

**THE IMPACT OF COUNTER-TERRORISM OPERATIONS ON HUMAN
RIGHTS IN KENYA //**

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CENTER FOR HUMAN RIGHTS AND PEACE STUDIES

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DECLARATION

I declare that this research project is my original work and has not been presented for examination in any other University.

Sign: 

Date: 18-11-2014

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This research project has been submitted for examination with our approval as university supervisors.

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DEDICATION

I dedicate this work to my family for the sacrifice they made for me to complete this project. Their motivation, love, care, support, encouragement and enthusiasm inspired me to achieve this goal. I thank my colleagues, the ATPU officers, the KNHRC staff and my classmates for the assistance they gave when I needed it.

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I take this opportunity to thank God for the good health and for bringing me this far. I also want to extend my special gratitude to my supervisors for the role they played. I thank them for their guidance, encouragement and patience in reading, correcting and refining this work.

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LIST OF ACRONYMS

AI	:	Amnesty International
ATPU	:	Anti-Terrorism Police Unit
CAT	:	Convention Against Torture
ICCPR	:	International Covenant on Civil and Political Rights
ICESCR	:	International Covenant on Economic, Social and Cultural Rights
SPSS	:	Statistical Package for Social Sciences
UN	:	United Nations
US	:	United States
UDHR	:	Universal Declaration of Human Rights
MHRF	:	Muslim Human Rights Forum
FBI	:	Federal Bureau of Investigation
DOPU	:	Drop-Off/ Pick Up
ICJ	:	International Court of Justice

DEFINITION OF TERMS

Anarchism- A political theory which aims to create a society within which individuals freely co-operate together as equals because of disorder or absence of the government.

Counter-terrorism- Is the political or military activities designed to prevent or thwart terrorism. These are strategies, techniques adopted to attack terrorist threats.

Detention- Action of detaining someone or a state of being kept in a prison or similar place for a given period of time.

Human Rights- Are rights inherent to all human being whatever our nationality, sex, place of residence, religion, language or ethnic origin.

Terrorism- Any activity that involves violent acts or acts dangerous to human life that violates state law. It appears to be intended to affect the conduct of a government by mass destruction, assassination or kidnapping.

Terrorist- Any person(s) who uses terrorism in pursuit of political aims.

ABSTRACT

A recurrent issue in the fight against terrorism has been, relating to the respect for human rights. All those who have worked to promote human rights in both domestic and international have realized the rise in the incidents of human rights violation during the fight against terrorism. From 1998, Kenya has suffered several terrorist attacks in which large numbers of people have been killed and others injured. The raises awareness on the impact of terrorism on the enjoyment of human rights and fundamental freedoms, explains the role of the state on human rights when countering terrorism, and illustrate specific human rights violations in the context of counter-terrorism. Qualitative and Quantitative research design was used in the study. The target population of the study was the staff working at the Kenya National Human Rights Commission headquarters and the officers from Anti-Terrorism Police Unit. The sample size was fifty percent of the population thus 82 respondents. Quantitative data collected was analyzed by use of descriptive statistics by help of SPSS (V. 17.0) and presented through frequencies, percentages, and standard deviations. The study established that terrorism leads to loss of life and property and threatens the dignity and security of human beings. This study therefore recommends that everybody should be involved in counterterrorism by providing necessary information to the concerned authority. In addition the study showed that the government of Kenya should ensure that there are no illegal immigrants and the need for proper screening and enhanced checking and monitoring all those coming into Kenya from other countries.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Global terrorism has been described by the international communities as a key threat to peace, security and individual rights (Bonner, 2013). From August 1998, operations and reactions to fight terrorism have encountered a great number of challenges to the protection of individual rights and basic freedoms Kenya. In the course of safeguarding the right to life and safety of individuals from terrorist operations, a good number of basic human rights have faced increasing threat. The intimidating atmosphere brought about by the struggle against terrorism has caused the undermining of global individual rights ethics. The main challenge in fighting terrorism activities on global, regional and national levels is how these issues can be entirely tackled.

According to Blomberg, Hess and Orphanides (2004), the concentrated effort on counterterrorism in Kenya has not yielded well in the universal human rights condition. According to the international human rights law, it is the duty of member states to protect their people from criminal activities (Whitaker, 2007). Nevertheless, measures to protect the people from criminal activities should be put in place within a protective structure for every human right. Human rights principles constitute the lowest standards essential to safeguard the security and integrity of people from misuse of power. Measures to curb terrorism can only be efficient if they also assure and protect the rights of the people.

In a special convention of the UN Security Council's counter terrorism committee in 2003, the former UN Secretary General Kofi Annan said that the reactions and efforts to prevent terrorism should defend the rights of the people that terrorists put at stake (Lind and Howell, 2010, p.340). He argued that the rights of the people, basic freedoms and the rule of law are vital in the attempt to fight terrorism and should not be forfeited at such a time of tension (Bonner, 2013, p.54). But the adherence of Kenya to this statement has not been evident because there is a lot human rights violation during the counter-terrorism operations. The lack of respect to rule of law and adherence to the principles of international human rights is clear in many reports of persecution, brutality, detention, detention without trial, humiliating treatment and torturing of relatives to those accused to be suspects (Ludlam, 2012, p. 116).

According to AI report of 2005, the Kenyan government has not complied with the international human rights decrees, principles and Kenyan constitution in investigating several terrorist attacks. Some of the terrorist attacks include the bombing of the US embassy in Nairobi on August 1998, Kikambala hotel in Mombasa in November 2002 and the recent attack at Westgate shopping mall in Nairobi on 21st September 2013. Kenya has followed law-implementation measures according to the continuous combat on terrorism and all personal cases that arise in the process of curbing terrorists' acts (Mogire and Mkutu, 2011, p.490).

People's security is a fundamental human right and their protection is a basic responsibility of the government. This can be done by putting in place mechanisms to safeguard them from terrorist threatening activities and putting on book the masterminds of such injustices (Osman, 2008). According to the United Nations report in 2008, attempts to curb terrorism usually taken by states have often brought serious problems to the rights of people and the rule of law. Most states have neglected the legal measures to stop torture such as continuous and free evaluation of detention centres (Mogire and Mkutu, 2011, p.474). Instead, they have taken part in torture and other inhuman treatments to fight terrorism. Other countries have violated the international legal responsibility of Non-Refoulment. They return terrorism suspects to their countries where they get tortured and face adverse abuse of human rights (Walsh and Piazza, 2010). Most states have threatened the supremacy of the judiciary and introduced special courts to handle civilian cases. These courts have had an impact on the efficiency of the normal court structures in administering justice to terrorism situations.

The modifications of in the judicial system are tailored to curb the rise of terrorism. They include absence of rule of law, abuse of the rights of people, tribal, national and religious inequity, political segregation and social-economic discrimination (Mayoyo, 2013). The measures to tackle these conditions should include encouraging full involvement of civil society, criticizing any violation to rights of the people, excluding them (civil societies) from national bylaws , investigating and putting them on trial, preventing them and also to be aware of the rights of victims of violation of people's rights, for example through compensation (Ignatieff, 2002, p. 1145).

Counter-terrorism in all its forms and manifestations constitutes one of the most serious threats to security of people and human rights. It threatens the integrity of citizens and destabilizes legitimate governments, it destroys democracy, and pluralist civil society seriously jeopardizes human rights and fundamental freedoms, causing loss of life destruction and damage worldwide (Osman, 2008).

1.2 Statement of the Problem

According to Noam Chomsky, everyone is worried about stopping terrorism. The main problem when countering terrorism is the issue of providing security as well as protecting and respecting for the human rights. The line between counter-terrorism and the protection of human rights of suspected terrorist tends to be a challenge in Kenya. There have been cases of suspects of terrorism abducted, they are denied human rights such as prohibition of torture, arrest and detention and right to life (Cooper and Schindler, 2003). Suspects are forced to confess through arrest and detention, torture their right to life threatened and they end up saying anything because of inhuman and degrading punishments they are exposed to. War on terror is increasingly getting more complicated and sophisticated to an extent that it is not easy to point out violations of international humanitarian law when suspects are killed or tortured. The problem is the conflict arising from the need to comply with the human rights standards while at the same time taking measures that seem to contradict the international standards on human rights.

With regard to terrorism, especially following the terrorist attacks between 7th August 1998 at the United States of America embassy and on 21st September 2013 at Westgate Mall, the Security Council and the General Assembly of the UN have engaged in an active task in counter-terrorism and their mechanisms to fight terrorism have applied over an extensive region where the terrorist attacks have been experienced (Du Plessis, 2013, p.39). The decisions and principles put in place in the presence of UN involves an extensive approach, considering the security issues, human rights aspects, establishment of international law and the efforts to fight international crime. The challenge experienced by counter-terrorism operations is to balance between effective security measures and protection and promotion of human rights.

The argument of this research is that any step taken by a country to fight terrorism must be in line with the country's responsibility of international human rights standards (Piombo and Lischer, 2008). The humanitarian laws bring forth an explicit structure for the important measures in which counter-terrorism can efficiently be carried out without threatening the rights of suspected terrorists and their basic freedoms (Mogire and Mkutu, 2011, p.490)

We are living in a globalising world where states are faced with the problem of fighting terrorism while respecting the human rights of the suspects. This research suggests that fighting terrorism can cause adverse effects to the respect of human rights in Kenya (Ludlam, 2012, p. 116). Human rights must then be seen as the foundation of the fight against terrorism and not as a barrier. They also argue that the issue of terrorism needs

special measures but these provisions should neither undermine basic freedoms and the rights of the suspects of terrorism nor threaten the legitimate dissent (Lind and Howell, 2010, p. 337). This study therefore seeks to answer the question: What is the impact of counter-terrorism operations on human rights in Kenya.

1.3 Objectives of the Study

The study set to find out whether it was possible to effectively combat terrorism while ensuring the protection of and respect for human rights, of suspects. The specific objectives of the study were to:

- i. Describe the effect of terrorism on the enjoyment of all human rights and fundamental freedoms;
- ii. Determine the role of the state on human rights violations when countering terrorism; and
- iii. Establish whether there are human rights violations in the context of counter terrorism measures in Kenya.

1.4 Research Questions

The research questions sought to be answered by the study were:

- i. What are the effect of terrorism on the enjoyment of all human rights and fundamental freedoms?
- ii. What is the role of state on human rights violations when countering terrorism?
- iii. Which are the specific human rights challenges in the context of counter terrorism in Kenya?

1.5 Hypotheses

This study is based on the following hypotheses:

1. Counter-terrorism operations by states also lead to a lot of human rights violations.
2. Counter-terrorism operations infringe the right to life of the suspects
3. Counter-terrorism operations lead to torture and other cruel, inhuman or degrading treatment or punishment on the suspects.

1.6 Justification and Significance of the Study

This study covers the problem associated with counter-terrorism legislation and their operations in Kenya as well as analyses the impact with regard to the rule of law and human rights principles. In addition, the study explains the effect of terrorism on the enjoyment of all human rights and fundamental freedoms. Further, the study looks at the central role of human rights and states' obligations when countering terrorism. It also addresses some specific human rights violations in the context of counter terrorism measures.

The study hopes to make a contribution to already existing literature on counter-terrorism in terms of ensuring their compatibility with human rights and constitutional principles.

The study will therefore be of great importance to future authors and researchers.

The study will be of great importance to the government of Kenya and state organizations that deal with terrorism. Given the very prevalent nature of terrorism in the country and the challenges of combating it, there is a necessity for a robust discussion on issues of

pertaining to law and human rights in the context of terrorism. The findings of this study can be used to formulate more policies to protect the rights of terrorism suspects and to curb terrorism.

The study will also be of importance to the Judiciary and human rights activists in Kenya. It is notable that although in times of counter-terrorism, both human rights, and humanitarian law ought to be applied in a complementary manner, but in most cases the counter-terrorism operations never observe the human rights law. Thus, states fail to balance between provision of security for the victims and the respect of human rights of the suspects.

1.7 Scope and Limitation of the Study

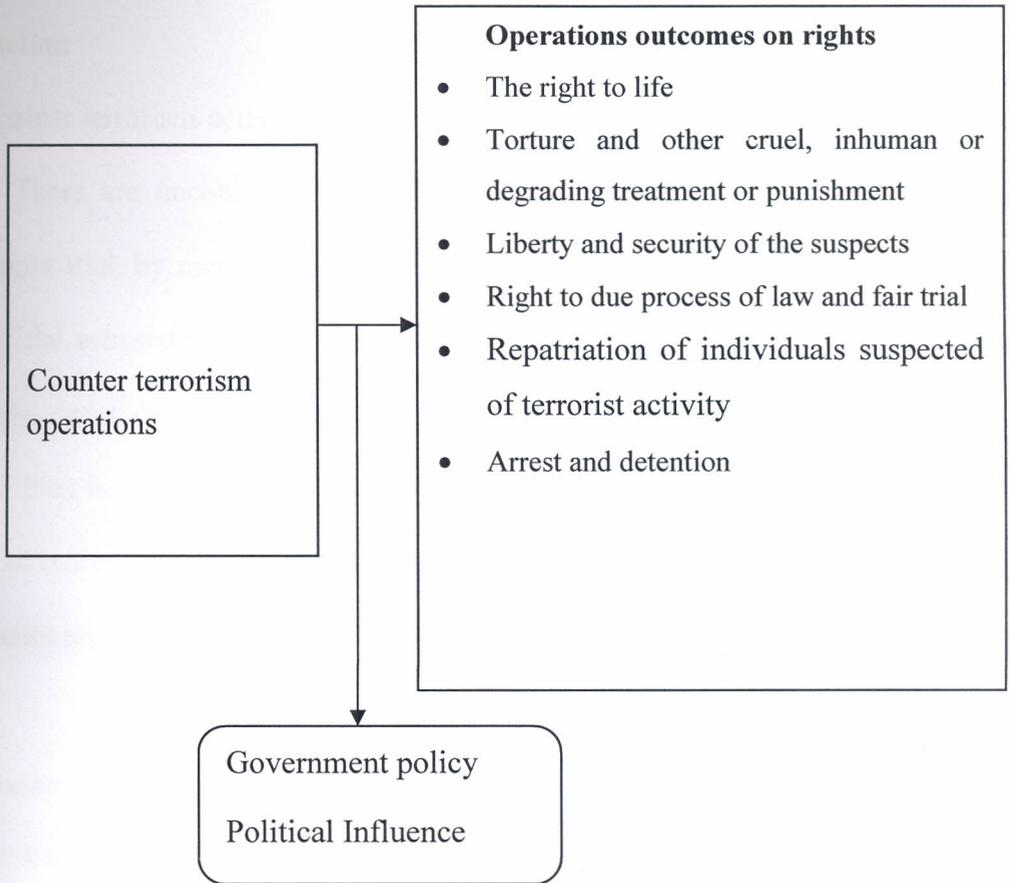
This study focuses on the period between 7th August 1998 when the United States Embassy in Nairobi was bombed and 21th September 2013 when terrorists attacked the Westgate Shopping Mall in Nairobi. During this period, the Kenyan government focused on fighting terrorism, with major operations to counter terrorism done by Anti-Terrorism Police Unit and the General Service Unit (GSU). Within this period, many suspects were arrested and detained, and denied their fundamental freedoms. Some suspects were even killed under unclear circumstances. Within the same period, there was also an increase in international attempt to curb terrorism which was then being frequently witnessed. This was a clear indicator that terrorism was becoming a major security challenge and every country was prone to attacks by terrorists.

1.8 Conceptual Framework

The conceptual framework illustrates that there is great human rights challenges in the context of counter terrorism operations. As a result of terrorism, Kenya reacts extensively by arresting several people suspected to be behind the terrorist act (Whitaker, 2007). Usually the aim of the operation is to locate all those suspected to be involved in the attack. During these operations suspects are detained without charge and often denied access to lawyers, there family members are also detained and harassed (Osman, 2008).

However, the handling of suspects of terrorism does not comply with the international human rights standards including the right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, transfer of individual suspected of terrorist activities, right to fair- trial and liberty and security of the suspects. International standards provide that all suspects arrested and detained must be informed of the reasons of arrest and notified their rights (Mogire and Mkutu, 2011, p.479).

Figure 2. 1: Conceptual Framework



Independent Variable Moderating Variable Dependent Variable

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

The fight against terrorism activities has had major impacts that widens to an extent of criminality. There are uncontrolled acts and powers that use strict measures against persons without trial, by merely suspecting them, and without having an assurance that the rights of the accused will be defended (Shafiq, 2013, p. 389).. With demoralizing results for the satisfaction of the right to life, freedom and the integrity of victims, terrorist activities has authentic and direct effect to the rights of the people. On top of these losses of individual life, civil societies are weakened, calm and security destabilized and social-economic growth threatened. All this hinders the fulfilment of human rights.

2.1.1 The Nature of Human Rights and International Human Rights Law

According to Ludlam (2012), human rights are universal values and legal guarantees that safeguard individuals and organizations from actions and mistakes by state organs that violate basic freedoms, entitlements and human decorum. The complete band of human rights entails the respect for, safeguarding and implementation of economic, social, cultural, political and civil rights just to mention a few. One of the major difficulties of effective counter terrorism measures is the violation of civil liberties and human rights that such measures often entail for human being by the state during the attempt to combat terror (Whitaker, 2007). Some of these problems include death, risk of being subjected to torture, return and extradition of people within countries and detention without trial (Piombo & Lischer, 2008, p.76).

Human rights in the international arena are of great importance in various central international human rights agreements and in the traditional international law (Shafiq, 2013, p. 403) which makes clear its laws relating to terrorism. These agreements include the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). Others vital global human rights treaties are the Convention Against Torture (CAT) and other brutal, inhuman or humiliating punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Walsh and Piazza, 2010, p.370). The process of establishing and protecting human rights is complex and detailed especially in the Kenya constitution, Chapter Four.

Upholding human rights entails not interrupting the enjoyment of individual rights. Safeguarding of these rights is based on making positive steps to ensure that there is no interruption with the enjoyment of individual rights. The implementation of human rights calls for states to embrace suitable measures, including educative, governmental, organizational and judicial measures, so as to execute their legal responsibility (Ludlam, 2012, p. 116). Hence, the state has an obligation to uphold, respect and execute human rights.

2.1.2 Terrorism and Its Impacts on Human Rights

Terrorism is defined as violent activities that target people with an aim of gaining political or ideological grounds (Lind and Howell, 2010, p. 337). In 1994, the General Assembly's Declaration on Measures to Eliminate International Terrorism came up with

a declaration 49/60, acknowledged that terrorism involves criminal activities whose mission is to provoke a situation full of terror amongst the population, a group of people or specific individuals for political gain (Mogire and Mkutu, 2011, p.474). They argued that these activities are not justifiable, whatever the explanations of political, theoretical, ideological, cultural, religious, tribal or any other that may be raised to justify them (Shafiq, 2013, p. 389).

In Kenya, the extradition of Somali suspects has come under heavy criticism from the international community. Tanzania has also been involved in extradition of terror suspects to Kenya for trial. The Muslim Human Rights Forum (MHRF) heavily criticized these moves as a violation of the human rights of the terror suspects. This is because these moves were undertaken without any extradition proceedings taking place in accordance with laws of the involved countries. The director of MHRF termed the transfer of the Somalis to Uganda by Kenya as kidnap and abuse of basic human rights. Many communities in the region have also criticized the activities engaged by the countries such as those highlighted above. The Kenyan ATPU and FBI have been working closely in the interrogation of the terror suspects. However, they have been accused of not following the right ways of dealing and handling of the terror suspects.

Terrorism is a premeditated use of extra-normal violence by individuals or sub-national groups to obtain political objectives through intimidation or fear directed at a large audience beyond that of the immediate victims (Bueno de Mesquita, 2005, p.150). It imposes serious political and economic costs on Governments so that it (terrorism)

concedes to the political demands of the terrorist. Shafiq, 2013 gives the definition of terrorism as illegal and deliberate attempt or threat to cause death or severe body injuries to any individual or total destruction to property such as a public infrastructure, government facility or the environment as a whole.

The objective of terrorism is to put the rights of people at stake, destroy the rule of law and democracy (Mogire and Mkutu, 2011, p.490). It goes contrary to the core values laid in the United Nations Charter of 1945 and many other international tools such as upholding human rights, peaceful conflict resolution, forbearance between nations and people, the rule of law and the bylaws governing armed clash and the protection of people (Lind and Howell, 2010, p. 337).

The Kenyan Anti-Terrorism Police Unit (APTU) has been criticized for perpetrating most human rights in the course of the activities to curb terrorism. The mysterious deaths of two Muslims, Aboud Rogo Mohamed and Sheikh Ibrahim Ismail have both come stirred controversy among many people. There are also the disappearances of some people earlier suspected of involvement in terrorism activities have also been blamed on ATPU. These are the few activities of human rights violation reported and captured the attention of the international community.

Terrorism has an express effect on the enjoyment of several human rights, specifically the rights to life, freedom and human integrity (Osman, 2008). Terrorists' activities can disrupt government operations, weaken civil society, put at risk the peace and security and derail social-economic growth. All these areas lead direct effects on the enjoyment of

basic human rights (Du Plessis, 2013, p.39). It poses a threat to the social and political values that are directly or indirectly related to the full enjoyment of human rights and fundamental freedoms (Lind and Howell, 2010, p.340). Acts of terrorism have resulted to serious violation of human rights.

The Open Society Justice Initiative recently released a report concerning the human rights in Kenya. The report calls for the evaluation of the activities of ATPU concerning the violation of human rights of terror suspects. It further appeals to the international community to assist Kenya in the implementation of the police reforms. These reforms will reduce the cases of human rights violation. ATPU has not been completely disregarded completely. It has done commendable work in thwarting dozens of terrorism attacks in the capital. It was deemed necessary after a series of terrorist attacks in the country including the infamous Westgate mall attack.

The consequences of terrorism on the rights of the people and security has been acknowledged at the highest ranks of the United Nations, especially by the Security Council, the General Assembly, the new Human Rights Council and the former Commission on Human Rights (Lind and Howell, 2010, p. 337). In particular, member states of UN agreed that terrorism jeopardizes the value and security of human beings globally causes deaths of innocent people, bring forth an atmosphere that instills fear in people, threatens basic freedoms and focuses on destroying rights of the people (Whitaker, 2007). They have also recognized that terrorism poses severe impacts on the

development of the rule of law, and it leads to the destruction of the democratic foundations of society and shakes lawfully established governments.

Furthermore, terrorism is connected to transnational well-structured crime, drug and arms dealings and unlawful transfer of biological, nuclear and chemical substances (Lind and Howell, 2010, p.340). It is also linked to the frequent acts of serious crime such as burglary, abduction, assault, assassination, extortion and hostage cases (Whitaker, 2007). In addition, it leads to adverse impacts on the social-economic growth of states, threatens the close relationships among states and has destructive effects on development cooperation among states. It also affects negatively the integrity and security of states, abuses the standards of the United Nations. Finally, it jeopardizes the international peace and security. Therefore, for the sake of upholding the international peace and security, terrorism must be fully dealt with (Lind and Howell, 2010, p. 339).

2.2 The Role of the State on Human Rights Protection when Countering-Terrorism

It is worth noting that there has been increase insecurity and strategies to fight terrorism all over the world since the establishment of Resolution 1373 (2001) of the Security Council, much of which has affected the enjoyment of terrorist rights (Lind and Howell, 2010, p. 338). The Resolution established a Counter-terrorism centre to monitor the issues of terrorism and receive reports from states on measures taken to implement counter-terrorism measures. The very essential human rights considerations which countries should handle seriously is to make sure that any measure they take to fight terrorism should be in line with their commitment to the law of human rights. The

protection of human rights against violation is of essence. This calls for the cooperation of the international community.

It is the obligation of international community in their mandate to put in place measures that uphold respect the rights of every individual and the rule of law as the basic foundation of the counter-terrorism activities through the implementation of the United Nations Global Counter-Terrorism Strategy by the General Assembly in resolution 60/228 (Whitaker, 2007). All the member states have agreed unanimously to put in place techniques whose objective is to address the atmosphere conducive to the increase of terrorism, especially the abuse of human rights and lack of rule of law, and making sure that any measures established to curb terrorism conform to their mandate as per the international law and specifically the international laws of human rights, international humanitarian law and the law of refugees (Walsh and Piazza, 2010, p.370).

Human rights law establishes a framework in which terrorism can be effectively countered without infringing on fundamental freedoms. The measures and practices adopted to fight terrorism also often give rise to concerns relating to fair trial, torture, unlawful detention and principle of non-discrimination among others. In 2005, the UN General Assembly assumed the World Summit Outcome, which also considered the issue of upholding human rights in the fight against terrorism and recommended that in the efforts to curb terrorism, international collaboration must be done in line with international law with the United Nations Charter and international protocols inclusive (Whitaker, 2007).

The Human Rights Commission and the General Assembly have stressed that states must make sure that any measures taken to curb terrorism is in conformity with their mandate according to the international laws of human rights, international humanitarian law and the law of refugees. The same thing has been done by the Security Council. Primarily, with the pronouncement made in its resolution 1456 (2003), whereby the Council in a convention at the rank of Foreign Affairs Ministers, said that all states must uphold their responsibilities. This is according to the international law as they put to action any measure in fighting terrorism (Whitaker, 2007). The Human Rights Commission and the General Assembly should also accept such measures specifically in line with international law of human rights. In the Security Council Resolution 1624(2005), the same position was supported (Mogire and Mkutu, 2011, p.491). The report by United Nations Secretary General in 2006 by the title "*Uniting against terrorism: recommendations for a global counter-terrorism strategy*" (A 60/825), the Secretary General expressed human rights as necessary to the realization of all phases of the fight against terrorism strategy (Walsh and Piazza, 2010, pp.557). Likewise, the global and regional bodies based on treaties regularly maintained that the upholding of law in the measures taken in the fight against terrorism is dependent to their consistency with the international law of human rights (Gearty, 2007, p.350).

The obligation of states to always take action within human rights agenda is worth noting that the international treaties in the fight against terrorism expect total compliance with all the features of the law of human rights. According to the International Convention for the Suppression of the Terrorism Financing, Article 15 clearly allow states to say no to

extradition or lawful support if there are significant reasons for supposing that the states making request has plans to punish an individual on discriminative measures (Mogire and Mkutu, 2011, p.495). Article 17 expects a fair handling any individual in detention and ensuring he enjoys all his rights according to the international human rights. Finally, Article 21 clearly shows that the Convention does not override the responsibilities and rights of states.

2.3 Specific Human Rights Violation in the Context of Counter-Terrorism

There are several human rights, which are violated during counter-terrorism operations, they include, the right to life, right to liberty and security of the suspects of terrorism, torture and other cruel, Inhuman or degrading treatment or punishment, and right to due process of the law and fair trial. Human rights activists in many parts of the world share a sense of alarm about the prevailing challenges of promoting human rights in the context of heightened global concern about the threat of terrorism. Respect of human rights, democracy and rule of law is an essential antidote to the conditions that gives rise to terrorism (Whitaker, 2007). The abuse of basic rights in the course of efforts to combat terrorism can ultimately be self-defeating.

2.3.1 Arrest and Detention

It is provided in the Kenyan constitution that a police officer of or above the rank of inspector of police may direct that a person arrested be detained in police custody for a period not exceeding 36 hours from his arrest, without having access to any person other than a police officer or government medical officer (Whitaker, 2007). This constitution

restricts the right of access to legal counsel during the period of detention if the police officer has reasonable grounds to believe that exercise of the right to consult a legal adviser would lead to interference with the evidence conducted with an offence under legislation. This provision restricts the enjoyment of the right to fair trial in terms of denying access to legal counsel. This is a violation of international standards that recognizes the right of detainees' legal counsel after arrest (Mogire and Mkutu, 2011, p.490).

Under international human rights law, no person may be deprived of his/her liberty except on grounds and accordance with procedures established by the law. The procedures must conform to both domestic and international standards. The International Convention on Civil and Political Rights (ICCPR) has explained arbitrary arrest in Article 9(1) as includes not only that which is against the law but also elements of inappropriateness, injustice and lack of accountability. Detention is also arbitrary if it constitutes an abuse of power.

2.3.2 The Violation of Right to Life

The Kenya constitution 2010 upholds the right of every person to life and shall not be deprived of life intentionally, except to the extent authorized by the law (Whitaker, 2007). This is the essence of the universal and regional law. The universal and regional law of human rights is aware of the obligation of states to safeguard the people subject to their level of command. Practically, the measures taken by countries to safeguard people from the terrorism activities have brought great challenges to the right to life (Osman,

2008). They include, intended assassinations to some people instead of arresting them and judging them justly (Whitaker, 2007). The Human Rights Committee in the UN states that the deliberate killings should not be used as a penalty and that focus should be offered to the theory of proportionality. State strategies should be outlined clearly in the guiding principles to the forces commanders and any protest about the abuse of power should be scrutinized quickly by an impartial body. In contemplating of a resort to the use excessive force, all plans to arrest a suspected terrorist should fully exhausted (Ignatieff, 2002, p. 1145).

In other cases, countries have embraced the “shoot-to-kill” mechanism in reaction to suspected terrorists attacks (Mogire and Mkutu, 2011, p.490). In the fight against terrorism, the Kenya Human Rights High Commissioner emphasizes how crucial it is in making sure that the whole enforcement of law in all cadres of forces should do their mandate in accordance to the law. She gave a warning that in the effort to curb terrorism. She has cautioned that, in the fight against terrorism, tremendous attention should be employed by those in power against all kinds of abuse of authority, and that they should introduce a habit of reverence for the law especially by those assigned to apply it (Whitaker, 2007).

Mostly, the deliberate killing and use of shoot-to-kill policy has brought up a new method and shows that it is ineffective to operate within the law in counter-terrorism activities. This method is in contravention to human rights but is there to serve the greater good. (Whitaker, 2007). In addition, the special reporter for most international media argues

that countries that apply shoot-to-kill strategies to deal with terrorists, must build up legal structures to accurately integrate intelligence analysis into both the planning of the operations and post-incident establishing accountability levels of State responsibility after an incident. Furthermore, they must make sure that only such concrete information, in combination with the embracing suitable practical protection, will lead to the application of deadly force (Osman, 2008, p.65).

In accordance to the universal and regional law of human rights, there should be safeguards against taking away of life even in a state of emergency frightening the life of the state (Mogire and Mkutu, 2011, p.490). In line with the Human Rights Committee, the protection against arbitrary deprivation of life is of great value. The Committee believes that member states should establish measures to curb arbitrary killing by their own military groups (Whitaker, 2007). Threatening of life by the power systems of the State is a weighty matter. As a result, the law must firmly manage and limit the conditions in which an individual may be deprived of his life by such power systems.

To conform to the international law of human rights, any state rule, which permits the application of deadly force, must therefore, be classified under those small cases in which the deprivation of life cannot be termed as arbitrary. Similar provisions against deliberate killings of people amidst armed clash are included in the International humanitarian law (Mogire and Mkutu, 2011, p.496).

Under Kenyan and international law, police may use lethal force only when necessary for self-defence or to save a life. Section 4 of the Sixth Schedule of the National Police Service Act of 2011 requires police officers who use lethal fire to report to their immediate superior explaining the circumstances that necessitated the use of force. Section 5 of the same act requires officials to report any use of force that leads to death or serious injury to the Independent Police Oversight Authority for investigation. Police authorities have not complied with these requirements in these cases of extrajudicial killings.

2.3.3 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 1 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment. (Bonner, 2013, p. 102), defines torture as follows:

“The term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”(pp 544-789).

According to Kenya constitution 2010, Article 29, every person has the right to freedom and security of the persons, which include the right not to be treated or punished in a cruel, inhuman or degrading manner. Prevention against afflictions and other brutal, merciless or humiliating treatment does not give in to threats brought forth by terrorism or to the suspected threat posed by a person to the security of a State. Nonetheless, States have frequently taken up policies to curb terrorism whose effects undermine this complete prevention (Piombo and Lischer, 2008). Gearty (2007) argues that the use of afflictions and other malicious, inhuman or demeaning treatment to information unclear from alleged terrorist is not allowed, the same way the use of proof got by persecuting, whether within or out of the country. In accordance to the Human Rights Committee, the rights protected in the International Covenant on Civil and Political Rights (ICCPR) is applicable to every individual who may be within a certain State and to all the people under its authority (Whitaker, 2007). This implies that a State party must uphold and make sure that all the rights stipulated in the Covenant especially the total prohibition of persecution to anyone within its authority or efficient control, even if not located within its region. Likewise, the International Court of Justice (ICJ) has declared that, while the jurisdiction of countries is territorial, the rights protected in the Covenant extend to the acts carried out by a State in the application of its powers outside its own territory (Mogire and Mkutu, 2011, p.498).

Concerning circumstances of custody, practices such as the use of covert and incommunicado imprisonment, as well as extended lonely detention and similar measures

whose objectives is causing strain, may amount to persecution, brutality, ruthless or humiliating punishment (Office of the United Nations, 2008).

2.3.4 Repatriation of Individuals Suspected of Terrorist Activity

Countries have a responsibility to carry out any relocation of detainees in a way which is apparent and in line with human rights and the rule of law, including the right to value for an individual's natural dignity, the right of everyone to acknowledgment before the law and the right to appropriate process (Bonner, 2013). Furthermore state authorities have a responsibility to prevent human rights abuses and to keenly investigate and put on trial any accusation of actions which may involve the relocation or imprisonment of persons in a way conflicting with their duty under international law (Ludlam, 2012, p. 116).

Since 11 September 2001, most Countries have apparently extradited, barred, deported or else relocate persons alleged of terrorism to their native land or to other States where they purportedly face a threat of persecution or mistreatment, particularly in Article 3 of the Convention Against Torture (Mogire and Mkutu, 2011, p.494). This is in the interest of the security against terrorism. According to Ludlam, (2012, p. 119) the transfer of a person, which happens outside the rule of law and without proper procedure may lead to several human rights infringement, in particular abuse of the right to freedom and security of an individual, the ban of persecution and other unkind, ruthless or humiliating punishment, the right to recognition of a person everywhere before the law, the right to a just trial, the right to personal and family unit life, and the right to an efficient remedy. Depending on the conditions, it may also lead to a forced disappearance.

2.3.5 Liberty and Security of the Suspected Terrorist

Under the Universal Declaration of Human Rights, 1948 the right to fair trial and rule of law should be recognized. Terrorist suspects suffer infringement of their human rights set out under Kenyan and International law. All people are protected from the illegal or arbitrary hindrance with their freedom. This protection is relevant in the perspective of criminal dealings, as well as other areas in which the State might influence the freedom of individuals. Practically, as part of their hard work to curb terrorism, Countries have embraced measures which have an effect on the freedom of people, such as: pre-trial process for terrorism related offences, including provisions regarding bail and the detention of people in custody awaiting trial.

The other measure is detention before laying charges against an individual to allow more investigations on whether he was part of the act or supported the act of terrorism. In addition, detention to stop an individual from committing or helping in the act of terrorism and imposing conditions on an individual who is not detained, to prevent him from committing or abating terrorism and in order to question and get information on terrorism. Devotion to due procedure and the right to a just hearing are vital for the appropriate protection of an individual's freedom and security (Mogire and Mkutu, 2011, p.491).

2.3.6 Right to Due Process of the Law and Fair Trial

The human rights protection for all people charged with unlawful offences like terrorism; include the right to be assumed innocent, the right to a hearing with appropriate assurance

and within a practical timeframe, by a knowledgeable, autonomous and neutral court (Whitaker, 2007). Also, the right to have a sentence reviewed by a higher tribunal satisfies the same principles. International humanitarian law is concerned to significantly related protections for the try-out of people in the perspective of armed conflicts (Mogire and Mkutu, 2011, p.492).

The right to fair trial is fundamental to the rule of law. It draws its jurisprudential basis from the rule of law, understood as conformity to obligatory universal legal rules that check arbitrary and unaccountable power (Osman, 2008). Under the Universal Declaration of Human Rights (UDHR) there is protection against arbitrary arrest, detention or exile under Article 9, while the right to fair trial is recognized under Article 10 (e), which provides that everyone is entitled in full equality to a fair and public hearing by an independent tribunal in the determination of his rights and obligations and of any criminal charge against the suspect (Mogire and Mkutu, 2011, p.490). The involvement of security workforce and exceptional courts to try terrorist suspects may also have severe implications on suitable procedural rights, depending on the nature of the court and any limitations placed on individual facing allegations before it (Mogire and Mkutu, 2011, p.498). In particular, the conditions are uncommon in which a military court will be the suitable setting to try a person.

According to Osman (2008) the number of measures put in place by Member States has had grave implications on suitable process-related rights for persons accused of terrorism. While targeted approval against persons accused of taking part in terrorism acts may be

an effective instrument in a State's efforts to curb terrorism it has its challenges. Such procedures bring forth several serious challenges to human rights. Measures should be established to make sure a clear listing and de-listing procedure, based on transparent criteria and with a suitable, open and consistently practical standard of evidence, as well as an efficient, accessible and impartial instrument of review for the persons and countries concerned to successfully mitigate terrorism. The lowest standards necessary to make sure just and transparent procedures must contain the right of an individual to get information of the measures taken and to know the case facing him or her as soon as possible, and without frustrating the intentions of the sanctions government; the right to be listened to within a reasonable timeframe by the appropriate decision-making entity; the right to efficient review by a skilled and sovereign review mechanism; the right to advice with respect to all dealings and the right to an effective remedy (Ignatieff, 2002, p. 1149). The acute problem is how to achieve fair trials for men and women who are demonized by the society from which judges are drawn. This section of the study argues that the justices dispensed to accused terrorist are not exquisitely fair. It must be justice that conforms and provides a genuine adversary process determined by judges who are independent of the prosecution authority.

2.4 Theoretical Framework

The following theories explain why terrorism occurs resulting to counter- terrorism operations or measures. The political theory of anarchy, which is a theory of governance that rejects any form of central authority and the natural rights theory which shows that human rights are inalienable fundamental rights to which a persons is inherently entitled

simply because she or he is a human being and that these rights should be preserved at all times.

2.4.1 Anarchism

When a state understands the motivation and causes of terrorism, it helps to structure a broad counter terrorism strategy since terrorists are not from the same group (Osman, 2008). Terrorism is absolutely not a form of governance, but a revolution. Most revolutionary snub terrorism for nationalist or religious reasons but in a theoretical sense, anarchism rationalizes terrorism as a form of criminal activity that attacks the principles of a structured, satisfied society. According to Pierre- Joseph Proudhon (1840), anarchism is often referred to as nineteenth century roots of terrorism. It is the denial of the state of any form of coercive regime of any form of domination and utilization (Walsh and Piazza, 2010). The study by Goodwill, et al., (2010, p.340.) shows that that fight against terrorism is the greatest hazard to the safeguarding of basic freedoms and human rights. To protect and uphold the rights of the people, the remedy is in the struggle against terrorism in all its aspects by cooperating with the international community. Terrorism internationally target civilians in order to gain publicity. Political oppression, religious intolerance and divine revelation are the most cited reasons for terrorist attacks.

2.4.2 The Natural Rights Theory

Human rights are considered the offspring of natural rights, which themselves evolved from the concept of natural law. The idea of a person having certain fundamental, unchallengeable rights is against a autonomous State (Mogire and Mkutu, 2011, p.474).

Thomas Hobbes (1588 – 1679), John Locke (1632 – 1704) and Jean-Jacques Rousseau (1712 – 1778) are the three main philosophers who came up with the Natural Rights theory. Thomas Hobbes was the first winner of the theory of ‘natural rights’ (Whitaker, 2007). In his book, he advocated that no person’s right to life could be taken away, which he enjoys in the state of nature. He affirmed that all human beings are the same, without any consideration.

He continues to say that every human being has a natural right to life, personal freedom and right to own property, and that there is no regime that has authority to deprive people of these rights reason being they had enjoyed them even before the formation of the civil or political society (Ignatieff, 2002, p. 1145).

Rousseau a scholar of natural law school, states that “All men are born free but everywhere they are in chains.” He announced that men are given absolute rights of freedom, equality and alliance. These impressions became the foundation for the French Declaration of the Rights of Man and of the Citizen. Paine, an American radical scholar, developed the principle of natural rights without connecting it to the social contract theory. He upheld that rights are natural, because they were given by God to man. These rights exist separately of the lawful code of any country.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter describes the methodology that was adopted in this study. It highlights the research design, the study population, sampling techniques and sample size, data collection instruments, data collection procedure and data analysis.

3.2 Research Design

This study was a cross-sectional study where studies are carried out at one time point or over a short period. In this design, data is collected on individual characteristics, including information on the independent variables, alongside information about the dependent variable. In this way cross-sectional studies provide a 'snapshot' of the dependent variable and the characteristics associated with it, at a specific point in time (Cooper and Schindler, 2003). This research study also used both qualitative and quantitative design which involves gathering data that describe events and tabulates, depicts, and describes the data.

3.3 Study Population

The target population of this study was the Kenya Anti-Terrorism Police Unit (ATPU) officers based in Nairobi and the Kenya staff working at the headquarters of Kenya National Human Rights Commission departments. They include support, complaint and investigation, redress, reforms and accountability, research and complaints, public affairs and communication, public education and training, economic social and cultural rights

and regional outreach (Table 3.1). The two organizations were selected because the Kenya National Human Rights Commission fights for the rights of the accused while the ATPU is accused of violating rights of terrorist. In addition, the two organizations were used in an effort to reduce bias as they provided answers to same questions on different perspectives.

Table 3.1: Target Population

Organization	Department	Target Population
Kenya Police Service	ATPU	47
Kenya National Human Rights Commission	Support	32
	Complaint and investigation	18
	Redress	14
	Reforms and accountability	15
	Research and complaints	21
	Public affairs and communication	12
	Public education and training	22
	Economic social and cultural rights	14
	Regional outreach	16
	Total	

3.4 Sample and Sampling Technique

This study used stratified random sampling method to select thirty percent of the target population for both KNHRC and ATPU. Stratified random sampling involves the division of a population into smaller groups known as strata (Babbie, 2002, p.58). In stratified random sampling, the strata are formed based on population members' shared attributes or characteristics. A random sample from each stratum is taken in a number proportional to the stratum's size when compared to the population. These subsets of the strata are people forming the sampling frame. In this study the strata will be the various departments in Kenya National Human Rights Commission and Anti-Terrorism Police Unit. According to Kothari (2004), a sample size of ten to thirty percent is a good representation of the target population. The sample size of this study was therefore forty nine individuals working in Kenya National Human Rights Commission and fourteen Anti-Terrorism Police Unit (ATPU) officers.

Table 3.2: Sample Size

Organization	Department	Target Population	Sampling Percent	Sampl Size
Kenya Police Service	ATPU	47	30%	14
Kenya National Human Rights Commission	Support	32	30%	10
	Complaint and investigation	18	30%	5
	Redress	14	30%	4
	Reforms and accountability	15	30%	5
	Research and complaints	21	30%	6
	Public affairs and communication	12	30%	4
	Public education and training	22	30%	7
	Economic social and cultural rights	14	30%	4
	Regional outreach	16	30%	5
	Total	211	30%	63

3.5 Data Collection Instruments

The study used primary data which was collected by use of a questionnaire. Close ended and open ended questions were used in an effort to conserve time, to ensure consistency as well as to facilitate an easier analysis as they are in immediate usable form and encourage the respondent to give an in-depth response.

3.6 Data Collection Procedures

The questionnaires were administered by use of a drop off and pick up later method to the sampled respondents. The use of the Drop-off/Pick-Up (DOPU) method results in significantly high response rates (Ngechu, 2004, p.474). In addition, the DOPU technique is an effective means to reduce potential non-response bias through increased response rate (Mugenda and Mugenda, 2003, p.210). The respondents were contacted by visiting the two organizations; Kenya National Human Rights Commission and Anti-Terrorism Police Unit (ATPU) officers. Before administering the questionnaires, the researcher met with the heads of the two organizations to whom he explained the purpose of the study and assured the confidentiality of any information given. Thereafter, the researcher distributed the questionnaires to the staff in both organizations and gave them seven days to fill the questionnaires after which they were collected.

3.7 Data Analysis and Presentation

Quantitative data collected were analysed using descriptive statistics by the help of SPSS (V. 17.0) and presented through frequencies, percentages, means and standard deviations. To use SPSS, the data was first of all checked for errors manually. Afterwards, the options in the closed ended questions were allocated numbers (coding). For instance, responses with a yes were allocated one and responses with a no were allocated two. All the questions in this study were treated as variables. After coding, data entry was done and all the questionnaires from the respondents were treated as cases. After data entry,

various descriptive statistics were used to summarize the findings and the results were presented in tables, figures and charts.

CHAPTER FOUR

PRESENTATION AND INTERPRETATION OF FINDINGS

4.1 Introduction

This chapter discusses the interpretation and presentation of the findings. The purpose of the study was to find out whether it is possible to effectively combat terrorism while ensuring the protection and respect for human rights of suspects. The study also sought to explain the effect of terrorism on the enjoyment of all human rights and fundamental freedoms, explain the central role of the state on human rights violations when countering terrorism and finally highlight specific human rights violations in the context of counter terrorism measures in Kenya.

The study population for this study was 49 individuals working in Kenya National Human Rights Commission and 14 Anti-Terrorism Police Unit (ATPU) officers. Out of this sample size 43 individuals working in Kenya National Human Rights Commission and 11 Anti-Terrorism Police Unit (ATPU) officers; this represents a 85.71% response rate. According to Cooper and Schindler (2003), 50% response is adequate for analysis and reporting and response rate of 70% and over is excellent and hence the response rate in this study was enough to make inferences and conclusions.

4.2 Background characteristics

As part of the general information, the respondents were asked to indicate their age bracket and the duration of time they had been working in the organization.

4.2.3 Age Bracket of the Respondents

From the findings, 3.70% of the respondents reported that they were aged between 45 and 55 years, 18.5% indicated that they were aged between 35 and 45 years, 70.4% indicated that they were below 25 and 35 years in age and 7.4% indicated that they were aged 25 years and below. The age of an individual is used to determine whether they have experienced terrorism acts in Kenya or not. In Kenya major terrorism acts started in 1998 after the bombing of the US Embassy. In this study most of the respondents were aged between 25 and 35 years and hence all hence the youngest person by the time terrorism acts started in Kenya was aged 13 years. This shows that most of the respondents were grownups by the time terrorism acts started in Kenya.

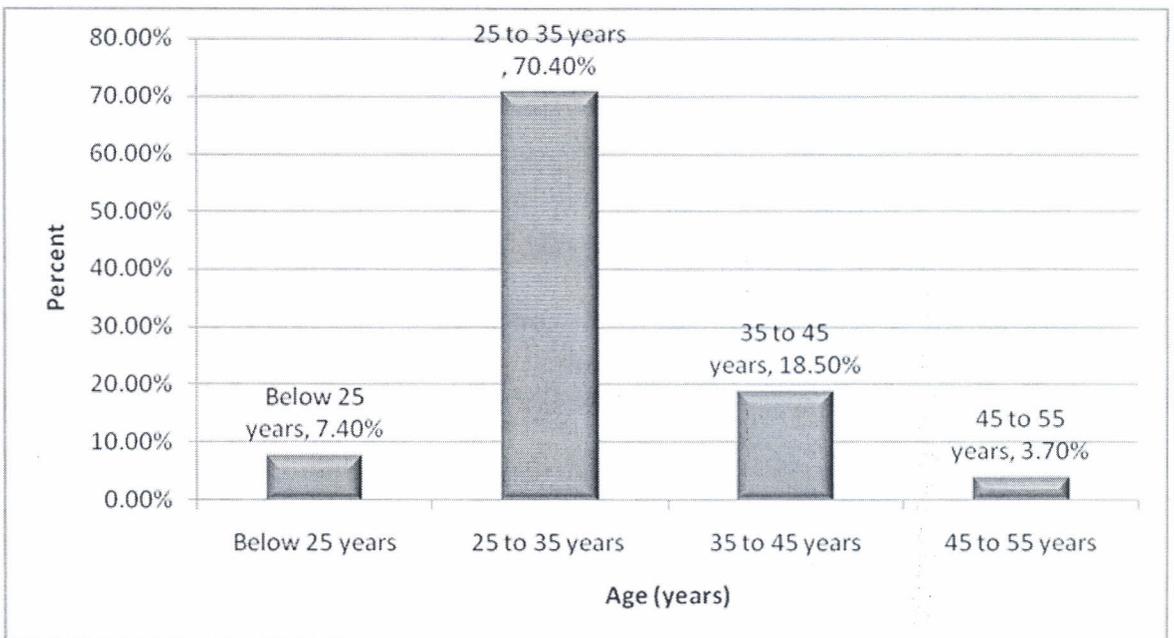


Figure 4.1: Age Bracket of the Respondents

4.2.4 Duration in the Organization

According to the findings, 7.4% of the respondents indicated that they had been working in their organization for more than 12 years, 14.8% of the respondents indicated a working period of 9 and 12 years, 44.4% indicated a duration between 6 and 9 years, 18.5% of the respondents had worked between 3 and 6 years and 14.8% below 3 years. From these findings we can deduce that most of the respondents had been working in their organizations for between 6 and 9 years. Duration in the organization shows the work experience of the respondents and hence determines whether they have the information required in this study or not. In this study most of the respondents had a work experience of between 6 and 9 years and hence they had the information required to meet the objectives of this study.

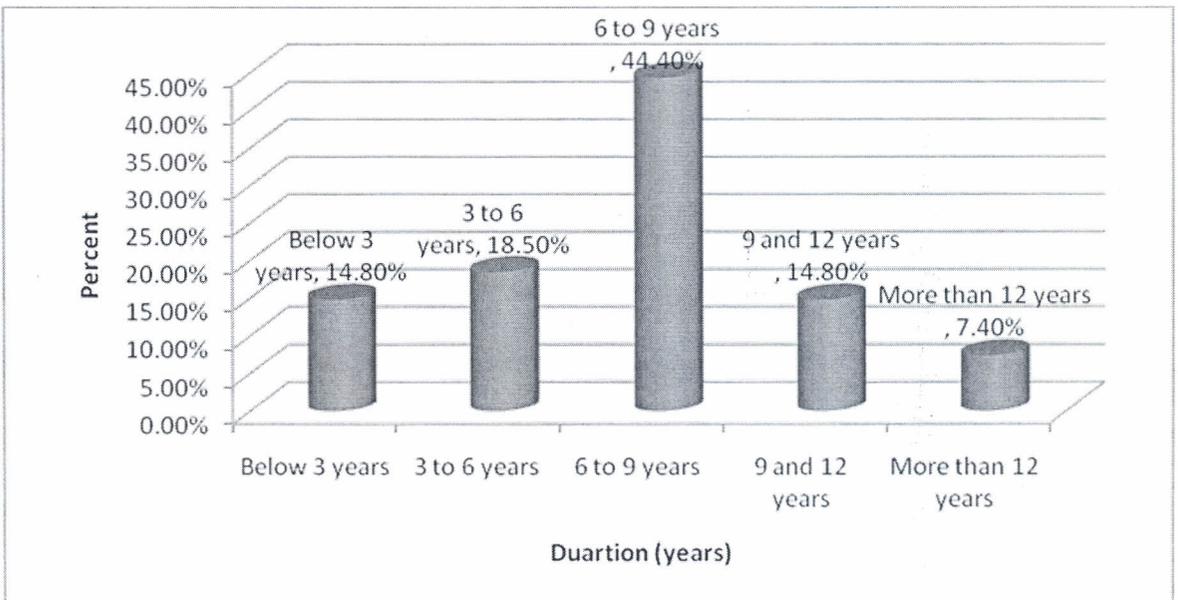


Figure 4.2: Duration in the Organization

4.3 Impact of Terrorism on the Enjoyment of Human Rights and Fundamental Freedoms

The first objective of this study was to explain the effect of terrorism on the enjoyment of human rights and fundamental freedoms.

4.3.1 Terrorism and Enjoyment of Human Rights and Fundamental Freedom

According to the findings, 85.2% of the respondents indicated that terrorism influences the enjoyment human rights and fundamental freedom while 14.8% disagreed. From these findings we can deduce that terrorism influences the enjoyment human rights and fundamental freedom.

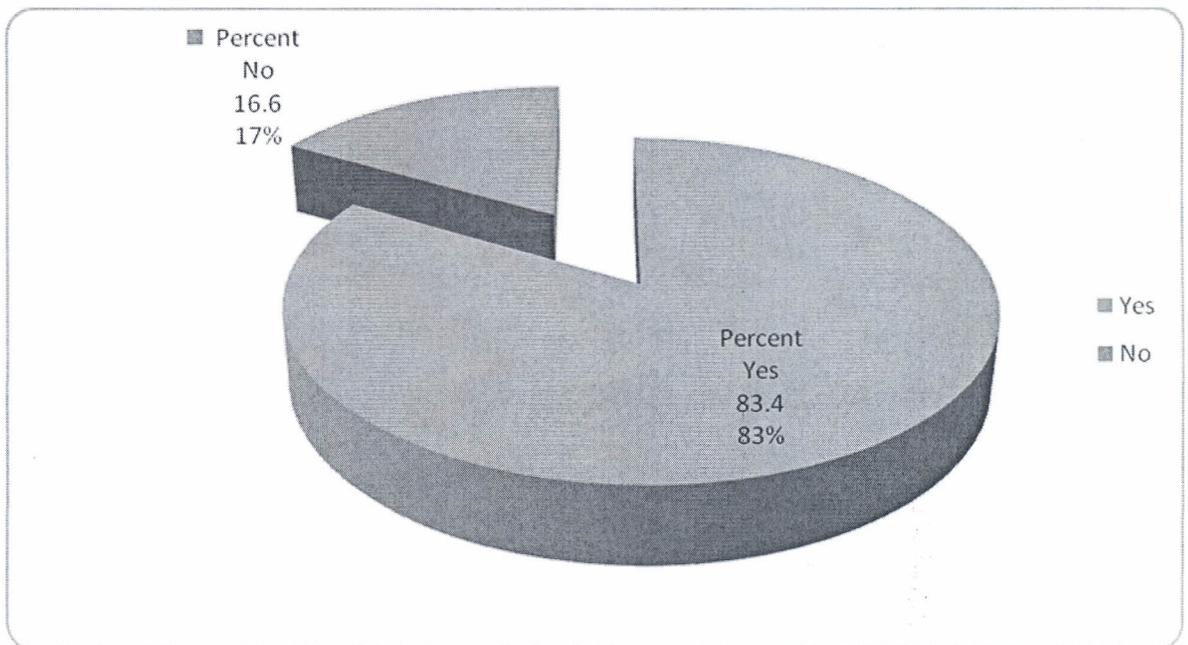


Figure 4.3: Terrorism and enjoyment human rights and fundamental freedom

4.3.2 How Terrorism Influences Enjoyment Human Rights and Fundamental Freedom

From the respondents who indicate that terrorism influences the enjoyment human rights and fundamental freedom. According to the findings, the respondents indicated that freedom of worship is influenced because people are afraid to go to churches due to terrorism threats. In addition, the respondents indicated that terrorism leads to loss of life and property and threatens the dignity and security of human beings. The respondents further indicated that it affects fundamental rights like right to life, right to liberty and right to be free. The respondents further indicated that terrorism acts can lead to arrest of innocent people during pursuit of terrorists.

4.3.3 Impact of Terrorism on Human Rights

The respondents were requested to indicate the extent to which they agreed with statements in relation to terrorism and its impact on human rights. According to the findings, the respondents strongly agreed with a percentage of 96.3 that terrorism leads to death or serious bodily injury to any person. The respondents also strongly agreed with a percentage of 96.3 that terrorism leads to a serious damage to public or private property, including state or government facilities, transportation systems. In addition, the respondents agreed with a percentage 92.6 that terrorism acts are unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify. Further, the respondents agreed with a percentage 96.3 that terrorism involves acts of violence that target civilians in the pursuit of political or ideological aims. Additionally, the respondents agreed with a percentage of

85.2 that terrorism involves criminal acts intended or calculated to provoke a state of terror in the general public a group of persons or particular persons for political purposes. Lastly, the respondents agreed with a percentage of 81.5 that terrorism aims at the very destruction of human rights, democracy and the rule of law.

Table 4.1: Impact of terrorism on human rights

	Frequency		Percent	
	Yes	No	Yes	No
Terrorism involves acts of violence that target civilians in the pursuit of political or ideological aims	52	2	96.3	3.7
Terrorism involves criminal acts intended or calculated to provoke a state of terror in the general public a group of persons or particular persons for political purposes	46	8	85.2	14.8
Terrorism acts are unjustifiable, whatever the considerations of a political, philosophical, ideological., racial, ethnic, religious or other nature that may be invoked to justify them	50	4	92.6	7.4
Terrorism leads to death or serious bodily injury to any person	52	2	96.3	3.7
Terrorism leads to a serious damage to public or private property, including state or government facility, transportation system, and infrastructure facility	52	2	96.3	3.7
Terrorism aims at the very destruction of human rights, democracy and the rule of law	44	10	81.5	18.5

4.3.4 Effects of Terrorism on Human Rights

The respondents were further asked to indicate whether they agreed with the stated effects of terrorism on human rights. From the findings, the respondents agreed with a percentage of 92.5 that terrorism destabilizes governments. In addition, the respondents agreed with a percentage of 92.5 that terrorism jeopardize peace and security. Further, the respondents agreed with a percentage of 92.5 that terrorism endangers or takes innocent lives. With a percentage of 92.5 the respondents agreed that terrorism threatens social and economic development. The respondents further agreed with a percentage of 92.5 that terrorism threatens the dignity and security of human beings. Further, the respondents agreed with a percentage of 88.9 that terrorism creates an environment that destroys the freedom from fear of the people. In addition, the respondents agreed with a percentage of 85.2 that terrorism has links with transnational organized crime like drug trafficking, money laundering. Additionally, the respondents agreed with a percentage of 77.8 that terrorism undermines civil society. Lastly, the respondents agreed with a percentage of 74.1 that terrorism destroys public transport system.

Table 4.2: Effects of terrorism on human rights

	Frequency		Percent	
	Yes	No	Yes	No
Destabilize Governments	50	4	92.5	7.5
Undermine civil society	42	12	77.8	22.2
Jeopardize peace and security	50	4	92.5	7.5
Threaten social and economic development	50	4	92.5	7.5
Destroy public transport system	40	14	74.1	25.9
Endangers or takes innocent lives	50	4	92.5	7.5
Threatens the dignity and security of human beings	50	4	92.5	7.5
Creates an environment that destroys people's freedom from fear	48	6	88.9	11.1
It has links with transnational organized crimes like, drug trafficking and human trafficking	46	8	85.2	14.8

4.4 States' Human Rights Obligation when Countering Terrorism

The second objective of this study was to explain the obligation of the state on human rights protection when countering terrorism.

4.4.1 Kenya's Commitment to Countering Terrorism

The respondents were also asked to indicate whether the government of Kenya is committed to countering terrorism. From the findings, 96.3% of the respondents indicated that the government of Kenya is committed to countering terrorism while 3.7% disagreed. From these findings we can deduce that the government of Kenya is committed to countering terrorism.

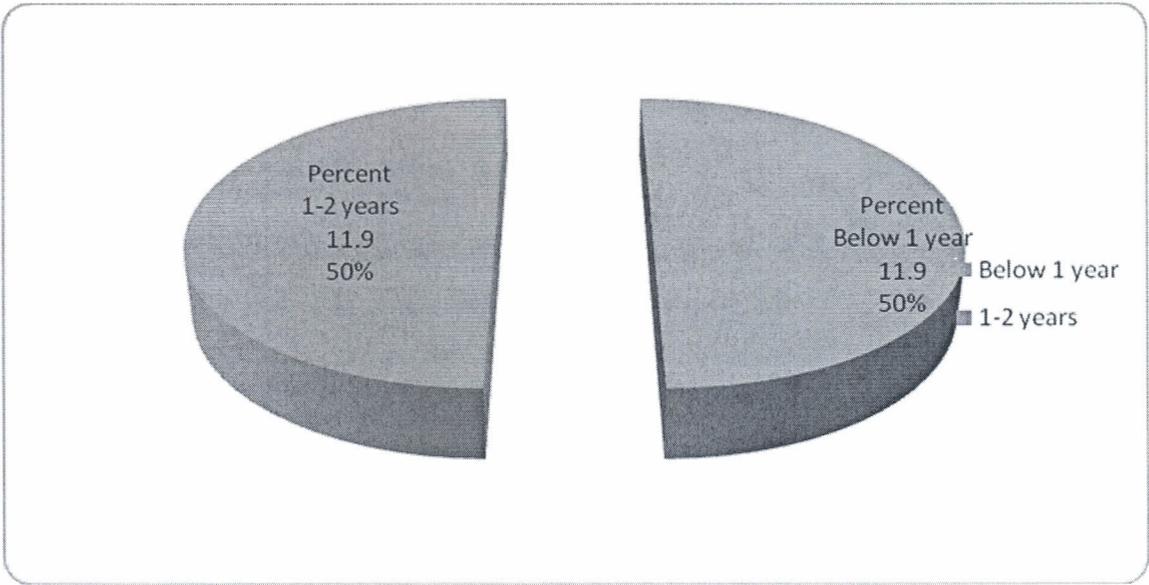


Figure 4.4: Kenya’s commitment to countering terrorism

4.4.2 Counter-terrorism Policies and Government’s Strategies

The respondents were also asked to indicate whether the counter-terrorism policies in Kenya are aligned to the government’s strategies to counter terrorism. According to the findings, 59.26% of the respondents reported that the counter-terrorism policies in Kenya are aligned to the government’s strategies to counter terrorism while 40.74% disagreed. From these findings we can deduce that the counter-terrorism policies in Kenya are aligned to the government’s strategies to counter terrorism.

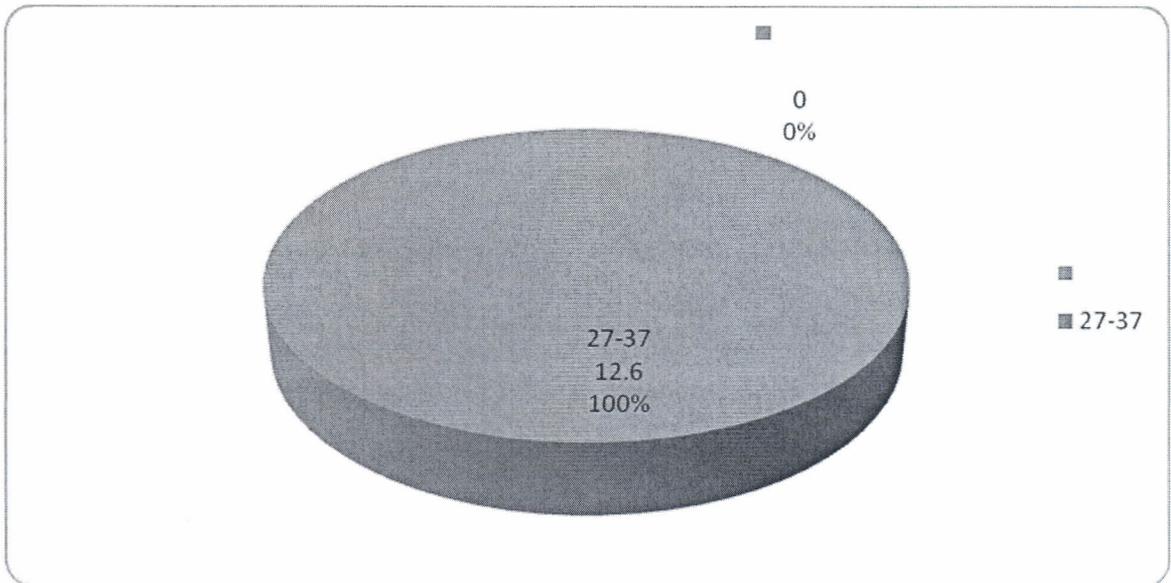


Figure 4. 5: Counter-terrorism policies and government's strategies

4.4.3 Government Strategies to Counter Terrorism

The respondents were asked to indicate the extent to which the government of Kenya used the stated ways to counter terrorism. From the findings, the respondents indicated with a percentage of 29.6 that the government of Kenya was using adoption of the United Nations Global Counter-Terrorism Strategy to sway terrorism. In addition, the respondents agreed with a percentage 44.4 that the government of Kenya was improving the rule of law to sway terrorism. Further, the respondents agreed with a percentage of 40.7 that the government of Kenya ensures that any measures taken to counter terrorism comply with their obligations under international law. Lastly, the respondents agreed with a percentage of 29.6 that the government of Kenya addresses the conditions conducive to the spread of terrorism.

The respondents also indicated that the government of Kenya had formed an anti-terror police unit and was involved in peace-keeping in Somalia. The respondents further indicated that the government of Kenya was using legislations such anti and counter terrorism bill/Act passed by the Kenya parliament. The government is also using international cooperation with external partners to fight terrorism. The government also ensures registration of persons through ID cards and passports according to the law. The government of Kenya also ensures persons suspected of being terrorists are arrested and handed over to relevant authorities. The respondents further indicated that the government was dealing with terrorism by securing the Kenyan borders. The government has introduced a Nyumba Kumi initiative to help Kenyans understand their neighbors.

Table 4. 3: Government strategies to counter Terrorism

	Frequency		Percent	
	Yes	No	Yes	No
Adoption of the United Nations Global Counter-Terrorism Strategy	16	38	29.6	70.4
Addressing the conditions conducive to the spread of terrorism	16	38	29.6	70.4
Improve the rule of law	24	30	44.4	55.6
Ensure that any measures taken to counter terrorism comply with their obligations under international law	22	32	40.7	59.3

4.5 Specific Human Rights Violations in the Context of Counter Terrorism

The third objective of this study was to explain specific human rights violations in the context of counter terrorism measures in Kenya.

4.5.1 Whether Kenya Conforms to the International Law

The respondents were also asked to indicate the extent to which the government of Kenya has been conforming to the international law. From the findings, the respondents indicated with a percentage of 63 that the government of Kenya was conforming with the international refugee law to a great extent. In addition, the respondents agreed with a percentage of 51.9 that the government of Kenya was conforming with International humanitarian law to a great extent. Further, the respondents indicated with percentage of 44.4 that the government of Kenya was conforming with Charter of the United Nations and relevant international conventions and protocols to a moderate extent. Lastly, the respondents indicated with a percentage of 22.2 that the government of Kenya was conforming with human rights law to a moderate extent.

Table 4. 4: Whether Kenya Conforms to the International Law

	Frequency		Percent	
	Yes	No	Yes	No
Refugee law	34	20	63.0	37.0
International humanitarian law	28	26	51.9	48.1
Human rights law	12	42	22.2	77.8
Charter of the United Nations and relevant international conventions and protocols	24	30	44.4	55.6

4.5.2 Human Rights Considerations in dealing with Terrorism

The respondents were asked to indicate the extent to which the government of Kenya considers the stated human rights in dealing with the terrorism. From the findings, the respondents indicated with a percentage of 63 that the government of Kenya was putting into consideration the right to life in dealing with terrorism. In addition, the respondents indicated with a percentage of 40.7 that the government of Kenya was putting into consideration torture and other cruel, inhuman or degrading treatment or punishment when dealing with terrorism. Further, the respondents indicated with a percentage of 29.6 that the government of Kenya does not take into consideration human rights when dealing with repatriation of refugees and Asylum – seekers (Transfer of individuals suspected of terrorist activity). Additionally, the respondents indicated with a percentage of 37 that the government of Kenya was putting into consideration liberty and security of the suspects of terrorism when dealing with terrorism. Lastly the respondents moderately agreed with a percentage of 33.3 that the government of Kenya was putting onto consideration right to due process of the law and fair trial.

Table 4. 5: Human Rights considerations in dealing with terrorism

	Frequency		Percent	
	Yes	No	Yes	No
The right to life	34	20	63.0	37.0
Torture and other cruel, inhuman or degrading treatment or punishment	22	32	40.7	59.3
Violation of the rights of refugees and Asylum – seekers (Transfer of individuals suspected of terrorist activity)	16	38	29.6	70.4
Liberty and security of the suspects of terrorism	20	34	37.0	63.0
Right to due process of the law and fair trial	18	36	33.3	66.7

CHAPTER FIVE

THE DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter presents a summary of the findings, discussion, conclusions and recommendations for practice and further research on the problem. This study aimed at finding out whether it is possible to effectively combat terrorism while ensuring the protection of and respect for human rights of suspects. The study also sought explain the effects of terrorism on the enjoyment of all human rights and fundamental freedoms, explain the central role of the state on human rights violations when countering terrorism and explain specific human rights violations in the context of counter terrorism measures in Kenya. Most of the respondents in this study were male. This is because most of the officers in the ATPU are male. In addition, most of the respondents were aged between 25 and 35 years and had been working in their organizations for between 6 and 9 years.

5.2 Impact of Terrorism on the Enjoyment of Human Rights and Fundamental Freedoms

The first objective of this study was to explain the effect of terrorism on the enjoyment of all human rights and fundamental freedoms. This study established that terrorism influences the enjoyment or causes a great of human rights and fundamental freedom. In addition the study established that places of worship are targeted and people are afraid of going to churches due to terrorism threats. Further, terrorism leads to loss of life and property and threatens the dignity and security of human beings. It also affects

fundamental rights like right to life, right to liberty and right to be free and can lead to arrest of innocent people during pursuit of terrorists.

The study established that terrorism leads to serious bodily injury to people and leads to a serious damage to public or private property, including state or government facility, transportation system, and infrastructure facility. In addition, the study found that terrorism acts are unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify. Further, the study revealed that terrorism involves acts of violence that target civilians in the pursuit of political or ideological aims and involves criminal acts intended or calculated to provoke a state of terror in the general public a group of persons or particular persons for political purposes.

The study found that terrorism destabilizes governments, jeopardize peace and security, endangers or takes innocent lives, threatens social and economic development, threatens the dignity and security of human beings, creates an environment that destroys the freedom from fear of the people, has links with transnational organized crime like drug trafficking, money laundering., undermines civil society and destroys public transport system.

5.3 States' Obligation on Human Rights when Countering Terrorism

The study established that the government of Kenya is committed to countering terrorism. The study also established that the counter-terrorism policies in Kenya are

aligned to the government's strategies to counter terrorism are not addressing the issue of human rights but it overlooks it and concentrates on security instead of addressing both. It was also established that the government of Kenya is using adoption of the United Nations Global Counter-Terrorism Strategy to sway terrorism. The intelligence of the country is not gathering the correct information to help Police to curb the terrorism acts.

In addition, even if the government of Kenya is improving the rule of law, ensures that any measures taken to counter terrorism comply with their obligations under international law and addresses the conditions conducive to the spread of terrorism, the government agencies are not adhering to it. It was also revealed that in dealing with terrorism, the government of Kenya has formed an Anti-Terror Police Unit, is involved in dealing with the terrorist attacks in the country. The government is also using international cooperation with external partners to fight terrorism. The government also ensures registration of persons through ID cards and passports according to the law. The government of Kenya also ensures persons suspected of being terrorists are arrested and handed over to relevant authorities. The government has introduced a Nyumba Kumi initiative to help Kenyans understand their neighbors.

5.2.3 Specific Human Rights Violations in the Context of Counter Terrorism

The study found that the government of Kenya was conforming with the international refugee law, International humanitarian law, Charter of the United Nations and relevant international conventions and protocols to a great extent. Further, the government of Kenya was conforming with human rights law to a moderate extent.

The study also established that the government agencies violate human rights when countering terrorism in the country. The government is not putting into consideration the right to life in dealing with terrorism. In addition, the study revealed torture and other cruel, inhuman or degrading treatment or punishment is exercised when dealing with suspects of terrorism. Further, the study revealed that the government of Kenya in consideration to dealing with violation of the rights of refugees and Asylum – seekers (Transfer of individuals suspected of terrorist activity). Additionally, the government of Kenya is not putting into consideration liberty and security of the suspects of terrorism when dealing with terrorism. The study also found that the suspects are not given proper right to due process of the law and fair trial.

5.3 Conclusion

In relation to the effect of terrorism on the enjoyment of all human rights and fundamental freedoms the study found that terrorism leads to loss of life and property and threatens the dignity and security of human beings. It also affects fundamental rights like right to life, right to liberty and right to be free and can lead to arrest of innocent people during pursuit of terrorists. The study also established that it leads to a serious damage to public or private property, including state or government facility, transportation system, and infrastructure facility. This study also established that terrorism destabilizes governments, jeopardize peace and security, endangers or takes innocent lives, threatens social and economic development, threatens the dignity and security of human beings, creates an environment that destroys the freedom from fear of the people, has links with

transnational organized crime like drug trafficking, money laundering, undermines civil society and destroys public transport system.

In relation to the central role of the state on human rights violations when countering terrorism, the study established that the government of Kenya is committed to countering terrorism as counter-terrorism policies in Kenya are aligned to the government's strategies to counter terrorism. The study also found that the government of Kenya is using adoption of the United Nations Global Counter-Terrorism Strategy to sway terrorism. In addition, the government of Kenya is in the process of improving the rule of law, ensures that any measures taken to counter terrorism comply with their obligations under international law and addresses the conditions conducive to the spread of terrorism. The government has introduced a Nyumba Kumi initiative to help Kenyans understand their neighbours. In relation to specific human rights violations in the context of counter terrorism measures in Kenya, the study found that the government of Kenya was conforming with the international refugee law, International humanitarian law, Charter of the United Nations and relevant international conventions and protocols to a great extent. In addition, the study revealed that the government of Kenya has not put into consideration torture and other cruel, inhuman or degrading treatment or punishment when dealing with terrorism. Additionally, the government of Kenya was putting into consideration liberty and security of the suspects of terrorism when dealing with terrorism.

5.4 Recommendations

The legislatures should come up with bills which will tackle the sources of finance for terrorist and address the conditions conducive to the spread of terrorism and address radicalization and extremism that lead to terrorism. They should come up with law to govern the protection of human rights while countering terrorism.

The government of Kenya should ensure that there are no illegal immigrants and this can be done by proper screening and enhanced checking and monitoring of Kenyan borders. The government should embrace technology in dealing with terrorism so as to be able to separate terrorists from citizens. The government should also build a close link of trust with the Kenyans. This can help to boost the spirit of patriotism or nationalism, which can aid in getting terrorists movements in the country. The government of Kenya should also improve surveillance and intelligence, address inequality and poverty and improve legislation and other internal policies.

Police officers at all levels should be trained in human rights law in order to improve the quality and effectiveness of the policing and gain the respect and confidence of the public so as to stop beating and arbitrary detaining suspect and other act which amounts to torture. Proper investigations including forensic investigation should be done in order to avoid unlawful arrest.

The judiciary should also ensure that arrest and detention should be mandated under the legal framework of the recognized criminal offences and within the human rights standards and international humanitarian law.

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APPENDICES

APPENDIX I: QUESTIONNAIRE

I am a student at the University of Nairobi pursuing Masters of Arts Degree in Human Rights and in my final year of study. As part of the requirements for graduation, I'm undertaking a research to establish the "The Impact Of Counter- Terrorism Operations On Human Rights In Kenya". I'm therefore, kindly requesting for your support in terms of time, and by responding to the questions below. Your accuracy and candid response will be critical in ensuring objective research.

General Information

1. Gender

Male Female

2. Age Bracket

Below 25 years 25 to 35 years

35 to 45 years 45 to 55 years

Above 55 years

3. How long have you been working in the organization?

Below 3 years 3 to 6 years

6 to 9 years 9 to 12 years

More than 12 years

Impact of terrorism on the enjoyment of all human rights and fundamental freedoms

4. Does terrorism influence the enjoyment human rights and fundamental freedom?

Yes No

5. If yes, how?

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6. To what extent do you agree with the following statements in relation to terrorism and its impact on human rights?

Statements	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
Terrorism involves acts of violence that target civilians in the pursuit of political or ideological aims					
Terrorism involves criminal acts intended or calculated to provoke a state of terror in the general public a group of persons or particular persons for political purposes					
Terrorism acts are unjustifiable, whatever the considerations of a political, philosophical, ideological., racial, ethnic, religious or other nature that may be invoked to justify them					
Terrorism leads to death or serious bodily injury to any person					
Terrorism leads to a serious damage to public or					

private property, including state or government facility, transportation system, and infrastructure facility					
Terrorism aims at the very destruction of human rights, democracy and the rule of law					

7. To what extent do you agree with the following effects of terrorism on human rights?

Effect	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
Destabilize Governments					
Undermine civil society					
Jeopardize peace and security					
Threaten social and economic development					
Destroy public transport system					
Endangers or takes innocent lives					
Threatens the dignity and security of human beings					
Creates an environment that destroys the freedom from fear of the people					
It has links with transnational organized crime like drug trafficking, money-laundering					

The central role of the state on human rights when countering terrorism

8. In your own opinion is the government of Kenya committed to countering terrorism?

Yes [] No []

9. Are the counter-terrorism policies in Kenya aligned to the governments strategies to counter terrorism?

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10. To what extent has the government of Kenya used the following sways to counter terrorism?

Strategies	To a great extent	Great extent	Moderate extent	Low extent	No extent at all
Adoption of the United Nations Global Counter-Terrorism Strategy					
Address the conditions conducive to the spread of terrorism					
Improve the rule of law					
Ensure that any measures taken to counter terrorism comply with their obligations under international law					

11. Apart from the above strategies which other strategies has the government of Kenya committed to countering terrorism?

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Illustrate specific human rights violations in the context of counter terrorism

12. To what extent has the government of Kenya been conforming to the international law particularly the following?

Policies	To a great extent	Great extent	Moderate extent	Low extent	No extent at all
Refugee law					
International humanitarian law					
Human rights law					
Charter of the United Nations and relevant international conventions and protocols					

13. To what extent does the government of Kenya consider the following human rights in dealing with the terrorism?

Human rights	To a great extent	Great extent	Moderate extent	Low extent	No extent at all
The right to life					
Torture and other cruel, inhuman or degrading treatment or punishment					
Violation of the rights of refugees and Asylum – seekers (Transfer of individuals suspected of terrorist activity)					
Liberty and security of the suspects of terrorism					
Right to due process of the law and fair trial					

Recommendation on how Kenyans counter terrorism can be improved

14. What do you recommend in relation to counter terrorism and human rights in Kenya?

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