


COMMENTARY

Evidence, weak states, and identifying terrorists after 9/11: Africans in the Crosshairs of America's War on Terror

Kris Inman 

Introduction

We also have to work sort of the dark side, if you will. We're going to spend time in the shadows in the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussions, using sources and methods that are available to our intelligence agencies if we're going to be successful. (Vice President Dick Cheney speaking on *Meet the Press*, September 16, 2001)¹

Guantanamo Diary is the firsthand account of a young Mauritanian man, Mohamedou Ould Slahi, who in 2001 found himself extrajudicially detained and incarcerated, clandestinely shipped around the world on a journey that would last until his release in 2016. An alleged terrorist incarcerated for years without due process of American law, Mr. Slahi joins the ranks of others accused of terrorism who were also clandestinely and extrajudicially detained in the name of defeating Al Qaeda or other terrorist groups. Other well-known cases, such as Moazzam Begg, have since been exonerated in courts of law, but the victims live on with the stigma of having been accused of being terrorists.² Still others, such as the Bagram detainee known only as Dilawar, have died in U.S. custody as a result of what the Bush Administration

African Studies Review, Volume 63, Number 2 (June 2020), pp. 424–429

Kris Inman, PhD, is the Research Director of the Peace through Evaluation, Learning, and Adapting (PELA) activity, a USAID-West Africa collaboration, learning, and adapting contract implemented by IBTCI. She is based in Accra. The views in this essay are those of the author alone and do not reflect the opinion or position of the United States Government or any of its constituent parts. E-mail: inman.kris@gmail.com

© The Author(s) 2020. Published by Cambridge University Press on behalf of African Studies Association

doi:[10.1017/asr.2020.21](https://doi.org/10.1017/asr.2020.21)

dubbed “enhanced interrogation techniques.”³ In plain English, Dilawar was severely beaten, denied medical treatment, and died. He was never tied to any terrorist act and seems to have simply been in the wrong place at the wrong time. These men have one blaring thing in common: they were all arrested on the hearsay of others who themselves had perverse incentives for reporting these men to the authorities.

Such cases reveal flaws in the intelligence and legal structures that have been put in place to humanely investigate, adjudicate, and prosecute terrorists. They illustrate how easily people with little power living in states with comparatively little power on the international stage can fall into the “dark side”—the shadows of the so-called War on Terror. The first part of this essay focuses on the issues around defining “terrorism” and “terrorists” in the American legal code. The second part explores the implications of these evidentiary flaws for vulnerable people living in West Africa.

Evidence and Terrorism

That information gathered on the “dark side” can be dubious, incomplete, incorrect, or used as a political weapon should not surprise any American—or concerned world citizen—who has lived through the immediate aftermath of 9/11. The failure of the intelligence community to sufficiently warn the government about the 9/11 attacks is well-documented in the 9/11 Commission Report.⁴ Further, the use of poor and politicized intelligence to justify the 2003 Iraq War is also a well-known and costly intelligence failure.⁵ In short, while at its best, intelligence is an integral part of national security, it can be flawed and wielded for ill. Despite the fact that these deficiencies in intelligence exist, the secretive nature of intelligence means that such deficiencies are not subject to public debate or scrutiny. We rely on the professionalism of our military and intelligence community—and in America, the military and intelligence community are highly professional—to have these debates on the merits of the evidence in the shadows. Nevertheless, mistakes can happen and intelligence can be politicized, especially when it remains “in the shadows” and outside the scrupulous public eye.

Against this backdrop, how do we know who is a terrorist? That is the crux of the issue we grapple with in Africa and around the world.

America’s legal framework and implications for Africa

In the United States, foreign terrorists are defined under *18 U.S. Code § 2331. Definitions*.⁶ The definition of “terrorism” is not especially straightforward, though the tools of terrorism explicated under the law—such as material support to terrorists or crimes of terrorism such as taking hostages and hijacking airplanes—are more so. The U.S.’s legal code governing the designation of Foreign Terrorist Organizations (FTOs) is *8 U.S. Code § 1189. Designation of foreign terrorist organizations*.⁷ While these are important legal codes for national security and protection against the real threats of

terrorism, they are not without limitations and challenges. For example, the designation of Boko Haram as an FTO triggered a number of legal restrictions on interacting with any member—whether the individual had joined the group willingly or through coercion—or on assisting any African organization, such as civil society working to reintegrate former Boko Haram members. These restrictions and their negative implications have been documented and communicated to the American government by, for example, a group of scholars who wrote to Secretary of State Hillary Clinton asking the Obama Administration not to designate Boko Haram an FTO.⁸

Making judgements about who does or does not meet these legal standards of terrorism has been problematic throughout history. Perhaps the best-known African case is that of Nelson Mandela, who was on the U.S. terrorist watch list until 2008, nearly twenty years after he became the President of South Africa and won the Nobel Peace prize. Today in West Africa, where multiple terrorist groups exist amid complex conflict dynamics and criminal networks, judging who does or does not meet the legal standards of a terrorist or a terrorist group is even more difficult. Should the young man who lost his livelihood due to the ongoing State of Emergency in Niger and who therefore took a job moving seemingly legal goods on a motorcycle for a group that, unbeknown to him, turns out to be a terrorist group himself be prosecuted as a terrorist or terrorist supporter? According to the legal definition, he provided material support. What about the Chibok Girls, who are abducted by Boko Haram and forced into marriage or servitude? Are they supporting Boko Haram? What about the community that decides to capitulate to living under Shari'a Law imposed by a terrorist group or face death and the destruction of their homes? Where do they fall in the "who is/is not a terrorist" determination? In Slahi's case, were his wire transfers to his relative during Ramadan material support to an al Qaeda operative? The more you dig into the myriad ways people find themselves engaged in terrorist groups—knowingly or unknowingly, willingly or unwillingly—across West Africa, the more it is apparent that the legal categories and definitions are problematic and not well-suited for dealing humanely with vulnerable populations.

The evidence base

Such examples beg the question, what evidence do we use to determine who is or is not a terrorist or terrorist supporter? In the Slahi case, the evidence against him seemed to be mostly hearsay, gathered by other detainees who had themselves been questioned under "enhanced interrogation techniques." There were records of a few phone calls between him and a relative who was an alleged Al Qaeda associate. If such thin evidence was enough to keep Slahi locked away for over a decade, we can imagine what other Africans may be facing as terrorism grips more and more of the continent and where state laws to deal with such cases either do not exist, are weak and dubious, or are politicized or applied extrajudicially.

In West Africa, where rumor and witchcraft are part of the social fabrics of many societies, the hearsay around terrorism and its accompanying stereotyping verges on egregious. The rampant stereotype du jour in West Africa is against Fulani nomads. The “Fulani problem” (code word for the idea that Fulani are terrorists, or are highly likely to become terrorists) is bantered about by policy makers, practitioners, and non-Fulani Africans, even though there is little actual evidence to suggest that Fulani are any more or less prone to terrorism recruitment than any other group. Other common stereotypes are poverty, lack of education, being male and under the age of thirty-five, and the conflation of conservative Islamic ideologies—specifically Wahhabism and Salafism—with terrorism. While there may be a correlation between such ideologies and terrorist groups, there is ample evidence gathered over two decades showing that many terrorists never radicalize ideologically and that many radical ideologues never commit terrorist acts.⁹ (Not to mention the lack of evidence to demonstrate that poor, young, uneducated men are any more or less prone to terrorism than any other demographic group.) Despite the vast amount of evidence that concludes there is no one profile or path that defines a terrorist, if one has the misfortune of being a poor, young, uneducated Salafi Fulani male in West Africa, suspicion is sure to fall on his head. There are already known cases in West Africa of such stereotyping leading to mass incarcerations of young men who never get their day in court (such as Slahi).¹⁰ Worse, such stigmatizing may actually lead to terrorist groups effectively targeting the stigmatized groups for recruitment.

As we see in cases such as Slahi’s, the evidence used to link an individual to terrorism can be equivocal. In West Africa, one hears stories of so-called “terrorists” crossing borders and committing various alleged terrorist acts (from violence to robbery to illicit trafficking). There are reports of apparent “foiled plots” against various states, though the details of these plots are almost never shared publicly. Often these reports are shared by entities with a motive to show that there is a problem—largely because civil society and security services in West Africa know full well that Western countries are willing to write large checks in the name of counterterrorism and countering violent extremism initiatives and programming. But if one digs further for actual evidence beyond mere hearsay or rumor, one is hard pressed to find it. For example, in Mauritania, one may hear of terrorists propagating “radical messages” on the radio or social media such as Facebook and WhatsApp. All three sources—radio, Facebook, and WhatsApp—are public sources of information, yet when pressed to produce examples of such messaging, none are provided.

Conclusion

Today, counterterrorism efforts in the Middle East and North Africa have effectively pushed terrorism down into the Sahelian and West African states, such as Mali, Niger, and Burkina Faso. There is concern that terrorism will spread further into coastal states such as Benin, Côte d’Ivoire, and Guinea, as

counterterrorism efforts in the Sahel displace terrorist groups. Most African states lack the capacity to conduct routine criminal investigations (for crimes such as murder), let alone to engage in effective counterterrorism. Combine this with evidence of human rights violations in response to terrorism and the need or desire to capitulate to more powerful states such as the United States, and what currently exists in Africa today is the recipe for a toxic cocktail, portending future Slahi cases, or worse.¹¹

This state of affairs underscores the legal, moral, and philosophical tensions with which the world must contend in combatting terrorism. They force us to answer the question: how much freedom, privacy, and human rights are we willing to cede to the War on Terror?¹² In America, we ceded significant privacy rights in a federal law following 9/11 known as the 2001 Patriot Act, which people like Edward Snowden exposed through extrajudicial leaks.¹³ It took fourteen years for the Patriot Act to be revised and for the most egregious parts of the law to expire. The law that corrected these privacy rights violations is known as the U.S. Freedom Act (2015).¹⁴ But Americans have not come to terms with the violations of human rights of foreign nationals in the War on Terror. Barack Obama ran his presidential campaign on a platform that included closing down Guantanamo Bay prison and either prosecuting or freeing those like Slahi who had been imprisoned there for years. However, Guantanamo Bay remains open, and people around the world are still incarcerated without due process of the law.

Notes

1. <https://www.youtube.com/watch?v=KQBsCIaxMuM>. Full transcript available at <https://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/cheney091601.html>.
2. Alan Cowell, "Charges Dropped against British Terrorism Suspect," *New York Times*, October 1, 2014. Available at <https://www.nytimes.com/2014/10/02/world/europe/moazzam-begg-freed-britain-drops-terrorism-charge.html>.
3. Tim Golden, "In U.S. Report, Brutal Details of 2 Afghan Inmates' Deaths," *New York Times*, May 20, 2005. See also *Taxi to the Dark Side*, 2007.
4. Thomas Kean and Lee H. Hamilton, *The 9/11 Commission Report*, 2004. Available at <https://www.9-11commission.gov/report/911Report.pdf>.
5. See Laurence H. Silberman and Charles S. Robb, *Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction*, 2005. Available at https://fas.org/irp/offdocs/wmd_report.pdf.
6. Available at <https://www.law.cornell.edu/uscode/text/18/2331>.
7. Available at <https://www.law.cornell.edu/uscode/text/8/1189>.
8. See full letter here: <http://carllewan.com/wp-content/uploads/2012/05/Boko-Haram-FTO-letter-to-Clinton4.pdf>.
9. For example, see Anne Spechard, *Talking to Terrorists: Understanding the psycho-social motivations of militant Jihadi terrorists, mass hostage takers, suicide bombers, and martyrs* (McLean, VA: Advances Press, 2012); Guilain Denoëux, "Radicalization Revisited: Jihad 4.0 and CVE Programming." *United States Agency of International*

- Development*, 2016. Available at https://sprw.files.wordpress.com/2016/06/radicalization-revisited_jihad-4-0-and-cve-programming_sept-2016.pdf.
10. E.g., see <https://www.cfr.org/article/boko-harams-deadly-impact>, <https://issafrica.s3.amazonaws.com/site/uploads/war-24.pdf>.
 11. For example, see Human Rights Watch, “By Day we Fear the Army, by Night the Jihadists: Abuses by armed Islamists and security forces in Burkina Faso” (2018). Available at https://www.hrw.org/sites/default/files/report_pdf/burkina_faso0518_web2.pdf; Human Rights Watch, “World Report 2019.” Available at <https://www.hrw.org/world-report/2019/country-chapters/mali>.
 12. For an excellent discussion of these tradeoffs, see Michiael Ignatieff, *The Lesser Evil: Political ethics in the age of terror* (Princeton, NJ: Princeton University Press, 2004).
 13. Specifically, Section 215 of the Patriot Act, which intelligence agencies such as the National Security Agency (NSA) used to justify mass collection of metadata on Americans’ phone records. See <https://www.congress.gov/bill/107th-congress/house-bill/3162?q=%7b%22search%22:%5b%22Uniting+and+Strengthening+America+by+Providing+Appropriate+Tools+Required+to+Intercept+and+Obstruct+Terrorism%22%5d%7d&r=9>.
 14. See <https://www.congress.gov/bill/114th-congress/house-bill/2048>.