

**EFFECTS OF COUNTER TERRORISM ON THE RIGHT TO PRIVACY IN KENYA**

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**MASTERS**

**RESEARCH PROJECT REPORT**

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## **DECLARATION**

This research project is my original work and has not been presented elsewhere for a degree award.

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## **Dedication**

I dedicate this research to my father Mr. Solomon Dola ,my other Mrs Margaret Osongo and my husband Mr. Joseph Oyieke as a symbol of my gratitude, respect and honour for the their inspiration and instilling in me values of hard work, self reliance, determination and persistence.

## **Acknowledgement**

I would wish to express my special thanks and gratitude to my research supervisor Dr.Simon Kinyanjui for his assistance and intellectual guidance during my research. A very special thanks to my parents, husband and children who supported me all this years and always gave me encouragement to move on.

## **List of Abbreviations**

US	United States
KDF	Kenya Defense Forces
BBC	British Broadcasting Cooperation
UN	United Nations
OCHR	Office of the High Commission on Human Rights
GOK	Government of Kenya

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## **Abstract**

The Republic of Kenya has in its young history been the victim of major terror attacks in the capital city of Nairobi and Mombasa. The first terrorist attack took place in 1975 and subsequently in 1981, 1998 and 2002 the first terror attack was domestic but the issue remains unresolved to date while the 1981 and 2002 were external attacks targeting Israeli hotels and an Israeli airliner in Nairobi and Mombasa. The most significant attack was the US embassy bombing of 1998 in Nairobi. The most recent however is the 21<sup>st</sup> September 2013 west gate attack where unidentified gunmen attacked the west gate shopping mall in Nairobi. Following the 11th September 2001 bombings and subsequent UN actions and resolutions including UN resolutions 1373/01, 1377/01 and 1624/2005 constrained the Kenyan government to adopt counterterrorism strategies that included, legislative reforms, institutional building, trainings and bilateral and multilateral collaboration with like-minded states including the US and UK on the actions(s). Kenya has reported thrice pursuant to resolution 1373 of 2001 and non with regards to resolution on the 24th July 2002, 12th March 2003 and 2nd March 2004 and has not reported ever since. This study shall examine and analyse the proactive, reactive, systematic counter-terrorism actions, challenges, and the lack of a clear effective counter-terrorism law in relation to human rights concerns.

## **Introduction**

Terrorism is a global issue that has necessitated major legislative and precautionary adjustments to counter. The issue has resulted to adjustments that are viewed by many to violate the right to privacy and fundamental freedoms. Kenya has been adversely affected by terrorism. Kenya has experienced a number of terrorist attacks because of its role as an American ally and its move to invade Somalia. The country has had to make significant adjustments to enhance its security with measures that require extensive privy of what would have ordinarily be viewed to be within privacy and civil liberties realm.

This study evaluates the effects of the counter terrorisms legislation and strategies and their influences on the right to privacy and fundamental freedoms in Kenya. The study shall address the following issues

1. The impact of counter terrorism on an individual's security. Counter terrorism measures encourage strategies that give the government more access to private information on the individuals. Can this access pose some danger to the individual?
2. The impact of counter terrorism measures on individual personal space. The effects of strategies that allows the government to search an individual and the individual's private possession in relation to invasion of personal space.
3. The impact of counter terrorism on individual freedom of association. Being that terrorist networks operate in closed societies, the associate of an individual is a profiling factor in counter terrorism in a way that it affects the freedom of association.

## **Background**

Kenya is not new to terror attacks. While most people remember the 1998 bombing of the United State Embassy as the first terror attack, there have been a number of terror attacks prior to the Embassy bombing. The major incidents include the Norfolk Hotel Bombing in 1980 and the Nairobi Bombing in 1975. The Norfolk attack happened on the New Year's Eve in 1980 and it was the first attack in Kenya whereby the attackers claimed responsibility<sup>1</sup>. Al Qaeda, an Arab group claimed responsibility signifying that it was retaliation for Kenya role in the Entebbe Airport in Uganda raid.

On 7<sup>th</sup> August 1998, terrorist visited Nairobi again. Osama Bin Laden led Al-Qaida claimed responsibility for the twin attack that also targeted the United States embassy in Dar es Salaam. 224 lives were lost and more than 4000 injured<sup>2</sup>. On 28 November 2002, a missile attack on an Israel Plane off Mombasa failed to hit its target while 13 people were killed and 80 injured in a subsequent attack on the Kikambala Hotel in the coastal region<sup>3</sup>. Following the invasion of Somali by Kenya Defence Forces (KDF), the country became a target of Al Shabaab. The country has witnessed 17 terror<sup>4</sup> attacks in reprisal of the invasion by the extremist Islam group. The major attack was on 21 September 2013 where gunmen raided Westgate Mall shooting to death more than 80 people.

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<sup>1</sup> See Torchia, Christopher (2013). "Kenya mall attack echoes 1980 hotel bombing." Associated Press accessed March 17, 2015 Retrieved <http://news.yahoo.com/kenya-mall-attack-echoes-1980-hotel-bombing-141916771.html>

<sup>2</sup> Katz, Samuel M. . Relentless Pursuit: The DSS and the manhunt for the al-Qaeda terrorists. (New York: Forge/Tom Doherty, 2002), 135

<sup>3</sup> Ibid 2002, 44

<sup>4</sup> "UK closes Mombasa Consulate over security fears." Capital News. (13 June 2014) accessed on 14 June 2014. Retrieved <http://www.capitalfm.co.ke/news/2014/06/uk-closes-mombasa-consulate-over-security-fears/> accessed on 14 June 2014, 67

Alshabaab embarked on a secret campaign urging Kenyans especially Muslim youths to fight their homeland (Kenya) for divine reasons<sup>5</sup>. An increasing number of terrorism activities in Kenya were carried out by locals. According to Walker,<sup>6</sup> an estimated 10% of the Al-Shabaab's fighters are Kenyans. These developments resulted to a twist in the fight against terrorism. The enemy was not just without but also within the country. On 2 October 2012, President Mwai Kibaki approved the Prevention of Terrorism Act 2012. It was the first piece of anti-terrorism and it was viewed as a legislation that compromised the right to privacy.

Other than legislation, various aspects of the country have changed with the intent of making the country more secure. The societal norms have adjusted to the imminent threat of terror from within. Regular security checks in entries of all buildings have been instituted. Both the government and the general public have been more cautious over the security with a political call for communal security tagged "Nyumba Kumi" encouraged by the government.

With all these events unfolding, the interest of securing the country has triumphed the need for privacy as a right and some fundamental freedoms such as the freedom of association. In a bid to counter the terror threat, the government has become more vigilant on the information of its citizens beyond the realm of personal privacy. These measures including the act of searching private properties and controlling the associations, have adversely affected the lives of Kenyans especially the targeted groups. Mixed views have been held with some quarters supporting the measures to safeguard the lives while others contesting the move.

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<sup>5</sup> Walker, R. 2008, 'Meeting Somalia's Islamist insurgents', BBC News, April 28 accessed on June 8, 2015 retrieved <http://news.bbc.co.uk/2/hi/africa/7365047.stm>

<sup>6</sup> Ibid 2008

### **1.1: Significance of the study**

This study comes in the backdrop of a fierce parliamentary scuffle and fistfight in Kenya. On 18<sup>th</sup> December 2014 members of parliament fought over an anti-terrorism laws with the opposition to the law claiming that the legislation poses a threat to civil liberties and freedoms including the right to privacy<sup>7</sup>. The eventful parliamentary session was followed by nullification of key aspects of the law in court. These events are testimony of strongly divided opinions on the effects of counter terrorism measures to the civil liberties including the right to privacy. An academic analysis on the impact of the counter terrorism measures on privacy will not only give an unbiased view of the situation but will also provide a sober discourse on the situation.

This study addresses important issues in relation to the impact of counter terrorism on an individual's security, the impact of counter terrorism measures on individual personal space, and the impact of counter terrorism on individual freedom of association. These are issues that affect the public space as the country enforces counter terrorism measures.

### **1.2: Statement of the research problems**

Chapter four of the constitution of Kenya on the Bill of Rights under part 2: Rights and fundamental freedom addresses issues relating to right to privacy. According to the constitution, every person has the right to privacy, which includes the right not to have--

- (a) Their person, home or property searched;
- (b) Their possessions seized;
- (c) Information relating to their family or private affairs unnecessarily required or revealed; or

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<sup>7</sup> "Fights break out in Kenyan parliament over controversial anti-terrorism laws" The guardian (18 December 2014) accessed March 16 2015 retrieved <http://www.theguardian.com/world/2014/dec/18/fights-kenya-parliament-anti-terrorism-law>

(d) The privacy of their communications infringed.

The constitution also holds that

(1) Every person has the right to freedom of association, which includes the right to form, join, or participate in the activities of an association of any kind.

(2) A person shall not be compelled to join an association of any kind.

These provisions were created with the intention to enforce an individual's security, protect the personal space of Kenyans from infringement, and allow Kenyans to enjoy the freedom of association. However, with the ensuing terror activities and the fact that some of the perpetrators of the activities are locals, counter terrorism measures are instituted in a way that they limit these provisions. This study analyses the effects of counter terrorism activities on the spirit and intention of the constitution with respect to these provisions. It investigates how these measures compromise full enjoyment of these rights and violates the provisions of the law regarding limitation to these rights and freedoms.

### **1.3: General objective**

To assess how counterterrorism measures compromise full enjoyment of the rights and fundamental freedoms provided in the constitution.

#### **1.3.1: Specific objectives**

This study has the following specific objectives

1. To assess the global terrorism and its effects
2. To determine the effects of counter terrorism measures in Kenya
3. To critically analyse the impact of counter terrorism measures in Kenya on the rights to privacy.



#### **1.4: Research questions**

The study poses the following questions

1. Are the counter terrorism measures in violation of the constitution in regards to the full enjoyment of fundamental rights and freedom
2. Does the counter terrorism measures invade personal security
3. To what extent does the counter terrorism measures affect an individual's security
4. How does counter terrorism measures affect an individual's personal space
5. Does the measures employed to counter terror in Kenya deny individuals their freedom of association
6. To what extent is the freedom of association infringed by these measures

#### **1.5: Literature review**

Can fighting terrorism and promoting fundamental rights and freedom stand together? Policy makers suggest that it is possible but in practice, there is a real conflict and most of the time the right to privacy and fundamental freedoms are compromised. Kenya is a country that has been affected with these dynamics. There are domestic constrains that challenge counter terrorism measures and some of the counter terrorism measures demand the sacrifice of some of the fundamental rights and freedoms. The issue of inversion of privacy with counter terrorism is not new to the world. There is existing literature on the issue critically analysing the effects of these measures especially out of the interest on their effect on democracy. To begin the review on literature, the following statement by Blakesley attempts to portray the true picture of the events

The greatest danger posed by terrorism to our democracy and to our constitutional republic may be our executive branch's overreaction to terrorism and its use of terrorism

to erode the constitutionally mandated checks and balances and sharing of powers in foreign affairs, war powers and combating international crime, 166.<sup>8</sup>

### **1.5.1: The provisions of the law on the fundamental rights and freedom**

The constitution of Kenya views the bill of rights as an integral part of Kenya's democratic state.

The bill of rights is also the key framework for social, economic, and cultural policies<sup>9</sup>. Any terrorism legislation and counter terrorism measures should be within the framework of the Bill of Rights as stated in the constitution<sup>10</sup>. According to the Kenyan constitution, the purpose of recognizing and protecting the human rights and fundamental freedoms is to promote social justice and preserve the dignity of individuals and communities.

The constitution in section 3 (a) spells out that the Bill of rights belong to each individual and not granted by the state. Amnesty International<sup>11</sup> interprets this position to imply that the state cannot withdraw any right when it suits it irrespective of the adversity of the event. Any act of violation of the rights by the state without the provision of the constitution shall be viewed to defy the constitution.

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<sup>8</sup> Christopher Blakesley, *Terrorism, Drugs, International Law, and the Protection of Human Liberty: A Comparative Study of International Law, its Nature, Role and Impact in Matters of Terrorism, Drug Trafficking, War and Extradition* (1992: New York, Transnational Publishers), 166

<sup>9</sup> Constitution of Kenya. Rights and Fundamental Freedoms. Chapter 4-Bill of Rights, Part 1. General provisions relating to the Bill of Rights

<sup>10</sup> Flynn, Edward J 'Counter-terrorism and human rights: the view from the United Nations' (2005) 10 *European Human Rights LR*, 29

<sup>11</sup> Amnesty International Report, Kenya: The Impact of Anti-Terrorism Operations on Human Rights. 23rd March 2005 accessed 15 March 2015 retrieved <http://web.amnesty.org/library/index/engaf320022005>.

The envisioned privacy in the constitution includes the rights not to have the person, home, or property searched and their possession seized. Any information that relates to their family or private affairs unnecessarily required not revealed and the privacy to communication infringed<sup>12</sup>. The constitution also provides for the freedom of association. According to the constitution, Kenyans should enjoy the right to freedom of association including the right to form, join, or participate in activities of the association and one shall not be compelled to join an association of any kind<sup>13</sup>. The constitution also protects registration of any association<sup>14</sup>.

However, the constitution provides for the limitation of the rights and fundamental freedoms under special condition. Article 24 of Chapter 4 of the constitution provides for the conditions of limitation of the rights and fundamental freedoms including privacy and the right to association<sup>15</sup>. According to the constitution, the bill of rights shall not be limited except by law and on condition, that reasonable justification within a democratic society is conceived. If parliament enacts legislation to make original jurisdiction as discussed above subordinate to the succeeding legislation, then the rights and fundamental freedoms may be limited.

While the discussions regarding the position of the constitution on the right to privacy appear to be closed, some authors such as Charles Goredama<sup>16</sup> are of the opinion that in the context of terrorism, certain human rights should be limited in the interpretation that an act of terrorism is an attempt to deny the basic right to life. In an assessment of terrorism practices in South Africa,

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<sup>12</sup> Constitution of Kenya. Rights and Fundamental Freedoms. Chapter 4-Bill of Rights, Part 2. Rights and fundamental freedoms

<sup>13</sup> Ibid, 2010

<sup>14</sup> Ibid , 2010

<sup>15</sup> Ibid , 2010

<sup>16</sup> Charles Goredama, “Initiatives against Terrorism in Southern Africa: Implications for Human Rights” (2003) 12 (1) African Security Review, 91

Goredama points out that the pursuit of legitimate national security purposes demands compromise to some rights but not to the extent that exclusion of human rights regime is realized.

### **1.5.2: Counter terrorism legislations in Kenya and the rights to privacy**

Kenya does not have a specific anti-terrorism legislation other than the Prevention of Terrorist Act 2012. The act is viewed to be more about committing Kenya as a commonwealth nation to the global war against Kenya rather than providing local legislative guidelines on handling terrorism<sup>17</sup>. In effect, it does not address any issues regarding privacy but touches on issues regarding association<sup>18</sup>. Attempts to legislate an anti-terrorism law with more stringent values were thwarted by the court<sup>19</sup>. However, the country relies on a number of legislations. With regard to privacy, the government relies on the Criminal procedure code (cap. 75) and with regard to association; the government relies on Non-Governmental Organisation (Coordination) Act.

Makau Mutua<sup>20</sup> asserts that war on terror influenced by the American and European countries in what he refers to as western dominance is slowly redefining human rights from a litigation perspective. Mutua<sup>21</sup> describes the influence by the western countries as dominance because they crush dissent and eliminates opposition in enforcing legislation that scrape off some parts of globally accepted human rights standards and in some cases exclude some rights in the name of

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<sup>17</sup> Kamau, Carolyne Wanjiru. Kenya & the War on Terrorism. Review of African Political Economy, Vol. 33, No. 107, p 133-141. Mar 2006. Accessed 16 Mar. 2015 retrieved <http://www.jstor.org/stable/4007116>.

<sup>18</sup> Ibid 2006, 140

<sup>19</sup> BBC News Africa, Kenya Anti-terror laws: Court scraps main clauses, 23 February 2015 accessed 16 March 2015, retrieved <http://www.bbc.com/news/world-africa-31588445>

<sup>20</sup> Makau wa Mutua, 'Terrorism and Human Rights: Power, Culture and Subordination', 8 (2002) Buffalo, Human Rights Law Review, 302.

<sup>21</sup> Ibid, 2002, 302

terror. This influence is evidence in the acceptance of the Prevention of Terrorist Act 2012 in Kenya, which is as a western instigated act. In some countries such as Kenya, the right to privacy have succumbed to the dominance. These changes are slowly affecting the definition of human rights because in Kenya, the right to privacy is not observed in public with the consistent frisking and inversion of personal effects unconstitutionally.

While most authors and commentators have differed with the counter terrorism measures invasion of privacy, Charters <sup>22</sup> takes a different opinion in a study that assesses six nations' counter terrorism policies. The countries in his study are United Kingdom, Germany, Italy, France, Israel, and the United States. Charters describes the implication of counterterrorist policies on human rights to have no wholesale rush to restrict freedoms as is perceived and described by many authors. Charters <sup>23</sup> asserts that the gains in democracy are strong and resilient to several infringements in the face of counterterrorism measures. Governments will thus be able to balance the pressure to arrest terrorism and the need to uphold human rights.

The United Nations has taken a strong position with regards to the violation of human rights specifically the right to privacy. Through the Office of the High Commission on Human Rights (OCHR)<sup>24</sup> in an article titled Human Rights, Terrorism and Counter-terrorism emphasizes on article 17 of the international covenant on civil and political rights that demand respect for the privacy of individuals even in an ensuing counter terrorism measure. This position echoes the report of the High Commissioner for Human Rights to the 58th Session of the Commission on

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<sup>22</sup> David A. Charters, *The Deadly Sin of Terrorism: Its Effect on Democracy and Civil Liberty in Six Countries*, (1994: Westport, CT, Greenwood Press).

<sup>23</sup> *Ibid*, 1994

<sup>24</sup> Office of the High Commission on Human Rights (OCHR), *Human Rights, Terrorism and Counter-terrorism* accessed 16 March 2015 retrieved <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>

Human Rights, Human Rights: A Uniting Framework<sup>25</sup> and Guidance notes to the Counter-Terrorism Committee of the Security Council. However, Posner Erick A., and Vermeule, Adrian argue that it is impossible to make the public safe from terror without affording the government executive powers that transcend human rights<sup>26</sup>. They attribute this position to the nature of terrorism and the terrorists being a secretive network that can only be infiltrated if the privacy of the public is compromised.

### **1.5.3: The terrorism Bill of 2003**

Two years before the end of the millennium, Kenya witnessed terrorist attack at the heart of Nairobi in the US Embassy. The Kikambala bombing followed the 1998 US Embassy bombing. These events necessitated legislative provision to handle terrorism. The Minister of justice and constitutional affairs tabled the suppression of Terrorism Bill of 2003<sup>27</sup>. The bill was viewed as a government overreaction to the attack with critics pointing out that the government was heavy handed in its move<sup>28</sup>. Odula<sup>29</sup> viewed that the bill would erode some of the civil liberties gained after reforms. He posed that the bill merely defined what terrorism was an in the event one would be described to be a terrorist, his or her civil liberties would be in danger being that the mechanism of handling a terrorists were not clearly defined. The bill was criticized to leave the definition of terrorism to executive powers while the definition of terrorism affects all the counter measures that will follow.

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<sup>25</sup> Report of the High Commissioner for Human Rights to the 58th Session of the Commission on Human Rights, Human Rights: A Uniting Framework, E/CN.4/2002/18 accessed 16 March 2015 retrieved at [www.un.org/Docs/sc/committees/1373/sel-doc.html](http://www.un.org/Docs/sc/committees/1373/sel-doc.html)

<sup>26</sup> Posner Eric A., and Vermeule, Adrian, *Terror in the Balance: Security, Liberty, and the Courts*, (2006: Oxford University Press, USA).

<sup>27</sup> Kenya Gazette Supplement, The Suppression of Terrorism Bill, 2003, 38 Kenya Gazette Supplement Nairobi, (30 April 2003 at 443), Clause 3.

<sup>28</sup> Odula T., "War fears: Somalis in Kenya afraid of xenophobia", Associated Press, 11 November 2011, 78

<sup>29</sup> Ibid, 2011, 79

In a more recent article on the Star, Guled<sup>30</sup> points out that counterterrorism is to be handled by security officers. Directing blame to the very definition of terrorist, Guled asserts that the forces that are accorded the responsibility to handle counterterrorism measures are prone to corruption and are highly likely to abuse the civil liberties of anyone who is suspected to be terrorists. However, at the time of gazetting of the bill, there was need for the constitution to differentiate terrorists from ordinary criminals. Terrorist operated in a different platform and required expanded resource to handle. The law was the first move to clearly separate terrorist from other criminals. The bill was muted after almost a decade of arguments.

#### **1.5.4: The prevention of Terrorism act 2012**

Mwazighe<sup>31</sup> takes a critical look at the legal responses to terror in Kenya. According to Mwazighe,<sup>32</sup> the prevention of terrorism act 2012 was drafted with a keen eye not to violate human rights. The act was carefully drafted such that it did not address all the issues that should have been legally addressed with regards to terrorism crimes. It broadened the definition of terrorism to mass action, political protests, industrial actions, and other forms of violence. It did not give adequate directions on counterterrorism measures leaving most of the issues to the existing legal frameworks.

The act was criticized for criminalization of innocent acts based on motive that was not clearly defined. It placed the burden of proof to proving innocence in contradiction to the provisions of the constitution. Mwazighe views the act to have given authorities wide and intrusive powers that have been used for racial profiling, seizure, and confiscation of property that are suspected

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

<sup>31</sup> Mwazighe L. (2012) Legal responses to terrorism: Case study of the republic of Kenya, Thesis presented to the Naval Postgraduate school Monterey California accessed March 17 2015 retrieved <http://www.dtic.mil/dtic/tr/fulltext/u2/a574555.pdf>

<sup>32</sup> Ibid, 2012

to be used in terror related attacks. 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<sup>33</sup>.

#### **1.5.5: Counter terrorism measures and personal security and space**

Personal security is a constitutional right that is embedded in the constitution. Chapter 4-Bill of Rights Part 2-Rights and fundamental freedoms accords every citizen the right to freedom and security. The constitution extends these privileges to protecting the nationals from the deprivation of freedom arbitrary or without just cause. The debate is whether counterterrorism is a just cause. However, literature on the event show that most of the people who are subjected to violation of these rights are usually merely suspects and others ethnically profiled.

Counter terrorism measures are expected to reinforce and enhance personal security. However, this is only possible if human rights are upheld in the process. According to the UN

“The promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective counter-terrorism measures and the promotion of human rights are not conflicting goals, but complementary and mutually reinforcing<sup>34</sup>”, 788

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<sup>33</sup> Kenya Gazette Supplement, The Suppression of Terrorism Bill, 2003, 38 Kenya Gazette Supplement Nairobi, (30 April 2003 at 443), Clause 3.

<sup>34</sup> United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288, annex), 788



Wanjiru<sup>35</sup> addresses the issues of terrorism in Kenya from a global perspective. In an article that takes multidimensional approach on terrorism, Wanjiru<sup>36</sup> takes a review of the political economy of Kenya during the counterterrorism regime. In her review, other than the effects of the war on terror on the bilateral traded between Kenya and her western allies, she addresses the effects of inversion of privacy and the security of the affected individuals during the process.

According to Jatin Dua<sup>37</sup> in an article published on Aljazeera on 24<sup>th</sup> September 2014, after the Westgate attack, the government of Kenya embarked on a mission to flush out illegal Somali immigrants. In an operation tagged; “Usalama Watch” security forces invaded various communities in refugee camps and in Nairobi’s Eastleigh, South C and South B estates targeting Kenyans of Somali origins and Somalis. Thousands of Somalis were rounded up in an operation that was claimed to be mired with theft and bribery. According to Jatin Dua<sup>38</sup> the ethnic profiling and inversion by security forces was a renewed personal security violation.

A report by Human Rights Watch<sup>39</sup> published on May 4 2013, documents the inversion of personal security and violation of rights of Somalis during the operation “Uslama Watch.” An escalation of police abuses was realized during this period in what was justified as a counter terrorist measure. The homes of the homes and property of profiled Somalis was rampant as four units of police invaded areas that are prone to Kenyan Somalis. The report based on 101

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<sup>35</sup> Kamau, Carolyne Wanjiru. Kenya & the War on Terrorism. Review of African Political Economy, Vol. 33, No. 107, p 133-141. Mar 2006. Accessed 16 Mar. 2015, retrieved <http://www.jstor.org/stable/4007116>.

<sup>36</sup> Ibid, 2006

<sup>37</sup> Jatin Dua, Kenyan efforts to counter Al-shabaab need to be reformed, Aljazeera, accessed 16 March 2015 retrieved <http://america.aljazeera.com/opinions/2014/9/kenya-us-counterterrorismalshababsomalia.html> on

<sup>38</sup> Ibid, 2015

<sup>39</sup> Human Rights Watch (2013) “You Are All Terrorists” Kenyan Police Abuse of Refugees in Nairobi accessed on March 16<sup>th</sup> 2015 retrieved [http://www.hrw.org/sites/default/files/reports/kenya0513\\_ForUpload\\_0\\_0.pdf](http://www.hrw.org/sites/default/files/reports/kenya0513_ForUpload_0_0.pdf)

interviews of the affected documents abuses that directly affected one thousand people. General Services Unit (GSU), the Regular Police (RP), the Administration Police (AP), and the Criminal Investigations, Department (CID) conducted the operation. The units committed the abuses, which included rape, beatings and kicking, theft, extortion, and arbitrary detention in inhuman and degrading conditions.

According to Gitobu Imanaya,<sup>40</sup> the Systems and Structures Set up by the Government to Fight Corruption are not sufficient to ensure strict regulation that would protect Kenyans from counterterrorism measures that are likely to compromise personal security and space. Other than having a functioning police, service, strong judicial mechanism should exist to protect Kenyans from the government forces that execute the anti-terror agenda. The concept of counterterrorism has been viewed by these forces to be rigorous with a comparable magnitude to the effect of terrorism. This misconception has given the forces leeway to exceed the boundaries of personal rights preservation<sup>41</sup>.

#### **1.5.6: Freedom of association in the context of terrorism**

Holmes<sup>42</sup>, compares terrorism with organized crime and corruption. In his assessment of these vices, Holmes takes a critical look at the networks and linkages that form these groups. In his assessment, he asserts that the vices operate optimally if the involved parties are cohered together. Their ability to organize and execute is mainly supported by the loyalty of the

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<sup>40</sup> Imanaya Gitobu. Systems and Structures Set up by the Government to Fight Corruption: How Effective and What More Can Be Done? In Strengthening Judicial Reforms in Kenya. Volume IX: The Anti-corruption Court in Kenya .icj-kenya 2004.

<sup>41</sup> Nthamburi, Nevada. Fighting Terror in East Africa: Less Liberty for More Security? Analysis of Anti-terrorism Legislation and its Impact on Human Rights. Master's Thesis University of Cape Town. 2002.

<sup>42</sup> Holmes, L .2007. Terrorism, Organized Crime and Corruption: Networks and Linkages. Cheltenham: Elgar.

organizing members. This way of operation according to Carson<sup>43</sup> has informed the approach to counter terrorism measures.

Carson<sup>44</sup> finds it reasonable to fight terrorism by targeting their forms of association. In an assessment of the Kenyan struggle against terrorism and the efforts of the country in managing the terrorism menace in the horn of Africa, Carson takes a journey into the measures taken by the country to address counter terror. Muhula<sup>45</sup> takes a similar look into Kenya's effort but with a global view of the problem of terror. Terror according to his findings cuts across borders but the perpetrators are connected by a common ideology, which forms and shapes the nature of their association.

Victoroff<sup>46</sup> takes a micro look at the issue of association in the context of terrorism. In an evaluation of the mind of a terrorist, Victoroff addresses the issue of association among terrorism from a psychological perspective to conclude that by association, terrorists come together and become stronger. Dissenting from terror activities becomes more difficult. Carson and Victoroff warn that targeting terrorist by association is difficult unless the group openly proclaims to belong to the terror cell.

The Government of Kenya (GOK) counterterrorism measures have been empathized on association as a front to fight terror. The Kenyan Police has been making raids into mosques

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<sup>43</sup> Carson, J. "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.

<sup>44</sup> Ibid

<sup>45</sup> 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.

<sup>46</sup> Victoroff, J. *The Mind of the Terrorist – A Review and Critique of Psychological Approaches*. *Journal of Conflict Resolution* 49 (1) 2005: 3-42,

<sup>47</sup>and other places of association of people they view to be highly likely terrorist associates. According to Odula,<sup>48</sup> the methods used to counter terrorism could result to extremism among the Muslim community. Most of the raids violate the freedoms of association among other rights. While targeting extremism and terrorism through their networks and linkages is viewed to be likely effective in fighting terror, it has the potential of creating an opposite effect. The freedom of association among groups that are ethically profiled to terrorists is compromised if not violated. A report by Human Rights Watch<sup>49</sup> record a number of Muslim youths denied their freedom of association. The report based on interviews of youths following police raids in targeted areas highlight the abuses of the freedom of association for this group. These raids do not conform to the provisions of the constitution with regard to human right principles and provisions.

## **1.6: Theoretical framework**

### **1.6.1: The Crenshaw Model**

The Crenshaw Model is one of the earliest theoretical perspectives of terrorism and counterterrorism measures. The model was conceived in 1972 and has been adversely used as the theoretical bearing of most of the theoretical explanation of counterterrorism measures that explicitly defy human rights especially the right to privacy and the fundamental freedom of

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<sup>47</sup> Aljazeera 20 November 2014, Kenya Police find explosives in mosques accessed <http://www.aljazeera.com/news/africa/2014/11/kenya-police-find-explosives-mosque-raids-2014112095511530664.html> on March 17, 2015

<sup>48</sup> Doula T. The Star 21 Nov 2014, Mosque raids in Kenya could boost support for radicals, rights official says, accessed on March 17, 2015 retrieved [http://www.thestar.com/news/world/2014/11/21/mosque\\_raids\\_in\\_kenya\\_could\\_boost\\_support\\_for\\_radicals\\_rights\\_official\\_says.html](http://www.thestar.com/news/world/2014/11/21/mosque_raids_in_kenya_could_boost_support_for_radicals_rights_official_says.html)

<sup>49</sup> Human Rights Watch (2013) “You Are All Terrorists” Kenyan Police Abuse of Refugees in Nairobi accessed on March 16<sup>th</sup> 2015 retrieved [http://www.hrw.org/sites/default/files/reports/kenya0513\\_ForUpload\\_0\\_0.pdf](http://www.hrw.org/sites/default/files/reports/kenya0513_ForUpload_0_0.pdf)

association<sup>50</sup>. So far, this is the only widely acclaimed original model used to explain the phenomenon and other emerging models echo its position.

Crenshaw's model is also appropriate for interpreting counter terror situations that involve an insurgency within<sup>51</sup>. This makes it appropriate for the Kenyan situation where most of the recent terror attacks are perpetrated by locals or are planned and executed within with foreigners who 'localize' before the attack<sup>52</sup>. The model is also appropriate because it addresses the social and political changes that emerge out of counter terrorism strategies<sup>53</sup>. This study employs the model to the limit where terrorism is used to influence social structures which is the case in violation of rights and fundamental freedoms

According to Crenshaw,<sup>54</sup> terrorism is a weapon of the weak. However, it has the strong effect of being irrational to the targeted group in this case Kenya and its administration. This psychological potency of terrorism to withdraw rational results to counter terrorism measures that are also irrational<sup>55</sup>. The result of this is breaking of core values of the attacked and the beginning of crumbles in an organization in this case the Kenyan community.

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<sup>50</sup> Crenshaw, Martha. "The Long View of Terrorism." *Current History* 113, no. 759 (2014): 40.

<sup>51</sup> Young, Joseph K. "The Consequences of Counterterrorism. Edited by Martha Crenshaw.(Russell Sage Foundation, 2010.)." *The Journal of Politics* 74, no. 02 (2012): e13.

<sup>52</sup> Crenshaw, Martha. "The Long View of Terrorism." *Current History* 113, no. 759 (2014): 40

<sup>53</sup> Plümper, Thomas, and Eric Neumayer. "Terrorism and Counterterrorism: An Integrated Approach and Future Research Agenda." *International Interactions* 40, no. 4 (2014): 586.

<sup>54</sup> Crenshaw, M.H. "The Concept of Revolutionary Terrorism." *The Journal of Conflict Resolution*. 16, no. 3 (1972), 383.

<sup>55</sup> Young, Joseph K. "The Consequences of Counterterrorism. Edited by Martha Crenshaw.(Russell Sage Foundation, 2010.)." *The Journal of Politics* 74, no. 02 (2012): e13.

The theory also asserts that the counter terrorism measures undermine the solidarity of a community and replaces the value of normal relationship with insecurity and distrust<sup>56</sup>. What is viewed as privacy violation and denial of freedom of association is testament to the existing distrust within the affected community. According to Crenshaw<sup>57</sup>, when a government and its organs are viewed to be violating the rights of its people and communities view each other with distrust and prejudice, then the intention of terrorism is achieved through counter terrorism.

Crenshaw provides guidelines for government that are seeking to counter the active threat of terrorism. In her view, weak terror cells may be easy manage and destroy, however, with sustained repression, the idea may be strengthen and result to alienate the civilian population. This is the case with Kenya through AMISOM's success in removing Alshabaab from Somalia<sup>58</sup>. This was a won war but when Al-Shabaab changes tact and prolongs the war with sustained repression in the form of terror attack, the result is different. Counter terrorism measure that are illegal and indiscriminate are tempting yet they should be avoided because they serve to foster the terrorists' agenda.

### **1.6.2: Crenshaw Model Tenets**

The assumption that the motivations for terrorism have changed is rooted in a series of assertions by proponents of a "new" terrorism school of thought. Their argument is that the terrorism from the 1990's to the present is fundamentally and qualitatively different from the terrorism of the preceding years<sup>59</sup>. Advocates of this perspective argue that the phenomenon has been

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<sup>56</sup> Crenshaw, Martha. "The Long View of Terrorism." *Current History* 113, no. 759 (2014): 40

<sup>57</sup> Young, Joseph K. "The Consequences of Counterterrorism. Edited by Martha Crenshaw.(Russell Sage Foundation, 2010.)." *The Journal of Politics* 74, no. 02 (2012): e13.

<sup>58</sup> Plümper, Thomas, and Eric Neumayer. "Terrorism and Counterterrorism: An Integrated Approach and Future Research Agenda." *International Interactions* 40, no. 4 (2014): 579-589.

<sup>59</sup> Crenshaw, Martha. "The Long View of Terrorism." *Current History* 113, no. 759 (2014): 40.

transformed and that our knowledge of the past is at best irrelevant and obsolete and at worst dangerously misleading<sup>60</sup>. This model is based on the tenets political psychology of modern terrorism and policy.

### **1.6.3: Political Psychology of modern terrorism**

The psychology of terrorism has been studied for over twenty years. Many key figures in the field are represented in this volume<sup>61</sup>. What is the value of what we have learned? Should we simply discard the accumulated knowledge that we have acquired over time? Do psychological analyses of terrorism support the assumptions of the new terrorism 6 model? Do political and social psychologists think that the motivations for terrorism have fundamentally changed? In essence, the answer is no<sup>62</sup>.

A curious fact is that psychological analyses are not concerned with the purported distinction between new and old terrorism<sup>63</sup>. In general they concur that motivations and dynamics have remained much the same over time. Nor do they point to a new irrational fanaticism that makes terrorism entirely different. Instead they see continuity and evolution. Thus from the point of view of psychology, we should not dismiss what we know about the terrorism of the past as archaic.

Two extensive reviews of the literature on terrorism reached similar conclusions about the progress made. Young concluded that the field has too many theories in relation to the amount of

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<sup>60</sup> Plümper, Thomas, and Eric Neumayer. "Terrorism and Counterterrorism: An Integrated Approach and Future Research Agenda." *International Interactions* 40, no. 4 (2014): 579

<sup>61</sup> Crenshaw, Martha. "Terrorism Research: The Record." *International Interactions* 40, no. 4 (2014): 557

<sup>62</sup> Young, Joseph K. "The Consequences of Counterterrorism. Edited by Martha Crenshaw.(Russell Sage Foundation, 2010.)." *The Journal of Politics* 74, no. 02 (2012): e13.

<sup>63</sup> Crenshaw, Martha. "Terrorism Research: The Record." *International Interactions* 40, no. 4 (2014): 556

available evidence. He argued that psychological theories of terrorism need to be tested in a systematic way<sup>64</sup>. More empirical studies and less speculation are needed. Yet he also notes a core of consensus in the field. Terrorist behaviour is always determined by a combination of factors. In terms of psychological makeup, terrorists are heterogeneous. Each is motivated by a particular complex of experiences and traits. Nevertheless, he suggests that four traits may be characteristic of "typical" terrorists in underground conspiracies. They are highly committed to an ideological cause<sup>65</sup>. They have a high personal stake in a conflict. They may also exhibit low cognitive flexibility, low tolerance for ambiguity, and elevated tendencies toward attribution errors. They are capable of suppressing moral constraints against harming others. Groups with different ideologies have similar group dynamics<sup>66</sup>.

#### **1.6.4: Policy approach to counter terrorism**

What are the policy implications of assuming that contemporary terrorism is entirely new? First, if the demands of the new terrorists are considered to be non-negotiable from the start, then governments need make no effort to bring such groups to the table or seek a compromise with them<sup>67</sup>. Governments are not inclined to try to persuade such opponents to accept a democratic bargain or share power. If the enemy is undifferentiated, then there is no point in trying to piece off moderates from extremists. If the adversary is irrevocably hostile and implacably bent on our destruction, then logically the only response is one of force<sup>68</sup>. Defeat is the only solution.

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<sup>64</sup> Young, Joseph K. "The Consequences of Counterterrorism. Edited by Martha Crenshaw.(Russell Sage Foundation, 2010.)." *The Journal of Politics* 74, no. 02 (2012): e13.

<sup>65</sup> Young, Joseph K. "The Consequences of Counterterrorism. Edited by Martha Crenshaw.(Russell Sage Foundation, 2010.)." *The Journal of Politics* 74, no. 02 (2012): e13.

<sup>66</sup> Ibid (2012),13.

<sup>67</sup> Crenshaw, Martha. "Beatrice de Graaf. Evaluating Counterterrorism Performance." *Perspectives on Terrorism* 6, no. 2 (2012), 36

<sup>68</sup> Young, Joseph K. "The Consequences of Counterterrorism. Edited by Martha Crenshaw.(Russell Sage Foundation, 2010.)." *The Journal of Politics* 74, no. 02 (2012): e13.



Extraordinary measures against terrorism thus become acceptable, even though they may alienate the constituencies whose support is critical to ending terrorism. The idea that there was a fundamentally new terrorism began initially with the fear that terrorists would acquire WMD. The Aum Shinrikyo sarin gas attacks on the Tokyo subway system in 1995 reinforced this fear.

Apprehension led to an extraordinary focus on the specific risk of WMD terrorism, which was assumed to be the only form that catastrophic or mass casualty terrorism could take. While the danger is real, it is possible that its imminence was exaggerated and that preoccupation with it led to a neglect of possibilities that were more likely if less exotic<sup>69</sup>. (Paradoxically an emphasis on the threat of WMD can make the use of such weapons even more attractive to terrorists because they expect that their use is likely to cause extreme public fear. Our exaggeration of the WMD threat may thus increase the value of such an attack to terrorist groups<sup>70</sup>.)

Another possible policy consequence is the stigmatization of Islam and the prejudicial stereotyping of all those who adhere to Islamic doctrines that are defined as extremist or fundamentalist<sup>71</sup>. Although the United States government is clear that the war on terrorism is not a war against Islam, many Muslims feel on the defensive<sup>72</sup>. It is important that the public understand that terrorism is not automatically associated with 12 religion. Moreover, focusing exclusively on terrorism inspired by Islamic doctrine may lead governments to neglect nationalist or other secular sources of terrorism at their peril.

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<sup>69</sup> Plümper, Thomas, and Eric Neumayer. "Terrorism and Counterterrorism: An Integrated Approach and Future Research Agenda." *International Interactions* 40, no. 4 (2014): 583

<sup>70</sup> Young, Joseph K. "The Consequences of Counterterrorism. Edited by Martha Crenshaw.(Russell Sage Foundation, 2010.)." *The Journal of Politics* 74, no. 02 (2012),13.

<sup>71</sup> Crenshaw, Martha. "The Long View of Terrorism." *Current History* 113, no. 759 (2014): 40

<sup>72</sup> Plümper, Thomas, and Eric Neumayer. "Terrorism and Counterterrorism: An Integrated Approach and Future Research Agenda." *International Interactions* 40, no. 4 (2014): 580

Reliance on the new terrorism model also leaves many anomalies and questions unanswered. For example how are Western governments to deal with the possibility that Hamas will gain significant power through democratic elections in Palestine? If they assume that Hamas is an example of new terrorism, and will thus never moderate its ambitions, then should they oppose the expressed will of Palestinian voters? The outcome of the elections in Algeria in 1992 is instructive<sup>73</sup>. How can the new terrorism model explain the political evolution of Hezbollah in Lebanon? If there are no lessons to be learned from policy toward “old” terrorism, then what guidelines should governments rely on? Crenshaw models finds these questions critical in informing policy in counterterrorism measures not just globally but even within the local measured.

#### **1.6.5: Crenshaw and modern terrorism**

Modern terrorism has a fundamental tool in the name of internationalization. This tool is evident in the propagation of terror activities by Kenyans who live in Kenya as a protest to their motherland’s invasion of Somalia. The irony is explicit in the eyes of a layman but the effect is great. This tool is also effective in enabling the continuity of the terror actions, as is the case with Al-Shabaab adopting agendas from Al Qaeda<sup>74</sup>. In fact, the continuity of terrorism attack in Kenya is owed to internationalization whereby Al Qaeda perpetrated the initial attacks in the country and Al Shabaab has inherited the same. It is obvious that the counter terrorist strategies will be prolonged and inn effect realizes the sustained repression defined by Crenshaw.

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<sup>73</sup> Crenshaw, Martha. "The Long View of Terrorism." *Current History* 113, no. 759 (2014): 40.

<sup>74</sup> Young, Joseph K. "The Consequences of Counterterrorism. Edited by Martha Crenshaw.(Russell Sage Foundation, 2010.)." *The Journal of Politics* 74, no. 02 (2012), 13.

In summation, Crenshaw's<sup>75</sup> theory conceived illegal and indiscriminate (non-terrorist are affected) counter terrorism measures employed by the GOK. This situation, which is testament to the violation of the bill of rights provisions, was conceived out of the inability of the GOK to rationalize the acts of terrorism<sup>76</sup>. Measures such as violation of privacy, insecurity, and denial of freedom of association are evidence of distrust in the society. The values and principles of the constitution with regards to humanity as prescribed in the bill of rights are slowly succumbing to the sustained repression. In this event, counter terrorism works against solidarity in the community.

### **1.7: Research hypothesis**

The study conceives the following hypothesis

1. Global Counter terrorism measures have greatly affected individual security. 2
2. Counter terrorism measures have invaded individual personal space in Kenya
3. There is consistency in empirical findings and theoretical position on counterterrorism measures infringement on personal rights

### **1.8: Research Methodology**

The study shall employ analysis of secondary information. The issue of violation of privacy, infringement of personal security, and deny of freedom of association has been largely contested with various quarters having opposing positions. There is a thin line between what is acceptable constitutionally and what the society needs to feel safe against terrorists. Secondary information in the form of documented findings from prior research and other recognized literature will be

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<sup>75</sup> Crenshaw, M.H. "The Concept of Revolutionary Terrorism." *The Journal of Conflict Resolution*. 16, no. 3 (1972), 383

<sup>76</sup> The government's inability to rationalize the act of terrorism is evident in the failure of parliament to come up with a legislation that addresses all issues regarding terrorism as discussed earlier.

employed in providing essential academic and legislative perspective of the gathered empirical information.

### **1.8.1: Analysis of secondary data**

The study will be conducted through the analysis of literary materials. The secondary data will be derived from information acquired from existing scholarly material of various disciplines. The secondary data will focus on legal provisions in the constitution. The study will also be directed on materials from neighbours, previously done research, and other academic materials.

The secondary material will focus anti-terrorism legislation and compare them with the existing constitutional and human rights provisions. The study will assess the practical application of counterterrorism measures as documented in literary materials and the provision of privacy rights and fundamental freedom.

### **1.8.2: Scope and limitation of the study**

The study will descriptively analyse the effect of counter terrorism on the right to privacy and other fundamental freedoms such as the freedom of association in Kenya. The study takes an inside out approach of the phenomenon and explores the various forms of privacy violations experienced with implementation of counter terrorism strategies. The study will also work towards literate analysis of the existing situation's explanations.

The study will focus on counter terrorism measures in the post US Embassy attack in 1998. The effects of counter terrorism will be assessed from both primary data from affected individuals and secondary data from documented findings and academic studies. The two sources of data will then be compared to come up with a comprehensive opinion of the effects of counter terrorism in privacy, personal security, and freedom of association. This approach will give a

practical analysis of the situation from a strong theoretical background in the context of the constitution.

### **1.9: Chapter outline**

The thesis will be organized into five chapters. It will also have an introduction and a conclusion discussed in every chapter

**Chapter one** will give a general introduction to the study. It will give the intention of the study, its objective, the preferred methodology among many other issues relating to the general study.

**Chapter two** will analyse the terrorism in the world and the experience of Kenya with terrorism. It will be dedicated to the chronology of terror and its effect on the society

**Chapter three** will give an overview of the counter terrorism measures that have been put in place in the republic of Kenya. Its legal provisions and what is viewed to happen on the ground.

**Chapter four** will be giving a critical analysis of counter terrorism measures that have been put in place in Kenya and its infringement on rights of privacy.

**Chapter five** will be a summary of the whole process, conclusion from the findings and recommendations on the findings.

## CHAPTER 2: GLOBAL TERRORISM

### 2.1: Critical analysis of global terrorism

To understand terrorism better, it is important to know what terrorism means. According to Sageman, terrorism comes from the word terror<sup>77</sup>. Terror is derived from the Latin word *terre*, which means frighten or tremble. It is imperative that terrorists and their terror activities are intended to terrify people. Terror is akin to frightening which when connected to the suffix *ism* implies the practice of terrifying. Sageman, points out that terrorism is accentuated by the feeling of lack of security and that is why measures such as infringement of security are acceptable by people<sup>78</sup>.

There are various levels of terrorism. There are local terrorism activities that involve local disgruntled groups that pursue their agenda through causing fear. There are regional terror groups that operate within a number of countries that they feel have offended them and there is the global terrorism. The idea of global terror comes out because America, which is the super power, is viewed as a protagonist in a guerrilla war that involves extremist Muslims<sup>79</sup>. Any ally of America has found itself an enemy of the enemy of America.

Global terrorism has been viewed to echo the pattern implied by the late Yasser Arafat chairperson of the Palestine Liberation Organization PLO when he said, “[O]ne man’s terrorist is another man’s freedom fighter,” In a 1974 speech before the United Nations. The statement,

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<sup>77</sup> Sageman, Marc. *Understanding terror networks*. University of Pennsylvania Press, 2004, 68

<sup>78</sup> *Ibid*, 2004, 68

<sup>79</sup> See Jackson, Richard *Writing the War on Terrorism: Language, Politics and Counter-Terrorism*. (Manchester, England: Manchester University Press, 2005)

which has been viewed by scholars to exemplify the ease of biases that influence the definition of terrorism, brings together two distinct sides in a war that is getting global<sup>80</sup>. Governments categorize all terror activities to be similar irrespective of their plight and reason for their activities a move that brings the terrorist groups to be one.

Stakelbeck, brings up a new orientation to the discussion about global terrorisms. In his argument, the definition global terrorism is subjective<sup>81</sup>. Anything that causes fear is terrorism including government-propelled measures. In line with these contentions, a public opinion poll was conducted in Palestine on December 21, 2001. The poll found that 98.1% of the Palestinians surveyed agreed or strongly agreed that “the killing of 29 Palestinians in Hebron by Baruch Goldstein at al Ibrahimi mosque in 1994” should be called terrorism. On the other hand, 82.3% of the same respondents disagreed or strongly disagreed that “the killing of 21 Israeli youths by a Palestinian who exploded himself at the Tel Aviv Dolphinarium” should be called terrorism<sup>82</sup>. It can therefore be deduced that the definition of terrorism itself propels terrorism at a global level.

In summation, according to the global terrorism database, there have been more than 125,000 terrorist attacks since 1970 through to 2014 across the globe. These attacks have resulted to stringent security measures across the globe. These measures are intended to reduce the mobility and networking of terror cells across the globe<sup>83</sup>. While literature has suggested that, the definition of terror encompasses measures initiated by both the authorities and the outlaws,

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<sup>80</sup> See Stakelbeck, Erick .*The Terrorist Next Door: How the Government Is Deceiving You about the Islamist Threat*. (New York: Regnery Publishing, 2011), 234

<sup>81</sup> Stakelbeck, Erick. *The Terrorist Next Door: How the Government is Deceiving You About the Islamist Threat*. Regnery Publishing, 2011, 78

<sup>82</sup> Jandt, Fred. *An Introduction to Intercultural Communication: Identities in a Global Community* (6th ed.) (Thousand Oaks, CA: Sage, 2010), 145

<sup>83</sup> Stakelbeck, Erick. *The Terrorist Next Door: How the Government is Deceiving You About the Islamist Threat*. Regnery Publishing, 2011, 78

measures to curb terrorism have been employed by the authorities with a bid to control and curb the vice.

### **2.1.1: Global terrorists**

The United States has come up with a list of terror cells that it views to be the main protagonist against world peace<sup>84</sup>. These organizations propel terror out of their political beliefs, ideological conflicts, and religious observations.

### **2.1.2: Global terrorism statistics**

To have a comprehensive grasp of the landscape of global terrorism informative statistics are essential. The effect of terrorism extends beyond the ordinarily perceived effects, which are death and fear. Terrorism effects expand to economic and social<sup>85</sup>. In addition, the spread of terrorism and the involved groups can be well portrayed through statistics. Here are a set of data on terrorism updated to 2014 by the institute of economics and peace.

### **2.1.3: Global terrorism trends**

More than 80 percent of the lives that have been lost to terrorism between 2013 and 2014 occurred in only five countries, which are Iraq, Afghanistan, Pakistan, Nigeria, and Syria. The largest year on year in deaths was realized between 2012 and 2013 with the deaths increasing from 11,133 in 2012 to 17,958 in 2013. Out of all the countries in the world, only 87 countries were affected between 2012 and 2014. The number of countries that experienced more than 50 deaths from terrorism increased to hit an all-time high in 2013 at 24 countries.

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<sup>84</sup> Stakelbeck, Erick. *The Terrorist Next Door: How the Government is Deceiving You About the Islamist Threat*. Regnery Publishing, 2011, 78

<sup>85</sup> Sageman, Marc. *Understanding terror networks*. University of Pennsylvania Press, 2004, 89

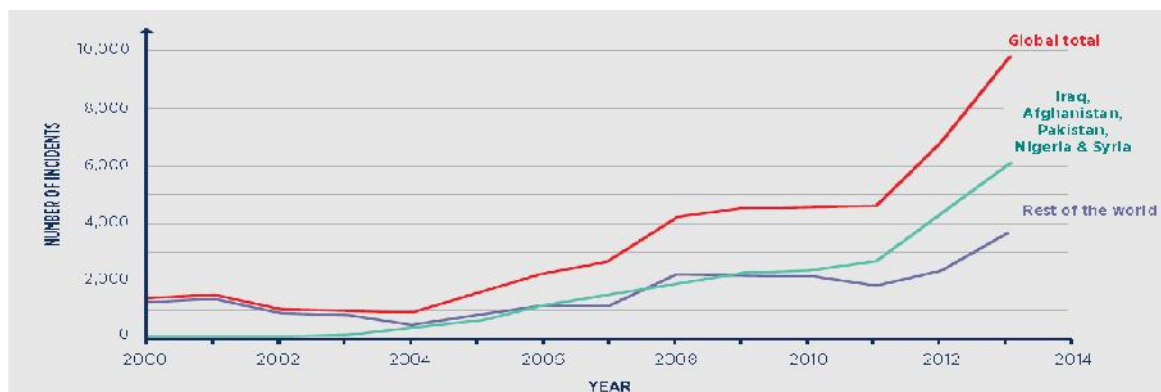


Statistics show that the global primary target of terrorism has been private property and citizens. During the attacks, 60 percent involved the use of explosives while 30 percent involved the use of firearms. The remaining 10 percent have been through incendiary devices, melee tactics, and sabotage of equipment. Religion has been a major driving ideology for terrorism<sup>86</sup>. Other ideologies that have propelled terror include separatists' movements. Terrorism has been realized to correlate with political stability, intergroup cohesion, and legitimacy of state<sup>87</sup>. There has not been any noted correlation between terrorism and poverty or economic development<sup>88</sup>.

#### 2.1.4: Global terrorism spread

Below is a graph indicating the global terrorism trends

Figure 1: Graph of global terrorism between 2000 and 2014



Source: Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 297-312.

<sup>86</sup> Stakelbeck, Erick. *The Terrorist Next Door: How the Government is Deceiving You About the Islamist Threat*. Regnery Publishing, 2011, 114

<sup>87</sup> Sageman, Marc. *Understanding terror networks*. University of Pennsylvania Press, 2004, 98

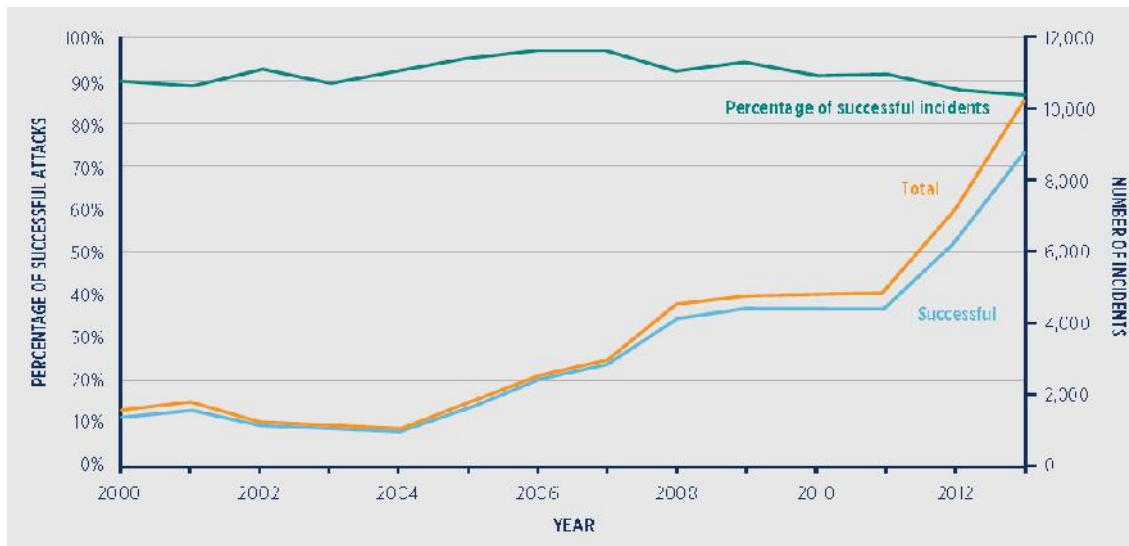
<sup>88</sup> Higuchi, Hiroko, Jun Fujimura, Takahumi Nakamura, Katsunori Kogo, Kentaro Tsudaka, Tomotaka Wada, Hiromi Okada, and Kazuhiro Ohtsuki. "Disaster Detection by Statistics and SVM for Emergency Rescue Evacuation Support System." In *Parallel Processing Workshops (ICCPW), 2014 43rd International Conference on*, pp. 358

Source: Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 299

The above graph from the Institute of Economics and Peace show that terrorism is in continuous increase. The number of incidences across the globe has increased towards the 10,000 incidences mark. Increase in incidences has been realized for both the top five affected countries and the rest of the world<sup>89</sup>. According to the statistics, the countries that are currently most affected had an almost zero number of incidences in 2000 while the global total in 2000 was at 1400 incidences. Within four years, the five most affected countries contributed the largest number of incidences in global terrorism.

### 2.1.5: Global terrorism success rate

Figure 2: graph of global percentage of successful incidences



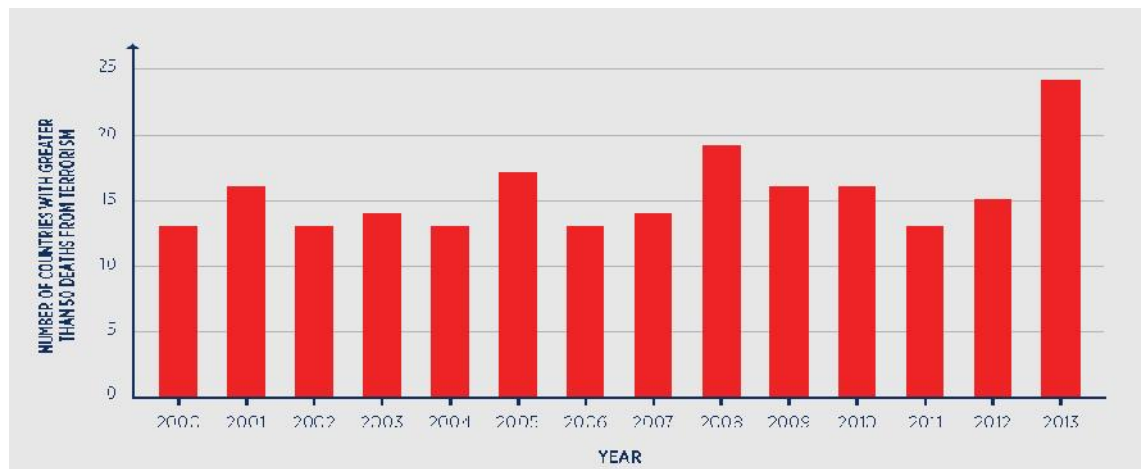
Source: Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 300.

<sup>89</sup> Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 299.

Studies indicate that most of the terror attack incidences have been successful<sup>90</sup>. According to the data, the level of success rate of terror incidences has always been above the 80percent mark. However, with time, the authorities have been able to arrest some of the attempted attacks. In 2013 over 85 per cent of all recorded incidents were successful<sup>91</sup>. This represents an improvement from 2011 when over 90 per cent of attacks were successful.

### 2.1.6: Countries that suffer losses from terrorism

Figure 3: Countries that have lost more than 50 people to terror incidences



Source: Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 300

The graph illustrates the number of countries that have experienced more than 50 deaths out of terror attacks from the years 2000. The trend shows a fluctuating trend in countries that are

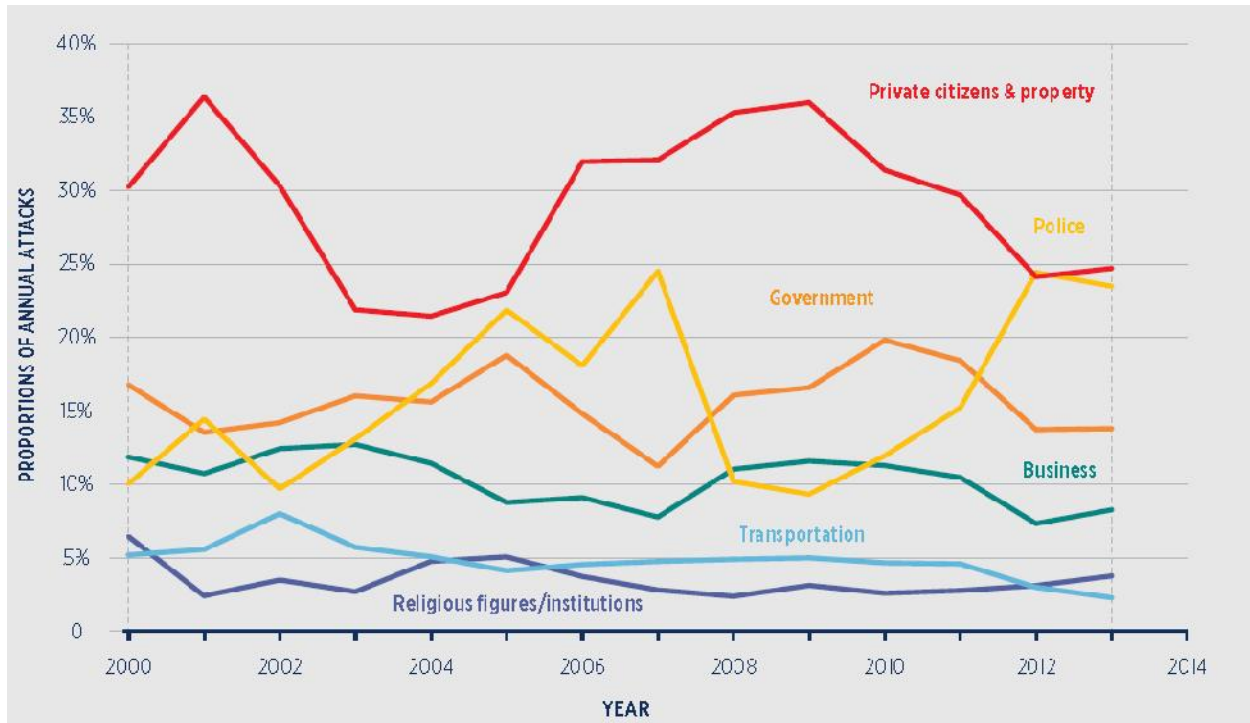
<sup>90</sup> Success is defined in respect to the tangible effects of an incident, not the overall strategic goal. For example, a bomb attack is deemed successful if the bomb is detonated regardless of whether the detonation achieves greater aims such as destroying a building or killing a specific person.

<sup>91</sup> Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 302.

affected. However, since 2000, 2013 realized the most number of countries that experienced more than 50 deaths from terror attacks.

### 2.1.7: Terrorist's targets

Figure 4: the global Terrorist's targets



Source: Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 301.

Private Citizens and property has been the main target by terrorist. The vulnerability of this group and their inability to react effectively to a terror threat and attack makes them the most targeted group. Private Citizens have remained the main casualties during terrorist attacks. Attacks on police have and governments have recorded increases. The least targeted groups are religious figures and institutions. Attacks on transportation infrastructure have also reduced significantly since 2002.

### 2.1.8: Trends in Global Ideology pushing terrorism

Figure 5: Ideologies that motivate terror attacks from between 2000 and 2013



Source: Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 309.

Religion as a driving ideology for terrorism has dramatically increased since 2000. However, in 2000 Nationalist Separatist movements were more prominent. Political and National Separatist movements are still significant in 2013 but have seen little change in activity over the period.

## 2.2: Why Terrorism exists

### 2.2.1: Religion

According to Ganor, religious fanaticism results in terrorism, convictions because it involves an extreme sense of ideological zeal complemented by a focused and unrelenting set of activities that express the high dedication of one or more people to their own belief system(s)<sup>92</sup>. Global studies and research has documented that Radical religious Islamism as a root cause of terrorism. This position is pushed by Islamic writings and teaching that asserts that one of the rewards of

<sup>92</sup> Ganor, Boaz. Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter? *Police Practice and Research*, 3(4), 2002, 287

martyrdom is a place in heaven (for men), with 80,000 servants and 72 virgins<sup>93</sup>. Religious fanatics convince their followers that they are in a religious battle (jihad)<sup>94</sup> thus the qualification for the prescribed rewards. As one Hamas fighter said, “Before I start shooting, I start to concentrate on reading verses of the Qur’an because the Qur’an gives me the courage to fight the Israelis<sup>95</sup>.” Religious motivated terrorism is not isolated to Islam as Jackson in his book titled *Writing the War on Terrorism: Language, Politics, and Counter-Terrorism*<sup>96</sup>. Some Christians have also committed acts of religious extremism. For example, in the U.S., radical Christian killers have been involved in abortion-clinic bombings and militia actions. Likewise, in Northern Ireland, Catholics and Protestants have perpetrated terrorist acts.

### **2.2.2: Oppression:**

Hafez, provides evidence to prove that terrorism can be the result of groups’ portrayal of governments as oppressive. In this case, Terrorism takes advantage of the desire to reduce the power of opponents. Evidence suggests that in autocratic societies, military-occupied areas, or even in the international arena where political expression is limited, there is high likelihood of groups opposing the current state of affairs to engage in terrorism as a principal method of expression and not as a last resort as may be conceived. Groups such as ETA, Hamas have preferred terrorism as a form of expression in such regimes. Under these circumstances, terrorists

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<sup>93</sup> Hafez, Mohammed M. Martyrdom Mythology in Iraq: How Jihadists Frame Suicide Terrorism in Videos and Biographies. *Terrorism and Political Violence*, 19(1), 2007: 100

<sup>94</sup> Ibid , 2007, 140

<sup>95</sup> See Jackson, Richard, *Writing the War on Terrorism: Language, Politics and Counter-Terrorism*. (Manchester, England: Manchester University Press, 2005).

<sup>96</sup> Ibid 2005, 67

often invoke the unfairness of their treatment by governments that deprive them of identity, dignity, security, and freedom as the main reason for joining terrorist groups<sup>97</sup>.

### **2.2.3: Historical grievances:**

Historical grievances are one of the unexpected reasons for involvement in terror activity. However, according to Sageman historical grievances has been a cause for terror activity in various countries. In this case, terrorists target governments and groups they view as responsible for historical injustices<sup>98</sup>. Events of the Chechen terrorists that defended their terrorist attacks by alluding to Russia's long-lasting rejections of Chechen desire for independence, and the old and cruel history of Russian invasion of Chechnya dating back to the 17th century in one of the notable example. The other cases are the Basque separatist movement ETA, Sikh extremists (in India), the IRA, the ANC (in South Africa), and pro-Palestinian terrorist groups seeking vengeance for historical grievances. Crenshaw points out that avenging comrades or the community is "the single common emotion that drives the individual to become a terrorist"<sup>99</sup>.

### **2.2.4: Violations of international law:**

There has been a unique association of terror activity with violation of the international law. While terrorism is a violation of international law, in the terrorist's mind, a wrong can be the violation of some basic right treasured by the terrorist. Authors such as Ganor (2002) and Jackson allude to the fact that if the rights of the terrorists or their sympathizers may have been infringed on by a historical incident, such as a war or multiple violations of international law the

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<sup>97</sup> Ibid 2005, 67

<sup>98</sup> Sageman, Marc. *Understanding terror networks*. University of Pennsylvania Press, 2004, 67

<sup>99</sup> Crenshaw, Martha. "The Long View of Terrorism." *Current History* 113, no. 759 (2014): 40.

terrorists may attempt to retaliate through terror<sup>100</sup>. The international rule of law is the standard by which all nations are subject to and bound by supranational legal covenants. Enduring conduct such as extended military occupation or foreign domination in violation of U.N. resolutions are among the causes of terrorism. The case of Palestinians whereby they demanded but were not granted justice through the U.N. and other legal channels precipitated terror activities across countries that were viewed to oppose the rights of the Palestine's. Specific examples include the failure of Britain to protect the rights of Palestinians after the Balfour Declaration (1917), the failure of the Paris Peace Conference to grant Arab autonomy under the Treaty of Sèvres (1920), and the annexation of Palestinian territory by Jews in the 1940s and the resulting eviction of thousands of Palestinians from their land<sup>101</sup>.

### **2.2.5: Relative deprivation:**

Multiple scholars including Ganor and Jackson have found a strong link between poverty and terrorism despite the fact that statistics opt otherwise. However, other arguments suggest imposed poverty as is the case of the 70% adult unemployment rate in Gaza, the GDP of less than \$1,000 throughout the Palestinian Territories, the very limited economic opportunities due to the unsettled Israeli–Palestinian conflict, and the cultural prominence of the male wage-earner role. The terrorist sympathizers feel that deprivation has helped trigger Palestinian terrorism<sup>102</sup>. Sageman describes how the Core Arabs (from Saudi Arabia, Egypt, Yemen, and Kuwait) sent abroad to study by their rich families were rejected, under-employed, and possibly discriminated

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<sup>100</sup> Jackson, Richard. "Critical discourse analysis1." *Critical Methods in Terrorism Studies* (2015): 87

<sup>101</sup> Hafez, Mohammed M. Martyrdom Mythology in Iraq: How Jihadists Frame Suicide Terrorism in Videos and Biographies. *Terrorism and Political Violence*, 19(1), 2007: 110

<sup>102</sup> Ibid , 2007, 69



against. Hence, they found themselves in a state of relative deprivation in comparison with the natives of their host countries.

The same experience is shared among the Maghreb Arabs living or born in France. In both cases, the Arabs' perception of relative deprivation may have been assuaged by their espousal of radical Islam; this is a way for them to rebuild their dignity, to be "born again," and to disseminate their values as explained by Ganor and Jackson<sup>103</sup>. In Peru, the popularity of the Shining Path (Sendero Luminoso) in the 1960s, where government economic restructurings initially gave hope but then failed, is another historical case of relative deprivation.

#### **2.2.6: Hatred toward the global economic and power hegemony:**

The countries that express hatred toward the global economic hegemony will produce more terrorist groups. According to Jackson, most of the countries that support terrorism or perpetrate the act have been against the economic and power hegemony<sup>104</sup>. Attacks against USSR and America and its allies are among the most common in the current time. The background that gave birth to Al Qaeda, namely Afghanistan and Pakistan, symbolizes this notion. Similar organizations were formed against Britain and Russia.

#### **2.2.7: Financial gain:**

Local terrorists have been associated with financial gains<sup>105</sup>. Terrorism can be used for sheer financial gain, as is the case in corporate hostage taking in Central and South America, and

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<sup>103</sup> Ganor, Boaz. Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter? *Police Practice and Research*, 3(4), 2002, 289

<sup>104</sup> Jackson, Richard. "Critical discourse analysis1." *Critical Methods in Terrorism Studies* (2015): 79

<sup>105</sup> Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 300.

hostage taking by the Abu Sayyaf group in the Philippines. In these instances, the act has been more out of a desire to earn a ransom than achieving political goals, as is the case with most events. Another notable case is the 1987 the Iran-Contra scandal that concluded with an arms-for-hostage deal, even when the Reagan administration initially refused to negotiate with terrorists. Jackson points out that most terrorists are promised rewards directed to their families as a motivation to commit the act<sup>106</sup>. Jackson gives the example of the Palestinian bombers who committed suicide and their families earn subsequent social status and are secured financial reward<sup>107</sup>.

### **2.2.8: Racism:**

Racism can be a powerful method for dehumanizing adversaries and accomplishing moral disengagement and within this situation breeds terrorism. Both Palestinian and Israeli terrorists draw on stereotypes and racism to dehumanize the other group<sup>108</sup>. Similarly, the FBI-watched Aryan Brotherhood (a group of devious bikers formed in U.S. prisons) identifies with Nazi ideals (as noticed with their Nazi symbols) and has vowed to remove the Jewish and Black races out of the earth. There are many ways that terrorism can relate to racism.

### **2.2.9: Guilt by association:**

It is a fundamental belief for terrorists that you are the company that you keep. This situation has been exemplified through a number of ways including the 2004 Madrid train bombings that were executed by an Al Qaeda–inspired terrorist cell. One of the motives was Spain’s involvement in the Iraq War, where the country had troops. Likewise, since decolonization in

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<sup>106</sup> Jackson, Richard. "Critical discourse analysis." *Critical Methods in Terrorism Studies* (2015): 79

<sup>107</sup> Ibid, 2015, 79

<sup>108</sup> Ganor, Boaz. Defining Terrorism: Is One Man’s Terrorist Another Man’s Freedom Fighter? *Police Practice and Research*, 3(4), 2002, 289

continents like Africa and South America, the West has been the target of terrorist attacks because it has been accused of making local minorities of Westernized people become comprador-ruling elites. Comprador ruling elites are Third World ruling elites perceived to be in power (despite being shady, incompetent, and sanguinary) because the West put them or has kept them in power<sup>109</sup>. In exchange, those elites fulfill the economic needs of the West. Because they have become westernized in the process, the comprador ruling elites are culturally close to those in power in the West. Accordingly, the latter is blamed for the substandard quality of Third World governance because of a partnership between corrupt Third World elites and their backers in the West.

#### **2.2.10: Supporting sympathizers:**

Because terrorism is the weapon of the oppressed, an important goal is to push the stronger power (e.g., U.S.) into unleashing against the terrorists' perceived support base. Such acts of retaliation, cruelty, and counterterrorism often turn the stronger power into a support for sympathizers, like a recruiting driver for the terrorist cause. For example, a chief Al Qaeda objective would have been to trigger U.S. retaliation so that the U.S. was seen as violently repressive<sup>110</sup>.

#### **2.2.11: Mortality salience:**

Mortality salience refers to anxiety over one's own death. Research by Sageman examined the effect of mortality salience on Iranian and U.S. students and their respective espousal of

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<sup>109</sup> Jackson, Richard. "Critical discourse analysis1." *Critical Methods in Terrorism Studies* (2015): 79

<sup>110</sup> Sageman, Marc. *Understanding terror networks*. University of Pennsylvania Press, 2004, 68

martyrdom (terrorism) or extreme military intervention (counterterrorism)<sup>111</sup>. When Iranian students answered questions about their own demise, they rated the student who advocated martyrdom as higher than the student who opposed it. However, among politically conservative U.S. students, mortality salience increased advocacy for extreme military interventions by U.S. forces.

### **2.2.12: Narcissism:**

People with certain narcissistic dispositions are more prone to committing terrorist acts.<sup>99</sup> Suellwold observed a high percentage of angry paranoids among members of the Baader-Meinhof Group, a German terrorist group active from the 1970s to the 1990s<sup>112</sup>. A common characteristic among many of these terrorists is a propensity to externalize—to look for outside sources to blame for personal inadequacies. Without being bluntly paranoid, terrorists over-rely on the ego defense of projection. Other prominent characteristics were a defensive grandiosity and a larger-than-life self-absorption with little concern for others' feelings. Crenshaw (1990) observed various self-satisfying or self-aggrandizing motives for resorting to terrorist behavior and an increase in personal status for terrorists whose actions are praised by their communities, or at least by their fellow group members<sup>113</sup>. Lastly, by analyzing the social backgrounds of forty neo-Nazi males, together with two case studies, Hamm concluded that his subjects aspired to

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<sup>111</sup> Ibid, 2004, 68

<sup>112</sup> Süllwold, Lilo. *Manual zum Frankfurter Beschwerde-Fragebogen (FBF)*. Springer-Verlag, 2013.

<sup>113</sup> Crenshaw, Martha. "The Long View of Terrorism." *Current History* 113, no. 759 (2014): 40.

fame within their subculture and that “this insatiable need to be famous was, in fact, so strong that it outweighed every other motivational factor”<sup>114</sup>.

### **2.2.13: Sensation seeking:**

Another variable suggested as a reason for being drawn to the path of terrorism is sensation seeking. Here, sensation seeking denotes the inherent risk and excitement that a terrorist career may provide. Researchers contend that it is highly plausible that sensation-seekers are more likely to join an organization that uses violent tactics<sup>115</sup>. Sensation-seeking entails personal reward, including the thrill of the combative lifestyle and a feeling of empowerment through violence. The appeal and excitement of terrorism, perhaps the fascination for some individuals, lie in part in the physical danger it involves. Some terrorists have been reported to be stress-seekers seeking to increase the emotional intensity or the level of activation of the organism. Stress-seekers meticulously plan their behavior, respond more to internal than external necessities, and frequently repeat stressful activities<sup>116</sup>. Moreover, repetition of the stressful situation becomes not only addictive and fanatical but also escalatory; the stress-seeker is forced to perform more to achieve the same high.

### **2.2.14: Failure of conventional channels of expression:**

In democratic civilizations, the use or threat of using terrorist violence is seen by some scholars, like Chomsky, as the definitive failure of conventional channels of political expression and

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<sup>114</sup> Hamm. *Terrorism as Crime: From Oklahoma City to Al-Qaeda and Beyond*: New York: New York University Press, 2004. 270

<sup>115</sup> Sageman, Marc. *Understanding terror networks*. University of Pennsylvania Press, 2004, 68

<sup>116</sup> Stakelbeck, Erick .*The Terrorist Next Door: How the Government Is Deceiving You about the Islamist Threat*. (New York: Regnery Publishing, 2011), 234

legitimate systems of authority<sup>117</sup>. A related concept is the Death of Statecraft, whereby diplomats fail to negotiate with their counterparts, or nation-states do not attempt at engaging in communicative action. As a result, people deploy actions that are more lethal. Terrorism, then, becomes a by-product of violations of diplomacy and other forms of political expression.<sup>106</sup>

### **2.3: Effects of terrorism**

Terrorist main objective is to cause fear. Any act of terror is intended to frighten people into submission. According to Moghaddam, the main reason why terrorist execute the act of terror is to frighten the people and make them feel helpless<sup>118</sup>. The move has a counter effect of making the established authority seem unable to provide security to its people. Most terrorism activities are associated with a particular grievance. The grievance that causes the terrorism activity relates to the target group and in extension the effects of terrorism.

#### **2.3.1: Terror and death**

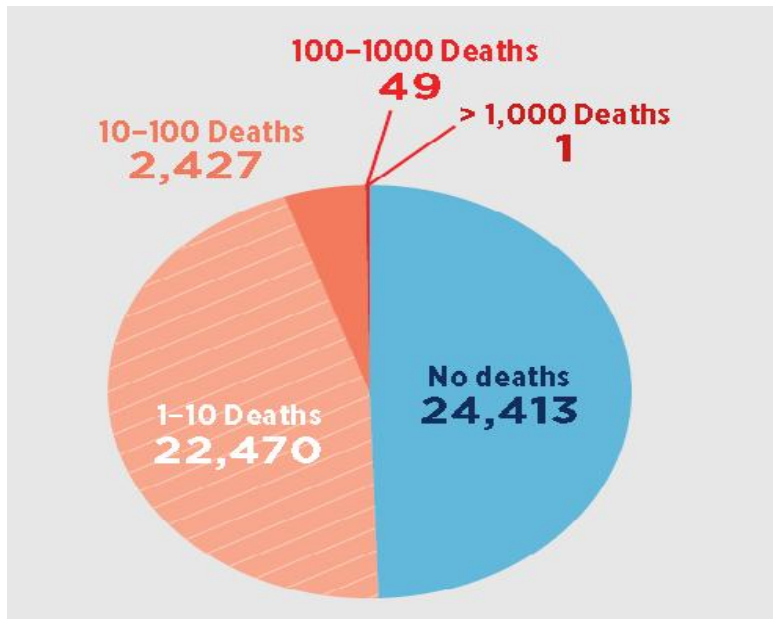
One of the main result of terrorism is death. Death is not only the intention of terrorism but it is also the effect that sent the strongest message of terror. The number of deaths out of terrorism incidence matches the number of incidences with no fatalities.

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<sup>117</sup> Chomsky, Noam. *Was There an Alternative?.* Seven Stories Press, 2006, 67

<sup>118</sup> Moghaddam, Fathali M. "Editorial: The new global American dilemma." (2007): 54.

Figure 6: Chart of the number of deaths caused by global terrorism



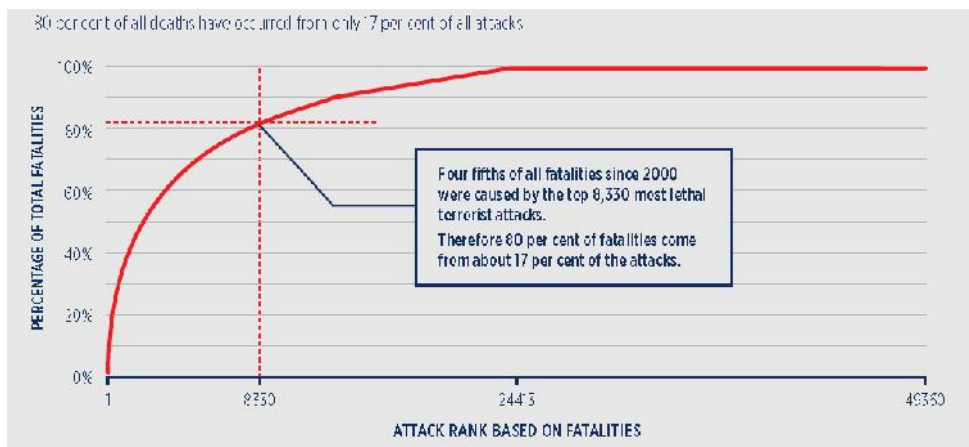
Source: Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 302.

24,413 terrorism incidences between 200 and 2013 did not result to any death. However, 22,470 incidences resulted to between 1 and 10 deaths within the same period. 2,427 incidences resulted to between 10 and 100 deaths. 49 incidences resulted to between 100 and 1000 deaths while only one incidence resulted to more than 1000 deaths<sup>119</sup>.

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<sup>119</sup> Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 300.

Figure 7: Graph of cumulative deaths as a result of terrorisms since 2000



Source: Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 307.

The graph above illustrates the cumulative deaths as a result of terrorism since 2000. From the statistics more and more people are lose their lives out of terrorism activities. The act of terror may have caused forty times less deaths than homicide but its effect is felt more and accentuated because of the laxity in security that it brings out. One of the reasons why governments find it essential to control terrorism is because of the loss of life as a result of terrorists activities. According to Jackson, it is after 1970 that terrorism was perceived to be a major global problem<sup>120</sup>.

<sup>120</sup> Jackson, Richard. "CriticCal disCourse analySis1." *Critical Methods in Terrorism Studies* (2015): 77.



### **2.3.2: Economic consequences**

Economic scholars across the globe accept that terrorist attacks ushered in a period of greater uncertainty. Following the 9/11 attack; there has been significant changes in the pattern of commerce across the globe. Most literature has analyzed the economic effects of terror both in terms of immediate policy response in the aftermath of the attacks and of medium-term policy implications for regulatory, trade and fiscal policy. Authors such as Niehaus, (2002) and Leonard (2001), point out that the economic effects are not just short term but also long term. Other than infringed economic activities, new markets have emerged as a result of the terror activities. According to the DRI-WEFA (2002) on an assessment of the Financial Impact of World Trade Centre Attack,<sup>121</sup> the following are the economic consequences of global terrorism

#### **2.3.2.1: New market-based insurance**

According to Niehaus, in reaction to the attacks, the insurance industry raised its premiums, reduced coverage, and called on governments to step in and cover risks deemed too large for the private sector<sup>122</sup>. Niehaus<sup>123</sup> points out that risks related to terrorism are difficult to price, not least because of the possibility that several catastrophic events occur at once (correlated risk). However, private sector initiatives specifically tailored to provide insurance for this type of risk are emerging. Market-based instruments, such as catastrophe bonds, are also available, although they are at present not actively traded. Private sector coverage of some types of terrorism risk

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<sup>121</sup> DRI-WEFA, Financial Impact of World Trade Center Attack, Prepared for the New York State Senate Finance Committee, January, (2002)

<sup>122</sup> Niehaus "The economic consequences of terrorism." (2002).

<sup>123</sup> Ibid , 2002, 3

may therefore be restored in the future as pointed out by United States General Accounting Office<sup>124</sup>.

### **2.3.2.2: Tighter border controls have detrimental economic consequences**

The disruptions in the transportation system following the attacks have illustrated the importance of efficient and open borders for the daily operations of firms. The just-in-time supply chain management system, increasingly common in industry, depends to a large degree on the efficiency of border crossings. DRI-WEFA (2002) asserts that border controls have now been relaxed and waiting times reduced, but some observers feel that the porosity of borders creates a security threat. Attempts to reinstate comprehensive controls at the borders would have long-lasting detrimental consequences for economic growth. Industrial sources estimate that proposed security measures may increase the *ad valorem*<sup>125</sup> cost of trading internationally by 1 to 3 percentage points. Given that the elasticity of trade flows with respect to transaction costs may be in the –2 to –3 range, this could lead to a significant drop in international trade, negatively affecting openness, productivity and medium-term output growth. Thus, the right balance between efficiency and security at the border needs to be found, preferably in agreement with trading partners and on a non-discriminatory basis.

### **2.3.2.3: Economic confidence sagged**

In the United States, consumer and business surveys showed falls in the overall confidence measures akin to those observed in the wake of the Iraqi invasion of Kuwait in 1990, and much larger than those following terrorist attacks in the 1990s. In Europe and Japan, confidence was

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<sup>124</sup> United States General Accounting Office, *Terrorism Insurance: Rising Uninsured Exposure to Attacks Heightens Potential Economic Vulnerabilities*, GAO-02-472T, (Washington DC, 2002)

<sup>125</sup> A tax based on the assessed value of real estate or personal property. Ad valorem taxes can be property tax or even duty on imported items. Property ad valorem taxes are the major source of revenue for state and municipal governments. Source Investopedia

also weakened, albeit less sharply. In countries such as Kenya, terror attacks result to loss of confidence in the security of the country resulting to travel advisories. Forecasters responded with one of the largest one-time collective downward revisions in recent history. Thus, the consensus forecast for real GDP growth following an attack instantly downgrade by an average of 0.5 percentage point. The implied projected cumulative loss in national income is high within a short time.

#### **2.4: Terrorism in Kenya**

In the aftermath of September 11, 2001, twin attack, Kenya became a major partner in the Global War on Terror (GWOT) like many other countries across the globe<sup>126</sup>. Having historically been an ally of the United States Kenya was likely to suffer terror targets. Kenya's importance was only reiterated following several major incidents in the last two decades that were followed by subsequent attacks. The relationship between Kenya and United States has been one of mutual interests as put by Aronson, (2012)<sup>127</sup>. 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 this incidence sealed and confirmed the relationship between Kenya and US from a perspective of a common enemy.

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<sup>126</sup> Documented in Al Jazeera America (2013). Kenyan authorities hold eight suspects in Nairobi mall attack. (2013, September 28). Al Jazeera America. Retrieved from <http://america.aljazeera.com/articles/2013/9/28/>

<sup>127</sup> See Aronson, S.L. United States aid to Kenya: A study on regional security and counterterrorism assistance before and after 9/11. *African Journal of Criminology and Justice Studies*. 5(1), 2012, 119-126.

Several other attacks followed as listed by Krause & Otenyo (2005)<sup>128</sup>. In 2002, terrorists widely believed to be affiliated with the perpetrators of the embassy attack (Al-Shabaab) 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 in what is referred to as the Kikambala Bombing. 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<sup>129</sup>.

As al-Qaeda affiliates continue to target Kenya for its role in the Global War on Terror and 2011 military invasion of 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

These attacks made Kenya more affiliated to the United States and Israel. While the attacks targeted the Israeli and American nationals and interest in Kenya, more Kenyans were killed pulling the country more into the centre of Al-Qaeda terror crisis. While studies from authors such as Kresse (2009)<sup>130</sup> propose that Kenya is geopolitically relevant in Islamic related attacks

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<sup>128</sup> See Krause, V. & Otenyo, E. Terrorism and the Kenyan public. *Studies in Conflict Terrorism*, 28(2), 2005, 99-112.

<sup>129</sup> Al Jazeera America (2013). Kenyan authorities hold eight suspects in Nairobi mall attack. (2013, September 28). Al Jazeera America. Retrieved from <http://america.aljazeera.com/articles/2013/9/28/>

<sup>130</sup> See Kresse, K. Muslim politics in postcolonial Kenya: Negotiating knowledge on the double periphery. *Journal of the Royal Anthropological Institute*, (N.S.), 2009, 77

out of its role in the Israel's Entebbe raid, other authors such as Forest, (2011)<sup>131</sup> argue that Kenya's cultural diverse nature makes it a platform for easy attack on American and Israel's interests.

The geography of Kenya is crucial to understanding its present consistent terrorism attacks. History shows that the geography of a country matters when it comes to terrorism and other related extremists activities. In the case of Kenya, the country is situated on the Eastern coast of Africa and has direct access to the Arabian Sea and the Gulf of Aden. Additionally, Kenya is surrounded by five countries: Somalia, Uganda, South Sudan, Ethiopia, and Tanzania. The location of Kenya makes it a part of both East Africa and the Horn of Africa. Kenya's location makes it proximal to Somalia that has experience civil unrest for many years. The country is also known to host Islamic extremist.

Other than Kenya's geography, the demographics work to make it vulnerable to terrorism. Demographically, Kenya has a population of roughly 40 million people, of which 45 percent live below the poverty line (World Bank, 2010). While the country is predominantly Christian, a substantial and vocal minority are Muslims. The Government of Kenya (GOK) estimates the Muslim population at 7 percent but leading private organizations claim a much larger 20 percent. Nevertheless, a widely accepted figure is 15 percent of the population, many of whom live along the coast (Vittori et al., 2009). These Muslims are part of a complex history that is directly relevant to the current counterterrorism strategies.

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<sup>131</sup> See Forest, J.J. Al-Qaeda's influence in Sub-Saharan Africa: Myths, realities and possibilities. *Perspectives on Terrorism*, 5(3), 2011, 67

## **2.5: Kenya as a terrorist's target**

There are a number of factors that made Kenya an attractive target for the terrorist. A report by the International Crisis Group points out that it is not out of coincidence that Kenya became a terrorist target<sup>132</sup>. The main factors that made Kenya a preferred target and the right playing ground for global terrorism as listed by Adan (2005, p. 8) include its geography, the ethnic composition of the country, political stability, poverty, unstable neighbours, lax laws and Islamic fundamentalism.

### **2.5.1: Geography and political stability**

Kenya shares a long stretch of its border with Somalia. Somalia's instability makes Kenya exposed to infiltration by terrorist. The fact that Kenya is relatively stable compared to its neighbours makes it the perfect target for terrorists. The political stability of the country attracts a number of foreigner's especially traditional enemies of the al –Qaeda and the other extremist, its geography and political stability makes it the perfect platform for the terrorists to perpetrate their acts.

### **2.5.2: Unstable Neighbour**

Kenya shares diverse borders with Somalia. Somalia has been at war by itself for more than twenty years. This situation has made it a heaven for Islamic fundamentalists. The lack of proper government and a wide access to international waters makes it a dangerous country. According to Mogire & Agade, the lack of border security across the Kenya-Somalia border has made it accessible terrorist's elements from Somalia and other places across the globe through

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<sup>132</sup> International Crisis Group, *The crisis manager*. Routledge, 2012, 33

Somalia<sup>133</sup>. An example being the case of Fazul Mohammed. The porous borders allowed Fazul Abdullah Mohammed, to transit frequently between both countries. Fazul was eventually killed in 2011 after exchanging gunfire with Somali forces.

### **2.5.3: Islamic Fundamentalism**

The Islamic fundamentalist aspect of terrorism should also be critically analysed because it is part of the terrorism equation in Kenya. Much, if not all, of the international terrorism threat in Kenya is based on Islam.. Much of the radical Islam originates in Somalia and due to the lack of border security, makes its way into Kenya. There are certainly a number of Kenyan-born radical Imams who preach anti-Western and anti-Kenyan views (Shinn, 2004; Adan, 2005).<sup>134</sup>This extremism, nevertheless, is relatively limited in its scope. There is a crucially important differentiation between Muslim theological conservatives and those willing to mobilize. The two may hold similar beliefs on the United States and Kenyan governments; however, the extent of those willing to partake in terrorist acts is much less obvious.

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<sup>133</sup> Mogire, Edward, and Kennedy Mkutu Agade. "Counter-terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 475.

<sup>134</sup> Ibid, 2011, 476.

## **CHAPTER 3: COUNTER TERRORISM MEASURES IN KENYA**

### **3.1: Introduction**

Currently, Kenya is relying on a combination of legislative, security, social and diplomatic measures to deal with the country's terrorist threat. These measures include

- (1) Anti-terrorist legislation,
- (2) beefed up security patrols by the military and police,
- (3) Social outreach and,
- (4) Peace talks to resolve the Somalia and Sudan crises.

#### **3.1.1: Legislative action**

On April 30th, 2003, Kenya published a draft Suppression of Terrorism bill to guide its future response to terrorism. The country had been using various kinds of laws such as Anti-Corruption and Economic Crimes Act, the Police Act and other elements of Kenya's criminal code to deal with its terrorism threat. The country's broad executive powers are also being extensively used for this purpose. The recent passage of the Anti-Corruption and Economic Crimes Act is especially likely to help to seal a major loophole –corruption of the police, immigration and customs agencies in the country's vulnerability to terrorism.

More recently, the Parliamentary Committee on National Security and Administration sent to the parliament the Security Laws (Amendment) Bill, 2014. The bill contains a wide array of amendments to 21 laws and that were adopted by parliament but rescinded by the courts. The bill was viewed to be unconstitutional and a violation of the rights and freedoms of Kenyans. Some of the provisions of the rejected bill are viewed to be applied in defiance of the provisions of



the constitution. The amendments made by the bill would infringe on the basic freedoms and fundamental rights through the following provisions

#### **3.1.1.1: Expanded Powers and New Offenses**

According to the human rights commission, Articles 62 through 66 of the bill amending the National Intelligence Security Act broaden the powers of security officials to arrest and detain people and could violate due process rights<sup>135</sup>. The bill expands the powers of the National Intelligence Service (NIS) to stop and detain suspects, search and seize private property, and monitor communications without a court warrant<sup>136</sup>.

The bill seeks to significantly expand the powers of intelligence officers. Such powers had been withdrawn in the 1990s after the then-Special Branch, now the NIS, was accused of the torture of political activists and of detaining them for several years without trial.

#### **3.1.1.2: Restrictions on Speech, Media**

The security bill includes provisions that would make it harder to expose and criticize violations by security forces, the groups said.

Article 75, section 30(a) of the bill would punish with up to 14 years in prison anyone who “publishes or utters a statement that is likely to be understood as directly or indirectly encouraging or inducing another person to commit or prepare to commit an act of terrorism<sup>137</sup>.”

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<sup>135</sup> See Prevention of Terrorism Act, 2012, KENYA GAZETTE SUPPLEMENT art. 62

<sup>136</sup> See Prevention of Terrorism Act, 2012, KENYA GAZETTE SUPPLEMENT art. 65

<sup>137</sup> See Prevention of Terrorism Act, 2012, KENYA GAZETTE SUPPLEMENT N art. 75.

This overly broad provision could be interpreted to apply to social media or any other public forum.

The bill expands the understanding of “radicalization” to possibly include activism, with article 73, section 12(d), describing “a person who adopts or promotes an extreme belief system for the purpose of facilitating ideologically based violence to advance political, religious, and social change<sup>138</sup>.” The unclear language could be interpreted to prosecute political and human rights activists, with sentences of up to 30 years.

### **3.1.1.3: Restrictions on Assembly and Association**

The security bill would limit basic rights to freedom of assembly and association with vague provisions subject to abuse, the groups said. The proposals create even greater concern considering the current hostility toward nongovernmental organizations working on governance and human rights in Kenya.

Article 4 would authorize the cabinet secretary for interior, a presidential appointee, to decide when and where public meetings can be held. Kenya has a history of retaining executive control over public gatherings that was used to restrict freedom of peaceful assembly during the Moi government.

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<sup>138</sup> See Prevention of Terrorism Act, 2012, KENYA GAZETTE SUPPLEMENT art 73.

The bill in article 107 would amend the Public Benefits Organizations (PBOs) Act, 2013, giving full discretion to the authority responsible for registration of organizations to classify organizations and, in consultation with the cabinet secretary, to review the classification<sup>139</sup>.

### **3.1.2: Police and military action**

The country has also stepped up security measures and its forces have even carried out daring missions that have managed to snatch some terrorist suspects from Somalia. Border patrols especially along the troublesome Kenya-Somalia border (Daily Nation on the Web, Wednesday, June 25, 2003) and joint Kenya-U.S. navy patrols of Kenya's Indian Ocean territorial waters (Wabala and Wandera, 2003) have been enhanced in order to stop the infiltration of terrorists from Somalia and to curb illegal immigration and the smuggling of narcotics and [other] contraband goods [like weapons] along the coast. Moreover, the U.S. has also been conducting additional security patrols of Kenya's territorial waters along the Kenya-Somali coast, although these are proving to be unpopular with local residents who fear that the U.S. is slowly building a base in Kenya (Mango 2003). Such fears may be unwarranted as Nairobi and Washington have a longstanding agreement that allows US forces to make periodic use of air and sea bases in Kenya (Daily Nation on the Web, Monday, July 7, 2003).

Military trainings between Kenya, US and Britain are also measures that were seen to be geared towards countering terrorism. The training of the military personnel and special police forces in Israel (Mango 2003) was viewed to be a measure that was facilitated to equip the Kenya forces with the necessary tactical capacity to handle terrorism. Mango (2003) argues that the war on terror was brought to the doorstep of the Kenyans and the battle was to be fought both within the

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<sup>139</sup> Prevention of Terrorism Act, 2012, KENYA GAZETTE SUPPLEMENT art 107

country and in the neighbouring Somalia. The Kenyan demographic made it difficult to identify the potential enemy from the loyal nationals. This situation has necessitated drastic measures that are viewed to abuse the rights of innocent Kenyans.

On the police side, the government has taken a number of measures aimed at strengthening the force's ability to combat terrorism. These measures include,

- (1) The creation of an Anti-terrorism Police Unit that is specially trained to handle terrorism <sup>140</sup>
- (2) The opening of a National Counter-Terrorism Centre<sup>141</sup> to [provide] an institutional framework to combat the [terrorist] threats <sup>142</sup>,
- (3) The replacement of personnel at the top echelons of the force e.g., the appointment of an Army Brigadier to head the force and,
- (4) The infusion of \$641 million over the next five years in a bid to make the unit more effective in combating crime <sup>143</sup>

Internationally renowned anti-terrorism police units such as the Scotland Yard are aiding and training their local counterparts to better combat the threat (Wabala and Wandera 2003). Additional security support for Kenya has also come from the US in the form of counter-

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<sup>140</sup> Mogire, Edward, and Kennedy Mkutu Agade. "Counter-terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 477

<sup>141</sup> The National Counter-Terrorism Center, headquartered in the Kenyan capital of Nairobi a former Kenyan military intelligence official, is the first of its kind in Africa. It functions under the Kenyan spy agency, the National Security Intelligence Service (NSIS).

<sup>142</sup> Mogire, Edward, and Kennedy Mkutu Agade. "Counter-terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 477.

<sup>143</sup> Ibid, 2011, 479.

terrorism efforts including technical collaboration in detection and disarming of bombs, protection of government leaders and hostage negotiations [and,] \$30 million worth of US counter-terrorism aid as part of a \$100 million US initiative involving five East African countries<sup>144</sup>.

Airport security has also been enhanced by the US provision of computer systems for Kenyan airports that allow each traveller's identity to be quickly checked against an updated terrorist watch-list. A US government team is also working with Kenyan authorities to develop means of blocking clandestine terrorist financing<sup>145</sup>.

### **3.1.3: Socio-political solutions**

The use of force in reducing Kenya's terrorism risk is complemented by socio-political efforts aimed at reaching out to local communities to help identify terrorists and to promote continued co-existence of Muslims and Christians in Kenya. To this end, the government has also tried to reach out to social groups (e.g., Muslims) that are apprehensive of the new anti-terrorism measures e.g., the anti-terrorism bill<sup>146</sup>. Specifically, the government has reassured Muslims of its commitment to unbiased application of the law without regard to religion, and has promised to revise the draft anti-terrorism bill to remove religious stereotypes contained in the original draft<sup>147</sup>,

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<sup>144</sup> Kelley, K. J., and P. Munaita. "US: Al Qaeda Threat greatest in East Africa." *The EastAfrican on the Web*, Monday, April 12, 2004, 33

<sup>145</sup> Ibid April 12, 2004, 33

<sup>146</sup> Otieno "Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery." *Kenya Studies Review* 1, no. 1.2003, 44.

<sup>147</sup> Kelley, K. J., and P. Munaita. "US: Al Qaeda Threat greatest in East Africa." *The EastAfrican on the Web*, Monday, April 12, 2004, 33

Muslim views have been also included in the recently completed draft review of the Constitution of Kenya (National Constitutional Conference 2004). International aid donors such as the US are also boosting the war on terrorism with increased development assistance to the Muslim dominated Coastal and Northeastern regions of Kenya. Assistance in the form of the rehabilitation of clinics, construction of classrooms, bridge repairs, provision of potable water and donations of medical services, are helping to improve the quality of life in these regions<sup>148</sup>. Many of these services are provided through civil action by the US military, which also gives the troops a chance to engage in dialogue with local Muslim people. As expected, there have been bumps in the delivery of such development assistance e.g., the recent Muslim rejection of a US offer to fund Islamic schools out of fear that the offer was insincere and intended to influence the schools' curriculum (The *East African*, February 24, 2004).

There are also attempts to promote inter-religious dialogue in Kenya. Although the country has seldom seen religious violence, there have been a few worrisome incidents in Wajir, Nakuru, Nyeri, Mombasa and Nairobi in recent decades. According to Chemchemi ya Ukweli (*lit. Oasis of Truth*): inter religious dialogue is the way to resolve and prevent animosity between Christians and Muslims that would cause a full-fledged war between the two groups. Some examples of this tension include the 1984 Wagalla massacre, which resulted in 1,600 Muslims killed after a referendum showed the population's preference to be part of Somalia. Religious animosity peaked after the August 1998 bomb-blast in the American Embassy in Nairobi. The Kenyan Muslim community was blamed and victimized. Five Muslim NGOs were de-registered. [That] same year, the Oromo Liberation Front army crossed into Kenya and killed 300 Muslims in Baggala, North-eastern Province.

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<sup>148</sup> Ibid, 2004, 33

In 1998 there was also a conflict in Nakuru, when an evangelist's remarks about Prophet Mohammed were reciprocated with the burning of a church and the public stripping of a Catholic nun by Muslim youth in Wajir. In 1999, police officers entered a mosque in Kwale and killed 6 Muslims. The Muslim community perceived it as an anti-Muslim act by a predominantly Christian police force (Chemchemi ya Ukweli 2000? 7-8). To counter this alarming trend, organizations such as Chemchemi ya Ukweli have begun to offer Kenyans of various religious persuasions basic courses on peaceful conflict resolution. Some religious leaders and organizations are also taking the lead in promoting inter-religious dialogue in the country (Nyamai 2004)<sup>149</sup>.

#### **3.1.4: Diplomatic solutions**

The main diplomatic thrust of Kenya's anti-terrorism effort is the search for peace in Somalia and Sudan. This initiative is driven by the recognition that political instability in Somalia and Sudan is a major contributor to Kenya's terrorist threat. Thus, Kenya has for a long time hosted both countries' peace talks. Most recently, the Sudan peace talks were held in Naivasha while the Somali talks were initially held in Eldoret and later Nairobi. Both peace talks have made good progress lately. Sudan's peace process received a major boost recently when the warring parties signed a document compiling six previously negotiated protocols into one framework agreement, at the start of the final phase of their peace talks at State House, Nairobi, in June 2004. Similarly, a promising breakthrough has been achieved in the Somali peace talks<sup>150</sup>. If both peace talks

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<sup>149</sup> Nyamai, "Terrorist bombing at the USA Embassy in Nairobi: the media response." *East African medical journal* 80, no. 3 (2004): 160.

<sup>150</sup> Njeru, "Post-9/11 Aid, Security Agenda and the African State." *Hakima Abbas/Yves Niyiragira (Hg.), Aid to Africa. Redeemer or Coloniser, Capetown [ua]*, 2004, 95

result in binding treaties, they could stabilize these two countries politically helping to transform them into good neighbours whose security will greatly enhance that of Kenya.

### **3.2: Contemporary feeling of the counter terrorism measures**

While it is not possible to determine the general feeling of Kenyans on the counterterrorism measures without conducting a survey, the general mood of the country towards these measures can be alluded to through newspaper opinions, discussions on social media, and the general reaction of Kenyans to the counter terrorism measures. There has been mixed feelings regarding the measures that the government takes to manage terror threats and their effects on the basic rights and fundamental freedoms such as, personal security, the right to privacy through access to private information, and infringement of the rights to association.

#### **3.2.1: Loss of national sovereignty to the west**

Most Kenyans see most of the anti-terrorism measures taken by the government of Kenya as a breach of the country's constitution (Thuku, Agutu, Mugonyi and KNA, 2003). In 2003, for instance, the US and Britain pressed Kenya to implement intrusive security measures before the two countries could lift their economically debilitating travel advisories against Kenya. These measures include

- (1) Passage of an anti-Terrorism Bill<sup>151</sup>,

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<sup>151</sup> Njeru, "Post-9/11 Aid, Security Agenda and the African State." *Hakima Abbas/Yves Niyiragira (Hg.), Aid to Africa. Redeemer or Coloniser, Capetown [ua]* (2004): 96



- (2) Cancellation of all airport staff passes and re-issuing them after carefully screening all staff members,
- (3) Introduction of a new electronic pass system,
- (4) Improving airport fences and enforcing security patrol inside and outside the fences,
- (5) Increasing Kenya's passenger screening equipment at the two international airports,
- (6) Increasing staff manning the immigration arrival desks and,
- (7) Deploying mobile security units at its international airports even below aircraft flight paths<sup>152</sup>

As with the anti-terrorism legislation, the Kenya government is not keen to be seen as acting at the behest of foreign countries, especially the US and the UK.

These events culminated to a public opinion on the relationship between Kenya and its perceived allies in the war of terror. The measures coming as conditions for the cordial relationship between the government and its allies, created a bully type of relationship perception among the people. However, Kenyans obliged to the requirements that relieved them of their rights and fundamental freedoms for the fear of being stigmatized and viewed as a terrorist.

Infringement of personal security

### **3.2.2: Compromise of individual's personal space**

The counter terrorism measures conducted by the security forces infringed on individuals personal space. While the law requires that private space especially residence should not be

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<sup>152</sup> Ibid , 2004, 96

forcefully occupied by security personnel unless allowed by the courts through a duly offered warrant, evidence show that terror suspects personal space were invaded by police in the name of counter terrorism. In an operation intended to flush out suspected terrorists and illegal immigrants in Eastleigh, security forces forcefully invaded the private space of targeted residents and conducted unwarranted searches. From the activities documented to be ensuing during the raid, the residents were harassed despite showing their identity to be Kenyans.

“I was at home with my older brother and younger siblings when the police arrived. My brother said we should not worry because he thought the police would leave us alone as soon as we had shown them our Kenyan ID cards.

They knocked hard on our door and when we opened, they barged in. Saying nothing, one of them grabbed my brother by the neck and six others beat him with batons on his head and back. When he fell to the floor, one of them stood on him. I have never seen people so violent.”

“I shouted, ‘We’re all Kenyan, why are you beating my brother?’ One of the officers grabbed my arm and twisted it. It felt like he was trying to break my arm. I told him I had Kenyan ID and that I spoke Swahili but he ignored me and shouted, ‘Go back to your country.’ I felt so bad, as if I were not even Kenyan.”

“The other officers went to the bedroom where I could hear them trying to break the locks on some of the cabinets. They also broke all the windows in our apartment.

The day after, my brother went to the Aga Khan Hospital, where he had to stay for two days before they let him go home. He still has kidney problems<sup>153</sup>.”

### **3.3.3: Compromise of personal security**

On April 6, 2014, police forces made a crackdown on the Kenya Somali nationals living in Eastleigh<sup>154</sup>. The raid followed series of grenade terror attacks in the City. According to a human rights report titled “You Are All Terrorists” Kenyan Police Abuse of Refugees in Nairobi<sup>155</sup> Witnesses and victims of abuse told Human Rights Watch that police personnel from the General Services Unit (GSU), the Regular Police (RP), the Administration Police (AP), and the Criminal Investigations Department (CID) committed the abuses. The abuses included rape, beatings and kicking, theft, extortion, and arbitrary detention in inhuman and degrading conditions. Many women and children were among the victims. Police officers also arrested and charged hundreds of Eastleigh residents with public order offenses without any evidence, before the courts ordered their release.

The notion that the measures are intended to enhance security for all was one of the most selling issues for the privacy violation measures. Many Kenyans feel that the enemy lies within

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<sup>153</sup> See interviews conducted by the Human rights watch on residents of Eastleigh “You Are All Terrorists” Kenyan Police Abuse of Refugees in Nairobi accessed on 15 March 2015 [http://www.hrw.org/sites/default/files/reports/kenya0513\\_ForUpload\\_0\\_0.pdf](http://www.hrw.org/sites/default/files/reports/kenya0513_ForUpload_0_0.pdf)

<sup>154</sup> According to Kenyan media reports, 657 people were taken into custody immediately after the bombing. Over the weekend, hundreds more were arrested, and 900 are reportedly in police custody in Nairobi’s Kasarani Stadium. The UNHCR has expressed concern over the arrests, and requested access to the stadium.

<sup>155</sup> See “You Are All Terrorists” Kenyan Police Abuse of Refugees in Nairobi accessed on 15 March 2015 [http://www.hrw.org/sites/default/files/reports/kenya0513\\_ForUpload\\_0\\_0.pdf](http://www.hrw.org/sites/default/files/reports/kenya0513_ForUpload_0_0.pdf)

especially with the consistent attacks being perpetrated locally. The need for frisking and ensuring that there is no danger posed by any of the people entering a particular premise fostered a feeling of security among the locals. However, the most affected or those who have shared stories with people who have been affected feel that there is extensive security breach concern in the name of counter terrorisms.

The media played an important role in moralizing the acts of frisking and searching of particulars as a measure of preventing terrorisms. Campaigns and stories that encouraged security enhancement were run on media while stories such as the deputy chief justice Nancy Baraza resisting frisking and finally being asked to step down hitting the headlines made the issue of frisking acceptable in the nation. However, with highlights on the events in Eastleigh which is the practical case of counter terrorism measures by the government an overwhelming Kenyans feel that their security is compromised as indicated in the News article by Aljazeera dated April 7, 2014 titled Kenyans question mass arrests of Eastleigh Somalis<sup>156</sup>.

Twenty-two people said GSU officers stole cell phones, jewellery, a music system and a total of Ksh 246,000 (\$2,964). The average amount of money that witnesses said was stolen was just over Ksh 10,000 (\$120), although in some cases witnesses claim GSU officers stole around 15,000. In three cases, the witness's say officers stole Ksh 20,000 and in two further cases Ksh 35,000 and Ksh 50,000. Nine people said RP officers stole cell phones, business materials, and a

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<sup>156</sup> See Kenyans question mass arrests of Eastleigh Somalis, Aljazeera accessed on 15 March 2015 retrieved <http://stream.aljazeera.com/story/201404072028-0023625> Kenyans on Twitter are debating a police crackdown that has resulted in hundreds arrested in Nairobi's Eastleigh suburb. The mass arrests of Somalis in Eastleigh, an area sometimes called "Little Mogadishu", follow a deadly bombing last week that killed six people. #EastleighCrackdown, #JusticeForEastleigh, #EastleighBlast and #KasaraniConcentrationCamp are some of the hashtags Kenyans on Twitter are using to discuss the situation.

total of KSh 37,000. The average amount stolen among interview subjects was KSh 5,280 and the highest was KSh 15,000<sup>157</sup>.

“It was around 9:30 a.m. when the GSU came and just broke down my front door. I could smell teargas. They grabbed my daughter by the wrist and told me to get our identity cards. Then they went into the bedroom and emptied the wardrobe. My husband was in Sudan at the time and had sent money to pay for rent and other things, so they found KSh 50,000 (\$602) in the wardrobe. They took all of it. I asked them why they were robbing me and they kicked me in the kidney. I was one-month pregnant at the time but I was lucky because the baby survived. My children were all very afraid and were coughing a lot because there was teargas in the building. Even now, months afterwards, they still have breathing problems<sup>158</sup>,”

Consistent attacks by terrorists in the country resulted to more apprehension and desperation for any measure that would ensure the security of the nationals. The feeling of desperation pushed the population to accept relinquishing their rights for a feeling of safety acceptable<sup>159</sup>.

### **3.4: CRENSHAW’S MODEL**

Crenshaw breaks down potential causes into three categories. Firstly, situational, which includes both permissive and motivational pre-conditional factors – which enable the possibility of radicalisation, such as the internet, and motivate feelings against (the State, for example), such as poverty or racial inequality<sup>160</sup>. As well as these pre-conditional situational factors Crenshaw also

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<sup>157</sup> Human rights watch interviews, Eastleigh Nairobi, February 5, 2013

<sup>158</sup> Ibid , 2013

<sup>160</sup> Martha Crenshaw, *Comparative Politics*, Vol. 13, No. 4. (Jul., 1981), pp. 379.

argues that there are precipitant situational factors – events that may be seen as triggers for actions, UK foreign policy in Iraq being a commonly cited contemporary example.

Secondly, there are the strategic aims of the group, such as to cause fear (short-term) or to change a political status-quo (long-term). The last set of issues Crenshaw identifies are to do with individual factors relating to motivation and participation in groups, such as psychological issues<sup>161</sup>. Crenshaw's article is a tightly written examination of these causes. Whilst it is a dated example of literature in this field, it is both relevant in its general theoretical analysis of causes and helpful in providing a structure for thinking about them.

### **3.5: The future of Kenya's terrorism challenge**

Kenya was thrust into the centre of global terrorism in 1998 when the US embassy in Nairobi was bombed. Four years later, a bomb destroyed an Israeli hotel in Mombasa and a shoulder-launched missile was fired on an airliner full of Israeli tourists. Although, in both Al Qaeda terrorist incidents, the primary targets were Americans and Israelis, Kenyans paid the heaviest price in terms of lives lost and number of injuries, not to mention the socioeconomic disruptions occasioned by these events<sup>162</sup>. Other attacks have followed including the Westgate mall siege and most recently the University attack in Garissa that cost the country 147 lives.

Because the factors that have contributed to terrorism in Kenya are unlikely to change in the short-term, the country will continue to be on the terrorist radar screen for a while. Thus, it is imperative for the country to maintain a high level of terrorism preparedness by enacting anti-

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<sup>161</sup> Ibid 1982, 380

<sup>162</sup> Njeru, "Post-9/11 Aid, Security Agenda and the African State." *Hakima Abbas/Yves Niyiragira (Hg.), Aid to Africa. Redeemer or Coloniser, Capetown [ua] 2004, 97*

terrorist legislation and reducing corruption especially in its security forces. Simultaneously, conditions such as iniquitous socioeconomic development within the country should be addressed in order to reduce some local Muslims' sympathy and support for would be terrorists. Kenya should also continue to support the Somali and Sudan peace talks because their success could greatly reduce the country's vulnerability to terrorism. If these countries were to become politically stable, this would deprive Al Qaeda and other terrorist organizations of easy weapons sources and convenient safe havens, thereby making it harder for them to operate in Kenya's neighbourhood<sup>163</sup>.

Attention should also be paid to the negative effects of the war on terrorism on Kenya's civil, human, and political rights. This is important because the war on terrorism will not be won without the cooperation of citizens. Thus, the anti-terror war should not be used as a pretext to wantonly violate the basic rights of Kenyans. In short, the war on terrorism should not be allowed to degenerate into a war on citizens' rights, lest success on the former be found to be hollow in the end.

Unfortunately, the religious-inspired terrorism that Kenya is dealing with right now is driven by spiritual/religious motivations with no material solutions. As a consequence, the best way for Kenya to reduce its vulnerability to this type of terrorism is by reducing immediate contributing factors while whittling down its local and regional support base. Equally important is the need to re-evaluate the country's global geopolitical stance, especially the security and socioeconomic cost of its support of Western and Israeli interests<sup>164</sup>. While a geopolitical realignment may not

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<sup>163</sup>Mogire, Edward, and Kennedy Mktutu Agade. "Counter-terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 477.

<sup>164</sup> Ibid, 2011, 480.

change the country's position in the larger Christianity-Islamic contest for regional spiritual supremacy, it could put Kenya below the radar screen of religious inspired terrorist groups.

#### War a threat to citizens' rights

The nature of terrorism and the perception that has been created about it makes it a vice that requires comprehensive measures to combat. As in other countries such as the US, the war on terrorism 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. According to Shinn, 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 airports and in entries of certain buildings<sup>165</sup>. It is a norm to be frisked when entering buses, public offices, private premises, and other general facilities. 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 authorities and their rights violated. Many have subconsciously mortgaged liberty for security with the fear that the terrorist may be within. But perhaps the most worrying new tool in the country's anti-terrorism war is the draft Suppression of Terrorism Bill that was published on April 30th, 2003 that was reintroduce.

This bill defines terrorism and terrorist organizations. It also

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<sup>165</sup> Shinn, David. "Fighting terrorism in East Africa and the Horn." *Foreign Service Journal* 81, no. 9 (2004): 40.



- (1) Seeks to criminalize unlawful weapons training, leading of terrorist organizations, and possession of articles of terrorism, being a member of, or supporting a terrorist organization
- (2) Confers extra powers on police and spells out cooperative procedures to enable Kenya to work with other countries to combat terrorism,
- (3) Provides punishment, and or life imprisonment for anyone convicted of terrorism and,
- (4) Allows for the seizure of property acquired through terrorism

There are many issues that made the bill unpopular, they include the following

- (1) The bill was widely believed to have been foisted on Kenya by the U.S. and British governments as discussed by Potter<sup>166</sup>. By the fact that it comes from a foreign government it has been viewed to be undermining home-grown responses to terrorism as discussed by <sup>167</sup>
- (2) The bill has been viewed to target certain groups of Kenyans, especially Muslims<sup>168</sup>. The spirit of the bill is viewed to be divisive because it pits Christian supporters against its Muslim opponents. The bill has the potential to initiate counter terrorism measures that target one group. It is also viewed to victimize Muslims without the needed proof.
- (3) The bill is viewed to be draconian and oppressive as discussed by Potter because it contains no remedy for those wrongly accused of terrorism unlike the USA Patriot Act. The authors feel the key issues that the bill should address while forming counter terrorism legislative provisions is a way to remedy its mistakes. The consequences of being perceived to be a terrorists are dire.

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<sup>166</sup> Potter. *The four faces of nuclear terrorism*. Routledge, 2004, 334

<sup>167</sup> Otieno "Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery." *Kenya Studies Review* 1, no. 1.2003, 44.

<sup>168</sup> Ibid, .2003, 44.

In the event one is wrongly accused and victimized, there should be remedial measures that are commensurate to the charge, which lacks in the provisions.

(4) The bill is viewed to be unbeneficial to Kenyans even though they will bear its brunt not so much to protect them but to satisfy American and British concerns over their own security as explicated by Otieno<sup>169</sup>. The bill is prone to abuse. The bill itself does not seek to reconcile with the bill of rights to ensure that the rights and fundamental freedoms are safeguarded as provided in the constitution.<sup>170</sup> Views that the bill is position to be superior to the bill of rights and fundamental freedoms. It also has avenues for abuse without sufficient remedial measures.

(5) The bill allows the extradition of terrorist suspects to other countries without the normal safeguards. The bill is viewed to treat suspects as terrorists. This provision is viewed as a violation of International law provision of human rights. The authors finds the provisions comparable to giving out national citizens to other countries to be persecuted with laws that they do not subscribe to and do not relate to the offense that they committed in their home country.

(6) The bill perpetuates neo-colonialism and violates the country's sovereignty by facilitating the operation of foreign security forces. American and European in Kenya even though some of these foreign forces have been accused of being disrespectful of their Kenyan counterparts. The level of control that is leverage to the foreign governments by Kenya is more than necessary.

(7) The bill is viewed to be undemocratic having been drafted with no due input from most Kenyans.

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<sup>169</sup> Otieno "Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery." *Kenya Studies Review* 1, no. 1.2003, 46.

<sup>170</sup> Ibid , 2003, 47

(8) The bill is viewed to terrorize Kenyans and violate their civil and human rights by, for example, allowing for the arrest and holding of terrorist suspects without allowing them to contact lawyers and relatives. Additionally, the bill has also caused angst among some Kenyans because they view it as being racist because of its likely violation of the rights of non-whites while protecting those of whites.

These views have been presented to the government through various avenues including commentary in the local dailies. In response, the government denies most of these criticisms, especially charges that the bill was brought about by external pressure and that the bill is unfriendly to Kenyans, arguing instead that the bill will be amended to the Kenyan situation [and that] the views of Kenya Muslims will be catered to before [its] enactment <sup>171</sup>. Such government assurances are unconvincing to many Kenyans<sup>172</sup>

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<sup>171</sup> Golda Akolo. "An Analysis On Terrorism In Kenya From 1960-2000." PhD diss., University of Nairobi, 2003, 46

## **CHAPTER 4: CRITICAL ANALYSIS OF COUNTER TERRORISM MEASURES IN KENYA AND IMPACT ON RIGHTS OF PRIVACY.**

### **4.1: Introduction**

Counter terrorism is or may be defined generally to mean the tactics, practices, techniques and strategies put in place by a government, police departments, military units and corporations in response to terrorist threats and or acts both real and imputed. From this definition one thing is evident and that is there are objectives that are set by the various bodies to counter terrorism. The main objective of these bodies ought to be to dismantle and or destroy terrorist networks all over the world. That is the only way that counter-terrorism measures will be deemed to have taken effect positively<sup>173</sup>.

In reaction to the terrorism threats, the government of Kenya and private security have put several measures in place. These measures include restricting some basic freedoms and fundamental rights. One of the biggest question to ask however, is whether the measures that have been put in place have achieved their objective (which is to act as safety measures against terrorist attacks) or have they instead brought about disgruntled citizens who feel like their basic human rights are being invaded.

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<sup>173</sup> Nteere, Grace. *Counter Terrorism measures Kenyas approach*. Nairobi: Iyaat Organization, 2015.

Personal security, personal space, and freedom of association have been relinquished in a view to counter terrorism. The society has been convinced through the terror activities that these measures are not only necessary but also a step towards enhancing security.

Privacy is a fundamental human right, enshrined in numerous international human rights instruments. It is central to the protection of human dignity and forms the basis of any democratic society. It also supports and reinforces other rights, such as freedom of expression, information and association. The right to privacy embodies the presumption that individuals should have an area of autonomous development, interaction and liberty, a “private sphere” with or without interaction with others, free from arbitrary State intervention and from excessive unsolicited intervention by other uninvited individuals. Activities that restrict the right to privacy, such as surveillance and censorship, can only be justified when they are prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued. As innovations in information technology have enabled previously unimagined forms of collecting, storing and sharing personal data, the right to privacy has evolved to encapsulate State obligations related to the protection of personal data. A number of international instruments enshrine data protection principles, and many domestic legislatures have incorporated such principles into national law

Kenya is a signatory to the Universal Declaration of Human Rights (‘UDHR’) and has ratified the International Covenant on Civil and Political Rights (‘ICCPR’). Article 17 of the ICCPR, which reinforces Article 12 of the UDHR, provides that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”. The Human Rights Committee has noted that states parties to the ICCPR have a positive obligation to “adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right

[privacy].”<sup>8</sup> 7. Article 2 of Kenya’s Constitution states: “(5) The general rules of international law shall form part of the law of Kenya. Sovereignty of the people. (6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution.

In this chapter we shall analyze the counter terrorist measures that have been put in place in Kenya to try and curb the terrorism menace that is proving to be a challenge in the country and the benefits and challenges that come along with this measures.

#### **4.2: Security measures taken**

Kenya faces genuine security threats from Al-Shabab and Somalia’s continued instability, but government crackdowns have only worsened the climate of fear. In response to the Westgate attack, Kenya instituted a series of measures to shore up its domestic security. This includes the

**Know thy Neighbour initiative**, which divided the households into groups of 10 and requires people in those households to hold one another accountable and share information on any suspicious activities. This singled out Kenyan Somalis and anyone who looked like Somali for surveillance, escalating the mistrust that characterizes Kenyan-Somali interactions.

**Operation Usalama** Watch to detect illegal immigrants, arrest and prosecute people suspected of engaging in terrorist activities, identify places harbouring criminals and prevent lawlessness in general. Thousands of Somalis were rounded up and held at a football stadium in dehumanizing conditions. More than 300 people were deported to Somalia in the first two weeks of the operation alone, despite concerns by a number of rights groups, including Human Rights Watch, about the security situation in Somalia for the deportees. The campaign ultimately yielded little in terms of bolstering Kenya’s

security, but it touched off a raw nerve in already fraught relations between the Somali community and Kenya. For Al-Shabab, the ethnic profiling of Kenyan Somalis served as yet another opportunity for recruitment<sup>174</sup>.

**Establishment of the National Security Intelligence Service** with support from the U.S. Anti-Terrorism Assistance (ATA) Program

**Creation of the Anti-Terrorism Police Unit (ATPU)** in 1998, a Joint Terrorism Task Force (JTTF) and the National Counter-Terrorism Center (NCTC) in 2003.

**Creation of the National Security Advisory Committee (NSAC)** in 2004 which has since been scrapped.

**Participation in the U.S. Terrorist Interdiction Program (TIP)**, which provides technology to screen travellers arriving at airports and border crossings.

#### **4.3: Challenges involved with counter terrorism measures**

Beyond the question of Al-Shabab's capacity or weakness, however, a year after the Westgate tragedy, **Kenyatta's government has no real exit strategy from Somalia** or sufficient explanations for Kenya's continued presence there. Far from creating security, the violence against ordinary Somalis has deepened the mistrust and enmity between the Kenyan state and Somalis. Until that changes, ordinary and extraordinary violence will become the norm and not the exception.

##### **4.3.1: Dealing with the enemy within**

The East African nation is facing a great challenge in dealing with the "enemy within," who has executed several terror attacks undetected as Kenya Defense Forces and its allies effectively

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<sup>174</sup> (Kenyanito, 2014)

fight external aggressors. Intelligence reports indicate that Al-Shabab is recruiting an increasing number of Kenyans, from both Somali and non-Somali populations. Recent al-Shabab propaganda films feature non-Somali fighters speaking Kiswahili, which is widely spoken in Kenya, and not in Somalia. AL Shabaab terror recruitment have been reported by intelligence experts to happen on a very large scale on the social networks. It is on these networks that the potential recruits have met terrorists who provided them with orientation on how they can join a terrorist network. The recent incidence in Kenya is the case of two Kenyan girls in their twenties who crossed over to Syria with the only link between the Islamic State in Iraqi and Syria and Kenya being the social networks. The question that may pop from the Kenyan public is how terrorists lure youths to join their groups and direct all manner of atrocities towards their home countries. (Kenya Alshabaab Terror Recruitment:How Terrorists Lure Youths., 2015)

#### **4.3.2: Reaching a consensus on enactment of the Anti-Terrorism Bill and the Anti-Money Laundering and Combating the Financing of Terrorism.**

Muslim human right groups opposed two bills in legislation as being imposed by the US. This has blurred the fight against terror due to weak legal framework. Political opposition, human rights campaigners and coastal Muslims has prevented counterterrorism legislation from passing. The aggrieved view such measures as forms of victimization and denial of due process of law, which in turn illustrates their exclusion from political power. Sections of leaders and civil society condemned the anti- terrorism bill terming it draconian and biased against members of certain ethnic and religious backgrounds.



### **4.3.3: Discrimination on the basis of race, ethnicity and religion in the operations**

The counter terrorism actions in Kenya has been concentrated on predominantly muslim areas in North Eastern province on the border with Somalia and the Coastal strip that is inhabited with predominant Muslim Arab-Swahili communities bringing to the fore allegations as stated above. It was the view in some communities that people were suspected, stopped, searched, arrested and held in custody solely because of their ethnic, racial or religious origins. As part of the response to terrorism, extensive arbitrary arrests were carried out throughout most of 2003 and 2004 in coastal towns, as well as in Nairobi with allegations of human rights violations. The extra-legal operations were conducted with impunity; in fact a Kenyan Judge Justice Waki, as he then was, sitting at the High Court in Mombasa held that;

“There cold silence from the respondents in this matter about what laws, if any that was used in seeking information ad interrogating the applicant. There is indeed a concession that the FBI has no legal basis in operating in this country. I am not as a court of Law to imagine that the Respondent had good and valid reasons for their action. The police is at liberty and has the constitutional mandate to investigate crime and bring criminals to book. But there are clear laws governing this country and they must be shown to be complied with; particularly by all law enforcement of whatever description”.

## **4.4: Counter terrorism measures and invasion of privacy.**

### **4.4.1: Interception of communication by National Security Organs**

Section 80 of the Bill amends the Prevention of Terrorism Act by introducing a new section 36A, which provides that ‘National Security Organs may intercept communication for the purposes of

detecting, deterring and disrupting terrorism in accordance with procedures to be prescribed by the Cabinet Secretary’.

These surveillance powers are incomprehensibly broad. The Bill entirely fails to set out what these powers are and how they are to be exercised. This is seemingly left to the Cabinet Secretary, i.e. outside any of any parliamentary scrutiny. This is effectively laying the ground for secret decrees guidance detailing the surveillance powers of unspecified national security organs. It is therefore in breach of international standards on the right to privacy.

#### **4.4.2: Section 251A of the Penal Code on insulting modesty by intruding privacy or stripping**

Section 215A criminalises anyone who intentionally insults the ‘modesty’ of any other person ‘by intruding upon that person’s privacy or strips such person. The offence is punishable by imprisonment not exceeding 20 years.

Again, ARTICLE 19 is concerned that this provision is unduly broadly drafted. Key terms are both undefined and excessively vague. It is unclear what ‘modesty’ means, how such modesty can be insulted or intruded upon. This provision is therefore likely to criminalise legitimate speech, such as a journalist reporting on an affair involving a politician. Moreover, the criminal sanctions available for this offence are wholly disproportionate.

#### **4.4.3: Increasing number of databases without appropriate safeguards**

Article 40 B of the Bill makes provision for the creation of a database ‘to assist law enforcement agencies’ without any further detail. It is wholly unclear for instance, what information may be collected, how long such personal information may be kept, whether there is a cut-off period after which the data should be erased and any remedies available to data subjects in order to request the removal of their name and personal detail from the database.

Finally, we note that the Bill makes reference to the creation or need to record the personal information of several categories of people, such as prisoners, tenants or tourists in databases without giving any clear guidance as to the safeguards in place in order to respect individuals' right to privacy.

#### **4.4.4: Security Equipment's and Surveillance Camera**

Despite Kenya's efforts to strengthen and embed protection of privacy both in its constitutional and legislative framework, there are increasing concerns over certain surveillance practices and policies, such as the adoption of the Prevention of Terrorism Act 2012, the Network and Early Warning systems (NEWS) in 2012, and the Integrated Public Safety Communication and Surveillance System in May 2014. These measures are often framed within government strategies to combat terrorism, cyber criminality, fraud and corruption. A group of Kenyan and international organisations including Human Rights Watch, Amnesty International and Open Society Justice Initiative have expressed concerns over reports of human rights violations by the Kenyan security forces in the context of counterterrorism operations. These have included threats against HRDs and journalists for exercising their right to freedom of expression

Without warning, Kenyans learned last month that Safaricom, Kenya's largest telecoms operator, had contracted with the government to provide a new communications and street-level surveillance system. The new system integrates 2,000 video surveillance cameras, video conferencing, digital radios, and a mapping system into a central command center. Worryingly, this contract likely entails many forms of street-level surveillance including license plate readers, facial recognition technology, and real-time tracking across major cities like Nairobi and Mombasa. The arrangement between Safaricom and President Uhuru Kenyatta's government has come under scrutiny by the Kenyan Legislature, but only for its bidding process, not human

rights concerns. Evidently, Safaricom was the only bidder for the contract, whereas some lawmakers would have preferred an open bidding process. The right to privacy of communications is guaranteed in the Kenyan Constitution, but Kenya lacks comprehensive data protection laws, so the government and Safaricom are operating this powerful new surveillance network effectively without checks or balances.

#### **4.4.5: Limiting access to internet and mobile services**

During and in the aftermath of the March 2013 elections, the Kenyan government requested that mobile phone providers block text messages that were deemed to incite violence using a firewall that would detect messages containing key words, identified beforehand, to be further analysed. The National Steering Committee on Media Monitoring of the Ministry of ICTs intercepted 300,000 text messages during the 2013 elections. This practice shows the extensive power the government exercises over telecommunication and internet providers and their operations.

#### **4.4.6: The Integrated Population Registration System and new biometrics database**

In December 2012, EDAPS38 completed the creation of an Integrated Population Registration System (IPRS) for the Kenyan government. The IPRS collects data from a dozen databases held by various government agencies. It combines data from the birth and death register, citizenship register, ID card register, aliens register, passport register and the marriage and divorce register as well as elections register, tax register, drivers register, National Social Security Fund (NSSF) register, National Hospital Insurance Fund (NHIF) register and the Kenya National Bureau of Statistics (KNBS) register. When it was deployed, Kenya had yet to adopt data protection legislation and the collection, centralisation and sharing of this data is not appropriately regulated.

## **CHAPTER 5: CONCLUSION AND RECOMMENDATIONS**

### **5.1: CONCLUSION**

The General objective of the study was to assess how counterterrorism measures compromise full enjoyment of the rights and fundamental freedoms provided in the constitution. The study finds literature information that points out on the various ways through which counterterrorism measures restrict the full enjoyment of the basic rights and fundamental freedoms. With a specific focus on the full enjoyment of the right to security, personal space and the freedom, the study concludes that the provisions of these basic rights and fundamental freedoms are suspended in the event counter terrorism is mentioned.

The society has come to accept the violations of these basic right and fundamental freedoms. The government has also acted to defy its very constitution in measures that are viewed to be intended to reduce the level of terror attacks. This is consistent with the theories and descriptions asserted by Crenshaw. Crenshaw takes the position that terrorism itself is irrational to the authorities. In effect, it results to irrational measures to counter it.

The government of Kenya acts to restrict the freedoms enjoyed by Kenyans. Other than the government, the society has also accepted the violation of the basic rights and fundamental freedom. The empirical findings show that most of the interviewees do not approve the actions taken by the Government and the society. However, they accept it in the name of preventing terror attacks.

### **5.2: RECOMMENDATIONS**

While some measures would be deemed necessary to manage terrorism, they should be exercised with caution and with supervisory clauses. Necessary legislation and controls with checks and balances should be put in place. The following should be key characteristics of the legislation,

which should be implemented and enforced to the fullest because terrorism often thrives where human rights are violated, which adds to the need to strengthen action to combat violations of human rights. Terrorism itself should also be understood as an assault on basic rights. In all cases, the fight against terrorism must be respectful of international human rights obligations.

### **5.2.1: Strong data protection Law Implemented**

With this massive new surveillance contract, the Kenyan Government must take a number of steps immediately to ensure data protection of Kenyan mobile phone subscribers and respect of their human rights. For its part, the Parliament must pass a strong data protection law. The 2010 Constitution of Kenya requires that the Parliament pass a data protection bill, but the draft law has yet to be voted upon, despite being ready for adoption. The bill should be passed quickly to ensure respect for human rights online.

Additionally, Safaricom must take action to ensure its network is not abused for unlawful purposes. For instance, Safaricom and other telcos and ISPs in Kenya should conduct a thorough human rights impact assessment (HRIA) through independent human rights experts. Based on these assessments, providers should reform their policies impacting user privacy and freedom of expression, and implement new measures to prevent rights abuses. These measures include: issuing regular transparency reports detailing government requests for user data; disclosing actions they take to respond to government requests; publishing relevant corporate policies; and meeting with civil society to review policies and implementation. Finally, to the extent possible under law, providers should reject government requests for direct access to their networks or for network shutdowns.

### **5.2.2: Gaps in law closed and implementation enforced**

Despite improvements in Kenya's domestic legislation in recent years, legal gaps remain. The police reform process has also suffered from slow progress and, at the time of writing, there were proposed amendments to the National Police Service Act and National Police Service Commission Act that, if implemented, would erode important human rights gains. All three of these factors—gaps, delays, and potential erosions should be closed.

There is need or legal gaps to be enforced to protect the ordinary Kenyan who is subjected to these counter terrorism measures. Without good legal provision, the counter terrorism measures can be easily abused and used to deny Kenyan's their basic rights and freedoms. Without the right legal framework, Kenyans will not take counter terrorism measures that are necessary seriously, as they are prone to abuse. The law will give the measure the necessary brainstorming to allow its consistency with the human rights provisions safeguarded; a case in point being torture.

Based on all these gaps and legal deficiencies, passing stronger anti-torture legislation, ratifying the International Convention for the Protection of All Persons from Enforced Disappearance, strengthening non-refoulement protections will help. Other measures should include amending or repealing the Prevention of Terrorism Act, ratifying the optional protocols to the Convention against Torture and the International Covenant on Civil and Political Rights, and declaring that Kenya recognizes the competence of the Committee against Torture would significantly contribute to protecting individuals from ATPU abuses.

### **5.2.3: Expedite police reforms**

Numerous delays in the police reform process have hampered Kenya's human rights reforms and have therefore prevented the police from becoming less corrupt, more professional and accountable, better managed, and more respectful of human rights. After more than a year of waiting, the IGP, NPSC, and IPOA were in place, but the slowness of the reforms calls into question whether the political will exists to institute the reforms. Amnesty International reported that many police institutions did not start to follow the new policing legislation—including new restrictions, which limit the use of force and firearms, regulate arrest and detention, and enhance internal accountability and reporting obligations to IPOA—until after the IGP was appointed in December 2012.

Expediting these reforms will not only help in establishing a supervisory body but will provide the right avenue through which Kenyans can be involved in the war against terror. There have always been calls for the involvement of the general public in provision of information regarding terrorists. However, this will only be easy if the relationship between the public and the police is cordial. Police reforms are also viewed to bring in an effective brand of police. The gap has always been on intelligence and with the right police service, counter terrorism can be transformed in terrorism prevention whereby the police work to prevent terrorism rather than to counter terrorism.

### **5.2.4: Clear Existing legislation**

Human rights groups have routinely criticized anti-terrorism legislation that contains vague and broad language and permit states to engage in excessive investigatory, detention, confiscation, and punitive action. Kenya's Prevention of Terrorism Act permits all four by allowing Kenya to attach the label of terrorism to a broad range of acts. Without defining its terms, the act



criminalizes, as forms of terrorism, activities that, inter alia, create a “serious risk to the health or safety of the public,” “result in serious damage to property,” or that “prejudices national security or public safety.” However, the act does not define any of these vague terms. The act is similarly vague in its definition of terrorism, defining it as an activity carried out with the intent of “intimidating or causing fear amongst members of the public or a section of the public.” In some cases it is “intimidating or compelling the Government or international organization to do, or refrain from any act,” or “destabilizing the religious, political, Constitutional, economic or social institutions of a country, or an international organization.”

Adding to its vagueness, the act does not require the Inspector-General to apply for an ex parte order from a judge for the police to seize property when “it is not reasonably practicable, having regard to the urgency of the situation” so long as he notifies a judge within 72 hours<sup>175</sup>. The act, however, provides no clear criteria to determine what defines an “urgent” situation. As a final example of the act’s vagueness, the IGP may, where reasonable grounds exist, recommend that the cabinet secretary declare a person, group, or trust a terrorist group and subject it to various sanctions. To acquire this designation, the terrorist labelled group need only to act “in association with” another designated entity. The term “in association with,” when broadly defined, would provide the government with excessively sweeping powers to take action against nearly any person, group, or trust that comes in contact with another designated entity. The law has to be clear regarding these issues. There is no alternate provision when it comes to laws that will be put to regular use.

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<sup>175</sup> Prevention of Terrorism Act, 2012, KENYA GAZETTE SUPPLEMENT NO. 149, art. 37(2).

## BIBLIOGRAPHY

- Al Jazeera America. Kenyan authorities hold eight suspects in Nairobi mall attack. (2013, September 28). Al Jazeera America. Retrieved from <http://america.aljazeera.com/articles/2013/9/28> accessed on March 17, 2015 (28 September 2013)
- Aljazeera, Kenya Police find explosives in mosques accessed <http://www.aljazeera.com/news/africa/2014/11/kenya-police-find-explosives-mosque-raids-2014112095511530664> accessed on March 17, 2015 (20 November 2014)
- Amnesty International Report, Kenya: The Impact of Anti-Terrorism Operations on Human Rights. 23rd March 2005. <http://web.amnesty.org/library/index/engaf320022005>.
- Armstrong, J. S. "How to Avoid Exploratory Research?" *Journal of Advertising Research*, 10 (4), (1970), 27-30.
- Aronson, S.L. United States aid to Kenya: A study on regional security and counterterrorism assistance before and after 9/11. *African Journal of Criminology and Justice Studies*. 5(1), (2012) 119-126.
- BBC News Africa, Kenya Anti-terror laws: Court scraps main clauses, (23 February 2015) <http://www.bbc.com/news/world-africa-31588445> accessed 16 March 2015
- Bergesen, A. J. and Lizardo, O. International Terrorism and the World-System. *Sociological Theory*. 22: 1 (March 2004): pp. 38-52.
- Blakesley, C. "Terrorism, Drugs, International Law and the Protection of Human Liberty: A Comparative Study of International Law, its Nature, Role and Impact in Matters of Terrorism, Drug Trafficking, War and Extradition," New York: Transnational Publishers, 1992).
- Bronitt, Simon, Tim Legrand, and Mark Stewart. "Evidence of the Impact of Counter-terrorism Legislation." (2015): 297-312.

- Capital News. "UK closes Mombasa Consulate over security fears".. Retrieved <http://www.capitalfm.co.ke/news/2014/06/uk-closes-mombasa-consulate-over-security-fears/> on 14 June 2014 accessed on 17 March 2015
- Carson, J. "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.
- Charters, A. "The Deadly Sin of Terrorism: Its Effect on Democracy and Civil Liberty in Six Countries," (Westport, CT, Greenwood Press, 1994)
- Chomsky, Noam. *Was There an Alternative?*. Seven Stories Press, 2006, 67
- Crenshaw M. *Explaining Terrorism: Causes, Processes and Consequences*, (New York: Routledge, 2010)
- Crenshaw M. Will Threats Deter Nuclear Terrorism? *Stanford Security Studies* (September 19, 2012)
- Crenshaw, M.H. "The Concept of Revolutionary Terrorism." *The Journal of Conflict Resolution*. 16, no.3 (1972), 383-396.
- Crenshaw, Martha. "Beatrice de Graaf. Evaluating Counterterrorism Performance." *Perspectives on Terrorism* 6, no. 2 (2012).
- Crenshaw, Martha. "Terrorism Research: The Record." *International Interactions* 40, no. 4 (2014): 556-567.
- Crenshaw, Martha. "The Long View of Terrorism." *Current History* 113, no. 759 (2014): 40.
- DRI-WEFA, *Financial Impact of World Trade Centre Attack*, Prepared for the New York State Senate Finance Committee, January. (2002)
- Flynn, Edward J., "Counter-terrorism and human rights: the view from the United Nations" 10 *European Human Rights LR*, (2005) 29
- Forest, J.J. Al-Qaeda's influence in Sub-Saharan Africa: Myths, realities and possibilities. *Perspectives on Terrorism*, 5(3), (2011) 63-80.
- Ganor, B., *Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?* *Police Practice and Research*, 3(4), (2002) 287-304.

- Golda Akolo. "An Analysis On Terrorism In Kenya From 1960-2000." PhD diss., University of Nairobi, 2003.
- Goredama, C. "Initiatives against Terrorism in Southern Africa: Implications for Human Rights" 12 (1) *African Security Review*, (2003) 91
- Guled, M. "Hounding Somalis hurts terror fight", *The Star*. (2 November 2011)
- Hafez, M. Martyrdom Mythology in Iraq: How Jihadists Frame Suicide Terrorism in Videos and Biographies. *Terrorism and Political Violence*, 19(1), (2007) 95–115;
- Hamm. *Terrorism as Crime: From Oklahoma City to Al-Qaeda and Beyond*: New York: New York University Press, 2004. 270 pp., \$23.00 paperback. ISBN: 978-0-8147-3696-8." *Terrorism and Political Violence* 25, no. 2 (2013): 331-333.
- Higuchi, Hiroko, Jun Fujimura, Takahumi Nakamura, Katsunori Kogo, Kentaro Tsudaka, Tomotaka Wada, Hiromi Okada, and Kazuhiro Ohtsuki. "Disaster Detection by Statistics and SVM for Emergency Rescue Evacuation Support System." In *Parallel Processing Workshops (ICCPW), 2014 43rd International Conference on*, pp. 349-354. IEEE, 2014.
- Holmes, L. "Terrorism, Organized Crime and Corruption: Networks and Linkages". (Cheltenham: Elgar, 2007)
- Human Rights Watch "You Are All Terrorists" Kenyan Police Abuse of Refugees in Nairobi accessed [http://www.hrw.org/sites/default/files/reports/kenya0513\\_ForUpload\\_0\\_0.pdf](http://www.hrw.org/sites/default/files/reports/kenya0513_ForUpload_0_0.pdf) on March 16th 2015(2013)
- Imanyara Gitobu. *Systems and Structures Set up by the Government to Fight Corruption: How Effective and What More Can Be Done?* in *Strengthening Judicial Reforms in Kenya. Volume IX: The Anti-corruption Court in Kenya* .icj-kenya (2004)
- International Crisis Group , *The crisis manager*. Routledge, 2012.
- Jackson, R., *Writing the War on Terrorism: Language, Politics and Counter-Terrorism*. (Manchester, England: Manchester University Press, 2005).
- Jackson, Richard. "Critical discourse analysis1." *Critical Methods in Terrorism Studies* (2015): 77.
- Jackson, Richard. "Critical discourse analysis1." *Critical Methods in Terrorism Studies* (2015): 79

- Jandt, F., *An Introduction to Intercultural Communication: Identities in a Global Community* (6th ed.). (Thousand Oaks, CA: Sage; 2010).
- Jatin Dua, "Kenyan efforts to counter Al-shabaab need to be reformed" Aljazeera, accessed <http://america.aljazeera.com/opinions/2014/9/kenya-us-counterterrorismalshababsomalia>. accessed on 16 March 2015 (September 2014)
- Kamau, C. "Kenya & the War on Terrorism." *Review of African Political Economy*, Vol. 33, No. 107, p 133-141. Mar, 2006. Accessed 16 Mar. 2015. <http://www.jstor.org/stable/4007116>.
- Katz, Samuel M. "Relentless Pursuit: The DSS and the manhunt for the al-Qaeda terrorists." (New York: Forge/Tom Doherty, 2002).
- Kelley, K. J., and P. Munaita. "US: Al Qaeda Threat greatest in East Africa." *The EastAfrican on the Web*, Monday, April 12 (2004).
- Kenya Gazette Supplement, The Suppression of Terrorism Bill, 2003, 38 Kenya Gazette Supplement Nairobi, (30 April 2003 at 443), Clause 3.
- Krause, V. & Otenyo, E. Terrorism and the Kenyan public. *Studies in Conflict Terrorism*, 28(2), (2005) 99-112.
- Kresse, K. Muslim politics in postcolonial Kenya: Negotiating knowledge on the double periphery. *Journal of the Royal Anthropological Institute*, (N.S.), (2009) 76-94
- Livingston, Steven. "13 Digital technology and peace." *Communication and Peace: Mapping an Emerging Field* (2015): 192.
- Makau wa Mutua, "Terrorism and Human Rights: Power, Culture and Subordination" *Buffalo Human Rights Law Review*, (2002)302.
- Moghaddam, Fathali M. "Editorial: The new global American dilemma." (2007): 54.
- Mogire, Edward, and Kennedy Mkutu Agade. "Counter-terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 473-491.
- Moody, D.L. "Empirical Research in Conceptual Modelling: A Theoretical and Practical Imperative" *Wirtschaftsinformatik*, 47, 2, April, (2005) pp. 152-162.

- Muhula, R. "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.
- Niehaus "The economic consequences of terrorism." (2002).
- Niehaus, G. "The allocation of catastrophe risk", *Journal of Banking and Finance*, Vol. 26, No. (2002) 2-3.
- Njeru, "Post-9/11 Aid, Security Agenda and the African State." *Hakima Abbas/Yves Niyiragira (Hg.), Aid to Africa. Redeemer or Coloniser, Capetown [ua]* (2004): 93-105.
- Nthamburi, Nevada *Fighting Terror in East Africa: Less Liberty for More Security? Analysis of Anti-terrorism Legislation and its Impact on Human Rights. Masters Thesis University of Cape Town* (2002).
- Nyamai, "Terrorist bombing at the USA Embassy in Nairobi: the media response." *East African medical journal* 80, no. 3 (2004): 159-164.
- Odula T. The Star Mosque raids in Kenya could boost support for radicals, rights official says, accessed [http://www.thestar.com/news/world/2014/11/21/mosque\\_raids\\_in\\_kenya\\_could\\_boost\\_support\\_for\\_radicals\\_rights\\_official\\_says.html](http://www.thestar.com/news/world/2014/11/21/mosque_raids_in_kenya_could_boost_support_for_radicals_rights_official_says.html) on March 17, 2015(21 Nov 2014)
- Office of the High Commission on Human Rights (OCHR), Human Rights, Terrorism and Counter-terrorism Available <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf> accessed 16 March 2015
- Otieno "Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery." *Kenya Studies Review* 1, no. 1.2003, 44.
- Plümper, Thomas, and Eric Neumayer. "Terrorism and Counterterrorism: An Integrated Approach and Future Research Agenda." *International Interactions* 40, no. 4 (2014): 579-589.
- Posner A., and Vermeule, A. "Terror in the Balance: Security, Liberty, and the Courts," (Oxford University Press, USA, 2006)
- Potter. *The four faces of nuclear terrorism*. Routledge, 2004, 334

Defenders, National Coalition of Human Right. *The Right to Privacy In Kenya*. Nairobi: Privacy International, 2014 accessed 17 August 2015

Dua, Jatin. *kenyan Tactics to counter Alshabab need to be reformed*. Michigan: Aljazeera America, 2014 accessed 17 August 2015

*Impact of anti terrorism operations on human rights*. Kenya: Amnesty International, 2005.

*Kenya Alshabaab Terror Recruitment:How Terrorists Lure Youths*. Nairobi: Strategic Intelligence Service, 2015 accessed 20 August 2015

*Kenya 'anti terror' law faces legal setback*. kenya: Aljazeera , 2015.Accessed 17 March 2015

*Kenya:Concerns with Security Laws (amendment) bill*. London: Article 19, 2015.

Kenyanito, Ephraim Percy. *Surveillance in a Legal Vacuum:Kenya considers new spying system*. Nairobi: access 18 August 2014.

Megged, Moshe. *kenya Government counter terrorism measures against Al shabab*. nairobi: Strategic Intelligence Service, 2015.Accessed 20 August 2015

Nteere, Grace. *Counter Terrorism measures Kenyas approach*. Nairobi: Iyaat Organization, 2015.

Report of the High Commissioner for Human Rights to the 58th Session of the Commission on Human Rights, Human Rights: A Uniting Framework, E/CN.4/2002/18 Available at [www.un.org/Docs/sc/committees/1373/sel-doc.html](http://www.un.org/Docs/sc/committees/1373/sel-doc.html) accessed 16 Mar. 15

Sageman, Marc. *Understanding terror networks*. University of Pennsylvania Press, 2004.

Sageman, Marc. *Understanding terror networks*. University of Pennsylvania Press, 2004, 68

Shinn, David. "Fighting terrorism in East Africa and the Horn." *Foreign Service Journal* 81, no. 9 (2004): 40.

Stakelbeck, Erick .*The Terrorist Next Door: How the Government Is Deceiving You about the Islamist Threat*. (New York: Regnery Publishing, 2011), 234

Stakelbeck, Erick. *The Terrorist Next Door: How the Government is Deceiving You About the Islamist Threat*. Regnery Publishing, 2011, 78

Süllwold, Lilo. *Manual zum Frankfurter Beschwerde-Fragebogen (FBF)*. Springer-Verlag, 2013.

The guardian "Fights break out in Kenyan parliament over controversial anti-terrorism laws" accessed <http://www.theguardian.com/world/2014/dec/18/fights-kenya-parliament-anti-terrorism-law> retrieved March 16 2015(18 December 2014)

Torchia, Christopher (19 October 2013). "Kenya mall attack echoes 1980 hotel bombing". Associated Press Retrieved <http://news.yahoo.com/kenya-mall-attack-echoes-1980-hotel-bombing-141916771.html> accessed March 17, 2015

United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288, annex)

United States General Accounting Office, Terrorism Insurance: Rising Uninsured Exposure to Attacks Heightens Potential Economic Vulnerabilities, GAO-02-472T, (Washington DC, 2002)

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

Walker, R. "Meeting Somalia's Islamist insurgents," BBC News, accessed April 28 2015 <http://news.bbc.co.uk/2/hi/africa/7365047.stm> Retrieved on June 8, 2008.

Young, Joseph K. "The Consequences of Counterterrorism. Edited by Martha Crenshaw.(Russell Sage Foundation, 2010.)." *The Journal of Politics* 74, no. 02 (2012): e13.



## APPENDIX

### Appendix 1: List of terrorist group

<i>International Terrorist Organizations (ITOs)</i>
Abu Nidal Organization (ANO)
Abu Sayyaf Group (ASG)
Al-Aqsa Martyrs Brigade (AAMS)
Al-Shabaab
Ansar al-Islam (AAI)
Army of Islam (AOI)
Asbat al-Ansar
Aum Shinrikyo (AUM)
Basque Fatherland and Liberty (ETA)
Boko-Haram
Communist Party of the Philippines/
New People's Army (CPP/NPA)
Continuity Irish Republican Army (CIRA)
Gama'a al-Islamiyya (Islamic Group)

HAMAS (Islamic Resistance Movement)
Harakat ul-Jihad-i-Islami/Bangladesh (HUJI-B)
Harakat ul-Mujahidin (HUM)
Hezbollah (Party of God)
Indian Mujahideen (IM)
Islamic Jihad Union (IJU)
Islamic Movement of Uzbekistan (IMU)
Jaish-e-Mohammed (JEM) (Army of Mohammed)
Jemaah Islamiya organization (JI)
Jundallah
Kahane Chai (Kach)
Kata'ib Hizballah (KH)
Kongra-Gel (KGGK, formerly Kurdistan Workers' Party, PKK, KADEK)
Lashkar-e Tayyiba (LT) (Army of the Righteous)
Lashkar i Jhangvi (LJ)
Liberation Tigers of Tamil Eelam (LTTE)
Libyan Islamic Fighting Group (LIFG)
Moroccan Islamic Combatant Group (GICM)

Mujahedin-e Khalq Organization (MEK)
National Liberation Army (ELN)
Palestine Liberation Front (PLF)
Palestinian Islamic Jihad (PIJ)
Popular Front for the Liberation of Palestine (PFLP)
PFLP-General Command (PFLP-GC)
al-Qaida in Iraq (AQI)
al-Qa'ida (AQ)
al-Qa'ida in the Arabian Peninsula (AQAP)
al-Qaida in the Islamic Maghreb (formerly GSPC)
Real IRA (RIRA)
Revolutionary Armed Forces of Colombia (FARC)
Revolutionary Organization 17 November (17N)
Revolutionary People's Liberation Party/ Front (DHKP/C)
Revolutionary Struggle (RS)
Shining Path (Sendero Luminoso, SL)
Tehrik-e Taliban Pakistan (TTP)
United Self-Defense Forces of Colombia (AUC)

<b><i>Domestic Terrorist Organizations (DTOs)</i></b>
Alpha 66
Animal Liberation Front (ALF)
Army of God (AOG)
Aryan Nations (AN)
Black Liberation Army (BLA)
Coalition to Save the Preserves
The Covenant, the Sword, and the Arm of the Lord (CSA)
Earth First!
Earth Liberation Front (ELF)
Greenpeace
Greenpeace
Hardesty Avengers
Jamaat ul-Fuqra
Jewish Defense League (JDL)
Phineas Priesthood (Phineas Priests)
Sea Shepherd Conservation Society (SSCS)

source Stakelbeck, Erick. *The Terrorist Next Door: How the Government is Deceiving You About the Islamist Threat*. Regnery Publishing, 2011, 78