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THE IMPACT OF COERCIVE MEASURES ON THE MANAGEMENT OF TRANSNATIONAL TERRORISM IN KENYA

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DECLARATION

This research project is my original work and has not been presented for any other academic award in any institution of learning.

Signed_____   Date_____

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This research project has been submitted for examination with my approval as university supervisor.

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FELIX ODIMMASI

Dedication

I would like to dedicate this project to my wife and son who motivate me to better myself, and be a better husband and father. It is only with their belief in me and support that I was able to successfully complete the task at hand.

ACKNOWLEDGEMENT

ABSTRACT

Kenya has been a target and continues to face significant threat of terrorist activities emanating from Al Shabaab, and Al Qaeda affiliated militant group in Somalia. This upsurge of violent terrorist attacks, both in frequency and scale, began with the Westgate Shopping Mall attack in Nairobi, followed by other large-scale attacks in other parts of the country including Mpeketoni, Mandera and Garissa specifically targeting Kenyans.

Historically, terrorist attacks such as the bombings of Norfolk Hotel on 31st December 1980 and US Embassy on 7th August 1998, although targeting Kenyans were aimed at foreign targets especially American and Israel interests. However, recent terrorism incidences in the Country point at local participation and support by youth recruited into Al-Shabaab to carry out attacks in Kenya. This trend coincides with the emerging threat of homegrown operatives, including local Muslim youth from Islamic backgrounds as well as recent converts, recruited into and trained by the Al-Shabaab to carry out attacks in Somalia and within Kenya.

This study therefore assesses the impact of Kenya's counter terrorism laws, policies and practices on the spread of transnational terrorism, and establishes that there is urgent need for re-evaluation of counter terrorism measures applied by the government as they are counter-productive and create conditions conducive for the spread of terrorism in Kenya.

LIST OF ABBREVIATIONS AND ACRONYMS

ATPU   Anti-Terrorism Police Unit

AU   African Union

CBO   Community Based Organizations

CPRM   Conflict Prevention, Management and Resolution

CTC   Counter Terrorism Committee

EAC   East African Community

GSU   General Service Unit

ICCPR   International Covenant on Civil and Political Rights

ICRC   International Committee of the Red Cross

IGAD   Intergovernmental Authority on Development

KDF   Kenya Defence Forces

KPS   Kenya Prisons Service

NGO   Non-Governmental Organization

NCRS   National Counter Radicalization Strategy

NCTC   National Counter Terrorism Centre

NCTS   National Counter Terrorism Strategy

NIS   National Intelligence Service

NODC   National Disaster Operations Centre

NPS   National Police Service

NSIS   National Security Intelligence Service

NYS   National Youth Service

OAU   Organization of African Unity

PISCES	Personal Identification Secure Communication Electronic Systems
PSC	Peace and Security Council
REC	Regional Economic Community
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children Education Fund
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Resolution
US	United States

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CHAPTER ONE

INTRODUCTION AND BACKGROUND OF STUDY

1.1   Introduction

Kenya has been a target and continues to face significant threat of terrorist activities emanating from Al Shabaab, an Al Qaeda affiliated militia group based in Somalia. Historically, terrorist attacks such as the bombings of Norfolk Hotel on 31st December 1980 and US Embassy on 7th August 1998, although targeting Kenyans were aimed at foreign targets especially American and Israel interests. However, there has been an upsurge of violent attacks, both in frequency and scale, which began with the Westgate attack in Nairobi, followed by other large-scale attacks in other parts of the country including Mpeketoni, Mandera and Garissa, specifically targeting Kenyans.

The Global Terrorism Index (GTI) 2014, which enumerates terrorist incidents, resultant fatalities, injuries and property damage therefrom in a year, ranks Kenya twelfth (12th) among one hundred and sixty-two (162) countries that recorded the highest number of terrorism activities in 2013, the second highest in Africa behind Somalia[1]. A similar report ranked Kenya eighteenth (18th) in 2012, indicating an upsurge in terrorist activities[2].

Recently however, there is an emerging threat of homegrown operatives, including local Muslim youth from Islamic backgrounds as well as recent converts, recruited into and trained by the Al-Shabaab to carry out attacks in Somalia and within Kenya.[3] The GTI report has attributed this

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[1] "Global Terrorism Index Report 2014: Measuring and Understanding the Impact of Terrorism," Institute for Economics and Peace (2014: 8).

[2] "Global Terrorism Index: Capturing the Impact of Terrorism from 2002-2011," Institute for Economics and Peace (2012: 5).

[3] Muriuki, P. N., "Securing Justice; A Critical Analysis of Kenya's Post 9/11 Security Apparatus." World Academy of Science, Engineering and Technology, International Scholarly and Scientific Research & Innovation (2012: 6).

upsurge in local recruitment, frequency and scale of terrorist attacks to state repression in the form of extra-judicial killings and gross human rights abuses among other factors[4], atrocities often associated with Kenya's counter terrorism strategy[5].

This study therefore reviews Kenya's counter terrorism measures and practices, assesses their impact on the spread of transnational terrorism, and seeks to establish that coercive measures are counter-productive and ineffective in the management thereof.

1.2   Statement of the Research Problem

Recent terrorism incidences in the Country point to participation and support by local youth recruited into Al-Shabaab to carry out attacks in Kenya. This worrying trend requires urgent attention to address radicalization, indoctrination and the conditions conducive for the recruitment of Kenyan youth into terrorist groups.

Although States are duty bound to protect their citizens, some of the counter terrorism measures adopted often contravene human rights and international law. Kenya's counter terrorism measures including policing and military intervention have been criticized as being ineffective, replete with reports of extrajudicial killings, arbitrary arrests and detention, and torture by State agencies. Further, these coercive measures may be counterproductive as they create conditions conducive for the recruitment of youth into terrorist groups and the spread of terrorism.

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[4] Ibid.
[5] Human Rights Watch World Report, 2015.

However, counter terrorism measures and activities ought to have the respect of human rights at heart.[6] This would involve development of strategies that uphold human rights principles and respect international law.

This study therefore scrutinizes Kenya's counter terrorism strategy and the effectiveness thereof in managing transnational terrorism, or whether they play any role in the spread of terrorism, and are therefore counter-productive.

1.3   Objectives

The main objective of the study is to scrutinize Kenya's counter terrorism strategy and its effectiveness in managing the threat of terrorism in Kenya. Other objectives include:

1.3.1   To highlight the role of international obligations in counter terrorism;

1.3.2   To interrogate Kenya's counter terrorism strategy; and

1.3.3   To evaluate the impact of coercive counter terrorism policies and practices on the spread of terrorism in Kenya.

1.4   Research Question

This research will attempt to answer the following question: Are Kenya's coercive counter terrorism policies, measures and practices responsible for the upsurge of homegrown terrorism activities?

The following secondary questions will also be addressed:

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[6] "Human Rights, Terrorism and Counter-terrorism", Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 32. United Nations, Geneva (2008).

1. Is Kenya's counter terrorism strategy effective in managing the transnational terrorism threat?

2. Are Kenya's counter terrorism measures counterproductive in managing transnational terrorism?

3. How can Kenya manage the threat of transnational terrorism?

1.5   *Justification of the Study*

States are duly obligated by international law to protect the lives of those in their jurisdiction, and this includes protection from the threat of terrorism. However, the resultant counter terrorism measures adopted often go against principles of human rights as incidences of arbitrary arrests, detention and extra-judicial killings are rife.

There is need therefore to evaluate the impact of such counter terrorism policies and practices on the spread of terrorism. Coercive measures may sometimes be counterproductive, especially if they fail to uphold human rights, discriminate upon or alienate certain groups, or increase repression. Specifically, there is need to assess the likely impact of Kenya's counter terrorism measures and activities on the spread of transnational terrorism.

Overall, this research therefore has both academic and policy value. It therefore adds value to existing knowledge.

1.6   *Literature Review*

The literature review covers issues of definitions, types of counter terrorism measures and their impact on terrorism. There has never been a consensus definition of terrorism.[7] The questions that

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[7] Betts, R., in "How Do You Define Terrorism." Institute of War and Peace Studies, Columbia (2014)

begs therefore is, does the absence of generally accepted definitions increase the possibility of human rights violations by states and negatively impact their ability to fight terrorism?

1.6.1 Terrorism Defined

Scholars have suggested hundreds of definitions of terrorism which differ depending on the background and agenda of the author. The study shall review a few of these definitions, focusing on those that combine various components of terrorism.

Bruce Hoffman, an eminent theorist and terrorism scholar, proposed that *"terrorism is thus violence – or equally important, the threat of violence - used and directed in pursuit of, or in service of, a political aim".*[8] This definition does not identify perpetrators, intended victims or targets. However, he ponders the threat of violence, and infers that actual harm is not necessary.

Brian Forst, on one hand, defined terrorism as *"the premeditated and unlawful use of violence against a non-combatant population or target having symbolic significance, with an aim of either inducing political change through intimidation and destabilization or destroying a population identified as an enemy".*[9] While this definition appears to be more inclusive, it leaves out the actors and use of threat of force.

Although these definitions vary slightly, they highlight key elements of terrorism. These are perpetrators, intent, action or threat thereof, targets, motivation and goals. However, points of divergence include whether the perpetrators include state or other actors. Ultimately, the difficulty

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[8] Hoffman, B., "Inside Terrorism." Columbia University Press, Colombia (2006: 3).
[9] Forst, B., "Terrorism, Crime and Public Policy." Cambridge University Press, Cambridge (2009).

in defining terrorism is brought about by the fact the meaning and usage of the term evolved to fulfil the *"political vernacular and discourse of each successive era."*[10]

Due to this definitional difficulty, efforts should be focused on distinguishing terrorism from other types of violence and identifying elements that make it a distinct phenomenon.[11] States have opted for official definitions for specific purposes such as to establish legal boundaries and as a basis for policy directives.

However, although these official definitions are fairly similar, none is universally accepted either.[12] Different agencies, even those within the same government, often have different definitions. For instance, the Central Intelligence Agency (CIA) uses the following definition; *"The term 'terrorism' means premeditated, political motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents".[13]* On the other hand, the Federal Bureau of Investigations (FBI) defines terrorism as *"the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof in furtherance of political or social objectives".[14]* Each definition highlighted above is indicative of the agencies priorities and interests.

1.6.2   *Countering Terrorism*

In light of the abovementioned definitional challenges, it is unsurprising that there is no consensus on how to deal with terrorism. Generally speaking, since counter terrorism efforts entail actions

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[10] Howard, R. and Sawyer, R., "Terrorism and Counter Terrorism – Understanding the New Security Environment." McGraw-Hill/Dushkin, Connicticut (2006).
[11] Schmid, A., "Political Terrorism: A Research Guide."
[12] Goodall, C., "Defining Terrorism." The University of Nottingham, United Kingdom (2013).
[13] Definition retrieved from: https://www.cia.gov/news-information/cia-the-war-on-terrorism/terrorism-faqs.html
[14] Ibid.

taken by by the State to limit consequences of terrorism, policy formulation should be commensurate to this goal.[15] Outlining States goals, Boaz Ganor distinguishes the aims of counterterrorism policies as elimination, damage minimization and prevention of escalation thereof.[16] According to him, states should therefore formulate counter terrorism polices aimed at preventing or eliminating terrorism, as well as minimizing damage in the event of the inevitability of an attack.

Ronald Crelinsten on his part identified five approaches to counter terrorism: he described them as coercive, proactive, persuasive, defensive and long-term approaches.[17] Firstly, coercive counter terrorism, in his view *"relies on the state's monopoly on the use of violence or the exercise of hard power where state agents acting in the name of counterterrorism consistently contravene the rule of law with impunity, using their coercive powers in ways that create a reign of terror that is sanctioned by the state"*. These measures include the criminal justice approach, the war model and a facet of proactive counter terrorism.

According to Crenlinsten, the criminal justice approach changed drastically after the 9/11 attacks as many states promulgated laws which created special terrorism offences. These laws included motive, commission of terrorist acts, membership, providing material support to terrorist organizations, which includes as financing, weapons or technical expertise, and recruitment.[18]

Meanwhile, the war model, which still falls under coercive measures, *"treats terrorism as if it were an act of war or insurgency"*, equating terrorist groups to state.[19] Proactive counterterrorism

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[15] Ibid.
[16] Ganor, B., "The Counter-Terrorism Puzzle; A Guide for Decision Makers." The International Policy Institute for Counter-Terrorism, Transaction Publishers (2005:25).
[17] Crelinsten, R., "Perspectives on Counterterrorism: From Stovespipes to a Comprehensive Approach", Terrorism Research Initiative and the Center for Terrorism and Security Studies (2014).
[18] Ibid.
[19] Ibid.

on the other hand seeks to prevent a terrorist incident before it occurs. This can be done through activities such as surveillance, wiretapping, eavesdropping and among others, combining elements of the criminal justice and war models mentioned above.[20]

Conversely, defensive counterterrorism assumes that terrorist attacks are inevitable and anticipates the nature and probable target of the attack. Two basic approaches proposed hereunder include minimizing risk through prevention, and mitigation of the impact of successful attacks. Options for prevention include target hardening which entails making potential targets difficult to attack and protection of critical infrastructure among other things.[21]

Lastly, long-term counter terrorism initiatives should focus on the individual. Here, Human Security and Human Rights take precedence. Therefore, Crenlinsten was of the opinion that the promotion of social and economic rights by a State can reduce the drivers of radicalization and recruitment.[22]

Similarly, according to Alia Brahimi and Chris Mackmurdo in their article "*Defining a Full-Spectrum Counter-Terrorism Strategy*", comprehensive counter-terrorism strategies comprise of four pillars: detect and disrupt, capacity building, dealing with the enablers of terrorism and addressing the drivers.

Hereunder, security agencies utilize the *"traditional"* strategy to detect and disrupt terrorism activity in order to mitigate and neutralize threats; Capacity building involves identifying and tackling cross border terrorist networks in conjunction with other States; Dealing with the enablers

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[20] Pedahzur, A. and Ranstorp, M., "A Tertiary Model for Countering Terrorism in Liberal Democracies: The Case of Israel," Terrorism and Political Violence (2001: 22).
[21] Crelinsten, Op. Cit.
[22] Ibid.

of terrorism involves tackling facilitation and logistical networks by enhancing border controls and financial sanctions, among other measures; and, dealing with drivers of terrorism includes managing issues associated with poor governance, poverty and armed conflict.[23]

According to the them, military intervention cuts across all the above-mentioned pillars, *"through special-forces operations to disrupt terrorist cells or leaders, training provision by the army, targeting of terrorist-held oil refineries by the air force, or peacekeeping missions."*[24] However, they argue that use of force should only be complimentary to the other strategies. Therefore, in their view, *"a comprehensive counter-terrorism response requires a cohesive strategy which synchronizes 'traditional' counter-terrorism activity and measures addressing the drivers and enablers of terrorism."*[25]

Collectively therefore, all these strategies as proposed above point towards the use of both coercive strategies to prevent or disrupt terrorism activities, as well as long term strategies to deal with the causal factors. They all recommend military action for immediate goals, and the human rights and human security approach to deal with the drivers in the long run.

In the end however, contradictory expectations and evidence exist on the success of the respective strategies. According to Martha Crenshaw in *"How Terrorism Declines,"* some research expects that *"terrorism would end if governments consistently adopted hardline policies and coordinated their international implementation"*.[26] Yet others claim that hardline policies only encourage

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[23] Brahimi, A. and Mackmurdo, C., "Defining a Full-Spectrum Counter-Terrorism Strategy." Oxford University and International Institute for Strategic Studies (2015).
[24] Ibid.
[25] Brahimi and Mackmurdo, Op. Cit.
[26] Crenshaw, M., "How Terrorism Declines," Terrorism and Political Violence, Vol. 3. Routledge Publishers (1991: 73).

terrorism. According to this logic, governments would *"become the victims of their own stereotype of terrorism as responsive only to force"*.[27]

Crenshaw however concluded that in democracies, repression undermines the legitimacy of the government, subsequently limiting the public's cooperation in counterterrorism efforts, and reduces overall support thereof. The use of coercive tactics is usually condemned in democratic states, and applying such tactics thus damages the legitimacy of the government and increases support for terrorist groups and their duration. However, since coercive strategies are commonplace in authoritarian regimes, repression is not expected to hurt the reputation of the government, thus discouraging the use of terrorism as a political tool.

Importantly, Posner posits that, due to the nature of terrorism, security agencies timely information to neutralize threats.[28] However, intrusive actions can undermine the legitimacy of governments and result in disaffection by local communities. Therefore, government responses *"perceived as harsh and excessive can lead individuals to withhold information out of fear of reprisals, thus making counter terrorism efforts counter-productive"*.[29]

Moreover, since the goal of terrorist groups is to draw attention to their grievances against the state, overreactions by the government can increase popular sympathy and subsequently spur recruitment.[30] As terrorist organizations depend on support from the community, and harsh government responses can increase overall support for the groups.[31]

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[27] Ibid (1991: 74).
[28] Posner, R., "Countering Terrorism: Blurred Focus, Halting Steps." Rowman & Littlefield (2007).
[29] Donohue, L. K., "The Cost of Counterterrorism: Power, Politics, and Liberty." Cambridge: Cambridge Univ. Press (2008).
[30] LaFree, G., & Ackerman, G., "The Empirical Study of Terrorism: Social and Legal Research.'' 5 Annual Rev. of Law and Social Science (2009: 347).
[31] Ibid.

1.6.3 Conclusion

It can therefore be concluded from the literature review that counterterrorism efforts or measures cannot be merely reactive or coercive as it may increase popular sympathy for terrorist groups and spur recruitment thereto. It must therefore be proactive as well as persuasive to convince terrorist groups and their sympathizers to seek other options. States should also address political, social, cultural, and economic grievances in order to undermine the drivers that fuel the spread of terrorism.[32]

Most importantly, long-term counter terrorism initiatives should be anchored on human security and human rights. As is posited above, active promotion of social, political and economic rights in society addresses the inequalities fueling radicalization and recruitment into terrorist groups.

1.7 Gaps in the Literature Review

Beyond religious and political motivations, some scholars have identified socioeconomic and personal issues as factors driving the youth into terrorism. However, there is no consensus on the individual or collective impact of these factors.

1.8 Theoretical Framework

This study centers on Realism Theory to explain the role of the state in countering terrorism and protecting citizens. The study also looks at those with contrasting views to realism, more so on the centrality of the state in the approaches use.

1.8.1 Realism Theory

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[32] Crelinsten, Op. Cit.

Realism theory considers the state as the most important actor in international politics. This theory, as propounded by preeminent scholars such as Hans Morgenthau and Thomas Hobbes, relies on the assumptions that the state is the most important, if not the only actor in the international political arena, and non-state actors including international organizations (IGOs) and non-governmental organizations (NGOs) do not play any significant role.

Further, the state is a reflection of its inhabitants, and would *"mirror"* their characteristics. However, Hobbes described human nature as being evil, ruthless, and power wanting, or to be more specific, *"solitary, poor, nasty, brutish and short"*.[33] Consequently, issues such as national security and state survival are at the heart of realism theory, as the state is crucial for the good life of its citizens and without a state to guarantee security, life is likely to be as Hobbes described it.[34]

Realism therefore views the state as the protector territory, its population, and of their way of life. Consequently, national security essentially is defending territory against, and deterring, external threats. And, presently, the greatest threats emanate from transnational terrorism from organizations such as Islamic State (IS) and Al Qaeda (AQ), and their affiliates.

The study therefore holds the view that the state is responsible for the protection of its citizens against threats such as terrorism. The state must therefore come up with policies to fulfil this obligation effectively. However, do non-state actors also have a role to play? Who holds states accountable for its excesses? The study looks at other theories such as liberalism and critical theories.

1.8.2 *Liberalism*

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[33] Hobbes, T., "Leviathan: or, The Matter, Form and Power of a Commonwealth, Ecclesiasticall and Civil." Blackwell (1946: 82).
[34] Holsti. O., "Theories of International Relations." Hogan and Paterson Eds. (2004).

Liberal theories have been the principle challenge to Realism. John Locke, the forefather of Liberalism, completely disagreed with Hobbes pessimistic description of human nature, claiming that the decision to create a state to govern is informed by the fact that the state of nature, though perfect for liberty and freedom from interference, is lacking law and sanctions.[35] Essentially, Liberals propounded that different actors, both state and non-state, are capable of different things in the political arena.

One liberal theory associated with former US President Woodrow Wilson argues that since democratic states are intrinsically more peaceful than authoritarian regimes, institutional democracy is integral to world peace. Another more recent theory pointed out that international or multi-national institutions can assist in overcoming selfish state behavior.[36]

However, although some liberal theorists toyed with the notion that non-state actors such as multinational corporations are eat into the power of states, liberalism still viewed states as the main actors in the international political arena.[37] In fact, according to Fukuyama in *"The End of History and The Last Man",* the disintegration of the Soviet Union and the end of the Cold War was definitive proof of the triumph of liberal democracy.[38]

However, the current wave of Islamic militancy represents a direct challenge to liberal democracy. It is argued by the likes of Barry Buzan that it would be hasty and misleading to claim that the emergence of terrorist organizations like Al-Qaeda is, in his words, *"a victory for the deterritorialization of world politics".*[39] In fact, the national security state has been regained new

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[35] Locke, J., "An Essay Concerning Human Understanding." Penguin Books, London (1997).
[36] Holsti. O., "Theories of International Relations." Hogan and Paterson Eds. (2004).
[37] Walt, S., "International Relations: One World, Many Theories." Foreign Policy, No. 110. Special Edition: Frontiers of Knowledge (1998).
[38] Fukuyama, F., "The End of History and The Last Man." London (1992: xi–xii).
[39] Buzan, B., "Implications for the Study of International Relations", in M. Buckley and R. Fawn (eds), Global Responses to Terrorism, London (2003: 297).

prominence after 9/11 with the re-emergence of and enhancement of restrictions on civil liberties among other activities.[40]

1.8.3 Problem Solving

In contrast, Critical Theory challenges traditional forms of theorizing like realism and liberalism, and seeks to take apart the deep-rooted constrains they bring.[41] Robert Cox criticized traditional theories for legitimize prevailing social and political structures.[42] In support of problem solving, he posits that theories like Positivism take the world as it is, *"with the prevailing social and power relationships as well as the institutions into which they are organized."*[43] The aim, according to Cox, is to enable existing structure to effectively deal with particular challenges, rejecting the notion that theorists are merely objective bystanders.[44]

Therefore, to deal with contemporary challenges like radical religious terrorism propagated by transnational groups such as IS and AQ, Critical Theorists encourage usage of problem solving to effectively deal with the problem as it is, rather than reverting to traditional forms of theorizing. It also encourages usage of any available mechanisms including multinationals as they are increasingly becoming relevant in international politics.

The study therefore looks at realism and liberalism as theories and how their key tenets influence states counter terrorism efforts, and the role of other players in the field. Therefore, even as states undertake their obligations to ensure the safety and security of citizens, other players have a role

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[40] Ibid.

[41] Devetak, R., "Critical Theory" in "Theories of International Relations" by Burchill, S., et al. Palgrave, Macmillan (2005; 137).

[42] Devetak, Op. Cit. (2005; 142).

[43] Cox, R. W., "Social Forces, States and World Orders: Beyond International Relations Theory", Millennium (1981: 128).

[44] Devetak, Op. Cit (2005; 159).

to play to ensure compliance with international frameworks such as humans rights law. Other critical theories such as positivism, which recognizes relationships and institutions as frameworks for action and promotes problem solving, have also been exploited by the study.

1.9   Hypothesis

H1– Coercive measures and practices are ineffective in managing the threat of transnational terrorism in Kenya.

H0 – Coercive measures and practices are effective in managing the threat of transnational terrorism in Kenya.

H2– Coercive counter terrorism measures and practices are responsible for the spread of terrorism in Kenya.

1.10   Methodology

1.10.1 Research Design

This study utilized a survey research design which involves use of in-depth informant interviews to collect data from stakeholders in Kenya's security architecture, including the police, civil society and community leadership. According to Kothari, such a survey which he refers to as an experience survey "*allows the researcher to define a problem concisely by obtaining insight into the relationship between variables as well as new ideas relating to the research.*"[45]

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[45] Kothari, C. R., "Research Methodology: Methods and Techniques." New Age International, India (2004).

Owing to the sensitivity of the study, this research design provided a conducive atmosphere for the respondents to freely express their views, experiences and suggestions on the likely impact of coercive counter terrorism measures and activities.

1.10.2 Variables and Categories of Analysis

The dependent variable which the study examined was effectiveness of counter terrorism measures while the independent variable included the impact thereof on the spread of transnational terrorism. The study intended to find out whether there was a significant relationship between these two variables. Categories of analysis included both quantitative and qualitative type because the study interacted with both approaches in order to ensure that the objectives were adequately achieved.

1.10.3 Target Population

The target population in the study is limited to stakeholders in the security sector. This included heads of security agencies, members of county security committees, community leaders and representatives, as well as members of the public. The target population also included key informants drawn from selected civil society organizations which deal with security sector reforms.

1.10.4 Sampling Techniques and Sample Size

The sample group included stakeholders in the security architecture and members of the County Security Committees attached to various geographically distinct security installations serving people of different demographic groups. Therefore, Stratified Random Sampling was utilized to

identify respondents from the general study population. Kothari opined that these samples provide detailed information and more reliable data on a particular subject matter.[46]

Stakeholders in the security sector constituted the strata from which respondents were randomly selected, providing an equal opportunity of participation in the survey. The advantage of this method is that it reduces costs by concentrating the survey in randomly selected samples within each stratum.

1.10.5 Research Instruments

A semi-structured interview schedule was used to conduct interviews with stakeholders in the security sector because of its flexibility in gathering in-depth information from sensitive topics. On the other hand, key informant interview schedules were used to collect data from civil society organizations.

1.10.6 Data Collection Procedures

Secondary data was collected through extracting information from books, articles and previous reports documenting counter terrorism efforts in Kenya. Literature from other stakeholders such as government ministries, departments and agencies, as well as civil society organizations involved in the security sector was also consulted to enrich the scope of this research study.

1.11 Scope and Limitations of the Study

This study was carried out within a limited time span and with limited resources. These constraints may therefore have impact on the quality of the findings with regard to the level of accuracy. Since

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[46] Kothari, Op. Cit (2004).

the interviews to informants will also be structured and the sample size obtained through non-probability sampling, this may equally lower the level of accuracy. Further, Government officials and employees of interviewed agencies may also not be very open due obligations on confidentiality and secrecy of their work.

1.12 *Chapter Outline*

The study is divided into five broad chapters. Chapter 1 covers an introduction, the research problem, the objectives of the study as well as research questions, hypothesis, justifications, literature review, theoretical framework, the research methodology, data collection and data presentation.

Chapter two is an overview of the States international counter terrorism obligations, highlighting the regional and sub-regional initiatives undertaken by the United Nations (UN), Africa Union (AU) and Inter-Governmental Authority on Development (IGAD) towards the management of transnational terrorism, and the resultant obligations by member states.

Chapter three is a synopsis of Kenya's National Counter Terrorism Strategy (NCTS), the measures implemented to mitigate against the threat of terrorism and stakeholders involved. Included herein are the indicators of implementation and success.

Chapter four, the crux of the study, assesses the likely impact of counter terrorism measures and practices on the spread of transnational terrorism and as such will include presentation of data collected from stakeholders and findings.

Chapter five covers summary of major findings, conclusion based on the research objectives and hypothesis and recommendations of the study both at the academic and policy levels including recommendations on areas for further research.

CHAPTER TWO

THE NEXUS BETWEEN COUNTER TERRORISM AND HUMAN RIGHTS

2.1   Introduction

In this chapter we look at the states counter terrorism and human rights obligations under international law. The aim here is to establish that counter terrorism and human rights are not at logger heads, but are in fact mutually reinforcing concepts in international politics.

The Constitution of Kenya (2010) at Article 2 lists various sources and hierarchy of laws applicable in Kenya. Hereunder, it provides that *"the general rules of international law shall form part of the law of Kenya"*, and provides further that *"any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution."* Therefore, rules of international law, treaties and conventions form an integral part of Kenya's legal framework.

Commendably, Kenya has to date signed and ratified over forty-nine (49) treaties and acceded to about eighty-seven (87) others since attaining independence. These treaties are specifically in relation to the United Nations, humans rights, refugees, International Humanitarian Law, and terrorism among many others.[47] For all intents and purposes, Kenya has done better than most African states in this regard.

2.2   International Obligations

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[47] Read more at: http://www.standardmedia.co.ke/article/2000068021/in-international-treaties-lie-the-untapped-law?articleID=2000068021&story_title=in-international-treaties-lie-the-untapped-law&pageNo=1

While the UN has always been concerned with terrorism, there has been an urgency since the World Trade Center terrorist attack on 11th September 2001, and the UN Security Council has been at the forefront of these initiatives. However, the UN General Assembly (UNGA) and the High Commission on Human Rights (UNCHR) have also played a significant role in the UN's current *"Suppression of Terrorism"* approach.

One of the major resolutions includes Security Council Resolution (UNSC) 1456, the aim of which was to encourage states to guarantee that *"any measure taken to combat terrorism comply with all their obligations under international law, and [to] adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law"[57]*. Another is UNSC 1624, calling upon states to *"continue international efforts to enhance dialogue and broaden understanding between civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures […]"[48]*. Further, UN General Assembly Resolution 58/187 provides that *"States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law [and] raise awareness about the importance of these obligations among national authorities involved in combating terrorism."[49]*

UNSC 1373 establishes the foundation for the domestic legal action and promotion of law enforcement approach to counter terrorism. This resolution, empowers states to suppress terrorism financing, prevent terrorist activity, and co-operate in terrorism investigations.[50] Resolution 1373 sought to influence domestic law and practice, including legislative measures.

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[48] UN Security Council Resolution 1624 (2005)
[49] UN General Assembly Resolution 58/187 (2004)
[50] UN Security Council Resolution 1373 (2001)

However, as UNSC 1373 paid little attention to human rights, UNSC 1456, subsequently required States *"to ensure that measures taken to combat terrorism comply with obligations under international law, and the adoption of such measures should be in accordance with international law, in particular international human rights, refugee, and humanitarian law"*.[51] Under this resolution therefore States are obliged to ensure that domestic counter-terrorism efforts are compliant with international human rights standards.

Despite the specific provisions in the abovementioned resolutions, serious doubts linger as whether States are actually adhering to these obligations. As a matter of fact, UNHCR has repeatedly expressed concern with State actions in the name of counter terrorism negatively affecting civil, cultural, economic, political and social rights.[52]

Consequently, in an effort to enhance adherence and compliance, UNGA and UNHCR adopted resolutions requiring UN human rights mechanisms *"to consider, within their mandates, the protection of human rights and fundamental freedoms in the context of measures to combat terrorism and to coordinate their efforts, as appropriate, in order to promote a consistent approach on this subject."*[53]

This commitment was reiterated in the launch of the UN Global Strategy for Fighting Terrorism.[54] Elements of the strategy include developing state capacity to prevent terrorism, and most importantly, upholding human rights in the fight against terrorism among other activities.

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[51]UN Security Council Resolution 1456 of 20 January 2003, doc. S/RES/1456 (2003), para. 6.

[52]Report of the United Nations High Commissioner for Human Rights and follow-up to the World Conference on Human Rights: effective Functioning of human rights Mechanisms, doc. E/CN.4/2004/4, 5 August (22: 2003).

[53] UN General Assembly, Resolution 58/187 of 22 March 2004, doc. A/RES/58/187, para. 7, and UN Commission on Human Rights, Resolution 2004/87 (2004).

[54] Op. cit., note 9, Kofi Annan, "A Global Strategy for Fighting Terrorism".

Subsequently, member states endorsed the strategy in the form of a resolution [55] marking the first time that all member states agreed to a common strategic approach to combat terrorism, and resolving to take practical steps individually and collectively to ensure that "*human rights and the rule of law are at the heart of combating and preventing terrorism.*"[56]

Importantly, the Strategy stresses the importance of preventive measures to counter terrorism, addressing the conditions conducive to the spread of terrorism, measures to build state capacity to fight terrorism as a precursor to ensuring the respect of human rights while countering terrorism.[57] Furthermore, the Strategy reiterates that *"an effective long-term counterterrorism plan requires a multi-stakeholder approach"* and highlights the role played by the UN and regional and sub-regional bodies, as well as civil society. It provides a common framework for coordination, creating a basis for cooperative action against terrorism.[58]

2.2.1 *Nexus between Counterterrorism and Human Rights*

Human Rights have been defined as *"universal values and legal guarantees that protect individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity, primarily by state agents."* [59] This broad definition encompasses the respect for, protection and fulfillment of, civil, cultural, economic, political and social rights specifically by states and their agents.[60]

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[55] UN General Assembly, Resolution 60/288 of 20 September 2006, doc. A/RES/60/288; see also http://www.un.org/ terrorism/strategy-counter-terrorism.html.
[56] United Nations Global Counter-Terrorism Strategy, General Assembly resolution 60/288.
[57] Ibid.
[58] Op. Cit., UNGTS.
[59] "Human Rights, Terrorism and Counter-terrorism", Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 32. United Nations, Geneva (2008; 3).
[60] Ibid.

The International Covenant on Civil and Political Rights (ICCPR) under Article 2 (1) also provides that *"each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".*[61] In essence, Article 2 of the ICCPR reiterates that State measures, including counter terrorism efforts, must not circumvent international law or violate human rights.

Specifically, Article 4 (2) of the ICCPR, identifies as non-derogable *"the right to life, freedom from torture or cruel, inhuman or degrading treatment or punishment, the prohibition against slavery and servitude, freedom from imprisonment for failure to fulfill a contract, freedom from retrospective penalties, the right to be recognized as a person before the law, and freedom of thought, conscience and religion."*[62] Hereunder, States are prohibited from depriving a life arbitrarily and unlawfully, and are also duty bound to take appropriate steps protect this right to those within its jurisdiction. Thus states must enact laws that criminalize unlawful killings, and establish systems to enforce prevention and punishment for breaches thereof. Ironically, challenges arising therefrom include arbitrary killings, torture, inhuman or degrading treatment and punishment among others.[63]

While highlighting the nexus between counter terrorism strategies and conditions conducive to the spread of terrorism, former UN Secretary General Koffi Annan lamented that, *"Past cases show that Governments that resort to excessive use of force and indiscriminate repression when countering terrorism risk strengthening the support base for terrorists among the general*

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[61] International Covenant on Civil and Political Rights (ICCPR), Article 2 (1).
[62] Op. Cit., ICCPR.
[63] United Nations, Article 55 (c), The Universal Declaration of Human Rights, Article 2.

population. Such measures generally invite counter-violence, undermine the legitimacy of counter-terrorism measures and play into the hands of terrorists."[64]

The UN Counter-Terrorism Strategy also reiterates the complex links between human rights and security[65] and demands commitment by States to respect human rights and the rule of law as a essential component of the fight against terrorism. It provides that *"the promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective counter terrorism measures and the promotion of human rights are not conflicting goals, but complementary and mutually reinforcing."[66]*

However, no institution has a clear mandate to assess and establish if measures undertaken by states violate human rights standards.[67] The Counter-Terrorism Committee as established by the UN Security Council believes that this is not its mandate, and this has enabled non-compliance by States at the expense of human rights.[68]

2.2.2   Flexibility of Human Rights

However, according to researchers and human rights defenders, counter terrorism and human rights are not at loggerheads. In fact, States can balance their international law obligations by utilizing the flexibilities built into the international human rights law framework, allowing for limitations and derogations from certain human rights provisions.[69]

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[64] United Nations General Assembly, Uniting Against Terrorism: Recommendations for a Global Counter Terrorism Strategy (2006).
[65] "Human Rights, Terrorism and Counter Terrorism". Office of the United Nations Commissioner for Human Rights, Geneva (2008).
[66] United Nations Global Counter-Terrorism Strategy, General Assembly resolution 60/288.
[67] Koufa, K., "Terrorism and Human Rights," Additional progress report prepared by Special Rapporteur of the Commission on the Promotion and Protection of Human Rights, UN (2001: 8).
[68] Ibid.
[69] "Human Rights, Terrorism and Counter Terrorism". Office of the United Nations Commissioner for Human Rights, Geneva (2008).

According to the UN, States can legitimately limit some rights, including the freedom of movement, privacy, expression, association and assembly among others.[70] However, any such limitations must be provided for in the law, and in pursuit of specific legitimate purposes. An additional safeguard is provided as being *"necessary in a democratic society,"* which requires demonstration that imposing these limitations does not prejudice democratic functioning.[71] Permissible legitimate purposes are listed as *"national security, public safety and order, health, morals, and the human rights and freedoms of others",* a wide array of circumstances which would enable law enforcement agencies to take requisite action with the scope of international human rights law and principles.[72]

2.3   *The AU*

The formation of the African Union (AU) in July 2002 shortly after the 9/11 attacks in the US was influenced by terrorism and the global response through UNSC 1373. Furthermore, the US Embassy bombings in Kenya and Tanzania in 1998 also shaped the 1999 Algiers Convention establishing the AU. Thus, counter-terrorism is an integral component of the AU's peace and security architecture, and its counter-terrorism framework has assisted with contextualizing global counterterrorism norms.[73]

However, the AU like other international organizations, lacks a system for monitoring implementation.[74] Further, the Algiers Convention and protocol are also affected by low levels of ratification and implementation. One shortcoming noted by Ewi and Aning in their article

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[70] Ibid.
[71] Op. Cit., "Human Rights, Terrorism and Counter Terrorism" (2008).
[72] Ibid.
[73] E, Rosand and J, Ipe., "Enhancing Counterterrorism Cooperation in Southern Africa." African Security Review (2008: 43).
[74] Ibid.

"Assessing the Role of the African Union in the Preventing and Combating Terrorism in Africa", has been the organizations inability to shake off the legacy of the OAU, which had a tendency *"to adopt landmark decisions and make pronouncements without ensuring effective and appropriate follow-up."*[75]

Moreover, the AU is inept at ensuring compliance and implementation of the African and global counter terrorism schemes. Specifically, and most disturbing, is the fact that the AU is known to be weak in dealing with the Continents poor human rights record, which in turn affects the organization's credibility.[76]

2.4 IGAD

The Intergovernmental Authority on Development (IGAD) in Eastern Africa initially founded to react to recurring famine and other natural disasters in the Horn of Africa region, extended its mission to assist member states to promote and maintain peace, security and humanitarian affairs, and facilitate economic cooperation and integration.[77] To this end, IGAD provides a regular forum for various stakeholders in various thematic areas within the region to tackle various issues of regional context and expand cooperation among its members, and this includes counter terrorism.[78]

For instance, IGAD's Capacity Building Programme Against Terrorism (ICPAT) leads the way among sub-regional organizations on counter-terrorism strategy since the Addis Ababa

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[75] Ewi, M., and Aning, K., "Assessing the role of the African Union in Preventing and Combating Terrorism in Africa." African Security Review 15(3) (2006), 33-38. See too I Wani, The African Union role in global counterterrorism, in Le Sage (ed), African Counterterrorism Cooperation (2007).

[76] Ewi and Aning, Op. Cit. (2007: 37).

[77] Protocol of the Establishment of a Conflict Early Warning and Response Mechanism for IGAD Member States, Djibouti (2002).

[78] Mwaura, C., & Schmeidl, S., "Early Warning and Conflict Management in the Horn of Africa." The Red Sea Press (2002).

Conference on Prevention and Combating of Terrorism held in 2003.[79] A Key component of the strategy is ensuring member states adopt international good practices and adhere to international human rights laws. This program entails regional seminars targeting policy makers in the security sector, and appears to be bearing fruits at least in spreading awareness on international good practices such as the Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector, adopted in Morocco in 2012.

2.6   *Summary and Conclusion*

In conclusion, States can counter terrorism and uphold international law and human rights standards at the same time. Specifically, human rights law has made ample provision for law enforcement, including counter-terrorist action, even in the most exceptional circumstances. However, violating or infringing human rights while countering terrorism ultimately facilitates achievement of the terrorist's objective which is provoking tension, hatred and mistrust of government among parts of the population they are most likely to find recruits. As Koffi Annan portends, upholding human rights is not only compatible with successful counter-terrorism strategy, but it is an essential element thereof.

However, international organizations such as the UN, AU and IGAD which are mandated to ensure compliance with international law and principles, lack mechanisms to ensure compliance with these obligations.

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[79] See Report of the expert group meeting on African perspectives on international terrorism, UN Office of the Special Adviser on Africa, Report and Recommendations, 3-4 June 2009, Addis Ababa, Ethiopia.

CHAPTER THREE

AN OVERVIEW OF KENYA'S COUNTER TERRORISM STRATEGY

3.1   Introduction

In this chapter, the study reviews Kenya's counter terrorism laws, policies and practices, and the various stakeholders involved therein. Further, other initiatives that have an impact on counter terrorism are also included.

3.2   Background

Notably, it was the 1998 attack on the U.S. Embassy which claimed the lives of two hundred and forty six (246) Kenyans and twelve (12) Americans that made Kenya more aware of the threat of terrorism. This incident prompted Kenya to embark on a more concerted counterterrorism strategy which included institutional and legislative reforms.[80]

Institutional changes include the creation of the National Security Intelligence Service (NSIS)[81] in 1998 from the Special Branch wing of the Kenya Police, the Anti-Terror Police Unit (ATPU), and the National Security Advisory Committee. The National Counter-Terrorism Center (NCTC) was established in 2003 to collect, integrate and disseminate timely and accurate intelligence on terrorism threats and vulnerabilities. The NCTC was mandated to guide operations on the basis of integrated threat analysis, as well as policy formulation and sensitization to stakeholders in the security sector.

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[80] Krause, V. & Otenyo, E.,"Terrorism and the Kenyan public." Studies in Conflict Terrorism" (2005; 100).
[81] Mogire, E., & Agade, K. M., "Counter-terrorism in Kenya." Journal of Contemporary African Studies (2011; 487).

Legislative improvements were however difficult implement, as efforts to pass anti-terrorism laws were thwarted. The proposed Suppression of Terrorism Bill of 2003 was not enacted it into law due to public and civil society uproar over infringement of the Constitution as well as international human rights law, and alleged targeting of Muslims. Subsequently, the Anti-Terrorism Bill of 2006 faced similar opposition and failed to pass into law as well.

The absence of comprehensive legislation contributed to the disregard for and violation of human rights. Reports of arbitrary arrests, unlawful detention, enforced disappearance and extra-judicial killings were rife.[82] Further, terrorism suspects were allegedly rendered to neighboring countries and to the US. For example, individuals associated with the 2010 bombings in Kampala were rendered to Uganda.[83] Reportedly, there are also a number of Kenyans currently being held in Guantanamo Bay, including a Mohamed Abdulmalik, associated with the Paradise Hotel Kikambala car bomb and shooting incident of 2002 in Mombasa. Allegedly, his rendition was occasioned by the inability to investigate and prosecute the case by Kenyan authorities.

Therefore, as stated above, early counter terrorism initiatives were uncoordinated and reactionary. A national policy to deal terrorism was overdue, a task given to the National Counter Terrorism Centre (NCTC). The NCTC has formulated and is in the process of implementing two strategies, namely: The National Counter Terrorism Strategy (NCTS) and the National Counter Radicalization Strategy (NCRS).

3.2   National Counter Terrorism Strategy (NCTS)

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[82] Prestholdt, J., "Kenya, the United States, and counterterrorism." Africa Today (2011; 3).
[83] Horowitz, J., "Counter Terrorism and Human Rights Abuses in Kenya and Uganda: The World Cup Bombing and Beyond." Open Society Justice Initiative, Open Societies Foundation (2012).

The NCTS has two components: Counter terrorism which refers to measures employed to prevent, deter and respond effectively to acts of terrorism, and Anti-terrorism measures aimed at reducing the vulnerability of individuals and property in addition to initiating investigations and prosecutions of terrorist acts. Similar to Brahimi and Mackmurdo's full-spectrum counter-terrorism strategy, the NCTS is anchored on four pillars: Deterrence, Disruption, Detection and Defense.

3.2.1 *Deterrence*

This is a holistic approach aimed at addressing the underlying causes of terrorism. This includes factors that contribute to indoctrination, radicalization and extremism, hence eliminating the possibilities of recruitment into terrorism.[84]

The approach focuses on dismantling ideologies that breed violence, extremism and support networks; supporting those vulnerable to recruitment or have already been recruited into terrorism; addressing the grievances which extremists exploit to win sympathy and followers by engaging communities and community based organizations in detecting radicals and religious extremists; promoting good governance, rule of law, democracy, education and economic prosperity through community and national assistance programmes; addressing incitement and recruitment in prisons, places of religious training and worship; and targeting inequalities and discrimination where they exist and promoting national integration and cohesion.

Activities hereunder include creating public awareness, production and distribution of counter terrorism bulletins, use of electronic, print and digital media, addressing historical injustices,

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[84] National Counter Terrorism Strategy (NCTS) 2015 to 2020.

rehabilitation of former radicals, creation of job opportunities, providing information on access to relevant funding opportunities, and embracing affirmative action in employment opportunities among many other measures.

Currently, the Government is making efforts to ensure public participation in the management of terrorism by posting pictures of wanted terrorists on billboards with rewards for provision of information leading to arrests. These pictures are posted on newspapers, social media and billboards, and are so far bearing fruits as public participation is at its highest level in recent years.

3.2.2 Disruption

This approach uses intelligence to drive law enforcement mechanisms to detect, disrupt and destroy terrorist networks and activities. It focuses on impeding planning and disrupting terrorist networks and recruitment activities; denying terrorist funding and access to attack materials; enhancing intelligence collection on terrorist activities; enhancing investigative and detection capability and capacity; increasing the effectiveness of prosecution processes from evidence collection to post-prison supervision; improving coordination and partnership between stakeholders; and, strengthening coherence between counter terrorism efforts and international partnerships.[85]

Activities hereunder include inter-agency cooperation in the security sector, implementation of relevant laws such as the Prevention of Terrorism Act (POTA) 2012, the Prevention of Organized Crimes Act (POCA) 2010, and Proceeds of Organized Crime and Anti-Money Laundering Act (POCAMLA) 2010; regional cooperation; training and capacity building; and, linking national

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[85] National Counter Terrorism Strategy (NCTS) 2015 to 2020.

level CT policy to strategic operational objectives. Players under this pillar include security organs and international partners and organizations key in capacity and capability building.

POTA (2012), an act of parliament to provide for the detection and prevention of terrorism, defines a terrorist act as *"an act or threat of action which: involves the use of violence against a person; endangers the life of a person, other than the person committing the action; creates a serious risk to the health or safety of the public or a section of the public; results in serious damage to property; involves the use of firearms and explosives; involves the release of any dangerous, hazardous, toxic or radioactive substance or microbial or other biological agent or toxin into the environment; interferes with an electronic system resulting in the disruption of the provision of communication, financial, transport or other essential services; prejudices national security or public safety; and, which is carried out with the aim of intimidating or causing fear amongst members of the public or a section of the public, or intimidating or compelling the Government or international organization to do, or refrain from any act, or destabilizing the religious, political, Constitutional, economic or social institutions of a country, or an international organization."* [86]

This Act also defines terrorist group and property, and provides for terrorist offences including commission, harboring, provision of weapons, direction, recruitment, training, conspiracy, incitement, collection of information and possession of articles connected with offences under the Act. The Act also grants powers to intercept communication and its admissibility, as well as power to seize property used in commission of a terrorist act. Further, the Act imposes an obligation to disclose information relation to terrorist acts. The Act also grants the power to seek a remand for thirty (30) days at a time, and for a maximum of ninety days. [87]

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[86] Prevention of Terrorism Act (2012).
[87] Ibid.

So far only two terror suspects have been convicted of terrorism offences. The first individual is Elgiva Bwire Oliacha alias Mohamed Saif, hurled a grenade at bystanders on Race Course Road, Nairobi killing one person and injured more than thirty (30) others. He confessed to being a member of Al-Shabaab, was convicted on his own guilty plea and sentenced to life imprisonment. He also admitted to illegal possession of firearms, including an AK-47 rifle, a submachine gun, hand guns, grenades and a large number of assorted rounds of ammunition recovered in a house in the informal settlement of Kayole within Nairobi.[88]

The second individual, Abdulmajid Yasin Mohamed, was arrested in Eastleigh, Nairobi in possession of suicide vests, home-made bombs and an assortment of weapons. He pleaded guilty to being a member of Al- Shabaab, was convicted on his own guilty plea and sentence to forty five (45) years in prison.[89]

The abovementioned cases were aided by the suspects guilty plea. Meanwhile, many cases of suspects arrested in connection with other terrorist attacks are ongoing, including the case against Yahya Jamaldin Thabit from the informal settlement of Kibera within Nairobi City, was charged with bombing a night club in Mombasa on 15th May 2012. Further, Adan Mohamed Abdikadir Adan, Liban Abdullah Omar and Hussein Hassan charged with lending support to the Westgate Mall attackers. These cases are still ongoing and the suspects are in remand.[90]

Under the Prevention of Organized Crimes Act (2010), Al-Shabaab is proscribed as an organized criminal group, and includes offences such as being a member or professing to be a member, knowingly advise, encourages or recruits another to become a member of an organized criminal

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[88] Botha, A., "Assessing the Vulnerability of Kenyan Youths to Radicalization and Extremism." Institute for Security Studies (ISS) Paper 245 (2013).
[89] Ibid.
[90] Op. Cit., Botha (2013).

group, acting in concert with others to commit a serious offence for financial gain or any other purpose, possession of an article on behalf of another for purposes connected with the commission, preparation or instigation of organized crime, collection of information among many others.[91] This Act provides the prosecution with alternative offences to charge those involved in terrorist activities but is yet to be tested in court.

POCAMLA (2010) provides for money laundering, acquisition, possession and use of proceeds of crime, as well as failure to report suspicion. The Act provides for search and seizure of documents and property, criminal forfeiture and confiscation orders upon conviction.[92]

Other laws relevant in counter terrorism include the Penal Code which provide for criminal offences including murder, grievous bodily harm and assault, the Firearms Act (2012) which provides for the purchase, acquisition and possession of firearms, the Explosives Act, Chapter 115 of the Laws of Kenya which deals with unlawful possession or making of explosives, and the Kenya Citizenship and Immigration Act (2011) which provides for the unlawful entry into or presence in Kenya, use or possession of forged passport, work permit, residence permit, visa, registration or other forged or altered consent, endorsement or approval, and presenting a forged, altered, or altered document in order to obtain passport, registration, visa, work permit or any other written authority.

3.2.3 Detection

This approach focuses on protection of citizens, infrastructure and reduction of vulnerability to attack. It entails enhancing protection of external borders to make it easier to detect persons of

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[91] Prevention of Organized Crimes Act (2010).
[92] Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) (2010).

interest, and prevent known or suspected terrorists from entering or operating within the country, enhancing border surveillance through increased use of modern technology and patrols, improvement of technology to capture biometric information and data of all travelers, including the expanded use of the Personal Identification Secure Communication Electronic Systems (PISCES) at all points of entry, protection of key infrastructure through continuous security and vulnerability assessment of critical installations, creating security awareness and sensitization in crowded places, and the provision of physical security among others.[93]

Activities hereunder may include general and border surveillance, conducting continuous security and vulnerability assessment of critical installations, improve counter terrorism information sharing between stakeholders, conducting intensive public awareness campaigns and sensitization; monitoring compliance of laws regulating use and sale of chemicals and explosives and, providing physical security at border points and airspace.

The aim of this pillar is to harden targets and make it difficult for terrorists to access key installations. Measures hereunder include the installation of scanners at Jomo Kenyatta International Airport (JKIA), manning border points and mounting road blocks on major channels utilized by terrorism operatives and their facilitators.

3.2.4 Defense

This approach aims at mitigating the impact of a terrorist incident where it could not be prevented, and it includes efforts to manage ongoing incidences and recovery from the aftermath. It focuses on developing capabilities of critical stakeholders to deal with the eventuality of a terrorist attack, coordination of the response by addressing the needs of the victims and the pursuit of the terrorists,

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[93] National Counter Terrorism Strategy (NCTS) (2015 to 2020).

continuity and swift recovery of critical national infrastructure, coordination of local and international organizations in response to attacks, enhancing the sharing of best practices and approaches for collective response, and enhancing community resilience post attack.[94]

Activities hereunder may include capacity building and training of personnel, appraising stakeholder capabilities, joint drills and exercises, continuous exchange within the stakeholders, establishing an inventory of response personnel and equipment, unified media handling, and coordination of local and international organization for post incident action teams.

Government and private institutions are more aware of the threat of terrorism and are carrying out security drills in an attempt to prepare themselves in the event of an attack. Kenya Airports Authority (KAA) carries out frequent security drills to test the preparedness of first responders, and Moi University Eldoret recently carried out a drill the result of which was numerous injuries due to lack of awareness and uncoordinated response.

3.3   National Counter Radicalization Strategy (NCRS)

The strategy addresses radicalization at two levels: understanding the dynamics of individual and organizational radicalization so as to identify early indicators; and, continuous engagement with various communities to help them understand and protect themselves against violent ideology.[95]

It focuses on the creation of a network of experts to train government agencies, religious leaders, local community leaders and civil society groups to tackle violent extremism and equip them with the skills necessary to carry out their role, community based engagement to seek community based solutions; support by organizing intra-religious and inter-religious objectives through a network

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[94] Ibid.
[95] National Counter Radicalization Strategy (NCRS).

of representatives from different faith groups as well as through conferences and seminars, the use of education and youth engagement and cultural exchanges to develop among Muslim youth an understanding of cultural diversity, common values and inter-cultural ideals, encourage standardization of the curriculum offered in Madrassa by the relevant Islamic umbrella bodies, and enhanced co-operation with countries that face similar problems in order to share information and experiences on the issue.

3.4   Amnesty

In April 2015, the government offered blanket amnesty from prosecution as an initiative to reintegrate youths who denounced the Al-Shabaab terror group. In his statement, Joseph Nkaiserry, Cabinet Secretary for Interior and National Coordination, invited youth who had joined Al Shabaab and seek to disassociate themselves from terrorism activities to report to the government in order for the government to consider granting amnesty from prosecution, rehabilitation and reintegration.[96]

The minister also called upon parents or guardians whose children had either gone missing and are suspected to have joined terror groups, or are suspected to be radicalized, to report the same. Failure to report such information would expose one to prosecution as it would be presumed that they were aware of the activities and failed to report, or they condone or support their activities. The POTA (2012) created an obligation to report terrorism activities.

Thereafter, media reports indicated that following the amnesty call, eighty-five (85) people associated with terror groups surrendered and are undergoing rehabilitation and counselling. The

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[96] Ombati, C., "Kenya Announces Amnesty and Reintegration to Youth Who Denounce Al-Shabaab." The Standard Digital, Tuesday 14th April 2015

rehabilitation program, involving professional counsellors with the support of security agencies among other partners, and provides psychological support to those seeking to reintegrate back into their communities. Those who surrendered are from all parts of the country. However, the program was affected by threats to those who took up the amnesty offer, viewed by those still affiliated to terror groups as traitors who could potentially disclose their identities and activities.

3.6   *Conclusion*

In conclusion, we have a comprehensive counter terrorism strategy that contains mechanisms aimed at preventing, deterring and responding effectively to acts of terrorism, and measures employed to decrease vulnerability of individuals and property, in addition to investigations and prosecution of terrorist acts. The strategy includes measures aimed at understanding the dynamics of individual and organizational radicalization to identify early indicators, and continuous engagement with communities on violent ideology. The strategy also identifies the various stakeholders and the roles played by each.

However, in spite of this comprehensive strategy and measures put in place, efforts to manage transnational terrorism appear disjointed and uncoordinated, raising questions from the general public as to whether a strategy actually exists. In fact, the measures, policies and practices applied by security agencies appear to be at cross purposes with the abovementioned strategy. Furthermore, human rights violations continue unabated in spite of the counter terrorism strategy highlighting the importance of upholding the same as a key component of the strategy.

CHAPTER FOUR

THE IMPACT OF COERCIVE MEASURES, PRACTICES AND POLICIES ON THE MANAGEMENT OF TRANSNATIONAL TERRORISM

4.1   Introduction

This chapter covers data presentation, analysis and discussion. The aim of the study was to evaluate the impact of Kenya's counter terrorism laws, policies and practices. This was achieved through analysis of the primary and secondary data based on themes derived from the objectives of the study. The theme included the impact of coercive counter terrorism measures.

4.2   Background Information of the Respondents

The background information of the respondents was examined based on their involvement in the security affairs of Nairobi, Mombasa and Mandera Counties. The respondents were drawn from security agencies and key informants from Civil Society organizations.

4.3   Kenya's Human Rights Record

In spite of existence of a strategy that highlights the importance of upholding human rights, Kenya's human rights record is poor at best with numerous reports of unlawful detention, enforced disappearances, extra-judicial killings, reparation of arrestees among others. Security agencies are at the forefront of these allegations.

However, the history of human rights abuses is not limited to the ATPU and counter terrorism activities alone. The Kenya National Commission on Human Rights (KNCHR), a constitutionally established human rights organization, documented cases of extra-judicial killings and enforced disappearances carried out by the Kenya Police and other security agencies in a response to

criminal activities by gangs such as Mungiki, a proscribed militia group known for establishing extortion cartels associated with the informal transport sector.

Human Rights Watch (HRW), an international human rights organization, conducted a research study between November 2013 and June 2014, and identified *"at least ten (10) cases of extra-judicial killings, ten (10) incidences of enforced disappearances, and many reports of mistreatment or harassment of terrorism suspects attributable to the ATPU in Nairobi since 2011"*.[97] The information gathered from interviews with a wide variety of respondents including family members, victims, witnesses, journalists and terrorism suspects among others in Nairobi's Majengo neighborhood, suspects were *"shot dead in public places, abducted from vehicles and courtrooms, beaten badly during arrest, detained in isolated blocks, and denied contact with their families or access to lawyers."* Other security agencies were also implicated, including the General Service Unit (GSU) of the Kenya Police Service, military intelligence, and National Intelligence Service (NIS).[98]

Witness statements indicated that in one incident, terror suspects Hassan Omondi Owiti and Shekha Wanjiru, were allegedly shot dead without armed resistance by officers from the ATPU and GSU.[99] Another suspect named Lenox David Swalleh and another unidentified person were shot dead as they left a mosque after morning prayers in Nairobi's Eastleigh neighborhood.[100]

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[97] Human Rights Watch, World Report (2015) https://www.hrw.org/world-report/2015/country-chapters/kenya.
[98] Human Rights Watch, World Report (2015) https://www.hrw.org/world-report/2015/country-chapters/kenya.
[99] Botha, A., "Assessing the Vulnerability of Kenyan Youths to Radicalization and Extremism." Institute for Security Studies (ISS) Paper 245 (2013).
[100] Ibid.

Furthermore, following a series of grenade attacks, an operation dubbed *"Operation Usalama Watch"* was launched the aim of which was to apprehend illegal aliens, relocating urban refugees back to the refugee camps. This operation led to the apprehension and detention of at least four thousand (4,000) people of including Kenyans of Somali descent as well as refugees. Subsequently, three hundred and fifty-nine (359) Somali and other nationals were deported, including at least three registered refugees, in April and May 2015.[101]

During the operation, the UN and other independent organizations were prohibited from monitoring the screening process that was being carried out at Nairobi's Kasarani stadium, nor were they allowed to challenge deportations to conflict-ridden Somalia. Furthermore, it is reported that the detainees while a Kasarani Stadium were being held in inhuman and humiliating conditions.

Previously, the High Court in 2013 had ruled that a similar operation violated refugees' freedom of movement and right to dignity as enshrined in the Kenyan constitution and international law. However, in June 2014, the same court overturned its previous decision.[102] Such operations by security and state agencies, and decisions by the courts lay credence to the negative perception of Kenya's counter terrorism efforts. Furthermore, that incident has been used by terrorism sympathizers on numerous occasions to fuel anti-government sentiments against the state.

Anneli Botha in her paper *"Ässessing the Vulnerability of Kenyan Youths to Radicalization and Extremism",* based on research conducted in informal settlement of Majengo within Nairobi, specifically identified counter-terrorism efforts by the state as a factor driving the youth into radical groups.[103] Information gathered during the research indicated numerous cases of arbitrary arrests

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[101] Human Rights Watch, World Report (2015) https://www.hrw.org/world-report/2015/country-chapters/kenya
[102] Ibid.
[103] Botha, A., "Assessing the Vulnerability of Kenyan Youths to Radicalization and Extremism." Institute for Security Studies (ISS) Paper 245 (2013: 19).

and incarceration of Muslim youths on suspicion engaging in terrorism activities.[104] Botha concluded that Muslim youths lamented that they were marginalized as the Kenyan justice system treats Muslims as being *'guilty of terrorism until proven otherwise'*, and were therefore justified in joining extremist groups.

4.4   Incidences in Mombasa

Similarly, the Open Society Justice Initiative, an international NGO, and Muslims for Human Rights (MUHURI), a Mombasa-based non-governmental organization, published a damning report in 2013 highlighting human rights abuses by the ATPU contrary to international and regional human rights law. Specifically, the report criticized the POTA (2012), which in the organizations opinion is replete with *"vague definitions of terrorism, creates terrorist blacklists with inadequate due process guarantees, and expands police powers, all of which can be used both against terrorist suspects and as a tool against political opponents, civil society, religious and ethnic groups, minorities, and common criminals"*. This report was critical of the ATPU, describing counter terrorism efforts thereby as counter-productive to stifling domestic terrorism. They attribute the backlash of terrorism activities to terrorist organizations utilizing the reports of abuses committed by the ATPU as justification for their activities, making recruitment of new members easier.

In Mombasa, the suspicious killings of radical clerics including Sheikh Aboud Rogo, Sheikh Ibrahim Omar, and Abubakar Shariff aka Makaburi between 2012 and 2014, attributed to the State, remain unresolved. The prominent clerics were associated with the promoting radical islam and recruiting sympathetic youth from the Coastal Region on behalf of Al-Shabaab, and Rogo and

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[104] Botha, A., Op. Cit.

Makaburi had on-going cases before court on terrorism related charges and had also been listed in the UN Sanctions List as logisticians for the Somalia based militia group. A task force to investigate Rogo's killing was established which reported that police had mishandled the crime scene, and recommended a public inquest which never materialized.

Meanwhile, in November 2014, police raided Musa and Sakina Mosques within Mombasa to expel radical youth who had allegedly taken control of the management thereof. During the operation, a twenty (20) year old man was shot dead at Musa Mosque allegedly for attempting to throw a grenade at the officers, and two hundred and fifty-one (251) people were arrested. During the operation, the security forces were accused of desecrating a sacred place with their muddy boots and using excessive force.

Cumulatively, these incidences have been used in the recruitment and radicalization narrative by sympathizers and propagandists. Andrew Franklin, a security analyst, lamented that security agencies consistently use the same tactics to crack down on people perceived to be terrorists, but the problems subsists. He concluded that *"it seems to be a situation where they continue to round up the youths and the extrajudicial killings of so-called radical preachers and imams, there are a whole host of unresolved gun and grenade attacks. And it seems to be a general ground swell of opinion, of anti-government opinion."*[105]

4.5 Incidences in North Eastern Region

A 2012 report by Human Rights Watch, an international NGO's, raised concerns about Kenyan security operations especially in the North Eastern region along the border with Somalia, stating that arbitrary arrests and assault were *"part of a pattern of violent and indiscriminate responses*

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[105] Yusuf, M., "Kenya Police Raid Mombasa Mosques; 1 Dead, Hundreds Arrested." Voice of Africa News (2014).

by the Kenyan military and police to suspected militant attacks, responses that have involved arbitrarily rounding up large numbers of ethnic Somali Kenyans and Somali refugees and subjecting them in some cases to severe mistreatment.''[106]

After the Garissa University College attack in Garissa County in the North Eastern Region which left one hundred and forty-eight (148) people, and injuring seventy-nine (79) or more in April 2015, investigations identified one of the gunmen as Abdirahim Abdullahi from Mandera County, a straight A student and law graduate from the University of Nairobi in 2013. He was reported missing to the authorities in 2014 by his father, Abdullahi Mohamed Omar, a public administrator, who feared he had become radicalized and joined al-Shabaab.

In an interview with Ali Roba, Mandera County Governor, he disclosed that the County has been the gateway for terrorism due to the fact that it is linked to all major terrorist attacks incidences in the Country. Incidentally, the perpetrators of the U.S. Embassy bombing in 1998 and gunmen who carried out the Westgate attack in 2013 entered the country throw Mandera, the suicide bomber who blew himself and police officers up outside Pangani Police Station in 2014 hailed from Mandera, as did Abdirahim Abdullahi, and investigations into a Vehicle Borne Improvised Explosive Device (VBIED) discovered in Mombasa in April, 2014 revealed that it was driven into the Country through Mandera as well.

4.6   *Reports of Extra-judicial Killings*

In May 2015, media reports indicated a shallow grave was discovered in Lanbiib on the outskirts of Wajir Town with at least eleven (11) decomposed bodies. Further reports indicated that two

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[106] Human Rights Watch, World Report (2015) https://www.hrw.org/world-report/2015/country-chapters/kenya.

dismembered heads were found in Yahud Dam, two kilometers east of Wajir. Allegedly, some of the victims were reportedly *'arrested'* by people who identified themselves as police officers. Elsewhere, around seventeen (17) people were reported missing and reports indicated that they were bundled into vehicles by men in plain clothes with pistols, suspected to be police officers.[107]

Further, in an interview with Ibrahim Mohamed Hussein, a youth leader in Mandera, alleged that the terrorist incidences that occurred in the County were direct reactions to the extra-judicial killings carried out by the ATPU. He specifically attributed the killing of twenty eight (28) bus passengers in Arabia, Mandera County to the killing of a Sheikh Blackie, whose vehicle was intercepted by security personnel. In the vehicle, the police found twelve grenades among other weapons. Interestingly, the youth leader attributed the retaliatory killings to local youths who joined Al-Shabaab angered by the high handedness of the security apparatus in the region.

Mohamed Ali Isaak, the Peace Committee Chairman in Mandera County, attributed the attacks to Al-Shabaab militia from Somalia with local support and participation from youths recruited into the militia or sympathetic to the militias cause. In relation to the attack on 7th July 2015, Isaak drew links to the killing of an elderly woman whose body was discovered at Mandera Bus Park on 5th July 2015. Protests by youth clan members followed with demands for quick investigations and arrests of the perpetrators by the police, failure to which the youth would take revenge on the suspects who had been identified as quarry workers from *'down'* Kenya, referring to non-locals. Calls for revenge followed on local radio stations, and intensified on the night of the attack. What Isaak found to be peculiar was that calls for revenge died down after the attack, which raises suspicion as to the true motive of the attack. In his assessment, the attack on non-locals was

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[107] http://www.hiiraan.com/news4/2015/May/99431 Mass grave found in Wajir town 11 bodies thought to be of terror suspects found in lanbiib.

perpetrated by members of the Al-Shabaab from *Bulla Hawa*, a border town neighboring Mandera, with the blessings and assistance of the local youth demand action for the killing of one of their own by outsiders.

Therefore, according to community leaders in Mandera, the actions of the security apparatus, especially the ATPU is directly related to conscription into Al-Shabaab or support for their activities. Police officers are viewed as aggressors who are linked with killing young innocent members of the community. This approach breeds hatred and makes the community better hunting ground for Al Shabaab recruiters.

4.7   *Corruption and Impunity*

Coercive measures perpetuate a culture of impunity and undermine public confidence in the security apparatus. Haji Barre, the landlord of the homestead where fourteen (14) people were killed, including thirteen (13) quarry workers and his wife, lamented that the security situation in Mandera has deteriorated due to incompetence in the police occasioned by corruption, as youth are arrested without sufficient reason or evidence, and their families forced to cough out large sums of money to secure their release.

Furthermore, people reporting to police stations on suspicious activities are victimized, questioned about how they came about the information and harassed by police officers and accused of being suspects themselves. This in turn has led them to refrain from giving out information that would be integral in the fight against terrorism.

Coercive measures also alienate communities from the security apparatus, resulting in refusal to cooperate. Sultan Yusuf, the head of the Gurreh Clan in Mandera lamented that they have met several delegations of high ranking officials from government after every terrorist attack and

presented the issues ailing the security apparatus in the County but nothing happens upon the delegations departure, and the recommendations given are not acted upon. He listed the main issue bedeviling the County as a growing gap between the public and the government, alluding to the lack of trust in the government and the absence of political will to address the challenges facing Mandera County.

The Sultan added further that faith in the police service is waning due to corruption, insubordination, indiscipline and lack or patriotism. This is a glaring indictment of the police in the County, and public participation in security matters will be denied until the issues are addressed.

4.8   Unprofessionalism

There have also been complaints of inefficiency as investigating authorities are accused of shoddy work leading to the lack on convictions. Cases are therefore dismissed or lost, leading to the suspects returning into society and posing a threat to those who volunteered information or testified in the cases.

This is attributable in part to punitive deployment and transfers by security agencies. Information received indicates that majority of the security personnel posted to Mandera and other border regions are transferred there on disciplinary grounds, and therefore lack the capacity nor motivation to carry out the duties required of them. Cases of insubordination among the rank and file within the security agencies are high, with officers deployed to conduct patrols abandoning their beat to pursue activities with monetary gain such as intercepting contrabands for bribes.

4.9   Nyumba Kumi

As consequence of all the above-mentioned failures is the collapse of the *Nyumba Kumi* initiative in Mandera County. Birik Aftin Kassim, Chief of Mandera *Bulla Mpya* village, lamented that *Nyumba Kumi* has failed in Mandera due to the mistrust between the public and the police. He stated that he personally shared information given to him by villagers, with the police and the County Security Committee but no action was ever taken, leaving the County vulnerable to terrorist attacks.

The victimization of people volunteering information and inaction by security agencies upon provision of vital information has further damaged the already waning confidence in the government. The effect of this is to deny state agents crucial intelligence needed to interdict terrorist attacks before they happen. Furthermore, it hampers investigations into terrorist incidences and prosecution of suspects as information by potential witnesses is not provided leading to acquittals and subsequent reintegration of terrorists back into society.

This was evident after the 7th July attack as it was alleged that no one saw the attackers nor where they disappeared to, hence no significant arrest have been made thus far. However, Governor Roba posited that nothing happens in the villages without the Chiefs finding out about it. However, Nkaissery, Cabinet Secretary for Interior and National Coordination lamented after the 7th July 2015 attack on non-locals residing in *Soko Mbuzi* village that there was no prior, actionable intelligence on the attack. Intelligence is information from the public that is processed for action. Therefore, if the public withholds information on operations and planning for terrorist attacks, it creates a scenario where attacks happen without the knowledge of said attacks, and it also hinders investigations thereafter that could assist in the arrest of the perpetrators and their associates and facilitators.

Simon Charters, Police Reforms Programmme Officer at the United Nations Office on Drugs and Crime (UNODC) in Nairobi, identified part of the problem as the setup of the *Nyumba Kumi*

Initiative itself. He says that Kenya is struggling to establish community policing as a concept because it is impossible to create a community led policing initiative due to the many differences we have as a community. The right way to go about it is to establish and institutionalize a police led community policing initiative. This will ensure the police are viewed as partners as opposed to them being viewed as antagonists.

4.10   Summary and Conclusion

Therefore, information gathered indicates that coercive measures such as high handedness and extra-judicial killings by the police, coupled by corruption and inaction by the state on critical matters of security interest in Nairobi, Mombasa and Mandera Counties has drastic consequences on the public. The consequences include alienation and marginalization of the youth and the Muslim populace, loss of confidence in the security agencies and withholding of vital information that could assist in timely interdiction of terrorism activity, among others. However, these measures are contrary to the comprehensive counter terrorism strategy established in by the NCTC.

It is assessed therefore that these policies, practices and measures are counterproductive and could be contributory to the spread of terrorism in Kenya. As a matter of fact, these activities increase popular support and sympathy for the terrorist cause therefore spurring recruitment for terrorist organizations.

CHAPTER 5

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter provides the key findings of the study and suggests areas of further research. The chapter therefore deals with the summary of the study, conclusions, and recommendations emanating from the research on the impact of coercive counter-terrorism measures in Kenya.

5.2 Summary of Key Findings

The study has drawn three key findings: international obligations require states to counter terrorism while promoting human rights: the NCTC has formulated comprehensive counter terrorism and counter radicalization strategies in line with international standards; and, coercive counter terrorism measures, practices and policies applied are counterproductive in managing the threat of transnational terrorism in Kenya.

Firstly, the study sought to establish that international and regional obligations require states to protect all those within their jurisdiction, and develop national strategies to prevent acts of terrorism, prosecute those responsible, all while promoting and protecting human rights and the rule of law. This is reiterated in the UN Global Counter Terrorism Strategy which provides a common strategic approach to fighting terrorism and reaffirms the mutually reinforcing relationship between human rights and security.

Although balancing the promotion of human rights and effective counter terrorism may appear to raise serious practical challenges for states at face value, these challenges surmountable as states can meet their obligations by utilizing built in flexibilities in international human rights

framework, allowing for limitations and derogations. Regrettably however, there are still no formal mechanism with the requisite organizations to evaluate and ensure compliance with international human rights by states.

Secondly, the findings also indicate that the government has put in place a raft of measures to counter terrorism in Kenya including institutional, legislative and administrative reforms. The State through the NCTC has formulated a comprehensive counter terrorism strategy that contains measures and activities aimed at preventing, deterring and responding effectively to acts of terrorism, and measures employed to reduce the vulnerability of individuals and property in addition to initiating investigations and prosecution of terrorist acts. The strategy includes measures aimed at understanding the dynamics of individual and organizational radicalization to identify early indicators, and continuous engagement with communities on violent ideology. The strategy also identifies the various stakeholders and the roles played by each.

Connected thereto is the underutilization of counter terrorism tools available to security agencies. The Prevention of Terrorism Act 2012 is yet to be fully operationalized, as is exemplified by the absence of convictions in spite of numerous arrests, requests for custodial orders and attempts to charge. This is attributable to shoddy investigations that do not meet the evidence threshold of the legislation, as well as lack of synergy between the investigator and prosecutors.

Furthermore, the government has unveiled other initiatives such as the *"Nyumba Kumi Initiative"* aimed at bringing the community onboard in the management of security affairs, as well as an amnesty programme to reintegrate youth recruited into terrorist groups, and motivate the public to report on family members suspected to have joined Al Shabaab. However, in spite of this

comprehensive strategy and measures put in place, efforts to manage transnational terrorism appear disjointed and uncoordinated.

The study established that coercive counter terrorism measures may contribute to a conducive environment for the spread of terrorism. This assessment is informed by the upsurge in frequency and scale of terrorist attacks, as well as the rise in cases of homegrown terrorists recruited and trained by Al-Shabaab to carry out attacks in Kenya against local targets. Illustrations of these homegrown terrorists in include the perpetrators of the Garissa University attack, Pangani blast and Bella Vista Club grenade attack, all carried out by Kenyan youth from different parts of the country.

The study established that coercive practices such as arbitrary arrests, gross violation of human rights, enforced disappearances and extra judicial killings lead to resentment and anger towards the agencies involved and the government as a whole, creating the conditions conducive for the recruitment of youth into terrorist groups. It must be noted that such groups use the narrative that such agencies and the government is oppressive towards specific communities including the Muslims and Somalis, fueling hatred and the urge for retaliation.

Further, coercive counter terrorism measures alienate communities from the security apparatus, resulting in refusal to cooperate. These include arbitrary arrests to extort bribes, victimization of members of the public and mishandling of witnesses, the effect of which is to drive a wedge between the public and the security agencies. This creates a scenario where the public do not trust the security agencies and thus refuse to share vital information required to interdict terrorist activities. It should be noted that that intelligence does not exist without information from the public, a state of affairs that has led to terrorist attacks occurring without prior knowledge on the

part of the government. This was reiterated after the 7th July 2015 attack on quarry workers residing in *Soko Mbuzi* village in Mandera County.

The withholding of vital information regarding terrorist incidences also hampers investigations and prosecution of suspects as key witnesses refuse to testify for fear of retaliation by those being charged. This is due to the fact the potential witnesses do not trust security agencies to provide security, a situation compounded by the absence of a strong and independent Witness Protection agency.

Finally, the rejection of the *Nyumba Kumi* initiative by residents, which initiative was launched to enable community policing in areas most affected by terrorism is a glaring indictment of the system. It appears the rejection of government initiatives in tandem with the security agencies such as the police is a reaction to the long-term marginalization in some regions, so much so that the government is viewed as illegitimate.

This is a devastating blow to counter terrorism initiatives in Mandera County, and the rest of the country as well because of the importance of County in the entire terrorism picture as was described by Governor Ali Roba. There is therefore urgent need to address this issue and revive the initiative as the starting point to countering transnational terrorism in Kenya.

5.3   *Conclusion*

There is urgent need for a re-evaluation of the counter terrorism measures applied by the government as they are ineffective and counter-productive as they contribute to the spread of terrorism in Kenya. The measures applied by the security agencies, especially the police and the military include arbitrary arrests, poor and shoddy investigations leading to lengthy detention of

suspects and wrongful prosecutions, torture and inhumane treatment of suspects, victimization and endangerment of witnesses and extra-judicial killings of youth.

The findings of the study indicate that there is a connection between these practices and the spread of terrorism in a number of ways: Coercive measures breed hatred and makes the community better hunting ground for Al Shabaab recruiters; Coercive measures perpetuate a culture of impunity and undermine public confidence in the security apparatus; and, coercive measures also alienate communities from the security apparatus, resulting in refusal to cooperate.

Respondents confirmed the above and provided illustrations of how each individually and collectively hamper the management of transnational terrorism. The upsurge of homegrown terrorism is therefore attributable to the application of coercive measures in one way or the other, and there is need to evaluate these measures urgently.

There is therefore urgent need for police reforms as was envisioned in the Waki and Ransley Reports as well as the Constitution of Kenya 2010, which sought to address this problem since the outbreakof post-election violence in 2008. This push for reforms has however faced opposition internally by those seeking to preserve the status quo and are benefiting from the rot in the system. Changes at the helm of the National Police Service have brought about little change over the years, indicating that the problem is endemic.

It is interesting to note however that the Counter Terrorism and Counter Radicalization Strategies promulgated by the NCTC varies from actual practices by stakeholders, especially the police. This begs the question whether the stakeholders are onboard in these strategies which on paper appear to address the key issues facing the management of transnational terrorism in Kenya. There is

therefore urgent need for all stakeholders to get on board to ensure synergy in the concerted effort to manage transnational terrorism in Kenya.

5.4   Recommendations

On the strength of the findings of the study this study makes the following recommendations:

a. The government and the civil society organizations should engage in police reforms and sustained awareness campaigns targeting security agencies and the members of the public as well. This is important as it will provide more knowledge on the importance of police reforms to the country at large;

b. The government to urgently and fully implement the National Counter Terrorism and National Counter Radicalization Strategies, and sensitization of all stakeholders to ensure synergy of efforts in the management of transnational terrorism. Tied hereto is the urgent need for capacity building among the agencies involved in countering terrorism to utilize the tools created thereunder;

c. The government should also explore ways of revamping and strengthening community policing as it is not addressing issues of mistrust between the police and the public. Simon Charters, a security expert with the UN Office for Drugs and Crime (UNODC) in Kenya, opined that there is urgent need to re-evaluate the setup of the community policing initiative into institutionalized police led community policing structures as opposed to a community led setup which appears to be failing. This would ensure a structured process as well as enable engagement to improve relations between the security agencies and community;

d. The National Police Service Commission should embark on vetting all police officers to remove those unfit to hold office. This would go a long was in regaining public confidence.

Vetting also would ensure that the only officers who remain are competent and qualified to serve in the police service.

e. There is need for strict adherence to international obligations at the regional and sub-regional level, and adoption of international good practices in counter terrorism. Regrettably, there are inadequate mechanism to evaluate and ensure compliance with international human rights, refugee and humanitarian standards. However, member states of the EAC have a mutual interest to cooperate in order to secure the region from the growing threat of terrorism emanating from Somalia. Therefore, there is urgent need to expedite efforts to actualize the regional counter terrorism strategy for the EAC.

5.5   *Areas of Further Research*

There is need for further research into the specific factors and conditions contributory to the spread of terrorism in the country due to the upsurge of homegrown terrorism. This should include an analysis on the psychological and sociological drivers of terrorism in Kenya. Further, the impact of radicalization and recruitment in the country as whole needs deeper review and analysis.

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http://www.hiiraan.com/news4/2015/May/99431/mass_grave_found_in_wajir_town_11_bodies_thought_to_be_of_terror_suspects_found_in_lanbiib.aspx#sthash.ALmvThff.dpuf

http://www.standardmedia.co.ke/article/2000068021/in-international-treaties-lie-the-untappedlaw?articleID=2000068021&story_title=in-international-treaties-lie-the-untappedlaw&pageNo=1

Table 1: GTI RANKS AND SCORES 2014

Rank	Country	Score
1.	Iraq	10
2.	Afghanistan	9.39
3.	Pakistan	9.37
4.	Nigeria	8.58
5.	Syria	8.12
6.	India	7.86
7.	Somalia	7.41
8.	Yemen	7.31
9.	Philippines	7.29
10.	Thailand	7.19
11.	Russia	6.76
12.	Kenya	6.58
13.	Egypt	6.5
14.	Lebanon	6.4
15.	Libya	6.25
16.	Colombia	6.24
17.	Turkey	5.98
18.	Congo	5.9
19.	Sudan	5.77
20.	South Sudan	5.6
21.	Algeria	5.52
22.	Mali	5.29
23.	Bangladesh	5.25
24.	Nepal	5.23
25.	China	5.21
26.	Central African Republic	5.19
27.	United Kingdom	5.17
28.	Iran	4.9
29.	Greece	4.73
30.	United States	4.71