weak institutions. Greater regional leadership to ensure local ownership and institutional development will assist in ensuring precious donor resources are efficiently spent on addressing local needs. Greater donor coordination could help alleviate the burden of redundancy and reduce institutional overload.

Based on its extensive consultations and after careful internal deliberation, the task force identified a number of concrete steps that could be taken by the IGAD Secretariat, IGAD member states, and IGAD donors to strengthen legal cooperation against terrorism in the IGAD subregion. **Section 3** presents the task force's final recommendations, which cut across a broad range of issue areas that came up during the course of their study tour consultations. Some of these topics include information sharing, border management, counterradicalization, criminal investigations, and anti-money laundering (AML) efforts.

## SUMMARY OF RECOMMENDATIONS

The recommendations of the Task Force on Legal Cooperation Against Terrorism in the IGAD Subregion are summarized below.

### To the IGAD Secretariat:

#### **Recommendation 1: Program of domestication of IGAD conventions**

*The IGAD Secretariat should create a program for accelerated domestication of the IGAD MLA and Extradition Conventions.*

#### **Recommendation 2: Criminal justice support in Somalia and South Sudan**

*The IGAD Secretariat should create IGAD Criminal Justice Support Mechanisms in Somalia and South Sudan to mobilize and deploy relevant criminal justice sector expertise from IGAD member states.*

#### **Recommendation 3: Al-Shabaab Fusion and Liaison Unit**

*The IGAD Secretariat should work with member states to create within the secretariat the Al-Shabaab Fusion and Liaison Unit.*

#### **Recommendation 4: Joint investigation arrangements**

*The IGAD Secretariat should create the High-Level Task Force on Joint Investigation Arrangements in the IGAD area to develop proposals for consideration by the IGAD Council of Ministers.*

#### **Recommendation 5: IGAD list of proscribed terrorist groups**

*The IGAD Secretariat should commission a study on the feasibility of the development of an IGAD list of proscribed terrorist groups and suspects to be subject to legal sanctions and control measures.*

#### **Recommendation 6: Countering violent extremism**

*The IGAD Secretariat should develop lessons learned for countering violent extremism through dialogue, engagement, and reconciliation as complements to legal prosecution, drawing on experiences within the IGAD subregion and beyond.*

#### **Recommendation 7: Annual convention of counterterrorism practitioners**

*The IGAD Secretariat should convene an annual convention of counterterrorism practitioners in the IGAD subregion.*

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**To IGAD member states:**

**Recommendation 8: Strengthen internal coordination**

*IGAD member states should create and strengthen effective internal coordination mechanisms for the legal fight against terrorism.*

**Recommendation 9: Periodic peer review and support system**

*IGAD member states should create the IGAD MLA and Extradition Periodic Peer Review and Support System.*

**Recommendation 10: Integrate anti-money laundering regimes and counterterrorism legal cooperation**

*IGAD member states should take steps in accordance with the ISSP-CGCC “Baseline Study on Anti-Money Laundering and Countering the Financing of Terrorism in the IGAD Subregion” to strengthen their domestic AML and counterterrorism financing regimes and ensure they collaborate effectively.*

**Recommendation 11: Strengthen border management**

*IGAD member states should implement existing recommendations on border control and management arising out of IGAD’s audit of existing border management measures and practices by the IGAD Capacity Building Programme Against Terrorism/ISSP.*

**To all stakeholders (IGAD Secretariat, member states, donors and civil society):**

**Recommendation 12: Regional counterterrorism action plan**

*Stakeholders should work together to create a regionally led IGAD Action Plan to Counter Terrorism and Related Transnational Crime.*



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# Introduction

**T**ERRORISM AND TRANSNATIONAL CRIME increasingly threaten security in the subregion of the Intergovernmental Authority on Development (IGAD). Because of their transnational nature, no individual IGAD member state will single-handedly be able to deal effectively with these threats. As the IGAD Security Strategy adopted in December 2010 makes clear, effective cooperation will be crucial to winning the struggle against terrorism and to ensuring that other forms of transnational crime do not similarly jeopardize the IGAD subregion's growth, prosperity, and stability.

Terrorism and transnational crime have a complex history in the subregion, intertwined with its political instability and prolonged episodes of violent conflict. Factors including poverty and limited access to government services, weak institutional capacity, porous borders, and weakly monitored coastlines have created conditions conducive to the spread of terrorism and, increasingly, transnational crime. In recent years, some of these conditions have improved as the subregion has found economic opportunities in the process of globalization and regional economic integration. This has produced encouraging growth and rapid development in many parts of the subregion. At the same time, however, these forces may also be contributing to the increasingly transnational nature of organized criminal and terrorist activity in the subregion, with al-Shabaab operating on a more regional scale and international criminal networks establishing a robust presence in many countries in the subregion. All of these factors point to a growing need for closer cooperation among the countries of the subregion to tackle terrorism and transnational crime.

Yet, there is a further challenge facing the IGAD subregion, just as it faces every other region: to ensure that this cooperation against terrorism reinforces the rule of law. Some authorities in the IGAD subregion perceive that legal cooperation against terrorism, including mutual legal assistance (MLA) and extradition, is slow, cumbersome, and ineffective. This view is neatly captured in the words of one official that spoke with the task force issuing this report: "Terrorism will never be curtailed if we use the methods recommended by human rights activists."

The result is that much of the cooperation against terrorism in the IGAD subregion remains informal, based on personal initiatives between political authorities and operational agencies. It is in a sense "extralegal," occurring outside the formal legal system. This kind of informal cooperation is increasingly seen as counterproductive, however, not only by civil society actors but also, as the consultations of this task force have shown, by politicians and civil servants in the subregion. It is increasingly viewed as unreliable and unpredictable, eroding support for state action against terrorism by failing adequately to protect human rights.

It will take time to build broad support for the view that rule of law-based cooperation against terrorism, relying on formal MLA and extradition arrangements, is preferable to the existing system of personal initiatives, so-called hot pursuit across borders, and extrajudicial transfers. That effort has not been assisted by the reliance of some major external powers in recent years on nonlegal counterterrorism methods. That has served to reinforce the erroneous perception that hard power alone will win the struggle against terrorism and related transnational crimes.

Nonetheless, the processes of subregional integration now under way in East Africa and the Horn clearly offer countries inside and outside the subregion a number of opportunities to strengthen practical cooperation. This task force was born out of a desire to capitalize on those opportunities.

## The IGAD Framework for Legal Cooperation Against Terrorism

IGAD stands in the forefront of the effort to strengthen rule of law–based cooperation against terrorism in this subregion. In late 2009, acting on a desire to implement the United Nations Global Counter-Terrorism Strategy in this region, the IGAD Council of Ministers adopted two new conventions, one on extradition, the other on MLA. These conventions have since been ratified by Djibouti and Ethiopia, and as the task force issuing this report heard, further ratifications may soon occur. Together, the IGAD conventions provide a strengthened framework for legal cooperation against terrorism in the subregion. Yet, in a subregion with a record of limited interstate trust and cooperation and weak legal and judicial systems, a challenge to implement this framework remains.

In the last three years, the IGAD Security Sector Program (ISSP)—previously known as the IGAD Capacity Building Programme Against Terrorism (ICPAT)—has been working with IGAD member states to encourage and support implementation of this framework. Activities supporting implementation have included dialogue and outreach with member states about the ratification process, joint training sessions for officials from each IGAD member state on using the IGAD framework, and training sessions on counterterrorism investigations, open source analysis, advanced interrogation techniques, and community engagement. This programming was developed and executed in collaboration with a New York–based think tank, the Center on Global Counterterrorism Cooperation (CGCC), which helped facilitate access to international expertise on these issues.

## About the Task Force

During the course of this work, it became clear that there was an appetite in the IGAD subregion to accelerate implementation of the IGAD framework. IGAD member states currently share a perception that al-Shabaab represents a common threat to all their interests, warranting the establishment of mechanisms to rapidly scale up legal cooperation against terrorism and related transnational crime.

With a mandate from the ISSP Steering Committee and financial support from the Ministry of Foreign Affairs of Denmark, the ISSP and the CGCC established the Task Force on Legal Cooperation Against Terrorism in the IGAD Subregion. The task force’s objectives were identifying challenges for IGAD member states in the effective implementation of the IGAD MLA and Extradition Conventions and making recommendations to IGAD and IGAD stakeholders (the member states, donors and civil society) on additional concrete steps to strengthen legal cooperation against terrorism in the IGAD subregion.

In December 2011, the task force activity was officially approved by the ISSP Steering Committee within the framework of the 2012 ISSP Work Plan. Between December 2011 and February 2012, the ISSP and the CGCC mobilized support for the nomination of task force members through the network of ISSP National Focal Points. The task force was to be comprised of one member from each IGAD member state, selected on the basis of their experience and expertise in legal cooperation against terrorism and transnational crime. Care was also taken to ensure that the group was characterized by a diversity of men and women and consisted of members with diverse experience in intelligence cooperation, criminal investigation, prosecution, MLA, and extradition.

A Background Paper (see annex 1) was provided to task force members to stimulate discussion and serve as a point of reference for important concepts and themes over the course of the study tour. This paper (1) briefly surveyed

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existing continental and subregional initiatives that support legal cooperation in countering terrorism and transnational crime in East Africa, (2) offered a number of perspectives on common challenges to legal cooperation faced by states in the subregion, and (3) presented a selection of short case studies discussing institutional arrangements for law enforcement and criminal justice cooperation in other regional contexts.

## Task Force Methodology and Program of Work

Organized around an intensive study tour of the IGAD subregion, the final 11-day task force itinerary (4–14 March 2012) encompassed meetings with delegations from all IGAD member states. Meetings were held with a number of elected officials from Ethiopia, including the chairpersons of the Foreign, Defense and Security Affairs Standing Committee and the Legal and Administrative Affairs Standing Committee; a high-ranking representative from the Kenyan parliament; and the Ugandan Committee on Legal and Parliamentary Affairs. Meetings also were held with various senior civil servants from member state ministries of defense, interior, foreign affairs and national security, and justice, including public prosecutors; federal military and law enforcement agencies, including Ethiopia's Interpol National Central Bureau; and national counterterrorism agencies, such as the Kenyan and Sudanese National Counter-Terrorism Centres (NCTCs) and the Ugandan Joint Anti-Terrorism Task Force (JATT).

In addition, the task force met with the African Union (AU) Commission, IGAD, the UN Office on Drugs and Crime (UNODC), and other external partners and members of civil society. (The tour program is reprinted in annex 2, and the individuals the task force met are listed in annex 3.) These meetings were organized into approximately 15 official sessions and several internal working sessions. The task force visited Addis Ababa, Nairobi, and Kampala. Delegations from IGAD member states not visited during

the study tour (Somalia, South Sudan, and Sudan) were invited to visit with the task force in a neighboring capital.

Task force consultations occurred in Amharic, Arabic, English, French, Kiswahili, and Somali. Consultations were held on a not-for-attribution basis to encourage frank discussion. Task force members served as rapporteurs for each official meeting session of the study tour. Working in pairs, rapporteurs would serve as discussion leaders of their respective session and were responsible for summarizing the key points of the discussion and presenting them to the task force at postmeeting debriefings.

Early in its work, the task force agreed to a common structure for these consultations. In meetings with IGAD member state officials, discussions were generally structured as follows:

1. What are the central legal and practical mechanisms that provide internal coordination for legal cooperation against terrorism and transnational crime?
2. What are the central legal and practical mechanisms that provide legal cooperation with external partners against terrorism and transnational crime?
3. What are the main challenges for legal cooperation against terrorism and transnational crime?
4. How can IGAD and its member states assist to help overcome these challenges?

Meetings with nonstate stakeholders followed a similar pattern, with adjustments as necessary.

## About This Report

Working CGCC facilitators, task force members began formulating a common approach and the major themes of this final report early in the study tour program. These themes were developed by task force members through a collaborative process into a draft text. A full first draft was agreed by the task force on 14 March 2012 and then circulated to IGAD member states for comment prior to publication.

The report is structured into three sections. The first section summarizes the findings of the task force on existing arrangements for legal cooperation against terrorism and related transnational crime in the IGAD subregion, looking at national and international arrangements and including civil society perspectives. The second section provides the task force findings on cross-cutting challenges to cooperation that recur throughout the region. The third and final section provides a series of recommendations for the way forward, addressed to the IGAD Secretariat and other stakeholders.





# 1. What Are the Existing Arrangements for Legal Cooperation Against Terrorism in the IGAD Subregion?

**A** **FIRM LEGAL BASIS FOR CROSS-BORDER INTER-ACTION** between law enforcement and justice institutions is necessary for engaging in effective cooperation against transnational threats. Effective cross-border cooperation, however, requires effective internal coordination. Developing the necessary framework and skills may require international support. This section records the findings of the task force relating to existing arrangements for legal cooperation against terrorism and related transnational crime in the IGAD subregion. It touches on internal coordination, external cooperation, and international arrangements and includes some civil society perspectives. Challenges and recommendations are addressed in sections 2 and 3.

## A. National Arrangements

### i. Djibouti

Djibouti is situated at the southern passage between the Red Sea and the Gulf of Aden and benefits from a privileged geostrategic position at the intersection of significant international maritime trading routes. A base for a number of foreign military contingents, it figures prominently as a hub

of international antipiracy and antiterrorist military activity in the region. A small country of 23,000 square kilometers, Djibouti shares somewhat porous borders with Eritrea, Ethiopia, and Somalia. It is separated from its closest maritime neighbor, Yemen, by a narrow waterway, which is an attractive transit point for insurgent, criminal, and terrorist groups moving people, goods, money, and weapons between theaters of operation in the Arabian Peninsula and East Africa.

#### INTERNAL ARRANGEMENTS

A presidential decree of 3 October 2001 created the National Committee to Combat Terrorism. It is chaired by the Ministry of Justice and is charged with effecting measures to prevent and combat terrorism in all its forms inside Djibouti and participating in international arrangements to this end. The committee has created three subcommittees: on justice, focusing on legislative and legal measures; on security, charged with coordinating security agencies; and on finance, charged with coordinating action on banking and finance.

In parallel, a crisis response cell has been created. It meets twice a week, with the Minister of the Interior in the chair. Djibouti is currently developing institutional anti-money

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laundrying (AML) capabilities, including a new Financial Intelligence Centre. It has a developed counterterrorism legal framework, including provisions covering MLA and extradition.

#### **EXTERNAL COOPERATION**

Djibouti has ratified numerous international counterterrorism conventions (see annex 4). It was the first state to ratify the IGAD MLA and Extradition Conventions, which are now in force between it and Ethiopia, the other state that has ratified these conventions as of March 2012. Additionally, it has a bilateral MLA and extradition arrangement in place with Ethiopia. There is growing and increasingly formalized cooperation between Djibouti and external partners, including Interpol and the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO). It is thought to have informal cooperation arrangements with foreign military contingents in the areas of piracy and counterterrorism. Djibouti has limited cross-border customs control arrangements with its neighbors, but these are generally limited to information sharing and have not provided the basis for joint patrols or cooperation on investigation of cross-border crime or terrorism.

### **ii. Ethiopia**

The Ethiopian economy has achieved remarkable growth rates in recent years, and effective government action against terrorism and related transnational crime is increasingly understood in the country as necessary to secure its stability, development, and prosperity. Ethiopia has consequently been undergoing an intensive period of legislative and administrative development in this area, with its arrangements continuing to evolve as it takes on new international obligations and creates new internal arrangements to match.

#### **INTERNAL ARRANGEMENTS**

The most important legislative measures Ethiopia has adopted in countering terrorism are the Anti-Terrorism Proclamation No. 652/2009 and the Anti-Money Laundering and

Financing Terrorism Proclamation No. 657/2010. The House of People's Representatives has proscribed five groups under the Anti-Terrorism Proclamation: al-Shabaab, al-Qaida, the Oromo Liberation Front, the Ogaden National Liberation Front, and Ginbot7.

Ethiopia has established a National Anti-terrorism Coordinating Committee comprising the heads of the Ministry of Justice, the National Intelligence and Security Service, and the Federal Police. This committee provides a forum for strategic coordination, with operational coordination taking place under its auspices at a bilateral level. Cooperation between the police and federal prosecutors is particularly close on terrorism and transnational crime issues, with several senior federal prosecutors seconded to the Federal Police for this purpose. A working-level task force was recently established by the Ministry of Justice, involving several other agencies, to develop closer operational cooperation among those agencies. This task force will also be responsible for furthering implementation of international conventions, including the IGAD MLA and Extradition Conventions.

In the area of AML and countering the financing of terrorism (CFT), Ethiopia has established a Financial Intelligence Center, which is overseen by a board involving multiple government agencies. It remains in its early stages of development.<sup>1</sup>

#### **EXTERNAL COOPERATION**

Ethiopia has ratified a number of UN counterterrorism conventions, including recently the UN Convention for the Suppression of Financing Terrorism. Among AU agreements, Ethiopia has ratified the AU Convention for the Prevention of Terrorism. At the IGAD level, Ethiopia has ratified the IGAD MLA and Extradition Conventions. The country also has bilateral MLA and extradition agreements with Djibouti and Sudan and is currently negotiating an extradition arrangement with Kenya. Cross-border cooperation in investigations and prosecutions remains a fairly new, although growing, enterprise in Ethiopia, with attention focused to date on police-to-police arrangements, notably with Interpol and EAPCCO.

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1. See IGAD Security Sector Program and Center for Global Counterterrorism Cooperation, *Baseline Study on AML/CFT in the IGAD Region*, May 2012.

### iii. Kenya

Kenya has been a victim of international terrorism in recent years, perpetrated by al-Qaeda and associated groups in East Africa and the Horn. Al-Shabaab is increasingly becoming a direct security threat to Kenya, prompting Kenyan military intervention in Somalia.

#### INTERNAL ARRANGEMENTS

Coordination of counterterrorism efforts at the national level is carried out by the NCTC, a multidisciplinary organ operating under the National Counter Terrorism Strategy adopted in 2003. Key stakeholders, including the Ministry of Defense, the Kenya Police Service, the security agencies, and Immigration and Customs, are represented at the NCTC by staff seconded to it. Specialized units within the police carry out investigations relating to terrorism and other transnational crimes and provide evidence to the Director of Public Prosecutions. These different roles are reflected in a government circular on government functions. The NCTC also coordinates external reporting, for example, the annual report to the UN Security Council under Resolutions 1267 and 1373.

Although Kenya still has no law creating a specific offense of terrorism or terrorism financing, a number of significant developments on the legislative front have taken place in recent years. In 2009 the Kenyan National Assembly adopted the *Proceeds of Crime and Anti-Money Laundering Act* (POCAMLA) and the *Prevention of Organized Crime Act*. The latter allows the minister in charge of security to proscribe criminal groups, subject to judicial review. Also, the law criminalizes various forms of support for and participation in these groups. So far, some 33 groups have been proscribed, including al-Shabaab; the *mungiki*, a local criminal group; the Baghdad Boys, another local group; and the Mombasa Republican Council. These laws give the Kenyan National Assembly an important opportunity to support executive action against terrorism and provide checks and balances.

In 2011 the assembly enacted the *Mutual Legal Assistance Act*. In developing parliamentary support for the passage of this act, civil servants pointed to Kenya's signature of the IGAD MLA Convention as an indication of the significance of passage of the bill for Kenya's participation in the IGAD subregion's emerging legal cooperation framework, particularly in the fight against terrorism. Clarification is still required, however, on the relationship between the attorney general as the traditional central authority in the administration of MLA and the newly created independent office of the Director of Public Prosecutions, who may or may not serve as a competent authority independent of the attorney general. It is also unclear whether the Financial Reporting Centre, established by the POCAMLA but not yet fully operational, will have power to share only administrative information with foreign financial intelligence units (FIUs) or whether it will also serve as a competent authority for the purposes of requesting MLA from foreign states.<sup>2</sup>

#### EXTERNAL COOPERATION

Kenya has relied notably on informal forms of cooperation such as police-to-police cooperation, especially under the auspices of EAPCCO and Interpol. Within this framework, Kenya has participated in a number of joint police investigations together with Tanzania and Uganda, most notably a series focused on the trade in stolen cars. Kenya is also an active member of the East African Community (EAC), which is currently stepping up its cooperation arrangements in the security sector. A Peace and Security Protocol currently under formulation would address issues on capacity building, counterterrorism, information sharing, and border management between the member states. The EAC is also establishing a Regional Defence Counter Terrorism Centre in Nairobi to provide a common platform for sharing military intelligence related to terrorism.

Kenya has entered into a number of bilateral, regional, and multilateral agreements as platforms for sharing information and evidence related to criminal investigations and prosecutions (see annex 4). Kenya is party to a number of instruments that provide for extradition of indicted fugitives, including

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2. See *ibid.*

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the Commonwealth of Nations' London Scheme for Extradition Within the Commonwealth and the Scheme Relating to Mutual Assistance in Criminal Matters Within the Commonwealth (the Harare Scheme). Kenya has ratified 14 universal instruments against terrorism (the UN conventions) and the Organization of African Unity (OAU) convention on terrorism (Algiers Convention). Within IGAD, Kenya is yet to ratify the IGAD MLA and Extradition Conventions, pending passage of the ratification bill by the assembly. Kenya also has in place a cooperative network of informal, interstate border committees, especially to address border issues with Tanzania and Uganda.

#### **iv. Somalia (Transitional Federal Government)**

Wracked by three decades of war, Somalia's formal legal institutions have been eviscerated. In areas controlled by the Transitional Federal Government (TFG), on which the task force focused, legal institutions formally exist but are only now beginning to rebuilt their operational capacity. Recent military advances in Somalia hold out the prospect of an opportunity, indeed a need, for rapidly scaling up justice sector capacities. Given the interest of other IGAD member states and states from outside the region in legal cooperation against al-Shabaab, it may be worth considering how a limited capacity for legal cooperation against terrorism and related transnational crime can be built into this nascent capacity from the outset.

##### **INTERNAL ARRANGEMENTS**

The key bodies involved in the TFG fight against terrorism have primarily been security agencies. These include the Somali National Army; the nascent Somali Police Force, including a Central Investigations Department; and the Anti-Terrorism Unit of the National Security Agency within the Ministry of the Interior and National Security. These bodies answer to the National Security Committee, comprised of the president, prime minister, and ministers of interior, justice, defense, information, and finance. This National Security Committee has a Technical and Executive Security Subcommittee composed of the head of the Intelligence/National Security Agency, the police commissioner, Ministry of Interior officials, and the mayor of Mogadishu.

These various bodies share intelligence and together with the prosecutor general are formally responsible for investigating and prosecuting terrorism related offenses under Somalia's 1962 penal code, and *sharia* law. The task force was unable to ascertain, however, how many such investigations or prosecutions have occurred. The penal code does not include a specific offense of terrorism. Such an offense will be created by the National Security Law if or when it is enacted by the Somali Transitional Federal Parliament.

##### **EXTERNAL COOPERATION**

Given the severe weakness of Somalia's legal institutions, nearly all cooperation between the TFG and foreign actors in the fight against terrorism has been informal, and the vast majority of it has been focused on military, rather than legal, cooperation. Somalia is a member of the United Nations, the AU, the Arab League, and the Organisation of Islamic Cooperation (OIC), in addition to IGAD. As a member of the Arab League, it is a signatory to the Riyadh agreement covering extradition and MLA. It has formal agreements with Djibouti, Ethiopia, and Kenya to fight al-Shabaab and a growing Interpol presence focused in particular on piracy. Yet, the task force heard that most cooperation against terrorism and related transnational crime occurs through informal, high-level policy commitments rather than formal rule of law-based cooperation. This has led to a proliferation of cooperation and information-sharing arrangements, including with foreign military contingents, the AU Mission to Somalia (AMISOM), and the U.S. Federal Bureau of Investigation.

#### **v. South Sudan**

Less than one year old, the Republic of South Sudan remains, as one South Sudanese official stated to the task force, an "infant state" deserving of "special attention" from IGAD. Despite its infancy, South Sudan is already acutely aware of the threat posed by terrorism and related transnational crime. It has been actively engaged in efforts to combat the Lord's Resistance Army (LRA), considered by the AU to be a terrorist group. It is currently seeing an influx of West African criminal networks and a rise in counterfeiting, including of U.S. dollars. Furthermore, a steep increase in

immigration from Somalia has raised concerns about the state's capacity to participate in subregional efforts to control al-Shabaab.

#### INTERNAL ARRANGEMENTS

Two decades of war have left South Sudan with extremely limited state capacity. Its nascent infrastructure means that it struggles simply to control its territory and borders, let alone engage in complex multijurisdictional investigations and prosecutions. Nonetheless, South Sudan clearly has an appetite to rapidly improve its justice sector capabilities. The Ministry of Finance is currently drafting an anti-money laundering bill, which may set up an FIU once enacted by parliament.<sup>3</sup> Perhaps surprisingly for some, South Sudan already has a number of key building blocks in place to allow it to participate in the international fight against terrorism. Articles 67 through 73 of its 2008 *Penal Code Act*, for example, deal with terrorism, and a number of other legal provisions are in place that will provide a foundation for legal cooperation against terrorism.

To date, however, these issues have arisen primarily in the context of South Sudan's struggle to create internal security. This is coordinated through the National Security Council at the national level with Security Committees at the state level, with operations carried out by the nascent police force under the supervision of the attorney general. In some cases, this has also involved support from the Sudan People's Liberation Army, for example, to deal with the LRA in Western Equatoria state. Border management is a significant component of the new republic's efforts in this area and is a responsibility of the National Security Service (an intelligence body) and Immigration Police and Customs officers.

#### EXTERNAL COOPERATION

With other pressing issues perhaps taking priority, South Sudan has not yet entered into many international arrangements relating to counterterrorism and combating transnational organized crime. Its cooperation with neighboring states has focused on border and security issues to date, although

it is already a member of the United Nations, the AU, IGAD, Interpol, and EAPCCO. It is not formally a signatory to the IGAD MLA and Extradition Conventions, but as its independence came after Sudan's signature, South Sudan has the option simply to accede to the conventions. It is developing a platform for security cooperation with Ethiopia, and the agenda for current ministerial discussions includes counterterrorism cooperation.

#### vi. Sudan

Like many countries in the IGAD subregion, Sudan has had some experience dealing with the threat of international terrorism. Currently, it enjoys the benefits of particularly strong security and justice infrastructures in the areas surrounding Khartoum and the capitals of its various states. The benefits of strong domestic institutions are less apparent on the periphery, however, and instability is prevalent on many of its borders, posing considerable challenges for cross-border legal cooperation.

#### INTERNAL ARRANGEMENTS

Sudan has a comprehensive suite of laws dealing with counterterrorism issues, including an antiterrorism act, an AML/CFT act, and laws on MLA and extradition (see annex 4). Operational activities under these laws are coordinated through a number of committees and interagency arrangements.

The Counter-Terrorism Coordination Committee has been established to provide a platform for information sharing between relevant ministries and includes members from the ministries of foreign affairs, defense, and justice; the National Intelligence and Security Service (NISS); the Bank of Sudan, including the Sudanese FIU; and the Ministry of Information. This committee also coordinates external reporting, for example, to the UN Security Council under Resolutions 1267 and 1373. More broadly, strategic coordination occurs through the National Security Council, presided over by the president. Its function is to lay out general policies and ensure coordination between the

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3. See *ibid.*

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security units and other governmental organs. At the state and local level, subcommittees on security ensure operational coordination in pursuit of these general policies, reporting to the National Security Council.

Special units in the NISS and police focus on countering terrorism and provide evidence to a special counterterrorism bureau in the public prosecutor's office. These cases are heard in a special counterterrorism court. On AML/CFT issues, there is an FIU at the Central Bank of Sudan that provides evidence to the prosecutor's bureau for formal investigation and prosecution and an Administrative Committee on AML, which oversees broader coordination in AML/CFT issues. This committee is chaired by the under-secretary of the Ministry of Justice and includes the Central Bank of Sudan, the Ministry of Finance, the Ministry of Investment, the customs agency, and others.

#### EXTERNAL COOPERATION

Sudan is party to a significant number of conventions that can underpin legal cooperation against terrorism. It has ratified 12 universal instruments against terrorism and the 1999 OAU Algiers Convention on counterterrorism. In addition, it is party to the OIC and Arab League conventions on counterterrorism and, significantly, the Riyadh agreement on extradition and MLA between Arab League countries. It is currently working on ratification of the IGAD MLA and Extradition Conventions and has developed formal arrangements with Ethiopia. Beyond these conventional ties, Sudan also has close bilateral intelligence and security cooperation with more than 80 countries and is an active member of Interpol and EAPCCO.

#### vii. Uganda

Threats posed by terrorism and violent insurgency have long been considered top security concerns in Uganda. Bitter memories of the two-decade-long struggle against the brutal LRA resonate with all Ugandans, especially in the north. The Allied Democratic Forces, a violent insurgent group that terrorized central Uganda for more than a decade leading up to 2004, has recently stepped up activity from bases in eastern Democratic Republic of the Congo. Since 2007,

Ugandan troops have comprised the bulk of AMISOM forces deployed in Somalia, their determination becoming all the more resounding following the revelation of al-Shabaab's role in the devastating dual bombings in Kampala on 11 July 2010, in which 87 people were killed.

#### INTERNAL ARRANGEMENTS

Counterterrorism activities in Uganda are coordinated through the JATT, whose membership includes officials from the police (antiterrorism unit), defense (Chieftaincy of Military Intelligence), and security agencies, notably the Internal Security Organisation and External Security Organisation. This arrangement is security oriented and collects intelligence information that may be developed into evidence by the antiterrorism police unit. The unit then submits the evidence to the Director of Public Prosecution's antiterrorism unit for possible prosecution.

This focus on security at the expense of legal process has eroded support for counterterrorism arrangements in Uganda. The task force heard concern from some members of the Ugandan parliament that opposition movements may be listed as proscribed groups under the *Anti-Terrorism Act* (no. 14 of 2002). This act gives the minister of the interior power to list proscribed groups and includes a very broad definition of terrorism. Groups currently listed under the act are the Allied Democratic Front, al-Qaida, the LRA, and the Lord's Resistance Movement.

At present, no act covers MLA in Uganda. Without such an act, there appears to be a lack of clarity regarding the relationship between the attorney general as the central authority and the Director of Public Prosecutions when it comes to handling requests for assistance and evidence submitted by foreign actors and the ability to submit Uganda's own requests to those actors.

#### EXTERNAL COOPERATION

Uganda has ratified 11 of the UN conventions against terrorism. It is party to the 1999 OAU Convention on the Prevention and Combating of Terrorism in 1999 (the Algiers Convention). It has signed but not ratified the IGAD MLA and Extradition Conventions and is an active

member of EAPCCO and Interpol. As party to the London and Harare Schemes and in the absence of formal MLA legislation at the domestic level, it relies on these agreements when dealing with Commonwealth countries. The 1964 *Extradition Act* allows for extradition of suspects from and to Kenya and Tanzania. The Ugandan legislature is also currently debating a transfer of convicted offenders bill, which will enable postconviction transfers for nonnationals who wish to serve their sentences in their home countries.

Uganda relies on informal and formal bilateral security and legal cooperation as a basis for involvement in the regional fight against terrorism. The formal means include EAAPCO and the new system of security focal points being developed by the EAC. Whereas suspects from Kenya were moved informally to Uganda following the July 2010 terrorist bombings in Kampala, there was a formal extradition process for suspects that were moved from Tanzania. The manner by which the Kenyan suspects were moved has caused a number of legal complexities for prosecution of the case in Uganda.

Ugandans see utility in complementing legal avenues with alternative dispute resolution mechanisms. Drawing on their experiences with the LRA, a number of those consulted in Uganda also suggested that additional attention should be given by IGAD to alternative dispute resolution avenues in the counterterrorism context, such as amnesty and reconciliation, as a complement to prosecution. Again, however, such dual-track approaches have led to legal complexities in Uganda. One LRA commander, Thomas Kweyolo, currently being tried in the International Crimes Division of the High Court, for example, has sought to have his case struck, having applied under the 2000 *Amnesty Act*.

The task force also heard that some Ugandans feel inadequately supported by the subregion in their efforts to combat terrorism in Somalia and the central Africa through military deployments. One idea raised as a concrete step that could be useful to broaden the burden of counterterrorism was the development of an IGAD database or list of terrorism suspects. This would allow, it was argued, closer cooperation by IGAD member states in identifying, apprehending, and dealing with counterterrorism suspects.

## B. Cooperative Arrangements in the Region

### i. The Intergovernmental Authority on Development

IGAD was established in 1986 to coordinate a regional approach to desertification and drought and was refocused on peace and security issues in response to conditions of intractable conflict and ongoing political instability in the subregion. Following the adoption of the Draft Implementation Plan to Counter Terrorism in the IGAD Region in 2003, IGAD has taken a more proactive role in strengthening cooperation against terrorism and transnational organized crime in East Africa and the Horn.

#### NORMATIVE AND LEGAL FRAMEWORK

The 2003 draft implementation plan was the first major step toward legal cooperation against terrorism taken by IGAD at the subregional level. It called on member states to work toward a common legal framework, develop extradition and MLA treaties, and encouraged ratification of relevant continental and international instruments. The plan also called for increased information exchange, training coordination, and international cooperation and highlighted the importance of respecting human rights while countering terrorism.

With the adoption of the MLA and extradition conventions by the IGAD Council of Ministers in 2009, the IGAD region committed itself to a set of formalized legal frameworks for interstate cooperation in matters of law enforcement and criminal justice. Although this legislation added additional leverage for increased cooperation among IGAD member states, its full potential has yet to be realized. As of March 2012, only Djibouti and Ethiopia have ratified these conventions. The utility of these conventions has thus been limited by a lack of ratification and implementation among many member states.

#### OPERATIONAL ACTIVITIES

ICPAT was launched in June 2006 and established to assess, promote, and serve as a catalyst in assisting member state



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implementation of the IGAD draft implementation plan. Between 2006 and 2011, ICPAT engaged in a wide array of activities in partnership with member states, international organizations, nongovernmental organizations (NGOs), academic institutions, and think tanks, aimed at enhancing the capacity of member states in the judicial, prosecutorial, law enforcement, and border control sectors. ICPAT focused largely on training and providing strategic analysis and guidance to member states.

In December 2010, member states approved the IGAD Peace and Security Strategy, which has recognized the changed security situation in the IGAD region to include a convergence of various transnational crimes. Guided by the strategy, ICPAT was restructured to become the ISSP to enable it to absorb the best practices from ICPAT and address regional security matters in a holistic manner. The ISSP, instituted on 6 October 2011, seeks to enhance the capacity of IGAD member states to combat terrorism, deal with maritime security threats, contain the intensity and impact of organized crime, and provide security efficiently and effectively through security sector reform with capacity building as an overarching component.

One of ICPAT's most notable achievements was the facilitation of the adoption of the IGAD MLA and Extradition Conventions. Collaborative work among ICPAT, the CGCC, and other partners resulted in the developing, shepherding, and signing of the conventions between 2008 and December 2009, when the conventions were adopted by the IGAD Council of Ministers. ICPAT/ISSP and the CGCC have undertaken a series of activities in support of the implementation of the conventions, including the joint development and dissemination of a user's manual, sensitizing practitioners from member states on the implementation of the MLA and extradition conventions.

## ii. The African Union

The 1999 Algiers Convention, the 2002 AU plan of action for the prevention and combating of terrorism in Africa, and the 2004 protocol to the Algiers Convention are the key legal documents for AU continental counterterrorism initiatives. The AU's added value in counterterrorism and

criminal justice cooperation lies in its normative advantages and its ability to mobilize political and donor support. Although the broad, treaty-based approach adopted by the AU offers a multifaceted legal and consensual framework for countering terrorism in Africa, questions remain regarding its overall effectiveness beyond the normative level.

### NORMATIVE AND LEGAL FRAMEWORK

The 1999 Algiers Convention provides a number of important precedents for member state cooperation in law enforcement and judicial matters. It encourages a number of areas of domestic, continental, and international cooperation against terrorism. The convention contains specific provisions on extraterritorial investigations, MLA, and extradition proceedings. The convention reiterates the importance of respecting human rights and the rule of law in its application, as encompassed in various international obligations, as well as the African Charter on Human and Peoples' Rights.

The 2002 AU plan of action offers more practical guidance on the implementation of the Algiers Convention, including more effective procedures governing extradition and MLA. At the operational level, the plan of action calls for enhanced border security procedures and regular training of law enforcement, border control, and judicial officials. Serving as more than just a reiteration and expansion of the Algiers Convention, the plan of action prescribes a robust set of provisions to suppress the financing of terrorism, including the criminalization of money laundering and the establishment of FIUs. The plan of action also urges member states to consider such measures to address a number of related transnational threats, such as transnational organized crime.

The 2004 protocol to the Algiers Convention was intended to update and reinforce a number of the convention's aspects, but with only 12 of the 15 required ratifications deposited, it has not yet come into force. It established the AU Peace and Security Council, the AU Commission, and subregional bodies as the main actors responsible for the convention's implementation. The AU Commission was given, *inter alia*, a general mandate to assist member states by providing technical assistance on legal and law enforcement matters and was given the authority to establish a database on terrorism-related issues.

## OPERATIONAL ACTIVITIES

The AU's implementation policy has always heavily relied on its constituent regional economic communities, which include the Arab Maghreb Union, the Economic Community of West African States, the Economic Community of Central African States, IGAD, and the Southern African Development Community. Conceptually, these regional economic communities were meant to provide the operative platforms that give life to AU initiatives. This state of affairs has resulted in mixed, if not sometimes uneven, results. Recently, however, the AU has taken a more direct role in the practical implementation of counterterrorism programming.

Some of these activities have been pursued through the African Centre for Studies and Research on Terrorism (ACSRT), established in the final section of the 2002 AU plan of action. The ACSRT, based in Algiers, was meant to centralize continental information and analysis on the threat posed by terrorism, evaluate and assess member state progress toward implementation of the plan of action and other AU instruments, and assist in the development of institutional capacity and continental expertise among counterterrorism officials.

Over the past year, the ACSRT has benefited from increased funding and staff and has undertaken a number of evaluation missions to member states. These evaluation missions, conducted pursuant to its 2010–2013 Strategic Plan of Activity, consist of a series of extensive technical meetings between a senior ACSRT delegation and member state officials over the course of visits lasting four to five days. These visits include meetings with members of civil society and on-site border reviews. The information gained by an ACSRT delegation is used for the development of recommendations to the member state on areas that need improvement in order to comply with continental obligations. Among the six member states assessed by the ACSRT in 2011, Sudan was the only IGAD country.

The AU and the ACSRT also provide ongoing technical support for the Trans-Sahel Fusion and Liaison Unit (Unité

de Fusion et Liaison, or UFL). The UFL, established under the Joint Operational Chiefs of Staff Committee of Algeria, Mali, Mauritania, and Niger, provides a joint platform for intelligence sharing in the Sahel. Its staff is comprised of military and police intelligence officials from each member state, working together in a situation room in order to share information on imminent threats in real time. National liaison officers sitting in the situation room are connected remotely to national liaison units based in respective capitals. Data is collected from their respective capitals, analyzed, and shared and disseminated as necessary back to respective national liaison units.

### iii. Eastern Africa Police Chiefs Cooperation Organization and Interpol

EAPCCO was established in 1998 to serve as a cooperation hub for law enforcement institutions and Interpol activities in East Africa in the fight against serious transnational crime.<sup>4</sup> As the East African police network of Interpol, it maintains access to an international network of resources and expertise to fulfill a range of operational goals in conjunction with Interpol's regional bureau in Nairobi.

Despite numerous efforts, the task force was unable to secure a meeting with representatives from the regional bureau in Nairobi. This section was compiled from information gathered over the course of task force discussions with personnel representing member state National Central Bureaus and law enforcement officers with experience working with Interpol and supplemented by additional desk research.

## NORMATIVE FRAMEWORK

EAPCCO's primary activities include encouraging, developing, and facilitating police training activities among its member states in partnership with the Interpol Secretariat, member states, and external partners. It periodically works to formulate a larger strategic vision of regional law enforcement activities through high-profile meetings of East African police chiefs. Strategic mission statements usually promote

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4. The member states of EAPCCO are Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Tanzania, and Uganda.

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nonpolitical professionalism in police work or highlight the importance of cracking down on particular areas of crime. It also partners with NGOs, strengthening the relationship between law enforcement and civil society. For example, in partnership with the Commonwealth Human Rights Initiative and African Policing Civilian Oversight Forum, EAPCCO assisted in the development of a framework of common standards in policing for the EAC in accordance with international and continental human rights norms.

The EAPCCO constitution offers a basis for establishing legal bilateral and multilateral agreements for cross-border police cooperation activities, a regionalized version of the informal cooperation allowed through Interpol. Additionally, a number of regional legal instruments have been adopted by member state police ministers through EAPCCO but have yet to be ratified, including MLA and extradition agreements.

#### **OPERATIONAL ACTIVITIES**

The EAPCCO Council of Police Chiefs, comprised of one representative from each of the 12 EAPCCO member states and headed by a rotating chairman, oversees EAPCCO. Personnel at Interpol's regional bureau in Nairobi double as EAPCCO staff, seconded from participating national police forces. The Nairobi bureau serves as the EAPCCO Secretariat, and its activities are facilitated through the use of Interpol equipment and facilities. In this capacity, EAPCCO works to increase member state access to Interpol's I-24/7 communications dashboard and criminal information databases.

EAPCCO has been relatively active in the dissemination of training programs in collaboration with numerous regional partners. In 2007 and 2008, for instance, it collaborated with ICPAT in developing a series of four-week police counterterrorism training courses for law enforcement officials in six IGAD member states. It has partnered with the United Nations in facilitating the UN Police Officers Course, preparing police for deployment in international peacekeeping missions.

Interpol's positive role in cross-border operational coordination was cited by a number of state officials in meetings with the task force. In 2010, for instance, it successfully coordinated joint law enforcement operations among several

EAPCCO states, resulting in the seizure of more than 10 tons of dangerous counterfeit pharmaceutical drugs. That same year, it coordinated joint investigation teams across Africa, including several EAPCCO states, which resulted in the impounding of more than 60 stolen vehicles in Tanzania and the seizure of more than 40 tons of illegal drugs.

#### **iv. The UN Office on Drug and Crime**

UNODC was established to support rule of law-based efforts by member states to counter serious organized crime and terrorism. Its East Africa office in Nairobi provides technical support for its activities within its area of operation, which includes 13 states in the greater subregion. In the context of counterterrorism, this programming is largely concerned with law enforcement and legal capacity building in accordance with international instruments and conventions.

#### **NORMATIVE FRAMEWORK**

Much of UNODC's normative work in the greater subregion has focused on the ratification of international legal instruments and the domestication of counterterrorism laws as a basis for legal cooperation. It has developed model statutes, disseminated a compendium of international instruments against terrorism, and promoted joint training of prosecutors, judicial officers, and investigators, all as part of its efforts to promote legal cooperation. In some instances, UNODC has supported the redrafting of legislation to create, among other things, enabling legislation. UNODC is also active in developing strategic regional assessments of organized criminal and terrorist activity. An East Africa organized crime and trafficking assessment and a study on radicalization of youth in Kenya and Somalia are set for release in 2012.

#### **OPERATIONAL ACTIVITIES**

At the operational level, UNODC supports a number of institutional capacity-building projects at domestic and interstate levels. For example, they have assisted in the development of dedicated transnational crime units in several East African states. As part of its antipiracy programming, UNODC also played a central role in the establishment of

a special piracy intelligence unit based in the Seychelles. This unit incorporates assets from partners in the region and from abroad for information sharing and joint analysis. UNODC has also been very active in supporting subregional FIUs and enhancing AML/CFT capacity.

In the IGAD subregion, UNODC is perceived as a purveyor of specialized legal services, including training and legislative guidance. It is not seen as providing extensive, hands-on guidance and support to strengthen legal cooperation skills in areas such as extradition and MLA, for example, through mentoring on actual cases. That task is seen as beyond its mandate and resources.

## C. Civil Society Perspectives

During the course of the study tour, the task force met with a representative of the International Commission of Jurists based in the subregion. At this meeting, the representative presented a number of critical civil society perspectives on legal cooperation against terrorism. After considering the content of this presentation and the discussion that followed, the task force agreed that this final report should account for these perspectives. The points presented below, while offered in the context of the IGAD subregion, are consistent concerns voiced throughout the international community regarding the relationship among counterterrorism activities, human rights, and the rule of law.

### **COUNTERTERRORISM SHOULD REINFORCE THE RULE OF LAW**

Counterterrorism should be understood by governments in the context of protecting human rights and upholding the rule of law. Where there are disputes around human rights and counterterrorism, they are frequently over methods, not objectives. Because terrorism is often perceived as an extraordinary threat, extraordinary measures may be seen as necessary to defend the state against it. Coercive tactics by government agents in the name of counterterrorism can be detrimental not only to the long term struggle against terrorism, but also to the development of stronger, more

responsive law enforcement and criminal justice institutions. Combating terrorism through justice and the rule of law can help secure long-term stability and growth and provide more effective, nonmilitarized responses to the threat of terrorism. In this way, the task force was told, civil society in the region seeks to promote a legal basis for counterterrorism that integrates human rights protections in law and practice.

### **TRANSPARENCY, ACCOUNTABILITY, AND PUBLIC SUPPORT**

Cross-border cooperation against terrorism in line with a transparent legal process strengthens perceptions of government legitimacy and credibility. State counterterrorism activities pursued in accordance with a measured, rule of law-based legal process contribute to favorable domestic and international confidence in the state. Such perceptions reinforce public support and can improve the cooperation of local communities in counterterrorism initiatives. Conversely, knee-jerk reactions to terrorist threats that ignore legal limitations can produce faulty results and unintended consequences. Civil society recommends that government provide transparent information to the public about potential threats and disclose reasonable information regarding the lawful measures being taken to address it.

### **CIVIL SOCIETY AS A POTENTIAL PARTNER**

A wealth of experience and expertise is available through nongovernmental channels that can contribute to strengthening legal responses to terrorism. Increased cooperation among IGAD, its member states, and civil society may offer assistance to key allies in enhancing public education and community relations, facilitating intercommunal dialogue, and providing legal and operational training on counterterrorism and human rights. Civil society recommends increased communication and dialogue between states and community organizations to strengthen rule of law-based counterterrorism cooperation.



## 2. Recurring Challenges for Legal Cooperation Against Terrorism in the IGAD Subregion

**T**HROUGHOUT ITS CONSULTATIONS, THE TASK force sought to identify the challenges facing legal cooperation against terrorism in the IGAD subregion, both at the national and multilateral levels. Each country in the subregion faces its own challenges and confronts differing circumstances. The situation of Somalia, still wracked by war, and South Sudan, an “infant state,” is in many ways different to the situation in, for example, Ethiopia and Kenya, where the use of legal tools to fight terrorism already has a substantial track record. Nonetheless, task force members were struck by the similarities between the responses they received to queries about “challenges” across a variety of different respondents. The task force has therefore chosen to identify those challenges that appear to recur in multiple different venues and contexts in the subregion, because efforts to tackle these recurring challenges seem likely to have a greater impact on strengthening legal cooperation against terrorism than efforts directed against challenges that occur in only one IGAD member state.

The task force was told time and time again that the central problem is a deficit of trust between countries in the region. The most acute example is the distrust between Eritrea and other countries in the region, most notably Ethiopia. Thus even as legal cooperation is not yet routine in the subregion, IGAD member states are reluctant to rely on diplomatic channels for extradition and MLA. There is, however, an increasing recognition that al-Shabaab and transnational crime pose a common threat to all IGAD member states; so

there is a need for a professional, trusted, and efficient system of cross-border cooperation. This is leading a number of states in the IGAD subregion to move beyond distrust and attempt to build closer cooperation on these issues. The task force itself is an example of such initiative.

Cooperation is further hampered by very different perceptions and definitions of terrorism and transnational crime. A number of states, such as Kenya, have not specifically defined or criminalized terrorism or terrorist financing, which can make cross-border cooperation in criminal matters more complicated. These challenges are further exacerbated by language barriers, with the IGAD subregion including English-, Arabic-, and French-speaking countries, as well as myriad other languages. The involvement of some states in sponsoring or giving support to terrorist groups undermines interstate agreement on what constitutes terrorism and therefore undermines interstate cooperation against terrorism. In other cases, some state definitions may focus on local groups that other states do not see as terrorist groups. The task force was repeatedly told that the development of a common IGAD list or database of groups or individuals that member states can agree to treat as terrorism suspects would greatly simplify cooperation on these issues. Yet, the task force met with a number of actors, such as government and civil society officials, who stressed that any such arrangement would need to be accompanied by rigorous transparency and oversight arrangements to ensure it did not lead to abuse.

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Even with such a tool, many other challenges will remain. There is weak criminal justice sector capacity in every country in the region, although the nature of those weaknesses vary. It is particularly acute in Somalia, from where one of the major terrorism threats is perceived as emanating. South Sudan also requires “special attention,” the task force was told, to rapidly scale up its criminal justice sector capacities before it becomes a haven for money laundering and other forms of crime. In certain IGAD countries, the problems also concern the impact of politics on the judicial process. A related problem involves internal coordination.

If countries cannot rely on each other’s judicial systems to provide efficient, timely, and reliable evidence or extraditions, they will continue to resort to nonlegal methods, which appear to be particularly ubiquitous at borders. IGAD member states have had difficulty extending their legal authority and control throughout their land and sea territories, which creates border management problems. This can hinder legal cooperation by creating pressure for speedy results by any method rather than relying on the legal process to take its course. For example, a number of extrajudicial transfers in the region appear to have been caused by concern that a fugitive would flee from the country in which he was unlawfully apprehended to another country where he could not be tracked down, such as Somalia.

Overall, the task force concludes, these weaknesses have led to an overreliance on hard power, especially military and extrajudicial options, to deal with violent extremists and terrorists. The limited legal capacity of states makes them reluctant to rely on cross-border investigations and legal cooperation when they believe they can get speedier results through other channels. Immediate pressures for results appear to outweigh longer-term considerations, such as the damage done to specific legal cases and to the perceived legitimacy of the legal process generally. Moreover, some in the region saw this overreliance on hard power as partly caused by some external actors that give greater support to military approaches than to legal approaches. Through the course of the task force’s deliberations, however, it became abundantly clear that some officials are simply unaware of the existence and availability of many legal tools such as MLA and extradition. This calls for a major push on sensitization and awareness raising on these tools and their benefits.

Equally, officials lack awareness of and guidance on how to use alternative dispute resolution techniques such as dialogue, reconciliation, and amnesty. In some countries, there is a willingness to complement legal cooperation with these tools, drawing on traditional dispute resolution systems, but states are unsure how they can do so without creating undue legal and strategic complexity for themselves at a later stage. Task force members also heard calls for the development by the region of clearer guidance on how states should handle victims and survivors of terrorism.

Despite the growing willingness to engage in region-wide information sharing and cooperation in the investigative phase, there is currently only a weak integration of policing cooperation into broader legal cooperation frameworks. States’ participation in EAPCCO and Interpol to share police intelligence has not led to a more structured process of cross-border cooperation on the development of evidence (MLA) and the arrest of fugitives (extradition).

Finally, the task force heard from member state officials that although they welcome the increasing attention and support these issues are receiving from donors and multilateral bodies, the resulting demands for engagement by member states can sometimes be overwhelming. For example, strategies addressing these issues are currently being prepared or rolled out by the United Nations, the Counter-Terrorism Committee Executive Directorate, the UN Counter-Terrorism Implementation Task Force, the European Union, the Global Counterterrorism Forum, the EAC, EAPCCO, the Financial Action Task Force (FATF), IGAD, and Interpol. The proliferation of strategies and planning processes challenges member states’ limited “absorption capacity.” Greater collective prioritization is needed. IGAD member states repeatedly called for regional leadership to ensure local ownership, if necessary through pressing donors to form a donor coordination mechanism for capacity building in the justice, law, and order sectors in the region. This could build on similar experiences at the national level, such as the Justice, Law and Order Sector (JLOS) in Uganda and the Governance, Justice, Law and Order Sector (GJLOS) in Kenya.





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# 3. The Way Forward

**B**ASED ON ITS EXTENSIVE CONSULTATIONS AND after careful internal deliberation, the task force has identified a number of concrete steps that could be taken by the IGAD Secretariat, IGAD member states, and IGAD donors to strengthen legal cooperation against terrorism in the IGAD subregion. These recommendations are presented below in three groups: those directed to the IGAD Secretariat, to IGAD member states, and to all IGAD stakeholders.

## A. To the IGAD Secretariat:

### **Recommendation 1: Program of domestication of IGAD conventions**

*The IGAD Secretariat should create a program for accelerated domestication of the IGAD MLA and Extradition Conventions.*

Djibouti and Ethiopia have ratified the conventions but seek assistance with implementation. Sudan is in the process of ratification and would benefit from similar assistance. Kenya and Uganda face a number of obstacles that may require constructive engagement from IGAD. Somalia and South Sudan require special attention, addressed in Recommendation 2.

This program for accelerated domestication should include a number of components, each of which could be provided by different partners working closely with the ISSP.

- A targeted sensitization program alerting senior leaders of foreign ministries, police agencies, intelligence services, and customs as well as judges and prosecutors to the strategic costs of extralegal cooperation and the strategic benefits of legal cooperation.
- The identification of a focal point in each IGAD country to handle issues on the implementation of the IGAD MLA and Extradition Conventions.
- The creation of an online directory and virtual community for central authorities, competent authorities, and other MLA and extradition practitioners to access relevant contact details and legal materials and discuss legal issues.
- An intensive program of legislative support and institutional capacity building involving mentoring by experienced national and international staff to build capacity at the national level to implement these conventions.
- Ongoing joint training involving multiple countries.

### **Recommendation 2: Criminal justice support in Somalia and South Sudan**

*The IGAD Secretariat should create IGAD Criminal Justice Support Mechanisms in Somalia and South Sudan to mobilize and deploy relevant criminal justice sector expertise from IGAD member states.*

Effective state building in both countries requires a rapid scaling-up of their criminal justice capacities to ensure law and order, buttress state legitimacy, and arrest the erosion of state capacity by transnational threats. In South Sudan,

these threats especially include counterfeiting and the infiltration of West African criminal networks; in Somalia, a host of trafficking and terrorism-related threats. Because of their shared history, legal traditions, and cultures, IGAD member states may be better placed to provide criminal justice support to these countries than countries outside the subregion. These Criminal Justice Support Mechanisms would provide a framework for IGAD member states to send relevant criminal justice sector expertise to participate in and support broader international efforts, for example, through the UN Mission in the Republic of South Sudan and the UN Political Office for Somalia.

**Recommendation 3: Al-Shabaab Fusion and Liaison Unit**

*The IGAD Secretariat should work with member states to create within the secretariat the Al-Shabaab Fusion and Liaison Unit (ASFLU).*

This unit would be modeled on the Trans-Sahel UFL supported by the AU. It could draw inspiration or even guidance from the Eurojust model and to some extent the UN 1267 Monitoring Team. It would have a mandate to share information and analysis of al-Shabaab activities in the subregion, with a view to developing cross-border investigations and prosecutions. The ASFLU would initially have one liaison officer from each IGAD member state, for example, sitting initially in Nairobi, although member states such as South Sudan and Sudan may prefer to liaise from a distance. Liaison officers should be drawn from the military, police, financial investigations, or other relevant institutions. Each participating country would commit to share relevant al-Shabaab-related information with its liaison officers. These officers would pool this information and feed joint analytical products back to their own countries and other relevant recipients, such as AMISOM and the new Interpol database on Somali piracy. The ASFLU could also explore the possibility of receiving information from AMISOM and other partners, for example, through the inclusion of liaison officers from outside IGAD.

**Recommendation 4: Joint investigation arrangements**

*The IGAD Secretariat should create the High-Level Task Force on Joint Investigation Arrangements in the IGAD*

*area to develop proposals for consideration by the IGAD Council of Ministers.*

This High-Level Task Force on Joint Investigation Arrangements would explore modalities for joint investigations among IGAD countries. It would draw on experiences in the region such as the ASFLU (see Recommendation 3) and joint investigations on car thefts recently undertaken in the EAC region under Interpol coordination. The high-level task force could receive input and advice from Interpol, Eurojust, Eurojust, UNODC, and EAPCCO to consider how IGAD joint investigations might be undertaken, for example,

- through bilateral and small-group cooperation among IGAD and EAPCCO countries (e.g., Kenya, South Sudan, and Uganda working on a common problem or Djibouti and Ethiopia investigating a common problem), or
- through the creation of a network of liaison officers and personnel exchanges.

**Recommendation 5: IGAD list of proscribed terrorist groups**

*The IGAD Secretariat should commission a study on the feasibility of the development of an IGAD list of proscribed terrorist groups and suspects to be subject to legal sanctions and control measures.*

The task force heard repeated calls for IGAD to develop regional, targeted sanctions mechanisms, such as coordinated travel bans, to disrupt and deter terrorism, piracy, international crimes, and transnational crime. A number of countries in the IGAD region are adopting such an approach at the national level. The task force heard interest from a number of countries in the possibility of “regionalizing” such an arrangement, to help ensure dual criminality as a basis for legal cooperation across borders and potentially as a basis for targeted international travel bans, asset freezes, or financial embargoes.

A number of concerns would need to be addressed before such an arrangement could move forward, notably,

- the relationship between any such list and national legislation,

- the relationship between any such list and the proposed AU list and UN lists, and
- complex issues of protection of human rights in the listing and delisting process, already encountered in Europe and at the United Nations.

This requires careful and detailed legal and political analysis, drawing on experiences in other places and consultation in the region.

#### **Recommendation 6: Countering violent extremism**

*The IGAD Secretariat should develop lessons learned for countering violent extremism through dialogue, engagement, and reconciliation as complements to legal prosecution, drawing on experiences within the IGAD subregion and beyond.*

The question of when dialogue and engagement, reconciliation, and amnesty have been successful alternative approaches to engaging terrorist and extremist groups and when they have not emerged in a number of contexts in the task force's deliberations. Member states seemed eager to understand how these alternative dispute resolution techniques could be successfully combined with legal cooperation against terrorism without creating additional legal challenges for themselves in the future. The task force recommends that such lessons learned also address the role that civil society organizations can play in helping to develop and roll out such solutions and strategies for engaging victims and survivors of terrorism and their dependents.

#### **Recommendation 7: Annual convention of counterterrorism practitioners**

*The IGAD Secretariat should convene an annual convention of counterterrorism practitioners in the IGAD subregion.*

This annual gathering would provide an opportunity to foster closer ties, build professional networks in the region, generate common understandings of shared problems, and work toward joint solutions.

## **B. To IGAD Member States:**

#### **Recommendation 8: Strengthen internal coordination**

*IGAD member states should create and strengthen effective internal coordination mechanisms for the legal fight against terrorism.*

Effective interagency coordination provides benefits not only for domestic counterterrorism, but also for counterterrorism cooperation. Without effective interagency coordination, legal cooperation across borders can come unstuck. IGAD member states should take steps to integrate information sharing, investigations, and prosecution in the fight against terrorism and to ensure coordination mechanisms are in place to provide a unified approach to extradition and MLA cooperation with cross-border counterparts. Positive lessons might be learned from interagency coordination experiences in Ethiopia, Kenya, and Sudan. Equally, however, there may be lessons learned from the difficulties some IGAD member states have faced as a result of the absence of coordination in providing cross-border legal assistance on terrorism cases.

#### **Recommendation 9: Periodic peer review and support system**

*IGAD member states should create the IGAD MLA and Extradition Periodic Peer Review and Support System.*

The task force proposes that IGAD member states create a system allowing them to review each other's progress on implementation of the IGAD MLA and Extradition Framework and to support each other's implementation efforts through sharing knowledge and lessons learned. This would be based on Eastern and South African Anti-Money Laundering Group (ESAAMLG)- and FATF-style peer review systems and could perhaps be supported by external partners experienced with such review arrangements and having extradition and MLA expertise, such as the Commonwealth Secretariat. Two or three selected IGAD member states would supply officials to undertake the review. Each member state would be reviewed periodically. The review team would conduct a visit to the country under review, after

which they would write a confidential report that would be submitted to the country being reviewed for comment before sharing with other IGAD member states. This approach would allow for ongoing interaction between extradition and MLA professionals in the region, strengthening networks and trust. It would help spread good practices across the region and maintain awareness of, attention to, and support for ongoing implementation of the IGAD Framework for Legal Cooperation Against Terrorism.

**Recommendation 10: Integrate anti–money laundering regimes and counterterrorism legal cooperation**

*IGAD member states should take steps in accordance with the ISSP-CGCC “Baseline Study on Anti–Money Laundering and Countering the Financing of Terrorism in the IGAD Subregion” to strengthen their domestic AML/CFT regimes and ensure they collaborate effectively.*

With support from the IGAD Secretariat, the ESAAMLG, the Middle East and North Africa Financial Action Task Force, and other partners as appropriate, IGAD member states should take a number of steps to ensure that they have effective AML/CFT arrangements in place and that these arrangements can participate in the emerging sub-regional counterterrorism legal cooperation framework. This will require efforts to

- put effective AML/CFT regimes, laws, and policies in place;
- clarify the analytical, investigative, and MLA role of AML bodies, especially FIUs; and
- integrate these FIUs with existing counterterrorism legal cooperation regimes through effective internal coordination and through ensuring FIUs can collaborate independently across borders.

**Recommendation 11: Strengthen border management**

*IGAD member states should implement existing recommendations on border control and management arising out of IGAD’s audit of existing border management measures and practices by ICPAT/ISSP.*

These recommendations include

- the development of national border management strategies;
- border control development by specialized agencies like the International Maritime Organization, the World Customs Organization, the Office of the UN High Commissioner for Refugees, and the International Organization for Migration;
- the development of cross-border mechanisms and inter-agency coordination structures, including support for the creation of a subregional electronic border management network; and
- the promotion of community-based border control measures, including community policing, and bilateral, intercommunal border control arrangements, such as bilateral commissions and joint patrols.

These efforts should extend to blue (maritime) and green (land) borders.

## C. To All Stakeholders (IGAD Secretariat, Member States, Donors and Civil Society):

**Recommendation 12: Regional counterterrorism action plan**

*Stakeholders should work together to create a regionally led IGAD Action Plan to Counter Terrorism and Related Transnational Crime.*

This action plan should draw on the IGAD Security Strategy and other relevant planning documents, such as the United Nations Global Counter-Terrorism Strategy and EU Strategy for the region. It should, however, be a regionally led process to create local ownership, supported by foreign donors and multilateral organizations such as the United Nations. It should create mechanisms for monitoring the of implementation of the action plan and for donor coordination, based on the principles of the Organisation for Economic Co-operation and Development’s Paris Declaration on Aid

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Effectiveness and regional experiences with donor coordination mechanisms such as the JLOS in Uganda and GJLOS in Kenya. The action plan may require a secretariat, which could be housed within the ISSP and which could serve as a clearinghouse to help match national and regional needs to different providers. UNODC may play an important role as an implementer of this action plan.



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# ANNEX 1—Task Force Background Paper

INFORMAL BACKGROUND PAPER FOR THE ISSP-CGCC TASK FORCE ON LEGAL COOPERATION AGAINST TERRORISM IN THE IGAD SUBREGION  
4–14 MARCH 2012<sup>5</sup>

FEBRUARY 2012

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ANNEX 1  
Task Force  
Background  
Paper

## 1. Introduction

“The key to success in the battle against [terrorism],” stated Attorney-General S. Amos Wako of Kenya, “is cooperation, communication, and intelligence sharing.”<sup>6</sup> Although East Africa continues to struggle with the threat of terrorism, important steps are being taken by states in the region to strengthen their collective capacities to deal with that threat. The Intergovernmental Authority on Development (IGAD) is central to that effort. IGAD’s adoption of the Draft Implementation Plan to Counter Terrorism in the IGAD Region in 2002 and the establishment of the IGAD Capacity Building Programme Against Terrorism (ICPAT) in 2006 were major steps in promoting strategic counterterrorism cooperation. With the adoption of the IGAD Mutual Legal Assistance (MLA) and Extradition Conventions by the IGAD Council of Ministers in 2009, the region committed

itself to the establishment of formalized legal frameworks for interstate cooperation in matters of law enforcement and criminal justice.<sup>7</sup> Although the ratification and implementation of these conventions at the national level remains a work in progress in most IGAD member states,<sup>8</sup> more can be done to ensure that national institutions have the infrastructure in place to put these conventions into practice once the necessary ratifications have occurred.

An operational platform for law enforcement and judicial cooperation to counter threats posed by terrorism and other shared security challenges could assist in implementing the IGAD conventions and contribute to greater subregional security, stability, and development.<sup>9</sup> This paper provides some background thinking on how such a platform might

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5. The views presented in this Background Paper do not necessarily reflect the view of the CGCC or the ISSP.

6. S. Amos Wako, statement at the ICPAT-CGCC seminar “Investigating Terrorism Incidents,” Nairobi, 18 May 2011 (attorney-general of Kenya).

7. Draft MLA and extradition conventions were agreed during a meeting between the IGAD ministers of justice under the auspices of ICPAT, in April 2009 in Khartoum, Sudan. These conventions were later adopted during the 33rd Ordinary Session of the IGAD Council of Ministers, 7–8 December 2009 in Djibouti, Djibouti.

8. Djibouti and Ethiopia are the only IGAD member states to have ratified the IGAD MLA and Extradition Conventions in national law. The legislation will come into force after full ratification by three member states.

9. For a detailed discussion, see World Bank, *World Development Report 2011: Conflict, Security and Development* (Washington, D.C.: World Bank, 2011); Organisation for Economic Co-operation and Development (OECD), *OECD DAC Handbook on Security Sector Reform: Supporting Security and Justice, 2007*; UN General Assembly, *In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General, A/59/2005*, 21 March 2005.

be built for the consideration of the Task Force on Legal Cooperation Against Terrorism in the IGAD Subregion.

In January 2011, with the support of the Royal Government of Denmark, ICPAT and the Center on Global Counterterrorism Cooperation (CGCC) undertook a new project designed to encourage national-level implementation of the IGAD MLA and Extradition Conventions. In addition, this project aimed to foster subregional support for a law enforcement cooperation network while strengthening counterterrorism expertise in the subregion through a series of advanced training and policy seminars. Project seminars were designed to deepen the knowledge and skills of a group of counterterrorism officials from the region and to enhance their familiarity with working together to solve shared problems. They also provided an opportunity for local stakeholders to articulate their needs in overcoming obstacles to national implementation of the IGAD conventions.<sup>10</sup>

#### **THE TASK FORCE ON LEGAL COOPERATION AGAINST TERRORISM IN THE IGAD SUBREGION**

The Task Force on Legal Cooperation Against Terrorism in the IGAD Subregion builds on the ongoing work of ICPAT—now called the IGAD Security Sector Program (ISSP)—and the CGCC. The goal is development by a team of expert regional officials of locally owned options to strengthen rule of law–based counterterrorism cooperation in the subregion. During 4–14 March 2012, the ISSP and the CGCC will convene a core group of seven senior civil servants from the region, representing Djibouti, Ethiopia, Kenya, Somalia, South Sudan, Sudan, and Uganda. These officials will embark on an 11-day study tour, visiting a number of IGAD member state capitals for in-depth briefings and discussions on law enforcement cooperation needs and challenges and for developing ideas for mechanisms to strengthen rule of law–based counterterrorism cooperation in the region. The main objective of the task force is to develop locally owned plans for strengthening law enforcement cooperation, particularly with regard to the IGAD MLA and Extradition Conventions. This study tour will allow the

group to become more familiar with each other’s MLA, extradition, and counterterrorism casework practices and engage in intensive discussions to develop practical options for institutionalizing a network of police, prosecutors, intelligence officials, and, where appropriate, judges who are engaged in counterterrorism investigations in the region.

In addition to meetings with lawmakers and agency officials of IGAD member states, the task force hopes to meet with key multilateral actors active in the region, including the African Union (AU), the East African Community (EAC), the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO), IGAD, and the UN Office on Drugs and Crime (UNODC). These discussions are not only meant to identify areas of increased collaboration for further exploration, but also to focus particularly on the operational and procedural mechanisms that guide the activities of these institutions. The institutionalization of interstate cooperation does not happen overnight, nor does it require an all-or-nothing approach. By engaging with a diverse cross-section of actors in the region, the task force can gain access to more nuanced thinking about small, practical mechanisms that can contribute to strengthening legal cooperation against terrorism in the subregion.

Legislative and political commitments to strengthening counterterrorism actions are only effective if they are implemented in practice. With this in mind, the paper aims to identify some potential obstacles and opportunities for national and regional organizations as they try to enhance their own internal capacity to carry out effective cooperation arrangements with each other and outside partners. In particular, we highlight the need to strengthen confidence, trust, and mutual accountability among counterterrorism practitioners around the region, if subregional legal frameworks such as the IGAD MLA and Extradition Conventions are to be implemented effectively. Building a network of law enforcement and judicial practitioners in the subregion will help contribute to meeting that goal. At the same time, enhancing the capacity of national institutions to effectively deliver security and justice to their citizens can be crucial in

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10. The following training seminars were conducted: “Lessons Learned From Investigating Terrorism Incidents,” Nairobi, 18–20 May 2011; “Open Source Analysis and Information Sharing,” Nairobi, 14–16 June 2011; “Community Engagement to Counter Terrorism,” Addis Ababa, 14–16 July 2011; and “Advanced Interrogation Skills in Counterterrorism,” Kampala, 18–21 October 2011.



underpinning regional stability, development, and growth. An institutionalized network of expert officials regularly facilitating cross-border interaction could play a critical role in transforming policy into practice and encourage greater and more coordinated efforts to strengthen national justice systems.

Based on the shared expertise of the task force members and the information gathered over the course of the study tour program, participants will formulate a series of policy and programming recommendations in a final task force report. For this purpose, the study tour will end with a period of intensive report drafting, facilitated by ISSP and the CGCC. During this time, the task force will draft a report including its specific recommendations for strengthening counterterrorism cooperation in the region. The report will be disseminated to IGAD member states and regional stakeholders and be a subject for discussion at the ISSP-CGCC First Annual Convention of East African Counter-Terrorism Practitioners in May 2012.

#### THE CONTENTS OF THIS BACKGROUND PAPER

This background paper will highlight the issues and questions that the task force may wish to consider over the course of the study tour program. It has been developed solely through extensive desk research and aided by more than three years of CGCC experience working with stakeholders in the region on counterterrorism cooperation issues. Undoubtedly, the task force will wish to develop its own analysis. Although not an exhaustive study, this paper has three main objectives.

1. Familiarize the reader with the local multilateral institutions and legislative frameworks that contribute to the general normative basis for counterterrorism cooperation in the subregion.
2. Encourage reflection on the gaps in member state criminal justice capacity, common criticisms of law enforcement practice in East Africa, and other contextual circumstances that hinder more effective cooperation at the subregional level.
3. Stimulate innovative but practical thinking about institutional law enforcement cooperation through a presentation of models of institutional legal cooperation against terrorism in other regions.

**Section 2** presents some of the major continental and sub-regional initiatives that work to improve counterterrorism capacity and cooperation in East Africa. These include formal and informal legal and institutional frameworks, including the IGAD MLA and Extradition Conventions. They also include institutional mechanisms that contribute to strengthening the capacity of national law enforcement and judicial institutions, such as ISSP and EAPCCO. These initiatives reflect the political will of individual states in the subregion to strengthen their ties in establishing an integrated approach to counter the shared threat of terrorism. If such programming and legal initiatives were pursued in a coordinated and streamlined manner, they could contribute to the realization of a well-rounded vision for police and justice cooperation based on a respect for human rights and the rule of law.

The security environment and numerous internal and external challenges, however, have limited the potential of many of these initiatives. Focused and concerted effort will be needed to overcome these obstacles to realize the full benefits of subregional counterterrorism cooperation. In **section 3**, we offer some thoughts on the underlying sources of these obstacles, identifying a number of structural and operational challenges to legal cooperation against transnational terrorism and organized crime in East Africa. In some cases, politics impedes the advancement of legal cooperation at domestic and international levels, detracting from potential partnerships with neighboring states. There have been numerous concerns regarding extrajudicial counterterrorism activities and their impact on human rights and the rule of law. Such activities risk further exacerbating social and political tensions, fueling instability and violent extremism and jeopardizing growth and development. Underdevelopment in turn prevents institutional strengthening, and the cycle begins again.

In order to conceptualize how strengthened arrangements for institutional cooperation may help East African states overcome these challenges, in **section 4** we take a step back to look at institutional models for multilateral law enforcement and judicial cooperation drawn from other regional contexts. We present examples of multilateral law enforcement cooperation that have strengthened security and justice among participating states. In particular, we will look

at the development of these institutions, their form and function, their mandates and procedural guidelines, and the activities and programs in which they are engaged. In this section, our aim is to stimulate discussion and out-of-the-box thinking on how state institutions can work collaboratively to address common threats and strengthen the national law enforcement and justice systems of their member states. Following each case study, we offer a number of practical ideas to assist in the task force's analytical process. Participants are encouraged to go beyond these points and develop their own thinking on how these case studies or other experiences or models may be applied in enhancing a network for legal cooperation against terrorism in East Africa.

## 2. Existing Continental and Subregional Frameworks and Initiatives

As terrorist and organized criminal groups operating in East Africa and the Horn establish links that transcend political borders and expand their reach to an increasingly regional and global scale, law enforcement and judicial systems in the subregion must be prepared to respond in kind with the tools afforded to them under the rule of law. Establishing a strong legal and procedural basis for coordinating effective cross-border interaction among law enforcement and judicial institutions is an essential component of cooperation against transnational threats in East African states. At the same time, building robust internal capacity for cooperation among national agencies and accountability between and among national officials and the publics they serve is of equal importance.

These challenges have not gone unrecognized in the region. Measures to strengthen the capacity and cooperation of law enforcement and judicial institutions have made progress

on national and subregional levels. At the national level, states have engaged in a number of initiatives to strengthen their internal coordination and external cooperation, from developing legislation and signing bilateral and multilateral treaties to establishing national counterterrorism centers and antiterrorism police units. Intergovernmental developments at the continental and subregional levels have included the adoption of common strategies and legal instruments, the establishment of specialized institutions and international partnerships, and the provision of technical assistance and joint trainings.<sup>11</sup>

A number of institutional sources provide a basis for or encourage legal cooperation in the fight against terrorism and organized crime in East Africa and the Horn. Some of these were developed within international institutions. For instance, the United Nations is active in providing legal and technical assistance to member states in countering terrorism and transnational organized crime.<sup>12</sup> The Financial Action Task Force (FATF) provides guidance and a system of peer review on the strength of member states' financial regulatory resilience against money laundering and terrorist financing.<sup>13</sup> Beyond such global arrangements, this section highlights a range of legal and institutional frameworks particularly relevant to East Africa, all of which offer a rule of law basis for multilateral law enforcement and judicial cooperation in the region. Together, these initiatives represent a robust conceptual and political basis for taking subregional law enforcement and judicial cooperation to the next level, aspiring to extend a greater measure of security, justice, and prosperity to the communities in the region. Such programs of action and resulting legislation, however, are only as effective as the willingness and capacity of national institutions and state officials to implement them in practice. All require significant further operationalization at the national level. In this section, we explore how these initiatives set the stage for more direct operational coordination against terrorism in East Africa; in later sections of the paper, we explore how that operational coordination might be developed.

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11. For a general background on African counterterrorism initiatives, see Andre Le Sage, ed., *African Counterterrorism Cooperation* (Dulles, Va.: Potomac Books, 2007).

12. For a detailed discussion on the role of the United Nations in countering terrorism in East Africa, see Eric Rosand, Alistair Millar, and Jason Ipe, *Implementing the UN Global Counter-Terrorism Strategy in East Africa*, CGCC, June 2008.

13. See <http://www.fatf-gafi.org>.

## a. The African Union

At the continental level, the AU and its predecessor, the Organisation of African Unity (OAU), have long recognized the necessity of international cooperation in fighting terrorism and violent extremism.<sup>14</sup> The foundations for the AU's continental framework to counter terrorism are enshrined in three central documents: the 1999 OAU Convention on the Prevention and Combating of Terrorism (the Algiers Convention),<sup>15</sup> the 2002 AU plan of action for the prevention and combating of terrorism,<sup>16</sup> and the 2004 protocol to the Algiers Convention.<sup>17</sup>

The Algiers Convention serves as a testament to the African continent's recognition of the threat posed by terrorism even before the events of 9/11. The convention provides a number of important precedents for member state cooperation in law enforcement and judicial matters. Part II, Article 4 outlines a number of areas of cooperation applicable to states-parties, including through the sharing of information and the establishment of shared databases and through the establishment of effective cooperation between domestic security officials.<sup>18</sup> Furthermore, Part IV, Articles 8-13 provide for the undertaking of extradition proceedings between member states party to the convention. Perhaps one of the potentially most useful aspects of the convention is the section dealing with MLA in Part V, Articles 14-18. Article 14 outlines the specific activities that may be carried out pursuant to extraterritorial investigations and MLA.

Any State Party may, while recognizing the sover-

eign rights of States Parties in matters of criminal investigation, request any other State Party to carry out, with its assistance and cooperation, on the latter's territory, criminal investigations related to any judicial proceedings concerning alleged terrorist acts and, in particular: (a) the examination of witnesses and transcripts of statements made as evidence; (b) the opening of judicial information; (c) the initiation of investigation processes; (d) the collection of documents and recordings or, in their absence, authenticated copies thereof; (e) conducting inspections and tracing of assets for evidentiary purposes; (f) executing searches and seizures; and (g) service of judicial documents.

Article 18 provides for member states to undertake bilateral and multilateral arrangements to facilitate more effective cooperation. The convention takes care to reiterate the importance of respecting human rights and the rule of law in the application of the convention, as encompassed in various international obligations and the African Charter on Human and Peoples' Rights.<sup>19</sup>

The AU plan of action for the prevention and combating of terrorism provides greater clarity on the provisions set forth in the Algiers Convention and offers more practical guidance on its implementation. Some of these items expand on the convention's provisions, for example, by presenting a number of practical steps for the implementation of procedures governing extradition and MLA.<sup>20</sup> At the operational level, the plan of action calls for enhanced border security procedures,

14. For example, see OAU, AGH/Res. 213 (XXVIII), 1992, [http://www.africa-union.org/official\\_documents/Heads%20of%20State%20Summits/hog/2HoGAssembly1992.pdf](http://www.africa-union.org/official_documents/Heads%20of%20State%20Summits/hog/2HoGAssembly1992.pdf).

15. OAU, "OAU Convention on the Prevention and Combating of Terrorism," [http://www.africa-union.org/root/au/Documents/Treaties/Text/Algiers\\_convention%20on%20Terrorism.pdf](http://www.africa-union.org/root/au/Documents/Treaties/Text/Algiers_convention%20on%20Terrorism.pdf). It was adopted in Algiers in July 1999.

16. AU, "Plan of Action of the African Union High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism in Africa," Mtg/HLIG/Conv.Terror/Plan.(I), [http://www.iss.co.za/AF/RegOrg/unity\\_to\\_union/pdfs/oau/keydocs/PoAfinal.pdf](http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/oau/keydocs/PoAfinal.pdf) (hereinafter 2002 AU plan of action). It was adopted in Algiers during the 11-14 September 2002 meeting.

17. AU, "Protocol to the OAU Convention on the Prevention and Combating of Terrorism," 8 July 2004, <http://www.africa-union.org/root/au/Documents/Treaties/Text/The%20Protocol%20on%20Terrorism%2026July2004.pdf>. For a detailed description and analysis of the AU counterterrorism framework, see Ibrahim J. Wani, "The African Union Role in Global Counterterrorism," in *African Counterterrorism Cooperation*, ed. Andre Le Sage (Dulles, Va.: Potomac Books, 2007), pp. 39-56; Martin Ewi and Kwesi Aning, "Assessing the Role of the African Union in Preventing and Combating Terrorism in Africa," *African Security Review* 15, no. 3 (2006): 32-46; Jolyon Ford, "African Counter-Terrorism Legal Frameworks a Decade After 2001," *Institute for Security Studies [ISS] Monograph*, no. 177 (March 2011).

18. "OAU Convention on the Prevention and Combating of Terrorism," arts. 4(e) and 4(i).

19. *Ibid.*, art. 22.

20. 2002 AU plan of action, paras. 11(o) and 12(f)-(j). These provisions call for member states to expedite the finalization and adoption of draft conventions on MLA and extradition.

including the issuance of machine-readable travel documents, and presents more detailed provisions regarding information exchange.<sup>21</sup> It calls for regular training of law enforcement, border control, and judicial officials.<sup>22</sup>

Serving as more than just a reiteration and expansion of the Algiers Convention, the plan of action prescribes a set of provisions to suppress the financing of terrorism, including the criminalization of money laundering and the establishment of financial intelligence units.<sup>23</sup> The AU Peace and Security Council is given the responsibility to request and follow up with annual reports from member states regarding the plan of action's implementation, although to our knowledge the extent of such reporting is not clear.<sup>24</sup> The final section of the plan established the African Centre for Studies and Research on Terrorism (ACSRT) to centralize continental information and analysis on the threat posed by terrorism and to assist in the development of continental expertise among counterterrorism officials.<sup>25</sup> The ACSRT assists in the development of training programs and other forms of capacity-building assistance, much of which has been in partnership with UN entities. It is also meant to serve as a forum for subregional organizations at the continental level.<sup>26</sup> As of 2010, however, only half of the 44 nationally designated Focal Points and two of the seven Regional Focal Points have submitted some type of report to the ACSRT.<sup>27</sup>

The 2004 protocol to the Algiers Convention was intended to update and reinforce a number of aspects of that agreement.<sup>28</sup> It established the AU Peace and Security Council, the AU Commission, and subregional-level bodies as the main

actors responsible for the convention's implementation.<sup>29</sup> The AU Commission was given, *inter alia*, a general mandate to assist member states by providing technical assistance on legal and law enforcement matters and the authority to establish a database on terrorism-related issues.<sup>30</sup> Although the protocol has not yet entered into force, Article 8 on extradition declares in reference to the Algiers Convention that "[t]he Convention shall constitute an adequate legal basis for extradition for States Parties that do not have extradition arrangements" and that "[s]hould any dispute arise between State Parties on the interpretation or applicability of any existing bilateral extradition agreement or arrangement, the provisions of the Convention shall prevail with respect to extradition."<sup>31</sup>

Counterterrorism has long been a feature of the continental agenda, but the AU framework suffers from weak levels of ratification and implementation.<sup>32</sup> In light of this state of affairs, Africa analyst Jolyon Ford suggests the development of a "comprehensive transnational and international crimes strategy" that addresses capacity building across a broader array of institutions.<sup>33</sup> In this regard, the AU plan of action urges member states to "take into consideration the intimate relationship between terrorism and related scourges such as drug trafficking, illicit proliferation and trafficking of small arms and light weapons, corruption and money laundering—all of which are variants of transnational organized crime."<sup>34</sup>

The above language reflects recognition of the interlinked conditions of pervasive violence, criminality, and weak governance impacting much of the continent. A broader focus

21. *Ibid.*, paras.11 and 14.

22. *Ibid.*, paras. 9(i), 10(c), and 14(b) and (i).

23. *Ibid.*, para. 13.

24. *Ibid.*, para. 16.

25. *Ibid.*, paras. 19–21.

26. AU Peace and Security Council, *Report of the Chairperson of the Commission on Measures to Strengthen Cooperation in the Prevention of Terrorism*, PSC/PR/2(CCXLIX), 22 November 2010, p. 6, <http://www.caert.org.dz/ACSRTDocs/PSC/Report22nov-En.pdf>.

27. *Ibid.*, p. 9.

28. AU, "Protocol to the OAU Convention on the Prevention and Combating of Terrorism."

29. *Ibid.*, arts. 4–6.

30. *Ibid.*, arts. 5.2(a) and (d).

31. *Ibid.*, art. 8.

32. Ford, "African Counter-Terrorism Legal Frameworks a Decade After 2001," p. 31.

33. *Ibid.*, p. 29.

34. 2002 AU plan of action, para. 10(d).

on transnational threats may also tone down the often controversial nature of terrorism discourse that has sometimes limited the appeal of related measures in national lawmaking bodies and among the public.

Although the broad, treaty-based approach adopted by the AU offers a multifaceted legal and normative framework for countering terrorism in Africa, there are numerous questions regarding its overall effectiveness. The absence of a transparent and proactive mechanism to monitor member state compliance, competing priorities in the AU Peace and Security Commission, and a gross lack of resources to assist member states in implementation have limited the potential benefits of the AU framework.<sup>35</sup> Some scholars have observed that “the AU is yet to overcome a legacy of the OAU,” namely “a tendency to adopt landmark decisions and make pronouncements without ensuring effective and appropriate follow-up.”<sup>36</sup>

## b. The Intergovernmental Authority on Development

In 1986, IGAD was initially established with a limited mandate: to assist with coordinating a regional approach to desertification and drought that threatened subregional development.<sup>37</sup> Faced with intractable conflicts in Somalia, Sudan, and Ethiopia and Eritrea, as well as political instability throughout the region, IGAD’s mandate gradually grew to encompass peace and security-related issues.<sup>38</sup> IGAD began articulating its counterterrorism agenda at the 9th IGAD

summit in Khartoum, ultimately leading to the development of the Draft Implementation Plan to Counter Terrorism in the IGAD Region at a 2003 IGAD conference held in Addis Ababa.<sup>39</sup> Later that year, the plan was approved during the 10th IGAD summit in Kampala.<sup>40</sup>

The plan was an ambitious step toward legal cooperation in the IGAD region and an attempt to regionalize the strategy set forth by the OAU in the Algiers Convention. In particular, the plan called on member states to work toward a common counterterrorism legal framework, including common guidelines for extradition and MLA,<sup>41</sup> and encourages ratification of relevant regional and international instruments.<sup>42</sup> It also calls on member states to institute provisions to counter terrorist financing and strengthen arrangements to curb illegal trafficking and migrant flows.<sup>43</sup> Further, it envisioned the establishment of a regional counterterrorism and organized crime database;<sup>44</sup> called for increased information exchange, training coordination, international cooperation, and public outreach;<sup>45</sup> and highlighted the importance of respecting human rights while countering terrorism.<sup>46</sup>

In March 2005, the creation of ICPAT was approved by the IGAD Council of Ministers and launched in June 2006 to assess, promote, and serve as a catalyst in assisting member state implementation of the plan. Based out of its headquarters in Addis Ababa, ICPAT has spent the past six years working to build the capacity of national security and justice institutions throughout the subregion. It has engaged in a wide array of activities, including facilitating law enforcement training exercises, hosting legal and policy workshops,

35. Eric Rosand, Alistair Millar, and Jason Ipe, “Enhancing Counterterrorism Cooperation in Eastern Africa,” *African Security Review* 18, no. 2 (2009): 95.

36. Ewi and Aning, “Assessing the Role of the African Union in Preventing and Combating Terrorism in Africa,” p. 42.

37. Monica Juba, “The Role of the Inter-Governmental Authority on Development in Preventing and Combating Terrorism,” in *African Counterterrorism Cooperation*, ed. Andre Le Sage (Dulles, Va.: Potomac Books, 2007), p. 58.

38. *Ibid.*

39. IGAD, “Draft Implementation Plan to Counter Terrorism in the IGAD Region,” 2002, [http://www.iss.co.za/AF/RegOrg/unity\\_to\\_union/pdfs/igad/confjun03plan.pdf](http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/igad/confjun03plan.pdf).

40. Solomon Muchina Munyua, “An Institutional Review of IGAD and IGAD Satellite Programs for the Establishment of an IGAD Livestock Unit,” IGAD Livestock Policy Initiative, April 2010, pp. 24–27, [http://www.igad-lpi.org/publication/docs/IGADLPI\\_CR\\_InstitutionalReview\\_April15\\_AD.pdf](http://www.igad-lpi.org/publication/docs/IGADLPI_CR_InstitutionalReview_April15_AD.pdf).

41. IGAD, “Draft Implementation Plan to Counter Terrorism in the IGAD Region,” sec. 5.3.

42. *Ibid.*, sec. 2.1 and 2.2.

43. *Ibid.*, sec. 3 and 4.1–4.3.

44. *Ibid.*, sec. 5.1

45. *Ibid.*, sec. 5.2, 5.4, 5.5, and 7.

46. *Ibid.*, sec. 6.

developing strategic and operational analysis in partnership with member states, and working to build partnerships with local and international partners.<sup>47</sup> Most ICPAT activities are executed with the support of, in partnership with, or include the participation of representatives from national governments, international organizations, academic institutions, and nongovernmental organizations (NGOs). ICPAT focused largely on training and providing strategic analysis and guidance. Through these initiatives, ICPAT has built strategic relationships with national policymakers in IGAD member states such as ministers, parliamentarians, diplomats, judges, prosecutors, and security officials. Further abroad, ICPAT has fostered relationships with its donor governments, foreign academics, officials, and experts from international governmental and nongovernmental organizations.

Building on this success, ICPAT is now transitioning to an enlarged mandate and reincarnation as the ISSP, which launched on 6 October 2011 with an expanded mandate covering organized crime, anti-money laundering (AML) and countering the financing of terrorism, piracy, cybercrime, security sector reform, and capacity building, in addition to counterterrorism.<sup>48</sup> The expanded mandate for ISSP could prove a positive development in the subregion's approach to counterterrorism. Due to the strong political and social sensitivities associated with terrorism and growing concerns regarding the use of heavy-handed counterterrorism measures by subregional security forces, the shift to a broader security-sector frame may prove beneficial.

One of ICPAT's most notable achievements has been the facilitation of the adoption of the IGAD MLA and Extradition

Conventions.<sup>49</sup> In 2008 a project to enhance intergovernmental counterterrorism capacity in East Africa conducted by ICPAT and the CGCC, supported by the Royal Government of Denmark, resulted in a set of recommendations to advance legal and judicial cooperation in the subregion.<sup>50</sup> Consistent with these recommendations, a forum of IGAD judicial and legal experts was formed and met twice in 2008 to begin work on draft extradition and MLA conventions for East Africa.<sup>51</sup> IGAD member states, meeting under the auspices of ICPAT, reached agreement at the political level on the texts of draft extradition and MLA conventions when IGAD ministers of justice met in Khartoum in April 2009.<sup>52</sup> Those conventions were adopted by the IGAD Council of Ministers at their 33rd ordinary session in Djibouti on 7–8 December 2009.<sup>53</sup>

Although these conventions have the potential to greatly enhance the efficiency of cross-border investigations and legal proceedings, three main obstacles must be overcome before the subregion can reap the benefits of these instruments: (1) the difficulty for most member states to ratify these conventions and implement them in national law; (2) the lack of an institutionalized network of law enforcement and judicial officials with the expertise and capacity to cooperate across borders and bring these laws to life; and (3) the need to establish a greater degree of mutual trust and reciprocity between member states to confidently constitute and empower such a network. These challenges and possible solutions are considered in sections 3 and 4 of this Background Paper.

47. For information on ICPAT/ISSP activities, see <http://www.icpat.org/>. See also IGAD, *Annual Report 2009*, [http://www.igad.int/attachments/257\\_IGAD%20AR%202009-Final+covers.pdf](http://www.igad.int/attachments/257_IGAD%20AR%202009-Final+covers.pdf); IGAD, *Annual Report 2007*, [http://igad.int/attachments/104\\_IGAD\\_Annual\\_Report\\_2007.pdf](http://igad.int/attachments/104_IGAD_Annual_Report_2007.pdf).

48. IGAD, "IGAD Security Sector Program Launched," 6 October 2011, [http://www.igad.int/index.php?option=com\\_content&view=article&id=353:igad-security-sector-program-launched&catid=45:peace-and-security&Itemid=128](http://www.igad.int/index.php?option=com_content&view=article&id=353:igad-security-sector-program-launched&catid=45:peace-and-security&Itemid=128).

49. For ICPAT's central role in the adoption of these conventions, see UN Security Council, *Letter Dated 17 August 2011 From the Chair of the Security Council Committee Established Pursuant to Resolution 1373 (2001) Concerning Counter-Terrorism Addressed to the Secretary-General*, S/2011/463, 1 September 2011, p. 12 (containing UN Counter-Terrorism Executive Directorate's global survey of the implementation of Security Council Resolution 1373).

50. See Rosand, Millar, and Ipe, "Enhancing Counterterrorism Cooperation in Eastern Africa."

51. ICPAT, "Experts Drafting Extradition, Mutual Legal Assistance Conventions," 16 October 2008, <http://www.icpat.org/index.php/events-archive-mainmenu-81/153-experts-drafting-extradition-mutual-legal-assistance-conventions>.

52. ICPAT, "IGAD Ministers of Justice Okay Extradition, Mutual Legal Assistance Conventions," 4 April 2009, <http://www.icpat.org/index.php/events-archive-mainmenu-81/270-igad-ministers-of-justice-okay-extradition-mutual-legal-assistance-conventions>.

53. IGAD, "Communique of the 33rd Ordinary Session of IGAD Council of Ministers Held from 7th-8th December, 2009 in Djibouti," [http://igad.int/attachments/155\\_Council\\_Communique\\_General\\_FINAL.pdf](http://igad.int/attachments/155_Council_Communique_General_FINAL.pdf).

### c. The East African Community

Although the EAC lacks a formal counterterrorism legislative framework, it has long aspired to and taken steps toward a more robust role in peace, security, and defense issues, including counterterrorism.<sup>54</sup> Through its various strategy documents, the EAC's vision to counter transnational terrorism and organized crime through capacity building and cooperation among law enforcement and the judiciary provides for a whole-of-government framework that complements its broader development strategy. Yet, its ability to harness the political will, mutual trust, and long-term commitment of its members to implement this framework remains to be seen.

The third EAC development strategy, for 2006–2010, was the first major strategy document to include an integrated antiterrorism framework as an organizational objective and the first to name police cooperation as a feature of the community.<sup>55</sup> The document also highlighted the establishment of formal meetings between national police chiefs “to facilitate speedy policy making and implementation in the sector” and the facilitation of “enhanced cooperation of police and customs authorities in combating illegal cross border crime.”<sup>56</sup> Interventions in these areas fall under the pillar “Cooperation in Political Matters, Defence and Security” and included several related objectives set for completion between 2007 and 2009. These included the establishment of a mechanism for conflict management and resolution, joint measures to control terrorism, a mechanism to enhance the exchange of criminal intelligence, a regional framework for good governance and anticorruption, and a memorandum of understanding on EAC police cooperation.<sup>57</sup>

The EAC's role in combating transnational threats was articulated in greater detail in its Strategy for Regional Peace and Security in East Africa, adopted in November 2006.<sup>58</sup> The strategy's overall objective is to encourage enhanced regional security cooperation, identifying the EAC's major goals and the steps needed to achieve them. These goals included enhanced information exchange, the establishment of shared communication facilities at border control stations, and the facilitation of exchange programs between national law enforcement institutions.<sup>59</sup> To further encourage the attainment of these goals and the implementation of the EAC peace and security framework, member states endorsed the establishment of the Nyerere Center for Peace Research (NCPRI) in 2006. Based out of EAC headquarters in Arusha, the NCPRI's mission is to serve as a “center for excellence” for the conduct of policy research in peace and security studies and ultimately to assist in building member state capacity and support for the EAC peace and security platform.<sup>60</sup> The NCPRI hosts short training programs on a range of topical areas including negotiation and conflict resolution, humanitarian assistance, and terrorism-related issues. It also works in partnership with Arcadia University to facilitate an international peace studies research program.<sup>61</sup>

### d. Eastern Africa Police Chiefs Cooperation Organization and Interpol

EAPCCO was established in 1998 to serve as a cooperation hub for law enforcement institutions in East Africa in the fight against serious transnational crime. Its special relationship with Interpol brings with it access to a broad international network of resources and expertise to fulfill a range of operational goals in conjunction with Interpol's

54. Wafula Okuma, “Counterterrorism Measures in the East African Community,” in *African Counterterrorism Cooperation*, ed. Andre Le Sage (Dulles, Va.: Potomac Books, 2007), pp. 77–98.

55. EAC, “East African Community Development Strategy 2006–2010,” para. 111, [http://www.eac.int/advisory-opinions/doc\\_download/159-eac-development-strategy-2006-2010.html](http://www.eac.int/advisory-opinions/doc_download/159-eac-development-strategy-2006-2010.html).

56. *Ibid.*

57. *Ibid.*, annex 1, sec. 1.1.

58. EAC, “Strategy for Regional Peace and Security in East Africa,” October 2006, [http://www.eac.int/advisory-opinions/doc\\_download/141-eac-strategy-for-peace-and-security.html](http://www.eac.int/advisory-opinions/doc_download/141-eac-strategy-for-peace-and-security.html) (adopted by the 13th EAC Council of Ministers meeting, Arusha, Tanzania).

59. *Ibid.*, sec. 2.0.

60. EAC, “Strategic Plan, 2010–2014,” Nyerere Centre for Peace Research, January 2010.

61. EAC, “Peace and Security: Nyerere Centre for Peace Research,” n.d., [http://www.eac.int/security/index.php?option=com\\_content&view=article&id=63&Itemid=109](http://www.eac.int/security/index.php?option=com_content&view=article&id=63&Itemid=109). See Arcadia University, “Nyerere Centre for Peace Research,” n.d., <http://www.arcadia.edu/academic/default.aspx?id=4301>.

regional bureau in Nairobi.<sup>62</sup> Interpol's main objectives include strengthening police cooperation through the development of joint strategies and monitoring cross-border crime, facilitating the exchange of information on relevant criminal activities in the subregion, encouraging cross-border legal cooperation in criminal matters, ensuring the efficient management of criminal records, making policy recommendations to regional governments, and promoting "non-political professionalism" and the "observance of human rights" among regional police forces by designing and implementing training strategies and performance requirements.<sup>63</sup>

EAPCCO is overseen by a Council of Police Chiefs, comprised of one member from each of the 11 EAPCCO member states and headed by a rotating chairman. A Permanent Coordinating Committee comprised of the heads of each member states' criminal investigations service plans executes cross-border operations, implements EAPCCO resolutions, and oversees two main subcommittees. The Legal Subcommittee helps bridge barriers to legal cooperation between regional law enforcement institutions and lobbies for the harmonization of related legislation. The Training Subcommittee coordinates regional capacity-building and training initiatives. Aside from its affiliation with Interpol, EAPCCO programming has been organized in collaboration with other international and regional organizations, such as UNODC, the Eastern and South Africa Anti-Money Laundering Group, and IGAD.

All EAPCCO staff are seconded to Interpol's Nairobi bureau from participating police forces. The Nairobi office serves as its secretariat, and its activities are facilitated through the use of Interpol equipment and facilities. In this capacity, it works to encourage and expand member state capacity to access and utilize Interpol's I-24/7 communications dashboard and criminal information databases. In general, EAPCCO's primary activities include strategic, tactical, and

operational meetings and the development, coordination, and facilitation of training activities in partnership with the Interpol Secretariat, member states, and third-party partners. EAPCCO also partners with the United Nations in facilitating the UN Police Officers Course, preparing police for deployment in international peacekeeping missions.<sup>64</sup>

Along with the activities of its Legal Subcommittee, the EAPCCO constitution is meant to serve an important role in legal matters as well. Theoretically, the constitution is meant to provide an alternate basis for establishing bilateral and multilateral agreements for joint cross-border operations, border control legislation, harmonization of police practice, and information exchange. Additionally, a number of relevant legal instruments, all of which are pending national ratification, have been adopted by member state police ministers, including agreements on MLA, drug trafficking, counterterrorism, and extradition.<sup>65</sup> EAPCCO partners with NGOs, strengthening the relationship between law enforcement and civil society. In partnership with the Commonwealth Human Rights Initiative and African Policing Civilian Oversight Forum, for example, EAPCCO assisted in the development of a framework of common standards in policing for the EAC in accordance with international and continental human rights norms.<sup>66</sup>

### 3. Challenges to Effective Legal Cooperation to Counter Terrorism in East Africa and the Horn

The frameworks, initiatives, and institutions presented above offer a number of channels for member state legal cooperation at the subregional level, but bringing these schemes to life has proven difficult. There are numerous legal, organizational, and operational challenges to engaging

62. Interpol, "RB Nairobi," 2 March 2011, <https://www.interpol.int/Public/ICPO/SRB/nairobi.asp>.

63. Interpol, "Eastern Africa Police Chiefs Cooperation Organisation (EAPCCO)," n.d., <https://www.interpol.int/Public/ICPO/SRB/EAPCCO.pdf>, (information sheet referencing Articles 3 and 4 of the EAPCCO constitution).

64. Festus B Aboagye, Xavier Ejoyi, and Andrews Attah-Asamoah, "Bottlenecks to Deployment! Police Capacity Building and Deployment in Africa," *Institute for Security Studies Paper*, no. 221 (November 2010).

65. Interpol, "Eastern Africa Police Chiefs Cooperation Organisation (EAPCCO)," pp. 4–5.

66. Commonwealth Human Rights Initiative (CHRI) and the African Policing Civilian Oversight Forum, "Common Standards for Policing in East Africa," 2010, [http://www.humanrightsinitiative.org/publications/police/common\\_standards\\_for\\_policing\\_in\\_east\\_africa.pdf](http://www.humanrightsinitiative.org/publications/police/common_standards_for_policing_in_east_africa.pdf)



in effective multilateral legal cooperation, even among states with extremely robust institutional capacity. Despite the broad political support for enhancing a multilateral legal network against terrorism presented above and a number of substantial, locally owned initiatives, there are still significant obstacles to strengthening cross-border law enforcement and judicial capacity and cooperation. Issues such as a lack of human and material resources and communications technology; inadequate training in functional and advanced skills in areas such as investigations, forensics, and interrogation; and a lack of technical and professional knowledge are common challenges in all developing countries.<sup>67</sup> At the same time, a number of internal and external factors contributing to a general lack of trust, confidence, and accountability among subregional security and justice institutions are especially problematic in East Africa and the Horn.<sup>68</sup> This section presents an overview of several recurring and interlinked themes underlying these challenges.

### a. Politicized Justice, Law Enforcement, and Counterterrorism

The absence of strong national legal infrastructure—a rule of law–based framework that guides law enforcement and judicial practice, ensures accountability, and safeguards against political influence—is a symptom as well as a contributing factor to weak institutional performance in East Africa’s justice sector. Many states in the subregion have come under scrutiny for corrupt and politicized criminal justice systems. The danger is that police and judicial officials may ultimately end up serving political masters rather than the law.

In the most extreme circumstances, police and justice officials must forgo legal procedures in order to advance their careers

and even keep their jobs. At the same time, the inadequate criminal justice response to allegations of the involvement of political figures in drug trafficking and other forms of organized crime contribute to extremely low levels of public trust in government.<sup>69</sup>

In some cases, counterterrorism programs can become especially politicized. Combined with a weak legal infrastructure, such an operating environment encourages law enforcement and judicial officials to pursue informal solutions to cross-border issues. With regard to counterterrorism in particular, unchecked police powers have resulted in major human rights abuses, including arbitrary arrest, prolonged extrajudicial detention, rendition, “forced disappearances,” and torture. Different agencies of the same national government may have difficulty cooperating due to an underlying lack of trust in the intentions and effectiveness of colleagues and their institutions. Ultimately, these circumstances can contribute to the endemic abuse of power by state officials and lead to a swift deterioration of public trust.

Efforts to reform police and judicial institutions often come up against political barriers as well. A weak and disorganized justice system benefits corrupt politicians, allowing them to act with impunity. Furthermore, police and justice officials and the institutions they represent can become closely intertwined with the patronage networks of political elites. Under these circumstances, government agencies may serve as tools of the elite, subject to the whims of their political and economic agendas. For instance, the use of the “terrorism” label to persecute political opponents and human rights defenders, silence critical voices in the media, and disrupt nonviolent public demonstrations weakens public support for counterterrorism efforts, stifles reform, marginalizes vulnerable groups, and emboldens enemies of the state.<sup>70</sup>

67. Medhane Tadesse, “Overcoming Challenges for Security Sector Reform in the Horn of Africa,” in *Challenges to Security Sector Reform in the Horn of Africa*, ISS Monograph, no. 135 (May 2007), p. 71.

68. For example, see CHRI, “Spotlight Thrown on Policing in East Africa,” 12 June 2006, [http://www.humanrightsinitiative.org/programs/aj/policy/media\\_statement/spotlight\\_thrown\\_on\\_policing\\_in\\_ea\\_jun06.pdf](http://www.humanrightsinitiative.org/programs/aj/policy/media_statement/spotlight_thrown_on_policing_in_ea_jun06.pdf); Bruce Baker, “Nonstate Policing: Expanding the Scope for Tackling Africa’s Urban Violence,” *Africa Security Brief* no. 7 (September 2010), <http://africacenter.org/wp-content/uploads/2010/09/AfricaBrief-7.pdf>; Okuma, “Counterterrorism Measures in the East African Community,” pp. 81–82; Transparency International, *The East African Bribery Index 2011*, 20 October 2011, <http://www.transparency.org/content/download/63593/1019155>.

69. For example, see Peter Gastrow, “Termites at Work : Transnational Organized Crime and State Erosion in Kenya,” International Peace Institute, September 2011, p. 3, [http://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_2562.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_2562.pdf).

70. Note that the EAC Development Strategy 2011–2016, section 3.1.4(b) highlights “inappropriate measures for combating terrorism” as a significant challenge in integration toward a political federation. EAC, “EAC Development Strategy (2011/12–2015/16): Deepening and Accelerating Integration,” August 2011, [http://www.eac.int/advisory-opinions/doc\\_download/650-4th-eac-development-strategy.html](http://www.eac.int/advisory-opinions/doc_download/650-4th-eac-development-strategy.html).

## b. “Legalization” of Extrajudicial Measures and Militarized Counterterrorism

State preoccupation with strengthening national security can contribute to the development of extraordinary arrangements for cross-border law enforcement cooperation. When states perceive an existential security or political threat, they may tolerate or even encourage extraordinary measures to act against it. Under these circumstances, whether formal or informal agreements exist between states, cross-border cooperation may provide unchecked powers to law enforcement or military bodies acting outside the law. Reckless and illegal activity by national law enforcement can lead to the deterioration of trust between states. Law enforcement cooperation procedures based on a strong legal framework is critical to ensuring security does not come at the expense of justice.

The perceived “exceptional nature” of the terrorist threat has contributed to the erosion of long-established norms and legal safeguards. Legal practices regarding lawful arrest, detention, prosecution, and adjudication were sidelined in lieu of an equally exceptional response to terrorism.<sup>71</sup> Although by no means unique to the East African subregion, the use of counterterrorism efforts to repress citizens has the potential to hinder economic growth and prosperity. Domestic terrorism legislation can be reactionary: giving exceptional power to executive officers in labeling terrorist groups without judicial review, laying out provisions for the denial of bail to terrorism suspects, and assuming the power to arrest suspected terrorists without warrant.<sup>72</sup>

At the same time, practitioners from inside the region and abroad have highlighted concerns that counterterrorism

priorities are skewed toward short- and medium-term “hard” security measures.<sup>73</sup> Since 2001 and the onset of the “Global War on Terror,” Western governments have encouraged the implementation of far-reaching and extraordinary methods to counter terrorism. These “[o]ld-style high-handed approaches associated with global actors undermine human rights and imperil weak democracies.”<sup>74</sup> The overemphasis on military aspects of counterterrorism, which tend to prioritize regime security and short-term donor interests over human security, can be detrimental to greater socioeconomic development, institutional reform, and the long-term struggle against terrorism. When discussing these issues in the context of the IGAD region, analyst Monica Juba reiterates that “strategies for combating terrorism in fragile democracies must be reconciled to the need for achieving and consolidating gains in democracy and economic stability and progress.”<sup>75</sup>

The emphasis on reactionary extrajudicial and military-oriented approaches to counterterrorism are by no means unique to the subregion, but this trend is particularly troubling in the context of the region’s history of endemic conflict and its clear aspirations to overcome the vicious cycle of insecurity and underdevelopment. Ultimately, the politicization and militarization of law enforcement and justice-related counterterrorism activities may render counterterrorism efforts a source of insecurity to governments and the publics they serve.

## c. Lack of Interstate Trust and Confidence

One of the most common and ongoing challenges to all multilateral cooperation arrangements is the issue of interstate trust. Indeed, most states prefer to rely on their own

70. Note that the EAC Development Strategy 2011–2016, section 3.1.4(b) highlights “inappropriate measures for combating terrorism” as a significant challenge in integration toward a political federation. EAC, “EAC Development Strategy (2011/12–2015/16): Deepening and Accelerating Integration,” August 2011, [http://www.eac.int/advisory-opinions/doc\\_download/650-4th-eac-development-strategy.html](http://www.eac.int/advisory-opinions/doc_download/650-4th-eac-development-strategy.html).

71. Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, *Assessing Damage, Urging Action*, International Commission of Jurists, 2009, <http://www.ijf.org/assets/docs/028/207/3e83f1c-fbfc2cf.pdf>.

72. Cephas Lumina, “Terror in the Backyard: Domestic Terrorism in Africa and Its Impact on Human Rights,” *African Security Review* 17, no. 4 (2008), <http://www.iss.co.za/uploads/17NO4LUMINA.PDF>; George Kegoro, “The Effects of Counter-Terrorism Measures on Human Rights,” in *Understanding Terrorism in Africa: In Search for an African Voice*, ed. Wafula Okumu and Anneli Botha (Pretoria: Institute for Security Studies, 2007), p. 57.

73. Rosand, Millar, and Ipe, “Enhancing Counterterrorism Cooperation in Eastern Africa,” p. 96.

74. Peter Kagwanja, “Counter-Terrorism in the Horn of Africa: New Security Frontiers, Old Strategies,” *African Security Review* 15, no. 3 (2006): 84.

75. Juba, “Role of the Inter-Governmental Authority on Development in Preventing and Combating Terrorism,” p. 75.

criminal justice officials over those of even their closest of allies.<sup>76</sup> The ability and willingness of states-parties to trust one another is of paramount importance for building a sustained institutional arrangement for cross-border judicial and police cooperation. This issue bears particular relevance to East Africa and the Horn. The tragic legacy of severe, protracted conflict in East Africa has left lingering cross-border tensions between neighboring states. The region has been referred to as the most conflict ridden in the world and has been home to two of the African continent's most long-lasting civil wars.<sup>77</sup> Further human security crises, whether a result of conflict, environmental decay, or natural disaster, have contributed to mass population displacement, stretching the capacity of weak state institutions and exacerbating tense cross-border relations between neighboring states.<sup>78</sup>

A history of intense regional conflict is often cited as one of prime factors contributing to poor interstate relations and weak institutional cooperation in East Africa and the Horn. Indeed, regional conflicts and civil wars are often interwoven with prolonged rebellion, proxy wars, insurgency, and terror campaigns contributing to a particularly complex and hostile political environment. Although subversion has been an arguably popular tool among governments in the subregion for the past 50 years, revelations of Eritrea's alleged role in supporting antigovernment forces, particularly in Djibouti, Ethiopia, Somalia, and Sudan, has become the most virulent example of this phenomenon.<sup>79</sup> Long-standing political and social conflict in South Sudan and Sudan, Eritrea and Ethiopia, and Somalia have seen the rise and fall of numerous "armed opposition movements," often sustained with the support of a third subregional state. Such actual or perceived underlying hostilities detract from an environment conducive to systematic legal cooperation. At the same time, cooperation

can be perceived by state actors as risking the exposure of their own weak internal capacity to potential exploitation.<sup>80</sup>

#### d. Unrealistic Expectations and Uncoordinated Assistance

Placing unrealistic demands on weak states to comply with an insurmountable list of international legal obligations, treaties, conventions, and instruments can place a heavy burden on weak state institutions.

The adoption of complex international treaties is not just a legislative exercise; subsequent and ongoing action is required to operationalize their provisions in practice. Lacking resources and institutional capacity, developing states can face enormous challenges in implementing the operational components of multilateral policy obligations.

For instance, a state with a generally weak criminal justice system may be understaffed, have insufficient resources and technical training, and struggle to fulfill its domestic mandate. As the same time, that state may be under pressure from the international community to implement a half-dozen international obligations on AML, extradition, MLA, piracy, and UN Security Council sanctions regimes, all of which require domestication, legal training, and practical implementation. As the World Bank's World Development Report 2011 points out, in weak or fragile states, placing too much pressure on the individual agencies and departments responsible for implementation can lead to the failure of an entire initiative.<sup>81</sup> As Ford relates, "Those involved in promoting counterterrorism in Africa must be more honest about what is likely, and more humble about what is possible."<sup>82</sup>

76. Mathieu Deflem and Shannon McDonough, "International Law Enforcement Organizations," in *Comparative and International Policing, Justice, and Transnational Crime*, ed. Sessa Kethineni (Durham, N.C.: Carolina Academic Press, 2010), p. 131.

77. Berouk Mesfin, "The Horn of Africa Security Complex," in *Regional Security in the Post-Cold War Horn of Africa, ISS Monograph*, no. 178 (April 2011), p. 4, <http://www.issafrica.org/uploads/Monograph178.pdf>.

78. See Gilbert M. Khadiagala, "Eastern Africa: Security and the Legacy of Fragility," *Africa Program Working Paper Series*, October 2008, pp. 6–9.

79. UN Security Council, *Letter Dated 18 July 2011 From the Chairman of the Security Council Committee Pursuant to Resolutions 751 (1992) and 1907 (2009) Concerning Somalia and Eritrea Addressed to the President of the Security Council*, S/2011/433, 18 July 2011.

80. For a discussion on political violence in the region, see Mesfin, "Horn of Africa Security Complex"; Samson S. Wasara, "Conflict and State Security in the Horn of Africa: Militarization of Civilian Groups," *African Journal of Political Science* 7, no. 2 (2002).

81. World Bank, *World Development Report 2011*, p. 100.

82. Ford, "African Counter-Terrorism Legal Frameworks a Decade After 2001," p. viii.

Further, a growing menu of international assistance packages and reporting requirements can leave states in the subregion focusing on short-term compliance goals rather than pursuing long-term institutional and behavioral change. In addition, a number of regional actors are engaged in the same space, attempting to fulfill similar roles in countering terrorism and organized crime and lending to a proliferation of institutional policy frameworks beyond the reasonable ability of member states to implement.

Ultimately, it may be that the benefits of pursuing a more institutionalized arrangement for law enforcement and judicial cooperation in counterterrorism efforts are not perceived as outweighing the status quo. Legal cooperation in the subregion is often limited to broad political commitments and unratified conventions. Despite the existence of several bases for engaging in MLA and extradition (e.g., IGAD and EAPCCO conventions, the AU framework, and in some states, the Harare and London Schemes), states in the region may prefer the expedience of informal cooperation in countering terrorism, sometimes at the expense of human rights, the rule of law, and long-term aspirations for institutional development and accountability.

## 4. Contemporary Institutional Arrangements for Multilateral Law Enforcement and Judicial Cooperation: Case Studies for Consideration

The investigation of criminal activity and the prosecution of criminals have traditionally fallen under the stewardship of a sovereign state in accordance with its own system of criminal law. In cases of particularly complex crime, authorities of numerous relevant competencies are assigned roles in the investigation process. Terrorists and organized criminal groups now operate internationally; no state acting alone

can bring them to justice. For instance, organized terrorist and criminal activities can be planned in one country, supplied through a second, and perpetrated in a third; perpetrators can then escape to a fourth, and so on. The international community has thus recognized the need for legal and institutional solutions that allow states to work together for mutual benefit to address common challenges in the fields of counterterrorism and criminal justice.

There is no one-size-fits-all approach to law enforcement and judicial cooperation. East Africa will have to develop an operational platform that suits its needs and resources, but it may benefit from drawing on the lessons learned elsewhere.

Many factors contribute to the form in which such cooperation can take, including

- the nature of the threat or crime in question (e.g., an “in principal” agreement on the criminality and cross-border nature of a criminal activity will contribute to the basis on which states may cooperate to address it);
- national preferences, legal traditions, national legislation, and administrative procedures;
- law enforcement capacities, including human, material, and knowledge resource; and,
- levels of trust and reciprocity and political will, i.e., the willingness of states to utilize established legal mechanisms for law enforcement and judicial cooperation, between partnering states.

The capacity, autonomy, and professionalism of national police and justice institutions vary greatly across states. Nevertheless, the norms and standards of modern law enforcement practice have been “internationalized” over the past century, and the general form and function of many criminal justice activities are shared by most states in the international community.<sup>83</sup> Reflective of the increasingly global nature of many aspects of crime, contemporary forms of cooperation between states in law enforcement and judicial matters have only risen to prominence within the past century. Criminal justice, particularly counterterrorism cooperation, has developed tremendously over this period as well.<sup>84</sup>

83. Deflem and McDonough, “International Law Enforcement Organizations,” pp. 127–148.

84. For a discussion on the development of multilateral counterterrorism cooperation, see Peter Romaniuk, *Multilateral Counter-Terrorism* (New York: Routledge, 2010).

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Effective cooperation in matters of law enforcement and criminal justice, whether formally through MLA to obtain evidence for use in court or informally through everyday information sharing with colleagues across borders, requires a certain amount of human and technical infrastructure. The fundamental building blocks for the effective institutionalization of multilateral legal cooperation consist of two general components: (1) a formal or informal legal framework that demarcates the extent of such cooperation and establishes measures to ensure accountability in related activities, and (2) a network of expert officials in partnering states to facilitate communication and interaction between and among colleagues in national agencies and across borders.

The stronger the legal basis for cooperation, the more fruitful cooperation can become. Institutional networks that are empowered by clear procedural guidelines in a formalized commitment from participating member states could result in a more proactive and responsive cooperation network.

The institutional form of a network follows from its function; its structure is determined by the tasks it is expected to perform, i.e., its mandate. Law enforcement and judicial cooperation institutions can range from loose networks of contact or focal points for information sharing and requests for assistance, to on-call rapid response or joint investigation teams, to centrally housed cooperation hubs or units comprised of seconded staff from all participating states. Practitioners within these institutions may serve a purely advisory role, be empowered in accordance with domestic law, or be endowed with abilities to engage with states directly. No matter the case, all multilateral institutional arrangements hinge on the willingness of participating states to engage proactively and honestly through them. Multilateral institutional arrangements in criminal matters must balance the need for cross-border cooperation with the sensitivities of national sovereignty.

Establishing a firm legal framework for law enforcement and judicial cooperation is highly desirable, but the establishment of a network of practitioners to execute that framework is just as important. Much like the process of building multilateral legal frameworks, transforming them into practice cannot be accomplished overnight. Any degree of institutionalization will require expert practitioners to be trained

to work in accordance with newly established guidelines, and competent authorities in participating states must be instructed on the circumstances under which they should refer or contribute to and render or receive assistance from such a network. As the case studies in this section demonstrate, multilateral law enforcement and judicial institution networks are not necessarily finished products once established. As their limits are tested and trends in governance or criminal activity shift, these institutions may evolve over time.

As discussed above, interstate cooperation against terrorism and other transnational threats can take place through a number of legal and institutional arrangements. In the case studies that follow, we present a series of nonexhaustive brainstorming ideas as examples to encourage more nuanced thinking for consideration and discussion over the course of the task force study tour. The task force will need to develop its own analysis. Consideration of the following examples may be instructive.

### **a. Joint Institutional Arrangements for Legal Cooperation: Europol and Eurojust**

States may strengthen a legal cooperation network through the development of a centralized, joint institution designed for this very purpose. In the context of the European Union, Europol, the EU law enforcement cooperation agency, and Eurojust, the EU judicial cooperation unit, are permanent multilateral institutions that assist in facilitating cooperation between law enforcement and judicial institutions of EU member states. This section begins with an overview of Europol and Eurojust because they stand as the most complex and far-reaching models of cross-border cooperation in law enforcement and judicial cooperation. Of course, the development of these institutions is intimately related to the larger historical and legal process of European civil and economic integration and the space provided by formal EU security and justice agreements. East Africa may similarly need to consider and organize developing law enforcement cooperation in the context of broader economic integration in the region. Despite contextual differences, a number of useful observations can be made by examining the form and function of these institutions.

## EUROPOL OVERVIEW

Europol's mission is to improve the effectiveness of member state law enforcement authorities in preventing terrorism, drug trafficking, and other forms of serious organized crime involving two or more member states.<sup>85</sup> It supports law enforcement activities in member states through the facilitation of information exchange and the provision of operational analysis and analytical support, expertise, and technical support for member state–led investigations and operations within the EU. It also is an information clearinghouse, providing strategic guidance through threat assessments, trend reports, and crime analysis based on the information supplied by member states.<sup>86</sup> It has a limited mandate to request the initiation of an investigation by member states and may participate in Joint Investigation Teams (JITs).<sup>87</sup>

Europol is not a supranational European police force. Europol Liaison Officers (ELOs) do not carry firearms and are prohibited from taking part in coercive actions in the field. Its power and effectiveness extends from the sovereignty of EU member states and their law enforcement agencies. As such, Europol's ability to bring added value to law enforcement activities in the EU is highly dependent on the willingness of member states to contribute to and cooperate through Europol.<sup>88</sup> Much of the history of modern police cooperation in Europe was based on informal working groups focusing on narrow issue areas that offered little in the way of active coordination.<sup>89</sup> Despite early support for the concept of such a joint institutional arrangement, political sensitivities between member states over issues of sovereignty, trust, and professional practice rendered the process for

Europol's establishment and ongoing development a rather arduous undertaking. Once established, however, Europol's role in law enforcement activities has grown gradually from strategic criminal intelligence coordination and information sharing to include tactical guidance as well as limited operational support.<sup>90</sup>

A general agreement on the creation of Europol was initially conceived in the 1992 Treaty on European Union (Maastricht Treaty) to further police cooperation against terrorism, drug trafficking, and international crime through an EU-wide “system for exchanging information within a European Police Office.”<sup>91</sup> At the time, this provision was little more than a collective aspiration of EU member states to develop a formal institution through which to cooperate on matters of law enforcement. It was not a legal framework for the establishment of such an institution, and member states disagreed on the focus and scope of Europol's mandate. Following the conclusion of the Maastricht Treaty, as the Europol Convention was being negotiated in the European Council, there was enough interim support for the creation of a Europol Drugs Unit (EDU) to begin laying the groundwork for the establishment of Europol. The EDU became operational in 1994 and had a limited mandate to coordinate information exchange and analysis on organized drug trafficking affecting two or more EU states. Also, it “had the task of establishing a directory of specialised competences, skills and expertise for the fight against crime established and updated on the basis of contributions” from EU member states.<sup>92</sup> This infrastructure would ultimately be absorbed by Europol on its creation.

85 Council of the European Union, “Convention Based on Article K.3 of the Treaty on European Union, on the Establishment of a European Police Office (Europol Convention),” 95/C 316/01, 26 July 1995, art. 2(2) (hereinafter Europol Convention); European Council, “Council Decision of 6 April 2009 Establishing the European Police Office,” 2009/371/JHA, art. 3.

86. Europol, “Frequently Asked Questions,” n.d., <https://www.europol.europa.eu/faq> (“How does Europol assist Member States investigations?”). See Europol, *Europol Review: General Report on Europol Activities*, 2011, <https://www.europol.europa.eu/sites/default/files/publications/europolreview-en.pdf> (covering 2010).

87. European Council, “Council Decision of 6 April 2009 Establishing the European Police Office,” arts. 6 and 7.

88. See Madalina Busuioc and Martijn Groenleer, “Beyond Design: The Evolution of Europol and Eurojust,” *Amsterdam Centre for European Law and Governance Working Paper Series*, no. 2011-03 (March 2011), pp. 9–10.

89. For a discussion on informal police cooperation in Europe prior to the establishment of Europol, see Mathieu Deflem, “Europol and the Policing of International Terrorism: Counter-Terrorism in a Global Perspective,” *Justice Quarterly* 23, no. 3 (September 2006): 336–359.

90. For a discussion on the evolution of Europol, see Alexandra de Moor and Gert Vermeulen, “The Europol Council Decision: Transforming Europol Into an Agency of the European Union,” *Common Market Law Review* 47, no. 4 (August 2010): 1089–1121; UK House of Lords European Union Committee, “Europol: Coordinating the Fight Against Serious and Organized Crime,” *HL Paper*, no. 183 (12 November 2008).

91. “Treaty on European Union,” 92/C 191/01, 7 February 1992, title VI, art. K.1(9).

In 1995 the Europol Convention was agreed on at the European Council and was sent for ratification among the member states. The convention laid out provisions detailing the form and function of Europol, its areas of competence, its governance structure, and measures to ensure its accountability. After ratification by the then-15 members of the EU, the convention came into force in October 1998; and Europol became fully operational, based out of The Hague in July 1999.

The physical backbone of Europol's infrastructure is its practitioner network of Europol National Units (ENUs) and ELOs. ENUs are created or designated from existing law enforcement agencies within each EU member state capital to serve as the sole focal point of contact for Europol. Each member state is also required to second at least one ELO from their national unit to Europol headquarters in The Hague to facilitate daily information exchanges with their colleagues at Europol and between their respective member state and Europol.<sup>93</sup> Despite their secondment to Europol and their obligation to perform their respective duties, liaison officers technically remain subordinate to their own national command and subject to their respective national law.<sup>94</sup> In this sense, Europol operates similarly to a UN or AU peace operation, with national contingents serving together but remaining answerable to superiors in their capitals.

Europol headquarters thus provides an environment conducive to building trust and reciprocity among liaison officers while preserving the national character and autonomy of member state law enforcement agencies. Communications, casework intake, and information exchange among Europol, member states, and other partners are enabled in real-time through Europol's Secure Information Exchange Network Application.<sup>95</sup> Europol is also responsible for maintaining the Europol Information System, which collects, collates,

and correlates, inter alia, biographical data on criminals of interest and known associates, related offenses, and suspected activities and lists the relevant national authorities responsible for individual cases.<sup>96</sup>

Europol's regulatory framework provides for rigid guidelines on the maintenance, receipt, and transmission of information. In accordance with Article 17 of the 2009 European Council decision on Europol, Europol is obligated to notify the relevant national units of any information received regarding their member state.<sup>97</sup> However, all information provided to Europol by member states remains subject to the sovereignty of that state, and its permission is required for Europol to disseminate this information to other states.<sup>98</sup> In order to ensure that data retrieved and communicated by and through Europol is done so in accordance with the national laws of each member state, each state is obligated to establish a National Supervisory Body to oversee the communications and data inputs of their respective national unit and liaison officer. These National Supervisory Bodies, along with an independent Joint Supervisory Body also work to ensure that the information maintained and used by Europol is not used unethically or in violation of human rights.<sup>99</sup>

Contemporary European police cooperation against terrorism can be traced back the 1970s with the establishment of the Terrorism, Radicalism, Extremism, and Political Violence (TREV) Group. For a time, the TREV Group served as an informal European police cooperation forum for legal assistance and information exchange in matters related to terrorism.<sup>100</sup> Europol continues to play an active role in law enforcement activities to counter terrorism in the EU. In accordance with its mandate to strengthen national law enforcement bodies, Europol has begun work on establishing a Europol Platform for Experts specifically for counterterrorism units to facilitate secure communication and

92. "Europol Drugs Unit," 17 August 2005, [http://europa.eu/legislation\\_summaries/other/l14005a\\_en.htm](http://europa.eu/legislation_summaries/other/l14005a_en.htm).

93. Europol Convention, arts. 4–5.

94. European Council, "Council Decision of 6 April 2009 Establishing the European Police Office," art. 9.

95. Europol, *Europol Review*, pp. 12–13.

96. European Council, "Council Decision of 6 April 2009 Establishing the European Police Office," arts. 11–13.

97. *Ibid.*, art. 17.

98. *Ibid.*, art. 24.

99. *Ibid.*, arts. 33–34.

100. See Deflem, "Europol and the Policing of International Terrorism," pp. 340–341; Oldrich Bures, "Europol's Fledgling Counterterrorism Role," *Terrorism and Political Violence* 20, no. 4 (October 2008): 499–500.

### BOX 1. EUROPOL: FEATURES FOR CONSIDERATION

1. A permanent, centrally located police cooperation unit would require intense political and resource commitments from partnering states, although it may be the most potentially rewarding. Such an arrangement would provide for daily contact and trust building in a collaborative working environment and connect centrally located officers with respective national cooperation units with clear lines of communication.

Using the liaison–national unit formulation, this arrangement provides the added benefit of strengthening multilateral cooperation through strengthening respective national networks.

2. A semipermanent or temporary investigation team is a potentially less demanding and more malleable option. Such a team can be tailored to the needs, capacity, and political will of individual states. A multilateral unit can begin to build its

credibility and demonstrate its utility to member states by, for instance, incrementally networking an expert group mandated to share intelligence or compile open source data on a broad issue area. Over time, as it gains the trust of member states, its responsibilities can expand.

Similar activities might include the development of expert platforms focused on specific issue areas and having the ability to provide guidance to national partners on an as-needed basis (e.g., al-Shabaab, piracy, remittances) and the development of knowledge products, such as strategic threat assessments, at regular intervals for dissemination to member states on issues of shared interest.

3. There are several important considerations to be made when discussing an institutional arrangement for law enforcement cooperation.

- If active law enforcement officials are seconded to such an institution, what are the powers and limitations of these officers? Will they maintain these powers in their own jurisdictions?

- How will dependent and independent oversight mechanisms be placed in order to ensure lawful compliance with their mandate?

- Will there be a shared facility? Databases? Communications infrastructure? How will they be funded?

- What steps will be taken to ensure information security within the institution and in accordance to the wishes of participating member states? What rules and procedures will govern information sharing?

exchange of information and know-how between national specialists.<sup>101</sup> Also, Europol produces an annual strategic terrorism threat assessment, the “EU Terrorism Situation and Trend (TE-SAT) Report,” and a number of relevant intelligence products and operational tools.<sup>102</sup> These include platforms for cross-border assistance in the disposal of ordinance and the mobilization of first-response counterterrorism coordination teams.<sup>103</sup>

Europol’s day-to-day management and administration is executed by an executive director who oversees staff and budget implementation and serves as Europol’s legal representative. The director is supported by three deputies, all appointed by the European Council, who oversee Europol’s

operations. Although technically autonomous in the performance of these responsibilities, the executive director is accountable to a Management Board, comprised of representatives of each member state. The board develops and reports on Europol’s annual strategy, sets benchmarks for its performance, and draws up Europol’s annual work plan and budgeting.<sup>104</sup>

101. Europol, *Europol Review*, p. 20.

102. *Ibid.*, pp. 16 and 27. For the 2011 TE-SAT, see [https://www.europol.europa.eu/sites/default/files/publications/te-sat2011\\_0.pdf](https://www.europol.europa.eu/sites/default/files/publications/te-sat2011_0.pdf).

103. Europol, *Europol Review*, pp. 27–29.

104. European Council, “Council Decision of 6 April 2009 Establishing the European Police Office,” arts. 37–38.



## EUROJUST OVERVIEW

Eurojust was established to strengthen judicial cooperation in matters of criminal justice among EU member states, going beyond police cooperation. Its main functions are to assist in the facilitation of MLA and extradition requests among member states and provide them with support and guidance in cross-border criminal investigations and prosecutions.<sup>105</sup> It holds competency in the same criminal areas as Europol, covering, *inter alia*, terrorism, drug trafficking, and other forms of serious organized crime.<sup>106</sup> Over time and in accordance with the most recent Eurojust decision in 2009, it has been empowered with an increasingly operations-focused mandate, allowing them to act on their own initiative in requesting member states to undertake investigations or prosecutions, to issue nonbinding judicial opinions, and to access Europol and national criminal data.<sup>107</sup> Its operational capacity has been expanded to provide 24/7 assistance in order to respond swiftly to time-sensitive requests and to exercise responsibility over the Eurojust National Coordination System, institutionalizing Eurojust's access to national focal points and the European Judicial Network (EJN).<sup>108</sup>

European judicial cooperation in the field of criminal justice became institutionalized relatively recently. Particularly in light of Europol's establishment in the 1990s, there was increasing concern that developments in law enforcement cooperation should be balanced by complementary developments among the European judiciary.<sup>109</sup> In 1998 these concerns contributed to the establishment of the EJN, a

system of national contact points to facilitate judicial cooperation in criminal matters. The establishment of a centralized European judicial cooperation unit was first endorsed by the European Council in 1999. The concept was not meant to supersede the EJN but to serve as a centrally housed body of high-level jurists capable of facilitating cross-border cooperation among member state authorities engaged in criminal prosecutions and investigations.<sup>110</sup> In early 2001, a legal agreement was reached for Eurojust to begin provisional operations (under the name Pro-Eurojust) while a final decision was negotiated. Following the passage of the February 2002 European Council decision, Eurojust officially began operations based, like Europol, out of The Hague. It has since been strengthened by subsequent council decisions.<sup>111</sup>

Eurojust shares the same criminal areas of competency as Europol, but Eurojust is not a Europol for judicial cooperation. Its most unique feature is that it functions through a single body, the Eurojust College, which plays three primary roles. First, it is a body composed of national members representing each individual EU member state. National members are high-level judicial, prosecutorial, or law enforcement officials of equivalent competency who are seconded by their respective member state to serve in the Eurojust College for four-year terms. Although national members may retain powers in their own national jurisdiction in accordance with national law, they are each endowed with a minimum authority to access their member states' national registers of arrested persons. Individually, acting as national members, they may, *inter alia*, request member states to provide them information relevant to a case, engage in prosecution or

105. Eurojust, "Mission and Tasks," 2011, <http://eurojust.europa.eu/about/background/Pages/mission-tasks.aspx>.

106. European Council, "Council Decision 2009/426/JHA of 16 December 2008 on the Strengthening of Eurojust and Amending Decision 2002/187/JHA Setting Up Eurojust With a View to Reinforcing the Fight Against Serious Crime," 2009/426/JHA, 16 December 2008 (hereinafter Eurojust Decision (2009)). Article 4.1(a) as amended specifically mandates that the general competence of Eurojust cover "the types of crime and offences in respect of which Europol is at all times competent to act." In accordance with Article 4.2 of the European Council document in 2002 establishing Eurojust, Eurojust is further empowered to provide support in criminal areas outside its competency at the request of a member state. European Council, "Council Decision of 28 February 2002 Setting Up Eurojust With a View to Reinforcing the Fight Against Serious Crime," 2002/187/JHA, 28 February 2002, art. 4.2.

107. Eurojust Decision (2009). For a discussion on the effects of the 2009 Eurojust decision, see Agnieszka Serzysko, "Eurojust and the European Judicial Network on a New Legal Basis," ERA Forum 11, no. 4 (2 February 2011): 585–600.

108. Eurojust Decision (2009), arts. 5(a) and 12.

109. Oldrich Bures, "Eurojust's Fledgling Counterterrorism Role," *Journal of Contemporary European Research* 6, no. 2 (2010): 237; Busuioac and Groenleer, "Beyond Design," p. 9.

110. UK House of Lords European Union Committee, "Judicial Cooperation in the EU: The Role of Eurojust," *HL Paper*, no. 138 (21 July 2004), p. 7.

111. See most recently Eurojust Decision (2009).

investigation, coordinate with or relinquish jurisdiction to another state, and cooperate and consult with the EJM.<sup>112</sup> Unlike Europol, all information obtained by individual national members from member states is allowed to be shared among the Eurojust College without special authorization.<sup>113</sup>

Secondly, while the body is empowered with similar powers accorded to individual national members, when acting collectively as the Eurojust College, it is also accorded an array of additional powers. These include the ability to request member states to set up a JIT and assist in its coordination and the ability to issue nonbinding legal opinions on the settlement of conflicts of jurisdiction between member states. Eurojust can also assist Europol and render assistance based on Europol analysis.

There are practical benefits to housing the Eurojust College under one roof. As senior jurists representing each EU member state, national members are resources to each other through direct contact, each having expert legal insight into one another's jurisdictions at their fingertips. Eurojust is a collection of legal representatives tied to their own national states, but together, they form an integrated legal personality within the EU framework. Lastly, the Eurojust College also functions as a management board, collectively overseeing its own operations underneath the European Council and developing organizational goals and strategies and budget planning. An administrative director manages budget implementation and oversees the data protection office and all Eurojust administrative units and secretariats.<sup>114</sup>

Eurojust operations rely on the information provided by EU member states. One of its primary tools in this regard, as mentioned above, derives from the power of national mem-

bers and the Eurojust College to request states to undertake casework or act on its judicial recommendations.<sup>115</sup> States are not obligated to comply, but if they do not, they are obliged to provide just cause in writing. Eurojust avoids potential political blowback with member states by issuing a majority of these requests and recommendations through informal channels.<sup>116</sup> Formal communication and information exchange is facilitated through the Eurojust National Coordination System in each member state.<sup>117</sup> These national systems are made up of a subnetwork of one or more national correspondents falling under four categories: (1) Eurojust correspondents, (2) a Eurojust correspondent in matters of terrorism, (3) Eurojust correspondents for the EJM and up to three EJM contact points, and (4) national members or contact points of the network for JITs.<sup>118</sup> Eurojust organizes relevant information and casework through the maintenance of a case management system comprised of temporary work files on each investigation or prosecution in which Eurojust is involved.

Another common way Eurojust facilitates cooperation at the strategic and operational levels is through coordination meetings. Depending on the purpose, these meetings may include competent authorities from EU member states, external states, and organizational partners such as Europol and the EJM.<sup>119</sup> At these meetings, participants can develop "a common strategy to plan and co-ordinate simultaneous investigations and actions, such as arrests, searches, and seizure of property."<sup>120</sup> Eurojust's mandate also provides for operational roles in the execution of other EU legal instruments. It assists states in the activities relevant to the 2000 EU MLA Convention, for instance, by fine-tuning letters rogatory, directing competent authorities to sources of information and evidence across jurisdictions, and facilitating

112. For an outline of the powers of Eurojust through its national members, see Eurojust Decision (2009), art. 1.5 (amending Article 6 of the 2002 European Council decision). For the powers and authority accorded to national members, see Eurojust Decision (2009), art. 1.8 (adding Articles 9(a)–(f) to the 2002 European Council decision).

113. Eurojust Decision (2009), art. 14.3.

114. *Ibid.*, art. 29; Eurojust, "Organisational Structure," 2011, <http://eurojust.europa.eu/about/structure/Pages/organisational-structure.aspx>.

115. Eurojust Decision (2009), arts. 6 and 7.

116. Eurojust, *Annual Report 2010*, p. 21, <http://eurojust.europa.eu/doclibrary/corporate/eurojust%20Annual%20Reports/Annual%20Report%202010/Annual-Report-2010-EN.pdf>.

117. Eurojust Decision (2009), art. 12.

118. *Ibid.*

119. Eurojust, *Annual Report 2010*, p. 20.

120. *Ibid.*

**BOX 2. EUROJUST: FEATURES FOR CONSIDERATION**

1. A subregional judicial unit located perhaps within the IGAD headquarters and in partnership with the East African Court of Justice could contribute greatly to streamlining otherwise complex requests for legal assistance and serve as a resource for the informal exchange of national legal expertise among IGAD member states.

It can serve as a basis for establishing working groups on important topics. Such a unit may also have the responsibility of

- playing a key convening role in hosting joint strategic or operational meetings, bringing together relevant stakeholders to coordinate judicial and law enforcement cooperation in particular cases or against particular groups, such as al-Shabaab;

- centralizing information collection and access to provide overstretched national criminal justice systems with the ability to pool their resources in prosecutions or investigations of the same suspect, group, or activity; and,

- producing regular updates on opportunities and obstacles to judicial cooperation in the subregion, playing a crucial role in monitoring and evaluating member state implementation of subregional cooperation frameworks.

2. A subregional judicial cooperation unit can play an important role as a counterweight to subregional security cooperation. It may be useful to consider how Eurojust's

greater technical responsibilities may assist in involving the justice systems more intimately in cases that might otherwise be handled in an informal manner between national security forces.

3. A system of national correspondents on terrorism may assist in pursuing cross-border casework and may be used as a mechanism encouraging greater oversight and judicial review in the handling of terrorism cases and terrorism suspects.

4. Further consideration should be given to questions offered in item 3 of Box 1 in the context of Eurojust.

cooperation to circumvent the necessity of a rogatory letter.<sup>121</sup> In situations where European arrest warrants have been issued by two or more member states for the same individual, Eurojust can advise which is state is best situated to execute the order.<sup>122</sup> Eurojust is specifically mandated to facilitate cross-border coordination of controlled deliveries.<sup>123</sup>

Since its inception, Eurojust has asserted itself as a resource in counterterrorism-related activities in the EU. In the form of Pro-Eurojust, it held its first meeting among European magistrates dealing specifically with growing concerns over Islamist extremism and radicalization in Europe. Following the 9/11 attacks, the mutual understanding between participants and the resulting exchange of information at the June meeting led to the successful arrests of a number of

suspects in Spain in connection with the 9/11 attacks. Eurojust thus quickly established its added value in the realm of counterterrorism, and annual strategic meetings on the subject became a regular part of Eurojust activities going forward.<sup>124</sup> In addition, Eurojust convenes operational and tactical meetings with member state authorities to assist in the coordination of ongoing cases and share best practices and new developments. Eurojust maintains a special Counter-Terrorism Team with enhanced links to partner organizations such as Europol and the United Nations and third countries.<sup>125</sup> It also regularly updates national correspondents on all cases of note and best practices-related updates through its Terrorism Convictions Monitor and contributes to Europol's annual *TE-SAT Report*.<sup>126</sup>

121. *Ibid.*, p. 23.

122. *Ibid.*, p. 25.

123. Eurojust Decision (2009), arts. 1.8 and 1.11 (adding or amending Articles 9c.1(d), 9d(a) and 13.7(b) of the 2002 European Council decision). For a discussion of Eurojust's role in facilitating controlled deliveries, see Eurojust, *Annual Report 2010*, pp. 31–32.

124. Eurojust, "Counter-Terrorism Team," *Eurojust News*, no. 1 (October 2009), p. 2 [http://www.eurojust.europa.eu/press\\_eurojustnews.htm](http://www.eurojust.europa.eu/press_eurojustnews.htm).

125. Bures, "Eurojust's Fledgling Counterterrorism Role," p. 240.

126. Eurojust, *Annual Report 2010*, p. 33; Eurojust, "Counter-Terrorism Team," p. 3.

### THE JOINT INVESTIGATION TEAM MODEL

Particular attention should be given to one aspect shared by the Europol and Eurojust mandates: their role in the facilitation and coordination of JITs. The JIT is a legally grounded mechanism for cross-border operational cooperation in investigations being conducted between law enforcement and judicial operatives in different countries within the EU framework. Legal provisions that guide the establishment and functioning of the JIT are laid out across a number of EU instruments, including the 2000 EU convention on mutual assistance in criminal matters, the 2002 European Council framework decision on JITs, the 2009 council decision on Europol, and the 2002 council decision on Eurojust.

How does a JIT work?<sup>127</sup> As previously mentioned, a JIT is specifically designed to streamline the conduct of cross-border investigations by forging a multinational team under a single command and control structure. JITs are established through formal agreement, developed in writing by participating states on mutually acceptable terms. This agreement accounts for (1) the purpose and participating states of the JIT, (2) the composition and leadership of the JIT, (3) the area(s) of operation and primary headquarters of the JIT, (4) the powers to be exercised by JIT members and relevant terms and conditions of operating in respective jurisdictions, (5) the estimated duration of the JIT investigation, and (6) the organization and division of labor between JIT members and participating member states.

Although JITs can work just as well remotely, one of the main advantages of this arrangement is the establishment of the joint headquarters in the member state designated as the main area of operation. A clear chain of command and division of labor must be established at the onset. The team leader is usually designated from the headquarters host state to direct operations and assign daily tasks. Although the JIT will operate primarily in one state, all JIT operations must

be carried out in accordance with the law of the state in which it is operating; the JIT cannot override domestic law. Members of foreign states second their JIT members and provide for their accommodations and salary during their deployment. In the EU context and per the initial JIT agreement established between participating member states, JIT members are free to exchange any and all relevant information pertaining to the case in question, and all evidence gathered by the JIT may be shared with participating member states. Further, legal assistance can thus be provided between member states through the JIT without the need for a rogatory letter.

JITs can theoretically be comprised of any competent official or nonofficial, but under normal circumstances, special considerations must be taken into account regarding the inclusion of law enforcement officers and judicial officials from different national jurisdictions. For instance, the agreement should include provisions that outline special consideration for the admissibility of evidence obtained by the JIT in national courts and special considerations for the execution of MLA requests by the JIT to member states. With regard to participating police officers, conditions on their engagement in coercive activities in the area of operation need to be considered, as well as their ability to carry firearms. Due to the many legal, procedural, and logistical complexities involved in setting up a JIT, the EU maintains a network of JIT experts as guides and facilitators to assist in designing JITs. Further, in 2010 the European Council adopted a model agreement for setting up a JIT.<sup>128</sup> Eurojust and Europol developed a detailed manual “to inform practitioners about the legal basis and requirements for setting up a JIT and to provide advice on when a JIT can be usefully employed.”<sup>129</sup>

127. Judit Nagy, “About Joint Investigation Teams in a Nutshell,” *Issues of Business and Law*, vol. 2 (2010), pp. 105–117; Edwin Bakker and Joseph Powderly, “Joint Investigation Teams: Added Value, Opportunities and Obstacles in the Struggle Against Terrorism,” *ICCT Expert Meeting Paper*, 21 February 2011. This discussion is also largely based on Europol and Eurojust reports.

128. European Council, “Council Resolution of 26 February 2010 on a Model Agreement for Setting Up a Joint Investigation Team (JIT),” 2010/C 70/01, 26 February 2010.

129. European Council, “Joint Investigation Teams Manual,” 15790/1/11 REV 1, 4 November 2011, p. 2, <http://register.consilium.europa.eu/pdf/en/11/st15/st15790-re01.en11.pdf>.

**BOX 3. JIT: FEATURES FOR CONSIDERATION**

As a general model for institutional cooperation, the JIT concept offers a number of useful insights for discussion in the East African context.

1. Developing a temporary JIT need not focus on an actual case but can be given a more general mandate. For example, a joint threat analysis team on a particular thematic area of terrorism or organized crime or a particular group or criminal organization can produce open source strategic guidance at first to demonstrate added value and, over time, may grow to be entrusted with greater information access and investigatory powers.

2. Developing subregional South-South

cooperation cells in vulnerable areas comprised of seconded personnel as permanent contact points or liaisons between the host country and partnering states. Such an arrangement can serve a number of purposes.

- Cooperation cells in Juba or Mogadishu might help build the foundations of institutional strengthening in other sectors in these fledgling governments.

- Cells may alleviate some of the difficulties Somali and South Sudanese officials encounter when dealing with neighboring states' security services and help develop an environment of trust among participating national officials.

- Cells can provide a crucial law enforcement and judicial alternative to AU Mission to Somalia military operations, particularly in Somalia.

- Cells can help generate support for additional law enforcement and judicial sector capacity building.

3. A monitoring and evaluations unit comprised of seconded officials from member states could play a crucial role in conducting performance evaluations and a basis for peer review of subregional law enforcement and judicial practices.

## **b. Informal Institutional Cooperation Networks: The Commonwealth of Nations and Its Network of Contact Persons**

Even as an informal association of diverse states, the Commonwealth of Nations supports a range of activities with regard to legal training, legislative support, and technical assistance in matters related to counterterrorism. These activities are often executed in partnership with the United Nations, subregional organizations, and individual states. The Commonwealth also offers a potentially advantageous environment for member states to engage in legal cooperation against terrorism and organized crime. Despite being comprised of member states of widely divergent levels of technical capacity, their legal systems are largely based on or influenced by the common law tradition. The membership in the Commonwealth of IGAD member states Kenya and Uganda, as well as neighboring states Rwanda and Tanzania, makes an examination of the Commonwealth's role in legal cooperation to counter terrorism particularly relevant for East Africa and the Horn.

In this section, we present a short case study on the counterterrorism activities of the Commonwealth with a particular focus on its Commonwealth Network of Contact Persons (CNCNP), an informal network of designated individuals meant to promote legal cooperation among Commonwealth member states. This model, similar to the EJN, is comprised of a system of contact persons or focal points on call to assist with cross-border legal questions within their own national jurisdictions and to receive inquiries from counterparts abroad. Although the mandates of similar cooperation networks may differ greatly in scope, procedure, and structure, the primary function of such a network is to provide guidance in the legal assistance process. Access to contact persons well versed in their own criminal laws and procedures and the agreements governing legal cooperation with partnering states is extremely valuable, if not compulsory, to ensuring successful and lawful cross-border investigations and prosecutions.

## THE COMMONWEALTH NETWORK OF CONTACT PERSONS

The CNCP was established in order to enhance cooperation in criminal matters among Commonwealth member states with particular reference to the Scheme Relating to Mutual Assistance in Criminal Matters Within the Commonwealth (the Harare Scheme) and the London Scheme for Extradition Within the Commonwealth. The CNCP was designed as a web of interconnected contact persons designated by each Commonwealth state, under the loose coordination of the Commonwealth Secretariat. The CNCP's primary functions are to facilitate and enable contact between state authorities requesting or offering legal assistance, to provide practical legal advice to relevant authorities domestically or in other Commonwealth jurisdictions, and inform the Commonwealth Secretariat of changes in relevant procedure or legislation within their jurisdiction.<sup>130</sup> Unlike similarly modeled formal networks, the CNCP is not governed by a rigid procedural code but by a general framework of conduct. As they are not bound by a specific instrument in the provision of legal assistance, CNCP contact persons may facilitate legal cooperation in accordance with any relevant legal frameworks and not necessarily with reference to the Commonwealth Schemes. Like all institutions built for multilateral legal cooperation, however, its resourcefulness is commensurate with the degree to which member states use it.

The institutionalization of the CNCP cannot be separated from the context of the voluntary nature of member state association within the Commonwealth. Although the network was conceived in order to enhance legal cooperation in the Commonwealth generally, it was also meant to strengthen the efficacy of the Harare and London Schemes.<sup>131</sup> The

Harare and London Schemes were adopted in order to provide a voluntary, legal basis for the rendering of MLA and extradition, respectively, between Commonwealth member states. Unlike formal instruments or conventions, however, these Schemes are nonbinding. They need not be referenced as the basis for MLA, be ratified into national law, or be upheld as legal bases for the production in court of evidence or testimony, in the case of MLA, or suspects, in the case of extradition.<sup>132</sup> Further, both Schemes specify central or competent authorities as the individuals that have the power to actualize their provisions in practice and do not mention the use of the CNCP.<sup>133</sup> Ultimately, the Commonwealth Schemes are broad templates for cooperation between Commonwealth states that may serve as a legal basis for MLA and extradition but lack the weight of binding instruments.

The establishment of the CNCP was first endorsed in Ghana at a Commonwealth law ministers meeting in October 2005. In its opening principles, the "Framework of the CNCP" clearly underscores that the designated contact persons do "not act as the Central Authority of a Member State unless the Central Authority also acts as a Contact Person" and the role of the central authority identified in the Harare Scheme is "unaffected by the establishment of the CNCP."<sup>134</sup> By 2007, with the support of the Commonwealth Secretariat, the CNCP became operational and held its inaugural meeting. At their first meeting, contact persons engaged with practitioners from related institutions such as Eurojust, Interpol, and UNODC; exchanged member state legislation and case law on cross-border legal cooperation; and received basic training on the role of contact persons.<sup>135</sup> The Commonwealth Secretariat maintains a list of contact persons on its website and disseminates relevant information received

130. Commonwealth Secretariat, "Framework of the CNCP," n.d., arts. 5.1–5.4, [http://www.thecommonwealth.org/Inter-nal/165671/165696/framework\\_of\\_the\\_cnpc/](http://www.thecommonwealth.org/Inter-nal/165671/165696/framework_of_the_cnpc/).

131. Commonwealth Secretariat, "Report of the Inaugural Meeting of the Commonwealth Network of Contact Persons," 27–28 February 2007, p. 2, [http://www.thecommonwealth.org/shared\\_asp\\_files/GFSR.asp?NodeID=167916](http://www.thecommonwealth.org/shared_asp_files/GFSR.asp?NodeID=167916).

132. Commonwealth Secretariat, "The Harare Scheme Relating to Mutual Legal Assistance in Criminal Matters Within the Commonwealth: The Way Forward," *Journal of Commonwealth Law and Legal Education* 6, no. 2 (2008): 141–142.

133. See "Scheme Relating to Mutual Legal Assistance in Criminal Matters Within the Commonwealth," n.d., para.5, [http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/2C167ECF-0FDE-481B-B552-E9BA23857CE3\\_HARARESCHEMERELATINGTOMUTUALASSISTANCE2005.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/2C167ECF-0FDE-481B-B552-E9BA23857CE3_HARARESCHEMERELATINGTOMUTUALASSISTANCE2005.pdf); "The London Scheme for Extradition Within the Commonwealth," n.d., [http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/%7B56F55E5D-1882-4421-9CC1-71634DF17331%7D\\_London\\_Scheme.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B56F55E5D-1882-4421-9CC1-71634DF17331%7D_London_Scheme.pdf) (referring to "competent executive authority" and "competent judicial authority").

134. Commonwealth Secretariat, "Framework of the CNCP" ("Principles of the CNCP"). This contrasts with the legal basis guiding the EJM in which contact points are chosen from among central authorities.

135. Commonwealth Secretariat, "Report of the Inaugural Meeting of the Commonwealth Network of Contact Persons."

**BOX 4. CNCP: FEATURES FOR CONSIDERATION**

1. The establishment of an informal network of dedicated contact points or cooperation units within their existing criminal justice infrastructure can assist in overcoming the confusion and complexity of formal requests for cooperation. Such a network could essentially provide a platform for the exchange of basic legal information and advice between national jurisdictions and the acceptance or issuance of formal requests for legal assistance between national jurisdictions.
2. A more formal iteration of the CNCP model can serve as a mechanism to channel requests and operationalize cooperation between national jurisdictions and accompanying casework. National contact points/cooperation units can maintain preferential status with each other through a formal agreement and basic networking between partnering member states.
3. An informal network could provide the basis for a regular policy forum to encourage greater subregional legal cooperation. A regular policy forum can provide counterterrorism officials the opportunity to brief their counterparts on procedural changes in cross-border legal cooperation and to exchange ideas on encouraging greater and more effective judicial cooperation. They could also create the space to demonstrate the efficacy of nontraditional approaches to counterterrorism that are not normally accessible to national counterterrorism-related institutions.

through the CNCP. In partnership with the Australasian Legal Information Institute, the Commonwealth Secretariat also maintains a free online database, CommonLII, of legal information from all Commonwealth member states, including a criminal law library.<sup>136</sup>

### c. Partnerships for Institutional Strengthening: The Role of the Jakarta Centre for Law Enforcement Cooperation

Not all multilateral counterterrorism cooperation networks revolve around an operational mandate. The Jakarta Centre for Law Enforcement Cooperation (JCLEC) was established in 2004 through a partnership between the governments of Australia and Indonesia. Its purpose is to serve as a resource to enhance the capacity of law enforcement and criminal justice practitioners in Southeast Asia to counter terrorism and transnational crime. It primarily functions as a training and educational institution that facilitates a range of programs and workshops for regional law enforcement officers. Moving forward, the establishment of JCLEC was meant to

serve as a step toward the development of a more operational role, assisting with the coordination of cross-jurisdictional investigations and responding to requests for operational assistance from regional governments.<sup>137</sup>

Most JCLEC activities are conducted at its training facility, established with donor funding primarily from the government of Australia and housed within the Indonesia National Police Academy. This facility sets JCLEC apart from most institutions with a similar mandate. The JCLEC campus serves as an innovative learning environment, complete with classrooms and breakout areas, a computer lab, and a reference library, along with dining facilities, an auditorium, and a conference center.<sup>138</sup> In 2007, JCLEC opened its own dormitory, complete with swimming pool and other amenities, with the capacity to accommodate up to 124 students.<sup>139</sup> This allows JCLEC to host extended training programs, some lasting as long as a month, not only to provide a richer learning experience but to encourage stronger professional networking among participants. For example, in 2009 the Regional Executive Leadership Program brought together 25 senior police officials from 11 countries to spend four

136. Commonwealth Secretariat, "Briefing Note – Rule of Law," n.d., <http://www.thecommonwealth.org/files/216532/FileName/ComSec%20Briefing%20-%20Rule%20of%20Law.pdf>. For the Commonwealth Criminal Law Library, see <http://www.commonlii.org/int/special/crimlaw/>.

137. See Jakarta Centre for Law Enforcement Cooperation (JCLEC), <http://www.jclec.com/>.

138. JCLEC, *Annual Report 2005*, pp. 17–19, [www.jclec.com/index.php?option=com\\_docman&task=doc\\_download&gid=286&Itemid=42](http://www.jclec.com/index.php?option=com_docman&task=doc_download&gid=286&Itemid=42).

139. JCLEC, "Accommodation Building Selamatan," 22 January 2007, [http://www.jclec.com/index.php?option=com\\_content&task=view&id=129&Itemid=2](http://www.jclec.com/index.php?option=com_content&task=view&id=129&Itemid=2).

weeks together engaging on cross-border issues in countering terrorism and transnational organized crime, focusing particularly on leadership and investigations management.<sup>140</sup>

Fostering regional and international partnerships is one of JCLEC’s fundamental goals. Since its inception, it has maintained close ties with the Australian and Indonesian Federal Police, the Association of Southeast Asian Nations (ASEAN), UNODC, the International Law Enforcement Academy in Bangkok, and the South East Asian Regional Centre for Counter Terrorism in Malaysia. It enjoys diverse streams of assistance from a number of donor states, who partner with JCLEC in the delivery of particular components of its curriculum. In 2009, for instance, Germany funded a course on Internet investigations in counterterrorism and the United Kingdom funded three courses on informant handling and interviewing techniques.<sup>141</sup>

As of March 2011, more than 8,000 participants had completed training programs with JCLEC.<sup>142</sup> Its current training regimen operates along seven main streams of practice: investigations and management of serious crime, criminal intelligence, forensics, financial investigations, anticorruption, communications, and policy.<sup>143</sup> These programs draw modest participation from ASEAN countries but are open to the entire international community. Yet, it remains a quintessentially Australian-Indonesian enterprise: between 2008 and 2009, about 80 percent of approximately 2,000 training participants were Indonesian nationals, and an overwhelming majority of the trainers was Indonesian and Australian.<sup>144</sup>

**BOX 5. JCLEC: FEATURES FOR CONSIDERATION**

- |   |   |  |
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| <p>1. A dedicated, permanent, joint training facility, perhaps under the auspices of the ISSP and EAPCCO, would provide an educational environment more conducive to extended training programs for subregional counterterrorism officials. Extended on-site training programs centrally located on a dedicated campus could</p> <ul style="list-style-type: none"> <li>• provide a greater opportunity for participating officials to build trust with their colleagues across borders and establish relationships that last beyond the time spent in training,</li> <li>• offer more-intense programming that allows for classroom-based material to</li> </ul> | <p>be given practical meaning through daily exercises and simulations, and</p> <ul style="list-style-type: none"> <li>• serve as a permanent shared institution that promotes broader institutional change over time through its alumni.</li> </ul> <p>2. Undertaking such a project could greatly enhance donor coordination in accordance with a centralized programming scheme. JCLEC’s schedule of programming eliminates redundancy by centralizing and coordinating international donor support into individual components of a larger curriculum.</p> <p>3. Additional considerations for the establishment of a joint training center may include</p> | <ul style="list-style-type: none"> <li>• an agreement by participating member states on where the facility will be located,</li> <li>• the manner in which it would be funded and how costs will be split among partnering states,</li> <li>• if and how to obtain partnerships with international donor states, and</li> <li>• ensuring that all participating subregional states are the primary and equal beneficiaries of the facilities programming.</li> </ul> |
|---|---|--|

140. JCLEC, *Annual Report 2009*, pp. 21–22, [www.jclec.com/index.php?option=com\\_docman&task=doc\\_download&gid=293&Itemid=42](http://www.jclec.com/index.php?option=com_docman&task=doc_download&gid=293&Itemid=42).

141. *Ibid.*, pp. 16–17.

142. Australian Federal Police, “Fighting Terrorism at Its Source,” n.d., <http://www.afp.gov.au/policing/fighting-terrorism/fighting-terrorism-at-its-source.aspx>.

143. JCLEC, *Annual Report 2005*, p. 21.

144. JCLEC, *Annual Report 2009*, p. 11–15; JCLEC, *Annual Report 2008*, pp. 16–20, [www.jclec.com/index.php?option=com\\_docman&task=doc\\_download&gid=291&Itemid=42](http://www.jclec.com/index.php?option=com_docman&task=doc_download&gid=291&Itemid=42).



# ANNEX 2—Task Force Itinerary

## DAY ONE: Sunday, 4 March 2012 Radisson BLU Hotel, Addis Ababa, Ethiopia

All Day Task Force Members Arrive  
19:30 Informal Team Dinner

## DAY TWO: Monday, 5 March 2012 Radisson BLU Hotel, Addis Ababa, Ethiopia

**09:00 Welcoming Remarks**  
**Mr. James Cockayne**, Co-Director, Center on Global Counterterrorism Cooperation  
**Ms. Lotte Machon**, Deputy Head of Mission, Royal Danish Embassy, Addis Ababa  
**Commander Abebe Muluneh Beyene**, Head, IGAD Security Sector Program

10:00 Coffee Break

**10:30 Session I: Task Force Orientation**  
The organizers will present the background of the task force project and an overview of the task force itinerary, study tour, the roles of Rapporteurs, and the materials provided in the resource pack. A question-and-answer session will follow.

12:00 Group Lunch

**13:00 Session II: Balancing Aspirations and Expectations**  
Task force members will discuss the task force Background Paper. They will exchange views on the challenges and potential entry points for increased cooperation in the subregion and what they hope to see come out of the task force project.

**14:30 Session III: Meeting With Djiboutian National Delegation**  
Members of the task force will meet with the Djiboutian national delegation to discuss strengthening legal and institutional cooperation against terrorism from the Djiboutian perspective.  
**Mr. Ahmed Loita Ahmed**, Magistrate and Technical Counsellor of the Ministry of Justice,

Republic of Djibouti

**Mr. Ahmed Hassan Djama**, Magistrate and Technical Counsellor of the Ministry of Justice, Republic of Djibouti

*Rapporteurs:*

**Mr. Richard Barno**, IGAD Security Sector Program

**Mr. Mohamed Abdullahi Hamud**, Ministry of Interior and National Security, Somali Republic

ANNEX 2  
Task Force  
Itinerary

## DAY THREE: Tuesday, 6 March 2012 Radisson BLU Hotel, Addis Ababa, Ethiopia

**09:00 Session IV: Meeting With Ethiopian Lawmakers, Police, and Judicial Officials**  
Members of the task force will meet with representatives of Ethiopian House of People's Representatives, law enforcement, and judicial agencies to discuss law enforcement cooperation and information sharing against terrorism from the Ethiopian perspective.  
*Rapporteurs:*  
**Ms. Amina Abdillahi**, Juge au Tribunal de Premiere Instance, Republic of Djibouti  
**Mr. Mohamed Almustafa Musa Abdalla**, Ministry of Justice, Republic of the Sudan  
**Mr. Richard Barno**, IGAD Security Sector Program

10:30 Coffee Break

**10:45 Session IV—Continued**

12:00 Lunch

**13:30 Session V: Meeting With the African Union**  
A representative from the African Union (AU) will brief the task force on the ongoing activities of the AU to counter terrorism and transnational crime in eastern Africa and the Horn (especially in regard to mutual legal assistance and extradition).  
**Ms. Einas Mohammed**, Counter-Terrorism and Strategic Issues Desk, Defense and Security Division, Department of Peace and Security, AU Commission

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|              | <i>Rapporteur:</i><br><b>Mr. William Julius Wari</b> ,<br>National Security Service, South Sudan  |
| 14:30        | Coffee Break  |
| <b>15:00</b> | <b>Session VI: Meeting With the Sudanese National Delegation</b>  |
|              | Members of the task force will meet with the Sudanese national delegation to discuss law enforcement cooperation and information sharing against terrorism from the Sudanese perspective. |
|              | <b>General Mohammed Gafar</b> ,<br>Sudanese National Counter-Terrorism Centre,<br>Republic of the Sudan   |
|              | <i>Rapporteurs:</i><br><b>Mr. John Kiplimo</b> , National Counter-Terrorism<br>Centre, Republic of Kenya  |
|              | <b>Mr. Fassikaw Molla</b> , Ministry of Justice,<br>Federal Democratic Republic of Ethiopia   |
| 16:00        | Coffee Break  |
| <b>16:15</b> | <b>Session VI – Continued</b>   |
| 17:00        | Free Time   |
| 19:00        | Cultural Outing/Dinner  |

## DAY FOUR: Wednesday, 7 March 2012 Radisson BLU Hotel, Addis Ababa, Ethiopia

|              |                                  |
|--------------|----------------------------------|
| <b>09:00</b> | <b>Session VII: Team Meeting</b> |
| 11:00        | Travel to Nairobi                |

## DAY FIVE: Thursday, 8 March 2012 Norfolk Fairmont Hotel, Nairobi, Kenya

|              |  |
|--------------|--|
| 09:30        | Team Meeting   |
| <b>10:30</b> | <b>Session VIII: Meeting With Kenyan Police and Judicial Officials</b>   |
|              | Members of the task force will meet with representatives of Kenyan law enforcement and judicial agencies to discuss law enforcement cooperation and information sharing against terrorism from the Kenyan perspective. |

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|              | <i>Rapporteurs:</i><br><b>Ms. Betty Khisa</b> , Office of the Deputy Public<br>Prosecutor, Republic of Uganda   |
|              | <b>Mr. Fassikaw Molla</b> , Ministry of Justice,<br>Federal Democratic Republic of Ethiopia   |
| <b>12:30</b> | <b>Session IX: Lunch Meeting With Civil Society</b>   |
|              | The task force will discuss the role of civil society in promoting human rights and the rule of law while countering terrorism in the subregion. Guest speakers will share their thoughts on how these issues relate to the effectiveness of interstate and interagency law enforcement operations against terrorism and violent extremism. |
|              | <b>Mr. George Kegoro</b> , Executive Director,<br>Kenyan Chapter of the International<br>Commission of Jurists  |

|              |  |
|--------------|--|
|              | <i>Rapporteurs:</i><br><b>Mr. Mohamed Abdullahi Hamud</b> , Ministry of<br>Interior and National Security, Somali Republic |
|              | <b>Ms. Amina Abdillahi</b> , Juge au Tribunal de<br>Premiere Instance, Republic of Djibouti                                |
| <b>14:00</b> | <b>Session X: Meeting With the South Sudanese National Delegation</b>  |

Members of the task force will meet with the South Sudanese national delegation to discuss law enforcement cooperation and information sharing against terrorism from the South Sudanese perspective.

**Brigadier Dut William Garang**,  
Ministry of Defense, Republic of South Sudan

**Brigadier Charles Ciec Mayor Cien**,  
National Security Service, Republic of  
South Sudan

|              |   |
|--------------|---|
|              | <i>Rapporteur:</i><br><b>Mr. Mohamed Almustafa Musa Abdalla</b> ,<br>Ministry of Justice, Republic of the Sudan |
| 15:15        | Coffee Break  |
| <b>15:30</b> | <b>Session X – Continued</b>  |

**DAY SIX: Friday, 9 March 2012**  
**Norfolk Fairmont Hotel, Nairobi, Kenya**

09:30      **Session XI: Team Meeting**  
12:00      Informal Lunch and Free Time

**DAY SEVEN: Saturday, 10 March 2012**  
**Norfolk Fairmont Hotel, Nairobi, Kenya**

09:30      **Session XII: Meeting With the Somali National Delegation**  
  
Members of the task force will meet with the Somali national delegation to discuss law enforcement cooperation and information sharing against terrorism from the Somali perspective.

**Mr. Farah Ali Nur**, Head of Immigration and Naturalization Section, Ministry of Interior and National Security, Somali Republic

*Rapporteurs:*

**Mr. William Julius Wari**, National Security Service, Republic of South Sudan

**Mr. Fassikaw Molla**, Ministry of Justice, Federal Democratic Republic of Ethiopia

10:30      Coffee Break

10:45      **Session XII – Continued**

11:30      Team Meetings

**DAY EIGHT: Sunday, 11 March 2012**  
**Norfolk Fairmont Hotel, Nairobi, Kenya**

All Day      Individual Drafting Assignments

**DAY NINE: Monday, 12 March 2012**  
**Norfolk Fairmont Hotel, Nairobi, Kenya**

09:30      **Session XIII: The UN Office on Drugs and Crime**  
  
A representative from UNODC will brief the task force on their ongoing activities in the field to strengthen law enforcement and judicial capacity and cooperation in the subregion.

**Mr. Bjørn Clarberg**,  
Head of Law Enforcement Programme,  
Regional Office of Eastern Africa, UNODC

*Rapporteurs:*  
**Ms. Betty Khisa**, Office of the Deputy Public Prosecutor, Republic of Uganda

**Mr. Mohamed Abdullahi Hamud**, Ministry of Interior and National Security, Somali Republic

10:30      Coffee Break

10:45      **Session XIII – Continued**

12:00      **Session XIV: Lunch Meeting With Kenyan Lawmakers**

Members of the task force will meet with a representative of the Kenyan parliament to discuss Kenya's current framework for engaging in cross-border legal cooperation against terrorism and serious transnational crime. The discussion will also touch on ideas on the future of multilateral law enforcement cooperation, particularly focusing on matters of mutual legal assistance and extradition.

*Rapporteur:*

**Mr. Richard Barno**,  
IGAD Security Sector Program

14:00      Travel to Entebbe

**DAY TEN: Tuesday, 13 March 2012**  
**The Sheraton, Kampala, Uganda**

09:30      **Session XV: Meeting With Ugandan Lawmakers**

Members of the task force will meet with the Committee on Legal and Parliamentary Affairs to discuss Uganda's current framework for engaging in cross-border legal cooperation against terrorism and serious transnational crime. They will also discuss ideas on the future of multilateral law enforcement cooperation, particularly focusing on matters of mutual legal assistance and extradition.

*Rapporteurs:*

**Ms. Amina Abdillahi**, Juge au Tribunal de Premiere Instance, Republic of Djibouti

**Mr. William Julius Wari**,  
National Security Service, South Sudan

10:30      Coffee Break

10:45      **Session XV – Continued**

12:00      Lunch

**13:30      Session XVI: Meeting With Ugandan Police and  
Judicial Officials**

Members of the task force will meet with representatives of Ugandan law enforcement and judicial agencies to discuss law enforcement cooperation and information sharing against terrorism from the Ugandan perspective.

*Rapporteurs:*

**Mr. John Kiplimo,**  
National Counter-Terrorism Centre,  
Republic of Kenya

**Mr. Mohamed Almustafa Musa Abdalla,**  
Ministry of Justice, Republic of the Sudan

15:30      Coffee Break

**15:45      Session XV – Continued**

17:00      Team Meeting

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**DAY ELEVEN: Wednesday, 14 March 2012  
The Sheraton, Kampala, Uganda**

All Day      **Session XVI: Team Drafting Session for  
Final Report**

Evening      Final Team Dinner

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**Thursday, 15 March 2012  
The Sheraton, Kampala, Uganda**

All Day      Task Force Members Depart

# ANNEX 3—List of Task Force Participants and Consultations

## MEMBERS OF THE TASK FORCE ON LEGAL COOPERATION AGAINST TERRORISM IN THE IGAD SUBREGION

- Ms. Amina Ahmed Abdillahi**, Ministry of Justice, Republic of Djibouti
- Mr. Mohamed Elmustafa Musa Abdulla Al-Fatih**, Ministry of Justice, Republic of the Sudan
- Mr. Richard Barno**, Senior Research and Policy Advisor, IGAD Security Sector Program
- Mr. Mohamed Abdullahi Hamud**, Ministry of the Interior and National Security, Somali Republic
- Ms. Betty Khisa**, Office of the Deputy Public Prosecutor, Republic of Uganda
- Mr. John Kiplimo**, National Counter-Terrorism Centre, Republic of Kenya
- Mr. Fassikaw Molla**, Ministry of Justice, Federal Democratic Republic of Ethiopia
- Mr. Julius William Wari**, Ministry of National Security, Republic of South Sudan

## TASK FORCE FACILITATORS

- Mr. James Cockayne**, Co-Director, Center on Global Counterterrorism Cooperation
- Mr. Matthew Schwartz**, Programs Associate, Center on Global Counterterrorism Cooperation

## INDIVIDUALS CONSULTED BY THE TASK FORCE

### Djibouti

- Mr. Ahmed Loita Ahmed**, Magistrate and Technical Councillor, Ministry of Justice
- Mr. Ahmed Hassan Djama**, Magistrate and Technical Councillor, Ministry of Justice

### Ethiopia

- Mr. Michael Teklu Beyene**, Director, Prosecution and Investigation, Ministry of Justice
- Cmdr. Muluwork Gebre**, Rapid Deployment Intelligence,

Federal Police Commission

**Cmdr. Yemane Gessew**, Head, Interpol National Central Bureau, Federal Police Commission

**Mr. Mehrateab Mulugeta Haile**, Director, IGAD Affairs, Ministry of Foreign Affairs

**Mr. Yoseph Kiros**, Assistant Chief Special Prosecutor, Ministry of Justice

**Mr. Ngusu Lemma**, Secretary-General, Parliament

**Inspector Moni Mengesha**, Head, Human Trafficking and Illegal Drugs Department, Federal Police Commission

**Mr. Reta Alemu Nega**, Director of International Law, Ministry of Foreign Affairs

**Mr. Gisle Samlemikael**, Ministry of Justice

**Hon. Asmelash W/Selassie**, Chairperson, Legal and Administrative Affairs Standing Committee, House of People's Representatives

**Hon. Tesfaye Daba Wakjira**, Chairperson, Foreign, Defense and Security Affairs Standing Committee, House of People's Representatives

### Kenya

- Hon. Mohamed Hussein Ali**, Member, National Assembly
- Mr. Wambilianga David**, Department of Immigration
- Mr. William Haribai**, Ministry of Foreign Affairs
- Mr. Abdi Doti Iya**, National Counter-Terrorism Centre
- Mr. Benjamin Musau**, Commissioner, Kenya Law Reform Commission
- Mr. Franklin Mutembei**, National Counter-Terrorism Centre
- Mr. Richard Ndambuki**, National Counter-Terrorism Centre
- Mr. Onger Nicholas**, Department of Immigration
- Mr. Richard Ogetii**, Head Legal Liaison, National Counter-Terrorism Centre
- Maj. Thomas Onchiri**, Ministry of State for Defense
- Mr. Eugene Sudi**, Ministry of Foreign Affairs

### Somalia

**Mr. Farah Ali Nur**, Head, Immigration and Naturalization Section, Ministry of Interior and National Security

### South Sudan

**Brig. Charles Ciec Mayor Cien**, National Security Service

**Brig. Dut William Garang**, Ministry of Defense

### Sudan

**Gen. Mohammed Gafar**, Director, National Counter-Terrorism Centre

### Uganda

**Hon. Ndeezi Alex**, Member, Parliament

**Mr. Asiimwe John Baptist**,  
Office of the Deputy Public Prosecutor

**Mr. Tutayomba Churchill**, Deputy Director, Legal Affairs,  
Internal Security Organisation (JATT)

**Ms. Batera Gloria**, Directorate of Citizenship and Immigration

**Hon. Kamateeka Jovah**, Member, Parliament

**Hon. Baka Stephen Mugabi**, Vice Chairman, Committee on  
Legal and Parliamentary Affairs, Parliament

**Mr. Francis K. Mutungi**, Acting Head, Legal Division,  
Ministry of Foreign Affairs

**Hon. K.C. Ayena Odong**, Member, Parliament

**Hon. Odonga Otto**, Member, Parliament

**Hon. Fox Odoi Oywelowo**, Member, Parliament

**Mr. Oola Sam**, Office of the Deputy Public Prosecutor

**Mr. Edward Sebina**, Assistant Commissioner, Ministry of East  
African Community Affairs

**Mr. Samuel Watuma**, Deputy Senior Superintendent of Police

### African Union Commission

**Ms. Einas Mohammed**, Counter-Terrorism and Strategic  
Issues Desk, Defense and Security Division, Department of  
Peace and Security

### UN Office on Drugs and Crime

**Mr. Bjørn Clarberg**, Head of Law Enforcement Programme,  
Regional Office for Eastern Africa

### Other

**Mr. George Kegoro**, Executive Director, Kenyan Section of  
the International Commission of Jurists

**Ms. Lotte Machon**, Deputy Head of Mission, Royal Danish  
Embassy, Addis Ababa

**Ms. Pernille Mortensen**, First Secretary, Royal Danish  
Embassy, Addis Ababa

**Cmdr. Abebe Muluneh Beyene**, Head, ISSP

# ANNEX 4—Key Counterterrorism, Mutual Legal Assistance, and Extradition Instruments in The Igad Subregion

## SELECT DOMESTIC LEGISLATION AND EXTERNAL ARRANGEMENTS

### Djibouti

#### External legal arrangements:

Party to the IGAD Convention on Mutual Legal Assistance (2009; ratified under Loi n° 126/11 portant ratification de la Convention de l'IGAD sur l'entraide judiciaire en matière pénale)

*Other IGAD parties as of April 2012: Ethiopia*

Party to the IGAD Convention on Extradition (2009; ratified under Loi n° 129/11 portant ratification de la Convention d'extradition de l'IGAD)

*Other IGAD parties as of April 2012: Ethiopia*

Party to 1983 Riyadh Arab Agreement for Judicial Cooperation

*Other IGAD parties as of April 2012: Sudan*

### Ethiopia

#### Related domestic legislation:

Anti-Terrorism Proclamation No. 652/2009 (2009)

Prevention and Suppression of Money Laundering and the Financing of Terrorism Proclamation No. 657/2009 (2009)

#### External legal arrangements:

Party to the IGAD Convention on Mutual Legal Assistance (2009; ratified under Proclamation No. 732/2012)

*Other IGAD parties as of April 2012: Djibouti*

Party to the IGAD Convention on Extradition. (2009; ratified under Proclamation No. 733/2012)

*Other IGAD parties as of April 2012: Djibouti*

#### Other bilateral MLA and extradition arrangements with Sudan and Yemen

### Kenya

#### Related domestic legislation:

Prevention of Organized Crime Act (2009)

Proceeds of Crime and Anti-Money Laundering Act (2009)

Mutual Legal Assistance Act (2011)

#### External legal arrangements:

Party to the Harare Scheme Relating to Mutual Assistance in Criminal Matters Within the Commonwealth

*Other IGAD parties as of April 2012: Uganda*

Party to the London Scheme for Extradition Within the Commonwealth

*Other IGAD parties as of April 2012: Uganda*

### Somalia

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#### Related domestic legislation:

Penal Code (1962): Article 10 on conditions for the recognition of foreign penal judgements; Article 11 on the granting of extradition

Criminal Procedure Code (1963): Book 5, Judicial Relations With Foreign Authorities, with provisions regarding MLA and extradition

### South Sudan

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#### Related domestic legislation:

Penal Code Act (2008): Sections 67–73 on the offense of terrorism

### Sudan

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#### Related domestic legislation:

Extradition Act (1957)

Criminal Code (1991): Articles 65 and 144 on the offense of terrorism

Anti-Terrorism Act (2001)

Law Against Money Laundering and Financing Terrorism (2010)

#### External legal arrangements:

Party to 1983 Riyadh Arab Agreement for Judicial Cooperation

*Other IGAD parties as of April 2012: Djibouti*

#### Other bilateral MLA and extradition arrangements with Ethiopia

### Uganda

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#### Related domestic legislation:

Extradition Act (1964)

Anti-Terrorism Act, No. 14 (2002)

#### External legal arrangements:

Party to the Harare Scheme Relating to Mutual Assistance in Criminal Matters Within the Commonwealth

*Other IGAD parties as of April 2012: Kenya*

Party to the London Scheme for Extradition Within the Commonwealth

*Other IGAD parties as of April 2012: Kenya*



## Ratification Matrix of Counterterrorism Mutual Legal Assistance, Extradition, and Judicial Cooperation Instruments and Multilateral Memberships of IGAD Member States

TABLE 1: UNIVERSAL INSTRUMENTS (AS OF APRIL 2012)

| No. | Convention/Treaty                        | Djibouti | Ethiopia              | Kenya                 | Somalia | South Sudan | Sudan | Uganda |
|-----|--|----------|-----------------------|-----------------------|---------|-------------|-------|--------|
| 1   | 1963 Aircraft Convention                 | R        | R [DR] <sup>145</sup> | R                     |         |             | R     | R      |
| 2   | 1970 Unlawful Seizure Convention         | R        | R                     | R                     |         |             | R     | R      |
| 3   | 1971 Civil Aviation Convention           | R        | R [DR] <sup>146</sup> | R                     |         |             | R     | R      |
| 4   | 1973 Diplomatic Agents Convention        | R        | R [DR] <sup>147</sup> | R                     |         |             | R     | R      |
| 5   | 1979 Hostages Convention                 | R        | R [DR] <sup>3</sup>   | R [DR] <sup>148</sup> |         |             | R     | R      |
| 6   | 1980 Nuclear Materials Convention        | R        |                       | R                     |         |             | R     | R      |
| 7   | 2005 Nuclear Materials Amendment         |          |                       | R                     |         |             |       |        |
| 8   | 1988 Airport Protocol                    | R        | R                     | R                     |         |             | R     | R      |
| 9   | 1988 Maritime Convention                 | R        |                       | R                     |         |             | R     | R      |
| 10  | 1988 Fixed Platform Protocol             | R        |                       | R                     |         |             | R     |        |
| 11  | 2005 Fixed Platform Protocol             |          |                       |                       |         |             |       |        |
| 12  | 1991 Plastic Explosives Convention       | R        |                       | R                     |         |             | R     | R      |
| 13  | 1997 Terrorist Bombing Convention        | R        | R [DR]                | R                     |         |             | R     | R      |
| 14  | 1999 Terrorist Financing Convention      | R        | R [DR] <sup>149</sup> | R                     | [S]     |             | R     | R      |
| 15  | 2005 Nuclear Terrorism Convention        | [S]      |                       | R                     |         |             |       |        |
| 16  | 2010 New Civil Aviation Convention [NIF] |          |                       |                       |         |             |       | [S]    |

[NIF] = NOT IN FORCE [DR] = DECLARATIONS OR RESERVATIONS [S] = SIGNED, NOT RATIFIED R = RATIFIED

Source: UN Treaty Collection, <http://treaties.un.org>; International Civil Aviation Organization, <http://www.icao.int>; International Maritime Organization, <http://www.imo.org>; International Atomic Energy Agency, <http://ola.iaea.org>.

145. Ethiopia made a Reservation with regard to Article 24, paragraph 1 of the convention and does not consider itself bound by that provision.

146. Ethiopia made a Reservation with regard to Article 14, paragraph 1 of the convention.

147. Ethiopia made the same Reservation with regard to Article 13(2) of the 1973 Diplomatic Agents Convention, Article 16(2) of the 1979 Hostages Convention, and Article 20(2) of the 1997 Terrorist Bombing Convention: "The Government of the Federal Democratic Republic of Ethiopia does not consider itself bound by the aforementioned provision of the Convention, under which any dispute between two or more States Parties concerning the interpretation or application of the Convention shall, at the request of one of them, be submitted to arbitration or to the International Court of Justice, and states that disputes concerning the interpretation or application of the Convention would be submitted to arbitration or to the Court only with the prior consent of all the parties concerned."

148. "The Government of the Republic of Kenya does not consider herself bound by the provisions of paragraph (1) of the article 16 of the Convention."

149. Ethiopia's Reservation states that "Ethiopia does not consider itself to be bound by the jurisdiction of the International Court of Justice as per Article 24 (2) of the Convention." Ethiopia's Declaration states that "[p]ursuant to Article 2 (2) (a) of the Convention, the Convention on the Physical Protection of Nuclear Materials which has been adopted in Vienna on 3 March 1980 and annexed to the [International Convention for the Suppression of the Financing of Terrorism], shall not apply in Ethiopia."

**TABLE 2: SELECT MULTILATERAL AGREEMENTS**

| Convention/Treaty  | Djibouti | Ethiopia | Kenya | Somalia | South Sudan | Sudan | Uganda |
|--|----------|----------|-------|---------|-------------|-------|--------|
| 2009 Intergovernmental Authority on Development (IGAD) Convention on Mutual Legal Assistance       | R        | R        |       |         |             |       |        |
| 2009 IGAD Convention on Extradition  | R        | R        |       |         |             |       |        |
| Commonwealth Scheme on Extradition (London Scheme)   |          |          | R     |         |             |       | R      |
| Commonwealth Scheme on Mutual Legal Assistance (Harare Scheme)                                     |          |          | R     |         |             |       | R      |
| 1983 Riyadh Arab Agreement for Judicial Cooperation  | R        |          |       | [S]     |             | R     |        |
| 1998 Arab Convention for the Suppression of Terrorism  | R        |          |       | [S]     |             | R     |        |
| 1999 Convention of the Organisation of the Islamic Conference on Combating International Terrorism |          |          |       |         |             | R     | [S]    |
| 1999 Organization of African Unity (OAU) Convention on Terrorism                                   | R        | R        | R     | [S]     |             | R     | R      |
| 2004 OAU Protocol to the Convention on Terrorism [NIF]   | R        | R        | [S]   | [S]     |             | [S]   | [S]    |
| 2000 UN Convention Against Transnational Crime   | [S]      | R        | R     |         |             | R     | R      |
| 2003 UN Convention Against Corruption  | R        | R        | R     |         |             | [S]   | R      |

[NIF] = NOT IN FORCE    [S] = SIGNED, NOT RATIFIED    R = RATIFIED

**TABLE 3: MEMBERSHIP IN SELECT MULTILATERAL ORGANIZATIONS**

| Convention/Treaty  | Djibouti | Ethiopia | Kenya | Somalia              | South Sudan         | Sudan               | Uganda |
|--|----------|----------|-------|----------------------|---------------------|---------------------|--------|
| African Union (AU)                                       | M        | M        | M     | M                    | M                   | M                   | M      |
| AU Mission to Somalia                                    | M        |          | M     |                      |                     |                     | M      |
| Commonwealth of Nations                                  |          |          | M     |                      |                     |                     | M      |
| East African Community                                   |          |          | M     | Invitation discussed | Invitation expected | Application refused | M      |
| Eastern and South African Anti-Money Laundering Group    | O        |          | M     |                      |                     |                     | M      |
| Eastern Africa Police Chiefs Cooperation Organization    | M        | M        | M     | M                    | M                   | M                   | M      |
| League of Arab States                                    | M        |          |       | M                    |                     | M                   |        |
| Middle East and North Africa Financial Action Task Force |          |          |       |                      |                     | M                   |        |
| Organisation of Islamic Cooperation                      | M        |          |       | M                    |                     | M                   | M      |

O = OBSERVER    M = MEMBER



Task Force team poses for a group photo in Nairobi. Standing, left to right: Fassikaw Molla; John Kiplimo; Richard Barno; Mohamed Hamud; Mohamed Elmustafa; and Julius Wari. Sitting, left to right: Betty Khisa; Amina Abdillahi; and Matthew Schwartz. Not pictured: James Cockayne.

PHOTO: CENTER ON GLOBAL COUNTERTERRORISM COOPERATION

East Africa and the Horn face a number of transnational security threats, including terrorism, transnational crime, and piracy. States throughout the subregion are fighting terror through justice — investigation, prosecution and trial. But effectively combating transnational threats requires close cooperation amongst states. That is challenging in a subregion with porous borders, a history of inter-state conflict, and politicized justice institutions. How, then, can the IGAD subregion fight terror through justice?

In this report, a task force of expert officials from Djibouti, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Uganda and the Intergovernmental Authority on Development sets out to answer that question. Based on consultations with stakeholders across the subregion, the report offers insights into the challenges that countries in the subregion are facing to fight terror through justice. It offers a range of innovative insights and practical recommendations for strengthening legal cooperation against terrorism in the IGAD subregion.

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