

**GLOBAL TERRORISM: A VICTIM'S RIGHT TO COMPENSATION IN KENYA**

**BY**

**STANLEY MUTUMA**

**Reg No: G62/75930/2014**

**RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILLMENT OF THE  
REQUIREMENTS FOR THE AWARD OF THE MASTER OF LAWS DEGREE OF THE  
UNIVERSITY OF NAIROBI.**

**October 2017**

**DECLARATION**

I hereby declare that this thesis is my original work and has not been presented in any university or college to be accredited or for an award of any degree. All sources and materials used in the preparation of the research project have been duly acknowledged.

**STANLEY MUTUMA**

**G62/75930/2014**

Signed: .....

**APPROVAL**

This thesis is submitted for examination with my approval as University Supervisor.

**MS. JOY ASIEMA.**

**University of Nairobi**

**Department of Public Law**

**School of Law**

Signed: .....

## **DEDICATION**

This project is dedicated first, to the Almighty God who gave me the physical and mental strength to undertake and accomplish this study.

Secondly, I devote this project to my family members especially my father Ntongaiti, mother and wife Joy, for the support they accorded me in the period of this research. I owe it to them all.

## **ACKNOWLEDGEMENT**

The preparation of a project calls for concerted efforts from several key individuals and institutions. Nonetheless, while it might be impractical to cite all of them, some credit however minimal is inevitable.

To begin with, my sincere gratitude goes to my project supervisor, Ms. Joy Asiema for taking the time and rendering invaluable advice, guidance and timely assistance through the preparation of this project proposal.

Secondly, I wish to acknowledge my parents for their help in editing the project proposal.

Lastly, I wish to appreciate the University of Nairobi fraternity, notably, the Department of Public Law and the School of Law Library for granting me an enabling environment to plan for and finally complete my research project. In addition, I express my worthwhile recognition of the Judiciary of Kenya, in particular, the Supreme Court of Kenya, for the opportunity they granted unto me in a bid to conduct this research

## TABLE OF CONTENTS

DECLARATION	ii
DEDICATION	iii
ACKNOWLEDGEMENT	iv
ABBREVIATIONS	viii
ABSTRACT	xii
DEFINITION OF TERMS	xiii
CHAPTER ONE: BACKGROUND AND CONTEXT OF THE STUDY	1
1.1 Introduction	1
1.2 Background	1
1.3 Statement of the Problem	4
1.4 Objectives of the Study	4
1.4.1 General Objective	4
1.4.2 Specific Objectives	4
1.5 Research Questions	5
1.6 Research Hypotheses	5
1.7 Justification for the Study	6
1.8 Scope and Limitation of the Study	7
1.9 Literature Review	7
1.10 Methodology	12
1.11 Theoretical Framework	12
1.12 Natural Law Theory	13
1.13 Chapter Breakdown	16
CHAPTER TWO: MAKING A CASE FOR COMPENSATION OF VICTIMS OF TERROR IN KENYA	17
2.1 Introduction	17
2.2 The Terrorism in Kenya	18
2.3 Recognition of Victims of Terrorism.	23
2.4 Legal Redress for Victims of Terrorist Attacks	26
2.5 Cases of Compensation of Terrorism Victims in Kenya	30
2.5.1 Bomb Blast Victims Petition Parliament in Quest for Compensation	30

2.5.2 Terror victims sue French bank over 1998 Nairobi attack	32
2.5.3 Terror Victims and Rights Activists Cry Out for Compensation	35
2.6 Challenges That May Hinder the State in Providing Adequate Compensation to Victims of Terror	36
2.7 Conclusion	38
<b>CHAPTER THREE: THE KENYAN LEGAL FRAMEWORK WITH RESPECT TO COMPENSATION OF TERRORISM VICTIMS</b>	39
3.1 Introduction	39
3.2 Kenyan Legal Framework on Compensation of Terrorism Victims	39
3.2.1 The Constitution of Kenya 2010	39
3.2.2 The Victim Protection Act 2014	41
3.3 Conclusion	44
<b>CHAPTER FOUR: COMPARATIVE COMPENSATION SCHEMES ANALYSIS</b>	46
4.1 Introduction	46
4.2 Compensation Mode for Terror Victims in Selected Jurisdictions	47
4.2.1 United States of America	47
4.2.2 United Kingdom	49
4.2.3 Argentina The AMIA Case Study	51
4.3 Proposed Compensation Criteria and their Shortcomings	53
4.3.1 Level of Government with Responsibility on Compensation	56
4.3.2 Compensation of Citizens versus Compensation of Non-Citizens	57
4.4 Conclusion	60
<b>CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS</b>	62
5.1 Introduction	62
5.2 Hypotheses	62
5.3 Findings.	63
5.3.1 Eligibility of Victims of Terrorism for Compensation	63
5.3.2 Challenges That May Hinder the Provision of Adequate Compensation to Victims of Terror	64
5.4 Conclusion	65
5.5 Recommendations	65



### **LIST OF CASES**

Argentine Republic v Amerada Hess Shipping Corp, 488 US 428, 434 (1989)

Brewer v Islamic Republic of Iran, 664 F Supp 2d 43, 50 (DDC 2009).

James Owens, et al v Republic of Sudan, et al, Civil Action No 01-2244 (JDB).

Winfred Wairimu Wamai, et al v Republic of Sudan, et al, Civil Action No 08-1349 (JDB).

### **LIST OF STATUTES**

Constitution of Kenya 2010.

Anti-terrorism and Effective Death Penalty Act 1996.

Criminal Procedure Code, Cap 75, Laws of Kenya.

Penal Code Cap 63 Laws of Kenya.

Prevention of Terrorism Act No 30 of 2012 (Kenya).

Victim Protection Act 2014 No 17 of 2014.

Witness Protection Act Cap 79, Laws of Kenya.

Crime Victims Right Act 18 USC (USA).

Foreign Sovereign Immunity Act 2008 (USA).

Victims of Terrorist Act of 1984 (US).



## INTERNATIONAL AND REGIONAL INSTRUMENTS

UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (Resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/34) <<http://www.refworld.org/docid/3b00f2275b.html>> accessed 19 February 2017.

UN General Assembly, *International Convention for the Suppression of Terrorist Bombings* (Adopted by GA Res A/RES/52/164 on 15 December 1997, Doc No 37517) <<http://www.refworld.org/docid/3dda06ddc.html>> accessed 15 February 2017.

UN General Assembly, *International Convention for the Suppression of the Financing of Terrorism* (Resolution 54/109, 9 December 1999, Doc No 38349) <<http://www.refworld.org/docid/3dda0b867.html>> accessed 15 February 2017.

UN General Assembly, *International Convention for the Suppression of Acts of Nuclear Terrorism* (13 April 2005, A/59/766, available at: <<http://www.refworld.org/docid/425e58694.html>> accessed 15 February 2017.

UN General Assembly, *Universal Declaration of Human Rights* (10 December 1948, 217 A (III)) <<http://www.refworld.org/docid/3ae6b3712c.html>> accessed 16 February 2017

Organisation of African Union Convention on the Prevention and Combating of Terrorism (Algiers July 1999) and the Protocol to that Convention, Addis Ababa July 2004

Directorate General of Human Rights, *Guidelines of the Committee of Minister of the Council of Europe on Human rights and the fight against terrorism* (adopted by the Committee of Ministers on 11 July 2002 at the 804<sup>th</sup> meeting of the Ministers' Deputies, Council of Europe Publishing 2003) <<http://www.coe.int/t/dghl/standardsetting/victims/Guidelines%20CM.pdf>> accessed 19 February 2017.

## **ABBREVIATIONS**

<b>CVTF</b>	Compensation of Victims of Terrorism Fund
<b>FSIA</b>	Foreign Sovereign Immunity Act
<b>PLO</b>	Palestinian Liberation Organization
<b>RFLNPSA</b>	Roman Foundations of the Law of Nations and Political Science Association
<b>S11VCF</b>	September 11 Victim Compensation Fund
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>US</b>	United States

## ABSTRACT

The purpose of this study was to make a case for the victims of terrorism to be compensated by the State. Justice is the constant and perpetual disposition to render every man his due as was held in *Re James Henry Borden, Jr v State* (20

07). Consequently, access to a fair and just legal system is a fundamental human right which no person should be denied. In view of the foregoing, it is worth noting that global terrorism is a phenomenon that usually affects innocent citizens whereas terrorism may target to damage both the State and her security apparatus. Therefore, this study was conducted in Kenya and was chosen purposively due to the fact that it has huge numbers of terrorism victims seeking compensation. Hence, the specific objective of this study was to examine Kenya's legal framework providing for compensation for victims of terrorism, assess if victims of terrorism are duly recognized by the State for compensation purposes and to make recommendations for the enactment of a law providing for compensation. The Natural law theory was used in this study fairly widely so as to provide a means of determining and supporting the progress in advancing the compensation argument for victims of terrorism. This study employed descriptive research design and specifically used the library based design which was quite appropriate for this study since it sought to analyze factors associated with certain occurrences, outcomes or types of behaviour. In conclusion, this study discerned that the Compensation Fund established by the Prevention of Terrorism Act, 2012 is yet to be operationalised and therefore recommends that there be established a Compensation Scheme and an operationalised Compensation Fund for victims of terrorism; thereby creating the need to enact a law providing for the eligibility criteria for victims of terrorism to guarantee them compensation.

## DEFINITION OF TERMS

**Global terrorism** is a phenomenon that usually affects innocent citizens whereas terrorism may target to damage the State and security apparatus.<sup>1</sup>

**Jurisprudence** is the study of law, legal systems and institutions to get a deeper understanding of their nature and reasoning.<sup>2</sup>

**Justice** is one of the tenants of development, and without access to which, it complicates and burdens the life of the individual/party that is hindered from its shield and defender.<sup>3</sup>

**Legal system** is a fundamental human right to which no person should be denied at whatever cost.<sup>4</sup>

**Natural law** is a theory of law which holds that law is right reason in agreement with nature, and that God is the only source and enforcer of law.<sup>5</sup>

**Terrorism** refers to acts of violence or use of force against property or human beings, thereby threatening their security of a nation in order to further certain political ideologies or other objectives.<sup>6</sup>

**Transnational, international, or global terrorism** is where there is the involvement of two or more countries in terrorism, which is best approached using international systems.<sup>7</sup>

---

<sup>1</sup> A Bettelheim, 'Policymakers struggle with issues of fairness and frugality in compensating terrorism victims' *CQ Weekly* (17 November 2001) 27-33.

<sup>2</sup> R Dworkin, *Sovereign virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press 2000).

<sup>3</sup> Ibid (n 1).

<sup>4</sup> Ibid(n 1).

<sup>5</sup> Omony John Paul, *Key Issues in Jurisprudence: An In-depth Discourse on Jurisprudence Problems* (1<sup>st</sup> ed. Nairobi: LawAfrica Publishing (K) Ltd) xxi.

<sup>6</sup> Richard Jackson, 'The Core Commitments of Critical Terrorism Studies' (2007) 6 *European Political Science* 244–251.

<sup>7</sup> Ibid.

## CHAPTER ONE

### BACKGROUND AND CONTEXT OF THE STUDY

#### 1.1 Introduction

The present chapter discusses the background and context of the study comprising, inter alia, the statement of the problem, research objectives, hypothesis, justification, study limitations, and the scope of the study.

#### 1.2 Background

Justice globally is the constant and perpetual disposition to render every man his due as was held in *Re James Henry Borden Jr v State*.<sup>8</sup> Consequently, access to a fair and just legal system is a fundamental human right which no person should be denied. In view of the foregoing, it is worth noting that global terrorism is a phenomenon that usually affects innocent citizens whereas terrorism may target to damage both the State and her security apparatus.<sup>9</sup> In Africa, international terrorism groups became active in the mid-1990s, with the major examples being the 1998 Nairobi US Embassy bombings, the Kikambala bombing in Mombasa, the Kampala bombings, Tanzanian bombings and South African bombings to mention but a few.<sup>10</sup>

In these incidences, the victims were not compensated since there were no adequate legal procedures that could be used to determine the extent to which victims had been affected directly or indirectly.<sup>11</sup> In addition, continuous acts of terrorism by the Al-Shaabab militant group in Kenya have created more victims who now more than ever before require adequate compensation.

---

<sup>8</sup> Supreme Court of Alabama, Ex parte James Henry Borden Jr. (In *Re James Henry Borden, Jr v State of Alabama*) 1050042, Decided 17 August 2007.

<sup>9</sup> Secretary-General of the United Nations, *Supporting Victims of Terrorism* (New York, NY: United Nations 2008) ii <[http://www.un.org/en/terrorism/ctitf/pdfs/un\\_report\\_supporting\\_victims\\_terrorism.pdf](http://www.un.org/en/terrorism/ctitf/pdfs/un_report_supporting_victims_terrorism.pdf)> accessed 15 February 2017; African Union, 'Conclusions' (African Union Symposium on Victims of Terrorist Acts, Algiers, Algeria 27-28 October 2014) 2 <<http://www.peaceau.org/uploads/conclusions-symposium-victims-oct2014-en.pdf>> accessed 15 February 2017.

<sup>10</sup> Richard Aldrich, *The Roman Foundations of the Law of Nations* cited in R J Aldrich, 'Dangerous Liaisons: Post-September 11 Intelligence Alliances' (2002) *Science Monitor*, Article on-line. E books, London.

<sup>11</sup> *Ibid* (n.10).

The Constitution of Kenya, Prevention of Terrorism Act 2012,<sup>12</sup> as well as regional and international conventions and treaties,<sup>13</sup> have enshrined the rights of individuals and civilians to protection and sought to shield them from acts of war that arise from situations of conflict. The International Convention for the Suppression of Terrorist Bombings 1997,<sup>14</sup> the International Convention for the Suppression of Financing of Terrorism 1999,<sup>15</sup> and the International Convention for the Suppression of Acts of Nuclear Terrorism<sup>16</sup> establish several crimes relating to, inter alia shipping, civil aviation, use, possession or threatened use of “bombs” or nuclear weapons and terrorism funding. In this regard, these international instruments may be regarded as creating a code of terrorism offences.

Specifically, the International Convention for the Suppression of Financing of Terrorism 1999 makes it an offence for a person, country or organisation to donate or collect finances with the objective of facilitating, full or in part, the commission of acts delineated in the annex.<sup>17</sup> The Convention further states that the duty of State Parties in respect of the offence of funding the commission of the acts delineated in the annex is independent of their ratification.<sup>18</sup> However, this does not permit any States which are not party to one or more of the international instruments listed in the annex to make reservations restricting the scope of their international obligations in relation to the financing of the listed acts.<sup>19</sup>

Additionally, the aforementioned treaties enjoin State parties cooperate mutually in the construction in the construction of ‘universal jurisdiction’ over the prohibited acts, by taking appropriate steps to give their courts wide jurisdictional powers over the acts in question, including jurisdictional powers relating to territoriality, nationality of the offender and the

---

<sup>12</sup>Prevention of Terrorism Act 2012 ( No 30 of 2012).

<sup>13</sup> See, e.g. Organisation of African Union Convention on the Prevention and Combating of Terrorism and the Protocol to that Convention; International Convention for the Suppression of Terrorist Bombings, 1997.

<sup>14</sup> UN General Assembly, *International Convention for the Suppression of Terrorist Bombings* (Adopted by GA Res A/RES/52/164 on 15 December 1997, Doc No 37517) <<http://www.refworld.org/docid/3dda06ddc.html>> accessed 15 February 2017.

<sup>15</sup> UN General Assembly, *International Convention for the Suppression of the Financing of Terrorism* (Resolution 54/109, 9 December 1999, Doc No 38349) <<http://www.refworld.org/docid/3dda0b867.html>> accessed 15 February 2017 [hereinafter ‘International Convention for the Suppression of Financing of Terrorism 1999’].

<sup>16</sup> UN General Assembly, *International Convention for the Suppression of Acts of Nuclear Terrorism* (13 April 2005, A/59/766, available at: <<http://www.refworld.org/docid/425e58694.html>> accessed 15 February 2017.

<sup>17</sup> International Convention for the Suppression of Financing of Terrorism 1999, Article 2(1).

<sup>18</sup> International Convention for the Suppression of Financing of Terrorism 1999, Article 2(2).

<sup>19</sup> Ibid.

victims, and the mere presence of a suspect in the territory of a State.<sup>20</sup> In the same vein, States are required to extradite any terrorist suspects found in their territory or initiate criminal proceedings against them.<sup>21</sup> Therefore, for purposes of extradition, the aforementioned treaties call upon States Parties to consider the listed acts as political offences, which are extraditable. The States should also take all possible measures to promote international cooperation in the prevention, investigation and prosecution of terrorist acts.<sup>22</sup>

As aforementioned, terrorism involves unlawful use of force or violence against property and human life, with a view to coercing or intimidating a State or its citizens to further certain ideologies. There are two types of terrorism generally recognised by the international law enforcement: domestic and international terrorism. Domestic involves nationals attacking their own country without foreign direction, while international trans-boundary terrorism is conducted or facilitated by foreign governments or groups which transcend a country's boundaries.<sup>23</sup> Needless to say, the issue of terrorism is a new and emerging arena of warfare that is totally different and distinct from the traditional systems of conventional warfare. In it the combatants, for example, terrorists disguise themselves as civilians thereby making it difficult to isolate and identify them from the civilians. Their targets are also different from the traditional military and strategic targets in the sense that they are by and large unsuspecting civilians who have no idea of the ongoing conflict. The compounding scenario then, as one would then imagine for the victims of a terrorist attack, is that they are left feeling unprotected, vulnerable and abandoned by their governments. Hence, there is need for the current study.

### **1.3 Statement of the Problem**

Terrorism has been a threat in the wake of the 21<sup>st</sup> Century and this paper holds the view that acts of terrorism affect both people and their property and the consequences of terrorism are far reaching. Accordingly, victims affected by these acts have a right to be compensated by the States where the Act occurred. Does the legal framework in Kenya adequately provide for compensation of victims of terrorist attacks?

---

<sup>20</sup> Ibid (n.18) Article 7.

<sup>21</sup> Ibid (n.18) Article 15.

<sup>22</sup> Ibid (n.18) Preamble, para 1.

<sup>23</sup> See Georgene Vairo, 'Remedies for Victims of Terrorism' (2002) 35 Loyola of Los Angeles Law Review 1265-1294; Peter Roy-Byrne, 'Effects of Terror and Violence Vary by Culture' (2003) NEJM Journal Watch.

The right to compensation of terrorism victims in Kenya is provided in Section 49 of the Prevention of Terrorism Act.<sup>24</sup> Section 49 (1) establishes a Victims Compensation Fund known as Compensation of Victims of Terrorism Fund. Section 49 (4) mandates that the Cabinet Secretary responsible for matters relating to internal security to pass regulations that provide for the management and administration of the Fund and for anything incidental to or connected therewith. Unfortunately, anything to this effect is yet to be passed close to five years after the Act was passed. This means that both foreigners and non-foreigners are yet to be protected or have this right realized. In the event that such a law had been passed and either of the groups not mentioned then the resulting law would be Chapter 4 on the Bill of Rights in the Constitution with guarantees rights recognised or conferred by law, except to the extent that they are inconsistent with Chapter 4 to be conferred to all persons.

In light of the above, once the Regulation is passed both foreigners and non-foreigners would be protected. This paper will make a case/justification for the victims of terrorism in Kenya to be compensated by the State as this paper is of the opinion that the State has neglected its duty in light of this paper.

#### **1.4 Objectives of the Study**

The general and specific objectives of the study are stated below.

##### **1.4.1 General Objective**

The present study generally sought to make a case for the victims of terrorism to be compensated by the Kenyan state.

##### **1.4.2 Specific Objectives**

The specific objectives of this study are to:

1. Examine the legal framework in Kenya, and whether it adequately provides for compensation of victims of terrorist attacks.

---

<sup>24</sup> NO. 30 OF 2012



2. Assess whether victims of a terrorist attacks are recognized as being eligible for compensation.
3. Make a case for compensation for victims of terrorism in Kenya.

### **1.5 Research Questions**

This study sought to address the following research questions:

1. How does the legal framework in Kenya provide security and compensation for victims of terrorism?
2. Are victims of terrorist attacks recognized as being eligible for compensation?

### **1.6 Research Hypotheses**

The following hypotheses were tested:

1. The victims of terrorist's acts in Kenya are not properly recognized as being eligible for compensation by the State.
2. There is need to enact a compensation scheme and operationalize section 49 (4) of the Prevention of Terrorism Act 2012.
3. The legal framework in Kenya does not adequately provide and or address compensation of Terrorism Victims.

### **1.7 Justification for the Study**

In recent times, the world has experienced an increasing number of terrorist attacks which results in loss of life and destruction of properties.<sup>25</sup> It is appropriate that the question of compensation for the victims of terrorism should be considered hence this study.

The prevention of infringement of human rights is a well-established principle of law.<sup>26</sup> Civilians are entitled to protection of their life and property. The government as a sobering entity has the obligation and mandate to fulfil this role, in the absence of which it would be abdicating its core mandate of offering security to its citizens and therefore the need for the study. Due to the

---

<sup>25</sup> National Centre for Victims of Crime Resource Library, <<https://victimsofcrime.org/>> accessed on 18 October 2016.

<sup>26</sup> Alfred Adler, *Superiority and Social Interest: A Collection of Later Writings* (Rowena R Ansbacher and Heinz Ludwig Ansbacher eds, New York, NY: W W Norton 1979).

unconventional nature of terrorist attacks, the study would try to identify the responsible actors and try to establish who is obligated to offer compensation.

The study is important because it is acknowledging a global problem that is giving more significance in the occurrence of terrorism. For the country to take stock of the increasing terror attacks thereby the government would use the findings of this study to fast track emerging compensation issues of victims of terrorism to be redressed. Victims would be able to make an argument for compensation from the government and this would help illustrate the challenges faced by victims of a terrorist attack, to show their vulnerability and hurdles faced in their attempt to seek compensation.

This would assist victims of terror acts to feel acknowledged and maybe helpful to bring a closure to such experiences by compensation in order to return them to their normal life or at least give a feel of normalcy. To the researchers it would act as reference material for further research.

### **1.8 Scope and Limitation of the Study**

The study undertook a comparative analysis of terrorist victims in Kenya as they have been categorized compensable and non-compensable due to their nature of engagements at the vicinity of terrorist attacks by the legal frameworks. The focus is on assessment of the law and if it accords protection to victims of terrorism attacks.

### **1.9 Literature Review**

This comprises the review of past studies and critical review. There have been numerous researches done in this area of terrorism and effects of terrorism on victims and the general public. Various attempts by different authors and scholars have tried to seek out how the law compensates victims of terrorism.

In a 2008 symposium, the United Nations (UN) brought together victims of terrorism from various parts of the world, creating an avenue for their needs to be addressed.<sup>27</sup> This was under the Terrorism Prevention Branch and the Justice Section of the UN Office on Drugs and Crime (UNODC) which was generously supported by donor countries, such as Colombia, Cyprus and

---

<sup>27</sup> Secretary-General of the United Nations (n 9) 1-24.

the Netherlands.<sup>28</sup> This exercise stressed on the trans-border nature of terrorism activities, which States should take into account when coming up with effective means of providing assistance to the victims of such activities, including the provision of adequate compensation.<sup>29</sup> Cross-border issues mount a share of complexity to the measures needed promote victims' access to justice and/or reparation.<sup>30</sup> For instance, the location of the trial proceedings and its impact on the interests and involvement of the victim, as well as the chances for a successful trial, are factors that were considered in the application of the *aut dedere aut judicare* principle in the cross-border context.<sup>31</sup> This study appreciates this work since it highlights challenges encountered by terror victims globally especially in Kenya.

Jalata's comparative study on the global impact of terrorism noted that the collateral damage directly and indirectly is usually impacted on citizens.<sup>32</sup> Terrorism acts such as September 11, acts of terrorism in Northern Ireland, The Madrid Bombing, and the July 7th London bombing affected many citizens which resulted to death and permanent disability. Yet the victims are not compensated promptly and adequately. This present study tried to analyze what needs to be done after the occurrence.

Gersen work argues that In Africa there is no jurisprudence that can be cited for compensating victims of terror.<sup>33</sup> Equally, there is no legal tradition that can be cited to act as a framework of offering litigation to victims perhaps this is so since Africa States had not experience much of terrorism that would warrant legal engineering of setting up laws and statute that would protect the terror victims.<sup>34</sup> This study appreciated this information as they are in tandem with its objectives.

Walsh quotation in the Kenyan context said that once citizens are found in scenes of terror<sup>35</sup> for example the west gate attack, government has tended to offer only facilitation fee for the dead,

---

<sup>28</sup> Secretary-General of the United Nations (n 9) 1-24.

<sup>29</sup> Ibid N.28.

<sup>30</sup> Ibid N.28.

<sup>31</sup> Ibid N.28.

<sup>32</sup> Asafa Jalata, 'Colonial Terrorism, Global Capitalism and African Underdevelopment: 500 Years of Crimes against African Peoples' (2013) 5(9) The Journal of Pan African Studies 6 <<http://www.jpanafrican.org/docs/vol5no9/5.9Colonial.pdf>> accessed 15 February 2017.

<sup>33</sup> J E Gersen, *Citizens, Disasters and the State* (Unpublished manuscript 2001).

<sup>34</sup> Ibid.

<sup>35</sup> D Walsh, *African Victims of Al-Qa'ida Forgotten, Independent* (Kampala, Uganda: Oxford Press 2002) 21.

such as a casket and transport. The survivors of terror to a less extent have been settled for hospital bills only. However actual adequate compensation for incapacitation or permanent disability is an area that has not been taken up by government as an area for compensation yet this set of victims are in dire need of compensation so as to help them pick up their pieces and move on with their lives which might be disrupted. This quotation inspired this study since its context is relevant to this study's hypotheses and done on the same geographical setup as this work.

Lewis and Murdock in 1996 acknowledged that terrorism directly affects the enjoyment of fundamental human rights,<sup>36</sup> particularly the rights to life, security, liberty and physical integrity, while Smetters in 2003 affirmed that it adversely affects the economic and social development<sup>37</sup> of countries, jeopardizes the friendly relationship between various countries, including cooperation in development. This information formed the basis of this study.

Deess noted that close to 50 per cent of the US states accord rights to the victims of terrorism and crime in general. The author argues that, in all those states, some victims are granted the right to compensation, notification of rights, notification of court appearances, and need to submit victim impact statements before sentencing.<sup>38</sup> This is a positive contribution to the present study.

The other rights accorded to victims in most states include the rights to restitution, the right to be treated with utmost dignity and respect, the right to protection, the right to expeditious trial, the right to take part in the court hearing processes, and the right to consult with relevant court authorities before plea bargains are offered or defendants released from custody. Worth noting, some US states extend protection to victims' jobs while they exercise their right to participate in the criminal justice process.<sup>39</sup>

One of the ways through which victims can get monetary compensation for their economic and social losses is state-run victim compensation programs. In the US, these programs first begun in

---

<sup>36</sup> Christopher M Lewis and Kevin C Murdock, 'The Role of Government Contracts in Discretionary Reinsurance Markets for Natural Disasters' (1996) 63 (4) *The Journal of Risk and Insurance* 567-597.

<sup>37</sup> Kent Smetters, 'Insuring Against Terrorism: The Policy Challenge' (2004) *Brookings-Wharton Papers on Financial Services*, Working Paper 11038, <<http://www.nber.org/papers/w11038>> accessed 19 February 2017.

<sup>38</sup> F Deess, *The Victims of Crime Rights in United States of America* (Chicago: Oxford University Press 1999).

<sup>39</sup> *Ibid.*

1965 in California and subsequently spread to all other States.<sup>40</sup> The study finds that in comparison to US compensation model Kenya lacks a proper classification of terror law that would facilitate compensation after the disaster.

A notable impact of terrorist activities and the international response to them has been the propensity to pit the issues of liberty and security against each other. The idea of protecting and promoting human rights has often been presented as being in conflict with protection from terrorist activities. This may not be far from the truth. As a matter of fact, international human rights stemmed from the need, and obligation, to contain aggression and extreme acts. The UN human rights principles were, in part, developed to address the ravages of political extremism, aggression and war of the 1930s and 1940s.<sup>41</sup>

The principles established under international human rights law are very essential in combating the terrorist menace. Such principles go a long way to addressing the root-cause of terrorism, dealing with its perpetrators, protecting its victims, and reducing its consequences. Additionally, international human rights law imposes a positive obligation on the states to device measures that will prevent terrorism. States also have an obligation to promote the right to life, protect their nationals from torture and promote other human rights and freedoms.<sup>42</sup> It is a well settled fact that terrorism has the potential of infringing on all rights that are part of a State's positive obligation to promote and protect. This does not imply that a terrorist attack displays a State's failure to protect and promote the rights. Nonetheless, if a state fails to adopt adequate and apposite measures to promote fundamental human rights and freedoms, it can itself be held responsible for violating those rights and freedoms. An effective counter-terrorism strategy can thus be a part of a state's human rights obligations.<sup>43</sup>

The study was geared towards addressing the gap areas that were lacking in other previous literature on compensation in Kenya. The compensation scheme that would comprehensively outline the losses covered and to what extent. It also addressed issue of eligibility as to who qualifies to be defined as a victim of terrorism.

---

<sup>40</sup> Ibid.

<sup>41</sup> A Ripstein, *Equality, Responsibility, and the Law* (Cambridge, UK: Cambridge University 1999).

<sup>42</sup> Bettelheim (n 1) 27-33.

<sup>43</sup> Jeremy Prestholdt, 'Kenya, the United States and Counterterrorism' (2011) 57 (4) *Africa Today* 2-27.

## **1.10 Methodology**

This study adopted descriptive research design in collecting and analysing data. This design involved a library-based (secondary) research which has the advantage of allowing the researcher to conduct the study by evaluating existing literature in relation to compensation of victims of terrorism. The approach was appropriate for this study because of its high analytical content and the fact that it is the best way of obtaining verifiable and in-depth data which was unlikely to be obtained through other approaches.<sup>44</sup> The above reasons form the basis for which the descriptive research design is to be used and also the most appropriate for the study to obtain exhaustive and accurate accounts.

The author appreciates that desktop method is not sufficient to adequately address the whole question of compensation. Additionally, this paper opines that further research is needed which includes interviews with the victims in order to get a more in-depth perspective of the problem.

## **1.11 Theoretical Framework**

The term ‘theory’ denotes a set of properly argued or laid down concepts and propositions geared towards explaining some facts or events.<sup>45</sup> However, there are indications that a theoretical approach to terrorism is likely to be fruitful in answering several broad and important questions associated with the topic.

The study analyzed various theories related to the topic of the study before predicating it on Natural Law theory in order to create a foundation for the study to explore global terrorism and interrogate the right to compensation for the victims of terrorism in Kenya.

## **1.12 Natural Law Theory**

As already pointed out, jurisprudence is the study of theories of law, legal systems and institutions to obtain a deeper understanding of their nature and interrelations. Historically, the concept of jurisprudence in the modern-day was developed in the 18<sup>th</sup> century, with the main focus being on the principles of natural law, civil law, and the law of nations.

---

<sup>44</sup> Omony (n 5) xxiii; see also L David, *Social Research Methods* (Oxford press 2012).

<sup>45</sup> C R Kothari, *Social Research Theory* (Nairobi, Kenya: Macmillan Publishers 2004).

Jurisprudence can generally be broken down into different categories depending on the type of questions theorists and scholars seek to answer, the existing theories or schools of thought, and how best those questions should be answered.<sup>46</sup>

The natural law theory is best fit to be used in this study since it pertains to the idea that there are rational objective limits to the power of legislative rulers. Consequently, the foundations of law are accessible through reason and it is from these laws of nature that human-made laws gain whatever force they exhibit.<sup>47</sup>

The ancient theory of natural law is largely associated with Aristotle, who is invariably regarded as the father of natural law, as well as Cicero and St Thomas Aquinas. Aristotle propounded the concept of natural justice or natural right. His understanding of natural law is largely in line with how Thomas Aquinas interpreted his contributions. This was based on Aquinas' conflation of natural law and natural right, the latter of which Aristotle posits in Book V of the *Nicomachean*. Aquinas's influence was such as to affect a number of early translations of these passages, though more recent translations render them more literally. In his book *summa theologica*, Aquinas propounded four major categories of law, namely eternal law (*lex aeterna*), natural law (*lex naturalis*), divine law (*lex divina*) and human law (*lex humana*). Eternal law represents God's rational direction of all things created through His divine will and intellect. Aquinas argues that this principle is revealed to humans through right reason and failure to know it is being without direction.<sup>48</sup> Natural law results from man's participation in the working of cosmic law owing to his being a rational human creature, and is discovered by reason.<sup>49</sup> Divine law is God's direct revelation to mankind through scripture.<sup>50</sup> Finally, human law represents ordinances of reason (e.g. legislation) developed by humans in the application of natural law for their common good.<sup>51</sup>

Admittedly, natural law is premised on what is known as "first principles." This is the first principle of natural law which holds that good should be done and promoted and evil should be

---

<sup>46</sup> <<http://www.englishdictionary.education/en/jurisprudential>> accessed 19 October 2016.

<sup>47</sup> <<http://www.liquisearch.com/jurisprudence>> accessed on 19 October 2016.

<sup>48</sup> Omony (n 5) 18.

<sup>49</sup> Ibid n.47.

<sup>50</sup> Ibid n.47.

<sup>51</sup> Max Solomon Shellens, 'Aristotle on Natural Law' (1959) 4(1) *Natural Law Forum* 72–100 DOI: 10.1093/ajj/4.1.72.

avoided.<sup>52</sup> All other principles of the natural law stem from this first principle. In the same vein, and as argued by Aquina, the desires to live and to multiply are part of the basic (natural) values undergirding all other values of humanity. In his treatise *Leviathan*, (1651), Hobbes considers natural law as a precept, or general rule, founded on reason, by which human beings are forbidden to do that which is destructive of their lives, or takes away the means of preserving the same; and to omit that by which they consider should best be preserved.<sup>53</sup>

The theory is applicable to this study in the sense that it promotes legal obligations of the state to individuals that has been one of the sturdiest human rights in the history of compensation to victims of terrorism. As the dominant modern form of fundamental freedoms and rights, it has informed and guided several of the most successful and enduring governments the world has ever known. The legal system established by natural law theory is such a powerful model that the very future of terror victims seems to depend entirely on its fortunes and thus on the American system of government and its supporting terror victims compensation culture.

It is a widely held view that people possess rights by virtue of them being rational creatures, and that those rights should be protected and not violated by pure majoritarianism. As a matter of fact, minority rights can be violated by an excessive concentration on majority rights. In most developing states like Kenya, majorities tend to discriminate against minorities on the basis of different attributes, such as religion, sex, gender and ethnicity. Thus, natural law theory stands relevant to this study as compared to the other legal schools of thought.

### **1.13 Social Contract Theory**

#### **John Locke**

For Hobbes, the necessity of an absolute authority, in the form of a Sovereign, followed from the utter brutality of the State of Nature. The State of Nature was completely intolerable, and so rational men would be willing to submit themselves even to absolute authority in order to escape

---

<sup>52</sup> Michael Zuckert, *The Natural Rights Republic* (Notre Dame University Press 1996) 73–85.

<sup>53</sup> R Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press 2000).



it.<sup>54</sup> For John Locke,<sup>55</sup> the State of Nature is a very different type of place, and so his argument concerning the social contract and the nature of men's relationship to authority are consequently quite different.<sup>56</sup> While Locke uses Hobbes' methodological device of the State of Nature, as do virtually all social contract theorists, he uses it to a quite different end.<sup>57</sup>

Locke's most important and influential political writings are contained in his *Two Treatises on Government*. The first treatise is concerned almost exclusively with refuting the argument of Robert Filmer's *Patriarcha*, that political authority was derived from religious authority, also known by the description of the Divine Right of Kings, which was a very dominant theory in seventeenth-century England.<sup>58</sup> The second treatise contains Locke's own constructive view of the aims and justification for civil government, and is titled "An Essay Concerning the True Original Extent and End of Civil Government".<sup>59</sup>

According to Locke, the State of Nature, the natural condition of mankind, is a state of perfect and complete liberty to conduct one's life as one best sees fit, free from the interference of others.<sup>60</sup> This does not mean, however, that it is a state of license: one is not free to do anything at all one pleases, or even anything that one judges to be in one's interest. The State of Nature, although a state wherein there is no civil authority or government to punish people for transgressions against laws, is not a state without morality. The State of Nature is pre-political, but it is not pre-moral. Persons are assumed to be equal to one another in such a state, and therefore equally capable of discovering and being bound by the Law of Nature. The Law of Nature, which is on Locke's view the basis of all morality, and given to us by God, commands

---

<sup>54</sup> Celeste Friend, *Social Contract Theory*, Internet Encyclopedia of Philosophy, A Peer – Reviewed Academic Source < <https://www.iep.utm.edu/soc-cont/>> 21<sup>st</sup> May, 2018.

<sup>55</sup> John Locke 1632-1704 was among the most famous philosophers and political theorists of the 17<sup>th</sup> century. He is often regarded as the founder of a school of thought known as British Empiricism, and he made foundational contributions to modern theories of limited, liberal government. < <https://www.iep.utm.edu/locke/>> 21<sup>st</sup> May, 2018

<sup>56</sup> Alex Tuckness, *Locke's Political Philosophy*, Stanford Encyclopedia of Philosophy, < <https://plato.stanford.edu/entries/locke-political/>> 21<sup>st</sup> May, 2018.

<sup>57</sup> Ibid

<sup>58</sup> Alex Tuckness, *Locke's Political Philosophy*, Stanford Encyclopedia of Philosophy, < <https://plato.stanford.edu/entries/locke-political/>> 21<sup>st</sup> May, 2018.

<sup>59</sup> Alex Tuckness, *Locke's Political Philosophy*, Stanford Encyclopedia of Philosophy, < <https://plato.stanford.edu/entries/locke-political/>> 21<sup>st</sup> May, 2018.

<sup>60</sup> Alex Tuckness, *Locke's Political Philosophy*, Stanford Encyclopedia of Philosophy, < <https://plato.stanford.edu/entries/locke-political/>> 21<sup>st</sup> May, 2018.

that we not harm others with regards to their "life, health, liberty, or possessions".<sup>61</sup> Because we all belong equally to God, and because we cannot take away that which is rightfully His, we are prohibited from harming one another. So, the State of Nature is a state of liberty where persons are free to pursue their own interests and plans, free from interference, and, because of the Law of Nature and the restrictions that it imposes upon persons, it is relatively peaceful.<sup>62</sup>

Property plays an essential role in Locke's argument for civil government and the contract that establishes it. According to Locke, private property is created when a person mixes his labor with the raw materials of nature.<sup>63</sup> So, for example, when one tills a piece of land in nature, and makes it into a piece of farmland, which produces food, then one has a claim to own that piece of land and the food produced upon it. Given the implications of the Law of Nature, there are limits as to how much property one can own: one is not allowed to take more from nature than one can use, thereby leaving others without enough for themselves. Because nature is given to all of mankind by God for its common subsistence, one cannot take more than his own fair share. Property is the linchpin of Locke's argument for the social contract and civil government because it is the protection of their property, including their property in their own bodies, that men seek when they decide to abandon the State of Nature.<sup>64</sup>

According to Locke, the State of Nature is not a condition of individuals, as it is for Hobbes. Rather, it is populated by mothers and fathers with their children, or families - what he calls "conjugal society".<sup>65</sup> These societies are based on the voluntary agreements to care for children together, and they are moral but not political. Political society comes into being when individual men, representing their families, come together in the State of Nature and agree to each give up the executive power to punish those who transgress the Law of Nature, and hand over that power to the public power of a government. Having done this, they then become subject to the will of the majority. In other words, by making a compact to leave the State of Nature and form society, they make "one body politic under one government"<sup>66</sup> and submit themselves to the will of that

---

<sup>61</sup> [Alex Tuckness, Locke's Political Philosophy, Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/entries/locke-political/>](https://plato.stanford.edu/entries/locke-political/) 21<sup>st</sup> May, 2018.

<sup>62</sup> [Alex Tuckness, Locke's Political Philosophy, Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/entries/locke-political/>](https://plato.stanford.edu/entries/locke-political/) 21<sup>st</sup> May, 2018.

<sup>63</sup> Manzoor Elahi, *What is Social Contract Theory?* Sophia Project, Philosophy Archives.

<sup>64</sup> Ibid n.61

<sup>65</sup> Ibid n.61 par. 78.

<sup>66</sup> Ibid n.61 par. 97

body. One joins such a body, either from its beginnings, or after it has already been established by others, only by explicit consent. Having created a political society and government through their consent, men then gain three things which they lacked in the State of Nature: laws, judges to adjudicate laws, and the executive power necessary to enforce these laws. Each man therefore gives over the power to protect himself and punish transgressors of the Law of Nature to the government that he has created through the compact.

In light of the above the author opines that the citizenry have a right to compensation by the state from where they hail in the event when their safety is compromised. In line with this paper, when the citizens suffer the consequences of terrorism, the state in question has an obligation to offer compensation to them.

### **1.14 The Human Rights Theory**

Human rights are almost a form of religion in today's world. They are the great ethical yardstick that is used to measure a government's treatment of its people.<sup>67</sup> A broad consensus has emerged in the twentieth century on rhetoric that frames judgment of nations against an international moral code prescribing certain benefits and treatment for all humans simply because they are human.<sup>68</sup> Within many nations political debates rage over the denial or abuse of human rights. This paper is of the view that acts of terrorism unsettle the central tenet of human life which is order and safety free from harm. The Acts (as they have been discussed later in this work) cause untold harm to human life. If a government ignore its citizenry who are affected by such atrocious act then the government in question falls below the yardstick in Human Rights Theory.

Human rights are a product of a philosophical debate that has raged for over two thousand years within the European societies and their colonial descendants.<sup>69</sup> This argument has focused on a search for moral standards of political organization and behaviour that is independent of the contemporary society. This unease has led to a quest for enduring moral imperatives that bind societies and their rulers over time and from place to place. It seems therefore that the origin of Human Rights Theory found in the notions of 'natural right' developed by classical Greek

---

<sup>67</sup> Andrew Heard, "Human Rights: Chimeras In Sheep's Clothing?" 1997

<sup>68</sup> Ibid

<sup>69</sup> Andrew Fagan, *Human Rights*, Internet Encyclopedia of Philosophy, University of Essex, A Peer – Reviewed Academic Source < <https://www.iep.utm.edu/hum-rts/> > 21<sup>st</sup> May, 2018.

philosophers, such as Aristotle, but this concept was more fully developed by Thomas Aquinas in his *Summa Theologica*.<sup>70</sup> For several centuries Aquinas' conception held sway: there were goods or behaviours that were naturally right (or wrong) because God ordained it so. What was naturally right could be ascertained by humans by 'right reason' - thinking properly. Hugo Grotius further expanded on this notion in *De jure belli et paci*,<sup>71</sup> where he propounded the immutability of what is naturally right and wrong.

Thomas Paine wrote a defence of the conception of natural rights and their connection to the rights of a particular society.<sup>72</sup> In *The Rights of Man*, published in two parts in 1791 and 1792, Paine made a distinction between *natural* rights and *civil* rights:

Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others. Civil rights are those which appertain to man in right of being a member of society. Every civil right has for its foundation, some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection<sup>73</sup>

This passage reflects, in part, inspiration for human rights from the social contract views of writers such as Jean-Jacques Rousseau, who argued that people agree to live in common if society protects them.<sup>74</sup> Indeed, the purpose of the State is to protect those rights that individuals cannot defend on their own. Accordingly, the State has a duty to protect its citizenry from acts that could bring harm to them, and in the event where its citizenry are harmed its only in order that the State compensates them.

---

<sup>70</sup> The *Summa Theologiae* is the best-known work of Thomas Aquinas. Although unfinished, the *Summa* is "one of the classics of the history of philosophy and one of the most influential works of Western literature" < [www.documentacatholicaomnia.eu/.../1225-1274\\_Thomas\\_Aquinas\\_Summa\\_Theologiae\\_22nd](http://www.documentacatholicaomnia.eu/.../1225-1274_Thomas_Aquinas_Summa_Theologiae_22nd) April, 2018

<sup>71</sup> A treatise of Legal Philosophy and general Jurisprudence, Vol. 9: "A History of the Philosophy of Law in the Civil Law World" < <http://www.springer.com/978-90-481-2963-8> > 22<sup>nd</sup> March, 2018

<sup>72</sup> Andrew Fagan, *Human Rights*, Internet Encyclopedia of Philosophy, University of Essex, A Peer – Reviewed Academic Source < <https://www.iep.utm.edu/hum-rts/> > 21<sup>st</sup> May, 2018.

<sup>73</sup> *Ibid*

<sup>74</sup> Andrew Fagan, *Human Rights*, Internet Encyclopedia of Philosophy, University of Essex, A Peer – Reviewed Academic Source < <https://www.iep.utm.edu/hum-rts/> > 21<sup>st</sup> May, 2018.

This paper appreciates that there are several challenges on the Universality and Inalienability of Human Rights; for instance They may simply be invented by people, or they may only need to be revealed to, or discovered by, humans. This means that legal researchers and scholars and all other relevant stakeholders have to appreciate and recognize that such a right exists before it is recognized. This will be a challenge to this paper since the Right/s in question has to be agreed upon. However, the writing of this work is a starting point for this. Another set of problems arise if human rights are creations, pure and simple, of the human intellect. Human rights standards could be created in a variety of ways.<sup>75</sup> In one method, a gradual growth of consensus builds around norms of behaviour that eventually acquire an obligatory character. It may be difficult to trace the epistemological origins of this consensus, but the end result is a broad base of agreement that human beings should be treated in certain ways. It may thus be difficult to come up with the said right but not impossible, this means that it could take a little longer for the rights to be realized and recognized.

Theories of human rights are based on dignity, well-being, or development all are motivated by a desire to protect and cultivate some quality of life; because one is alive, one should lead a life filled with dignity, well-being, or continuing development.<sup>76</sup> A view of human rights based on subsistence is ultimately concerned with simply preserving life itself. However, the common ground among all theories of human rights is the assumption that human rights include subsistence rights. Approaches based on dignity, well-being, and development add protections for these qualities of life onto the right to existence

### **1.15 Chapter Breakdown**

This study contains is explored under five chapters as follows:

**Chapter One** offers a foundation to the study comprising the background information, problem statement, research objectives, hypothesis of the study, significance and justification for the study, scope and limitation of the study, literature review, methodology and chapter review.

---

<sup>75</sup> Ibid

<sup>76</sup> A treatise of Legal Philosophy and general Jurisprudence, Vol. 9:” A History of the Philosophy of Law in the Civil Law World < <http://www.springer.com/978-90-481-2963-8>> 22<sup>nd</sup> March, 2018

**Chapter Two** makes a case for the victims of terrorism in Kenya to be compensated by the State.

**Chapter Three** highlights on the Kenyan legal framework with respect to compensation of terrorism victims.

**Chapter Four** presents the analysis of comparative compensation schemes in selected countries, proposed compensation schemes and summary.

**Chapter Five** covers findings, recommendation and conclusions

## CHAPTER TWO

### MAKING A CASE FOR COMPENSATION OF VICTIMS OF TERROR IN KENYA

#### 2.1 Introduction

In the world history, criminal justice systems have often concentrated on the apprehension, prosecution and sentencing of perpetrators of crime without taking into account the place of victims.<sup>77</sup> At best, the role of the victim has been forgotten or restricted to that of a mere witness. Nevertheless, the adoption of the UN Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power marked a positive move towards a more victim-centred justice approach.<sup>78</sup> This Declaration contains 21 proposed measures geared towards enhancing access to justice, fair treatment, as well as the restitution, compensation and social assistance for victims.<sup>79</sup> Importantly, the Declaration emphasised the importance of developing and implementing international standards concerning fair treatment of victims of crime consistent with the rule of law and human rights principles. The term ‘victims of crime’, and it encompasses victims of terrorism. Thus, although the Declaration does not expressly mention victims of terrorism, its application equally extends to them and the principles envisaged therein provides a basis for protecting and promoting the rights of victims of terrorism at the national level.

In view of this imperative, this chapter critically makes a case for the victims of crime to be compensated by the Kenyan state. In evaluating terrorism in Kenya, emphasis is placed on whether victims of terrorist attacks are properly recognized, and whether there exist legal redress mechanisms that victims of terrorism can pursue. It also examines, in reference to Kenya’s legal framework, the challenges that may hinder the state in providing adequate compensation to victims of terror.

---

<sup>77</sup> UNODC, *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework* (Vienna: United Nations, 2015) 1 <[https://www.unodc.org/documents/terrorism/Publications/Good%20practices%20on%20victims/good\\_practices\\_victims\\_E.pdf](https://www.unodc.org/documents/terrorism/Publications/Good%20practices%20on%20victims/good_practices_victims_E.pdf)> accessed 15 February 2017.

<sup>78</sup> UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (Resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/34) <<http://www.refworld.org/docid/3b00f2275b.html>> accessed 19 February 2017.

<sup>79</sup> *ibid.*

Moreover, the chapter analyses acts of terrorism in Kenya and the issues and challenges that have engulfed Kenya. The chapter further discusses Kenya and other anti-terror partners with Kenya. This is in keeping with the fact that Kenya and other anti-terror partners have been assisting Kenya on terrorism issues. Just like in the preceding chapter, the Natural law theory is employed to guide the analysis in this chapter, that is, whether the human right (compensation right) as an external factor determines compensation development in Third World countries.

## 2.2 The Terrorism in Kenya

The terrorism menace in Kenya dates back to the 1975 when the first bomb exploded. Two blasts occurred inside the Starlight nightclub and in a travel bureau near the Hilton hotel within Nairobi. A few days after these explosions, the late JM Kariuki exposed that fact that his car had been hit by bullets.<sup>80</sup> Information went round that this was a failed attempt to kill him. This 'failed' attempt was followed by yet another serious explosion which killed about 30 civilians.<sup>81</sup> Despite the massive public protest and police efforts, not suspect was apprehended.<sup>82</sup> The inhabitants of Nairobi city subsequently lived in fear, destabilised by a number of telephone bomb hoaxes.<sup>83</sup>

Moreover, during the 1976 Operation Entebbe hostage crisis, Kenya acted as a refuelling haven for the Israeli C-130 Hercules transport planes. Viewed as involving Western interests, this incident raised anger on the part of the Islamic extremists. The next terrorist attack took place at the Norfolk Hotel during the new-year celebrations in 1980.<sup>84</sup> As a result of this attack, about 20 people were killed and 80 others injured.<sup>85</sup> An Arab extremist group claimed responsibility and justified that it was retaliating because Kenya had allowed Israeli troops to refuel in Nairobi during the Entebbe Airport crisis.<sup>86</sup> In that incident, the international security agencies collaborated with the Kenyan security forces to have the primary suspect, Qaddura Mohammed

---

<sup>80</sup> Charles Hornsby, *Kenya: A History since Independence* (London/New York: I.B. Tauris 2012).

<sup>81</sup> Ibid n.80.

<sup>82</sup> Ibid n.80.

<sup>83</sup> Samuel L Aronson, 'Kenya and the Global War on Terror' (2013) 7 (1&2) *African Journal of Criminology and Justice Studies* 24-34  
<[https://www.umes.edu/cms300uploadedfiles/ajcjs/volume\\_7\\_issue\\_1\\_and\\_2/vol7.1%20aronson%20final.pdf](https://www.umes.edu/cms300uploadedfiles/ajcjs/volume_7_issue_1_and_2/vol7.1%20aronson%20final.pdf)>  
accessed 15 February 2017.

<sup>84</sup> Ibid n.83.

<sup>85</sup> Ibid n.83.

<sup>86</sup> Edward Mogire and K M Agade, *Counter-terrorism in Kenya* (2011) 29 (4) *Journal of Contemporary African Studies* 473-491.



Abdel al-Hamid of Morocco, apprehended within hours.<sup>87</sup> The suspect was alleged to have checked into the Norfolk hotel a week before the incident took place.<sup>88</sup>

The other serious attack took place on the 7<sup>th</sup> day of August, 1998.<sup>89</sup> A Kenyan-based US Ambassador stated that an al-Qaeda operative had come to the Nairobi embassy 8 months before the attack, and warned that it would be blown up with a truck bomb.<sup>90</sup> On November 2002, a missile attack took place after a plane took off from the Mombasa airport.<sup>91</sup> Subsequently, the Kikambala Hotel was attacked when the Israeli tourists were being received.<sup>92</sup> This blast killed 13 people and injured 80, and four Israeli military planes with teams of doctors and psychologists came overnight to evacuate the injured Israelis and others who wanted to leave.<sup>93</sup>

In October 2011, a collaborated operation was initiated by the Somali and Kenyan military against the Al-Shabaab extremists in the southern part of Somalia.<sup>94</sup> The operation was mainly led by the Somali military, with support from the Kenyan security forces. Since then, Kenya has been rocked by a number of terror attacks which are believed to have been undertaken by the by Al-Shabaab insurgents.<sup>95</sup>

For instance, between 2011 and 2012, the number of grenade attacks in Kenya was about 17, with nine of them taking place in North Eastern parts of Kenya, such as Dadaab, Wajir, and Garissa.<sup>96</sup> During that period, four terror attacks occurred in Nairobi, and four in Mombasa. Targets included police stations and police vehicles, nightclubs and bars, churches, a religious

---

<sup>87</sup> Edward Mogire and K M Agade, *Counter-terrorism in Kenya* (2011) 29 (4) *Journal of Contemporary African Studies* 473-491.

<sup>88</sup> Media Policy Centre, 'Theoretical Perspectives to Terrorism and the Media' (2014) Revised Paper on Media and Terrorism 3 <<http://www.mediapolicycentre.org/wp-content/uploads/2014/06/Revised-Paper-on-Media-and-Terrorism-3.pdf>> accessed on 18 October 2016.

<sup>89</sup> *Ibid* P.g3-4.

<sup>90</sup> Edward F Mickolus and Susan L Simmons, *Terrorism 1996-2001: A Chronology* (Connecticut and London: Greenwood Press 2002) 140-143.

<sup>91</sup> 'Kenya Terror Strikes Target Israelis' *BBC* (28 November 2002).

<sup>92</sup> D Walsh, *African victims of Al-Qaeda Forgotten* (Oxford Press Kampala Uganda 2002) 21.

<sup>93</sup> Media Policy Centre (n 65) 4.

<sup>94</sup> *Ibid* n.93.pg. 5-6.

<sup>95</sup> See Lawrence Mwangi Mulatya, *Asylum and National Security in Kenya* (Master of Arts Project, University of Nairobi: Institute of Diplomacy and International Studies, 2014) 51-54; Kenya Defence Forces, 'Update on Al-Shabaab Activities' *Daily Nation* (2012).

<sup>96</sup> Simeon Mokaya Momanyi, 'The Impact of Al-Shabab Terrorist Attacks in Kenya' (Master Thesis, The Arctic University of Norway 2015) 11 <<http://munin.uit.no/bitstream/handle/10037/9848/thesis.pdf?sequence=1&isAllowed=y>> accessed 16 February 2017.

gathering, a downtown building of small shops, and a bus station. Further, on 1<sup>st</sup> July 2012, 17 people were killed and 45 others injured in two simultaneous attacks on churches in Garissa.<sup>97</sup> In this attack, 17 people were killed and about 45 people injured.<sup>98</sup>

On September 2013, the Al-Shabaab militia attacked Nairobi's Westgate Shopping Mall, reportedly killing over 80 people.<sup>99</sup> In April 2015, gunmen attacked the Garissa University College, killing about 148 students and injuring several others.<sup>100</sup> The attackers claimed to be from the Al-Shabaab extremist group, and indicated that they were taking revenge over non-Muslims occupying Muslim territory.<sup>101</sup> The militants took several students hostage, freeing Muslims but withholding Christians.<sup>102</sup>

On 1<sup>st</sup> April 2014, two bombs exploded in the Eastleigh area of Nairobi, killing six people and injuring dozens more.<sup>103</sup> On 9<sup>th</sup> April 2014, it was reported that twelve shops in the Nairobi central business district centre were under investigation for funding terrorist activities.<sup>104</sup> On April 2014, a terrorist car bomb that exploded in Nairobi's Pangani quarter killed four people.<sup>105</sup>

On 3<sup>rd</sup> May 2014, twin terrorist attacks in the port city of Mombasa killed three people.<sup>106</sup> A day after this tragedy, another terrorist attack took place on two commuter vehicles along Thika Highway in Nairobi, reportedly killing at least 3 passengers and injuring over 62 others.<sup>107</sup> There

---

<sup>97</sup> Media Policy Centre, 'Theoretical Perspectives to Terrorism and the Media' (2014) Revised Paper on Media and Terrorism 3 <<http://www.mediapolicycentre.org/wp-content/uploads/2014/06/Revised-Paper-on-Media-and-Terrorism-3.pdf>> accessed on 18 October 2016. Pg.6.

<sup>98</sup> Ibid n.97.

<sup>99</sup> Ibid n.97.

<sup>100</sup> National Consortium for the Study of Terrorism and Responses to Terrorism (START), *Al-Shabaab Attack on Garissa University in Kenya* (START Background Report, April 2015) 1-3 <[https://www.start.umd.edu/pubs/STARTBackgroundReport\\_alShabaabGarissaU\\_April2015.pdf](https://www.start.umd.edu/pubs/STARTBackgroundReport_alShabaabGarissaU_April2015.pdf)> accessed 16 February 2017.

<sup>101</sup> Ibid n.100.

<sup>102</sup> Ibid n.100.

<sup>103</sup> Jeremy Lind, Patrick Mutahi and Marjoke Oosterom, *Tangled Ties: Al-Shabaab and Political Volatility in Kenya* (Evidence Report No 130, Institute of Development Studies 2015) 27 <<http://chriips.or.ke/docs/publications/tangled-ties-al-shabaab-and-political-volatility-in-kenya.pdf>> accessed 16 February 2017.

<sup>104</sup> Ibid n.103 pg.16-28.

<sup>105</sup> Julius Kithuure, 'Kenya: Pangani Attack Shines Spotlight on Kenya Police Tactics' *AllAfrica* (Washington, DC, April 2014) <<http://allafrica.com/stories/201404250182.html>> accessed 16 February 2017.

<sup>106</sup> Col Cyrus Oguna, 'Assessing Operation Linda Inchi' (2012) 6(2) Africa Defence Forum 40.

<sup>107</sup> Julius Kithuure, 'Kenya: Bus Bombings in Nairobi and Mombasa Shake Citizen Confidence in Security Forces' *AllAfrica* (Sabahi (Washington, DC, 5 May 2014) <<http://allafrica.com/stories/201405060930.html>> accessed 16 February 2017.

were also twin explosions at the *Gikomba* Market in Nairobi, which claimed the lives of over 10 people.

On 16<sup>th</sup> June 2014, about 48 people were killed when Al-Shaabab militants attacked restaurants in a Kenyan coastal town, including police and government offices. The other attack took place in Mpeketoni with about 50 heavily-armed gunmen attacking a police station, before starting to shoot at civilians.<sup>108</sup> In late 2014, two attacks believed to have been undertaken by Al Shabaab militants killed 64 persons in Mandera County.<sup>109</sup>

On 22<sup>nd</sup> November 2014, gunmen attacked a bus travelling from Mandera to Nairobi, killing 28 passengers, mostly teachers and government workers heading to Nairobi for the December festive season.<sup>110</sup> Similarly, on 2<sup>nd</sup> December 2014, about 36 quarry workers were killed in a terror attack conducted by Al-Shabaab militants near Mandera town. Most of these workers were non-Muslims.<sup>111</sup>

The study ascertained that from all the incidences mentioned above the victims have not been compensated appropriately by the government.<sup>112</sup> The Kenyan Parliament is working on legislation focused on reducing terrorism but not on compensation of victims. There has been opposition from Muslim, NGO and human rights groups. The bill aims to allow police to tap private communications, seize property and access the bank details of suspected terrorists.<sup>113</sup> Consequently, Kenyan former President Mwai Kibaki assented to the Prevention of Terrorist Act 2012, Kenya's first piece of anti-terrorist legislation to be passed, on 2<sup>nd</sup> October 2012.

---

<sup>108</sup> Jeremy Lind, Patrick Mutahi and Marjoke Oosterom, *Tangled Ties: Al-Shabaab and Political Volatility in Kenya* (Evidence Report No 130, Institute of Development Studies 2015) 27 <<http://chrips.or.ke/docs/publications/tangled-ties-al-shabaab-and-political-volatility-in-kenya.pdf>> accessed 16 February 2017.pg31-34.

<sup>109</sup>Ibid n.108.

<sup>110</sup> ibid n.108 pg.31.

<sup>111</sup> Ibid n.108.

<sup>112</sup> John Fritze, "Victims of 1998 Africaa Bombing still seeking compensation", The Baltimore Sun, June, 30, 2012, 6.04pm Washington [www.baltimoresun.com](http://www.baltimoresun.com) 15<sup>th</sup> June, 2018. Where we seek that a decade later after the 1998 bombing, the victims are still seeking compensation.The Victims of the recent terrorism acts are also yet to be compensated.

<sup>113</sup> 'Terrorism in Kenya' (*OMICS International* 2014), <[http://www.research.omicsgroup.org/index.php/Terrorism\\_in\\_Kenya](http://www.research.omicsgroup.org/index.php/Terrorism_in_Kenya)> accessed 16 February 2017.

It should be noted that most of the terrorist attacks carried out in Kenya have been planned by local Kenyans who were recruited by the Al-Shabaab extremist group.<sup>114</sup> Most of the recruits are recent converts to Islam. Estimates in 2012 placed the figure of Kenyan fighters at around 10% of Al-Shabaab's total forces.<sup>115</sup> Referred to as the 'Kenyan Mujahedeen' by Al-Shabaab's militants, the recruits are usually young and overzealous Kenyans who have been pushed by the unemployment frustrations to fall in the trap of extremist groups. Because the Kenyan insurgents have a different profile from the Somali and Arab militants that allows them to blend in with the general population of Kenya, they are also often harder to track. Existing literature suggest that Al-Shabaab has been trying to build an even more multi-ethnic generation of militants in the larger region.<sup>116</sup> One recent convert who was the mastermind of the Kampala attack but now cooperates with the Kenyan police believes that in doing so, the group is in effect trying to use Kenyans to propagate its ideologies while its members are in a hideout. According to diplomats, the coastal parts of Kenya and Tanzania, such as Mombasa and Zanzibar, which are largely inhabited by Muslims, have a number of young people who are mostly vulnerable for recruitment.<sup>117</sup>

### 2.3 Recognition of Victims of Terrorism.

The term 'victim' refers to natural or legal persons who have proximately or directly sustained injuries, emotional or physical or other, as a result of a violation of the rules of international law.<sup>118</sup> In regard to the first element, it is imperative to point out that the scope of the Universal Declaration of Human Rights is not restricted to injury sustained by natural persons. Consistent with international State practice, it also extends to legal persons.<sup>119</sup> Accordingly, legal persons include corporations or other entities.

There are also several different legal definitions of the term "crime victim" for different purposes. For asserting rights during a prosecution, to determine who can assert victims' rights

---

<sup>114</sup> 'Terrorism in Kenya' (OMICS International 2014), <[http://www.research.omicsgroup.org/index.php/Terrorism\\_in\\_Kenya](http://www.research.omicsgroup.org/index.php/Terrorism_in_Kenya)> accessed 16 February 2017

<sup>115</sup> Ibid.

<sup>116</sup> 'Terrorism in Kenya' (OMICS International 2014), <[http://www.research.omicsgroup.org/index.php/Terrorism\\_in\\_Kenya](http://www.research.omicsgroup.org/index.php/Terrorism_in_Kenya)> accessed 16 February 2017.

<sup>117</sup> Ibid n.116.

<sup>118</sup> See UN General Assembly, *Universal Declaration of Human Rights* (10 December 1948, 217 A (III)), <<http://www.refworld.org/docid/3ae6b3712c.html>> accessed 16 February 2017.

<sup>119</sup> Ibid n.118.

during the prosecution, it is necessary to explore the offense being prosecuted and then the interests of the victims.<sup>120</sup> The definition of victim for the purpose of services is different from the definition for rights. Thus, for the provision of services, a victim refers to a person who has suffered a direct physical, emotional, or pecuniary harm as a result of the commission of a crime. The services required should commence immediately after the detection of the crime, and should be in place during the initial investigation, before any prosecution proceedings are initiated.

Incidentally, it should be noted that Kenya did not have terrorist-specific legislation before the enactment of the Prevention of Terrorism Act 2012 and therefore relied on provisions of the Penal Code<sup>121</sup> and Criminal Procedure Code (CPC)<sup>122</sup> to prosecute terrorism related offences. The CPC recognises victims of crime and gives them an opportunity to address the court on how they have been affected by the crime in question. In particular, section 329A of the CPC defines the term “victim” as referring to a person who was, at the time of the commission of the crime which caused the death of the primary victim or personal harm, a member of the primary victim’s immediate family (which literally means the victim’s *de jure* or *de facto* spouse, a parent, guardian or step-parent, a child or step-child, a brother, sister, step-sister or step-brother). The term “primary victim” refers to a person against whom the offence was committed, a person who was a witness to the act of actual or threatened violence, the death or the infliction of the physical bodily harm concerned, being a person who has suffered personal harm as a direct result of the offence. Thus, from this comprehensive definition, a victim means a primary victim or a family victim.

The above statutory definition of a victim has been considered as qualified because it was restricted to injuries arising from a domestic nature as terrorism activities had different dimensions depending on the environment existing at the time, as well as the ability of the government of the day to tolerate and accommodate victims of terrorism. Therefore, just like the term terrorism is broadly defined in law, victims of terrorism are dynamic depending on the school of thought that has defined terrorism. In some instances the definition of terrorism can capture wide range of people.

---

<sup>120</sup> The Crime Victims’ Rights Act, 18 U SC 3771 et. seq., states that a crime victim is a “person directly and proximately harmed as a result of the commission of a Federal offense [which terrorism is]....”

<sup>121</sup> Cap 63 Laws of Kenya.

<sup>122</sup> Cap 75 Laws of Kenya.

Equally the principal definition of terrorism may only include few victims. The State has found itself in a dilemma in relation to who qualifies to be recognized as a victim of terrorism for instance 1998 bombing at the US embassy. There were citizen's directly injured by the bomb besides they are those as a result of commission there after attempted to run away from the scene and were either knocked by cars or injured by debris falling from the surrounding. In this unique two instances the legal question that lies is that who is rightfully recognized as a victim of terror.

The many instances of terrorists throwing grenades on buses thereby injuring passengers and in some cases, the bus losing balance and knocking people by the road: still begs the fundamental question of who qualifies to be recognized as a victim of terror? Is it the one in the bus where the explosion has occurred or the one by the road where the exploding bus has hit? These are legal hurdles that must be cleared for proper recognition of eligibility of victims of terrorism. Another issue arising is that when terrorism occurs in State installations such as the embassy of a country and government offices, it follows that the terror was aimed at causing harm to the State and hence she should take responsibility for the victims but the challenge comes when the terror is committed in private installations for example supermarkets like the Westgate Mall or social places like *Gikomba* and *Muthurwa* markets, who then should take responsibility?

In instances where a terrorist attack occurs in Kenya but it is aimed at a foreign installation for example an Embassy or a Consular, should a distinction be made between the foreign nationals who are the targets, Kenyan citizens working in the premise(s) and the other citizens doing separate business in and outside the premise(s). An example is the 1998 US Embassy bombing in Nairobi where various cadres of persons were killed and others injured-Those outside the embassy, those inside and working in the embassy and those seeking services in the embassy. This foregoing discussions in principal makes eligibility of proper definition for victims difficult since there is no clear parameter that demarcate acts of terrorism in its broadest sense in both public and private installation and acts of criminality resulting from avenges.

This research holds that the State should adopts a clear frame work on the recognition and eligibility for compensation of victims of terrorism in light of the dynamism of terror activities.<sup>123</sup>

---

<sup>123</sup> Prevention of Terrorism Act, No. 30 of 2012.

## 2.4 Legal Redress for Victims of Terrorist Attacks

Effective prosecution of terrorist offenders is a key element in the fight against terrorism and the protection of victims' rights; miscarriages of justice have no significant impact in protecting and promoting the rights of victims, and may lead to impunity for the real offenders. As a matter of fact, the right to a fair trial is crucial, particularly because its promotion provides a ground for the protection of both the rights of the suspect(s) and the victim(s). Impunity for those who have allegedly violated human rights is an affront to the victims of those violations. Thus, from the viewpoint of victims' rights, impunity is a key issue. Earlier studies conducted by Anti-terror Committee in UK confirm that most governments in the North, South, West and East of Africa are undertaking the tricky process of enacting anti-terrorism laws.<sup>124</sup>

Section 24 of the Victim Protection Act<sup>125</sup> provides for payment of compensation as one of the punishments that may be inflicted for a crime. The other listed punishments include death, imprisonment (or community service), fine, and forfeiture. In the same vein, the CPC contains provisions relating to compensation of victims of crime as the court may direct. In particular, sections 171 and 174, which provide for "cost and compensation," are applied broadly by courts to order compensation for victims of crimes and spell out how this should be paid. The relevant provisions state as follows:

A judge of the High Court or a magistrate of a subordinate court of the first or second class may order a person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as the judge or magistrate may deem fit, in addition to any other penalty imposed.

A judge of the High Court or a magistrate of a subordinate court of the first or second class who acquits or discharges a person accused of an offence may, if the prosecution for the offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, order the private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit.

---

<sup>124</sup> Home Office, Foreign & Commonwealth Office, and Ministry of Justice, *Counter-terrorism* <<https://www.gov.uk/government/policies/counter-terrorism>> accessed 18 October 2016.

<sup>125</sup> No.17 of 2014

Additionally, the Witness Protection Act 2014 has created the Victims Compensation Fund which is funded from several sources, notably moneys payable from any property forfeited to the Government in respect of a crime as specified the Act, grants, gifts, donations or bequests made to the Fund by any person and received by the Agency with the approval of the Cabinet Secretary. The purpose of the Fund is to ensure: restitution to a victim of a crime specified in the Act or his family; compensation for the death of a victim of a crime under the Act, to the family of such victim; or reimbursement of any moneys required to meet expenses relating to any other issue incidental to or connected with the aspects restitution or compensation.

Section 329 of Kenyan CPC provides for the issuance of Victim Impact Statements, not only as an opportunity to provide information for the judge to consider at sentencing but also to allow the victim to explain the harm resulting from the commission of the crime in question and the financial consequences thereof.

The study held that, contrary to the last decade of 1990's where terrorism was frustrated by the nature of political, security and judicial structures or lack of financial resources, in this decade, these safeguards have been found to be wanting. It is in this light that the study concluded that though there are some significant rights to safeguard compensation for victims of terrorism in Kenya, much still needs to be done. This is due to the fact that the rights of victims of terrorism are guaranteed under international human rights law. Consequently, Kenya needs to enact a proper legal framework for criminalizing certain acts that violate human rights and for ensuring that an adequate and effective compensation scheme is developed for victims of terrorism.

Thus, the Kenyan State has an obligation to protect the victims of crime, including those who have suffered harm as a result of terrorism.<sup>126</sup> Similarly, the State should ensure that victims of terrorism and their families are accorded the right to an effective remedy when their rights have been violated in relation to terrorist acts. Any person who presents a claim that his or her rights have been violated has a right to be heard in a public hearing before an independent and impartial court or tribunal.<sup>127</sup> This further requires the State to ensure all its nationals, and victims in particular, have effective access to court(s) for purposes of defending their rights. The right to an effective remedy is very essential in the realm of international human rights law, and

---

<sup>126</sup> Constitution of Kenya, 2010, Article 29(c).

<sup>127</sup> Constitution of Kenya, 2010, Article 50(1).



it is a key element in the protection of victims of terrorism and other violations of human rights. It requires the State to make available a range of remedies for victims of serious crime, including an effective investigation and prosecution for alleged perpetrators.

It is also important to note that despite the enactment of counter terrorism legislation in Kenya, the issue of compensation has not been adequately addressed. It is a material fact that the victims of terrorism cannot be attributed to any aorta of contributory negligence as it so happens they are victims of circumstances who happen be “at the wrong place at the wrong time”.

## **2.5 Cases of Compensation of Terrorism Victims in Kenya**

### **2.5.1 Bomb Blast Victims Petition Parliament in Quest for Compensation**

In the recent past, the Government of Kenya has been under pressure to take appropriate measures in order to compensate the victims of the 1998 US embassy bombing in Nairobi. The 1998 US embassy bombing victims association affirmed that the United States Agency for International Development (USAid) had initially started providing them medical and educational support after the deadly terror attack, but it stopped doing so in 2002. No assistance has since been received from either the Kenyan or US government.

Al Qaeda-linked terrorists launched simultaneous attacks on US embassies in Kenya and Dar es Salaam, Tanzania that resulted in the death of 243 Kenyans and 12 foreigners in the Nairobi attack. The deadly attack, according to the 1998 bomb victims, left a further 5,000 injured many of whom are now disabled.<sup>128</sup>

A petition for compensation of the 1998 US embassy bombing in Nairobi was prepared and readied for delivery to the House before terrorists struck Nairobi’s upscale Westgate Shopping Mall on 21 September 2013. The mall attack left 67 Kenyans dead and about 200 others injured.<sup>129</sup> The petition had been prepared way before Westgate attack but a commission headed

---

<sup>128</sup>Bomb blast victims petition Parliament in quest for compensation’ *Business Daily* (Nairobi, 24 October 2013) <<http://www.businessdailyafrica.com/Bomb-blast-victims-petition-Parliament-in-quest-for-compensation/-/539546/2045556/-/ciid3d/-/index.html>> accessed 19 February 2017 Ibid. n.128

<sup>129</sup> Ibid. n.128

by former Attorney-General Charles Njonjo, was set up that received money from well-wishers which was distributed to victims in respect of the Westgate shopping mall attack only.<sup>130</sup>

The US aid then provided medical and educational support from the time of the attack to the year 2002 when the assistance was abruptly stopped.<sup>131</sup> The victims never received any assistance yet many of them are in dire need of medical assistance. Further, the US government provided \$45 million to the government which never went to compensate victims. It is said that the money went to the repair of the Co-operative Bank and Ufundi cooperative buildings, Kenya Red Cross, Operation Recovery as it was then called, Amref and Amani doctors. No money went to help victims many of whom are disabled.<sup>132</sup>

In contrast, the US congress, through Jesse Jackson Junior passed a resolution in 2007 calling on the American government to compensate US citizens affected by the bombing to which it agreed.<sup>133</sup> “However the East African bomb victims (Kenya and Tanzania) will not be compensated under that resolution. This House should do more using its legislative powers to take relevant action.”<sup>134</sup> Further, a ruling by a US district judge who ordered compensation to US citizens who were victims of the terror attack but nothing has been done to compensate the Kenyan victims. Further none of the issues cited in the said US ruling had been brought before any court of law, a constitutional or legal body.<sup>135</sup>

## **2.5.2 Terror victims sue French bank over 1998 Nairobi attack**

In 2015, a French multinational bank was accused in a lawsuit to have funded the 1998 terrorist attacks in Nairobi and Dar es Salaam. About 60 victims of the bombings and their families sued BNP Paribas SA (BNPP) for \$2.4 billion (Sh245 billion) compensation.<sup>136</sup> According to a

---

<sup>130</sup> Ibid. n.128

<sup>131</sup> ‘Bomb blast victims petition Parliament in quest for compensation’ *Business Daily* (Nairobi, 24 October 2013) <<http://www.businessdailyafrica.com/Bomb-blast-victims-petition-Parliament-in-quest-for-compensation/-/539546/2045556/-/ciid3d/-/index.html>> accessed 19 February 2017.

<sup>132</sup> Ibid n.131

<sup>133</sup> Ibid. n.131

<sup>134</sup> ‘Bomb blast victims petition Parliament in quest for compensation’ *Business Daily* (Nairobi, 24 October 2013) <<http://www.businessdailyafrica.com/Bomb-blast-victims-petition-Parliament-in-quest-for-compensation/-/539546/2045556/-/ciid3d/-/index.html>> accessed 19 February 2017.

<sup>135</sup> Ibid n.134

<sup>136</sup> Otiato Guguyu, ‘Terror victims sue French bank over 1998 Nairobi attack’ *Daily Nation* (Nairobi, 6 November 2015) <<http://www.nation.co.ke/news/Terror-victims-sue-French-bank-over-1998-Nairobi-attack/1056-2944748-yy7wwd/index.html>> accessed on 18 October 2016

lawsuit filed in the US District Court for the District of Columbia, the survivors demanded BNPP and some of its subsidiaries that were used to transfer funds used by Al-Qaeda and Hezbollah terrorists in the planning and execution of the attack held to account. The bank circumvented US sanctions on Sudan, Iran and Cuba and lied to US law enforcement about its operations in those countries.<sup>137</sup>

The case has been filed by the Fay Kaplan Law Firm, which won a similar case against Sudan and Iran for damages arising from the twin attacks on the embassies in Nairobi and Dar that killed over 220 people. It was argued that the bank in question had knowingly and intentionally given material, financial and resource support to the terrorists, which enabled them to plan and execute the 1998 attacks.<sup>138</sup>

It was, therefore, argued that, by pleading guilty to the 2014 charges, the French bank had admitted to taking part in financing terrorist activities which ended up harming over 4,000. Fay Kaplan argued in the case that during this period, Al-Qaeda and Hezbollah terrorists who carried out the attacks transacted money through BNPP and its subsidiaries.<sup>139</sup> It was stated that the bank had violated the US Anti-Terrorism Act, which requires victims killed or injured as a result of terror attacks committed against Americans to collect treble damages. The law is aimed at thwarting support for terrorist organisations, which it defines as Specially Designated Nationals.<sup>140</sup>

According to lawyer Fay, the bank had conspired with the government of Sudan, banks and other entities controlled by Sudan, including extremist organisations operating in Sudan (such as Hezbollah and Al-Qaeda), to intentionally transfer huge amounts money through the US financial system contrary to the US sanction laws.<sup>141</sup> In 2011, a US judge held that, since Sudan and Iran had aided the terrorism, they had an obligation to compensate the victims following a

---

<sup>137</sup> <<http://www.nation.co.ke/news/Terror-victims-sue-French-bank-over-1998-Nairobi-attack/1056-2944748-yy7wwd/index.html>> accessed on 18 October 2016

<sup>138</sup> <<http://www.nation.co.ke/news/Terror-victims-sue-French-bank-over-1998-Nairobi-attack/1056-2944748-yy7wwd/index.html>> accessed on 18 October 2016

<sup>139</sup> <<http://www.nation.co.ke/news/Terror-victims-sue-French-bank-over-1998-Nairobi-attack/1056-2944748-yy7wwd/index.html>> accessed on 18 October 2016

<sup>140</sup> <<http://www.nation.co.ke/news/Terror-victims-sue-French-bank-over-1998-Nairobi-attack/1056-2944748-yy7wwd/index.html>> accessed on 18 October 2016

<sup>141</sup> <<http://www.nation.co.ke/news/Terror-victims-sue-French-bank-over-1998-Nairobi-attack/1056-2944748-yy7wwd/index.html>> accessed on 18 October 2016

2008 amendment to the US Foreign Sovereign Immunities Act, which provided a window for non-US nationals employed by the US government to sue a state sponsor of terrorism.<sup>142</sup>

On its part, Iran was accused and found guilty of providing explosives and training to Al-Qaeda at camps in south Lebanon. Sudan's role in this incident was acting as a safe haven for the terrorists, including Osama Bin Laden, while the attacks were being planned.<sup>143</sup> Although the Court had awarded \$907 million as compensation to the victims of the 1998 attack (Kenyans, Tanzanians and Americans), more than 5000 Kenyan victims did not benefit from this payment since they were not working for the US embassy at the time of the attack and were thus not covered in the 2008 amendment.<sup>144</sup>

On 25<sup>th</sup> September 2015, a US court held that the six Kenyans individuals who were part of a "bellwether trial" conducted in 2011 were each entitled to \$150 million compensation. The rest, who had been left frustrated, held demonstrations in the run-up to the Global Entrepreneurship Summit seeking President Barack Obama's intervention to have them compensated on humanitarian grounds.<sup>145</sup>

In conclusion to this sub heading, I note that victims of terrorism in Kenya have made several attempts to get compensation through civil suits. However, their cause still remains in vain.

### **2.5.3 Terror Victims and Rights Activists Cry Out for Compensation**

After the Garissa University College attack,<sup>146</sup> which attracted international attention, foreign governments intervened to assist the victims. The Government of Kenya also covered the initial medical expenses at the Kenyatta National Hospital (KNH) and funeral expenses for all those killed in the attack. However, no compensation was extended to the families and survivors, and even those who sustained serious complications had to find other means of paying their medical

---

<sup>142</sup> <<http://www.nation.co.ke/news/Terror-victims-sue-French-bank-over-1998-Nairobi-attack/1056-2944748-yy7wwd/index.html>> accessed on 18 October 2016

<sup>143</sup> Ibid.N.144

<sup>144</sup> Ibid n.144

<sup>145</sup> <<http://www.nation.co.ke/news/Terror-victims-sue-French-bank-over-1998-Nairobi-attack/1056-2944748-yy7wwd/index.html>> accessed on 18 October 2016

<sup>146</sup> Jacqueline Mahugu, 'North Eastern Terror victims, rights activists cry out for compensation' *Standard Digital* (Nairobi, 3 April 2016) <<http://www.standardmedia.co.ke/article/2000196995/terror-victims-rights-activists-cry-out-for-compensation>> accessed on 18 October 2016.

bills.<sup>147</sup> For instance, one of the victims, named Mercy Chepkorir, had been shot on both legs, resulting to serious fractures. Regrettably, this victim stayed at KNH for two months and her single mother was forced to close her small business to attend to the situation. The only assistance the victim received was from France and not her own State, Kenya.<sup>148</sup>

## **2.6 Challenges That May Hinder the State in Providing Adequate Compensation to Victims of Terror**

The State might oppose the issue of compensation stating that it provided the necessary counter terrorism measures to its level best and therefore was not wilfully negligent nor did it abandon its duty in protecting its citizens. Furthermore, in the language of tort, the tortfeasor is solely responsible for the injurious acts caused by him. In this regard the State will argue that the tortfeasor is the perpetrator of the terrorism act. Moreover, the State might advance the defence that it has not set aside funds meant for compensating victims of terrorism. In addition, the State can advance the defence that the citizens ought to take precautionary measures by taking up insurance policies that are expected to cater for the unseen eventualities.

Tort law provides the answers to the question whether this person will be relieved of the loss; but these answers are not always in the affirmative, quite the contrary (at least in theory).<sup>149</sup> While it may be easy to identify an individual or an organization that is responsible for a terrorist act in a way triggering liability under the applicable legal system, plaintiffs are unlikely to bring these perfect defendants into court, and even if they do, most of them lack sufficient funds to cover all the losses that they have caused. As in other areas where the most obvious defendant is no practical option for the plaintiff, tort law tries to overcome this difficulty by finding side alleys that may lead to funds of which the victims can get a hold of instead.

The most basic rule of tort law is that the loss should lie with the immediate victim unless there are compelling arguments to shift all or part of her loss to somebody else.<sup>150</sup> It is obviously not

---

<sup>147</sup> Jacqueline Mahugu, 'North Eastern Terror victims, rights activists cry out for compensation' *Standard Digital* (Nairobi, 3 April 2016) <<http://www.standardmedia.co.ke/article/2000196995/terror-victims-rights-activists-cry-out-for-compensation>> accessed on 18 October 2016.

<sup>148</sup> Ibid n.147

<sup>149</sup> Peter Bell, *Compensating Victims of Terrorism Workshop Report* (Institute for National Security and Counterterrorism (INSCT, Spring 2011) 8 <<http://insct.syr.edu/wp-content/uploads/2012/09/Compensating-Victims-of-Terrorism-INSCT-May-2011.pdf>> accessed 15 February 2017.

<sup>150</sup> *ibid.*

difficult to convince someone that between the victim and the terrorist, it is the latter who should pay, but the further away to move from the terrorist in the chain of causation, the more doubts may be raised with respect to other potential defendants outside the terrorists' sphere. The choice is not equally easy, for example, between the surviving dependents of a person killed in a car bombing and the owner of the car stolen for that purpose by some terrorists.

## **2.7 Conclusion**

From the foregoing analysis, it is clear that the nature of terrorism in Kenya increased over the years. The author opines that it is only fair and just to compensate victims of terrorism which has not been done in Kenya. It is on the basis of this gap that this study makes a case for Kenya to develop an effective scheme for the compensation of victims of terrorism like in the US. In order to give impetus to this proposal, the ensuing chapter three provides an in-depth analysis of the Kenyan legal framework to establish whether it adequately provides a legal landscape for compensation. The purpose of chapter three is to further the findings generated in present chapter, but from a legal perspective.

## **CHAPTER THREE**

### **THE KENYAN LEGAL FRAMEWORK WITH RESPECT TO COMPENSATION OF TERRORISM VICTIMS**

#### **3.1 Introduction**

As revealed in chapter two above, terrorism has gained root in Kenya, and many survivors have at least a story to tell, but only in relation to their right to compensation because it hurts to remember the actual events. In regard to the question of compensation, it has explicitly been revealed that Kenya has not developed an effective compensation scheme for the victims of terrorism. This may be buttressed by the series of terror attacks since 1976 which left many Kenyan victims with serious complications, but the Government did not give any compensation apart from initial medical coverage, which was provided in very few cases. In view of this, this chapter interrogates the law to find out whether it adequately anchors the aspect of compensation. The thesis behind this analysis is to further the findings of chapter two above from a legal perspective by elucidating whether it is indeed the law which is inadequate or it is a question of implementation or both. The chapter discusses the provisions of the Constitution of Kenya 2010, the Victims Prevention Act 2014 and the Prevention of Terrorism Act 2012.

#### **3.2 Kenyan Legal Framework on Compensation of Terrorism Victims**

##### **3.2.1 The Constitution of Kenya 2010**

This study has various underpinnings in the Constitution of Kenya 2010. Most victims of terrorism do undergo difficulties following an incident of terrorism. Most of their rights as contained in the Bill of Rights are usually negated. Article 28 provides for the right to human dignity. This right is very core to the victims of terrorism. As such, the Kenyan government has an obligation to ensure that the victims are not subjected to conditions that violates their dignity. Article 40 of the Constitution 2010 guarantees the right to protection of property. The government should therefore look for ways of compensating those people whose properties are destroyed as a result of terrorism. Most importantly is Article 43 which provides for the right to economic and social rights. These rights include the right to health care services, highest attainable standards of health, accessible and adequate housing and to reasonable standards of

sanitation. Further, they deserve the right to quality food and clean water. Article 29 of the Constitution provides that every person has the right not to be subjected to any form of violence from either public or private sources. This provision may be construed to include violence from terrorist acts, which are caused by private sources.

While the Constitution does not refer specifically to victims of crime, the above provisions are directly applicable in the protection and promotion of their rights as other Kenyans. The government of Kenya should respect, promote and fulfil those rights with a view to meeting the needs of the victims. The reason for this view is that, as the Social Contract theory holds, the citizens have already submitted their sovereignty to the state, which is therefore required to respect that provide adequate security, including compensating those who suffer as a result of security threats. The obligation to respect and promote the fundamental rights and freedoms stems from the Constitution itself. Article 21(1) thereof makes it an obligation for “the State and every state organ to observe, respect, protect, promote and fulfil all the rights and fundamental freedoms in the Bill of Rights.” Fulfilling the rights entails developing legal and policy frameworks that are consistent with the interests of the right holders, in this case the victims of terrorism.<sup>151</sup>

### **3.2.2 The Victim Protection Act 2014**

The Victim Protection Act 2014 was enacted in accordance with Article 50(9) of the Constitution 2010. Section 23 thereof accords the victim the right to be compensated by the offender for personal harm suffered and any costs in relation to medication or psychological treatment. One challenge with this provision is the difficulty of the victim identifying the offender, particularly in cases of terrorism where the Government has itself been unable to apprehend the suspects. In this regard, it is regrettable that Kenya does not have any clear legal and regulatory framework for the compensation of victims of terrorism and other crimes where offenders clandestinely conduct their plans and are not identifiable to give compensation. This point makes it imperative for the Government to look into the situation and device a workable victims’ compensation and

---

<sup>151</sup> See Article 21(2) of the Kenyan Constitution, 2010.



protection framework, taking into account the numerous terror attacks witnessed in Kenya.<sup>152</sup> A practical approach may be amending the Victim Protection Act 2014 since it only covers the protection of victims but presupposes that an offender must be identified and convicted.

As a matter of fact, victims of the numerous terror attacks explored in chapter two above have been alive to their right to compensation but their clamour seems in vain.<sup>153</sup> For instance, one Douglas Sidialo was rendered completely blind in the 1998 bomb blast in Nairobi.<sup>154</sup> As the chairperson of the Bomb Blast Victims Association, he tried all ways to get compensated in vain.<sup>155</sup> True, pushing the Government of Kenya for compensation is just a mirage and, as indicated above, only a foreign government can listen to the victims' outcry. In Kenya, everyone should carry his cross, and God is for them all.

Section 27 of the Victim Protection Act 2014 establishes the Victims Protection Trust Fund, but this has not been operationalised. As a result, the victims of crime continue being used to give testimonies in Court after which they are forgotten. In his recent address to the Nation, the President of Kenya stated that a Reparations Fund has been established to help in compensating victims of historical injustices, but no effective mechanisms have been taken thus far to make this real. Whether the Fund exists is a puzzle. The framework for reparations that were recommended by the Truth, Justice and Reconciliation Commission is yet to be operationalised. This means that the country will continue ignoring the needs of victims of crime.<sup>156</sup>

In addition, the Act envisages the reparation and compensation of victims and special protection for vulnerable victims including the establishment of a Victim Protection Board which will play an important role in policy development, and the Victim Trust Fund which will cater for expenses arising out of assistance of victims of crime.<sup>157</sup> Importantly, a victim has a right to compensation by the offender for economic loss, loss or damage of property, personal injury, medical expenses and costs of necessary transportation and accommodation resulting from the

---

<sup>152</sup> See the arguments made by Jacqueline Mahugu, 'Terror victims, rights activists cry out for compensation' *Standard Digital* (3 April 2016) <<http://www.standardmedia.co.ke/article/2000196995/terror-victims-rights-activists-cry-out-for-compensation>> accessed 16 February 2017.

<sup>153</sup> Ibid n.152.

<sup>154</sup> Ibid n.152.

<sup>155</sup> Ibid n.152.

<sup>156</sup> Ibid n.152.

<sup>157</sup> Victim Protection Act 2014 No 17 Of 2014, Preamble.

offence.<sup>158</sup> If such compensation is awarded, it is to be enforced in the same way as a judgement in a civil case.<sup>159</sup> As an alternative, an award for compensation may be charged to the Victims Trust Fund.<sup>160</sup>

### 3.3 Conclusion

The foregoing analysis indicates that Kenyan law does not adequately provide for the compensation of victims of terrorism. While section 49 of the Prevention of Terrorism Act creates a special Fund to benefit victims, it is quite saddening to note that to date, the section has not been operationalised and the Cabinet Secretary for Internal Security is yet to enact Regulations providing for the management and administration of the Fund and for anything incidental to or connected there with.<sup>161</sup> As it stands currently, it is a tussle for the victims of terrorism to get compensated, since the legal framework is inadequate. This further corroborates my proposal that there is need to do more to develop a workable compensation scheme for the victims of terrorism. Other states like US have been alive to the rights of victims of terrorism and have created effective legal and institutional mechanisms to meet the needs of victims. Accordingly, it is important to explore how such countries accommodate the victims of terrorism in the legal system. This forms part of the next chapter, which will explore how different jurisdictions and possible insurance schemes have tackled the challenge of compensation. As noted earlier in this study, the phenomenon of terrorism is relatively new in Africa as compared to the other parts of the globe. Similarly, countries in the western hemisphere which have grappled with this challenge have also come up with modes of compensation that Kenya can borrow from. The different modes are discussed in the following chapter to draw best practices for this study.

---

<sup>158</sup> Ibid, Section 23(1), (2).

<sup>159</sup> Ibid, Section 23(4).

<sup>160</sup> Ibid, section 24; see also Bowry & Co Advocates, 'A New Era for Victims of Crime in Kenya' (21 January 2016) <<http://bowrycoadv.com/a-new-era-for-victims-of-crime-in-kenya>> accessed on 18 October 2016.

<sup>161</sup> Prevention of Terrorism Act, No 30 of 2012 section 49(3).

## CHAPTER FOUR

### COMPARATIVE COMPENSATION SCHEMES ANALYSIS

#### 4.1 Introduction

From the analysis of Kenya's legal framework in the previous chapter, it can be argued that Kenya lacks an effective legal scheme for the compensation of the victims of terrorism. This undoubtedly makes it a case for the Government of Kenya to come up with practical mechanisms, including by way legislation, to attend to the needs of the victims who have suffered from previous terror attacks, and also create a framework for future cases. In order to put this into effect, the Government will be required to study what other countries have done to borrow best practices. Some of the best practices form part of this chapter. The chapter generally explores a comparative study of compensation mode of victims of terrorism in selected jurisdictions and explores possible insurance schemes . The cited jurisdictions have enacted legislation that seeks to address the issue of compensation for victims of terrorism. These jurisdictions have been cited as best practices in this area and it is hoped that Kenya can borrow and implement on these best practices. This chapter analyses the gaps created and gives summary of the study.

#### 4.2 Compensation Mode for Terror Victims in Selected Jurisdictions and possible insurance schemes

##### 4.2.1 United States of America

In the US, compensation for the victims of terrorism covers the out of pocket expenses caused by the crime.<sup>162</sup> Each state in the EU has a victim compensation scheme for the crimes that are committed within the state.<sup>163</sup> These schemes are often funded through fines and fees that convicted offenders must pay.<sup>164</sup> Any fines collected from federal cases are channelled into the Crime Victims Fund, which is administered by the Justice Department's Office for Victims of

---

<sup>162</sup> UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (Revised ed., New York, NY: United Nations 2012) 90 UNODC (n 67) 47.

<sup>163</sup> Ibid n.162.pg. 48.

<sup>164</sup> Office for Victims of Crime, 'Crime Victims Fund' (*OVC Fact Sheet*) <<http://ojp.gov/ovc/pubs/crimevictimsfundfs/intro.html>> accessed on 18 October 2016.

Crime, and later distributed to the States in form of grants.<sup>165</sup> Importantly, all victims of terrorism, regardless of their nationality, are entitled to compensation for the crimes committed in a given state. However, the costs covered under such compensation schemes differ across states, but include medical costs, mental health counselling, funeral and burial costs, and lost wages or support.<sup>166</sup> In Kenya, the government often provides, at least in countable incidences, some medical and funeral expenses.

Most states in the US have a limit on the amount of compensation a victim can receive. In practice, compensation is often available only when other financial resources, such as insurance from private sources and offender restitution, do not cover the loss.<sup>167</sup> However, most compensation schemes do not cover certain expenses, including theft and property loss.<sup>168</sup> As to the acts of terrorism, state-based schemes typically provide coverage for acts that take place in that state.<sup>169</sup> While some states cover their own citizens when victimized in foreign states, others do not. In recent past, the US Congress created a compensation scheme for US nationals and government employees who are victims of terror acts in foreign countries<sup>170</sup>

In practice, victims are entitled to reimbursement for out of pocket costs for medical care, counselling, funeral and burial, and other miscellaneous expenses. The maximum amount awarded to a victim under this scheme programme is US\$150,000.<sup>171</sup> Foreign citizens (except US government employees) are not qualified for this scheme, even if they were suffered from the same attack as the US nationals and government employees.<sup>172</sup> Victims of acts of terrorism may

---

<sup>165</sup> Douglas Evans, *Compensating Victims of Crime* (New York, NY: Research & Evaluation Centre, John Jay College of Criminal Justice, City University of New York 2014) 2 <[www.njjn.org/uploads/digital-library/jf\\_johnjay3.pdf](http://www.njjn.org/uploads/digital-library/jf_johnjay3.pdf)> accessed 18 October 2016.

<sup>166</sup> Ibid n.165.

<sup>167</sup> Ibid n.165.

<sup>168</sup> Ibid n.165.

<sup>169</sup> Ibid n.165.

<sup>170</sup> The programme is called the “Inter International Terrorism Victim Expense Reimbursement Program” (ITVERP) and is administered by the Justice Department’s Office for Victims of Crime. ITVERP operates as a reimbursement programme for victims of terrorist attacks in foreign countries dating back to 1983.

<sup>171</sup> UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (Revised ed., New York, NY: United Nations 2012) 90 <[https://www.unodc.org/documents/terrorism/Publications/Support\\_to\\_victims\\_of\\_terrorism/revised\\_edition\\_21\\_May\\_2012\\_12-53652\\_Ebook.pdf](https://www.unodc.org/documents/terrorism/Publications/Support_to_victims_of_terrorism/revised_edition_21_May_2012_12-53652_Ebook.pdf)> accessed on 18 October 2016.

<sup>172</sup> Ibid n.171.

obtain restitution from an offender through a criminal prosecution, although most offenders, if captured, do not have significant financial or other assets.<sup>173</sup>

The Mandatory Victim Restitution Act 1996 (MVRA) requires that restitution be imposed in a number of circumstances.<sup>174</sup> There are other laws which authorise the imposition of restitution as part of a criminal sentence. Most prosecuted Federal offenses, including terrorism, require the mandatory imposition of the full amount of restitution.<sup>175</sup> Victims of terrorism can also sue civilly in the US federal court for monetary damages against foreign terrorist organizations and against countries that sponsor terrorism.<sup>176</sup> When such a move is made, the country in question must be part of the US State Department's list of countries that finance terrorism.<sup>177</sup>

The MVRA is an exception to the sovereign immunity laws that prevent individuals from suing foreign governments in the US courts.<sup>178</sup> In most cases, when victims sue under this type of law, the other side, whether it be a terrorist organization or a country, does not appear in the case and

---

<sup>173</sup> UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (Revised ed., New York, NY: United Nations 2012) 91  
<[https://www.unodc.org/documents/terrorism/Publications/Support\\_to\\_victims\\_of\\_terrorism/revised\\_edition\\_21\\_May\\_2012\\_12-53652\\_Ebook.pdf](https://www.unodc.org/documents/terrorism/Publications/Support_to_victims_of_terrorism/revised_edition_21_May_2012_12-53652_Ebook.pdf)> accessed on 18 October 2016.

<sup>174</sup> Crime Victims' Rights Act, 18 USC, s 3771(a) (6), a crime victim has the right to full and timely restitution as provided in law.

<sup>175</sup> UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (Revised ed., New York, NY: United Nations 2012) 90  
<[https://www.unodc.org/documents/terrorism/Publications/Support\\_to\\_victims\\_of\\_terrorism/revised\\_edition\\_21\\_May\\_2012\\_12-53652\\_Ebook.pdf](https://www.unodc.org/documents/terrorism/Publications/Support_to_victims_of_terrorism/revised_edition_21_May_2012_12-53652_Ebook.pdf)> accessed on 18 October 2016..

<sup>176</sup> Ibid n.175.

<sup>177</sup> See 18 USC, s 3663A.

<sup>178</sup> The Foreign Sovereign Immunities Act, 28 USC, sections 1602-1611, is the sole basis for obtaining jurisdiction over a foreign state in the United States; *Argentine Republic v Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989); *Brewer v Islamic Republic of Iran*, 664 F. Supp.2d 43, 50 (D.D.C. 2009). Although the FSIA provides that foreign states are generally immune from jurisdiction in U.S. courts, see 28 USC, s 1604, a federal district court can obtain personal and subject matter jurisdiction over a foreign entity in certain circumstances. A court can obtain personal jurisdiction over a defendant if the plaintiff properly serves the defendant in accordance with 28 USC, s1608. See 28 USC, section 1330(b). Moreover, subject matter jurisdiction exists if the defendant's conduct falls within one of the specific statutory exceptions to immunity. See 28 USC sections 1330(a) and 1604. Here, this Court has jurisdiction because service was proper and defendants' conduct falls within the "state sponsor of terrorism" exception set forth in 28 U.S.C.1605A.

the victims obtain default judgments.<sup>179</sup> Collecting money on these judgments is very cumbersome and victims are not always able to recover the amount awarded by the court.<sup>180</sup>

#### 4.2.2 United Kingdom

Any victim of terrorist activities which occurred in the UK is eligible to receive free medical treatment and ancillary services. Compensation can be claimed after a conviction is pronounced in a criminal court. Once sought, and the court finds it appropriate, an order will be made when the Court is sentencing the defendant. However, the sums are limited and the process is not generally an adequate remedy to compensate for injuries, loss of life, future earnings or expectations or for any form of psychological suffering.<sup>181</sup>

Additionally, victims of terrorism can make an application to the Criminal Injuries Compensation Authority whether or not there has been a prosecution. Compensation is awarded on a tariff basis and the sums are not high. The scheme is applicable to all victims of crime and is not limited to victims of acts of terrorism. An applicant may occasionally qualify for legal aid to present their case. This can be important as the resulting compensation often depends on the evidence provided and particularly the medical evidence. The sum is a lump sum payment with no provision for a regular income.<sup>182</sup>

Accordingly, the victim must be a British citizen or long term resident who has suffered harm or death as a result of a terrorist attack in a foreign state. The amount of compensation to be claimed is to be determined by the Secretary of State. Another avenue through which one may claim compensation is to sue the perpetrator for damages in a civil court. This can be a lengthy process and must generally be commenced within three years of the incident giving rise to the claim. The standard of proof required is “on a balance of probabilities” and is therefore lower than that required in the criminal courts.<sup>183</sup> However, if the perpetrator possesses insufficient property, then the action may be unfruitful. Where a number of victims have suffered from the

---

<sup>179</sup> UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (Revised ed., New York, NY: United Nations, 2012) 90  
<[https://www.unodc.org/documents/terrorism/Publications/Support\\_to\\_victims\\_of\\_terrorism/revised\\_edition\\_21\\_May\\_2012\\_12-53652\\_Ebook.pdf](https://www.unodc.org/documents/terrorism/Publications/Support_to_victims_of_terrorism/revised_edition_21_May_2012_12-53652_Ebook.pdf)> accessed on 18 October 2016.

<sup>180</sup> Ibid n.179.

<sup>181</sup> Ibid n.179.

<sup>182</sup> Ibid n.179.

<sup>183</sup> Ibid n.179.

same crime, a ‘group action’ may be preferred in order to save on costs. Currently, UK has a Victims’ of Overseas Terrorism Compensation Scheme, which covers criminal activities taking place on or after 18 January 2010.<sup>184</sup> As we see in this chapter and the subsequent sub-heading, civil suits by victims of terrorism can also bring about compensation and set precedents that can be used to establish an effective compensation framework.

### 4.2.3 The Argentinian Jurisdiction “The AMIA Case Study”

As discussed in the above sub-heading, when looking at the US and UK jurisdictions on the issue of compensation for victims of terrorism, I note that Argentina has a locus classical of how case law can be used to bring about the remedy of this problem. The *Asociación Mutual Israelita Argentina* (AMIA)<sup>185</sup> case entailed the 1994 bombing attack on the AMIA building.<sup>186</sup> The investigation and prosecution of the matter is still ongoing.<sup>187</sup> Collective representation has been applied to this case, allowing over 100 victims to participate in the proceedings. Nonetheless, because of the differences in their perceptions (for instance, in relation to the manner in which investigation was conducted owing to different procedural strategies), the representation was categorised into six plaintiff collective representations that currently take part in the proceedings.<sup>188</sup>

The Government of Argentina implemented some measures with a view to compensating the victims or their families. Two such mechanisms include the dispensing of subsidies provided by the Argentinean Executive Power, as well as the preventive seizure of the property of the defendant in order to comply with the financial aspects of the judicial sentences related to the aforementioned case.<sup>189</sup>

---

<sup>184</sup> UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (Revised ed., New York, NY: United Nations 2012) 90  
<[https://www.unodc.org/documents/terrorism/Publications/Support\\_to\\_victims\\_of\\_terrorism/revised\\_edition\\_21\\_May\\_2012\\_12-53652\\_Ebook.pdf](https://www.unodc.org/documents/terrorism/Publications/Support_to_victims_of_terrorism/revised_edition_21_May_2012_12-53652_Ebook.pdf)> accessed on 18 October 2016..

<sup>185</sup>The Argentinian Jurisdiction “The AMIA Case Study”  
[www.defenddemocarcy.org/content/uploads/documents/summary\(-31-pages\).pdf](http://www.defenddemocarcy.org/content/uploads/documents/summary(-31-pages).pdf) last accessed on 15<sup>th</sup> June, 2018

<sup>186</sup> Ibid n.185.

<sup>187</sup> Ibid n.185.

<sup>188</sup> Ibid n.185.

<sup>189</sup> Ibid n.185.

The government of Argentina provided the subsidies as a response to the 1994 attack, which killed 85 people and injured hundreds.<sup>190</sup> The then President issued Decree 1216/94 (complemented by the Decree 1452/94), which allowed the victims, or their families, to receive a subsidy, the amount of which varies depending on the degree of damage sustained by the victims.<sup>191</sup>

Following a suit lodged by a certain nongovernmental organization against the government of Argentina in the Inter-American Commission on Human Rights, Argentina issued Decree 812/2005 which recognized, due to the government's failure to comply with its preventative function, the government's responsibility for the violation of the rights of the victims, protected under the American Convention on Human Rights, including the rights to life, physical integrity, fair trial, and effective judicial protection.<sup>192</sup> It also provided for compensation to be paid to the victims, or their families, independently of the subsidy established by Decree 1216/94.

Following these developments, a legislative proposal has been submitted to Parliament.<sup>193</sup> The highlight of the said proposal is that it offers a one-time compensation to the families of the 85 people killed in the 1994 attack, which compensation will be around \$170,000 for each casualty. Additionally, for those who sustained "extremely grievous" injuries, the compensation will be trimmed down to 70%, while those with "grievous" injuries will get 60% of the amount. Other modes of remedying this challenge are discussed below. Compensation as a principle is meant to rectify or return a victim to his previous position before the loss occurred. At times, the compensation may be inadequate or merely impossible due to the nature of the loss. Different compensation modes are discussed subsequently.

### **4.3 Proposed Compensation Criteria**

From a paternalistic viewpoint, a State should take all possible measures to compensate victims of all crimes, from "cradle to grave."<sup>194</sup> This approach encompasses generous forms of the social insurance that exist in most countries in the modern-day world. For instance, it may be crucial to

---

<sup>190</sup> The Argentinian Jurisdiction "The AMIA Case Study" [www.defenddemocracy.org/content/uploads/documents/summary\(-31-pages\).pdf](http://www.defenddemocracy.org/content/uploads/documents/summary(-31-pages).pdf) last accessed on 15<sup>th</sup> June, 2018.

<sup>191</sup> Ibid n.190.

<sup>192</sup> Ibid n.190.

<sup>193</sup> Ibid n.190.

<sup>194</sup> Edward L Lascher Jr and Michael R Powers, 'September 11 Victims, Random Events and the Ethics of Compensation' (2004) 48(3) American Behavioural Scientist 286.



have comprehensive social security programs for pensioners and the disabled, as well as comprehensive national health insurance.<sup>195</sup> It is therefore imperative to interrogate and understand at which level victims should claim compensation, for instance, in nations where the system of governance is that of a devolved nature. The constitution of Kenya under article 6 provides for two levels of government, the national government and the devolved units. The sub heading below tries to interrogate this matter, and to understand which level of government is liable in the instances that such acts occur in their jurisdiction.

#### **4.3.1 Level of Government with Responsibility on Compensation**

It is instructive to note from the foregoing analysis that government has the obligation to compensate victims of terrorism. It is equally important to identify the level of government that should bear the burden. The foregoing three principles may provide guidance on this discourse. Nevertheless, our three standards may provide some guidance.<sup>196</sup> Consider the first and third Principles. The first principle might as well support state responsibility as federal responsibility. For example, consider harms suffered by citizens because lax security at a state prison resulted in a prison break and subsequent crime spree. The first principle would support state government responsibility in this instance. Conversely, the strongest version of the third principle would involve repercussions in the entire economy. If that were true, the action of the central or federal government would seem most appropriate.<sup>197</sup>

#### **4.3.2 Compensation of Citizens versus Compensation of Non-Citizens**

As seen earlier in this study, the issue of compensation of victims of terrorism is quite challenging in many different attributes. In this sub heading, I discuss the issue of categorization of victims depending on their nationality, where one event has occasioned the loss. The example of the Kenyan victims of an earlier terrorist attack aimed against American symbols raises the

---

<sup>195</sup> Edward L Lascher Jr and Michael R Powers, 'September 11 Victims, Random Events and the Ethics of Compensation' (2004) 48(3) *American Behavioural Scientist* 286.

<sup>196</sup> Michael Zuckert, *The Natural Rights Republic* (Notre Dame University Press 1996) 73–85.

<sup>197</sup> *Ibid* n.195 pg. 292.

question of responsibility for non-Americans, especially if they are directly involved with Americans (embassy employees).<sup>198</sup>

In civil action *James Owens, et al., v Republic of Sudan, et al.*,<sup>199</sup> and *Winfred Wairimu Wamai, et al., v Republic of Sudan, et al.*,<sup>200</sup> and others consolidated in the United States District Court for the District of Columbia under the Foreign Sovereign Immunities Act ("FSIA"),<sup>201</sup> plaintiffs victims of the terrorist attack and their families sought to assign liability for their injuries to the Republic of Sudan ("Sudan"), the Ministry of the Interior of the Republic of Sudan, the Islamic Republic of Iran ("Iran"), the Iranian Revolutionary Guards Corps ("IRGC") and the Iranian Ministry of Information and Security ("MOIS") (collectively "defendants"). The Court based its findings and conclusions pursuant to section 1608(e) of 28 USC, which requires plaintiffs under the FSIA to prove their claim or right to compensation by evidence satisfactory to the court even where, as here, defendants have failed to appear after proper service.

#### **4.4 Conclusion**

In conclusion, the US, Argentina and UK have established and implemented effective legal mechanisms that recognise the rights of victims of crime, and hence victims of terrorism have a legal avenue to claim compensation for their losses. The foregoing comparative analysis presented the Argentinean case of *AMIA* provided an ideal situation where the government can compensate victims, which includes providing subsidies, preventive seizure of property, allowing the victims to take part in the criminal proceedings, if the perpetrators are brought to book, and enacting legislation to accommodate the needs of the victims of terrorism. The chapter has explored possible criteria that may be used to effectively compensate victims of terrorism. In a nutshell, the first and third principles may be relevant in the Kenyan context. Based on the lessons learnt from the comparative analysis, and other findings of this chapter, the next provides the overall findings of the study, the conclusion and recommendations.

---

<sup>198</sup> Edward L Lascher Jr and Michael R Powers, 'September 11 Victims, Random Events and the Ethics of Compensation' (2004) 48(3) *American Behavioural Scientist* 286.

<sup>199</sup> Civil Action No 01-2244 (JDB).

<sup>200</sup> Civil Action No 08-1349 (JDB).

<sup>201</sup> The National Defense Authorization Act for Fiscal Year 2008 ("2008 NDAA" or "Act") amended the FSIA to permit foreign national employees of the United States government killed or injured while acting within the scope of their employment and their family members to sue a state sponsor of terrorism for injuries and damages resulting from an act of terrorism.

## CHAPTER FIVE

### CONCLUSIONS AND RECOMMENDATIONS

#### 5.1 Introduction

From the foregoing chapters, it is a well settled fact that Kenya has not established an effective and adequate framework to meet the compensation needs of victims of terrorism. The study has explicitly pointed out a series of terror attacks since 1976, the dominant ones being the 1998 bombing of the US Embassy in Nairobi, and the Garissa University College attack by the Al-Shabaab militants. These attacks left many Kenyans with a gap by losing their loved ones and sustaining personal injuries. Regrettably, no effective steps have been made to compensate them other than the compensation provided by the US. Due to the inadequate legal framework, the government enacted the Prevention of Terrorism Act 2012 and the Victims Protection Act 2014, but some of the provisions therein have not been operationalised, including the establishment of an effective Compensation Fund. Chapter four has explored very important best practices that can assist in the development of an efficient scheme of compensation in Kenya. In light of this, this chapter presents a summary of the research findings, conclusion and the recommendations arrived at. It also gives suggestions for further studies.

#### 5.2 Hypotheses

The following hypotheses were tested:

1. There was no nexus between the legal frame work in Kenya, regarding terrorism and compensation for victims of terrorist attacks.
2. The victims of terrorist's acts in Kenya are not properly recognized as being eligible for compensation by the State.
3. There was no operationalization of section 49 of the Prevention of Terrorism Act, No. 30 of 2012.

## 5.3 Findings.

### 5.3.1 Eligibility of Victims of Terrorism for Compensation

Similar to the UK Compensation model,<sup>202</sup> Kenya needs to adopt criteria for compensating victims of terrorism, for example:

One may be able to claim if one of the following apply:

- They were injured physically or mentally in a specific act of terrorism;
- They were a witness to a specific act of terrorism where a loved one was injured;
- They are a partner or close family member of someone killed in a specific act of terrorism.

In addition, one must also:

- be a citizen of the UK (so in our case, one must be a citizen of Kenya, including those who are members of the armed forces (or a close relation or family member));
- have lived in the UK (so in our case, Kenya) for 3 years immediately before the terrorist incident happened.

### Recommendations

The Association Mutual Israelita Argentina (AMIA) case gives a perfect solution to the terror victims, as discussed above we see:

- a) Argentina also provided for compensation to be paid to the victims, or their families, independently of the subsidy established by Decree 1216/94.
- b) a legislative proposal was submitted to the Argentina Parliament. The highlight of the said proposal is that it offers a one-time compensation to the families of the 85 people killed in the 1994 attack, which compensation will be around \$170,000 for each casualty. Additionally, for those who sustained “extremely grievous” injuries, the compensation

---

<sup>202</sup> ‘Compensation for victims of terrorist attacks abroad’ (25 October 2016) <<https://www.gov.uk/compensation-victim-terrorist-attack>> accessed on 24<sup>th</sup> October, 2016.

will be trimmed down to 70%, while those with “grievous” injuries will get 60% of the amount

- c) dispensing of subsidies provided by the Argentinean Executive Power,
- d) preventive seizure of the property of the defendant in order to comply with the financial aspects of the judicial sentences related to the aforementioned case.

## **5.4 Conclusion**

Compensation for victims of terrorism and their families is important in any counter-terrorism strategy that is human rights compliant. The Council of Europe Guidelines on Human Rights and the Fight against Terrorism recognize that the state has the obligation to provide adequate compensation to the victims of terrorism activities, for instance from the confiscation of the perpetrators’ or sponsors’ property.<sup>203</sup>

In view of the foregoing, it is worth noting that Kenya’s legal framework for compensation of victims of terrorism is inadequate and does not properly recognize the victims of terrorism to show their eligibility for compensation.

## **5.5 Recommendations**

Based on above findings, the study proposed the following recommendations to the government, victims of terrorism and other stakeholders:

- 1) There is need to review and amend the Prevention of Terrorism Act 2012 so as to incorporate the needs of victims of terrorism attacks such as compensation, security and protection of their dignity, protection of their private and family life, effective access to justice, access to information on training or counselling and any form of assistance, as well as emergency and continuing assistance.
- 2) There is urgent need to put in place adequate measures that will ensure that government operated compensation mechanisms fill in the gaps left by the insurance system, the tort system, and private charities thereby circumventing the tort system's long delays and high

---

<sup>203</sup> Directorate General of Human Rights, *Guidelines of the Committee of Minister of the Council of Europe on Human rights and the fight against terrorism* (adopted by the Committee of Ministers on 11 July 2002 at the 804<sup>th</sup> meeting of the Ministers’ Deputies, Council of Europe Publishing 2003) 12 <<http://www.coe.int/t/dghl/standardsetting/victims/Guidelines%20CM.pdf>> accessed 19 February 2017.

transaction costs. It should, however, be noted that there are limitations to the foregoing in the sense that they can strain the national budget and create bureaucracies that deliver compensation less efficiently than the private insurance sector. In principle, government strategies have the potential of reducing private incentives to take appropriate measures to reduce losses.<sup>204</sup>

- 3) In operationalizing section 49 of the Prevention of Terrorism Act, No. 30 of 2012, the compensation of the victims of terrorism should also include medical costs, mental health counselling, funeral and burial costs, and lost wages or support.<sup>205</sup> In addition, there should be a restriction on the amount of funding a victim can receive and the compensation, as is the case in the US, should be only made available when other financial resources, such as private insurance and offender restitution, do not adequately cover the loss.
- 4) All the stakeholders, both in government and private sector, should come together in efforts aimed at sensitizing the public on the gains made and challenges faced in ensuring victims of terrorism are adequately catered for and compensated.
- 5) Ensure that coordination between various bodies charged with the direct assistance of victims and their families is effective.
- 6) Encourage State actions that are geared towards meeting the needs of the victims in line with set guidelines.
- 7) Enact legislation to comprehensively provide for victim services and rights.
- 8) Provide information about and support in dealing with the media.
- 9) The victims should be provided with timely, accurate and complete information about court decisions and appeals, as well as the availability of compensation programs.

---

<sup>204</sup> See Lloyd Dixon, 'Compensation Policies for Victims of Terrorism' (*RAND Review*, 2002) <<http://www.rand.org/pubs/periodicals/rand-review/issues/rr-08-02/compensation.html>> accessed on 18 October 2016.

<sup>205</sup> Douglas Evans, *Compensating Victims of Crime* (New York, NY: Research & Evaluation Centre, John Jay College of Criminal Justice, City University of New York 2014) 2 <[www.njcn.org/uploads/digital-library/jf\\_johnjay3.pdf](http://www.njcn.org/uploads/digital-library/jf_johnjay3.pdf)> accessed 18 October 2016.

## BIBLIOGRAPHY

### Books

Adler A, *Superiority and Social Interest: A Collection of Later Writings* (Rowena R Ansbacher and Heinz Ludwig Ansbacher eds, New York, NY: W W Norton 1979).

Azam J P and Mesnard A, *Civil War and the Social Contract: Public Choice* (Cambridge publishers, London 2003).

David L, *Social Research Methods* (Oxford press 2012).

Deess F, *The Victims of Crime Rights in United States of America* (Chicago: Oxford University Press 1999).

Dworkin R, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press 2000).

Hornsby C, *Kenya: A History since Independence* (London/New York: I.B. Tauris 2012).

Kothari C R, *Social Research Theory* (Nairobi, Kenya: Macmillan Publishers 2004).

Mickolus E F and Simmons S L, *Terrorism 1996-2001: A Chronology* (Connecticut and London: Greenwood Press 2002).

Omony J P, *Key Issues in Jurisprudence: An In-depth Discourse on Jurisprudence Problems* (1<sup>st</sup> ed. Nairobi: LawAfrica Publishing (K) Ltd).

Ripstein A, *Equality, Responsibility, and the Law* (Cambridge, UK: Cambridge University 1999).

Walsh D, *African Victims of Al-Qa'ida Forgotten, Independent* (Kampala, Uganda: Oxford Press 2002) 21.

Zuckert M, *The Natural Rights Republic* (Notre Dame University Press 1996).

## **Journals and Articles**

- Aronson S L, 'Kenya and the Global War on Terror' (2013) 7 (1&2) *African Journal of Criminology and Justice Studies* 24-34.
- Bettelheim A, 'Policymakers struggle with issues of fairness and frugality in compensating terrorism victims' *CQ Weekly* (17 November 2001) 27-33.
- Brown J R, Kroszner R S and Jenn B H, 'Federal Terrorism Risk Insurance' (2002) 55 *National Tax Journal* 647-657.
- Jackson R, 'The Core Commitments of Critical Terrorism Studies' (2007) 6 *European Political Science* 244–251.
- Jalata A, 'Colonial Terrorism, Global Capitalism and African Underdevelopment: 500 Years of Crimes against African Peoples' (2013) 5(9) *The Journal of Pan African Studies* 1-42.
- Lascher E L and Powers M R, 'September 11 Victims, Random Events and the Ethics of Compensation' (2004) 48 (3) *American Behavioral Scientist* 281-294.
- Lewis C M and Murdock K C, 'The Role of Government Contracts in Discretionary Reinsurance Markets for Natural Disasters' (1996) 63 (4) *The Journal of Risk and Insurance* 567-597.
- Mogire E and Agade K M, *Counter-terrorism in Kenya* (2011) 29(4) *Journal of Contemporary African Studies* 473-491.
- Oguna C C, 'Assessing Operation Linda Inchi' (2012) 6(2) *Africa Defence Forum* 40
- Prestholdt J, 'Kenya, the United States and Counterterrorism' (2011) 57 (4) *Africa Today* 2-27.
- Roy-Byrne P, 'Effects of Terror and Violence Vary by Culture' (2003) *NEJM Journal Watch*.
- Shellens M S, '*Aristotle on Natural Law*' (1959) 4(1) *Natural Law Forum* 72–100, DOI: 10.1093/ajj/4.1.72.



Stone D A, 'Causal Stories and the Foundation of Policy Agendas' (1989) 104 *Political Science Quarterly* 281-300.

Vairo G, 'Remedies for Victims of Terrorism' (2002) 35 *Loyola of Los Angeles Law Review* 1265-1294.

## **Reports and Papers**

African Union, 'Conclusions' (African Union Symposium on Victims of Terrorist Acts, Algiers, Algeria 27-28 October 2014) <<http://www.peaceau.org/uploads/conclusions-symposium-victims-oct2014-en.pdf>> accessed 15 February 2017.

Blanchard L P, *The September 2013 Terrorist Attack in Kenya: In Brief* (CRS Report for Congress, November 14, 2013) <<https://fas.org/sgp/crs/row/R43245.pdf>> accessed 16 February 2017.

Dixon L and Reville R T, *National Security and Compensation Policy for Terrorism Losses* (Santa Monica, CA: RAND Corporation, 2005) <<http://www.rand.org/pubs/reprints/RP1168.html>> accessed 15 February 2017.

Evans D, *Compensating Victims of Crime* (New York, NY: Research & Evaluation Centre, John Jay College of Criminal Justice, City University of New York 2014) <[www.njjn.org/uploads/digital-library/jf\\_johnjay3.pdf](http://www.njjn.org/uploads/digital-library/jf_johnjay3.pdf)> accessed 18 October 2016.

Lind J, Mutahi P and Oosterom M, *Tangled Ties: Al-Shabaab and Political Volatility in Kenya* (Evidence Report No 130, Institute of Development Studies 2015) <<http://chrips.or.ke/docs/publications/tangled-ties-al-shabaab-and-political-volatility-in-kenya.pdf>> accessed 16 February 2017.

Media Policy Centre, 'Theoretical Perspectives to Terrorism and the Media' (2014) Revised Paper on Media and Terrorism <<http://www.mediapolicycentre.org/wp->

<content/uploads/2014/06/Revised-Paper-on-Media-and-Terrorism-3.pdf>> accessed on 18 October 2016.

National Centre for Victims of Crime, *Making Restitution Real Five Case Studies on Improving Restitution Collection* (Washington, DC: National Centre for Victims of Crime 2011) <<https://victimsofcrime.org/library/publications>> accessed 15 February 2017.

National Consortium for the Study of Terrorism and Responses to Terrorism (START), *Al-Shabaab Attack on Garissa University in Kenya* (START Background Report, April 2015) <[https://www.start.umd.edu/pubs/STARTBackgroundReport\\_alShabaabGarissaU\\_April2015.pdf](https://www.start.umd.edu/pubs/STARTBackgroundReport_alShabaabGarissaU_April2015.pdf)> accessed 16 February 2017.

Secretary-General of the United Nations, *Supporting Victims of Terrorism* (New York, NY: United Nations 2008) <[http://www.un.org/en/terrorism/ctitf/pdfs/un\\_report\\_supporting\\_victims\\_terrorism.pdf](http://www.un.org/en/terrorism/ctitf/pdfs/un_report_supporting_victims_terrorism.pdf)> accessed 15 February 2017.

Smetters K, 'Insuring Against Terrorism: The Policy Challenge' (2004) Brookings-Wharton Papers on Financial Services, Working Paper 11038, <<http://www.nber.org/papers/w11038>> accessed 19 February 2017.

UNODC, *Good Practices in Supporting Victims of Terrorism within the Criminal Justice Framework* (Vienna: United Nations 2015) <[https://www.unodc.org/documents/terrorism/Publications/Good%20practices%20on%20victims/good\\_practices\\_victims\\_E.pdf](https://www.unodc.org/documents/terrorism/Publications/Good%20practices%20on%20victims/good_practices_victims_E.pdf)> accessed 15 February 2017.

UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism* (Revised ed., New York, NY: United Nations 2012)

[https://www.unodc.org/documents/terrorism/Publications/Support\\_to\\_victims\\_of\\_terrorism/revised\\_edition\\_21\\_May\\_2012\\_12-53652\\_Ebook.pdf](https://www.unodc.org/documents/terrorism/Publications/Support_to_victims_of_terrorism/revised_edition_21_May_2012_12-53652_Ebook.pdf)> accessed on 18 October 2016.

## Theses

Momanyi S M, 'The Impact of Al-Shabab Terrorist Attacks in Kenya' (Master Thesis, The Arctic University of Norway 2015) 11  
<<http://munin.uit.no/bitstream/handle/10037/9848/thesis.pdf?sequence=1&isAllowed=y>>  
accessed 16 February 2017

Mulatya L M, *Asylum and National Security in Kenya* (Master of Arts Project, University of Nairobi: Institute of Diplomacy and International Studies, 2014) 51-54; Kenya Defence Forces, 'Update on Al-Shabaab Activities' *Daily Nation* (2012).

## Media Sources

'Bomb blast victims petition Parliament in quest for compensation' *Business Daily* (Nairobi, 24 October 2013) <<http://www.businessdailyafrica.com/Bomb-blast-victims-petition-Parliament-in-quest-for-compensation/-/539546/2045556/-/ciid3d/-/index.html>> accessed 19 February 2017.

Guguyu O, 'Terror victims sue French bank over 1998 Nairobi attack' *Daily Nation* (Nairobi, 6 November 2015) <<http://www.nation.co.ke/news/Terror-victims-sue-French-bank-over-1998-Nairobi-attack/1056-2944748-yy7wwd/index.html>> accessed on 18 October 2016.

Kithuure J, 'Kenya: Bus Bombings in Nairobi and Mombasa Shake Citizen Confidence in Security Forces' *AllAfrica* (Sabahi Washington, DC, May 2014)  
<<http://allafrica.com/stories/201405060930.html>> accessed 16 February 2017.

Kithuure J, 'Kenya: Pangani Attack Shines Spotlight on Kenya Police Tactics' *AllAfrica* (Sabahi Washington, DC, April 2014) <<http://allafrica.com/stories/201404250182.html>> accessed 16 February 2017.

Mahugu J, 'North Eastern Terror victims, rights activists cry out for compensation' *Standard Digital* (Nairobi, 3 April 2016)

Otieno R, 'Westgate committee recommends compensation' *Standard Digital* (Nairobi, 4 March 2014) <<http://www.standardmedia.co.ke/article/2000106028/westgate-committee-recommends-compensation>> accessed on 18 October 2016.

### **Websites and Website Documents**

'Compensation for victims of terrorist attacks abroad' (25 October 2016) <<https://www.gov.uk/compensation-victim-terrorist-attack>> accessed on 24<sup>th</sup> October, 2016.

'Terrorism in Kenya' (*OMICS International* 2014), <[http://www.research.omicsgroup.org/index.php/Terrorism\\_in\\_Kenya](http://www.research.omicsgroup.org/index.php/Terrorism_in_Kenya)> accessed 16 February 2017.

Bowry & Co Advocates, 'A New Era for Victims of Crime in Kenya' (21 January 2016) <<http://bowrycoadv.com/a-new-era-for-victims-of-crime-in-kenya>> accessed on 18 October 2016.

Dixon L, 'Compensation Policies for Victims of Terrorism' (*RAND Review*, 2002) <<http://www.rand.org/pubs/periodicals/rand-review/issues/rr-08-02/compensation.html>> accessed on 18 October 2016.

Global Counterterrorism Forum, 'Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings'

<<https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/A/GCTF-Madrid-Memorandum-ENG.pdf>> accessed 18 October 2016.

Home Office, Foreign & Commonwealth Office, and Ministry of Justice, *Counter-terrorism* <<https://www.gov.uk/government/policies/counter-terrorism>> accessed 18 October 2016.

Media Policy Centre, 'Theoretical Perspectives to Terrorism and the Media' (2014) Revised Paper on Media and Terrorism <<http://www.mediapolicycentre.org/wp-content/uploads/2014/06/Revised-Paper-on-Media-and-Terrorism-3.pdf>> accessed on 18 October 2016.

Mwazighe C L, 'Legal Responses to Terrorism: Case Study of The Republic of Kenya' (December 2012) <<http://www.dtic.mil/dtic/tr/fulltext/u2/a574555.pdf>> accessed on 18 October 2016.

National Centre for Victims of Crime Resource Library, <<https://victimsofcrime.org/>> accessed on 18 October 2016.

Office for Victims of Crime, 'Crime Victims Fund' (*OVC Fact Sheet*) <<http://ojp.gov/ovc/pubs/crimevictimsfundfs/intro.html>> accessed on 18 October 2016.