

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**THE DOMESTIC CONTEXT OF KENYA'S FOREIGN
POLICY ON INTERNATIONAL TERRORISM: 1998 - 2004**

By

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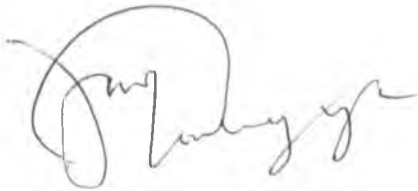
Declaration

This dissertation is my original work and has not been presented for a degree in any university.

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This dissertation has been submitted for examination with my approval as the university supervisor.

Professor Olewe Nyunya.......... Date.....5/12/05.....



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Dedication

This work is dedicated to the people who lost their lives or were affected by the August 1998 and the December 2002 terrorist attacks in Kenya.

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Abbreviations

AI	-	Amnesty International
AIC	-	Africa Inland Church
CBO	-	Community Based Organizations
CI	-	Coalition of Interests
CSU	-	Civil Servant Union
COTU	-	Central Organization of Trade Unions
4Cs	-	Citizens Coalition for Constitutional Change
FBI	-	Federal Bureau of Investigations
GEMA	-	Gikuyu - Embu and Meru Association
ICC	-	International Criminal Court
IPE	-	International Political Economy
IPS	-	International Political System
IPPG	-	Inter- Party Parliamentary Group
IPK	-	Islamic Party of Kenya
KANU-	-	Kenya African National Union
KNCHR-	-	Kenya National Commission for Human Rights
KTN	-	Kenya Television Network
LSK	-	Law Society of Kenya
MFA	-	Ministry of Foreign Affairs
MP	-	Member of Parliament
MWYO	-	Maendeleo Ya Wanawake Organization
NAK	-	National Alliance of Kenya

NARC	-	National Rainbow Coalition
NCKK	-	National Convention of Churches of Kenya
NCEC	-	National Convention Executive Council
NGO	-	Non-Governmental organizations
NSIS	-	National Security Intelligence Service
PCEA	-	Presbyterian Church of East Africa
PLO	-	Palestinian Liberation Organization
SSA	-	Sub Saharan Africa
SONU	-	Student Organization of Nairobi University
TIPS	-	Terrorist Information and Prevention System
UASU	-	University Academic Staff Union
U.N	-	United Nations
U.S. [U.S.A]	-	United States of America
WTC	-	World Trade Center
WWII	-	World War Two

Abstract

The participation of the domestic context in politics can be traced to the time of Kenya's independence in 1963. However, the degree of its involvement was determined by the democratic space afforded by the successive regimes. During Kenyatta's regime, the domestic context was very active but had domestic rather than foreign policy as their object. On the other hand, during Moi's regime the partners in the domestic context were threatened, censored, banned or procrastinated, reducing their activity to a bare minimum. After introduction of multiparty politics, the activity of the domestic context was once again revived. This participation increased in tempo when Kenya became a target of international terrorism in 1998 and 2002, because the responses of the state to these acts, were perceived as discriminating against sections of the population.

The diversity of partners and interests within the domestic context, has led to delays in formulating and implementing policy on international terrorism. The intense influence of the civil society, legislature, political opposition and the media has caused the government to drag its feet in policy making, leading to inconsistency and uncertainty of responses in this area. Therefore, the Kenyan government needs to encourage and participate in bargaining with the different partners in the domestic context, in order to reach a consensus on the most effective measure in countering this threat to its national security.

CHAPTER ONE

THE DOMESTIC CONTEXT OF FOREIGN SECURITY POLICY ON INTERNATIONAL TERRORISM

1.1. Introduction

Every state strives to formulate a foreign policy, which offers best outcomes given its goals. However, this is difficult because each state seeks to achieve certain interests, which more often than not conflict between and within states. As such diverse internal, external and personality factors reminiscent of Waltz three images, constrain a state's policy in all areas. This is further complicated by relative capabilities between competing states in the international system.

In traditional conception, political units treated as given the conduct of international relations, -that foreign policy begins where domestic policy ends.¹ The state was felt to act as a single entity thus effectively precluding activities within it. Consequently, power relations among competing states dictated what policy was, in the sense that 'might was deemed right.'² For the less powerful state, external realities were fixated upon as the major determinants of policy. However, the appropriateness of this approach has been questioned by contemporary conception, which concedes that the gap has narrowed between foreign and domestic policies.

¹ H.A. Kissinger, *Domestic Structure and Foreign policy* in H.K. Jacobson and Z. Woll *The shaping of Foreign Policy* (New York: Atherton Press, 1969) p.268

² H. J. Morgenthau, *Politics Among Nations: the Struggle for Power and Peace*. 5th ed (New York: Alfred.A.Knopf, 1995) Ch.3

The perceived narrowing of the gap between foreign and domestic policy, has meant that many issues activate various actors within the state because of their impact on economic well-being, concern of ethnic groups, electoral and or other considerations.³ Thus even where external considerations are thought to be prominent, decisions made on the ground may fail to reflect this influence. This underscores the need to establish criteria for the hierarchy of competing factors within a state's decision-making environment.

The most fundamental source of foreign policy objective is perhaps the universally shared desire to ensure survival and territorial integrity of the nation state⁴. As such, the perennial search for security dictates that all states' foreign policy is influenced by it.⁵ Kenya has been no exception, she having grappled continuously with both external and internal issues of security since her independence in 1963. Of special concern is the current threat of international terrorism that has devastated the East African country twice in less than a decade, prompting responses. Not surprisingly, the intensity of feelings within and without the state about international terrorism and responses to it, has placed Kenya on the collision course with determinants of her decisions.

At a glance, decisions made by Kenya in this area seem to be motivated by the realities of the International Political Economy (IPE) and the International Political System (IPS), rather than a need to tackle the security issue *per se*. The responses have encountered

³ J. Rourke, *International Politics on The World Stage*. 4th ed. (Connecticut: Dushkin Publishing Group, 1993) p.123

⁴ K. Legg and J. Morrison, 'The Formulation of Foreign Policy Objectives' in R. Little and M. Smith (eds) *Perspectives on World Politics* (London: Routledge. 1991) p.62

⁵ P.A. Reynolds, *An Introduction to International Relations*. 3rd ed. (New York: Longman, 1994) Pp.54 and 55

numerous impediments from within the country in essence paralyzing them, as an intricate web of bureaucratic competition and societal restraints⁶ become involved. Accordingly, in order to address the issue of international terrorism conclusively, Kenya has to navigate through this web of domestic limits to her foreign policy outputs.

1.2. Statement of the Problem

Since independence, Kenya's Foreign Security Policy saw her acting as a single rational entity that was pointedly pro-western. Realities of the IPS such as the continued colonial dependencies and the East – West rivalry ensured that external influences on Kenya's policy remained pervasive, since she depended on the west for both her economic well being and security. However, changes within and without the country in the last two decades have greatly altered this scenario. The changes have potential to lead to a reconfiguration of state interests, as we know them.

The end of Cold War in the late 1980s after the collapse of the Soviet Union, and the democratization of Kenya roughly at the same time (early 1990s), is particularly relevant. Kenya is no longer a client of competing superpowers, while greater democratic space has given birth to groups, which promote interests of various people within the country. This advocacy has been pervasive in many government action-areas because of the desire for transparency and accountability to the citizen, and the need to sustain existing democratic space and better human rights.

⁶ J. Rourke, *International Politics on the World Stage* (Connecticut: Dushkin/McGraw Hill, 2002) p.79

The exacerbation in international terrorism in the 1990s and the perceived congruence between what is domestic and foreign policy, has seen foreign policy become invaded by these influences. Diverse domestic forces such as the public, political parties, religious groups, human rights groups and the media in Kenya among others, (whose concern has been triggered by alleged effect on their well being) have come up to defend their 'interests,' effectively politicizing Kenya's responses. The general feeling of these groups is that the state does not take into account their 'interests' when deciding on the course of action and yet a stakeholder input is perceived as necessary, if policy is to be effective. This need is rationalized in the need for the democratic government to be sensitive to peoples' views, and because they (citizens) provide the necessary economic, military and cultural and other resources of the nation.⁷

Therefore, the study analyses the connection between domestic interests and foreign security policy on international terrorism in Kenya. The domestic context of international terrorism is taken as the independent variable, while foreign security outputs on international terrorism are considered as the dependent variable. The study thus seeks to answer the question: to what extent does the domestic context influence foreign security policy on international terrorism in Kenya?

1.3. Objective of the Study

The main objective is to determine the domestic context of foreign security policy concerning international terrorism in Kenya, with a view to finding out its implication for the policy process.

⁷ B. Hughes, *Domestic Context of U.S Foreign Policy* (San Francisco: WH. Freeman and Co, 1978) p.2

1.3.1. Specific objectives

1. To explicate the emergence of the domestic context and international terrorism as important factors in Kenya's policy making
2. To evaluate the influence of the domestic context of foreign security decision-making concerning international terrorism in Kenya.
3. To posit recommendation in this area that may augment decision making in foreign policy.

1.4. Scope of the study

The unit of analysis for this study is the groups, which form the domestic context of policymaking on international terrorism in Kenya. These include rights groups, political parties, the media and any other interest group within the public, as viewed alongside state organs. The time frame under consideration is from 1998 to 2004. It was during this period that terrorism devastated the country in attacks on two key cities, thus marking the beginning of perception of terrorism as a serious threat to the nation.⁸ Accordingly, during this period terrorism was also largely seen to be international in character, thus eliciting elaborate responses from the Kenyan government.

The analysis will consider foreign policy output in the area of international terrorism. For example the allowing by the Kenyan government, of foreign agents into the country to hunt Al-Qaeda suspects, following the terrorist bomb attacks and related actions that

⁸ L. Chweya, 'Emerging Dimensions of Security in the IGAD Region' in M. Mwagiru (ed) *African Regional Security in the Age of Globalization*, (Nairobi: Heinrich Boll Foundation, 2001) p.32.

culminated in the proposed *Suppression of Terrorism Bill for Kenya in 2003*. The study will also draw from other relevant decisions in the same field and away, in an attempt to determine the real or perceived effect of domestic determinants of the country's foreign security policy.

1.5. Literature review

The literature review explores general debates on foreign policy decision-making, in an effort to determine their relevance. It further examines foreign policy stances taken up by Kenya over the years. The literature then places counter terrorism debates in the global and domestic context, before offering a brief summary. It is from these that the researcher identifies a gap in the literature, which the study subsequently seeks to fill.

1.5.1. General debates on Decision-making

Goldstein argues that a common starting point for studying decision-making process is the rational model.⁹ Here, decision makers calculate costs and benefits of each possible course of action and choose the one with the highest ratio. Legg and Morrison indeed suggest that the task of top decision makers in the foreign policy process, is to identify the political, economic and psychological needs of their country, recognize the limitations in their pursuit, and work out a well-defined and well-ordered set of foreign policy objectives.¹⁰ But is everything so clear-cut?

⁹ J. Goldstein, *International Relations*. 4th ed. (New York: Priscilla McGeehan, 2001) p.166

¹⁰ Legg and Morrison, 'The Formulation of Foreign Policy Objectives' op cit. Pp. 59 - 67

While acknowledging the utility of a neat model in analyzing foreign policy decisions by communities about which little is known, various shortfalls of the model can be identified. Firstly, it raises questions as to whether policy evaluation criteria should center on what is best for the country or for the decision maker.¹¹ It also fails to adequately describe procedures in a large government of complex society where diverse interests exist, in addition to ambiguity of the concept of national interest. Indeed above and beyond organization inertia and government bargaining, psychological elements challenge the model's central tenet of rationality.¹² Thus, for a 'penetrated and interdependent world,'¹³ where actors other than the state have successfully invaded the decision making process, the argument falls short of an adequate description of the process.

Hughes indeed disregards the argument as assumption of simplistic realism.¹⁴ Instead of 'hard impenetrable states' interacting according to physics-like laws, he sees 'mushy' open states with behavior that will vary according to organization and administration structures, the leadership personnel, and political strength of various groups within society.

This scenario is captured well by Allison and Halperin in the bureaucratic politics model. They argue that what happens in government decisions is not chosen as a solution to a problem, but rather results from compromise, conflict, and confusion of officials with

¹¹ B. Hughes, *The Domestic Context of U.S. Foreign Policy* op. cit. p.7

¹² J. Goldstein, *International Relations* op. cit. p.168

¹³ R. Keohane and J. Nye, *Power and Interdependence*. 2nd ed. (New York: HarperCollins, 1989) Ch.2

¹⁴ B. Hughes, *Continuity and Change in World Politics: Competing Perspectives*. 4th ed. (New Jersey: Prentice Hall, 2000) p.180

diverse interests and unequal influence, seeking survival and growth.¹⁵ Activity from which such decisions and actions emerge is characterized as bargaining along regularized channels, among individual members of government hooked onto major channels for producing action on a nation's security.

This argument is plausible considering contemporary breakaway from traditional realist thinking, to accommodate sub-national components in government decision-making. However, most advocates of bureaucratic politics while alluding to involvement of private interest groups, concentrate mostly on the core of government, -its agencies. They thus fail to appreciate the diversity of interest, which characterizes the involvement of citizens in decision-making, as opposed to obsession with competing government bureaucracies. The analyses have also concentrated on processes in developed countries where bureaucracies are powerful, and ideally positioned to contribute relevantly to the process alongside the executive.

Since scholars admit that bargaining occurs less so in non-democratic than democratic systems,¹⁶ it places the model under need for further scrutiny. This is especially important in the African setting where dictatorships have abounded, and where young democracies exist. This scenario not only stifles bargaining by domestic groups, but also government bureaucracies and organizations whose focus becomes desire to please the executive, rather than pursuit of parochial interests. Indeed, even where diverse interests are

¹⁵ G. Allison, *Essence of Decision: Explaining the Cuban Missile Crisis* (Boston: Little, Brown & Co, 1971) p.164. See also G. Allison and M. Halperin. 'Bureaucratic Politics: A paradigm and Some Policy Implications' in J. Vasquez (ed) *Classics of International Relations* (New Jersey: prentice Hall, 1990) Pp.118 - 120

¹⁶ J. Rourke, *International politics on the world stage* op. cit. Pp. 115 - 119

considered, analysts fail to identify the necessary criteria for arriving at compromise interest.¹⁷ The model does also not come to terms with reality on the ground, in terms of relevant external pressures and requirement for longer decision time, which make it a liability during crises.

Lindblom and Braybrooke on the other hand, argue that most political decisions fall into categories of "disjointed incrementalism."¹⁸ That is, most political decisions are neither arrived at rationally and comprehensively, nor are they designed to promote society's common good. Rather decisions are marginal steps taken by various branches and sub-branches of government in order to satisfy, to bring about gradual changes, to close political gaps and to avert control crises. The decision makers arrive at a decision by muddling through.

However incrementalism is skewed towards past policy because changes are perceived to threaten the organization. It also means that decisions are predictable since only gradual changes are accommodated. It thus fails to explain situations in which the decisions made deviate by far from tradition and even more importantly, leaves little or no room for reorienting pre-existing policy however mediocre. Moreover, by relying on the constitutional structure of government and division of power, it completely ignores the domestic context without much as a casual glance. In Hughes words, this model is 'only properly applicable in specific situations.'¹⁹

¹⁷ P.A. Reynolds, *An Introduction to international Relations*. op. cit. Pp. 40 and 41

¹⁸ A. Coulombis and W. Wolfe, *Introduction to International Relations: Power and Justice 4th ed* (New Delhi: Prentice Hall, 1990) p.127

¹⁹ B. Hughes. *Continuity and Change in World Politics; Competing perspectives* op. cit. p.178

Kumar and Putnam argue that in shaping foreign policy on behalf of the political community, decision makers operate at two levels, –at one level with the community that gives them instructions and supplies the resources with which to carry out their functions, and at the second level with other states whose behavior the policy makers try to change or regulate.²⁰ But while this model accommodates both internal and external determinants of foreign policy, it does not explain the procedures to be followed, and may thus suffer from same deficiencies as the bureaucratic and other models.

Kolko's revisionist argument considers value free, scientifically oriented models as seeking to maintain a capitalist dominated *status quo*²¹. He notes the futility of studying bureaucratic structures, tracing information flow or tracing social origin studies to arrive at causes of bureaucratic decision behavior, because power elites -synonymous with big business define a state's national interest. However, broadly considered big businesses are also domestic groups albeit very powerful. Indeed, the inclusion of private interests and the utility of relative power in bargaining is welcome. However, Kolko's argument is based on economic well being while ignoring political and social dimensions. Moreover, with the democratic wave sweeping the globe its timeframe is obsolete especially if we accept the argument by Fukuyama²² that, 'we may be witnessing... the end point of mankind's ideological revolution and the universalization of western liberal democracy as the final form of human government.'

²⁰ R. Putnam, 'Diplomacy and Domestic politics: the Logic of Two Level Games' *International Organization Journal* Vol. 42 No. 3 (Summer) Pp.427 – 460. See also M. Kumar, *Theoretical Aspects of International Politics* (Agra: Shiva Lal Agarwala and Company, 1984) p.323

²¹ Couloumbis and Wolfe, *Introduction to International Relations: Power and Justice*. 4th ed. op. cit. p.132

²² F. Fukuyama, 'The End of History,' *the National Interest* 16 (Summer 1989) p.18

1.5.2. The Making of Kenya's foreign policy

Discourses on Kenya have varied conclusions. One of the earliest analyses by Howell saw the country as being guided by national variables in its relation with immediate neighbors, while systemic variables affected her stance on continental African and other international issues.²³ But despite the attempt by Howell to cover both domestic and external determinants of Kenya's foreign policy, the national variables considered are tangible imperatives like economic development pursued by the country. Domestic sources of foreign policy are therefore viewed as goals and objectives, rather than the diverse domestic elements that may have gone into decision-making.

In the 1970s, Okumu on the other hand saw the influence of domestic pressures on third world foreign policy objectives, only in as much as they overestimated the capability of the system to achieve them.²⁴ This was partly explained by the fact that significant social formations had yet to be fully articulated,²⁵ in addition to the alienation of the citizenly and existing institutions from foreign policy issues, and failure of the domestic context (the party, parliament and mass communication) to sensitize the citizens.

Although Okumu considered Kenya's policy as effective because it paid substantial economic dividends and gave her domestic stability, the apparent lack of interest in foreign policy and indeed insignificant social formations, dictated that issues of foreign

²³ J. Howell, 'Analysis of Kenya's foreign Policy' *Journal of Modern African Studies* Vol. 6 No. 1 (1968)

²⁴ J. Okumu, 'Kenya's Foreign Policy' in O. Aluko (ed) *The Foreign Policy of African States* (London: Hodder and Stoughton, 1977) Pp. 137 - 159

²⁵ J. Okumu, 'Foreign relations: Dilemmas of Independence and Development' in J. Barkan, and J. Okumu (eds) *Politics and Public Policy in Kenya and Tanzania* (New York: Praeger Publishers, 1979) p.240

policy figured little in domestic politics, let alone within the setting of group bargaining. Indeed, around this period scholars have noted that Kenya practiced politics of the belly,²⁶ where both public and private institutions that would have otherwise constituted the domestic context, were harassed into doing the leader's bidding stifling independent thinking. However, the democratization wave in the early nineties heralded greater activism and advocacy by various groups. These changing circumstances, suggest greater involvement by groups in domestic and indeed international politics than Okumu had envisaged.

Shaw and Makinda explained Kenya's foreign policy in terms of her dependency as the client of foreign states, while at the same time being a sub-imperial power within the region.²⁷ The argument therefore suffers from shortcomings not unlike Howell's. Indeed, Orwa has dismissed their theoretical perspectives as inadequate in explaining continuity and change in Kenya's foreign policy.²⁸ More importantly, these three studies (Shaw, Makinda and Orwa) like most post-independence analyses, considered Kenya to be a unitary rational actor, while conveniently ignoring domestic politics that might have influenced policy. They in essence consider broad determinants such as dependency, without taking into account the process itself, through which these determinants influenced policy within the country.

²⁶ J.F. Bayart, *The State in Africa: The Politics of the Belly* (London: Longman, 1993) Pp.228-259

²⁷ T.M. Shaw, international Stratification in Africa: Sub-Imperialism in Southern and Eastern Africa' *Journal of Southern African Affairs* Vol. 2 No. 2 (April 1977). S.M. Makinda, 'From Quiet Diplomacy to Cold War Politics' *Third World Quarterly* Vol. 5 No. 2 (1983)

²⁸ K. Orwa, 'Continuity and Change: Kenya's Foreign Policy From Kenyatta to Moi' in W. Oyugi (ed) *Politics and Administration in East Africa* (Nairobi: East Africa Education Publishers, 1994). p.301

Korwa, as does Orwa's analyses, also note the persistence of colonial dependencies on the west by Kenya, coupled by the strategic pro-West stance occasioned by the cold war, as major determinants of her policy.²⁹ In the analyses, domestic influences do not figure while external determinants of foreign policy are prominent. In addition, these scholars including Okumu, consider policy in terms of national interest that is broadly described but not defined, despite its being used as a measure of policy effectiveness. Moreover, circumstances under which their arguments were based have changed. The cold war has since ended, while colonial patronage is on the decline, thus making the timeframe of these analyses outdated. On the contrary, counter terrorism policies have placed Kenya on the collision course with former patrons, while greater democratic space has nurtured divergent views domestically, such that she can no longer act as a unitary rational entity.

Awuonda has dealt with the influence of international law on Kenya's foreign policy. Using the Kenya- Somali border dispute, the Kenya-Uganda dispute during Amin's era and the treatment of refugees, he shows that Kenya observes international law during international intercourse.³⁰ He ignores domestic constraints that may influence policy even where international law says otherwise. Moreover, the issue of international terrorism has particularly put this argument on a weak footing, since states have so far been unable to create an international law on terrorism, let alone followed it. Thus generalization along these lines has serious shortcomings.

²⁹ K. Adar, 'Kenya – U.S. Foreign Policy: A Recapitulation of Patterns of Paradigmatic Conceptualization 1960s – 1990s' in M. Munene, O. Nyunya and K. Adar (eds) *The United States and Africa: From Independence to the End of the Cold War* (Nairobi: East African Education Publishers, 1995) p.101. K. Orwa, 'Continuity and Change: Kenya's Foreign Policy From Kenyatta to Moi' op. cit. Pp.297 - 323

³⁰ O. Awuonda, *The Role of International Law in Foreign Policy of African States* (M.A dissertation, University of Nairobi, 2001) Pp.58 - 93

1.5.3. Globalization of Counter terrorism Debate

Counter terrorism debates mainly center on the likely beneficiaries and the losers of responses. It is about whether the interests pursued are the international community's, or a specific nation's. This begs the question whether responses should be multilateral or national. As such, to Harmon terrorism is not only a persistent threat to world community and to specific state's national interest, but also a moral challenge to legitimate political and social life.³¹ Thus viewed, its internationalization in terms of utilizing territory, finance, education and telecommunications of various countries around the globe, cultivates a powerful rationale for multilateral action.

But such a scenario is unlikely among partners who perceive themselves as unequal. Indeed, Muriuki suggests that the end of the cold war, made Africa irrelevant to international diplomacy.³² The U.S. President, George W. Bush in his campaign also declared, "While Africa may be important it doesn't fit into the national strategic interests as far as I see them."³³ But come September 11, everything changed as Africa was dragged into a war with distant significance but massive impact on it, as if in confirmation that 'when America sneezes, Europe catches a cold, but Africa suffers

³¹ C. Harmon, *Terrorism Today* (Portland: Frank Cass, 2002), p.269.

³² G. Muriuki, 'Some Reflections on Cold War Africa and After' in M. Munene, O. Nyunya and K. Adar (eds) *The United States and Africa: From Independence to the End of Cold War* (Nairobi: East African Education Publishers, 1995) p.21.

³³ O. Ajayi-Soyinka. 'The Fashion of Democracy: September 11 and Africa' *Journal of Women in Culture and Society* Vol. 29 Issue. 2 (Winter 2004) Pp.604 - 606

pneumonia.’³⁴ Such shifts suggest unequal partnership, which has potential for breeding suspicion.

As a major target of recent terrorist attacks, the United States (U.S.) has obligation to her citizenry to confront it.³⁵ As such, current attention on terrorist groups with global reach reflects dominant U.S. interests. She has however largely failed in portraying terrorism as a general threat to world community, while ignoring the reasons why she is a major target. Indeed, the U.S. interests may not necessarily coincide with those of other countries.³⁶ Her global crusade against terror could thus be used to advance unrelated interests, as domestic structure of alleged sponsors of terrorism such as Afghanistan and Iraq, are reshaped to safeguard American global hegemonic status, not unlike it did with Japan after World War Two (WWII). This further breeds suspicion inimical to multilateral efforts.

And for Africa, the cold war scenario is apparently being replayed. Scholars like Stefan note:

“With the attacks in Kenya and Tanzania, the perception that Africa has once again, following the end of the cold war, become a victim and theater of a conflict between external parties, namely the terrorist network of Al-Qaeda and alliance against terrorists, is likely to strengthen already wide spread tendency to believe conspiracy theories. Africans are increasingly going to wonder if the war on terrorism is ‘their’ war”³⁷

³⁴ K. Adaka, ‘A Vulnerable Continent: Africa’ in M. Buckley and R. Fawn (eds) *Global Responses to Terrorism: 9/11, Afghanistan and Beyond* (New York: Routledge, 2003), p.165.

³⁵ K. Deutsch, *The analysis of International Relations* (New Delhi: Prentice-Hall of India) p.99

³⁶ P. Nying’uro, ‘Conference Paper’ *Recent Responses to Terrorism, International Terrorism: Conceptual Problems, Recent Responses and U.S Hegemony* (Nairobi: University of Nairobi, Institute of Diplomacy and International Studies, July 1st July 2003) Pp.15 -19

³⁷ S. Mair, ‘Terrorism and Africa’ *African Security Review* Vol. 12 Issue. 1 (2003) p.108

For example there appears to be a replacement of the Truman Doctrine of “*containment of communism*,” with Bush Doctrine of “*Containment of Terrorism*,” as the central framework for U.S. foreign policy.³⁸ Coming from a superpower in this unipolar moment, sentiments like, “They are either with us or against us,” coupled with cold war philosophies like, “he may be a bastard but he is our bastard,”³⁹ brook no dissent while they risk buttressing tyrannical regimes that feed on western regimes’ anxieties, to secure weapons and unconditional funding. Counter-terrorism thus like cold war patronage, could ensure Africa remains a bubbling source of instability. Witch-hunting may also shore up terrorism like it did communism in Vietnam, Angola, Mozambique and Korea.⁴⁰

And while the apparent sacrifice of fundamental freedoms by the U.S, (through introduction of Terrorist Information and Prevention System (TIPS) and USA Patriot Act) make it likely that African governments can sacrifice the same for the much needed development aid,⁴¹ the U.S. stands accused of applying double standards. The patriot bill affects non-Americans, while the U.S. has sought immunity of its citizens from prosecution by the International Criminal Court (ICC).⁴² Pressuring African nations to pass laws that negatively impact on their citizens should thus be viewed with suspicion.

The economics that go to it are also subject to debate. To Kikaya, when the western media strongly advocated for retaliation, terrorism was on its way to overtaking African

³⁸ Nying’uro, op. cit. p.2

³⁹ M. Wrong, ‘Since the planes crushed into the twin towers, African countries have known that to receive western aid, they must be seen as furthering western security interests’ *New statesman*, Vol. 133, Issue 4691 (6/7/2004) p.10

⁴⁰ Nying’uro, op. cit. p.4

⁴¹ Ajayi-Soyinka, op. cit. p.607

⁴² ‘Terror Bill continues to attract Criticism’ *Mtetezi Monthly Publication* (November 2003) p.3

development as a funding priority.⁴³ And while economic origins of terrorism, and the threat poverty poses to international security brought to attention the plight of many, ⁴⁴ immense funds that might otherwise have been used to alleviate poverty in Africa, are being poured into hotspots like Iraq and Afghanistan. The totality of these factors, complicates the global development agenda alongside the counter terrorism debate, with African countries being the losers.

1.5.4. Domestication of Counter terrorism Debate

Investment in Security Sector capacity building has been touted as the major issue for Kenya. Indeed, it is generally agreed that a nation that takes security seriously not only feels more confident but also is better equipped to cope with international hazards.⁴⁵ According to Bayart, Kenya's failure to anticipate and prevent attacks can be linked to regime preoccupation with survival and consolidation.⁴⁶ However, fascination with physical security fails to tackle why Kenyans were implicated in terrorism, or why 'perfect' security details did not prevent similar attacks on the Pentagon. In fact, physical security, which epitomizes intelligence gathering, leads to conflicting priorities because by then terrorist campaigns are so active, that requirements to maintain order precede those of addressing root causes.⁴⁷

⁴³ World Report, 2002: Africa Overview, Human Rights Watch, 2002, 4, available at <http://www.hrw.org/wr2k2/africa.html>, see also K. Adaka . *op cit*, p.166

⁴⁴ J. Odera, 'Conference paper' *Terrorism within a Regional Security Framework* (University of Nairobi, Institute of Diplomacy and International Studies, (July 1st 2003) p.8

⁴⁵ Commonwealth Consultative Group, 'Report' *Vulnerability: small states in the Global Society* (London: Commonwealth Secretariat, 1983) p.39

⁴⁶ J F. Bayart, *The State in Africa: The Politics of the Belly* *op. cit.*

⁴⁷ M, Crenshaw, 'How Terrorism Declines' in McCauley Clark (ed.) *Terrorism Research and Public Policy* (Portland: Frank Cass and Co. Ltd, 1991) p.86.

Moreover, physical security can ignore the hopes and aspirations of society as well as contradict values like national pride and autonomy.⁴⁸ This may lead to withholding of support from the citizenry, especially where investment is external to the state. So far, counter terror measures by Kenya give the impression of merely following instructions,⁴⁹ which indicates a desire not to address terrorism but perhaps to maintain, increase or attract aid from powerful external actors. This raises question as to whether the government has gotten priorities right.

If numbers are any indication, terrorism pales in terms of casualties when compared to pestilences like poverty, disease and hunger, which afflict developing countries like Kenya. Moreover, rampant corruption in migration and elsewhere might pose greater danger and even augment terrorism.⁵⁰ Even in the U.S. for example, (at least before September 11) terrorists kill less than fires resulting from faulty wiring, and yet terrorism is the political subject. It's however noteworthy that, psychological effectiveness of terrorism is enhanced by its dramatic and random choice of victims as portrayed by the media. People realize that, "this could have been me,"⁵¹ thus amplifying a small amount of power. But assuming Kenya was an indirect victim, one wonders whether the politicizing factor is the psychological trauma or a manifestation of external bullying, which activates the domestic context.

⁴⁸ K. J. Holsti, 'Interdependence, integration and fragmentation' in C. Kegley and E. Wittkopf (eds) *The Global Agenda: Issues and Perspectives*, (New York: Random House, 1984) p.210.

⁴⁹ J. Odera, *Terrorism within a Regional Security Frameworks* op. cit. Pp.6-8

⁵⁰ K. B. Richburg, *Out of America: A Black Man Confronts Africa* (New York: Basic Books, 1997) pp.4-7. See Also K. Mungai, 'Lessons from Blast in Nairobi' *Mtetezi Monthly Publication* Vol. 1, No. 14 (Aug 1998) p.11

⁵¹ J. Goldstein, *International relations*. 4th ed. op. cit. Pp.236,237

Some responses have also the potential to ignite religious tensions in Africa, where numerous faiths coexist. For example, Kavi has noted that in Thailand runaway violence erupted because a six million-strong Muslim population in the south, felt shortchanged in the war on terror.⁵² And while Muslims in Kenya constitute a minority, actions such as the arrest of an imam⁵³ or biased legislation can be viewed as condescending towards religious identity and culture, creating a perfect recipe for religious conflict. Blanket condemnation of religious communities also breeds suspicion and arbitrary arrests, which may undermine the state's capacity to utilize their goodwill, (of the persecuted) to ensure collaboration and access to intelligence.

1.5.5. Summary of the Literature Review

It is apparent from the literature reviewed, that pragmatism has not been Kenya's strongpoint in making foreign policy, in light of former governments' success in suppressing independent action. Yet, a comprehensive analysis cannot regard Kenya as a single rational actor pursuing known interests as portrayed in earlier studies. This is in view of the changing circumstances, such as the end of the cold war and the democratization of Kenya. It has thus weakened the rationale for such an argument, as well as favored bargaining by sundry interests in the country.

Moreover, while African governments have always faced dilemma in balancing donor's agendas, legitimate national security interests and domestic support for democracy and human rights, September 11 seems to have further complicated matters. Thus the

⁵² C. Kavi. 'Thailand: International Terrorism and the Muslim South' *Southeast Asian Affairs* (2004) Pp.271, 272. 'Blantyre: Tension as Rioters Vandalize Churches' (Nairobi: Daily Nation, 30/6/2003)

⁵³ Adaka. 'A Vulnerable Continent: Africa' op. cit. p.16

emergence of terrorism as a threat to Kenya's security has afforded an international issue, whose nature and impact of responses catches both the attention of the state, and domestic concerns.

1.6. Justification of the Study

National security is a core national interest that should be reflected in a state's foreign security policy. Yet, national security in Kenya has been significantly compromised by international terrorism. The current need to develop urgent and up to date, foreign security policies to address the problem is under threat from a lack of congruence between perceived interests by the state and sub national forces. However, little has been written on the influence of domestic context on foreign security, especially that which captures the situation of a developing country like Kenya. This study therefore, seeks to enhance the substance and content of literature in this field, in addition to contributing to the academic debates in this area. Moreover, it will seek to give recommendations, which would be timely in augmenting the process and effectiveness of responses to international terrorism.

1.7. The Conceptual Framework

The study uses one of the decision-making models proposed by Allison and expounded by others, –the bureaucratic politics model.⁵⁴ It was used to explain the Cuban missile crisis of 1962, by examining competition between various bureaucracies with parochial interests and varying influence.

⁵⁴ G. T. Allison and P. Zelikow, *Essence of Decision: Explaining the Cuban Missile Crisis*. 2nd ed. (New York: Longman, 1999) See also G. T. Allison and M. Halperin, 'Bureaucratic Politics: A paradigm and Some Policy Implications' in J. Vasquez (ed) *Classics of International Relations* op. cit. Pp.118 - 120

The bureaucratic politics model sees no unitary actor, rather many actors who focus on not on a single strategic issue, but on many diverse intra-national problems as well. Players choose in terms of no consistent set of strategic objectives, but rather according to various conceptions of national security, organization, domestic and personal interests. They make governmental decisions not by a single rational action, but by pulling and hauling. This however, does not imply that individual players are not acting rationally given their interests.

The model portrays the decision environment as one of groups (and individuals) in conflict. Each group may have a relative clear set of values and objectives but priorities differ across groups. Groups often have parochial, self-interested goals captured in the expression, “where you stand depends on where you sit.” Decisions are compromises between groups and reflect their relative strength.⁵⁵

Bureaucratic politics model explanation of how one nations behavior affects the behavior of another, focuses primarily on processes internal to each nation. The influence of one nation’s action on the other, results from the action’s impact on the stands, or on the power of players in decision-making, or on the action-games in the other nation. It is not that actions of other nations do not matter, but rather they matter if and when they influence domestic struggles.⁵⁶

⁵⁵ B. Hughes, *Continuity and Change in World Politics* op. cit. p.178

⁵⁶ Allison and Halperin, op cit. Pp.151-161

This model is especially appropriate for the study because, it focuses on interests of various groups with a stake in the decision process, and the ensuing bargaining between them in order to arrive at a resultant. Moreover, the emphasis on both groups and individuals, preempts the problem of individuals' decision environment. And since the study seeks to identify how the domestic context, –composed of realities within the state –influences the foreign security policy in Kenya, this model provides the framework within which to form such an analysis.

1.8. Hypotheses

1. The uncertainty in arriving at a comprehensive counter-terrorism policy is dependent on the diverse interests of the domestic context in Kenya.
2. A comprehensive counter-terrorism policy in Kenya depends on ability to reach a compromise within the domestic context.

1.9. Definition of Terms and Concepts

Domestic Context is the organized forum for decision making within a country, bound by a legal order or set of rules and which includes organs, institutions, groups and factions inside and outside of government. A kind of partnership exists between the elements of the domestic context.

Democracy is the creation and sustaining of space, within which the individual and communities can creatively operate and realize themselves in any sphere.⁵⁷

⁵⁷ K. Kibwana, 'Conference Paper' *Laying a Foundation for Democracy and Peace in Kenya: The Role of Government, Opposition and Civil Society* (Nairobi: KHRC, LSK and Center for law and Research International, Clarion, 7th July 1994) p.3

Democratic space is the legitimization of a host of social and political activities outside the state, in addition to making the state further susceptible to public demands, which fosters an accountable government⁵⁸

Terrorism is a rational but illegal activity, which indiscriminately and deliberately targets non-combatants, as a means of imbuing terror for political ends. Non-state as well as state actors perpetrate terrorism by placing it in the 'appropriate' ideological context, articulated as social, economic, religious or pursuit of security.

International Terrorism is terrorism that goes beyond territorial boundaries in terms of its intrinsic characteristics.

Civil society is the realm of organized social life that is open, voluntary, self generating, at least partially self-supporting, autonomous from the state, and bound by legal order or a set of shared rules.⁵⁹

1.10. Methodology

The methodology for this study will consist of primary and secondary data, the Internet and prescriptive and descriptive personal contribution. Primary data will consist of recorded speeches and documentaries, in addition to interviews with representatives of relevant domestic groups, with the aim of establishing various positions on the issue.

The study will use non-probability sampling design, consisting of purposive samples whose sampling units are subjectively selected by the researcher, in order to obtain a

⁵⁸ I. Chipkin, 'What, Civil Society in South Africa?' in A. Bujra and S. Buthelezi (eds) *Leadership, Civil Society and Democratization in Africa: case Studies from Southern Africa* Addis Ababa: DPMF, 2002)

⁵⁹ S.W. Nasong'o, 'Civil Society and African Democratization: The Flip Side of the Coin' p.5 [Online] www.csd.neu.edu/Nasong'o_Voll_fall2002.htm

sample that appears representative of the population. As such, the researcher has used acquired knowledge on the domestic context in general, and specifically concerning counter terrorism in Kenya, to identify activism by various partners within the state. The interviews will be non-scheduled to enable the researcher to probe on issues of interest.

Secondary data on the other hand, will involve executive policy reports and legislative documents, relevant books, journals and newspapers, in order to explicate work already done in this field. The Internet will also form a third source, with a view to obtaining relevant discourses by various scholars. Finally, the data will be analyzed qualitatively with a view to achieving the objectives of this study.

CHAPTER TWO

THE POLITICAL DIMENSION OF THE DOMESTIC CONTEXT IN KENYA

2.1. Introduction

Politics at least in the domestic sense, can be said to be the process by-means-of-which the government and the people who are governed, interact. Imperative to this definition, is the availability of methods for peaceful change. This is so because the ability to change government policies or practices peacefully is crucial to national stability, and by extension to the economic well being of a nation.¹ The dictates of politics in this sense demand that the government interact with its citizens via existing channels, in order to meet their expectations.

Just pitting the government against citizens is however an oversimplification and oversight. There are within government, those organs mandated through the constitution to make policy that governs the people. Likewise, within the citizenry there are various channels used to exert influence on the government, towards achievement of relevant interests. This however depends on the political dispensation in a country. As such, the type of society and political system is a major determinant of what these channels are, and the degree to which they influence policy. In pluralistic democracies, policy is influenced through interest groups and political parties, while in dictatorships similar

¹ P. Woll and S. E. Zimmerman, *American Government: The Core*. 2nd ed (New York: McGraw-Hill, 1992) p.5

influences occur but less visibly.² It is these formations within and without the government, that the study considers the domestic context.

Therefore, no discussion of domestic context can suffice without looking at the interactive process between the government and the governed, and their respective channels of conduct. The type of political system is synonymous with a discussion of the domestic context on international terrorism, since only states that are truly democratic, that encourage citizens to be innovative, and to think and reason freely on how best to promote and defend core values, are likely to be prepared to anticipate both domestic and international terrorism and possibly develop ways of countering it.³ Indeed, the political system is critical in the Kenyan analysis because the nature and extent of domestic influences, has been greatly influenced by the type of government. This chapter seeks to trace the history of involvement of domestic context in Kenyan

2.2. Political History of Domestic Context in Kenya

The search for freedom and justice is as old as the history of Kenya itself, as pre-independence activity suggests. During the colonial period, people resisted oppression by rising up in arms against their colonizers. Even after gaining their independence, the people of Kenya had great hopes and expectations of their government. Politically, the government was expected to, 'respect their rights and involve them in determining the

² J. Goldstein, *International Relations*. 4th ed (New York: Priscilla McGeehan, 2001) p.181. See also J. T. Rourke, *International Relations on the World Stage* (Connecticut: Dushkin/McGraw Hill, 1991) Pp.115-121

³ M. Munene 'Conference Paper' *National Institutions Responses to Terrorism* (University of Nairobi, Institute of Diplomacy and International Studies, July 1st 2003) p.2

future of their country.’⁴ However, this wasn’t the case as the independence constitution, which was fairly democratic became eroded by successive amendments that compromised the activity of domestic context.

Pre-independence analysts of domestic politics in Kenya credit civil societies such as religious organs, media, trade unions and welfare associations with the gaining of independence. On the contrary, it is argued that political parties basically appeared on the eve of independence.⁵ While this may not be true in entirety, since political parties did act as vehicles through which ideologies were expressed,⁶ this anticipates the significance of civil society in the history of Kenya. For the purpose of coherency, the research has broadly divided the history of Kenya’s domestic context according to key political developments since independence.

2.2.1. Kenya the *de facto* single party state

Against most of Africa, the immediate post-independence Kenya is credited with a better record of organizing independent civic institutions, aimed at making the government more accountable to the governed. These included an elected parliament, a privately owned press, civic institutions such as professional associations, Christian church, Islamic organizations, trade unions, farmers organizations, professional and voluntary movements, cooperatives, self-help (harambee) organizations, women’s associations and

⁴ K. Akivaga et al. ‘The future of Democracy in Kenya: A Challenge to the Citizen’ *Popular Education Series* No. 9 (2003) p.iii

⁵ G. Kibaara, ‘Conference Notes’ *Civil Societies’ Agenda for the NARC Government* (Nanyuki: Center for Governance and Development, 24th – 25th January 2003)

⁶ C. Gertzel, *The Politics of Independent Kenya, 1963-1968* (Nairobi: East African Publishing House, 1968) Pp55-60

interest groups of various descriptions.⁷ Concurrence about the existence of these organizations is however, clouded by contestation of their political nature.

For scholars like Matanga, the motivation and patronage for NGOs and voluntary sector has varied with type of leadership and other key imperatives. During Kenyatta's era, their role is seen largely as developmental, with blessings of the state and stemming from a felt need to match scarce post-independence resources to the country's developmental imperatives. In contrast, he argues that the authoritarianism and personalization of power during Moi's era, necessitated that these organizations take the additional role of political activism and advocacy.⁸

Indeed, it is argued that while the democratization process requires compliance of political leadership, pressure for regime transformation cannot come from above but from below, in civil society.⁹ Thus digressers from Matanga's viewpoint take the political nature of civil society as given. They maintain that, the non-political nature often emphasized simply means that actions are taken on basis of issues, rather than for the benefit of political groups or individuals. To them, politics essentially deals with, 'matters related to the acquisition and exercise of power within a group or

⁷ M. Chege, *Civic Institutions and Public Accountability in Kenya*. [online] <www.dpmf.org/civic-instituion-michael.html>

⁸ F. K. Matanga, 'ISTR Conference: The Third Sector: For Whom and for What?' *Civil Society and Politics in Africa: the Case of Kenya* (Dublin: Trinity college, 5th –8th July 2000) p.6 [online] www.jhu.edu/-istr/conferences/dublin/workingpapers/matanga.pdf

⁹ 'Working Documents' *Human Rights, Democratization and Civil Society in Africa: Guidelines for Policies and Practices of ICCO, Churches and NGO*. (AD ZEIST, Netherlands: Inter Churches Organization for development Cooperation, 27th January 1995) p.12

organization,¹⁰ and thus includes all groups that have the same subject matter. Thus viewed, most civil institutions are invariably political.

Yet, other analyses suggest informally articulated channels to the character of civil society. For Barkan and Widner, a government realm, –a system wherein there is a measure of bargaining, compromise, and tolerance among competing interests, and between those who exercise political authority and those who are subject to it, – existed in Kenya during this time.¹¹ This, they argue was possible through existence of loose ethno-regionally based political coalitions linked to the ‘*harambee*’ system. The system was supposed to act as an extra- parliamentary bargaining system, –a rule based system of renewing political leadership and ensuring observance of the rule of law. Despite this argument, insights into some concepts in the argument may suggest otherwise.

For instance, the objective of the harambee movement has been a subject of contention. Was it a means for peasants to extract resources from the center in exchange for providing elite patrons with support, or an attempt by the state to tax peasants to support their own development?¹² In spite of this ambiguity, scholars agree that Kenya was more democratic in the immediate post-independence than later. At any rate, most constitutional amendments that obviously incapacitated civic organizations and political parties, came much later.

¹⁰ A. Fowler, ‘Democracy Development and NGO in Sub Saharan Africa: Where are we?’ *Democracy and Development* No. 4 (Johannesburg 1993). See also G. Kibaara, *Civil Societies’ Agenda for the NARC Government*, op. cit.

¹¹ See R. Ajulu, ‘Thinking Through the Crisis of Democratization in Kenya: A Response to Adar and Murunga’ *African Sociological Review* Vol. 4 No. 2 (2000) p.133-157 [online] www.codesria.org/Links/Publications/asr42full/ajulu.pdf

¹² F. K. Matanga, *Civil Society and Politics in Africa: the Case of Kenya* op. cit. p.8

2.2.2. Kenya the *de jure* one party state

When Moi's government took power amid promises for change, and went ahead to release political prisoners from jail, Kenyans had high expectations. However, by 1981 the interference of the government in non-state actors was pervasive. Indeed, by this time Civil Servant Union (CSU), the University Academic Staff Union (UASU), and ethnically centered welfare associations such as Gikuyu - Embu and Meru Association (GEMA), the Luo and Abaluhya Union had been banned.¹³ To the trusting Kenyans who had been rooting for change, this was the ultimate blow to the involvement of the domestic sector in policy making alongside the new government.

When in June 1982, the constitutional amendment made opposition political parties illegal in Kenya,¹⁴ it sealed the fate of political parties as a formal bargaining channel in Kenyan politics. To some however, it merely codified what had already become a reality. And although political activity outside the ruling party (the Kenya African National Union -KANU) umbrella continued, it had to move underground as political figures were being detained, tortured and held without trial for prolonged periods of time. Even journalism was strictly controlled through a system of coercion, self-censorship and the banning of several outspoken publications.¹⁵

¹³K.G. Adar and I. Munyae, 'Human Rights Abuse in Kenya Under Daniel Arap Moi 1978 -2001' *African studies Quarterly* 5 (1): 1 (2001) [online] URL: [Http://web.Africa.ufl.edu/asq/v5/v5i1a1.htm](http://web.Africa.ufl.edu/asq/v5/v5i1a1.htm)

¹⁴ Republic of Kenya, *Laws of Kenya: The Constitution of Kenya* (Nairobi: Government Printer, 1991) Ch. 2

¹⁵ J. Solomon. *Failing Democratic Challenge: Freedom of Expression in Multiparty Kenya 1993*. (Washington: The Robert F. Kennedy Memorial Center for Human Rights, 1994) p.11

The role of civil society was reduced to a bare minimum during this time. Powerful civil organizations were proscribed, infiltrated by government agents and sympathizers, co-opted or neutralized through the creation of similar organizations under government sponsorship.¹⁶ The law especially the Societies Act, ensured official procrastination of civil organizations through regulation. Some like the Central Organization of Trade Unions (COTU) and Maendeleo Ya Wanawake Organization (MWYO) were made departments of the ruling party KANU. The government, on a continuous basis criticized religious movements and professional bodies such Law Society of Kenya (LSK),¹⁷ even sponsoring candidates for the organization's top posts at some point.¹⁸ Indeed, much energy and resources was expended by civil society as it battled against its agent the government.

The effectiveness of the civil society greatly suffered at this time for various reasons. At the top is the patron – client networks, that ultimately compromised ideals in addition to ethnic divisions within movements and the lack of support from the international community owing to cold war strategies¹⁹ Moreover, public office was viewed from within and without civil society as an end rather than means, thereby compromising performance and service.²⁰ Loyalty to wielders of power rather than efficiency became the established criterion for advancement and influence, while diverse ethnic loyalties relegated power positions to mere outlets of public resources to the community of top

¹⁶ F.K. Matanga, *Civil Society and Politics in Africa: the Case of Kenya* op. cit. p.24

¹⁷ K. Kibwana, 'Conference Paper' *Laying a Foundation for Democracy and Peace in Kenya: The Role of Government, Opposition and Civil Society* (Nairobi: KHRC, LSK and Center for law and Research International, Clarion, 7th July 1994) p.40

¹⁸ Korwa and Munyae, 'Human Rights Abuse in Kenya Under Daniel Arap Moi 1978 –2001' op. cit.

¹⁹ K. Matanga, *Civil Society and Politics in Africa: the Case of Kenya* op. cit. p.33

²⁰ H.L. Bretton, *Power and Politics in Africa*, (Chicago: Aldine Publishing Co, 1973) p.195

office holder.²¹ These factors whether or not instigated by the government, gave it an edge over the rest of the domestic context.

By 1987, there was no effective political opposition save for various groups from modern civil society, most notably clerics, lawyers and students.²² The parliament was left as the only arm of government that could be considered representative of the citizens albeit indirectly. However, following the controversial 1988 'mlolongo' system, –one which entailed having voters line up behind the candidate of their choice and which was therefore open to all manner of abuse, –the parliament also became a rubberstamp for executive decisions.²³ Thus the domestic context at this point consisted of a hapless civil society, which channeled its discourse through organized forums such as LSK, SONU, UASU and the church.²⁴ However, equally harassed by the state most of these organizations took a low profile in their confrontation with the state,²⁵ effectively leaving the church occupying central position in this fight. The church is thus a crucial element of the history of domestic context in Kenya.

Indeed between 1980 and 1990, (before multiparty politics) the church was the only opposition of repute that persistently and consistently criticized the government. The church was able to participate effectively from the pulpit and reach numerous people. Mainstream churches, particularly the Anglican Church (then known as the Church

²¹ M. Chege *Civic Institutions and Public Accountability in Kenya* op. cit. p.4

²² R. Cornwell. Kenya: Enlarging the Rift? *African Security Review* Vol. 7 No. 1 (1998[7]) [online] www.iss.co.za/Pubs/ASR/7No1/cornwell.html

²³ Korwa and Munyae, 'Human Rights Abuse in Kenya Under Daniel Arap Moi 1978 –2001' op. cit.

²⁴ K. Matanga, *Civil Society and Politics in Africa: the Case of Kenya* op. cit. p.11

²⁵ K. Matanga, *ibid*

Province of Kenya), the Catholic Church and Presbyterian Church of East Africa (PCEA), –which together comprise 70% of Kenyan Christian community, – and the National Convention Of Churches of Kenya (NCCCK), were at the forefront of this fight. Pro-democracy and human right movements also found themselves using cathedrals and church compounds as avenues for expressing views and drawing plans for action.²⁶ This was perhaps, in silence acceptance of the crucial role the church played in domestic politics of a country, where other channels of influence were compromised or non-existent.

The success of the church in confronting the state is however debatable. It has been argued for example, that the exceptional level of public respect for church leaders in Kenya placed them in an appropriate position to exert influence that could not be easily ignored in the political arena,²⁷ -by both the public and the government. It has also been noted that, the state found it harder to crack down on the church than other domestic organizations because of its large following and elaborate foreign links.²⁸ Moreover, the church by virtue of being the ultimate religious and moral authority was ideally placed and expected to have a strong belief in political calling for moral reasons. As put by one cleric:

“The social evils of our time such as corruption, political patronage, interference of the state with basic human freedoms, electoral rigging, detention without trial, torture, gagging of the press et cetera, are so great.... [that] Christians with any compassion cannot be indifferent to or complacent about the effects of such evils upon human lives in Kenya²⁹”

²⁶ Korwa and Munyae, ‘Human Rights Abuse in Kenya Under Daniel Arap Moi 1978 –2001’ op. cit.

²⁷ Democratic Transitions in Africa: The role of the Churches and Women Network Groups in Kenya. (Frankfurt: Ziaf, Johann Wolfgang Goethe-Universitat) [online] www.ziaf.de/englisch/kihiu_c.htm

²⁸ G. Sabar-Friedman, ‘Church and State in Kenya, 1986 – 1992: The Churches Involvement in the Game of Change’ *African Affairs* Vol. 96 (1997) Pp.25-52

²⁹ G. Sabar-Friedman, *ibid.* p.29

However, experience has not been religiously faithful to this observation since the 'moral responsibility,' did not stop some churches from collaborating with the government. Perhaps the culprit of this state of affairs is the ambiguity of what constitutes proper morals, the subjectivity of which inordinately predisposes it to abuse. As such, some churches such as the Africa Inland Church (AIC) and Legio Maria rallied behind the then government. This was accomplished when the churches looked the other way in the face of abuses and suppression, or when they used scriptures to justify the totalitarian culture of the regime they were supporting.³⁰ Even though these churches had smaller following, while their operations were limited by the fact that they were based mainly in rural areas, had inadequate resources, and little or no international connection, it strikes a blow to the credibility of the church, further complicating generalization about its role in opposing excesses of the state.

2.2.3. Kenya the Multiparty state

The post- World War II rivalry between the East and West and the ensuing cold war, had provided an excellent opportunity for African leaders to subvert constitutional order without much censure because allegiance to the East or West, rather than to constitution and democracy was perceived to suffice.³¹ The collapse of Soviet Union and the subsequent end of cold war meant that Kenya lost her strategic importance as a western ally. With no further reason to please the regime, the international community's criticism

³⁰ Akivaga et al 'The future of Democracy in Kenya: A Challenge to the Citizen' op. cit. p.23

³¹ K. Kibwana, *Laying a Foundation for Democracy and Peace in Kenya: The Role of Government, Opposition and Civil Society* op. cit. p.8

of human rights violations and corruption in the country sharpened.³² Forthwith, political parties and civil society in the country received much moral and financial support from a hitherto unlikely quarter, while the government was criticized and pressured to change its policies by the same international community.

Despite the apparent fragmented and obscure nature of the domestic context at this time, it was possible to mount pressure on the government to allow open participation. But this would only have been possible after repeal of certain offending sections of the constitution. This is because, through the constitution the government had succeeded in muzzling opposition both from its ranks and within the civil society, thus paralyzing the dynamics of the domestic context. With repeal of such sections, it was hoped that greater democratic space and freedom of expression would afford an environment in which the parliament, political parties, civil society and the fourth estate among others would thrive.

Thus with intense pressure mounting from within the state, the international community was able to pressure the government to undertake certain constitutional reform by threatening to withhold much-needed donor funding. As such, the government undertook the amendment of sections 2A of the constitution. Forthwith, a myriad of political parties cropped up while freedom of the press and civil society increased at least on paper. However, the government's continued an attempt to sanction them in other ways was apparent. Indeed, major disruptions of political opposition's activism and ethnic clashes, which were allegedly instigated by the government as proof of the dangers of

³² 'Country report' *Transformation: Kenya* (25th October 2005) [online] www.bertelsmann-transformation-index.de/73.0.html?&L=13

multipartism, have been reported. Precisely or in spite of this, an opposition divided along ethnic lines was unable to dislodge KANU from power.

Another crucial point in the history of domestic context is the role of civil society and the opposition political parties, in the constitutional review in Kenya. Specifically, the role of the National Convention Executive Council (NCEC) – a consortium of NGO and religious fraternity formed in 1997 in Limuru, –should be noted. So should the role of the Citizens Coalition for Constitutional Change (4Cs). These among others were instrumental in calling for major constitutional reforms and mobilizing the public to participate *en mass* in the agitation. Protests by the public led by these groups, (for example the 7th July 1997 ‘*Saba Saba*’ protests) were however met with brutal force by the government,³³ even though similar month-to-month occurrences caught the attention of the international community, who brought pressure to bear on the government to undertake major constitutional review.

The effectiveness of domestic groups in opposition to the government was however at this point undermined by their inability to pull their resources together. Thus, the apparent lack of synergy in the actions of civil society and political parties must be underscored. The desertion of the mass movement in 1997 by opposition members of parliament, in favor of boardroom negotiations with the president (government), is a case in point. These round of talks culminated in the Inter- Party Parliamentary Group (IPPG) reforms, under which the country went to elections in 1997. Even later, when a

³³ J. Achieng, ‘Constitution Making from the Middle’ (*IPS, 16 February 1999*) [online] www.harford-hwp.com/archives/36/135.html

compromise seemed to have been brokered between the civil society, religious and opposition leaders and a law passed to that effect, frequent about turns have engineered stalemates between advocates of parliamentary process and the Ufungamano people-driven initiative.³⁴ Squabbles between advocates of the two schools have persisted, further delaying completion of constitutional reform.

The result of the myriad of political parties that cropped up in Kenya after the repeal of section 2A of the constitution did also not conform to expectation. In spite of continued repression by the government, as exemplified by ethnic cleansing in 1992 and 1998, wrangling compromised their ability to pull resources together to dislodge a 'bad government' in 1992 and again in 1997.³⁵ It has been argued that personal ambitions and ethnic loyalties were responsible for the parties' inability to develop national followings, distinctive policies and proper programs based on coherent ideologies³⁶. This not only rendered them somewhat irrelevant in decision-making and bargaining, but also complicated an analysis of their role in specific decisions due lack of direction and the subsequent confused implementation.

Indeed, ethnicity has been a problematic issue in the Kenyan domestic context and thereby necessitates more than a casual glance. Some scholars note that after independence, when increasingly confronted with sharply conflictual claims made upon the state, contestation for power and resources assumed the form of ethnic competition.

³⁴ S. Akivaga et al. 'Multipartism –without Democracy! A Challenge to the Voter' *Popular Education series* No. 9 (2003) Pp.67- 79

³⁵ Institute for Education in Democracy, *Political Party Organization and Management: An Audit* (Nairobi: IED, 1998) p.21 [online] www.anthrosource.net/doi/pdf/10.1525/pol.1997.20.1.62

³⁶ Institute for Education in Democracy, *ibid.*

This created a fertile ground for the reconstruction of ethnic identities alongside political contestation. Ethnicity became an important and effective instrument of political mobilization, involving face-to-face or house-to-house contact to mobilize sections that felt aggrieved in some way.³⁷ Because of the subjectivity of grievances to ethnic inclinations such as the pursuit of power, this assumed a regional and ethnic perspective rather than being national and issue based.

2.2.4. The Era of change?

After 1998, given the dynamics of constitutional review in participatory bargaining, the tide has apparently shifted. In 2002, given a chance Kenyans voted overwhelmingly for change rather than continuity. To Akivaga, Kenyans voted for acceptance of differing and conflicting interests as the basis for bargaining between interest groups, within a framework of democratic and political culture whose hallmark would be values of tolerance, pragmatism, cooperation and compromise. In addition, the right of opposition to offer alternative platform to the government, the civil society to advocate peoples rights without harassment, an independent press that encourages public dialogue on critical issues, the liberty of individual and respect for public opinion were expected to be guaranteed.³⁸ Thus, whereas allowance for distinction between the reality and expectation should be made, it is important to examine whether there have been changes in the political nature of the domestic context. So what is domestic context?

³⁷ R. Ajulu. 'Thinking through the Crisis of Democratization in Kenya: A Response to Adar and Murunga' op. cit. Pp.133 - 157

³⁸ Akivaga et al. 'The Future of Democracy in Kenya: A Challenge to the Citizen' op. cit. p.36

2.3. Recognizing the Domestic Context

Marshall has suggested that, in analyzing the foreign policy decision-making process of any country large or small, the criteria should involve the identification of most influential institution in the particular country and then identifying the dynamics within and surrounding the institution.³⁹ As such, it is important to consider the relevant institutions and interests within a country, before weighing them side-by-side and analyzing the internal and external dynamics of each.

2.3.1. Political leadership

This constitutes the ideal starting point, owing to the constitutional and legal advantages it enjoys over other domestic actors. They are officials whose tenure is variable and dependent upon the political contest for power in the country. They include the executive president or prime minister and are considered the strongest actors in the field of foreign policy⁴⁰. In Kenya, the executive has traditionally been very powerful, controlling both domestic and foreign policies while tolerating little dissent from other actors within the country.⁴¹ It is noted however that this government institution may sometimes not be the most important foreign policy-making institution in small states, owing to blurring of domestic goals and considerations of foreign realities.⁴² Moreover, the gradual empowerment of other actors in the state has placed them in a position to challenge this state of affairs.

³⁹ R.S. Marshall, 'Foreign policies of Small Developing States' in J. Rosenau, K.W. Thomson and G. Boyd (eds) *World politics: An Introduction* (New York: Free Press, 1976) p.288

⁴⁰ J. T. Rourke, *International Relations on the World Stage* op. cit. p.123

⁴¹ M. Munene, 'Symposium paper' *National Institutions Responses to Terrorism* op. cit. Pp2 - 4

⁴² R.S. Marshall, 'Foreign policies of Small Developing States' op. cit. p.284

2.3.2. Policy Bureaucracies

These comprise career government personnel as distinguished from those who are political appointees or elected officials. They are technically subordinated to political leaders but are usually important influences of a state's policy.⁴³ Tension is usually high between state leaders and foreign policy bureaucracies as each tries to tame the other. On the one hand, politicians consider bureaucratic agencies too huge and 'bureaucratic' (cumbersome, routinized and conservative) to control while on the other hand, career officials who staff these agencies at the lower level may often feel they owe no loyalty to political leaders,⁴⁴ thus fail to adhere to their dictates.

In some countries such as the U.S, government bureaucratic agencies are many and exert powerful influence on the executive. The Iran-Contra scandal is a case in point.⁴⁵ In Kenya, it is however not so clear-cut since post independence dynamics had the agencies competing to please the presidency, leading to suspicion within and between them rather than forging independent input into the policy process.⁴⁶ In spite of this, numerous agencies such as the foreign affairs ministry, counter terrorism center, National Security Intelligence Service and the police are recognizable among others. The nature and work of these agencies, puts them in a position to influence policy, which with increased independence can only be augmented.

⁴³ J. T. Rourke, *International Relations on the World Stage* op. cit. p.124

⁴⁴ J. Goldstein, *International Relations* op. cit. p.179

⁴⁵ See J.T. Rourke, *International Relations on the World Stage* op. cit. p.127 A small group of officials in the National Security Council secretly sold weapons to Iran in an attempt to win release of U.S. hostages in the middle East and used the funds to finance Contra rebels in Nicaragua. i

⁴⁶ J.F. Bayart, *The State in Africa: The Politics of the Belly* (London: Longman, 1993), Pp.228-259

2.3.3. The Legislature

This is the legislative (law making) arm of government. Its role is however considered less than that of the executive, especially in the area of foreign policy. Whereas it is not powerless, the exact power of legislatures will vary from state to state. In non-democratic states (dictatorships), they may act as rubberstamp for executive decisions while in some countries they are very powerful.⁴⁷ For example in the U.S, the congress successfully pressured president Nixon to leave Vietnam.

In Kenya, the legislature and judiciary's importance in the area of formulation and implementation of policy pales in comparison to the government bureaucracy. In spite of this, Kenyans have perceived parliament as the best forum for taking government to task for its most obvious errors and misdeeds. This is supposedly done through weekly question time to relevant ministers, introduction of private member motions & laws to censure government and the amending government bills.⁴⁸ With the advent of multiparty politics and growth of a new clique of members, the legislature's potential role as a countervailing power to the executive has been strengthened in spite of the constitution still ensuring the executive's preponderance.

2.3.4. Political opposition

People in power almost always face rivals who would replace them to change policy or gain power. In democratic systems, the opposition is legitimate and organized into

⁴⁷ J.T. Rourke, *International Relations on the World Stage* op. cit. p.123

⁴⁸ M. Chege, *Civic Institutions and Public Accountability in Kenya* op. cit.

political parties.⁴⁹ This is achieved in various ways including the innate competition between political parties, which offers choices to voters via ideological and practical grounds.⁵⁰ Without an effective opposition, there is no sustained check on the power of the government,⁵¹ while a vigilant opposition keeps the government 'on its toes,'- preventing abuses and encouraging efficient policymaking and implementation. In addition, it provides channels of communication, which circulate political ideas, principles and policy option among its members and the entire society.

The independent Kenya has mostly been under a single party, KANU. However, the 1991 constitutional amendments allowed other political parties to participate in the democratic process. Moreover, much freedom for partaking of politics has seen opposition to government policies not only come from the myriad of opposition political parties, but also from individuals within the governing party. After 2002, this was made even more likely by existence of a ruling coalition of political parties, –the National Rainbow Coalition (NARC), –whose cohesiveness is doubtful as reflected by frequent bickering. This political dispensation places political parties at the heart of the domestic context in Kenya.

⁴⁹ J.T. Rourke, *International Relations on the World Stage* op. cit. p.128

⁵⁰ P. Woll and S. E. Zimmerman, *American Government: The Core*. 2nd ed (New York: McGraw-Hill, 1992) p.79

⁵¹ Institute for Education in democracy, *Political Party Organization and Management: An Audit* op. cit. Pp7, 8

2.3.5. Interest groups

Interest groups are coalitions of people who share a common interest in the outcome of some political issue, and who organize themselves to try and influence the same.⁵² They seek to influence the government in any of the copious ways that exist at their disposal. These groups may have motives ranging from exclusivist economic interests to broad public interests such as a clean environment. Among the later, are citizens' groups⁵³ in which members are drawn together for reasons other than their occupation, such as motivation by a purposive incentive like the desire to promote a cause they believe in, – for example NCEC and the 4Cs. In the area of human rights and democracy, most of these private groups are lumped together under the single entity of civil society (religious and secular)

In contemporary times, self-governance as an alternative to state governance is at the center of paradigmatic shift.⁵⁴ Thus policy formulation, enactment and implementation is no longer seen as the preserve of state but a corporate project where the state is just one of the actors. Therefore, the civil society can and has provided counter weight to state power by promoting human rights and expanding political participation. This is significant since the organs and activities of civil society can mediate between the individual or family and the state, more so when the individual may feel dwarfed by the scale of the modern state and unable to make their voices heard. In this respect, membership in labor unions, religious organs and professional associations among others

⁵² J. Goldstein, *International Relations* op. cit. p.81

⁵³ T.E. Patterson, *The American Democracy* (New York: McGraw-Hill, 1990) p.266

⁵⁴ O. Ong'wen, 'Civil Society as a Constitutional Mechanism' (2001) [online]

www.kenya.constitution.org/docs/07d007.htm

form the context and opportunity for discussion of public issues at all levels. While they have existed before, these organizations have found much expression in multiparty Kenya.

2.3.6. The Media

Mwagiru and others define the media as a channel in the process of communication as well as being the tool of the person using it.⁵⁵ Thus so broadly defined, the media is pervasive in every aspect of our life much so in this age of information revolution. This pervasiveness is evinced by characterizations such as the CNN factor, –which essentially means that events happening in one part of the world are transmitted instantaneously to other parts of the world.⁵⁶ But if the media is a tool for internationalization of events, its reach is even more intense in the domestic arena. It indeed is because the media is a very powerful instrument of persuasion that it is kept under tight control in totalitarian states and carefully manipulated in democratic ones.

The Kenyan experience has been no exception. Instruments of public information such as radio or TV are today a part of the nation's democratic life, since it is through the media that the citizen is kept abreast of events. On the contrary, the single party government had used media to pervert the democratic process, by justifying the injustices of the regime while critical media was censored, threatened and even banned. However, with the introduction of multiparty politics via major constitutional reforms that reinstated

⁵⁵ M. Mwagiru, M. Munene and N. Kalulu. *Understanding Conflict and its Management* (Nairobi: Watermark, 1998). Pp.46-50

⁵⁶ M. Mwagiru, *Theory, Processes and Institutions of Management*. (Nairobi: watermark, 2000) p.67

freedoms earlier non-existent, Kenya's press and electronic media has thrived in the last decade.

Thus a feeling has grown within the scholarly field that, 'new forces are shaping Kenya's politics.'⁵⁷ These discourses have suggested that since introduction of multiparty politics, there has developed an increasingly independent legislature consisting among others, a new crop of progressive legislators, committees that participate actively in shaping and amending legislation, and the beginnings of classic triangular relationships between relevant government departments, legislative committees and interest groups. This has also come at a time when the civil society is said to have 'matured,' while the press and electronic media has flourished.

2.4. Relevance of Historical Aspects to foreign policy

The exact line of demarcation between domestic and foreign policy has been the subject of debate by scholars. Regularly, disenchanted domestic groups have criticized what had hitherto been considered foreign policy while what had been thought of as domestic policy, sometimes has foreign implications. Some scholars like Rourke have tried to get around this complication albeit inconclusively, by introducing the concept of 'intermestic' issues,⁵⁸ –a mix of foreign and domestic policy that arouses domestic groups.

⁵⁷ J.D. Barkan, 'New Forces Shaping Kenyan Politics' *African Notes: Center for Strategic and International Studies* No. 8 (May 2003) Pp.1-5 [online] www.csis.org/africa/Anotes/Anotes018.pdf

⁵⁸ J.T Rourke, *International Relations on the World Stage* op. cit. p.123

There was however, never a question that domestic pressures influenced foreign policy in the immediate post independence. Indeed, domestic secession-group politics greatly influenced Kenya's security and foreign policies, as illustrated by the various defense agreements made with neighbors and states beyond.⁵⁹ In addition, Kenya's colonial heritage has meant that most of her post-independence foreign policy can be examined only in light of colonial dependencies and the cold war environment.⁶⁰ As a result, and to the extent that the international community especially the West, affected policy or power relations within the domestic context via indifference, complacency or by providing support, they became accomplices of the government. This inordinately reflects a foreign element, as also does the shift in Western priorities to support the domestic groups when the cold war ended.

Moreover, in post-cold war Kenya other instances of foreign machinations abound. For example, the US Congressional concerns for human rights violations in Kenya gained momentum in the 1990s culminating in a fact-finding mission by high-ranking senators and the subsequent release of political prisoners.⁶¹ Furthermore, the demand by the club of Paris for reforms in November 1991 as a precondition for granting urgently needed loans to Kenya, is another appropriate example. This kind of pressure indeed induced the government to allow a multiparty system, through constitutional amendment in December 1991 and again in 1997 when the government undertook constitutional review.

⁵⁹ K. Orwa, 'Continuity and Change: Kenya's Foreign Policy From Kenyatta to Moi' in W. Oyugi (ed) *Politics and Administration in East Africa* (Nairobi: East Africa Education Publishers, 1994) p.305

⁶⁰ K. Orwa, 'Continuity and Change: Kenya's Foreign Policy From Kenyatta to Moi' op. cit. Pp.306-310

⁶¹ K. Adar and I. Munyae, 'Human Rights Abuse in Kenya Under Daniel Arap Moi 1978 -2001' op. cit. 'Country report' *Transformation*: op. cit.

2.5. Conclusion

The run through history of domestic context in Kenya, demonstrates that there indeed existed a domestic context to policymaking, albeit one skewed towards domestic politics of transition and democratization as opposed to foreign issues. The vivacity of domestic context was however compromised by constitutional constraints, which gagged the activity of civil society institutions and the legislature but failed to completely subdue them. And in spite of the repeal of some of these offending sections of the constitution, manifold factors such as tribalism and government interference have lingered, persistently affecting the operation of the domestic context. However, changes towards a more democratic Kenya and a change of government after decades, suggests room for improvement. Of particular interest, is whether the domestic context's preoccupation with domestic rather than foreign issues has changed particularly in light of the emerging challenge of international terrorism. Consequently, the next chapter seeks to analyze the phenomenon of terrorism in Kenya prior to evaluating the domestic context of policy making in the area of international terrorism.

CHAPTER THREE

INTERNATIONAL TERRORISM AND KENYA

3.1 Introduction

The previous chapter suggested the existence of a domestic context in Kenya albeit one with obscure foreign links. However, in order to investigate the study's hypotheses, it is important to build a background to the relevant security issue. This is because while the primary purpose of the study is to investigate the existence of the domestic context regarding international terrorism in Kenya, it is imperative to explore the specter of international terrorism as a prerequisite to identifying foreign security policy responses and the debates surrounding them. This will enable the study to form a background for analysis.

3.2. The Incidence of Terrorism

Although incidents of terrorism abound throughout history, it wasn't until the late 1960s that terrorism emerged as a force with a place in international politics¹. Since then, three waves of terrorism have been identified and coincide with important developments in international politics. Otenyo identifies the first wave as corresponding to the 1967 Israeli-Arab war, the second as epitomized by the 1979 return of Ayatollah Khomeini to Iran and the subsequent fall of the Shah, and finally the one associated with Osama bin Laden and the Palestine *intifada*

¹ C. Harmon, *Terrorism Today* (Portland: Frank Cass, 2002), p.2.

after the gulf war in 1991.² It is the last wave that is especially important with respect to international terrorism in Kenya.

Specifically, in the last twenty years or so, the world has witnessed terrorist attacks of tremendous proportions, which claimed thousands of victims. There were 855 incidents of international terrorism in 1988, 574 in 1991, and 321 in 1994, with the bomb used as the weapon of choice in most of these attacks.³ More recent attacks include the one on World Trade Center (WTC) in 1993, Nairobi and Dar-es-salaam in 1998 and the September 11th 2001 attacks on the WTC in United States.⁴ Since then there have been a series of terrorist attacks in India and Pakistan in 2001 and in Tunisia, Yemen, Kuwait, Indonesia, Philippines and Mombassa, Kenya in 2002,⁵ among others.

The first sign that Kenya had entered the terrorist circuit was in December 1980, when terrorists sympathetic to Palestinian Liberation Organization (PLO) bombed the world-renowned, Israeli owned Norfolk hotel in Nairobi. The attack claimed 16 lives and injured hundreds. The desire to punish Kenya for providing logistical support to an Israeli rescue mission of hijack victims at Entebbe airport, Uganda

² E. Otenyo, 'New Terrorism: Toward Explaining Cases in Kenya' *African Security Review* Vol. 13 Issue. 3 (2004) p.77

³ Source: U.S. Department of State

⁴ September 11 is used forthwith to refer to this attack.

⁵ P. Nying'uro, 'Conference Paper' *Recent Responses to Terrorism, International Terrorism: Conceptual Problems, Recent Responses and U.S Hegemony* (University of Nairobi, Institute of Diplomacy and International Studies, 1st July 2003) p.11

1976, is said to have motivated the attack.⁶ However, the attack seems to have been erroneously forgotten by policy makers as an isolated event.

On August 7, 1998, Kenya faced the most devastating terrorist attack yet.⁷ The U.S embassy in the capital city, Nairobi was bombed, with two hundred and fifty people (mostly Kenyans) being killed and thousands injured. The attack coincided with a similar one in neighboring Tanzania and was directly linked to Osama bin Laden. Four years later in December 2002, just as people were starting to forget, suicide bombers calling themselves the, 'Army of Palestine' attacked, wounded and killed patrons and workers at another Israeli owned hotel in Kikamballa, Mombassa. The attack simultaneously but unsuccessfully tried to shoot down (using Surface to Air Missiles), an Arkia Airline as it took off from the airport in the same city.

3.3. The Cost of Terrorism

The cost of terrorism whether in terms of lives lost, destruction, living in fear or the associated cost of counter terrorism, is colossal. The impact of some attacks has indeed been felt the world over. The effect of bombing of the twin towers of WTC in New York reverberated throughout the global financial sector, with some

⁶ M. Katumanga, 'Conference Paper' *Facing Emerging Threats from Terrorism: Some Thoughts on Alternative Menu of Responses* (University of Nairobi, Institute of Diplomacy and International Studies, 1st July 2003) p.14. See also E. Otenyo. 'New Terrorism: Toward Explaining Cases in Kenya' op. cit. p.76

⁷ E. Otenyo, *ibid*

analysts even predicting a recession in the world economy as a result.⁸ Even though this did not happen, the physical destruction and the loss of life were unprecedented.

In Kenya, the death and destruction was followed by upset to the tourism industry, decreased investor confidence and crippling of the country's economy in general.⁹ Estimated losses from the physical effects of the blast run into billions of Kenya shillings.¹⁰ It is not surprising then, that all over the world terrorism is no longer viewed as an irritating itch that can be ignored but a disease with capacity to devastate lives anywhere in the international system.

Thus the real and potential capacity for terrorist destruction cannot be underscored. From upcoming nuclear powers of Pakistan and India to the militarily weaker Tanzania, from the superpower U.S to the fast growing Southeast Asian economies to the relatively small East African economy of Kenya, from the Christian Philippines to the Muslim Middle East, -terrorism does not discriminate. It sweeps the globe like a hurricane, in ways previously unreckoned, leaving in its wake anger and despair, pain and misery, and death and

⁸ G. Brigitte, 'The Global Economy: What has changed?' in M. Buckley and R. Fawn. (eds), *Global Responses to Terrorism: 9/11, Afghanistan and Beyond* (New York: Routledge, 2003) Pp.278 - 277

⁹ K. Adaka. 'A Vulnerable Continent: Africa' in M. Buckley and R. Fawn (eds) *Global Responses to Terrorism: 9/11, Afghanistan and Beyond*, (New York: Routledge, 2003) p.165

¹⁰ KTN Television Documentary, 'Patterns of Global Terrorism' (30th July 2005)

destruction on the one hand and celebration and jubilation on the other.¹¹ But what is terrorism?

3.4. Towards Understanding Terrorism

Terrorism as a concept is the subject of protracted debate between scholars with definitions being perhaps as varied as the ideologies behind them. The lack of consensus is epitomized by sentiments like, “terrorism is like beauty it is in the eyes of the beholder,”¹² or “one person’s terrorist is another’s freedom fighter.”¹³ These positions have inadvertently affected counter terrorism effort both nationally and internationally. However, as with other analyses of concepts, any discussion concerning terrorism must prudently begin with an interrogation of the term itself. To this extent this paper has sampled a few definitions with the aim of identifying similarities and a rallying point to which counter terrorism strategy can be centered.

It is said that its easy to describe and understand terrorism at the conceptual level but that interpretation of what constitutes an act of terrorism, loses clarity when placed within a particular historical, political, religious or ideological context.¹⁴ It has thus been argued that an accurate definition should convey value-neutrality,

¹¹ J. Odera, ‘Conference paper’ *Terrorism within a Regional Security Framework* (University of Nairobi, Institute of Diplomacy and International Studies, 1st July 2003) p.2

¹² P. Jenkins, *Images of Terror: What We Can and Can’t Know About Terrorism*. (New York: Aldine de Gruyter, 2003)

¹³ J. Goldstein, *International Relations* 4th ed (New York: Priscilla McGeehan, 2001) p.236

¹⁴ J. Cilliers, and K. Sturman (eds). *Africa and Terrorism* (Pretoria: Institute for Security Studies, 2002)

by recognizing both the state and non-state actors as potential perpetrators.¹⁵ As such, no definition comes closer to one by Goldstein, which takes terrorism simply as political violence that targets civilians deliberately and indiscriminately.¹⁶ Beyond this basic definition, other criteria can be applied but are more politically motivated.

Sampling other definitions, Harmon considers terrorism as the deliberate and systematic murder, maiming and menacing of the innocent to inspire fear for political ends, which may evince religious, economic or social motives.¹⁷ Cilliers defines terrorism as unlawful or threatened use of violence against individual or property to coerce and intimidate governments and societies for political objective, which is couched in social, economical and religious terms.¹⁸ Finally Alexander defines terrorism as the use of violence against random civilian targets in order to intimidate or to create generalized pervasive fear for the purpose of achieving political goals.¹⁹

Away from definition of terrorism in its intrinsic sense, Wheeler defines international terrorism as terror by one group to another, or use of third parties as agents against nationals of another state either within the territorial domains of

¹⁵ United Nations Report, 'A more secure world: our shared responsibility' (8th January 2005)

¹⁶ J. Goldstein, *International Relations* op. cit. p.236

¹⁷ C. Harmon, *Terrorism Today* op. cit. p.87

¹⁸ J. Cilliers, 'Terrorism and Africa' *African Security Review* Vol. 12 Issue. 4 (2003) p.91

¹⁹ Y. Alexander, *International Terrorism: National, Regional and Global Perspective* (New York: Praeger Publishers, 1976) p.4

that state or in a third state.²⁰ Pierre on the other hand, takes international terrorism to be acts of violence across national boundaries or with clear international repercussions, often within the territory or involving citizens of a third party to a dispute.²¹ In light of these numerous definitions, this paper seeks not to coin a new definition but to analyze existing ones, in an effort to better understand the phenomena and consequent responses to it.

Three points emerge from the above characterization of terrorism. Firstly, if terrorism is deliberate and systematic, it must be rational. Indeed, it has been generally accepted that the bombing of U.S embassies in Nairobi and Dar-es-Salaam in 1998 and the September 11 attack in New York involved sophisticated planning,²² utilizing territory, financial, education and telecommunications services of several countries.²³ By admitting the rationality of terrorist's motives, we realize that terrorism is not the product of a deranged mind but the result of calculated planning meant to elicit certain responses. It implies that the perpetrators have clarified goals, gone through the process of calculating the cost and benefit of alternatives, and chosen the best available one in terms of reaching their goals.²⁴ This indicates that, 'real issues' exist for which someone (terrorists)

²⁰ E. Wheeler. 'Terrorism and Military Theory: an Historical perspective' in C. McCauley (ed), *Terrorism Research and Public Policy* (Portland: Frank Cass and Co. Ltd, 1991) Pp.8 and 9

²¹ A. Pierre, 'The Politics of International Terrorism' in C. Kegley and E. Wittkopf (eds) *The Global Agenda: Issues and Perspectives* (New York: Random House, 1984) p.85

²² P. Nyinguro, *Recent Responses to Terrorism, International Terrorism: Conceptual Problems, Recent Responses and U.S Hegemony* op. cit. p.6

²³ J. Wright, 'International Organizations - the UN, NATO and EU' in M. Buckley and R. Fawn (eds) *Global Responses to Terrorism: 9/11, Afghanistan and Beyond*, (New York: Routledge, 2003) p.262

²⁴ J. Goldstein, *International Relations* op. cit. p.166

seek redress. Conversely, states that terrorize their citizens, do so rationally as a process of reaching selfish but clearly defined goals.

Secondly, it emerges that terrorism is an illegal activity since people with no legal sanction to use violence carry it out. However, we again get caught up in a web of the many faces of terrorism. For instance, is state terrorism (where a regime terrorizes its citizens) legal? What of repressive laws passed in the guise of combating terrorism but which otherwise create room for abuse of human rights and fundamental freedoms? It is not surprising then, when some scholars suggest the emergence of a post-Westphalian structure where non-territorially organized units challenge states' monopoly on use of force and other capabilities.²⁵ Part of this picture, is the emergence of a pattern of failed states, which create spaces for non-state actors. But does this sanction violence by such groups thereby legitimizing their actions?

This complicates the notion of sanctioning of violence by relegating it to relativism. There however exists no evidence that we have moved from the state system introduced in 1648. Thus, only the state has legal mandate to mete out punishment on its citizens, thereby conferring illegitimacy to terrorism by non-state groups. This is much so in its international dimension where it entails breach of another state's sovereignty in one-way or other. Arguably then, terrorist acts by

²⁵ B. Buzan. 'Implications for the Study of International Relations' in M. Buckley and R. Fawn (eds) *Global Responses to Terrorism: 9/11, Afghanistan and Beyond*, (New York: Routledge, 2003) p.303.

illegal groups can only be subversive in nature,²⁶ perhaps portraying the relative gulf between the state and groups' capabilities but also reinforcing the argument for rationality. However, conferring illegality exclusively to non-state groups ignores the value-neutrality of terrorist definition. The question then becomes at what point does states' sanction on violence cease to be legal and becomes terrorism, thereby complicating and arousing hitherto dormant or uniform interests in the domestic arena?

Finally, it emerges that terrorism indiscriminately targets non-combatants. Even where terrorism is international and runs highest chance of being a war, it still is contrary to the rules of war,²⁷ thus relinquishing terrorists (state or otherwise) of any pretensions to waging a formal war. Targeting non-combatants also emphasizes the powerlessness of non-state terrorist organizations, their desire to avoid direct confrontation with the state and the manipulative nature of their actions. The indirect and random targets are a means to an end rather than ends in themselves. The flipside is that terrorism by the state does not absolve it of responsibility to its citizens. Seen this way, any action by the state in spite of the motive behind it, which contravenes the social contract between her and her citizens, should face like criticism.

And although targeting non-combatants puts in jeopardy terrorist's allusion to rationality, since motives pursued irrationally run the risk of losing their

²⁶ P. Nyinguro, *Recent Responses to Terrorism, International Terrorism: Conceptual Problems, Recent Responses and U.S. Hegemony* op. cit. p.7

²⁷ M, Shaw, *International Law*. 4th ed. (New York: Cambridge University Press, 1997) p.807

rationality, it may indicate a discrepancy between motive and perpetrator, separation of which may hold key to counter terrorism effort. Tentatively put then, terrorism in its intrinsic sense is a rational but illegal activity, which indiscriminately and deliberately targets non-combatants as a means of imbuing terror for political ends. Non-state as well as state actors can exploit the same by placing it in the 'appropriate' ideological context articulated as social, economic, religious or pursuit of security. The later has been variously used by states since the term national security commands such obeisance that it's deemed sacrosanct. In its international dimension, terrorism goes beyond national boundaries in terms of the innate characteristics described.

3.5. Causes of Terrorism

If terrorism is best defined by its calculated abuse of the innocent for political purposes, there is reason to survey political motives, which prompt such actions. However, this is a formidable task owing to their variation.²⁸ But because responsibility for terrorist actions has been placed squarely on Kenyans, as opposed to earlier discourses, which saw Kenya as an indirect victim of terrorism targeted at the U.S.,²⁹ it is necessary to investigate allegations of domestic terrorism in Kenya and by extension discuss the root causes of terror –an approach that the international community seeks to avoid, –perhaps because it exposes infirmities prior hidden.

²⁸ See A. Mazrui. Kenya: U.S. Should Address Causes of Terrorism. (Daily Nation, 7th October 2001 [online] www.allafrica.com/stories/2001/0070031.htm. See also Harmon op. cit. Pp.4 –100. Goldstein, op. cit. Pp.236 - 238

²⁹ Johnny Carson, 'What we can all do to fight and defeat terrorism' (Sunday Nation, 1st June 2003) p.15

The most direct way of determining causes of terrorism would be to examine specific demands in attacks. These were however not forthcoming in the case of Kenya,³⁰ thus creating room for debate about responsibility. The fact that Kenya and not every other was attacked (not just once but twice), leads one to tag it to terrorists' psychological disposition that some countries are better 'formatted' for attack than others. The research thus sets out to investigate the relevance of such allegations to the Kenyan experience.

Central among these factors is the perceived connection between Kenya and the West and between Israeli and the Kenyan government. Since independence, Kenya's foreign policy has been a result of sustained pre-colonial dependency and that resulting from cold war strategic interests of the west.³¹ Moreover, the implementation of *finbo* ideology of repression and dictatorship,³² where most decisions and actions hinged around the office of the president and were therefore knee-jerk reactions to external dependencies, aggravated the situation.

Analysts have indeed drawn parallels between the targeting of Israeli establishments in 1981 and 2002 and the cozy relations between Kenya and Israel. This ostensibly caused discomfort among Muslim populations opposed to Israeli

³⁰ J. Odera, *Terrorism within a Regional Security Framework* op. cit. p.7

³¹ K. Orwa, 'Continuity and Change: Kenya's Foreign Policy From Kenyatta to Moi' in W. Oyugi (eds) *Politics and Administration in East Africa* (Nairobi: East Africa Education Publishers, 1994) Pp.297 – 331. See also L. Chweya, 'Emerging Dimensions of Security in the IGAD Region' in M. Mwangi (ed) *African Regional Security in the Age of Globalization* (Nairobi: Heinrich Boll Foundation, 2004) Pp.37 and 38.

³² M. Munene, 'Changing Ideologies in Kenyan Foreign Policy' *African Review of Foreign Policy* Vol. 2 No. 1, (August 2000) Pp.42 - 45

occupation of Palestine.³³ Likewise, after the 1998 terrorist attacks in Nairobi, Kenya was viewed as the indirect victim of protracted tension between the superpower U.S. and the Middle East.³⁴ Thus because Kenya was no longer seen to be in control, attacking her was an indirect and easier³⁵ way of attacking the U.S. and Israel.

A related factor is the distinctive and conspicuous action of the power elite. For example, Moi's support for Christian churches with anti-Islamic orientation and refusal to register the Islamic Party of Kenya (IPK) on religio-political grounds, may have led to perception of Kenya as an enemy of Islam. Indeed, Sprinzak has argued that terrorism is often a direct behavioral extension of normal opposition politics gradually radicalized through a process of de-legitimization.³⁶ In addition, real or perceived business links between powerful officials in the Moi government and Israelis could only have worsened the situation, as would have rampant corruption and vulnerability to terrorist infiltration through bribes for passports and banking facilities for laundering cash.

Naive dealings with various dissident groups should also be considered. These include the hosting in Kenya, of the deposed Somali dictator Siyyad Barre amid protests from Islamic organizations in early 1990's, providing refuge to the 1994

³³ E. Otenyo, 'New Terrorism: Toward Explaining Cases in Kenya' op. cit. p.81

³⁴ L. Chweya, 'Emerging Dimensions of Security in the IGAD Region' op. cit. pp.43 and 44

³⁵ J. Achieng and L. Machpisa. 'Africa: an Easy Target for Terrorism' *New York-Amsterdam News* Vol. 89 Issue. 36 (09/03/98) p.2

³⁶ E. Sprinzak, 'The Process of Delegitimization: Towards a Linkage Theory of Political Terrorism' in C. McCauley (ed) *Terrorism Research and Public Policy* (Portland: Frank Cass and Co. Ltd, 1991) Pp. 50 -52.

Rwanda genocide masterminds, partisanship in regional civil wars such as supporting Sudanese secessionist movements (indeed during the time when Sudan hosted terrorist mastermind Osama bin Laden), being partisan in Uganda 1986 and the Congo 1998 and hosting the Haftar force that sought to eliminate Libyan leader, Gaddafi.³⁷ Statements made by terrorists spelling out the motives behind similar attacks globally, alerts us to the potential harm such intercourse between Kenya and dissident groups can cause.

The numerous ethnic and religious groups within Kenya, coupled with immigrants have also been mooted as a factor predisposing Kenya to terrorism. Kenya is home to people of Arab, Jewish and European descent in addition to its forty-plus constituent tribes.³⁸ Any animosity between these groups could import violence into Kenya from their original homelands.³⁹ In addition, it is argued that where Muslim comprise the minority, they generally belong to the losers of social and political changes that have swept Africa in the last decade,⁴⁰ further creating or fuelling latent conflict,⁴¹ which may be expressed in various ways not excluding terrorism.

Moreover, Kenya's relative peace in war-torn Horn of Africa has seen her host numerous refugees. Apart from the danger this poses when porous borders cause

³⁷ E. Otenyo, 'New Terrorism: Toward Explaining Cases in Kenya' op cit, Pp.79 - 83

³⁸ M. Munene, 'Conference Paper' *National Institutional Responses to Terrorism* (University of Nairobi, Institute of Diplomacy and International Studies, 1st July 2003) p.6

³⁹ M. Kariuki, KTN Television Documentary, 'Patterns of Global Terrorism' (30th 7 2005)

⁴⁰ S. Mair, 'Terrorism and Africa' *African Security Review* Vol. 12 Issue. 1 (2003) p.108

⁴¹ B. Russett and H. Starr, *World Politics: A Menu for Choice*, (New York: Freeman and Co, 1989) Ch.15

illicit arms proliferation, –as exemplified by entrance of the shoulder missile used in the 2002 Mombassa attacks, –other direct connections can be made. For example, in early 1990s when the World Food Program and United Nations High Commissioner for Refugees was unable to match resources with the high refugee influx into Kenya, the Saudi based Al-haramaih Islamic Foundation came in to fill the void. Later the Federal Bureau of Investigation's (FBI) allegation that the foundation was a conduit for terror cells was founded when a connection was established between it and the U.S. embassy bombing in Nairobi.⁴² Thus much of the problem of refugees is entangled with that of terrorism providing new vulnerabilities.

Some scholars even allude to economic deprivation being a cause of terrorism. However, despite terrorist activities having occurred when the Kenyan economy was in recession, the assertion is disputed with the argument that most African countries find themselves in similar socio-economic predicament.⁴³ Therefore, were this argument to be pursued simplistically, the vast majority of Africa would be terrorists. Indeed, some analysts feel that economic recovery meant to tame terrorists but which is viewed as condescending towards religious identity and culture can be resisted.⁴⁴ This inadvertently denies economic theories credit they might otherwise have enjoyed.

⁴² E. Otenyo, 'New Terrorism: Toward Explaining Cases in Kenya' op. cit. p.79

⁴³ S. Mair, 'Terrorism and Africa' p.107. Otenyo, *ibid.* p.77

⁴⁴ C. Kavi, 'Thailand: International Terrorism and the Muslim South' *Southeast Asian Affairs* (2004) Pp.273 - 275

Yet, terrorism is itself not a cheap affair. For example, the Al Qaeda has held significant assets and Osama bin Laden and many of the individual operatives within the network are by no means poor.⁴⁵ Moreover, claims that suicide bombers engaged in terrorism after being paid or promised that their poor families would be taken care of financially cannot be underestimated. Indeed, as Pierre puts it, 'individuals are more likely to turn to violence when they loose hope and life seems not to be worth living,⁴⁶ a condition that can arguably be associated with poverty, economic deprivation and by extension oppressive imperialistic tendencies.⁴⁷ Thus, economic deprivation can be a source as well as the supply line of terrorism.

Despite and in spite of this, religious content and motivation has emerged as a major characteristic of new terrorism. This is because religion ordinarily a wellspring of hope, stirs deep passions that can lead to mobilization to violence especially where earthly and spiritual realities are deemed inseparable.⁴⁸ However, the case that groups in Sub Saharan Africa and specifically in Kenya are affiliated to the cause of Al-Qaeda on religious grounds is not very strong. Indeed, some observers even doubt whether the often-mentioned exception, Al-Ittihad (suspects in 2002 Mombassa bombings), are still operational. However, the possibility of developing an African variant should not be ruled out in entirety since the necessary discontent and deprivation exists. The sufficient requirement –

⁴⁵ J. Odera, *Terrorism within a Regional Security Framework* op. cit. p.5

⁴⁶ A. Pierre, 'The Politics of International Terrorism' op. cit. p.86

⁴⁷ See Russet and Starr, op. cit.

⁴⁸ M. Kiai, KTN Television Documentary, 'Patterns of Global Terrorism' (30th July 2005)

a mobilizing idea and agitators to direct the violence bred by these factors externally⁴⁹ –would nevertheless be needed to complete such a picture.

Indeed, terrorism requires both the opportunity and the practical means to translate radical intent into effect. And unlike sub-state terrorism, international terrorism needs a suitable pool for recruitment, considerable finances, command, control, communication and intelligence, training, access to weapons and equipments, logistical support and a haven in the form of sympathetic regimes.⁵⁰ But while some of these ingredients are lacking in the case of Kenya, the presence of yet others provide ample reason for accusations and counter-accusations. More importantly, the uncertainty provides a chance to move fast to avoid such a tragedy.

The discussion of root causes of terrorism in Kenya is thus rife with referents to responsibility for the attacks. While some pointers may fail to absolve Kenya of responsibility for the attacks, it should be noted that the decision by the U.S. to abscond from responsibility could be viewed in light of her interests. Indeed, the primary obligation of the American ambassador to Kenya (who incidentally expressed these sentiments) is to protect American interests.⁵¹ Thus the U.S. may have sought to avoid liability and subsequent compensation of victims given that accepting responsibility would have ordained this. In this light, the ambassador's

⁴⁹ S. Mair, *Terrorism and Africa* op. cit. p.108

⁵⁰ J. Cilliers, *'Terrorism and Africa'* op. cit. p.99

⁵¹ D. Kappeler, M. Mwangi and J. Odera, *'The Concept, Actors, Organs, Rules and Processes'* *Diplomacy Training Manual* Pp.52 - 55

allegations while providing reason to proceed cautiously lack merit. Therefore, root causes of terrorism in Kenya are more foreign than domestic.

3.6. Responses to International Terrorism in Kenya

Responses to terrorism around the globe have varied as much with debates on what constitutes best counter terrorism policy, as with a country's resources. The actions range from military retaliation (as in Sudan 1998, Afghanistan in 2002 and Iraq in 2003), attempting to and/or establishing national and international conventions; banning suspected terrorist organizations and freezing their accounts and economic sanctions on countries that support terrorism⁵² for example on Libya after 1988 Plane bombing over Scotland. The feasibility and success of these measures greatly depend on a state's capacity to implement them. For example, military action is expensive, may ignite new resentments and may ultimately fail. Indeed, it is accepted that classic balance of power diplomacy does not work since violent acts of small groups of people are difficult for governments to control.⁵³ On the other hand, legislation may serve to alienate the citizenry or portions of it.

After 1998 bomb attacks in Nairobi, Kenya allowed U.S. agents into the country to hunt for Al-Qaeda suspects. Several Kenyans with coastal roots and of Islamic origin were arrested while charitable organizations with alleged Al-Qaeda links were raided and eventually proscribed. Terror suspects repatriated to Kenya from

⁵² R. Perl. 'Terrorism: U.S. Response to bombings in Kenya and Tanzania' *Congressional Research Service Issue Brief 98733* (1998). C. Harmon, *Terrorism Today* op. cit. Pp.234 - 270

⁵³ A. Pierre, 'The Politics of International Terrorism' op. cit. p.85

Pakistan were also transferred to the U.S for trial. Similarly, after Mombassa attacks Kenyan and U.S security agents were involved in joint operations that arrested more than 21 people.⁵⁴

In addition, the state upgraded intelligence machinery by replacing the Directorate of Security Intelligence with National Security Intelligence Service (NSIS), barely four months after the bomb blast, established a National Counter Terrorism Center in January 2004 to act as a clearing and liaison office for anti-terrorism activities in the country, created the Anti-terrorism Police Unit after Kikambala bomb attack,⁵⁵ and attempted to introduce a suppression of terrorism bill in parliament in 2003. The later was however shelved amid contention by the civil society and other organizations that it disregarded human rights, fundamental freedoms, the rule of law, constitutionalism and made irrelevant democratic gains made so far.⁵⁶ Success and efficiency of these policies is thus overshadowed by politics surrounding counter-terrorism measures.

In addition, the reality of global debates has raised the red flag on counter terrorism efforts, breeding suspicions among nations. This scenario is further complicated because alleged perpetrators like Al Qaeda are amorphous subjects with no fixed entities in terms of physical space and organization. The risk of misuse by governments that suppose to fight it, as well as by terrorists who claim

⁵⁴ Katumanga, *Facing Emerging Threats from Terrorism: Some Thoughts on Alternative Menu of Responses* op cit, Pp.14 - 16

⁵⁵ D. Wabala, 'Kenya's Anti-terrorism Efforts are Now Paying Off' (Daily Nation 7/8/2005) p.6

⁵⁶ G. Mathenge, 'Government under new pressure over terrorism Bill: Recommendations by visiting UN team likely to stir up a fresh round of protests' (Sunday Nation May 15 2005) p.16

responsibility as Al Qaeda in order to gain support or avoid detection is therefore formidable. Even organized crime can today be made out as terrorism given the right innuendo. This creates a perfect recipe for a protracted war which some have called the war of a thousand years.⁵⁷ Indeed, these among other factors provide rationale for redefinition of terrorism from a county's perspective.

3.7. Foreign or Domestic Security Policy

Responses to terrorism in Kenya beg the question whether they are ultimately domestic or foreign, given the speculation that terrorism has roots in Kenya. And inasmuch as we may wish to construe the responses as domestic and therefore necessitating action internally, many things suggest otherwise. Perhaps then the first step should be to investigate what constitutes foreign policy.

Looking at the definition by Mansbach and Hopkins, which considers foreign policy as the point at which influences arising in the international system cross into domestic arena and at which domestic politics is transformed into international behavior,⁵⁸ we realize that a thin line exists between the two. Issues that originate in the domestic political arena are internationalized while international issues have become domestic concerns. Indeed, contemporary foreign policy defies the distinction that foreign policy begins where domestic policy ends and vice versa as various actors other than state are increasingly becoming instrumental in policy-making.

⁵⁷ Interview with anonymous Ministry of Foreign Affairs Official

⁵⁸ R.F. Hopkins and R.W. Manbach *Structure and Process in International Politics* (New York: Harper and Row publisher, 1973) p.133

Some scholars opine that the international character of attacks in Kenya is already reflected in the U.S.'s action (on August 20th 1998), of firing a retaliatory missile on a purported chemical factory in Khartoum, Sudan.⁵⁹ In addition, by creating national anti-terrorism legislation states are merely fulfilling a duty under international law –one contained in article 2(4) of the Charter of the United Nations.⁶⁰ This thus confers international character to domestic responses in Kenya. Indeed, when terrorism is seen and acted upon as a threat by states, it competes with traditional securitizations of neighbors or great powers,⁶¹ such that decision makers more often than not find themselves in two simultaneous games, one internal to the country and one external.

Finally, by employing the use of Palermo convention on transnational organized crime we find that an offense is transnational when: it is committed in more than one state, it is committed in one state but has a substantial part of its preparation in another state, is committed in one state but involves an organized group that engages in activities in more than one state, or is committed in one state but has substantial effects in another state.⁶² Our previous analysis suggests that the attacks in Kenya fulfill this criterion. Therefore, the international character of Kenya's responses to international terrorism is evident and policy emanating from

⁵⁹ Cilliers, 'Terrorism and Africa' op. cit. p.94

⁶⁰ M. Mwangi, 'Conference Paper' *The Nationalization of Terrorism: National Responses to Terrorism through National legislation* (University of Nairobi, Institute of Diplomacy and International Studies, 1st July 2003) p.6

⁶¹ B. Buzan, 'Implications for the Study of International Relations' op. cit. p.298

⁶² Article 3(2) of the UN Convention Against Transnational Organized Crime (Palermo Convention)

them can be considered as foreign security policy. Counter-terrorism responses in Kenya are therefore foreign policy.

3.8. Responding to Terrorism: An Analysis

Since the lack of consensus on the origins, causes and objectives of international terrorism has capacity to negatively affect counter terrorism, responding to terrorism takes us back to its conceptualization. Understanding it as rational, illegal and targeting non-combatants for political ends, is the appropriate starting point. These intrinsic characteristics should however not be viewed in isolation but as complementing and/or detracting from each other, with view to informing responses.

Understanding terrorism as rational makes responses focused. As an aspect of rational action we find that terrorism is premeditated and predictable. A rational motive alerts us to a conflict that is brewing with the advantage of nipping it in the bud by addressing the root causes. For example, with the war in Iraq 2003, Americans, Britons and Spanish (Coalition of the Willing) beefed up their security at home upon realizing that the war made them principle targets of terrorism, as it indeed proved in Madrid (March 2004) and in London (July 2005). This defensive action could be construed as a silent acceptance that the war provided a valid motive for terrorism. Being rational, terrorists were 'expected' to identify the motive and act upon it. It thus provided the three countries with opportunity to address probable cause, which they ignored.

Even the lack of specific demands after attacks in Kenya should not lead us to declare contemporary terrorism as irrational and impossible to address. As this paper finds, political motives run deep even where religious manifestations are more apparent. The apparent 'forgetfulness' by the perpetrators in presenting demands, should in fact serve to challenge the counter-terror analyst as to the need for adapting to emerging aspects of terrorism. More importantly, it alerts us to the risk entertained by irrational and unfocused government dictates, which ignore potential sources of grievance and perceived injustice.⁶³ Simply put, rational terrorists cannot be countered by irrational governments that ignore the latter while instituting responses that may place citizens' rights in jeopardy and which have capacity to lead to a spiral of violence.

On the other hand, viewing terrorism as illegal should be interpreted as not only mandating states to pursue terrorists using all necessary means including adopting legislation, but also obligating states to fulfill all legal and constitutional demands of a country in the process. Indeed, as the old adage goes, 'two wrongs don't make a right'. Categorically put, the desire to destroy terrorism does not mandate governments to mistreat citizens, which is otherwise criminal and serves little than symbolic value while fostering new sources of discontent. Governments should thus tread carefully or risk domestic turmoil from opposed interests.

⁶³ M. Munene, *National Institutional Responses to Terrorism* op. cit. p.2

When the push comes to a shove, the extent to which suppressive laws are successful will ultimately be reflected in the society's level of tolerance in terms of harsh legal regimes.⁶⁴ When domestic interests aggregate themselves to counter such policy, illegality of responses so viewed confer obligation on the government to allow stakeholder participation in policymaking. Moreover, perceived illegality of terrorism be it from state to citizenly or vice versa does not mean terrorism is irrational much in the same way that terming an armed robbery as illegal, does not make it necessarily irrational and impossible to address.

Nevertheless, even where some scholars argue that the problem of terrorism in its international aspect is not so much one of law as one of politics hence the failure of multilateral efforts through the UN,⁶⁵ and while others advocate for maintaining *status quo*⁶⁶ (since suppressive laws are tantamount to state terrorism), the utility of legal measures in punishing perpetrators cannot be underscored. The illegality of terrorism suffices to necessitate such a course of action. But where legal measures as indeed other policies are undertaken, they must be timely, reliable, and valid. Timely as to be deemed appropriate by significant groups in society, reliable to be perceived as legitimate through equal treatment of offenders, and valid such that policies are seen to address the real

⁶⁴ M. Mwangi, *The Nationalization of Terrorism: National Responses to Terrorism through National legislation* op. cit. p.3

⁶⁵ A. Pierre, *The Politics of International Terrorism* op. cit. Pp..89, 90.

⁶⁶ J.Babendreier, *the ethics of fighting terrorism and the risk of a police state.* (Sunday nation 7/8/2005) p.8

issues underlying the terrorist challenge.⁶⁷ The later inadvertently drives us back to the need to address root causes and the political nature of the problem.

Accordingly, because terrorists target non-combatants cannot be taken as a statement of irrationality even when the rationality of means employed seems to contradict this. This should otherwise draw attention to distinctions that could inform responses. Distinguishing between terrorist acts and terrorist identities such as in the 2001 EU Common position⁶⁸ avoids the demonization of whole communities as terrorists, as well as avoiding the risk of the state seeming to be anti- populace.

Similarly, distinguishing between rational motives of terrorism and irrational acts of foot soldiers that target innocent civilians, alerts us to the potential for employing varied but complementing responses to particular targets where they are most effective. For example, we can identify motives and address them as well as identify the hopelessness that drives executors of attacks and address it appropriately. It also cautions the state against imposing irrational expectations on its people, therefore anticipating the input of stakeholders within the domestic context.

⁶⁷ H. Purkitt, 'Dealing with Terrorism: Deterrence and the Search for an Alternative Model' in M. Banks (ed) *Conflict in World Society: A New Perspective on International Relations* (Brighton: Wheatsheaf Books, 1984) pp.161-173

⁶⁸ J. Odera, *Terrorism within a Regional Security Framework* op. cit. p.12

As such, the success of counter terrorism may depend on the goodwill to address root causes as a preventive measure. Prevention in this sense, would try to eradicate conditions that spawn terrorism by looking for long-term solutions, seeking to find and strengthen common interests, constructively channeling remaining discontent and at the minimum seeking alternative non-violent forms of protest.⁶⁹ This can be done through national or multilateral efforts owing to the globalization of the intractable phenomenon that is terrorism. This also indicates that it is in the interest of a state to provide practical and effective measures with regard to its constituency, rather than risk fostering or increasing the discontent through suppressive laws.

3.9. Conclusion

The 21st century has seen terrorism emerge as a serious threat to Kenya's national security. The cost in terms of lives lost, destruction wreaked and the cost of counter terrorism is huge. Due to this, investigating root cause of terrorism in Kenya is a crucial factor in the process of counter terrorism. The causes predominantly exhibit external content thereby making international, the character of responses. In spite of this, the nature of the responses has brought to the fore various weaknesses that have activated the domestic context in Kenya. This is because some responses are perceived as tantamount to terrorism, due to their infringement on the civil liberties of the populace thus requiring caution in their making and implementation. And while at the national level governments might seek to involve stakeholders rather than alienate citizens, external constraints are

⁶⁹ A. Pierre, *The Politics of International Terrorism* op. cit. p.86.

formidable and can dictate otherwise. The dynamics of the domestic context on counter terrorism in Kenya is thus the purpose of the next chapter.

CHAPTER FOUR

THE DOMESTIC CONTEXT AND RESPONSES TO TERRORISM: AN ANALYSIS

4.1. Introduction

Having looked at the emergence of the domestic context in the second chapter and the issue of international terrorism in the previous chapter, this chapter attempts to build a connection between the two. It seeks to test the hypotheses that, the uncertainty in arriving at a comprehensive counter-terrorism policy is dependent upon the diverse interests of the domestic context in Kenya and thus a comprehensive counter-terrorism policy depends on the ability to reach a compromise within the domestic context.

4.2. Political Carrier of Counter terrorism in Kenya's Domestic Context

The spate of devastating terrorist attacks in Kenya connotes the stake she has in a focused counter-terrorism policy. Despite the significant steps taken by the government in fighting terrorism, evidence suggests that her policy is haphazard and inconsistent. From being among the few Sub-Saharan African (SSA) countries that have signed the 12 international protocols on terror, to failing to introduce a national legislation on anti-terrorism, to deficiencies in prosecuting terror suspects, to un-procedural 'extraditions,' to allowing foreign agents in the country to hunt suspected terrorists, to supporting the 2001 U.S. war in Afghanistan while keeping mum about Iraq¹ (even when its citizens were victims of kidnap in the same country) –these actions reek of an uncertain policy.

¹ U.S State Department Report, 'Country Report on Terrorism for 2004.' M. Katumanga, 'Conference Paper' *Facing Emerging Threats from Terrorism: Some Thoughts on Alternative Menu of Responses* (University of Nairobi, Institute of Diplomacy and International Studies, 1st July 2003) p.10 –26. See also

To understand this state of affairs, we must accept that policymaking is in the deepest sense political. That is, it seeks to reconcile conflicting goals, adjust aspirations to available means and to accommodate the different advocates and aspirations to one another.² Moreover, while foreign policy should be dynamic subject to the interests of a nation, it should also be consistent and effective³ in terms of achieving objectives, especially if the citizens are to understand and support it. Indeed, Kenya is only just formulating a foreign policy framework,⁴ which is expected to serve as overall guide to policy. Until this is done, no criterion exists under which to formulate an analysis.

As such, its important to reiterate that government policies have drawn vehement opposition from civil society –professional groups, religious organizations, Human rights organizations and members of parliament within and without the ranks of government.⁵ And while partners in domestic context vary, their effort to modify the path of government policy is consistent. This is important because domestic interest groups can heavily influence weak governments while the competition of many groups can paralyze them into inaction.⁶ Therefore, the researcher begins by analyzing what constitutes domestic context on counter terrorism in Kenya.

¹ 'Kikamballa: Four Terror Suspects Acquitted (Nairobi: Daily Nation 10/6/2005). 'Israel Protests at Bomb Ruling' (Nairobi: Daily Nation, 11/6/2005)

² R. Hilsman, 'Policy Making is Politics' in J.N. Rosenau (eds) *International Politics and Foreign Policy* (New Jersey: New Brunswick, 1969) p.237

³ C. Harmon, *Terrorism Today* (Portland: Frank Cass Publishers, 2002) Pp.236 - 238

⁴ Interview with anonymous Ministry of Foreign Affairs (MFA) Official

⁵ 'Lawyers Criticize Proposed Law' (Nairobi: Daily Nation, 29/6/2003). 'We'l listen to Bill Protests Says Kiraitu' (Nairobi: Daily Nation, 3/7/2003) Pp.1&6

⁶ B. Hughes, *Continuity and Change in World Politics: Competing Perspectives*. 4th ed. (New Jersey: prentice Hall, 2000) p.180

4.2.1. The Executive and Policy Bureaucracies in Kenya

Owing to the constitutional advantages enjoyed by the executive in Kenya, it is instrumental in initiating foreign policy to the extent its orders are obeyed by members of the branch.⁷ Important decisions such as the support of a particular counter terrorism effort has thus mostly originated from this area. The influence of bureaucracies on the other hand is discernible via traditional channels of information filtering, recommendations and implementation, and during classic concertation and consultation in inter-ministerial meetings.⁸ However, this is apparently changing with the foreign affairs ministry sometimes becoming the focus of decisions. The situation in 2004 when Kenyans were taken hostage by terrorists in Iraq is a classic example of a situation handled entirely (at least in the public eye) by the foreign ministry. Thus president Kibaki's hands-off policy seems to have empowered bureaucracies like never before.

Even when influence is not as clear, the inherent potential for this is significant. Using bureaucratic politics model referent to, 'where you sit (in the organization) determines where you stand (on an issue),' we can anticipate the interest of policy bureaucracies. This is especially so in multiparty Kenya because these agencies have greater leeway from the executive than previously envisaged, whereby the nature and work of the agency

⁷ H.J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York: Alfred.A.Knopf, 1995) p.31. Republic of Kenya, *Laws of Kenya: the Constituion of Kenya* (Nairobi: Government printer, 1991) Ch.2

⁸ H. Kissinger, *American Foreign Policy*, (New York: Norton, 1969) Pp.17-43. See also J. Rourke, *International Politics on The World Stage*. 4th ed (Connecticut: Dushkin Publishing Group, 1993) p.125 – 127. Interview with anonymous MFA Official. D. Kappeler, M. Mwagiru and J. Odera, 'The Concept, Actors, Organs, Rules and Processes' *Diplomacy Training Manual* p.93, J. Rourke, *ibid.* p.96. Interview *ibid*

determines the likely dynamics.⁹ The Counter Terrorism Center, which is charged with intelligence liaison within and without the country will for example support a decision to involve foreign agents since it promotes its purpose. Likewise, the Anti-terrorism Police Unit would derive much benefit from working with experienced foreign agents. Setting free the Kikamballa terror suspects on the other hand, can be used by organizations such as the police to emphasize the inadequacy of prosecution within current laws and the need for new legislation. Therefore, the impact of government bureaucracies though seemingly obscure is pervasive and reflected in the outcome. Indeed, the only reason they may not sideline the executive may be their infancy since they have just become independent entities.

4.2.2. The Legislature in Kenya

The national assembly is said to be the most important participatory institution created in Kenya at independence, its greatest strength lying in its ability to build unity in the nation and provide legitimacy for the single party regime while at the same time steering government policy and acting as a check on executive power.¹⁰ However, this might be disputed if the controversial 1988 'mlolongo'¹¹ system of elections that rigged parliamentary membership is anything to go by. At the time, parliament became a rubberstamp for executive decisions. This, has seemingly changed with introduction of multiparty politics, which democratized the system.

⁹ K.J. Holsti, *International Politics: A Framework for Analysis*, (New Jersey: Prentice Hall, 1988) p.332

¹⁰ 'The Role of Legislature' *Freedom Paper* No. 3 [online]

usinfo.state.gov/products/pubs/archive/freedom/freedom3.htm

¹¹ F. K. Matanga, 'ISTR Conference: The Third Sector: For Whom and for What?' *Civil Society and Politics in Africa: the Case of Kenya* (Dublin: Trinity college, 5th - 8th July 2000). P.11 [online]

www.jhu.edu/~istr/conferences/dublin/workingpapers/matanga.Pdf

Indeed, a role like the domestication of conventions is solely a prerogative of parliament. Kenya has ratified the 12 protocols on counter terrorism even though no international convention on the same has been forthcoming. However, for any international law to be applicable in Kenya, her internal laws have to reflect this through either transformation or incorporation.¹² Thus were states to reach a compromise and create an international convention on anti-terrorism, the role of parliament is necessary in order to legislate or amend existing municipal law.

The Suppression of Terrorism Bill 2003¹³ is another example of the role of legislature. While it was the initiative of Attorney General's Chamber, it could not become law until it was subjected to debate in parliament.¹⁴ In reality, the bill never got that far because legislators prompted by other stakeholders, threatened to shoot it down. Had the bill made it to parliament, it probably might have been amended or even rejected because while it's rare for legislature to reject a leader's foreign policy initiative outright, it is common for them to modify its path.¹⁵ Had members also pre-empted the bill and brought one of their own to the August house, it might have been passed and assented to by the president since in a system designed to require cooperation between the executive

¹² M. Dixon, *Textbook on International Law* (London: Blackstone Press Limited, 1990) Pp.41 and 42

¹³ 'The Suppression of Terrorism Bill, 2003' *Kenya Gazette Supplement* No. 38 (Nairobi: 30th April 2003)

¹⁴ This type of argument revolving around a particular foreign policy decisions is borrowed from J.Bandyopadhyaya, *The making of India's Foreign Policy*. 3rd ed (New Delhi: Allied Publishers PVT Limited, 203). Ch.5

¹⁵ J.T. Rourke, *International Politics on The World Stage* op. cit. p.128

and legislative branches, a president has to be dead set against a law before he will refuse to approve it and risk antagonizing parliament.¹⁶

The 'interference' of parliament in the law has put the government on the hot spot with external donors and the UN, since its (the governments) arms are tied by the countervailing power of the legislature. One should however proceed cautiously since individuals with differing and multiple agendas occupy parliament, thus predicting how they will vote is complicated. And while power dispensation (in terms of party majorities in parliament) should suggest what the decision would be, in situations where the governing party and the opposition are organized into shifting coalitions depending on issue at hand this is tricky. Indeed in Kenya NARC is such a coalition where the dynamics of voting in parliament are very unpredictable.

4.2.3. The Media in Kenya

When the information available for assimilation is excessive, there's a tendency to simplify and compartmentalize it. The media contribute mightily to this process by fixing the content of our concerns and our conversations in politics, art and social life.¹⁷ In the area of counter-terrorism, we need go no further than observe the fixation of the Kenyan media with the government responses after the 1998 attacks. The media thus acted as gatekeeper of information,¹⁸ making and breaking public debates and opinions on

¹⁶ P. Woll and S. E. Zimmerman, *American Government: The Core*. 2nd ed (New York: McGraw-Hill, 1992) p.105

¹⁷ Woll and Zimmerman. *ibid.* p.131

¹⁸ J. Goldstein, *International relations*. 4th ed (New York: Priscilla McGeehan, 2001) Pp.187 and 265

international terrorism issues by mounting indirect but sustained pressure on government's conduct.

This was depicted in counter terrorism debates in Kenya between 1998 and 2004, which impacted on policy since public opinion matters in generating impetus for policy changes as prodded on by the media. And while the media is traditionally an information conduit,¹⁹ it also affects the audience emotionally and intellectually,²⁰ affecting their opinion. For instance, respected newspaper editorials greatly influence the public especially so because in countries like Kenya it includes views of prominent scholars, political analysts and other personalities. Indeed, the media brings to the public's attention the nature of responses on terrorism and their impacts, availing information on which to base opinions that are by extension advocated to leaders by their constituencies.

But governments have learned to resist the emotional dictates of popular media coverage and are increasingly learning to gain control of it.²¹ For instance, until now (forty years into independence) the only television station with national coverage is the state-owned Kenya Broadcasting Corporation (KBC). Indeed, prior to multiparty politics the government had restricted, controlled and banned media that was deemed anti-government. As such, the only television stations and newspapers in business were government owned. Only recently, the government was accused of censoring the media.

¹⁹ B. Hughes, *Domestic Context of U.S Foreign Policy* (San Francisco: WH. Freeman and Co, 1978) p.205

²⁰ J.N. Rosenau, *Turbulence in World Politics: A theory of change and continuity* (Princeton: Princeton University Press, 1990) p.59

²¹ L. Gachungi, *The Role of Media in Conflict Management: A Case Study of Rwanda Genocide* (M.A. Dissertation, University of Nairobi, 2000) p.44

The media's role is further complicated by need for speed as opposed to accuracy. Reporting news as it comes in leaves the task of evaluating its reliability to the public with the risk of misinformation and misinterpretation. Accuracy on the other hand, prescribes that journalists take responsibility of the message by confirming its accuracy with the risk of conveying obsolete information.²² Therefore, if the media is to become an important player in stimulating public opinion and sustaining it, an urgent need arises to strike a balance between the two, which is difficult. This is because media houses like most private enterprises are profit oriented and issues selected for coverage reflect this.

Besides, in the current climate where a conflict of interest in the direction of policy is apparent, it is important to note that reporting can lead to miscarriage of justice where stories of arrests are linked with completely unrelated alleged threats. This was especially real after the explosion at Wilson in October 2004 when utterances, in addition to uncoordinated government response and obscure emergency capabilities, could have ignited some latent conflict. We need go no further than Rwanda to understand the consequences of hate media.²³ Poor reporting in such circumstances, would lead to undue pressure through 'doctored' public opinions that pressure government into flawed decisions such as an inadequate bill.

4.2.4. Interest Groups in Kenyan Counter-terrorism

Interest groups as noted in the first chapter are private sector enterprises that share an interest in the outcome of a policy. In Kenya, professional bodies such as the LSK,

²² P.O. Ochilo, 'Conference Paper' *The Media and Terrorism* (University of Nairobi, Institute of Diplomacy and International Studies, 1st July 2003) p.6

²³ L. Gachungi, op. cit. p.48

KNCHR, civil society and religious organizations among others, are interest groups in international terrorism responses. Here, the groups seem to share the common theme that current counter-terrorism response in Kenya is a manifestation of external bullying into deceptive decisions that encroach upon citizens' human rights, are contrary to the constitution, international human right instruments and the rule of law and which erode democratic gains made so far. These groups by spirit of their theme in opposing the government's chosen path of policy are depicted in the paper as a Coalition of Interests (CI).

4.3. Strategies and Avenues of Influence by Interest Groups

There are two primary ways in which interest groups influence policy. Firstly, they directly influence governmental institutions such as legislature, cabinet and other relevant agencies. Secondly they influence policy indirectly through individuals, political parties, public opinion, and media (not unrelated). Lobbying - coercive or otherwise, - is essentially considered as the application of pressure on the government by interest groups.²⁴ To this extent, Goldstein identifies the ability to gain hearing with busy officials, ability to present cogent arguments for one's case and the ability to trade favors (legal or otherwise) in return for positive action on an issue, as the necessary inputs to a successful lobbying process.²⁵ These provide guidelines for the analysis of interest group activity in Kenya.

²⁴ G. Almond and P. Birmingham, *Comparative Politics: Systems, Process and Policy* 2nd ed. (Boston: Little Brown and Company, 1978) Pp.179 – 182. P. Woll and S. E. Zimmerman, *American Government: The Core* op. cit. Pp.105 – 112. T.E. Patterson, *The American Democracy* (New York: McGraw-Hill, 1990) Pp.273 - 280

²⁵ J. Goldstein, *International Relations* p.182

4.3.1. Inside Lobbying

Inside lobbying is the direct communication between organized interests and policymakers, which is based on the assumed value of close (inside) contacts with them. Indeed, studies on opinion formation have shown that face-to-face contact is one of the most effective means of shaping attitudes.²⁶ Inside lobbying normally leads to iron triangles and issue networks.

4.3.1.1. Iron Triangles

Iron triangles are small and informal but relatively stable groups of well-positioned legislators, executives and lobbyists who seek to promote policies beneficial to a particular interest. In Kenya, the presence of such has been recognized by Barkan who suggests that parliamentary committees actively participate in shaping and amending legislation, noticeable through the classic triangular relationship between relevant government departments, the legislature and interest groups.²⁷ However, economic interests inform this observation although the same dynamics are expected for social and political issues. It should also be noted that a bill on terrorism is yet to be tabled in parliament, which constrains further analysis. Yet, lobbying did lead to shelving of the bill in the first place prompting the Ministry of Justice and Constitution to invite stakeholder input.²⁸

²⁶ G. Almond and P. Birmingham, *Comparative Politics: Systems, Process and Policy* op. cit. p.179

²⁷ J.D. Barkan, 'New Forces Shaping Kenyan Politics' *African Notes: Center for Strategic and International Studies* No. 8 (May 2003) Pp.2 and 3 [online] www.csis.org/africa/Anotes/Anotes018.pdf

²⁸ 'We'l Listen to Bill Protests Says Kiraitu' (Daily Nation 3/7/2003) Pp1 and 6

4.3.1.2. Issue Networks

While existence of iron triangles in counter-terrorism is obscure, issue networks are on the contrary easily discerned. These are informal and relatively open networks of public officials and lobbyists with common interest and expertise in a given area and who are brought together by a proposed policy in that area. Issue networks are indeed evident in the participation of CI in conjunction with Kenya Law Reform Commission, Attorney Generals' Chambers, the Police, the Ministry of Foreign Affairs and progressive parliamentarians towards reformulating a workable anti-terrorism Bill.²⁹ This connotes involvement of experts on the different technical aspects of counter terrorism as well as lobbyists. And unlike iron triangles, issue networks disband after the issue is resolved, which also seems evident. Indeed, for unrelated issues different partners in the CI may take different sides as seen in the constitution referendum, where civil society is mostly against while human rights activists aren't.

4.3.1.3. Direct Incentives

It has been claimed that, over the years strategies for lobbying have changed from the three B's of booze, bribes and broads to be replaced by the need to draw on factual information and indication of group strength, in order to persuade legislators to adopt a certain perspective.³⁰ However, bribes still play a role as exemplified by the '*motion for money, money for motion*' fiasco, where an MP was accused of receiving money to adopt a certain point of view. Nevertheless, the determination to provide factual information is evinced by involvement of technical experts such as lawyers, intellectuals and human

²⁹ Interview with Commissioner Mute, KNCHR

³⁰ T.E. Patterson, *The American Democracy* op. cit. Pp. 274,275

right gurus, who research and advice on impact of the responses to terrorism. Proof of group strength has also been flaunted through collection signatures for public petition, as Islamic activists did in an effort to discredit the Suppression of Terrorism Bill 2003.³¹ In the latter case, the incentive then becomes a chance at re-election.

4.3.1.4. Traditional Channels

Channels tied to social structures of society, for example traditional and ethnic bonds are also important avenues of influencing policy.³² For example, Muslim leaders can't shake the conviction that current definition of terror is a war against Islam and not against terrorism.³³ Sentiments like 'When you punish a whole community, a whole nation, and destroy the essence of that nation completely, it implies that you have a wider objective than trying to nab a criminal,'³⁴ recognize kinship to culture, ethnicity and religion. Indeed, accepting such arguments means that coercion in the form of riots and terrorism cannot be avoided since policy, which does not pass the test of universality and community risks isolating sections of society. The perceived schisms create room for exploitation of kinship in influencing people. Thus it is not uncommon for clerics, prominent leaders and legislators to renounce measures that target 'their kind' or their constituency, in forums where they have clout.

³¹ D. Ooko, 'Kenyan Muslims Call on Government to Shelve Anti-terrorism Bill' *Horn of Africa News Agency*

³² G. Almond and P. Birmingham, *Comparative Politics: Systems, Process and Policy* op. cit. p.179

³³ 'Terror: Security forces Largely Targeting Muslims' (Nairobi: Daily Nation, 25/6/2003)

³⁴ 'Interview with MP Billow Kerrow: on Aid and the War on Terror' *Partner NEWS* Vol. 7 No. 1:

4.3.2. Outside Lobbying

Outside lobbying on the other hand, is a form of lobbying in which interest groups seek to use the public pressure as a means of influencing officials. This is done via action meant to elicit certain reaction or through forums and organs that re-direct this influence to target recipients. In this respect, campaigns and use of intermediate forum are relevant.

4.3.2.1. Campaigns

Campaigns such as protests and demonstrations by stakeholders can be attributed to the desire to display group strength, in order to convince relevant authorities to adopt a group's perspective. In addition, they also provide a non-violent and dramatic way of forcing the government towards certain action.³⁵

Therefore, the threat by Muslims to initiate a, "Defend our Sovereignty" campaign by asking patriotic citizens to publicly display the Kenyan flag everywhere they go, as a symbol of commitment and resolve to defend their country from US/UK neo-colonialism,³⁶ is a case in point. Indeed, so are the calls within the CI for the citizens to petition their MP as a group or individual, to write to media reader's columns in opposition to the bill, to join human rights groups in rallies and meetings, to participate in group discussions in order to exchange ideas on evils of the bill and to distribute material to the public on the bill's education.³⁷ This is because MPs and other leaders, to whom

³⁵ G. Almond and P. Birmingham, *Comparative Politics: Systems, Process and Policy* op. cit. p.182

³⁶ D. Ooko, 'Kenyan Muslims Call on Government to Shelve Anti-terrorism Bill' *Horn of Africa News Agency* op. cit.

³⁷ 'Terror bill Continues to Attract Criticism' *Mtezezi Newsletter* Vol. 1 No. 14 (August 1998) p.5

high numbers of public opposition send signals about their re-election chances were they to go against the popular position, occupy the relevant organs.

The "Defend our Sovereignty" campaign can also be viewed in the context of an attempt by a minority (Muslim is only 10% of Kenyan population), to be viewed as part of the broad picture. So is the shift from a position of wanting responses to terrorism viewed specifically as a problem for Muslims to one for every citizen.³⁸ When this happens, it no longer is a battle for a small group (Muslims) but one involving the whole nation. This indeed is similar to the bureaucratic prediction of broadening the arena of conflict,³⁹ by showing external supporters that you are hurting. The only difference is that while the model predicts that public support is born of empathy for say Muslims, here the situation demands that the people support the position because it is in their interest to do so. Simply put, they are stakeholders rather than supporters. This otherwise is also a show of force, which positively impacts on a group's bargaining strength.

Human rights activists have also organized numerous workshops and seminars, which invited strategic personalities to present papers and listen to peoples' views on counter-terrorism.⁴⁰ In addition, interacting with relevant departments at the informal level such as the invitation of the Justice and Constitution assistant minister or the U.S. ambassador to officiate at a public Muslim function,⁴¹ (where they are 'forced' to speak about counter terrorism) is significant. So is broadening the focus on issues through collaboration of CI

³⁸ Mitezi Newsletter ibid.
³⁹ Hughes, Barry, *The Domestic Context of American Foreign Policy* op. cit. Pp.11, 12
⁴⁰ Interview with K. Ochieng Young Muslim Association. Interview with L. Mute, Commissioner KNCHR
⁴¹ 'We'll Listen to Terrorism Bill Protests says Kiraitu' (Daily Nation 3/7/2003) Pp1&6. See also Daily Nation 18/5/2004, 8/9/2004

50% of
zealots of
you are having religion!

with CBOs and civil society especially in campaigns and advocacy,⁴² which improves their reach in the grassroots. This enlightens the public as to their rights and the obligation of the state to foster them, encouraging participation *en masse* in debates on the same.

4.3.2.2. Political Parties

It is argued that while interest groups articulate interests, political parties aggregate them.⁴³ It is only reasonable then, that interest groups use political parties to achieve their purpose. Parties serve to link voting public to the government and to help bring about changes when enough people desire them.⁴⁴ However, in Kenya the political parties development along ethnic lines has made them almost irrelevant because they lack ideology to guide their action and aggregate support. Despite this, political parties have been used for example by KNCHR, which endorsed Kibaki for Presidency via NAK party in the 2002, in anticipation of furthering its agenda through the party.⁴⁵ This was a smart move if we accept Morgenthau's argument that, leaders of parties possess great political power when they can mold actions of members according to their will.⁴⁶

Indeed, while the link to political parties may not be straight forward, campaigns against responses to terrorism have come from opposition political parties and parties in NARC. This has been augmented by differences within this ruling coalition of parties, which at

⁴² Interview with L. Mute, Commissioner KNCHR

⁴³ B. Hughes, *Continuity and Change in world Politics: Competing perspectives* op. cit.

⁴⁴ P. Woll and S. E. Zimmerman, *American Government: The Core* op. cit. p.84

⁴⁵ A.D. Mutua. *Kenya's Regime Change and Constitutional Review Process: prospects for Women's Solidarity Across Religious Differences and Increased Political Participation* [online] www.kenyaconstitution.org/docs/06a_d_026.htm

⁴⁶ H.J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*. op. cit. p.31

the moment seem to be irreconcilable in the short term. Consequently, such dynamics are expected to persist even as the government tables the reformulated anti-terrorism bill in parliament. In addition, prior to multiparty elections in 1992, prominent party members were counterparts of the civil society, which means that their goals and those of civil may coincide. Having influence in political parties gives CI access to government organs as well as party support when specific interest group's goals coincide with broad party objectives, thus assuring their achievement.

4.3.2.3. Intermediate Forums

Interest groups also try to influence those who would influence others. This is perhaps in acceptance that, individuals acquire political opinions through the process of political socialization⁴⁷ –via family, school, peers, political institutions, leaders and news media among others. Interest groups thus target such forums.

However, providing people with information, which they may ponder is different from shaping their opinions and involves a thinking person in issues associated with propaganda or art of persuasion. This, coupled with profit imperatives make the media harder to influence⁴⁸ and by extension the public. Thus, as KNCHR found out, its sometimes more effective to rely on your own network rather than the media, unless you can pay to pass the message to the public.⁴⁹ If interest groups are therefore to benefit from media coverage, they need to make issues so 'hot' –perhaps through intense and

⁴⁷ T.E. Patterson, *The American Democracy* op. cit. 159

⁴⁸ P. Woll and S. E. Zimmerman, *American Government: The Core* op. cit. p.124

⁴⁹ A.D. Mutua. *Kenya's Regime Change and Constitutional Review Process: prospects for Women's Solidarity Across Religious Differences and Increased Political Participation* op. cit. p.3,8

frequent campaigns, which grasp the media's interest because of the promise of huge profits.

Media limelight and pressure can sometimes also be undesirable where the government learns to manipulate it through the information they supply.⁵⁰ For example, the government has of late conveniently sidelined counter-terrorism debate while becoming 'deliberately' vocal about the constitutional review. And while the importance of the two examples is incomparable, it is significant to note the implications for the government were it to table a controversial bill just before the constitutional debate is over. It would essentially risk offending a huge chunk of the public whose support it might otherwise have enjoyed as it seeks to adopt a new constitution and fulfill an election pledge. The timing in this respect is of essence and the government is in a position to pull strings to its advantage. The government likewise uses camera opportunity to voice proper rhetoric on issues like human rights and still fail to turn it to action.

4.4. Dynamics of the Domestic Context: Bureaucratic Politicking?

The above channels depict some kind of bargaining, the product of which could be viewed as bureaucratic politicking. Numerous forums and debates were for instance conducted in an effort to understand the bill from different perspectives.⁵¹ Moreover, elements of bargaining within CI were evinced by bilateral and multilateral consultations

⁵⁰ A.D. Mutua, *ibid.* J. Goldstein, *International Relations* op. cit. p.187

⁵¹ LSK Forum on Suppression of Terrorism Bill, 2003 on 3rd July 2003, See also Debate, Nation Television News Hour (Nairobi: Daily Nation, 2/7/2003)

to solve issues of contention.⁵² Indeed, because each contending faction has a maximizing incentive it tables its case in the extreme thereby necessitating compromises.⁵³ For example, the KNCHR admits that bringing civil society abode CI was difficult because the latter wanted the bill thrown out in entirety while the former wanted the law be modified. The rationale for KNCHR's position was that the government could go ahead with the flawed bill, by claiming they weren't persuaded otherwise. They thus sought successfully to incorporate rather than alienate the civil society despite its prior radical position. Therefore, in addition to bargaining with the government, bargaining also became a central concept in the working relationship of the CI.

Moreover, it is important to note that the government has interests. For example, the NARC government came to power on the wings of change, amid promises to revive the economy and improve security.⁵⁴ In addition, a lot of information (some of it classified) is at the disposal of government unlike private interests. Thus, the broad picture of the government as opposed to the narrower one of private interests might cloud the formers position and ease with which it can accommodate private groups.⁵⁵ For example, the government might see the need for donor aid as taking precedence over other interests including security, thus trade it for certain responses to terrorism. For this matter, the government might positively react to external overtures at the expense of real domestic

⁵² 'Conference Report' *Constitution making: Promoting Culture of Constitutionalism and Democracy in Commonwealth Africa* (Pretoria: CHRI, 19th October 1999) Pp.17,22

⁵³ C. Kegley and E. Wittkopf, *World Politics: Trend and Transformation* (New York: St Martins Press, 1993) p51 Interview with L. Mute, Commissioner KNCHR

⁵⁴ NARC Party, *Manifesto*, 2002

⁵⁵ See B. Russet and H. Starr, *World Politics: A Menu for Choice*, (New York: Free Man and Co, 1989) Ch.1

needs. This might result in a flawed law as predicted by the bureaucratic politics model that, external influences matter if they impact on relative 'power' of domestic groups in influencing policy. Similarly, when Amnesty International (AI) presented memorandums to the government on human right abuse by local and foreign intelligence agents or on the danger of the suppression of terrorism Bill 2003,⁵⁶ it strengthens the relative position of the CI by putting the government on the spot over issues of contention.

Such dynamics provide room for maneuvering by the domestic context. For example, the U.S. has interests in Southern Sudan because of its strong Christian groups' affiliation to Southern Sudanese Christian population. Kenya's interests by virtue of her location are also innate and she has been deeply involved in the Sudanese peace process. Thus, refusing to comply to 'bullying' by the U.S. in counter-terrorism policies is possible since Kenya has the leverage in the form of the peace process, which hinged and still does on her input. It translates to more power for the CI since the government has more options⁵⁷ and can be more easily swayed by it. Likewise, being forced to adopt policies in return for aid or where the U.N. rushes the government into adopting policies on counter terrorism,⁵⁸ negatively impacts on the relative power positions in the domestic context by reducing options for the government and by extension the possibility of adopting the CI's viewpoint.

⁵⁶ AI Index: AFR 32/003/2004 9th September 2004. AI index: AFR 32/002/2005 23rd March 2005. [online] web.amnesty.org/library/Index/ENGAFR320022003?OPEN&OF=ENG-KEN

⁵⁷ See B. Russet and H. Starr, *op. cit.* Ch.1

⁵⁸ G. Mathenge, 'Government under new pressure over terrorism Bill: Recommendations by visiting UN team likely to stir up a fresh round of protests' (Sunday Nation, May 15th 2005)

4.5. Effectiveness of the Influencing Process

Hitchner contends that the effectiveness of a group in bargaining depends on its characteristics, policies, tactics and decision-making structure of government.⁵⁹ For example, the greater the number, size, autonomy, resources, variety and democratic orientation of civil society, the greater the prospects for success.

Group size in terms of numbers is a significant advantage, as is cohesiveness and willingness to act in close concert because it proves group strength and denotes implications for decision maker's re-election chances were they to ignore the group's perspective. And whereas in Kenya specific groups might be small in size, it should be remembered that because some issues affect a fairly large stratum of people represented by 'no single interest,' coalitions can be formed. The aggregate interests of the CI are viewed in this light. In addition, by working with community-based organizations the CI created support at the grassroots level, further improving its effectiveness.

Secondly, techniques of influence are expensive. For example, where the media is not interested in an issue for reasons of profit, groups may have to rent space in order to reach the desired audience in the public.⁶⁰ Similarly, the conduct of civic education and lobbying is generally expensive. Thus the ability of an interest group or party to finance itself is not only important but the very existence of the group could depend on it. Yet,

⁵⁹ G. Hitchner and C. Levine, *Comparative Government and Politics* (New York: Dodd, Mead and Company Inc, 1967) Pp.73, 74. ⁵⁹ 'Working Documents' *Human Rights, Democratization and Civil Society in Africa: Guidelines for Policies and Practices of ICCO, Churches and NGO*. (Ad Zeist, Netherlands: Inter Churches Organization for development Cooperation, 27th January 1995) p.12

⁶⁰ A.D Mutua, *Kenya's Regime Change and Constitutional Review Process: prospects for Women's Solidarity Across Religious Differences and Increased Political Participation* op cit p.8

while economic groups do not encounter this problem because making profit is their objective, other groups such as those comprising the CI do not enjoy similar advantages.⁶¹ On the contrary, the government commands huge amounts of resources, which it uses to advance its agenda. In cases where these agendas conflict within the domestic context as is the case of responses to terrorism, the disparity in resources hinders effectiveness of groups.

The search for finances is thus an important aspect in determining how a group meets its obligations towards a particular purpose. Indeed, Nasong'o has noted that the civil society makes its deepest, most organic and sustainable contribution to democracy when it cultivates a significant base of financial support among a broad and indigenous constitution.⁶² This confers autonomy to the civil organization and promotes identity and sense of ownership on the part of individual donors. When this is not forthcoming, domestic groups can and do suffer from lack of finances for organization, which complicates their effectiveness in various ways. In Kenya because these groups are mostly urban based it can constitute a perennial problem.

And whereas extra-governmental funding for civil society enables them to escape patron-client relationship and the subsequent possibility of being compromised,⁶³ the donor-funded civil society exists on the premise that human rights and issues of democracy

⁶¹ T.E. Patterson, *The American Democracy* op. cit. Pp.262,266

⁶² S.W. Nasong'o, *Civil Society and African Democratization: the flip side of the Coin* p.8 [online] www.csd.neu.edu/Nasong'o_Vol1_fall2002.htm

⁶³ 'Country Report' *Transformation: Kenya* p.6 [online] www.bertelsmann-transformation-index.de/73.0.html?&L=1

continue to be on the top of donor's agenda if at all.⁶⁴ Remembering the donors' shifting priorities during and after the cold war, this assumption is risky. Moreover, it clouds the legitimacy of a sensitive process,⁶⁵ where conflict of interest between the needs of the domestic context and those of external partners exist. This is because in the same way that the government to which it is a client might have compromised civil society so is it susceptible to external donors. Such is the case of counter-terrorism where tension is so real that a MP is on record as saying, 'to attract donor funding we might be forced to support the bill [Suppression of Terrorism Bill 2003], when it comes for debate [in parliament]. Even where this funding is available, it impacts on the cohesiveness of the larger group and thus their ability to forge a common front, when partners compete, jostle and lobby for donor funding.⁶⁶

The objective of a group is also important to the extent that public causes are easier to promote than private ones. Tentatively speaking, the CI is closest to public than to private concern. It is also easier to act defensively than offensively about the objective being sought.⁶⁷ For example, it was harder (took several years) for the civil society to instigate amendments to sections of the constitution to pave way for multiparty politics, because it was trying to upset the *status quo*. However, most counter terror positions held by the domestic context aim at maintaining rather than upsetting the *status quo* and are arguably easier to accomplish. Nonetheless, public causes are also more susceptible to free rider

⁶⁴ F. K. Matanga, 'ISTR Conference: The Third Sector: For Whom and for What?' *Civil Society and Politics in Africa: the Case of Kenya* (Dublin: Trinity college, 5th–8th July 2000) p.33 [online] www.jhu.edu/-istr/conferences/dublin/workingpapers/matanga.pdf

⁶⁵ 'Conference Report' *Constitution making: Promoting Culture of Constitutionalism and Democracy in Commonwealth Africa* (ICRI) p.9

⁶⁶ S.W. Nasong'o, *Civil Society and African Democratization: the flip side of the Coin* op. cit. p.12

⁶⁷ G. Hitchner and C. Levine, *Comparative Government and Politics* op. cit. Pp.73, 74

problem,⁶⁸ since they are available to all in spite of who pursued them in the first place, which complicates their pursuit.

Tactics and techniques used are also relevant. There is for example, a need for moderation since excessive pressure or threats can be a disadvantage as well as a weapon. Indeed, governments may not react 'appropriately' to blatant pressure because widespread use of violence and illegitimate coercion can be perceived as a symptom that a regime is breaking down and losing legitimacy.⁶⁹ The government may want to avoid this 'by not getting persuaded' to take a group's position but by cracking down on such action brutally. However, the strategies employed by the CI in Kenya to re-orient the government's counter terrorism policy can largely be described as moderate and measured. This restraint has perhaps been responsible for making policy makers more accommodative and sensitive to stakeholders' views in the domestic context.

All said and done, the ultimate outcome depends to a considerable extent on a bargaining process,⁷⁰ within and among interest groups. It also depends on the relative persuasiveness of contending parties, rather than on a concept of overall purpose.⁷¹ Thus the contending groups find themselves winning some and losing some, without getting a 100% resolution of issues because the whole process is about concessions and compromises and some confusion in between to arrive at a working solution –or rather a resultant. For example, the bill is being redrafted pending publishing with pertinent issues

⁶⁸ T.E. Patterson, *The American Democracy* op. cit. p267

⁶⁹ G. Almond and P. Birmingham, *Comparative Politics: Systems, Process and Policy* op. cit. p.178

⁷⁰ C. Kegley and E. Wittkopf, *World Politics: Trend and Transformation* .op. cit. p51

⁷¹ H.A. Kissinger, *Domestic Structure and Foreign policy* in H.K. Jacobson and Z. Woll *The Shaping of Foreign Policy* (New York: Atherton Press, 1969) p.268

(though not all) being reviewed.⁷² In addition, the government has provided proper rhetoric on finding solutions to other issues of concern such as harassment and arbitrary arrests of suspected terrorists. The CI's effectiveness in Kenya is also reflected in its having been keen enough to notice relevant policies as well as to say no to the them, which is more than can be said for some states. For example, in Tanzania a similar law was passed by parliament without being noticed by the public and other stakeholders.⁷³ With such visible results, arguments that bargaining within the domestic context dilutes effectiveness of policy in terms of speed and adequateness are tempered by the illusion of what is effective.

4.6. Of Issue areas, Decision-making Units and Crises

A democracy exists to the extent that the government is controlled by citizens rather than imposed on them.⁷⁴ Therefore, for the domestic context to be relevant in decision-making, it must be able to channel this influence from the population. It is achieved when the population inhabiting a state develops participatory institutions of social life.⁷⁵ These institutions together with the legislature are usually the voice of the public in the domestic context.

Hughes has identified three factors that underlie public influence. These are issue type, the decision-making unit within the government and speed of decision-making.⁷⁶ Issue

⁷² Interview with K. Ochieng, Young Muslim Association

⁷³ J. Odera, 'Conference paper' *Terrorism within a Regional Security Framework* (University of Nairobi, Institute of Diplomacy and International Studies, (July 1st 2003) p.8

⁷⁴ S. Hendrik. *The Sovereign State and Its Competitors: An Analysis of Systems Change* (Princeton: Princeton University Press, 1994)

⁷⁵ J. Goldstein, *International Relations* op. cit. p.11

⁷⁶ B. Hughes, *Domestic Context of U.S Foreign Policy* op. cit. Pp.198 - 206

areas are categorized in the order of precedence as economic, security and diplomatic, with the decision-making unit being construed as competition between the legislature and executive while speed of decision-making defines the urgency and thus the nature of the decision made. These factors are best viewed in concert rather than in isolation.

The classification brings important considerations to the fore. Within issue areas, economics gets priority because reward or punishment to the public is easily identifiable and quantifiable thus activating affected sections domestically. On the other hand, inasmuch as security issues have dramatic impact on lives, it is frequently unpredictable and uncertain such that groups less often see rewards or punishment in any one action.⁷⁷ Such arguments however, depict situations in the traditional realist definition of security in terms of territorial integrity and international sovereignty and to a lesser extent in terms of security of state leadership and the way of life. For example, the American policy of containment of communism or Kenya's non-alignment during the cold war did not stimulate domestic activism perhaps because it did not isolate particular sections of society.

However, when the government in Kenyan allows foreign security agents into the state, who incidentally get accused of abusing rights of a segment of its population or when Kenya is perceived as having been bullied into adopting legislation that is inimical to the way of life of its citizens, this definition does not suffice. Accordingly, a broader definition of security is necessary and should include the living conditions of individual

⁷⁷ B. Hughes, *ibid.* p.199

citizens, domestic social groups and local communities.⁷⁸ When this happens, it ordains that some decisions in the security area have rewards or punishments, which are visible and quantifiable albeit qualitatively, thereby stimulating domestic stakeholders who would articulate these interests. In the case of Kenya, this is evident by sections of both secular and religious civil society that put the government to task over its decisions. In addition, analysis of counter terrorism in Kenya cannot be divorced from economic aspects due to its negative impact on some sectors like tourism and *miraa* trade with Somalia, which was caused by travel advisories and suspensions of trade owing to terrorism or threat of it.⁷⁹ Moreover, aid, which has been tied to the war on terror, has been delayed indefinitely. This has made counter terrorism very 'visible' indeed.

This notwithstanding, when rewards or punishment to sectors of the society are directly visible, decisions tend to be shared between legislature and executive thereby stimulating lobbying.⁸⁰ This, is probably because the legislature being the main avenue of participation by the public (via representation) is activated whenever relevant issues become the focus of the domestic context. And while few decisions on counter terrorism have been deliberated in the Kenyan august house, domestication of international counter terrorism conventions, which is perceived as discriminating against sections of the society, would involve like dynamics. Moreover, the Suppression of Terrorism Bill 2003 was actually withdrawn before it was tabled in parliament partly because sections of society (constituencies) were aggrieved by it, thus prompting members of parliament to

⁷⁸ L. Chweya, 'Emerging Dimensions of Security in the IGAD Region' in Mwagiru Makumi (ed), *African Regional Security in the Age of Globalization*, (Nairobi: Heinrich Boll Foundation, 2001) p.32.

⁷⁹ See 'MiraaDealers Turn to Illegal Land Routes' (Daily Nation, 25,6,2003) p.3

⁸⁰ L. Milbrath , 'Interest Groups and Foreign Policy' in J. Rosenau (eds) *Domestic Sources of Foreign Policy* (New York: Free Press, 1967) p.249

threaten to throw out the bill. Thus legislative activity is likely and indeed necessary when high-profile issues capture public attention and public opinion opposes the president's policy.

Likewise, the perceived urgency by leaders that a decision needs to be reached is a critical factor. During crises for example, decision makers are surprised, feel threatened and believe they have only a short time in which to make a decision.⁸¹ Kenya's decision to allow American agents to hunt Al Qaeda suspects in the aftermath of August 7, 1998 attack, or the decision 'to extradite' Abdula Ocalan to Turkey in 1998 & the suspects in the 1998 U.S. embassy bombing and the 2002 Kikamballa attacks, can be viewed as having been prompted by this. The chaotic aftereffect of the blast coupled with the guilt of the failure to anticipate and prevent it, foreordained that the Kenyan security forces and the Kenyan leaders (executive) needed to act or at least be seen to do so, not only as a display of concerted action with international community, which she wanted to please but also in the 'interest' of Kenyans to the extent that the 'extraditions' were meant to prevent reprisals from terrorists.

This state of affairs however raises important issues. In crises, there is tendency for decisions to be made by relatively small groups composed of high-level political leaders, (such as those around President Kennedy during the 1962 Cuban missile crisis⁸²) whose size is restricted by the need for secrecy, innovative behavior and consensus. In addition,

⁸¹ J. Rourke, *International Politics on the World Stage* op. cit. p.84

⁸² J. Goldstein, *International Relations* op. cit. p.176

the public usually rallies in support of whatever action their political leaders take.⁸³

Consequently, the perceived short time in which decisions have to be made means that parochial interests are subordinated to the purpose of the ad hoc group, which behaves cooperatively and expeditiously. The need for secrecy in addition, ensures that domestic interests that could be affected by the decision are not aware such a decision is being made until it's too late. The same dynamics effectively lock out the legislature as the decision-making unit in favor of the executive since public opinion, which might ordinarily act in favour of the legislature, does not figure, as doesn't the legislature itself because of the desire to be seen to, 'rally behind the flag.' Arguably this happened in the wake of 1998 and 2002 terrorist attacks.

Some have even questioned the rationale for crisis decisions in light of their consequences. For example, the 'crisis' decision to 'extradite' 'hot' terror suspects after 1998 U.S. embassy bombing (ostensibly to avoid retaliation), seem to have backfired if we take into account that it failed to stop terrorists from again targeting Kenya in 2002. Some even wonder why the government should fail to anticipate threats only to act under time pressure at the expense of citizen's rights.⁸⁴ In spite of such arguments, it is noted that crises do occur and the essence of electing leaders rather than having citizens make decisions together is ample justification, in addition to the fact that it might often be the only (best) option given the circumstances.

⁸³ J.T. Rourke, *International Politics on the World Stage* op. cit. p.84

⁸⁴ Interview with K. Ochieng, Young Muslim Association

Therefore, where the domestic context is actively involved in the decision-making process, and in spite of the right conditions being available for the domestic context to thrive, other factors come into play, which essentially determine whether the decision is better formatted for its involvement or not. The factors are the issue type, decision unit and urgency of the decision, which inadvertently lead to a reconfiguration of the relevance of partners within the domestic context. Therefore, decisions are likely to be made by the parliament and by extension made accountable to the public, when the public easily feels the impact of the security issue; are opposed to the executive in that particular decision and ample time exists for which to engage in dialogue.

4.7. Conclusion

A domestic context on international terrorism responses does exist in Kenya. Actors in this context take up various positions that reflect their interests, which may conflict with the governments.' Therefore, for a decision to be reached, it demands the input and compromise within and among this context, reflected in the perceived power of a group in terms of extent of public support it can muster and not necessarily the resources it commands although this may affect its effectiveness. This has been augmented by Kenya's democratization, whereby the government is more receptive to public concerns to avoid electoral repercussions if they go against the will of the majority. In this way, interest groups have succeeded in having the government accommodate their views. However, the nature of individual decisions has affected the decision environment and by extension the extent of these groups' effectiveness.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECCOMEDATIONS

5.1. Summary

The first chapter, found the need to explore the extent of the domestic context's participation in policy making, in the light of the end of cold war, the democratization of Kenya and the emergence of international terrorism as a major threat to her national security.

The second chapter examined the political dimension of the domestic context in Kenya, whose participation was found to have a political history dependent upon the country's leadership existing at a particular point in time. In the immediate post-independence, various organizations within the civil society such as the loose ethno-regionally based political coalitions were involved in determining the direction of policy, most notably through the '*harambe'e*' system. However, during Moi's regime these organizations were cracked down upon, severely curtailing their role in policy making. With the advent of multiparty politics and the substantial reinstatement of fundamental freedoms, partners in the domestic context became active in politics as independent entities rather than as agents of the executive. Moreover, their involvement prior thought to be restricted domestically has invaded the foreign policy arena, since the line between foreign and domestic policy has become blurred.

The third chapter explored the specter of international terrorism in Kenya. It was found that the root causes of terrorism in Kenya are external, while the nature of responses by

the state have affected or been perceived to affect, sections of the country's population. The feeling has been rife within the domestic context that these responses are prompted by agendas other than the desire to address terrorism, which has led to the responses being vehemently opposed.

In the fourth chapter we find that the contestation about responses to terrorism, has created a domestic context that has pitted government organs against representative organs such as parliament and the civil society. The dynamics of the domestic context have revolved around efforts to re-orient government counter-terrorism policy, through various channels and strategies. This inadvertently led to delays in making policy concerning international terrorism.

5.2. Conclusions

The research has traced the political history of Kenya's domestic context from independence to the current. The domestic context's involvement was found to be a factor of the democratic space availed by the different regimes after independence. During Kenyatta's regime, the context was visible but its impact was felt only in the domestic arena. However, the censorship of various actors in the domestic context early in Moi's regime reduced its activity to that of an agent of the executive. Gradually, with the advent of multiparty politics, this involvement has again thrived. In addition, the upsurge of international terrorism in Kenya and the controversial nature of responses to it, have amplified the domestic context's participation in foreign policy. This conclusion

is in line with the first objective, which sought to explicate the emergence of the domestic context and international terrorism as important factors in Kenya's policy making,

The study has also found that responses to terrorism are foreign security policy because of the perception that its root causes and the nature of responses to it have external manifestations. This has produced a domestic context to counter-terrorism in Kenya, revolving around a coalition of interests that has opposed the government's chosen path of policy. The coalition has applied direct and indirect pressure on the relevant policy making organs and its officials through lobbying, providing incentives in the form of re-election pledges and blatant display of group strength, which has forced the government to recapitulate and invite stakeholder input in decision-making. Therefore, this conclusion is also in line with the second objective, which sought to evaluate the influence of the domestic context on the foreign security policy on international-terrorism in Kenya.

Through analysis of the foreign policy outputs in the area of international terrorism, the different decisions made by the government have been found to be inconsistent in both direction and magnitude of commitment to them. This is as a result of the different interests advocated by partners within the domestic context, comprising of the executive, policy bureaucracies, the legislature, interest groups, the media and the political opposition outside and within the ranks of the government. These diverse interests have acted in competition, causing a stalemate whereby the government has been unable to produce a comprehensive policy on international terrorism. Therefore, our first

hypothesis that the uncertainty in arriving at a comprehensive policy is dependent upon diverse interests of the domestic context has been positively confirmed.

Furthermore, because of the diverse and conflicting views held by competing partners in the domestic context and their desire to maximize parochial interests, they have presented their positions at the extreme, both within coalitions and the domestic context. This was occasioned by the differing goals and objectives held by each group. On the one hand, the government sought to please donors in order to receive aid and fulfill election pledges while on the other, sections of the society felt that these decisions impinged on their civil liberties and freedoms and thereby opposed them intensely.

This state of affair necessitated bargaining within and among groups as they searched for an alternative. The process has involved some confusion, concessions and compromises in order to arrive at a solution, which does not reflect the interest of any particular partner but an amalgamation of deferring points of view. In addition, as a result some decisions have not been conclusively reached while in others, the participation of the domestic context has depended on the length of decision time, the involvement of parliament and the quantification of the impact of the responses to the public. However, where these conditions have been fulfilled, the nature of compromises reflect the relative strength of individual partners in terms of the public support they can muster, and other characteristic of the group, for example the resources at its disposal. Therefore, the second hypothesis that a comprehensive policy on counter terrorism depends on the ability to reach a compromise has also been ascertained.

4.3. Recommendations

The government should foster democratic space in which the domestic context can thrive, accommodating the rights of minorities when they are not an imposition on the will of the majority. Therefore, where the state constitutionally suspends certain rights, they should be of exceptional and temporary nature.

The government should concentrate on responses that address real issues rather than other agendas promoted by foreigners. It should seek homegrown solutions by empowering the domestic context, because excessive reliance on external advice and assistance has shortcomings and is detrimental to developing own expertise. .

Laws to combat terrorism in Kenya should ensure the right balance between security and the upholding of human right principles. They should pass the test of universality and community such that they are not biased against any section of society. Guilty parties should be made to pay as such and not on the basis of religious or any other characteristic.

The government should also focus on closing religious and other schisms that are inherent in the global and domestic debates on counter-terrorism. Domestically it should encourage stakeholders (itself included) to acknowledge the problem. It's not enough for the government to say, "The majority of Muslims are moderate and law abiding" and yet make sweeping arrests on members of the faith. Likewise, if the majority of people

credibly linked to terrorism claim to be doing so in the name of Islam, Muslim leaders should confront them and reject that position. Policies should thus aim to foster co-existence between conflicting parties. Similarly, at the international level, Kenya Should re-define, pursue and defend her interests to enable policy consistency and success. It should aim to obtain political solutions to conflicts, which breed terrorism by using her enhanced image as a mediator, to search for peaceful settlements of disputes.

The government should also invest in the security sector capacity building, not only in the physical sense but also intellectually, to enable institutions to effectively implement legislation. This is because issues of countering terrorism are entangled with those of human rights such that laws however well meaning can be abused. Therefore, anti-terrorism security units should be stimulated intellectually, to respect human rights and other freedoms in order to eliminate the post independence mentality of invincibility of the police force.

The government in collaboration with the private sector should also invest in strengthening emergency services. As much as it should seek to prevent terrorism in Kenya, the government should ensure the innocent citizen does not suffer (than need be) when terrorists succeed by having a capable emergency service. Strengthening emergency services is important as our last line of defence especially when our response is limited to damage control.

In addition, since the public is crucial in swaying decisions that concern the domestic context, civic education should be intensified to ensure people reason with what they see, know and understand rather than based on propaganda or what they think they know. This is because public opinion can be manipulated through propaganda aimed at compromising its role. Therefore, civic institutions should educate the public on the technical aspects of the responses' impact while the media should be objective and dissuade from providing biased news to the public.

Finally, the civil society and political opposition should build its capacity to criticize the government albeit constructively. They should not be seen as aimed towards paralyzing government action or they will run the risk of being censored by the same interests (public) they claim to serve. Political parties should employ the use of guiding principles and ideologies rather than ethnicity and religion, to aggregate citizen's interests, while interest groups should seek grassroots support to increase their moral legitimacy and financial base. And because the activity of the domestic context is a cooperative project, it should involve all stakeholders in bargaining as much as in implementation of the resultant.

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