



UNIVERSITY OF NAIROBI

**THE INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES
(IDIS),**

**IMPACT OF TERRORISM ON HUMAN RIGHTS IN AFRICA:
THE CASE STUDY OF COUNTERTERRORISM IN KENYA,
1998 -2014**

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DECLARATION

This project is my original work, has not been presented for an award of degree in this University or any other institution of higher learning.

SIGN _____

DATE: _____

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This project have been examined and approved as the University supervisor.

SIGN: _____ DATE: _____

PROF. AMB. MARIA NZOMO

DEDICATION

This M.A Project is dedicated to my Late Dad **Mr. Adinoyi H. M.**, my nephew **Ataba Ben Jr.**, and nieces **Onize, Ohunene, Oyiza and Ozichu.**

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LIST OF ABBREVIATIONS

AQIM	al-Qa'ida in the Islamic Maghreb
AML	Anti-Money Laundry
ATPU	Kenya Anti-Terrorism Police Unit
AU	African Union
CSOs	Civil Society Organizations
CAT	Committee against Torture
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
GoK	Government of Kenya
GWoT	Global War on Terror
HRC	Human Rights Committee
HRW	Human Rights Watch
HRWK	Human Rights Watch Kenya
IPOA	Independent Police Oversight Authority
ICCPR	International Covenant on Civil and Political Rights
KDF	Kenya Defence Force
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
KNF	Kenya Naval Forces
LRA	Lord Resistance Army
NBS	National Bureau of Statistics, Kenya
NCTC	National Counter Terrorism Center, Kenya
NGOs	Non-Governmental Organization
NSAs	Non-State Actors

PC	Penal Code of Kenya
R2P	Responsibility to Protect
UN	United Nation
UNDP	United Nations Development Programme
U.S	United States

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ABSTRACT

Africa has experienced incessant terror attacks that have grossly violated human rights particularly in Nigeria and Kenya. The counterterror approaches in these countries have worsened the sustenance of human rights due to the inability of States to ensure strong implementation and operationalization of international human rights instruments in their national counterterrorism approach. This study critically analyzes within the period of 1998-2014 in Kenya, the problematic themes of the persistent Human rights violations; reasons for the persistent criticism of the government counterterrorism approaches; and a comprehensive counterterrorism approach that considers the sustenance of human rights. In an inquiry to finding those reasons, this study uses regime theory in bridging the gap between the State's realist counterterrorism that often face criticism by the liberalists due to the violation of human rights. The study uses descriptive analysis aided by secondary sourced data and interviews conducted with relevant counterterror and human right advocacy agencies.

The study accepts the hypotheses that: terrorism undermines human rights and basic freedom Africa; the rights of terror suspects, suspect's relatives, and other individuals are violated during defensive, criminal justice and war related counterterrorism mechanisms in Kenya; and an effective counterterrorism strategy involves policy frameworks and implementation mechanisms that provide a balance of both human rights and security. The study confirms that in Kenya, the security agencies have violated the rights to life, freedom, arrest and detention, unfair trial and court proceedings renditions and non-refoulement. The findings indicates that there are lack of synergetic efforts between the counterterror State actors and non-State actors in promoting a comprehensive strategy that puts-into consideration, the formulation, implementation, and enforcement of the rule of law: that protects the basic and fundamental rights of terror suspects and victims; and improve of the economic, social and cultural rights of potential terror suspects and victims in Kenya.

The study recommends the use of a cognitive approach of regime theory that ensures an adjustable adaptation to the demand of strong knowledge based and institutionalized system. Such system encompasses: the use of security intelligence and training to reduce the oversights in militaristic counterterror operation that often violates fundamental rights; enhanced commitment of community policing and awareness on the derogability of right in legal and exceptional cases for an improved security; State and non-State actor participation in the promotion of the neglected social, economic, and cultural rights; monitoring and evaluation of rights abuses/violations by joint cooperation of State and non-State actors for effective implementation and enforcement of human rights' policies that is beneficial to all; and strict adherence to international and national human rights regimes in the operations of all counterterror agencies.

CHAPTER ONE

INTRODUCTION

1.0 Background to the Study

This research analyses the impact of terrorism on human rights; and objectively make deductions on the balance between *security and liberty* in the fight against terror. Conflict is the differentiation in interest or value. War or terrorism is still the exhibition of conflict but with varying forensic dimensions and legal implications, for instance, terror act are initiated due to conflicting interests but usually directed to non-active participants of the armed conflict.

Terrorism viewed by most academics is ‘a politically motivated tactic involving the threat or use of force or violence in which the pursuit of publicity plays a significant role’; furthermore, the term ‘counter-terrorism’ implies actions taken by governments in response to those acts committed.¹

In an effort to manage terror as a conflict, there is need to address the root causes of terrorism which will in long-term significantly reduces the growth and spread of terror acts as opposed to military and traditional approaches that only reduce short term terror acts. It is important to also point out the fact that such consideration alone will not manage the conflict but an inclusion of collaborative efforts of the community and national policy makers in order to maintaining global cultural, social, political and economic security.²

Security seeds the need to ensure that the rights of the citizens or people are not undermined. However, terrorism as an asymmetric conflict have increasingly establish incentives for the warring parties to lean towards warfare mechanisms that

¹ Julius Adinoyi, “Terrorism” in *Landmine, Weapon of Mass Destruction, & Counterinsurgency*, (Nairobi: Academia.edu, 2013), https://www.academia.edu/4096823/terrorism_landmine_weapon_of_mass_destruction_and_counterinsurgency

² Matthew Hersey, and Charles Hauss, ‘Terrorism and Conflict Resolution’, in *Terrorism: Concepts, Causes, And Conflict Resolution* (Virginia, Fort Belvoir: Defense Threat Reduction Agency, 2003), 129.

out-riously undermines and violates the accepted standards of international humanitarian law.

Terrorism as a global threat has challenged peace and security and development of not only states but also individuals³ and the respect for human rights should be drawn in countering terrorism⁴. The impact of terror has been greatly felt in all parts of the world, particularly in the continent of Asia and Africa. In Asia for example, such impacts have been felt in Philippine⁵, Lebanon⁶, Iraq⁷, and in Syria⁸. African nations have been faced with the challenge of ensuring that human rights are not violated, as observed in Nigeria, due to the existence of Boko-Haram; and Kenya due to the presence of Al-Shabaab.

In West Africa, the predominant terror group, Boko-Haram can be traced back the Mataseni movement of the 1940's, but the group became widely known with gruesome atrocities after 2009. Since then, Boko-Haram has committed mass human rights atrocities like systematic murders, executions and persecutions of people⁹ which are considered as crime against humanity¹⁰.

Before mid-2014 Boko-Haram kidnapped hundreds of school girls, hindering

³ Bonner D., 'Counter-Terrorism and European Human Rights since 9/11: The United Kingdom Experience', *European Public Law*, 19, no. 1, (2013): 97-128.

⁴ UNSC., Resolution 1456 of January 20, 2003 (United Nation Security Council Rule of Law, 2003). p3. <http://www.unrol.org/files/UNSCR1456.pdf>

⁵ "Mindanao: Christians take up arms against Muslims, but 'this is not the way forward'", Asian News, January 22 2016, accessed on 05 February, 2016, <http://www.asianews.it/news-en/Mindanao:-Christians-take-up-arms-against-Muslims,-but-this-is-not-the-way-forward-36474.html> ; "Christians in Philippines Take Up Arms Against Muslim Aggressors," *Norwegian Defence League*, January 20 2016, accessed on 05 February, 2016, <http://www.norwegiandefenceleague.info/25-ndl-news-media-asia/57-christians-in-philippines-take-up-arms-against-muslim-aggressors>

⁶ Ted., "Thousands Of Christians Take Up Arms, Make A Crusade, And Slaughter Muslims Who Try To Kill Them," *Shoe Bat*, October 29 2014, accessed February 5 2016, <http://shoebat.com/2014/10/29/thousands-christians-take-arms-make-crusade-slaughter-muslims-try-kill/>

⁷ "Iraqi Christian Militia Taking Up Arms Against Islamic State," *Truth and Action*, February 3 2014, accessed 3 May 2016, <http://www.truthandaction.org/iraqi-christian-militia-taking-arms-islamic-state/2/>; Ted., "Thousands Of Christians Take Up Arms, Make A Crusade, And Slaughter Muslims Who Try To Kill Them," Op. Cit ; Nour, Malas., "Iraq's Christians Take Up Arms to Fight Islamic State," *Wall Street Journal*, Feb. 3, 2015, accessed 3 May 2016, <http://www.wsj.com/articles/iraqs-christians-take-up-arms-to-fight-islamic-state-1423017266>

⁸ Mary, Chastain., "Christian Female Fighters Taking Up Arms Against Islamic State in Syria," *Breitbart*, December 16 2015, accessed February 5 2016 <http://www.breitbart.com/national-security/2015/12/16/christian-female-fighters-taking-arms-islamic-state-syria/>

⁹ Onuoha, F. C., 'The Islamist challenge: Nigeria's Boko Haram crisis explained', *Africa Security Review*, 19, no. 1 (2010): 54-67.

¹⁰ HRW., World report 2013: Niger events of 2012. (Human Rights Watch, 2013) <https://www.hrw.org/world-report/2013/country-chapters/nigeria>

the girl child's right to free life and education. In response to counter the atrocities of BH, the counterterror operations of the Nigerian State have also been found to have violated human rights¹¹. Those violations are evident in arbitrary arrests and detention, torture, arrest without trails or imprisonment without proven guilty¹².

In East African region, waves of reports from 2007 to 2014 indicated the poor records of human rights in the region¹³, including cases of unlawful killings, torture, abuse, and use of excessive force by the security forces in Burundi, Ethiopia, Kenya, Sudan, and Uganda. The cases witnessed in Kenya includes extraordinary renditions i.e. the unlawful transfer of persons to another country, to Ethiopia, Uganda, Somalia and the United States of America (U.S)¹⁴; and arbitrary arrests and disappearances¹⁵.

After the 1980 Norfolk Hotel bombing¹⁶, Kenya experienced its second wave of international terror in 1998 when the U.S embassy was attacked in Nairobi, Kenya and Tanzania, leading up to the September 11, 2001 terror attack on the U.S soil which awakened the near death irrelevance of terrorism in the 20th century. Subsequently in 2002, in Mombasa, an Israeli hotel was bombed and also a failed air to surface missile attack on an Israeli owned passenger jet. Among other continuous terror attacks in the 2000's, the 2013 Westgate Mall attack in Kenya was internationally significant.¹⁷

Those combined increasing threats unarguably violated the people's right to work, shop, live and among other basic rights in the society; and have necessitated the

¹¹ Abimbola, Adesoji., "The Boko Haram Uprising and Islamic Revivalism in Nigeria." *Afrika Spectrum* 45, no. 2 (2010): 95–108. doi:10.2307/25798918.

¹² Andrew Walker, "What is Boko Haram?" Special Report. (Washington, DC, NW: United State Institute for Peace, 2012). p12

¹³ HRW., World Report 2014: Kenya. (Human Rights Watch, 2014) <https://www.hrw.org/world-report/2014/country-chapters/kenya>

¹⁴ AI, "Kenya: Unlawful Transfers of 'Terror Suspects' Must Be Investigated," July 31, (Amnesty International, 2008)

¹⁵ HRW, *Open Secret: Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda*, April (Human Rights Watch, 2009)

¹⁶ Richard, McColl., "Surviving the Kenya Bombing: Norfolk hotel Bombing 1980 Archives," *Richard McColl.com*, July 23 2014, accessed February 5 2016, <http://www.richardmccoll.com/tag/norfolk-hotel-bombing-1980/>

¹⁷ Samuel Aronson L., 'Kenya and the Global War on Terror: Neglecting History and Geopolitics in Approaches to Counterterrorism', *African Journal of Criminology and Justice Studies*, 7, no. 1&2 (2013): 491 -509.

move by the Kenyan community to partner with the international community on the ‘war-on-terror’ just before and after the new millennium.

The scope of international protection evolved from both the Geneva Convention of 1840 and the Geneva Protocol, stressing the protection of rights of injured prisoners of war and victims of war in addition to protecting non-partisan workers during war times. The United Nations (UN) Charter in its preamble affirmed the promotion of the dignity and fundamental human rights of person(s)¹⁸.

Article 3 of the UN Universal Declaration of Human Rights states out clearly the rights of individuals that needs to be observed, and the preambles of the International Covenants recalls the obligation of States under the Charter of the United Nations to ensure that human rights are protected¹⁹. While the UN confers on States, the responsibility to protect (R2P) its citizen on the security of human rights²⁰, the State is also faced with the challenge of not violating R2P human rights in its response to ensure security. The Kenyan government (GoK) between 1998 and 2014 has faced challenges in its course to ensure an effective security while observing the fundamental liberty of the people²¹. Globally, the challenge of instituting punitive measures to prevent human rights violations have continuously brought criticism on nations about redlines of human rights in counterterror actions.

1.1 Statement of the Research Problem

Human rights should be upheld and not undermined by state and non-state actors. However, terrorism itself is an abuse of human rights and measures put in place for

¹⁸ Preamble of the UN Charter regarding human right in quote “faith in fundamental human rights,”... “the dignity and worth of the human person . . . [and] the equal rights of men and women”

¹⁹ OHCHR., Fact Sheet No.2 (Rev.1), The International Bill of Human Rights. (Office of the United Nations High Commissioner for Human Rights, 1948) <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

²⁰ UN., Responsibility to Protect: Report on the International Commission on Intervention and State Sovereignty (ICISS, 2001) http://www.un.org/en/ga/search/view_doc.asp?symbol=A/57/303

counterterrorism have not helped in sustaining human rights. More often than not, the counterterrorism measure put in place further undermines the human right that arises from the previous terror abuse of rights like socioeconomic rights. There are many factors that lead to the abuse of human rights but counterterrorism is considered as a significant factor that undermines human rights and it is increasingly becoming a global issue.²² It is therefore imperative to research and adopt measures that ensure a balanced counterterrorism measures that put into consideration the element of human rights.

Persistent anti-Western democracy in West Africa particularly against western knowledge and education in Northeastern part of Nigeria have influenced terror and counterterrorism operations that violate human rights. The American coalition to ensure peace and stability in Somalia²³ has continuously increased anti-Kenya ideology among the Al-Shabaab terror group and its sympathizers. Those respective principles and ideology acts as motivation for the ever increasing terror attacks from Boko-Haram, Al-Shabaab and their affiliate in Africa. The persistence of terrorism in Africa has been a huge problem with regards to the sustenance of human rights, and thus acting as a precursor to counterterrorism approaches that more often than not, violate human rights.

Human rights is said to have been violated along the coast of Kenya following the Kenya-U.S partnership after the 1988 and 2001 attacks in Kenya and US respectively²⁴. Also following the Westgate attack in 2013, there are reports of such violations by the various police units in April 2014 as a result of counterterror

²¹ Blomberg, S. Brock, Gregory D. Hess, and Athanasios Orphanides, "The Macroeconomic Consequences of Terrorism." *Journal of Monetary Economics* 51 no. 5, (2004): 1007–32.

²² The author's thesis statement for this research study

²³ Xinhua., "IGAD assures it will not remove security forces from Somalia," *Coastweek*, n.d, accessed 3 May 2015, <http://coastweek.com/3638-latest-news-igad-troops-will-remain-in-somalia.htm>

²⁴ Bruce L., *Holy Terror*, USA, Chicago: The University of Chicago Press, 2003.

operation in Nairobi, and similarly in August 2014 by the Anti-terrorism Police Unit (ATPU) including areas occupied by refugees²⁵. Those violation under the international humanitarian law includes illegal detentions and abduction, torture, inhuman punishment and treatments, and in some cases unlawful killing of suspect²⁶. Additionally, those violations instigated the opposition of the controversial security bill *Security Laws (Amendment) Act, 2014*. The *bill* was considered to be harsh on journalists and suspects²⁷ and was opposed prior to late 2014 before it was signed into to law²⁸.

This study addresses the possibility of balancing security and human liberty in order to aid effective and less excoriating counterterror efforts. Furthermore and more importantly, this study investigates human rights violations and abuses in terrorism. The study focuses on the problematic themes of the persistent Human rights violations; reasons for the persistent criticism of government counterterrorism approaches; issues regarding the proper ways to counter terrorism approaches that considers the sustenance of human rights.

1.2 Research Questions

In order to interrogate those problems stated in the previous section, the following research questions will be asked:

- i. What are the impacts of terrorism on human rights?

²⁵ HRW., World Report 2015: Kenya. (Human Right Watch, 2015). <http://www.hrw.org/world-report/2015/country-chapters/kenya>

²⁶ HRW., The Security Bill Tramples Basic Human Rights. (Human Rights Watch, 2014) <http://www.hrw.org/print/news/2014/12/13/kenyasecuritybilltramplesbasicrights>

²⁷ Cooper, D. R., Schindler, P. S., *Business Research Methods*, (New Delhi: Tata McGraw Hill, 2003).

²⁸ Al Jazeera America, "Kenyan president signs controversial national security law," *Al Jazeera America*, December 19, 2014, accessed 19 March 2015, <http://america.aljazeera.com/articles/2014/12/19/kenyan-presidentsignscontroversialnationalsecuritylaw.html>

- ii. What are the existing mechanism of countering terrorism and their implications on human rights?
- iii. What are the comprehensive grand strategy and mechanism of countering terrorism that needs to be put in place to protect human right?

1.3.0 Objectives of the Study

1.3.1 Broad Objective

The broad objective of this research is to examine how human rights have been affected in terrorism and counter terrorism.

1.3.2 Specific Objective

- i. To analyze the impact of terrorism on of human rights in Africa.
- ii. To investigate the implications of existing counterterrorism mechanism on human rights in Kenya.
- iii. To analyze the comprehensive strategy of counterterrorism that protects human rights in Kenya.

1.4 Literature Review

1.4.1 Terrorism

Terrorism is integral to many contemporary conflicts in form of a broader context of armed violence; the introduction of new mechanisms of instilling fear on broader population other than targeting specific victim creates the basis for the emergence of terrorism as a strategy which is usually used by conflicting parties. Jonathan White placed terrorism in between a conflict continuum of simple folkway violation and

mass destruction from war.²⁹ Gus Martin identified typologies of conflict as restricted and unrestricted: this typology can also be related in terrorism among which: unrestricted terrorism constitutes –*indiscriminate force, and noncombatant target*; and restricted terrorism constitutes –*discriminate force, and noncombatant target*³⁰.

Terrorism is the use of force or violence against persons or property in violation of the criminal laws of a States/Nation for purposes of intimidation, coercion, or ransom;³¹ and motivated by Political, philosophical, ideological, racial, ethnic, and religious or other motives³². Terrorists have frequently used explosive devices as one of their most common weapons, since accessibility to the materials and technicalities involved in this Improvised Explosive Devices are readily available in hardware, auto supply stores, and books, internet respectively. The portability and flexibility of such explosives have made it transportable and easily *or remote* detonated respectively, in addition conventional bombs and weapons have been used to damage and destroy financial, political, social, and religious institutions.³³ Terror apparatus are readily available to the State as State-owned machinery or equipment, and those terror apparatus are used in cases where terrorism is perpetuated by the State or State influenced actors.

The definition of terror widely accepted by states is the use of force or violence against persons or property in violation of the criminal laws of a States/Nation for purposes of intimidation, coercion, or ransom.³⁴ This definition indicates that the act of terror can not only be tied to non-state parties, however, State

²⁹ White, J., *Terrorism: An Introduction, 3rd edition*, (CA, Belmont: Wadsworth Thomson Learning, 2002).

³⁰ Martin, G., *Understanding Terrorism*. (2003)

³¹ U.S DoD., *Dictionary of Military and Associated Terms Joint Publication 1-02*, (United States Department of Defense, 2008), http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf

³² OAU/AU., *Convention on the Prevention and Combating of Terrorism: Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism*. (Algiers, OAU/AU: 1999), Article 3, p207 <https://treaties.un.org/doc/db/Terrorism/OAU-english.pdf>

³³ “Emergency Management Agency (EMA): Explosions,” n.d, 2014, accessed March 11, 2015, www.mymadisoncountyma.org/terrorism-explosions.shtml

³⁴ DoD., *Dictionary of Military and Associated Terms*, (2001). Op.cit

actors also use act of terror i.e. violence or threat of violence on the population³⁵. This State action includes the counterterrorism operations of the State.

In a 2015 report, about 14,000 terror attacks with 20,000 deaths were recorded in 2006; a figure higher than the 9,000 attacks with 18,000 deaths in 2013, the recorded death has increased while the numbers of attacks have reduced as compared to records between 2008 and 2012³⁶. Out of the global deaths in 2013, 35% of the fatalities occurred in Iraq, followed by Afghanistan with 17%, Pakistan with 13%, and Nigeria with 10%.³⁷ Iraq (10 points) was ranked the first in global terrorism index in 2014, seconded by Afghanistan (9 points) and then Pakistan (9 points), before Nigeria (8 points), while Kenya (6 points) stood at the 12th position.³⁸

1.4.2 Human rights and International Law

Human rights are rights that are inherent to human beings irrespective of their national or ethnic origin, residential place, language, sex and other statuses. These rights which humans are entitled to without discrimination are interrelated, interdependent and indivisible. Human rights provisions are guaranteed by law through international treaties and international laws which States are to conform to –as an obligation in pursuant of global promotion and protection of human rights and fundamental freedom of individuals or groups. The principles of human rights sustenance are provided for in the Universal Declaration on Human Rights in 1948, The 1993 Vienna World Conference on Human Rights, emphasizing on conditions for human rights

³⁵ Hoffman, B., *Inside Terrorism*. rev.ed. (New York: Columbia University Press, 2006).

³⁶ “Terrorism: number of deaths worldwide 2006-2013,” *Statista*, n.d., accessed March 12, 2015, www.statista.com/statistics/202871/number-of-fatalities-by-terrorist-attacks-worldwide/

³⁷ “Countries with the highest number of deaths by terrorism 2013 Statistic,” *Statista*, n.d, accessed March 12, 2015, www.statista.com/statistics/377061/countries-with-the-highest-number-of-deaths-by-terrorism/

³⁸ “Global terrorism index 2014 Statistic,” *Statista*, n.d, accessed March 12, 2015, www.statista.com/statistics/271514/global-terrorism-index/

protection and calls on the duty of States to ensure these are met.³⁹

1.4.3 Terrorism and Less Consideration of Human Rights

Terror attacks are continually directed to public places and businesses making them more highly susceptible compared to other military and diplomatic facilities⁴⁰, and thus terror undermines human rights since those terror acts are mostly directed to innocent civilian or non-combatant⁴¹ that are abused, injured or killed. Between 1975 and 1984, the average number of terror attacks increased from 10 per week to almost 10 per day⁴², a study in 1985 indicated that 10% of the world's countries accounted for over 60% of the total world terror attacks⁴³. In the period from 1975 to 1997, Middle East had the highest international terror attacks seconded by Europe while Africa Asia and America experienced less international terror⁴⁴. The world terror attack in the post 2000 increased from close to 2000 in 2001 to about 5000 attacks in 2005 and almost a close figure of 7000 in 2006⁴⁵.

The very beginning of State terror is seen in the era of the African slavery and colonization⁴⁶, an example is the cases where aboriginals are terrorized in America and Australia⁴⁷, and the continual State terror on West Papua in Indonesia⁴⁸. Over the period of World War one and World War two to the Cold War, the world has passed

³⁹ OHCHR., What are Human Rights. (Office of the United Nations High Commissioner for Human Rights, 2015) <http://www.ohchr.org/EN/Issues/Pages/WhatareHum>

⁴⁰ Madison County., Explosions. (US, Illinois: 2014). Oop.cit.

⁴¹ Martin, G., *Understanding Terrorism*. (2003). Op.cit

⁴² Ludlam, S., 'Regime Change and Human Rights: A Perspective on the Cuba Polemic', *Bulletin Of Latin American Research*, 3, no. 1, (2012): 110-126.

⁴³ Jenkins Brian, M. 'Terrorism Prone Countries and Conditions,' in *Terrorism and Combating Terrorism*, ed. A. Merari (MD, Frederick: University Publications of America 1985), 25-40.

⁴⁴ Li, Quan, and Schaub, Drew. 'Economic Globalization and Transnational Terrorist Incidents: A Pooled Time Series Analysis', *Journal of Conflict Resolution*, 48, no. 2, (2004): 230-258.

⁴⁵ Martin, Gus., *Understanding Terrorism: Challenges, Perspectives, and Issues*, (CA, Thousand Oaks: Sage, 2003).

⁴⁶ Mohamed, A. Eno., Omar, A. Eno., Mohamed, H. Ingiriis., Jamal, M. Haji., 'The terror of slavery, and the terror of colonization in Slavery and Colonialism: The Worst Terrorism on Africa', *African Renaissance*, 9, no. 1, (2012): 9-26.

⁴⁷ Elizabeth, A. Fenn., *Pox Americana: The Great Smallpox Epidemic of 1775-82*, (Hill and Wang, 2002); Elizabeth, A. Fenn., "Biological Warfare in Eighteenth-Century North America: Beyond Jeffery Amherst." *Journal of American History* 86, no. 4 (2000): 1552-80.

⁴⁸ Selpius, Bobii., "West Papuans live in terror," *The Guardian*, October 24 2013, accessed 26 March 2015, <http://www.theguardian.com/commentisfree/2013/oct/24/west-papuans-live-in-terror-mr-abbott>

through serial phases of the human rights violations as seen in cases where noncombatants were deliberately targeted in Europe by the Nazis in addition to the holocaust concentration camps; also the deliberate bombing of Hiroshima and Nagasaki where thousands of innocent civilians were killed and displaced, and the survivors suffers gene mutations and health defects due to the nuclear effects⁴⁹. The wave of terror continued in the cold war period particularly in cases where terror groups were supported by States vested upon with the States' respective and strategic interest. There are also cases of State terror where human rights were undermined as evident in the U.S-Iraq 2003 invasion, Israeli-Palestine oppression among others⁵⁰.

Prior to independence in Kenya, there were series of abuse of liberty by the colonial leaders. This led the colony to take up armed struggle which the British community considered as terror acts. The African community considers such act as liberation struggle as enshrined in the terrorism definition of the African Union (AU)⁵¹, although while it was observed that both conflicting parties violated right to liberty, a magnanimous violations of the fundamental rights of the people were perpetuated by the British⁵². The 1963 independence saw a transition into a one-party State system during which human rights were systematically violated despite the presence of the Bill of Rights in the constitution⁵³. Between 1980's and 1990's the country faced criticized for human right violations alleged to include state-sponsored torture, illegal arrests, lack of press freedom, disappearances and murder.⁵⁴ The constitutional introduction of multi-party in 1992 opened up a democratic system

⁴⁹ John Tirman., *The War on Terror and the Cold War: They're Not the Same*, (MIT Centre for International Studies, 2006), http://web.mit.edu/cis/pdf/Audit_04_06_Tirman.pdf

⁵⁰ John Tirman., *The War on Terror and the Cold War* (2006). Op.cit

⁵¹ OAU/AU Convention on the Prevention and Combating of Terrorism (OAU/AU, 1999). Op.cit. Article 3, p207.

⁵² Royal Courts of Justice., "MauMau Summary of Judgment between: Ndiku Mutua and Others And The Foreign And Commonwealth Office," *London School of Economics* 2011, accessed March 10, 2015, www.lse.ac.uk/humanRights/documents/2011/MauMauSummary.pdf

⁵³ Kabudi J., *Human rights jurisprudence in East Africa: A comparative study of Fundamental Rights and Freedoms of the Individual in Tanzania, Kenya and Uganda* (Baden-Baden, Namos Verlagsgesellschaft, 1995).

which further paved a process for regime change in 2002.⁵⁵

1.4.4 Counterterrorism and International Law

Counterterrorism are strategies employed by states to actively deter the efforts of terrorists⁵⁶, the policies of counterterrorism can be long term and/or short term, coercive and/or accommodating, domestically or internationally sighted⁵⁷. Counterterrorism model with particular reference to definitional concepts, goals, legality and roles of engagement can be classifications into defensive, reconciliatory, criminal justice and war⁵⁸. And more often, the defensive, criminal justice and war models tends to be used and similarly applies to the research interrogation in this study.

In defensive model, terrorism is conceptualized as physical and psychological threat, and the Counterterrorism goal is to protect potential targets and victims; the legal aspect corresponds in most cases with liberal democracies and all levels from government to privates and NGOs actively engages in various roles. In reconciliatory model, terrorism is viewed as a political problem and the counterterror goal is to address the root cause of terrorism; the Counterterrorism legally corresponds with the law, and actors are limited to politicians, policy makers and diplomats. In criminal justice, terror is viewed as a crime and the goal of Counterterrorism is to arrest and punish terrorists in accordance to the rule of law; Counterterrorism is subjective to

⁵⁴ HRW., Human Rights Watch Report, Kenya. (Human Rights Watch., 1993).
http://www.hrw.org/reports/1993/WR93/Afw-02.htm#P104_44398

⁵⁵ Fred, Matanga., 'Kenya: A Chequered Path to Democracy', *East African Journal of Human Rights and Democracy*, 31, no. 1 (2003): 31-42.

⁵⁶ Kolodkin, B., "What Is Counterterrorism?," *About News & Issues*, n.d., accessed March 29 2015,
<http://usforeignpolicy.about.com/od/defense/a/what-is-counterterrorism.htm>

⁵⁷ Crelinsten, Ronald, D., Alex, P. Schmid., eds., *Western responses to terrorism: a twenty five year balance sheet*, (London: Frank Cass Publishers, 1993).

⁵⁸ Ami, Pedahzur., *Israeli Secret Service and the Struggle against Terrorism*. (New York: Columbia University Press, 2009)

judicial oversight, the actors are the police and the criminal justice system.⁵⁹ In war model, terrorism is viewed as an act of war and therefore the need for intelligence and military units to eliminate terrorism through military force, and may partly correspond or entirely ignore the laws of war.

The defensive and war model is more prominently used by States in Counterterrorism and it is quite evident that the reconciliatory and criminal justice model which emphasize and recognize the rule of law –inclusively the sustenance of human rights –are rarely employed.

In the international Counterterrorism efforts, laws regarding terrorism were instituted through international treaties as seen in the first approach of The Convention on Offences and Certain Other Acts Committed on Board Aircraft, adopted in Tokyo in 1963. And in the 1970s, five additional treaties were adopted: the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the 1979 International Convention against the Taking of Hostages and the 1979 Convention on the Physical Protection of Nuclear Material.⁶⁰

In 1988, three treaties were adopted: the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, a Protocol to that Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, and a Protocol for the Suppression of

⁵⁹ Ami, Pedahzur., *Israeli Secret Service and the Struggle against Terrorism*. (2009). Op.cit

⁶⁰ O'Donnell, D., 'International treaties against terrorism and the use of terrorism during armed conflict and by armed forces', *International Review of the Red Cross*, 88, no. 864 (2006): 584-585.

Unlawful Acts of Violence at Airports Serving International Civil Aviation.⁶¹ In the 1990s, there were adoptions of three treaties: the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection, the 1997 International Convention for the Suppression of Terrorist Bombings and the 1999 International Convention for the Suppression of Financing of Terrorism.⁶² And in the 2000's there was addition of the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism, and the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation.⁶³

1.4.5 Counterterrorism and Sustenance of International Human Rights

Since CT are actions constituted by the governments to prevent or foil terror attacks or reduce the terrorism impacts, the formulation of Counterterrorism policies should reflect these goals and mission in consideration of upholding human rights during the implementation of those constituted actions. Kofi Annan noted that acts of terror are direct attack on human rights and the rule of law and if during the course of counterterror they are sacrificed then we are indirectly handing victory to terrorists⁶⁴. It is therefore an imperative that in Counterterrorism, human rights and the rule of law should be highly upheld in order not to commit, in-response, an act of terror which contextually undermines the global efforts to reduce terrorism.

Most of UN treaties on Counterterrorism contain dispositions concerning the protection of human rights; these dispositions are identified as general provisions

⁶¹ O'Donnell, D., International treaties against terrorism and the use of terrorism during armed conflict and by armed forces. (2006). Op.cit

⁶² O'Donnell, D., International treaties against terrorism and the use of terrorism during armed conflict and by armed forces. (2006). Op.cit

⁶³ UN., International Legal Instruments: United Nation Action to Counter Terrorism. (United Nations, n.d). <http://www.un.org/en/terrorism/instruments.shtml>

⁶⁴ Kofi, Annan., "A Global Strategy for Fighting Terrorism: Keynote address to the Closing Plenary of the International Summit on Democracy, Terrorism and Security," *United Nations*, March 10 2005, accessed 25 March 2015, <http://www.un.org/press/en/2005/sgsm9757.doc.htm>

which states that the obligations set forth in the treaty are without prejudice to other international obligations of the state party. Such provisions includes but not limited to the provisions concerning the right of accused or detained persons to due process, and the provisions establishing conditions regarding extradition and the transfer of prisoners.⁶⁵

Article 9 of the 1973 Convention on internationally protected persons, for example, provides that any person in connection with any crime set forth in article 2 shall be guaranteed fair treatment in proceedings. Similarly, such provisions are provided in the 1979 Convention against hostage-taking, the 1979 Convention on nuclear material and the 1988 Convention on maritime navigation.⁶⁶

The 1997 Convention against terrorist bombings and the 1999 Convention against the financing of terrorism provided for person in custody be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity to States law, applicable under the international law and international human rights law⁶⁷. Also most of the UN conventions aforementioned provide for detainees, the right to communication and visit⁶⁸, right to asylum unless objectively hindered by Treaties on Asylum⁶⁹, right to non-refoulement. Those rights are also applicable in the International Refugee Law⁷⁰, with regards to the provision of legal assistance⁷¹, prohibition of extraordinary rendition unless if (a) the detainee freely gives his or her

⁶⁵ Kofi, Annan., "A Global Strategy for Fighting Terrorism...", 2005. Op.cit

⁶⁶ UN., Convention against hostage-taking. (United Nation, 1979). Articles 8(2); UN., Convention on nuclear material. (United Nation, 1979). Article 12; UN., Convention on maritime navigation. (United Nation, 1988). Article 10(2)

⁶⁷ UN., Convention against terrorist bombings. (United Nation, 1997). Article 14; UN., Convention against the financing of terrorism. (United Nations, 1999). Article 17.

⁶⁸ UN., Convention for the Suppression of Unlawful Seizure of Aircraft. (United Nations, 1970). Article 6(3); UN., Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. (United Nation, 1971). Article 6(3); UN., Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. (United Nation, 1973). Article 6(2); UN., International Convention against the Taking of Hostages. (1979). Article 6(3); UN., Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (United Nations, 1988). Article 11(6); UN., International Convention for the Suppression of Terrorist Bombings. (United Nation, 1997). Article 7(3); and UN., International Convention for the Suppression of Financing of Terrorism. (United Nations, 1999). Article 9(4).

⁶⁹ UN., Convention on internationally protected persons. (United Nations, 1973). Articles 12; UN., Convention against hostage-taking. (United Nations, 1979). Article 15.

⁷⁰ UN., Convention against hostage-taking. (United Nation, 1979). Article 9(1).

⁷¹ UN., Convention against terrorist bombings. (United Nation, 1997)Article 12

informed consent; (b) the competent authorities of both States agree, subject to such conditions as those States may deem appropriate⁷². Those renditions usually lead to torture, denial of access to competent courts, incommunicado detention and other human rights violations.

The East African region has experienced mixed impacts from the Counterterrorism war approach which made the region somewhat frequent on the news dailies and a need for restructuring the priorities of security in the region⁷³. The States in East Africa have taken advantage of (GVoT) to label oppositions as championing terror in an attempt to protect the power of the regime, for example the Ugandan Anti-terrorism Act was used to stifle the regime's opposition –Kiza Besigye with accusations of terrorism⁷⁴, similarly in Kenya the Mpeketoni attack was blamed on the opposition⁷⁵ after which the Al-Shabaab terror group claimed responsibility⁷⁶, and thus creating possibility for home grown terror from local groups⁷⁷. Tanzania and Ugandan Act on counter terrorism have faced criticism of human rights violations and targeting local⁷⁸ and high degree of human rights violations have been reportedly recorded in the region⁷⁹ –inclusive of Kenya which is of particular interest of this study.

⁷² UN., Convention against terrorist bombings. (United Nation, 1997) Article 13(1)

⁷³ Tadese, M., New security frontiers in the Horn of Africa. *Briefing paper* June (Friedrich-Ebert-Stiftung, 2004) p5

⁷⁴ HRW., Journalism Is Not a Crime (Human Rights Watch, 2015) <http://www.hrw.org/reports/2015/01/20/journalism-not-crime>

⁷⁵ Flood, Z., Kenyan president blames 'local political networks' for coastal attacks, *The Guardian*, June 17 2014, accessed February 5 2016, <http://www.theguardian.com/world/2014/jun/17/kenyan-president-blames-local-political-networks-mpeketoni-poromoko-lamu-al-shabaab>

⁷⁶ David, Ochami., "The Counties - Al-Shabaab releases chilling video about Mpeketoni attack," *Standard Digital News*, March 9 2015, accessed February 5 2016, <http://www.standardmedia.co.ke/thecounties/article/2000154118/al-shabaab-releases-chilling-video-about-mpeketoni-attack>

⁷⁷ CESNUR., "Mungiki Movement –Kenya: Mungiki leaders convert to Islam," *Daily Nation*, September 3 2000, accessed February 5 2016, http://www.cesnur.org/testi/mungiki_005.htm

⁷⁸ "Tanzania's Muslims fight terror bill," *BBC*, November 15 2002, accessed February 5 2016, <http://news.bbc.co.uk/2/hi/africa/2482199.stm>

⁷⁹ HRW., Collective Punishment: War Crimes and Crimes Against Humanity in the Ogaden Area of Ethiopia's Somali Regional State. June 12. (Human Right Watch, 2008); HRW., Welcome to Kenya: Police Abuse of Somali Refugees. June 17. (Human Right Watch, 2010); HRW., All the Men Have Gone: War Crimes in Kenya's Mt. Elgon Conflict. July 28. (Human Right Watch, 2008); HRW., Get the Gun: Human Rights Violations by Uganda's National Army in Law Enforcement Operations

There are records of human rights violations in East African States, unlawful killings, torture, abuse, and excessive force by security forces in Burundi, Ethiopia, Kenya, Sudan, and Uganda; condoned by the government of those States under the pretext of CT⁸⁰. This is applicable to the Somali security forces. The police forces throughout the region have been accused of excessive force and corruption, and according to reports, many police continue to conduct abuses with impunity.

The Uganda's paramilitary Joint Anti-Terrorism Task Force (JATT), have been alleged with allegations of torture by the JATT at the State's detention facilities, inclusively the Kenya's Anti-Terror Police Unit (ATPU) –of arbitrary arrests and disappearances⁸¹.

Religious groups have also cried out loud to the GoK's counterterrorism measures that categorically targets and persecutes Muslim communities⁸², evidently in the deportation of several Muslim scholars, and the ATPU have accused of harassment, extortion, and theft during raids. Also Amnesty International stated that there are alleged practices extraordinary renditions in by the GoK to third countries such as Ethiopia, Somalia, and the United States⁸³.

1.5 Gap in Literature

The researcher have reviewed relevant literature to this study and discovered that: the protection of human rights in terrorism and counterterrorism is indeed an important issue that has created varying viewpoints and dilemma for States. This has resultantly pushed the state to engage in signing/party-to/ratification of treaties to ensure that

in Karamoja Region, September 11. (Human Right Watch, 2007); and HRW., The Security Bill Tramples Basic Human Rights. (2014). Op.cit

⁸⁰ Ibid

⁸¹ Ibid

⁸² HRW., Open Secret (2009). Op.cit

⁸³ AI., Kenya: Unlawful Transfers of 'Terror Suspects' Must Be Investigated, (2008). Op.cit

State-employed counterterrorism mechanisms conform to international human rights regimes.

Furthermore, strategies employed in counterterrorism implementation seek to follow suite with the war and defensive objectives that are not the designed framework of action that covers the protection of rights. Some scholars have argued that rights need to be protected at all cost and in all circumstances, others have argued that certain human rights needs to be freed to the relative rights of the State which includes the security of the people.

The researcher has come to the conclusion that there have been more emphasis on reports and criticisms of counterterrorism in regards to human rights violation while the terrorists enjoy and rides on this freedom, more also there have not been a critical interrogation as to what rights should be relinquished and at what level in order to aid an effective counterterrorism? Thus the need of this research to investigate the fragility of human rights as caused by terrorism and counterterrorism and further informs the need for the balance between security and liberty in order to ensure peace and stability.

1.6 Justification of the study

The ever increasing global insecurity makes it imperative for this study to examine the position of human rights in both terrorism and counterterrorism in Africa. The East African Region, particularly Kenya, in recent years have haboured terrorist which crosses the Somali-border into the country leading to increased counterterror operation. Sadly most of those studies lay more emphasis on causes and solutions to terrorism with less focal point on human rights issues in terrorism. This study investigates the implications of terrorism and counterterrorism on human rights in

furtherance to finding a balance between liberty guard and security protection. The protection of human rights and liberty cannot be underestimated especially as most CT measures usually conflict with such measures⁸⁴.

This study builds on existing literature and informs researchers on issues linkage between counterterrorism and human rights. And thus it is of importance in the field of academics. The study is significant to the GoK on how to approach issues of terrorism, counterterrorism strategies in relation to international morals and principles of human rights. This motive will be achieved, as this study informs policy makers on formulation of human rights considerable counterterrorism policies which ensures further implementation of such counterterrorism policies by counterterrorism agencies in compliance and enforcement with the rule of law.

Furthermore, this study further informs the public of the knowledge about their fundamental rights and also in consideration of not to entirely sacrifice liberty for security. Rather urging the public to strike a balance of protecting rights to security while also ensuring that there are considerable and limited infringement on their freedom as it is certain that states will continually take some liberties away from the people –whether little or much.

1.7 Theoretical Framework

This research uses the regime theory; the philosophy of its usage in this research is based on an approach of realist and liberalist perspective that analyzes regime theory. The liberalist stands on the conviction that counterterrorism championed by government agencies must respect the rights of the people; liberals look up to J. Lock

⁸⁴ OHCHR., Fact Sheet No 32: Human rights, terrorism and counter terrorism, (Office of the United Nations High Commissioner for Human Rights, 2008). p1.

and I. Kant⁸⁵. The realist lead by Thomas Hobbs views human rights as words actionable only in diplomatic talks and not practicable in actual sense.

Expanded by Carr⁸⁶ and Morgenthau⁸⁷, both argued that there is an unrealistic convenient linkage between universal morality and national interest –applicable to this research in themes of the morality in the sustenance of human rights while also championing the interest of national security.

1.7.1 Realist Perspective on Regime Theory

Realism view is of the term of chaos, disorder or conflict, but neo-realist place more emphasis on anarchy. The advancement of neorealism was the idea of Kenneth Waltz, stressing the absence of higher authority than States in the international system and the translation that states rely on themselves for their own survival in which States engage in highest possible means to attain this survival goal –usually through paranoid vigilance and constant preparation for conflict; he argues that war happens because there are no instruments to prevent them.⁸⁸ Similarly; John Herz indicated that States interests are dominated by the anarchical structure irrespective of the absence or presence of threat.⁸⁹

Realist framework inherently hinders the conceptualization of international solution to terrorism and human rights violation; with the believe of subordination of morality to security interests, –terrorist champion their interests with less or no regards for killing, bombing, kidnapping among others, –likewise as States focuses on the interest of security over the rights of the people. And States takes advantage of

⁸⁵ Immanuel, Kant., "Perpetual Peace: A Philosophical Sketch" (1795)

⁸⁶ Carr Edward Hallett, *The Twenty Years' Crisis, 1919-1939: An Introduction to the Study of International Relations*, (New York: Harper and Row, 1946).

⁸⁷ Morgenthau, Hans, J., *Politics Among Nations: The Struggle for Power and Peace*, (New York: Knopf, 1948)

⁸⁸ Kenneth, N. Waltz., *Man: The State, and War: a Theoretical Analysis*, (Columbia: Columbia University Press, 1959).

⁸⁹ Donnelly, Jack, *Realism and International Relations*, (Cambridge University Press, 2000), 12.

each other to champion their interest with the adoption of “us or them”, rhetorically assuming defensive position against loss of power, and employs devaluation of human rights that is beneficial to State power/security interest –and thus the primacy of State-interest over moral principles of human rights⁹⁰. This perspective on regime theory stands on the conviction that power must be defined in military terms and this explains why military strategies are often adopted in counterterrorism approaches with negligence of other strategies⁹¹.

1.7.2 Liberalist Perspective on Regime Theory

Locke is of the assumption that humans are good and rational by nature, and should enjoy rights in all stages or level of the society –i.e. freedom to worship, rights to property and right of opinion on governing issues over time⁹² – i.e. *rights to life, rights in arrest and detention, rights in torture and inhumane treatment, rights in rendition and non- refoulement, and rights in fair hearing and trial* as applied to this research.

This perspective calls on States to uphold human rights in order to ensure sustainable peace and security. And governments have the obligation to ensure human rights are protected in counterterror efforts. John Locke explained the need for checks and balances by strictly considering representative governance and adherence to the rule of law to limit government power, and stressed legitimate rebellion as opposed to being called tyranny when government undermines these considerations⁹³. Those

⁹⁰ Mtholyoke.edu, “International Conflict Intervention,” *Mtholyoke.edu*, n.d, accessed, March 25 2016, <http://www.mtholyoke.edu/~syrin22e/peaceconflic>

⁹¹ Elman, Colin., “Realism”, in Paul, Williams. ed. *Security Studies: An Introduction* (New York: Routledge, 2008), 15-27.

⁹² John Locke, *Essays on the Law of Nature* (1676), W. von Leyden ed. (Oxford: Clarendon Press, 1988); John A. Simmons, *The Lockean Theory of Rights*, (Princeton, NJ: Princeton University Press, 1992), 15.

⁹³ St. John, J. A., *The-Philosophical-Works-of John Locke*, (London: Covent Garden. 1854), <http://www.authorama.com/full/pdf/The-Philosophical-Works-of-John-Locke.pdf>

; Jim, Powell., “John Locke: Natural Rights to Life, Liberty, and Property,” *The Freeman : Foundation for Economic Education*, August 01, 1996, accessed 26 March 2015, <http://fee.org/freeman/detail/john-locke-natural-rights-to-life-liberty-and-property>

undermined considerations are a justification for resistance to human rights violations and criticism of unjust laws and revolution against all elements of human rights violations which can also be viewed that violation of human rights fuels terrorism and stands as terrorist's justification for continued use of terror. Thomas Jefferson, Samuel Adams, and Thomas Paine in agreed opinion states that natural rights justifies rebellion or revolution when these rights are denied⁹⁴ –i.e. terrorists are of the assumption that acts of terror is justified for emancipation in pursuant of the natural rights they were deprived of.⁹⁵

In view of States, Edmund Burke opposed this notion and called such natural rights as 'abstract rights', similarly Jeremy Bentham called it anarchical fallacies and that it is impossible for government –as applied to counterterrorism –to meet the standards demanded by the doctrine of natural rights, and further quoted that natural rights are “simple nonsense: natural and imprescriptible rights, rhetorical nonsense...”⁹⁶ that encourages civil unrest, disobedience and resistance to laws, and revolution against the established government that the people would otherwise have obeyed by law as a political right since no rights are contrary to the laws the government have established to protect the people . The cry for sustenance of human rights have influenced the acts of terror and terrorists violates human rights through its acts of terror but hides under the umbrella of human rights as victim or oppressed sarcastically contrary to their objective of transferring power from the State. The human rights rhetoric is established to undermine the authority of government and

⁹⁴ Natural rights, *Infoplease*, n.d, accessed March 26 2015, <http://www.infoplease.com/encyclopedia/history/natural-rights.html>

⁹⁵ “New Dictionary of Cultural Literacy,” Third Edition. *The American Heritage*, n.d. accessed March 26, 2015, [http://dictionary.reference.com/browse/natural rights](http://dictionary.reference.com/browse/natural%20rights)

⁹⁶ George H. Smith., “Jeremy Bentham’s Attack on Natural Rights,” *Libertarianism*, June 26 2012, accessed 26 March 2015, <http://www.libertarianism.org/publications/essays/excursions/jeremy-benthams-attack-natural-rights>

such should be realistically called a ‘terrorist language’.⁹⁷

1.7.3 Regime Theory as an Approach to the Study

Krasner Stephen defined regimes as sets of implicit or explicit principles, norms, rules, and decision-making procedures⁹⁸ around which actors' expectations converge in a given issue area⁹⁹.

There have been series of measures established to globally combat terror –creating financial regimes through anti-terror financing and Anti-Money Laundering (AML); security regimes through GWoT, military support and training; human rights regimes through UN human protection regimes, international law and international humanitarian laws; governance and democratic regimes.

Governments with the perception of an anarchical world through the lens of realism, strongly adheres to regimes that it considers favourable to champion its interest; particularly strong security regimes versus weak human rights regimes. On the perception of the liberalist is the conviction of strong human rights regimes versus weak Security regimes. Both ultimately create an imbalance of regimes which undermines sustainable peace and security.

According to Richard Anne, the financial counterterror regimes have been globally adopted while hard operational aspects of counterterrorism involving human rights regime implementations and enforcements have been left unattended to¹⁰⁰. And this can be seen as that AML regime have achieved full-blown regime, while the

⁹⁷ Edmund Burke, *The Works of Edmund Burke*, 3(1) (New York: Harper & Brothers, 1860), 1:pp481–83, 488–91; “Jeremy Bentham’s Attack on Natural Rights,” 2012 Op.cit

⁹⁸ Krasner, Stephen, D., ‘Structural causes and regime consequences: regimes as intervening variables’, *International Organization*, 36, no. 2 (1982): 185. ; Niemann, A., ‘Regime theory’, in M. Bevir ed., *Encyclopedia of governance* (CA, Thousand Oaks: SAGE Publications, 2007), 802-806.

⁹⁹ Little, Richard., ‘International Regimes’, in B. John, S. Smith eds., *The Globalization of World Politics-An Introduction to International Relations*, (Oxford: Oxford University Press, 2008), 301.

¹⁰⁰ Anne R., *Fighting Terrorist Financing: Transatlantic Cooperation and International Institutions*, (Washington: The John Hopkins University, 2005).

human rights CT regime is viewed as dead-letter regime according to Richard Little's typology¹⁰¹.

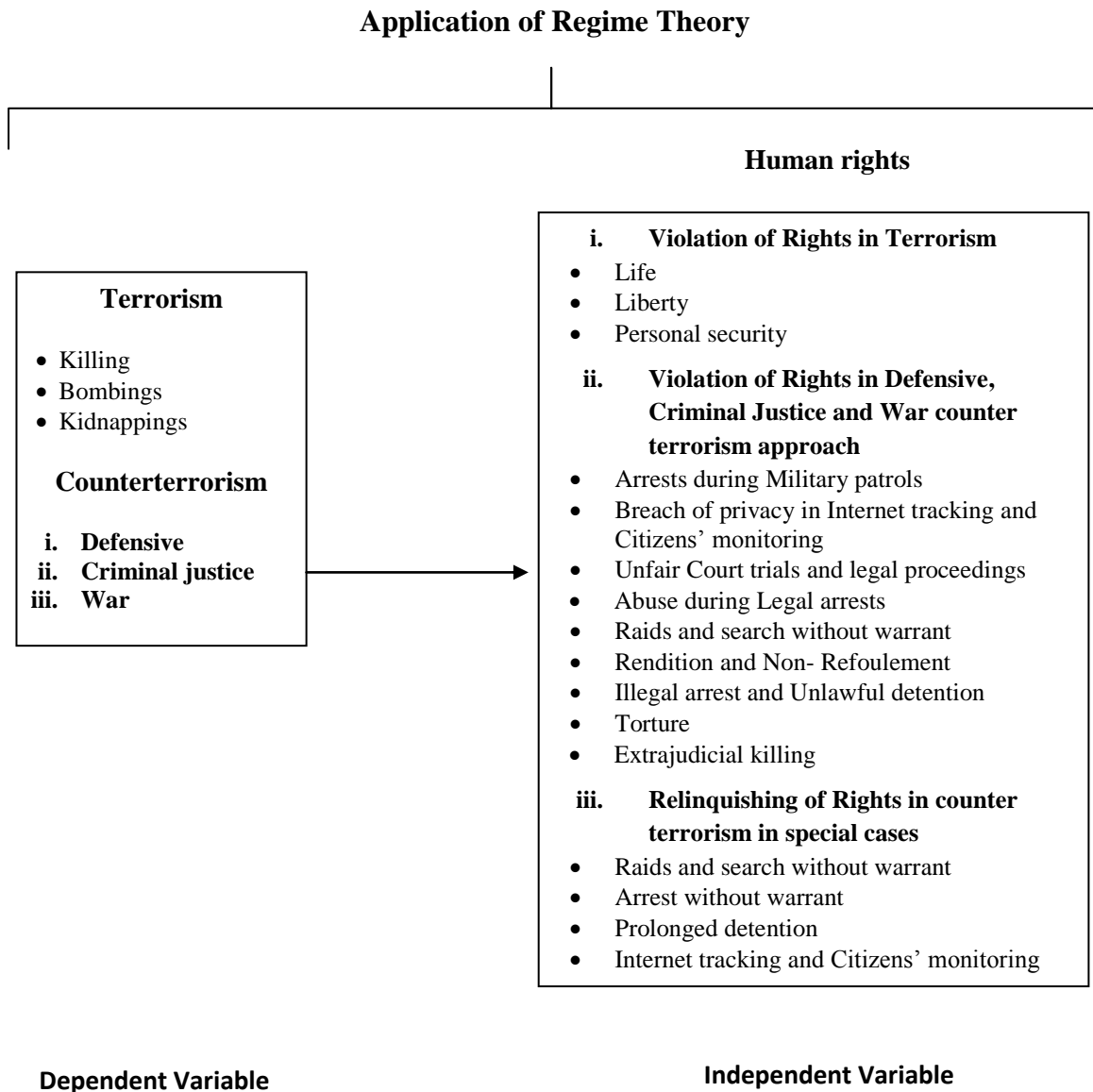
Further illustrations in Donnelly Jack's classification, shows that State's strategic interest positions of the various counterterror regimes on a continuum from strong to weak regimes. He viewed human rights counterterror regime in Africa as having strong human rights declarational regime since most Africa nations – inclusive of Kenya are party to international human rights instrument; and medium human rights promotional regime with weak human rights implementation as seen in cases that human rights are often violated in counterterrorism and minimal enforcement¹⁰².

Therefore this study uses these theories to explain the regimes considered anarchical to human rights security –human rights violation created by terrorism and counterterrorism, and also explain possible human rights regimes that need to be sustained in counter terror efforts.

¹⁰¹ Little, Richard., "International Regimes." (2008). Op.cit

¹⁰² Donnelly, Jack., *Realism and International Relations* (2000), Op.cit

Figure 1.1 Theoretical Model



Source: Author

1.8 Hypotheses

The study tests the following hypotheses:

- i. Terrorism undermines human rights basic freedom Africa
- ii. The rights of terror suspects, suspect's relatives, and other individuals are violated during defensive, criminal justice and war related counterterrorism mechanism in Kenya.
- iii. An effective counterterrorism strategy involves policy frameworks and implementation mechanisms that provide a balance of both human rights and security.

1.9 Methodology

This section focuses on information about the study population, research design, data collection sources and methods, data collection tools, sampling techniques and size, data analysis and presentation, and research ethics.

The study focus on Nairobi County; Mombasa County, Kilifi County, Garrisa County, Mandera County, Lamu County, Wajir County. Those counties are areas of significance to terror activities¹⁰³ as shown in figure 2. The target population is the counterterrorism and human rights implementers, enforcers, and watchdogs in Kenya. A sample of key individuals from Kenya Anti-terror Police Unit (ATPU), National Counter Terrorism Centre (NCTC), Independent Police Oversight Authority (IPOA), Human Rights Watch (HRW) Nairobi office, Kenya National Commission on Human Rights (KNCHR), and Kenya Human Rights Commission (KHRC).

This study adopts descriptive research design to analyse the implications of terrorism on human rights between 1998 and 2014. In addition to the direct

¹⁰³ "Kenya travel advice," *Foreign and Commonwealth Office*, January, 2015, accessed 29 March 2015,

application of qualitative data, quantitative method of inquiry was applied by ascribing quantitative values to the qualitative data collected.

Secondary data used in the course of writing this project was obtained from library and internet resource features from books, journals, and other educational materials. Primary data will be obtained using interview guide. The sources of the secondary data was collated using desktop review of data sourced from books, journals, and other educational material

s for the analysis of the seven (7) counties –namely Nairobi, Mombasa, Kilifi, Garissa, Mandera, Lamu, and Wajir –as identified in figure 1.2.

Figure 1.2 Kenya Terror Threat Areas



Source: UK Foreign and Commonwealth Office¹⁰⁴

<https://www.gov.uk/foreign-travel-advice/kenya>

¹⁰⁴ Kenya travel advice. FCO (2015) Op.cit.

The following research tools was employed: introductory letter to the Interviewee, Interviewee consent form; interview guide for data collection from key informants in the ATPU, NCTC, IPOA, KDF, HRW Kenya, KNCHR and KHRC.

The study used non-probability sampling, a purposive selection which is informed by the researcher’s knowledge of the best suitable interviewing entities for qualitative result¹⁰⁵. As illustrated in table 1, Multi-staged Quota sampling rule was used to determine the sample frame of individuals identified from 7 key organizations that were purposefully selected. A Purposive sampling of senior personnel each from ATPU, NCTC, IPOA, KDF, HRW Kenya, KNCHR and KHRC was be adopted and a total sample of 16 was generated.

Table 1.1 Quota Sampling for Interviewee

Multi-Staged Quota Sampling					
	1 st Stage	2 nd Stage	3 rd Stage	4 th Stage	Total
Key Informants	IPOA	Senior Personnel	At least 3 years working experience with anti-terror/ rights organization	1 persons	16 Interviewees
	NCTC		At least 5 years working experience with anti-terror/ rights organization	2 persons	
	ATPU		At least 8 years working experience with anti-terror/ rights organization	3 persons	
	HRW			1 persons	
	KHRC			3 persons	
	KNCHR			3 persons	
	KDF			3 persons	

Source: Author

Prior to fieldwork, questions were arranged in accordance to the research methodology and data collected in such order after fieldwork was adequately scrutinized for completeness.

The research tools from primary data sources outlined in appendix 1 addresses the research objectives as shown in table 1.2. The ‘open-ended questions’ and ‘rated questions’ from the qualitative data was analyzed in accordance to categorization, content and study themes and agreement scale. The thematic and statistical analysis was interpreted and presented using descriptive statistics and explanatory statements.

Table 1.2 Research tool Matrix

Research Questions	Questions in Research Tool
Research Question 1	Interview guide: Q4, & Q5
Research Question 2	Interview guide: Q6, Q7, Q8, Q9, & Q10
Research Question 3	Interview guide: Q11, & 12

Source: Author

The researcher ensured professional consideration through ensuring an adherence to data validity and research instruments reliability, and research ethics. The study observed confidentiality, non-compelled interviewee compliance and consent of the interviewee. Research approval obtained from the University of Nairobi (UoN) and research permit was obtained from the National Council for Science and Technology.

1.10 Limitation

The study was limited to the period of 1998-2014 because the incessant weave of modern terror in Kenya stated in 1998. Also according to the Office of the United

¹⁰⁵ Given, L. M., (Ed.). *The Sage Encyclopedia of Qualitative Research Methods* Vol.2, (Sage: Thousand Oaks, CA, 2008), 697-69.

Nation High Commissioner for Human rights, a conclusive reports on human rights that are comprehensive enough to make judgement and inform policy usually takes 2 years¹⁰⁶. This justifies the researchers' choice to exclude the period of 2015 and 2016 i.e. the year 2015 and 2016 are the two year period enough to make a conclusive report on year 2014. Other Organizations like: Supreme Council of Kenya Muslims (SUPKEM), Independent Medico-Legal Unit (IMLU), Kituo Cha Sheria (KITUO), Open Society Initiative for Eastern Africa (OSIEA), Centre for Human Rights and Policy Studies (CRISPS), Humanity Activism Knowledge Integrity Africa (HAKI Africa), Muslims for Human Rights (MUHURI) and Human Rights Agenda (HURIA) were selected for this research study but those organizations could not make provision for secondary data and/or interview.

The researcher views such decisions to have been factored by fear of freedom of expression and the security sensitivity of this research. And thus the researcher strategically analyzed the data from the interviewees without specific reference to their identity and their respective organizations.

Organizations like NCTC, HRW Kenya, KNCHR and KHRC could not make provision for quantitative secondary data to aid conductive analysis of this research study. Secondary data sourced directly from NCTC, HRW Kenya, KNCHR, KHRC and National Bureau of Statistics Kenya (NBS) for was impossible due to unavailable or classified data.

¹⁰⁶ OHCHR., *Questions and Answers on the Comprehensive Reporting Calendar*, (New York: Office of the United Nation High Commissioner for Human rights, 2012) <http://www.ohchr.org/Documents/HRBodies/TB/HRTD/QAReportingCalendar.pdf>.

1.11 Chapter Outline

This study is organized as outlined below:

- i. Chapter one: **Introduction to the Study**. This chapter gives an overview of the study, highlighting the research problem, research objectives, theories and methodological strategies that shape this research.
- ii. Chapter two: **Review of the Impacts of Terrorism on Human Rights in West and East Africa**. This chapter covers an analysis of state of the art review of the impact of terrorism on human rights in Africa. This was achieved using the realist perspective of regime theory.
- iii. Chapter three: **Implication of Counterterrorism Mechanisms on Human Rights in Kenya**. With the aid of liberalist perspective of regime theory, this chapter covers an investigation into how the apparatus and actions of the (GoK) are at risk of violating human rights.
- iv. Chapter four: **Towards a Balance between Human Rights and State Security**. This chapter finds the possibility of enhancing counterterrorism strategies that uphold human rights by way of a balance between liberty and security. The strategy employed in this chapter is aided by a balance between liberalist and realist perspective of regime theory.
- v. Chapter five: **Data Analysis and Findings**.
- vi. Chapter six: **Summary, Conclusions and Recommendations**. This final chapter encompasses in brief, the findings of the research and possible solutions as recognized by this study. The strategy employed in this chapter is aided by cognitive perspective of regime theory.

CHAPTER TWO

REVIEW OF THE IMPACTS OF TERRORISM ON HUMAN RIGHT IN WEST AND EAST AFRICA

2.1.0 Introduction

This chapter discusses about terror impact in Africa. The first part focuses on the general context of human rights considerations and violations in Africa, the second part stresses on same theme in West Africa while the last part focuses on the East African Sub-region. This chapter used realist perspective to explain how the reign of terror in Africa have undermined human rights regimes

2.2.0 Overview of Terrorism and Human Rights in Africa

Terrorism has constituted repudiation to human rights in Africa. Those terror spread across the various regions in Africa from the al-Qa'ida in the Islamic Maghreb (AQIM) and other violent extremist groups –like the al-Murabitun which is a formation of the al-Mulathamun Battalion and the Tawhid Wal Jihad in West Africa (TWJWA) –both which were splinter groups of the AQIM –terrorizes in Libya, Algeria, Mali, Mauritania, Niger and Northern Africa¹⁰⁷. The AQIM affiliates carried out the September 11 2011 attack on the American Embassy in Libya that left 4 dead. Also Boko Haram in West Africa that was reported to have killed about 13,000 people only in 2014¹⁰⁸, and the Al-Shabaab terror group in East Africa.

The Lord Resistance Army (LRA) which terrorized the East Africa region were repelled out of the region into the region's fringes with Central Africa where it

¹⁰⁷ Barbara Mantel, *Assessing the Threat from al Qaeda*, (CQ Researcher, 2014), 553–576

¹⁰⁸ "Nigeria: 'Our job is to shoot, slaughter and kill': Boko Haram's reign of terror in north east Nigeria," *Amnesty International*, April 13 2015, accessed May 3 2016, <https://www.amnesty.org/en/documents/afr44/1360/2015/en/>; "40 dead after Boko Haram attacks villages in Niger," *Fox News*, June 18 2015, accessed May 3 2016, <http://www.foxnews.com/world/2015/06/18/boko-haram-crosses-into-niger-attacks-2-villages-killing-40-says-local-governor.html>; "Have Over 13,000 People Been Killed In Nigeria's Insurgency? The Claim Is Broadly Correct," *Africa Check*,

still engage in smaller scale of abduction and killing¹⁰⁹, this group, in view of terrorism could be regarded as the worst of all various groups in Africa that have committed an unaccountable and tremendous crimes against armed personnel and unarmed civilians¹¹⁰. The LRA is said to have displaced about 2 million people and abducted 60,000 to 100,000 children as soldiers or slaves¹¹¹. While the LRA have committed atrocities in the magnitude of all other terror groups, the other terror groups have likewise significantly operated in a more coordinated manner well enough to impact, the rights of greater number of people in different African countries. Those terror groups have committed heinous crimes with no regards to the rights of the people.

2.2.1 Terrorism in Africa

Terrorism in the context of killing, indiscriminate oppression and suppression have not been only associated with non-state actors but in addition Africa has a long standing history, which still exist, of an authoritarian regime that suppresses, deny the rights and more often hold the power to kill indiscriminately without been held accountable or put to question. This idea questions the derogation of the rights of the people not only from terrorism that is a function of non-state actors but also those acts perpetuated by States in form of State-terrorism or state-sponsored terrorism.

Political terrorism has been greatly felt in all the continents of the world, of which Africa is not isolated. The pervasive nature of the political terrorism between

October 14 2014, accessed May 3 2016, <https://africacheck.org/reports/have-13000-people-been-killed-in-nigerias-insurgency-the-claim-is-broadly-correct/>

¹⁰⁹ Mareike, Schomerus., Tim, Allen., Koen, Vlassenroot., "Obama Takes on the LRA," *Foreign Affairs*, November 15 2011, accessed March 26 2016 <https://www.foreignaffairs.com/articles/uganda/2011-11-15/obama-takes-lra>

¹¹⁰ Nicole Crowder, "A parent, a home, a leg -former child soldiers of the LRA tell 'what I lost' during years of captivity," *Washington Post*, May 20, 2015, accessed 26 March 2016, <https://www.washingtonpost.com/news/in-sight/wp/2015/05/20/a-parent-a-home-a-leg-former-child-soldiers-of-the-lra-tell-what-i-lost-during-years-of-captivity/>

late 1990's and the 2000s was experienced in Sudan and South-Sudan, Somalia, Rwanda, Democratic Republic of the Congo, Sierra Leone, Liberia, and Mauritania, Kenya, and Nigeria.

In relation to Fayeye's explanation of impact of violence, terrorism in Africa can also be related to the following impacts on human rights. Firstly, directly – deliberate injury to the integrity of human life in form of murder and massacre. Secondly, the restriction and physical constraints implication which relates to the limiting the movement right of the populace due to fear of kidnappings, injury and deaths. Thirdly, the brutality manifested in torture, abuse and rape. Fourthly, the indirect and meditated impact that limits the physiological capacity to assist or help fellow humans, facilitated by the lack of trust of fear that have been instilled on the population through terror acts. And finally, the repressive impact of human rights which involves the derailed participation in political activities due to lack of or fear of the lack of adequate protection.¹¹²

2.2.2 Human Rights Instruments and Terrorism in Africa

There are several legal Instrument of the AU regarding human rights, notably and more widely known is the 1999 Convention on Prevention and Combating of Terrorism, 2002 Protocol to the Convention, and the 2004 Plan of Action. While the AU has urged its member States to not only ratify but also implement those regional and other international regimes of counterterrorism, the call includes other legal instruments that exist to check the gap to which the rights of the people stands to be

¹¹¹ Rick Gladstone, "Former Lord's Resistance Army Commander Appears at War Crimes Court," *New York Times*, January 27 2015), accessed March 27 2016, http://www.nytimes.com/2015/01/27/world/africa/dominic-ongwen-lords-resistance-army-war-crimes-court-hague.html?_r=2

¹¹² Fayeye J. O., 'Ethnic Militas: National Security, Democracy and Development', in *Democracy and Development in Nigeria Social Issues and External Relations*, vol.3, (University of Ilorin 2006), 114-123.

challenged and violated. These human rights instruments includes but not limited to the International Covenant on Civil and Political Rights 1966; the African Charter on Human and People's Rights 1981; the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984; and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002.

Under the AU, there have been efforts made by States in the adoption of resolutions related to counterterrorism cooperation and coordination among States¹¹³, terrorism cannot be countered in isolation but with the structural and resource coordination among States¹¹⁴. Likewise in the East Africa region, steps to counter terror acts was first experienced in 2003 when the East Africa CT Initiative (EACTI)¹¹⁵, regional framework for cooperation among member States is observed in the formation of the East Africa Police Chiefs Co-operation Organisation (EAPCCO)¹¹⁶, and more also national framework for regional cooperation among Kenya, Tanzania and Uganda is provided for in their various counterterrorism Acts¹¹⁷.

2.3.0 Terrorism in West Africa

The proximity of West Africa to the terrorist influx zones of North Africa from the Middle East ferments the nurtured polarization of politics, religion and ethnicity; and

¹¹³ OAU/AU Convention on the Prevention and Combating of Terrorism: Resolution to Co-operate and Enhance Co-ordination Among Member States to fight extremism. (Algiers: Oanization of African Unity/African Union, 1999). AHG/Res.213 (XXVIII); OAU/AU Convention on the Prevention and Combating of Terrorism: Declaration on the Code of Conduct for Inter-African Relations. (Algiers: Oanization of African Unity/African Union, 1999). AHG/Decl. 2 (XXX).

¹¹⁴ Goredema, C., Botha, A., *African commitments to combating organised crime and terrorism: A review of eight NEPAD countries*, (South Africa: African Human Security Initiative, 2004), 70-121.

¹¹⁵ William, Pope., Opening Remarks: East Africa Counterterrorism Initiative Conference. April 21. (2004). <http://www.state.gov/s/ct/rls/rm/2004/31731.htm>

¹¹⁶ William, Pope., Opening Remarks. (2004). Op.cit

¹¹⁷ Kenya Suppression of Terrorism Bill. Section 33 (1); Tanzanian Act. Section 37; and Ugandan Act. Section 5

thus creating terror favourable environment for States like Chad, Mali, Mauritania, Niger and Nigeria.¹¹⁸

The AQIM with its splinter groups led by Mokhtar Belmokhtar have engaged in killings, bombing and kidnapping that have kept the West and North Africa in the light of terror. Notable attack before 2014 was the January 2013 attack that on a gas facility in North Africa –Algeria that left 40 foreigners dead with several others injured.

The most profound group within West Africa is the Boko-Haram that have unleashed numerous suicide missions, kidnapping, bombing, and other forms of killings specifically on unarmed civilians and targets foreigners in few instances. Boko-Haram originated as a State terror group within the Nigerian State but has overtime gone transnational within the Nigerian border areas with few other states like Cameroon, Niger, and Chad.

2.3.1 ECOWAS Human Right Instrument and Terrorism

Regional efforts to combat terrorism have been put in place by the ECOWAS as stipulated and strengthened in the Article 3 of the Protocol for Conflict Prevention, Management, Resolution (PCPMRPS), Peacekeeping and Security (1999)¹¹⁹; Inter-Governmental Action Group against Money Laundering (GIABA)¹²⁰; and Political Declaration and Common Position against Terrorism (PDPCT).

The Political Declaration and Common Position against Terrorism (PDPCT) firstly, resulted to the ECOWAS CT Strategy and Implementation Plan framework for

¹¹⁸ “ICG Report on the Sahel Region,” *Wind of Change*, April 11, 2005, accessed 26 March 2015, <http://www.windsofchange.net/archives/006649.php>

¹¹⁹ ECOWAS., Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. December, 10 (Nigeria, Abuja: ECOWAS, 1999) <http://wwwsec.ecowas.int/sitecedeo/english/ap101299.html>

¹²⁰ GIABA., Inter-Governmental Action Group against Money Laundering: Strategic Plan 2011-2014 (GIABA, 2010).

action to prevent and eradicate terrorism and related criminal acts in West Africa, while protecting human security and creating the enabling conditions for sound economic development and the overall wellbeing of all citizens of West Africa,¹²¹ – and secondly, to objectively support the African Union (AU) Plan of Action on the Prevention and Combating of Terrorism in Africa, Comprehensive African Anti-Terrorism Model Law, among other AU anti-terror instruments.

The pillars of the ECOWAS ant-terror strategy is aimed at preventing and combating terror, and Post Conflict Peace Building (PCPB)¹²² –which non-specific mentioned as literally written, but encompasses Preventing Violent Extremism (PVE) and combating VE.

2.3.2 Boko-haram and Human Rights Impact

Before the 2009 leadership of Boko-haram which means ‘Western Education is sin’, the leadership of Mohammed Yusuf identified the group as Jama’atu Ahlis Sunnah Lidda’awatiwal Jihad meaning ‘People committed to the propagation of the Prophet’s teachings and Jihad’¹²³. While the group has existed and transformed since the early 1940’s, the group was not persistent in the use of violence until 2009 when there was change of leadership and orientation. The group lead by the new leader Abubakar Shekau became extremely violent by engaging in coordinated hostage taking, assassinations and suicide bombings¹²⁴.

¹²¹ ECOWAS., ECOWAS Political declaration and common position against terrorism, 28 February, (ECOWAS, Yamoussoukro, 2013).

¹²² ECOWAS., Political declaration and common position against terrorism, (2013). Op.cit. p25.

¹²³ Crilly, R., “Boko Haram swears allegiance to Isil,” *Telegraph*, March 7 2015, accessed 26 March 2015, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/11457195/Boko-Haram-swears-allegiance-to-Isil.html>

¹²⁴ Onuoha, F. C., Onuoha, F. C., *A danger not to Nigeria alone: Boko Haram’s transnational and regional responses*, (Friedrich-EbertStiftung, 2014)

After the military killed Yusuf in July 2009, Boko-Haram has engaged in retaliated act of revenge by engaging in terror activities across the six Northeastern Nigerian states resulting to the immediate death of about 800 persons. This has continued as BH strategically enhances on their wave of attacks. During this reign of terror and violence, churches, primary and secondary schools, journalists and media houses were targeted; and kidnapping of prominent persons for cash that will facilitate the social and warfare demands of the group. The weapons acquired by this group made them a formidable force to committing atrocities that greatly violates the right of the people to school, to engage in their daily work activities and rights to life which BH is less concerned about¹²⁵.

Between the period of 2011 and 2012, Boko-Haram intensified attacks resulted in the gruesome suicide bombing of a UN building, churches, banks, and security facilities. These attacks greatly increased the casualties of civilians and non-combatants¹²⁶. The attacks were reported to have been systematic executions and murder, and persecutions of people especially the Christian minority in Northeastern Nigeria. The HRW in a report in 2013 declared the attacks of Boko-Haram as a gross violation of human rights and as such a crime against humanity¹²⁷.

Before the end of 2013, there were numerous terror and counterterror attacks that led to the death of hundreds of people, most of whom were non-combatant civilians residing in the areas captured by Boko-Haram¹²⁸. Notably of these attacks were the October 2013 attacks; September 2013 attack on a college in Mubi of Adamawa State that led to the death of over 40 students; December 2013 attack where

¹²⁵ Onuoha, F. C., *Jama'atu Ansarul Musilimina Fi Biladis Sudan: Nigeria's Evolving Terrorist Group*, (CTC Sentin. 2013) p.18

¹²⁶ UK Home Office., *Country information and guidance: Nigeria: Fear of Boko Haram*, (London: Home Office, 2015), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/435251/CIG_NIG_Fear_of_Boko_Haram_v1_0.pdf

¹²⁷ Human Rights Watch., *World report 2013*. (2013) Op.cit

¹²⁸ Human Rights Watch., *World report 2013*. (2013). Op.cit

about 200 BH militants disguised in Nigerian military uniform on several occasions, killed and wounded many in several military facilities in Maiduguri, Borno State¹²⁹.

The attack on non-combatant by Boko-Haram continued in 2014: the Yobe State secondary school attack in February left about 59 dead; 75 were left dead in March after a bomb blast in Maiduguri; in April, over 70 people were killed in Nyanya carpark at Abuja. Also in same month, about 276 secondary school girls were kidnapped while their female dormitory was also burnt down in the town of Chibok in Borno state. In this instance, the girls were denied the right to education, right to control of their own lives since they were systematically sold and married out by the Boko-Haram.

In May 2014: over 360 persons were left dead after Boko-Haram attacked a town near Nigeria-Cameroonian border; an attack in Jos town of Plateau State left 118 dead and several injured; an areas which harbours the Nigerian military base in Yobe State was attacked, leaving over 500 persons dead. Attacks by Boko-Haram in the month of June and July recorded about 2,000 deaths across the Northeastern Nigeria inclusive of the Gwoza attack that left over 200 dead¹³⁰. By the end of 2014 alone, close to 6,000 deaths were reported. The cumulated death by Boko-Haram by the end of 2014 was estimated to be between the ranges from 7,500 to 18,000¹³¹.

2.4.0 Terrorism in East Africa

Between the period of 1998 and 2014, the East African States' experience of terror was brought to light by the two main terror groups: the Al-Shabaab an Al Qaeda group and other groups like the LRA. The perpetuation of terror in this region has

¹²⁹ UK Home Office., Nigeria: Fear of Boko Haram, (2015). Op.cit
¹³⁰

been precipitated by the region's insecure border, weak governance, and proximity to the Arabia Peninsula. This makes the region a safe zone for terrorist and their elements. For this reason, the various governments in the region have stepped up operations and efforts to combat terrorism.¹³²

The notable event in this region is the August 7, 1998, the U.S. embassy bombing in Kenya and Tanzania that left 224 dead and about 4500 people injured.¹³³ The Bin Laden's personal secretary, Wadiah el Hage, and a Comorian citizen, Fazul Abdullah Mohammed were key members of the Nairobi cell. Wadiah el Hage and several other members of the cell were apprehended and arrested after the bombing, many of whom were extradited without the formal procedures and now serving life sentence at the US prison¹³⁴.

The aftermath of the November 28, 2002 missile to air/Hotel terror attack by two Kenyans led to a mission that failed to apprehend and arrest Fazul rather an apprehension of several suspects yet to be proven guilty.¹³⁵ In 2008 February, over 100 were injured and about 20 killed in the Bossaso attack while in the late 2008, precisely on October 29th, the Al-Shabaab terrorists carried out 5 coordinated car bombing targeting UN buildings and other National Building that killed about 21 persons across Puntland and Somaliland. Al-Shabaab carried out twin bombing in Kampala, the capital of Uganda on July 2010 that left 76 people dead. The Westgate mall attack of 2013 left about 65 to 140 persons dead¹³⁶.

¹³¹ ICR2P., "The Crisis in Nigeria, International Coalition for the Responsibility to Protect Crisis in Nigeria," *International Coalition for the Responsibility to Protect*, n.d 2015, accessed 26 March 2015, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-nigeria>

¹³² Douglas Farah, *Blood From Stones: The Secret Financial Network of Terror* (New York: Broadway Books, 2004).

¹³³ Barbara, Mantel., *Assessing the Threat from Al Qaeda*, (2014) Op.cit

¹³⁴ Douglas Farah., *Blood From Stones* (2004) Op.cit

¹³⁵ Johnnie, Carson., "A New Beginning: U.S. Policy in Africa," *United States Department of State*, February 9 2009, accessed April 9 2016, <http://www.state.gov/p/af/rls/rm/2009/117326.htm>

¹³⁶ Samuel Aronson L., 'Kenya and the Global War on Terror: Neglecting History and Geopolitics in Approaches to Counterterrorism', *African Journal of Criminology and Justice Studies*, 7, no. 1&2 (2013): 491 -509.; Martha, C., 'Dealing with Terrorism', in A. C. Chester, F. O. Hampson and A. Pamela, eds., *Managing Conflict in a World Adrift* (Washington DC: USIP 2015), 491 -509.

In 2014, the group launched massive attack across the across the EA region. Kenya witnessed its deadliest year after an attack that left over 200 dead along the border with Somalia. The first terror attack on Djibouti was observed in May after two suicide explosions on a French restaurant killed a Turkish Citizen. In Somalia, 11 were killed; a composition of American, Kenyan and Ugandans on December 25 after the group led an assault on the Mogadishu International Airport.

2.4.1 Human Rights Instruments and Terrorism in East Africa

In 2007, Inter Governmental Authority on Development (IGAD) organized its first Ministerial level meeting on counterterrorism, this high paneled meeting with the support of the Terrorism Prevention Branch of the United Nations Office on Drug Control (UNODC's TPB) called on the six member States to ensure not only a coordinated member state counterterrorism mechanism, but also ensure their coordinated efforts supports and respects human rights while countering terrorism.¹³⁷

The East African States in Observance of UN treaties on human rights includes: Burundi, Rwanda, Uganda, Ethiopia and Kenya.

Burundi concluded observation on –Human Rights Committee in 2015, Committee against Torture in 2014, Committee on the Rights of the Child in 2010, Committee on the Elimination of Discrimination against Women in 2008, and Committee on the Elimination of Racial Discrimination in 1997.¹³⁸

Rwanda concluded observation on –Committee on Economic, Social and Cultural Rights in 2013, Committee against Torture in 2009, Human Rights Committee in 2009, Committee on the Rights of the Child in 2004, and Committee on

¹³⁷ InterGovernmental Authority on Development., The Kampala Statement, "Meeting of Ministers of Justice of IGAD member states on legal cooperation against terrorism," Kampala, Uganda, 20–21 September. (IGAD, 2007)

¹³⁸ OHCHR., OHCHR., "Country Homepage," *Office of the United Nations High Commissioner for Human Rights*, n.d, accessed March 10, 2015, <http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/AfricaRegionIndex.aspx/>

the Elimination of Racial Discrimination in 2001.¹³⁹

Uganda concluding observation on –Committee on the Rights of the Child in 2005, Human Rights Committee in 2004, Committee against Torture in 2005, and Committee on the Elimination of Racial Discrimination in 2003.¹⁴⁰

Ethiopia concluded observation on –Committee on Economic, Social and Cultural Rights in 2012, Human Rights Committee in 2011, Committee on the Elimination of Discrimination against Women in 2011, Committee against Torture in 2011, Committee on the Elimination of Racial Discrimination in 2009, and Committee on the Rights of the Child in 2006.¹⁴¹

Kenya concluded observation on –Committee against Torture in 2013, Human Rights Committee in 2012, Committee on the Elimination of Racial Discrimination in 2011, Committee on Economic, Social and Cultural Rights in 2008, and Committee on the Rights of the Child in 2007.¹⁴²

The region has also made efforts to comply with international laws by ratifying several international counterterrorism conventions and protocols. Ethiopia is a party to seven of the 12 international conventions and protocols relating to terrorism. Somalia has signed, but has yet to become a party to, the Convention for the Suppression of the Financing of Terrorism. Tanzania is a party to seven of the 12 international conventions and protocols relating to terrorism; Uganda is a party to 10 of the 12 international conventions and protocols relating to terrorism. Rwanda is a party to eight of the 12 international counterterrorism conventions and protocols. Kenya has ratified all 12 international counterterrorism conventions and protocols.¹⁴³

¹³⁹ Ibid

¹⁴⁰ Ibid

¹⁴¹ Ibid

¹⁴² Ibid

¹⁴³ Cofer, Black., *Government Advice: Patterns of Global Terrorism: 2003*, (US State Department, 2004), <http://www.state.gov/documents/organization/31912.pdf>

In Kenya, further steps were observed in the formation of the ATPU –an annex of Kenyan security apparatus, formation of an inter-ministerial Anti-Money Laundering and terrorist financing task force and invoking of the NGO Co-ordination Act of 1990 which enable deregistration of NGOs. But in general those efforts have had less consideration on human rights in its implementation.

2.4.2 Al-Shabaab and Human Rights Violations

Before the incessant attacks by Al-Shabaab, Al Qaeda first launched an attack on the Kenyan soil in 1998 killing 213 with about 5000 people wounded. Subsequently, in 2002, an attack on Paradise hotel left about 18 people dead.¹⁴⁴ Al-Shabaab in its early beginning in the July 2006, after the invasion of the Ethiopian forces, engaged in terror as an option to which the group expresses their infringement of rights by the counter terror efforts by regional forces. In most instances, invasion justified and strengthened the legitimacy of terror groups as they resort to terrorism as an option to retaliate. This action in the case of the Somali was supported by majority of the locals who sees the coordinated effort to restore peace in Somalia as invasion¹⁴⁵. For example, the Ethiopian forces were accused to have committed human right abuses by strategically and intentionally attacking civilians in Somalia particularly the hospitals¹⁴⁶ shelled by phosphorous bombs which were originally targeted at the Al-Shabaab militants¹⁴⁷, and also the kidnapping of Somali Children¹⁴⁸.

¹⁴⁴ "Timeline: Attacks in Kenya since 1998," *Al Jazeera*, April 2 2015, accessed May 27 2016, <http://www.aljazeera.com/indepth/interactive/2013/09/interactive-attacks-kenya-since-1998-2013924122218923825.html>

¹⁴⁵ Abdissaid M. Ali, *The Al-Shabaab Al-Mujahidiin: A Profile of the First Somali Terrorist Organisation*, (Institut fur Strategie Politik, Sicherheits- und Wirtschaftsberatung, 2008), http://kms2.isn.ethz.ch/serviceengine/Files/ESDP/55851/ipublicationdocument_singledocument/1dd66bc5-b0c9-488c-b7e9-d16eeac91018/en/AlShabaab.pdf

¹⁴⁶ HRW., "Shell-Shocked," (Human Rights Watch, 2007) <http://www.hrw.org/en/node/10783/section/4>

¹⁴⁷ Jeffery Gettleman, "Somalia and Ethiopia Are Accused of War Crimes," *New York Times*, August 13, 2007, accessed May 27 2016, http://www.nytimes.com/2007/08/13/world/africa/13cnd-somalia.html?_r=1&hp

¹⁴⁸ "Ethiopian Troops Took Children," *BBC News Africa*, April 23 2008, accessed May 27 2016, <http://news.bbc.co.uk/2/hi/africa/7363732.stm>

In June 2007, a suicide bomber detonated a bomb killing only him and injuring 41 people in Nairobi.¹⁴⁹ In 2008, Somalia was ranked 4th in globally deaths resulting from terror attacks. This is same year the group attacked United Nations Development Programme (UNDP) building and other foreign facilities.¹⁵⁰ This ranking stepped up and the group was rated in 2009 as the second most deadly terror organization after the Taliban¹⁵¹ due to the recorded number of deaths and atrocities the group have caused. This could be said to have been influenced by the withdrawal of the Ethiopian forces in 2009 that left Al-Shabaab choice less than to turn its mass atrocities formally directed to security forces and allies to now include the locals.

Fuad Mohamed in 2009, one of the top leaders of Al-Shabaab ordered the haunt of journalists that criticizes the group's brutal tactics; he accused those journalists and certain Medias of working against the nationality of Somalia.¹⁵² Subsequently, in September 2009, the group called on the Somalis not to use text books provided by UN Educational Scientific and Cultural Organization (UNESCO), a move which the Minister of Education opposed. The Minister along with 2 other ministers and 19 others were killed in a suicide blast 3 months after¹⁵³.

The group demanded strict adherence to Sharia law as opposed to the choice of the people.¹⁵⁴ Also, ordered all men to grow beard and women to wear veils and nt wear bra as opposed to free choice. The group directed all business activities to be placed on hold during the five-time daily Muslim prayer time.¹⁵⁵ The group banned

¹⁴⁹ Al Jazeera., "Timeline: Attacks in Kenya since 1998," *Al Jazeera*, April 2 2015, accessed 27 September 2016, <http://www.aljazeera.com/indepth/interactive/2013/09/interactive-attacks-kenya-since-1998-2013924122218923825.html>

¹⁵⁰ National Combating Terrorism Center, *2008 Report on Terrorism*, April 30, (NCTC, 2009)

¹⁵¹ National Combating Terrorism Center, *2009 Report on Terrorism*, April 30, (NCTC, 2010)

¹⁵² Baron, Bodissey., "Fuad Khalaf: Swedish Terrorist," *Gates of Vienna*, May 6 2009, accessed June 7 2016, <http://gatesofvienna.blogspot.co.ke/2009/05/fuad-khalaf-swedish-terrorist.html>

¹⁵³ "Suicide Bomber Kills Three Somali Govt Ministers," *New York Times*, December 3 2009, accessed 27 September 2015, http://www.nytimes.com/reuters/2009/12/03/world/international-uk-somalia-conflict.html?_r=1&pagewanted=print

¹⁵⁴ "Somalia: Al Shabaab Martyrs Imposes New Rules in Mogadishu," *Somali News*, October 4 2009, accessed March 12, 2015, http://www.somaliweyn.org/pages/news/Oct_09/4Oct32.html

¹⁵⁵ Abdi, Sheikh., "Somali Islamists Publically Whip Women for Wearing Bras," *Reuters*, October 16 2009, accessed July 2016, http://www.reuters.com/article/homepageCrisis/idUSLGL186376.CH_2400/; "Somalia: Al Shabaab Martyrs Imposes New Rules in Mogadishu" 2009 Op.cit

playing and watching soccer, dancing to or listening to music, and prohibited converting from Islam;¹⁵⁶ disallowed women not to work in office and forcing them to stay at home to take care of the children and their husband¹⁵⁷.

Al-Shabaab based police patrol and public persecution to ensure strict adherence to the new law¹⁵⁸ this includes whipping men for not maintaining beard and whipping women for not wear bra or vail. Also the hands of suspected robbers were chopped off, and stoning to death of adulterers and adulteresses¹⁵⁹.

On 13th June 2010, two explosions at a religious gathering left 6 dead and about 80 injured. Also on December 20th, 3 people were killed by a grenade attack on a bus in Kenya.¹⁶⁰ The Somali based terror group Al-Shabaab with its tentacles cut across to the heart of Kenya's capital Nairobi, has since the early 2011 constituted itself into a formidable force to continually attack and demoralize the people of Kenya. Those attacks by the group are alleged to have been an effort to force-withdraw the Kenyan Defence Forces (KDF) from Somalia. And in addition, to retaliate the supposed atrocities committed by the KDF both in Somalia and Kenya against the Muslim communities.

In October 2011, Kenya experienced the first attack from Al-Shabaab when a grenade killed one and wounded over 20 people.¹⁶¹ Few days afterwards in same

¹⁵⁶ "Muslim Militants Slay Long-Time Christian in Somalia," *Somaliland Press*, September 24 2009, accessed March 12, 2015, <http://somalilandpress.com/8771/muslim-militants-slay-long-time-christian-in-somalia/>

¹⁵⁷ Garowe Online., "Somalia: Al-Shabaab Close Women's Organisations in Balad Hawo," AllAfrica.com, November 3 2009, accessed 26 March 2015, <http://allafrica.com/stories/200911040143.html>

¹⁵⁸ Abdi Sheikh, "Somali Islamists Publically Whip Women for Wearing Bras," 2009 Op.cit

¹⁵⁹ "Somalia Adulterer Stoned to Death in Marka Town," *Somali News*, November 9 2009, accessed March 12, 2015, http://www.somaliweyn.org/pages/news/Nov_09/7Nov16.html ; "Somali Women Stoned for Adultery," *BBC*, November 18 2009, accessed May 27 2016, <http://news.bbc.co.uk/2/hi/africa/8366197.stm> ; "Al-Shabaab Stones Women for Adultery," *SITE Intel Group*, October 21 2008, accessed May 27 2016 https://www.siteintelgroup.com/_layouts/SiteIntel/ApplicationPages/Document.aspx?ID=11797

¹⁶⁰ Al Jazeera., "Timeline: Attacks in Kenya since 1998," *Al Jazeera*, April 2 2015, accessed May 27 2016, <http://www.aljazeera.com/indepth/interactive/2013/09/interactive-attacks-kenya-since-1998-2013924122218923825.html>

¹⁶¹ Associated Press., "Two grenade blasts rattle Nairobi: 1 dead," *USA Today*, October 24 2011, accessed 27 September 2016, <http://usatoday30.usatoday.com/news/world/story/2011-10-24/kenya-grenade-attack/50898570/1>

month, about 69 persons were critically injured and 5 dead after the Machakos bus terminal was attacked with grenades¹⁶².

In March 2012, over 60 persons were injured and 6 deaths recorded after grenade attack on Machakos bus station.¹⁶³ Between the month of May and July, series of significant attacks across Kenya killed about 25 and injured 77 people¹⁶⁴. Before the end of 2012, there were 6 successive attacks between the months of November and December resulting to about 13 deaths, 54 injuries, 10 cases of rapes, and destruction of properties and destabilization of freedom of movement¹⁶⁵.

In January 2013, not less than 4 people died and 6 injured after a hotel in Garissa came under attack.¹⁶⁶ About 12 people were killed in the coast on 3rd March 2013 when suspected Mombasa Republican Movement members attacked a security post.¹⁶⁷ The 2013 traumatic event that unfolded for days at the Westgate Mall in Nairobi left many dead and several others injured. This significant attack infringes on the right of the people to live freely as the terror unfolds, many within the Mall were

¹⁶² David, Clarke., "A grenade attack at a bus station in central Nairobi killed five people and wounded 69, the Kenya Red Cross said on Sunday," *Reuters*, 11 March 2012, accessed May 30 2016, <http://www.reuters.com/article/us-kenya-blast-idUSBRE82A03W20120311>

¹⁶³ Bosire, Boniface., "Timeline: grenade and landmine attacks in Kenya," *Sabahi*, August 30 2012, accessed, May 29, <http://archive.is/RhXKt#>; Mokaya, Julius., "Police arrest 4 suspects in connection with Nairobi bus station blast," *Sabahi*, 12 March, 2012, accessed May 30 2016, <http://archive.is/RhXKt>

¹⁶⁴ Ombati, C., "Police link Al Shabaab to Ngara church attack." *Standard Digital News*, May 4 2012, accessed May 30 2016, http://www.standardmedia.co.ke/?articleID=2000057613&story_title=Police%20link%20Al%20Shabaab%20to%20Ngara%20church%20attack; "Nairobi church struck in grenade attack," *BBC*, April 29 2012, accessed May 30 2016, <http://www.bbc.com/news/world-africa-17885476>; Ombati, C., "Police link Al Shabaab to Ngara church attack (2012) Op.cit : Kenya: Man arrested over deadly attack on Mombasa club," *BBC*, May 16 2012, accessed May 30 2016, <http://www.bbc.com/news/world-africa-18081566>; Jamah, O., "Blast rocks Kenyan Capital," (Standard Digital News, 2012) accessed May 30 2016, http://www.standardmedia.co.ke/?articleID=2000058933&story_title=Blast-rocks-Kenyan-Capital--Nairobi; Mwakio, D., "Three killed, 30 hospitalised in Mombasa blast." *Standard Digital News*, June 25 2012, accessed May 30 2016, http://standardmedia.co.ke/?articleID=2000060541&story_title=Three-killed,-30-hospitalised-in-Mombasa-blast; "14 killed in Garissa church attacks," *Daily Nation*, July 1 2012, accessed May 30 2016, <http://www.nation.co.ke/News/17+dead+50+injured+in+twin+Garissa+church+attacks/-/1056/1441242/-/139fewwz/-/index.html>; "Kenya church attacks 'kill 15' in Garissa," *BBC*, July 1 2012, accessed May 30 2016, <http://www.bbc.com/news/world-18662975>

¹⁶⁵ "The making of a Somali capital base at the heart of Nairobi," *Daily Nation*, September 26, 2010, accessed May 30 2016, http://www.hiiraan.com/news2/2010/sept/the_making_of_a_somali_capital_base_at_the_heart_of_nairobi.aspx; "Riots rock Eastleigh for the second day," *Daily Nation*, November 20, 2012, accessed May 30 2016, <http://www.nation.co.ke/News/Riotsrock-Eastleigh-for-the-second-day/-/1056/1624512/-/14918h2z/-/index.html>; "Kenya blast in Somali area of Nairobi, Eastleigh," *BBC*, December 6 2012, Accessed June 12 2016, accessed May 30 2016, <http://www.bbc.co.uk/news/world-africa-20617516>; Momanyi, Bernard and AFP, "Kenya: Death Toll in Eastleigh Grenade Attack Rises to Five," *AllAfrica.com*, December 8, 2012, accessed May 30 2016, <http://allafrica.com/stories/201212080208.html>; Sabahi., "Kenya launches investigation into Eastleigh blasts," *Sabahi*, December 24 2012.

¹⁶⁶ Al jazeera., "Timeline: Attacks in Kenya since 1998," Op cit

¹⁶⁷ Ibid

killed because of their right to have choose one religion over the other likewise as others were saved because they were emotionally forced against their will to deny their belief or religion in order not to be killed.

About 36 persons were killed in a quarry mine in Mandera on 12th February 2012.¹⁶⁸ In mid-2014, the group attacked the coastal town of Mpeketoni killing about 48 people. Kenya experienced the death of 64 persons in two separate attacks in late 2014 in Mandera County.¹⁶⁹

2.5.0 Chapter Conclusion

Terrorism in Africa as explained in this chapter depicts an outright infringement on the basic right of the people. Boko-Haram, AQIM with its sub-cells, and Al-Shabaab are the predominant non-state terror actors that terrorized the people through series of coordinated attacks resulting to thousands of deaths, hundreds of injuries, destruction of properties, obstruction of free movement and business activities. In most cases where those groups annex or occupy territory (ies), the people are subjected to derogative right treatment and controlled with an iron fist considered inhumane.

Terrorists are realists who views the world as a continual struggle that needs to be meet with violence in order to find justice; and those violent acts have likewise undermine rules, laws and norms that should be accorded to the rights of individuals. The findings of this chapter in consideration of research question 1, (*What are the impacts of terrorism on human rights?*) indicated that terrorism in Africa has violated the right of the people to life, liberty, and personal security.

¹⁶⁸ Al Jazeera., "Timeline: Attacks in Kenya since 1998," Op cit

¹⁶⁹ "At least 28 killed in Shabaab attack on Nairobi bound bus in Mandera," *Nation Media*, November 27 2014, accessed April 23 2015, <http://www.nation.co.ke/counties/28-dead-suspected-Al-Shabaab-attack-in-Mandera/-/1107872/2531256/-/ljsywl/-/index.html> ;"Kenya bus attack: Al-Shabaab militants slaughter 28 non-Muslims who failed to recite Koran," *The Independent*, December 2 2014, accessed April 27 2016, <http://www.independent.co.uk/news/world/africa/kenya-bus-attack-gunmen-kill-36-at-mandera-quarry-9896973.html>

CHAPTER THREE

IMPLICATION OF COUNTERTERRORISM MECHANISMS ON HUMAN RIGHTS IN KENYA

3.0 Introduction

This chapter argues on the liberalist approach on counterterrorism with consideration to how counterterror efforts should uphold the rights of individuals by explicitly having regards for the instituted human rights regimes. The aim of terror is geared towards the continual violation of human rights, and such is met with global response that is centered strongly on not just fighting terror but also counter the human rights – that terrorists seek to undermine –by defending human rights in order to win the Global War on Terror (GWOt)¹⁷⁰. As such, those rights to freedom and rule of law should not be relinquish¹⁷¹, however, contrary to this is evident as most counter strategies on adopts detention with no trial, brutal treatment, illegal persecution, inhumane treatment and torture of not just the suspect but also suspects’ relatives – usually if the suspect is at large¹⁷².

3.1.0 Counterterrorism Mechanisms in Kenya

From Ami’s counterterror approach¹⁷³, it can be deduced that Kenya adopts defensive, criminal justice and war strategy of combating terror. The criminal justice features policy formulation and legal implementation of punitive court based system of countering terrorism. The defensive and war approach focusses on police based and militaristic counter operations. However these two approaches under the Kenya State

¹⁷⁰ Lind, J., Howell, J., Counter-terrorism and the Politics of Aid: Civil Society Responses in Kenya. *Development & Change*, 41(2), (2010), pp335-353

¹⁷¹ Bonner D., ‘Counter-Terrorism and European Human Rights since 9/11: The United Kingdom Experience’, *European Public Law*, 19, no. 1, (2013): 97-128.

¹⁷² Ludlam, S., ‘Regime Change and Human Rights: A Perspective on the Cuba Polemic’, *Bulletin Of Latin American Research*, 3, no. 1, (2012): 110-126.

¹⁷³ Ami, Pedahzur., *Israeli Secret Service and the Struggle against Terrorism*. (2009). Op.cit

are not independently operational but spawn from the synergy of policy that ensures their strict implementation and compliance.

3.2.0 Counterterrorism Policy and Human Rights Consideration

After the US embassy bombing and the Kikambala bombing in Kenya, GoK instituted the Suppression of Terrorism Bill of 2003¹⁷⁴, the bill was criticized of been broad, vogue, and inexplicit in the term of defining ‘terrorism’, considered by East African Law Society as ‘absurdly wide as to mean anything and thus nothing’¹⁷⁵. Further indicating that political protests and movements by civil right activists and activities of the political opposition can be deemed as terror act as stated in the Bill’s definition of terrorism¹⁷⁶. Other unclear clause were procedures to Arrest, Branding group as Terror Organization, Incommunicado Detention, Immunity of Law Enforcement, Powers of Search and Seizure, Extradition, Freedom of information and Expression, among others clauses that aided the infringement of the rights of person(s) after the passing of the bill.

The continual efforts from critics and the increasing insecurity paved the way for the Prevention of Terrorism Act of 2012. This act however, redressed the vagueness and non-clarity in the 2003 Bill. The act redefined the definition of terror and the procedures of banding terror organization, terror offence and sentencing, among other law enforcement powers. Over and above, the 2012 Act adhered legally to the Article 24 of the Kenya Constitution as regards to the sustenance of the fundamental human rights of person(s). This act was considered the best in the interest of the security and civil liberty of the people in Kenya. However, the challenge to the

¹⁷⁴ Kenya Gazette Supplement, *The Suppression of Terrorism Bill, 2003*, 38 Kenya Gazette Supplement Nairobi, (30 April 2003 at 443), Clause 3.

¹⁷⁵ EALS Statement on Kenya’s draft Anti-terrorism Law, (Legal brief May 29, 2003).

¹⁷⁶ Ibid

2012 Act were implementation and enforcement by the criminal justice system and security enforcers whom were already used to non-strict adherence to laws regarding CT.

The GoK has Kenya adopted the Geneva Conventions Act¹⁷⁷, among others are the Refugee Convention (1966), Geneva Conventions (1966), International Covenant on Civil and Political Rights ICCPR (1972), International Covenant on Economic, Social and Cultural Rights ICESCR (1972), Committee on the Elimination of Discrimination against Women CEDAW (1984), Committee on the Rights of the Child CRC (1990), African Convention on Human and Peoples Rights (1992), Convention against Torture (1997) Additional Protocols I and II to the Geneva Conventions (1999), and Committee on the Elimination of Racial Discrimination CERD (2001).

The constitution of Kenya made provisions for the consideration of human rights, Article 74 (1) opposed torture, inhumane and other degrading punishment. Article 74 (2) clearly states that no law should be made to supersede or contravene Article 74 (1). Both the Article 20 (1) and (2) of the Chiefs Authority Act; and in Article 14A (2) and (3) prohibits the use of torture.¹⁷⁸

The bill of rights in Chapter 4 part 2 states in Article 29, that the rights of the people is not only limited to mainly security and freedom but inclusive of the right not to be deprived of freedom arbitrarily or without just cause; detained without trial, except during a state of emergency; subjected to any form of violence from either public or private sources; subjected to torture in any manner, whether physical or psychological; subjected to corporal punishment; or treated or punished in a cruel,

¹⁷⁷ Chapter 198 of the Laws of Kenya

¹⁷⁸ "Kenya Constitution: Online Kenya Constitution," *Manjemedi*, n.d, accessed 27 March 11, 2016, <http://kenyanconstitution.manjemedi.com/the-bill-of-rights/#19>

inhuman or degrading manner. Furthermore, section 31¹⁷⁹ explicitly stated the privacy rights or person(s) in cases where there is non-existent of court injunction. Those rights include rights not to have: their person, home or property searched; their possessions seized; information relating to their family or private affairs unnecessarily required or revealed; or the privacy of their communications infringed.

Article 58 of the bill of rights¹⁸⁰ states when persons can be detained without trial as rightly framed as in the case of “state of emergency”. This is declared when Kenya is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency. As such, terror is viewed as an act of war in this case, however, the state of emergency need to be officially declared in order to operationalize such detention and in addition a cessation at the relapse of the declaration of emergency.

The Article 21 (1)¹⁸¹ of the Kenya Constitution affirms that the Kenyan State and all element of the State organ are to protect, promote, observe, and respect the rights and freedoms as expressed in the Bill of Rights.

3.3.0 Counterterror Institutions and Human Rights Consideration

The institutions notably involved in CT under the jurisdiction of the GoK are the law court, the police units and the military. Those three legal institutions were meant to complement each other in the fight against terror.

¹⁷⁹ “Kenya Constitution: Online Kenya Constitution,” Op.cit

¹⁸⁰ Ibid

¹⁸¹ Ibid

3.3.1 The Law Courts

The trials of terror suspects by the Government of Kenya (GoK) in the early year 2000 to 2005 were non-conforming to the international human rights regimes which the GoK is a signatory to, inclusive of the human rights regimes which are instituted in the GoK constitution¹⁸², however GoK have made success in ensuring consideration to those issues by instituting –Prevention of Terrorism Act 2012, 2011 Proceeds of Crime and Anti-Money Laundering Act 2011, and Prevention of Organized Crime Act 2010 – legal frameworks under which terror acts are tried¹⁸³, but the lack of strict implementation raises concern in addition to the *Security Laws (Amendment) Act, 2014*.¹⁸⁴

The legal jurisdiction of the attorney general of the GoK made it possible for the occupier to authorize an arrest and detention without court orders in exceptional cases. This creates a lacuna in the persecution of suspected terrorist in clandestine operations without having to follow the normal court processes.¹⁸⁵ However, in most of the period between 1998 and 2014, there were no explicit counterterror operational laws for persecution as compared to the existence of the Penal Code of Kenya (PC) for the normative criminal laws.

Since terror prosecution was non-existent in the penal code, the close adoption of legal frameworks were the 2001 Banking Act and the Banking Amendments Act to curb the terror financing activities; section 235 of the Penal Code PC to address the

¹⁸² AI, Amnesty International Report 2005 – Kenya. (Amnesty International, 2005). Accessed 20 March 2015 from <http://www.refworld.org/docid/429b27e820.html>

¹⁸³ Ibid

¹⁸⁴ Ibid

¹⁸⁵ The Constitution of Kenya 1963, Section 72. Section 26(3) states that: The Attorney General shall have power in any case in which he considers it desirable so to do -(a) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person; (b) to take over and continue any such criminal proceedings that have been instituted or undertaken by another person or authority; and (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or another person or authority

possession of explosives; murder in section 203 of the PC; killing in 220 destruction of properties in section 340 of the PC; and among others.

The lacuna of terrorism in the criminal justice approach to combating terror created an option to the misuse of the court processes in terror related cases or the frequent use of other counterterror approaches¹⁸⁶.

3.3.2 Police and the Anti-Terrorist Police Unit (ATPU)

The counterterror effort of the Kenyan State led to the acceptance of refugees moving from terror incidences and insecurity in Somali. After the influx of refugees from Somalia in the year 2006-2010, there were reports of abuses of the rights of asylum seekers and refugees homes by the Kenya Police.¹⁸⁷ A 2010 report by Human rights watch uncovered series of killings carried out by the Police at the border, and in addition, unlawful arrests and detention, and inhumane treatments¹⁸⁸.

There were records of inhospitable police cells used to detain asylum seekers due to overcrowding, maltreatments and other elements of poor living conditions¹⁸⁹. More often, the refugees are continually detained without charging them to court or securing their release on bail¹⁹⁰. Between 2008 and 2009 alone, about hundreds to thousands of persons were refouled back to Somalia despite the insecurity in Somalia and the risk of persecution and loss of freedom of the returnees¹⁹¹.

After the 2013 Westgate attack, there were multiples of counterterrorism operation presumed to have infringed of the rights of citizens, refugees and

¹⁸⁶ Mbote, K. Patricia., Migai, Akech., 'Kenya: Justice Sector and the Rule of Law', *A Review by AfriMap and the Open Society Initiative of East Africa*, (2011), 119-130.

¹⁸⁷ HRW., "Kenya: Instruct Officials to Protect Somali Refugees," April 11, (Human Rights Watch, 2009) <http://www.hrw.org/en/news/2009/04/11/kenya-instruct-officials-protect-somali-refugees>; HRW., *Welcome to Kenya*, (Human Right Watch, 2010), Op.cit. p25-26

¹⁸⁸ HRW., *Welcome to Kenya*, (2010), Op.cit p26-33

¹⁸⁹ HRW., *Welcome to Kenya*, (2010), Op.cit p36

¹⁹⁰ HRW., *Welcome to Kenya* (2010) Op.cit p38

¹⁹¹ Human Rights Watch, *Horror to Hopelessness*, Chapter IV

migrants.¹⁹² Between 2013 and 2014, the Unit was accused of involvements in at least 10 killings, 10 disappearances and 11 cases of inhumane treatment and harassment¹⁹³.

Those killings includes the killing of Suspects like Shabaan Namusenda Makotse in April 2013 in Mombasa, Hassan Omondi Owiti and Shekha Wanjiru on 18th May 2013 in Nairobi, Khalif Mwangi on 20th May 2013 in Nairobi, Ibrahim Ramadhan Mwasi on 17th June 2013 in Nairobi, Lenox David Swalleh and 1 other person in November 2013 in Nairobi, Ibrahim Tafa Tuwa and Hamisi Juma on 8th January 2014 in Nairobi, and Sheikh Hassan Suleiman Mwayuyu on 5th December 2013 in Mombasa. Other significant accusations include the killing of Muslim clerics like Sheikh Aboud Rogo in August 2012, Sheikh Ibrahim Omar in October 2013, and Sheikh Abubakar Shariff in April 2014.¹⁹⁴

The disappearances includes but not limited to missing persons like Sylvester Opiyo Osodo and Jacob Musyoka on 23rd May 2012 in Nairobi; Jeremiah Onyango Okumu, Stephen Mwanzia Osaka, Salim Abubakar Hamisi and Omar Shwaib on 26th June 2012 in Nairobi; Abdulaziz Muchiri and Ali Kipkoech Musa on 6th May 2013 in Nairobi; and Yassin Olunga and Ali Musadiki in April 2013 in Nairobi.¹⁹⁵

3.3.3 Kenya Defence Force (KDF)

In November 2012, the KDF conducted operations in Garissa, an operation –which was criticized to be unconstitutional¹⁹⁶ –that resulted in the burning of the local

¹⁹² HRW., *Kenya: Halt Crackdown on Somalis*. (Human Rights Watch, 2014).. Accessed 27 September 2016, <https://www.hrw.org/news/2014/04/11/kenya-halt-crackdown-somalis>; HRW., *Kenya: Police Abuse Nairobi's Refugees*. (Human Rights Watch, 2013). Accessed 27 September 2016, <https://www.hrw.org/news/2013/05/29/kenya-police-abuse-nairobis-refugees>

¹⁹³ HRW., Human Rights Watch., *Kenya: Killings, Disappearances by Anti-Terror Police*. (2014). Accessed 27 September 2016, <https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police>

¹⁹⁴ Ibid

¹⁹⁵ Ibid

¹⁹⁶ Wafula, Caroline., "MPs accuse State of using undue force," 2012. Op cit.

market, shooting at the crowd or protesters that left 1 killed and 10 injured, a separate assault in same operation left 35 injured critically injured.¹⁹⁷ The KDF was accused of human rights abuse inclusive of the shooting of unarmed students and raping women¹⁹⁸.

3.4.0 Counterterror Operations and Human Right Violations

3.4.1 Mandera Triangle

The operation was launched by the Gok in 2008 by joint police and military operation. The operation was focused on the strategy of brutal attack on the civilian population for several days. The operation covered torturing, raping, looting, and mass destruction of properties in 10 towns. At the end, about 1200 were injured with significant number of traumatic women that were raped, and many bedridden months after their experience of torture.¹⁹⁹

3.4.2 Operation Linda Nchi

This operation was launched in October 2011 by the joint cooperation of the Kenya Defence and the Somali Military forces. The operation lasted for 5 months starting on 15th October 2011 and ending on 9th March 2012. On 30th October, the Kenya Air Force (KAF) bombarded an Internally Displaced Persons (IDP) camp located outwards of Jilib town in Somalia. The Médecins sans Frontières (an International Humanitarian NGO) reported to have treated over 45 injured persons, most of whom were about 31 children. At about the early morning hours (1:00am Kenyan time) on

¹⁹⁷ Aynte, Abdi., "How Shabaab is losing the battle, but maybe winning the war", *African Arguments*, November 21 2012, accessed 3 May 2016, <http://africanarguments.org/2012/11/21/how-shabaab-is-losing-the-battle-but-maybe-winning-the-war-%E2%80%93-by-abdi-aynte/>

¹⁹⁸ "Woman killed, 10 injured in Garissa swoop". *The Star*, November 21 2012 accessed June 29 2016, http://www.the-star.co.ke/news/2012/11/21/woman-killed-10-injured-in-garissa-swoop_c707940 ; Wafula, Caroline "MPs accuse State of using undue force" 2012. Op.cit

4th November, the Kenya Naval Force (KNF) at Kiunga, an area in at the Kenyan coast close to Somali-border, fired series of shots at an anchored boat that the KNF had earlier intercepted on 3rd November. The attack killed 4 and injured 2 unarmed persons. The injured and uninjured survivals were arrested and detained but were later released since they were not guilty.²⁰⁰

On the 11th of November, the Kenya forces detained several persons on the bases that they look in appearance like Somalis. This happened across several Pubs in Garissa, in DRC Pub and Locus Pub. Those arrested were treated inhumanely evidently as most of them were immediately made to sit or lie-down on the muddy-water, and some wear beaten severely. Subsequently those arrested and detained without charges were released since they were found to have committed no offence.²⁰¹

On the 2nd of December, the KDF targeted Somali base at al Adde village close to Bardhere in Gedo region, the bombardment killed 4 civilians and injured 35; only 9 out of the 35 injured persons were Al-Shabaab militant.²⁰²

The KDF, on the 4th of January, detained about hundreds of Somalis in just one night raid in Mandera. The raid was a follow-up on the landmine that targeted the KDF in the previous day.²⁰³ As such the hundreds of people detained were not confirmed to have qualified to be branded as suspect or guilty of the attack.²⁰⁴ This incident repeated itself on the 2nd of February where about 20 suspects were also

¹⁹⁹ HRW., "Bring the Gun or You'll Die" Torture, Rape, and Other Serious Human Rights Violations by Kenyan Security Forces in the Mandera Triangle (Human Rights Watch, 2009)

²⁰⁰ Daniel, Bekele., Kenya: Human Rights Concerns of Operation "Linda Nchi": Letter to Yusuf Haji, Minister of State for Defence. (Human Right Watch: 2011). <https://www.hrw.org/news/2011/11/18/kenya-human-rights-concerns-operation-linda-nchi>

²⁰¹ Ibid

²⁰² "Warplanes Hit Somalia Militant Bases: Residents," *Reuters*, December 2, 2011, accessed 27 July 3 2016, <http://af.reuters.com/article/topNews/idAFJ0E7B10AP20111202>

²⁰³ "Kenya Detain More Than 100 People Who Is Originally From Somalia in Madera Town," *Mareeg*, January 4, 2012, accessed 27 July 3 2016, <http://www.mareeg.com/fidsan.php?Kenya-detain-more-than-100-people-who-is--originally-from-Somalia-in-Madera-town&sid=22458&tirsan=3>

²⁰⁴ Ibid

detained after landmine attack²⁰⁵. On the 12th of January 2012, the KDF burnt about 6 Somali nationals that were travelling from Hargarder camp to IFO camp.²⁰⁶ By the end of the operation, the Kenya security forces were accused of gross human rights abuses that included looting, beatings, rape, arbitrary arrests and detentions²⁰⁷.

3.4.3 Operation Know your Neighbour

This initiative urged households in Kenya to be accountable to their neighboring households. The Kenya citizens of Somali origin were strategically singled out and use as scape goats. Most neighbours reported and placed under heavy surveillance were the Kenyan-Somalis thus a bridge into their personal life and subsequently an abuse of their fundamental rights.

3.4.4 Operation Usalama and other operations

The 2014 Usalama Watch was engineered to detect and arrest those illegally staying in Kenya and subsequently persecution those said to have aided their stay or cooperated with any person(s) suspected to have carried out terror acts. Thousands of the Somalis were detained inhumanly. The operation was further challenged with the problematic nature of differentiating Kenya-Somali from the Somali migrants. About 300 persons were deported back to Somalia within the first two weeks of the operation and created Somali ethnic profiling.²⁰⁸

²⁰⁵ Katherine, Zimmerman., Kennan, Khatib., "Timeline: Operation Linda Nchi," *Critical Threats*, March 9 2012, accessed 27 July 3 2016, <http://www.criticalthreats.org/somalia/timeline-operation-linda-nchi-october-24-2011>

²⁰⁶ "Somalia: Kenyan Army Beat and Burns 6 Somali Refugees in IFO Camp to Death," *Mareeg*, January 12, 2012, accessed 27 July 3 2016, <http://www.mareeg.com/fidsan.php?Somalia:Kenyan-army--beat-and-burns--6-Somali-refugees-at-IFO-camp-to-death&sid=22572&tirsan=3>

²⁰⁷ "Group: Security forces abusing Somalis in Kenya," *KTAR*, January 12, 2012, accessed July 3 2016, <http://ktar.com/story/220989/group-security-forces-abusing-somalis-in-kenya/>

²⁰⁸ Kenyanito, Ephraim Percy., "Surveillance In A Legal Vacuum: Kenya Considers Massive New Spying System," *AccessNow*, June 13 2014, accessed October 5 2015, <https://www.accessnow.org/surveillance-in-a-legal-vacuum-kenya-considers-massive-new-spying-system/>.

Between 2011 and 2014 there were about 31 deaths in Nairobi and 12 in Mombasa²⁰⁹ due to direct counterterror operations while about 12 death²¹⁰ were in separate instance recorded as extrajudicial killing making a total of 55 deaths from counterterrorism operations. A total of 8 were injured in Mombasa in 2014 alone²¹¹. Within same period of 3 years between 2011 and 2014, there were about 261 independent cases of illegal arrests and detentions in Nairobi alone²¹² and over 4,000 cases in the whole of Kenya²¹³.

The Muslim communities in Kenya have accused the (GoK) of targeted persecution of Muslims using the counter terror apparatus.²¹⁴ The group cited the deportation, refoulement, and extraordinary radiations of persons identified with high level of Islamic education. Further indications accused the ATPU of unlawful raids with harassment and extortion within the Islamic communities. This claims cannot be said to be false considering a report in 2008 that also explicitly stated the unlawful transfer of persons considered to be of abuse risk in the 3rd country to which they are been transferred to. Countries like Ethiopia, Somalia and US are the frequent cases that have high records of extraordinary renditions²¹⁵, those renditions would have otherwise not been challenged with criticism if they were lawfully conducted²¹⁶. The

²⁰⁹ HRW., Kenya: End Abusive Round-Ups. (2014). Human Rights Watch. <https://www.hrw.org/news/2014/05/12/kenya-end-abusive-round-ups>

²¹⁰ Kenya: End Abusive Round-Ups. (2014). Human Rights Watch. <https://www.hrw.org/news/2014/05/12/kenya-end-abusive-round-ups>

²¹¹ World Report 2015: Kenya. (2015). Human Rights Watch. <https://www.hrw.org/world-report/2015/country-chapters/kenya>

²¹² Kenya: End Abusive Round-Ups. (2014). Human Rights Watch. <https://www.hrw.org/news/2014/05/12/kenya-end-abusive-round-ups>

²¹³ Kenya: End Abusive Round-Ups. (2014). Human Rights Watch. <https://www.hrw.org/news/2014/05/12/kenya-end-abusive-round-ups>

²¹⁴ U.S DoS., *International Religious Freedom Report 2009*, (United States Department of States, 2009), <http://www.state.gov/documents/organization/140693.pdf>

²¹⁵ AI., "Kenya: Unlawful Transfers of 'Terror Suspects' Must Be Investigated," (2008), Op.cit

²¹⁶ REDRESS and Reprieve., *Kenya and Counterterrorism: A Time for Change*, February (2009); HRW, *Why Am I Still Here? The 2007 Horn of Africa Renditions and the Fate of Those Still Missing*, October 1, (2008)

suspects of the 2010 Kampala bombing were extradited to Uganda to stand trial without the lawful procedures of extradition²¹⁷.

3.5.0 Chapter Conclusion

The establishment of mechanisms to protect human rights in terms of legal framework and implementation is important²¹⁸, and most often while the Kenyan States have the legal frameworks on Human Rights and counterterrorism, the implementation usually infringe on the human rights of the people especially in clandestine operations²¹⁹ inclusive of extraordinary renditions where the terrorist will be treated inhumanely²²⁰.

Within 1998-2014, the international human right law on terrorism has not changed; however, the human right regimes in Kenya have been altered by the ever changing political spheres as a measure to combat terror. Therefore, there are need for States to engage in judicial modifications to ensure that terror is prevented with cognizance of ensuring that human rights are not violated during counterterror; and also the need for Nongovernmental Organization (NGOs) and Civil Society Organizations (CSOs) to ensure these are checked and voiced out.

With respect to the liberalist theory used in the analysis of this chapter, the findings of this chapter with regards to research question 2, (*What are the existing mechanism of countering terrorism and their implications on human rights?*) indicated that the mechanism of counterterrorism in Kenya is more based on a militaristic approach which have continually infringed and undermined the rights. The v mechanism relies more on defence and war mechanism that neglects an additional

²¹⁷ “Kenyan Judge Lambasts Extradition of Bomb Suspects,” *Reuters*, September 28 2010, accessed April 5 2015, <http://www.reuters.com/article/uganda-arrests-idAFLDE68R26520100928>

²¹⁸ Osman, A., Somalia at the Center of Global War on Terrorism: A Possible Misconception? *Conference Papers: International Studies Association*, 1, (2008).

²¹⁹ Mogire, E., Mkutu, A., K., ‘Counter-terrorism in Kenya’, *Journal Of Contemporary African Studies*, 29, no. 4 (2011): 473-491.

²²⁰ Walsh, J. I., Piazza, J. A., ‘Why Respecting Physical Integrity Rights Reduces Terrorism’, *Comparative Political Studies*,

use of an effective criminal justice mechanism. The implication of the present CT approach in Kenya is seen to have human rights implications that includes but not limited to unlawful arrests and detention, breach of privacy during internet tracking and monitoring operations, unfair court trials and legal proceedings, abuse during Legal arrests, raids and search without warrant, rendition and Non- Refoulement, torture and extrajudicial killings.

CHAPTER FOUR

TOWARDS A BALANCE BETWEEN HUMAN RIGHTS AND STATE SECURITY

4.0 Introduction

The complexity of terror has led to misinterpretations and misappropriation of a reciprocal State's reaction to counterterror. Those reactions branded with a focus of suppressing terror have increasingly turned out to be an instrument of oppression and atrocities, and of which State are less likely to account or redress such approaches. This chapter uses the liberalist and realist theory to find a balance on how human rights regimes can be sustained. The chapter seeks to redress the balance between the security of the people and their entitlement of rights; upholding democratic system and as well ensuring state security.

States are indeed faced with the challenge of protecting the rights and freedom of the people when engaged with an act of suppressing terror acts. State faces criticism from liberalists and in addition risks their obligation to protect the people when State fails to balance between protection of right and security of the people as rightly put forward in the doctrine of the State's responsibility to protect person(s) within their territory.²²¹

The GoK under the call of the United Nation Security Council (UNSC) have the mandate to ensure measures are taking to protect the people in the state from terrorism and such measure must comply with all international laws, specifically the refugee and humanitarian law, and the international human right law²²². The protection of the

²²¹ Thomas, Hoffman., 'Human Rights and Terrorism', *Human Rights Quarterly*, 26, no.4, (2004)

²²² UNSC., Security Council Resolution 1456, adopted on 20 January UN Doc. S/RES/1456 (UN Security Council, 2003), (2003); UNSC., Security Council Resolution 1373, adopted on 28 September, UN Doc S/RES/1373 (UN Security Council, 2001).

people must apply to those at the risk of been terrorized and those suspected to have engaged in terror acts. However in an exceptional case of legitimate emergency which are not meant to be frequent or abused, the state has the obligation to suspend certain rights in order to ensure the utmost security of the people.²²³ However, critics urged that in those exceptional cases, at a minimal protection of rights, it is non-negotiable to ensure that right to speak and be heard, to information, and to judicial review are upheld²²⁴.

4.1.0 Security as an Obligation

The GoK stance on security is to ensure peace and prevent anarchy arising from terrorism. This position is not negotiable and as such the need to ensure terrorists are defeated. The fear of the Kenya resulting into a blown insecurity may address GoK offensive counterterrorism which places less or no consideration on rights. GoK wants to be internationally viewed as able to deal with threats within the States territory with good governance, and thus engages in approaches that will sustain the States governing regime.

The fear of the States' failure to ensure security of her citizen –a failure in the responsibility to protect the individuals in the State –which calls for foreign intervention as identified under the UN International Commission on Intervention and State Sovereignty (ICISS)²²⁵. With the UN's R2P rhetoric that 'Sovereignty no longer exclusively protects States from foreign interference; it is a charge of responsibility that holds States accountable for the welfare of their people', democracies have turned towards championing of state control under the shadows of counterterrorism.

²²³ ICJ., *Assessing Damage, Urging Action*, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights (Geneva: International Commission of Jurists, 2009)

²²⁴ Miša, Zgonec-Rožej, Kafka., Sisyphus and Bin Laden: Challenging the Al-Qaida and Taliban Sanctions Regime

4.2.0 Kenya's Obligation on Human Rights as a Subset of Security Protection

The doctrine of R2P has been widely accepted after it was first set forward in 2001.²²⁶

The basic principles of the doctrine stresses the obligation of State to by all means legally justified, to protect the people with the State and failure in this demand calls on the international community on the responsibility to protect such people in the States. States' responds to this doctrine is to ensure at all cost and time to ensure peace without having to risk the sovereignty of the State. However, the foundation upon which the R2P emerged is under a number of guiding principles inclusive of the protection of right as an obligation under the declarations of human rights and human protections, national human rights laws, and international humanitarian law.

The compromise of either human rights or security affects the other since they are mutually inclusive. As such, any counterterrorism measure that violates human rights also undermines the Nation's security.²²⁷ Thus protection of the basic rights and fundamental freedom of the people is in itself a constituent of *Security*.

The fulfilment of this R2P obligation of complex security creates a dilemma for state on which comes first, which to restrict or limit. The rightness in such determination requires a balance and consideration of factors that ensures the security of not only the state and international obligations, but also the public's opinion interest and security.

To this end, the UN established rights monitoring bodies to ensure the implementation of rights of the people in member states that are signatory to those treaties. Those 10 monitoring bodies includes Human Rights Committee (CCPR); Committee on Economic, Social and Cultural Rights (CESCR); Committee on the

²²⁵ UN., Responsibility to Protect: Report on the International Commission on Intervention and State Sovereignty ICISS (United Nation, 2001) http://www.un.org/en/ga/search/view_doc.asp?symbol=A/57/303

²²⁶ Ibid

Elimination of Racial Discrimination (CERD); Committee on the Elimination of Discrimination against Women (CEDAW); Committee against Torture (CAT); Subcommittee on Prevention of Torture (SPT); Committee on the Rights of the Child (CRC); Committee on Migrant Workers (CMW); Committee on the Rights of Persons with Disabilities (CRPD); Committee on Enforced Disappearances (CED); and Human Rights Committee (HRC).

4.2.1 The right to life

The Article 6 of the 1966 International Covenant on Civil and Political Rights (ICCPR) affirms that people have the right to life and that such person(s) shall not be deprived of life and shall be protected by law.²²⁸ However the doctrine accord laxity to State laws by further stating that the right life may be derogative to death sentence in cases where serious crime have been committed. Article 4 reiterated that state may seek not to be obliged to Article 6 only in an emergency.²²⁹ While critics may address this as a lacuna –that Kenya States hides under this to violate the rights of the people, it is important to ensure that such emergencies are legitimately declared in commensurate correlation to the actual level of insecurity threat, non-frequent, and the seizure of emergency once the security threat level is reduced. HRC calls on an adoption of principle that respects liberalism and democracy irrespective of the security level²³⁰, which respects and protects human rights human rights at all cost.

²²⁷ Shola Omotola, J., ‘Assessing Counter-Terrorism Measures in Africa: Implications for Human Rights and National Security’, *Conflict Trends*, 2008, 41–48.

²²⁸ International Covenant on Civil and Political Rights (ICCPR), U.N.Doc.A/6316 (1966)

²²⁹ Ibid

²³⁰ International Covenant on Civil and Political Rights (ICCPR), Consideration of Reports Submitted by State Parties Under Article 40. CCPR/C/79/Add. 54 para. 27 (1995)

4.2.2 The right to freedom from torture and inhumane or degrading treatment, and discrimination

The right to freedom –by means from torture, inhumane and degrading treatment, exclusive of discrimination is non-derogative. ICCPR stated that no persons under any conditions should be subjected to torture, inhumane or degrading punishments²³¹. HRC affirms this by stating that Article 7 of the ICCPR has no limitation either through presidential order or in an emergency situation.²³² Also article 2 of the CAT clearly states that State must refrain from any justification of exceptional situations that warrants the cessation of the peoples right of not been tortured or inhumanely treated²³³ This conditions the Kenya State that in no circumstance should the counterterror mechanisms or approaches applied, torture or inhumanly treat persons categorized as either being at risk of terror attack or suspects of terror or perpetrators of terror.

Despite the terror challenges faced by the Kenya state, in a situation where the terror group has no value for the freedom of the people, HRC still in the doctrines' affirmation that moderate torture to uncover information is an abuse of rights states in Article 7²³⁴. Thus in all forms of weighing a balance between public security and torture of persons for intelligence, the security of the people should be made a priority by not initiating any form of torture on any member of the populace.

HRC prohibits discrimination in any form of element characterized on race, sex, language, religion, nationality, colour, and political opinion or inclination.²³⁵

Consideration in this regards have been unhelpful as there are reported cases of racial

²³¹ International Covenant on Civil and Political Rights (ICCPR), (1966) Op.cit Article 7

²³² UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March, (1992)

²³³ International Covenant on Civil and Political Rights (ICCPR), (1966) Op.cit Article 10

²³⁴ UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Israel*, 18 August 1998, CCPR/C/79/Add.93, para 19, 21

²³⁵ International Covenant on Civil and Political Rights (ICCPR), (1966) Op.cit Article 26

profiling and nationality and religious discrimination in the counterterror fight by the GOK. The CERD underscores the obligation of States to ensure that no form of discrimination is observed while countering terrorism²³⁶.

HRC recognizes the vulnerability of people of Islamic and Arabic descent²³⁷ and calls on the protection of the Arabs and Muslims during counterterrorism operations²³⁸. This draws the attention of GoK to the protection of Muslims and the Somali descent in counterterror operations in Kenya, and furthermore, the need to sensitize the Kenya community on better treatment of foreign nationals that risk been discriminated²³⁹. CERD stresses the need to monitor and prosecute abuser of such non-discriminatory rights²⁴⁰. Furthermore is the call to guarantee the non-discriminatory safety of migrants, asylum seekers and refugee.²⁴¹

4.2.3 Detention

While it is of strategic intelligence to detain a suspect in isolation or separately from other criminals, liberal stance asserts in support of the HRC that prolonged detention to acquire information contravenes the human rights privileges in detention and an abuse of Article 7²⁴² in same vain as such imprisonment and isolation of person(s) without trial²⁴³. Therefore in the fight against terror, suspects in special cases may be detained but not for a longer period of time that would contravene their rights.

²³⁶ UN Committee on the Elimination of Racial Discrimination (CERD), *UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Russian Federation*, 2 June 2003, CERD/C/62/CO/7 para 24

²³⁷ ICJ., *Assessing Damage, Urging Action* (2008) Op.cit

²³⁸ UN Human Rights Committee (HRC), UN Human Rights Committee: Concluding Observations: Sweden, 24 April 2002, CCPR/CO/74/SWE, para. 12 <http://www.refworld.org/docid/3d04bcda2.html>; UN Committee on the Elimination of Racial Discrimination (CERD), *UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Republic of Moldova*, 21 May 2002, CERD/C/60/CO/9, para. 15 <http://www.refworld.org/docid/3d5a73c515.html>; UN Committee on the Elimination of Racial Discrimination (CERD), *Report of the UN Committee on the Elimination of Racial Discrimination, Sixtieth Session (4-22 March 2002) and Sixty-first Session (5-23 August 2002)*, 1 November 2002, A/57/18, para. 338 <http://www.refworld.org/docid/3f52f7aa4.html>

²³⁹ UN Human Rights Committee (HRC), April 2002, CCPR/CO/74/SWE Op.cit

²⁴⁰ UN Committee on the Elimination of Racial Discrimination (CERD), 1 November 2002, A/57/18, Op.cit. para. 121

²⁴¹ UN Committee on the Elimination of Racial Discrimination (CERD), November 2002, A/57/18, Op.cit. para. 338

²⁴² UN Human Rights Committee (HRC), 18 August 1998, CCPR/C/79/Add.93, Op.cit. para. 20

²⁴³ UN Human Rights Committee (HRC), 18 August 1998, CCPR/C/79/Add.93, Op.cit. para. 20

4.2.4 Fair trial

HRC strongly affirmed that State should under no circumstance derogate the right of person(s) to fair trial as indicated under Article 4 and 14 of the Covenant²⁴⁴. The right to fair trial is explicitly guaranteed under the principles of international humanitarian law in cases of counterterrorism and further asserted in cases where state of emergency is declared²⁴⁵. This affirms the presumption of innocence until proven guilty.

HRC stresses the prohibition of military tribunals, which evidently lack legal training that is effective enough to consider the obligations to respect human rights,²⁴⁶ and such courts are more likely to be headed by faceless Judges²⁴⁷.

4.3.0 Human Right inclusivity in Comprehensive Security

Walker suggested that in arguments on balancing rights and security, human rights should be placed ahead of balancing values. Security should be viewed as rights as opposed of being viewed as value. The view of balancing all rights as an inclusivity of security ought to be pioneered than balancing rights and the need for security. This is justified firstly, that the achievement of a balance of rights is feasible if security is an element within rights that are in consideration for a balance. Secondly, the identification of security as part of human rights regimes reduces the risk or likelihood of State to derogate the fundamental rights of people in favour of security as isolation. And thus lastly, viewing security as rights consolidates the needed counterterrorism

²⁴⁴ UN Human Rights Committee (HRC), *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, CCPR/C/21/Rev.1/Add.11, paras. 11, 16 <http://www.refworld.org/docid/453883fd1f.html>

²⁴⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10 <http://www.refworld.org/docid/4538838c22.html>; General Comment No.29, CCPR/C/21/Rev.1/Add.11 (2001)

²⁴⁶ UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations of the Human Rights Committee, Slovakia*, 4 August 1997, CCPR/C/79/Add.79, para. 20 <http://www.refworld.org/docid/3ae6b032c.html>; CCPR/C/79/Add. 76, para. 34 (1997); CCPR/C/79/Add. 67, para.350 (1996); CCPR/C/79/Add.78. para.14(1997).

²⁴⁷ UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Peru*, 15 November 2000, CCPR/CO/70/PER, para. 350 <http://www.refworld.org/docid/3b39f0d96.html>

laws that will protect not only the right of person(s) but in addition validates the existence of values required of an actual liberal democratic State.²⁴⁸

4.3.1 Towards a Regime of true Liberalist Democratic State

Democratic states are faced with the risk of overreacting when confronted with the use of the rule of law in terrorism. More often, such State deliberately makes a radical departure from the use of conventional judiciary, law and enforcement procedures that undermines security as a whole. The disregard for constitutional principles of legal authority in itself undermines the true principles of a democratic State, and thus a loss of literacy of counterterror efforts. Counterterror approach not controlled by an institutionalized policy is as well a representation of terrorism otherwise called state terror.²⁴⁹

Counterterror measure used by a democratic state ought to be generally accepted process by the society and as well address the issues of insecurity that has been created by terrorists, thus the choice of a cruel choice that limits some significant democratic values in order to ensure effective counterterrorism or adapt to a significant level of terrorism in order to protect the integrity of democracy²⁵⁰. However, dissatisfied population as well puts the State at risk to an increasing insecurity through under-intelligence and exploitation of the situation by terrorists disguised in propaganda.

The normative concern is that authoritative regimes ascribe to the violation of human rights as a strategy to suppress challenge and maintain power. However, such

²⁴⁸ Clive Walker, Clamping Down on Terrorism in the United Kingdom, *Journal of International Criminal Justice*, 4, (2006): 1137-1147.

²⁴⁹ Peter Chalk, The Response to Terrorism as a Threat to Liberal Democracy, *Australian Journal of Politics and History*, 44, no. 3 (1998): 374.

²⁵⁰ Alex P. Schmid, ed et al. "Terrorism and Democracy" in *Western Responses to Terrorism*, (Frank Cass and Company Limited, 1992), 15.

violations are not only limited to authoritarian regimes but inclusive of democratic states. A true democratic States should have a succinct stance on the importance of civil liberties and rights for which the state is identified as democratic. The UN human rights treaty monitoring bodies can play more roles in ensuring advancing knowledge of human rights to aid effective implementation in States²⁵¹. State need not only be signatory to human rights treaties, likewise as ratification is not enough, but the implementation of those human rights treaties. In same vain, State have in some cases avoided been signatory to some human rights treaties, as such, fails to account for human rights crimes committed.

Institutionalization of human rights monitoring at global, regional, national and local levels has not been in implantation specifically in Africa where the regional and local institutionalization is non-explicitly existent as an independent institution. Such independent regional and local institutions are needed to validate and checkmate the global reports and thus demystify the criticism of the politicization of institutions.

Participation and cooperation of States with the UN machineries of human rights and the synergy of International human rights regimes with respective National human rights regimes has never been as important as in the 21st century era of modern terrorism. Cautioning, monitoring and reversing the abuses of human rights are dependent on democratic leniency and political will of States to actively engage in comprehensive approach that respects human rights.

²⁵¹ J.A. Mertus, *The United Nations and Human Rights: A guide for a new era* (Routledge 2005), Global Institutions Series; N.D. White, *The United Nations system: towards international justice*, (Lynne Rienner Publishers 2002).; K. Mechlem, 'Treaty Bodies and the interpretation of human rights', *Vanderbilt Journal of Transnational Law*, 3, no. 42 (2009): 905-947

4.3.2 Derogability of Human Rights in Exceptional Circumstance

Clear stance on human rights demands an understanding of rights that are derogable and rights that are not. Also is the derogation of rights that are derogable. The flexibility of human rights regimes makes it easier for states to maneuver between the derogative rights and ensuring security of the people. Measures taken to derogate the derogable rights should be monitored and with application in exceptional circumstance which guarantees the non-abuse of prolonged practice of derogation²⁵².

4.3.3 Activation of Economic, Social and Cultural Rights

HR as widely acknowledged in relation to its abuse in times of terrorism is more often than not linked with physical rights otherwise called civil and political rights i.e. life, torture, inhumane treatments, and detention and fair trial. However, economic, social and cultural rights are also infringed upon during terrorism and counterterrorism. Thus the neglects of those rights constitute a favourable environment for unaccountability in situations where they are more often infringed upon.

The UN ESCR stated that the violation of economic, social and cultural rights during counter terrorism has taken an incomparable dimension of negligence as compared to the clamour for the respect of civil and political rights. Furthermore the measures that States have put in place greatly impacted and further aggravated the economic, social and cultural rights of people that were previously impacted by acts of terror.²⁵³

²⁵² *Assessing Damage, Urging Action*, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights (Geneva: International Commission of Jurists, 2009)

²⁵³ "Human Rights, Terrorism and Counter Terrorism", Fact Sheet No.32, Office of the United Nations High Commissioner of Human Rights <http://www/ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx>; United Nations Counter Terrorism Implementation Task Force Working Group 'Protecting Human Rights While countering Terrorism', Expert Seminar on 'The impact of terrorism and Counter Terrorism measures on the enjoyment of economic, social and cultural rights' (Geneva: UN ESCR 2008) p57.

Rights activists, institutions and international human rights instruments have condescended that civil and political rights, economic, social and political rights are interrelated, interdependent and indivisible.²⁵⁴ Thus strategies to uphold human rights that usually include only civil and political rights ought to in addition also address economic, social and cultural rights as path to a comprehensive approach towards ensuring all rights are upheld in counterterror efforts. The importance to uphold the economic, social and cultural rights is not only in avoidance of its abuse but in the potentiality of cropping the breeding of terrorism. The deprivations of those rights have been attributed to the emergence of terror acts; likewise as its violation in counterterrorism have the propensity to undermine counterterror efforts.

4.4.0 Chapter Conclusion

The possible balance of ensuring human rights are upheld while countering terrorism is not only to make national framework provisions for –but also ensure security structures created to combat terror implements –the sustenance of *rights to life, rights in arrest and detention, rights in torture and inhumane treatment, rights in rendition and non- refoulement , and rights in fair hearing and trial* and therefore these rights should be non- derogable with national laws with respect to various international security and protection regimes²⁵⁵.

The need for state law to conform with international law are often overlooked²⁵⁶, and there is need to recognize the fact that security of the citizen of States is among the fundamental human rights and should not otherwise be viewed as

²⁵⁴ D.J.Whelan, “Untangling the Indivisibility, Interdependency, and Interrelatedness of Human Rights,” Economic Rights Working Paper Series, (The Human Rights Institute, University of Connecticut 2008)

²⁵⁵ OHCHR., Joint Statement by UN Special Rapporteurs and Independent Experts. E/CN.4/2004/4, (Geneva: Office of the United Nations High Commissioner for Human Rights, 2003), Annex 1. <http://www2.ohchr.org/english/issues/terrorism/>

²⁵⁶ Clive Walker, Clamping Down on Terrorism in the United Kingdom, *Journal of International Criminal Justice*, 4, (2006): 1137-1147.

a value. If security cannot be exclusively isolated from human rights, then governments with the mandate of ensuring security is otherwise promoting human rights since it is less likely for such State to derogate from security which is part of human rights, and thus a validation of counterterrorism laws to protect the existence of liberal democracy which out-rightly puts State's citizens into consideration²⁵⁷.

While the state assume the realist view in all its rules and principles to counter terror, it is important that State also consider the liberalization of those principles of counterterror in order to ensure and effective efforts against terrorism. The realization of those successful efforts cannot be archived when the principles and practices to sustain human rights are non-existent or not upheld. The findings of this chapter with respect to research question 3, (*What are the comprehensive grand strategy and mechanism of countering terrorism that needs to be put in place to protect human right?*) indicated that the comprehensive strategy on the protection of human rights in Kenya has not been sufficient enough to defend the rights to life, freedom, to fair trial and against prolonged detention. The strategy in-place has not demonstrated with regards to human rights, a true liberalist democratic state; and finally an indication of the neglect of the economic social and cultural rights.

²⁵⁷ OHCHR., Joint Statement by UN Special Rapporteurs and Independent Experts. (2003) Op.cit

CHAPTER FIVE

DATA PRESENTATION AND ANALYSIS

5.0 Introduction

This chapter presents the data collected from both primary and secondary sources. Furthermore it makes analysis on the findings on the research question one, two and three: the impacts of terrorism on human rights; the existing mechanism of countering terrorism and their implications on human rights; and the comprehensive grand strategy and mechanism of countering terrorism that needs to be put in place to protect human right.

Table 5.1 Gender of Interviewees

Gender	Frequency	Percent (%)
Female	3	18.8
Male	13	81.3
Total	16	100.0

The interviewees comprises of 13 males and 3 female as shown in Table 5.1.

This is an indication that the role of women in counterterrorism has not been fully explored. Terrorism is often stereotyped as masculine behaviour and thus need to be challenged with same behavioral attitude, whereas woman actively involved in terrorism and needs to be also actively engaged in the fight against terror²⁵⁸. This can be said to have resulted to the gender disparity approach of expertise involved in counterterrorism.

Under the Security Council Resolution 2242, Kenya is obliged to recognize the impact of terrorism and counterterrorism on women and children's right because

²⁵⁸ Ní Aoláin, Fionnuala. "Situating Women in Counterterrorism Discourses: Undulating Masculinities and Luminal Feminities." *Boston University Law Review* 93, no. 3 (2013): 1091–1092.
<http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=89713622&site=ehost-live>.

women have a significant role in world peace and security.²⁵⁹ This can be achieved through women’s involvement in policy formulation, implementation and enforcement of comprehensive counterterror mechanism. The low number of female interviewees reveals that the civil societies, legal practitioners and justice system, and other government agencies involved in counterterrorism have not enhanced measures to ensure gender parity among the expertise involved in counterterrorism²⁶⁰. And this tends to reduce the optimal efforts of counterterrorism²⁶¹. Those optimal efforts of ensuring an effective counterterrorism include the sustenance of human rights achieved not based on feminist activism but on the fact of a gender balanced approach for effective security.

Table 5.2 Years of Human rights/counterterror experience

Years of Experience	Frequency	Percent (%)
3 Years or less	2	12.5
4 to 6 Years	4	25.0
10 to 15 Years	10	62.5
Total	16	100.0

Table 5.2 shows that 14 of the respondent have been working for at least a mean average of 11 years in the field that is thematically related to this research study. Two third of the respondents have over 10 years of experience related to this study. This indicates the personnel interviewed during the course of this research study have at least 10 years of professional experience out of the 16 years period of the study focus i.e. 1998-2014 of this research.

²⁵⁹ UN Security Council, *Security Council resolution 2242 (2015) [on women and peace and security]*, 13 October 2015, S/RES/2242 (2015), <http://www.refworld.org/docid/562097f44.html>

²⁶⁰ "Topics Women And Counterterrorism," *Globalcenter.Org*, n.d, accessed October 7 2016, <http://www.globalcenter.org/topics/women-and-counterterrorism/>.

²⁶¹ Ní AolÁin, Fionnuala. "Situating Women in Counterterrorism Discourses: Undulating Masculinities and Luminal Feminities." (2013) Op cit. 1093

The productivity of workers cannot be determined by ex-ante but by progressive job tenure experience²⁶². This translates to the fact that the professional experience of the interviewees is sufficient enough to inform this research study. However, the total years of experience is low and this is due to the fact that the emergency of counterterrorism operations in Kenya started in 1998, and championing of human rights and counterterrorism in Kenya's professional training and studying institutions have not been widely and well-grounded.²⁶³

Table 5.3 Years of working period in current employment

Years with Organization	Frequency	Percent (%)
3 Years or less	5	31.3
4 to 6 Years	4	25.0
7 to 9 Years	2	12.5
10 to 15 Years	5	31.3
Total	16	100.0

As shown in Table 5.3, out of the 16 interviewees: 5 have been working between 10 to 15 years i.e. an average of 11 years with their current organization chosen by the researcher to inform this research study; 9 with about 1 to 6 years i.e. an average of 3 years with the organization they represent; and 7 with about 7 to 15 years i.e. and average of 11 years with the organizations they represent.

This indicate that about half of the interviewees have been working for 11 years with their present organization while the other half has an average of 3 years. This can be explained based on the fact that the emergence or establishments of human-rights/counterterrorism institutions in Kenya were fewer in the years closer to 2003 (*11 years from 2014*) and increases as the period extends to 2011 (*3 years from*

²⁶² Jovanovic, Boyan., "Matching, Turnover, and Unemployment," *The Journal of Political Economy*, 1984.

²⁶³ Irene, Ndungu., "To Fight Terrorism, Fight Corruption First ," *ISS Africa*, October 9, 2015, accessed October 7 2016, <https://www.issafrika.org/iss-today/to-fight-terrorism-fight-corruption-first>. ; Peter, Kirechu., "Kenya's Counterterrorism

2014). The ATPU was established in 2003, NCTC in January 2004, IPOA in November 2011, KNCHR in 2011, KCHR in 1991, HRW 1989 while other civil society organizations became operational in the late 2000's²⁶⁴.

This result can also be translated that the responses from the interviewees is a representation of the views of the organizations they represent since the interviewees a mean average of 7 years working experience with their respective organization.²⁶⁵

5.1 Terrorism Implication of Human Rights

Terrorism does not recognize human rights rather it is a perpetuation of sacrilegious act that has utmost disregard for human rights.²⁶⁶ Terrorists violates the rule of law²⁶⁷ and impose their own rules with minimal regard to human dignity, less or no freedom, gender discrimination and less or no right to justice²⁶⁸. Terrorism causes destruction of lives and property and additional has negative impact on the economy²⁶⁹. Terrorism like any other crime infringes on the right of the people particularly on the right to life, live freely without restrictions and right of control and usage over property²⁷⁰. The infringement on freedom includes but not limited to freedom of association, assembly, and expression; and above all on economic and social freedom²⁷¹. Apart

Approach Is Floundering," *The National Interest*, August 4 2016, accessed October 7 2016, <http://nationalinterest.org/feature/kenyas-counterterrorism-approach-floundering-17247>.

²⁶⁴ HRW., "Kenya," in *Human Rights Watch World Report 1989*, (Human Rights Watch, 1989), <https://www.hrw.org/reports/1989/WR89/>. ; "KHRC - About Us," *Kenya Human Rights Commission*, n.d, accessed October 7 2016, <http://www.khrc.or.ke/about-us.html>. ; "Establishment," *Kenya National Commission on Human Rights Commission*, n.d, accessed October 7 2016, <http://www.knchr.org/Aboutus/Establishment.aspx>. ; "About Us," *Independent Police Oversight Authority*, n.d, accessed October 7 2016, <http://www.ipoa.go.ke/about-us.html>. ; GoK., UNDP., *Strengthen Community's Capacity against Radicalization and Violent Extremism in Kenya* "project document" (Kenya: Government of Kenya and United Nations Development Programme, 2015) 6, [https://info.undp.org/docs/pdc/Documents/KEN/\(Kenya%20rev%20270115\)%20Kenya%20Counter%20Terrorism%20project%20Document%20FINAL.pdf](https://info.undp.org/docs/pdc/Documents/KEN/(Kenya%20rev%20270115)%20Kenya%20Counter%20Terrorism%20project%20Document%20FINAL.pdf).

²⁶⁵ Jovanovic, Boyan., "Matching, Turnover, and Unemployment," *The Journal of Political Economy*, 1984.

²⁶⁶ 15th Interviewee, NCTC in discussion with the author, September 2016.

²⁶⁷ 16th Interviewee, NCTC in discussion with the author, September 2016.

²⁶⁸ 1st Interviewee, KDF in discussion with the author, September 2016.

²⁶⁹ 2nd and 3rd Interviewee, KDF in discussion with the author, September 2016.

²⁷⁰ 4th, 5th and 6th Interviewee, ATPU in discussion with the author, September 2016.

²⁷¹ 14th Interviewee, IPOA in discussion with the author, September 2016.

from the direct infringement on economics activities, the impact of terror also extends to long term consequences²⁷² that have implications on human rights.

Terrorism have occasioned destructions; the violation of the rights to life, right to own property, right to work, right to be free; and ultimately generative to torture, rape, defilement and other degradable treatments.²⁷³ Those treatments are usually not only applicable to captured terrorists that are considered legally guilty but also on terror suspects along with innocent victims that were arrested²⁷⁴.

Such degrading treatments are facilitated by the unfamiliarity of terrorism to law enforcer²⁷⁵, the failure of the police reform²⁷⁶ which has human rights training of law enforcers as one of its core mandate²⁷⁷; and additionally an introduction of draconian legislation by the State that aids the arrest of many innocent Kenyans, further creating social instability as it affects the family systems, extending to the current polarization or marginalization as experienced in some parts of Kenya²⁷⁸.

Terror attack do not only violate the rights of the people to life and live freely but most importantly affects the socioeconomic rights of the people. It hinders development as it affects State's allocation of resources to development since the State prioritizes its resources on enhancing counterterrorism mechanisms and apparatus.²⁷⁹ Therefore terrorism has to a greater extent undermined the ability of the Kenya State to fulfill the right that should be accorded to her citizen²⁸⁰.

²⁷² Niehaus, G., 'The allocation of catastrophe risk', *Journal of Banking and Finance*, 26 (2002): 585–596.

²⁷³ 7th Interviewee, KNCHR in discussion with the author, September 2016.

²⁷⁴ 9th Interviewee, KNCHR in discussion with the author, September 2016.

²⁷⁵ 6th Interviewee, ATPU in discussion with the author, September 2016.

²⁷⁶ AI., "Human Rights Implications Of The Failure To Reform The Police" in *Police Reform in Kenya: A Drop in the Ocean*, (Amnesty International, 2013), 20, https://www.amnesty.nl/sites/default/files/public/kenya_afc_32_001_2013.pdf

²⁷⁷ OHCHR., *Republic Of Kenya Universal Periodic Review Of The United Nations Human Rights Council: National Mid Term Report*, (OHCHR, 2012), http://lib.ohchr.org/hrbodies/upr/documents/session8/ke/kenya_mid-term_upreport.doc

²⁷⁸ 10th Interviewee KHRC in discussion with the author, September 2016.

²⁷⁹ 8th Interviewee, KNCHR in discussion with the author, September 2016.

²⁸⁰ 12th Interviewee, KHRC in discussion with the author, September 2016. ; 13th Interviewee, HRW in discussion with the author, September 2016.

Table 5.4 shows that all the interviewees agreed that terrorism is a threat to the physical and psychological wellbeing of the people; and also destructive to the sustenance of human rights and global development. Additionally 81.3% of the interviewee's responses indicated that terrorism as an act of war while 75% considers terrorism as criminal and unjustifiable on the 68.8% responses that terrorism is caused by the rights denial.

Table 5.4 Interviewee's view on Implication of terror

Definition of terror Implication on Human right	Agree (%)	Disagree (%)	Neutral (%)
Threat to Physical and psychological wellbeing	100	0	0
Political problem and caused due to denial of rights	68.8	18.8	12.5
Criminal and unjustifiable based on any rights denial	75	25	0
Act of war against the people and their freedom	81.3	6.3	12.5
Destructive to sustenance of human rights and global development	100	0	0

The indication from the table 5.4 shows that terrorism is often viewed less as a political and social problem caused by the lack of appropriate measures to improve economic, social and cultural rights of the people. The low agreement of 68.8% also shows less cognizance on socio-economic rights of the people and thus the less usage of reconciliatory model of counterterrorism.

In line with other models of counterterrorism, 100% agreement to physical and psychological threat indicates that there is high use of defensive counterterror model; and the 81% agreement shows also the high use of war-counterterror approach. This view signifies that there are less inclusion of criminal justice and reconciliatory model

as compared to the previous two models. Thus terrorism in Kenya has been met with the use of intelligence and military operations to protect the interest of the State.²⁸¹

Terrorism is a reaction by certain groups due to denial of certain rights like self-determination, cessation or religious freedom, however, terrorism is still destructive and considered illegal, a forceful and unacceptable way of addressing their demands because it abuses and further deny others the very rights they previously considered to have been denied.²⁸² Those terror activities usually attack helpless populations like children and women among other innocent and or unarmed defenseless civilians²⁸³. Furthermore terror is motivated to delegitimize the State and incapacitate the State as to not able to secure the protection of the people, ensure economic growth and development²⁸⁴. Thus terror is considered a declaration of war against any State²⁸⁵

Terrorism manifests in two forms either by the state of Non-State Actors (NSAs) and in isolation both considers their actions as appropriate and not worthy to be regarded or called terror. In reality, groups considered as liberation movements have been previously branded as terror whereas greater number of the democratic population views such group legitimate and as such their actions are terror only in the views of the State or government. For example Kwame Nkurumah and his movement would have been considered as terrorist in this present day; also Nelson Mandela was viewed by many as terrorist and he was on the USA terror list until the delisting in 2008. Terror attacks perpetuated by NSAs usually targets government installations

²⁸¹ Ami, Pedahzur., Israeli Secret Service and the Struggle against Terrorism. (2009). Op.cit

²⁸² 1st Interviewee, KDF in discussion with the author, September 2016.

²⁸³ 7th Interviewee, KNCHR in discussion with the author, September 2016.

²⁸⁴ 15th Interviewee, NCTC in discussion with the author, September 2016.

²⁸⁵ Ibid

and personnel as hard target while fellow NSAs and non-governmental organizations are soft targets.²⁸⁶

Thus terror is an act that threatens the physical security and psychological wellbeing of the people, considered destructive enough to the sustenance of human rights and global development, regarded as an act of war against the people and their freedom, criminal and unjustifiable to the claims of the terrorists that they have been marginalized, due to denial of rights, usually socioeconomic rights.

Terrorism usually leads to disproportionate profiling of people suspected to be terrorists, increased State budget on security likewise as it reduces the nation's Gross Domestic Product because of less revenue from the aviation and tourism industry as a result of the fear of been a victim of terror, travel bans and strict travel rules and warnings.²⁸⁷ It psychologically disorganizes citizens by creating fear which results to limitation of freedom and enjoyment of right which are or would have been available²⁸⁸. Terrorism has created an unmeasurable security, economic and social instability and subsequently massive rights abuses in Nigeria as aided by Boko-Haram and in Kenya by Al-Shabaab²⁸⁹.

The socioeconomic rights of the people are continually undermined as evident in the thousands of children that have been prevented from accessing education in Kenya²⁹⁰ and particularly in Nigeria²⁹¹ among other rights as enshrined in the African Charter and the Bill of Rights.²⁹² Those socioeconomic rights are not limited to education but additionally includes right to adequate standard of living, to housing, to

²⁸⁶ 13th Interviewee, HRW in discussion with the author, September 2016.

²⁸⁷ 9th Interviewee, KNCHR in discussion with the author, September 2016.

²⁸⁸ 12th Interviewee, KHRC in discussion with the author, September 2016.

²⁸⁹ 10th Interviewee, KHRC in discussion with the author, September 2016.

²⁹⁰ Johnstone B. Musungu., Free Primary Education in Kenya: A Critical Analysis, *International Journal of Humanities Social Sciences and Education* 2, no. 7, (2015): 75

²⁹¹ Chukwurah, Daniel C., Eme, Okechukwu., Ogbeje, Eunice Nmir., 'Implication of Boko Haram Terrorism on Northern Nigeria', *Mediterranean Journal of Social Sciences*, 6, no. 3 (2015): 371,375, 376

²⁹² 10th Interviewee, KHRC in discussion with the author, September 2016.

science and culture and to health. This creates more burdens on the effort to develop nationally and regionally as African bloc.

Terrorism makes business environment unfavorable as a result of the effects from deaths, destruction of property and restriction of movement²⁹³. Terrorism has implications on the Kenya economy evidently the insecurity it often create in the tourism sector, reducing the economic development and subsequently socioeconomic rights and dividends that would have been facilitated from the dividends of flourishing tourism²⁹⁴. Terrorism and its impact are borderless and not country bound²⁹⁵.

The East African region and the rest of Africa have been negatively affected by the implications of terror on human rights. This is based on the fact that the violation of human rights causes insecurity; and insecurity in turn affects developments in countries where terrorism exist.²⁹⁶ Terrorism cannot be justified irrespective of the differences in ideology since there are numerous stream of ways through which solution to differences can be achieved²⁹⁷. The effects of terror are more detrimental to the agendas of human right with regards to international peace and development²⁹⁸ and therefore there can never be development and security without the respect of human rights²⁹⁹.

5.2 Counter Terrorism Impact on Human Rights

Terror attacks more often than not, leads to counterterrorism operations which has gross implications on human rights. Those implications includes but not limited to injuries, death either as direct or indirect impact of the terror attacks and the

²⁹³ 4th Interviewee, ATPU in discussion with the author, September 2016.

²⁹⁴ 5th Interviewee, ATPU in discussion with the author, September 2016.

²⁹⁵ 11th Interviewee KHRC in discussion with the author, September 2016.

²⁹⁶ 8th Interviewee, KNCHR in discussion with the author, September 2016.

²⁹⁷ 14th Interviewee, IPOA in discussion with the author, September 2016.

²⁹⁸ Ibid

²⁹⁹ Kofi, Annan., "A Global Strategy for Fighting Terrorism...", 2005. Op.cit

subsequent counterterrorism operations, unfair court trials, illegal arrests, detention and torture, renditions and non-refoulements.

Table 5.5 shows that slightly above half of the interviewees stated that the counterterrorism effort in Kenya is commendable and good enough. While a lesser but significant number of the interviewees indicated that the counterterrorism effort is not commendable.

Table 5.5 Efforts of Counterterrorism

CT Effort	Yes		No	
	Frequency	Percentage (%)	Frequency	Percentage (%)
Good enough	9	56.3	7	43.8
Protects liberties of targets and victims	7	43.8	9	56.3
Addresses terror root-cause legally to the Kenya law	7	43.8	9	56.3
Use rule of law in Arrest and prosecution	7	43.8	9	56.3
More focused on Military and intelligence, thus less rule of law	12	75	4	25

The table further shows that counterterrorism efforts in Kenya have focused more on intelligence and militaristic approach to an extent that the approach has less consideration for the rule of law. Further indication as presented in the 56.3% interviewee agreement, shows that the Kenya counterterrorism efforts do not protect the liberties of targets and victims; do not address terror root-cause with legal conformity to the Kenya law; and additionally does not use rule of law in arrest and prosecution. The summary of the table 5.5 show that the Kenya counterterror

operations is focused on war model approach to counterterror and have proven to be moderately successful³⁰⁰.

5.2.1 Protecting the targets and victims of terror

The State has obligation to protect her citizens against any acts of terror and additionally to protect the rights of victims, suspects, accused, and the guilty in observance of a transparent process of the rule of law.³⁰¹ Many of the counterterrorism operations have helped in averting terror attacks which on many occasions are unknown to the public³⁰². Those efforts are aided not only by the military but in addition, sister agencies of the government like the NCTC among others³⁰³. The protection of citizens in all lawful ramifications and against terror attacks is a continual and great challenge for any State including Kenya, with consideration of an effective approach cut across all stakeholders particularly the sensitizes public in helping the security forces with information that will better safeguard not only the people but the society in general³⁰⁴.

The Kenya constitution and terrorism legislation are already in-place to ensure citizens are well protected³⁰⁵. More often, the counterterrorism employed have not protected the people as evident in the operation Lindi nchi and Usalma watch where victims of terror attacks including the sick, elderly, and children were rounded-up and detained in Mekesligt police station³⁰⁶. There are victimization and blatant persecution of usually the marginalized group without adequate fact on proclaiming the status of

³⁰⁰ Aala, Abdelgadir., "How Kenya'S Counterterrorism Effort Turned Counterproductive," *Defense One*, May 8 2016 accessed October 8 2016, <http://www.defenseone.com/threats/2015/05/how-kenyas-counterterrorism-effort-turned-counterproductive/112315/>; Ami, Pedahzur., *Israeli Secret Service and the Struggle against Terrorism*. (2009). Op.cit

³⁰¹ 1st Interviewee, KDF in discussion with the author, September 2016.

³⁰² 4th Interviewee, ATPU in discussion with the author, September 2016.

³⁰³ 15th and 16th Interviewee, NCTC in discussion with the author, September 2016.

³⁰⁴ 5th Interviewee, ATPU in discussion with the author, September 2016.

³⁰⁵ 6th Interviewee, ATPU in discussion with the author, September 2016.

been guilty or innocent³⁰⁷. Additionally, the ATPU have been heavily accused of enforced disappearances which ultimately have failed to protect the people³⁰⁸. Special publications have also indicated the less protection of the people from terror between 2007 and 2014, and thus a validation of the responses of the interviewees³⁰⁹.

5.2.2 Addressing the socioeconomic rights as the root cause of terror

Poverty, discrimination, resources exploitation, and corruption have influenced terror in Kenya.³¹⁰ The effort of counterterrorism in Kenya can be seen as addressing the surface or direct causes and neglecting the root cause.³¹¹ Kenya is still challenged with political difference and injustices, marginalization, inequality and discrimination, and misinterpretation of religion³¹². Those root causes are contentious and contestable as it should never be a justification to engage in terror³¹³. The deployment of Kenya security forces into the heart of Somalia and enacting counterterrorism laws can be seen as addressing terrorism in militaristic and realist notion of the State³¹⁴. However those laws are viewed by civil society organizations and liberalists as draconian and a facilitating instrument that hinders an effective approach to addressing the root cause of terror in Kenya³¹⁵. The negative religious ideology has hindered GoK's effort to ensure the root causes of terror are addressed³¹⁶.

The root cause of terrorism in Kenya is yet to be well understood and addressed due to hard challenge of addressing ideological issues; also the existing

³⁰⁶ 7th Interviewee, KNCHR in discussion with the author, September 2016. ; 11th Interviewee KHRC in discussion with the author, September 2016.

³⁰⁷ 13th Interviewee, HRW in discussion with the author, September 2016.

³⁰⁸ 9th Interviewee, KNCHR in discussion with the author, September 2016.; 10th Interviewee KHRC in discussion with the author, September 2016

³⁰⁹ HRW., Human Rights Watch., *Kenya: Killings, Disappearances by Anti-Terror Police.* (2014).

³¹⁰ 1st Interviewee, KDF in discussion with the author, September 2016.

³¹¹ 2nd Interviewee, KDF in discussion with the author, September 2016.

³¹² 9th Interviewee, KNCHR in discussion with the author, September 2016. ; 11th Interviewee KHRC in discussion with the author, September 2016.

³¹³ 3rd Interviewee, KDF in discussion with the author, September 2016.

³¹⁴ 4th and 6th Interviewee, ATPU in discussion with the author, September 2016.

³¹⁵ 10th Interviewee KHRC in discussion with the author, September 2016

national and legal framework of counterterrorism within the period of 1998 to 2014 appears to be weak and not sufficient in addressing the root cause of terror³¹⁷. The GoK have made effort in 2014 to institute the security law amendments act 2014 and also a national strategy to counter violent extremism³¹⁸. However those laws were not effective in 2014 and also have faced criticism on the respect for human rights.

5.2.3 Consideration of the rule of law in arrest and prosecution

The rule of law applies to all human beings. Any terrorist arrested should be dealt with according to the law. Arresting a terrorist is difficult and suicidal³¹⁹, and most terrorists are shot and killed directly during counterterrorism operations³²⁰. The rule of law regarding arrest and persecution of terrorists has not been fully implemented and enforced³²¹. The Kenya counterterrorism approach is empowered by the terrorism act number 30 of the 2012 Act and the article 49 of the constitution of Kenya made provision for procedures of arrest and persecution of terror suspects³²². Also the Prevention Terrorism Act of 2014 has been used in arrest and trial of terror suspects³²³. However, those laws lack strict implementation³²⁴.

The national laws have not been effective because only a few cases of arrest are legally charged to court of prosecuted using the law since most are killed before or during the prosecutions process. This is evident in the aftermath of the Westgate attack whereby suspects were rounded up and prosecuted unlawfully.³²⁵ The terrorists in Kenya are usually not Kenyans as evident in many concluded cases and as such the

³¹⁶ 5th Interviewee, ATPU in discussion with the author, September 2016.

³¹⁷ Interviewee 14

³¹⁸ 15th and 16th Interviewee, NCTC in discussion with the author, September 2016.

³¹⁹ 1st Interviewee, KDF in discussion with the author, September 2016.

³²⁰ 11th Interviewee KHRC in discussion with the author, September 2016.

³²¹ 3rd Interviewee, KDF in discussion with the author, September 2016.

³²² 4th and 6th Interviewee, ATPU in discussion with the author, September 2016.

³²³ 15th Interviewee, NCTC in discussion with the author, September 2016.

³²⁴ 14th Interviewee, IPOA in discussion with the author, September 2016.

security forces have sought to neglect the national laws in some exceptions.³²⁶ Many suspects have are been unaccountably killed in the recent time³²⁷, tortured, detained without trial in violation of the national laws³²⁸ and thus the Kenya counterterrorism have total disregard for the rule of law³²⁹ which further creates an avenue for the increased violence extremism and radicalization in Kenya³³⁰.

5.2.4 Military Strategy Emphasis and the Respect for the Rule of Law

The strategy of terrorist is ruthless as it engages in suicidal missions without the sense of humor. Thus should not be treated like ordinary criminals³³¹, they should be apprehended and prosecuted in accordance to the provision of the law³³² The KDF, NCTC and the National Intelligence Unit (NIU) of Kenya aided with sophisticated tools have been heavily useful and resourceful in the counterterrorism strategy of Kenya³³³. However those strategies in isolation have proved not effective³³⁴ and also the degree of militarization for war is greater than intelligence gathering or investigation³³⁵. Over the recent years, the GoK have ensured that counterterrorism approaches engages the religious and community leaders to pioneer the Nyaumba Kumi initiative and thus a systematic shift from the previous militaristic approach³³⁶. Terrorism can only be fought through intelligence gathering and not just only focusing

³²⁵ 10th and 12th Interviewee KHRC in discussion with the author, September 2016. ; 13th Interviewee, HRW in discussion with the author, September 2016.

³²⁶ 5th Interviewee, ATPU in discussion with the author, September 2016.

³²⁷ 9th Interviewee, KNCHR in discussion with the author, September 2016.

³²⁸ 13th Interviewee, HRW in discussion with the author, September 2016.

³²⁹ 7th Interviewee, KNCHR in discussion with the author, September 2016.

³³⁰ 12th Interviewee KHRC in discussion with the author, September 2016.

³³¹ 1st Interviewee, KDF in discussion with the author, September 2016.

³³² 7th Interviewee, KNCHR in discussion with the author, September 2016.

³³³ 7th and 9th Interviewee, KNCHR in discussion with the author, September 2016. ; 15th Interviewee, NCTC in discussion with the author, September 2016.

³³⁴ 10th Interviewee KHRC in discussion with the author, September 2016

³³⁵ 11th Interviewee KHRC in discussion with the author, September 2016. ; 13th Interviewee, HRW in discussion with the author, September 2016.

³³⁶ 4th Interviewee, ATPU in discussion with the author, September 2016.

on combatant efforts. It involves a wide scope that requires multi-agency to community involvement approach³³⁷ and above all, due and lawful process³³⁸.

5.2.5 Consideration of Human Right’s Legal Instruments

Table 5.6 Operational use of Instruments

Instrument	Agree (%)	Disagree (%)	Neutral (%)
Responsibility to protect	81.3	18.8	0.0
Kenya human rights law	56.3	37.5	6.3
UN conventions and protocols on terrorism	50.0	25.0	25.0
International humanitarian law	62.5	18.8	18.8
Universal human rights declaration and refugee law	56.3	31.3	12.5

Table 5.6 shows that greater proportion of the interviewee agreed to the fact that the GoK’s counterterrorism approach leans greatly on the principles of responsibility to protect the State’s security and interest. This affirms the application of the States’ realist perspective to defend the Kenya by all means possible in order not to be viewed as a weak State –that prompts an international military intervention to protect Kenyans. Additionally, an average indication of the interviewees revealed that the GoK’s counterterrorism approach have to an average extent operationalized the use of the International humanitarian law, Universal human rights declaration and refugee law, Kenya human rights law and the UN conventions and protocols on

³³⁷ 5th Interviewee, ATPU in discussion with the author, September 2016.; Interviewee 14

³³⁸ 13th Interviewee, HRW in discussion with the author, September 2016.

terrorism. This is evident is the GoK adoption of 14 out of the 16 International regimes on terrorism and Human rights³³⁹.

Table 5.7 Violation of Human Rights Instruments

Instrument	Agree (%)	Disagree (%)	Neutral (%)
Responsibility to protect	50.0	50.0	0.0
Kenya human rights law	43.8	43.8	12.5
UN conventions and protocols on terrorism	43.8	37.5	18.8
International humanitarian law	43.8	37.5	18.8
Universal human rights declaration and refugee law	37.5	43.5	18.8

The research sought to differentiate the operational usage human rights instruments and the violation of human rights instruments. Table 5.6 shows that the former was partly used while the latter as indicated in Table 5.7 was also a valid fact. This means that the guidelines or principles of human rights instruments have to an average extent embedded in the counterterrorism approach by the GoK, however the usage of those instruments were not strictly adhered to and thus often violated.

This is an indication that the GoK have not actively engaged with the United Nations mandate on State to oblige to the respect, protection and fulfilment of human rights. Such effective engagement involves the adoption appropriate measures that includes but not limited to administrative, judicial, legislative and educative measures.³⁴⁰

The rules of engagement are followed where applicable. The defence forces are well trained personnel who know how to deal with any enemy combatant and

³³⁹ Beth, Elise, Whitaker., Compliance Among Weak States: Africa and the Counter-Terrorism Regime, *Review of International Studies* 36, no. 3 (2010): 651.

³⁴⁰ OHCHR, "Fact Sheet No 32: Human rights, terrorism and counter terrorism" 2008 Op.cit

refugees alike. The security forces have the option of either defeating the terrorists or otherwise be defeated. The responsibility to defend the state supersedes engagements evidently in the operations in Eastleigh, Boni forest and operations in Somalia. And thus an effort by the security forces to conduct an operation that adhere to the existing law with regards to national security.³⁴¹

The GoK under the 2010 constitution have made efforts to ensure that human rights are sustained in counterterrorism operations.³⁴² A counterterrorism strategy that considers strict adherence of all the human rights instruments is academically feasible but in reality there are limitations to those human rights instruments to ensure an effective counterterrorism driven by a militaristic centered approach³⁴³. This militaristic orientation was predominant within 1998-2014 and considers terror to be ruthlessly fought back.³⁴⁴ Most of those militaristic operations are clandestine and shrouded in secrecy with less regards for international human rights instruments³⁴⁵. Thus an existence of what constitutes unaccounted and underreported incidences of human rights violations³⁴⁶.

The UN mandate stresses the strict adherence to the basic human rights of the people by States irrespective of their national laws during counterterrorism.³⁴⁷ The GoK has not adhered to the international instruments in totality due to the fact that there are lacuna in enactment and interpretations of the corresponding national law; enforced amendments of legislation or existing legislation that is draconian and grossly violates the chapter 4 of the constitution of Kenya; additionally the lack of political will to prosecute terror suspects have aided the adoption of policies that

³⁴¹ 1st and 3rd Interviewee, KDF in discussion with the author, September 2016.

³⁴² 2nd Interviewee, KDF in discussion with the author, September 2016.

³⁴³ 5th Interviewee, ATPU in discussion with the author, September 2016.

³⁴⁴ 11th Interviewee KHRC in discussion with the author, September 2016.

³⁴⁵ 9th Interviewee, KNCHR in discussion with the author, September 2016.

³⁴⁶ 8th Interviewee, KNCHR in discussion with the author, September 2016.

³⁴⁷ United Nations, *Report of the Policy Working Group on the United Nations and Terrorism*, 2002, para 26

consist of ‘shoot to kill’, kidnapping, and prolonged detention. This is evident in the counterterrorism operation carried out in the aftermath of 2013 Westgate attack³⁴⁸, Nother benyo attack, Garrisa university attack, and attacks in Mombasa which all are subsequently followed by killing of the suspects³⁴⁹.

5.2.6 Consideration on Human Rights

Table 5.8 Violation of Basic Rights

Rights	Agree (%)	Disagree (%)	Neutral (%)
Right to life	50.0	50	0.0
Rights on arrest and detention	50.0	31.3	18.8
Rights against torture and inhumane treatment	50.0	43.8	6.3
Rights against renditions and refoulement	31.3	37.5	31.3
Rights to fair hearing and trial	37.5	50.0	12.5

Table 5.8 shows that the interviewees on an average agrees that the basic rights such as rights to life, arrest and detention, torture and inhumane treatment, renditions and refoulement, fair hearing and trial have all been breached. This is explained with empirical facts in the two reports published in 2012³⁵⁰ and 2013³⁵¹. However, an additional response indicated the need to relax the strictness of those rights in an emergency situation in order to promote and effective counterterrorism.

³⁴⁸ Stanly, Mwachanga., "Police Issue Shoot To Kill Order On Terrorism Suspects," *Standard Digital News*, March 26 2014, accessed October 9 2016, <http://www.standardmedia.co.ke/article/2000107870/police-issue-shoot-to-kill-order-on-terrorism-suspects>.

³⁴⁹ 10th Interviewee KHRC in discussion with the author, September 2016

³⁵⁰ ICJ., *State of Torture and Related Human Rights Violations in Kenya*, Alternative Report to the Human Rights Committee to Inform its Review of Kenya's Third Periodic Report at Its 105th Session (9 - 27 July 2012) on the Implementation of the Provisions of the International Covenant on Civil and Political Rights in Relation to Torture, (Oak Foundation 2012) http://www.omct.org/files/2012/07/21869/state_of_torture_and_related_human_rights_violations_in_kenya_unhrc.pdf

³⁵¹ ICJ., *Kenya CAT 50: State of torture and related human rights violation in Kenya, State of Torture and Related Human Rights Violation in Kenya*. Alternative report to the United Nations Committee Against Torture (CAT) informing its Review of Kenya Periodic Report at its 50th Session (6-31 May 2013) on the Implementation of the Convention against Torture and Other

This exceptional situation is internationally recognized³⁵² and nationally³⁵³ supported by the Kenya constitution. It is based on this reason that the interviewee responses as shown in the table 5.8 were averagely in neither agreeing nor disagreeing with the violation of those rights. Therefore the counterterrorism approach puts inter consideration both the rights of the people and the security of the State.

The rule of law has been used to prosecute many terror suspects.³⁵⁴ The counterterrorism agencies are constrained by the abuse of rights by human rights activists. The human rights activists have in many occasions interfered with the role of the police through hindrance on investigation and ultimately directing the security forces into quicker means of unraveling cases before any investigative interference³⁵⁵. The rhetoric of human rights violations have often demoralized the security forces since there are other operations they have conducted that championed and upheld human rights and the rule of law: usually such are not sensitized enough to the public's awareness. Such operations includes but not limited to monitoring and tracking potential terror and intelligence-led operations³⁵⁶.

Despite the effort of counterterrorism in the sustenance of rights in Kenya there have been reported cases of violation of rights and additionally aided by foreign nations. The rendition of Amin to Uganda is considered as unlawful³⁵⁷, the continual refoulement of refugees from Kenya to Somalia³⁵⁸, the 2007 rendition to Guantanamo

Cruel Inhuman and Degrading Treatment or Punishment Geneva, (Oak Foundation 2012) <http://www.icj-kenya.org/jdownloads/Publications/icj%20kenya%20cat%2050.pdf>.

³⁵² ICJ., *Assessing Damage, Urging Action*, Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights (Geneva: International Commission of Jurists, 2009)

³⁵³ The Constitution of Kenya 1963, Section 72. Section 26(3)

³⁵⁴ 4th Interviewee, ATPU in discussion with the author, September 2016.

³⁵⁵ 5th Interviewee, ATPU in discussion with the author, September 2016.

³⁵⁶ 5th Interviewee, ATPU in discussion with the author, September 2016.

³⁵⁷ 8th Interviewee, KNCHR in discussion with the author, September 2016.

³⁵⁸ 9th Interviewee, KNCHR in discussion with the author, September 2016.

bay³⁵⁹, the reported mistreatment of Somalis at Kasarani, and the branding of Somalis as potential facilitators of terror³⁶⁰.

5.3 Comprehensive Strategy to Protect Human Rights in Counterterrorism

Table 5.9 Balance of Counterterrorism and Human Rights

Rights	Agree (%)	Disagree (%)	Neutral (%)
Protection from terrorism	86.7	6.7	6.7
Arrest and detain suspects	93.8	0.0	0.0
Treat terror suspects differently	68.8	25.0	25.5
Allow suspects to live without arrest	12.5	81.3	6.3
Open special court for terror cases	68.8	31.3	0.0

Table 5.9 shows that the interviewees agree to the need to arrest and detain suspects in order to protect people from terrorism because terror suspects are threat to the society and should not exist freely within the environment; as such terror suspects should be treated differently from other criminal cases and justly tried in constitutionally approved special courts.

In Kenya, criminals now hide under the arm of human rights and thus a difficult task to protect the State tactically and at the same time uphold the rights of those criminals. The emerging democratic world monitored by Community Based organizations (CBOs) and NGOs has set the stage for criminal to possess the same rights with victims.³⁶¹ And thus Kenya still lacks implemented laws that protect the rights of not only potential terror victims and targets but also victims and targets of

³⁵⁹ 13th Interviewee, HRW in discussion with the author, September 2016.

³⁶⁰ 9th Interviewee, KNCHR in discussion with the author, September 2016.

³⁶¹ 11th Interviewee KHRC in discussion with the author, September 2016.

counterterrorism. The operationalization of the present laws, have more often than not violated the rights of victims³⁶². The right to life is supreme and any threat to such should be proportionately countered with the appropriate measures. Kenya has limited efforts in the involvement of the community through winning of their minds and heart of the local population that will ultimately strengthen the comprehensive counterterrorism approach that puts human rights at the core.³⁶³

The Kenya as a State have failed to harmonize the various sensitization and de-radicalization programmes that would promote cohesion and integration of all inhabitants of Kenya to willingly report or refrain from engaging in criminal activities that is considered as or influence terror.³⁶⁴ Presently, the security personnel engaged with counterterrorism are not fully sensitized or schooled on the significance of upholding human rights as a strategy to making gains in the fight against terror³⁶⁵. The counterterrorism strategy in-place have less consideration for the ratified human rights related integrational treaties and thus legislative and constitutional frameworks needed to facilitate and implement a comprehensive counterterrorism within 1998 and 2014 was non-existent.³⁶⁶

Court process regarding trials of suspected terrorist needs to be reformed: such includes the term used in charging suspected persons like a shift from terror charge to murder charges, torture charges or espionage among others to effectively trial the suspect with the actual crime committed without ambiguity.³⁶⁷ The establishment of special court for trial of suspect, which additionally put into consideration the rights of

³⁶² 4th Interviewee, ATPU in discussion with the author, September 2016.

³⁶³ 1st Interviewee, KDF in discussion with the author, September 2016. ; 12th Interviewee KHRC in discussion with the author, September 2016.

³⁶⁴ 5th Interviewee, ATPU in discussion with the author, September 2016.

³⁶⁵ Irene, Ndungu., "To Fight Terrorism, Fight Corruption First ." 2015. Op.cit ; Peter, Kirechu., "Kenya's Counterterrorism Approach Is Floundering," 2016. Op.cit ; 6th Interviewee, ATPU in discussion with the author, September 2016. ; 11th Interviewee KHRC in discussion with the author, September 2016.

³⁶⁶ 6th Interviewee, ATPU in discussion with the author, September 2016.

³⁶⁷ 7th Interviewee, KNCHR in discussion with the author, September 2016.

the suspects, is not legally existent or instituted in Kenya within the 1998-2014 periods.³⁶⁸ The State lacks the mechanism to use more of intelligence than the use of force. Also the strategy for the actualization of economic, political and social rights still remains unaddressed due to the increasing unaccountability of governance.³⁶⁹

5.4 Conclusive Analysis

The presented data from the interviewees revealed that terrorism in Kenya has great impact on the economic and social rights of the people as compared with the infringement of the basic and fundamental rights. While the counterterrorism approach has been more of militaristic and commendable, it has failed to: protect the liberties of targets and victims; address the root cause of terror; and finally has failed to leally arrest and prosecute suspects of terror.

The existing mechanism to protect and uphold human rights was found to be not comprehensive enough due to lack of harmonized efforts of both State and NSAs in the sustenance of human rights; this can be explained by the heavy reliance on the realist perspective by the GoK which focuses on the State as the major actor in counterterrorism. Also highlighting the significant element of the liberalist perspective, there are limitations in the use of international and national legal instruments in arrest and prosecution in Kenya. Those two missing strategy have made the gains of counterterrorism in the reduced terror by NSAs futile because it has introduced a new form of terror orchestrated by the State.

The findings of this chapter indicated that the counterterrorism strategy in-place is not sufficient enough to defend the human rights of people in Kenya based on the insecure physical and psychological wellbeing of not only terror suspects and

³⁶⁸ 13th Interviewee, HRW in discussion with the author, September 2016.

victim but also the entire population with subsequent effect on national and global development.

³⁶⁹ 9th Interviewee, KNCHR in discussion with the author, September 2016.

CHAPTER SIX

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

6.0 Introduction

This chapter put forward a detailed summary of the study in an outlined brief of findings from this study with regards to the three research objectives of the study. Furthermore, the chapter concludes on the research study and proffer succinct solutions otherwise referred to as recommendations.

6.1 Summary

In reference to the impact of terrorism on of human rights in Africa, Africa has experienced an increased consequence from the effects of terrorism. Al-Shabaab continually terrorizes the East Africa region, Boko-Haram in West Africa, and al-Qa'ida in the Islamic Maghreb terrorizing the North Africa. Those terror attacks have inflicted on the people, psychological pains and stress, injuries and deaths, property destruction and business hindrances and thus constituting an economic sabotage.

The findings of objective one accepts and validates the first hypothesis that terrorism undermines human rights but terrorists abuse basic freedom by violating human rights in Africa.

With regards to the implications of existing counterterrorism mechanism on human rights in Kenya, the establishment of mechanisms to protect human rights in terms of legal framework and implementation is limited in Kenya, and most often while the States have the legal frameworks on human rights and counterterrorism, the implementation usually infringe on the human rights of the people especially in clandestine operations inclusive of extraordinary renditions where the terrorist will be treated inhumanely. While the human rights international regimes have remained

unchanged, within 1998-2014 the national human rights regimes have been altered by the ever changing political structures of counterterrorism framework in Kenya. This aided judicial modifications ensured counterterrorism operations that violated human rights.

The finding of the second objective accepts and validates the second hypothesis that the rights of terror suspects, suspect's relatives, and other individuals are violated during defensive, criminal justice and war related counterterrorism mechanism in Kenya.

In line with the comprehensive strategy of counterterrorism that protects human rights in Kenya, the country has faced limited efforts in ensuring a balance of human rights and security in counterterrorism operations. The national framework on counterterrorism is enshrined with war, defence and militaristic approaches at the core of security and neglecting a security structure that sustains the rights to life, rights in arrest and detention, rights in torture and inhumane treatment, rights in rendition and non- refoulement , and rights in fair hearing and trial. As a consequence, these rights have been derogated aided by the lack of synergy between 'formulated national laws that respects the various international security and protection regimes' and 'the implementation and enforcement of those laws'.

Kenya national laws relative to terrorism and human rights have overlooked the international law in terms of conformity, and have not clearly included human rights as part of the comprehensive security that needs to be won in the fight against terror. Rather the State has championed and upheld human rights as value and not needed security. The security of people in Kenya is not exclusively in isolation of the human rights of those people, and thus GoK's mandate of security should be non-derogable i.e. the human rights as security component among other, should not be

derogable.

The finding of the third objective accepts the third hypothesis that an effective counterterrorism strategy involves policy frameworks and implementation mechanisms that provide a balance of both human rights and security.

In a short summary from the secondary and primary data analysis, the game theory explanation of the findings is that the operations of counterterrorism in Kenya by the State actors focuses on the realist perspective of human rights, with central variable on power, rationally oriented but seeks relative security gains and characterized with weak institutions. While the NSAs and the people/masses focus on the liberalist perspective of human rights with a central variable of interest that is rationally oriented but maximizes absolute security gains with medium institutionalized systems.³⁷⁰

The validation of counterterrorism laws and operations to protect the existence of liberal democratic State in Kenya has out-rightly not considered the people of Kenya. This is ultimately due to the neglect of: *firstly*, a comprehensive approach that stresses the human rights derogability in exceptional cases, which is well understood by not only the State counterterrorism apparatus but also the public/people; *and secondly*, an activated involvement of NSAs to promote the neglected social, economic and cultural human rights.

Over and above the findings of this research indicates that Kenya have strong human rights declarational regimes, medium promotional human rights regimes and weak implementation of human rights regimes. This confirms Donnelly Jack's classification of human rights regimes in Africa³⁷¹: Thus this study suggests the need

³⁷⁰ Andreas, H., Mayer, P., Rittberger, V., *Theories of International Regimes*, (New York: Cambridge University Press, 1997) p.6

³⁷¹ Donnelly, Jack., *Realism and International Relations* (2000), Op.cit

for a bridging gap between the State and NSAs i.e. the Realist State and the Liberalist NSAs. This balance is a cognitive perspective of human rights that is characterized with knowledge as the central variable, sociologically oriented towards seeking an ensured role-played/collective security by all stakeholders held by a strong institutionalized system.³⁷²

6.2 Conclusion

Over the past 70 years, at the core of the UN mandate is to ensure a global and sustainable human rights, peace and security, and development. The sustenance of human rights cannot be overemphasized since there can neither be peace and security nor development if the fundamental, basic and socioeconomic rights are not adequately championed.

Terrorism causes threat to physical and psychological wellbeing, political instability, increased criminal activities and insecurity which hinders global development. Those factors untimely undermine the sustenance of counterterrorism especially in Africa. Nigeria and Kenya has faced a common challenge from the rot of terror ranging from the direct physical destruction to the indirect socioeconomic implications as a result of abuses and denial of rights to all sought of freedom and denial of fundamental, basic and socioeconomic rights.

The consequences from the violation of human rights is not entirely limited to terrorism, the counterterror approach have also exacerbated those impacts from human rights. The counterterrorism approach adopted in Kenya has not demonstrated a liberalist approach since it neglects the adoption of a comprehensive strategy that

³⁷² Andreas, H., Mayer, P., Rittberger, V., *Theories of International Regimes*, (New York: Cambridge University Press, 1997) p.6

includes an enhanced involvement of NSAs, in partnerships with the State agencies: to protect the basic and fundamental rights of terror suspects and victims; and to improve the economic, social and cultural rights of potential the potential terror suspects and victims in Kenya.

6.3 Recommendation

The Kenya society needs to cooperate with the government and other security agencies to make the country safe. The public needs to be cognizance with the responsibility to cooperate with security agencies in order to prevent the emergence of or protect the rights of potential counterterrorism and terror victims and target. The youths needs to be strategically targeted and should be engaged with programmes that protects their socioeconomic rights. Thus an enhanced implementation of community policing for accountability as enshrined in the Section 96 to 100 of the NPS Act 2011³⁷³.

There should be enshrined and clear laws that address the existing marginalization and disenfranchisement in Kenya. Laws regarding comprehensive counterterrorism approaches that respect the principles of human rights should be formulated, implemented and enforced in all counterterrorism operations unless cessation in exceptional cases like in the declaration of legitimate and justified State of emergency. The National framework for protecting human rights should be accommodative to the International and regional human rights frameworks.

There is need to invest in the intelligence sector, training of personnel on human rights and public sensitization on objective of counterterrorism that is broadened to include human rights. The National Intelligence Centre (NIU) and the

National Counter Terrorism Center should be strengthened in terms of financial and human resources well enough and commensurable to the existing capacity of the Kenya military forces; this will reduce the excesses and operational oversight of the military. The NSAs like the NGOs, churches and mosques and other civil society organizations needs to be capacitated to ensure targeted youth engagements that address the socioeconomic rights of the people so as to reduce the possibility of a transition from a potential suspect/victim to an actual suspect/victim whose rights are not guaranteed.

The state should investigation of extrajudicial counterterrorism approaches and subsequent punishment or prosecution to serve as deterrence to others that might want to commit such abuses. Additionally a national framework of Monitoring and evaluation should be coordinated and not independently in isolated; such effort should be carried out by both the responsible State agency like IPOA, KNCHR and NSAs like KCHR, and HRW. Such action will aid global documentation of efforts of counterterrorism to adhere to human rights around the world and would inform both human rights and international actions that is reliable, realistically implementable and accounted for.

There should be implementation, establishment, and enforcement of constitutionally and legally binding special courts to oversee trials of terror suspects. Those courts should be open and have the mandate of speedy and just-trials that puts-into consideration the human rights of suspects and not a constitution of secret and persecution trials. All terror suspects should never be arrested without adequate intelligence: suspects should be duly investigated, legally arrested, and justly and

³⁷³ "The National Police Service Bill, 2011". 2016, accessed October 10 2016. http://www.cickenya.org/index.php/resource-center/downloads/downloads-acts/item/download/117_6e9b45093e68a2d02fa2def4a178bbbb.

promptly prosecuted not for the proclamation of guilt but also for the proclamation of innocence if found not guilty.

6.4 Suggested Areas for Further Studies

Based on the findings of this research, the researcher have identified significant areas that needs to be researched in order to explore a comprehensive research options that informs the sustenance of human rights while countering terror.

There are few studies that have empirically explored the effectiveness of the role of women as counterterrorist actors in the awareness and sustenance of women and child rights. Such research will enhance the understanding of the gender dimensions in counterterrorism as well as the effectiveness of women as State and non-State counterterrorist operatives. Also it will aid human rights-based respond to counterterrorism, specifically the rights of women and child.

This study also suggests comprehensive and empirical studies on the violation of economic, social and cultural rights in terrorism and counterterrorism, and its implication on sustainable economic development. Such research will help in understanding the extent to which second and third generation rights that have been neglected in the fight against terrorism.

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Interviewees

- Interviewee 1 to 3: Kenya Defence Forces
- Interviewee 4 to 6: Kenya Anti-terror Police Unit (ATPU)
- Interviewee 7 to 9: Kenya National Commission on Human Rights (KNCHR)
- Interviewee 10 to 12: Kenya Human Rights Commission (KHRC)
- Interviewee 13: Human Rights Watch (HRW) Nairobi office,
- Interviewee 14: Independent Police Oversight Authority (IPOA)
- Interviewee: 15 to 16: National Counter Terrorism Centre (NCTC)

APPENDICES

Appendix I: Interview Guide

Ref

Organization

Date .../.../2016

Instructions:

The objective of this research will be to establish “Impact of Terrorism on Human Rights in Africa: The Case Study of Counterterrorism in Kenya, 1998 -2014”.

Kindly *TICK or FILL* as appropriate to ensure the objective of this research is achieved.

General Information

1. Gender_____
2. Years of experience with rights/counterterror organization_____ years
3. How long have you been working in this organization? _____years

Impact of terrorism on human rights in Kenya

4. Does terrorism have positive or negative implications on human rights?
- Positive [] Negative []

Reason

.....

.....

.....

5. Tick your agreement with the following statements on implications of terrorism on human rights

- i. Terrorism is a threat to peoples physical and psychological wellbeing
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []
- ii. Terrorism is a political problem and caused because certain rights of the perpetrators were/are denied
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []
- iii. Terrorism is a criminal acts that are unjustifiable based on the denial of denial of certain any rights that should be accorded
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []
- iv. Terrorism is an act of war against the people and their freedom
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []

- v. Terrorism is destructive to the sustenance of human rights and global development
 Strongly agree [] Agree [] Neutral [] Disagree []
 Strongly Disagree []

Give reasons for your answers above on implications of terrorism on human rights

.....

Counterterrorism and Human Rights in Kenya

- 6. Is the effort of the Government of Kenya good enough in counterterrorism?
 Yes [] No []

7. Does the Kenya counterterrorism approach

- i. Protect potential targets and victims with consideration on civil liberties? []
 Give reason for your answer

.....

- ii. Address the root cause of terrorism, and legally correspond with the Kenya law? [] Give reason for your answer

.....

- iii. Arrest and punish terrorists in accordance to the rule of law? [] Give reason for your answer

.....

- iv. More focused on intelligence and military units to eliminate terrorism through military force and faced with accusations of less consideration on the rule of law? [] Give reasons for your answer

.....

8. Indicate your agreement that the government of Kenya made operational use of the following instruments during counterterrorism?

- i. Adoption of the Principles of Responsibility to Protect (R2P) the Kenya State
 Strongly agree [] Agree [] Neutral [] Disagree []
 Strongly Disagree []
- ii. Kenya Human Rights Laws
 Strongly agree [] Agree [] Neutral [] Disagree []
 Strongly Disagree []
- iii. United Nations Conventions and Protocol Relating to Terrorism
 Strongly agree [] Agree [] Neutral [] Disagree []
 Strongly Disagree []
- iv. International Humanitarian Law
 Strongly agree [] Agree [] Neutral [] Disagree []
 Strongly Disagree []
- v. Human Rights Law and Refugee Laws
 Strongly agree [] Agree [] Neutral [] Disagree []
 Strongly Disagree []

Give reasons for your answers above on the adherence to human rights instruments

.....

Cite example(s) of such counterterror operations.....

.....

9. Indicate your agreement on the fact that the government of Kenya has violated the following instruments during counterterrorism?

- i. Adoption of the Principles of Responsibility to Protect (R2P) the Kenya State
 Strongly agree [] Agree [] Neutral [] Disagree []
 Strongly Disagree []
- ii. Kenya Human Rights Laws
 Strongly agree [] Agree [] Neutral [] Disagree []
 Strongly Disagree []
- iii. United Nations Conventions and Protocol Relating to Terrorism
 Strongly agree [] Agree [] Neutral [] Disagree []
 Strongly Disagree []
- iv. International Humanitarian Law
 Strongly agree [] Agree [] Neutral [] Disagree []
 Strongly Disagree []
- v. Human Rights Law and Refugee Laws
 Strongly agree [] Agree [] Neutral [] Disagree []
 Strongly Disagree []

Give reasons for your answers above on the violations of human rights instruments

.....
.....
.....

Cite example(s) of such counterterror operations.....

.....
.....

10. The government of Kenya has violated the following rights during counterterrorism?

i. The right to life
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []

ii. Rights in arrest and detention
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []

iii. Rights in Torture and Inhumane Treatment
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []

iv. Rights in Rendition (*– sending a foreign terrorist suspect covertly to be interrogated in a country*) and Non- Refoulement (*– not forcing refugees or asylum seekers to return to a country where they stand to be unjustly prosecuted*)
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []

v. Rights in fair hearing and trial
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []

Give reasons for your answers above on the violations of human rights

.....
.....
.....

Cite example(s) of such counterterror operations.....

.....
.....

Balance between Counterterrorism and Human Rights in Kenya

11. The government of Kenya should?

- i. Protect the people in Kenya from terrorist
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []
- ii. Arrest and detain terror suspects
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []
- iii. Treat terror suspects differently from other criminals
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []
- iv. Allow terror foreign terror suspects to live in Kenya
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []
- v. Open a special Court for Terror suspect trials since terror cases are more serious than other criminal cases
Strongly agree [] Agree [] Neutral [] Disagree []
Strongly Disagree []

In your opinion and professional experience, in what ways can human rights be upheld and at the same time safe guard the security of the people in Kenya during counterterror operations?

.....
.....
.....

Recommendation on Counterterrorism that protects human rights

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

.....
.....
.....

Appendix II: Letter of introduction

Date: August 01, 2016

TO WHOM IT MAY CONCERN

Dear Sir/Madam:

REQUEST FOR COLLECTION OF DATA

My name is **ADINOYI ADAVIZE JULIUS**, a post-graduate student at the Institute of Diplomacy and International Studies (IDIS), College of Humanities and Social Sciences, University of Nairobi.

I am conducting a research study titled “Impact of Terrorism on Human Rights in Africa: The Case Study of Counterterrorism in Kenya, 1998 -2014”.

You have been selected to inform part this study.

Kindly assist by filling in the attached questions. The information given will be treated in strict confidence and will be purely used for academic purposes.

Your assistance and cooperation will be highly appreciated.

Yours Sincerely,

Adinoyi Adavize Julius
(Student)
R52/76620/2015

Appendix III – Consent form

Title of the Study: “Impact of Terrorism on Human Rights in Africa: The Case Study of Counterterrorism in Kenya, 1998 -2014”.

Institution: Institute of Diplomacy and International Studies (IDIS), College of Humanities and Social Sciences, University Of Nairobi, P.O.BOX 30197-00400, Nairobi.

Investigator: Master. Adinoyi A. Julius, P O Box PA 41275-00100, Nairobi

Supervisor: Prof. Ambassador Maria Nzomo, Institute of Diplomacy and International Studies (IDIS), College of Humanities and Social Sciences, University Of Nairobi, P.O.BOX 30197-00400, Nairobi.

Ethical Approval: National Council for Science and Technology / University of Nairobi Ethical and Research Committee.

Permission is requested from you to participate in this research study. You should understand the following general principles which apply to all participants in a research.

- i. Your agreement to participate in this study is voluntary
- ii. You may withdraw from the study at any time without necessarily giving a reason for your withdrawal.
- iii. After you read the explanation, please feel free to ask any questions that will enable you understand clearly the nature of the study.

Purpose of the study: To investigate how human rights is affected by terrorism and government of Kenya terror response.

Procedures to be followed: With your cooperation, you will answer questions related to the objectives of this study. All information obtained will be handled with confidentiality.

Risks: There will be no risks involved in this study to you.

Benefits: There may be no direct benefits to you but the results of this study will be useful in understanding the position of the Kenya Government in human rights while countering terrorism.

Assurance on confidentiality: All information obtained from you will be kept confidential and used for the purpose of this study only. Your data/name will not be used during data handling or in any resulting publications. Codes will be used instead.

Contacts: The personal, National Council for Science and Technology, and University of Nairobi Ethical and Research Committee contacts provided above can be used to contact me on issues concerning this study.

I now request you to sign the consent form attached

CONSENT FORM

“Impact of Terrorism on Human Rights in Africa: The Case Study of Counterterrorism in Kenya, 1998 -2014”.

I _____ give consent to the investigator to use information that

I will provide him as part of his study. The nature of the study has been explained to me by the

.....

Signature_____

Date_____

I confirm that I have explained the nature and effect of the study.

Signature_____

Date_____