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A Critical Analysis of Egypt's Counter-Terrorism Law: Definitional Ambiguities and the Implications for Civic Engagement

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Abstract

The definition under Egypt's Anti-Terrorism Law fails to clearly delineate the constitutive legal elements of terrorism as a criminal offence posing significant challenges for the exercise of civic freedoms. This paper critically evaluates the definitional elements of terrorism under the Act, examining its potential to conflate the exercise of civic freedoms with terrorism and undermine the minimum qualitative requisites of the principle of legality under international law. The paper comprises a qualitative legal analysis of primary and secondary sources, including the relevant law, literature, news articles, reports and documents, utilising securitisation theory as a framework for understanding how ambiguous counter-terrorism legislation facilitates the 'terrorist' framing of civic actors. The analysis reveals that the inclusion of vague concepts, the convolution of the *actus reus* and *mens rea* elements, and the negation of a cumulative approach to the interpretation of the definition enables the mischaracterisation of dissent and protest as terrorism. To address these shortcomings, this paper provides normative guidance on defining terrorism which emphasises the need for a strict distinction between the constitutive elements of terrorism, precise definitions of the latter, adherence to a cumulative approach and the comprehensive exemption of the exercise of fundamental rights from the definition.

Keywords: *Counter-terrorism, Egypt, definition of terrorism, legality, civic engagement*

Introduction

Possessing perhaps one of the broadest definitions of terrorism to be encountered on the African continent, Egypt's principal counter-terrorism law, the Anti-Terrorism Law No. 94 of 2015, has frequently been described as 'stifling' and 'draconian' for its propensity to restrict civic freedoms, including the rights to freedom of expression, association and peaceful assembly.¹ When weighed up against international standards, it is apparent that its inability to unequivocally establish the scope and parameters of 'terrorism' as a criminal act under Egyptian law stems from the use of vague terminology such as 'national unity' and 'social peace', the coalescence of non-violent actions with terrorism, and the convolution of definitional elements, which significantly undermines the predictability and foreseeability of terrorism as a criminal offence (Amnesty International, 2019). Characterised by the escalation of political violence and the severe crackdown on the Muslim Brotherhood and pro-Morsi demonstrators in the post-July-2013 context, Abdel Fattah El Sisi's rule has witnessed a dramatic change in the approach to counter-terrorism dynamics in Egypt as the threat of terrorism has been used to legitimise widespread and intense repression of any dissent, criticism, protest, resistance and legitimate political opposition (Saferworld, 2017).

Following the highly publicised assassination of Prosecutor-General Hisham Barakat in June 2015, El Sisi, in his capacity as then Defence Minister, called for support in the form of mass public rallies that would give him a popular mandate to fight terrorism (Tahrir Institute for Middle Eastern Policy, 2018). What became known as the *tafweed* (mandate) speech, marked both the State's official proclamation of its 'war on terror', as well as the start of its heavily militarised and repressive counter-

¹ While the focus of this paper is an in-depth examination of the repression of civic actors under the designated counter-terrorism law of Egypt, it must be noted that the Anti-Terrorism Law is not an isolated flaw, but that various forms of government-imposed restrictions exist within a legal architecture engineered to criminalise dissent. These include restrictive non-governmental and non-profit laws that hinder civil society organisation formation, operations and funding by imposing burdensome registration requirements, prohibiting political activities, limiting the scope of civil society operations to service delivery or societal development roles, and restricting foreign funding which prevents the formation of international partnerships. Other restrictions include a protest law and restrictive media and communications regulations that limit mobilisations, access to information and freedom of expression, as well as non-legal tactics such as reprisals and smear campaigns, all of which reshape civil society activities to align with regime goals.

terrorism campaign through which numerous practices typified by significant violence, mass detention, pervasive rights violations, torture, and trials before specialised terrorism circuit courts have been justified under the pretext of consolidating national security (Saferworld, 2017; Tahrir Institute for Middle Eastern Policy, 2018). The Anti-Terrorism Law was swiftly ratified in August the same year. Article 2 of the Act defines an ‘act of terrorism’ as:

Any use of force, violence, threat, or intimidation domestically or abroad for the purpose of disturbing public order, or endangering the safety, interests, or security of the community; harming individuals and terrorising them; jeopardising their lives, freedoms, public or private rights, or security, or other freedoms and rights guaranteed by the Constitution and the law; harms national unity, social peace, or national security or damages the environment, natural resources, antiquities, money, buildings, or public or private properties or occupies or seizes them; prevents or impedes public authorities, agencies or judicial bodies, government offices or local units, houses of worship, hospitals, institutions, institutes, diplomatic and consular missions, or regional and international organisations and bodies in Egypt from carrying out their work or exercising all or some of their activities, or resists them or disables the enforcement of any of the provisions of the Constitution, laws, or regulations.

A terrorist act shall likewise refer to any conduct committed with the intent to achieve, prepare, or instigate one of the purposes set out in the first paragraph of this article, if it is as such to harm communications, information, financial or banking systems, national economy, energy reserves, security stock of goods, food and water, or their integrity, or medical services in disasters and crises.

While it can be contended that a broad definition of terrorism may allow the State to proactively address emerging terrorist threats as it provides flexibility to adapt to evolving tactics without the need for constant legal revisions, substantial evidence demonstrates that vague definitions chill rights and facilitate abuses as a result of arbitrary application against critics rather than genuine terrorist threats (Ni Aolain, 2019). Moreover, it is a well-established principle in African regional jurisprudence that a State cannot justify the violation of fundamental human rights and freedoms on the basis of domestic national security legislation (*Media Rights Agenda v. Nigeria*, 1998).

Broad definitional scopes, such as the latter, function preemptively and have the propensity to cover a wide array of inchoate, preparatory, indirect and even non-violent, non-criminal acts as they set a low evidentiary threshold which does not envisage a direct linkage between the actions they criminalise and the commission of a specific terrorist offence. Furthermore, considering Egypt's comprehensive criminal legislation, such as the Penal Code, it can be argued that the Anti-Terrorism Law largely replicates an existing framework, exemplifying its potential for selective application against political threats. This duplication is so pronounced and its articles and definitions so controversial that the Anti-Terrorism Law has been equated to a legislative redundancy – described as no more than a draconian law that 'widens government power and restricts individual freedoms' (Abdelaal, 2015).

The objective of this paper is to establish how and to what extent the definition of terrorism under the Anti-Terrorism Law restricts the exercise of civic freedoms, and to provide normative guidance on the issue of defining terrorism on the basis of these findings. To achieve this, the paper conducts a detailed analysis of the definitional elements of terrorism under the Anti-Terrorism Law, with a specific focus on the definition's potential for overreach and infringement on civil liberties, arguing for a more circumscribed definition that curbs misuse of the terrorism label. While the proposal of a comprehensive definition of terrorism is beyond the scope of this paper,² it provides normative direction on the issue of defining terrorism at the national level in a manner that respects the requirement of legality and aims to mitigate the human rights impact of the extant definition.

Theoretical Framework

Securitisation theory as proposed by Barry Buzan, Ole Waever and Jaap de Wilde provides a critical framework for understanding how counter-terrorism measures are operationalised against certain civic and political actors. The process of 'securitisation' is described as: an articulated

² The proposal of a comprehensive definition of terrorism for the African continent is fully explored in Lois A. (August 2025) *Towards a More Nuanced Definition of Terrorism in Africa: A Critical Assessment of the OAU Convention on Terrorism and its Human Rights Implications* APCOF Research Series 2025 <https://apcof.org/wp-content/uploads/035-towards-a-more-nuanced-definition-of-terrorism-in-africa-a-critical-assessment-of-the-oau-convention-on-terrorism-and-its-human-rights-implications-alara-lois-pdf-1.pdf>.

assemblage of practices where heuristic artefacts (metaphors, policy tools, image repertoires, analogies, stereotypes, and emotions) are contextually mobilised by a securitising actor, who works to prompt an audience to build a coherent network of implications (feelings, sensations, thoughts, and intuition) about the critical vulnerability of a referent object, that concurs with the securitising actor's reason for choices and act by investing the referent subject with such an aura of unprecedented threatening complexion that a customised policy must be undertaken immediately to block its development (Balzacq, 2011).

Securitisation thus explains the 'terrorist' framing of civil society actors under overbroad counter-terrorism legislation as a socially constructed speech act employed by a securitising actor who has the institutional power to escalate a political topic or issue into the realm of security concerns where such an issue poses a threat to a referent object such as national security (Buzan, Waever & de Wilde, 1998). Once this rhetoric is accepted by the securitising actor's audience, the use of extraordinary measures to neutralise the threat is legitimised, and the issue becomes securitised – meaning that it is moved beyond the normal bounds of democratic political procedure and placed on the 'panic politics' agenda (Buzan, Waever & de Wilde, 1998).

Beyond describing the discursive construction of certain individuals and organisations as terrorist – thereby justifying or enabling the implementation of extraordinary measures – securitisation theory highlights the importance of language and semantics, both from a legislative and a discourse perspective, and how this influences the shaping of the narrative around civil society and counter-terrorism, revealing how certain definitions, terms and concepts are predisposed, instrumentalised or used to justify the application of restrictive measures. In the context of this paper, securitisation theory proves useful as a theoretical lens as it emphasises the need for critical evaluation of broad definitions of terrorism, which blur lines between legitimate activism and violent acts, and can serve as a means of contextualising and understanding the specific effects, risks, and consequences of repression through the terrorist framing of certain actors.

Methodology

This paper is based on a comprehensive desktop review and analysis of relevant laws, standards, policies, applied research, and literature related to counter-terrorism and human rights. It relies on both primary and

secondary sources of information, including international human rights law instruments, relevant domestic counter-terrorism legislation, case law, UN Special Procedures communications, official reports and documents, policy documents, newspaper reports, field research conducted by others, documented interviews with civil society actors, books, journal articles, and legal commentaries.

This paper adopts a qualitative approach to its legal analysis to facilitate critical engagement with the relevant international and national legal frameworks, the interpretation and examination of the legal provisions in question and the evaluation of their consistency with international norms. This approach facilitates the identification of relationships between certain legal provisions and administrative practice under counter-terrorism legislation, and the patterns and trends resulting from such implementation, as well as in the development of legal arguments, critiques, normative guidance, and policy recommendations.

The paper's strong reliance on secondary data is acknowledged, as conducting interviews was not feasible due to the sensitive nature of national security and counter-terrorism issues in Egypt and potential risks to the researcher and civil society actors. However, the study's integrity and quality remains robust as it relies on all available formats of primary and secondary sources of information and data, including civil society reports and published interviews with affected actors.

The Principle of Legality and the Definition of Terrorism

International law mandates that any instrument establishing criminal liability must do so in conformity with the principle of legality, as recognised, for example, in article 7(2) of the African Charter and article 15 of the ICCPR. William Schabas notes that the principle of legality does not only prohibit the retroactive application of criminal laws in the narrow sense, but also places a duty on States to 'define precisely by law all criminal offences in the interest of legal certainty and to preclude the application of criminal laws being extended by analogy' (Schabas, 2019). This entails that any definition of a criminal act must clearly establish the factors and elements that distinguish such conduct from non-punishable behaviours, as ambiguity within such a description diminishes foreseeability and creates opportunity for the abuse of power with regard to ascertaining the criminal responsibility of individuals (*Castillo Petruzzi et al v. Peru*, 1999).

Terrorism as a crime is typically defined by two key components: an objective material element (*actus reus*) and a subjective mental element (*mens*

rea). Understandings of the *actus reus* at the international level are usually limited to calculated acts of violence intended to cause death or serious bodily injury to persons or serious damage or extensive destruction to property which results in major economic loss (where such destruction is not geared towards the death or serious bodily injury of persons). On the other hand, the *mens rea* element focuses on the specific purposes or aims of the perpetrator constituting ‘terrorist intent’. At the international level the two alternative aims of ‘intimidating or creating fear among the population’ and ‘compelling a government or international organisation to do or abstain from doing any act’ are considered fairly precise, conventional, and effective at defining terrorist intent, representing best practice in their construction of the *mens rea* element (Scheinin, 2021).

As terrorism constitutes a specific intent crime within the purview of criminal law, it necessitates proof of a dual intent structure. It thus requires proof of both the intent behind the underlying act framed within the *actus reus*, as well as the specific terrorist intent set down by the *mens rea* element – which elevates an ordinary crime to a terrorist offence – in order to sustain a terrorism conviction. In essence, the cumulative characteristics of the *actus reus* and *mens rea* components of a definition form a critical aspect in the characterisation of terrorism (Scheinin, 2005). For conduct to be considered ‘terrorist’, it must concomitantly satisfy the requirements of each enumerated element within a definition. The culminative approach to defining terrorism, prevalent in most international and national definitions, operates as a safeguard to ensure that only conduct unequivocally terrorist in nature is identified and prosecuted as such (Scheinin, 2005).

In the context of the offence of terrorism, it is imperative that both the physical and mental elements are delineated in a manner congruent with the principle of legality. Whilst the *actus reus* element may be relatively straightforward to establish through causation, evidentiary challenges may emerge in proving the existence or presence of a specific mental state at the time of commission, as proving subjective intention often hinges on inferential reasoning based on the specific circumstances of a given case (Scheinin, 2020; Scheinin, 2021; Saul, 2006). Definitions that are overly broad and ambiguous give rise to concerns that subjective assessments of available evidence and presumptions of terrorist intent may feature in terrorism prosecutions, or that the strict application of the constitutive elements of a definition may be disregarded, thereby undermining the principle of legality (Scheinin, 2020).

Analysis of the Definition under the Anti-Terrorism Law

The definition of terrorism under the Anti-Terrorism Law extends well beyond the thresholds set by international law, envisaging mere 'intimidation for purposes of disrupting public order' or 'community interests', or the 'harming of national unity' or 'social peace' as acts of terrorism, as well as any conduct simply aimed at achieving, preparing or threatening to commit the latter. Whilst restrictions employed to counter acts involving force or the material threat of force endangering the existence of a nation would constitute a permissible national security limitation according to international standards (UN Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1984), 'public order', for instance, is a much broader concept, and in itself, does not conform to any specific definition but is generally understood to extend to 'the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded'(Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1984).

The intimidation or disruption of public order, or threatening to do so, may thus encapsulate a wide range of actions, including breaches of peace or offensive, indecent or explicit behaviour conflicting with social policy, public opinion or accepted moral rules (Siegel, 2000). At the same time that these acts may interfere with the operations of society and the ability of people to function efficiently (Siegel, 2000), disorderly conduct such as making an excessive amount of noise during a protest or locking-on to another person, object or building, for example, does not and should not equate to an act of terrorism under national law. The same can be said for the disruption of the even more amorphous notions of 'community interests', 'national unity' and 'social peace', which possess the capability to subsume virtually any act deemed incongruous with the diverse aspirations, values and visions held by the public and the State as a whole. The inclusion of such extensive concepts in the definition poses a particular danger that large disorderly protests or demonstrations could be mischaracterised as acts of terrorism.

The definition notably cites certain non-violent actions, such as 'preventing or impeding public authorities or governmental bodies from carrying out their work or exercising all or some of their activities', as well as acts causing 'damage to buildings or public or private properties'. The recognition of the disruption of service delivery and mere property damage

as acts of terrorism gravely endangers the exercise of the right to peaceful assembly, as it is acknowledged that a certain level of disruption to the day-to-day functioning of the State and its activities is an inherent quality of the right, and that damage to property may very well occur during an assembly that otherwise meets the ‘peacefulness’ requirement under international law (UN General Comment 37, 2020). Reference to property damage without the qualifications of causing ‘serious’ or ‘substantial’ damage or ‘extensive destruction’ of property which ‘results in major economic loss’ as found under the UN sectoral terrorism conventions and protocols, has the ability to subsume minor, incidental and accidental damage that may occur during a peaceful assembly, leading to the disproportionate prosecution of property damage as a terrorist crime, rather than treating it as an ordinary offence under normal criminal legislation in contravention of international standards (ACHPR Guidelines on Freedom of Association and Assembly in Africa, 2017). This low threshold also has the potential to criminalise intentional but innocuous damage to property forming part of an act of freedom of expression.

Moreover, article 2 makes a very broad attempt at criminalising incitement or terrorist speech offences in the second paragraph of the definition through the incorporation of ‘any conduct committed with the intent to achieve or instigate’ one of the aforementioned acts. Taking into account the breadth of the conduct criminalised by the definition, which ranges from ‘disrupting public order’ to ‘intimidating community interests and social peace’, acts intended to achieve or instigate the latter conduct could easily encompass any form of dissent or criticism of the State and its officials at the discretion of the authorities and be used to limit freedom of expression as the definition frames several non-violent actions, inchoate actions and ambiguous concepts as terrorism.

In April 2016, Mina Thabet and Ahmed Abdullah from the Egyptian Commission for Rights and Freedoms were arrested as part of a large-scale crackdown on human rights activists for peacefully protesting against the controversial transfer of two Red Sea Islands to Saudi Arabia (Amnesty International, 2016a). The activists were charged with ‘inciting violence and public assembly’, ‘inciting attacks on police stations’, ‘possessing leaflets calling for the downfall of the government and changing Egypt’s constitution’, and ‘impeding the President’s duties and powers’ under article 2 of the Anti-Terrorism Law, after they were initially held incommunicado and subjected to ill-treatment, which included beatings to coerce confessions (Amnesty International, 2016a; Amnesty International, 2016b; Christian Solidarity Worldwide, 2016). Thabet was released on bail

in June 2016 due to deteriorating health (Daily News Egypt, 2016). After 5 months in pre-trial detention, Abdullah was released in September 2016 on a bail of 10 000 Egyptian Pounds and subject to an asset freeze and travel restrictions (Amnesty International, 2016a; Frontline Defenders, 2016). It is reported that the evidence adduced to sustain the charges against the activists included the exercise of their right to peaceful assembly, documents relating to their human rights advocacy and leaflets pertaining to the protest, which the authorities alleged were intended to incite violence and the overthrow of the regime, though no concrete evidence linking them to violent terrorist activities was ever presented (Amnesty International, 2016b; Morning Star News, 2016).

In April 2018, Adel Sabri, an Egyptian journalist, human rights defender and editor-in-chief of Masr Al-Arabia, an independent news website that published on issues relating to human rights and democracy, was arrested during a raid on the Masr Al-Arabia office and charged with 'disseminating ideologies through text and images published in Masr Al-Arabia news website to change constitutional and fundamental principles of the State', 'inciting protests to harm security and public order', and 'affiliation with a terrorist organisation with the purpose of undermining the political system' under article 2 and related articles of the Anti-Terrorism Law as part of Case No. 4681/2018 (Front Line Defenders, 2019). Shortly after, in May, the Egyptian authorities blocked the Masr Al-Arabia website for 'publishing content that supports terrorism and extremism and deliberately spreads lies' (Committee to Protect Journalists, 2017). Sabri was released in July 2020 after he had been detained for the maximum 2-year pre-trial detention period under Egyptian law for merely exercising his freedom of expression (Al Jazeera, 2020).

Regarding the *mens rea* element, international law mandates that the subjective mental element of the crime of terrorism should be conceived in the form of one or two precisely and narrowly formulated terrorist aims (Scheinin, 2020). Comparatively speaking, it cannot be said that the definition in the Anti-Terrorism Law makes clear the necessary distinction between the objective material elements and the aims or purposes of terrorism as a crime. In fact, it can be argued that the definition completely subverts the act-intention construct by listing acts such as disrupting service delivery, impeding the work of public authorities, property damage, disrupting public order, and intimidating community interests and social peace without delineating whether these concepts form part of the *actus reus* or *mens rea*. This is made more explicit by the second paragraph of article 2, which states that 'a terrorist act shall refer to any conduct

committed with the intent to achieve, prepare or instigate one of the purposes set out in the first paragraph of this article’.

This conflation of the physical and mental elements of the crime lowers the threshold of terrorism significantly to the point where it can incorporate minor offences, as well as inchoate, non-violent and non-criminal acts. Thus, any disruptive action or dissenting opinion, or any crime listed under the Penal Code, could conceivably be interpreted to meet the threshold of a ‘terrorist act’ without the existence of a single or set of clearly and narrowly construed terrorist intentions to elevate the status of a particular act to that of an act of terrorism in accordance with international standards (Scheinin, 2005). For example, the act of simply interrupting or impeding the work of public authorities through mass protest is likely to achieve the same ends as an act of terrorism due to the level of discretion the definition currently provides. Furthermore, the definition fails to make exemption for the exercise of fundamental human rights which has the potential to confound the exercise of civic freedoms, human rights work, political and advocacy activities with terrorism.

As illustrated by the above analysis, it cannot be said that the definition of terrorism under the Anti-Terrorism Law adheres to the cumulative approach found in international instruments due to the amalgam of proscribed conduct and terrorist aims. This essentially renders terrorism a strict liability offence as the commission of either a singular ‘act’ or ‘purpose’ under the definition could lead to a conviction.

Normative Direction and Guidance on Defining Terrorism

As a whole, the Egyptian counter-terrorism law is particularly vulnerable to politicised and subjective use due to the presence of an ambiguous definition of terrorism, which has the consequence of undermining the fundamental requirement of legality and hampering the exercise of core civic freedoms. The penultimate section of the paper is dedicated towards providing normative direction and guidance on the issue of defining terrorism within the context of the specific definitional elements restricting civic freedoms discussed above. Through the application and incorporation of the following key standards and principles, the definition under the Anti-Terrorism Law can be brought into alignment with international norms.

6.1 Actus Reus

As an instrument establishing criminal liability, it is recommended that the Anti-Terrorism Law does not make reference to vague forms of criminal participation, such as 'instigating' or 'threatening' an act of terrorism, as they expand the scope of criminal liability and are capable of subsuming conduct where there is no causal connection between a particular act and the commission of a specific terrorist offence. Counter-terrorism laws should be restrictive in that their application is limited only to circumstances in which there is a material or reasonable prospect that a proscribed act will actually occur (Saul, 2019). International law requires direct knowledge of the terrorist nature of the act and the intention to commit the act (ACHPR Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, 2015). The incorporation of the latter modes of criminal liability diminishes the predictability of the proscribed conduct, creating a subjective standard that can be applied to conduct that does not embody the gravity of terrorism.

The analysis in the previous section found that the Anti-Terrorism Law fails to make reference to property damage as envisaged by international instruments. International conventions such as the 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, the 1980 Convention on the Physical Protection of Nuclear Material, and the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism prescribe that acts must cause 'serious' or 'substantial' damage to property in order to qualify as terrorism. Where such instruments refer to 'destruction', as in the case of the Terrorist Bombings Convention of 1997, destruction of a public or government place, facility or system must be 'extensive' and result in 'major economic loss'. It is thus recommended that the definition adopt the more stringent requirement of 'causing serious damage to or extensive destruction of property' to avoid criminalising incidental damage and instances of minor damage occurring during the course of assemblies as terrorism, reserving lesser cases for ordinary criminal law.

The Act also broadly seeks to criminalise incitement or terrorist speech offences and the disruption of service delivery. The criminalisation of 'any conduct committed with the intent to achieve or instigate' one of the aforementioned acts in article 2, seems to be a highly ambiguous attempt at criminalising the sharing or dissemination of ideas, opinions, and information, and can subsume expression far beyond speech that directly incites terrorism or poses a real risk that such acts will be committed.

Additionally, reference to ‘preventing or impeding public authorities or governmental bodies from carrying out their work or exercising all or some of their activities’ can infringe on the exercise of peaceful assembly as this right fundamentally entails a certain degree of disruption to State operations and economic activities as a result of its exercise, as mentioned above (UN General Comment 37, 2020).

Beyond these shortcomings, the Act also makes reference to other broad concepts such as ‘intimidation for purposes of disrupting public order’ and ‘community interests’, the ‘harming of national unity’ and ‘social peace’. The framing of non-violent, inchoate and ambiguous concepts as terrorism easily encompasses dissent or any criticism of the State and can be used to limit freedom of expression and protest rights. On this basis, it is recommended that the definition exclude any reference to broad or ambiguous concepts or terminology, broad speech acts, and the disruption of service delivery or economic functions, considering their impact on the exercise of civic freedoms.

6.2 Mens Rea

It was remarked that the definition under the Anti-Terrorism Law upends the act-intention construct because it lists acts such as disrupting service delivery, impeding the work of public authorities, property damage, disrupting public order, and intimidating community interests and social peace without delineating whether these concepts form part of the *actus reus* or *mens rea*. The effect of the conflation of the physical and mental elements is that it lowers the threshold of terrorism significantly to the point where it can incorporate minor offences, as well as inchoate, non-violent and non-criminal acts. The definition is resultantly broad enough to subsume a wide range of non-criminal actions, including large disruptive protests, expressions of dissent, and the activities of civil society, as it does not explicitly require that acts be committed with specific terrorist intent to qualify as acts of terrorism. In order to align the *mens rea* element with international standards, it is recommended that the definition solely makes reference to the two alternative aims of ‘intimidating the population’ or ‘compelling a government or international organisation to do or abstain from doing any act’ as these purposes are conventional and narrowly framed in a manner that respects legality and aligns with international best practice.

6.3 Exemption of the Exercise of Fundamental Human Rights

As previously discussed, the incorporation of vague modes of criminal liability, preparatory acts, speech offences, the disruption of service delivery, and mere property damage within the definition can adversely affect the exercise of freedom of expression, association, and assembly if these activities are not expressly exempted. Inclusion of a comprehensive exemption for the exercise of fundamental rights will ensure that civil liberties, such as protest rights, are not mislabelled as terrorism, and can contribute towards the exercise of prosecutorial restraint in selecting appropriate criminal charges in non-democratic States or those with poor human rights records, if strictly adhered to (Saul, 2006).

To align such an exemption with the principle of legality and international standards, it is recommended that it be drafted clearly and unambiguously. A general provision applicable to the entirety of the Act, and not just specific offences, reading: ‘Advocacy, protest, dissent or industrial action, which is not intended to result in the harm mentioned in subsections (x) to (y), does not constitute a terrorist act under this Law’ would satisfy such requirements (Lois, 2025).

Conclusion

The critical evaluation of the Anti-Terrorism Law in this paper has demonstrated that the definition presents a substantial challenge to the exercise of civil society rights. Key ambiguities contributing towards the restriction of civic freedoms within the definition include the framing of non-violent disruptions of community interests, public order, national unity, social peace, service delivery, economic functions, public utilities, and the work of government officials as terrorism without providing exemption for the exercise of fundamental human rights, as well as the definition’s inability to clearly and decisively define and differentiate between the *actus reus* and *mens rea* elements of the crime of terrorism and to conform with the cumulative approach typically adhered to at the international level. This paper has identified certain key standards and principles that should be integrated and adhered to in order to remedy these definitional shortcomings and to align the definition with international standards. The normative guidance and recommendations presented herein can contribute positively towards legislative revisions and balanced reform of the Anti-Terrorism Law in a manner that augments

and prioritises a rights-based approach grounded in international human rights law standards.

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