

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**THE ROLE OF INTERNATIONAL TERRORISM IN SHAPING
GOVERNANCE IN AFRICA; A CASE STUDY OF KENYA , 1998 -2015.**

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**A RESEARCH PROJECT SUBMITTED IN PARTIAL
FULFILLMENT OF THE DEGREE OF MASTERS OF ARTS IN
INTERNATIONAL STUDIES.**

SEPTEMBER, 2016

DECLARATION

I , Kasili Juanita . P. Nangila declare that this research project is my original work that has not been presented for a degree in this University or in any other institute of higher learning.

Signed.....

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This research project has been submitted for examination with my approval as the University

Supervisor.

Signed.....

Date ..14 Dec 2016

Ambassador Professor Maria Nzomo.

Director Institute of Diplomacy and International Studies

DEDICATION

I dedicate this research study to the People of Kenya and the Government of Kenya as they strive together in fighting International terrorism. I hope the findings of this research study will be of great importance towards attaining that goal.

ACKNOWLEDGEMENTS

I am grateful to God for enabling me to reach this far in my academic journey. I would like to thank my supervisor Amb.Prof. Maria Nzomo who is the Director of the Institute of Diplomacy and International Studies, University of Nairobi, for taking her time to steer me into the right direction and ensuring that i produce a quality research project.

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Thank You.

Kasili Juanita.P. Nangila

LIST OF ABBREVIATIONS

AIAI	Al-ithad Al-islami
AMISOM	African Mission in Somalia
ANC	African National Council
ATA	Anti-Terrorism Assistance
ATPU	Anti-Terror Police Unit
AU	African Union
AQIM	Al-Qaeda in the Islamic Maghreb
CMAA	Customs Mutual Assistance Agreement
EAC	East African Community
ESAALMG	Eastern and Southern Africa Anti-Money Laundering Group
FBI	Federal Bureau of Investigations
GSPC	Salafist Group for Preaching and Combat
GSU	General Service Unit
HOA	Horn of Africa
ICCPR	International Covenant on Civil and Political Rights
ICPAT	Intergovernmental Capacity building Program Against Terrorism
IEDs	Improvised Explosive Devices
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IPK	Islamic Party of Kenya
IPOA	Independent Police Oversight Authority
ISIS	Islamic State of Iraq and Syria
KANU	Kenya African National Union
KDF	Kenya Defence Forces
LIFG	Libyan Islamic Fighting Group

LRA	Lords Resistance Army
MICG	Moroccan Islamic Combat Group
MRC	Mombasa Republican Council
MYC	Muslim Youth Club
NFD	Northern Frontier District
NFDLM	Northern Frontier District Liberation Movement
NGOs	Non Governmental Organisations
OAU	Organisation of African Union
PREACT	Partnership for Regional East Africa Counterterrorism
UIC	Union of Islamic Courts
UN	United Nations
UNHCR	United Nations Human Commissioner for Refugees

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ABSTRACT

Terrorism not only puts a state's national security in the political agenda but it also forces governments to make decisions that alter how a state is managed. This study demonstrates the role of international terrorism in shaping governance in Africa using the case study of Kenya between 1998 and 2015. The study has three specific objectives: to investigate the counter terror measures used by the government of Kenya; to investigate the impacts of the counter terror measures on the rule of law and human rights ,and to investigate the link between international terrorism and governance in Kenya. The realist theoretical framework asserts that governments are concerned with providing national security and for there to be order and national security, some human rights and freedoms have to be sacrificed. The theory was used to analyse Kenya's counter terror measures and their impacts on the rule of law and human rights. The researcher used purposive sampling to collect qualitative and quantitative data by interviewing a total of eighty respondents who included: security analysts, officials from the National Counter Terrorism Center, Police officers and Kenya defence forces officers who were resourceful in analysing Kenya's counter terror measures and their impacts on governance. Other respondents were county government officials and citizens from Nairobi, Lamu, Mandera, Garissa and Mombasa counties which have experienced a number of terror attacks as well as various counter terror security operations; hence were key informants on the impacts of government's counter terror measures on their human rights and the rule of law. The study established that Kenya's counter terror measures are informed by intelligence gathered; vulnerability to terror attacks and an endeavour to improve Kenya's counterterror strategy. The study established that some counter terror measures negate constitutionalism by perpetuating human rights and rule of law violations. The study observed that, in responding to terrorism the government of Kenya has formulated policies, enacted laws, made decisions and instituted practices that have inturn altered the social, economic and political norms in Kenya. The research findings affirm the hypotheses that Kenya's counter terror measures have not resulted into absence of terror attacks in Kenya, some counter terror measures used by the government violate human rights and constitutional provisions and international terrorism has impacted governance in Kenya both positively and negatively. The study recommends the use counter terror measures that promote constitutionalism by respecting the rule of law, human rights and freedoms. Secondly, terrorism provides an opportunity for the government to address historical grievances and injustices through social justice, truth justice and reconciliation mechanisms.

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.0 Background

Terrorism has been subjected to various interpretations and definitions. Terrorism and acts of terror existed long before the emergence of the modern nation-state system and their domination in the international system. Primarily, terrorism refers to an insurgency or political violence. International terrorism involves citizens and properties of more than one state, other aspects of international terrorism are: funding, recruitment, weapons, intelligence sharing and other resources to struggle against a state's authority and security forces.

International terrorism has a wider goal beyond putting national security in the political agenda of a state. This study demonstrates how repeated terror attacks in Kenya, their resulting casualties and the government's counterterror measures play a key role in shaping governance in Kenya.

The 9/11 terror attack epitomized terrorism as a threat to global security and international stability and consequently ushered in an era of extensive counterterror measures that shape national and international policies¹. Globally, terror related activities and violence have increased and the centralized hierarchy of international terrorists with Al-Qaeda at the top has been replaced by networks of regional terror groups and individual terrorists connected to each other on internet basis².

The United Nations Security Council Resolution 1566 of 2004, declares that acts of terror cannot be tolerated or excused for political or ideological reasons³. In September 2006, the United Nations General Assembly adopted a global counterterror strategy for the

¹J. Franks.2006. *Rethinking Roots of Terrorism*. NewYork: Palgrave Macmillan.p.45

²ibid

³Okumu Wafula and Anneli Botha(eds).Nov,2007.Domestic Terrorism in Africa:Defining,Addressing and Understanding its impact on Human Security.p.56.

enhancement of national, regional and international counterterror efforts⁴. The United Nations Center for Counter Terrorism which functions under the UN Secretary General and the United Nations department of Political Affairs, aids in the implementation of this strategy⁵.

Parts of Africa have suffered terror related attacks .The attacks have been conducted in the Maghreb (Algeria, Tunisia, Libya, Morocco, Mauritania) to West Africa (Nigeria, Burkina Faso, Mali, Niger, Cameroon and Chad) to Eastern Africa (Somalia, Kenya, Uganda,Tanzania, Ethiopia) as well as in the Central African Republic. In its preamble, the 1994 Declaration on the Code of Conduct for Inter-African relations outlaws violent extremism and terrorism irrespective of their drive⁶.

Popular models used by African states to curb terrorism and violent extremism include: USA's anti-terror programs, military response, legislative response, criminal justice response and multilateral collaborations with like minded states⁷. Using excessive force to curb terrorism is counter productive because it serves as a recruiting opportunity and a propaganda weapon for terrorists hence creates further threats to national and international peace and security⁸.

In the Eastern African region⁹, almost all the states have experienced terror attacks carried out by or against a state's nationals for a domestic cause or focused on Western targets located in the region¹⁰. According to Kimungunyi, states in this region are vulnerable to terror attacks because of: intra-state conflicts; weak governance and failed state

⁴ibid

⁵ibid

⁶ Preamble of the Declaration on the Code of conduct for inter-African relations, 1994.

⁷Paul Wilkinson.2007.*Terrorism vs Democracy:The Liberal State Approach*.Routledge.London.p.15

⁸ibid

⁹In this study the Eastern Africa region includes the following states: Kenya, Somalia, Djibouti, Eritrea, Ethiopia, Sudan,Uganda and Tanzania.

¹⁰Prof.Samuel Makinda.2010.*Security, Terrorism and Counter terrorism studies*.Murdoch University,Perth.p.12

institutions; the presence of extremist religious ideologies for radicalising vulnerable groups as well as porous borders that facilitate extensive and uncontrolled movement of people and illegal weapons¹¹.

The 1991 civil war in Somalia left it without a fully functional government for many years. This has been key in facilitating the spread of terrorism and violent extremism in Eastern Africa. Islamic terrorist groups took advantage of this situation and established operational and recruitment bases and have used Somalia as a gateway to Eastern Africa from the Middle East where terrorism is rife¹². According to Dr. Anneli Botha and Hussein Solomon, counterterror efforts in Eastern Africa have been hindered by: lack of capacity to fight terror, competing national priorities and political sensitivity surrounding counter-terrorism¹³.

Kenya is located in the East Africa region and has suffered several terror attacks. In the past, Kenya has been a victim of tragic terror attacks against western interests. Even though the reasons behind the attacks suggest that Kenyans were not directly involved in the political dynamics that caused the attacks, majority of lives lost were Kenyan. Examples include: bombing of the Jewish owned Norfolk Hotel in 1980 by an Arab terror group revenging on Kenya for allowing Israeli troops to refuel in Nairobi during the 1976 Entebbe raid¹⁴. Al-Qaeda justified the 1998 bombing of USA's embassies in Nairobi and Dar es Salam, Tanzania by citing the presence of USA's troops in Saudi Arabia; the holy land of muslims¹⁵. In 2002, suicide bombers attacked Israeli-owned Kikambala hotel in Kilifi county

¹¹ Patrick Kimungunyi. *Terrorism and Counter Terrorism in East Africa*. P. Kimungunyi is a researcher at the Global Terrorism Research Centre and EU Centre Monash University.

¹² ibid

¹³ Anneli Botha and Hussein Solomon. 2002. *Terrorism in Africa*. CIPS. p.2

¹⁴ Oyugi, W.O (ed). 1994. *Politics and Administration in East Africa*. Nairobi, East African Educational Publishers Ltd. p.38.

¹⁵ ibid

and two missiles were fired at and missed an Israeli airliner taking off from the Mombasa International Airport¹⁶.

The Global Terrorism Database (GTD) estimates that 446 terror attacks were executed in Kenya between 1970 and 2007 thus an average of 10 attacks per year¹⁷. The average attacks escalated to 47 attacks per year between 2008 and 2014; majority of which were executed by Alshabaab which has an established presence in Kenya¹⁸. A research dubbed 'Africa had a Violent 2015' conducted by Verisk Maplecroft a London based risk company noted that in 2015 terror attacks in Kenya had declined to 46 attacks compared to 2014 which recorded 96 attacks¹⁹. The study attributed this to security agencies gathering better intelligence and taking necessary preventative steps as well as the fights within terror groups in Somalia over allegiance to the Al-qaeda or the Islamic State²⁰.

In October 2011, Kenya deployed the Kenya Defence Forces (KDF) to Somalia in an undertaking dubbed "Operation Linda Nchi" (a Kiswahili phrase which means: to protect the country) to do away with the Al-qaeda linked Al shabaab terror group which threatened Kenya's national security by executing terror attacks in Kenya and abducting foreign aid workers and tourists within Kenya's territory²¹. Since 2007, the African Mission in Somalia (AMISOM) has used troops from various African states including: Uganda, Burundi, Djibouti, Ethiopia and Sierra Leone to fight the Alshabaab militants in Somalia²². Kenya's involvement since 2011 has been instrumental in pushing Alshabaab out of its strongholds including the Port of Kismayu. Al Shabaab militants retaliated the military incursion by

¹⁶Israel Adoba Oche.2014. *Africa and the Resurgence of Terrorism:Revisiting the Fundamentals* .p.16

¹⁷ibid

¹⁸Anneli Botha.2014 . *Radicalization in Kenya; Recruitment to Alshabaab and the Mombasa Republican Council*.ISS.p.12.

¹⁹ibid

²⁰Interview of Ms Emma Gordon the senior Africa analyst at Verisk Maplecroft with the Bloomberg Business news.

²¹Guido Steinberg and Anette Weber (eds).2015. *Jihadism in Africa: Local Causes, Regional Expansion, International Alliances*. German Institute for International Security Affairs.p.23

²²ibid

executing a number of terror attacks in Kenya. Major attacks in Kenya following the military incursion include: the 2013 Westgate Mall siege, the 2014 Mandera massacres, 2014 Mpeketoni attacks and the Garissa University massacre in 2015.

1.1 Problem Statement

This study examines the role of international terrorism in shaping governance in Africa with a specific focus on Kenya. *The key problem this research seeks to investigate is the persisting incapacity of African states to effectively respond to international terrorism without violating human rights and the rule of law. The main question that this study seeks to answer is : In its efforts to curb international terrorism, does Kenya uphold constitutionalism by respecting human rights and observing the rule of law?*

Kenya has taken a number of legislative and institutional counterterror measures including a military incursion in Somalia to curb international terrorism; following the 1998 Al-Qaeda linked terror attack on USA's embassy in Kenya and other subsequent terror attacks.

Political and sectarian beckerling in Kenya led to the debating of proposed anti-terror laws for several years. The 2003 Suppression of Terrorism bill and the 2006 Anti-terror bill were not passed into law because, the Law society of Kenya, political and religious leaders alongside the civil society condemned them. They termed the laws draconian for being religiously and ethnically biased with the aim of suppressing human rights and freedoms entitled to Kenyans²³. In the two bills, terrorism and terrorist acts were vaguely defined and allowed the police to search and arrest people without warrants and at the same time, terror suspects were denied the right to legal representation²⁴.

The 2013 Anti-terrorism bill which was signed into law in December 2014, has been criticised by human rights activists, muslim clerics and the political opposition on the

²³Mue Njonjo.2011. *Reflecting on the Church-state Relationship in Kenya*. New Jersey: Africa Word Press.p.54

²⁴ibid

following grounds: the law threatens freedom of speech and civil liberties, it makes Kenya a police state and it is a pretext for cracking down on dissent civil society and the media²⁵.

The political opposition and civil society went to court to have the law revoked. A five judge bench ruled in favour of the government on the following: allowing the police to detain terror suspects beyond the 24 hours constitutional limit, provided they were first brought to court; allowing the registrar of persons to cancel a national identity card and permitting the National Intelligence Service to tap private calls²⁶. Clauses that were declared unconstitutional and suspended include those that: assumed silence as a proof of guilt; allowed trial by ambush by not disclosing evidence; banned broadcasting of obscene images from terrorist attacks and limited the number of refugees and asylum seekers in Kenya²⁷.

The Anti terror police unit (ATPU) which was instituted in 2003 has arrested foreigners as well as Kenyans who in most cases are ethnic Somalis and muslims on suspicion of being terrorists²⁸. The ATPU is alleged to be behind the enforced disappearances and extra judicial killings of suspected terrorists²⁹. The 2014 Operation Usalama watch³⁰ allowed the police to conduct house to house searches without search warrants in areas suspected to be terrorists hide outs to arrest terrorists and illegal immigrants. The operation was a well intended strategy for eliminating terrorism and containing religious extremism but was ethnically and religiously biased since it focused on areas mostly inhabited by ethnic Somalis and muslims³¹. According to McCauley and Sophia, collective targeting of a

²⁵ 'Tough New Laws for War against Terror'. Daily Nation. Thursday December 4, 2014.

²⁶ ibid

²⁷ Kamau Muthoni and Wahome Thuku. Judges declare eight sections of new security law illegal. Standard Digital. Tuesday, February 24, 2015

²⁸ ibid

²⁹ 2014 Human Rights Watch report.

³⁰ Operation usalama watch directly translated into English refers to a 'security watch operation' was conducted in 2014 by the police service and KDF in Nairobi and Mombasa to detect and arrest suspected terrorists and illegal immigrants.

³¹ ibid

section of citizens while forgetting that they are also victims of terrorist attacks only serves the interests of terrorists as it encourages extremism and terror activities³².

The government's resolve to use military solutions to address internal security challenges signals a failed attempt in consolidating governance and law which is a threat to constitutionalism³³. For instance, the appointment of serving and former military officers to key state positions such as the National Intelligence Service (NIS), Internal security docket and Immigration. There are also plans to set up a Metropolitan command to be headed by the Kenya Army. Rabasa, Boraz et al argue that militarisation of security without due regard to civilian control of security agencies poses the danger of military creep and using the military to perform police functions³⁴.

1.2 Research Questions

1. What counterterror measures do African states use in dealing with international Terrorism?
2. What are the impacts of the counter terror measures used by African states on human rights and the rule of law?
3. What is the link between international terrorism and governance in Africa?

1.3 Objectives:

1.3.1 Main Objective

- To demonstrate that International terrorism has a place in shaping governance in Kenya.

³² Clark McCauley and Sophia Moskalenko. 2008. *Mechanisms of Political Radicalisation; Pathways Towards Terrorism*. Terrorism and Political Violence, 20. Routledge. p 415-433.

³³ Angela Rabasa, Steven Boraz et al. 2012. *Ungoverned Territories; Understanding and Reducing Terrorism Risks*. RAND corp. p.22

³⁴ ibid

1.3.2 Specific Objectives:

- To investigate the counter terror measures used by the government of Kenya in dealing with international terrorism.
- To investigate the impacts of Kenya's counter terror measures on human rights and the rule of law in Kenya.
- To investigate the nexus between International terrorism and governance in Kenya.

1.4 Literature Review

To enhance a deeper understanding of international terrorism, this section gives an in-depth analysis of terrorism.

1.4.1 Definition Problem of Terrorism

Terrorism lacks a universal definition hence the existence of several definitions of what it is. The definition of terrorism affects a state's response to it which in turn, also impacts on politics and governance. Etymologically, the word 'terror' which exists in terrorism is derived from the Greek word '*terrere*' which means to frighten or to tremble; thus terrorism is the act of causing fear or trembling³⁵. According to Poland, terrorism is not a philosophical movement but a tactic employed in times of peace or conflict; it is a form of an unconventional war used by weak minorities and a tool of domestic or foreign policies by states³⁶.

Terrorism as a tactic existed long before the word itself was coined, example the ancient practice of tyrannicide to create ideal societies and to please the gods. The word terrorism in

³⁵Israel Adoba Oche.2014. *Africa and the Resurgence of Terrorism: Revisiting the Fundamentals* .p.1

³⁵ibid

³⁶ James M.Poland.1988.*Understanding Terrorism Groups Strategies and Responses*.Englewood Cliffs;Prentice Hall.p.103

its current form was coined during the Reign of Terror in the French Revolution between 1793 and 1794³⁷.

The lack of a universal consensus on what terrorism is a hinderance to the United Nations' mandate of promoting global peace and security in that it limits law making efforts to counter terror at the national and international levels while observing the rule of law and fulfilling human rights obligations³⁸. States have however managed to work around this problem by adopting international counterterror related treaties, Security Council resolutions and United Nations protocols on addressing international terrorism.

Different authors and institutions have defined terrorism. According to Paul Wilkinson, terrorism refers to the use of forceful intimidation to achieve political ends³⁹. Yonah Alexander defines terrorism as the use of violence on random civilian targets to intimidate or create pervasive fear so as to achieve political goals⁴⁰. Walter Laquer defines terrorism as the use or threat to use violence as a method of combat or strategy which violates humanitarian rules to achieve set targets and induce fear on victims⁴¹. On the other hand, Bruce Hoffman defines terrorism as an undertaking with political aims which is conducted by an organized subnational group or a non-state entity and uses or threatens to use violence with far reaching psychological consequences beyond the immediate victims⁴².

The League of Nations Convention defines terrorist acts as "...all calculated criminal acts against a state that are intended to create a state of fear in the minds of the general

³⁷Ibid. p.65

³⁸Schmid Alex and Jongman Albert.2008.*Political Terrorism:A Newguide to*

Actors,Authors,Concepts,Databases,Theories and Literature.Amsterdam:Transaction books.p.4

³⁹Paul Wilkinson.2007.*Terrorism vs Democracy:The Liberal State Approach*.Routledge.London. p.15.

⁴⁰Alexander Yohan.1976.*International Terrorism:National,Regional and Global Perspectives*. New York: Praeger.P .xiv.

⁴¹Laquer Walter.1987.*The Age of Terrorism* (2nd ed).Boston:Littleand Brown.p.143.

⁴²Hoffman Bruce. 2006. *Inside Terrorism*. New York: Columbia University Press.p.43.

public”⁴³. The Arab Convention for the Suppression of Terrorism defines terrorism as “...actual use or threat to use violence to advance criminal agenda individually or collectively by causing panic and fear...by harming people or seeking to damage the environment, installations or jeopardizing a national resource”⁴⁴.

Kenyan laws do not define terrorism but define what an act of terror is in the Prevention of Terrorism Act of 2012. According to the preliminary of the Act, an act of terror is an actual use or threat to use violence against someone, endangering their lives and is risky to the health or safety of the public. It involves “..the use of fire arms or explosives which cause serious damage to property ; and disrupts the provision of essential and emergency services and threatens national security. It may also release hazardous, radio active or biological toxins to the environment....the aim of an act of terror is: to cause fear among Kenyans,to force the government or an International Organization to do or refrain from an act or to destabilize social, religious, economic, constitutional or political institutions of the state or an international organization”⁴⁵.

According to Stephen Sloan, the definitions of terrorism have evolved over time but its political, religious and ideological goals have not changed⁴⁶. A content analysis on selected definitions of terrorism conducted by two researchers from the University of Netherlands in 1988 found that the concept of violence was present in 83.5% of the definitions, political goals existed in 65% of the definitions, aims of causing fear in 51%, while arbitrary and indiscriminate targeting in 21% and victimization of civilians, non-combatants, neutrals or outsiders was found in 17.5% of the definitions⁴⁷.

⁴³League of Nations Convention.1937.Convention for the Prevention and Punishment of Terrorism. Article12.

⁴⁴Arab Convention for the Suppression of Terrorism 1998.

⁴⁵ibid

⁴⁶Sloan Stephen.2006.Terrorism:*The Present Threat in Context*.Oxford:Berg Publishers.p-5

⁴⁷Schmid Alex and Jongman Albert.1988.*Political Terrorism: A Newguide to Actors, Authors, Concepts, Databases, Theories and Literature*.Amsterdam:Transaction books.p.3

1.4.2 Motives and Causes of Terrorism

Scholars from different academic fields explain why people engage in terrorism and what motivates them. Terrorists have diverse origins and objectives; identifying these aids in the formulation of comprehensive anti-terror and counter terror policies and strategies. Terrorist organizations are not homogeneous in structure; some have a hierarchical command order while in others, leaders are non-identifiable; some use cell structures in which terrorists act as lone wolves⁴⁸.

Psychology identifies narcissism as a cause of terrorism. Narcissism causes people to seek self satisfying goals such as praise from group members after conducting terror attacks. Sensation seeking drives people into terrorism because of the inherent risk and thrill of a combative lifestyle⁴⁹.

Sociology views terrorism as a group based phenomenon used by weaker groups as the only available strategy to achieve their objectives⁵⁰. The Relative Deprivation theory asserts that people engage in terrorism collectively because of an unfair social order in which they feel relatively deprived in comparison with others⁵¹. In Nigeria, Amnesty International points out to the following socio-economic problems in Northern Nigeria as reasons behind the emergence of the Boko Haram terrorist group: high youth unemployment, religious tensions and government's failure to provide public and social services⁵². The discovery of oil in 1956 in southern Nigeria led to sectarian tensions since oil wealth benefits the christian dominated south and not the muslim dominated north.⁵³

⁴⁸ibid

⁴⁹Clark McCauley and Sophia Moskalenko.2008.*Mechanism of Political Radicalization: Pathways Towards Terrorism*. Journal of Terrorism and Political Violence,20 p 415-433.

⁵⁰ ibid

⁵¹ Maxim Worcester. 2015. *Combating Terrorism in Africa*. Berlin; ISPSW.p.29.

⁵² ibid

⁵³Okumu Wafula and Anneli Botha(eds).Nov,2007.*Domestic Terrorism in Africa: Defining, Addressing and Understanding its impact on Human Security*.p.5

Structural theory posits that social conditions, geographical location and weaknesses in governance structures including inadequate access to social institutions are a potential cause of terrorism and political revolution⁵⁴. According to Hughes, terrorists in Africa target governments or groups they term responsible for their historical injustices⁵⁵. This was the case in Mali following the 2012 coup in which the Tuareg separatist movement joined forces with the Al-Qaeda and gained control of 250,000 square miles in Northern Mali⁵⁶. For years, the Tuaregs have complained of government's neglect and demand secession from Mali to control their homeland 'Azawad' in northern Mali. France deployed its troops to Mali in 2013, leading to the defeat of the Tuareg-Al-Qaeda forces and it is alleged that the Al-Qaeda operatives fled and regrouped in Algeria and Libya⁵⁷.

Terrorism motivated by religious fanaticism is an ancient practice in the history of humanity⁵⁸. Acts of terror have been influenced by different religions including Islam, Judaism and Christianity. Samuel Huntington viewed cultural and religious differences as the main cause of conflicts and terrorism in the world today⁵⁹. As exemplified by the Al-Qaeda, Al-Shabaab, Muslim Brotherhood, Al-Nusra Front, Ansar al-Sharia, Islamic State in Iraq and Syria (ISIS) and Boko Haram which are Islamic terror groups that adhere to radical Islamism and use radicalized Muslims to engage in a holy war (*Jihad*) with the aim of establishing Islamic caliphates in Africa and other parts of the world. The Lord's Resistance Army founded in Uganda is comprised of radicalised Christians seeking to establish a system of governance in Uganda based on the biblical Ten commandments⁶⁰.

⁵⁴ibid

⁵⁵ibid

⁵⁶Hugh Schofield. 12 January 2013. Mali and France Push back Islamists. BBC. Retrieved 7, August 2016.

⁵⁷ibid

⁵⁸ M. Juergensmeyer. 2001. *Terror in the Mind of God*. California; California University Press. p. 12.

⁵⁹Samuel . P. Huntington. 1996 .*The Clash of Civilizations and the Remaking of World Order*. Simon and Schuster. p.76.

⁶⁰ Peter Eichstaedt. 2013. *First Kill Your Family: Child Soldiers of Uganda and the Lord's Resistance Army*. Chicago Review Press. p.12.

1.4.3 Religious Extremism and Terrorism

Leaders of most religions in the world condemn terrorism although their religious doctrines convince faithfuls to fight 'evil' using militant ways to test their faith and as part of God's plan to protect their religion in the present and future. According to Hoffman, religious interests usually mingle with political interests and to advance political motives; religious leaders blame political leaders for neglecting their religious issues and term foreign influence emanating from the international system as a threat to the survival of their religions⁶¹.

Terrorism motivated by radical islamist movements gained popularity in Africa in the early 1980's⁶². According to Wilkinson, to a great extent this was inspired by the 1979 Iranian Islamic revolution that overthrew the Shah under the leadership of Ayatollah Khomeini and turned Iran into an Islamic state based on fundamentalist principles⁶³. This inspired radical Islamists in other states including Africa to venture in overthrowing pro-western regimes and replace them with the Islamic *sharia* law for instance the Muslim Brotherhood in Egypt⁶⁴. In 2007, an audio message by Ayman al Zawahiri an Al-Qaeda leader urged muslims all over the world to wage *jihad* against Ethiopia for sending its troops to Somalia to fight the Union of Islamic courts⁶⁵. Boko haram terrorist group in Nigeria was initially formed to oppose western influence and education but broadened its goal to establishing an Islamic state in Nigeria⁶⁶.

⁶¹Hoffman Bruce. (2006). *Inside Terrorism*. New York: Columbia University Press.p.8

⁶² ibid

⁶³Paul Wilkinson.2007.*Terrorism vs Democracy:The Liberal State Approach*.Routledge.London. p.15.

⁶⁴ Mustafa Akyol. "Islam and the Liberal Order". German Marshall Fund of USA, April 2015, p 36-53.

⁶⁵SITE Intelligence Group,2007.

⁶⁶ John Horgan and Max Taylor.1999. 'The Future of Terrorism'.Special issue,Terrorism and Political Violence,11;4.

1.4.4 Terrorism as a Crime

Terror activities violate the criminal law code of most states. According to Hogan and Taylor,terror groups which are not financed by a state engage in criminal acts including: robbery, kidnappings and extortion to raise funds for their activities and sustain their existence⁶⁷. These tactics have been used by Alshabaab, Boko Haram and Muslim Brotherhood in Africa. To deter defections or avoid being reported to authorities, groups instill fear on people using lethal violence⁶⁸.

On the global scale,the United Nations Security Council Resolution 1566 declares that under no circumstance can terrorist acts be tolerated or excused for political or ideological reasons⁶⁹. As enshrined in its constitutive Act, the African Union(AU) is responsible for ensuring collective security and common values in Africa hence key in combating terrorism⁷⁰. The 1994, Declaration on the Code of Conduct for Inter-African relations in its preamble outlaws extremism and terrorism based on sectarianism, religion, tribe or ethnicity because terrorism undermines morality, human value, tolerance and fundamental human rights and freedoms⁷¹.

Several states in Africa have outlawed terrorism. Egypt's law no.97 of 1992 amended the Penal code and Criminal procedures code of Egypt and declared terrorism a crime. Additionally, the 2007 constitutional amendment added Article 179 to the constitution which gives the government a constitutional obligation to combat terrorism. In Nigeria, terrorism is a crime according to the 2011 Terrorism Prevention Act and it is a criminal offence to

⁶⁷ibid

⁶⁸ ibid

⁶⁹Okumu Wafula and Anneli Botha(eds).Nov,2007.*Domestic Terrorism in Africa: Defining,Addressingand Understanding its impact on Human Security*.p.56.

⁷⁰ibid

⁷¹ibid

commit, threaten or assist in the execution of acts of terror. Similarly, Uganda's Anti-Terrorism Act of 2002 outlaws terrorism in article 7(1).

In Kenya, before the enactment of the 2012 Prevention of Terrorism act, terror related offences were primarily addressed by the country's Penal code. In the Prevention of Terrorism Act, terrorism is a criminal offence in which a person who commits an act of terror is liable to a jail term not exceeding 30 years while a life imprisonment sentence is to be given to a terrorist who causes death. A person who facilitates a terror attack through funding or controlling terrorist property is liable to a jail term not exceeding 20 years⁷².

1.4.5 Counter-terror measures in Africa

The United Nations General Assembly in 2006 unanimously adopted a Global counter-terrorism strategy. The strategy is a holistic and inclusive approach comprising of the following four pillars: addressing conditions conducive for the spread of terrorism, preventing and combating terrorism, capacity building and an approach based on human rights and the rule of law⁷³. Counter terror measures within the frontiers of a given state usually operate in the context of the state's laws and policies, politics, history and culture⁷⁴.

The AU has adopted a broad counter terror approach for Africa as has been examined below. The Convention on the Prevention and Combating Terrorism is Africa's first legislative framework for combating terrorism and was adapted by the OAU in 1999, in Algiers, Algeria and entered into force in 2002⁷⁵. State parties to the convention are obliged

⁷² Part 3 on Offences in Prevention of Terrorism Act No.30 Of 2012

⁷³ UN Factsheet no.32

⁷⁴ *ibid*

⁷⁵ www.peaceau.org/en/page/64-counter-terrorism-ct. Retrieved 3 March 2016.

to criminalize terror acts in their national laws .The convention also provides for extradition and extra-territorial investigations on terrorism⁷⁶.

The 2002 AU Plan of Action on the Prevention and Combating Terrorism offers practical measures to curb terrorism through: police and border patrols, information exchange, legislative and judicial measures⁷⁷. In 2004, the Africa Centre for Studies and Research on Terrorism(ACSRT) was established to facilitate cooperation between member states on counter terrorism through: the provision of technical and professional advice, research and analysis, developing strategy and facilitating coordination of the counterterror strategies⁷⁸. The African Model Law on Counter terrorism which was adapted in July 2011 assists member states in the implementation of continental and international counter-terrorism instruments⁷⁹.

1.4.6 Terrorism, Governance and Politics

Governance broadly defined refers to the effective management of a state's affairs and includes the welfare of citizens, ensuring national cohesion and providing national security. Terrorists aim at changing political circumstances in their own favour. Anarchism theory introduced in 1840 by Pierre-Joseph Prouhon posits that terrorism is caused by the form of governance⁸⁰. Terrorism aims at abolishing an established system of governance and replacing it with a voluntary cooperation as is the case with the Muslim Brotherhood in Egypt which aims at abolishing the secular government and replace it with an islamic one⁸¹.

⁷⁶ ibid

⁷⁷ ibid

⁷⁸ IGAD. *Alshabaab as a Transnational Security Threat*. IGAD Security sector program (ISSP) and Sahar Foundation. March 2016.

⁷⁹ ibid

⁸⁰ Clutter Richard. 1990. *Terrorism and Guerilla Warfare*. London; Routledge.p.77

⁸¹ ibid

Anarchism is the first political ideology that regarded violence as a tactic of attaining political motives⁸².

Mikhail Bakunin popularised the idea of propaganda by deed that was originally developed by Carlo Pisacane⁸³, he advocated for anarchists (in this case terrorists) actions to be done individually or in small groups but not in large groups. Bakunin presented six steps necessary to destroy established social and political structures that terrorists use in Africa and across the globe. They are: killing the intelligent and the energetic, kidnapping the rich and powerful to obtain big ransom, helping guilty criminals, infiltrating politicians, defending dangerous declarations and nurturing those who believe in societal destruction⁸⁴.

Terrorism proved a useful method during the anti-colonial struggle in Africa. According to Franks, the Mau Mau in Kenya, the National Liberation Front (FLN) in Algeria and the youth military wing of the African National Congress (ANC) in South Africa used guerilla warfare and terror tactics in their respective independence struggles⁸⁵. On the contrary, reasons put forward showing that terrorism was not the key reason for granting African states independence include: after World war two, British and French colonialists were financially and economically weakened thus it was expensive for them to maintain their colonies⁸⁶; the general international mood opposed colonisation and colonial administrators were already intensively engaged in peacefully handing over power to African elites and nationalists⁸⁷.

⁸² Isharat Abbasi and Murkesh Kumar Khatwani. 2014. *An Overview of Political Theories of Terrorism*. IOSR Journal of Humanities and Social Science. Vol. 19, Issue 8, p 103-107.

⁸³ Spitz David. 1967. *Political Theory and Social Change*. New York. Atherton Press. p.112.

⁸⁴ *ibid*

⁸⁵ J. Franks. 2006. *Rethinking Roots of Terrorism*. New York; Palgrave Macmillan .p.35

⁸⁶ *ibid*

⁸⁷ Paul Wilkinson. 2000. *The Strategic Implications of Terrorism*. Har-anand publications. p.3

Terrorism influences domestic politics by changing the priorities of voters and politicians in governance matters⁸⁸. Terror activities may influence the survival of governments as voters hold the government accountable for failing to provide security thus in anticipating terror activity governments may seek to form stable coalitions⁸⁹. However, its imperative to note that empirical studies have not been conducted in African states to investigate these assertions.

George Bruce argues that politicians and governments use the concept of terrorism to persuade citizens that they are taking necessary steps to curb terrorism and at the same time, gain support on the use of harsh measures that would be unacceptable in any other circumstance⁹⁰. By the same token, laws addressing terrorism can also be used to increase government's power to repress opponents, religions and political associations in authoritarian as well as in democratic states.

According to Paul Wilkinson, governments must clearly indicate that their counterterror measures are solely directed at quelling terrorism and defending citizens against terror attacks: by avoiding over reaction and general repression that can destroy a government's legitimacy more rapidly and effectively than terrorism⁹¹. An under reaction on the other hand means failure of the government to respond and may result into the emergence of no go areas dominated by terrorists thus ungoverned spaces⁹².

⁸⁸Montalvo Jose Garcia.2007.*Voting After the bombing:Can terrorists Attack change the Outcome of Democratic Elections*,Manuscript. p.78.

⁸⁹Journal of Peace Research.March 2008,Vol 45 no.2 p.241-242.

⁹⁰George Bruce. 2015.*Definition of Terrorism-Social and Political effects*.Journal of Military and Veterans Health.Vol.21,no.2 p 12-23.

⁹¹ ibid

⁹²:ibid

1.4.7 Theoretical Approaches in the Study of Terrorism

Disciplinary interests differ and in turn influence academic perspectives on terrorism. There are economics, sociological and psychological approaches to the study of terrorism however this study limits itself to the theoretical perspectives of terrorism from the field of political science. This study reviews: Instrumental, Organizational and political communication approaches.

- ***Instrumental Approach***

This theoretical perspective is to a large extent influenced by Conflict studies. It views terrorists as non-state political actors with political objectives. Terrorism is an intentional response to government policies so as to change a state's decisions, policies and actions using force. In this approach, terrorism is not a warfare where involved parties try to destroy each other militarily⁹³.

This perspective borrows from the Rational Choice theory of Economics and argues that terrorists usually make a cost benefit analysis to evaluate the probability of success in their actions⁹⁴. According to Sandler Todd, success is defined in terms of accomplishing their set political ends but on the contrary, achieving the ends is almost always impossible since states are more powerful than terrorists and find ways to curb or neutralize them⁹⁵. Factions in terrorist organisations are due to disagreements concerning political and ideological ends as well as unsuccessful actions in achieving their set ends⁹⁶.

The Instrumental approach does not explain the internal workings of how terrorists come up with their aims and decisions.

⁹³ Ozgur OZDAMAR*.2008.*Theorizing Terrorist behaviour: Major Approaches and their Characteristics*. Defence Against Terrorism review. Vol.1, No.2, 2008 P.89-101.

⁹⁴ ibid

⁹⁵ Sandler Todd. 1992. *Collective Action: Theory and Applications*. University of Michigan press. p.75

⁹⁶ ibid

- ***Organizational Approach***

This approach analyses terror groups from the perspective of organization theories. It explains the internal dynamics, goals and activities of terrorist groups. According to Martha Crenshaw, survival is the main goal of terrorists in a competitive environment⁹⁷. In this approach as Long David argues, acts of terror do not directly reflect political or ideological values but they reflect organizational goals⁹⁸.

The approach has been criticised on the following grounds, given the secretive nature of terrorist organisations it is difficult to know and understand their internal dynamics and processes unless you are a member of the terror organisation⁹⁹. Secondly, its assumption that terror attacks are random does not provide a context for comparative analysis to find regularities and make predictions about terrorist behaviour¹⁰⁰.

- ***Terrorism as Political Communication Approach***

This approach focuses on the impacts of terrorism. Acts of terror are viewed as forms of political violence aimed at spreading political messages to force a portion of the community or state to make decisions that they (terrorists) want¹⁰¹. According to Fowler, the aims of terrorism vary but they all target at altering the relationship between a community of citizens and the state¹⁰². This perspective is not a comprehensive approach as it does not explain the internal dynamics of terrorist organisations that precipitate terrorist attacks.

As can be noted from the above analysed three theoretical perspectives on terrorism there is under development in them because researchers usually use a single study

⁹⁷ Martha Crenshaw (ed).1995. *Terrorism in Context*. PA: Pennsylvania state University.p.36.

⁹⁸ Long David. E. 1990. *The Anatomy of Terror*. New York: Free Press. p.17

⁹⁹ ibid

¹⁰⁰ Ibid

¹⁰¹ R. B, Fowler .1972. *The Anarchist Tradition of Political thought*. The Western Political Weekly 25 (4) .p 743-744

¹⁰² ibid

perspective on terrorism¹⁰³. Secondly, terrorism is a broad and complex subject and most research studies are policy oriented hence focus mainly on helping the government to control and prevent terrorism¹⁰⁴. Finally, terrorism is unpredictable in part because of its dynamic multiple geographical, cultural and historical contexts hence difficult to conduct comparative case studies.

1.5 Research Justification

1.5.1 Contribution to Knowledge

This study aids in understanding the role of international terrorism in shaping governance in Africa with a specific focus on Kenya. Government's counterterror measures and strategies although aimed at quelling terrorism; have a direct impact on governance by altering social, economic and political norms. The measures also have an impact on the rule of law and the enjoyment of rights. Some counter terror measures used by the government of Kenya, do not uphold the rule of law and violate constitutional rights provisions which negate constitutionalism.

1.5.2 Contribution to Policy Making

It is said that the political philosopher should avail principles that will aid those who make policies to cope with specific socio-political problems¹⁰⁵. By examining rule of law and human rights violations in Kenya and the link between terrorism and governance, the study provides a basis for implementing counter terror measures that enhance adherence to the law and respect people's rights to enhance constitutionalism in Kenya.

The study demonstrates the need for counterterror policies, laws and strategies that are not gender blind since men and women relate differently to terrorism and counter

¹⁰³ Alexander Yonah and Seymour Maxwell (eds).1977. *Terrorism: Interdisciplinary Perspectives*. New York :The John Jay press. p-238.

¹⁰⁴ ibid

¹⁰⁵Quote by Arnold Kaufman.

terrorism. Women are perpetrators as well as victims of both terror attacks and counter terror measures and are useful in pointing out when preventative and reactive counterterror measures are counter-productive so as to avoid creating and sustaining conditions that are conducive to the growth of terrorism.

1.6 Operationalisation of key terms

1. Counter-terrorism- These are strategies intended to prevent terrorist acts as well as to eradicate terrorist groups.

2. Constitutionalism- the distribution and limitation of the power of government through a system of laws that rulers must adhere to.

3. Governance—exercising political authority over a state through influencing and enacting policies and decisions concerning the public life.

4. Human Rights-basic rights and freedom entitlements that people have by the fact of being humans whatever their nationality, residence, sex, race or any other status. Example the right to life.

5. International terrorism-It involves citizens of more than one country and property. It is directed at wider targets and not immediate victims. It involves random attacks or symbolic targets. Its international dimensions include: raising of funds, recruitment, weapons and other resources to struggle against state authority and security forces.

6 Rule of law-the principle that people and institutions are subject to and accountable to law through fair application and enforcement.

1.7 Theoretical Framework

This study uses the Realist theory which is one of the orthodox approaches in the study of terrorism.

Orthodox approaches to the study of terrorism focus their analysis on the legitimacy of the nation-states in the international system. Any challenge to this legitimacy is an illegitimate threat that must be contained¹⁰⁶. The orthodox approach has two principal assumptions: the primacy of state legitimacy and terrorists are rational non-state actors who mainly target established authority and states. According to Elman Colin, this is a state-centric approach rooted in social contract between the government and citizens according to democratic values, rule of law and respect for human rights¹⁰⁷.

Orthodox approach has three conceptions of terrorism: functional, symbolic and tactical. Functionally, acts of terror are meant to force a reaction from the government and a state's authority against established constitutional requirements hence make existing establishments unsuitable to govern¹⁰⁸. The symbolic conception of terrorism asserts that acts of terror are meant to intimidate and frighten people with the aim of publicizing and internationalizing political aims¹⁰⁹. While the tactical conception posits that terrorism has short term tactics for short term gains such as kidnappings to raise funds from ransoms obtained. Long term strategies for long term goals include revolutionary movements for right of self-determination and insurgencies against repressive governments¹¹⁰.

Classical realism associated with Thomas Hobbes argues that human nature is selfish and everyone seeks to fulfill their own self interests and conflicts occur thus a state of war.

¹⁰⁶ibid

¹⁰⁷ Elman Colin. 2008. *Realism in Security Studies: An Introduction*. Routledge.p 15-28.

¹⁰⁸ Glaser Charles .2003. 'Structural Realism in a Complex World', *Review of International Studies* 29 (3).p 403-

414

¹⁰⁹ ibid

¹¹⁰ ibid

In this state of war life is solitary, short and brutal. To escape this condition, people enter into a social contract where the social and public orders are the responsibility of their sovereign leader. Niccolo Machiavelli a classical realist in his book 'The Prince' stated that rulers should always be concerned with the acquisition and maintenance of power because a power lacking state in military terms can be attacked by internal and external enemies. To ensure national security, a leader should always be thinking about war and the art of war since a person who knows how to gain power and create an absolute authority can easily become a ruler¹¹¹.

Realists including Hans Morgenthau, argue that the world as it is with the imperfections of opposing interests and conflicts is a result of forces inherent in human nature¹¹². Realism has six key tenets. First the international system is anarchical in nature and states are the main actors in the international system while terrorists are non-state actors with no allegiance to a particular state. Second, states are rational actors with rational alternatives to choose from. Third, all states are driven to act in accordance with their interest, sometimes states can have similar interests example fostering peace and can solve opposing differences through negotiation or war.

Fourth, self preservation is the primary interest of all states. Fifth, all states work to increase their power relative to that of other states, military power is considered as the most important form of power. The last tenet posits that there is no morality in states relations since international law only exists so long as states agree to abide by them and there is no International organisation with power to force states to observe international law¹¹³.

¹¹¹Niccolo Machiavelli. 1994. *The Prince*. Indiana Polis; Hackett publishing company.

¹¹² Ibid.

¹¹³ Ibid

Relevance in the study

Terrorism emanates from human nature, terrorists seeking to attain their objectives come into conflict with the states which seek to repress them and safeguard national security as part of governance. Realists view terrorism as a threat to a state's security and even though terrorists are non-state actors, the acts and impacts of terrorism are played out in the state arena¹¹⁴. This view will aid in understanding the diverse and everchanging responses to counter terrorism by the government of Kenya and how it views terrorism as a threat to its national security.

Hobbesian realism posits that to escape the state of nature, people consent to live under a government that makes and enforces law and order to protect them. Order and national security require people to sacrifice some of their rights and freedoms. This aids in explaining how Kenya as a rational actor in the international system, driven by the desire of ensuring its own national security ends up using some counterterror measures that violate human rights and do not uphold the rule of law which is against its constitutional provisions.

Realism aids in explaining that although some counter terror measures used by the government violate human rights there is no international organisation or government to compel and ensure Kenya observes its international human rights law obligations.

1.8 Hypotheses.

This study has the following three hypotheses:

- i. Kenya's counter-terror measures have not resulted into absence of terror attacks inside Kenya.
- ii. Some counter-terror measures used by the government of Kenya do not uphold the rule of law and violate human rights.

¹¹⁴<http://globetrotter.berkeley.edu/People2/Mersheimer.html>. Accessed on 5th May 2016.

- iii. International terrorism influences governance in Kenya both positively and negatively.

1.9 Research Methodology

This research uses both qualitative and quantitative research designs. Information collected is in the form of recorded responses obtained directly from people interviewed thus primary data as well as information obtained from available written documents thus secondary data.

1.9.1 Population Sample

The researcher used purposive sampling to interview a total of 80 individuals who are: two security analysts, 66 ordinary citizens, 3 officials from the National Counter Terrorism Centre, 4 serving and retired members of the Police Service and Kenya defence forces and 5 county government officials of Mandera, Lamu, Garissa, Mombasa and Nairobi counties (these are counties that have been victims of various terrorist attacks).

1.9.2 Data collection procedures

The researcher collected both primary and secondary data. Methods used to collect the data were:

1. Interviews

The interviews were conducted by filling in the interview guide and questionnaire as well as having face to face interviews with the security analysts, officers from the National Counter Terrorism Centre, ordinary citizens, serving and retired members of the Police Service and Kenya defence forces and county government officials of Mandera, Garissa, Lamu, Mombasa and Nairobi counties.

2. Library Searches

The library was used to collect quantitative and qualitative secondary data from the following sources: books ,human rights reports by local and international organisations, journals, news papers articles, documentaries and internet sources.

Tool: Questionnaire.

1.9.3 Data Analysis Method

The questionnaire and interview guide were used to collect both qualitative and quantitative data. Data coding was used to establish similarities and differences in collected data. Content analysis was done to capture information gathered from the open ended questions for the purposes of : quantification, classification and summarisation of data collected so as to highlight important:themes and findings through tabulation and a descriptive analytic narration . At the latent level, the researcher used interpretive analysis of responses and what they imply so as to come up with appropriate recommendations.

1.10 Scope and Limitations of the Study

The study focused on Kenya as the study site from 1998 to 2015 only. Some constraints the researcher experienced while undertaking the research include: national security is a sensitive matter and information concerning counterterror measures adopted in particular security operations and funding are secret. Some interviewees were not willing to provide information because they feared being victimised, this was mitigated by assuring them that their identities will not be revealed.

1.11 Chapter Outline

Chapter One: Introduction to the Study.

This chapter introduces the study by providing background information, the problem statement, Objectives, research justification, theoretical framework and the research design.

Chapter Two: Terrorism in Africa.

This chapter examines international terrorism in Africa with a specific focus on Kenya and the counter terror measures used by Kenya to curb this vice.

Chapter Three: Terrorism and International Law .

This chapter analyses terrorism as crime and examines how some counter terror measures violate human rights and disregard the rule of law.

Chapter Four : Terrorism and Governance.

This chapter examines the nexus between international terrorism and governance.

Chapter Five : Data Presentation and Analysis.

Chapter Six : Summaries, Conclusions and Recommendations.

CHAPTER TWO

TERRORISM IN AFRICA

2.0 Introduction

The chapter examines international terrorism in the context of Africa. It examines the growth of terrorism in Africa from a historical perspective, its objectives and impacts. To showcase Africa as a stage of international terrorism, the study uses examples of terror attacks carried out by Africans with foreign links in Africa as well as attacks executed by Africans outside Africa. It is against this background that various initiatives of individual African states, multilateral collaborations with like minded states and international organisations to counter terrorism in Africa ;with a specific focus on Kenya will be analysed.

2.1 Terrorism in the Context of Africa

As earlier mentioned in chapter one of this study, there is no universal consensus on the definition of terrorism inspite of its existence even before the emergence of the current nation-states system. According to Forest and Giroux, terrorism is nothing new to the people and governments of Africa and it is not an isolated phenomenon affecting the continent of Africa only as it has been a global phenomenon for many decades affecting other states in various continents of the world¹¹⁵.

According to Martha Crenshaw ,terrorism generally defined as a coercive strategy and tactic that uses violence or threat to violence to cause fear and political intimidation is visible in Africa's: independence and liberation movements,military coups,political assassinations,intra and inter-state conflicts of the post-colonial era in¹¹⁶. Example in South Africa,through its military wing,'*Umkhonto we Sizwe*' (spear of the Nation) the African

¹¹⁵James J.F.Forest and Jeninifer Giroux. 2011. *Terrorism and Political Violence in Africa: Contemporary Trends in a Shifting Terrain*. Terrorism Research initiative.Vol 5,No 3-4.

¹¹⁶Martha Crenshaw.(ed).1994.*Terrorism in Africa*.p.4

National Congress (ANC) publicly justified the use of terror tactics against the Apartheid regime for instance between 1983 and 1985 it used car bombs resulting to numerous casualties¹¹⁷. Walter Laquer describes the MauMau movement in Kenya as a local anti-colonisation group that used guerilla warfare and terrorist tactics against British rule¹¹⁸. In a debate in Britain's House of Lord's following the 1952 state of emergency in Kenya, Lord Earl of Munster stated the following concerning the Mau Mau "...Mau Mau terrorism is carefully planned, centrally directed with an objective of destroying all authority other than the Mau Mau."¹¹⁹

Africa has its own violent non-state, religious inspired terror groups that have carried out and still carry out acts of terror. As is the case with the Lord's Resistance Army (LRA) that has been active in Uganda since 1986. LRA is a radical christian movement that seeked to defend the Acholi people in Northern Uganda and overthrow the government of President Yoweri Museveni and rule Uganda based on the biblical Ten Commandments. The group has split into DR Congo, Central Africa Republic and South Sudan¹²⁰. The Al shabaab in Somalia seeks to make Somalia an islamic state and Boko Haram in Nigeria which opposes western education seeks to establish an Islamic state based on their own interpretation of the Koran; have evolved into transnational groups linked with other terrorist groups outside Africa such as the Alqaeda and ISIS¹²¹.

¹¹⁷F.Clifford-Vaughan. "Terrorism and Insurgency in South Africa", Journal of Social, Political and Economic Studies, Vol.12, No.3(1987), p.260.

¹¹⁸ *ibid*

¹¹⁹ House of Lords Hansard HLDe6 (21st October 1952). Vol 178 cc 789-91, 3:23 pm.

[http://hansard.millbanksystem.com/lords/1952/oct/21/mau-mau terrorism in Kenya](http://hansard.millbanksystem.com/lords/1952/oct/21/mau-mau%20terrorism%20in%20Kenya) . Accessed August 17 2016

¹²⁰ Peter Eichstaedt. 2013. *First Kill Your Family: Child Soldiers of Uganda and the Lord's Resistance Army*. Chicago Review Press. p.52

¹²¹ *ibid*

2.2 Africans as Participants in International Terrorism

International terrorism in Africa has two dimensions: the involvement of African nationals in transnational terrorism outside Africa and African nationals on their own or under the influence of foreign elements executing terrorism in Africa¹²². This section uses different examples to demonstrate Africans involvement in international terrorism before examining the causes of terrorism in Africa.

Radical Islamic groups that carry out terror attacks in Africa range from the Alshabaab in Somalia, Boko Haram in Nigeria, AQIM and ISIS franchise in Libya¹²³. The Islamic terror groups are behind various terror attacks in different African states including: Mali, Burkina Faso, Uganda, Algeria, Nigeria, Kenya, Egypt and Somalia. This points out to the fact that terrorism is widespread from the Maghreb region, to the Sahel, to the Horn of Africa and Eastern Africa.

The Alshabaab which has roots in Somalia and is affiliated to the Al-Qaeda has conducted numerous terror attacks inside Somalia. The group has also carried out several attacks in different parts of Kenya since 2006 including the 2015 Garissa University Massacre, 2014 Mpeketoni and Mandera massacres as well as the September 2014 Westgate Mall siege among other attacks. In Uganda, Alshabaab was behind the July 2010 World Cup Kampala bombings that led to the death of 70 people¹²⁴. Alshabaab members are a combination of Somali nationals and citizens from various states including: Kenya, Comoros, Tanzania, Uganda, Yemen and Britain¹²⁵.

In Nigeria, Boko Haram which started as a local insurgent group is now a transnational terrorist organisation affiliated to the ISIS. The group has caused havoc in

¹²² Israel Adoba Oche. (2014). *Africa and the Resurgence of Terrorism: Revisiting the Fundamentals*. p.34.

¹²³ ibid

¹²⁴ ibid

¹²⁵ Raymond Muhula, "Kenya and the Global war on Terrorism: Searching for a New role in A New War", in *Africa and the War on Terrorism*. John Davis (ed). 2013. Ashgate publishing company

Nigeria through a series of bombings, assassinations and kidnappings. The group attacked the United Nations compound in Abuja, in August 2011 using a car bomb that killed 23 people and injured over 75 others. In April 2014, Boko Haram kidnapped 276 teenage school girls from the Chibok area of Bornu state in Nigeria¹²⁶.

The Salafist Group for Preaching and Combat initially targeted Algeria's security forces but in 2003 it aligned itself with Al Qaeda and started to target foreign interests¹²⁷. In December 2006, the group attacked a bus ferrying employees of Brown and Root-Condor and citizens of: Algeria, Lebanon, America, Britain and Canada were injured in the attack¹²⁸. As Botha notes, despite a decline in the group's attack in Algeria, its influence has grown in the Maghreb region as it currently incorporates jihadists from: Libya, Tunisia, Morocco and Mauritania while at the same time adheres itself to the strategy and philosophical principles of Al Qaeda including suicide bombings¹²⁹.

High profile terror attacks originating from other parts of the world, have also been experienced in Africa. Example, the Israel-Palestine conflict was felt in East Africa in 1976 after a Palestinian terror organisation, hijacked a passenger plane and took it to Entebbe, Uganda. Kenya allowed the Israel's rescue team to refuel enroute to rescue hostages during the Entebbe raid. Israeli owned Norfolk hotel in Nairobi was bombed as a revenge on Kenya for allowing the refuel¹³⁰. While the 1998 bombings of USA embassies in Kenya and Tanzania by the Al Qaeda aimed at harming USA's interests in the East African region.

¹²⁶ ibid

¹²⁷ ibid

¹²⁸ Ganor Boas. 2008. *The Counter-terrorism Puzzle: A guide for Decision Makers*. New Brunswick, Transaction publishers. p. 123.

¹²⁹ Anneli Botha. 2007. *Relationship between Africa and International Terrorism: Causes and Linkages*.

¹³⁰ Raymond Muhula, "Kenya and the Global war on Terrorism: Searching for a New role in A New War", in *Africa and the War on Terrorism*. John Davis (ed). 2007. Ashgate publishing company. p. 48

Africans have also carried out terror attacks outside Africa as exemplified by Moroccan nationals who were members of the Moroccan Islamic Combat Group (MICG) involvement in the 2004 Madrid train bombings in Spain. Jamal Zougman a Moroccan was detained and accused of direct involvement in making 13 bombs that were placed on commuter trains¹³¹. At the same time, two Egyptian nationals Rabei Ousmane Sayed and Yahya Mawad Mohamed were sentenced by a Milan court for their involvement in the Madrid train bombings¹³². MICG has its cells in: Spain, Britain, Belgium, Canada, France and Italy¹³³.

The first recorded incident in which militants from East Africa played a direct role in terror cells in Europe involved an Eritrean (Muktar Said Ibrahim) and an Ethiopian (Yassin Hassan Omar) who tried to bomb a double decker bus and the underground system's in London, Britain¹³⁴.

2.3 Causes of Terrorism in Africa

Having demonstrated the fact that Africans are involved in international terrorism and Africa is a stage for international terrorism, it is imperative to analyse why Africa and Africans are involved in international terrorism. Identifying and understanding the root causes and not just the tactical manifestation of terrorism is crucial in the development of effective counter-terror strategies.

Realism asserts that war and conflicts are inherent in human nature because every person seeks to fulfill their own selfish interests and in these selfish pursuits, conflicts are bound to happen making life solitary, short and brutal¹³⁵. In Africa, it is individuals acting on their own or in terror organisations who seek to achieve selfish interests by committing acts

¹³¹ ibid

¹³² ibid

¹³³ ibid

¹³⁴ Anneli Botha. 2007. *Relationship between Africa and International Terrorism: Causes and Linkages*. ISS. p-4

¹³⁵ ibid

of terror. The presence of local and regional conflicts, historical grievances and the spread of radical islamism in Africa have been analysed in the subsequent sections as the key causes of international terrorism in Africa.

2.3.1 Terrorism and Conflicts in Africa

An understanding of international terrorism in Africa requires one to contextualize it in the local and regional grievances and conflicts. According to Steinberg and Weber, emphasizing the global aspect of jihad sidelines the local aspects of national differences on which individual terror groups are rooted on ; although ideological influences and recruitment networks are felt across states and beyond continental frontiers¹³⁶. According to Lyman and Morrison,international terrorism in Africa feeds on local conflicts and grievances without which most of the terrorist groups would not have appeared¹³⁷.

Empirical evidence from across Africa supports this. Example, in Northern Nigeria Boko Haram, now an ISIS affiliate emerged as result of muslims in the region feeling marginalised as they were excluded from oil revenues from the christian dominated south¹³⁸. In Mali, the local Taureg tribe has always cited negligence of northern Mali by the central government .In 2012, following a coup in Mali the Taureg seperatist militia joined forces with the Alqaeda¹³⁹. While the collapse of Somalia in 1991 and years long of civil war marked by clan conflicts made it possible for radical islamic groups including the Alqaeda to set planning and operational bases and use it as a focal entry point into Kenya and states neighbouring Somalia¹⁴⁰.

¹³⁶ Guido Steinberg and Annette Weber (eds).2015. *Jihadism in Africa: Local Causes, Regional Expansion, International Alliances*. German Institute for International and Security Affairs . P-8

¹³⁷ FN Lyman and JS Morrison. *The Terrorist Threat in Africa*. Foreign Affairs, January/February 2004. P-75-86.

¹³⁸ ibid

¹³⁹ ibid

¹⁴⁰ Guido Steinberg and Annette Weber (eds).2015. *Jihadism in Africa: Local Causes, Regional Expansion, International Alliances*. German Institute for International and Security Affairs . P-8.

2.4 The Rise and Spread of Radical Islamism in Africa

Controversy exists in regard to the term to use when alluding to people who justify violence and terrorism based on their interpretation of Islam. Some refer to them as 'islamists', 'islamic terrorist' while some people avoid connecting the word 'terrorism' to 'Islam' to avoid discriminating against muslims¹⁴¹. Islamists despite having different origins generally want to set up states and governments that are based on *sharia* law and the literal interpretation of the Koran and Hadith of Prophet Muhammad¹⁴² (thus fundamental islam). Islamists reject most western things except technology. They want women to dress in garments and cover themselves with veils and stick to their traditional roles of taking care of the family and stay out of politics and world economics¹⁴³.

In North Africa¹⁴⁴, according to the Worldfact book, more than 80% of the population practices Islam¹⁴⁵. Islamic empires controlled this region for over 1000 years until the collapse of the Ottoman Empire after World War I¹⁴⁶. Different islamic empires were based in present day :Algeria, Morocco, Tunisia, Libya, Egypt and Sudan. In the 200 years proceeding the collapse of the Ottoman Empire, European states colonialised North Africa . Shortly after World War 2 these states were granted independence. Libya attained independence from Italy in 1951, Egypt attained independence from Britain in 1952, Mali and Niger gained independence from France in 1960 while Tunisia, Morocco and Algeria attained independence from France in 1962¹⁴⁷.

¹⁴¹ B. Hoffman. 1997. "Religious Extremism", in M. Crenshaw and J. Pimlott (eds), Encyclopedia of World Terrorism vol. 1 .p-210.

¹⁴² Ibid

¹⁴³ J. Shola Omotola. 2014. *Assessing Counter-Terror Measures in Africa: Implications for Human Rights and National Security*. P-5.

¹⁴⁴ North Africa in this study refers to the following states: Egypt, Libya, Tunisia, Algeria, Morocco, Mali and Niger.

¹⁴⁵ World Factbook 2015.

¹⁴⁶ Ibid

¹⁴⁷ Ganor Baos .2008. *The Counter-terrorism Puzzle: A guide for Decision Makers*. New Brunswick: Transaction Publishers. P.6

Almost all leaders who came to power after independence in this region adopted a secular mode of government. The adoption of secular/western political and legal systems forced Islamic law and culture into the background¹⁴⁸. In Egypt, Abdel Gamel Nasser embraced a secular system of governance this led Islamic fundamentalist groups including the Muslim Brotherhood and the *Takfir wal-Hijra* to develop and gain supporters¹⁴⁹. In Tunisia, President Bourguiba adopted a secular system of governance that marginalised Islam by abolishing Sharia courts and banned headscarves¹⁵⁰. This gave rise to Islamic political groups that demanded a government based on Islam including the *Jamaah al-Islamiyya* that was banned and was behind the ousting of President Ben Ali in 2011 during the Arab Spring.¹⁵¹

The rise and spread of radical Islamism in Africa can be attributed to two main factors: Grassroot non-governmental efforts and sponsorships by Saudi Arabia's government. Egypt's Muslim Brotherhood and Boko Haram have been analysed below as examples of grass root non-governmental efforts.

a) Muslim Brotherhood in Egypt

The Muslim Brotherhood in Egypt currently exists in over 70 states in the world¹⁵². The Brotherhood was founded in 1928 by Hassan al-Banna during British colonial rule in Egypt with the aim of establishing an ideal government based on Islamic law¹⁵³. The Brotherhood preached: self-help, generosity, family values and social services for the poor while

¹⁴⁸ibid

¹⁴⁹Mustafa Akyol. "Islam and the Liberal order", German Marshall Fund of USA. April 2015,p 36-53.

¹⁵⁰ Ashraf El Sherif. *The Muslim Brother Hood and the Future of Political Islam in Egypt*. Carnegie Endowment for International Peace.p.12

¹⁵¹ibid

¹⁵² John Walsh. *Egypt's Muslim Brotherhood*. Harvard International Review,Perspectives on the United States,Vol.24 (4) Winter 2003.p.34

¹⁵³ ibid

emphasizing women's traditional roles in homes¹⁵⁴. Following the 1948 assassination of Mahmoud Nokrashy Pasha; then Egypt's Prime minister, the group split into those who advocate for non-violent and violent means for creating an Islamic Egyptian society¹⁵⁵.

Sayyid Qutb an Egyptian scholar who had studied in USA in 1940's was a leading thinker in the Brotherhood who advocated for the establishment of an Islamic system of governance in Egypt and termed Christianity and Judaism as corrupt religions. In 1966, he was assassinated by the government of Egypt for allegedly plotting the assassination of President Gamel Nasser.

The 2011, Egyptian revolution led to the legalising of the brotherhood resulting into them launching a civic political party, the Freedom and Justice party which contested the 2012 elections. Mohammed Morsi won the presidential elections and became Egypt's first democratically elected president. In 2013, following a nationwide anti- Muslim Brotherhood protests, Morsi was overthrown by a military coup and arrested. As of 2014, Muslim Brotherhood was declared a terrorist group by Egypt, Russia and Saudi Arabia¹⁵⁶.

b) Boko Haram in Nigeria

The Sokoto caliphate which was founded in 1804 as a confederation of emirates dominated present day parts of Northern Nigeria, Niger and Southern Cameroon before it was colonised by Britain in 1903¹⁵⁷. Since the colonial invasion, there has always been resistance to western education by Muslims in this region¹⁵⁸.

Boko Haram in Nigeria was formed against this background in 2002 by Mohammed Yusuf¹⁵⁹. The name Boko Haram translated from the Hausa language means 'western

¹⁵⁴ ibid

¹⁵⁵ ibid

¹⁵⁶ *Egypt's Muslim Brotherhood declared terrorist group*.bbc.co.uk 25 December 2013.Retrieved 6 July,2016.

¹⁵⁷ *The Cambridge History of Africa: 1807-1905*. 1985. London ; Cambridge University Press.p.276

¹⁵⁸ *The Cambridge History of Africa: 1807-1905*. 1985. London ; Cambridge University Press.p.280

¹⁵⁹ ibid

education is forbidden'. It emerged as a grassroots insurrection against Nigeria's national government as well as the traditional muslim establishment¹⁶⁰. From its inception, it viewed Nigeria as a state controlled by non-believers hence its political objective of creating an islamic caliphate in the 12 northern states of Nigeria before spreading to the rest of Nigeria¹⁶¹. Mohammed Yusuf placed the headquarters of Boko Haram in Maiduguri; Bornu state which is located in north-eastern Nigeria. He built a religious complex comprising of a mosque and an islamic school in which many poor families across Nigeria enrolled their children. The complex was a recruitment centre for jihadists¹⁶². In 2009, the group attacked police stations and government buildings in Maiduguri resulting into a shootout in which hundreds of Boko Haram supporters were killed while thousands others fled the city¹⁶³. When the founder Yusuf died he was replaced by Abubakar Shekau who continues with the insurgency. In 2014, Shekau pledged allegiance to Islamic state (IS) who named the territory under Boko Haram's control as the Islamic State of West Africa Province as part of the global caliphate ISIS is trying to establish¹⁶⁴.

Previously, Boko Haram only attacked local government facilities but the bombing of the United Nations headquarters in Abuja demonstrated that the group's goal is wider beyond dominating Nigeria. In June 2011, Nigerian security forces claimed that members of Boko Haram were trained in Afghanistan and Algeria by members of Al-Qaeda¹⁶⁵. Today, Boko Haram is active in Chad, Niger and northern Cameroon but as of March 2015, it had lost all

¹⁶⁰ www.worldpolicy.org/blog/2011/09/19/Terrorism-in-Nigeria-rise-of-Boko-haram. Retrieved on 19th May 2016.

¹⁶¹ *ibid*

¹⁶² *ibid*

¹⁶³ www.worldpolicy.org/blog/2011/09/19/Terrorism-in-Nigeria-rise-of-Boko-haram. Retrieved on 19th May 2016.

¹⁶⁴ Angela Rabasa, Steven Boraz et al. *Ungoverned Territories; Understanding and Reducing Terrorism Risks*. RAND corp p.148.

¹⁶⁵ *ibid*

towns under its control courtesy of a regional coalition of troops from: Nigeria, Cameroon, Chad and Niger was formed to fight it.

- ***Saudi Arabia Sponsorships***

The government of Saudi Arabia supports a fundamentalist type of Islam known as *wahhabism*; named after Muhammad bin Abd al-Wahhab who led a religious movement to restore pure Islam in Arabia¹⁶⁶. Abd al Wahhab joined forces with the Saudi family in Arabia to violently suppress all Arab Muslims who resisted his fundamental version of Islam¹⁶⁷. The Saudis and Wahhabi allies established the Kingdom of Saudi Arabia in 1932 and the Saudi royal family handed over the control of religion, morality, education and legal matters to Wahhabi clergy¹⁶⁸.

Saudi Arabia has produced great wealth from its oil reserves which has been used to fund Wahhabi missionaries, build mosques and schools in order to spread Wahhabism to different states of the world including Africa¹⁶⁹. A book found in King Fahd Mosque which was distributed by the embassy of Saudi Arabia in Washington DC and published by the government of Saudi Arabia had the following inflammatory words printed in it, "...Be dissociated from the infidels, hate them for their religion, leave them, never rely on them for support and do not admire them in every way according to Islamic law.." ¹⁷⁰. It is alleged that books containing similar inflammatory remarks have also been exported to African states¹⁷¹.

In Mali, Wahhabis are followers of Ansar Dine an organisation which has been linked to the Al Qaeda in Islamic Maghreb (AQIM). In the aftermath of the 2012 military coup, Ansar

¹⁶⁶Institute for the Analysis of Global Terror. *Fueling Terror*. Retrieved 6, August, 2016

¹⁶⁷ibid

¹⁶⁸Guido Steinberg and Annette Weber (eds). 2015. *Jihadism in Africa*. German Institute for International and Security Affairs. p.2

¹⁶⁹ ibid

¹⁷⁰ Nina Shea. *Saudi Arabia: Friend or Foe in the War on Terror?* Hudson Institute. Nov, 2005. p.4

¹⁷¹ibid

Dine occupied a large portion of Northern Mali and destroyed mosques and historical sites. According to Boraz, Rabasa et al, the group has also flogged, beheaded and dismembered those opposing them¹⁷².

2.4.1 Radical Islamism in the Horn of Africa (HOA) and East Africa

According to Kagwanja, the spread of radical islamism in the Horn of Africa in the 1990s transformed the region into a battle ground between the jihadists and their enemies (the west)¹⁷³. Close proximity and historical linkages with the Middle East have made HOA a breeding ground for radical islamic ideologies and a hub for local cells for international terrorists networks¹⁷⁴. The close geographical proximity between HOA and the Middle East facilitates easy movement of terrorists across the two regions¹⁷⁵.

States in East Africa and HOA have significant muslim populations presented by the following statistics: Ethiopia 50%, Eritrea 50%, Djibouti 94%, Comoros 98%, Kenya 11%, Sudan 35%, Somalia 90%, Uganda 16% and Tanzania 35%¹⁷⁶. This exposes the region to islamic sectarian conflicts and international terrorism driven by islamic extremism.

The region experiences ideological competition between Sufi islam, Salafi and Wahhabi interpretations of Islam¹⁷⁷. Radical islam is presented by the spread of salafism and wahhabism marked by the formation of extremists terror groups. External factors that have influenced extremism in HOA include: worldwide islamic revival; influence from international islamic extremist groups including the Muslim Brotherhood, Alqaeda and

¹⁷²Angela Rabasa, Steven Boraz et al. (2012). *Ungoverned Territories; Understanding and Reducing Terrorism Risks*. RAND corp.

¹⁷³Peter Kagwanja. *Counter-Terrorism in the Horn of Africa: New Security Frontiers, Old Strategies*. African Security Review 15.3. Institute of Security Studies.

¹⁷⁴Krueger Alan and David Laitin. 2008. 'A Cross-Country study of the Origins and Targets of Terrorism' in *Terrorism, Economic Development and Political Openness* (ed). Philip Keefer and Norman Loayza. New York ; Cambridge University Press. P 148-173.

¹⁷⁵ibid

¹⁷⁶Princeton N. Lyman. 2004. *The War on Terrorism in Africa from African World Politics* by John Harbeson. p.68.

¹⁷⁷ibid

ISIS;the 1979 islamic revolution in Iran as well as infiltration of the region by international radical extremists networks¹⁷⁸. Internal dynamics linked to growth and spread of radical islamism include: presence of domestic islamist movements, reaction to activities by christian missionaries and the collapse of Somalia state in 1991.

Martin Gus posits that the expansion of democratic space from the 1990s emboldened radical islamic activism among disaffected muslim minorities particularly at the coastal regions of Eastern Africa¹⁷⁹. In Kenya, the Islamic Party of Kenya (IPK) led by Sheikh Balala had grievances which included the under-development of Muslim inhabited areas and under representation of Muslims in government and state institutions. Sheikh Balala also called for the toppling of President Moi¹⁸⁰.

Islamism in Sudan dates back to 1989 when the National Islamic Front/National Congress Party took over power making militant islamism a powerful force in HOA. Sudan became a safe haven for islamic fighters including the Hamas, Hezbollah, Alqaeda and the Palestinian Islamic Jihad¹⁸¹. In 1993, the government of USA designated Sudan as a state sponsor of terrorism in .Osama bin Laden used his base in Sudan to expand his Al-qaeda network as well as to support terrorist organisations in Algeria,Tunisia and Egypt¹⁸². The Khartoum government aided Egypt's *Gama'at al-Islamiya*'s terrorists abortive assassination attempt on Egypt's President Hosni Mubarak in Addis Ababa, Ethiopia in July 1995.

2.4.2 Radical Islamism in Kenya

The spread of islamic fundamentalism in Kenya dates back to the 1970s when Saudi Arabian funded islamic missionaries travelled to Kenya to convert Kenyan muslims to

¹⁷⁸ *Radical Islam in East Africa* .www.rand.org. Accessed on July 19,2016.

¹⁷⁹ibid

¹⁸⁰ Martin Gus.2006. *Understanding Terrorism: Challenges, Perspectives and Issues*. Sage Publications p.83

¹⁸¹ibid

¹⁸² Country Reports on Terrorism 2010.

Salafism¹⁸³. The conversions made some sections of the muslim community in Kenya to be insular and conservative. At the same time sectarian animosities increased while traditional support for moderation and coexistence declined¹⁸⁴.

In the 1990s, Muslims in Kenya were exposed to radical islamism from Alqaeda and the Somali militant group *Al-iti had al-islami* (AIAI) that had a goal of establishing an islamic government in Somalia and the Ogaden region of Ethiopia¹⁸⁵. According to Bosire, AIAI attempted to recruit Kenyan youths in Garissa, Mandera and Eastleigh in Nairobi¹⁸⁶. The Pumwani Riyadh mosque in Nairobi, served as a radicalisation and terrorist recruitment centre. Inflammatory religious sermons were delivered and it is here that the Muslim Youth Centre (MYC) was founded in 2008 by Shayk Ahmad Iman Ali under the guise of expressing the grievances of Kenyan Muslim youths¹⁸⁷. In practice however, it recruited hundreds of Kenyans to fight alongside Alshabaab in Somalia and some returnees have carried out attacks in Kenya. In 2014, police raided the Masjid Musa mosque, in Mombasa and arrested atleast 200 youths undergoing radicalisation training¹⁸⁸.

2.5 Africa as a Target of International Terrorism

Africa's view on the causes, threats and impacts of terrorism differs from that of other parts of the world because vulnerability to terror attacks differs from continent to continent, sub-region to sub-region and from one state to another. At the same time according to Botha, Africa cannot isolate herself from developments in other parts of the world because of internet connectivity and globalisation in the sense that USA's foreign policy in the Middle

¹⁸³Salafism version of islam attempts to reconcile islam and modernity.

¹⁸⁴ibid

¹⁸⁵ Bosire Boniface, '*Muslims Youth Centre aims to Create Religious strife in Kenya*, Analysts Say'. Sabahi, August 22, 2012.

¹⁸⁶ibid

¹⁸⁷ibid

¹⁸⁸Step up fight against Youth Radicalisation. The Standard, Friday May 27, 2016.

East influences perception formation and radicalisation beyond national and continental frontiers¹⁸⁹.

International terror organisations use decentralized cell structures making it hard for states' security forces to detect and prevent the threats¹⁹⁰. This is the case with states that have not been attacked by terrorists or do not consider terrorism as a viable threat. Example the 1998 Al Qaeda linked bombings of America's embassies in Kenya and Tanzania had been planned since 1994 a time when few people knew Osama bin Laden and Al Qaeda who capitalized on this fact and established terrorist cells in Nairobi and Mombasa¹⁹¹.

Factors explaining why Africa is vulnerable to terror attacks include:

a) *Open borders and large illegal immigrant communities.*

Most African states as is the case in Eastern Africa have weak or no border patrols to prevent the movement of criminals and illegal immigrants. The states lack adequate human and technological resources to prevent terrorists from entering their state territories¹⁹².

b) *Political conditions*

Weak governments and the inability of some African states to effectively control their respective territories allows both foreign and local terrorist groups to set up their operational bases and hide outs. Somalia is a good example supporting this fact since the collapse of the Sayyed Barre led government in 1991, Somalia lacks a stable central government making it unstable and insecure. Local islamists militants including Al- ithad Al-islami and Alshabaab

¹⁸⁹ Anneli Botha. 2011. *Challenges in Understanding Terrorism in Africa: A Human Security Approach*. p.29.

¹⁹⁰ *ibid*

¹⁹¹ Israel Adoba Oche. (2014). *Africa and the Resurgence of Terrorism: Revisiting the Fundamentals*.

¹⁹² *ibid*

established links with Alqaeda making Somalia a transit point of Alqaeda terrorists into Kenya and the Eastern Africa region¹⁹³.

The 2011, Arab Spring resulted into the fall of authoritarian regimes in Tunisia, Egypt and Libya. Consequently, jihadists took advantage of the weakened governments to spread islamic extremism . In Libya,the demise of Muammar Gadaffi left a power vacuum that has allowed militant and terrorist groups including AQIM and ISIS to acquire arms and launch attacks from Libya. In Egypt, the anti- islamist crack downs following the 2013 coup led to the imprisonment and torture of democratically elected members of the conservative Muslim Brotherhood.This led to a backlash by Egyptian islamists including the Ansar Bayt al-Maqdis that have continuously attacked Egypt's army. In 2014 ,the islamist group pledged allegiance to ISIS and changed its name to Sinai Province¹⁹⁴.

c) Insufficient intelligence sharing among security forces

In most cases, security forces consider everything relating to terrorism as a top secret not to be shared with the broad public who can be a valuable source of information.This mistrust between the public and security forces makes it hard for people to report suspicious activities.

d) Islamophobia

Islamophobia is the perception that war against terrorism is war against islam despite assurances from governments that war on terror is not a war against Islam. Africa has a significantly large Muslim population and Islam can be used as a political tool to rally support. According to Aronson, religion extends beyond national and continental borders; and extremists use the internet and mass media to potray the global war against terrorism as a

¹⁹³Peter Kagwanja.2007.*Counter-Terrorism in the Horn of Africa:New Security Frontiers,Oldstrategies*.African Security Review 15.3.Institute of Security Studies.

¹⁹⁴ ibid

war against islam and to a large extent make it appear a war of Christianity and Islam¹⁹⁵.African states counter terror laws which violate human rights have the potential of widening already existing religious differences.

e) Competition between militant groups

Worcester notes that terrorism analysts have affirmed that there is a growing competition among militant groups that are linked to Alqaeda or ISIS to capture more territory hence gain the attention of potential recruits by proving their potency and relevance¹⁹⁶. Africa is a target of these militant groups.

2.5.1 Kenya as a target of International Terrorism

This sub-section examines why Kenya has been targeted in the past and continues to be targeted by terrorists; in order to identify and understand factors that precipitated terror attacks and make Kenya vulnerable to terror attacks. Uncovering these aids in understanding Kenya's counter terror strategy. In general, Kenya has been a victim of international terrorism because of: sharing a porous border with Somalia; hosting western interests; inadequate intelligence sharing; unemployment; corrupt security and judiciary personnel who aid terrorists; presence of radicalised youths; unaddressed historical grievances and injustices and KDF's incursion into Somalia as has been analysed below.

i. Kenya's geographical location

Kenya is located in Eastern Africa and it is surrounded by five states which are: Somalia, Uganda, South Sudan,Tanzania and Ethiopia. Somalia is key in understanding the terror attacks Kenya has suffered. The resulting lawlessness after the 1991 collapse of Sayed

¹⁹⁵Samuel L.Aronson.2013. *Kenya and the Global War on Terror:Neglecting History and Geopolitics in Approaches to Counterterrorism*.African Journal of Criminal and Justice Studies:AJCJS,Vol.7,#s1&2 November 2013.

¹⁹⁶Marxm Worcester.(2015). *Combating Terrorism in Africa*. Berlin; ISPW. P.32-36

Barre led socialist government provided room for the flourishing of radical islamic ideologies and militant groups¹⁹⁷.The confirmed presence of islamic fundamentalist and a large porous border poses a security threat not only to Kenya but to the Eastern Africa region. For instance perpetrators of the 2002 Kikambala Hotel bombings entered Kenya through Somalia¹⁹⁸. Somalia has the longest coastline in Africa which is unguarded making it an ideal entry point for terrorists and it is the closest Eastern African state to the Middle East where terrorism is rife.

ii. Historical grievances

Kenya's population is roughly 40 million people with 45% of Kenyans living below the poverty line (World Bank, 2010). Kenyans predominantly embrace Christianity while 11% of the population are Muslims who mainly dwell along the Kenyan coast, North-Eastern region and Nairobi¹⁹⁹. The muslim population is part of a complex history relevant in understanding the government's counterterror strategy.The arrival of Arab settlers in the East African coast in the 15 Century saw the Bantu living along the coast being converted to islam²⁰⁰. Kenya's coastal strip was originally a dominion of the Sultan in Zanzibar following an agreement between British colonialists and the Sultan in 1895 the coastal strip was declared a British protectorate.

At the dawn of independence, Arab muslims wanted to secede from Kenya and be enjoined with Zanzibar because historically they had been a dominion of the Busaidi Sultanate and practiced Islam just like muslims in Zanzibar²⁰¹. In the 1963 London Conference , it was agreed that Kenya would adopt a federal system of governance with one

¹⁹⁷ ibid

¹⁹⁸ ibid

¹⁹⁹ Samuel L.Aronson.*Kenya and the Global War on Terror: Neglecting History and Geopolitics in Approaches to Counterterrorism*.African Journal of Criminal and Justice Studies:AJCJS,Vol.7,#s1&2 November 2013.

²⁰⁰ Prestholdt,J.2011.*Kenya, the United States, and Counterterrorism*.Africa Today,57(4)p,3-27.

²⁰¹ ibid

central government and six regional governments as incorporated in Kenya's 1963 independence constitution. The Arab Muslims viewed this as an escape from domination by Christian elites and dropped their secessionist claims thus the coastal strip became Kenya's territory and the Sultan of Zanzibar was to be compensated for surrendering sovereignty in the 100 miles coastal strip²⁰². On the contrary, Kenya embraced a unitary state until the promulgation of the 2010 Constitution that provides for a devolved system of governance comprising of 47 County governments and one central government.

Upon attaining independence in 1963, President Jomo Kenyatta instituted a one party system of governance under Kenya African National Union (KANU). This continued during President Daniel Moi's rule until 1992 when Section 2A of the Independence constitution was repealed to allow multipartism in Kenya. According to Hassan Ndozvu, the Muslim community in Kenya viewed KANU as a party that is strongly linked to Christian ethnic groups hence largely ignored the needs and issues specific to Kenyan Muslims²⁰³. This lack of influence in politics resulted into the formation of the Mwambao United Front Movement that called for the autonomy of Kenya's coastal strip so as to establish a political system that honours Islamic religious beliefs²⁰⁴. Today's Mombasa Republican Council (MRC) which was formed in 1999 and has been listed as a terrorist organisation by the government of Kenya, has taken up this role.

In 1992, the Islamic Party of Kenya (IPK) was formed but was denied formal political participation because religious parties are illegal in Kenya and there were fears it was spreading Islamic fundamentalism in Kenya²⁰⁵. As Mogire and Agade argue, this was the first time that the threat of Islamism gained political attention as a domestic issue however this

²⁰² Ibid

²⁰³ Hassan Ndozvu. 2009. *Muslims and Party Politics and Electoral Campaigns in Kenya*. ISITA-Working paper series. p.2-3.

²⁰⁴ Ibid.

²⁰⁵ Ibid

does not mean that threats of international terrorism were absent²⁰⁶. Muslims viewed this as a deliberate resolve to prevent them from expressing themselves politically.

The North Eastern part of Kenya formerly known as the North Frontier District (NFD) is predominantly inhabited by ethnic Somalis who practice Islam. This region was carved out of Jubaland; present day Southern Somalia in 1925, to serve as a buffer zone between Ethiopia and Italian Somaliland²⁰⁷. British colonialists granted the NFD to Kenya despite a 1961 informal plebiscite indicating an overwhelming desire by the residents to join the newly formed Somalia Republic since the region is almost exclusively inhabited by ethnic Somalis who practise Islam²⁰⁸.

Somali men joined Somalia backed Northern Frontier District Liberation Movement (NFDLM) between 1963 and 1968 in an attempt to secede from Kenya during the Shifita war²⁰⁹. Kenya's security forces violently suppressed them leading to a three decades long state of emergency in the region. The subsequent Wagalla Massacre in 1984 in the present day Wajir county, was a brutal suppression by Kenya's security forces to diffuse clan-related conflict and disarm the Degodia clan. The massacre led to the killing of thousands of Somali men²¹⁰. The resulting resentment against the government coupled with lack of roads, schools and hospitals alongside chronic youth unemployment, rapid population growth and general insecurity makes the people to be easily lured by extremists with the promise of lucrative income²¹¹.

²⁰⁶ Edward Mogire and Kennedy Mkutu Agade. *Counter terrorism in Kenya*. Journal of Contemporary African Studies. Vol.29,2 011.issue 4. P 473-491.

²⁰⁷ *ibid*

²⁰⁸ Major John Ringquist. *Bandit or Patriot: The Kenyan Shifita War 1963-1968*. Baltic Security and Defence Review. Vol.13,issue 1.,2011.

²⁰⁹ *ibid*

²¹⁰ Ahmed Nassir. *Kenyan Somalis are treated like second class citizens*. Daily Nation. Saturday April 12, 2014

²¹¹ *ibid*

The Al-shabaab terror group in its public propaganda statements and videos frame their attacks in Kenya around the above analysed religious, ethnic and territorial grievances. They argue that for decades the government of Kenya has marginalised and abused the human rights of ethnic Somalis and Muslims in general²¹². At the Coast region, Alshabaab and the Mombasa Republican Council adopt narratives used by predominant Muslim inhabitants that from independence the government has allowed 'wabara' (other non-coastal communities) and Christians to usurp land belonging to the indigenous inhabitants of this region²¹³.

iii. Pervasive Corruption

Corruption in Kenya is institutionalised. The national police service has topped various national and international bribery rankings for several years. They include the East African Bribery Index, Kenya Bribery Index and the Kenyan Urban Bribery Index²¹⁴. In the 2015 Transparency International survey, the Police service emerged the most corrupt institution in Kenya²¹⁵. According to the report, the average bribe for a Kenyan police officer is Ksh.4800. This points to the fact that national security can be sacrificed for personal greed. The report further states that the Ethics and Anti-Corruption Commission, Department of Prosecution and the Judiciary who are collectively responsible for investigating and prosecuting corruption cases have failed to castigate individuals implicated in corruption.

It is alleged that Fazul Abdullah Mohammed the master mind of the 1998 bombings in Nairobi had been arrested twice in Kenya but compromised police officers freed him²¹⁶. In August 2015, a police lorry was caught ferrying illegal Ethiopia immigrants²¹⁷. It goes

²¹² Kefa Otiso, 'Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery'. Kenya Studies Review. Vol.1, no.1. 2014, p.128

²¹³ *ibid*

²¹⁴ A National Perception Report by the Ethics and Anti-Corruption Commission

²¹⁵ *ibid*

²¹⁶ Kefa Otiso, 'Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery'. Kenya Studies Review. Vol.1, no.1. 2014, p.128.

²¹⁷ Irene Ndungu. *To fight terrorism, fight corruption first*. Institute of Security Studies. 9, October 2015.

without saying that some of those being ferried might have been terrorists. Criminals and Terrorists can easily acquire Kenyan identification documents so long as they can bribe some state officers even if they do not speak English or Kiswahili ; Kenya's official languages.

iv. *Unemployment and Presence of radicalised youths*

Kenya has one of the largest youth populations in Africa but majority of the youths are unemployed even though they possess necessary skills and abilities for developing Kenya's economy²¹⁸. A 2015 World Bank Report estimates Kenya's unemployment rate to be at 17.3% compared to 6% for both Tanzania and Uganda²¹⁹.

A research conducted by Krueger and Laitin in 2008, established that terrorists are not necessarily the poor and the uneducated in a society²²⁰. A Survey released by Agakhan's University East African Institute in January 2016, found that majority of Kenyan youths would do anything to earn money even if it is illegal provided that they are not caught. Unemployment lures Kenyans to terror groups including, ISIS and Alshabaab. A 2016 state of National Security annual report to Parliament, established that terror groups capitalize on youth unemployment in Kenya and feelings of marginalisation to recruit members.

v. *Counter terror measures*

A 2013 research conducted by Dr. Anneli Botha a senior researcher at the Institute of Security studies and the Kenyan Youth Alliance found that Kenyan youths are driven by economic and ethnic factors to join terror groups. 95 people associated with the Alshabaab

²¹⁸ibid

²¹⁹World Bank; Kenya, East Africa's biggest economy, holds the dubious distinction of being the country with the largest number of unemployed youth in the region.

²²⁰Krueger Allan and David Laitin. 2008. *A Cross-country study of the Origins and Targets of Terrorism*. Cambridge University Press. P-148-173.

and 45 people associated with the MRC were interviewed. The study established that the drive to join MRC were ethnic and economic factors. While Alshabaab's core is radical islamism, 65% of all the respondents stated that they were pushed to join the terror groups because of injustices they had suffered from Kenya's security forces and collective punishment. While 49 % of the Alshabab respondents said that they viewed the government as a threat to their religion.

vi. *Habouring Western Interests*

Kenya hosts western interests including embassies and international organisations. Kenya hosts the headquarters of the United Nations Environmental program and has substantial Western tourist activity particularly at the coastal regions.

2.6 Kenya's Counter-terror Strategy

African states have responded to terrorism in different ways. As earlier mentioned, counterterror measures often operate in the context of a state's laws and policies, history, culture and politics²²¹. The counterterror measures analysed are limited to those adapted by the government of Kenya as part of the country's counterterror strategy. Understanding the causes of terrorism in Kenya aids in understanding why the government of Kenya uses a complex multifaceted counter terror approach and not simple solutions and alliances. Kenya's counter terror strategy is both preventative and reactionary as has been analysed in the subsections below.

According to Otiso, government's response to terrorist threats following the 1998 USA bombings were slow because Kenya perceived herself as a victim of international terrorism and not a source of international terrorism²²². It was after the 9/11 terror attacks when

²²¹ibid

²²² Kefa Otiso, '*Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery*'. Kenya Studies Review. Vol.1,no.1. 2014,p.128

sections of the muslim community in Kenya marched in support of the Al Qaeda atrocities that led to a policy shift and Kenya started viewing herself as a source of international terrorism and radical extremism²²³.

Driven by the desire of ensuring its own national security and protecting its citizens, Kenya has taken different counter terror measures to curb terrorism. Terrorism is a constantly changing phenomena and combating it is not an easy task. The study categorises the approaches into: Diplomatic and Regional Partnerships; Institutional measures; Legislative measures; Security screenings, border patrols and operations ; Freezing of financial assets and Social outreach.

2.6.1 Regional Partnerships

Kenya is a rational state actor in the international system and bases its decisions on rational alternatives available to it. Driven by the desire to protect its national security, to curb international terrorism and violent extremism as well as to ensure regional stability Kenya has partnered with like minded states to achieve these ends.

As a member of various regional organisations Kenya has partnered with different states to curb terrorism and violent extremism. In the East African Community (EAC), Kenya alongside Tanzania, Uganda, Rwanda and Burundi work on developing strategies of combating terrorism. Kenya adapted the 2014 Regional counter terrorism strategy that seeks to safeguard the region's security through preventing and combating terrorism as well dealing with insurgency and transnational crimes²²⁴.

Kenya is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) which was founded in August 1999²²⁵. ESAAMLG assists member

²²³ *ibid*

²²⁴ *Ibid* p-46

²²⁵ Edward Mogire and Kennedy Mkutu Agade. *Counter terrorism in Kenya* Journal of Contemporary African Studies. Vol1,29,2011.issue 4. P 473-491.

states in complying with international standards against funding terrorism (originating from the Financial Action Task Force (FATF) recommendations). FATF is an intergovernmental body that was founded in 1989 to set standards and promote effective implementation of legal, regulatory measures to combat money laundering and terrorist financing²²⁶. Some members states include: South Africa, Zimbabwe, Uganda, Lesotho, Mozambique, Angola and Zambia²²⁷.

In 2006, Kenya alongside Ethiopia, Sudan, Somalia, Djibouti, Eritrea, Uganda and South Sudan founded the Intergovernmental Authority on Development, Capacity Building Program Against terrorism (ICPAT). ICPAT was founded for regional security cooperation and to build national capacity to combat terrorism in five key areas: promoting strategic cooperation, sharing information and best practices, providing counter terrorism training to law enforcers, enhancing border patrols and enhancing judicial capacity and interdepartmental cooperation²²⁸.

2.6.2 Diplomatic Partnerships and Foreign Assistance

The 1998 bombing of USA's embassies in Kenya and Tanzania exposed African based terror threats on USA's interests and their African partners. Driven by the need to protect its citizens from terrorism and violent extremism, USA has partnered with Kenya and other African states in the fight against terror and finances counterterror programs in Africa²²⁹.

Kenya has been receiving aid from the USA through the Partnership for Regional East Africa Counter Terrorism (PRACT) which was established in 2009 as a multi-

²²⁶ www.fatf-gafi.org/about/ Retrieved 6, August 2016.

²²⁷ *ibid*

²²⁸ IGAD. *Alshabaab as a Transnational Security Threat*. IGAD Security sector program (ISSP) and Sahar Foundation. March, 2016. P.2

²²⁹ Edward Mogire and Kennedy Mkutu Agade. *Counter terrorism in Kenya* Journal of Contemporary African Studies. Vol, 29, 2011. issue 4. P 473-491

year, multi-faceted program to build capacity and cooperation for military, law enforcers and civilian actors across East Africa²³⁰. PRACT aims at :enhancing border security, reducing the operational capacity of terrorists, reducing radicalisation and recruitment to violent extremism and developing a rule of law framework for countering terrorism. Other member states of PRACT are: Burundi, Djibouti, Ethiopia, Somalia, Uganda, Tanzania, Rwanda, Comoros, Seychelles, Sudan and South Sudan. PRACT also compliments USA government efforts by supporting AMISOM in promoting stability in Somalia²³¹. Prosecutors from Kenya and Uganda have received training to improve their prosecutorial capacity to adjudicate terrorism cases²³².

In August 2014, Kenya and USA signed a Customs Mutual Assistance Agreement (CMAA)²³³. CMAA is a legal framework to allow exchange of information and evidence to assist in the prevention, detection and investigating terror related customs offences between the two states²³⁴.

America's Federal Bureau of Investigation (FBI) is collaborating with Kenya's security forces to help deal with terror related threats²³⁵. Kenya is among the top five recipients of USA's State Department Anti-Terrorism Assistance (ATA) worldwide²³⁶. The fund supports programmes focusing on: training of law enforcers, border security and security of coastal regions. Since 2002, ATA has trained more than 500 security officials in the USA and in USA's designated facilities in East Africa²³⁷.

²³⁰ ibid

²³¹ ibid

²³² Kefa Otiso, 'Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery'. Kenya Studies Review. Vol.1, no.1. 2014, p.132

²³³ ibid

²³⁴ Edward Mogire and Kennedy Mkutu Agade. *Counter terrorism in Kenya* Journal of Contemporary African Studies. Vol.1, 29, 2011. issue 4. P 473-491

²³⁵ ibid

²³⁶ MUHURI and Open Society Justice Initiative. 2013. "We are Tired of Taking You to the Court" *Human Rights Abuses by Kenya's ATPU*. Open Society Foundation. p.3

²³⁷ ibid

Kenya has partnered with Israel in the fight against terror. According to Nadav Peldmam Israel's deputy ambassador to Kenya, the Israeli-Kenyan partnership dates back to the 1976 Entebbe raid and the two states cooperate in training security personnel, providing security equipment and sharing intelligence²³⁸.

2.6.3 Institutional Measures

Kenya has undertaken a number of institutional measure in the fight against terrorism. These include establishing the Anti Terror Police Unit (ATPU) in 2003 alongside the National Counter Terrorism Centre.

- ***Anti Terrorism Police Unit (ATPU).***

The ATPU was established in February 2003 with a mission of combating terror activities using proactive and reactive measures. Its vision is "to ensure a secure environment for all in Kenya by eliminating the fear and threat of terrorism"²³⁹. Its standing orders are termed secret while its officers usually hide their identities. The unit functions to: prevent, detect and thwart imminent terror activities and attacks in Kenya. ATPU investigates terror related cases, shares intelligence with other security agencies in Kenya and it is mandated to create databank profiles for all terror suspects.

The ATPU works closely with the Recce squad which is a special force unit of the paramilitary General Service Unit (GSU). Officers of Recce squad are trained in Kenya, Britain, Israel and USA. They are trained in: handling and detonating explosives, securing vital installations and anti-terrorism. Recce squad comprises of the Sky Marshall Unit; an undercover counterterror unit on board commercial flights which prevents aircraft

²³⁸Simon Maina. *Israel and Kenya to boost Security Partnership in Terror Fight*. Daily Nation. July 5, 2016.

²³⁹Kenya police, *the Anti-Terrorism Police Unit*, at www.kenyapolice.go.ke/anti-terrorism. Accessed August 12, 2016.

hijackings²⁴⁰. Recce squad was involved in operations against Westgate mall siege and Garissa university massacre

- ***The National Counter Terrorism Centre***

According to the 2014 Security laws of Kenya, the National Counter Terrorism Centre is an interagency body headed by a director who is appointed by the National security council, the National Intelligence Service, The Kenya Defence Forces (KDF), National Police Service and other agencies determined by the National Security Council²⁴¹.

The functions of the Centre are: coordination of counter terrorism efforts so as to detect, deter and disrupt terrorism; putting in place a terrorists data base to assist law enforcing officers; conduct public awareness on the prevention of terrorism; develop deradicalization strategies; coordinate with other governmental agencies in the provision of security certification for aviation schools and facilitate capacity building for counter terrorism stakeholders²⁴². The Centre may also request any person or the government to provide information relating to terrorism which is within their knowledge.

2.6.4 Legislative measures.

Kenya has for years since the 1998 USA embassy bombings tried to create a legal framework for addressing terrorism. Parliament had proposed anti-terrorism bills but religious and political differences saw the 2003 Suppression of Terrorism bill and the 2006 Anti-terror bill not passed into law. The 2003 Suppression of Terrorism bill, (supplement no.38 of the Kenyan gazette) was tabled in parliament by the minister of justice and

²⁴⁰ intelligencebriefs.com/recce-squad-commandos-training-in-Kenya/.Retrived August 12,2016

²⁴¹ 2014 Security Laws Amendment bill. Section 40 A.

²⁴² 2014 Security Laws Amendment bill. Section 40 B.

constitutional affairs²⁴³. The Law Society of Kenya, the clergy and civil society claimed that it violated the constitution and legalised human rights violations. LSK and the civil society conducted civic education across the country to sensitize Kenyans on the negative clauses of the bill including: limiting the freedom of association, presumption that silence means a person is guilty, limiting the right to a fair hearing and particularly targeted Kenyan Muslims as terrorists²⁴⁴. The bill did not pass into law as it failed to pass the second reading stage.

The 2006 Anti-terror bill never made it to parliament because human rights organisations and the civil society rejected it before it was formally introduced to parliament²⁴⁵. The East African Law society questioned the necessity of the bill alluding to the fact the Penal code already addresses crimes under the proposed bill²⁴⁶.

The 2012 Prevention of Terrorism Act was introduced in parliament by the then acting Minister of state for Provincial administration and Internal Security Mohamed Yusuf Haji through the Kenya gazette supplement no.77 on 27th July, 2012²⁴⁷. It was enacted into law in October 2012. The Act has six parts comprised of 52 sections and two schedules. The act states that terrorism is a crime and defines what acts of terror are. Those engaging in terrorism or aid terrorists if found guilty can be jailed for 30 years or handed life sentences.

The 2013 Anti-Terrorism bill was introduced to parliament on December 11, 2014 by the Committee on National Security and Administration and signed into law on 19th December 2014. This is the official legal framework for combating terrorism in Kenya. The law is a wide

²⁴³Kenya Gazette Supplement, The Suppression of Terrorism Bill, 2003, 38 Kenya Gazette Supplement Nairobi, 30 April 2003 at 443, Clause 12 (2).

²⁴⁴Caroline Wanjiru Kamau. 2006. 'Kenya and the War on Terrorism', Review of African Political Economy, vol 33, no. 107. p 133-141.

²⁴⁵ibid

²⁴⁶East African Law Society Statement on Kenya's draft Anti-Terrorism bill, May 29, 2003. <http://www.legalbriefs.co.za/article.php/story>. Accessed August 17, 2016.

²⁴⁷ibid

range array of amendments to 23 existing security related laws. The laws are to aid security agencies in curbing terror. Some of the amendments include: allowing the registra of persons to revoke a national identity card, National Intelligence service are allowed to tap calls and police can retain a terror suspect before the 24 hour constitutional limit provided that the suspect is first brought to court.

2.6.5 Security Screenings, Patrols and Operations

Kenya has introduced security checks in all its airports and border points to detect terror suspects and terrorists. The government closed down mosques where radicalisation was being taught including Masjid Musa in Mombasa and Pumwani Riyadh mosque in Nairobi²⁴⁸. Clerics preaching radicalisation have been arrested example slain radical imams Aboud Rogo and Abubakar Sheriff alias Makaburi who had pending terror related cases in court²⁴⁹.

In October 2011, Kenya undertook '*Operation Linda Nchi*' translated in English means 'An operation to protect the state'. This was a military incursion into Somalia to rout the Al Qaeda linked Alshabaab terror group. Kenya later joined the African Mission in Somalia (AMISOM) an active peacekeeping mission operated by the African Union (AU) since 2007 with the approval of the United Nations Security Council. AMISOM was created with an initial mandate of six months by the Peace and Security Council of the AU however, subsequent renewals of its mandate by African Union Peace and Security Council have been authorized by the United Nations Security Council.

In 2014, the government through the police and KDF conducted *Operation Usalama Watch* which when translated to English means 'A security watch operation'. The operation was conducted in Mombasa and Nairobi particularly in areas inhabited by ethnic Somalis

²⁴⁸ibid
²⁴⁹ibid

and muslims with the aim of detecting illegal immigrants and criminal hideouts,arresting and prosecuting people suspected terrorists²⁵⁰. According to the ministry of Interior Security, at least 4000 people were arrested and detained during the operation²⁵¹.

In 2015, the government announced plans to construct a wall along its border with Somalia to stop and prevent the movement of terrorists and illegal immigrants between Kenya and Somalia.Security cameras and surveillance stations will also be set up along the wall. It is expected that security and immigration officers will be at strategic points along the wall to collect biometric data for people entering Kenya.

In July 2015, the government launched *Operation Linda Boni* in the Boni forest in Lamu county. Boni forest was being used by *Jash Ayman* a local faction of the Alshabaab in Kenya as their hide out and an entry point of terrorists from Somalia into Kenya²⁵². The faction was behind terror attacks in Lamu and Garissa counties between 2014 and 2015²⁵³. Terrorists launched attacks on both civilians and security forces in areas near the forest. In a press conference, KDF's spokesman Colonel David Obonyo said that the security agencies had recovered guns, ammunition, improvised explosive devices(IEDs) and bomb making materials²⁵⁴.

2.6.6 Social Outreach

In 2013,the government launched *the Nyumba kumi initiative* that borrows heavily from Tanzania's socialist policy.This initiative involves people developing an interest to know atleast 10 people in their neighbourhoods; giving people living in Kenya the mandate

²⁵⁰ Human rights Watch report;Kenya, 2015.

²⁵¹Ibid

²⁵² Laban Walloga. *KDF intensifies security operations in Boni forest*. Daily Nation February 4, 2016.

²⁵³ Benard Sanga. *Officers Say Boni forest still dangerous*. Standard Digital. Sunday 3 April,2016.

²⁵⁴ ibid

of ensuring their own safety. The initiative has been praised for helping in the detection and foiling numerous imminent attacks²⁵⁵.

In 2015, President Uhuru Kenyatta announced that the government was planning to launch a National strategy to Counter Violent Extremism that will be implemented by the national government, county government, the civil society, communities and international partners²⁵⁶. The purpose of the strategy is to disengage and rehabilitate returnee militants who no longer adhere to the ideology and aims of terrorism.

2.6.7 Freezing Assets of People suspected to have links with terrorist groups

The government of Kenya with the help of USA's security forces harshly cracked down several muslim organisations and closed down five Non-governmental organisations after the 1998 bombings of the USA embassy in Nairobi. NGOs that were closed down include: Mercy Relief international association, al-Haramain foundation, Help African people, the International Islamic Relief Organisation, Ibrahim bib'Abd al'Aziz al-Ibrahim foundation and Rabitat al-Islam²⁵⁷. They were all suspected of funding terrorists and terror activities in Kenya.

In April 2015, the government froze 85 bank accounts belonging to individuals, hawalas and institutions on suspicion that they fund terrorism as identified by the government's Financial Reporting Centre²⁵⁸. In a press statement, the National treasury principal secretary, Kamau Thuge stated that investigations would be conducted on the account holders before taking any legal action against them²⁵⁹. The 85 bank accounts were listed in Kenya gazette notice 2323 on 7th April 2015. Some of the frozen bank accounts

²⁵⁵ www.counterextremism.com/countries/Kenya. Retrieved 2, September 2016.

²⁵⁶ *ibid*

²⁵⁷ Bjorn Moller. *Political Islam in Kenya*. DIIS working paper no. 2006/22.

²⁵⁸ Stephen Mudiari. *Government freezes accounts of people suspected to be funding terrorist activities*. Daily Nation. Wednesday, April 8 2015.

²⁵⁹ *ibid*

include those of : Dahabshiil hawala, Kaah Express, Muslims for Human Rights (MUHURI) and Haki Africa.

2.7 Conclusion

Terror attacks in Kenya are a result of Kenya sharing an inadequately guarded border with Somalia, presence of radicalised youths, unaddressed historical grievances, hosting western interests, high youth unemployment, corrupt security, border and judicial officers and using counterterror measures that encourage religious extremism.

The government of Kenya driven by the need to ensure national security uses diverse and multifaceted counter terror strategy to curb international terrorism. These approaches are both preventative and reactive which have been successful in some cases by facilitating the arrest and prosecution of suspected terrorists, thwarting terror attacks and preventing radicalisation.

CHAPTER THREE

TERRORISM AND INTERNATIONAL LAW

3.0 Introduction

Recognising that human rights provisions are covered and guaranteed by: human rights law, humanitarian law, refugee law and constitutions of different African states; this chapter examines human rights principles and standards taken into account in counterterrorism. Human rights and rule of law violations brought about by counter-terror measures adopted across Africa with a special focus on Kenya have been illustrated.

3.1 Definition of Human Rights

Human rights are entitlements every person has by virtue of them being people. They are universal and held equally by all people irregardless of their race, nationality, religion, gender, ethnicity or any other status²⁶⁰. The right to life is a supreme right because without life, all other rights have no meaning. Human rights are inalienable and can only be taken away under special circumstances according to due process²⁶¹. However, some human rights possess a special status since there is no circumstance under which derogation from them is permissible in accordance with the principle of *Jus cogens*²⁶². According to the UN Human Rights Committee other rights which derogation is not permitted include: freedom from torture, collective punishment and hostage taking²⁶³.

Human rights are indivisible and interrelated such that the fulfillment of one right facilitates the advancement of others while the deprivation of one right affects the others²⁶⁴.

²⁶⁰ Article 2 of the 1948 Universal Declaration of Human Rights.

²⁶¹ Thomas Pogge and Leif Weiner. Human Rights. Stanford Encyclopedia of Philosophy. Retrieved July 6, 2016.

²⁶² The United Nations Office of the High Commissioner of Human Rights, What are human rights?, Retrieved 6, July 2016.

²⁶³ *ibid*

²⁶⁴ *ibid*

Human rights confer both rights and obligations. At the individual level, we must respect the human rights of others. Under international law, it is the duty of states to respect, protect and fulfill human rights of all those living within their borders²⁶⁵. Respecting human rights refers to not interfering or hindering the enjoyment of human rights²⁶⁶. The duty to protect requires states to protect individuals and communities against human rights abuses and violations. The duty to fulfill means that states must take necessary positive actions to facilitate the enjoyment of basic human rights through: legislative, judicial, administrative and civic education measures²⁶⁷. States are to provide effective remedies in the event of human rights violations.

3.2 Definition of the Rule of Law

Rule of law does not have a universal definition but most authors acknowledge it as a set of ideals and an institutional framework²⁶⁸. According to Raz, the rule of law can be achieved through the following principles: prospective, open and clear laws; relatively stable laws; independent judiciary; natural justice; courts with reviewed powers; courts that are easily accessible while crime preventing agencies should not be allowed to violate the law²⁶⁹. Kleinfield gives five principles upon which the rule of law should be based upon: a government bound and ruled by law, equality of all before the law, establishment of law and order, protection of human rights and an efficient and predictable application of justice²⁷⁰.

²⁶⁵ICCPR, Article 2(1)

²⁶⁶ Burns.H. Weston. *Human Rights*. Encyclopedia Britannica. Retrieved July 6, 2016.

²⁶⁷ ibid

²⁶⁸ ibid

²⁶⁹ Raz.J.(1977).*The Rule of Law and Virtue*.The Law Quarterly Review,93.p-196.

²⁷⁰ Kleinfield.B.R.(2005).*Competing Definitions of The Rule of Law: Implications for Practitioners*.Carnegie Papers- Rule of Law Series.Number 55,p-3.Washington:Carnegie Endowment for International Peace.

3.3 International Human Rights Law

The international human rights law (IHRL) is contained in a number of international human rights treaties. IHRL is not limited to the enumerated rights in various treaties as it is inclusive of rights and freedoms that are part of customary international law and bind all states even when they are not a signatory to a particular treaty²⁷¹. There are several subject-specific treaties and protocols as well as regional treaties on the protection of rights and fundamental freedoms. Examples of regional and universal treaties protecting civil rights and fundamental freedoms in Africa include:

- The 1981 African Charter on Human and Peoples' Rights that entered into force in 1986.
- The 1990 African Charter on the Rights and Welfare of the Child that entered into force in 1999.
- The 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa.
- The 2003 Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
- The 1966 International Covenant on Economic, Social and Cultural rights and its 2 Optional protocols.
- The 1948 Universal Declaration on Human Rights.
- The 1965 International Convention on the Elimination of all forms of Racial Discrimination.
- The 1984 Convention Against Torture and other Cruel Inhumane or Degrading Treatment or Punishment and its Optional Protocol.

²⁷¹Hannum Hurst .2006. *'The Concept of Human Rights'. International Human Rights: Problems of Law, Policy and Practice.* Aspen Publishers p 31-33.

- The 1979 Convention on the Elimination of all forms of Racial Discrimination Against Women and its additional Protocol (CEDAW).
- The 2006, International Convention on the Protection of All Persons From Enforced disappearance.
- The 1989 Convention on the Rights of the Child and its 2 Optional Protocols.
- The 2006, Convention on the Rights of Persons with Disabilities and its Optional Protocol.

3.3.1 Flexibility of Human Rights Law

Counter-terror measures seek to prevent acts of terror, prosecute terrorists while protecting human rights and promoting the rule of law²⁷². Practical challenges arise for states in their bid to curb terrorism. According to Wilkinson, states usually face a dilemma of protecting intelligence sources which may limit the disclosure of evidence in terror related legal proceedings while at the same time, they must give a fair hearing and trial to a terror suspect²⁷³. IHRL allows limitations and derogations from certain human rights provision on specific grounds.

- ***Limitations***

States can legitimately limit the exercise of certain rights and freedoms including freedoms of: expression, association, movement and assembly. These limitations should be prescribed by law in pursuance of a legitimate purpose and when necessary²⁷⁴.

²⁷²Paul Wilkinson.2007.*Terrorism vs Democracy:The Liberal State Approach*.Routledge.London.p.89.

²⁷³ibid

²⁷⁴UN Factsheet no.32

- ***Derogations***

States may derogate from certain human rights provisions under special circumstances for instance during public emergencies. The derogations however should be temporary and not be discriminatory on the basis of: race, sex, religion, ethnic background or social class²⁷⁵. A key requirement is that through the intermediary of the UN secretary general, a derogating country must immediately inform other state parties of the International Covenant on Civil and Political Rights (ICCPR) of the human rights provisions it has derogated²⁷⁶. Article 4(2) of ICCPR identify's the following as non-derogable human rights: right to life, freedom from torture, cruel, inhumane or degrading treatment and punishment, prohibition against slavery and servitude, freedom from retrogressive penalties, right to be recognised as a person before the law, freedom of thought, conscience and religion²⁷⁷.

3.4 Terrorism and International Humanitarian Law

International Humanitarian Law (IHL) contains a set of rules guiding the conduct of hostilities and protection of civilians in armed conflicts²⁷⁸. The rules are contained in the four 1949 Geneva Conventions and their two 1977 additional Protocols. The aim of IHL is to reduce human suffering in armed conflicts and many of its provisions are considered to be customary law²⁷⁹.

As Mark Garten notes, addressing terrorism in legal terms is a complex and challenging task since there is no universal treaty defining what exactly terrorism is²⁸⁰. IHL does not provide a legal framework for addressing terrorism although terrorist acts resulting

²⁷⁵Ibid.

²⁷⁶Article 4. ICCPR.

²⁷⁷ibid

²⁷⁸ Degan Vladmin Duro. 1997. *Sources of International law*. Martnus Nijhoff publishers. p.126

²⁷⁹ World Encyclopedia of law

²⁸⁰Ibid

into death or civilian injuries violate the Geneva Conventions and are regarded as war crimes²⁸¹. The fourth Geneva Convention and Additional Protocols 1 and 2 prohibit acts of terror in articles 33, 51 and 13(2) respectively²⁸².

In IHL, all parties to a conflict must at all times distinguish between civilians and combatants. Deliberate targeting of civilians and civilian objects which is the practice of terrorists constitute war crimes for which individuals may be prosecuted²⁸³. Civilians such as terrorist engaged directly in hostilities are unlawful combatants and are to be prosecuted under a state's domestic laws. IHL advocates for treating terrorists in a humane manner but does not obstruct criminal justice.

3.5 Terrorism and International Refugee Law

The 1951 Convention relating to the status of Refugees and its 1967 Protocol relating to the Status of Refugees are the two universal instruments of International refugee law. The convention sets out the obligations of host states regarding the standards of refugee treatment. The international Refugee Law is the legal framework for the protection of refugees. Terrorism affects refugees directly or indirectly while inside states they have sought refuge. Refugees and asylum seekers are bound to conform to the laws and regulations of their host country at all times²⁸⁴.

In regard to counter terror measures, International Refugee law incorporates a system of checks and balances that take into account a state's security interests and those of the hosting communities while protecting the rights of refugees. The 2001 United Nations Security Council Resolution 1373 compels states to curb the movement of terrorists through effective border controls and at the same time states should secure the integrity of their

²⁸¹Mark Garten. *Coping with Challengers of Terrorism and International Law*. International Policy Digest, Dec. 2012.

²⁸²<http://www.icrcorg/eng/resources/documents/fq/terrorism-faq-050504.html>. Retrieved on 13 July 2016.

²⁸³Ibid.

²⁸⁴1951 Convention on the Status of Refugees. Article 2.

identity papers and travel documents. The resolution obliges states to ensure that they do not grant refugee status to asylum seekers who have planned, facilitated or participated in acts of terror²⁸⁵. Both the 1951 Convention and the Security Council resolution 1373 state that refugee status must not be abused by perpetrators, organizers or facilitators of terrorist acts²⁸⁶.

According to the Universal Declaration of Human rights all people have the right to seek asylum²⁸⁷. Any summary rejection of asylum seekers may amount to refoulment which is prohibited by IHRL and International Refugee law. Exceptions to the principle of non-refoulment is provided for in article 33 (2) of the 1951 convention ; a person who poses danger to the security of the host state or has been convicted for committing a serious crime. Expulsion should however be conducted by a competent authority in accordance with the law including the right to be heard and the right to appeal²⁸⁸.

3.6 Impacts of Terrorism on Human Rights and the Rule of Law in Africa

Terrorism aims at destabilising and replacing the existing systems of governance²⁸⁹. According to Thomas and Leif, the various terror attacks conducted within Africa demonstrate the fact that terrorism and terrorists have no respect for constitutional rights, the law, peaceful conflict resolution as well as the rules regulating the conduct of armed conflict and the protection of civilians²⁹⁰.

Terrorism endangers or leads to the loss of innocent lives. Numerous terror attacks in various African states have claimed many lives. Example: in the 1998 bombings in US

²⁸⁵ 2001, UNSC Resolution 1373-paragraph 3(f).

²⁸⁶ *ibid*

²⁸⁷ Article 14 (1) Universal Declaration of Human Rights.

²⁸⁸ Article 33 ,1951 Convention Relating to the status of refugees.

²⁸⁹ Solomanson William. 2011. *Fundamental perspectives on International Law*. Wadsworth. p.24

²⁹⁰ Thomas Pogge and Leif Weiner. Human Rights. Stanford Encyclopedia of Philosophy. Retrieved July 6, 2016.

embassies 291 people lost their lives in Kenya while in Tanzania 10 people were killed²⁹¹. In 2015, Al Qaeda linked militants took 170 people hostage and killed 20 of them in a mass shooting at Radisson Blu hotel in Bamako, Mali²⁹². The 2015, Garissa University massacre in Kenya led to the death of 148 people²⁹³. While in Nigeria, Boko Haram's 2015 attack on Baga town of Bornu state left at least 2000 people dead²⁹⁴. At the same time, terrorism creates an environment which destroys the freedom from fear, undermines pluralistic societies and destabilise legitimately constituted governments, negatively affects the economy of states and leads to diversion of funds meant for social and economic development in favour of security and counter terror measures²⁹⁵.

3.7 Human Rights and Counter Terrorism

This section focuses on the relationship between counter-terrorism and human rights by examining states' obligation to ensure that all counter terror measures comply with human rights law.

3.7.1 Obligations to uphold the rule of law and Protect Human Rights in Counter Terrorism

All measures taken by a state should comply with a state's obligations under international law particularly human rights law, refugee law and humanitarian law²⁹⁶. The 2010 Constitution of Kenya in its chapter 4 provides for a Bill of Rights while Article 2 sections 5 and 6 state that the general rules of international law form part of Kenya's laws. Any treaty or convention ratified by Kenya are also part of Kenya's laws²⁹⁷. The United

²⁹¹ *ibid*

²⁹² Israel Adoba Oche. 2014. *Africa and the Resurgence of Terrorism revisiting the Fundamentals*

²⁹³ *ibid*

²⁹⁴ Amnesty International 2015 report.

²⁹⁵ *ibid*

²⁹⁶ Solomanson William. 2011. *Fundamental Perspectives on International law*. Wadsworth. p- 114

²⁹⁷ *ibid*

Nations General Assembly and the UN Commission on human rights emphasize that all counterterror measures must comply with a state's obligations under international human right, humanitarian and refugee laws²⁹⁸.

It is compulsory for all UN member states including Kenya to take joint and separate actions while cooperating with the UN in the achievement of universal respect and observance of human rights and fundamental freedoms for all²⁹⁹. The enjoyment of human rights is not limited only to citizens of states parties but is for all regardless of a person's nationality or statelessness. States have an obligation to protect the human rights of their citizens and foreigners within their frontiers by putting in place measures to protect them against terrorist attacks and punishing terrorists and their facilitators³⁰⁰.

The UN Global Counter-Terrorism strategy recognises the importance of protecting human rights and observing the rule of law. It states that : "...promotion and protection of human rights and the rule of law is essential to the strategy.....effective counter terrorism measures and the promotion of human rights are not conflicting, but complimentary and mutually reinforcing goals."³⁰¹.

During its 56th Ordinary Session in Banjul, Gambia the African Commission of the AU adopted principles and guidelines on Human and Peoples rights while countering terrorism in Africa which were officially launched at the AU summit in Ethiopia on January 2016³⁰². The principles and guidelines are meant to be the rules and standards upon which Africa states can base their counterterror legislations. The four specific objectives of the guidelines are: to contextualise terrorism in Africa, to respond to emerging issues, to focus on women and their

²⁹⁸ UN factsheet no.32.

²⁹⁹ ibid

³⁰⁰ The United Nations office of the High commissioner of Human Rights, What are Human Rights?.retrieved 6, July 2016.

³⁰¹ United Nations Global Counter-Terrorism Strategy, General Assembly resolution 60/288, Annex.

³⁰² www.acphr.org/sessions/56th/

rights and to emphasize the importance of cooperating in implementing the counter terror principles and guidelines³⁰³.

Kofi Annan, the former secretary general of the UN, in his keynote address at the 2005 International Summit on Democracy, Terrorism and Security; identified 5 elements (Five Ds) as the principle and comprehensive strategy to counter terrorism in Africa³⁰⁴. The 5Ds are: defending human rights in the fight against terror, developing a capacity to prevent terrorism, deter people from supporting terrorism, dissuade disaffected groups from choosing terrorism to achieve their goals and denying terrorists the ability to carry out attacks.

3.7.2 Counter-terrorism, the rule of law and human rights violations in Africa

Counter-terror measures have a direct impact on citizen's rights and functioning of the society. Empirical data analysed below prove the fact that some measures used by African states in the war against terror in themselves are a threat to human rights and the precepts of law. This raises the question of whether the Anti-terror laws are really aimed at curbing terrorism or justifying rule of law and human rights violations. Legislative and practical measures negatively impact on civil liberties and fundamental human rights by: torturing terror suspects to obtain information, deporting suspected terrorists to states where they risk facing human rights abuses without following the laid down procedures thus violating the principle of non-refoulement³⁰⁵.

Several states in Africa have adopted counter terror laws; they include Uganda, Nigeria, Egypt, Ethiopia, Cameroon, Kenya, Tunisia and Tanzania. Most of these laws are controversial and deemed a cover up for human rights abuses on the political opposition and

³⁰³ibid

³⁰⁴ibid.

³⁰⁵J. Shola Omotola. 2014. *Assessing Counter Terror Measures in Africa : Implications for Human Rights and National Security*.p.5

critics of the government³⁰⁶. In 2014, an Egyptian Court jailed three Al Jazeera journalists: Peter Greste, Mohammad Fahmy and Baher Mohammed for allegedly having links with terror groups, broadcasting false reports and operating without licenses³⁰⁷. These allegations were termed false. Tunisia's anti-terror laws allow security agencies to hold suspects for up to 16 days without accessing a lawyer³⁰⁸.

In Nigeria, in respect to the insecurity brought about by the Boko Haram menace; Nigerian security agencies are alleged to have perpetrated: extra judicial killings, torture, rape, destruction of property, arbitrary detention and mistreatment of detainees³⁰⁹. The 2016 Human Rights Watch report on Egypt noted that, the Egyptian National Security agency committed: torture, enforced disappearances and deaths in custody. While the mass trials against Muslim Brotherhood members failed to establish individual guilt³¹⁰.

3.8 Impacts of Kenya's Counter-terror Measures on Human rights and the Rule of Law

Insecurity is what caused human beings to abandon the state of nature and form a polity to ensure security and preserve their human rights and freedoms. For there to be national security realism posits that people must surrender some of their liberties to the sovereign in this case the government. Legislative and practical counterterror initiatives have some negative consequences on the enjoyment of civil liberties and fundamental human rights in Kenya provided for in law as has been analysed below.

The 2010 constitution in article 238 (2) b states that ".....national security shall be pursued according to the law and with utmost adherence to the rule of law; democracy,

³⁰⁶ ibid

³⁰⁷ ibid

³⁰⁸ Guido Steinberg and Annete (eds). 2015. *Jihadism in Africa : Local Causes, Regional Expansion, International Alliances*. German Institute for International and Security Affairs. p.12

³⁰⁹ ibid

³¹⁰ 2016 Human Rights Watch Report on Egypt.

human rights, and fundamental freedoms.” As analysed below, the government of Kenya is a defender and a violator of human rights in the fight against terror.

Human rights violations in the war against terror include the following:

a) *Extra judicial killings and enforced disappearances*

Kenya’s counter-terror measures have resulted into loss of lives. The right to life is a non-derogable right and derogation is only allowed when necessary and for self defence³¹¹. According to a 2015 Human Rights Report, the ATPU; the General Service Unit (GSU); Military intelligence and the National intelligence allegedly conduct extra judicial killings and forceful disappearances³¹². ATPU is suspected of being behind the killings of radical imams including: Sheikh Aboud Rogo, Sheikh Ibrahim Omar Rogo and Abubakar Sheikh Ibrahim Sharif alias Makaburi³¹³. The clerics were accused of using the Masjid Musa in Mombasa to recruit youths to join Al-shabaab. Rogo and Makaburi had pending court cases concerning the accusations.

In 2015 Human rights activists raised the alarm over the disappearances of Kenyan Somali men. They claimed that 100 men were missing from Mandera county, 50 from Garissa, 39 from Wajir county while at least 20 were abducted by security forces³¹⁴. Bodies of youths believed to be victims of extra judicial killings have been found in different parts of Kenya including Nairobi, Mombasa and Murang’a.

A research conducted by the Human Rights Watch between November 2013 and June 2014 documented 10 cases of extra judicial killings and 10 cases of enforced disappearances mainly in Nairobi. The Kenya National Commission on Human Rights (KNCHR) is the body

³¹¹ Article 4(2) of ICCPR

³¹² Human Rights Report 2015.

³¹³ Rasna Warah. *Disappearances and Extrajudicial Killings wotend Terrorist threats*. Daily Nation. Sunday August 30, 2015.

³¹⁴ ibid

mandated by the constitution to investigate and report on human rights observance in Kenya and take appropriate measures to redress human rights violations³¹⁵. In its September 2015, report entitled '*The Error of fighting Terror with Terror*' which investigates and documents human rights violations in Kenya's war against terror; it alleges that Kenya's security agencies are behind 25 extrajudicial killings and 81 enforced disappearances.

Families of missing people have searched for them in prisons and police cells while some have sought the help of religious and political leaders, registered complaints with the Kenya National Commission on Human Rights and others use the social media to try and locate their loved ones. According to Amnesty International, government authorities usually deny knowledge of missing people and in some cases those seeking information and accountability from the security agencies have been intimidated or harassed³¹⁶.

In a 2014, Al Jazeera documentary on extra judicial killings in Kenya, ATPU police officers (who concealed their identities) revealed that they assassinate terror suspects according to orders from Kenya's National Security Council as police usually fail to produce sufficient evidence to prosecute terror suspects. However, the government came out to deny this allegations.

In 2014, after a church attack in Likoni that led to the death of six people, the then Mombasa County Commissioner; Nelson Marwa, issued a shoot to kill order arguing that there is no sense in taking terror suspects to court as it is hard to prosecute them or find witnesses in their prosecution³¹⁷. The then inspector general of police David Kimaiyo instructed police officers to ignore the order.

³¹⁵Article 59 (1) (d) of 2010 Constitution of Kenya.

³¹⁶Amnesty International Report, 'Kenya: The impact of Anti-Terrorism Operations on Human Rights

³¹⁷Stanely Mwachanga. Police Issue Shoot to Kill Order on Terrorism Suspects. Standard Newspaper March 26, 2014.

b) Freedom from Torture and Right to Fair Hearing

Prohibition against torture as stated earlier is one of the non-derogable rights³¹⁸. In some cases, ATPU officers are alleged to have used torture to obtain information from terrorists and have used such information to prosecution and judicial proceedings contrary to the provision of the principle of non-admissability of evidence obtained by torture contained in Article 15 of the Convention Against Torture. While the 2010 constitution of Kenya states that arrested people should not be forced to confess or admit what could be used as evidence against them³¹⁹.

The Kenya National Commission on Human Rights in its 2015 report identified that terror suspects were tortured by security agencies using the following methods: electric shocks, genital mutilation, mock executions, denial of food and sleep, water boarding and continuous beatings³²⁰.

c) Illegal Extraditions and Renditions

One of the counter terror measures used by the government of Kenya has been forceful transfer of individuals and refugees suspected to be involved in terror activities. In 2007, atleast 90 people believed to be involved in terror activities were arrested in the then North Eastern province and were rendered to Somalia then to Ethiopia; they included Kenyans, Somali nationals and Ethiopians³²¹.

The same year, Mohammed Abdulmalik; a Kenyan was arrested in Mombasa for allegedly planning to conduct bombings in Kenya³²². At the Jomo Kenyatta International airport he was handed over to USA personnel who rendered him to Djibouti where he was

³¹⁸ Article 3, ICCPR.

³¹⁹ Article 49, 1(d). 2010 Constitution of Kenya.

³²⁰ KNCHR. September 2015. *The Error of Fighting Terror with Terror*. p.3

³²¹ Ibid.

³²² Ibid

held at USA's military base before being rendered to Afghanistan and later on moved to Guantanamo Bay where he is imprisoned to date³²³.

In 2010 following the July 10th Kampala bombings that claimed 70 lives, several Kenyans including: Idris Magondu, Mohammed Adan Abdow and Hussein Hassan Agade were extradited to Uganda by the ATPU without following the laid down extradition procedures that require reciprocal arrest warrants and judicial hearings in both states³²⁴. They were also denied their right to challenge their detention before court³²⁵. The High court later declared the transfers illegal and a violation to Kenya's constitution.

d) Violations of the Principle of Non-Refoulement

In December 2012, in a decision aimed at curbing terrorism the government issued a directive to relocate all urban refugees to Dadaab and Kakuma refugee camps however in July 2013 a ruling by a Kenyan High court declared the plan illegal and violated the rights of refugees and their dignity³²⁶. Another government directive was soon issued and implemented. By the same token, the 2014 Anti-terrorism law limited the number of refugees residing in Kenya to 150,000³²⁷. A five judge bench in February 2015, declared the clause to be unconstitutional as it violated Kenyan laws and international treaties³²⁸.

In 2014, Kenya expelled 359 Somalis to Somalia including at least 3 registered refugees, 28 Ethiopians were also expelled, 6 Ugandan assylum seekers were arrested and returned to Uganda, while a total of 412 refugees were relocated to Kakuma and Dadaab refugee camps³²⁹. Those expelled had foreign identity documents with some claiming that

³²³Counterterrorism-human-rights-abuses-kenya-uganda.(2012).p.38

³²⁴ Kenya's 1968 Extradition Act.

³²⁵ ibid

³²⁶ ibid

³²⁷Section 58.16A (1) The Security laws Amendment bill,2014.

³²⁸'Ruling on Anti-terrorism law a triumph for Kenya's Judiciary'.Daily Nation 28 February 2015.

³²⁹ ibid

their identity documents were confiscated or destroyed following their arrests by police officers who wanted bribes in order to secure their release³³⁰.

Expelling the refugees breached the principle of non-refoulement provided for in international law as well as article 2 (3) of the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa, to which Kenya is a signatory. The United Nations Commissioner for Human Rights (UNHCR) stated that Kenyan authorities denied them access to detainees in cell as well as at the airport to identify registered refugees and asylum seekers and it is still unclear how authorities decided whom to charge and whom to deport without charging.

e) Religious and ethnic Discriminations and Profilings

The government in many instances has held the Somali community collectively liable for the actions of its criminals and terror suspects. As was in 2011 when the government ordered an audit of all Somali properties and assets alleging that Somali business people were using proceeds from terrorism and piracy in the Somalian coast to invest in the real estate of Kenya³³¹.

The 2014 Operation Usalama Watch was conducted by the police and the KDF without search warrants in Mombasa and Nairobi particularly in areas inhabited by ethnic Somalis and muslims. This created a perception that it was an ethnic and religious profiling operation which violates the principles of equality and non-discrimination despite the need of carrying out a nation wide operation since some terror suspects trace their origins in Central Kenya, Rift valley and as far as Western Kenya. According to the ministry on Interior

³³⁰ *ibid*

³³¹ World bank rules out piracy cash in Kenya property boom. www.businessdailyafrica.com/cxe7g6/index.html
Retrieved 2. September 2016.

security, about 4000 people were detained including Kenyans, registered refugees and international aid workers³³². They were detained without appearing in court beyond the 24 hours legal limit provided for in the constitution. The people arrested during the operation were detained for several days in different cells including the Moi Sports Stadium at Kasarani in unsanitary conditions, without food and access to their lawyers³³³.

f) Right to Identity

The government collectively suspended the issuance of identity cards to Somalis in most parts of North Eastern since 2011 with the purpose of limiting foreigners mainly non-Kenyan Somalis and suspected terrorists from obtaining Kenyan identity. This violates the constitution which states that every Kenyan is entitled to identification and registration documents³³⁴.

g) Arbitrary arrests and detentions.

The government has been accused of arresting and detaining terror suspects without charge. According to the Muslim Human Rights Forum (MUHURI), between 2006 and 2007, about 150 terror suspects were arrested on different dates along the Kenya-Somali border and were not brought before any law court and a few of them accessed legal representation when MUHURI intervened³³⁵.

³³²The 2015 Human rights Watch World Report.

³³³ ibid

³³⁴Article 12 (1b) of the 2010 Kenya's Constitution.

³³⁵MUHURI and Open Society Justice Initiative. 2013. "We are Tired of Taking You to the Court" Human Rights Abuses by Kenya's ATPU. Open Society Foundations. 23-24

i) Economic and Social Rights

The KDF in 2012 stopped by in Garissa to repair a tyre puncture enroute to Somalia. The KDF soldiers were ambushed by suspected terrorists and 3 KDF soldiers lost their lives³³⁶. The attackers then vanished into the crowds that had gathered and in retaliation the KDF burnt down the whole of Garissa's main market a source of livelihood for over 1000 local inhabitants³³⁷. This was collective punishment against the locals which is unconstitutional. The then KDF spokesman Colonel Cyrus Oguna, in a press statement denied the allegations³³⁸.

In 2015, the government of Kenya began the construction of a border security wall in response to continued terror attacks by Al-shabaab originating from Somalia. The director of immigration retired Major General Kihalangwa believes that the physical barrier will be imperative in identifying who is entering Kenya and from which point³³⁹. This move will negatively affect Somalis who practice pastoralism as they will not be able to freely move across the border in search of pasture.

3.9 Conclusion

The counter-terror measures although adopted to ensure national security and safeguard the human rights and freedoms of all inside Kenya's territory some have resulted into human rights violations and do not uphold the rule of law. This is despite Kenya's national, regional and global obligations to respect and protect human rights at all times, this has been explained using the realist assertions that for there to be national security some

³³⁶ *Kenyan soldiers rampage after Garissa shooting.* www.bbc.com/news/world-africa-20401136. Retrieved 6, August, 2016

³³⁷ *ibid*

³³⁸ *Claims Against KDF over Garissa unrest unfair.* www.capitalfm.co.ke/eblog/2012/11/22. Retrieved 6, August, 2016.

³³⁹ *ibid*

human rights must be sacrificed and there is no international organisation or government to compel and ensure that Kenya fulfills its human rights obligations.

CHAPTER FOUR

TERRORISM AND GOVERNANCE

4.0 Introduction

This chapter discusses the link between terrorism and governance in the context of Africa with a specific focus on Kenya. The chapter begins with an analysis of constitutionalism since constitutions are the blueprints for governance then examines the link between governance and terrorism.

4.1 Constitutionalism in Africa

Constitutionalism in a literal sense means limited government. Often constitutions are the blueprint for a governance system in which authority is shared among branches of government so as to limit a government's power³⁴⁰. Defined more broadly according to Lumumba et al, constitutionalism is the doctrine that government's must act within limitations of a known written or unwritten constitution³⁴¹. Constitutionalism is an ongoing process of altering constitutional provisions; an explanation of why not all governments are necessarily constitutional and why post- colonial African governments use constitutions to legitimise authoritarian rule³⁴². Rosenfeld defines constitutionalism as a three faceted concept that demands, limited governmental powers, adherence to the precepts of law and human rights protection³⁴³.

Almost all the fledging independent African states of the 1960s were committing themselves to democracy, good governance and respecting human rights³⁴⁴. As Mbondenyei

³⁴⁰ Morris Kwinda Mbondenyei and Tom Ojienda, 2013. *Constitutionalism and Democratic Governance in Africa; Contemporary Perspectives from Sub-saharan Africa*. Pretoria University Law Press.

³⁴¹ PLO Lumumba, MK Mbondenyei and SO Odero. 2010. *The Constitution of Kenya: Contemporary readings*. p.78.

³⁴² Ibid.

³⁴³ Rosenfeld, M. 1994. *Modern Constitutionalism as an interplay between Identity and Diversity*. London. Duke University Press. p.27-28.

³⁴⁴ ibid

notes, shortly after independence most of the independence constitutions underwent several amendments, that weakened the essence of constitutionalism and democratic governance in Africa³⁴⁵. Ruling parties did not tolerate opposition politics and constitutionalism was sacrificed for political greed. This triggered a wave of coup d'etats across Africa to 'clean up' socio-economic and political mess of overthrown regimes³⁴⁶. The coup leaders made errors that were similar to the overthrown civilian governments.

According to Babu liberation of Africa was climaxed by "...arbitrary arrests of citizens, disrespecting the right to appear in court, imprisonment without trial...systematic police brutality, mass arrests and detentions in concentration camps and violent repression."³⁴⁷. Decades later, according to Ondikalu this situation still prevails in Africa since the laws and institutions that violated human rights during colonisation era survived independence and prospered thereafter³⁴⁸. A glance at the 21st Century Africa depicts how undermining constitutionalism can result into consequences that are the anti thesis of democracy and good governance.

4.1.1 Constitutionalism in Kenya

Kenya just like most former British colonies had a fairly progressive democratic constitution thus the 1961 independence constitution. In the independence constitution, Kenya had a federal system of governance and multiparty democracy. The constitution also provided for: checks on the executive, an independent judiciary and a bill of rights³⁴⁹.

³⁴⁵MK Mbondenyi.2010.*International Human rights and their Enforcement in Africa*.p.89-90.

³⁴⁶ibid

³⁴⁷A.Babu.1981.*African Socialism or Socialist Africa?*.p.171.

³⁴⁸CA Ondikalu.2003. 'Back to the Future:The Imperative of Prioritising for the Protection of Human Rights in Africa'.*Journal of African Law*.p.12

³⁴⁹Benson Tusasirwe (ed). 2005. *Constitutionalism in East Africa: Progress Challenges and Prospects in 2003*. Fountain Publishers. P.70.

At the dawn of independence, the constitution underwent several amendments to negate constitutionalism and legitimise dictatorship. For instance as Owiye, Kubau et al observed between 1964 and 1990, thirty amendments were made to the constitution³⁵⁰. In 1982, the KANU regime enacted section 2A into the constitution which made Kenya a de-jure one party state at the same time, civil society groups were intimidated into silence while some were deregistered alongside widespread human rights violations that included torture, extra judicial killings, arbitrary arrests and limited press freedom³⁵¹. These clearly show that the ruling regimes did not value the rule of law and constitutionalism.

In August 2010, Kenya promulgated a new constitution that provides for a detailed bill of rights in its chapter four and several constitutional gains including: a devolved system of governance, one third minimum for either gender in elective bodies, recognising the marginalized groups and protecting their interests and pursuing national security alongside the adherence of the rule of law and respecting human rights. These have however not guaranteed in practice that the rule of law is upheld and human rights are respected.

4.1.2 Constitutionalism and Counterterrorism Measures in Kenya.

The absence of constitutionalism since independence has in a substantial way affected African counterterrorism measures. As discussed in details in chapter three, African states counterterrorism measures have persistently violated constitutionalism by failing to respect human rights and freedoms and upholding the rule of law as has been the case in Kenya.

The government of Kenya has constantly negated constitutionalism and the rule of law safeguarding human rights in the fight against terror. The fight against terror has been

³⁵⁰ibid

³⁵¹Evelyn Owiye, Tom Kabau, Morris Mbondenyi (eds). 2015. *Human Rights and Democratic governance in Kenya: a Post-2007 appraisal*. Pretoria University Law Press. p.4

used as an excuse for human rights violations that include illegal detentions, illegal renditions and extrajudicial killings contrary to constitutional provisions.

The government's failure to investigate alleged human rights violations by security officers in the war against terror and charging those found culpable of violating constitutional provisions only depict the government supporting the rule of law violations and does not respect human rights.

4.2 Governance in Africa

The term governance has been subjected to various definitions. Broadly defined, governance refers to citizens interaction with the government in which citizens are concerned with the responsiveness of the government to their needs and protection of their rights. Kaufman et al define governance as the traditions and institutions upon which authority in a state is exercised³⁵². According to the World Bank PRSP handbook, governance is the exercise of power through a state's economic, political and social institutions to manage resources of a state for development³⁵³. According to Bruce, governance involves an institutionalised system through which citizens articulate their interests, exercise their rights and resolve their disputes within constitutional provisions and the rule of law³⁵⁴.

Having discussed terrorism in the context of Africa in chapter two of this study and constitutionalism in the above preceding subsection, it is imperative to understand governance in Africa (generally before focusing on Kenya) from a historical perspective before examining its links with terrorism. Colonization of Africa altered the native governing

³⁵² Kaufman et al. *The Concepts and Theories of Governance*.p.3

³⁵³ibid

³⁵⁴George Bruce. *Definition of Terrorism-Social and Political Effects*. Journal of Military and Veterans Health. Vol.21,no.2 pp 12-19.

systems and structures that existed among the various societies in Africa³⁵⁵. The existing systems of governance, political leadership and corresponding political culture in Africa have to a large extent been shaped by colonialism and neo-colonialism.

According to Ake, slave trade which involved forceful capture and shipping of Africans across the Atlantic Ocean to work in American plantations was the first defining contact between Africa and Western states³⁵⁶. This was followed by colonialism in which various European colonial powers implemented: political, economic and social policies that enabled them to exploit free labour provided by Africans while looting the continent's natural resources³⁵⁷. They did this while maintaining authority in their various spheres of influence across Africa using direct and indirect rule.

The same policies were then handed over to elite nationalist leaders upon attaining independence³⁵⁸. The oppressive and suppressive colonial style of ruling was imposed on newly independent African States including: Angola, Zimbabwe, Rwanda, Tunisia, Egypt, Kenya among others. Government's legitimacy in most African states was not based on the choice, consent or will of the people³⁵⁹. To prevent Africans from forming a united position against colonizers, colonial administrators strengthened tribal rivalries and religious differences between ethnic groups through the divide and rule strategy. This resulted into formation of ethnic political parties. Ethnic groups that are marginalised develop feelings of resentment and want to revenge against those enjoying socio-economic well being from states resources

³⁵⁵ Ake. C. 1996. *Democracy and Development in Africa*. Washington Dc; The Brooking Institution, p.6

³⁵⁶ Ake . C.1996. *Democracy and Development in Africa*. The Brooking Institution, Washington DC, p.74

³⁵⁷ ibid

³⁵⁸ Joy Asongazoh. Post-Colonial Colonialism: *An Analysis of International Factors and Actors Marring African Socio-Economic and Political Development*. Journal of Pan African Studies, Vol.3 no.10. September 2010.

³⁵⁹ ibid

because of their affiliation to the ruler³⁶⁰. Post-independence leaders perfected ethnicity as a unit for allocating state resources to command loyalty and avoid being toppled.

The rule of law meant to safeguard the human rights of africans and advance efficient adminstration of justice was subverted by colonialists. According to Gertez Cherry, in many states as was the case in South Africa and Zimbabwe Africans were denied property rights (owning land) and citizen rights making them more of subjects than citizens³⁶¹. Example chiefs that were appointed by colonial adminstrators ruled the people with impunity as if they were the law and only the colonial authorities gave them instructions and commands³⁶². During the independence struggle Africans demands included: representation in political decisions, forming their own governments and electing their own representatives. In most cases this was denied, resulting into armed struggles that finally resulted into the enactment of new laws and constitutional amendments in many colonies for instance the 1961 Kenya's independence constitution³⁶³.

African states gained independence but their political and systems were directly formulated by colonizers and not citizens themselves³⁶⁴. African-states economies are resource based and depend on external markets. This external dependence makes them unable or unwilling to assert independence and develop their states³⁶⁵. This external market dependence was brought about by the exploitative colonial rule that made Africa unable to develop itself without foreign assistance. According to Roseberg, the European Community formed the European Development Bank to fund their former colonies for development

³⁶⁰ Ibid.

³⁶¹ Gertez Cherry. 1970. *The Politic of Independent Kenya*. Routledge, London p.17.

³⁶² Ibid

³⁶³ Birmingham David .1995. *The Decolonization in Africa*. Routledge.p127-130

³⁶⁴ Ibid

³⁶⁵ Ibid

politics that would promote sustainable economic and social development as well as foster democracy and rule of law in African states³⁶⁶.

4.2.1 Governance in Kenya

In Kenya's post-colonial era, legislative measures to ensure active citizen participation in governance did not reach full potential at implementation because Kenyans lacked adequate understanding of their rights or failed to embrace this opportunity³⁶⁷. Upon attaining independence in 1963 from Britain, President Jomo Kenyatta's government spent the first six years making Kenya a unitary state contrary to the 1961 Independence constitution that had envisaged (*majiboism*) a federal state. In 1978 when Daniel arap Moi became president following the demise of Jomo Kenyatta, he continued with the creation of a unitary state. As Njonjo notes, this led to a state system that infringed on individual rights and sidelined majority of Kenyans in economic activities³⁶⁸. As a result, according to Oded, people started to demand an open political system and democratic governance eventually leading to the repealing of Section 2A of the Independence Constitution in 1991 that made Kenya a multi-party democratic state³⁶⁹.

The 2010 constitution of Kenya spells out the functions and responsibilities of the government as well as the rights, duties and responsibilities of citizens. The sovereignty in Kenya is vested on citizens who exercise it either directly or through their democratically elected representatives³⁷⁰. According to Article 10(2) of the 2010 constitution, Kenya is a multiparty democratic state with the following national values and principles of governance.

³⁶⁶ Jackson R and Rosberg Carl. 1982. *Personal Rule in Black Africa*. University of California press. p.86.

³⁶⁷ *ibid*

³⁶⁸ Mue Njonjo. 2011. *Reflecting on the Church-state Relationship in Kenya*. New Jersey; Africa Word Press. p.2

³⁶⁹ Oded Alex. 2000. *Islam and Politics in Kenya*. London: Lynne Reinner Publishers. p.34

³⁷⁰ Article 1 of Kenya's 2010 Constitution.

“...patriotism, national unity, devolution, rule of law...participation of people, human dignity, social justice, human rights, inclusiveness and non-discrimination.”

Kenya has a devolved system of government comprising of 47 counties governments and one central government. The national and county governments are distinct and inter-dependent conducting their mutual relations on the basis of cooperation and consultation³⁷¹. National security is not devolved and the central government is responsible for it.

4.3 Link between Terrorism and Governance in Africa

Extremist groups have a goal of establishing islamic caliphates either within a state's frontiers or regionally³⁷². Violent extremist groups are not homogeneous as they vary on the way they view society, governments and their modes of operation³⁷³. In Africa, demands to establish Islamic states have been voiced in: Egypt by the Muslim Brotherhood and Sinai province; Somalia by the Alshabaab and Nigeria by Boko Haram³⁷⁴.

Extremists organisations in Africa are classified into two:

- ***The Conservative/Moderate.***

The conservative/moderate extremists support coexistence with the ruling government regimes but believe that politicians and the society must observe religious laws and enhance islamic awareness³⁷⁵. Such organisations strive to attain their objectives through legitimate means but they sometimes use violence example Al-Nahdha in Tunisia and Muslim Brotherhood in Egypt³⁷⁶.

In Egypt, according to El Sherif, the Muslim Brotherhood seeked to establish an Islamic political identity at the grassroot levels through non-violent means as they gained

³⁷¹ Article 6(2) of Kenya's 2010 Constitution.

³⁷² Princeton Lyman. "The War on Terrorism in Africa" from *Africa in World Politics* by John Harbeson, p.3

³⁷³ Ibid

³⁷⁴ Global Terrorism index Report 2015. Institute for Economics and Peace. Retrieved 5, May 2016.

³⁷⁵ Ibid

³⁷⁶ Princeton Lyman. "The War on Terrorism in Africa" from *Africa in World Politics* by John Harbeson. P.54

control over the education system, professional organisations and trade unions and distributing pro-islamic material³⁷⁷. This was to oppose Hosni Mubarak's government which they labeled secular and authoritarian. In 2012, the brotherhood launched the Freedom and Justice political party and its candidate Mohammed Morsi won the presidential elections. In 2013, he was toppled by a military coup and the Muslim Brotherhood was declared a terrorist group by Egypt.

- **Radical.**

Extremist organisations under this category reject existing political and social order. They posit that an Islamic state based on their interpretation of Islam can only be established through violent jihad to destroy an existing order³⁷⁸. They oppose muslim leaders who fail to implement sharia law³⁷⁹.

In Somalia, the Alshabaab established caliphates in some areas under their control for instance the group raised money from the local inhabitants by collecting *zakat* and *sadaqa* which are traditional islamic forms of voluntary alms and obligatory charity respectively³⁸⁰. Public stoning and amputations are usually carried out against those violating their laws and regulations. The terrorist group provides public service including digging irrigation canals, building mosques and islamic schools in areas they control³⁸¹.

³⁷⁷ Ashraf El Sherif. *The Muslim Brotherhood and the Future of Political Islam in Egypt*. Carnegie Endowment for International Peace. P.7-8

³⁷⁸ ibid

³⁷⁹ ibid

³⁸⁰ IGAD. *Alshabaab as a Transnational Security Threat*. IGAD Security sector program (ISSP) and Sahan Foundation, March 2016. P.4

³⁸¹ ibid

4.3.1 Terrorism and Ungoverned Spaces in Africa

In some African states, there exists a gap between the central government and the periphery which has been widening since independence³⁸². Political scientists term this as ungoverned spaces which are as a result of government's decision to devote resources mostly in high return areas and also viewed as an excuse to allocate resources on the basis of ethnicity, nepotism to the exclusion of others. The resulting resentment is a fertile breeding ground for radicalisation and violent extremism. Ungoverned spaces are defined with respect to physical space and the level of a state's governmental functions³⁸³. According to Rabasa, Boaz et al, the areas can be found in failed or failing states or areas within fairly stable states where the central government's authority does not penetrate³⁸⁴.

According to Steinberg, the elite independence leaders failed to expand governance outside the confines of what colonialists left behind³⁸⁵. The vacuum has been filled by criminal gangs, terrorists as well as ethnic based liberation movements³⁸⁶. For instance the Taureg separatist movement in Mali who joined forces with Al-Qaeda; quasi-state entities in Somalia while Boko Haram took advantage of the lack of social amenities and minimal central government under the guise of the army and border police to grow and flourish in Nigeria³⁸⁷.

³⁸²Marxm Worcester.2015. *Combating Terrorism in Africa*. Berlin: ISPW. P.32-36.

³⁸³ibid

³⁸⁴ Angel Rabasa, Steven Boaz et al.2012. *Ungoverned Territories; Understanding and Reducing Terrorism Risks*. RAND corp.p.147.

³⁸⁵Guido Steinberg and Annette Weber (eds).2015. *Jihadism in Africa*. German Institute for International and Security Affairs.p.8

³⁸⁶ibid

³⁸⁷ibid

According to Okumu and Botha, several states in the Eastern Africa region have not exercised effective control over their territories³⁸⁸. Terrorists linked to international jihadists have operated or passed through this region. The ungoverned spaces in this region have been as a result of poor leadership, rampant corruption, economic underdevelopment and manipulation of ethno-religious differences rooted in colonialists' little or no effort in fostering a national sense of cohesion³⁸⁹. Somalia is the most chronic case of ungovernability, the absence of a central authority has enabled radical Islamist groups and terrorist organisations to thrive.

The Al-Qaeda in the Islamic Maghreb (AQIM), Al-Itihadi Al-Islami (AIAI) and Al-Shabaab have been examined below to demonstrate how terrorists use ungoverned spaces to mete terror across Africa.

- **AQIM**

In 2000, AQIM evolved out of the Group for Salafist Preaching and Combat (GSPC) based in Algeria. Its initial objective was to create an Islamic state in Algeria but established links with the global Al-Qaeda network and other extremist groups operating in: Libya, Tunisia, Mali and Nigeria for the recruitment and training of militants³⁹⁰. AQIM operates in northern Algeria which has a mountainous terrain and is sparsely populated since there is less of government in this regions³⁹¹.

The 2011 Arab spring in Tunisia was perceived to be driven by democratic forces and spread to Egypt and Libya resulted into destabilization of the Maghreb region. According to Abasa, AQIM alongside other extremist groups took advantage of the chaos and crumbling

³⁸⁸ Anneli Botha and Okumu Wafula (eds). 2007. *Understanding Terrorism in Africa: In search for an African Voice*. Pretoria; ISS. p.5

³⁸⁹ *ibid*

³⁹⁰ *ibid*.

³⁹¹ Al-Qaeda in the Islamic Maghreb. Stanford University. 13 January 2013. Accessed 28, August 2016.

regimes to recruit militants and acquire arms³⁹². For instance in Benghazi, Libya when anti-Gadaffi protesters took over the city, AQIM and the Libyan Islamic Fighting Group (LIFG) reportedly raided ammunition depots and stole weapons including anti-tanks and surface to air missiles some of which were transported to Niger and Western Chad where AQIM also operate³⁹³.

In Mali, following the 2012 military coup, members of Al Qaeda and AQIM forged an alliance with the local separatist Tuareg tribe who have always complained of government neglect and want to control their historical homeland thus Azawad in northern Mali and gained control of a large territory of Mali³⁹⁴. This prompted France to deploy its troops to Mali in 2013 defeating the militant forces who dispersed to Libya and Algeria within months³⁹⁵.

- **AIAI and Al-shabaab**

Somalia has lacked a central government since 1991 following the collapse of Sayyed Barre regime. This allowed armed militias to set base and flourish in the country including Al-Itihad Al-Islami (AIAI). AIAI was founded in 1983 by Sheikh Ali Warsame and its leaders were influenced by Egypt's Muslim Brotherhood as some had studied in Cairo³⁹⁶. AIAI had the goals of governing Somalia using sharia law, restoring the greater Somalia and establishing an Islamic state in East Africa³⁹⁷.

³⁹² Africano Abasa. *Ungoverned Spaces and the Survival of Terrorist Groups in Africa: A case study of the Lord Resistance Army*. December 2015. Naval postgraduate School, Monterey, California.

³⁹³ *ibid*

³⁹⁴ *Mali Tuareg rebels Declare independence in the North*. BBC News, 6 April 2012. Retrieved 3 June 2016.

³⁹⁵ *ibid*

³⁹⁶ Guildo Steinberg and Annette Weber (eds). 2015. *Jihadism in Africa*. German Institute for International and Security Affairs. P 12-14.

³⁹⁷ *ibid*

AIAI operated near Somalia's border with Ethiopia with the aim of annexing the Ogaden region of Ethiopia³⁹⁸. It stocked weapons from Sudan and Eritrea while its militants were trained by Al-Qaeda in Afghanistan³⁹⁹. To indoctrinate youths into radical Islamism and extremist ideologies in regions it controlled in Somalia, it built schools and orphanages alongside imposing sharia law⁴⁰⁰. AIAI also attempted to recruit Kenyan Somali youth in Garissa, Mandera and Eastleigh in Nairobi⁴⁰¹. As Sunguta notes, the group failed to overcome the structural defining order of clanism in Somalia and splinter groups emerged. It is out of this splinting, that the Islamic Courts Union and later Alshabaab which is affiliated to Al-Qaeda emerged⁴⁰².

The growth of Al-shabaab in Somalia has been attributed to the 2006 Ethiopian invasion of Somalia to force out the Union of Islamic Courts (UIC) that had controlled Mogadishu and was extending its influence to other parts of Somalia. Somalia's UIC has its roots in Al-ithad Al-Islamia⁴⁰³. Al-shabaab emerged as the youth military wing of the UIC and over time it has taken advantage of the absence of a central government in Somalia and evolved into a jihadist organisation terrorising Somalia, Kenya, Uganda and threatens regional and international security⁴⁰⁴. Al-shabaab appealed to anti-Ethiopia sentiments to mobilize followers arguing that Ethiopia was an occupying force in Somalia and a puppet of the USA fighting Islamists in Somalia⁴⁰⁵. Al-shabaab attacks in Somalia, Kenya and Uganda clearly depict how ungoverned spaces can be used to train locals and foreigners before sending them to execute terror attacks.

³⁹⁸ Bryden Matt. 2003. "No Quick Fixes: Coming to terms with Terrorism, Islam and Statelessness in Somalia." *The Journal of Conflict Studies*. 23, no. 2. p 24-56

³⁹⁹ ibid

⁴⁰⁰ ibid

⁴⁰¹ ibid

⁴⁰² West Sunguta. "Somalia's ICU and its roots in Al-ithad Al-Islamia". *Terrorism Monitor* 4, no 15 August 4, 2006.

⁴⁰³ *Terrorism Monitor* 4, no 15 August 4, 2006.

⁴⁰⁴ ibid p.35.

⁴⁰⁵ ibid

4.3.2 Terrorism and Governance in Kenya

Background social, political and economic conditions motivate and provide direction for terrorist movements. As Martha Crenshaw notes, concrete grievances in an identifiable sub-group of a population, such as an ethnic minority discriminated against by the majority directly results into the emergence of social movements that seek to have their grievances addressed either by gaining equal rights or separate from a state⁴⁰⁶. This has been the case in North Eastern and Coastal regions of Kenya. The predominantly muslim coastal strip of Kenya was declared a British protectorate based on an agreement with the Sultan of Zanzibar in 1895. At the dawn of independence the Arab muslims and the Mwambao Liberation wanted to secede from Kenya and be enjoined with Zanzibar because historically, they had been a dominion of the Busaidi Sultanate and practiced Islam just like muslims in Zanzibar⁴⁰⁷. The 1961 independence constitution envisioned a federal system of governance but Kenya embraced a unitary state until the promulgation of the 2010 Constitution that provides for a devolved system of governance comprising of 47 County governments and one central government.

At the dawn of Independence in 1962, the British colonialists conducted an informal referendum in the Northern Frontier District in which an overwhelming majority voted to join the newly formed Somalia republic⁴⁰⁸. The government of Kenya failed to honour this desire which resulted into the Shifta wars between 1963 to 1968 in which Somali men joined Somalia backed Northern Frontier District Liberation Movement (NFDLM) in an attempt to

⁴⁰⁶Martha Crenshaw.1981.*The Causes of Terrorism*.Comparative Politics,vol13,no.4 p 379-399.

⁴⁰⁷ ibid

⁴⁰⁸Godwin Murunga and Shadrack Nasongo .2007. *Kenya: The Struggle for Democracy*. NewYork; Zed books. P-12

secede from Kenya⁴⁰⁹. Kenya's security forces violently repressed them leading to a three decades long state of emergency in the region⁴¹⁰.

The government of Kenya has neglected the the North Eastern region socially and economically in terms of not developing its infrastructure, education and health care. According to Kamau, the Somali business community is also partly to be blamed for this under development because they have not adequately invested to develop the region⁴¹¹. At the same time terror attacks in the region have caused a mass of exodus of teachers, medical personnel and business people despite government's assurance of providing security for them. A 2013 intergrated household budget survey of Kenya ranked the coast and North Eastern Kenya as the second and the first regions leading in rural poverty. While Urban poverty in Mombasa is higher than in other major cities of Kenya. The Alshabaab terror group in its public statements and propaganda videos continually frame their attacks in Kenya around these religious,ethnic, economic and territorial grievances. While claiming responsibility for the April 2015 Garissa University massacre, the Alshabaab demanded that security forces should be withdrawn from all Muslim lands and named North Eastern and Coast regions⁴¹².

The government's use of unusual and expected force to counter violent extremism and terrorism in Kenya while continuously targeting muslims and ethnic Somalis results into serious human rights violations that further increase resentment towards the government making the victims vulnerable to terrorist recruitment and radicalisation as established by a 2013 research conducted by the Kenya Youth Alliance and Dr. Anneli Botha of the institute

⁴⁰⁹ibid

⁴¹⁰ibid

⁴¹¹Caroline Wanjiru Kamau .(2006). '*Kenya and the War on Terrorism*', Review of African Political Economy, vol33, no.107. p 133-141

⁴¹²ibid

of Security Studies (discussed in details in chapter two) in which 65% of the respondents stated they were driven by the harsh government's counterterror measure to join the Al-shabaab⁴¹³.

Terrorism threatens the stability of Kenya by creating Christian-Muslim tensions that have been brought about by Al-shabaab's discriminatory attacks on christians and not muslims example during the 2015 Garris University massacre where non-muslim students who failed to recite Koranic verses were shot dead as was the case also in 2014 Mander bus attacks in which 28 non-muslims were shot dead. According to Makori, terrorists have been targeting christian civilians and pro-government muslim leaders in their attacks in Lamu, Mander and Garissa counties⁴¹⁴. To ensure unity both christian and muslim leaders have called upon the government to beef up security in the country and asked Kenyans to refuse division based on religion⁴¹⁵.

The government of Kenya has politicised and ethnicised terrorism by unfairly targeting and profiling ethnic Somalis and people of arab descent. In 1999, the government stated that all Somalis must undergo screening and verification before being given any Kenyan identification documents; a strategy which the government has been using to detect Somali terrorists and illegal immigrants⁴¹⁶. In a bid to ensure that Muslims backed KANU in the 2002 national elections, President Moi announced that the government would stop screening ethnic Somalis who are predominantly muslims before issuing them with identification cards and passports and that instead the government would rely on local leaders to verify Kenyan Somalis apart from illegal Somali immigrants and refugees from Somalia.

⁴¹³Anneli Botha. 2013. *Radicalisation in Kenya: Recruitment to Alshabaab and the Mombasa Republican Council*.

⁴¹⁴Henry Makori. *Terror attacks could be linked to Religious and Ethnic tensions*. Daily Nation. Tuesday, 26 November 2016

⁴¹⁵ibid

⁴¹⁶ibid

According to Ahmed Nassir, this was a calculated move done four months before the 2002 elections aimed at luring Somalis to vote for KANU⁴¹⁷.

In June 2014 following the killings of at least 15 people in Poromoko village, Lamu county President Uhuru Kenyatta blamed the political opposition for the attacks despite Al-shabaab claiming responsibility. Kenyans have also formed their own perceptions on who is responsible for terror attacks as exemplified in the June 2014 Mpeketoni attacks in Lamu county. Despite Al-shabaab claiming responsibility for attacks, two gunmen retaliated by killing four people and distributed leaflets accusing Raila Odinga, the former Prime Minister, and the Luo people for the attacks⁴¹⁸. This creates political and ethnic divisions further threatening national unity.

4.4 Conclusion

In Kenya terrorism and governance are closely linked and impact each other. Some counterterror measures used by the government violate the constitution and infringe on human rights and fundamental freedoms. Failure to uphold constitutionalism in Kenya dates back to the colonial era, post-independence and subsequent governments.

Terrorism provides an opportunity to address historical grievances and injustices through social justice, truth justice and reconciliation mechanisms but the counterterror measures used by the government have failed to embrace this as they continuously target ethnic Somalis and Muslims unfairly. All these put together erode the rule of law and human rights; and is counterproductive to national cohesion and peaceful coexistence.

⁴¹⁷ Ahmed Nassir. Kenyan Somalis are treated like second class citizens. Daily Nation. Saturday April 12, 2014..

⁴¹⁸ Ibid.

CHAPTER FIVE

DATA PRESENTATION AND ANALYSIS.

5.0 Introduction

This chapter analyses data collected using the questionnaire and interview guide from primary sources who are a total of 66 Kenyan citizens and 5 county government officials from the counties of: Nairobi, Lamu, Mombasa, Garissa and Mandera; 2 security analysts; 3 officers from the National Counter Terrorism Centre, 4 retired and serving members of the Kenya police service and the Kenya defence forces. The analysis focuses on the findings of the study on the role of international terrorism in shaping governance in Kenya based on the specific objectives of the study which are: To investigate the counterterror measures used by the government of Kenya in dealing with international terrorism; To investigate the impact of the counterterror measures on the rule of law and human rights and To investigate the nexus between international terrorism and governance in Kenya. The findings are presented in tables and explained using analytic narrations.

5.1 Population data analysis

The researcher interviewed citizens and county government officials who have lived in the Counties of Nairobi, Lamu, Mombasa, Garissa and Mandera for at least seven years thus are able to identify and analyse the impact of various governments counterterror measures and operations on their human rights. The five counties have been victims of several terror attacks and several security operations have been conducted inside them. This makes the inhabitants key sources of information regarding the effectiveness of the government's counterterror measures as well as how the initiatives have impacted on their

human rights and governance. Other respondents were officials from the National Counter Terrorism Centre, security analysts, serving and retired members of the the National Police Service and the Kenya Defence forces. This category of respondents was instrumental in the analysis of Kenya's counterterror measures. They were resourceful in providing information concerning factors that inform Kenya's counterterror measures, key players in Kenya's counterterror measures and how terrorism has led to the use of counterterror measures that shape governance.

Table 5.0 Number of interviewees

Respondents	Total
Citizens	66
County government officials	5
National Counter Terrorism Centre officials	3
Retired and Serving KDF and Police officers	4
Security analysts	2
Sum total	80

Source: generated from study data, 2016.

5.1.1 Respondents in total by gender.

Gender is crucial in terrorism and counter-terrorism because men and women relate differently with the two. The misconception that women are passive participants in terrorism usually result into counter terror initiatives that exclude women from national security decision making and women's under representation in security and law enforcing agencies⁴¹⁹.

⁴¹⁹Naureen Chowdry, Rafia Barakat and Liat Shetret. 2013. *The Role of Women in Terrorism, Conflict and Violent Extremism: Lessons for the United Nations and International Actors*. Centre on Global Counter Terrorism Cooperation.p.3

According to Professor Maria Nzomo, in any given society, men and women are not homogeneous since they have different individual capabilities⁴²⁰. Empirical evidence indicate that various social media platforms are used to recruit boys and men, girls and women into terrorist organisations. Girls and women are particularly targeted for recruitment into terrorist organisations because often, they are subjected to less scrutiny by security agencies compared to men.

Acknowledging that men and women are active individual participants in terrorism and counterterror measures in Kenya and are directly impacted by them, the researcher uses gender disaggregated data to analyse the views of men and women on how the government's counter terror initiatives have impacted their human rights and the effectiveness of various government's counterterror measures.

Table 5.1 Number of respondents by gender.

<i>Gender</i>	<i>Total</i>	<i>Percentage</i>
<i>Men</i>	<i>44</i>	<i>55%</i>
<i>Women</i>	<i>36</i>	<i>45%</i>
<i>Sum Total</i>	<i>80</i>	<i>100%</i>

Source: generated from study's data, 2016.

5.1.2 Occupation of Respondents.

Citizens from different fields of employment and various government employees were crucial in availing information regarding the impact of the counterterror measures on their human rights, civil liberties and the rule of law.

⁴²⁰[k.w.awcfs.org/articles/need-for-a-genderperspective in the fight against terror/](http://k.w.awcfs.org/articles/need-for-a-genderperspective-in-the-fight-against-terror/). Accessed 12th August 2016.

Table 5.2 Occupation of respondents

Occupation	Number of Respondents	Number of Respondents in Percentage
Government employees	52	65%
Self employed	20	25%
Unemployed	6	7.5%
Did not indicate	2	2.5%
Sum Total	80	100%

Source: generated from study's data, 2016.

Out of the 80 respondents, the study found that 52 of them stated that they are government employees thus 65%; while 20 are in self employment thus 25%; 6 of the respondents were unemployed thus 7.5% while 2 respondents did not fill in their occupation thus 2.5% of the population sample.

5.2 Kenya's counter terror measures

Affirming that the provision of national security is a key function of governance, the study sought: to investigate Kenya's counter-terror measures by identifying the key actors in Kenya's counter terror initiatives; analysing factors that inform Kenya's counter terror measures as well as the effectiveness of the counter terror measures in curbing terrorism as examined in the subsequent sub-sections.

5.2.1 Key Actors in Kenya's Counterterror measures

Realism views terrorism as a threat to a state's national security and governments are obliged to repress terrorists in order to safeguard national security which is a key function of governance⁴²¹. Article 239(1) of the 2010 constitution identifies the KDF which is charged with the protection of Kenya's sovereignty and territorial integrity; the National Intelligence Service whose function is to enhance national security through security

⁴²¹Elman Colin. 2008. *Realism in Security Studies; An Introduction*. Routledge.p.17

intelligence and counter intelligence and the National police service which maintains law and order in the entire state as Kenya's national security organs.

According to Article 240 (3) of Kenya's constitution, the National security council is responsible for the supervision of the state's national security organs. The National Security Council consists of : the president, deputy president, Attorney General, Chief of Defence forces, Director general of the National intelligence service, inspector general of National police service and cabinet secretaries incharge of: foreign affairs, internal security and defence⁴²².

The study established that Kenya uses a precautionary and reactive counter terror strategy. The study identified the following as the key actors in the formulation and implementation of Kenya's counter-terror measures: the National police service through the Anti- Terror Police Unit and the Recce Squad of the paramilitary General service Unit; the National Counter Terrorism Centre; the Kenya Defence Forces; the National intelligence service, Kenya's Immigration Directorate, the judiciary, the National Assembly of Kenya and citizens through the *Nyumba kumi* initiative.

The ATPU was established in 2003 to combat terrorism through preventative and reactive measures. ATPU functions to detect, prevent and thwart imminent terror attacks in Kenya. The unit also investigates and prosecute terror related cases and maintains a databank profile for all terror suspects⁴²³. The study observed that the ATPU cooperates with the Recce Squad of the General Service Unit in curbing terrorism. The ATPU alongside the Recce Squad were involved in quelling the 2015 Garissa University terror attacks and the

⁴²² Article 240(3) Constitution of Kenya.

⁴²³ Kenya police, the Anti-Terrorism Police Unit, at www.kenyapolice.go.ke/anti-terrorism. Accessed August 12th, 2016.

2014 Westgate siege. ATPU is actively involved in operation Linda Boni in Lamu county against Jash Ayman and Alshabaab terrorists who have been using the vast Boni forest as their hide out and an entry point into Kenya via Somalia.

The National Counter Terrorism Centre was established in 2003. Section 40 A of the 2014 Security Laws terms the centre as an interagency body whose functions are: the coordination of Kenya's Counter-terror measures in the detection and disruption of terrorism; conducting public awareness on prevention of terrorism; facilitating capacity building for counter-terror agencies in Kenya and developing deradicalization strategies for disengaging and rehabilitating militants who no longer embrace the ideology of terrorism and its goals.

The study observed that the Kenya Defence Forces have been involved in the war against terror through the October 2011 military incursion into Somalia to rout Al-shabaab terror group that has conducted numerous terror attacks in Kenya before joining the AMISOM which is operational to date. KDF was also involved in neutralising terrorists involved in the 2014 Westgate siege and the April 2015 Garissa University massacre. The study established that the KDF patrols the Kenya-Somalia border alongside officers from the National Intelligence service and the National Police Service to prevent terror suspects from accessing Kenyan territory as well as arresting terror suspects. Other security operations that KDF has conducted alongside the National Intelligence service and the National Police service include the 2014 *operation usalama* watch which was conducted in Mombasa and Nairobi counties to detect illegal immigrants, criminal and terrorist hideouts and the 2015

Operation Linda Boni in the vast Boni forest in Lamu County to flush out terrorists . In the process, the security agencies have recovered IEDs and bomb making materials⁴²⁴.

The Directorate of Immigration and Registration of persons operates under the Ministry of interior and coordination of National Government is responsible for the control of the entry and exit of persons into Kenya; border control; refugee welfare; Issuance of travel documents to Kenyans; regulating the residency and work permits of non- Kenyans as well as the provision of consular services in Kenyan missions abroad⁴²⁵. According to interviewees from the National Counter Terrorism centre, this department is crucial in the war against terror because it aids in detecting terror suspects entering or trying to gain entry into Kenya in collaboration with the national police service, KDF and the National intelligence service. Secondly, the Directorate of Immigration ensures that terrorists and terror suspects are not issued with Kenyan identification documents thus passports and national identity cards.

Kenya's National Assembly is a key actor in Kenya's counter-terror strategy and measures through the formulation and enactment of laws necessary for curbing international terrorism. The study established that the 2012 Prevention of Terrorism Act was introduced to Parliament by the then Minister for Provincial Administration and Internal Security Mohammed Yusuf Haji through the gazette supplement no.77 in July 2012 and the Act was enacted into law in October 2012. The Act outlaws terrorism and those found guilty of engaging in terrorism , funding or aiding terrorists can be jailed for 30 years or serve a life sentence. The 2014 Anti-Terror Laws/Security Amendments Act which is the official legal framework for combating terrorism in Kenya was enacted into law after the national

⁴²⁴Benard Sanga. *Officers Say Boni Forest still Dangerous*. Standard Digital. Sunday 3 April 2016.
⁴²⁵<http://www.immigration.go.ke/index.php?option>. Retrieved 3rd July 2016

assembly agreed to pass the security laws amendment (including amendments to the Penal Code, Evidence Act, Prevention of Terrorism Act and the Criminal Procedure Act) into law and the president signed the Act into law on December 19,2014⁴²⁶.

Kenya's judiciary which is one of the three state organs is involved in curbing terrorism. The study observed that as the custodian of justice inline with the constitution and other national laws, the judiciary through the court system tries and sentences terror suspects. For instance in 2015, the High Court in Mombasa sentenced Jermain Grant a British National (alleged to be associated with Samantha Lewthwaite one of the world's most wanted terror suspects) to nine years in jail for trying to obtain Kenyan citizenship illegally⁴²⁷.

Kenyans are involved in the implementation of government's counterterror measures through the *nyumba kumi initiative*. The initiative demands citizens to know atleast ten people residing in their neighbourhood to help the national security organs to identify and arrest terrorists, illegal immigrants and criminals.

5.2.2 Analysis of factors informing Kenya's Counterterror measures

The study established from its findings that Kenya's counter terror measures are informed by three key factors. Intelligence gathered on terrorism, vulnerability to terror attacks and striving to improve counter terror measures as has been analysed below.

An official from the National Counter Terrorism stated that Kenya's counter terror initiatives are largely informed by gathered security intelligence. He stated that operation linda Boni in Lamu county was informed by gathered intelligence indicating that the

⁴²⁶ Kamau Muthoni and Wahome Thuku. *Judges declare eight sections of new security law illegal*. Standard Digital. Tuesday, 24 February, 2015

⁴²⁷ www.counterextremism.com/countries/Kenya. Retrieved 2 September 2016.

Alshabaab and Jash Ayman were using the vast Boni forest as their hide out and an ideal entry point into Kenya through Somalia without being detected. This is what necessitated the establishment of a military camp and nine police stations with ATPU units along the Boni forest.

Two other interviewees also affirmed that intelligence gathered on terrorism and imminent terror attacks informs the government's counter terror measures. They used the following three initiatives to support their response: the construction of the Kenya-Somalia border was informed by the fact that terrorists take advantage of the vast inadequately manned border to enter Kenya and execute terror related activities ;hence a border wall is necessary to deter terrorists and illegal immigrants from entering Kenya, as it will have surveillance stations; security cameras as well as security and immigration officials stationed strategically to collect biometric data of people who enter or leave Kenya through the border. Secondly, during the 2014 operation usalama watch, Swafaa, Masjid Musa, Sakina and Musa mosques in Mombasa county were raided because intelligence reports had indicated that the mosques were being used by radicalised imams to preach radicalisation and violent extremism. Lastly, the decision to close the Dadaab refugee camp was informed by intelligence reports indicating that the Alshabaab have operation bases inside the camp for recruiting, radicalising and training their militants . For instance, terrorists who executed the 2015 Garissa University massacre entered Kenya through the Dadaab refugee camp. The study deduced that the use of refugee camps to recruit militants and launch attacks against Kenya is what informed the formulation of the suspended section 58,16 A(1) of the 2014 Security Laws which limits the number of refugees in Kenya to 150,000.

The study established that Kenya's counter terror measures are informed by Kenya's vulnerability to terror attack. Three interviewed serving and retired KDF and national police

officers stated that Kenya's counter terror strategy is informed by Kenya's vulnerability to terror attacks. Previously, Kenya did not term herself as a source of international terrorism and viewed herself as a victim of terror attacks following the execution of the 1980 Norfolk bombing, 1998 USA's embassy bombing and the 2002 Kikambala hotel bombings.

This perception has now changed as Kenya actively endeavours to address factors that make it vulnerable to terror attacks. First, Kenya neighbours unstable Somalia which has an established presence of various islamist and terror groups; this has made Kenya to engage Somalia politically and diplomatically to aid it in establishing a stable national government. Secondly, when Al-shabaab militants conducted attacks and abductions in Kenya, the KDF undertook a military incursion to rout them this however resulted into increased terror attacks by the Al-shabaab in Kenya. Third, the confirmed presence of radicalised youths who adhere to terrorism saw the government in 2015 grant amnesty to youths who had joined Al-shabaab in Somalia and later abandoned the group by returning to Kenya. The amnesty programme required the youths to register with the government while those who failed to do so were to face the full force of the law. Two respondents criticised the amnesty programme because Kenya at that time lacked laws, policies or practice in place to operationalise the amnesty.

Kenya's counter terror measures and initiatives are informed by government's desire to improve the existing counter-terror measures to effectively curb international terrorism hence safeguard national security. Three respondents referred to the formulation and enactment of the 2014 Anti-terror laws as a move aimed at improving Kenya's counter terror legislative framework. For instance, clause 38 of the 2014 Security Amendments Act requires the state to create a database for all vehicles owned by foreigners as well as all diplomatic vehicles to aid police in tracking down cars owners in the event that their vehicles are used in

terror or criminal activities. Additionally, clause 31 of the Act permits the use of digital and electronic evidence in legal proceedings.

Kenya is constantly improving its security capabilities in counter terrorism through regular training of its security officers separately as well as in partnership with other states. For instance through the East African Counter-terrorism Initiative (EACTI) that conducts joint military exercises and at the same time funds police trainings to improve counterterrorism in the region.

5.2.3 Effectiveness of Counterterror Measures

The research found that 81.25% (n=65) of the respondents agreed that the counter terror measures used by the national government were effective. They explained that the counter terror measures are effective because they have resulted into the arrest and prosecution of suspected terrorists; the number of terrorist attacks have declined and that several terror attacks have been thwarted.

On the other hand, 18.75% (n=15) of the respondents stated the counter terror measures used by the national government are not effective. They backed their stand by citing the following reasons: the fact that terror attacks still occur inside Kenya in spite of the government implementing various counter-terror initiatives over the years is an indication that terrorism is yet to be fully curbed. Secondly, the counter terror initiatives have not taken into account the opinions and suggestion of community and religious leaders ; at the same time ,the government has not done adequate civic education to make the public aware of its counter-terror initiatives because national security matters are often regarded as a top secret.

The third reason is that the counter terror security initiatives and operations, unfairly target muslims and ethnic Somalis instead of adequately addressing the root causes of terrorism including islamic radicalisation, historical grievances and injustices, poverty and unemployment. The fourth reason is that corruption in the police and judiciary continues to persist allowing terrorists to carry out attacks, while suspected terrorists can be set free after bribing the police and judicial officers. Other respondents noted that putting convicted terrorists in same jails with other criminals may lead to radicalisation and recruitment of other inmates into terrorist networks. On the contrary however, the study established that the Kamiti, Naivasha and Shimo la Tewa maximum prisons where convicted terrorists are jailed; the prisons have seperated other inmates from those serving terror related charges

5.2.4 Military solutions in counter terrorism.

The research established that 70% (n=56) of the respondents support the government's use of the military for counter terrorism. They backed their stand with the following reasons: they allege that the KDF is not as corrupt as the police and has the necessary skills and prowess to deal with terrorists and that KDF has been instrumental in fighting Al-shabaab in Somalia and liberated many areas it controlled.

On the other hand, 30% (n=24) of the respondents are against the use of military solutions to curb international terrorism. They are against military solutions because Kenya's military incursion into Somalia led to increased terrorist attacks inside Kenya; while the KDF has also suffered casualties in terms of deaths and injuries inside Kenya and Somalia in the war against terror. Some expressed fear that Kenya risks turning into a military state if the KDF usurps police functions. Others stated that the KDF is corrupt just like the national police service.

5.2.5 Challenges facing Kenya's Counterterrorism measures

The study established that Kenya's counter terrorism measures are constrained by the following challenges as was identified by respondents:

Respondents argued that terrorism is not what our security machinery thus the military and police are trained for. They argued that KDF is trained to fight armies of other states and not fight terrorist groups like the Alshabaab in Somalia. While police are for detecting criminals and investigating crimes committed by civilians. The research however observed that the KDF and the Police service are national security organs hence are appropriate in fighting and neutralising terrorism and its threat. Secondly, the KDF and the ATPU alongside other units of the National Police Service are constantly under going training to improve their counter terrorism capacities and capabilities.

Police keep on taking bribes to aid terrorists hence national security in most cases can be sacrificed for personal greed. This creates mistrust between security forces and citizens. Since colonial times, Kenyans relationship with the uniformed forces has been of fear and mistrust. More worrying however, is the fact that some members of the security agencies are radicalised and support terrorism and violent extremism in Kenya.

The Nyumba kumi initiative might be hard to implement in counties inhabited by pastoralists who hardly reside in one place including Isiolo, Marsabit and Kajiado.

The Independent Police Oversight Authority (IPOA) released a report in 2014 about Operation Usalama Watch with 29 complaints against some police officers involved in the operation and so far, no disciplinary action has been taken. Respondents termed the continued government's failure in holding security officers accountable for human rights abuses and violations undermines the rule of law. The government's failure to investigate alleged complaints against security officers in the war against terror and charging those found

culpable of violating human rights alongside other constitutional provisions only depicts the government as a supporter of the rule of law violations and does not respect human rights.

5.2.6 Measures to consider in improving counter terrorism in Kenya.

The respondents put forward the following suggestions which the government should incorporate in its current counter-terror strategy. First the government should stop unfair targeting and mistreatment of muslims and ethnic Somalis in the war against terrorism because terrorists are from diverse social and ethnic backgrounds. Second the government must adhere to the provisions of the law and uphold human rights in its counter terror security operations.

Third, the government should introduce more economic initiatives to allievate poverty and tackle the high levels of unemployment which makes people easily lured into joining terrorist organisations. In the same vein,the government should build roads; build more schools and adequately staff the existing ones with teachers ; as well as build hospitals and improve the existing ones in the vast North Eastern region to reduce chances of youths being radicalised or lured into joining terrorist groups.

Fourth, the government should issue Kenyan ethnic Somalis, muslims and Kenyan's residing along the country's borders who are eighteen years and above with national identity cards. Fifth, the government should address corruption within the judiciary and the security agencies to ensure that national security is not sacrificed for personal greed and benefits. Finally the government should remove the KDF from Somalia and place them strategically along all border points in Kenya to stop the movement of terrorists into and out of Kenya.

5.3 Impacts of Counterterror measures on the rule of law and human rights.

The research established that 97.5 % (n=78) of the total respondents affirmed that the counter terror measures used by the government interfere with their human rights. The 2010 constitution of Kenya has been used to analyse the human rights violations in line with constitutional provisions and chapter four of the constitution which provides for a bill of rights. Rights violated that were identified by both men and women individually are: Right to identity, freedom of movement, freedom of association, freedom of expression, being subjected to arbitrary arrests and right to privacy. This points to the fact that the government of Kenya has negated constitutionalism and the rule of law safeguarding human rights in the fight against terror. The fight against terror has been used as an excuse for human rights violations contrary to constitutional provisions.

Table 5.3 Impacts of counterterror measures on human rights.

Human rights Violated	Number of Men	Percentage (%) in terms of total men interviewed (44)	Number of Women	Percentage (%) in terms of total women interviewed (36)
Right to identity	15	34.09%	8	22.22%
Freedom of movement	32	72.73%	18	50%
Freedom of Association	16	36.37%	20	55.56%
Right to privacy	12	27.27%	3	8.33%
Freedom of Expression	24	54.55%	12	33.33%
Discriminated against	35	79.55%	25	69.44%
Subjected to arbitrary arrests	30	68.18%	6	23.08%

Source: generated from study's data.

The study found that twenty three interviewees stated that they have been denied the right to identity by the government in the Kenya's war against terror. Right to identity is protected by article 12 (1)b of the constitution which states that every Kenyan is entitled to

identification and registration documents. The study established that this was brought about by a 2011 government directive that suspended issuance of identity documents to ethnic Somalis and inhabitants of the former North Eastern province with the purpose of limiting non-Kenyan Somalis and suspected terrorists from obtaining Kenyan identity. Youths and mostly Somali youths, who lack identity cards cannot access various government's youth economic empowerment funds programs such as Uwezo fund; Youth Enterprise Development fund and Affirmative action in the government tendering process. This was viewed by some respondents as economic subjugation aimed at keeping some sections of Kenya's population poor under the guise of fighting terrorism.

Without a Kenyan identification card, the enjoyment of a person's certain rights and freedoms in Kenya are also limited. The person cannot vote which is a political right provided for by article 38(1) of the constitution. The person cannot also obtain formal employment; open a bank account; transact in mobile banking; register a business; purchase property; acquire a driving license all of which serve to limit their economic rights.

Thirty six respondents stated that they have been victims of arbitrary arrests and extortion by police even without breaking any law because they lacked identity cards. Some were detained beyond the 24 hours constitutional limit provided in article 49(1) (f) without being taken to court and later released without any charge. They stated that they are always questioned by police officers hence are afraid of moving around freely as they risk being arrested or questioned. The study thus deduced that the lack of identification card resulted into limitation of the freedom of movement of the affected people contrary to article 39(1) of the constitution.

A total of 32 men and 18 women thus 50 interviewees stated that the governments counter terror measures have interfered with their freedom of movement which is protected

by article 39 (1) of the constitution. Respondents from Lamu county cited a ten month dawn to dusk curfew between July 2014 and March 2015 in Mpeketoni, Witu and Hindi following a spate of terror attacks in these areas. Respondents from Garissa and Mandera counties referred to a two week dawn to dusk following the 2015 Garissa University terror attack. However, the ICCPR of which Kenya is a signatory allows limitation of freedom of movement in article 12(3) in such national security situations.

The study established that fifteen respondents stated that their right to privacy which is protected by article 31 of the constitution is limited by the government's counter-terror measures. Section 36 of the Prevention of Terrorism act allows police officers to intercept communication which includes phone tapping and internet monitoring of which respondents argued violates their right to privacy. Clause 69 of the 2014 Security Laws allows the National Intelligence service to tap telephone calls while the increased surveillance in airports and border points that involve collecting passengers biometric data, photographs and passport details raises the question of how the collected data is protected since there is no legislation or policy in place regulating the protection of the gathered data.

Respondents stated that counter terror measures interfered with their freedoms of expression and association but failed to explain how they have been interfered with. Freedom of expression protected by article 33 of the constitution while the freedom of association is protected by article 36 of the constitution. The study however established that the constitution categorically states in article 33 (2) that freedom of speech excludes propaganda, hate speech, incitement to violence and hatred.

The study established that a total of 60 interviewees noted that counter terror operations unfairly target ethnic Somalis and muslims thus the measures are discriminatory contrary to article 27(4) which outlaws discrimination on any ground including ethnic or

social origin, religion, dress or birth. Two respondents from Mandera and Mombasa counties noted that terrorism provides an opportunity to address historical grievances and injustices through social justice, truth justice and reconciliation mechanisms but the counter terror measures used by the government have failed to embraced this as they continuously target ethnic Somalis and muslims unfairly contrary to article 238(c) of the constitution which requires security organs to respect the diverse culture of Kenyan communities in performing their functions.

5.3.1 Civil liberties to surrender.

All the respondents 100% (n=80) did not list any human right or freedom which they are willing to surrender in the fight against terrorism. Subsequently they did not provide an answer of what proof they need to show that sacrificing their some of their human rights will be effective in the fight against terrorism.

The study established that article 24 of the constitution allows the limitation of a right or freedom in accordance with the law only during reasonable and justifiable circumstances.

5.4 Other Impacts of International Terrorism on Governance.

The study established that in Kenya, inefficiency in governance thus : pervasive corruption in security and law enforcing agencies; lack of equitable development; growing youth unemployment and delinquency and counter terror measures that ethnicise terrorism play a key role in the growth of terrorism and rise of violent extremism despite the strategic role played by radical islamism and Kenya hosting western interests. Even though terrorism has not led to the establishment of an islamic state in Kenya, the government's response to terrorism has influenced government's policies and decisions concerning public life that inturn alter social, economic and political norms.

Kenya's Victim Protection Act of 2014 covers victims of all crimes including terrorism it states that "...victims have a right to compensation by the offender for...personal injury and cost for any medical or psychological treatment"⁴²⁸. The study observed that Kenya still lacks a legal regulatory framework for compensating victims of terror attacks where in most cases the offender is unidentifiable or unable to compensate.

Kenya passed the Proceeds of Crime and Anti-Money Laundering Act in 2009 that came into effect in June 2010. Prior to enactment of this law terrorists might have used the gap to conduct their activities in Kenya and the region. The study established that the act not only addresses funding of terrorism since it is also used in the identification ,tracing and seizure of proceeds of non-terror related crimes. The Act also created the Financial Reporting Centre which receives information on suspicious transactions. Additionally, the act made it mandatory for all financial institutions operating in Kenya to implement training programmes to curb money laundering and terror funding in Kenya.

The Hawala system in Kenya was unregulated until after the 2015 Garissa University terror attack. The hawala system of transaction involves mutual trust in which the sender of money gives money to a hawala operator who instructs a corresponding operator to give a specified amount of money to an identified recipient without keeping a transaction record. The study observed that in April 2013, following intelligence reports indicating that terrorists use the unregulated hawala system to fund their activities, the Central Bank of Kenya introduced regulations on the money transfer which made it mandatory for all hawalas to register with the Central Bank, own a database of all their transactions, pay Kshs 5 million licensing fee and maintain a minimum working capital of Kshs.20 million.

⁴²⁸2014, Victims Protection Act of Kenya .Article 2(1).

The study observed that counter terror measures have been used to fulfill political agendas of the government. According to three respondents, the 2015 freezing of bank accounts belonging to Haki Africa and Muslims for Human rights (MUHURI) local human rights organisations which advocate for constitutionalism and respect for human rights was an attempt to punish them for criticising the government's counter terror measures. The research established that Mombasa High court ordered the bank accounts to be unfrozen since freezing them was unconstitutional and nullified the gazette notice number 2323 of 7th April 2015 that had linked them to terrorism⁴²⁹.

In police raids under Operation Usalama watch at Swafaa, Musa, Sakina and Minaa mosques in Mombasa in which one person was killed and over 250 youths arrested, the deputy President William Ruto stated that any muslim leader who criticised the operation would be questioned by state authorities, implying that sympathy is equivalent to extremism thus placed muslim leaders, civil society and human rights activists between a rock and a hard place⁴³⁰.

The study was guided by the following three hypothesis:

- i. Kenya's counter-terror measures have not resulted into absence of terror attacks inside Kenya.
- ii. Some counter-terror measures used by the government of Kenya do not uphold the rule of law and violate human rights.
- iii. International terrorism influences governance in Kenya both positively and negatively.

⁴²⁹ www.fidh.org/en/issues/humanrights-defenders/kenya- Retrieved on 6th July 2016.

⁴³⁰ Counterterrorism operations undermine Rights .<http://www.hrw.org/2015/01/29>.Retrieved 7, August 2016.

The study confirmed that adopting various counter terror measures and initiatives have not resulted into the complete elimination of international terrorism and threats of international terrorism in Kenya. The research observed that this is because of the presence of corrupt security and border personnel who aid terrorists in gaining entry into Kenya to execute terror attacks. Most importantly terrorists are also inventing new ways of evading security measures put in place for instance by taking advantage of security loopholes to conduct attacks.

On the second hypothesis, the study confirmed that some counterterror measures do not uphold the rule of law and violate the human rights inspite of Article 238(2)(b) of the constitution categorically stating that national security shall be pursued in compliance with the law and with utmost respect for the law; democracy, people's rights and fundamental freedoms.

The the third hypothesis was confirmed by the findings of the study which indicate that terrorism has shaped governance in Kenya both positively and negatively through government policies, decisions and actions that are a response to terrorism and have consequently altered social, political and economic norms in Kenya.

CHAPTER SIX

SUMMARIES, CONCLUSIONS AND RECOMMENDATIONS

6.0 Introduction

This chapter summarises the findings of the three objectives of the study which are: To investigate the counterterror measures used by the government of Kenya; To investigate the impact of the government's counterterror measures on the rule of law and human rights in Kenya and To investigate the nexus between terrorism and governance in Kenya. Conclusions of the study have also been discussed followed by recommendations.

6.1 Summaries

6.1.1 To investigate Counterterror measures used by the Government of Kenya in dealing with international terrorism.

The research study established that the counterterror methods used by the government of Kenya have been influenced by: Kenya's geographical location sharing a border with unstable Somalia, past terror attacks, perceived terror threats, laws and policies in place and Kenya's political-history. Kenya's counterterror strategy involves proactive and reactionary measures which include: adopting the 2012 Prevention of Terrorism law and the 2014 Anti-terror laws as the official legal framework of dealing with terrorism. Given the international aspect of terrorism Kenya has formed global and regional diplomatic partnerships to curb the menace.

Kenya has taken up institutional measures including setting up the ATPU which works to prevent terror attacks, arrest suspected terrorists and prosecute them in courts while the National Counter Terrorism Centre is tasked with the coordination of counter terrorism efforts in Kenya. Increased security measures involve enhanced border patrols, airport and border point security screenings. Security operations such as: *Operation Linda Nchi*; the military

incursion into Somalia, *Operation Usalama Watch* in 2014 to arrest illegal immigrants and suspected terrorists in their hide outs in Nairobi and Mombasa and Operation Linda Boni in 2015 to flush out terrorist using the Boni forest in Lamu county as their hide out and operational base. In a bid to aid security agencies to identify terror suspects and curb terror attacks the government launched the *Nyumba Kumi initiative* in 2013 while in 2015 the government announced that plans were in place to launch a national deradicalisation strategy to curb violent extremism.

The counter terror measures have aided in arresting terror suspects, thwarting imminent attacks and deterring terror attacks but have not resulted into zero occurrence of terror attacks in Kenya.

6.1.2 To investigate the impacts of Kenya's counter terror measures on the rule of law and human rights in Kenya

The counterterror measures adapted by the government of Kenya although aimed at curbing terrorism have resulted in to widespread human rights violations by various security agencies and rule of law violations contrary to constitutional provisions; inspite of Kenya's national and international obligations to uphold the rule of law and respect people's rights at all times. Human rights violations perpetrated include: detentions exceeding the 24hours constitutional limit without court hearings, targeting ethnic Somalis and muslims in security operations thus discrimination, denying Kenyan ethnic Somalis their right to identity, use of torture to obtain information to use as evidence in law courts as well as interfering with the rights of privacy, freedoms of: expression, movement and association. At the same time, no disciplinary action has been taken against security officers accused of violating human rights.

6.1.3 To investigate the nexus between international terrorism and governance in Kenya

The study established that in Kenya, international terrorism feeds on the economic, religious, ethnic, historical and political grievances. Politicians have politicised international terrorism to gain political mileage. International terrorism driven by radical islamism seeks to establish islamic states or caliphates that are governed by sharia laws, so far this has not happened in Kenya. However international terrorism has forced the government to adopt measures that alter the political, social and economic norms in Kenya. Some security measures violate human rights and do not uphold the rule of law in the name of ensuring national security this has undermined constitutionalism.

6.2 Conclusions

The government of Kenya is actively engaged in the fight against terrorism using precautionary and reactive measures with a decline of terror attacks in 2015. Terror attacks still occur despite the various measures put in place over the years; an indication that more needs to be done in the fight against terrorism. Perhaps the weakest link in the fight against terrorism is that the government is yet to identify patriotic sentiment upon which to rally citizens in the fight against terror.

Despite the strategic role played by radical islamism and Kenya harbouring western interests, to a large extent the growth and spread of international terrorism in Kenya can be attributed to inefficiency in governance thus : government's inability to be effectively take charge and exercise its authority over all its territory; failure to address historical grievances, pervasive corruption, growing youth unemployment and hardline counter terror approaches that ethnicise terrorism.

Terrorism has shaped governance in Kenya by influencing law and policy formulations as well government decisions that in turn shape the political, social and

economic order in Kenya. The fight against terrorism has negated constitutionalism and has served to justify human rights violations and not upholding the rule of law.

6.3 Recommendations

The government should make a national resolve to de-politicise and de-ethnicise the war against terror. Politicians and citizens alike should embrace this approach irregardless of their ethnicity or political affiliations.

The government should formulate an ideological response as a counter narrative for violent extremism by finding a patriotic issue to rally Kenyans around to deter them from radicalisation. For instance create national cohesion by resolving historical injustices and grievances as well as addressing the growing youth unemployment.

Security officers and agencies need to respect rights and uphold the rule of law at all times in the fight against terrorism. They should adhere to relevant treaty provisions safeguarding human rights while those found culpable for human rights violations should be charged in court as a deterrent for further rule of law and human rights violations.

The government must recognise that women are both victims as well as perpetrators of terrorism. Women should have a role in the designing and implementation of counter-terror measures hence the need to include gender expertise in formulation of counter terror measures and assessment of the differential impact on men and women in the war against terror.

6.4 Suggested areas for further Research

The researcher proposes the following areas for future research:

- Kenya's counterterrorism in the era of a legal counterterrorism framework from 2015 onwards.
- Harmonising national and regional counter terror measures in the fight against terrorism in Kenya.

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APPENDIX A

QUESTIONNAIRE

Section One : Counter-terror Measures used.

1. What Measures does the government use to deal with international terrorism in Kenya?.....
2. Who are the key actor involved in the formulation and implementation of Kenya's counter terror measures?.....
3. What are factors that have influenced the use of the counter terror measures in Kenya?.....
4. Are the counter-terror measures employed by the government effective in dealing with terrorism? (Yes or No).....Explain.....
5. Do you support Kenya's increased military intervention to counter terrorism and internal security problems?(Yes or No).....Why.....
6. What policy or measure does the government need to take to improve its counter-terror initiatives?.....

Section Two:Impacts of counter terror measures on human rights and rule of law.

7. Does the government's counter terror measures interfere with human rights?(Yes or No).....
8. Which human rights have the government's counter terror measures violated?.....
9. Which of your civil liberties are you willing to give up to support government counter terror efforts?.....

Section Three: Link between international terrorism and governance.

10. Is international terrorism linked with governance? (Yes or No).....Explain your answer in terms of how they are linked or not linked.....
11. How has international terrorism impacted governance in Kenya?.....
12. Are the counter terror measures used by the government of Kenya a threat to constitutionalism? (Yes or No).....Explain.
13. What are the positive and negative impacts of government's counter terror measures on Kenyan's relationship with law enforcing organs?.....

APPENDIX B

INTERVIEW GUIDE

Bio Data Section.

What is your gender?.....

Which county do you reside in?.....

What is your occupation?.....

Please answer all the questions below.

- 1) Are the counterterror measures used by the government of Kenya effective in curbing terrorism? (Yes or No).....Explain your answer.....
- 2) What initiative or policy measure should the government use to improve counter terrorism in Kenya?.....
- 3) Which of your human rights have been affected by the government's counter terror measures?.....How have they been affected?.....
- 4) What kind of proof do you need to show that sacrificing your personal freedom is an effective measure in curbing terrorism?.....
- 5) Has international terrorism shaped governance in Kenya? (Yes or No).....Explain.....
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