

**“IMPACT OF TERRORISM IN PEACE AND SECURITY IN POST 9/11
ERA: A CASE STUDY OF KENYA”**

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**A RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILLMENT OF
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MANAGEMENT**

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DECLARATION

This research study is my original work and has not been presented for the award of a master's degree in this University or any other Institution of higher learning for examination.

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

Signature

Date.....

MARTIN NGURU

DEDICATION

I hereby dedicate this research project to my family, colleagues and friends who have continuously been a source of encouragement and offered their endless support during the entire time I was writing this research project and even when at times I felt defeated and all hope seemed lost.

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I would like to first and foremost acknowledge and appreciate my supervisor for all the advice and guidance given unto me as I was writing this project. I would also like to acknowledge my friends and colleagues who all participated and offered their much valued input into this project. This research project would not have been a success if it had not been for you.

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ABSTRACT

Terrorism in Africa has changed the typology of past conflicts that often involves ethnic conflict to radicalization into terrorism as the Alshabaab and Boko Haram for instance fight against the forces of Westernization in Africa. Kenya indeed has been at the forefront of cooperating with the West, particularly the United States in different forms since the Global War on Terror (GWT) and thus is targeted by the terror groups due to the international personalities and organizations as well as the westernized culture. Moreover, the location of Kenya which neighbors the institutionally weakened and conflicted Somali makes the counterterrorism difficult. Worst still is the Kenya's government to militarily 'intervene' in Somalia in 2011. All the factors and others have in one way or another led to terror attacks and retaliatory attacks for the intervention.

Terror attacks have impacted heavily in Kenya in different sectors from social, political and economic sectors. This research project therefore seeks to study the impact of terrorism on peace and security in post 9/11 era in Kenya. In bid to do so, the study is guided by the objectives to examine the influence of Kenya's historic relationship with the West on peace and security in , examine the influence of Kenya's economic strength on peace and security, and to examine the influence of Kenya's legal system on peace and security in post 9/11 era. The study is therefore intended to generate both academic and policy-relevant arena as an integral component of economic integration and co-operation in Kenya.

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.0 Introduction

In the new global era, governments everywhere are faced with new threats to their security due to environmental degradation, biological and chemical weapons, international crime and smuggling, and not least, terrorism. The terrorist attacks in New York and Washington on September 11, 2001 (9/11) marked the beginning of a new era for the world, in which security was dramatically redefined. Suddenly the threat was not from another country but the omnipresent possibility of an attack from anywhere, including from within one's borders.

Globally, the 9/11 attacks “and the subsequent war on terrorism brought to light issues that have in the past lurked in a dark corner at the edge of the legal universe, such as how a constitutional regime should respond to violent challenges.”¹ Some scholars argue that “respecting liberty to the full extent will jeopardize the discretionary power which the government needs to guarantee security, and that sacrificing some of our freedom rights is a small offer to bring for our security.”² This sentiment has left governments, including Kenya, in a dilemma on whether to “trade human rights for security.”

Elena³ posits that the dilemma is higher in democratic governments than in autocratic regimes. She argues that liberal democracies have a dual role of providing security and protecting the rights and liberties of the citizenry. Any antiterrorist policy implemented must be

¹ Ian, B. (1972). “Interrogation in Depth: The Compton and Parker Reports,” *Modern Law Review*, no. 35, 501.

² Transnational Terrorism Security and The Rule of Law, “The Ethical Justness of European Counterterrorism Measures,” December 19, 2008, 7, accessed July 24, 2012,

<http://www.transnationalterrorism.eu/tekst/publications/WP6%20Del%2012b.pdf>.

³

in “compliance with the democratic values held by the citizens.”⁴ This tension is almost as old as the theory and practice of modern democracy itself. John in his *Second Treatise of Government* discusses the “prerogative power vested in the executive branch of the government.” According to him the “prerogative power” is: nothing but the peoples permitting their rulers to do several things of their own free choice, where the law was silent and sometimes too against the direct letter of the law for the public good and their acquiescing in it when so done... when the ruler applies her prerogative power for the public good, such action is considered the right thing to do whichever way one looks at it.⁵

1.1 Background of the Research Problem

Beyond the American tendency to prioritize security over civil liberties, U.S.-Kenyan relations have recently been strained by several major issues. First, there is a general feeling that the government’s partnership with the United States, and to a lesser extent Israel, is responsible for the repeated targeting of Kenyan civilians in terrorist attacks. As a result, many Kenyans believe the West has a responsibility to compensate the victims of attacks for their losses. In 2002, for example, a class action lawsuit, which argued that the United States government had failed to protect the embassy from attack, was filed in a U.S. district court on behalf of 5,000 Kenyans seeking compensation.⁶ While the case was ultimately dismissed, it serves to illustrate the sense of victimization and resulting bitterness.

More broadly, American preoccupation with counter terrorism objectives offends Kenyans who see their country suffering from a variety of more important troubles. Failure to resolve, or at least acknowledge, these divergences in Kenyan and American interests will only

⁴ Elena, P. (2011). “Terrorism: The Dilemma of Response,” in *International Criminal Justice: Critical Perspectives and New Challenges*, ed. G. Andreopoulos, (Springer Science+Business Media, LLC, 2011), doi: 10.1007/978-1-4419-1102-5_5.

⁵ Ibid, section 164. John, L. (2012). *Second Treatise of Government* (Gutenberg eBook, 2005), accessed July 24, 2012, <http://gutenberg.org/files/7370/7370-h/7370-h.htm>.

⁶ COMESA – Report of the First Technical Committee on the Customs Union – March 2004. Available at: www.comesa.int

serve to further alienate the Islamic community specifically, and the Kenyan people more broadly. At the very least, a disaffected Islamic community may act as a permissive cause of terrorism. Marginalization serves to ensure that increasingly apathetic Muslims feel no pressing responsibility to report extremists. Kenya's proximity to the coastline and substantial Muslim presence makes it easy for radical elements to infiltrate and blend in with local Muslim and Arab communities.⁷ Al Qaeda's previous success in Kenya is due, in large part, to the ability of its operatives to weave "themselves into the fabric of eastern Africa's Islamic society."⁸

Finally, the Kenyan government's willingness to cooperate with the United States has served, in some ways, to increase its vulnerability to terrorist activity. Not only are the metropolises of Nairobi and Mombasa rich in soft targets such as embassies, businesses, and non-governmental organizations, but the previously discussed issues of poor governance (corruption, impunity, low standards, and the resulting failures of border security, bribery, etc) make Kenya an appealing international mark. Kenya's mounting cooperation with the United States and Great Britain – particularly on issues related to terrorism – has only served to further justify attacks against the country. Economic success at the expense of the Muslim minority, military cooperation with and occupation by the United States, discrimination by the Christian majority, all serve as near perfect manifestations of al Qaeda's grievances against the Western world and act as a instigative cause of terrorism in Kenya.

1.2 Statement of the Problem

With the escalation of the global war on terror, western nations have been repeatedly and increasingly criticized for policies that facilitate the abuse of civil and political rights. The Anti Terrorism Police Unit (ATPU) has been accused of targeting Muslims, particularly ethnic Somalis, under American guidance. Amnesty International has recently highlighted an unknown

⁷ COMESA – Report of the First Technical Committee on the Customs Union – March 2004. Available at: www.comesa.int/

⁸ Mark S. H. (2007). *Terrorism as Crime*. (New York: New York University Press, 2007), 61.

number of irregular arrests, searches without warrants, unlawful detentions, and instances of torture. Allegations of human rights abuses skyrocketed in 2007, as security forces intensified their efforts to capture suspected terrorists fleeing from Somalia into northeastern Kenya. The periodic and highly visible presence of FBI agents and U.S. Marines along the coast has unsurprisingly caused many Muslims to feel targeted by U.S. policy, while military actions along the Kenyan-Somali border and the government's unsympathetic response to Somali refugees has served to reinforce this sentiment.⁹ As a result, anti-American rhetoric has become increasingly popular among candidates, particularly when campaigning in Muslim areas.

Perhaps more importantly, Kenya's abiding relationship with the West makes it an ideological and rhetorical target. Al Qaeda first took notice of Kenya in the early 1990s, when Mombasa was used a supply-station for Western military operations and patrols of the Indian Ocean and Persian Gulf. In mid-October 2011, Kenya deployed its defense force in Somalia in retaliation for the abduction and murder of two British tourists in the coastal town of Lamu by Al Shabaab militia¹⁰. The Al Qaeda-linked terrorist group has since launched a series of terror attacks in the country. In September 2012, the Minister of Justice and Constitutional Affairs introduced the Prevention of Terrorism Bill, which was again met with stiff resistance from the same quarters before being passed hurriedly by the parliament.

Given the current susceptibility of Kenya to terrorist attack, it might be expected that a terrorism bill would be introduced, subjected to rigorous public debate, and passed without hesitation. Instead, all attempts have been rejected by a broad cross-section of Kenyan society, civil-rights bodies, and religious organizations. In the face of deadly threat, much of which is not, in the first instance, a homegrown matter, Kenya must find the right balance, implementing antiterrorism strategies amid fears of violating human rights and damaging Kenyan democracy.

⁹ Bruce, L. (2003). *Holy Terror*. The University of Chicago Press, Chicago, USA. 2003.

¹⁰ Alphonse, G. (2012). "Briton Killed, Wife Kidnapped by Al Shabaab at Village in Lamu," *The Star Newspaper*, September 12, 2011, accessed January, 24, 2012, <http://www.the-star.co.ke/news/article-49805/briton-killed-wife-kidnapped-al-shabaab-village-lamu>.

Therefore, this study seeks to analyze the impact of terrorism in peace and security in post 9/11 era: A case of Kenya.

1.3 General Objective

The overall objective of the study is to analyze the impact of terrorism on peace and security in post 9/11 era: in Kenya.

1.3.1 Specific Objectives`

The following are the specific objectives that will guide the study:

- i. To examine Kenya's cooperation with the West on peace and security in the post 9/11era.
- ii. To examine the impact of terrorist related insecurity on Kenya's economy in the post 9/11 era.
- iii. To examine the impact of Kenya's legal system on peace and security in post 9/11 era.

1.4 Justification of the Study

1.4.1 Academic Justification

The study is intended to generate academic debate that will potentially lead to the mainstreaming and institutionalization of terrorism issues as an integral component of economic integration and co-operation in Kenya.

The study also aims to share and popularize the importance of peace and security and to identify potential terrorist acts that threaten socio-economic stability in Kenya. This study will contribute in the framing of Kenyan-Western relations, particularly in the understanding of the potential that exist in the Counter-terrorism Corridors.

1.4.2 Policy Justification

This study will also help to stimulate policy-debate on the link between economic stability, peace, security, and terrorism in contemporary Africa. The aim of the study was to analyze the impact of terrorism in peace and security in post 9/11 era: case of Kenya. Such a study's findings will contribute to the studies of security and peace in an effort to address the conundrum of terrorism in particular and the question of development in general.

1.5 Literature Review

1.5.1 Introduction

This section tries to understand terrorism, the peace and security, terrorism in Kenya, Counter-terrorism efforts in Kenya and the research gap to be filled. The purpose of this section is to establish the foundation for the proposed study and identify a framework within which primary data will be contextualized and interpreted.

1.5.2 Understanding Terrorism: The New, the Old, and Al Qaeda

“There is no ‘terrorism’ per se, only different terrorisms.” - Laqueur¹¹. Terrorism is a term that seems to defy definition. This is not, however, from lack of trying. In perhaps one of the most exhaustive efforts, Alex Schmid and Albert Jongman compiled 109 distinct definitions in their search for a broadly acceptable, reasonably comprehensive definition¹². Four years and a second edition later, the two authors were forced to concede they still had not found a succinct answer. More recently, Leonard, Ami, and Hirsch-Hoefler examined 73 definitions of terrorism from 55 articles in three leading academic journals, with similarly limited success.¹³ Frustration has led some, such as Laqueur, to despair that there is no singular definition.

¹¹ Laqueur, W. (1999). *The New Terrorism: Fanaticism and the Arms of Mass Destruction*. (Oxford: Oxford University Press, 1999), 79.

¹² Alex, P.S. and Albert, J. J. (1988). *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories and Literature*. (Amsterdam: North-Holland, 1988), 28.

¹³ Leonard, W., Ami, P. and Hirsch-Hoefler, S. (2004). “The Challenges of Conceptualizing Terrorism.” *Terrorism and Political Violence*. 16, no. 4. (2004).

A number of factors contribute to the enigmatic nature of terrorism. As popular perceptions of the act and of the actor evolve, there is a corresponding desire to change the definition. The act itself has stayed largely the same; however, developments in politics and culture have changed our perceptions of terrorism and subsequently our usage of the term. As such, it has been imprecisely applied to a diverse and perpetually changing set of actors, institutions, and actions. The term “terrorism” originated under Robespierre’s Reign of Terror in the 18th century, and has since been used to describe situations and organizations ranging from the abuse of state power in Stalinist Russia to the anarchism of Theodore Kaczynski, the tactics of the Young Bosnians to the narco terrorism of Columbia. Furthermore, the terrorism as a tactic has existed for much longer than the term itself. Beginning in AD 66, the Jewish sect the Sicarii launched a subversive campaign against Roman rule in Palestine. Then throughout the middle Ages, the empire of Saladin was the target of numerous terror campaigns by the religious sect of Ismailis and Nizari better known as the Assassins. In the 16th century, small terrorist initiatives continually attacked the Ottoman Empire.¹⁴

Obfuscation of the term is not only a function of its indiscriminate use, but also its pejorative nature. As terrorism has become increasingly subjective and deeply politicized, it has taken on an irreversibly negative connotation. The result is a label used to demean and delegitimize enemies and opponents, rather than an analytical tool to understand a unique political phenomenon. According to Jenkins, “What is called terrorism thus seems to depend on one’s point of view. Use of the term implies a moral judgment; and if one party can successfully attach the label terrorist to its opponent, then it has indirectly persuaded others to adopt its moral viewpoint.”¹⁵

¹⁴ Bruce Hoffman. *Inside Terrorism*. (New York: Columbia University Press, 1998), 5.

¹⁵ Jenkins, B. (1980). *The Study of Terrorism: Definitional Problems*. (Santa Monica: RAND Corporation, 1980), 10 in Bruce Hoffman. *Inside Terrorism*. (New York: Columbia University Press, 1998), 31.

Individuals or organizations subject to the “terrorist” label are well aware of its negative implications and steadfastly reject it, opting instead for images of freedom and liberation (i.e. the National Liberation Front AKA Freedom for the Basque Homeland,) armies or other military organizations (Popular Liberation Army, Irgun Zvai Le’umi or the National Military Organization,) self-defense (Afrikaner Resistance Movement, Jewish Defense Organization,) and vengeance (Organization for the Oppressed on Earth, the Palestinian Revenge Organization.) The last organization to voluntarily identify as “terrorist” was the 1940s militant Zionist group Lohamei Herut Yisrael, known to Jews by its Hebrew acronym Lehi and to the British as the Stern Gang after its leader, Avraham Stern. It is important to note, however, that even Lehi’s name translates as “Freedom Fighters for Israel” rather than “Terrorists for Israel.”¹⁶

The media, with inconsistent attempts at impartiality, has further obfuscated the terrorism debate. According to Hoffman, Western journalists have consistently enshrined “imprecision and implication as the lingua franca of political violence in the name of objectivity and neutrality.”¹⁷ Outlets therefore tend to employ more “neutral” alternatives such as guerrilla, freedom fighter, gunman, extremist, or militant. Yet despite these supposed qualms, the shock value of the term makes it irresistible to the media, which tends to liberally apply the “terrorist” label in the wake of particularly horrific attacks, specifically those involving the death or injury of innocent persons.

1.5.3 Peace and Security

According to UNESCO, more than half of Africa’s countries are at risk of facing peace and security crises in the form of terrorism, state collapse, weak states, civil wars, ethnic conflicts, and social and political deprivations of its citizenry. Regrettably, East African nations

¹⁶ Hoffman, B. (1998). *Inside Terrorism*. (New York: Columbia University Press, 1998), 29.

¹⁷ Hoffman, B. (1998). *Inside Terrorism*. (New York: Columbia University Press, 1998). 36.

still remain the weakest and most fragile of all states, miserably occupying the bottom half of the failed states index year in and year out. According to the report by United Nations, despite the continent's current relative stability, which includes reduced armed inter-state conflict, new security challenges could influence the political and security landscape negatively. The drivers of conflicts and violence are still potent¹⁸.

When the United Nations, released the *Agenda for Peace* and *the Agenda for Development*, it set the stage for a more holistic look at the violent conflicts in the developing countries¹⁹. As a result the United Nations became the arena to create international norms, to establish new priorities and to set collective agendas. These were reflected in the various international summits that took place in the 1990s; they also influenced the agenda of the Security Council. As a result human rights abuses, protection of civilians in war, small arms, gender and peace, children and armed conflict, and Human Immunodeficiency Virus / Acquired Immune Deficiency Syndrome (HIV/AIDS) became legitimate issues for the Council's consideration.

The term "human security" gained currency only in the early 1990s with the publication of the United Nations Development Programme (UNDP) Human Development Report of 1994. The Report defined human security as: the safety from such chronic threats as hunger, disease and repression and or, the protection from sudden and hurtful disruptions in the patterns of daily life, whether in homes, in jobs or in communities²⁰. The report identified seven elements that comprise human security: economic security; food security; health security; environmental

¹⁸ UN (United Nations) (1992): *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, UN Doc A/47/277-S/2411, New York; online: [http:// www. un.org](http://www.un.org)

¹⁹ UN (United Nations) (1992). *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, UN Doc A/47/277-S/2411, New York; online: [http:// www. un.org](http://www.un.org)
UN (United Nations) (1994): *An Agenda for Development: Report of the Secretary-General*, UN Doc A/48/935, New York; online: <http://www.un.org>

²⁰ UNDP (United Nations Development Programme) (1994): *Human Development Report 1994: New dimensions of human security*, New York: Oxford University Press; online: <http://hdr.undp.org>

security; personal security; community security; and political security²¹. In line with the new human security agenda, several governmental and non-governmental actors began to champion a range of issues that were neither part of traditional development nor conventional security.

The campaigns to ban anti-personnel landmines, to regulate small arms and light weapons, and to establish an international criminal court were part of the emerging international consensus around major issues that threatened human security and militated against human development²². Since 1994, human security has been employed by numerous scholars in the context of conflict and of international cooperation. Although it is a relatively new concept, the components of human rights, and as an extension human security, have been in conversation long before 1994. Many prominent peace scholars allude to most, if not all, of the seven aforementioned securities as imperative to maintaining peace and stability²³.

In her work on peace-building, Porter writes that human security entails a global humanitarian responsibility for welfare; therefore individuals and communities need empowerment to realize their own human security. This stresses the need to involve marginalized groups in peacemaking processes in order to make peace sustainable and to ensure that human security needs are being met. There are two disciplines of thought on human security, both of which are crucial to the concept, although the latter highlights the importance of maintaining security for noncombatants during war and is more useful in terms of realizing peace. The aforementioned UNDP version of human security emphasizes human rights and development, while the other notion is centered on preventing the persecution of civilians during conflict, upholding rules of war, and limiting conflict-related damage²⁴.

²¹ UNDP (United Nations Development Programme) (1994): Human Development Report 1994: New dimensions of human security, New York: Oxford University Press; online: <http://hdr.undp.org>

²² UNDP (United Nations Development Programme) (1994): Human Development Report 1994: New dimensions of human security, New York: Oxford University Press; online: <http://hdr.undp.org>

²³ Paris, R. (2006). *Human Security: Paradigm Shift or Hot Air?* Massachusetts Institute of Technology. Fall 2001, Vol. 26, No. 2, Pages 87-102.

²⁴ Porter, E. (2003). *Peace building as a Process*. United Nations Security Council Resolution 1325’.

Peace researchers more frequently incorporate the secondary, conflict-related definition in their work. Galtung, for instance, continually builds upon the need for “positive peace”²⁵. He underscores the importance of the contemporary transition from militaristic state security to that of human security, and has supported this notion through past work as well. The World Bank in study, titled *Voices of the Poor*, concluded that the poor view well-being holistically and considers security, alongside physical and material well-being, social relations and freedom of choice and action, as essential to their lives. Despite these stark realities, the Millennium Development Goals (MDGs), which were unanimously adopted by world leaders to address poverty and human development, made no reference to conflict or human security²⁶.

The Commission on Human Security noted that people's security around the world is interlinked as today's global flows of goods, services, finance, people and images highlight. Political liberalization and democratization opens new opportunities but also new fault lines, such as political and economic instabilities and conflicts within states. According to the Commission more than 800,000 people a year lose their lives to violence and about 2.8 billion suffer from poverty, ill health, illiteracy and other maladies. The Commission further noted that conflict and deprivation are interconnected. The Commission finally noted that, wars kill people, destroy trust among them, increase poverty and crime, and slow down the economy. Addressing such insecurities effectively demands an integrated approach.²⁷

The Commission advocated a two-track approach to promoting human security: protection and empowerment. It urged the following actions: protecting people in violent conflict; protecting people from the proliferation of arms; supporting the security of people on the move; establishing human security transition funds for post-conflict situations; encouraging

²⁵ Galtung, J. (1969). Violence, Peace and Peace Research: *Journal of Peace Research*, Vol. 6, No. 3 (1969), pp. 167,183.

²⁶ World Bank (2005b): *Voices of the Poor*, Washington, DC; online: <http://www.worldbank.org>

²⁷ CHS (Commission on Human Security) (2003): *Human Security Now: Protecting and Empowering People*, New York; online: <http://www.humansecuritychs.org>

fair trade and markets to benefit the extreme poor; working to provide minimum living standards everywhere; according higher priority to ensuring universal access to basic health care; developing an efficient and equitable global system for patent rights; empowering all people with universal basic education; clarifying the need for a global human identity while respecting the freedom of individuals to have diverse identities and affiliations.²⁸

Peace and security is essential in post 9/11 era. In pre-Westphalia era, the contact between the different polities (countries) was minimal and, therefore, security was above all national issues and in most cases, had exclusive domestic implications. In an era when communication and mobility were sluggish (or inexistent), the increase of security in a country (or feud) had no positive or negative direct impact on the neighboring countries. In the post-Westphalia world, this configuration has been profoundly altered. The formation and consolidation of states led to their securitization and, consequently, national security became, hence, a relational concept. States played out their security strategies versus other states. The UN Report of the High Level Panel on Threats, Challenges and Change observes in accordance, that today, more than ever before, threats are interrelated and a threat to one is a threat to all. The mutual vulnerability of weak and strong has never been clearer.²⁹

To be secure is by definition, to be secure from threats. As early as in the Roman period security was regarded as the absence of distress upon which happy life depends³⁰. And threats have different providers and receivers, which may result in ten different types of conflicts. The types of conflicts where the regional level plays the dominant role, either as the provider or/and the receiver of the threat are shadowed. Most conflicts are, however, civil wars or are

²⁸ CHS (Commission on Human Security) (2003): *Human Security Now: Protecting and Empowering People*, New York; online: <http://www.humansecuritychs.org>

²⁹ United Nations, Report of the High Level Panel on Threats, Challenges and Change, New York, United Nations, 2004.

³⁰ Waever, Ole. (2004). 'Peace and Security: Two Concepts and their Relationship' in Stefano Guzzini and Dietrich Jung (eds.) *Contemporary Security Analysis and Copenhagen Peace Research*, London and New York, Routledge, 2004, pp. 6.

associated to terrorism, which sometimes does not have any direct connection to the regional level. In the present globalized world, a threat (or an attack) to the national security of one state (be it perpetrated by a domestic opposition force or by a global terrorist organization) has an inevitable seismic reaction in neighboring states. Harbom and Wallensteen say that in 2004, there were 30 armed conflicts, 27 of which were intrastate, and 3 were internationalized interstate and the incidence of internal conflicts continue to increase while affecting the neighboring countries.³¹

IGAD in collaboration with EAC and COMESA jointly developed a programme intended to enhance political integration, good governance and human security.³² These issues cross cut closely support terrorism prevention. The programme which is under the overall leadership of EAC strives to achieve results of improving political governance, transparency, democratization processes, security, stability and sustainable development in the Region. The programme identified three broad areas which includes: Development and /or implementation of selected regional frameworks on good governance; adoption of selected strategies and programmes on democratic processes and promotion of a culture of democracy in the structures and systems of governance and the development and/or implementation of Key regional frameworks on migration management and forced population displacements.

The challenge for its member states and international development partners is how to facilitate and strengthen a self-nourishing relationship between human, regime and state security at the national level³³. Importantly, this demands reflection on how to support the process of reconstituting regional politics of member states from being a zero-sum calculation and state-centric notion of security to a more positive process characterized by reciprocal behavior and

³¹ EAC Secretariat, 'EAC Partner States Urged to Take Full Responsibility for Peace and Security matters as Conference Ends in Kampala', <http://www.eac.int/about-eac/eacnews/459i.html>, 2009, accessed on 16-8-2012.

³² COMESA – Report of the First Technical Committee on the Customs Union – March 2004. Available at: www.comesa.int/

³³ Thomas, C. (2001): *Global Governance, Development and Human Security*: Exploring the Links, in: *Third World Quarterly* 22 (2), 159–79

legitimate relations between the rulers and the ruled. In essence, the promotion of human security goes a long way towards bolstering regime security and stability. The emergence of unemployment, hunger, poor service deliveries, organized crime, terrorism, drug and human trafficking, unconstitutional changes of governments and electoral violence has demonstrated that, in order to ensure human security, peace and stability, not only are pro-growth policies needed, but also redistributive policies anchored on positive relationships between human and regime security, or a positive alignment between political incentives and good economics.³⁴

Lawrukwa et al explain that one of important measures in ensuring peace and security is conflict resolution. Conflict resolution presupposes that the state of conflicts is already in place and it has, therefore, to be resolved. In other words the conflict has to be brought to an end and peace has to be restored in the society. Conflict resolution measures usually constitute peace negotiations, the signing of peace agreements and implementation of such agreements.³⁵

Post-conflict peace building encompasses the daunting challenges of conflict resolution, reconstruction, and societal transformation. To the greatest extent possible, this requires a restoration of confidence and trust (social capital), and national empowerment (political capital), so that nationals take responsibility for building the kind of society they want to live in. For this to succeed, it is of paramount importance that processes be shaped, driven and owned by internal actors.³⁶ El-Affendi argues that this does not necessarily assume that internal actors will develop better policies than external actors, but experience shows that external domination generates resentment, inertia and resistance; consequently externally driven peace building is usually unsustainable. Nor does this mean that external actors should idealize internal actors

³⁴ Waever, Ole, 'Peace and Security: Two Concepts and their Relationship' in Stefano Guzzini and Dietrich Jung (eds.) *Contemporary Security Analysis and Copenhagen Peace Research*, London and New York, Routledge, 2004, pp. 6.

³⁵ Lawrukwa, W., Mjema, G. & Rutasitara, R. (2002). *Regional Integration Study of East African Community*, EAC Secretariat, 2002, pp. 32.

³⁶ Dinka, T., & Walter, K. (2007). 'Africa's Regional Integration Arrangements: History and Challenges', in Discussion Paper No. 74, *European Centre for Development Policy Management*, 2007.

rather, they need to understand the diversity of interests at play, and the different perspectives and agendas present in the society. Hence, ensuring effective peace and stability needs an approach that is facilitating and supportive of national processes, but not directive and pressured.³⁷

1.5.4 Terrorism in Kenya

Kenya has suffered three major international terrorist attacks in the recent past. The Norfolk Hotel: On New Year's Eve 1980, Kenya witnessed its first major terrorist attack. The Norfolk Hotel, in the capital city, Nairobi, was bombed, leaving twenty dead and eighteen injured. Investigations revealed that the Palestinian Liberation Organization (PLO) was involved. The group was retaliating for Kenya's assistance to Israel during the 1976 hijacking of an aircraft to Uganda³⁸.

The U.S. Embassy in Kenya: On 7 August 1998, the U.S. Embassy in Nairobi was bombed. This attack claimed more than 214 lives and more than 5,000 people were injured. The Paradise Hotel–Kikambala: In Mombasa, a terrorist attack destroyed part of the Paradise Hotel, following a bomb blast on 28 November 2002. Fifteen people were killed in the Israeli-owned hotel. Although the primary targets of the attacks were U.S. and Israeli citizens and properties, the consequences of these attacks were catastrophic for Kenya as well on many levels³⁹.

According to the Daily Nation Newspaper, the attacks had “grave economic, political, and social implications.”⁴⁰ The United States, Germany, and the U.K. issued travel advisories that paralyzed the tourism sector in 2003, recording a loss of \$14 million a week (tourism

³⁷ Ramesh, C., & Van Langenhove, L. (2005), ‘*Inter-Regionalism and the Future of Multilateralism*’, in a paper presented at the 5th Pan-European IR Conference of the Standard Group of International Relations, 2005.

³⁸ Muhula, R. (2007). “*Kenya and the Global War on Terrorism: Searching for a New Role in a New War*,” in *Africa and the War on Terrorism*, ed. John Davis (Burlington, VT: Ashgate Publishing Company, 2007) 48.

³⁹ Carson, J. (2005). “Kenya: *The Struggle Against Terrorism*,” in *Battling Terrorism in the Horn of Africa*, ed. Robert I. Rotberg (Washington, D.C.: Brookings Institution Press, 2005), 180.

⁴⁰ The Daily Nation Newspaper, (Thursday, June 26, 2003) in Kefa Otiso, “*Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery*,” *Kenya Studies Review*, Vol 1, no.1 (2009),117–119.

employs more than half a million people in Kenya and represents 15percent of the country's foreign-exchange earnings.) Foreign tourists cancelled their visits to Kenya's sunny beaches in Mombasa, Malindi, and Lamu and to renowned safari destinations Masai Mara, Tsavo, and Samburu. In 1996, Kenya attracted one million tourists, but after the advisories, the numbers declined drastically, thereby affecting the whole economy.⁴¹

1.5.5 Counter - terrorism Efforts in Kenya

Kenya currently stands as the single largest recipient of U.S. security assistance in East Africa. Since FY2000, it has received over \$4 million in International Military Education and Training (IMET) and more than \$25 million in Foreign Military Financing (FMF). Foreign Military Sales (FMS), including fighter aircraft, helicopters, and Air Force computer systems, amount to well over \$20 million since FY2008. The East African Counterterrorism Initiative (EACTI) has provided another \$12.5 million, and Kenya is the largest recipient of funds under Department of Defense Section 1206 programs.⁴²

Additionally, the country benefits from a variety of bilateral and multilateral exercises with American forces through Joint Combined Exercises Training (JCET) and military-to-military exchanges. It is also one of the largest global recipients of Anti-Terrorism Assistance (ATA)⁴³. Such substantial quantities of security funding beg the question: why? Why does the United States care about Kenya? The country has not suffered a successful international terrorist

⁴¹ Marc, L. (2004). "*Threat of Terrorism Hurts Kenya Tourism*," New York Times, January 4, 2004, accessed August 16, 2012, <http://search.proquest.com/docview/432633287?accountid=12702>.

⁴² Section 1206 of the National Defense Authorization Act of 2006 established a new program that gives the Department of Defense (DOD) the authority to spend up to \$200 million of its own appropriations to train and equip foreign militaries to undertake counterterrorism or stability operations. For more information, see the GAO report "Section 1206 Security Assistance Program – Findings on Criteria, Coordination, and Implementation" available <http://www.gao.gov/products/GAO-07-416R>.

⁴³ Ploch, L. (2010). "*Countering Terrorism in East Africa: The U.S. Response*." U.S. Congressional Research Service. 7-5700, R41473. (2010), 51.

attack since November 2002, and unlike Somalia, it is not host to any domestic terrorist organizations⁴⁴.

In fact, Kenya is arguably the Horn of Africa's most stable nation and a regional economic powerhouse. The Failed State Narrative would therefore suggest that Kenya is not a potential safe haven and subsequently of limited counterterrorism interest. Perhaps Kenya's importance is instead a function of its comparative strength and relative willingness to assist the West in combating terrorism, rather than a reflection of weakness. Yet this would appear inconsistent with the high level of security assistance the U.S. currently provides, since a strong Kenya would likely not need such large infusions of training, equipment, and other aid. The U.S. relationship with Kenya therefore seems to challenge basic logic, not just the logic of the Failed State Narrative.

American assistance becomes somewhat less confusing if one considers it as a function of American assumptions about Somalia, rather than a reaction to realities on the ground in Kenya. As previously discussed, the FSN understands Somalia as increasingly unstable, and therefore a source of great insecurity and a potential safe haven for al Qaeda. These assumptions have largely determined American counterterrorism operations and U.S. foreign policy more broadly, in the Horn of Africa. Security concerns surrounding Somalia have therefore driven the United States to partner with countries such as Kenya to combat extremism, intercept terrorist activity,

⁴⁴ The first such attack was in December 1980, when individuals sympathetic to the Palestine Liberation Organization (PLO) bombed the Norfolk Hotel in Nairobi. Sixteen people were killed, and more than one hundred injured. Many experts have attributed the bombing to two factors: first, the Norfolk's ownership by a well-known Jewish-Kenyan family and secondly, as retaliation for the Kenyan government's willingness to serve as the launching point for the 1972 Israeli military raid on Entebbe, Uganda. The first attack by al Qaeda was in August 1998, when a car bomb exploded outside the American Embassy in Nairobi. On November 28, 2002, al Qaeda operatives fired two SAM-7 missiles at an Israeli passenger jet leaving Moi International Airport in Mombasa. Within five minutes, a second group of operatives bombed the Israeli-owned and frequented Paradise Hotel in Kikambala. Fifteen people were killed and 35 injured in the hotel blast, though none of the 271 passengers on the flight were harmed. Less than six months later, Kenyan authorities foiled an al Qaeda plot to attack the temporary American Embassy in Nairobi with a truck-bomb and an explosive-laden plane from Wilson Airport. One suspect apprehended by the Kenyan authorities implicated many of the same operatives from the November 2002 attacks in the 2003 plot. Finally, the first case of domestic Islamist terrorism occurred on May 12, 2006 when three Kenyans firebombed the Nairobi offices of the Christian radio station Hope-FM. While not affiliated with al Qaeda, the attack was largely perceived as a response to the station's "Jesus is the Way" program, which encourages conversion to Christianity and frequently features recent converts from Islam encouraging Muslims to do the same.

and deny al Qaeda a safe haven. However, the perceived limitations of the Kenyan government have led the United States to pursue an aggressive capacity building program within the country. As such, American counterterrorism policy in *Kenya* ultimately represents U.S. security concerns over *Somalia*.

U.S. counterterrorism policy tends to characterize states as potential victims or potential safe havens. Victims are typically rich in soft, vulnerable targets such as NGOs, businesses, or governmental buildings and closely associated with the United States or Western hegemony more broadly. Safe havens, in contrast, appear akin to the failed state model: porous borders, ungoverned spaces, weak governance, and poor security, all of which provide cover and plentiful recruiting opportunities. Great Britain and France are typically portrayed as victims, for instance, while Afghanistan is broadly perceived as a safe haven. A state's categorization largely determines the United States' counterterrorism response, whether it is sharing intelligence and reducing vulnerabilities in victims, or pursuing more aggressive strategies designed to root out potential threats in safe havens.

While a rash of attacks in the late 1990s and early 2000s placed Kenya squarely within the "victim" category, it has not suffered an international terrorist attack since 2002. At the same time, Kenya is not a safe haven. Al Qaeda operatives may live in and operate from Kenya; however the country is not itself a source of terrorism. To use Rosenau's terminology, Kenya lacks a "mobilizing belief."⁴⁵ According to the American security paradigm, therefore, Kenya

⁴⁵ According to Rosenau, "If terrorism was simply a function of a lack of state capacity, corruption, poverty and a sizeable Muslim population, Kenya and Tanzania would be extremely promising countries for Islamic terrorist recruitment." He argues that while local Muslims have been recruited to assist in terrorist operations within the region, they have oftentimes done so unwittingly. Perhaps more importantly, very few Kenyans have enlisted to serve as part of the greater global insurgency, which he takes to indicate that Kenya has little potential to serve as a recruiting ground for al Qaeda. In seeking to explain why this is true, Rosenau outlines three elements necessary for terrorism in Africa: first, a lack of state capacity, specifically in the sectors of police, intelligence, and law enforcement; secondly, a "mobilizing belief" such as Salafist jihadism; and finally, appropriate "agitators," or actors who can facilitate the spread of extremist ideals and organize an effective jihadist force. Ultimately, Rosenau argues that the Kenyans – including the young, theological conservatives, to whom extremism should be most appealing – have largely rejected Wahhabism and therefore lack a "mobilizing belief" that could potentially serve to further al Qaeda's mission in the region. See Rosenau: "Al Qaida Recruitment Trends in Kenya and Tanzania." *Studies in Conflict & Terrorism*. Vol. 28 (2005).

does not constitute a threat. Yet substantial foreign assistance to bolster the country's government and security capacities seems to indicate otherwise. In the absence of broader strategic interests, U.S. security efforts in Kenya can therefore be interpreted as a response to Somalia, rather than the perception of a threat in Kenya.

The lack of a stable, central government has led many to assume that Somalia is a safe haven for al Qaeda and its regional affiliate al Shabaab. These concerns have been exacerbated by a number of recent developments: the growing influence of hardliners within al Shabaab, its evident willingness to engage in international terrorist attacks, and a demonstrated ability to deliver on said threats, as illustrated by the 2010 Kampala bombings. Furthermore, American counterterrorism policy is predicated on the belief that Islamic extremism is in danger of becoming "more widely distributed and more geographically and ethnically diversified among affiliates and among those who are inspired by the al Qaeda message."⁴⁶ Many point to the bombings in Kampala as evidence of the proliferation of extremism in the Horn of Africa; by some reports, Uganda has charged more than 30 people in connection with the attacks, including 14 Ugandans, 10 Kenyans, 6 Somalis, 1 Rwandan, and 1 Pakistani.

Furthermore, the two suicide bombers were believed to be Kenyan and Somali⁴⁷. In sum, not only are existing terrorist elements becoming increasingly extreme, but al Qaeda's ideology is gaining traction throughout the Horn and East Africa more broadly. Statements from the Department of State Office of the Coordinator for Counterterrorism serve as an ideal example of the counterintuitive relationship between Somalia, Kenya, and American counterterrorism policy. The 2009 Kenya report emphasizes the dangers of cross-border kidnappings and arms smuggling, reports of extremist recruiting within refugee camps, and public threats by al

⁴⁶ U.S. State Department Coordinator for Counterterrorism Daniel Benjamin. "Confronting a resilient al Qaida: The United States Strategic Response." Remarks before the Washington Institute for Near East Policy. (2010). <http://www.state.gov/s/ct/rls/rm/2010/142110.htm>.

⁴⁷ Ploch, L. (2010). "Countering Terrorism in East Africa: The U.S. Response." U.S. Congressional Research Service. 7-5700, R41473. (2010), 51

Shabaab leaders. The threats outlined by the report are almost entirely a function of al Shabaab, Somalia, or al Qaeda more broadly, in conjunction with the government's incapacity to counter these threats⁴⁸. It is important to note that U.S. relations with any state; Kenya, Somalia, or otherwise, are not entirely a function of counterterrorism objectives. The absence of more demanding security concerns in the Horn, however, has prioritized Somalia and subsequently defined Kenya as the "decisive arena in the fight against al Qaida and associated movements in the Horn."⁴⁹

1.5.6 Research Gap

Achieving peace, security in Kenya has been a monumental task. However, most literature on Kenya addresses industrialization and economic reforms with limited literature on peace and security in regards to terrorism. This study therefore, seeks to explore whether terrorism has an impact on peace and security in Kenya in the post 9/11 era. Given that Kenya cannot pursue its economic and social objectives without first consolidating the peace, security and stability agenda; there is still a major gap on this emotive issue.

⁴⁸ Office of the Coordinator for Counterterrorism, U.S. Department of State. "Country Reports on Terrorism 2009." (2010). <http://www.state.gov/s/ct/rls/crt/2009/140883.htm>.

⁴⁹Ploch, L. (2010). "Countering Terrorism in East Africa: The U.S. Response." U.S. Congressional Research Service. 7-5700, R41473. (2010), 51.

1.6 Theoretical Framework

The Crenshaw Model

In 1972, Crenshaw examined state terrorism in terms that are startlingly applicable to the modern terrorism. She defined the phenomenon as “part of insurgent strategy in the context of internal warfare or revolution: the attempt to seize political power from the established regime of a state, if successful causing fundamental political and social change.”⁵⁰ As a theoretical framework, her analysis outlines the incentives, strategies, and potential pitfalls of employing terrorism to achieve political goals. Specifically, she argues that terrorism will be employed when there is a violent and lengthy conflict between the revolutionary organization and an incumbent regime overpower distribution.

It typically marks the initial stages of insurgency, particularly when material weakness limits alternative means of achieving revolutionary goals. Crenshaw describes terrorism as a “weapon of the weak,” as it requires only a few individuals with limited training, no uniforms or special equipment, and very little logistical support⁵¹. Crenshaw takes particular pains to emphasize the psychological potency of terrorism, highlighting how “terrorism appears irrational to the threatened individual, who therefore cannot respond rationally.” Furthermore, by upsetting “the framework of precepts and images which members of society depend on and trust,” terrorism goes beyond the individual to negatively influence social structures.²⁸ In doing so, it undermines the solidarity of a community by replacing normal relationships with insecurity and distrust.

Crenshaw also outlines the limits of revolutionary terrorism as a means of achieving political goals. She warns that the extreme nature of terrorism can cause a popular backlash

⁵⁰ Crenshaw, M.H. (1972). “The Concept of Revolutionary Terrorism.” *The Journal of Conflict Resolution*. 16, no. 3 (1972), 383-396.

⁵¹ Crenshaw, M.H. (1972). “The Concept of Revolutionary Terrorism.” *The Journal of Conflict Resolution*. 16, no. 3 (1972), 383-396.

against a revolutionary movement, and outlines the two primary factors that influence a population's willingness to tolerate violence. First is the duration and magnitude of the threat, further highlighting the inverse relationship between unpredictability and psychological effectiveness. Prolonged terrorist activity is more likely to numb and habituate the population to attacks than sporadic terrorism.

Revolutionary terrorism is also limited by its ability (or lack thereof) to communicate its message. A high level of transparency may convey an organization's demands, but cause it to lose its element of surprise. At the same time, too much uncertainty can cause a population to revolt. Implicit in Crenshaw's argument is the assumption that revolutionary movements seek to eventually govern, and therefore must restrain their use of force to a level tolerable by the public. While terrorism may effectively undermine the existing regime's legitimacy, it is a tool incapable of creating legitimacy in and with of itself.

Crenshaw's guidelines for governments seeking to counter the threat of terrorism are particularly relevant for this paper. While she acknowledges that a weak revolutionary force may be quickly destroyed by official action, she warns that sustained repression will serve to strengthen the movement by alienating the civilian population. She notes that, "However strongly tempted by circumstances, the regime should avoid antiterrorist measures which are illegal and indiscriminate."⁵² While repression may seem like a logical response to insecurity, Crenshaw cautions that authoritarian action can increase instability and disorder. This stems in part from the futility of using national military force to address what is fundamentally a political effort.

Modern terrorism is Crenshaw's revolutionary terrorism writ large. While Irish revolutionaries, Polish resistance movements, and Algerian insurgents previously sought to

⁵² Crenshaw, M.H. (1972). "The Concept of Revolutionary Terrorism." *The Journal of Conflict Resolution*. 16, no. 3 (1972), 383-396.

overturn their national governments, al Qaeda and its affiliates seek to overturn the international status quo. Rather than a state, their target is the global system. This shift in focus has necessitated a broadening of scope and altered the motivations, goals, tactics, and range of modern terrorism, while leaving it a fundamentally political tool. As such, internationalization serves as the best explanation for the apparent changes, as well as the obvious continuity inherent in al Qaeda.

1.7 Hypotheses

- i. Kenya's has had terrorist attacks because of its historic relationship with the West in post the 9/11 era.
- ii. Kenya's economy has been impacted upon by terrorism in the in the post 9/11 era.
- iii. Kenya's legal system has a role to play regarding peace and security in the post 9/11 era.

1.8 Research Methodology

This study will utilize an empirical exploratory research method that helped in collecting a considerable amount of empirical information and data in order to answer the research questions of the study. Moody⁵³ argues that while primarily used in academic research, empirical research method could also be useful in answering practical question. In situations where the prior knowledge is not adequate, the best strategy may be to employ the empirical research approach⁵⁴. The method is often preferred and used in entering completely unexplored fields, and it could become less purely empirical as the acquired mastery of the field increases. Indeed, a higher degree of intuitive ability may be required to successfully utilize this particular method.

⁵³ Moody, D.L. (2005). 'Empirical Research in Conceptual Modelling: A Theoretical and Practical Imperative', *Wirtschaftsinformatik*, 47, 2, April, pp. 152-162.

⁵⁴ Armstrong, J. S. (1970). 'How to Avoid Exploratory Research?' *Journal of Advertising Research*, 10 (4), 1970, 27-30.

The aim of exploratory research is to discover ideas, concepts, insights, generate possible explanations and hypotheses. This methodology will strengthen the research by offsetting the weakness of both quantitative and qualitative research methods. This research will be based on secondary data. Secondary data will be gathered by means of reviewing published books, journal articles and public documents on the subject for the relevant concepts and current opinions.

1.9 Scope and Limitations of the Study

The study descriptively analyses the impact of terrorism in peace and security in post 9/11 era, in relation to Kenya, through an “inside-out” approach. It explores the various forms of terrorism and the factors that contribute to terrorism in Kenya. It is also based on a literature study aimed at working towards explanations why Kenya, among many other policy choices available to it, prioritized human rights, peace and security.

The study was mainly conducted through secondary data analysis and thus issues of financial constraints and travelling were not relevant to the study. Literature on the specific topic however is still in its infancy and finding material might prove challenging at times. Development Corridors and research on it is mainly done through what is called ‘applied research’. Applied research is designed to offer practical solutions to a concrete problem; it is often used by practitioners who want to find quick results that can be used in the short term⁵⁵. Research that seeks to build on theory is limited on the subject.

1.10 Chapter Outline

This thesis will be organized into five chapters with an introduction and conclusion of the themes discussed in every chapter.

⁵⁵Armstrong, J. S. (1970). ‘How to Avoid Exploratory Research?’ *Journal of Advertising Research*, 10 (4), 1970, 27-30.

Chapter one gives a general introduction to the thesis. It provides the problem statement, objectives, hypothesis, theoretical framework, literature review and methodology in relation to terrorism, peace and security in post 9/11 era in Kenya.

Chapter two will analyze the historic relationship with the West. Particular attention is paid to this factor's shortcomings, as well as the support provided by the western countries, particularly the U.S to address said limitations. Finally, it outlines how counterterrorism efforts have served to further alienate and potentially radicalize the Kenyan Muslim population in a way that would not be possible without extensive intervention.

Chapter three will analyze the Republic of Kenya's experience with terrorism and the law, from the roots of Kenyan counterterrorism the most recent Al Shabaab attacks. The chapter analyzes the Suppression of Terrorism Bill 2003 and Prevention of Terrorism Act 2012 to point out controversial clauses and probable effects in the country's criminal justice system. The compatibility of these bills with civil liberties is also investigated.

Chapter four will analyze the research findings and results.

Chapter five will offer a summary, conclusions and recommendations on the findings.

CHAPTER TWO

THE LEGITIMACY OF THE PROCESS THAT CREATED THE CONSTITUTION

2.0 Introduction

While 9/11 might be termed as the beginning of a new wave of “massive terror exposure” to global audience, Kenya as a state had been prone to terrorist attacks prior to 9/11 attacks and the act had only helped in accelerating open responses to terrorism. The following cases as analyzed by Lawrukwa et al.⁵⁶ help in bringing out the acute problem of international terrorism where Kenya has been affected. On Sunday 1st July 2012, fifteen people were killed in grenade and gunfire attacks on churches in the Kenyan town of Garissa near Somalia; on 24th June 2012, a grenade blast tore through the Jericho bar, killing one on the spot and injuring many in the densely populated Mishomoroni area of Mombasa where fans were watching the Euro 2012 England-Italy football quarter final match; on May 28th 2012, a blast rocked the busy market stalls in Moi Avenue in Nairobi injuring 36 people; on 29th April, one person was killed and 10 wounded in a grenade attack on a church in Nairobi; on 15th Dec 2011, four people were injured by pellets from one of the grenades that exploded outside a restaurant popularly known as Florida Hotel in Garissa town; on October 2011, a grenade was hurled into a crowd of commuters on Racecourse Road in Nairobi killing one person and injuring dozens and hours later a similar attack occurred, this time in a pub on Mfangano Street.

Marc⁵⁷ notes that these grenade attacks, which have registered only one conviction, have seen pressure pile on the country’s security organs to ensure culprits are punished.

So far, Elgiva Bwire Oliacha, alias Mohammed Seif, who was linked to the Race Course attack, is the only suspect to have been convicted and is serving a life sentence. Numerous arrests of

⁵⁶ Lawrukwa, W., Mjema, G. & Rutasitara, R. (2002). *Regional Integration Study of East African Community*, EAC Secretariat, 2002, pp. 32.

⁵⁷ Marc, L. (2004). “Threat of Terrorism Hurts Kenya Tourism,” *New York Times*, January 4, 2004, accessed August 16, 2012, <http://search.proquest.com/docview/432633287?accountid=12702>.

Kenyans and foreigners linked to these grenade attacks have continued while investigations have taken place outside and inside the country. On December 31st 1980, a terror attack killed 16 and more than hundred were left injured after Norfolk Hotel, owned by an Israeli Jack Block was bombed; on August 7th an Al-Qaida connected suicide bomber killed 246 Kenyans and 12 Americans in what has been referred to as Kenya's Dark Friday; on November 28th 2002, Paradise hotel in Kikambala Coastal beaches is bombed leaving 15 dead coupled with a failed missile attack on an Israeli aircraft taking off from Mombasa Airport; on October 15th 2011, "Operation Linda Nchi" (operation to protect the country) was given a go ahead as a military intervention strategy by Kenya Defense Forces against the threats of Al Shabaab. This was after multiple kidnapping and piracy activities on Kenyan soil and waters by the terrorist group from Somalia.

Marc argues that to date, multiple grenade attacks continue to rock major cities as Kenya's intervention in Somalia breed counter violence. From these violent cases, the picture dramatized is that of an outright attack on the interests of Israel, USA and the Western countries with Kenya hosting the theatre stage. Many Kenyans are presently worried by the idea of a prolonged military occupation in Somalia and are calling for a clear exit strategy. Fazul Abdullahi Mohammed (alias Abdul Karim, already killed on 7th June 2011) was the Al-Qaida mastermind for East African bombings, having resided in Somalia with the help of the Islamist organisation Al-Ittihad al-Islamiya. Some of the suspects arrested in connection with grenade attacks in Nairobi have shown a strong link with Al Shabaab.

Terrorism in East Africa has received support from Al-Ittihadal-Islamiya (AIAI) and Al Shabaab, whose central aim remains the creation of an Islamic government in Somalia based on Sharia law. All these cases of violence and political criminological mental gymnastics leave many asking the question why certain individuals and governments would want to commit actions of such magnitude and ready to give their own lives and survival for it. Social scientists

and military strategists are left with the desire to explain the motivation behind these acts of violence in an ever expanding and globalizing world. The main issues in peace and security have focused on how these threats can be effectively policed in a “runaway world” according to Giddens. This chapter goes ahead to examine the social-legal-political criminological security apparatus employed by Kenya, one decade after the 9/11 trigger of new wars and new forms of anti-terror and counter-terror.⁵⁸ The discussions herein centers on the state-centric approaches to security and evaluate how these mechanisms and specifically, how the anti-terror counter-terror regimes have affected ordinary citizens in their everyday life.

2.1 Defining Terrorism

Terrorism as a phenomenon has been a contested field by scholars, media journalists and policy makers. The recent development in technology has complicated the term as originally viewed owing to the changing faces of terrorism and one can argue of a modern style of terrorism. There has not been a consensus on the exact definition of the term. Juergensmeyer⁵⁹ says that the term terrorism comes from a Latin word “terrere -to cause tremble and came into common usage in the political sense, as an assault on civil order, during the reign of terror in the French revolution.” During this time it was used to describe the actions of the French government. Thousands of people who were perceived or considered the enemies of the state were put on trial and guillotined. This view was adopted by leadership such as the American administration under Bush Jr., where terrorism was declared as America’s enemy number one. Mr. Bush vowed to continue with both non-violent means where possible, and military force in dealing with this problem.

⁵⁸ EAC Secretariat, ‘EAC Partner States Urged to Take Full Responsibility for Peace and Security matters as Conference Ends in Kampala’, <http://www.eac.int/about-eac/eacnews/459i.html>, 2009, accessed on 16-8-2012.

⁵⁹ Juergensmeyer, M. (2001). *Terror In the Mind of God: The Global Rise of Religious Violence*. University of California Press, Berkeley and Los Angeles, California. 2001 pp 5.

In East and horn of Africa, Al-Qaida and Al Shabaab have been identified as leading on the enemy list for Nairobi bombings, Dar es Salaam bombings and the ongoing grenade attacks in many cities. Al-Qaida and Al Shabaab are therefore designated as an evil that has to be defeated. To echo this outlook of antagonists, Bruce⁶⁰ quotes the speech given on October 7th 2001 by President Bush who appealed to American citizens to be patient “given the nature and reach of the enemies”. The striking part in this view is the prerequisite for one to define and identify a terrorist as an enemy and an evil. This view applies the demonological view to crime by identifying terrorists with and attributing their actions to “the evil” and demons. Morris and Hawkin⁶¹ agrees to this view and says that it legitimizes the way in which crime is attributed to “invisibility, immateriality, eternity, omnipresent, and omnipotence.” This perception offers a link between terrorism and belief systems.

At the same time, myriad of definitions advanced by governments, institutions and individuals have gone beyond belief systems to linked terrorism to crimes, politico-economic and psychological factors. The FBI⁶² defines terrorism as “the unlawful use of force or violence against a person or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives. It further describes terrorism as either domestic or international, depending on the origin, base, and objectives of the terrorist organization.” This definition is closely related to one adopted by the government of Kenya.

The government of Kenya⁶³ defines terrorism as “the use or threat of action where the action used or threatened-involves serious violence against a person, involves serious damage to property, endangers the life of any person other than the person committing the action, creates a

⁶⁰ Bruce, L. (2003). *Holy Terror*. The University of Chicago Press, Chicago, USA. 2003 pp. 100.

⁶¹ Morris, N. and Hawkin, G. (1970). *The Honest Politician's guide to Crime Control*. University of Chicago, USA. 1970 pp. 206.

⁶² <http://www.fbi.gov/publish/terror/terrusa.html>

⁶³ Anti-Terrorism Bill, The Government Printers, Nairobi 2003 pp. 448-449

serious health risk or safety of the public or a section of the public or is designed seriously to interfere with or seriously to disrupt an electronic system.· The use or threat is designed to influence the government or to intimidate the public or a section of the public; and· The use or threat made for the purpose of advancing apolitical, religious, or ideological cause”

The above definition by Kenya has been accused of being state-centric, where it applies a one sided government-lens in viewing terrorism. Terrorism here is taken to be either an already committed action or a perceived threat to people and property thus inviting pre-emptive and curative strategies. Preemptive force and covert actions applied by different states have threatened to polarize the world into two especially at the international law. Though Kenya has been affected by terrorism, it has created an image of neutrality to demands of the USA and Britain especially when it came to proposed unilateral pre-emptive and counter-terrorism strategies in Iraq, Afghanistan and Somalia (during the time of President Mohammed Farah Aideed).

By then, Kenya expressed through its foreign ministry the desire for the UN to take centre stage in targeted counterterrorism and anti-terrorism activities during these periods. This can be interpreted as a self-preservation strategy for Kenya owing to its vulnerability. Much of the Kenya’s argument has focused on the legitimacy of the UN in matters of inter-state conflicts. This is however, a dilemma for many states since the UN on the other hand has left the problem of terrorism to be handled by individual states.

Kenya’s approach to anti-terrorism has also been criticized as encompassing everything in its classification of potential and actual terrorism threats. There are high risks of accusing minor offenders as terrorists as long as their actions or threats are perceived to be politically, religiously, or ideologically opposing to the view of the government. Thus some political parties, individual or religious sects may be labeled as terrorists and terrorist-groups. For both the current and former government regimes, some religious groups have been portrayed as

enemies and a threat to peace. On 8th march 2002, the Daily Nation Newspaper⁶⁴ reported that 18 sects, groups and private armies, some of them linked to prominent politicians, had been outlawed by the police. Among the groups banned were *Mungiki* and *Taliban* vigilantes who had participated in the violent clashes in one of Nairobi's region of Kariobangi. A number of people had been killed and hundreds injured. This violence was interpreted by some people as having ethnic indicators where *Mungiki* is believed to comprise of Kikuyu ethnic group while the *Taliban* include the majority Luo ethnic members. Other groups that were banned by former Police Commissioner Philemon Abong'o comprised *Jeshi la Embakasi*, *Jeshi la Mzee*, *Baghdad Boys*, *Sungu Sungu*, *Amachuma*, *Chinkororo*, *Dallas Muslim Youth*, *Runyenjes Football Club*, *Jeshi la Kingole*, *Kaya Bombo Youth*, *Sakina Youth*, *Charo Shutu*, *Kuzacha Boys*, *Kosovo Boys*, *Banyamulenge* and *KamJesh*.

At the international level, the UN defines a terrorist as “any person who, acting independently of the specific recognition of a country or as a single person, or as a part of a group not recognized as an official part of division of a nation, acts to destroy or to injure civilians or destroy or damage property belonging to civilians or to governments in order to effect some political goal.”⁶⁵ This definition by the UN gives more emphasis on human-security of civilians as it tries to make them the focus and referent object in a more decentralized manner. At the same time, the UN⁶⁶ defines terrorism as “an act of destroying or injuring civilian lives or the act of destroying or damaging civilian or government property without the express chartered permission of a specific government, thus by individuals or groups acting independently or governments on their own accord and belief, in an attempt to effect some political goals.”

⁶⁴ Kenya Daily Nation Newspaper(Friday March 8th 2002) in Ken warioba,” *Kenyas outlawed criminal group*; pg 7

⁶⁵ <http://www.inlink.com/~civitas/mun/res9596/terror.html>.

⁶⁶ UN (United Nations) (1992): *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, UN Doc A/47/277-S/2411, New York; online: [http:// www. un.org](http://www.un.org)

The above definition by the UN is important in that it adds into the bracket of terrorism those governments who resort to aggression that is not permitted by the United Nations Charter. Kenya Defense Force's intervention in Somalia is put into question when it comes to this evaluation vis a vis the UN charter and the Rome Statute. The intervention in Somalia by Kenya Defense Forces lacks the legitimacy since there was no military aggression from Somalia. The so called Al Shabaab are individuals who are not in combat and the focus should therefore be that of police related response to criminality rather than the army-related intervention. It is possible therefore to argue that Kenya is the aggressor since its military has crossed borders into Somalia territory. However, this aspect of engagement justified in modern asymmetrical wars where conventional armies engage with terrorist groupings that apply unconventional means.

The above aspect of terrorism is captured by Walzer⁶⁷ who recognizes asymmetrical aggression by states and groupings as a crime and an example of immorality of decisions made by leaders. He sees terrorism as "a way of avoiding engagement with the enemy army and representing the extreme strategy of the indirect approach." Thus it can be implied that Al-Qaida terrorists were avoiding direct encounter with the mighty American military force when attacking Nairobi and Dar es Salaam. This idea focuses on the asymmetric nature of power characterized by the parties in a conflict. Groups and individuals who command less strategic power employ terrorism as an unconventional method in pursuing their interests.

According to the contemporary military strategy, terrorism perceived in this sense could be classified as a 'crime of aggression' and thus requiring a legalistic approach. In Kenya's situation, the kidnapping of foreigners by Al Shabaab was interpreted as a crime of aggression by the government thus necessitating military actions. It is however wise to note that there was no member of Al Shabaab group who was clad in combat uniform during these raids and kidnappings thus questioning the militaristic response. This shows that there has been no legal

⁶⁷ Walzer, M. (2000). *Just and Unjust Wars*. Basic Books. New York. 2000 pp. 197.

criminological agreement at the local and international level concerning the problem of terrorism. Every state has its own definition thus creating a conflict in its interpretation. Kenya offers its own definition which is different from those of other states creating an inconsistent environment for harmonized international law and norms. The famous saying of one man's terrorist is another man's liberator goes with this conflict at the international level. The late leader of Hamas, Abdul Aziz Rantinsi is quoted in Juergensmeyer⁶⁸ as not considering Hamas' activities as terrorism but rather preferred to call them "operations carried out by martyrs".

A criminological view however attributes terrorism to crime since it involve planning for violence, sourcing of human and material resource with illegal intention, and general perpetration of assault on innocent people. Kenya's penal code has not recognized the crime of terrorism but somehow identify the various forms that terrorism takes e.g. kidnapping, hijacking, suicide bombing, hostage taking, conspiracy, arson etc. It is therefore impossible to come up with one generally agreed approach to the definition since definitions of terrorism fluctuates according to time and space. Some forms of terrorism could be seen as crime, war, or revolutions. Other forms are long-term and enduring where individuals, groups and states support it in pursuit of their legitimate cause or deeply cherished values. What is called terrorism in one time and place could be called war and revolution while acts that were not considered terrorism could be classified as so in other times and places.

Terrorism is also an emotionally charged word that could be used to politically and socially discriminate against individuals or groups. At one time in the struggle for independence, the *Mau Mau* Liberation movement in Kenya was considered a terrorists group with Jomo Kenyatta as its leader. The current regime in Kenya in conjunction with the British authority has de-legalized and de-labelled Mau Mau as a group of terrorists, with its founders recognized as freedom fighters and nationalists serving a justified cause.

⁶⁸ Juergensmeyer, M. (2001). *Terror In the Mind of God: The Global Rise of Religious Violence*. University of California Press, Berkeley and Los Angeles, California. 2001 pp 5

Academicians have also sunk in the sea of confusion when it comes to problems associated with definition of terrorism. Schmid⁶⁹ defines terrorism as “an anxiety-inspiring method of repeated violent action, employed by semi-clandestine individuals, groups or state actors, for idiosyncratic, criminal, or political reasons, whereby-in contrast to assassination-the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat and violence based communication processes between terrorist victims, and main targets are used to manipulate the main target [audiences]turning it into a target terror, target of demands or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily used.

This definition identifies acts committed by individuals and those of oppressive states/governments. It helps in bringing the idea of government-sponsored terrorism. This view is not visible in the proposed Anti-Terrorism Bill that Kenya has proposed. The proposed bill therefore holds irresponsible government leaders as terrorism-free individuals. Schmid’s definition also focuses on terrorism as an attention-generating activity i.e. communication between the adversary, the oppressor and the purported victim targets.

This communication aspect is further captured comprehensively by Cindy⁷⁰ where she defines terrorism as “a synthesis of war and theatre, a dramatization of the most proscribed kind of violence-that which is perpetrated on innocent victims-played before an audience in the hope of creating a mood of fear, for political purposes”. This means that there are “stages” that are produced for drama and as Bruce⁷¹ says “the activities on the stage are designed to attract and hold its audience, while also advancing the interest of the backers”. Don DeLillo is quoted by

⁶⁹ Schmid, A.P. (2000). Thesaurus and Glossary of early warning and conflict prevention terms. Forum on Early Warning and Early Response, The Old Truman Brewery, 91-95 Brick Lane London. 2000.

⁷⁰Cindy, C.C. (2003). *Terrorism in the Twenty-First Century*. Pearson Education, Inc. New Jersey. 2003 pp. 10

⁷¹ Bruce, L. (2003). *Holy Terror*. The University of Chicago Press, Chicago, USA. 2003

Juergensmeyer⁷² adding that terrorism is “the language of being noticed without being noticed it would not exist.” In setting the stage where the acts are to be committed, terrorists are interested in one that will produce the most dramatic thus, East Africa towns of Nairobi and Dar es Salaam proved to be excellent for a variety of symbolic reasons.

Nairobi was considered by the Late Osama Bin Laden as portraying a symbol of secular political power, which is a threat to Islamic belief and interests while the attacks in Dar es Salaam was to keep the infidel away from the “house of Islam”.

2.2 State, Security and Constitutionalism

Since August 7th 1998 when an Al-Qaida suicide bomber hit the American Embassy in Nairobi, Kenyans have said much relating to the link between anti-terrorism, security and policing. The argument on security holds that it is an issue that relates to every state and its citizenry and therefore the public governance dialogue and conflicts must be encouraged. The state is obliged to provide security to its citizens and therefore wants to ensure that any threats to security and peace to its population are eliminated. On the other hand, the citizenry want a feeling of safety and will support government projects which are perceived as beneficial to individual and collective security. The on-going transformation of international crimes and terrorism in particular however, goes beyond the internal security thinking. At the international level, UN has left the problem of international crimes and terrorism to be solved by individual governments. Roth⁷³, who was the senior UN correspondent to CNN’s Diplomatic license, argued that the UN had no structural arrangements to deal with international terrorism after the Madrid bombing in March 2004.

⁷² Juergensmeyer, M. (2001). *Terror In the Mind of God: The Global Rise of Religious Violence*. University of California Press, Berkeley and Los Angeles, California. 2001 pp 5.

⁷³ CNN interview with Richard Roth on Diplomatic License Program, March 2004.

According to Lauren⁷⁴ national security structures are therefore left to explore links between anti-terrorism policies and resolution of conflicts on both short and long-term basis. Kenya has not been left behind on this. The government has showed its commitment in addressing the problem of terrorism through the amendment of existing legislations that are useful in the fight against terrorism and the enactment of new legislation in accordance to Security Council Resolution 1373 for the purpose of fighting against terrorism, as well as the establishment of institutions for the purpose of combating terrorism.

2.2.1 Perception of Security

According to Spiegel⁷⁵ security as a concept and a form of practice is viewed differently by the party concerned. He says that “it is constantly changing, meaning different things to different people in different environments.” Security has traditionally been viewed from a militaristic approach that borrows heavily from the writings of Thucydides, Hobbes, Machiavelli and Rousseau. The writings of the four have been analyzed in what has formed the realist tradition in international relations. Realism concerns itself with the system of power politics and state-interest that are geared towards survival in an anarchic world. The French philosopher Rousseau⁷⁶ in his support of this preservation aspect and interest-orientations uses the analogy of the family and states that “the most ancient of societies, and the only one that is natural, is the family, and even the children remain attached to the father only so long as they need him for their preservation. If they remain united they continue so no longer naturally, but voluntarily; and the family itself is then maintained only through convention (man's) first law to provide self preservation, his first cares and those which he owes to himself.” It is possible to argue that this assertion of security in its traditional sense, simply involves self-preservation,

⁷⁴ Lauren, P. (2010). “Countering Terrorism in East Africa: The U.S. Response.” U.S. Congressional Research Service. 7-5700, R41473. (2010), 51.

⁷⁵ Spiegel, L.S. (1995). *World Politics in New Era*, Harcourt Brace College Publishers, Orlando, Florida. 1995 pp 501

⁷⁶ Rousseau, J.J. (2005). *The Social Contract*, <http://www.fordham.edu/halsall/mod/rousseau-contract2.html>.

protection of oneself and associations of individuals that one identifies with from threats and challenges of survival.

This perception to security has however been criticized from many directions for not taking into account the insecurity that is posed by states on their citizens. The state is supposed to protect those who have agreed to pledge allegiance to it through the constitution. However, many states, Kenya included have given more weight to internal sources of threats making their citizens a target for control and suppression. Kenya's situation on this has ended up with the state becoming the main source of individual insecurity. This individual insecurity is manifested through torture to opposition individuals, massive police raids based on social-cultural bias, lack of procedural justice in extraditions, securitization of specific cultures and religions and sustenance of poverty through skewed policies and other processes that undermine human dignity. Whereas there exist internal threats to security, the argument put forward in this paper carries the assumption that threats to peace and security go beyond the inside outlook.

Rousseau ⁷⁷ notes that anti-terrorism, policing and justice therefore require an inside outside stance to cover those that result in a new global order where states and non-state actors are playing a major role in improvement of life as well as threatening the same. State centric approaches and strategies have redirected their attention to military intervention in Somalia, ignoring other securities such as physical security, societal security environmental security, food security, economic security, and health. Contemporary evaluation of world social disorders based only on a state-centric and militaristic lens to security are no longer appropriate in theory and practice. One founding member of Copenhagen school of security, Wæver⁷⁸ agrees with the changing outlook of security, its conceptualization and says that “we have to come to terms with a new security agenda and its different inventory of threats.”

⁷⁷ Rousseau, J.J. (2005). *The Social Contract*, <http://www.fordham.edu/halsall/mod/rousseau-contract2.html>

⁷⁸ Wæver, O. (2000). *working paper* No. 6 'Security agendas old and new, and how to survive them' presented at the Universidad Torcuato Di Tella, Buenos Aires on Sept. 11-12. [2000]

2.3 Securing Justice through Legal-Criminological-political Strategies

2.3.1 Frameworks of Securing Justice

According to the World Bank the existing framework for addressing insecurity in Kenya is the criminal law. In particular it is in the form of penal code and the police Act.⁷⁹ Legally, the criminal justice has dealt with the problem of crime but has not adequately addressed social dimensions of the problem of insecurity. It only deals with the symptoms rather than the root causes of the problem as convicted criminals are put to jails, fined, sent to community services or are put on probation programs.

The EAC Secretariat⁸⁰ additionally observes that the police Act on the other hand provide a one-dimensional view to security. It does not encourage the police to see themselves as partners with the communities in the pursuit of peace. Police officers have come to be feared by the civilian community as harassment, torture, demand for bribes, illegal arrests and other state-sponsored violence creep in. It is thus imperative to begin changing the philosophy of policing in Kenya so that the police force perceives themselves as peace workers and propagating the values of justice and human rights. Such a change will allow for civilians to take policing agents with seriousness when policing against terrorism and thus collaborate accordingly.

The Anti-terrorism police unit which came into existence after the bombing in 1998 is yet to prioritize its relation with the ordinary civilians in risky communities. There has not been any coordinated interaction between the anti-terrorism unit and the civilian community living in urban cities or rural areas thus maintaining the gap. The Anti-terrorism police unit that came into force is believed to be having the specialty that is required to carry out investigations and

⁷⁹ World Bank (2005b): *Voices of the Poor*, Washington, DC; online: <http://www.worldbank.org>

⁸⁰ EAC Secretariat, 'EAC Partner States Urged to Take Full Responsibility for Peace and Security matters as Conference Ends in Kampala', <http://www.eac.int/about-eac/eacnews/459i.html>, 2009, accessed on 16-8-2012.

forensic searches that are characterized by the complexity of terrorism. The lack of technological machinery and trained police force to handle the complexity has however been met with pessimism by the public, as the process is seen to be haphazard and reactionary. Government ministries and departments such as ministry of internal security and provincial administration, ministry of trade and commerce, ministry of tourism and wildlife, ministry of communication, department of immigration, the police force and the judiciary have largely been stretched by the threats and actual acts of terrorism.

Since the beginning of 2003 and in response to perceived risk of further attacks, security agents and actors have taken the following selected measures: Published the Suppression of Terrorism Bill in April 2003; Established a specialized Anti-Terrorism Police Unit; Authorized the on-going military intervention into Somalia against Al Shabaab on 15th Oct. 2011; Established the National Counter-Terrorism center in Nairobi in January 2004, under the responsibility of the National Security and Intelligence Service aimed at providing "timely" and "factual" intelligence in the fight against terrorism. Prosecution and extradition of suspected terrorists. Imposed and lifted flight bans between Kenya and Somalia such as the one of 19th June 2003 which was lifted on 8 July 2003. Strengthened security measures at points of entry into Kenya, including airports; Strengthened security measures at public places and hotels. Engaged in cooperation to fight terrorism in the region, under the auspices of the Inter-Governmental Authority on Development (IGAD).⁸¹

2.3.2 Suppression of Terrorism Bill, Politics and Policing

The Anti-Terrorism Bill⁸² was established in April 2003 but had been shelved for having numerous short-comings and strong critique by the public and human rights organizations. However, the Bill has been re-introduced to the cabinet for reconsideration before being tabled

⁸¹ Anti-Terrorism Bill, The Government Printers, Nairobi 2003 pp. 448-449

⁸² Anti-Terrorism Bill, The Government Printers, Nairobi 2003 pp. 448-449

in parliament. The Anti-Terrorism Bill has advocated for the police institution to go beyond the existing national territories since terrorism is not limited to Kenya. However, much of the proposed measures in the legislation bear more internal impacts than the external ones especially with the thinking that Kenya has been earmarked as harboring terrorist groups and cells that have inter-continental links. The Anti- terrorism bill in particular has reflected a number of biases following its proposals to the immigration officers and the police force in the pursuit of peace and security. It has become clear from its proposals that Kenya is highly becoming a police-state. Muslims and people of Somali ethnicity have become a major target with threats perceived to be coming from Coastal communities and Al Shabaab.

Mazrui⁸³ says that Islam phobia within Kenya will find policemen arresting Jesus Christ as a potential terrorist “if he walked on the streets of Nairobi with his long beards and Arab-style robes”. On matters relating to wearing and clothing in particular, the Anti-terrorism Bill⁸⁴ allows for “a member of the police force to arrest a person without a warrant if he has reasonable ground to suspect that the person is guilty of an offence.” This leaves the policing agents with a lot of discretion on what to consider as reasonable threat without any recourse for accountability.

The process of suspecting and arresting thus follows a physical-overt evaluation by policing agents on a suspect, guided by the six-month training that the police acquired at the police academy. It is questionable whether a police constable who graduates from police academy after such a short period has the theoretical and practical skills to foretell the attributes of a potential terrorist. At the same time, this kind of approach takes policing back to the times of Lombrossian thinking where criminals were evaluated by their body-type or what Lombroso

⁸³ The Daily Nation Newspaper, (Thursday, June 26, 2003) in Kefa Otiso, “*Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery*,” Kenya Studies Review, Vol 1, no.1 (2009),117–119.

⁸⁴ Anti-Terrorism Bill, *The Government Printers*, Nairobi 2003 pp. 448-449

referred to as atavistic characteristics. It is therefore very likely that, a slim young male adult with curly hair and a sharp nose fall in the wrath of police officers as a suspect terrorist.

Migrants and migrant-hosting communities have been affected by these emerging policing activities carried out by police officers in their everyday preventive and curative security measures. The direct effects are visible during the swoop-operations that take the form of estate-to-estate crackdown on illegal migrants. This is done with the false intentions of reducing the number of illegal migrants and migrant-related criminality. Within the objectives of these police swoop operations is the improvement in internal security. Contrary to this, there has been complaints coming from migrant diasporas concerning the manner in which policing is affecting their security.

Soon after the 9/11 bombings, the following selected cases by the local Nation Daily Nation newspaper⁸⁵ reflects how security actors and agents pursued the issue of immigration in Kenya. On February 8th 2002, 1000 suspected illegal immigrants were arrested in a country-wide crackdown on crime, a survey carried out by Nation media on February 20th 2002 indicated that around 400-500 illegal immigrants from Somalia enter into Kenya through Wilson airport. On May 30th 2002, more than 800 refugees were arrested in a four-hour operation at Eastleigh Nairobi; on July 24th 2003 more than 70 illegal immigrants were arraigned in court in Mombasa.

Foreigners, especially those from Somalian, Ethiopian and Eritrean origins were generally seen as the “other”, coming from outside, strange, alien and in many situations likened to problem makers. The concept of ‘alien’ has been used in the laws of Kenya under the Aliens Restriction Act⁸⁶ to mean “any person who is not a citizen of Kenya” and thus a strange and

⁸⁵ All the figures were taken from The Kenya Daily Nation Newspaper of respective dates; The Daily Nation Newspaper, (Thursday, June 26, 2003) in Kefa Otiso, “*Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery*,” Kenya Studies Review, Vol. 1, no.1 (2009),117–119.

⁸⁶ The Aliens Restriction Act cap 173 pp. 2 of the Laws of Kenya

dangerous unknown identity different from that of “being Kenyan”. The security gatekeepers have promoted a public attitude that tends to build on quick assumption that immigrants and non-citizens bring along with them some conflicts and ignorance of the laws of the land.

The former Police Commissioner, Nyaseda attributed the high rate of crimes in Kenya to high number of immigrants. He argued that Immigrants are linked with arms robberies, drug-trafficking and forgeries of documents. This line of thinking and operations goes hand in hand with what Francis⁸⁷ describes as migrants “not originally bound by, and probably not particularly familiar with the criminal laws”. This has legitimated an attempt to apply a militaristic approach when operationalizing security policies at the expense of professional policing. This has in turn promoted the perception that criminals come from a given social-political-territorial category, to be dealt with as a designated enemy if security is to be achieved.

This criminological perception is worrying as it offers justice and punishment tailored to classification of criminals especially when dealing with migrant Diasporas. It is possible to argue that many arrests and prosecutions in certain areas will reflect a high frequency of the perceived ethnic community whose body type is seen to be criminogenic. Maguire, Morgan, and Reiner⁸⁸ agree that the Police institution at the same time has a “major impact on what becomes defined as crimes, which offences are prioritized, and which of the community are portrayed as dangerous or troublesome”.

Communities that breed high crimes are generally given more attention when it comes to state policing as they are seen to be more risky and dangerous. However, following police statistics on the number of arrests and convictions in court might be misleading owing to the above bias based on body type. Urban centers, which act as economic centers report more crimes all over the world owing to heterogeneity of cultures, religion, occupation, technology

⁸⁷ Francis, T. S. (1986). *Conflict Studies*. The Centre for Security and Conflict studies [CSCS] 12/12G, Golden Square London. 1986 pp. 183-194.

⁸⁸ Maguire, M., Morgan, R. and Reiner, R. (2002). *Handbook of Criminology*. Oxford University Press, p89.

and high population densities. The police might focus on these areas at the expense of rural areas. For this reason, policing should be an integral part of both the community and state, linking the citizens and the government in pursuit of peace and security. The Al Shabaab terrorist group has targeted tourists and citizens in remote areas as well as in big cities.

2.4 Ties to the West

Perhaps the best explanation for cooperation between Kenya and the United States is precedent. Carson⁸⁹ observes that, at the risk of perpetuating a somewhat tautological argument, current diplomatic and military collaboration increases the likelihood of future collaboration, it fosters the creation of shared values, promotes trust-building exercises, and serves to increase Kenyan capacity. Unlike Uganda under Idi Amin, Ethiopia under Mengistu Haile Mariam, or Sudan under Bashir and Turabi, Kenya has never broken diplomatic ties or had a major diplomatic rift with the United States. Western nations most notably the U.S. and Great Britain maintain significant missions within Kenya, and it is host to one of the United Nations' four regional headquarters, the only such headquarters outside of the United States or Western Europe.

Carson⁹⁰ further argues that, militarily, Kenya serves as the region's most valuable counterterrorism and security partner. Colonial rule established the basis for cooperation with Great Britain, and the country has participated in a variety of operations spanning from the training and movement of British troops to naval calls at the port of Mombasa. Since independence, Kenya has also entered into a series of security agreements with the United States. Most importantly, the U.S.-Kenyan Access Agreement institutionalized American entry into the main seaport at Mombasa, as well as major international airports in Nairobi and

⁸⁹ Carson, J. (2005). "Kenya." *Battling Terrorism in the Horn of Africa*. Edited by Robert I. Rotberg. Baltimore: Brookings Institution Press, 2005,p26.

⁹⁰ Carson, J. (2005). "Kenya." *Battling Terrorism in the Horn of Africa*. Edited by Robert I. Rotberg. Baltimore: Brookings Institution Press, 2005,p26.

Mombasa. Additionally, the United States has been permitted to maintain a small warehouse and office facility on the grounds of the airport in Mombasa, and is allowed the frequent use of Kenyan facilities in Mombasa and Nairobi.

Chandler⁹¹ contends that as the Horn of Africa has increased in strategic importance, the United States has sought greater collaboration with Kenya. The American military presence has grown substantially since the 1970s to include the U.S. Army, Navy, and Air Force. Currently, the United States has two major operations in Kenya: the Kenyan-U.S. Liaison Office (KUSLO), which facilitates military assistance and training programs, and the Walter Reed U.S. Army Medical Research Unit, which conducts scientific research in tropical and infectious diseases. In exchange, Kenya has received greater military assistance dedicated to the purchase of equipment, growing opportunities for officer training in the United States, and more military exercises in Kenya, with Kenyan participation. American's presence in Kenya and the region more broadly, has only increased with the launch of U.S. Africa Command (AFRICOM) in October 2007.

2.5 Conclusion

Acts of terrorism presupposes the presence of an actual or perceived enemy. An enemy to be defeated by any means possible. Regrettably, individuals and governments employ different means in tackling the actual and perceived threats posed by terrorism. Strategies and tactics used to defeat and deter terrorism involve the use of force and violence on one side and through peaceful-non-violent means on the other. The criminal justice institutions in many countries are endowed to apply both of these strategies in their daily maintenance of law and security. On matters pertaining to application of force, the police and the military enjoy the legitimacy of implementing the monopolized state violence, where the law gives them room to shoot any

⁹¹ Chandler, D. (2006). "Back to the future? The limits of Neo-Wilsonian ideals of exporting democracy." *Review of International Studies*. 32 (2006, p78).

person or animal that poses a threat to public peace. The Kenya Police Act⁹² allows a police officer to use arm firstly to “any person in lawful custody charged and convicted of felony, when such person is escaping or attempting to escape, secondly to any person who by force rescues or attempts to rescue another from lawful custody and thirdly, against any person who by force prevents or attempts to prevent lawful arrest of himself or of any other person.”

The police and the military are therefore recognized as people sanctioned by the state with the powers to enforce the law, keep peace and defend the state. This means that the priority of the police and military institutions is in policing the public peace and therefore must do so guided by the rule of law, justice and human rights. Many advocates of modern policing of threats agree that the process is necessary as it serves the function of reinforcing positive social order in an environment of human-rights and peace-building. However, there has been a dominantly state-centric approach to policing, ignoring the call for unitary policing between the police and civilians. Maguire, Morgan and Reiner⁹³ argue that public peace is not kept by the police but by primarily, an intricate almost unconscious network of voluntary controls and standards among the people themselves and enforced by the people themselves.

⁹² Laws of Kenya. The Police Act Chapter 84, Part III section 28. Pg. 13

⁹³ Maguire, M., Morgan, R. and Reiner, R. (2002). *Handbook of Criminology*. Oxford University Press, p89.

CHAPTER THREE

KENYA'S LEGAL SYSTEM ON PROSECUTION OF TERRORIST RELATED CASES IN THE POST 9/11 ERA

3.0 Introduction

This chapter traces the development of Kenya's main counterterrorism acts, the Suppression of Terrorism Bill of 2003 and the Prevention of Terrorism Act of 2012, two rather different approaches to the demands of contemporary counterterrorism and Kenyan democracy. Terrorism is a reality that has left many countries, including Kenya, counting losses. The Republic of Kenya, and indeed all of Africa, is no exception to the worldwide increase in terrorism because there is a favorable environment that permits terrorist operations, including porous borders, internal conflicts, a propensity to failed states, lax financial systems, poverty, corruption, and sociocultural diversity.⁹⁴

Statistics for the year 2007 indicate that “Africa recorded 6,177 casualties from 296 terrorist acts, hence making it the continent with the second highest number of casualties after Asia.”⁹⁵ The highest number of casualties was 5,379 in 1998 and occurred as a result of the bombings in Kenya and Tanzania. Future terrorist threats to Kenya are as likely as they have been in the past, especially with the Kenya Defence Forces involvement in war in the failed state of Somalia. Hence the need to put in place preventive and mitigative measures to counter the effects of terrorist activities - and the need to examine the legal response to terrorism in the context of legislation and policies, to contribute to developing a theoretical and practical approach to understanding and dealing with terrorism in the horn of Africa.

Civil society and watchdog groups have raised the alarm about Kenya's antiterrorism legislation, especially on human-rights grounds. Various observers, domestically and abroad,

⁹⁴ Chomsky, N. *Rogue States: The Rule of Force in World Affairs*, Boston: South End Press, 2000

⁹⁵ Wafula O. and Botha A. *Understanding Terrorism in Africa: In Search for an African voice*, ed., *Pretoria, Institute for Security Studies*, 2007, 27. Accessed July 10, 2012, <http://www.issafrica.org/uploads/AFRITERRO071106.PDF>.

have accused the security forces of heavy handedness in the interrogation of terror detainees. Amnesty International accused the government of torture, detaining persons without charge, and harassment of families of people suspected of terrorism.⁹⁶

In October 1952, the British government, then administering Kenya as a colony, declared a state of emergency in the Colony of Kenya to contain the increasing -and increasingly violent- activities of *Mau Mau* fighters. Britain deemed as “terrorists” the *Mau Mau* fighters who had killed Chief Waruhiu on 7 October 1952, as well as 2,000 African civilians and 32 white settlers. In a debate at the House of Lords, the Lord Earl of Munster stated: “*Mau Mau* terrorism is carefully planned, centrally directed and its object is to destroy all authority other than *Mau Mau*.”⁹⁷

In rationalizing the imposition of the state of emergency, the Earl of Munster argued that, action against these leaders was imperative. The ordinary process of the law is necessarily slow. In present conditions in Kenya, it would have allowed time and opportunity for those behind the outrages to organize widespread disturbances in what number of innocent people might have been killed. The declaration of the emergency has enabled the Kenya Government to detain the ringleader and their lieutenants about 130 all together.⁹⁸ Thus, the Kenyan Legislative Council was permitted to pass the Emergency Regulations of 1952. The regulations made possession of ammunition and firearms a capital offence. Moreover, the regulations also shifted the burden of proof of lawful authority or justification for possessing firearms or ammunitions to the accused person, contrary to settled criminal practice, where the burden of proof rests with the prosecution.

⁹⁶ Amnesty International Report, “Kenya: The Impact of ‘Anti-Terrorism’ Operations on Human Rights,” March 23, 2005, accessed August 14, 2012, <http://www.amnesty.org/en/library/info/AFR32/002/2005> .

⁹⁷Chomsky, N. *Rogue States: The Rule of Force in World Affairs*,(Boston: South End Press, 2000)

⁹⁸ House of Lords Hansard HL De6 (21 October 1952) vol 178 cc 789–91 3.23 pm, accessed January 20, 2012, <http://hansard.millbankssystems.com/lords/1952/oct/21/mau-mau-terrorism-in-kenya>.

The regulation declared *Mau Mau* a terrorist organization and criminalized membership thereof. These regulations created a specialized court, the Court of Emergency Assize, to hear and expedite cases against *Mau Mau* suspects. The court conducted 1211 trials between 1953 and 1958, in which 2609 suspects were tried on capital offences linked to the *Mau Mau* group. Among these cases 1574 were sentenced to hang.⁹⁹ For example, in Regina vs. Dedan Kimathi Wachiuri,¹⁰⁰ a defendant charged under the Emergency Regulations for being a member of the *Mau Mau* and possessing a firearm and ammunition (but no direct acts of terrorism or “conventional” criminal acts) was tried in the Court of Emergency Assize, presided over by Chief Justice K.K. O’Connor. He was convicted and sentenced to death.¹⁰¹

In light of these cases and considering that the *Mau Mau* revolution was an anticolonial revolt against the British who had stripped the natives of their land, the measures put in place were heavy-handed and violent, to say the least.¹⁰² The legislation completely abrogated the basic civil-liberty protections that form the heart of any criminal code in a democratic state. Indeed, the British considered national security to be more important than colonial civil liberties and thus unleashed both the military and the special courts, outside the normal channels of justice and civic responsibility, to deal with the so-called domestic terrorists. These measures set the tone for future government actions even after independence. Since the *Mau Mau* revolution, Kenya has changed, as has the nature of terrorism. For one thing, Kenya has been a target of both domestic and international terrorism.

Today, it must balance its counterterrorism measures with its obligations to protect the fundamental civil liberties of its citizens. That is, terrorism legislation is meant to address the crime of terror and mitigate the risks posed. However, these are but the initial pieces of the

⁹⁹ David A. , *Histories of the Hanged: The Dirty War in Kenya and the End of Empire*,(W W Norton and Company, New York, 2005), 151–170.

¹⁰⁰Kenya Law Review,(1956)e “ Criminal case no. 46 of 1956” KLR13, accessed July 12, 2012, http://www.kenyalaw.org/Downloads_FreeCases/EMERGENCY%20ASSIZE%20CRIMINAL%20CASE%20NO%20%2046%20OF%201956%20Final.pdf

¹⁰¹ Odula T., “War fears: Somalis in Kenya afraid of xenophobia”, Associated Press, 11 November 2011

¹⁰² Odula T., “War fears: Somalis in Kenya afraid of xenophobia”, Associated Press, 11 November 2011

puzzle; the evidence arising from terrorism is usually in the form of plotting the mission and thus difficult to detect and prevent. Legislation should therefore encompass measures that are both prophylactic and preemptive in nature because ordinary criminal justice system is not. These measures should be able to define the crime of terrorism, proscribe terror organizations, tackle terrorist finances and property, and stipulate law enforcement powers.¹⁰³

What's more, Kenya is bound by its obligations to and within the international community. UN Security Council Resolution 1373 of 2001 also requires states to criminalize offences related to the planning and preparation of terrorist acts and including the perpetrators themselves. The instruments obligate states to domestically criminalize the offenses, deal with perpetrators of terror under the approved law, and collaborate with other states in prosecuting or extradition.¹⁰⁴ The Republic of Kenya has so far acceded to all thirteen UN conventions under Resolution 1373 and, thus, must conform its domestic law accordingly. The key objects of the legislation are to: Provide an appropriate legal framework for the prevention, investigation and punishment of terrorism and terrorist financing and hence promote law and order and national security; Domesticate in part the various counterterrorism conventions to which Kenya is a signatory of including, the UNSC Resolutions and FATF recommendations and thereby enhance Kenya's satisfaction of its international obligations. In this framework of requirements for security and liberty, Kenya had undertaken two notable efforts in the name of counterterrorism legislation.

¹⁰³ Crisis Group observations; "Kenya: Security Forces Abusing Civilians Near Somalia Border", Human Rights Watch, 12 January 2012.

¹⁰⁴Kenya Law Review,(1956)eKLR13, "Criminal case no. 46 of 1956" accessed July 12, 2012, http://www.kenyalaw.org/Downloads_FreeCases/EMERGENCY%20ASSIZE%20CRIMINAL%20CASE%20NO%20%2046%20OF%201956%20Final.pdf

3.1 The Terrorism Bill Of 2003

In the beginning of the new millennium, the Republic of Kenya had just witnessed one of the most devastating terror attacks in the country. The 1998 U.S. embassy bombing was followed by the 2003 Kikambala bombing in Mombasa; these two incidences marked the dawn of international terrorism in Kenya. In a bid to criminalize this acts of terror, the then minister of justice and constitutional affairs tabled the Suppression of Terrorism Bill of 2003 (Supplement No. 38 of the Kenya Gazette) in Parliament.¹⁰⁵ The bill immediately stirred up controversy, as had the acts that prompted it. The government's reaction was heavy handed, in part because that was the mood of the day and in part because the 1952 act established the precedent that an iron fist meant the authorities were dealing with the situation. Ultimately, its flaws undid the bill though not so fatally as to preclude a successor law nearly a decade later.

The entire bill/act is based on the definition of terrorism. An imprecise definition distorts the whole legislation and renders major clauses as being controversial. First, what is and what is not an offence under the bill/act is highly dependent on the definition. Second, powerful foreign states can easily influence smaller states based on their interests if the offences are not clear.¹⁰⁶ Third, this is an area that most civil liberties are bound to be violated because domestic law enforcement agencies have powers bestowed upon them to deal with the crime of terrorism and therefore decide what falls under this category of crime. Declaring an organization or an individual as a terrorist entity is also dependent on a precise definition of terrorism. It is an area that is prone to abuse, especially if there is no control mechanisms stipulated beforehand. These powers of declaring an organization are usually executive powers.

Counterterrorism is conducted by law-enforcement officers. In Kenya, Police officers have been known to be highly corrupt. If these powers have no checks and balances then terrorism

¹⁰⁵ Kenya Gazette Supplement, The Suppression of Terrorism Bill, 2003, 38 Kenya Gazette Supplement Nairobi, (30 April 2003 at 443), Clause 3.

¹⁰⁶ Odula T., "War fears: Somalis in Kenya afraid of xenophobia", Associated Press, 11 November 2011.

will still flourish in the eyes of corrupt officers. These powers if unchecked also violate civil liberties. In the case of Kenya, certain human rights are enshrined in the constitution and cannot be taken away. Those with caveats have safeguards within the system and must therefore be handled with care.¹⁰⁷

3.2 The Prevention of Terrorism Act 2012

After nearly a decade of disagreement, the 2003 bill was mooted and a new bill was enacted as the Prevention of Terrorism Act 2012. This act was drafted with a careful eye toward the concerns raised by various stakeholders. As a consequence, the new act has ample safeguards for the rights of persons and entities affected in the process of combating terrorism at least in terms of those areas of contention raised by the 2003 bill.¹⁰⁸ That is, without question, the 2012 act marks an improvement in the civil-liberties sensibilities of Kenya's counterterrorism law. It is by no means a perfect document, but the progress is both welcome and vitally important to Kenya's citizens, who value both their national security and their human rights.

The Prevention of Terrorism Act 2012 was introduced in parliament by the acting minister of State for Provincial Administration and Internal Security, Mohamed Yusuf Haji on the 27 of July 2012,¹⁰⁹ following sporadic attacks by the Al Shabaab terror group. The act was drafted with regard to the concerns raised by various stakeholders regarding the 2003 bill. It addressed the following concerns: Broad definition of terrorism that also extended to political protests, mass action, industrial action and other forms of violence Declaration of an organization as a terrorist organization was without due process and open to abuse. Absence of redress mechanism for innocent persons and entities affected in the process of combating terrorism.

¹⁰⁷ Mohammed Guled, "Hounding Somalis hurts terror fight", The Star, 2 November 2011.

¹⁰⁸ Kenya Gazette Supplement, The Suppression of Terrorism Bill, 2003, 38 Kenya Gazette Supplement Nairobi, (30 April 2003 at 443), Clause 3.

¹⁰⁹ Haji Mohamed Yusuf . " Attacks by Al Shabaab" Kenya Gazette supplement No. 77 on the 27 of July 2012

Criminalization of innocent acts even where a person had no intention or motive of committing the impugned act. Reversal of the burden of proof in that the burden of proving innocence was placed on the suspect as opposed to the prosecution contrary to the constitutional principle on presumption of innocence and other principles of criminal liability. Wide and intrusive investigative powers of the law enforcement agencies. Religious profiling in that the bill appeared to target a section of the society by reference to the manner of dressing. Seizure and confiscation of property suspected to be used in terrorist acts was without due process and open to abuse. Where incommunicado detention of suspects beyond the constitutionally recognized timeframe within which one must be brought before a court of law.

The provisions on mutual legal assistance, extra-territorial application and Extradition of suspects gave the impression of that the bill was foreign driven. The act was passed and enacted into law in October 2012. It contains six parts, 52 sections and two schedules.¹¹⁰ Though the whole act is important for analysis, this thesis will focus on the most contentious issues.

¹¹⁰ Kenya Gazette Supplement, The Suppression of Terrorism Bill, 2003, 38 Kenya Gazette Supplement Nairobi, (30 April 2003 at 443), Clause 3.

3.2.1. Definition of Terrorism

The Prevention of Terrorism Act 2012, unlike the Suppression of Terrorism Bill 2003 seeks to define “acts of terrorism”¹¹¹ as opposed to defining “terrorism,” which is subject to many definitions. The law also applies to acts with far fewer theoretical or practical problems, particularly from a civil-rights perspective, than, say, to ideas, status, or inclinations. The definition has significant changes from its predecessor and the main areas that were affected are as follows: In the act, paragraph (a), sub-paragraph (vii), is more specific where it states: interferes with electronic systems resulting in the disruption of the provision of communication, financial, transport or other essential services.¹¹² In its predecessor it only mentions the disruption of an electronic system, which could be a small generator in the village used by a local Chief to address congregations. Paragraph (a) sub-paragraph (viii) has a provision on disruption of essential and emergency services that is not found in the 2003 definition.

Paragraph (b) sub-paragraph (iii); replaced one of the most controversial clauses of the bill that touched on religious, ideological, and ethnic causes. The act leaves out religious, ideological, and ethnic motives that are usually linked to terrorism. It simply means that regardless of the motive (religious, ethnic, ideological or political) as long as the perpetrators intend to cause harm as described in (a)(i)-(iv) and with the aim as tabulated in (b)(i)-(iii), the act will still be regarded as terrorism. After subsection (b), the 2012 act qualifies what should and should not be classified as a terror act and expressly excludes acts committed in pursuance of a protest, demonstration, or industrial action from being regarded as terrorist acts.

The Prevention of Terrorism Act 2012 is clear and precise as compared to its predecessor. Most of its sections beginning with definition of terms to disclosure of information relating to

¹¹¹ Prevention of terrorism act 2012 Clause 2 (1)(a) states that a ,” terrorist act” means an act or threat of action— (a) which—(i) involves the use of violence against a person; (ii) endangers the life of a person, other than the person committing the action; (iii) creates a serious risk to the health or safety of the public or a section of the public; (iv) results in serious damage to property; (v) involves the use of firearms or explosives;

¹¹² Kenya Gazette Supplement, The Suppression of Terrorism Bill, 2003, 38 Kenya Gazette Supplement Nairobi, (30 April 2003 at 443), Clause 3.

terrorist acts are important and relevant to the detection and prevention of terrorism. Further, the stiff penalties in all the offences reflect the gravity of those offences.¹¹³

Detection and prevention which are sought to be achieved by the act are very important in countering terrorism. Throughout the act, the provisions seek to instill measures to identify commencement of any terrorist activity and prosecution of individuals involved in terrorism at such stages in a bid to avert full exposure to the crime of terrorism.

Even though the act appears to be focused on the Kenyan context, provisions prosecution of individuals having committed terrorism against Kenyan citizens in other states or planned outside the country and committed inside Kenya makes the fight against terrorism global. This aspect serves to secure Kenyan citizens and property within the country, and outside, including other nationals in or outside Kenya. The act conforms to constitutional requirements as tabulated in the Bill of Rights. Other safeguards have also been catered for through the judicial oversight body and the independent police oversight authority.¹¹⁴

3.2.2. Terrorism Offences and Sentencing

A number of offences relating to financing, recruitment, training, and preparations to commit a terrorist attack are laid down in Part 3. The act provides for life imprisonment for persons who carry out terrorist acts that result in the death of another person—as opposed to death sentence as provided for in the penal code. The reasons for this discrepancy that terrorist are often ready to die and imposing a death sentence would unnecessarily grant them the status of a martyr. In addition, there may be challenges in extraditing suspects to stand trial in Kenya in the event the subjects are liable to death sentence, because most countries have a bar to extraditing suspects to countries that met out death penalties. A similar penalty awaits leaders of

¹¹³ Kenya Gazette Supplement, The Suppression of Terrorism Bill, 2003, 38 Kenya Gazette Supplement Nairobi, (30 April 2003 at 443), Clause 3.

¹¹⁴ Maguire, M., et al. *Handbook of Criminology*. (London: Oxford University Press 2002), 89.

terrorist groups who command their followers to cause pain, suffering, or death.¹¹⁵ Heavy jail terms await those who take part in this heinous crime. Anyone aiding the activities of terrorism, through financial support, collection of intelligence, or through any other action will be jailed for twenty years. No fines have been created as an alternative to imprisonment. For all offences under the Act, the mode of punishment is by imprisonment. The stiff sentences are action focused and commensurate with the debilitating consequences of terrorism, and are intended to serve as deterrence.

All the offences under the act require a person to have positive knowledge or a guilty mind on the support or facilitation of offences under the bill as opposed to inferred knowledge. The rights to presumption of innocence and fair trial are intact. Signally, in all the offences, the burden of proof is on the prosecution and not the suspect.¹¹⁶

3.2.3 Declared Terrorist Organizations (Specified Entity)

In the 2012 act “declared terrorist organizations” was changed to specified entities. An entity according to the act is defined as: “a person, group of persons, trust, partnership, fund or an unincorporated association or organization.”¹¹⁷ While a "specified entity" means an entity in respect of which an order under Section 3 has been made.” According to the act, Part II, Section 3, the Inspector General of Police can recommend to the Cabinet Secretary that an order be issued against certain entity/entities under the article.¹¹⁸ The Cabinet Secretary on his part if satisfied that there is reasonable grounds may go ahead and declare an entity, that is, to add it to the list of terrorist organizations.

In this case only two statutory thresholds must be overcome in order to declare an organization a specified entity, the Inspector General’s recommendations based on Section

¹¹⁵ Maguire, Mike, et al. Handbook of Criminology. (London: Oxford University Press 2002), 89.

¹¹⁶ Maguire, Mike, et al. Handbook of Criminology. (London: Oxford University Press 2002), 90

¹¹⁷ Porter, B. (August 07, 2003). Terrorism Splits Kenya Christians and Muslims.

Online <http://www.washtimes.com/upi-breaking/20030806-062435-7097r.htm>, accessed October 24, 2013

¹¹⁸ Odula, Tom, “War fears: Somalis in Kenya afraid of Xenophobia”, Associated Press, 11 November 2011.

3(1)(a) & (b) and the Cabinet Secretary's belief. The act does not give any discretionary factors that must be satisfied in order to proscribe an organization. (Unlike Kenya, the U.K. has five discretionary factors that the Secretary of State follows before proscribing an organization).¹¹⁹ Specifying an entity usually infringes on such human rights as freedom of expression and association as guaranteed by the constitution and the ICCPR.

According to the act, entities can be individuals; group of persons; trust; partnership; fund or unincorporated associations or organizations. Therefore, as per the definition of a terrorist act, a person intimidating members of the public can be declared a specified entity by the cabinet secretary, with the recommendation of the inspector general. Once an entity has been specified and gazetted, it loses the protection of the law and its activities are curtailed, even if the entity was established on legal ground and its activities are within the law.¹²⁰ If it engages or attempts to engage in any activity forming part of a terrorist act as provided by the 2012 act, it will lose its legality. Consequently, it will lose the protection of the law.

This means that all organizations or groups in the country that have been declared illegal by law are automatically specified entities. This declaration is based on their activities, which threatened national security, intimidation to general public or sections of the general public, use of violence or threat of action involving use of violence against people, among other activities. However, as required by Article 47 of the constitution, the affected entity has recourse to administrative remedy by applying to the inspector general for revocation of the order. An entity dissatisfied or aggrieved by the decision of the inspector general can seek redress to the high court for reevaluation. The verdict is not a permanent mark against the affected entity

¹¹⁹ Kenya Law Review,(1956)e “ Criminal case no. 46 of 1956” KLR13, accessed July 12, 2012,

http://www.kenyalaw.org/Downloads_FreeCases/EMERGENCY%20ASSIZE%20CRIMINAL%20CASE%20NO%20%2046%20OF%201956%20Final.pdf

¹²⁰ Schmid, A. P., Thesaurus and Glossary of early warning and conflict prevention terms. Forum on Early Warning and Early Response, The Old Truman Brewery, 91-95 Brick Lane London. 2000.

because the decision is subject to administrative review every twelve months. Even though the specified entity is to be accorded this opportunity, danger looms for specification of entities engaging in activities causing environmental pollution or intimidating the public. This Article will be a cause of legal tussles in a bid to overturn the ruling.

3.2.4. Law-enforcement Powers

In regard to seizure of property as stipulated in Section 43:(1) The Inspector-General may, where he has reasonable grounds to suspect that any property has been, or is being used for the purpose of committing an offence under this Act, seize that property;(2) The Inspector-General may exercise powers conferred under subsection (1), whether or not any proceedings have been instituted for an offence under this Act in relation to such property;(3) The Inspector-General shall as soon as is reasonably practicable but not later than twenty one days after seizing property.¹²¹

Under subsection (1), make an application, ex-parte and supported by an affidavit, to the High Court for an order to detain that property; (4) The High Court shall not determine an application under subsection (3) unless—(a) every person having an interest in the property has been given a reasonable opportunity to be heard; and (b) there are reasonable grounds to believe that the property has been, or is being used for the purpose of committing an offence under this Act; (5) Subject to subsection (6), an order for the detention of property made under subsection (4) shall be valid for a period of sixty days and may on-application, be extended by the High Court for such further period as may be necessary to enable, where applicable, the production of the property in Court in proceedings for an offence under this Act in respect of that property.(6)¹²² The High Court may release any property seized under this section if—(a) the Court no longer has reasonable grounds to suspect that the property has been or is being used

¹²¹ Prevention of terrorism Act 2012, section 43, sub sections 1, 2 and 3.

¹²² Prevention of Terrorism Act 2012, Section 43. Sub sections 4, 5 and 6

for the commission of an offence under this Act; or (b) no proceedings are instituted in the High Court for an offence under this Act in respect of that property within six months of the date of the detention order (7) and No civil or criminal proceedings shall lie against the Inspector-General for a seizure of property made in good faith under subsection (1).¹²³

The power given to the inspector general is only preservatory/temporary and does not extend to disposal or permanent deprivation of property. The inspector general is required within and not later than 21 days move to court to have the court either confirm or lift the seizure. After 21 days, only the high court can determine whether the property should still be detained by the inspector general. The court will not issue an order for detention unless: Every person who has an interest in property has been given an opportunity to be heard. It believes reasonable grounds that the property has been or is being used for related offences. Deprivation is not permanent, as the property may be released to the owner if there are no grounds for continued detention or no forfeiture proceedings are instituted within six months. Forfeiture to the state is subject to rigorous due process.¹²⁴

3.2.5 Powers of Police Officers

Section 31 states that: If a police officer may arrest a person where he has reasonable grounds to believe that such person has committed or is committing an offence under this Act. The powers of arrest that are vested in police officers under this article are subject to judicial oversight. The police are required to base all arrests on reasonable grounds, and the suspect is to be either taken to court or released within 24hours as provided by the Constitution. Any continued detention has to be sanction by the courts of law. An area of concern is that the police are authorized to arrest without a warrant so long as they have reasonable grounds that an individual is about to commit/is committing or has committed an offense. These are very wide

¹²³ Prevention of Terrorism Act 2012, Section 43.

¹²⁴ Hansard HL vol.613 col. 252 (16 May 2000),

powers that can also be used to arrest (legally) individuals who might never be charged under this act.¹²⁵

The officer need not have a particular offence in mind in order to arrest an individual; it's entirely based on his perception and whatever he considers a terrorist act at that moment's. Detention (Remand) and Right to be Released In the act, the issue of detention has been rectified in Section 32 which states that:(1) A person arrested under section 24 (referred to as the suspect)shall not be held for more than twenty four hours after his arrest unless - (a) the suspect is produced before a Court and the Court has ordered that the suspect be remanded in custody; orb) it is not reasonably practicable, having regard to the distance from the place where the suspect is held to the nearest Court, then on availability of a judge or magistrate, or force majeure to produce the suspect before a Court before the expiry of twenty four hours after the arrest of the suspect.¹²⁶

The section conforms to the 24-hour detention maximum given in the Constitution. Any other extension to the stipulated period requires court approval under several stringent conditions (detailed in Article 33)¹²⁷ and may not exceed a total of 90 days, inclusive of the initial period of arrest. The provision is in line with the Article 49 of the constitution on the rights of an arrested person. This provision is not a carte blanche for illegal detention of suspects. It has inbuilt safeguards such as: The officer must first produce the suspect before a court of law i.e. comply with the Constitution; In his application, the officer must state the reasons necessitating the continued holding of the suspect. A court shall not issue a remand order unless the suspect has been served with a copy of application. A court will only issue a remand order if there are compelling reasons for issuance of the same. The court orders cannot

¹²⁵ Prevention of Terrorism Act 2012, section 43.

¹²⁶ Levine M. & S. Newman, "Sacred Cows and the Changing Face of Discourse on Terrorism: Cranking it Up a Notch". *The International Journal of Human Rights*, 10(4) (2006) 359- 371

¹²⁷ The Constitution of Kenya 2010, article 33

be issued in perpetuity as the suspect can only be held for up to a maximum of 90days, cumulatively.

3.3 Terrorism Financing

Terrorism financing and money laundering are related but they have different elements. Money laundering presumes that there is a crime which generates proceeds that have to be disguised to conceal the illicit source while in the case of terrorist financing money would be from either legitimate or illegal sources. Terrorism financing was not covered by the Proceeds of Crime and Anti-Money Laundering Act 2009, because terrorism was not an offence under Kenyan laws.¹²⁸

However in the 2012 act, prohibition of terrorist financing is in line with the UNSC resolution 1566 (2004) and the 1999 Suppression of Financing of Terrorism Convention.¹²⁹ The imminent threat of being blacklisted by the Financial Action Task Force (FATF)/international community due to lack of legislation to criminalize terrorism and terrorist financing is over. Blacklisting would have placed the country in the same category as Iran and North Korea and would have had a devastating effect on the country's economy, especially the financial sector. The country's reputation in the international community would have been tarnished as it would have been viewed as a money laundering haven while transactions emanating from the country would have be entreated with suspicion and subjected to extra vigilance. Correspondent banking relationships and growth of Kenyan banks to other regions would also have been severely curtailed while foreign investments into the country would have been severely eroded.¹³⁰

¹²⁸ The Constitution of Kenya 2010, article 24.

¹²⁹ United Nations Security Council Resolution 1566n (2004)

¹³⁰ United Nations Security Council Resolution 1566n (2004)

3.4 Communications Interception

Section 36 allows police officers to intercept conversations subject to approval of the High Court. This provision is necessary because terrorism is a complex phenomenon often involving a chain of events and players at different stages.¹³¹ The provision is intended to make law enforcement agencies proactive as opposed to being reactive and hence pre-empt what the terrorists are planning. Interception is a law enforcement tool acceptable in most jurisdictions. However, the power to intercept is subject to administrative and judicial oversight in the Act and has the following inbuilt safeguards: Written approval of the Inspector General or Director of Public Prosecutions must first be obtained. Not every officer can exercise this power only an officer of or above the rank of chief inspector. It must be sanctioned by the court. It is limited only to the investigation of commission of offences under this act that is terror related offences and does not extend to other penal code offences. A court will not issue an interception order unless it is satisfied that the information sought relates to the commission of an offence under the act.

The administrative and judicial oversight is intended to prevent the abuse of interceptions by rogue officers. The independent police oversight authority is also expected to address any grievances that may be raised on complaints regarding the abuse by police officers. Also, the fear that one may be falsely implicated by business or political rivals has been addressed by providing for stiff penalties (up to 20 years imprisonment) for giving false statements to the police under section 20.¹³² The interception of communication includes phone tapping, internet monitoring, and house bagging among other methods. This has been argued to violate the right to privacy.

¹³¹ The Constitution of Kenya 2010, article 24, section 36

¹³² The Constitution of Kenya 2010, article 33, sec 20

3.5 Fundamental Rights in Relation to the Constitution of Kenya

As regards fundamental rights, the constitution is quite exhaustive and being the supreme law of the land, all other laws must be in tandem with the constitution to stand the test of constitutionalism. The rights and freedoms which have been limited in the 2012 Act have all passed the test of Article 24 of the Constitution of Kenya which states that ¹³³: (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—(a) the nature of the right or fundamental freedom; (b) the importance of the purpose of the limitation;(c) the nature and extent of the limitation; (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.¹³⁴

The Constitution provides that a suspect be presented before court in 24 hours and the 2012 Act has had to abide. A suspect can only be held beyond the 24 hours if there is a court order for remand or it is not practically possible to produce the suspect before the court. The Act has more safeguards through the Criminal Procedure Code because a suspect who has been released under Section 32(2)¹³⁵ of the 2012 act cannot be rearrested for the same offence unless there is a warrant of arrest in place and further evidence has come to light justifying the re-arrest.

3.6 Challenges in Terrorism Laws in Kenya

The flawed terrorism laws in Kenya have caused grave problems and even with improved legislation over the last few years, success has been minimal. For one, the definition

¹³³ The Constitution of Kenya 2010, article 24, sec 1, subsections a,b,c,d.

¹³⁴ The Constitution of Kenya 2010, article 33, sec 20

¹³⁵ Prevention of Terrorism Act 2012, section 32 (2)

of terrorism is vague and thus, able to be contested by many opponents. The Kenyan government defines terrorism as “anti-state violent activities undertaken by non-state entities which are motivated by religious goals”.¹³⁶ This definition neglects terrorism based on political, ideological, and criminal rationales and thus, places an unfair target on the minority religion in Kenya -Islam. Second, actual legislation has been very difficult to pass and put into practice, therefore the government has been operating without official and encompassing anti-terrorism laws and standards. The 2003 Suppression of Terrorism Bill did not make it into law after a public outcry over unconstitutionality, international human rights violations, and overt discrimination against Muslims. Two years later, the Anti-Terrorism Bill of 2006 was again brought before Parliament. This bill contained many of the same issues as its predecessor and was, therefore, not passed into law. Certain crimes committed by terrorists (such as murder) can be prosecuted in Kenyan courts; however, there has yet to exist a comprehensive anti-terrorism law insofar as one exists in other Western democracies.

The lack of this comprehensive legislation puts Kenyan law enforcement officials in positions where they perform questionable means and violate the human rights of many in the Muslim community. Intelligence officials have been accused numerous times of unlawfully detaining suspected terrorists for lengthy periods of time and torturing suspects in attempts to gain confessions and further intelligence.¹³⁷ As the proper prosecutorial infrastructure is hardly in place, Kenyan authorities frequently hand-off terrorism suspects to neighboring countries or the United States. In one instance – after the 2010 bombing in Kampala, Uganda – the Government of Kenya transferred 13 Kenyan citizens suspected of taking part in the attacks to Uganda. The Minister of Justice declared that the rendition was illegal,¹³⁸ although there was no

¹³⁶ Mogire, E. and Agade, K. M. (2011). Counter-terrorism in Kenya. *Journal of Contemporary African Studies*, 29(4), 473-491.

¹³⁷ Ploch, L.(2010). *Countering Terrorism in East Africa: The US Response*. Congressional Research Service, Library of Congress.

¹³⁸ Mogire, E. and Agade, K. M. (2011). Counter-terrorism in Kenya. *Journal of Contemporary African Studies*, 29(4), 473-491.

possibility of reversing the action that had already occurred. There are also several Kenyan nationals currently detained at Camp Delta, Guantanamo Bay. One such subject, Mohamed Abdulmalik, was informally suspected of participating in the 2002 Mombasa attacks.¹³⁹ He was never charged with a crime and no evidence was ever recovered after extensive interrogations and searches. Nevertheless, he was handed over to the American government because Kenya did not have the means to further investigate or prosecute the case.¹⁴⁰ This is not to say that Mohamed Abdulmalik is innocent. Rather, the untrained law enforcement personnel and lack of proper legislation in Kenya make the amount of counterterrorism aid flowing into the country largely irrelevant.

In the aftermath of the Westgate attack in Nairobi, on 20th September 2013, it is clear to academics and policy experts that Kenya is still heavily reliant on Western security resources. This is not surprising for a developing democracy still dealing with critical levels of poverty and corruption. Still, the counterterrorism units that were expanded and funded for the sole purpose of responding to acts of terrorism were quickly overwhelmed by an inability to work together.¹⁴¹ Kenyan President Uhuru Kenyatta activated the military – in direct contradiction to its usual role – essentially creating more confusion than would have occurred otherwise.¹⁴² This led to allegations that the success of the militants was a direct result of ineffective law enforcement and counterterrorism strategies, ultimately calling into question the extensive training and funding of recent years. After neutralizing the alleged hostage situation, stories began circulating that the Westgate mall was looted by KDF forces, using an opportunity of chaos to profit financially. Additionally, Kenya detained and later released numerous Kenyan muslims who were held under the country's existing anti-terrorism legislation and were

¹³⁹ Ali, A. (2009). *Radicalization Process in the Horn of Africa- Phases and Relevant Factors*, Berlin, ISPSW.

¹⁴⁰ Ali, A. (2009). *Radicalization Process in the Horn of Africa- Phases and Relevant Factors*, Berlin, ISPSW.

¹⁴¹ Ali, A. (2009). *Radicalization Process in the Horn of Africa- Phases and Relevant Factors*, Berlin, ISPSW.

¹⁴² Westgate Terrorist Attack: A Compilation of Statements September 23, 2013.

<http://kenyastockholm.com/2013/09/23/StateReport:Kenya.html>

subsequently released due to lack of evidence¹⁴³ To the extent that post-9/11 counterterrorism laws around the world allow for varying degrees of detention with little oversight, one can all but expect Kenyan authorities to use its power indiscriminately, albeit legally, to search for perpetrators, often at the expense of innocent civilians.

3.7 Impact of Terrorism in Kenya

The two terrorist attacks in the country in 1998 and 2002 have had many negative economic, social, political and geopolitical effects on the country. These effects include the decline of the country's tourism industry and the attendant loss of jobs and foreign exchange, growing tension between Muslims and Christians, radicalization of the country's Muslims, rising anti-western sentiments in the Muslim and general population, the passage of unpopular anti-terrorist measures that threaten Kenyans' human, civil and political rights besides eroding the country's sovereignty, and rising tension between Kenya and the West. These effects are discussed below.

Economic effects of Kenya's terrorist attacks are most noticeable in the tourism sector. The sector that represents 15% of foreign exchange earnings and 12% of GDP, constitutes an eighth of the economy¹⁴⁴ and employs some 500,000 people¹⁴⁵ suffered a major slump after the terrorist attacks due to lower tourist flows from key European markets and the attendant trip cancellations and drop in hotel bookings. Thus while the country received over 1 million tourists in 1997, the attacks scared away many tourists causing a 25% decline in the number of tourists in 1998.¹⁴⁶ In the 1999-2000 periods the number of tourist arrivals rose slowly before

¹⁴³Westgate Terrorist Attack: A Compilation of Statements September 23, 2013.

<http://kenyastockholm.com/2013/09/23/StateReport:Kenya.html>

¹⁴⁴ Maclean, W. (2003). Bombers Push Kenya's Coast Deeper into Poverty, The Financial Standard, August 26 - 1 September, 2003, Available online at <http://www.eastandard.net/>, accessed August 26, 2013.

¹⁴⁵ Maclean, W. (2003). Bombers Push Kenya's Coast Deeper into Poverty, The Financial Standard, August 26 - 1 September, 2003, Available online at <http://www.eastandard.net/>, accessed August 26, 2013.

¹⁴⁶ Kenya, Republic of, 2003. The Terrorism Suppression Bill (draft), in Kenya Gazette Supplement No. 38 (Bills No. 15), 2003. Nairobi: Government Printers., 186

further declines occurred following the September 2001 attacks in the US and the second terrorist attack in Kenya in 2002.¹⁴⁷ The drop in the number of tourists to Kenya inevitably resulted in the decline of hotel bookings and occupancy. In mid-2003, hotel occupancy, normally at about 40 to 45 per cent at that time of the year ... slumped to an average of about 20 to 30 per cent in the shoreline tourist hotels, resulting in a substantial drop in tourism sector earnings and jobs.¹⁴⁸ In mid-2003, the government estimated that, Kenya was losing \$14 million (about Sh1 billion) a week in tourism earnings and tax revenues due to the untimely US and British warnings of a looming terrorist attack in Kenya.¹⁴⁹ Moreover, slump in the tourism sector increased the size of the government's budget deficit and worsened the country's balance of trade since tourism is a major source of foreign currency. To cushion herself against these massive losses, the country sought \$400 million (Sh30 billion) worth of "emergency" assistance from the US in that year.¹⁵⁰

Sociopolitical effects are also evident in Kenya. The terror attacks have also produced profound sociopolitical effects in Kenya including, the loss and disruption of lives, growing tension between Muslims and Christians, birth of a nascent Anti-Arab/Muslim rightwing movement, radicalization of the country's Muslims, harassment of Kenyans by the security forces, further erosion of the country's sovereignty and, rising anti-western sentiments. These effects are briefly examined below.

Loss and disruption of lives is a major immediate effect evident at the cost of terrorism. Collectively, the 1998 and 2002 terrorist attacks in Kenya killed 228 people and injured 4,080

¹⁴⁷ Kenya, Republic of, 2003. The Terrorism Suppression Bill (draft), in Kenya Gazette Supplement No. 38 (Bills No. 15), 2003. Nairobi: Government Printers, 186

¹⁴⁸ Maclean, W. (2003). Bombers Push Kenya's Coast Deeper into Poverty, *The Financial Standard*, August 26 - 1 September, 2003, Available online at <http://www.eastandard.net/>, accessed August 26, 2013.

¹⁴⁹ Kelley, K. J. and Munaita, P. (2004). US: Al Qaeda Threat Greatest in East Africa, *The EastAfrican on the Web*, Monday, April 12, 2004, Online at <http://www.nationaudio.com/>, Accessed April 12, 2014.

¹⁵⁰ Kelley, K. J. and Munaita, P. (2004). US: Al Qaeda Threat Greatest in East Africa, *The East African on the Web*, Monday, April 12, 2004, Online at <http://www.nationaudio.com/>, Accessed May 12, 2008.

others, mostly Kenyans.¹⁵¹ Many of these victims were in the prime of their life and were, therefore, the breadwinners of untold numbers of people. In short, the country lost many workers, husbands, wives, and friends besides being saddled with the cost of taking care of the injured, maimed and orphaned.

There has also been growing tension between Muslims and Christians. Kenya has enjoyed relative Muslim-Christian religious harmony for much of its history because the country's secular constitution guarantees freedom of religion and accords equal protection to adherents of the country's diverse religions.¹⁵² Nevertheless, the Christian majority dominates most aspects of the country's social, political and, to a lesser extent, economic life. But after the 1998 terrorist attacks by purported Islamic extremists, relations between the two groups began to sour¹⁵³ with many Christians blaming local Muslims for abetting the attacks.¹⁵⁴ For Muslims, these accusations add insult to injury because many of them believe that they are disadvantaged in their access to jobs and other socioeconomic opportunities. Whether rightly or wrongly, Muslim perception that they are under siege is beginning to radicalize them resulting in their increasing demand for a federal system of government that could make it easier for them to introduce Sharia (Islamic) law in their regions as they have done in Northern Nigeria.¹⁵⁵ Actually, Islamic law is already in use in limited cases in predominantly Muslim areas of Kenya such as Northeastern Province.¹⁵⁶

¹⁵¹ Ali, A. (2009). *Radicalization Process in the Horn of Africa- Phases and Relevant Factors*, Berlin, ISPSW.

¹⁵² Mulama, J. (2004). Constitutional Endorsement of Muslim Courts Provokes Anger. Online at http://www.axisoflogic.com/artman/publish/printer_5623.shtml, accessed June 8, 2009

¹⁵³ Porter, B. (August 07, 2003). Terrorism Splits Kenya Christians and Muslims. Online <http://www.washtimes.com/upi-breaking/20030806-062435-7097r.htm>, accessed October 24, 2013

¹⁵⁴ Mwaura, P. (2004). Islamophobia on the rise everywhere, Daily Nation of the web, Friday, January 23, 2004, online at <http://www.nationaudio.com/>, accessed July 7, 2014.

¹⁵⁵ Mulama, J. (2004). Constitutional Endorsement of Muslim Courts Provokes Anger. Online at http://www.axisoflogic.com/artman/publish/printer_5623.shtml, accessed June 8, 2007

¹⁵⁶ Weiss, T. (2004). Chapter Five: Northeastern Province, in *Guns in the Borderlands, Reducing the Demand for Small Arms*, Monograph No 95, January 2004, Online at <http://www.iss.co.za/pubs/Monographs/No95/Chap5.pdf>, accessed June 9, 2014.

The War on Terrorism: A threat to citizens' rights and Kenya's sovereignty? As in other countries such as the US, the —war on terrorismll has become a major threat to human, civil and political rights in Kenya as the security forces have acquired unprecedented powers and tools to combat terrorism. Since the attacks, Kenya's security forces have been accused of using heavy-handed interrogation tactics on terrorist detainees and body searches are becoming more common especially on routes to airports¹⁵⁷. Although there have been some protests against the new security measures, they have not been sustained enough to produce change. Most Kenyans appear tacitly supportive of the measures unaware that they could be victimized by them. Many have subconsciously mortgaged liberty for security.

3.8 Conclusion

The Republic of Kenya has progressed in its efforts to legislate terrorism from an oppressive colonial regime that installed laws without consultation to a democratic regime that seeks consultation and views from its citizens. The initial laws were heavy handed and had one aim of crushing the *Mau Mau* revolution. The legislation of 2003 had its own flaws, which encouraged the creation of a two-tier justice system whereby constitutional safeguards were completely negated. It sought to introduce a distinct system that only caters for terrorism offences such as arrests, detention, prosecution, and seizure of property and cash. The bill violated the rights of the individual and was inconsistent with international human rights norms. The 2012 Act on the other hand sought to fix these anomalies but has somehow left others undone. It is however a much improved legislation as compared to its predecessor more so because it addresses civil liberty concerns. The Act has also balanced national security and civil liberties where certain

¹⁵⁷ Maclean, W. (2003). Bombers Push Kenya's Coast Deeper into Poverty, *The Financial Standard*, August 26 - 1 September, 2003, Available online at <http://www.eastandard.net/>, accessed August 26, 2013.

safeguards have been put in place to minimize the damage while protecting the people of Kenya.

This chapter has demonstrated that the process of achieving acceptable terrorism legislation in a democratic society is slow. Even though a rise in security threats act as a catalyst in speeding up the process, a compromise or a tradeoff must be achieved. At the moment, this balance has been achieved in Kenya. Kenyans seem to have accepted that in order to achieve a certain level of security; a certain amount of civil liberties must be compromised. The government on the other hand must show that safeguards are in place to cover the little flaws that still seem to violate civil liberties. It is however a matter of time whether the democratic principles that Kenya is trying to instill will hold. To implement this legislation, the criminal justice system has to be corruption free and adhere to the laid down regulations. All in all the legislation makes Kenya a much safer place than before.

CHAPTER FOUR

IMPACT OF TERRORISM

4.1 Introduction

Terrorism discourse is plagued by confusion and misrepresentation. Definitions number in the hundreds. Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal, or political reasons, whereby in contrast to assassination the direct targets of violence are not the main targets.¹⁵⁸ The human victims of violence are chosen selectively as symbolic targets from a target population, and serve as message the hard targets like high ranking government officials. Threat and violence based communication processes between terrorist, victims and main targets are used to manipulate the main target (audiences), turning it into a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought.¹⁵⁹

Although accounting for most violence, state terrorism is widely presented as justified, while opponents are the forces of disorder and, thus, are illegitimate.¹⁶⁰ Discrepancies exist between the developed and developing countries as the developed nations do as they please.¹⁶¹ Those leading guerilla and insurgency are the terrorists or freedom fighters according to whose interests they serve; for example, the United States endorsed, mobilized, financed, and armed militant groups abroad, including some they now target in their “war on terror”. The term terrorism provides a means to stigmatize and delegitimize the actions of enemies. Typically, terrorism is associated with deadly attacks on civilians, such as the Friday, August 7, 1998

¹⁵⁸United Nations Office on Drugs and Crime, n.d. Definitions of terrorism. Available from: http://web.archive.org/web/20070129121539/http://www.unodc.org/unodc/terrorism_definitions.html.

¹⁵⁹Schmid, A. (1988). Political terrorism. Amsterdam: North Holland.

¹⁶⁰Primoratz, I. (2002). State terrorism. In: T. Coady and M. O’Keefe, eds. Terrorism and justice. Melbourne: Melbourne University Press, 31–42.

Chomsky, N, (2008), The most wanted list. TomDispatch. Available from: <http://www.tomdispatch.com/post/174899> [Accessed 26 February 2008].¹⁶¹

bombing at the US embassies in Nairobi, Kenya and Dar-es-Salaam¹⁶². Schmid¹⁶³ while emphasizing terrorism's communicative aspect cites murderous violence as its "central idea: Kill one to frighten ten thousand". However, the term is increasingly misapplied to various other actions far removed from violent mass-casualty attacks. This ever-broadening expansion of "terrorism" is encouraged in propaganda campaigns by corporations that profit from the abuses their opponents decry.

4.2 Al-Shabaab's and Al-Qaeda's Recruitment and Propaganda Strategies

In a bid to understand the impact and the operations of terror groups, this research paper finds it important to understand the recruitment and operational strategies of the terror group. These help in counterterrorism and de-radicalization efforts that in the end prevent future impact by terror groups, or reduce the magnitude of the impact. Like other activities, propaganda and recruitment are enhanced by the network's structure. Decentralization allows for superior penetration into other social nets, to take advantage of opportunities that arise suddenly, and intercept potential recruits who meet Al-Shabaab's internal standards of security and confidence. The net has not arisen spontaneously, but its earlier development had not been planned either. It spreads constantly and in a dispersed fashion. The Jihad discourse transcends personal charisma. It is an ideology with deep religious anchorage and an attractive 'anti system' that will survive Al-Shabaab's leaders.

The research concludes that indeed Al-Shabaab's actions are facilitated enormously by the previous existence of a deep-rooted sense of rancor and hostility toward the West in certain parts of the world. With regards to the perception and psychology of the masses, Al-Shabaab has resorted to a simple but terribly effective mechanism of mobilization: to spur on frustration

¹⁶²Odhiambo, E.O.S., Mwenesi, C.S., & Maito T. L. (2010). Kenya Military Medical Personnel and Trauma Care to the victims of Friday, August 7, 1998 Terrorist Attack. Workshop Proceedings on the Role of Uniformed Forces in Disaster Management. Masinde Muliro University Press.

¹⁶³Schmid, A. (1988). Political Terrorism. Amsterdam: North Holland.

and provoke the desire of revenge. Al-Shabaab's use of language offers an attractive justification for millions of people who need to find the ultimate cause of their misfortune and stagnated future.¹⁶⁴ The success of Al-Shabaab's propaganda resides through the radicalized interpretation of the Koran, and the simplification of reasons that govern the international system, Al-Shabaab has been able to elaborate a simple, but attractive statement of the role and duty of every Muslim, the reasons for his unhappiness, and the way to overcome them.¹⁶⁵ Al-Shabaab thus applies an excessively subjective cause-effect logic, which strengthens subculture morale. With guerilla warfare, the Americans were defeated in Vietnam and the Soviets were defeated in Afghanistan. This is the method that expelled the direct Crusader colonialism from most of the Muslim lands, with Algeria the most well known. Al-Shabaab claimed through their twitter account that they had blown up a Kenyan armored personnel carrier between Taabto and Dhoombley, killing six Kenyan soldiers and injured 10 others. However the Kenyan government dismissed claims by the Somali militants that they had blown up KDF armored personal carrier and killed six Kenyan soldiers.¹⁶⁶

Al-Shabaab is perceived more clearly that, far from being the simple result of a backward and archaic fanaticism, it is a product of the included and immersed world of the information revolution. Al-Shabaab is conscious that manipulation, frustration, and indignation are not the only personal experiences extracted, but that these can be generated across emotive and sentimental resources recounted to a third party. Personal accounts, telecasts, photos, and an entire array of electronic means are capable of ensuring that individuals born and educated in Western societies, with no direct suffering themselves, nevertheless experience and empathize with the desperation of others. This skillful management of propaganda and the means that the information provides gives rise to deep transnational solidarities and nets of identity from which

¹⁶⁴Altheide, D. (2002). *Creating fear*. New York: Aldine De Gruyter.

¹⁶⁵Jowett, G. S., & O'Donnell, V. (1992). *Propaganda and Persuasion*. 2nd ed. Sage

¹⁶⁶NAIROBI, Dec. 30, Xinhua, (2011). <http://beegeagle.wordpress.com/2011/12/31/kenyan-troops-kill-al-shabaab-militants-in-southern-somalia/>

the terrorists obtain considerable yield.¹⁶⁷ Any resulting xenophobic event or violence against Muslim minorities constitutes a most valuable resource in its propaganda arsenal. The same can be said about various types of information that promote mutual distrust, for example, conspiracy theories that blame the Kenya intelligence services and the economic ambitions of Kenya leaders for conflicts, terrorist attempts, and evil that, in general, actually stem from the international struggle against the terrorism. Al-Shabaab uses the technological advances that, to a great extent, produced the civilization that it tries to defeat. The Internet plays a pivotal role in its information strategy, even within the terrorist organization itself.¹⁶⁸

The appearance of power and the outreach of the Jihad message achieved through the Internet is reinforced as a consequence of links that include the related Web pages dedicated to Al-Shabaab. Any Web navigator interested in the Palestinian cause is able to easily connect to pages that gather the messages of the Islamic militants of Kashmir and the Afghan Taliban. All this transmits the idea of a global and linked struggle as Al-Shabaab and Al-Qaeda tries to mobilize to new candidates against the alleged enemies of Islam.

The communicative action of Al-Shabaab terrorism toward Kenya tends to spread fear, distort normal modes of behavior, generate insecurity, and stir hostility and distrust toward Islam. These are the most evident effects of its violent actions. But several subtle and dangerous others must be emphasized: to undermine the support that a population gives to leaders; to sow doubt on the capacity of the government to protect its population; and, especially, to spread the feeling of self-guilt among those receiving terrorist assaults. Therefore, there is a double objective: to terrify and de-legitimize.¹⁶⁹

¹⁶⁷Alisha, R. (2009). Al-Shabab Militants Divided over Tactics, Foreign Control, Voice of America News, December 22.

¹⁶⁸Wine, M. (1999). "Islamist Organizations on the Internet" Terrorism and Political Violence, Vol. 11, No. 1, pp. 123–132.

¹⁶⁹Taylor, P.M. (2002). "Perception Management and the "War" on International Terrorism", Journal of Information Warfare 1(3): 16–29.

Al-Shabaab uses various media in order to proliferate their propaganda. Besides traditional radio, the internet is the most heavily utilized by Al-Shabaab and other militant Islamic groups such as Al Qaeda because it is the easiest and most cost-effective way to reach a large audience. As the internet is especially popular with today's youth, organizations such as Al-Shabaab are using online forums and chat rooms in order to recruit young followers to their cause. Al-Shabaab's official website, which has since been taken-down, featured posts, videos and official statements in English, Arabic and Somali, as well as online classrooms to educate followers.¹⁷⁰

Prior to its expulsion from Mogadishu in mid-2011, Al-Shabaab had also launched the Al-Kataib propaganda television station the year before. The channel's pilot program aired the confessions of Ahmed Kisi, an alleged CIA spy, who had been executed earlier in the week.¹⁷¹ In addition, Al-Shabaab is also using music to influence and appeal to their young followers. According to Robin Wright, by 2010, almost eight out of every ten soldiers in Somalia's many rebel forces were children, which are especially influenced and susceptible messages conveyed to modern, western-themed music.¹⁷² One of Al-Shabaab's foreign-born leaders, American Omar Hammami aka Abu Mansoor Al-Amriki, gained notoriety after an April 2009 video of him rapping about jihad.¹⁷³ Hammami's most recent song, "Send Me a Cruise", debuted online.¹⁷⁴

4.3 Kenya Government Counter-Propaganda Strategies

Any analysis into the strategy used to diffuse Al-Shabaab's ideological content must arise from the fact that the propaganda is multidirectional. Al-Shabaab's future depends not only on

¹⁷⁰Ploch, L, (2011), "Countering Terrorism in East Africa: The U.S. Response". Congressional Research Service. Retrieved November 28, 2011.

¹⁷¹Agbibo, D.E. (2013). "Al-Shabab, the Global Jihad, and Terrorism without Borders." Aljazeera, September 24. Available at: <http://www.aljazeera.com/indepth/opinion/2013/09/Al-Shabab-global-jihad-terroris-201392484238627603.html>. (Accessed 26 December 2013).

¹⁷²Wright, R Anti-Defamation League. (2011) "Al Shabaab Launches Apparent Twitter Campaign" December 20, 2011. (2011). *Rock the Casbah : rage and rebellion across the Islamic world* (1st Simon & Schuster hardcover ed.). New York: Simon & Schuster. p. 136. ISBN 978-1-4391-0316-6.

¹⁷³Gartenstein-Ross, D. (2011). *Bin Laden's legacy : Why We're Still Losing The War on Terror*. (Hoboken, NJ: Wiley.), 149

¹⁷⁴Omar, H, (2011), "A Song "Send Me A Cruise"". *NEFA Foundation*. New York. November 18, 2011

its aptitude to support an operative nucleus capable of realizing ostentatious assaults, and its ability to obtain funding and secure recruits. Eroding and neutralizing this image of a mighty fortress must be the ultimate goal of any action designed to offset Al- Shabaab's propaganda campaign.

The GoK has had worked on turning Al-Shabaab's violent discourse into an unjustifiable discourse. The challenge is the uprooting of opinion that terrorism constitutes an acceptable way, independent of the legitimacy of the ends it seeks. Seating within the Muslim populations the idea that terrorist violence delegitimizes those that employ it can help to erode the supposed popular representation that terrorists always claim. A global rejection must be achieved in the long term to this type of violence

In some countries that have suffered for years, for example, Spain, terrorism is defined in legislation and punishable by a jail sentence. This strategy can be transplanted to other countries. Working against the apologists of terrorism does not hit against the public's general freedom of expression because the expression of support for the murder of innocents is a way of endorsing those who commit such actions.¹⁷⁵ In addition, in an interconnected world, without real restrictions to the flow of information, tackling this dilemma solely within a national arena is pointless.

The mass media should be activated to spread an anti-terrorist message, as was done during the Cold War with the anti-Soviet Western radio listened to on the other side of the Berlin wall. In the current case, not perceiving these means as foreign agents of manipulation is difficult. Phenomenal successes like Al-Jazeera show the need to detract attention from these mediums, and take part in expressing opposing opinions and facilitating contrary information; otherwise the mass media become easy prey to systematic terrorist manipulation.¹⁷⁶

¹⁷⁵Kamalipour, Y. & Snow, N., eds., (2004). War, media, and propaganda. Lanham, MD: Rowman and Littlefield.

¹⁷⁶Hall, L. (2006). Capers in the churchyard. Darien, CT: Nectar Bat Press.

Any informative action that tries to offset the effects of terrorist imagery must use the mobilizing power that symbols possess. In this struggle to erode the image of terrorists“ being a fortress, such actions as the loud and clear advertising of the detentions of the terrorist, the publication of their confessions and of any act that shows their lack of loyalty to the organization and to their colleagues, and any other measures that cast a mistrust over Al-Shabaab“s heroic image of fallen or captured members, can prove enormously helpful.¹⁷⁷ Another strategy is discrediting those who spread rumors.

Rumor and misinformation occupy an important place in the terrorist network“s propaganda strategy. Through them, Al-Shabaab manages to question the legitimacy and the honor of its opponents, without the need to justify the truth of its accusations. Rumors can consist of all kinds of delirious statements, conspiracy theories, and odd suggestions. Though the public first grants only limited credibility to this type of statements, the long-term effect supposes an internalization of doubt about all those involved: the political and security leaders, the security agencies, and the terrorists. The often secret nature of the authorities, the frequent lack of coordination, and the damage of the allegations, allow the ‘fire to spread. Neutralization of the pernicious effects of these statements can perhaps be achieved through the creation of an agency or foundation that devotes itself exclusively to denying, in an informed manner, the misinformation, and to providing clear and forceful proof to end rumors. Keeping its composition neutral, by including academics and professionals outside the political or military arenas, would contribute to its credibility and efficiency.¹⁷⁸ Resorting to the emotions terrorist propaganda relies on a wide use of the emotional impact of certain visual material. Without any type of available or effective restriction, crude images of corpses and mutilations can be found on terrorist-sponsored sparse Web pages, including disabled persons and injured men portrayed

¹⁷⁷Manjoo, F, (2004), “A Picture is no Longer Worth a Thousand Words”, 22 April; at: archive.salon.com/tech/feature/2004/04/22/doctored_photos/index_np.html

¹⁷⁸Dinan, W., & Miller, D., eds. (2007). *Thinker, Faker, Spinner, Spy*. London: Pluto.

as supposed evidence of the results of Kenya Defence Forces (KDF) military action. Terrorists are conscious that appealing to the emotions is one of the most rapid and effective ways of modifying public and personal attitudes, and they do not hesitate to resort to any type of material that they consider to be useful to this end. Without committing to excesses, and always respecting ethical criteria, the Kenya counter-informative strategy cannot ignore the emotive perspective of this information war. Illustrating the results of terrorist action, through actual images of its victims and the resulting human tragedy, is one of the most powerful ways of delegitimizing terrorists. Together with respect due to the victims and their families, the exhibition of certain images can constitute a revolt against terrorists much more powerful than a long series of official communique's regarding penalty. Indeed, concealing the real results of terror only helps to generate an idealized stereotype removed from what terrorism actually is.¹⁷⁹

4.4 Impact of Terrorism in Kenya

On 21 September 2013 Kenya recorded its deadliest terrorist incident since the 1998 bombing of the US embassy in Nairobi. Over ninety people lost their lives when a group of masked gunmen stormed Kenya's high-end Westgate Mall in Nairobi and randomly opened fire on weekend shoppers. Al-Shabab, a Somali-based Islamist group, has since claimed responsibility for the horrific attack.¹⁸⁰ There are different questions that emerged such as why Kenya was targeted? How to explain the transformation of Al-Shabab from a mainly nationalist organisation with a localised agenda into a movement that conducts the kind of coordinated and sophisticated attacks recently witnessed at the Westgate mall? Drawing on three key questions

¹⁷⁹Andrew, H. (2009). Meeting Somalia's Al-Shabaab, BBC news, July 3

¹⁸⁰Agbibo, D.E. (2013). "Al-Shabab, the Global Jihad, and Terrorism without Borders." Aljazeera, September 24. Available at: <http://www.aljazeera.com/indepth/opinion/2013/09/Al-Shabab-global-jihad-terroris-201392484238627603.html>. (Accessed 26 December 2013)

on religious terrorism, and on James Piazza's¹⁸¹ distinction between 'universal/abstract' groups and 'strategic' groups, this study concurs that to understand the transformation of Al-Shabab, one has to consider how the group came to be incorporated within a global jihadist movement by Al-Qaeda in the Islamic Maghreb. Furthermore, this paper finds that the Westgate attack confirms Al-Shabab's willingness and increased operational capability to hurt targets outside its traditional Somalian base. This suggests that the group is moving away from insurgent activity in Somalia itself and has mutated as a transnational terrorist group, with grave implications for international security and regional stability.¹⁸²

At least ninety people were confirmed dead, 175 others reported injured, and several others held hostage, when a group of Islamists fighters stormed Kenya's high-end Westgate mall in Nairobi and randomly opened fire on weekend shoppers. The Islamist fighters reportedly shouted in the local Swahili that Muslims would be allowed to leave while all others were subjected to their bloodletting. At least 18 foreigners were killed in the horrific attack, including citizens from Britain, France, Canada, the Netherlands, New Zealand, Australia, Peru, India, Ghana, South Africa, and China.¹⁸³ The Somali-based Islamist group Harakat Al-Shabab al-Mujahideen (aka Al-Shabab, aka the youth, aka mujahidin Al-Shabab Movement, aka Mujahideen Youth Movement, aka HizbulShabaab, aka Hisb'ulShabaab, aka Youth Wing) have claimed responsibility for the attack through its now closed Twitter account.

In one tweet, Al-Shabab announced: 'The Mujahideen entered Westgate Mall today at around noon and are still inside the mall, fighting the Kenyan Kuffar inside their own turf.' In another tweet they stated their refusal to negotiate and later on said, 'For long we have waged war against the Kenyans in our land, now its time to shift the battleground and take the war to

¹⁸¹James A. Piazza, "Is Islamist Terrorism More Dangerous?: An Empirical Study of Group Ideology, Organisation, and Group Structure," *Terrorism and Political Violence* 21 (2009): 71-77.

¹⁸²Agbibo, D.E (2013a). "Al-Shabab's Dangerous Affair with Al-Qaeda." *Journal of Social, Political and Economic Studies* 38(4): 425-440.

¹⁸³Mamdani, M. (2013). "Senseless and (Sensible) Violence: Mourning the Dead at Westgate Mall." *Aljazeera*, September 26. Available at <http://www.aljazeera.com/indepth/opinion/2013/09/senseless-sensible-violence-mourning-dead-at-westgate-mall-201392563253438882.html> (Accessed 27 September 2013).

their land'.¹⁸⁴ Al-Shabab has recently released the names and nationalities of the Islamist fighters who attacked the Westgate mall in Nairobi. In an interview with Al Jazeera, a spokesman for Al-Shabab stated that the Westgate mall was chosen as the central target because it is frequented by Kenyan elites, diplomats, and tourists, specifically Americans and Israelis .

The above tweets suggest that Al-Shabab's Westgate attack was retribution for the invasion of Somalia by Kenyan Defence Forces (KDF) – labelled as an 'occupation force' by Al-Shabab – in October 2011 following attacks by alleged Al-Shabab fighters in northern Kenya near the Somali border.¹⁸⁵ Kenya's operations resulted in Al-Shabab's loss of the strategic seaport of Kismayo, from which it had derived substantial revenues through the international charcoal trade. In July 2012, the KDF in southern Somalia, numbering about 4,000, were incorporated into the African Union Mission in Somalia (AMISOM) force of over 17,000 soldiers with a UN mandate to protect the weak Transitional Federal Government (TFG).¹⁸⁶

Apart from Kenya's political and military support for the TFG, there are also a number of political reasons why Kenya was Al-Shabab's primary target. This includes '(Kenya's) support for US backed counter-terrorism efforts (especially since the bombing of the US embassy in the country as well as in Tanzania in 1998) that especially target Somalis and Somalia, and the perception that the country is a Christian state (and) a frontline state against the spread of Islamist extremism in the Horn of Africa'.¹⁸⁷ In addition, Al-Shabab claims, not without reason, that Kenya has been involved in the recruitment and training of Kenya Somali and Somali youths on behalf of the TFG and its army. Indeed, the UN Monitoring Group on

¹⁸⁴Blair, Edmund and Lough, Richard. (2013). "Islamists claim Gun Attack on Nairobi Mall." Reuters, September 21. Available at: <http://www.reuters.com/article/2013/09/21/us-kenya-attack-idUSBRE98K03V20130921> (Accessed 25 September 2013).

¹⁸⁵Hansen, S.J. (2013). *Al-Shabab in Somalia: The History and Ideology of a Militant Islamist Group, 2005-2012*. Oxford: Oxford University Press.

¹⁸⁶Kay, N. (2013). "Press Briefing by Special Representative of the Secretary-General for Somalia." September 24. Geneva: U.N. Information service

¹⁸⁷Mwangi, O.G. (2012). "State Collapse, Al-Shabab, Islamism, and Legitimacy in Somalia." *Politics, Religion and Ideology* 13(4): 513-527

Somalia pointed out that Kenya has failed to meet its obligations under the UN resolution 1772(2007) regarding the disclosure of support to Somalia's security sector. The Kenyan government itself have publicly acknowledged that it accepted TFG's request to train government police officers, but initially denied knowledge of any other type of training¹⁸⁸.

4.4.1 The Economic Ramifications of Terrorism

Modern terrorism also has a high economic price. In examining the economic effects of mass-casualty terror attacks, one should differentiate between two types of effects – direct and indirect. Direct economic effects include, inter alia, compensation for direct damage caused by an attack, including damage to property or from personal injuries.¹⁸⁹

This cost is likely to be paid by insurance companies or directly by the government through compensation payments or a national insurance system, as is customary in Israel. In addition to the direct damage, however, an attack usually causes wide-scale collateral damage that can sometimes be greater than the direct damage. This damage is generally the result of the fear and anxiety that terror attacks create among the population. The “personalization” process, which causes people to feel that there is a good chance they will be the next victims of a terrorist attack, naturally influences their behavior. People may avoid traveling abroad for a certain period of time, in particular to those countries where an attack has occurred. They may also avoid air travel in general or congregating in tourist sites. One's local surroundings are perceived to be more familiar and therefore safer. Long trips may seem fraught with unnecessary danger. Such emotional effects influence world tourism and air travel. These two industries were badly hit following the 9/11 attacks and those that occurred thereafter. In fact, they almost caused the financial collapse of several airlines and resulted in heavy economic damage to countries where tourism is considered a central source of income.

¹⁸⁸Mwangi, O.G. (2012). “State Collapse, Al-Shabab, Islamism, and Legitimacy in Somalia.” *Politics, Religion and Ideology* 13(4): 521

¹⁸⁹Holme, L . 2007. *Terrorism, Organized Crime and Corruption: Networks and Linkages* . Cheltenham Elgar

As a result of such harsh blows to the tourism sector and the decrease in international flights, the leisure industry also suffered. A decline in tourism hurts restaurants, cafes, clubs, etc. The situation in Israel following the wave of terror attacks from 2000 to 2003 provides a particularly applicable case study in understanding the economic ramifications of terrorism. The process began with a halt in tourism following the terror attacks, which led to an economic recession for the entire leisure industry. The despondent mood in the business sector caused by the terror attacks quickly affected the capital market and thereafter the commercial sector. Finally, as a result of the mounting recession, the real estate sector also suffered.¹⁹⁰ In addition, a significant portion of a country's budget and many national resources are allocated to the prevention and defense against terrorism activities. While the cost of terrorism itself is extremely low – and is in fact becoming even lower – billions of dollars are invested in defense against terrorism.¹⁹¹

The long-term economic effects of terrorism are no less severe than the direct and indirect short-term economic ramifications. This includes severe damage to development and investment activities, such as the prevention of business expansion, identification of new markets, recruitment of personnel, etc. One question terrorism researchers are seeking to answer is whether harming the economy is a primary or only a secondary strategic goal of terrorism and of radical Islamic terrorism in particular. Websites that serve Bin Laden's followers have reiterated the influence terrorism has on the Western economy. They contend that Islam must attack the American enemy and the entire Western world exactly where it hurts the most, in their pockets. This strategy has even been dubbed "economic jihad," and its ostensible goal is not only to cause a large number of casualties, but also to trigger the collapse of the world's economic centers. The 9/11 attacks and the events that took place thereafter

¹⁹⁰ Melnick, R., and R. Eldor. Financial markets and terrorism. *European Journal of Political Economy* 20 (2) : 367 – 386 2004 : 367–386

¹⁹¹ Horgan, J. 2005, *The Psychology of Terrorism*. (London: Routledge), 9

demonstrated the enormous damage that international terrorism can cause to the world economy, particularly in the private business sector. However, it is unknown whether or not this was bin Laden's primary goal when he initiated the 9/11 attacks.¹⁹² The World Trade Center (WTC) could have been chosen as a target because it served as the business hub of New York and one of the most important economic centers worldwide, or could have been selected because of the perpetrators' assessment that attacking the WTC would cause a large number of casualties and would instill fear and panic in the American population and the entire world. The twin towers may have been a symbolic target representing Western economic power, while an attack on the Pentagon would demonstrate radical Islam's ability to target the center of Western military power. A planned attack on Congress or the White House could arguably symbolize the perpetrators' ability to harm the political nerve center. Most likely, all these goals were considered by Al-Qaeda when they chose to attack the specific targets on 9/11.

The subsequent economic damage, therefore, may not necessarily have been the terrorists' primary goal. However, terrorist organizations are quick learners. They are constantly learning about their enemy – gathering information from the press, their sympathizers worldwide, and from any other possible source.¹⁹³ Economic explanations for their actions, therefore, may have been adopted retroactively. Terrorist organizations understand that the way they frame an attack, largely dependent on the content of their declarations following an attack, can increase their power to instill fear of future threats, ultimately advancing their goals. Many attacks in recent years have in fact been against economic, tourism, or commercial targets. Aside from the example of September 11, other such cases include the attack on a hotel in Mombassa and the firing of anti-aircraft missile at an Israeli passenger plane in November 2002, the attack against tourists in Sharm-al-Sheikh (July 2005) and in Dahab (April 2006) in Egypt,

¹⁹²Hoffman, B. 2006, *Inside Terrorism*, Revised and Expanded Edition. New York: Columbia University Press .

¹⁹³Victoroff, J . 2005. The Mind of the Terrorist – A Review and Critique of Psychological Approaches. *Journal of Conflict Resolution* 49 (1): 3 – 42.

an attack in a dance club in Bali (October 2005), attacks against hotels in Amman (November 2005), and others.¹⁹⁴ These attacks, as well as others, had severe economic consequences on tourism and air travel worldwide. It still appears however that the economic goal in these cases was secondary to the aim of seeking crowded venues where an attack would result in a large number of casualties. The victims' international identities and the large number of injured were meant to produce mass-media coverage. Since the victims were not local (Australians in Bali, Israelis in Mombassa, etc.), the organizations' message would reach an international audience, maximizing its impact.¹⁹⁵

4.4.2 Effect of Terrorism on Kenya's Securities Market

The stock market plays a critical role in the national economy since it facilitates fundraising activities, trade, investment and economic growth and development. An understanding of all the factors that affect its performance is crucial. Socio-political events such as terrorism have been noted to disrupt the flow of financial capital between nations and affect incomes, company profits and stock prices.¹⁹⁶ Terrorism has become a fairly recent global phenomenon which almost every society finds itself exposed to from time to time, hence the need to understand its effect on the stock market. Terrorism is of particular interest to the government, investors and listed companies at the Nairobi Securities Exchange (NSE).¹⁹⁷ Terrorism and the stock market in Kenya The effect of terrorism on the stock market is a recent area of study that has received attention in advanced economies. However, there are no studies in Kenya on the effect of terrorism on the stock market.

¹⁹⁴Victoroff, J. 2005. The Mind of the Terrorist – A Review and Critique of Psychological Approaches. *Journal of Conflict Resolution* 49 (1) : 3-42, and, Holmes, L. 2007. *Terrorism, Organized Crime and Corruption: Networks and Linkages*. Cheltenham: Elgar .

¹⁹⁵ Holmes, L. 2007. *Terrorism, Organized Crime and Corruption: Networks and Linkages*. Cheltenham: Elgar .

¹⁹⁶Arin, K., Ciferri, D., and Spagnolo, N. (2008). The price of terror: The effects of terrorism on stock market returns and volatility, *Economics Letters*, 101(3), 164-167.

¹⁹⁷Onyuma, S. O. (2009). Day-of-the-week and Month-of-the-year Effect on the Kenyan Stock Market Returns. *Eastern Africa Social Science Research Review*, 25 (2), 53-74.

Although Kenya's Operation Linda Nchi was in response to a provocation by Al Shabaab, Kenya is acting broadly in the collective interest of advancing international peace and security and fighting terror. It, therefore, requires the support of the international community in order to meet its objectives. Owing to terrorist events, investors may anticipate that future profits of companies within the nation will suffer due to either a drop in exports or due to a drop in domestic demand due to uncertainty about Kenya's future given the possibility of repercussions against Kenya from other countries. The likely result will be a drop in stock prices. The greater the impact of terrorist strike and the anticipated repercussions, the larger the drop in stock prices. Correlations between acts of terrorism and stock market reactions have been empirically proven. Ahmed and Farooq¹⁹⁸ examined the effect of 9/11 on the Karachi stock market and found a significant change in volatility during the post 9/11 period.

Due to the interconnectedness of the financial markets, it is reasonable to further assume that other stock exchanges have been affected. Such spillover effects have been noted by Floros¹⁹⁹ between the Egyptian and Israeli stock exchanges and by Chan and Hooy²⁰⁰ between the US, Japan, Hong Kong, Singapore, South Korea, Taiwan, Indonesia, Malaysia, the Philippines and Thailand.

4.4.3 Effects of the 'War' on the International System

As discussed in the previous chapter, the 'war on terror' is far more than a straightforward military campaign. It is directed at both domestic and international enemies of the state. It has in many ways re-conceptualized the 'rules war' and directed it against ill-defined enemy (enemy-combatant) who is not allowed to participate in the war itself. Due to this criminal combatant's status, they are not given any of the protections afforded enemy

¹⁹⁸Ahmed, S., and Farooq, O. (2008). The effect of 9/11 on the stock market volatility dynamics: Empirical evidence from a front line state. *International Research Journal of Finance and Economics*, 16, 71-83.

¹⁹⁹Floros, C. (2008). Modelling Volatility Using Garch Models: Evidence from Egypt and Israel. *Middle Eastern Finance and Economics*, 2, 31-41.

²⁰⁰Chan, T. and Hooy, C.W. (2003). On Volatility Spillovers and Dominant Effects in East Asia; Before and after 9/11. retrieved on August 7, 2012, from <http://mpr.ub.uni-muenchen.de/2032/>.

soldiers in a traditional war. This has repercussions far beyond the military campaign. As these policies have played out over the last five years, they have fundamentally challenged human rights norms and the stability of the international system.

First of all the legality of the international military campaign throughout this ‘war’ calls on the ability of the international legal regime to control its members’ use of force into serious doubt. The US administration’s arguments for the military campaigns in Afghanistan and Iraq are long and complex debates over definitions of war and the legislation that flows from this definition²⁰¹. Similarly the military strikes on Yemen, Pakistan and Somalia raise questions concerning the ‘rules of war’ and extrajudicial killing, all of which the US administration justifies by saying they are in a ‘new kind of war’.²⁰² Beyond the technicalities of the legal arguments, what is easily apparent is the degree to which this ‘war’ challenges the very principles of the UN Charter and legal and humanitarian norms.

The US administration and its supporters argue a complex series of loopholes and national security requirements to justify these actions and policies. As Rosa Brooks points out in “War Everywhere: Rights, National Security Law, and the Law of Armed Conflict in the Age of Terror”, where ‘previously there seemed to be relatively clear definitions of war and peace these have been eroded and have created a space for some to argue that ‘there are no rules’’. It is in this space that the United States has been able to justify its policy claims that it is permitted to wage war against countries of its choosing, “may kill any suspected terrorist in any state in the world at any time”²⁰³ and can hold its enemies outside of the law.²⁰⁴ As Brooks points out

²⁰¹Kirgis, K. (2001). “ASIL Insights Terrorist Attacks on the World Trade Center and the Pentagon” The American Society of International Law.

²⁰²Brooks, R. (2004), “War Everywhere: Rights, National Security Law, and the Law of Armed Conflict in the Age of Terror” University of Pennsylvania Law Review

²⁰³Brooks, R., “War Everywhere: Rights, National Security Law, and the law of Armed Conflict in the Age of Terror” (University of Pennsylvania Law Review, 2004), 677

²⁰⁴Brooks, R., “War Everywhere: Rights, National Security Law, and the Law of Armed Conflict in the Age of Terror” (University of Pennsylvania Law Review, 2004), 677

“U.S. courts are currently struggling to determine how to assess many of these claims, all of which are based on loose, but not implausible, readings of the law of armed conflict”²⁰⁵.

This legal debate is far beyond the scope of this dissertation. It can be said, however, that by calling into question fundamental pillars of the international system and international law, the debate challenges long excepted norms concerning a state’s use of force. Though there are some who still forcefully argue that the military actions were ‘legal’, no one denies that they represent a drastic change in US policy and at the very least a new interpretation of international law.

While the debate waged, the policies of the ‘war on terror’ and the ‘Bush pre-emption doctrine’ were being enforced around the world, and the effects of these precedents should not be taken lightly. As Mark Drumbl points out in “Self-Defence and the Use of Force: Breaking the Rules, Making the Rules, or Both”? the Bush Pre-emption Doctrine; is more than just a political doctrine it “is global in reach and is deliberately constructed as a legal doctrine”²⁰⁶. He goes on to point out that, due to the evolving nature of international law, the application of this doctrine could be seen as having actually altered the international norms that restrict states use of force. He argues: “The military response to the September 11, 2001, attacks altered the *jus ad bellum*, the international law regarding the use of force. Principally, some elasticity... in time, space, and place... was imported into the legal understanding of self-defence. In this regard, our collective response to those terrorist attacks can be constructed as a *juris generative* event-creating law, often times as a reaction, as we go along.”²⁰⁷

In terms of the Geneva Conventions and other human rights legislation, the concept of the ‘enemy combatant’ has thrown their very principles into question. Because the US

²⁰⁵Brooks, R., “War everywhere: Rights, National Security Law, and the law of Armed Conflict in the Age of Terror” (University of Pennsylvania Law Review, 2004), 678

²⁰⁶Drumbl, M. (2003), “Self-Defense and the Use of Force: Breaking the Rules, Making the Rules, or Both?” *International Studies Perspectives* vol. 4, p 409-43

²⁰⁷Drumbl, M. (2003), “Self-Defense and the Use of Force: Breaking the Rules, Making the Rules, or Both?” *International Studies Perspectives* vol. 4, p. 426

administration has launched a war against a non-state enemy who was not previously widely categorized as an actor in war, they have been able to loosely justify their own actions under the rules of war while shedding the restraints on their behaviour contained within the same legislation.

Working with this definition of the ‘enemy’, the behaviour of the US intelligence sector most especially the CIA has also dealt a blow to international norms. Besides holding prisoners at Guantanamo Bay, there are reports that the US along with European allies have been involved in “unlawful inter-state transfers” (so called ‘extraordinary renditions’) of ‘terrorist suspects’. They have been accused of holding these suspects in secret detention facilities with no access by the Red Cross, and possibly moving them to third party countries where they have few if any rights. There is very little information available on the circumstances surrounding the prisoners’ capture and detention, but from what is known their supposed status leaves them with virtually no legal protection. As Amnesty International points out; “In the "war on terror", the USA has resorted to secret detentions, in some cases amounting to "disappearance". Such people have been placed outside the protection of the law. The USA is alleged to have engaged in numerous "renditions", transfers of prisoners between itself and other countries which bypass fundamental human rights safeguards”.²⁰⁸

The UN is far from innocent in these setbacks in international norms. The legality of the UNSC’s Al Qaeda sanction list has been repeatedly called into question. Marty²⁰⁹ directly attacks the UNSC’s so-called “black lists” in his report to the” EU Committee on Legal Affairs and Human Rights. He says: “It is frankly alarming to see the UN Security Council sacrificing essential principles pertaining to fundamental rights in the name of the fight against terrorism.

²⁰⁸Amnesty (2004) “Proclamations are Not Enough, Double Standards Must End; More Than Words Needed this Human Rights Day” Amnesty International, AI Index; AMR 51/171/2004
<<http://web.amnesty.org/library/index/engamr511712004>>

²⁰⁹Marty, D. (2006) “Alleged Secret Detentions and Unlawful Inter-state Transfers Involving Council of Europe Member states” EU Committee on Legal Affairs and Human Rights

The compilation of so-called “black lists” of individuals and companies suspected of maintaining connections with organizations considered terrorist and the application of the associated sanctions clearly breach every principle of the fundamental right to a fair trial: no specific charges, no right to be heard, no right of appeal, no established procedure for removing one’s name from the list”.²¹⁰ As the ‘war on terror’ policies have been applied internationally, they have challenged, broken and (through precedent) possibly changed international law.

These principles have divided the world, further stressing the already strained relations within the international community. The legal framework the UN High Panel and the Secretary General point to as the world’s defence from the ‘terrors of armed conflict’ are most obviously not as secure as some would argue. This fact makes today and future generations far more susceptible to the “scourge of war” and as a result far less safe from all kinds of terror.

4.5 Conclusion

Kenya is deeply being affected by events arising from terrorism. Moreover, Kenya remains a potentially prime target for terrorists in its own right. It has substantial Western tourist activity, the headquarters of the United Nations Environment Program and the United Nations Habitat Program, a large number of Western embassies, and several international businesses. Kenya sustained terrible casualties in the bombing of the U.S. embassy in 1998. That act, and the 2002 attack on Israeli facilities in Mombasa, revealed the extent of terrorist cells operating within Kenya. The cells have taken root in the Muslim community, which traces its roots to the Middle East.²¹¹ The community has experienced a steady decline in political and economic influence since Kenyan independence, as Kenya’s African population gained power and competition for jobs increased. As conditions have declined, religious interest has risen, Muslim religious and social groups have taken on more responsibility and influence, and there

²¹⁰Marty, D. (2006) “Alleged Secret Detentions and Unlawful Inter-state Transfers Involving Council of Europe Member states” EU Committee on Legal Affairs and Human Rights

²¹¹Otiso, K. (2009). Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery. Kenya Studies Review: 1, 1, 107-132.

has been more interchange among young people seeking opportunity in the Middle East. The radical cells that developed in this milieu represent only a small portion of the Muslim community, which itself is only about 10 percent of the Kenyan population. Nevertheless, the outsiders directly involved in the bombings of 1998 and the Mombasa attacks were clearly assisted by Kenyan citizens.²¹²

Carson J., "Kenya: The Struggle Against Terrorism," in Rotberg, ed., *Battling Terrorism*, pp. 173–192. See also Gilbert Khadiagala, "Kenya: Haven or Helpless Victim of Terrorism," in *Terrorism in the Horn of Africa*, United States Institute of Peace, Special Report no. 113, January 2004.

CHAPTER FIVE

SUMMARY AND RECOMMENDATIONS

5.1 Summary

Kenya became a major partner in the Global War on Terror (GWOT) in the aftermath of September 11, 2001. Having historically been an ally of the United States, the country's importance was only reiterated following several major incidents in the last two decades. In 1998, the American embassies in Nairobi and Dar es Salaam (Tanzania) were attacked, taking the lives of hundreds and marking a shift in U.S. foreign policy. In 2002, terrorists – widely believed to be affiliated with the perpetrators of the embassy attack – detonated a bomb at a hotel on Kenya's coast while simultaneously shooting a surface-to-air missile at an Israeli commercial aircraft, narrowly missing the target. Most recently, a September, 2013 insurgent attack on the Westgate Shopping Mall in Nairobi made international headlines and took the lives of 67 individuals from nearly a dozen countries around the world, while reiterating the reputation of Kenya as a hub for terrorism, violent extremism, and factionalism.

As Al-Qaida affiliates continue to target Kenya for its role in the Global War on Terror and the 2011 military involvement in Somalia, there have been frequent small-scale attacks, exemplifying that the surrounding threats to regional security can only act as an even greater prediction for future problems. It has become clear that the insecurity stemming from terrorism in Kenya does not remain restricted to the confines of the country. The implications of further instability, therefore, affect global security and create a critical need for successful anti-terrorism policies that promote the Global War on Terror. Nevertheless, the current anti-terrorism strategy in Kenya neglects the history and geopolitics of the nation and is thus flawed in its most basic capacity.

Addressing the terrorism phenomenon is a very complex and challenging task. While condemnation of terrorist activities by the international community has been unanimous and

unequivocal, efforts to regulate this phenomenon have been marred by differences of approach and competing concerns. A number of key issues remain unresolved and the solution has been further complicated by the emergence of new forms of terrorism. The challenge facing the international community is translating the statements and well-elaborated declarations of condemnation of terrorism into concrete measures (legal, political, military) that can effectively address the very negative effects and consequences of terrorist activities. There is a clear need for further discussion not only at UN and/or governmental levels but also within NGOs. The negative impact of terrorism should be analyzed in an objective and impartial way. The existing legal framework should be reaffirmed and interpreted by competent legal authorities, first of all, within the UN system. Terrorism is one of the threats against which the international community, above all States, must protect their citizens. They have not only the right but also the duty to do so. But States must also take the greatest care to insure that counter-terrorism does not become an all-embracing concept, any more than sovereignty, used to block or justify violations of human rights and recognized humanitarian standards. We are faced with desperate situations in some regions of the world that have become an insult to the conscience of mankind. But we are also confronted with the aftermath of what happened in the U.S. on September 11th last year and has happened in many countries since then - as a direct or indirect consequence

5.2 Recommendations

Effectively coping with the phenomenon of terrorism requires local and international action on two levels – addressing both terrorists’ motivation and their operational capabilities. It is a state’s responsibility and duty to protect its citizens, and so it must work to reduce terrorist organizations’ operational capabilities through preventative and offensive action (and sometimes also defensive action) based on intelligence resources. With the development of

modern terrorism and its continuing international reach, the physical and moral damage incurred by terrorist acts has increased to such an extent that it arguably threatens the proper functioning of open society, the world economy, and the maintenance of humanitarian and liberal values – making counter-terrorism efforts all the more crucial.

Effectively countering the threat of terrorism and Global Jihad networks requires a well-coordinated and multidisciplinary campaign that takes advantage of all possible resources – intelligence, economic, security related, and diplomatic. States that have political, diplomatic, and economic ties or interests with countries that support terrorism, may not pressure them to stop granting political asylum to terrorists or allow the extradition of terrorists. It is important to recognize that it takes a network to defeat a network, which is only possible if the world community agrees together on the nature of the terrorist threat, prioritizing counter terrorism on their national agendas and coordinating in all their efforts. Sharing pieces of the intelligence puzzle and declaring joint sanctions on states that support terrorism – without taking into account economic considerations or diplomatic interests – is critical in developing a cohesive and effective response to terrorism. This requires not only agreement on the part of a number of states, but the advancement of international legislation against terrorism and the strict enforcement of applicable conventions and laws. As a prerequisite, the international community must agree on one international objective and comprehensive definition of terrorism, which is not broad or vague, that refers to terrorism as an outlawed method of operation that no goal can justify. Such a definition would differentiate between terrorism and other violent measures intended to achieve criminal or political aims. The implications of such efforts – which require the cooperation of the academic, security, and intelligence communities – lie in the perpetuation or termination of the threat; only when such coordination is established can the world community deal effectively with the operational capabilities of the Global Jihad movement and the modern terrorist threat. Establishing an alliance of countries that share the common goal of

effectively countering global terrorism would be one step in creating a broad-based and international response to terrorism. Such an alliance could reflect the NATO model, but, unlike NATO would include third-world, Arab and Muslim states in addition to Western countries.

In past years, the international community has in many cases been able to effectively thwart terrorist plots. A window of opportunity has been created as a result of such short-term achievements, allowing the international community to potentially deal with the roots of terrorism – the motivations that breed terrorism, propaganda and incitement to violence based on radical Islamic justifications, and the radicalization process as a whole, which has continued over generations by radical Islamic movements, organizations, and individuals all over the world. International radical Islamic terrorism is primarily the result of a systematic process of fundamentalist indoctrination that has taken place for over two decades all over the Arab and Muslim world. It is the product of two primary factors. First, after Khomeini's revolution in Iran in 1979, the new Iranian regime's primary goal was to "export the revolution," first and foremost to Shiite Muslim populations in other countries. The regime invested tremendous amounts of resources in this venture. Second, many other resources, based on petrodollars, were invested to strengthen radical Islamic education among the Sunni-Wahabbi communities. These resources were used to establish educational, religious, and welfare services all over the Muslim world in order to provide the population with basic services. The masses, who had difficulty providing their families with basic needs, rushed to accept help from the Islamic movements, even when aid was provided only on condition that they submit to radical Islamic indoctrination. For more than two decades, the radical Islamic movement has succeeded in establishing a solid base within many communities of the Muslim world.

The movement first preached religious fundamentalism, but soon started to support and preach violence against its enemies – the "infidels" – without differentiating between Christians, Jews, or even Muslims who do not support a radical interpretation of Islam. In order

to counter the motivations behind the Global Jihad movement, the radical Islamic movement and associated political parties may need to be uprooted. This task should not be placed on the shoulders of Western states, however. Rather, it would most appropriately and effectively be a task for the pragmatic Islamic world, which is still by far the majority within the Islamic world. However, vast resources are needed in order to strengthen alternative educational, religious, and welfare systems within the Muslim world. A possible approach would be to task the West, headed by the U.S., with assisting in the development of, in essence, a new “Marshall Plan,” available to pragmatic Muslim regimes. The budget for such a program could be supervised and would not intend to interfere with the religious, educational, and cultural content of the Islamic world. As such, efforts to counter radical Islamic terrorism would be based in the Muslim world, with Muslims themselves preventing the hijacking of their religion by radicals. In recent years, the U.S. has worked to implement a plan of democratization in the Muslim world, aiming to advance reforms that would encourage democracy in the political lives of Arab and Muslim states.

The premise, similar to the Helsinki Accords between the Western and Eastern blocs in 1975, was based on establishing relations between the two sides while stressing the issue of human rights. Just as with the eventual fall of the Communist regime, such democratic reforms are meant to bring about a desired regime change in Islamic states. However, the American democratization program could potentially “throw the baby out with the bath water.” Demanding increased democratization in Arab and Muslim countries instead of demanding more pragmatism actually plays into the hands of the Islamic fundamentalists. American decision makers would be better positioned if they remembered how American pressure on the Iranian Shah’s regime to implement democratic reforms was a decisive factor in the fall of the regime and Khomeini’s rise to power.

Despite the inherent benefits of a democratic system, the U.S. must understand that imposing democratic reforms on a nation that has not gone through its own process of liberalization, pragmatism, and democratization can be dangerous and counter-productive. Forcing Arab and Muslim regimes to adopt a democratic regime and the criteria accepted in Western society could add fuel to the radical Islamic fire. It could cause the downfall of regimes that are not hostile to the west and the subsequent rise of Khomeinistic juntas that bear no resemblance to a democracy. Efforts to eradicate radical Islamic terrorism and encourage democracy in the Muslim world should start with a long and thorough stage of pragmatic liberal education and legal restrictions on incitement to violence and terrorism. Such efforts can take place both within Muslim countries and internally in western states with large Muslim communities. Countries that host large Muslim immigrant communities can work to strengthen the moderate majority, also working to integrate and assimilate these communities and prevent discrimination against them. A host country may insist on demanding loyalty from the Muslim community, in terms of accepting the country's values, learning the language of the host country, and, above all, rejecting radical incitement to violence.

5.3 Suggestions for Further Research

Academic research in the field of terrorism has been ongoing since the 1970s, but it experienced a boost after 9/11, when governments began to re-evaluate the nature and level of the terrorist threat. Yet there is still significant room for further research, necessary in order to effectively counter and anticipate future threats. Comprehensive research on terrorism and counter terrorism requires multidisciplinary approaches that combine several fields within the behavioral sciences. Special emphasis should be placed on researching the radicalization process of terrorists in general and radical Islamic terrorists in particular, with specific focus on Muslim immigrants and converts. This should be combined with an ongoing effort to

understand terrorists' rationale, cost-benefit evaluations, belief systems and considerations, decision-making processes, and modus operandi. As part of this effort, exploring the direct and hidden messages sent by radical Islamic groups and movements can provide researchers significant insight into the radicalization process. The internet plays a crucial role in disseminating those messages, serving as a platform for radical virtual communities and ideology, in addition to being used for operational needs. Within the academic field of counter terrorism, further research should also focus on gauging how much a country's counter terrorism policies and strategies stress the operational capabilities of terrorists as opposed to the motivational factors behind terrorism. The weight placed on each approach can be compared across countries. In addition, research must focus on the different forms of regional and international cooperation – both experiences and apparatuses – in order to suggest new policies for effective international cooperation regimes. In this respect, there is also a need to analyze and compare the role of the police and military in countering the phenomenon of terrorism, outlining the methods and boundaries of cooperation between these two agencies.

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