

# **TERRORISM AND ETHICS IN COUNTERTERRORISM IN AFRICA**

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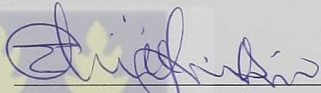
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**DECLARATION**

I, ROSE TOLOO APRONTI hereby declare that except for references to other publications and materials which have been duly acknowledged herein, this work in its entirety, is the result of an original research conducted by me under the supervision of Dr. Emmanuel Kennedy Ahorsu.



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## DEDICATION

*I dedicate this work to my unborn children; Ofotsu and Aso.*



## LIST OF ACRONYMS AND ABBREVIATIONS

AAD	-	Ansar al-Dine
ABM	-	Ansar Bayt al-Maqdis
AIAI	-	Al-Itihaad Al-Islamiya
AMB	-	Al-Mulathamun Battalion
AMISOM	-	African Union Mission to Somalia
AML	-	Anti-money laundering
AQIM	-	Al-Qa'ida in the Islamic Maghreb
ARF	-	ASEAN Regional Forum
ASEAN	-	Association of South East Asian Nations
AU	-	African Union
CAT	-	Convention Against Torture
CFT	-	Combatting the financing of terrorism
ECOWAS	-	Economic Community of West African States
EFCC	-	Economic and Financial Crimes Commission
FATF	-	Financial Action Task Force
FRC	-	Financial Reporting Center
GIA	-	Armed Islamic Group
GIABA	-	Inter-Governmental Action Group against Money Laundering in West Africa
GSPC	-	Groupe salafiste pour la Prédication et le Combat
GTI	-	Global Terrorism Index
HSM	-	Holy Spirit Movement
ICCPR	-	International Convention on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ICU	-	Islamic Courts Union
IGAD	-	Inter-Governmental Authority on Development
ISIS	-	Islamic States in Iraq and Syria
ISIL-SP	-	Islamic State of Iraq and the Levant in the Sinai Province

LRA	-	Lord's Resistance Army
MJTF	-	Multinational Joint Task Force
MLF	-	Macina Liberation Front
MNLA	-	National Movement for the Liberation of Azawad
MUJAO	-	Movement for Oneness and Jihad in West Africa
NFD	-	Northern Frontier District
NFIC	-	Nigerian Financial Intelligence Centre
NGO	-	Non-Governmental Organisations
OAU	-	Organisation of African Unity
POC	-	Proceeds of Crime
POTA	-	The Prevention of Terrorism Act
RDI	-	Rendition Detention and Interrogation
TPA	-	Terrorism Prevention Act
TJ	-	Jam'at al-Tawhid wal-Jihad
UDHR	-	Universal Declaration of Human Rights
UN	-	United Nations
UIC	-	United Islamic Courts
UK	-	United Kingdom
UNSC	-	United Nations Security Council
US	-	United States
WWII	-	World War II



## CHAPTER TWO

### AN OVERVIEW OF TERRORISM AND THE STATE TERRORISM IN AFRICA

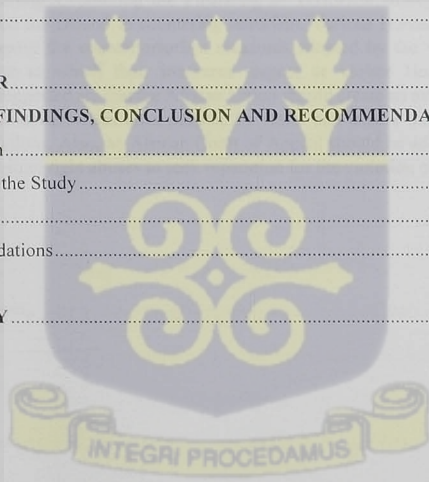
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## ABSTRACT

The terrorism canker is not a recent phenomenon in the international world, although it has gained much popularity after the events of 11<sup>th</sup> September, 2001. For many years, acts of terrorism in diverse forms have killed and endangered the lives of many people, jeopardizing fundamental freedoms and seriously impairing the dignity of human beings. Terrorist acts are unconventional in nature and this makes it very challenging for states to devise legitimate and effective means of responding to terrorist attacks. The study examines the problem of countering terrorism and in such a manner that the aims of terrorists are not promoted and anti-terror laws are not used as a façade to pursue idiosyncratic conflicts, ethnocentrism and administer political abuses. The work inquires how counterterrorism can be pursued and at the same time human rights safeguarded in Africa. The study employs a qualitative method in the gathering of data. Information was obtained from books, journal articles and internet sources. Findings of the study elucidate the violation of human rights by Kenya, Egypt and Nigeria in their counterterrorism measures. The measures critiqued included their counterterrorism laws, anti-Money Laundering/ Countering the Financing of Terrorism strategies, and the actual measures adopted on the ground in countering terrorism. Various Human rights instruments were used to juxtapose the counterterrorism measures adopted by the various countries to ascertain the extent to which their measures respect or violate Human Rights. Some recommendations suggested are that the African Union should create an oversight Commission that will review counterterrorism laws adopted by states and ensure that they comply with human rights regulations. Also, an African Court of Appeal should be adopted for victims of counterterrorism-human right abuses to seek reparation for the violation of their rights.



CHAPTER ONE  
RESEARCH DESIGN

**1.1 Background**

The terrorism canker is not a recent phenomenon in the international world, although it has gained much popularity after the events of 11<sup>th</sup> September, 2001. For many years, acts of terrorism in diverse forms have killed and endangered the lives of many people, jeopardizing fundamental freedoms and seriously impairing the dignity of human beings. Terrorist acts are unconventional in nature and this makes it very challenging for states to devise legitimate and effective means of responding to terrorist attacks.

The main goal of terrorists is to achieve a specific political aim in accordance with their ideology. Often, they aim at effecting radical change and imposing fear through all possible means, even if it means sacrificing human lives. To achieve their goal, they commit mass murder, demoralize governments, instil fear and panic amongst the populace, destabilize states and render them ungovernable. Their aim is bordered largely on creating instability, insecurity, undermining normative post-cold war gains in gender equality, civil liberties and human rights. Schorlemer reiterates this fact in stating that terrorist acts violate people's human rights.<sup>1</sup> His view is confirmed by the Vienna Declaration and Programme of Action of June 1993, which states that all acts of terrorism destroy human rights and downplay democracy.<sup>2</sup>

Terrorist acts violate human rights and are so far-reaching that they affect every single human right;<sup>3</sup> the right to life, dignity, security, freedom of movement just to mention a few. In fact, the European Parliament restated that 'terrorism is a violation of human rights'<sup>4</sup> and the OAU Convention on the Prevention and Combatting of Terrorism affirms this assertion in its preamble in which it states that terrorism constitutes a serious violation of human rights and,

in particular, the rights to physical integrity, life, freedom and security, and impedes socio-economic development through destabilization of states.<sup>5</sup>

Given the advances in mass media currently, terrorists sometimes announce their impending attacks although not necessarily stating the exact location where they will strike. Their unannounced activities are however shrouded in secrecy and there is little concrete information on their exact location.<sup>6</sup> This makes it very difficult for states to trace their routes and make predictions on their next strike in order to counterattack. Terrorists' methods of fighting are not straight-jacketed. They are usually fluid; a mixture of Conventional and unconventional techniques are applied in their fighting. For instance Boko Haram militants have recently engaged in gun battles with the Nigerian military whereas there have been instances where they struck villages warning.

Terrorists do not obey the rules of engagement in war or armed conflicts and this makes it inefficient, as well as difficult to pursue them through ordinary criminal processes.<sup>7</sup> In fact, Warbrick believes that states are of the view that their laws are procedural, delicate and slow, respecting the rights of all persons. Accordingly, these laws are not strong or effective enough to deal with issues as grave as terrorism.<sup>8</sup> Considering the unconventional nature of terrorist actions, counterterror measures sometimes take unconventional forms, which could lead to the infringement of certain civilian liberties. In the absence of a universally accepted normative structure in dealing with terrorists, states resort to all sorts of means in the naming and interrogation of terror suspects<sup>9</sup>

In more advanced democracies such as the Great Britain and United States where the rule of law and protection of human rights is sacrosanct, the fight against terrorism has equally been

tedious. States have had to resort to the use of crude means to derive information in order to fight terrorism. There have been allegations levelled against the US for the use of torture in countering terrorism. In a report, the horrors of torturous activities administered by American soldiers to Iraqi detainees were brought to bear.<sup>10</sup> The report, by Major Taguba showed photos and videos to back the allegations of the use of torture by American soldiers on Iraqi detainees in the Abu Ghraib Prison. In the report, there were photos of naked detainees forced to assume humiliating poses with American soldiers smiling into the camera and giving the thumbs-up sign.<sup>11</sup> In one photo, an American soldier had posed beside a hooded Iraqi detainee who was masturbating. In the photo, Private England had given the thumbs-up sign and was pointing at the genitals of the detainee. In another photo, a group of naked detainees were awkwardly piled on top of each other in a pyramid form with two American soldiers posing their signature thumbs-up sign beside them.<sup>12</sup> Photos of dead men also emerged in the report. One was of a badly beaten prisoner, and another, a visibly bruised body of another prisoner packed in ice. There was also another photo of soldiers threatening a naked detainee with a dog.<sup>13</sup>

In the report, a witness testified that once, a soldier punched a detainee so hard in the chest that he almost had a heart attack. Another witness also recounted that a detainee was once brought in for interrogation and was stressed so badly that he died in the process and his body was put on ice and later put on a stretcher with a fake intravenous substance attached to his arm and wheeled away.

The US is signatory to a number of Conventions that are against the use of torture of any form. Conventions such as the UN Convention Against Torture, the Universal Declaration on Human Rights (UDHR), the International Convention on Civil and Political Rights (ICCPR) and the Fourth Geneva Convention.<sup>14</sup> The US has also denounced the use of torture on various platforms.<sup>15</sup> Methods of persuasion such as the use of torture are therefore illegal in the U.S.<sup>16</sup>

So in order to perpetrate such acts, suspects are sent to legal black holes such as the Guantanamo Bay prison.<sup>17</sup> These legal black holes could be states where there are no laws banning the use of torture or states known to use torture.

Great Britain has been an obvious ally of the U.S in the “war on terror”. Britain, just like its ally has also been accused of directly and indirectly engaging in the use of torture in the interrogation of terrorist suspects. Great Britain partnered with the Criminal Investigation Agency of the US in the Rendition, Detention and Interrogation (RDI) programme. The programme enables prisoners to be rendered to states and held in secret prisons for months and sometimes years without trial. Details of this programme was published in December 2014 with evidence pointing to the use of torture such as sleep deprivation, sexual assault and waterboarding techniques. In a declassified document made available to the Human Rights Watch, Britain was implicated in a case of rendition. In the document, Britain is mentioned to have given approval for the rendition of a suspect to a state where the suspect stands the risk of torture.<sup>18</sup> The case, Abu Mudhir and his family including his wife and four children were rendered to Libya from Hong Kong. He was detained and subjected to beatings and electric shocks.<sup>19</sup>

For states such as the U.S and the U.K who denounce the use of torture to resort to crude means to obtain information to counter terrorism, it shows how complicated and tedious the task of effective counter terrorism could be.

In many countries including the U.K and the U.S, covert investigations are conducted in the form of tapping into phone calls of suspects, hacking into their internet accounts and using other means that are invasive of people’s privacy.<sup>20</sup> In their bid to combat terrorism, states

have, therefore, been compelled to overlook the statutes of Human Rights earlier enshrined. This, therefore, begs the question and place of ethics in fighting terrorism.

Considering the secrecy with which terrorists operate, it has become necessary for more advanced democracies even with more sophisticated intelligence-gathering equipment to adopt certain illegal means to derive information to counter terrorism. The adoption of such draconian strategies by African states is therefore not surprising. It must however be used with all caution.

The case of Africa is a rather complicated one in the annals of counterterrorism. Unfortunately, the continent consists of various structurally weak states with hardly enough sophisticated materials to effectively counter terrorism. In addition, Africa has had a history of violent ethnic and civil conflicts accompanied with various degrees of human rights abuses. The apartheid rule in South Africa; authoritarian rule in Uganda; the Civil wars in Burundi, Sierra Leone and Liberia; and the Genocide of Rwanda drew the continent backwards in the race of upholding human rights.<sup>21</sup> Not wanting to return to the dark age of abuse of human rights, the fighting of terrorism in Africa has taken an arduous turn. Although it has become necessary that certain civil liberties are limited in order to effectively counter terrorism, there is a limit within which states on the African continent can extend this necessity in order not to topple the fragile human rights situation on the continent.

Like any other state across the globe, a number of countries in Africa have equally suffered attacks by terrorist groups. Here is a trajectory of some terrorist attacks in Africa since 1998:

YEAR	TERRORIST ATTACK
1989	On 7 August 1998, a truck bomb exploded outside the U.S. embassy in Nairobi. The blast destroyed an adjoining office building with little damage to the actual embassy. It claimed 254 lives and injured approximately 5,000. A similar attack was launched on the U.S. embassy in Dar es Salaam in Tanzania. <sup>22</sup>
2002	The bombing of a Synagogue in Ghriba-Tunisia killed 20 people. <sup>23</sup> Mombassa attacks on Israeli owned hotel and aeroplane in Kenya kills leaves 16 dead. <sup>24</sup>
2004	Three bomb attacks on tourist restaurants in the Sinai Peninsula in Egypt kills 34 people. <sup>25</sup>
2005	Bomb attack on Sharm el-Sheikh resort City kills 64 people in Egypt. <sup>26</sup>
2006	3 bomb attacks on the resort city of Dahab in Egypt kills 23 people. <sup>27</sup>
2007	Zirve Publishing House Massacre kills 3 workers at the publishing house in Egypt. <sup>28</sup>
2010	The massacre of Coptic Christians in Nag Hammadi- Egypt left 11 dead. <sup>29</sup> Kampala attack on a crowd watching the final match of the 2010 FIFA World Cup in Uganda. <sup>30</sup>
2011	Bomb attack aimed at Coptic Christians in Alexandria kills 23 people in Egypt. <sup>31</sup> Bombing of Transitional Federal Government Ministerial Complex in Mogadishu-Somalia leaves 100 dead. <sup>32</sup> Christmas day attacks on 3 Churches in Nigeria leaves 41 dead. <sup>33</sup>
2012	Attack on U.S. Consulate in Benghazi-Libya leaves 4 dead. <sup>34</sup>
2013	Hostage taking of expats in Amenas-Algeria leaves 68 dead. <sup>35</sup> Attack on military base and French owned Uranium mine in Niger kills 26 people. <sup>36</sup> Kenya Westgate Mall attack kills 67 people. <sup>37</sup> A College of Agriculture in Nigeria's town of Gujba leaves 50 dead. <sup>38</sup>
2014	Massacre of villagers in Konduga-Nigeria kills 121 people. <sup>39</sup> AU base in Mogadishu-Somalia attacked by suicide bombers killing 9 people. <sup>40</sup> An attack on Mbaljuel village in Cameroon leaves 30 dead. <sup>41</sup>
2015	A refugee camp for people fleeing Boko Haram was attacked leaving 2 dead. <sup>42</sup>

	Ministry of Higher Education in Somalia attacked, leaving 17 people dead. <sup>43</sup>
	In April, a UN van was bombed in Puntland region-Somalia leaving 9 people dead. <sup>44</sup>
	In June, the AMISOM base in Somalia was attacked leaving more than 30 dead. <sup>45</sup>
	Garissa University attack in Kenya leaves 145 people dead. <sup>46</sup>
	Cameroon suicide attack kills 13 in a bar including a Chadian soldier. <sup>47</sup>
	Ankara-Turkey bombings killing at least 95 people. <sup>48</sup>
	An attack on a Russian jet bound for St. Petersburg kills 224 people. <sup>49</sup>
	Mali's MINUSMA peace-keeping force base attacked, killing 3 people. <sup>50</sup>
2016	Truck bombings in al-Jahfal Police training camp in Libya leaves more than 50 people dead. <sup>51</sup>
	An attack on AU Kenyan Army base in El-Adde-Somalia kills more than 63 people. <sup>52</sup>
	Attack on restaurant and hotel in Ouagadougou-Burkina Faso kills more than 20 people. <sup>53</sup>
	Grand-Bassam hotel shootings in La Cote d'Ivoire kills 18 people. <sup>54</sup>
	An attack on a church in Cairo-Egypt kills 36 people. <sup>55</sup>
2017	The Islamic State terrorist group claimed responsibility for an attack on a bus outside of Cairo Egypt that killed at least 29 Coptic Christians including 10 children on Friday, May 26 2017. <sup>56</sup>

The above mentioned examples do not cover all the attacks on African countries by terrorists. Many African countries continue to face attacks by terrorist groups such as Boko haram, Al-Shabaab, Islamic State in Libya, Al-Qa'ida in the Islamic Maghreb (AQIM), and other groups affiliated to Al-Qa'ida and ISIS. The activities of these groups in Africa are crippling the hard fought-for, post-colonial human rights records. To this effect, some African countries have enacted anti-terrorism laws to help tackle the situation. Also, regional organisations such as the African Union have come up with frameworks for countering terrorism.

As earlier mentioned, countering terrorism is a tricky issue and it is difficult for states to find information useful for effective counterterror strategies. It is for this reason that states with

more advanced democracies have had to resort to the use of crude means such as torture to extract information from suspected terrorists to help counter terrorism. It is therefore not surprising that states in Africa have also resorted to the use of questionable measures to counter terrorism.

There have been many criticisms of counterterror measures in Africa by international lawyers and civil society groups. The reason for the sharp criticisms on counterterror measures is due to reports on incidences of summary executions and random arresting and detaining of terror suspects in Africa.

In Kenya for instance, sections of the Prevention of Terrorism Act enacted in 2012 was amended in 2015 and this attracted a lot of outcry. Sections of the Act that were amended had tendencies of restricting the freedom the press enjoyed and gave the state powers to detain terror suspects for up to a year when hitherto, the maximum was for 90 days. Kenya's counterterror measures are of great concern indeed for good reasons. The state has had a long standing antagonism with Somalia.<sup>57</sup> In Kenya's Northern Frontier District (NFD) exists a large Somali-speaking populace and after independence in 1960, the leaders of the newly independent Somalia called for the reunification of all Somali-speaking people and indeed the people themselves looked forward to it.<sup>58</sup> This, Kenya saw as a threat to its territorial integrity as the NFD accommodates a large population of Somalis. In the end, riots broke out and there has since been a long standing bad blood between Somalia and Kenya.<sup>59</sup> Human Rights activists are therefore concerned that Kenya's counterterrorism laws would be used as a façade to target and prosecute Somalis living in the NFD region of the country.

Egypt's anti-terror law and counterterror strategies have also been criticised for their role in the violation of human rights. Concerns have been raised with regards to Security force abuses,

restrictions on freedoms of assembly, expression, religion, association, violation and discrimination against women, etc.<sup>60</sup>

Nigeria's Terrorism (Prevention) Act has also come under scrutiny for giving powers to security forces to brutalise citizens and suspected terrorists.<sup>61</sup> Also, the security forces have been accused of violating fundamental human rights in the name of counterterrorism strategies.<sup>62</sup>

The African counter terrorism problem remains; how can counter terrorism be carried out so that the gains made in human rights in Africa are not rolled back? This is of much concern especially considering the fact that the continent has experienced various degrees of human Rights abuses with impunity. These abuses occurred largely during civil wars, under authoritarian leadership and genocide. There is no disputing the necessity in taking exceptional measures to ensure public safety and effectively counter terrorism.<sup>63</sup> However, this needs to be done within the limits of International Law and Fundamental Human Rights and freedoms should not be sacrificed. For Africa, the concern with states' counterterror approaches is their ability to do so and still safeguard the rights of the people within their territory.

## 1.2 Problem Statement

The campaign against terrorism has resulted in various violations of human rights globally and African States are no exception. The effectiveness of counterterrorism measures borders largely on extensive intelligence gathering. The means of gathering such intelligence risks rolling back some gains made in protecting civil liberties and human rights across Africa.

In Africa, there is a genuine concern that if necessary measures are not taken to ensure that counterterror strategies are in line with International Human Rights obligations, the continent could likely go back to its British post-colonial days of civil war and genocide<sup>64</sup> during which the abuse of human rights was prevalent. Africa's history with ethnic conflicts and civil wars gives rise for the legitimate concerns raised about counterterrorism measures adopted by some governments with tendencies capable of clawing back advances made in human rights.

States are legally obligated to protect the human rights of their inhabitants even in their counter-terrorist methods. This is not only a legal requirement but also a necessity for the successful fight against terrorism. By resorting to crude methods in counterterrorism, states abuse the very rights they aim to prevent terrorism from abusing.<sup>65</sup> In the end, they do exactly what they are fighting against. A state's repression and human rights abuse of its populace could likely backfire and create more acts of terrorism instead of preventing it. Nigeria is reported to be facing this consequence for the violations of human rights in Northern Nigeria which resulted in the extrajudicial killing of the founder of Boko Haram.<sup>66</sup> The group of people "desiring vengeance" have later become the terrorist group known as Boko Haram.<sup>67</sup>

This dissertation examines the problem of countering terrorism and in such a manner that the aims of terrorists are not promoted and anti-terror laws are not used as a façade to prosecute idiosyncratic conflicts, ethnocentrism and administer political abuses. The work inquires how counterterrorism can be pursued and at the same time human rights safeguarded in Africa.

### 1.3 Research Questions

- What are the causes and explanations for the presence of terrorism in Africa?
- What are the guiding principles for fighting terrorism?

- What are the ethics in counter terrorism?

#### 1.4 Objectives: to;

- Examine the spectre and dynamics of terrorism in Africa;
- Examine the dynamics of counterterrorism in Africa.
- Examine the ethics and human rights counterterrorism approach in Africa;
- Offer suggestions and possible solutions to the challenges.

#### 1.5 Rationale of Study

After the terrorist attack on the U.S in 9/11, there has been emerging literature pertaining to counter terrorist measures to fight terrorism. This research is very timely in the fight against terrorism in Africa. Africans, having suffered various human rights abuses in the past have redefined sovereignty in the protection of human rights and upholding of democratic values in Africa. The research will contribute to literature advocating for the protection of Human Rights generally and specifically relating to measures in counterterrorism.

#### 1.6 Scope of Study

This research focuses on counterterrorism in Africa since the emergence of Boko Haram in 2009. Despite the African continent recording terrorist activities before the year 2009, it was with the emergence of Boko Haram that many African state were awakened to the gravity of terrorist acts which subsequently informed their counterterrorism strategies and laws. The study will examine in particular, the cases of Egypt, Nigeria and Kenya. These are three of the states that have had persistent demonstrable challenges with terrorism within the past decade.

## 1.7 Hypothesis

Adopted counterterrorism measures by African states are likely to pose a threat to the delicate human rights situation on the continent.

## 1.8 Theoretical Framework

For the purposes of the research, the concept of Human Rights is adopted to explain the relevance of ethics in countering terrorism. The modern idea of human rights evolved after the end of the Second World War. Hitherto, states were at liberty to treat their citizens as they chose. However in the wake of World War II (WWII), the world was appalled and outraged after it got a glimpse of the atrocities that befell both Germans and other foreign nationals in the hands of the Nazi regime. The Nazi regime had committed grave violations of human rights, especially on Jews in Germany and this prompted the need for interference in state matters on issues of human rights. Calls for universal International standards for the promotion of human rights and the protection of humans across the globe led to the creation of the United Nations Commission for Human Rights. The Commission was set up for the promotion of human rights. It also set up a committee chaired by Eleanor Roosevelt, the then first lady of the United States of America which was tasked with developing a set of human rights standards. There were some deliberations on whether the instrument should be legally binding on all states or should be a moral obligation. Finally, on 10<sup>th</sup> December, 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly with the status of a moral declaration. Later, it would become binding on all states to uphold the statutes of the UDHR. The UDHR became known as the document defining human dignity and values and became a yardstick by which standards of international human rights were measured.<sup>68</sup> For more than 25 years, the UDHR stood as an international “standard of achievement for all peoples and all nations” and the basis for all forms of human rights.<sup>69</sup> The Declaration consists of a preamble

and 30 Articles, mapping out various human rights and fundamental freedoms that all persons are entitled to without discrimination.<sup>70</sup>

Since the adoption of the UDHR in 1948, two major International Conventions have been adopted to buttress the UDHR. These are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both Conventions were adopted in 1966 and many supervisory mechanisms have been created to monitor and ensure that states are complying with these Conventions.

The ICCPR entered into force on 23<sup>rd</sup> March 1976. It is a legally binding treaty for the protection of civil and political rights of all persons everywhere. The ICCPR protects the right to life while denouncing the subjection of persons to cruel, inhumane degrading treatments/punishments or torture and arbitrary arrests or detention. The ICESCR was however entered into force in 1973. The ICESCR is enshrined with Social and economic rights such as obligations to provide health, adequate housing, education, the right to enjoy just and favourable conditions of work, and the right to an adequate standard of living.<sup>71</sup> Collectively, the UDHR, the ICCPR and the ICESCR spell out a holistic human rights obligation making up the International Human Rights Bill. The Bill serves as a source of reference for states in making anti-terrorism laws to rule out any possible violation of Human Rights.

Stemming from the above Conventions, the concept of human rights has been further espoused by the UN particularly in situations where human right violations are likely to dominate without recourse to the law. Although the uses of torture had been banned by the aforementioned Conventions, reports of torture were noted by numerous states amidst the various rising political tensions within the states. This therefore informed an independent declaration on

torture which later translated into the Convention against Torture and Other Cruel Inhumane and Degrading Treatments or Punishments (General Assembly Resolution 39/46). The prohibition of torture is the guaranteeing of the right to physical and mental integrity.<sup>72</sup> This is the main instrument used by the UN to combat torture and to prevent and eradicate violations of human rights both in peace and war times.<sup>73</sup> States who are party to the convention are obligated to ensure that torture is a punishable offence under their domestic laws. Also, the principle of universal jurisdiction is applied on torture offenses.<sup>74</sup>

Similarly, in further espousing the concept of Human Rights, numerous conventions have been developed by the UN and include the following; Declaration on the Human Right of Individuals Who Are Not National of Country in Which They Live; Standard Minimum Rules for Treatment of Prisoners; Declaration of Elimination of All Forms of Intolerance Based on Religion and Belief; International Convention for the Protection of all Persons from Enforced Disappearance. All these prescribe rules on how persons with varying political statuses should have their dignity protected as humans regardless.

Finally the African Charter on Human and Peoples' Rights will also be considered for the purposes of ethics in counterterrorism. The charter entered into force on 21<sup>st</sup> October 1986. The Charter was established for the protection of human rights. Member states who are party to the Charter pledge to fight towards the eradication of all forms of colonialism on the African continent, fight against all forms of discrimination and to uphold social, cultural, civil and political rights of the African people.<sup>75</sup>

Considering the various Human Rights Conventions enumerated above, it is obvious that the concept of Human Rights is relevant for to study. The International Human Rights Bill together

with the aforementioned Conventions provide the framework to measure the human rights dimension of states' counterterrorism measures. Collectively, they give a criteria for measuring states' responsibility to protect, respect and fulfil the human rights obligations of their citizens even in countering terrorism. They address both measures of countering and preventing terrorism. Studies have shown that structural weaknesses such as corruption have caused some people to join terrorist groups. These weaknesses arose out of the negligence of human rights such as the right to adequate standard of living (ICESCR article 11) which leads to insurgences. It is for this reason that the concept of Human Rights is suitable for the research work.

## 1.9 Literature Review

This section explores existing literature and academic work in relation to the objectives of the study.

### 1.9.1 Terrorism in Africa

Discourses on terrorism in Africa have often been preceded by the recognition of the impacts of 9/11 on the security landscape of the continent. Numerous authors have therefore offered varying accounts of terrorism in Africa prior to the landmark event of 9/11. In her book 'Securing Africa: Post 9/11 discourses on terrorism', Malinda Smith offers a rather in-depth genealogy of Terrorism in Africa.<sup>76</sup> Viewing terrorism as an ideology of fear and socio-political weapons, she recounts the genealogy in three (3) phases; Afro-oriental, Afro-occidental and Afro-global. The Afro-oriental phase marks the traceable roots of terrorism in the 12<sup>th</sup> century where Africans served in slavery under dehumanizing conditions to the Arabs. Similarly, the Afro-occidental phase was marked by the period of slavery within the 20<sup>th</sup> century. Following the colonization of sections of the continent by the Europeans, the Afro-global phase was

initiated within the colonies. The reported inhumane treatment by the Europeans, according to the author spewed terror within states.<sup>77</sup>

The terrorist situation in Africa is not only active but deadly as well with many states recording terrorist acts. There are more states that have been attacked by terrorists than those that have not. In his speech at the meeting of Ministers of Justice and Intergovernmental Authority on Development Member States on Legal Cooperation Against Terrorism, Attalla Bashir, the then Executive Secretary of the Intergovernmental Authority on Development (IGAD) made the assertion that of all the regions in Sub-Saharan Africa, East Africa was the region most vulnerable to terrorist activities. He backed this assertion by stating that nearly all the countries in East Africa have been hit by one act of terror or another.<sup>78</sup> This could be attributed to the presence of Western tourists in East Africa as the region is a ripe tourist destination.

Shuaibu & Salleh conducted a study on the historical evolution of Boko Haram, focusing on the causes of and solutions to the Boko haram terrorist menace. Their study was a systematic review of literature and they found out that poverty was the major driving force of terrorism as it resulted in unemployment and high illiteracy rates, and these, they concluded are direct causes of the insurgence of Boko Haram.<sup>79</sup> Krueger & Malečková on the other hand believe that the perception that poverty is a driving force of terrorists is a misconception. Their research found out that terrorists tend to be more highly educated and from wealthier families than the average population.<sup>80</sup> Their study focused on the Middle East and Shuaibu & Salleh's study on the other hand focused on West Africa, therefore it can be deduced that the driving force for terrorists varies across geographies. On the other hand, studies by David Shinn establish a linkage between poverty and terrorism in Africa.<sup>81</sup> While acknowledging that poverty cannot be the cause of terrorism in Africa, the study posits that poverty creates conducive

environments for the initiation and perpetration of acts of terrorism. Poverty therefore has the propensity to alter the viability of terrorist acts within the sub-Saharan.

Krueger & Maleckova's study on Education, Poverty, and Terrorism sought to find out if there is a causal connection between the three variables. Their study confirmed their core postulation that terrorists tend to be better educated and from richer backgrounds than people perceive them to be. They found that Palestinian suicide bombers were less likely to come from penurious families and more likely to have completed high school and attended college. After conducting their study, they also found that poverty was inversely correlated with the probability of a person becoming a member of the terrorist organization called Hezbollah, and education was positively correlated with a person becoming a Hezbollah member. This suggested that wealthier, more educated people were more likely to join this particular terrorist organization than people who were less educated and less wealthy.<sup>82</sup>

### **1.9.2 Dynamics of Counter Terrorism in Africa**

Scholars have different views on the causes of terrorism and this translates into the recommendations they suggest to counter terrorism. Shuaibu & Salleh cited that the misinterpretations about certain religions is a major cause of the present activities of Boko Haram and suggested the eradication of poverty, increment of school enrolment in northern Nigeria and beefing up the security of the police as recommendations to counter terrorism in Nigeria. This conclusion was drawn based on the comparison of literacy levels in northern Nigeria which is the home of Boko Haram and other parts of Nigeria. When both regions were compared, it was found out that Northern Nigeria had lower school enrolment, high levels of poverty and low security compared to other regions in Nigeria. In a related article on counter terrorism in Africa, Mohochi's article on preventive counter terrorism in a case study of Kenya,

examines and analyses amongst others, the systematic counter-terrorism actions, as well as human rights concerns, and the lack of a clear effective counter-terrorism law in Kenya.<sup>83</sup>

Mohochi argues that counterterrorism measures carried out in Kenya, including arbitrary arrests and extralegal operations such as rendition and torture, usually targets the North Eastern province of Kenya, an area predominantly inhabited by Muslim Arab-Swahili communities. This has raised concerns about religious discrimination in counter terrorism in Kenya.<sup>84</sup> It is worthy to note that Northern Nigeria is predominantly Muslim populated and therefore concerns raised about discrimination in Kenya's counter terror approach could be raised for Nigeria's economic rights approach. This assertion can be made based on facts that Northern Nigeria is greatly marginalized and does not enjoy the economic wealth that other parts of the country enjoys. It can be concluded that any form of discrimination poses a threat as it could either lead to radicalism and eventually terrorism, or it could be a hindrance to effective counterterrorism.

Patrick Kimunguyi also conducted a research on Terrorism and Counter terrorism in East Africa with the aim of examining the efforts by regional and external actors to counter terrorism in East Africa.<sup>85</sup> His work provides an overview of the apparent vulnerability of the region to terrorist related activities and the weak capacities of countries to respond to the increasing threat. His paper argues that although significant progress is being made to develop coherent counterterrorism approaches in East Africa, many challenges remain.<sup>86</sup> These include extreme intra and inter-state conflicts, increasing Islamic radicalization, lack of state capacity, competing national priorities, and the politicization of counterterrorism. He also admits that counterterror efforts have focused on short-term security and law enforcement efforts, which in his view, negatively affect longer-term measures to tackle the primary conditions that encourage the spread of terrorism.<sup>87</sup>

### 1.9.3 The Human Rights Approach to Counter Terrorism in Africa

Article 2 of the African Charter on Human and People's Rights states that all persons have the right to enjoy the rights and freedoms recognized and guaranteed in the Charter "without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status" and all member states are signatory to and have ratified this charter. However, many African countries, though party to the Charter, do not uphold the human rights of terrorism suspects or the ordinary citizen in the measures they adopt towards counterterrorism. For instance, Kenya's counter terrorism measures have been keenly criticized as discriminatory and an infringement on human rights.<sup>88</sup> The country's Bill on the Suppression of Terrorism introduced in 2003 was criticized by Atta-Asamoah as discriminatory against the Muslim community. He remarks that the Bill makes it an offense for a person to use certain items or dress in a certain way, a way attributed to the Islamic culture.<sup>89</sup> Nzamba Kitonga outlines the ills of the bill in his analysis of the counterterrorism strategies in Kenya. He posits that the bill is a fundamental threat to personal liberties and human rights while affording state agents room to further abuse the citizenry. Further, he identifies the religious biases of the bill against the Islamic population as the bill seeks to target individuals by reasons of choice of clothing including an ordinary suit or a "kanzul".<sup>90</sup> The argument is that Kenya's counterterrorism measures has the potential to affect everyone's human rights. Mohochi's research on counter terrorism in Kenya also sought to examine and analyze among others, the human rights concerns in Kenya's counter terrorism measures and he argues that "the continued 'backdoor' implementation of counter-terrorism actions without an effective piece of counter-terrorism legislation, acts as a catalyst for impunity and violation of human rights."<sup>91</sup> The "backdoor" implementation strategy is explained by Reprieve and Redress in their report on 'Kenya and Counter-terrorism; a time for change,' as the use of unapproved means in countering terrorism in the absence of an approved

counterterror measure.<sup>92</sup> Unapproved measures such as mass arbitrary detentions and renditions.<sup>93</sup> Most researches on counterterrorism approach the issue from the “suspected terrorist” view. They often focus on measures and its impacts on arrested terror suspects and some also focus on how the measures affect the ordinary citizen who is not suspected of any terrorist activity and how it affects his/her daily life. The imposition of restrictions on various aspects of everyday life and the invasion of people’s privacy in the name of counter terrorism affects the daily life of the ordinary citizens.

### **1.10 Methodology**

The research design for this study will be qualitative where secondary sources of data will be consulted. Documents collected from the libraries of various relevant institutions will be thoroughly reviewed to make up secondary data. Information will be retrieved from Books, Journal Articles and internet sources. Other printed and electronic materials such as policy papers, press releases, news articles, communiqués and other secondary sourced documents will be used for the study.

### **1.11 Organisation of Chapters**

The study will comprise the following chapters

CHAPTER 1 Research Design

CHAPTER 2 Overview of Terrorism and Counterterrorism in Africa.

CHAPTER 3 Counterterrorism and Ethics in Countering Terrorism in Africa

CHAPTER 4 Summary of Findings, Recommendations and Conclusion.

## Endnotes

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## CHAPTER TWO

### AN OVERVIEW OF TERRORISM AND COUNTERTERRORISM IN AFRICA

#### 2.0 Introduction

This chapter reviews terrorism and counterterrorism with further focus on Africa. It also elaborates on counterterrorism measures adopted by the AU and explores Human Rights instruments that should serve as a guide to states for counterterrorism.

#### 2.1 Definition of Terrorism

A standard definition for terrorism proves to be problematic<sup>1</sup> as different states and organisations have varying views of who a terrorist is, what a terrorist act entails and how exactly terrorism is defined.<sup>2</sup> This makes the word “terrorism” very ambiguous, and people are more likely to describe terrorism as ‘what others do’.<sup>3</sup> Marco Sassoli affirms this by stating that only very few people would classify their own behaviour as terrorism.<sup>4</sup> However, no matter the variation in definitions, one point stands out, and it is that terrorism encompasses the direct and indirect violent activities of non-state actors against states.<sup>5</sup>

The United Nations’ Security Council (UNSC) has adopted resolution 1566 of October 2004 in defining terrorism, and recalls that the following acts are never justifiable:<sup>6</sup>

“... criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international Conventions and protocols relating to terrorism ...”<sup>7</sup>

The UN urged States to enact national laws for the prevention of terrorist acts, and to prescribe penalties befitting of terrorist offences.<sup>8</sup>

At the continental level, The Organisation of African Unity (OAU)'s Convention on the Prevention of Terrorism also drafted a definition for a terrorist act. The OAU 1999 Convention Article 1 clause 3 defines a terrorist act as:

"any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

(i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or (iii) create general insurrection in a State; (b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to (iii)."<sup>9</sup>

The UNSC's enumeration of actions that would constitute a terrorist act will be adopted as a definition for terrorism for this research. This is because it points out that violations of international Conventions and Protocols relating to terrorism also constitutes a terrorist act. This study will outline a number of such international instruments and juxtapose those with counterterrorism measures of certain countries, in order to ascertain the extent to which human rights are violated in the name of counterterrorism.

## 2.2 Causes of Terrorism in Africa

Terrorist groups who engage in terrorist activities follow a cause. They are usually driven by their philosophies and ideologies, and at times, the conditions they face in their political environment. Terrorism could stem from socio-economic factors such as corruption, poor governance, porous borders, etc.<sup>10</sup> In addition to this, causes of terrorism could take religious, cultural or environmental forms.<sup>11</sup> Many scholars including Schorlemer have given varying views on the possible causes of terrorism. Schorlemer believes that human right violations constitute a major cause of terrorism.<sup>12</sup> He states that the fight against terrorism is in itself a fight against human rights violations; thus, counterterrorism measures should not lead to further violation of human rights. If this happens, it defeats the purpose of counterterrorism and from his analysis, breeds more terrorists.<sup>13</sup>

Writers have linked the rise of terrorist groups to Western interventions in predominantly Muslim states such as Iraq, Syria and Afghanistan and recently in Libya. It is often argued that the formation of the Islamic States in Iraq and Syria (ISIS) can be traced to the occupation of Iraq by the United States and its allies.<sup>14</sup> The group, which was then known as Jam'at al-Tawhid wal-Jihad (TJ) and led by Abu Musab al-Zarqawi, was born out of the Iraqi war as part of a coalition of Sunni resistance groups fighting the Western forces.<sup>15</sup> TJ evolved when it joined Al-Qa'ida in 2004 to become the Islamic State of Iraq and Syria (ISIS) after the Western forces intervened in the Syrian civil war.

### 2.2.1 Religious Militancy in Africa

In Africa, one of the main causes of terrorism is religious ideologies. Often, religious militants are motivated by an absolute belief that the violence they propagate is solely a commandment of their deity and in its will. To this end, they believe that a reward awaits them after the task

is done, if not here on earth, then in the afterlife.<sup>16</sup> There are two major religious groups in Africa, these are Islamic religion and Christianity. These religions are monotheistic in nature, believing in the oneness of God. They also believe that there is only one true way to heaven and it is through their respective messengers.

Religious militancy in Africa is highly associated with Islam than with any other religion in Africa. This is evident in the fact that most terrorist groups in Africa identify with Islamic religion and are fighting Jihad or a holy war. Boko Haram for instance emerged in 2002 as a group against the corrupt bureaucracy of Nigeria's political system. The group's ultimate aim was to overthrow the corrupt government and instate Shari'a/Islamic Law as the guiding principle to rule the region.<sup>17</sup> Presently, Boko Haram is known as the Islamic State of West Africa Province.

In Northern Africa, Ansar Dine militant group ("Defenders of the Faith") strives for the imposition of Shari'a law over northern Mali, and the Movement for Unity and Jihad in West Africa (MUJAO) also seeks to wage Jihad or Holy war against Western interests in Algeria, Mauritania, Mali and Niger.<sup>18</sup> Al- Qa'ida in the Islamic Maghreb (AQIM) which used to be known as the Groupe salafiste pour la Prédication et le Combat (GSPC), is a Salafist group that propagates Islam and engages in Jihad.<sup>19</sup>

In East Africa, the Al-Shabaab militant group traces its roots to the "Al Itihad Al Islamia" ("Islamic Unity") group in the 1980s which transformed in the 2000s to become the United Islamic Courts (UIC) movement. In 2006, the UIC was defeated in Mogadishu and this subsequently gave rise to Al-Shabaab. The group represents a new generation of Islamic militants.<sup>20</sup>

Most Terrorist groups in Africa have, to some extent, underlying Salafist origins and ideologies. Salafism at inception is a religious movement devoted to the struggle for religious purity, personal piety, and Islamic morality.<sup>21</sup> Salafists believe that political orientation and secular lifestyles are a threat to Islamic purity, and that the best way live a righteous life is to live under the Shari'a in an Islamic state.<sup>22</sup> The quest for this religious purity is often the driving force of Islamist militants. Their aim is to establish an Islamic political order, devoid of secular and "unclean" institutions. They are opposed to the present world political system based on Western capitalist and democracy models and are working towards an Islamic caliphate.

One major religious terrorist group that is not Islamist is the Lord's Resistance Army (LRA). Originating from the Holy Spirit Movement (HSM) in Uganda, the LRA was led by Joseph Kony.<sup>23</sup> In the 1980s, the HSM emerged as a rebellious sect led by Alice Lakwena. It opposed the then Ugandan government presided by President Museveni, with the aim of purging the country of superstitions and witchcraft. In 1987, the sect waged war against the Ugandan army and lost. In its aftermath, Alice absconded to Kenya and lived there till she died in 2007.<sup>24</sup> Joseph Kony is said to be related to Alice Lakwena and after the HSM collapsed, he regrouped old members and recruited new ones to form the LRA with the same ideologies. The LRA also waged war against the Ugandan government and is known for the abduction of children to make them child soldiers.<sup>25</sup> Over the years, the group has launched attacks not only in Uganda, but in DR Congo, Sudan and also Central African Republic.

### 2.3 Terrorist Groups in Africa

Terrorist organisations differ in ideology, tactics and goals. In Africa, terrorist attacks pre-date the historic attack on the U.S. on September 11 2001.<sup>26</sup> The terrorist organisations on the

continent seem to work towards a unilateral goal of creating Islamic states where people will have to live by the tenets of Islam, specifically, the Shari'a. With the emergence of Boko Haram or Islamic State of West Africa Province, Al-Shabaab, Islamic State in the Sinai Province, Al-Qa'ida in the Islamic Maghreb (AQIM), as well as extremist groups affiliated to these groups, the need to fight terrorism in Africa has become urgent. This is because as the number of terrorist groups multiply, so does the violation of human rights.

### 2.3.1 Terrorist Groups in West Africa

Boko Haram is the predominant terrorist group in West Africa. The group which means "western education is forbidden" emerged around 2002 as a local Islamic movement mainly for preaching and giving charity to people in Maiduguri, Borno State.<sup>27</sup> It later moved to Kanama in Yobe state, declaring that it was embarking on Hijra; a seclusion away from evil. At Kanama, the sect lived by strict Islamic laws, adopting anti-state ideologies and calling them corrupt.<sup>28</sup> The group was largely non-violent until its leader, Mohammed Ali, was killed during a violent clash with the police over a disputed fishing pond.<sup>29</sup> Mohammad Yusuf took over as leader of the group and it was during his leadership that the name Boko Haram was adopted. The aim of the group is to Islamize Nigeria by any possible means and at all cost, outrightly abhorring western education and culture, and adhering strictly to Islam in its purest form.<sup>30</sup>

The group received international attention after it attacked the United Nations' headquarters in Abuja in August 2011. After that incident, it has launched various attacks in Nigeria and neighbouring Cameroon and Niger. Some of its attacks include the kidnapping of the Chibok Girls in Nigeria, suicide bombings across Nigeria and fighting gun battles with the Nigerian Army. Boko Haram attacks since 2009 have increased in intensity. In 2013, the militant group was responsible for kidnapping French citizens in the Waza National Park in Cameroon's far

north villages.<sup>31</sup> Some states in West Africa have been subjected to terrorist attacks from terrorist groups not of West African origin. The al-Mulathamun Battalion (AMB), of North African origin, which was originally part of AQIM but broke away in 2012, launched terrorist attacks on Niger in May 2013. The attacks targeted a military base and a French uranium mine killing 26 people.<sup>32</sup>

Another terrorist group of West African origin is the Movement For Oneness And Jihad In West Africa, abbreviated as MUJAO. This terrorist organization was founded in Mali in 2011 and has been responsible for attacks in about 3 countries namely Algeria, Nigeria and Mali.<sup>33</sup> The group, founded by Hamad al-Khairi and Ahmed el-Tilemsi, and formally known as Jamaat At Tawhid Wal Jihad Fi Gharb Afriqqiya, is an offshoot of Al-Qa'ida in the Islamic Maghreb (AQIM), which has its origins in North Africa.<sup>34</sup> MUJAO has an Islamist-salafist-Jihadist ideology with specific goals of spreading Shari'a and encouraging Jihad in West Africa.<sup>35</sup> In October 2011, MUJAO abducted three European aid workers from a refugee camp in Tindouf, Algeria.<sup>36</sup> Also in 2012, after the coup d'etat in Mali, the group joined forces with AQIM and other terrorist groups in West Africa and took control of Northern Mali.<sup>37</sup> The group also attacked the Algerian consulate in Gao City, Mali, kidnapping seven Algerian diplomats, two of which died in captivity.<sup>38</sup> Other terrorist groups that operate in West Africa apart from the above mentioned are Ansar al-Dine (AAD) and the Macina Liberation Front (MLF).<sup>39</sup>

West African terrorist groups are financed through trade and other lucrative activities such as the sale of imported goods at inflated prices.<sup>40</sup> The importation of goods such as used cars is also used as a front to smuggle bulk cash to finance terrorist activities.<sup>41</sup> The smuggling and sale of arms across porous borders and human trafficking have been found as other means of

terrorist financing.<sup>42</sup> In addition to these, drug trafficking as well as hostage taking for ransom have also been linked to the financing of terrorist activities in West Africa.<sup>43</sup>

### 2.3.2 Terrorist Groups in East Africa

In East Africa, Al-Shabaab remains the dominant terrorist group. The group has launched attacks on numerous locations in Somalia (which is its place of origin), Ethiopia, Uganda and Kenya. In 1991, the Somali government collapsed, plunging the state into a state of anarchy. This set the stage for power competition among warlords and clansmen.<sup>44</sup> In its wake, numerous Islamic sects emerged, taking advantage of the situation to propagate their ideologies and creating neighbourhood Shari'a courts to instil law and order.<sup>45</sup> A number of such small sects amalgamated into a consolidated group called the Islamic Courts Union (ICU) in 2004, expanding into Mogadishu and parts of the countryside by 2006.<sup>46</sup> Al-Shabaab, which means 'the youth,' was the radical youth militia of the ICU, consisting of Islamic fundamentalists. Al-Shabaab is believed to be a vestige of a previous Islamist organisation called Al-Itihaad Al-Islamiya (AIAI). This organisation was established in the 1980s with the aim of overthrowing and replacing the then government with Islamic Law, but did not succeed.<sup>47</sup> In December 2006, the Somali Transitional Federal Government, backed by Ethiopia and the U.S attacked and defeated the ICU. After this incident, Al-Shabaab regrouped and in the months that followed, embarked on guerrilla-style warfare and suicide attacks on the Ethiopian military in Somalia and has since attacked Uganda, Kenya and the African Union Mission to Somalia (AMISOM).<sup>48</sup>

Al-Shabaab is currently an Al-Qa'ida-affiliated terrorist group with the aim of instating an Islamic-governed Somalia by all means possible, and waging a global war against the West.<sup>49</sup> Al-Shabaab gained international attention in 2010, in its first international attack on Kampala

which killed 75 people. Since then, it has attacked targets in Burundi and mostly Kenya. The group attacked the Westgate Mall in Nairobi, killing about 67 people and injuring many others. It stated that the attack was a retaliation to Kenya's presence in Somalia.<sup>50</sup> In 2011, the group bombed the Transitional Federal Government's Ministerial Complex in Mogadishu-Somalia leaving 100 dead,<sup>51</sup> attacked the AMISOM base in Somalia in 2015 and Garissa University in Kenya which left 145 people dead.<sup>52</sup>

A new terrorist group emerged in East Africa in 2016, calling itself Jahba East Africa, pledging allegiance to the Islamic State in Iraq and Syria (ISIS).<sup>53</sup> The group is also known as the Islamic States in Somalia, Kenya, Tanzania and Uganda, with membership from all these states. It is largely made up of members who were formerly part of the Al-Shabaab militant group and is led by Mohamed Abdi Ali.<sup>54</sup> It is a Mujadeen Islamic sect with pro-Jihad ideologies and was responsible for the 2016 attack on the AMISOM convoy in Somalia.<sup>55</sup>

### **2.3.3 Terrorist Groups in Northern Africa**

North Africa is home to a number of terrorist groups. One of such groups is Al-Qa'ida in the Islamic Maghreb (AQIM). This is a Salafi-jihadist militant group which operates in North Africa and in some parts of West Africa as well.<sup>56</sup> AQIM's descent is linked to the guerilla Islamist movement known as the Armed Islamic Group (GIA), which stood up against the secular Algerian government and France in the 1990s. The insurrection began when Algeria's French-backed military intervened in the parliamentary elections in 1992, cancelling it after it became apparent that the Islamic Salvation Front was going to win power.<sup>57</sup> The GIA sought to overthrow the liberal Algerian government and replace it with an Islamist one, and it adopted various radical tactics to try to achieve its aim.<sup>58</sup> The group engaged in the killings of a large number of civilians including foreigners and government officials, and also attacked military

targets.<sup>59</sup> The brutish strategies adopted by the GIA led to a divide, and several members broke away from the group to form the Salafist Group for Preaching and Combat (GSPC). The GSPC denounced the extremist strategies the GIA adopted and pledged not to attack civilians, but the group was still driven by the ideology of a Shari'a-governed Algeria, and so continued to fight the secular Algerian government.<sup>60</sup> In 2006, the group announce alliance with Al-Qa'ida and adopted the name "Al-Qa'ida in the Islamic Maghreb" (AQIM). By so doing, it aligned itself with other Islamic extremist groups with the universal aim of engaging in global Jihad.<sup>61</sup>

The group adopted Al-Qa'ida tactics of terrorism including suicide bombings and also engaged in abductions for ransom.<sup>62</sup> In April 2007, AQIM launched a suicide bomb attack on an Algiers police station and later in December that same year, bombed the UN headquarters in Algiers leaving thirty-seven people dead.<sup>63</sup> Another terrorist group, one of the most active militant groups in the Maghreb region, especially in Egypt, is the Islamic State of Iraq and the Levant in the Sinai Province (ISIL-SP).<sup>64</sup> Following the ousting of Egypt's Mubarak in the Arab Spring, a Salafist-Jihadist group emerged in Northern Sinai in 2011 called Ansar Bayt al-Maqdis (ABM) which means 'supporters of the Holy place/Jerusalem'. This terrorist group's hostility was channeled towards Israel in retaliation of Israel's attack on the Egyptian state.<sup>65</sup> The group pledged allegiance to ISIS in 2014, joining the many other African radical Islamists in the global jihad and changed its name to Sinai Province.<sup>66</sup> The terrorist group is widely considered to be the most dangerous Salafi-jihadist group currently operating in Egypt with a history of gruesome attacks including beheadings and suicide attacks.<sup>67</sup> Other militant groups that can be found in North Africa are Okba Ibn Nafie of Tunisian origin, Islamic State of the Tripoli from Libya and Jund al-Khalifah in Algeria.

In Northern Africa, the main source of funding for terrorists is support from charities and donations from links in Qatar and Saudi Arabia.<sup>68</sup> The use of kidnap-for-ransom is equally prevalent among North African terrorist groups. In 2003, AQIM launched a hostage-taking campaign in Algeria, targeting western tourists.<sup>69</sup> 32 people were kidnapped and most of them released after ransoms were paid by European governments.<sup>70</sup>

## 2.4 Challenges of Managing Terrorism

One of the major concerns relating to terrorism is how to prevent, manage and eliminate it entirely, and this is termed counterterrorism. Effective counterterrorism has proved to be problematic because, although terrorist attacks are often conspicuous and violent and obtain international attention, the plans and schemes leading to such acts are not open activities. Terrorist planning is often carried out in secrecy and this leaves states with no choice than to use unconventional measures to find information on terrorist planning. To this effect, states have resorted to strategies that interfere with people's freedoms in their attempt to fight terrorism. For instance, states have found the need to monitor people's movements, keep surveillances on communication devices such as telephones and emails, monitor their financial transactions and engaging in other activities that are invasive of people's privacy. The consensus is that in order to guarantee the national security and societal safety of the populace, some of these measures are necessary and citizens should be willing to giving away some of their rights for societal good.

Even advanced democracies such as the United States of America (USA) and Great Britain have adopted certain measures that are invasive of privacies in order to counter terrorism. Their counterterrorism measures have come under criticism for various violations of human rights.

Violations such as the use of torture during interrogations, electronic eavesdropping of suspects and extrajudicial killings of suspects.<sup>71</sup>

The US's war on terror was largely criticised for its blatant lack of respect for human rights.<sup>72</sup> There have been reports of inhumane and sadist acts mete out on detainees in camps in Iraq, Afghanistan and Guantanamo Bay. Between October and December of 2003 there were reports of numerous instances of illegal and inhumane abuses at the US-run Abu Ghraib prison in Iraq where detainees were forced to eat fecal matter, others threatened with rape and some were made to perform various sexual acts under duress while they were being photographed.<sup>73</sup>

The US has also been criticized in its use of unmanned drones in targeted killings and its implication on civilian life. The two main principles for the use of drones is distinction and proportionality. This means that attacks should be limited to military objects and there should be a limit to loss of civilian life, injury and minimum damage. However, US drone strikes are noted for causing huge losses to civilian life and tagging it as collateral damage and this is of a major violation of Human Rights.<sup>74</sup> Drones are sent out to kill but not to capture. This action is deeply flawed and goes against the presumption of innocence until proven guilty as suspects are not even given a hearing, neither are investigations conducted. The person is just targeted and killed, which infringes on his right to life and a fair trial.

The involvement of Great Britain in the violation of human rights using counterterrorism measures has been denied by the government of the state.<sup>75</sup> However, despite the repeated denial, there is enough evidence to implicate Britain's direct and indirect involvement in the abuse of detainees suspected of association with terrorism.<sup>76</sup> These include the approval for the capture and transfer of detainees to detention sites and the support for interrogation under

torture.<sup>77</sup> Britain has also been accused of providing information that informed the torture of detainees,<sup>78</sup> receiving information gained through torture and participating in Central Intelligence Agency programmes that saw the abuse, forced detention and rendition of detainees.<sup>79</sup> Cases of mock executions, sleep deprivation, water boarding and electrocution in various legal black holes have been connected to Britain.<sup>80</sup> In a harrowing recount of a former detainee, Yunus Rahmatullah, a Pakistani businessman who was captured by the joint UK-US Special Forces Task Force was subjected to torture by both UK and US soldiers.<sup>81</sup> The Task Force tortured Rahmatullah with dogs, waterboarding and at a point, he was confined in a box just 40cm high.<sup>82</sup> In this particular case, the British government in 2009 acknowledged detaining Rahmatullah and transferring him to US forces, who eventually rendered him to Afghanistan and detained him without charge for over 10 years.<sup>83</sup> In another case, Binyam Mohamed, a British resident, was arrested by Pakistani authorities in 2002 and handed over to US custody. He was rendered to Morocco where he was tortured, with his chest and genitals slashed repeatedly with a razorblade, British intelligence team provided his torturers with information that informed his torture.<sup>84</sup> Some of these allegations have led to civil action against the British government. In some cases, such as one brought in by 5 former Guantanamo Bay detainees, the government offered to payout without admitting liability.<sup>85</sup>

While these crimes have been committed in these advanced democracies, Commissions have been set up to demand accountability from the state in its measures towards counterterrorism. A number of commissions of enquiry were set up to investigate allegations against Great Britain in the violation of human rights in counterterrorism. Operation Hinton was set up to investigate the alleged torturous interrogation of Binyam Mohamed. This case was however settled out of court and no one was prosecuted for the offense.<sup>86</sup> Other enquiries set up to investigate the allegations are: the Detainee Enquiry which was set up in 2010 but was

suspended. Other commissions set up were Operation Iden, Operation Lydd, the al-Sweady enquiry and the Ihat investigations.<sup>87</sup> Most of these commissions were criticized for lack of transparency and also no individual was charged for the crimes committed.<sup>88</sup>

## 2.5 Africa's Challenge

Following recent terrorist attacks globally, the protection of the fundamental human rights of citizens has become very challenging. It has become necessary to restrict certain civil liberties in order to effectively counter terrorism.<sup>89</sup> To successfully detect terrorist groups, states need to gather intelligence, increase surveillance, give more powers to the security services for arrests and so on. These measures could lead to the constraining of certain individual freedoms of the populace. There have been reports and criticisms by human rights activists of unlawful methods used by states in their counterterrorism processes that go against the universal human rights framework.

These measures, they fear, have the potential to lower the human rights standards, especially in the developing world such as Africa. Most African countries already have constitutional histories that are rife with human rights abuses, and this makes countering terrorism more challenging for such states. In Africa, there is the fear that people will be targeted not because they are suspected terrorists but because they belong to an opposition party or are not friends of the sitting government.<sup>90</sup> The fear with counterterrorism in Africa is the ability of governments to use counterterrorism strategies as a façade to target and prosecute ethnic minorities, religious minorities, political dissidents and human rights activist.

In Egypt for instance, after the military ousted President Mohamed Morsi in 2013, and following the assassination of the prosecutor General Hisham Barakat in 2015, the new

government has constantly targeted Mohammed Morsi's organization; the Muslim Brotherhood.<sup>91</sup> Many of the members of the Muslim Brotherhood have been arrested, and some sentenced to death in Egypt's crackdown on terrorism. Egypt's Anti-Terror law has also been criticized for its loose diction which categorizes certain civil crimes as acts of terrorism.<sup>92</sup> The definition of a terrorist act in the Anti-Terror law for instance includes among others the threat or use of force to "disrupt general order" or "harm national unity".<sup>93</sup> This definition is so vague that public protests and demonstrations could be defined as acts of terrorism and people could face the death penalty for such civil disobedience. Egypt's anti-terrorism strategies are also cracking down on the freedom of the press and freedom of expression. Article 35 of the Anti-Terror law makes it a terrorist offense for a person to report on, and publish acts of terrorism and anti-terrorism operations that differ from the official statements released by the Ministry of Defense.<sup>94</sup> Also, Article 46 allows investigators to order surveillance and recording of terrorist suspects' communications and internet use. This Article could be used to target political opponents such as the Brotherhood and monitor their activities, violating their rights to privacy. There have also been reports of illegal detentions and enforced disappearances concerning security forces and suspected terrorists in Egypt, constituting violations of human rights.<sup>95</sup> Egypt's actions towards counterterrorism seem more like an excuse to advance political interests than a fight against terrorism.<sup>96</sup>

In Nigeria, the extrajudicial killing of the leader of Boko Haram who died in police custody led to a series of events which caused the radicalization of members of the sect, and eventually the formation of Boko Haram.<sup>97</sup> When Yusuf was killed by Nigerian Police men over a disputed fishpond, his followers sought to take revenge and the long term effect is a terrorist situation in Nigeria and some parts of West Africa.

Nigeria is also implicated in the use of counterterrorism as a façade to violate human rights. Human rights activists have expressed concerns that counterterror strategies used by Nigeria's government agencies have the ability to undermine genuine democratic and civil liberties.<sup>98</sup> The Nigerian Security forces have been implicated in a number of human rights violations in Nigeria's northern regions. Reports of indiscriminate killings, arbitrary arrests and detentions without charge and the bullying of residents with impunity have become common.<sup>99</sup> This development is worrying because the violation of human rights by Nigeria's security services is likely to fuel attacks and increase recruits of Boko Haram insurgents.<sup>100</sup> This will render counterterrorist measures counterproductive.

In Kenya, the government in 2015 froze the accounts of two well organised and respected Kenyan Human Rights Organisations.<sup>101</sup> Without following due process, the Kenyan authorities froze the accounts of Muslims for Human Rights (MUHURI) and Haki Africa, Non-Governmental Organisations in Kenya, along with 83 other organisations on grounds of 'specified entities'. By virtue of this label, the organisations were being accused of associating with terrorist groups.<sup>102</sup> The affected organisations were not accorded enough time to appeal and were not formally informed. They heard of their fate in the media. This action taken by the authorities was condemned by Human Rights Watch and the United Nations Special Rapporteur on Freedom of Peaceful Assembly and Association, Mr. Maini Kiai, who is also a member of the board of MUHURI.<sup>103</sup> Kenya's Prevention of Terrorism Act (POTA) has been criticised for its restrictions on civil societies, its role in silencing dissidents, in targeting human rights societies, and its broad and opaque nature which allows for the violation of human rights.<sup>104</sup> The law makes no room for an appeal in any situation and suspects do not enjoy the right to innocence until proven guilty, a violation of Articles 11 of the Universal Declaration on Human Rights and 7 of the African Charter on Human and Peoples Rights. Kenyan

authorities have also been accused of involvement in extrajudicial killings of civilians, rape, and enforced displacement of persons, arbitrary arrests and illegal detentions. The security forces are engaged in random killing, restriction of freedom of expression and prosecution based on shoddy investigations and evidence.<sup>105</sup> The Deputy Director of Human Rights Watch raised concerns that organisations were being targeted for their vocal stance and documentation of human rights abuses committed by the security forces.<sup>106</sup>

## 2.6 Counterterrorism Conventions

To make countering terrorism effective and orderly, the UN and other International Organisations and regional blocs such as the African Union, the European Union, ECOWAS and the ASEAN Regional Forum (ARF) have designed measures in response to terrorism. Some of these Conventions are the United Nations Security Council Resolution 1373 adopted by the United Nations Counter terrorism Committee; the Organisation of African Unity 1999 Convention on the Prevention and Combatting Terrorism and the Plan of Action on the Prevention and Combatting Terrorism in Africa. These instruments serve as building blocks to guide states in enacting counterterrorism laws.

### 2.6.1 The United Nations Security Council Resolution 1373

The United Nations Security Council on 8th September 2001 adopted Resolution 1373 calling on member states to become party to all relevant international Conventions on terrorism and to enact the necessary domestic legislation to enforce these agreements. It mentions issues relating to financing terrorism, prescribing measures to counter terrorism finance. It also cautions members to desist from supporting terrorism in any form. Finally it encourages members to share intelligence that will lead to effective counterterrorism.<sup>107</sup>

## 2.6.2 The African Union's Counterterrorism Instruments

In Africa, the African Union (AU) has enacted conventions, protocols, declarations and decisions as well as a Plan of Action spanning from 1999 to 2011 to combat terrorist acts on the continent. The 1999 Convention on the Prevention and Combatting of Terrorism was the first of such instruments to be enacted. It was created with the determination to eliminate terrorism in all forms and manifestations.<sup>108</sup> The Convention charges African states to review national laws and enact new laws where necessary, to criminalize all forms of terrorism. It also prescribes regulations on jurisdiction and extradition and encourages states to cooperate to eliminate terrorism on the continent.<sup>109</sup> The 2004 Additional Protocol to the Convention was created as a supplement to the 1999 Convention, purposed to see to the effective implementation of the Convention.<sup>110</sup> The Plan of Action brings to bear the practicality of the Convention. It gives specific provisions in areas of policing and border control, the suppression of terrorism financing, coordination among states at regional, continental and international levels, exchange of information between states and legislative and judicial measures, among others.<sup>111</sup>

The AU Decision to Combat Payment of Ransom to Terrorist Groups was adopted in 2009. It called out the payment of ransom to terrorist groups as a constituent of financing international terrorism and requested that it be considered a crime.<sup>112</sup> In addition to the above mentioned, is the AU Decision on the Prevention and Combatting of Terrorism enacted in 2010, which among others, rejects all forms of blackmailing and demand for ransom to finance terrorist operations.<sup>113</sup> Finally, in 2011, the AU came out with a model anti-terrorism law for adoption by all member states. The African Model Anti-Terrorism Law is a template-like law, simplified to suit any state. It spells out laws pertaining to counterterrorism and leaves blank spaces to be filled out by states to suit their national laws.<sup>114</sup>

The preamble of the OAU Convention on the Prevention and Combatting of Terrorism highlights the vices of terrorism. It condemns the act and states that it is by no means justified. The Convention also labels terrorism as constituting “a serious violation of human rights and, in particular, the rights to physical integrity, life, freedom and security” which obstructs the socio-economic development of states through subversion.<sup>115</sup>

Article 2 of the Convention entreats states to enact laws at the national level to fight terrorism,<sup>116</sup> while Article 4 cautions states to refrain from engaging in acts of terrorism in any form including supporting, financing, inciting to commit and using their territories to provide safe havens for terrorist acts. It also encourages states to give out incentives to individuals to encourage them to become counterterrorism whistle-blowers.<sup>117</sup> Also, Article 7 enumerates certain rights entitled to suspects who are not nationals of the state in which they have been arrested. Such persons have a right to be visited by a representative of their state, the right to a lawyer, and the right to be informed of their rights.<sup>118</sup> Articles 8 to 13 make room for extradition of suspected terrorists to their country of origin upon request from their country while Articles 14 to 16 give room for extra territorial investigations.<sup>119</sup>

In furtherance, Article 17 encourages states to engage in the dissemination of information to facilitate investigations, while Article 18 encourages states to develop mutual legal assistance procedures to help speed up investigations and evidence collection. This is to aid in detecting and preventing terrorism.<sup>120</sup> Finally, Article 22 states that the Convention should be interpreted within the confines of international law, especially international humanitarian law and the African Charter on Human and People’s Rights.<sup>121</sup>

## 2.7 International Human Rights Instruments

These instruments serve as a guide to states in their prosecution of terrorist, to prevent the violation of human rights in counterterrorism. The instruments mentioned are not exhaustive to serve as a guide to counterterrorism, however, they are necessary. After WWII, the barbarism of Nazi Germany against Germans and foreigners in Germany came to light and this was the basis for the formation of the International Human Rights Bill.<sup>122</sup> The concept of human rights was therefore to prevent violation of the rights of the individual by the state. The state was given the protector mantle on issues of human rights and was obliged to protect a person's right from being violated by another individual or violated by the state

The core Human Rights Conventions established in the wake of the Second World War are the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Collectively, these make up the International Human Rights Bill.

### 2.7.1 The Universal Declaration of Human Rights (UDHR)

The UDHR is the international "standard of achievement for all peoples and all nations" and the basis for all forms of human rights.<sup>123</sup> Article 1 of the UDHR confirms equality in rights and dignity of all persons while Article 2 speaks against all forms of discrimination. It forbids discrimination on grounds of "race, religion, political or other opinion, national or social origin, property, birth, colour, sex, language or other status".<sup>124</sup> Article 3 declares that everyone has the right to life and 5 prohibits torture and cruel, inhumane or degrading treatment. Article 6 endorses equality of all persons before the law by stating that everyone has the right to be recognized as a person everywhere.<sup>125</sup>

Article 7 re-echoes principles upheld in Article 1 on equality before the law and further confirms non-discrimination as espoused in Article 2. It states that all persons have a right to protection against all forms of discrimination. Article 9 reiterates the freedom from arbitrary arrest, detention or exile. In furtherance, Article 10 offers a universal right to fair trial and public hearing by an independent and impartial tribunal, while 11 presumes all persons innocent until proven guilty.<sup>126</sup> In Article 18, freedom of thought, conscience and religion is declared and Article 19 confirms the freedom of opinion and expression and the right to information. Article 23 also mentions the right to work, just and equal pay, favorable remuneration that will ensure a livelihood worthy of human dignity. Finally Article 29 states that human rights should not be exercised contrary to the purpose and principles of the UN.<sup>127</sup> In addition to the UDHR, the ICCPR also makes up the International Human Rights Bill.

### 2.7.2 The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR addresses civil and political rights. Article 6 of the ICCPR confirms the right to life as seen in Article 3 of the UDHR.<sup>128</sup> In Article 7, the ICCPR forbids the subjection of persons to cruel, inhumane degrading treatments/punishments or torture as stated in Article 5 of the UDHR. Like Article 9 of the UDHR, the ICCPR also lays down in Article 9, rules prohibiting subjection to arbitrary arrests or detention.<sup>129</sup>

Article 18 of the Convention calls for the protection of rights to freedom of religion, thought and conscience and Article 19, freedom of opinion and expression just as is found in Article 19 of the UDHR. Article 22 confirms freedom of association, and equality before the law and equality in protection against discrimination is recognized in Article 26 as is recognized in Article 1 of the UDHR.<sup>130</sup>

### **2.7.3 The International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The ICESCR is enshrined with Social and economic rights such as obligations to provide health, education etc. Article 7 of the Convention recognizes the right to enjoy just and favourable conditions of work and Article 11, the right to an adequate standard of living. Article 13 and 14 also give obligations for the right to education.<sup>131</sup>

Together, the ICCPR, the UDHR and the ICESCR spell out a holistic Human Rights obligation. The International Human Rights Bill is supposed to serve as a source of reference for states when they are making anti-terrorism laws. In addition to the Bill, States in Africa are entreated to rely on the African Charter on Human and People's Rights to rule out possible human rights violations in their counterterrorism legislations.<sup>132</sup>

### **2.7.4 The United Nations Convention Against Torture And Other Cruel Inhumane And Degrading Treatments Or Punishments**

United Nations Convention against Torture and Other Cruel Inhumane and Degrading Treatments or Punishments, (General Assembly Resolution 39/46) or simply, the Convention Against Torture (CAT) maps out Articles that forbid states from using torture under any circumstance. The prohibition of torture is the guaranteeing of the right to physical and mental integrity.<sup>133</sup> The CAT is the main instrument used by the UN to combat torture and to prevent and eradicate violations of human rights in that light, both in peace and war times.<sup>134</sup> States who are party to the Convention are obligated to ensure that torture is a punishable offence under their domestic laws. Also, the principle of universal jurisdiction is applied on torture offenses.<sup>135</sup>

Article 1 of the Convention defines what constitutes torture and Article 2 confirms its criminality. Article 3, forbids the use of torture at any time, with no derogation allowed.

Furthermore, Article 4 urges states to take measures towards the prevention of torture and instructs in Article 5 that interrogation processes be devoid of acts that violate Human Rights. Article 8, 9 and 10 charges states to examine and investigate reported cases and incidents of torture and incriminate the offenders. In Article 11, states are urged to offer redress to victims of torture in the form of compensations. And finally in Article 12, states are cautioned to desist from using information or confessions derived from torture.

### **2.7.5 The International Convention for the Protection of All Persons From Enforced Disappearance**

The International Convention for the Protection of all Persons from Enforced Disappearance adopted on 23<sup>rd</sup> December 2010 is also an instrument relevant for this research. The Convention is determined to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance. It upholds the right of any person not to be subjected to enforced disappearance and gives the victim the right to justice and reparation. Relatives of the victim also have the right to know the fate of their loved one.<sup>136</sup>

### **2.7.6 The Declaration of the Elimination of All Forms of Intolerance Based On Religion and Belief**

The Declaration was prepared by the UN Commission on Human Rights and declared without vote by the UN General Assembly.<sup>137</sup> Member states party to this declaration pledge to uphold and encourage universal respect for fundamental freedoms without discrimination to race, sex, language, religion or any other form of discrimination.<sup>138</sup>

### **2.7.7 Standard Minimum Rules for the Treatment of Prisoners**

The Standard Minimum Rules for Treatment of Prisoners prescribes how prisoners should be treated, giving instruction on their feeding, accommodation, clothing, access to personal hygiene and medical services.<sup>139</sup> It also prescribes what punishments and instruments of

constrain are admissible to prisoners.<sup>140</sup> In addition, it states certain rights and privileges that prisoners should enjoy. Such as access to information, contact with the outside world, the ability to freely practice religion under supervision, and access to a recreational facility.<sup>141</sup> The Convention is sectioned into areas to cover a variety of prisoners, ranging from those awaiting trial, those arrested and detained without charge, civil prisoners, and mentally ill ones, etc.<sup>142</sup>

### 2.7.8 The 1951 Convention Relating to the Status of Refugees

The Convention defines who a refugee is, outlines the rights of refugees and how states should treat them. Refugees' rights are often under threat and it is for this reason that a special Convention is needed to protect them.<sup>143</sup> For a person to qualify for refugee status under the 1951 Convention, he/she is required to demonstrate that he is indeed being persecuted, for which reason he is afraid, and also that he risks death should he go back to his country. A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.<sup>144</sup> The Convention is fortified by a number of principles including the principle of Non-refoulement, non-discrimination and non-penalization, among others. The principle of Non-refoulement enshrined in Article 33 of the Convention asserts that refugees should not be forced to return to their countries where they are likely to face threats to their lives and freedoms. Article 32 also prevents states from expelling refugees on grounds of national security of the host state.<sup>145</sup> Article 2 of the Convention obliges refugees to obey the laws of the host state. In Article 3, states are prohibited from discriminating against refugees on grounds of race, religion or country and in like manner, Article 26 prescribes that refugees are treated equally as nationals are treated. In Articles 15 and 26, rights of association and freedom of movement are guaranteed refugees, while Articles 16 to 18 grants refugees access to courts, earn a living and

be self-employed respectively. Finally, Article 29 prohibits the levying of refugees and Article 31 grants clemency to refugees who entered the host country illegally.<sup>146</sup>

### **2.7.9 The African Charter on Human and People's Rights (ACHPR)**

The Charter entered into force on 21<sup>st</sup> October, 1986 and was established for the protection of human rights. Member states who are party to the Charter pledge to fight towards the eradication of all forms of colonialism on the African continent, fight against all forms of discrimination and to uphold social, cultural, civil and political rights of the African people.<sup>147</sup>

Article 2 of the African Charter on Human and Peoples Rights gives citizens of the AU member states an entitlement to rights and freedoms enshrined in the Charter. Like Article 2 of the UDHR, Article 2 of the ACHPR outlaws discrimination of any form. Also, Article 4 confirms the inviolability of humans while Article 5 demands the right to respect of dignity and condemns all forms of exploitation and degradation, particularly torture, slavery, slave trade, cruel and inhumane or degrading treatments. This Article is similar to Article 7 of the ICCPR and Article 5 of the UDHR. Article 6 also speaks against arbitrary arrests and detainments which is similar to Articles 9 of both the UDHR and ICCPR.

Article 7 of the Charter re-echoes the right to be presumed innocent until proven guilty, same as Article 11 of the UDHR. Article 8 prescribes the freedom of religion, and cautions that no one should be restricted from exercising this freedom. Article 9 gives the right to information and freedom of expression which can also be found in Articles 19 of both the UDHR and the ICCPR. Also in Article 10, the freedom of association is guaranteed and Article 11 provides freedom of assembly provided it is lawful, ethical and in the interest of national security. In Article 12, the Charter prescribes the freedom of movement provided it is lawful. Article 19 also guarantees equality of all persons before the law and Article 17 the right to education.

Article 24 warrants the right to satisfactory environment favourable for development. Article 20 gives everyone the right to economic, cultural and social development and charges states to ensure that this freedom is exercised. Finally in Article 60, the charter mentions that it draws inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the UN, the OAU Charter, UDHR, and other Human Rights instruments adopted by the United Nations and by African countries.

## 2.8 Conclusion

As discussed above, terrorism and counterterrorism measures pose security and Human Right threats to society. Given the nature, form and trends of terrorism, the planning and execution of terrorist activities are often done clandestinely. Given the enormous challenge and threat terrorism poses to society, organisations and states are faced with a complex dilemma; how best to manage this faceless threat. It is obvious that in order to guarantee the greater security of societies, Human Right sacrifices, especially the right to privacy and freedom of movement have to be sacrificed to some extent. The dilemma however is, to what extent? The track records of both developed and developing states in counterterrorism have come out for a lot of abuse. The danger is that, if care is not taken, and human rights are not upheld in countering terrorism, there would not be much difference between the effects of terrorism and counterterrorism.

Worse still, as have been pointed in this chapter, more recruits could be won for terrorism through abusive counterterrorism strategies. Luckily, various human right instruments have provided the framework for states to look on to ensure that human rights are protected even in counterterrorism. It is important that counterterrorism is carried out within the limits of these human rights instruments provided. The next chapters look at how far counterterrorism

measures in Africa fall within these limits, find out the limitations in counterterrorism strategies and will suggest recommendations according to findings.



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## CHAPTER THREE

### COUNTERTERRORISM AND ETHICS IN COUNTERING TERRORISM IN AFRICA

#### 3.0 Introduction

This chapter studies three African countries' counterterrorism strategies, juxtaposes these strategies against Human Rights instruments to ascertain their compatibility with Human Rights protection, and gives a critique of their strategies. The countries are Nigeria in West Africa, Egypt in North Africa and Kenya in East Africa.

#### 3.1 The Case of Nigeria

According to the Global Terrorism index, Nigeria, together with Iraq, Afghanistan, Pakistan and Syria is one of the five countries with the highest impact from terrorism.<sup>1</sup> Collectively, these five countries accounted for 72% of all terrorism-related cases in 2015. The Global Terrorism Index (GTI) is a comprehensive study analyzing the impact of terrorism for 163 countries, covering 99.7 per cent of the world's population.<sup>2</sup> Being the African country hardest hit by terrorism as indicated by the GTI, Nigeria has suffered several terrorist attacks since the emergence of Boko Haram in 2009. Atrocities attributable to Boko Haram since 2009 have been numerous with increasing intensity. In 2015 alone, the terrorist group killed 5,478 people, three quarters of which occurred in Nigeria.<sup>3</sup> Since the dominance of the group in 2009, there have been various attempts by the government and state institutions to address the scourge. Initial actions primarily involved engagements in sporadic conflicts between sections of the Nigerian police forces and Boko Haram. Particularly, the Borno and Bauchi states were affected resulting in numerous deaths. These engagements further continued until initiation of peace talks in 2011 by former Nigerian President Olusegun Obasanjo. Following the failure of such interventions, a mediation process was later initiated between the government and Boko

Haram but to no fruition. During the 14<sup>th</sup> summit of the Multinational Joint Task Force (MJTF), the constituent states approved an expansion of the mandate of the Task Force to include combatting Boko Haram. The MJTF is a joint Task Force consisting of Cameroon, Chad, Nigeria and Niger with the aim to counter terrorism across the borders of the respective countries.<sup>4</sup> Following, the Nigerian Government and the Multinational Joint Task Force (MJTF) are working jointly to help counter terrorism in West Africa.<sup>5</sup>

### 3.2 Counterterrorism Strategies Nigeria Has Adopted

The need to counter terrorism in Nigeria began when it criminalized terrorist acts domestically. This had arisen from calls by the UNSC for member states to develop or amend existing legislative instruments to counter terrorism following the 9/11 attacks.<sup>6</sup> This necessitated the adoption of a comprehensive national legislation to counter terrorism in Nigeria.<sup>7</sup> In compliance with the UNSC Resolution 1373 directive, Nigeria amended its existing Economic and Financial Crimes Commission (EFCC) Establishment Act 2004<sup>8</sup> to define, prohibit and prescribe punishment for terrorism.<sup>9</sup> The EFCC was heavily criticized, and in 2006, the “Prevention of Terrorism Act” (although it was a Bill) was suggested as a form of counterterrorism legislation. This Act also faced a lot of opposition and was not enacted while Nigeria experienced increasing incidences of terrorist attacks domestically, and mounting pressure externally for the State to adopt a counterterror strategy.<sup>10</sup> The threat of Boko Haram in 2009 was therefore sustained in the absence of concrete counter terrorism laws. However, the Criminal code (for the South), the Penal code (for the North) and other Statutes were employed to criminalize specific acts of violence. Examples of such statutes include Banks and Other Financial Institutions Act 2002<sup>11</sup>, Official Secrets Act 1962; Extradition Act 1967; Money Laundering (Probation) Act 2011.

Following the advancement in the schemes and intensities of the killings by Boko Haram, the Nigerian legislature was compelled to relook the earlier opposed Terrorism Prevention Bill in December 2010. In June 2011, the 41-sectioned Terrorism Prevention Act was signed into Law. It establishes measures for the combatting and prevention of terrorism and prescribes penalties to that effect.<sup>12</sup> In 2013, the Terrorism (Prevention) Act (TPA) was amended. To counter the financing of terrorism, Nigeria passed the Nigerian Financial Intelligence Centre (NFIC) Bill in 2014 and the Proceeds of Crime (POC) Bill was passed by the National Assembly in 2015.

### **3.2.1 Terrorism (Prevention) Act (TPA)**

Article 1 of the TPA defines terrorism. Articles 2 to 6 map out what constitutes a criminal offense under the Act. This includes engaging with terrorist organisations, attending their meetings, giving support to terrorists, harboring them and providing them with training.<sup>13</sup> Section 10 covers the suppression of financing of international terrorism, making it an offense for a person to collect or receive funds to finance a terrorist act. Also, Articles 12 to 17 address terrorist funding and property. In Article 12, law enforcers are vested with the power to seize cash owned by suspected terrorists and Article 17 allows for the tracking of property owned by the suspect. Article 26 makes it possible for law enforcers to spy on and collect communication data of the suspects. Article 33 deals with penalties, spanning from fines to life imprisonment depending on the gravity of the offense. With Article 35, the state can revoke or refuse to register organisations that it believes are associated with terrorism.<sup>14</sup> It also makes provision for organisations who believe they have cause to, to appeal against the decision. Article 37 grants the power to refuse a person entry into Nigerian territory or deport a person on grounds of suspicion of being a terrorist. Finally, Article 38 grant the state the power to refuse refugee application in the national interest and public safety on Nigeria. This is done when the state has 'reasonable grounds' to believe that such persons are associated with terrorism.<sup>15</sup>

### 3.2.2 Countering the Financing of Terrorism in Nigeria

Terrorist groups' reliance on funding to function has necessitated the adoption of regulations to counter the financing of terrorism. In 1989, the Financial Action Task Force (FATF) was established by the G-7 Summit to address concerns of money laundering activities.<sup>16</sup> The FATF had the mandate to examine money laundering techniques, review national and international measures needed to address it and set measures needed to combat money laundering. The Task Force in 1990 issued a report offering a set of 40 recommendations towards a Plan of Action necessary to fight terrorism financing.<sup>17</sup> This became known as the FAFT Forty Recommendations on Money Laundering. In the aftermath of the 9/11 terror attack on the U.S., a total of 9 additional Special Recommendations were issued by 2004 to fight the financing of terrorism.<sup>18</sup> Together, the FAFT Forty Recommendations on Money Laundering and the FAFT Nine Special Recommendations on Terrorist Financing forms the international standard against money laundering and terrorist financing endorsed by the United Nations Security Council in its Resolution 1617.<sup>19</sup> Many African countries are members of the Task Force but also have FATF-like regional bodies which they are party to.

Nigeria is part of the Inter-Governmental Action Group Against Money Laundering and Terrorist Financing in West Africa (GIABA).<sup>20</sup> The GIABA, a FATF-style regional body of West Africa, is a specialized institution of ECOWAS, mandated to develop Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) measures and coordinate regional efforts to combat the financing of terrorism.<sup>21</sup> It is a regional intergovernmental body which supports the work of the United Nations (UN) in preventing, detecting, deterring and suppressing terrorism, particularly with regards to financing Money Laundering and terrorism.

Domestically, Nigeria has established a Financial Intelligence Center to see to the monitoring of financial transactions and to address specific deficiencies in Nigeria's AML/CFT processes. Regularly, the Government also distributes the UNSC list of designated terrorists or terrorist entities to financial institutions in Nigeria.<sup>22</sup> After this, the Nigerian Financial Intelligence Centre (NFIC) Bill was passed in 2014 and the Proceeds of Crime Bill was also signed in 2015 to help check the financing of terrorism in Nigeria. These two Bills have however not yet been signed into law.<sup>23</sup> The NFIC gives the Government of Nigeria power to freeze and impound assets belonging to terrorists and terrorist suspects as required by the UNSC.<sup>24</sup>

The measures to counter the financing of terrorism are not without challenges. Although individual states are working hard towards combatting the financing of terrorism, terrorists are equally getting more cunning in their acquisition of resources to fund their activities. In some states, such as Nigeria, systemic corruption and the inability or unwillingness of security forces to enforce the law are hampering the effectiveness of the measures adopted.<sup>25</sup> This situation is not limited to Nigeria only but also applicable to other African states. A major concern in the implementation of AML/CFT laws in Africa is, once again, its ability to target political opponents. Most of the laws allow for the seizure of assets of suspected offenders and governments could capitalize on that to harass opponents.

### 3.3 Criticisms of Nigeria's Strategies

There have been concerns that counterterror strategies that Nigeria's government agencies have adopted are likely to undercut the civil liberties of the Nigerian people and foreigners resident in the country.<sup>26</sup> Nigeria's security agencies have been implicated in a number of human rights violations in Northern Nigeria with reports of indiscriminate killings with impunity, arbitrary arrests and detentions without charge.<sup>27</sup>

According to Solomon Hussein, instead of conducting investigations to effectively counter terrorism, security service personnel deployed to Nigeria's northern communities carry out house-to-house searches and sometimes, shoot men in their homes and engage in other forms of brutalities.<sup>28</sup> This is a violation of the right to life enshrined in Article 3 of the UDHR, Article 6 of the ICCPR and 4 of the African Charter on Human and People's Rights. It is also a violation of the rights to fair trial and the assumption of innocence until proven guilty enshrined in Articles 7 of the African Charter on Human and People's Right and Article 11 of the UDHR.

Amnesty international has documented a number of these violations by Nigerian security forces in their 2012 Report on Nigeria. Interviews with victims showed that brutalities in various forms were mete out to people suspected to be associated with Boko Haram. People who were seen being arrested by the security forces were later found dead or have gone missing.<sup>29</sup> There were many incidences of summary executions where people were shot dead or beaten to death during raids, while in detention, on the streets etc., violating Article 6 of the ICCPR and 4 of the ACHPR on the right to life.<sup>30</sup> In one of the interviews conducted by Amnesty, a witness recounted how men from the Multinational Joint Task Force (MJTF) opened fire on staff and customers at a filling station killing 5 people.<sup>31</sup> MJFT men were also accused of burning down houses after they have raided the community, rendering inhabitants homeless.<sup>32</sup>

According to some victims of arbitrary arrest and detention who were interviewed, they were not told their offenses and neither were they granted access to a lawyer, a family member or medical care.<sup>33</sup> Nigeria's counterterrorism measures have also been accused of administering torture. A former detainee at a detention barrack narrated to Amnesty International the horrors of the barracks. He said: *"they have a dungeon, an underground place where they also take*

people... In the dungeon they have short chains, they tie you to one side, you can't stretch fully, lying on the ground, knees bent, you are handcuffed to a hook in the ground, facing another person who is also handcuffed to the hook. You lie on your side, two people per hook. They leave you for five days. You can't stretch out. It's a big place, they could put as many as they want in there."<sup>34</sup> This is a violation of the UN Convention Against Torture which Nigeria acceded to on 28 June 2001 and also a violation of Articles 5, 7 and 5 of the African Charter on Human and Peoples' Rights, ICCPR and the UDHR, respectively. Despite being privy to the violation of human rights in northern Nigeria, the Nigerian government has made no efforts at giving prompt and adequate reparation to the victims. Neither has it made efforts to investigate the allegations.<sup>35</sup> This goes against the mandate given to Nigeria by the UNSC in Resolution 1373.

Also, Nigeria's Terrorism Prevention Act is a reactive and not a proactive act. Although called a Terrorism-Prevention Act, it is more of a terrorism-fighting one as it does not prescribe measures to prevent terrorism from happening, nor addresses the root causes or the factors that lead to the emergence of terrorism in Nigeria. Factors such as economic deprivation, employment, religious extremism and radicalization are not addressed in the Act that seeks to "prevent" terrorism from advancing in Nigeria.<sup>36</sup> There is also no Act or Law that addresses the needs of victims of both terrorist acts and anti-terrorist strategies.<sup>37</sup> Article 12 of the TPA which allows for the confiscation of assets belonging to terrorist suspects, could be used as a façade to target and confiscate assets belonging to political opponents and Article 26 could also be used to spy on them without reason. Article 38 which gives the Nigerian government the right to expel refugees on national security and public safety grounds is a violation of Article 32 of the 1951 Convention Relating to the Status of Refugees.<sup>38</sup>

### 3.4 The Case of Egypt

Egypt is ranked 9<sup>th</sup> in the Global Terrorism Index of 2016. The country constitutes one of eight countries which recorded the highest number of deaths by terrorist attacks in the year 2015, with one incident recording the death of 224 people as a result of a bomb attack on a plane. This attack was claimed by ISIS in the Sinai Province.<sup>39</sup> Terrorist groups have targeted places of worship, schools and public transport systems in their strikes in Egypt and this has caused instability in the country. These happenings have necessitated the adoption of counterterrorism measures.<sup>40</sup>

### 3.5 Counterterrorism Strategies Adopted

Egypt has also adopted Anti-Terrorism Law and anti-Money Laundering/Countering terrorism financing strategies to counter terrorism in the country. According to the 2016 Global Terrorism Index, Egypt places 2<sup>nd</sup> in the list of African countries with the highest impact from terrorism.<sup>41</sup> The country usually suffers terrorist attacks from AQIM and ISIS in Sinai.

#### 3.5.1 Egypt's Anti-Terrorism Law

The Anti-Terrorism Law was enacted on 15<sup>th</sup> August, 2015 after the draft law was passed by parliament in July 2015. Article 2 of the Anti-terrorism law defines a "terrorist act" as "any use of force, violence, threat, or intimidation domestically or abroad for the purpose of disturbing public order, or endangering the safety, interests, or security of the community; harming individuals and terrorizing them; jeopardizing their lives, freedoms, public or private rights, or security, or other freedoms and rights guaranteed by the Constitution and the law; harms national unity, social peace, or national security or damages the environment, natural resources, antiquities, money, buildings, or public or private properties or occupies or seizes them; prevents or impedes public authorities, agencies or judicial bodies, government offices

or local units, houses of worship, hospitals, institutions, institutes, diplomatic and consular missions, or regional and international organizations and bodies in Egypt from carrying out their work or exercising all or some of their activities, or resists them or disables the enforcement of any of the provisions of the Constitution, laws, or regulations.

A terrorist act shall likewise refer to any conduct committed with the intent to achieve, prepare, or instigate one of the purposes set out in the first paragraph of this Article, if it is as such to harm communications, information, financial or banking systems, national economy, energy reserves, security stock of goods, food and water, or their integrity, or medical services in disasters and crises."<sup>42</sup>

Article 3 outlines what constitutes the funding of terrorism; and Article 4 enumerates the conditions under which Egypt has jurisdiction over a terrorist crime.<sup>43</sup> Article 8 grants enforcers of the law immunity from prosecution when they use force in the performance of their duty. Articles 12 to 39 form the "offenses and penalties" section of the law and lists out the situations under which a person may be sentenced. It includes instituting a terrorist group (Article 12), financing it (Article 13), planning the act, aiding and abetting and also physically engaging in a terrorist act (Articles 14 to 26).<sup>44</sup> Various sentences are given depending on terrorist offenses committed. These penalties begin from fines, to life imprisonment and ultimately, the death sentence.<sup>45</sup> Article 27 further gives the "enforcers of the law" more powers in their line of duty. People who are found guilty of attacking, resisting and threatening to use force against those seeing to the application and enforcement of the law shall be punished by prison sentences and in some cases, by death.<sup>46</sup>

Furthermore, Article 28 mentions the promotion of terrorism as an offence punishable by a prison sentence and in Article 29, the law points out the use of forms of media for the propagation of terrorism as a crime punishable by law. The controversial Article states that

“Whoever establishes or uses a communications site, website, or other media for the purpose of promoting ideas or beliefs calling for the perpetration of terrorist acts or broadcasting material intended to mislead security authorities, influence the course of justice in any terrorist crime, exchange messages, issue assignments among terrorist groups or their members, or exchange information relating to the actions or movement of terrorists or terrorist groups domestically and abroad shall be punished by imprisonment with hard labor for no less than five years. Whoever unduly or illegally accesses websites affiliated with any government agency in order to obtain, access, change, erase, destroy, or falsify the data or information contained therein in order to commit an offense referred to in the first paragraph of this Article or prepare it shall be punishable by imprisonment with hard labor for no less than ten years.”<sup>47</sup>

Article 31 is further dedicated to the enforcers of the law, making it a criminal offence for a person to collect information of them with the purpose of harming them, their work, their descendants or ascendants.<sup>48</sup> Article 35 makes it illegal for a person to report on, publish terrorist acts or anti-terrorism operations that are different from the official statements that the Ministry of Defense has released.<sup>49</sup> Article 36 prohibits the public display and broadcasting of trial proceedings of terrorist crimes. In Article 37, the law imposes certain restrictions on fundamental liberties of the populace as a counterterror measure. These restrictions are generally related to free movement of persons.<sup>50</sup> Article 38 grants amnesty to persons who are engaged in terrorist acts but report to the officials before the act, after the crime and/or aid in arresting the perpetrators.<sup>51</sup>

In order to counter an eminent terrorist crime, Article 40 gives law enforcers the mandate to among others, detain the perpetrators for a maximum of 24 hours. This can however be extended to a maximum of 7 days and by Article 44, the suspect shall have the right to appeal his detention.<sup>52</sup> The arrested suspect shall have the right to a lawyer, to speak to a family member and shall be informed of the reason for his arrest provided these actions will not tamper with the evidence. This is a provision of Article 41.<sup>53</sup>

Furthermore, Article 46 allows for the keeping of tabs/spying on the communication channels of the suspects for a maximum of 30 days. These includes wiretapping telephones, spying on website usage, recording of the suspect's messages, letters and seizure of electronic devices believed to be useful in investigations. And finally, Article 53 gives the law enforcers comprehensive compulsory insurance to cover any losses suffered in their line of duty in countering terrorism in Egypt.<sup>54</sup> The Egyptian Government's clampdown on some groups of people, for instance the Muslim Brotherhood, has been viewed as a deliberate attempt to silence political opponents, using counterterrorism as a façade

### **3.5.2 Countering the Financing of Terrorism in Egypt**

Due to its large informal economy that mostly involves cash, Egypt remains vulnerable to terrorist financing. This results in undocumented small scale financial transactions and it is estimated that about 90% of the Egyptian population do not have formal bank accounts. This makes the financing of terrorist organisations very easy.<sup>55</sup> To address this, the Central Bank of Egypt and the Federation of Egyptian Banks have come up with measures to encourage people and small and medium-scale business owners to be involved in the formal financial sector. Additionally, Egypt enacted measures including digitization of government payments,

introduction of smartcards, making access to ATMs easy, and developing mobile phone applications to help track financial activities across the country.<sup>56</sup>

In 2015, Egypt began to enact a number of laws to strengthen measures to combat financing of terrorism in line with the UN Security Council (UNSC) ISIL (Da'esh) and al-Qa'ida sanctions regime.<sup>57</sup> The country's Financial Intelligence Unit; the Egyptian Money Laundering and Terrorist Financing Combating Unit, is a member of the Egmont Group of Financial Intelligence Units.<sup>58</sup>

Egypt is also a member of the Middle East and North Africa Financial Action Task Force, which is a Financial Action Task Force (FATF)-style regional body. The country is also a member of the Coalition's Counter-ISIS Finance Group.<sup>59</sup>

### 3.6 Criticisms of Egypt's Strategies

Egypt's draft law, before it was enacted into a full law was criticized as deeply flawed by Amnesty International. The organization raised concerns that it had the potential of violating various Human Rights of the inhabitants of Egypt.<sup>60</sup> This is not surprising as various Articles restrict and violate a number of civil liberties and gives law enforcers power to abuse human rights with impunity. The organisation issued a memorandum on the draft law on August 12<sup>th</sup>, 2015, three days before it was approved and officially issued on August 15<sup>th</sup>, 2015 by President Abdel Fattah Al-Sisi. Amnesty International raised concerns that the definition of a "terrorist act" in the Draft Article 1 clause 7 (but in the actual Law's Article 2) is so vague and broad that the authorities and security forces are likely to use its *sweeping scope to muzzle their political opponents and critics*.<sup>61</sup>

Also, phrases in Article 2 of the anti-terrorism law which defines a terrorist act such as “disturbing public order”, “damaging public and private institutions” and “impeding the application of the provisions of the Constitution and national laws” has the ability to target and restrict people’s rights to public gatherings, processions and prevent them from embarking on peaceful protests.<sup>62</sup> The Anti-Terrorism law which grants the enforcers of the law immunity from various penalties seems to protect them more than the civilians. Article 8 of the law grants them immunity from prosecution in their use of force.<sup>63</sup> The Article does not give parameters for what constitutes “necessary and adequate” use of force in the performance of their duties. It also does not state that the force must be minimal. This gives officers the freedom to use unnecessary and excessive force in enforcing this law without fear of being held accountable for their actions as the law grants them immunity. Also, Article 27 prohibits the attacking of the enforcers of the law and people found guilty of such a crime could be sentenced to the tune of the death penalty. Article 31 criminalizes the collection of information on these enforcers, their ascendants and descendants and Article 53 offers them insurance cover for any losses they suffer in their line of duty. The Anti-Terrorism law seems to protect the enforcers of this law more than it does the citizens of the land. The law does not cover in any way, victims of human rights abuse carried out by these enforcers, neither does it cover reparation for victims of terrorist attacks.

Articles 28 and 29 of the Anti-Terrorism Law restrict access to information to the populace on terrorist offenses and makes it a punishable offense for a person to promote terrorist ideas using the internet and other forms of media broadcasting. This Article has been used to clamp down on media houses and restricted their access to information and freedom of expression enshrined in Article 9 of the African Charter on Human and People’s Rights, and Article 11 of the UDHR.

Additionally, Article 35 of the law criminalizes the reporting, publishing and broadcasting of terrorism operations that differ from official statements released by the Ministry of Defense. This is also a violation of the freedom of expression and this law could be used to restrict the freedom of the press and clamp down on vocal human rights activists. Also, Article 36 prohibits the public display, publishing and broadcasting of trial proceedings of terrorist crimes. This Article has the tendency to violate the right of suspects to a fair trial as enshrined in Article 10 of the UDHR.

Egypt's counterterrorism laws have traceable roots to the political developments within the state. Following the resignation of President Hosni Mubarak in response to protests in 2011 during the Arab spring, events in the state have taken the form of a heated power struggle between the Muslim Brotherhood and the Military. Mohammed Morsi, a member of the brotherhood who was elected to succeed Hosni Mubarak was ousted in 2013 by General El-Sisi, who was subsequently elected in 2014. In the wake of developing terrorist attacks, General El-Sisi responded aggressively to clamping down on terrorist.<sup>64</sup> Until 2015, the government had no clear strategies to counter terrorism.<sup>65</sup> Counterterrorism measures employed therefore included sweeping arrest campaigns, media gagging and direct targeting of suspected groups of persons.<sup>66</sup> Since his assumption to office, General El-Sisi has targeted the Muslim Brotherhood, labelling them as a terrorist organisation<sup>67</sup> with principles hinged on Al-Qaeda.<sup>68</sup> As such, members of the Brotherhood have largely been victims of state-reported arrests of terrorists.<sup>69</sup> The current counterterrorism law outlined above has evidently been used as a tool for the alienation of a sect of society and political opponents. It has been crafted to target these groups and therefore serves as a tool for targeted state induced repression of political opponents other than a strategy against terror.

### 3.7 The Case of Kenya

Kenya has also faced a number of terrorist attacks mainly from the terrorist group Al-Shabaab. The group is responsible for most of the terrorist attacks to the country including the Garrissa University attack, the Westgate mall attack and the bombing of various institutions in the country.

### 3.8 Counterterrorism Strategies Adopted

To fight the menace and protect human rights of the populace, Kenya adopted strategies to counter terrorism. These include the Prevention of Terrorism Act enacted in 2012 and Anti-terrorist financing/anti money laundering laws.

#### 3.8.1 The Prevention of Terrorism Act (POTA) 2012

Kenya's Prevention of Terrorism Act was enacted in 2012 as a guiding source in the fight against terrorism in Kenya. The Act was amended in 2014 in the Amendment of the Security Law Act 2014. Some portions of the Amendment were contested in Kenya's High Court, which ruled suspending some of those sections. The Prevention of Terrorism Act is an instrument relevant for the provision of measures to detect and prevent terrorist activities in Kenya.<sup>70</sup> Part III of the Act is dedicated to offenses of terrorist nature and this is the main portion relevant to this research.

A terrorist offense according to the POTA could be, among others, the actual committing of the terrorist act, provision of resources for the committing the act, harbouring terrorists, recruitment and training of terrorists and the obstruction of a public officer from performing his duties in relation to a terrorist act.<sup>71</sup>

Paragraph 30A criminalises the publication of offending material. It makes it an offense for a person to publish or say something ‘likely to be understood’ as encouraging or inciting another to commit a terrorist act. This offense attracts a penalty of not more than 14 years imprisonment.<sup>72</sup> The clause ‘likely to be understood’ is further defined as: “a publication or speech with intentions that can be reasonably inferred as, and with obvious intentions to incite a terrorist act”. It however does not state who’s ‘ability to infer’ will be the parameter for criminalising the action. In addition, Paragraph 30F of the Act criminalises the dissemination of information and the publishing of materials capable of undermining investigation or compromising security operations, if it was done without approval from the National Police Service. This offense attracts a maximum penalty of 3 years imprisonment or a fine of 5million Shillings or both.<sup>73</sup> The same paragraph also mentions the criminalization of the publishing and broadcasting of photos of victims of terrorism without approval from the victim or the National Police Service. Persons found guilty of this offense face the same penalty as the one earlier mentioned. However, individuals are allowed to publish ‘general facts’ relating to terrorism.<sup>74</sup> The Act does not define what constitutes ‘general facts’.

The Act further gives a police officer the power to arrest a person when he has ‘reasonable grounds’ to believe that that person has committed a terrorist act.<sup>75</sup> The paragraph however does not define what constitutes ‘reasonable grounds’. Paragraph 35 of the Act limits certain rights of arrested terrorist suspects. These restrictions enable the security services to search the home, person, property of the suspect and seize his/her possessions, as well as pry on his/her communication channels.<sup>76</sup> It also limits the freedom of expression, media, conscience, religion, belief and opinion of the entire Kenyan populace and allows for the confiscation of property used to commit an offense under the Act.<sup>77</sup>

A police officer with rank equal to or higher than the Chief Inspector of police may apply to a magistrate or a high court to intercept a suspect's communication. This limitation of the right to privacy is deemed relevant for detecting, deterring and disrupting terrorism.<sup>78</sup> Also, paragraph 37 prescribes the power to seize property used to commit a terrorist act for a period of 60 days. This is however subject to extension if the need arises.

In addition, the Cabinet Secretary is vested with powers to revoke registrations or refuse to register any organisation that he/she deems as associated to terrorist groups. This can be done through an application of an order at a high court. And the affected parties are to be notified through a letter.<sup>79</sup> Finally, paragraph 48 prescribes the ability of the Cabinet Secretary to refuse foreigners refugee status for the sake of national safety and security. This directive is applicable when there are 'reasonable grounds' to believe that the person is associated with a terrorist group. This should however be done in line with International Convention on Refugees.<sup>80</sup> Human rights organisations, political opponents and people belonging to the Islamic religion have been targeted by the Kenyan government while using the Terrorism Prevention Act as a facade.

### 3.8.2 Countering the Financing of Terrorism in Kenya

Kenya is a member of the Eastern and Southern Africa Anti-Money Laundering Group, a Financial Action Task Force (FATF)-style regional body. In 2013, the FATF removed the country from its list of countries with deficiencies in their anti-money laundering/countering the financing of terrorism (AML/CFT) strategies. This was as a result of strides made by the country towards AML/CFT.<sup>81</sup>

Kenya's financial intelligence unit, the Financial Reporting Center (FRC), was set up to monitor the formal financial system and the Central Bank of Kenya is mandated to encourage Kenyan citizens and residents to patronize the formal financial sector. This is because the formal financial sector is easily monitored and subject to regulatory oversight which helps to upturn overall financial transaction integrity through greater financial inclusion.

The country also has an active Financial Reporting Center (FRC) to address the formal financial systems and monitor formal financial activities including Mobile Money transactions in the country.<sup>82</sup>

### 3.9 Criticisms of Kenya's Strategies

Kenya's vague definition of terrorism has even been criticised by the UN Special Rapporteur on the Protection and Promotion of Human Rights while Countering Terrorism. He pointed out that the overly broad definition could affect the interpretation of other sections of the then 2006 Bill and called for a clearer and more precise definition.<sup>83</sup>

Under the guise of counterterrorism, the Kenyan government has armed itself with tools needed to justify anti-democratic strategies, arguing that the violation of certain liberties is a necessary evil for a greater good of national security. There have been reports that terrorist suspects arrested in Kenya are subjected to arbitrary detentions, inhumane treatments, were denied access to a lawyer and the ability to challenge their detention. Foreigners who are arrested are also denied access to consular services.<sup>84</sup> These actions are against the AU Charter on Human and Peoples Rights Articles 5 and 6, Articles 5 and 9 of the UDHR, Article 7 of the OAU Convention on the Prevention and Combatting of Terrorism and Articles 7 and 9 of the ICCPR.

Kenyan security authorities were reported to have arbitrarily detained more than 100 people between December 2006 and February 2017. The persons detained included children and foreign nationals, many of whom were potential asylum seekers from conflict-ridden Somalia.<sup>85</sup> This violates Articles 32 and 33 of the Convention on Refugees which prohibits the expelling of refugees and resistance to their entry into a host state.

Kenya's Law on terrorism has also been defined as anti-Muslim and ethnically discriminatory and this is because anti-terrorism measures have been carried out in predominantly Muslim regions of Kenya.<sup>86</sup> In 2010, the religious profiling of terrorist suspects in Kenya led the country to an embarrassing diplomatic situation with the United Arab Emirates when members of the Royal family were arrested, detained and deported on suspicion of being terrorists. Dubai retaliated with an imposition of strict visa rules for Kenyan travellers to Dubai.<sup>87</sup> Religious discrimination is a violation of Article 3 of the Convention on Refugee status, Articles 2, 7 and 9 of the UDHR, Article 2 of the African Charter on Human Rights and a violation of The Declaration of the Elimination of All Forms of Intolerance Based on Religion and Belief.

The use of torture in various military camps in Kenya goes against Articles 5 of the UDHR, 7 of the ICCPR, 3 of the CAT and Article 5 of the African Charter on Human and Peoples Rights. The extortion of refugees at refugee camps is also a violation of Article 29 of the Convention on Refugees.

Some sections of Kenya's Prevention of Terrorism Act also restricts human rights. Article 30A and F for instance restricts the freedom of expression enshrined in Articles 19 of the UDHR and ICCPR, and 9 of the African Charter on Human and Peoples Rights. Using paragraphs 35 and 37 of the POTA as a façade, the Kenyan government in 2015, froze the accounts of two

well organised and respected Kenyan Human Rights Organisations.<sup>88</sup> Without following due process, the Kenyan authorities froze the accounts of the MUHURI and Haki Africa, along with 83 other organisations, accusing them of having links with terrorist organisations.<sup>89</sup> It is believed that this accusation is informed by the Religious affiliation of these groups and that the Kenyan government is targeting them because they are Islamic groups.

Invoking Paragraph 48 of the POTA, Kenya has threatened to close down the refugee camp which accommodates about 120,000 refugee, mostly Somalis. This coerced repatriation of refugees is a violation of voluntary repatriation of the Refugee Convention.<sup>90</sup> Kenya's threat to close down the refugee camp also violates the principle of Non-refoulement enshrined in Article 33 of the Convention on Refugee.

There have also been reports of abuses during counterterrorism operations in Nairobi and the North Eastern Province, especially, incidences of forced disappearance and torture.<sup>91</sup> The North Eastern part of Kenya is highly dominated by ethnic-Somali Kenyans, many of whom are Muslims. Kenya has therefore been accused of ethnic and religious profiling in its counterterrorism measures. There are also allegations of torture in the Wajir military camp. Bodies of persons who were arrested by state agents have been found in various parts of the North Eastern region, giving evidence to extrajudicial killings.<sup>92</sup>

Kenya has contributed troops to fight Al-Shabaab in Somalia in its "Operation Linda Nchi" which means "protect the country." There are reports that Kenya's presence in Somalia on a counterterrorism mission is just a façade to create an enclave in the southern Somali-Kenya border town of Jubaland for security and economic reasons.<sup>93</sup> During the colonial era, vast land occupied by Somalis and belonging to the Somali people were given out to Ethiopia and Kenya

by Colonial masters. Somalia had tried in the past to regain their land using both diplomatic and military means but have not been successful. Thus, there are allegations that Kenya's presence in Somalia is to protect the former's own interest. Kenya hopes to open up its Northern region, which is where Jubaland is located, and assert its economic interest in the region. Therefore the phrase "Protect the country" is said to mean the protection of Kenya and not Somalia.<sup>94</sup>

The POTA gives powers to only the police officers to perform various security duties in counterterrorism, however, military personnel and Wildlife Service men with no legal mandate have also been seen arresting and detaining suspects. This is a clear violation of the national law governing counterterrorism. To make matters worse, the Kenyan government does not admit to these abuses by its security forces, nor has it investigated or publicly condemned such acts.<sup>95</sup>

### **3.10 Proposed Measures to Guarantee Human Rights**

Civil society organisations need to be involved in the processes of counter terrorism and their opinions sought in the enacting of counterterrorism laws to include the respecting of human rights in counterterrorism. These organisations should also serve as watchdogs for the guaranteeing of human rights in countering terrorism.

Also, states should focus on developing their economy to prevent the youth from joining terrorist groups out of idleness. States should also engage the traditional societies in their counterterrorism strategies. In this case, the youth in such societies could be cautioned and educated at the grass root level against joining terrorist groups and engaging in terrorist activities.

Western countries should also desist from interfering in the internal affairs of African states such as the interference in Libya which has left the state to serve as breeding grounds for terrorist organisations. African countries should adopt their very own Marshal plane, being circumspect of African culture and the root causes of terrorism in Africa. States in Africa should not take monies from Western state that will tie them to their counterterror plans which may not necessarily work for Africa.



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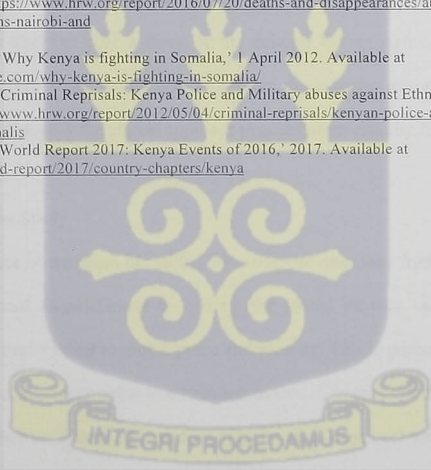
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## CHAPTER FOUR

### SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

#### 4.0 Introduction

The study sought to examine the ethical approach to counterterrorism by reviewing some African States' counterterrorism strategies and juxtaposing those strategies with human rights instruments. The concept of Human Rights was adopted to examine ethics in counterterrorism in Africa. Considering the prevalence of Human Right abuses in Africa in the name of counterterrorism, the study sought to test the hypothesis 'Adopted counterterrorism measures by African states are likely to pose a threat to the delicate human rights situation on the continent'. The objectives of the study were to explore the examine terrorism and counter terrorism in Africa and identify the ethical approach to counterterrorism by African states.

#### 4.1 Findings of the Study

The recent reemergence of terrorism has called for numerous responses from states, regional bodies and International Organizations to counter the global menace. Across all fronts, terrorism is seen as a major threat to global peace and security. This is primed on the number of deaths and counts of destruction that terrorism has caused to states on the African continent. Terrorist acts violate human rights and have the tendency of clawing back strides made in the guaranteeing of human rights on the continent.

In 2001, the UN Security Council's Resolution 1373, called on members to enact domestic laws to counter terrorism. The domestic counterterrorism laws and strategies of Nigeria, Egypt and Kenya were reviewed to find out their compatibility with various human rights instruments and the following findings were made:

First, the definitions of terrorism in respective anti-terrorism laws of the three states were considered flawed. The definitions were laden with loose language, making the inference of the difference between a terrorist act and a violation of a civil law difficult.

Due to the presence of natural resources in Africa, the continent is a fertile ground for the financing of terrorism. The porosity of borders, corruption of border officials, smuggling of small arms, drug and human trafficking and donor funding were found as sources of funding for terrorist groups in Africa.

Religious militancy was also found out as the major cause of terrorism in Africa. The majority of terrorist groups on the continent are Islamist Jihadist-Salafist movements with the aim of Islamizing their country/region and subjecting the region to the rule of Shari'a law. Their ultimate aim is a global Islamized world and they seek to do this by a global jihad against western culture.

Counterterrorism strategies and laws of all three countries necessarily undermine human rights of citizens and inhabitants of the respective states, especially the rights of civil society groups, media houses and journalists, and human rights activists. The rights to life, dignity of the human person, privacy, free and fair trial, freedom from all forms of discrimination, unlawful detainment, torture, association and expression, the presumption of a suspect innocent until proven guilty, and the rights ascribed to refugees are some of those which the counterterrorism strategies fell short of.

Finally, the violation of human rights in counterterrorism could work at counter-purpose and in the long run, facilitate the recruitment of terrorists.

The study identified a number of ways which can help to guarantee human rights while countering terrorism. One of such ways is the state involving civil society organisations in the processes of making counterterrorism laws and adoption of counterterrorism strategies. Also, states should focus on developing their economy to prevent terrorism from taking root in the country. All persons should be entitled to a piece of the national cake, and there should be no discrimination in allotting national resources to all parts of the country.

#### **4.2 Conclusion**

Terrorism has posed a threat to national security, and in some instances, counterterrorism measures also pose as a threat to some groups of people in Africa, such as minority groups and political opponents. This threat posed could be accidental or these groups of people could be deliberately targeted by governments. Counterterrorism measures adopted by most African state are happening in a knee-jerk fashion and are becoming an end in itself, instead of safeguarding the security and human rights of citizens.

#### **4.3 Recommendations**

From the findings of the study and the identified existing gaps, the following recommendations are suggested:

African states should focus on the development of the countryside or rural areas as these are the areas that often times, terrorist groups emerge from. Underdevelopment and low standards of living in these areas make them fertile grounds for radicalism to take root and makes room for the recruitment of terrorists. Government should invest in education in those areas and open up factories or industries to keep the youth occupied. Small and medium-scale enterprises in

these areas should be granted access to soft loans, or offered start-up capital to help boost their trade.

The African Union should come up with clear markers, involving counterterrorism and Human Rights which show clarity on how counterterrorism measures should safeguard the rights of people. The Union should also ensure that these markers are adhered to by member states. The organization should also set up an oversight commission such as the African Peer Review Mechanism to see to the adherence of member states to counterterrorism measures that respect human rights.

The African Union should also adopt a Regional Court of Appeal to which petitions and appeals can be brought before in cases of violations of human rights. This court of appeal should also be able to sit on cases involving victims of counterterrorism-human rights violations and see to the reparation of such victims. The African Court of Appeal should be given the powers to fine or invoke sanctions on states who are found to be perpetrators of human rights abuses in their counterterrorism measures. This will, to a large extent, discourage states from adopting counterterrorism measures that violate human rights and could reduce the number of released detainees who would join terrorist groups to seek vengeance.

States should conduct investigations into allegations of human rights abuse by security officers, findings of such investigations must be published, and perpetrators found guilty, should be punished. States should openly condemn counterterrorism acts that violate human rights and adopt laws specifically to address the issue of human right abuse in counterterrorism. This law should prosecute security officers who violate human rights using counterterrorism measures.

Persons found guilty of terrorism offenses should be entitled to the rights that international law accords, as enshrined in the Standard Minimum Rules for the Protection of Prisoners.

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