REPORT ON SECURING NATIONAL SECURITY & PROTECTION OF HUMAN RIGHTS

A COMPARATIVE ANALYSIS OF THE EFFICACY OF COUNTER TERRORISM

LEGISLATION AND POLICY

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
REPORT ON SECURING NATIONAL SECURITY & PROTECTION OF HUMAN RIGHTS

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LEGISLATION AND POLICY
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ARTICLE 1 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
ABBREVIATIONS / ACRONYMS

ACHPR  African Charter on the Human and People's Rights
ACHR  American Convention on Human Rights
AU  African Union
BCN  Biological, Chemical and Nuclear
CAT  Convention Against Torture
CTC  Counter Terrorism committee
CTED  Counter-Terrorism Committee Executive Directorate
CTITF  Counter Terrorism implementation Task Force
ECHR  European Convention on Human Rights
EU  European Union
IAEA  International Atomic Energy Agency
ICESCR  International Covenant on Economic, Social and Cultural Rights
ICCPR  International Covenant Civil and Political Rights
KHRC  Kenya Human Rights Commission
KNCHR  Kenya National Commission on Human Rights
OECD  Organization for Economic Development and Co-operation
PRRA  Pre-Removal Risk Assessment
PSC  The Peace and Security Council
RCK  Refugee Consortium of Kenya
UDHR  Universal Declaration on Human Rights
UN  United Nations
UNHCR  United National High Commission for Refugees
UNSC  United Nations Security Council
GLOSSARY OF KEY TERMS

International Terrorism

According to Article 2 of the UN Draft comprehensive convention against international terrorism, if a person, by any means, unlawfully and intentionally causes death or serious bodily injury to any person, damage to public or private property including a place of public, a state or government facility, a public infrastructure, the environment, or makes a credible and serious threat to commit an offence as set forth in paragraph 1 of this article.

Counterterrorism

Practices, tactics and strategies that governments adopt in response to terrorism threats, acts both real and imputed.

Radicalization

Process by which an individual or group adopts extreme political, social or religious ideals and aspirations that reject or undermine the status quo.

The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution created by Article 59 of the Constitution of Kenya 2010 and established by the Government of Kenya through an Act of Parliament (the
FOREWORD


The Kenya National Commission on Human Rights (KNCHR) being an independent National Human Rights Institution (NHRI) has in the past concerned itself with security from a human rights perspective. Terrorism has become a global threat to peace and Kenya has had its fair share of attacks. Since the 1998 bombing of the US embassy in Nairobi, the attacks have intensified with the highest threat peaking with the entry of the Kenya Defense Forces in Somalia in 2011.

With the retaliatory attacks, the ragtag Al-Shabab militia group which mainly operates from Somalia has made the situation worse, staging attacks on Kenyan soil that have claimed hundreds of innocent lives and destroyed property and investments worth billions of shillings. Notably also is the spread of fear in the country which has in turn crippled sectors of the economy like tourism.

The basic freedoms and rights of the Kenyan people and its visitors have been infringed on since this has caused loss of lives, curtailed movement, displaced people, maimed innocent people and crippled businesses. The situation has not fully improved and the confidence of the citizens on government interventions remains low.

Kenya National Commission on Human Rights has designed project interventions aimed at promoting respect for human rights in counter terrorism interventions. One of the key project components include research aimed at shedding light on key issues related to terrorism and counter terrorism in Kenya and beyond. KNCHR hopes that this report will add value to the ongoing initiatives to secure the country through the promotion and protection of human rights while fighting the war against terror.

Patricia M. Nyaundi, CEO, KNCHR
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“Effective Counter-terrorism measures and the protection of human rights are not conflicting goals, but mutually reinforcing”

UN Secretary-General Ban Ki-Moon on the 2006 UN Global Counter-Terrorism Strategy¹.

Kenya’s terror related problems can be traced back to 1976, when the infamous Entebbe hostage crisis was witnessed in neighboring Uganda. Members of international terror groups seized an Air France airliner and its 258 passengers and in an ensuing rescue battle, about 30 people were killed, both Israelis and Ugandans. Consequently, there was suspicion that Kenya had colluded with Israel in planning the raid and this resulted in diplomatic hostility between Kenya and Uganda.

In 1980 terrorists linked to the Palestinian Liberation Organization attacked the Jewish-owned Norfolk hotel in Nairobi killing 15 people. Though Kenyans may not have been seemingly the target, many innocent Kenyans were killed or hurt in the blast. In 1998, the U.S. Embassy in Nairobi, Kenya and the one in neighboring Tanzania were bombed. According to official Kenyan government figures, 213 people were killed in the blast that gutted the U.S. Embassy building in Nairobi. This incident resulted in the killing of foreigners too.

In 2002, three suicide bombers attacked an Israeli-owned hotel, killing 11 Kenyans, 3 Israelis and wounding dozens. Almost simultaneously, at least two missiles were fired at - but missed - an Israeli airliner taking off from Mombasa airport. With sporadic attacks since 2002, the Al-Shabaab’s linked attacks were intensified by the entry of Kenya Defense Forces in Somalia in hot pursuit of the militants after abducting an aged tourist. Since the late 2011, Kenya has seen an upsurge in violent terrorist attacks.

The Kenyan government has asserted that many of the murders and blasts are carried out by the Al-Shabaab in retaliation for Operation Linda Nchi, a coordinated military mission between the Somalian military and Kenyan military. According to Kenyan security experts, the bulk of the attacks were increasingly carried out by radicalized Kenyan youth who were hired for the purpose. These include the Westgate Mall in 2014 attack and the Mandera quarry mines and bus attacks which left over hundred people killed in 2014 alone. Kenyans woke up to yet another terrorist attack in April 2015 at Garissa University in which over 150 people lost their lives, majority being students.
Kenya has witnessed an increase in the levels of crime and insecurity in many parts of the Country. Notably, the biggest challenge has been terrorism. Other crimes and insecurity witnessed include inter-community conflicts, extra judicial killings and banditry. There has been an increase in the number of internally displaced persons especially after terror attacks in Nairobi, Mombasa, Lamu, Garissa and Mandera. Property, including livestock was lost in large numbers. Lives have also been lost. Kenya's biggest security challenge is the threat of terrorism which has greatly altered the lifestyles of many Kenyans.

These heinous acts of terrorism have occasioned violation of human rights, fundamental freedoms and have cascading consequences on social and economic development for both Kenya and the global community. With hundreds of innocent Kenyans killed, injured and property destroyed, the Kenya National Commission on Human Rights, in line with the United Nations resolution 2002/35 “…reiterates its unequivocal condemnation of all acts, methods and practices of terrorism, regardless of their motivation, in all their forms and manifestations, whenever and by whomever committed, as acts aimed at the destruction of human rights…”

Implementation of counter-terrorism laws in various jurisdictions has had an impact in enjoyment of economic, social and cultural rights. However, most focus has been put on the effect of these counter-terrorism laws on civil and political rights. In Indonesia, studies were conducted that indicated that enforcement of counter-terrorism measures in that country led to violation of social rights of the families of terror suspects and convicts both directly and indirectly. The UN Special Rapporteur on Promotion of Human Rights and Fundamental Freedoms while Countering terrorism indicated in a report in 2010 that counter-terrorism measures have an impact on enjoyment of economic, social and cultural rights.

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1. In Nairobi, the September 2013 Westgate mall attack claimed the lives of 67 people and left over 150 people injured and millions of property destroyed. On Monday, 24 October 2011, a grenade was hurled in a bar in Nairobi which left one person dead and more than 20 people wounded. On 10 March 2012, six were killed and over sixty were injured after four grenades were thrown into a Matatus bus station in Nairobi. On 4 May 2014, on the Thika Highway, terrorists exploded homemade bombs on two commuter buses, nearly simultaneously and about a kilometer apart. According to the report, at least three people were killed and at least sixty-two others injured. http://web.stanford.edu/class/e297a/Terrorism%20in%20Kenya.htm

2. University of Oslo, Counter-terrorism and Social Rights: the assessment of adverse effects of counter-terrorism on social rights of terror suspects and convicts in Indonesia, at p. 3-4 available at https://www.duo.uio.no/bitstream/ handle/10852/43096/MPhil-thesis-7007.pdf?sequence=1 (last visited 25/4/2016)

3. Ibid. at p. 2

He was reiterating the position held by the UN General Assembly in Resolution 64/168, which highlighted specific human rights that are affected by enforcement of counter-terrorism measures.

Kenya responded to increased terrorism attacks from Al-Shabab by passing the Security Laws Amendment Act in 2014. The law amended several laws that touch on security. Several sections of this law were declared unconstitutional and invalidated by the High Court of Kenya after KNCHR filed a case highlighting the amendment law’s impact on enjoyment of human rights in Kenya. The amendment law had the effect of restricting freedom of expression, freedom of assembly and association, freedom of movement, the rights of refugees and the right to a fair trial. In addition, in a case filed in 2015 challenging the Constitutionality of Section 29 of the Kenya Information and Communication Act, the Judge held the Section invalid for violating the freedom of expression. The Section was couched in broad and general terms this limiting gravely, the freedom of expression without adhering to the Constitutional standard of limiting rights.

It is apparent from various counter-terrorism measures employed by Kenya that their effect is to limit the enjoyment of rights. This occurs probably because of the rush with which the measures (specifically laws) are put in place without regard to adherence to constitutional standards and international obligations or stakeholder involvement.

It is against this background that the Commission has undertaken a comparative review of existing counter-terrorism legislation and the safeguards therein to protect human rights. The review has been based on compliance with the international law.

**Review Objectives**

1. To document court decisions on counter terrorism in relation to international human rights law.
2. To assess the effectiveness of counter terrorism strategies adopted by other Countries and the extent these can be applied in Kenya in relation to International law.
3. To assess the impact of counter terrorism interventions on the enjoyment of economic, social and cultural rights.
4. To document best practices on counter terrorism that can be replicated in Kenya.

**Methodology**

This report has been compiled through desk review and comparative analysis of existing relevant secondary materials, which included; Laws, Policies, standard Measures, court decisions and reports on the promotion and protection of human rights, while countering terrorism in the World and Kenya.
INTRODUCTION

1.1 Terrorism

Terrorism has become a global challenge. Both developed and developing economies have had to counter it. The History of terrorism traces its roots and practice to the 1\textsuperscript{st} Century depending on how one defines terrorism. It is as old as man’s willingness to use violence to affect politics. From the \textit{Sicarii}\textsuperscript{10} in the 1\textsuperscript{st} Century to the modern day \textit{Al-Shabaab}\textsuperscript{11} or \textit{Boko Haram}\textsuperscript{12}, the effects of terror activities have been frightful and widespread.

\textsuperscript{10}Sicarii is a Latin word for dagger. The Sicarii carried out murder and assassinations using short daggers. They were led by descendants of Judas of Galilee to revolt against Roman Rule of the Roman Governor Quirinius in Syria so that they could tax them.

\textsuperscript{11}The Harakat Shabaab al-Mujahidin commonly known as Al-Shabaab is based in East Africa. It describes itself as waging jihad against the enemies of Islam and the Federal Government of Somalia and the African Union Mission to Somalia (AMISOM).

\textsuperscript{12}Its Official Arabic name is Jama'atu Ahlis Sunna Lidda'awati wal-Jihaad meaning “People Committed to the Propagation of the Prophet’s Teachings and Jihad.” It is fighting to create an Islamic State and opposing Western education.

Many initiatives worldwide have been taken to counter-terrorism. These include, coming up with Anti-Terrorism legislation, policies, military tactics, technology, and law enforcement, intelligence all with the aim to combat or prevent terrorism. These strategies nonetheless have had shortcomings as far as respect to human rights is concerned. It is worth noting that the war against terror or rather war on terrorism waged without the rule of law undermines the very values that it seeks to uphold.

Many a times, the counter-terrorism strategies have violated human rights. This is owing to the fact that these measures have occasioned waning of civil liberties and individual privacy, prolonged incommunicado detention without judicial intervention, torture, and extradition of persons and generally undermine the rights...
and freedoms of citizens and other persons.

The Universal Declaration of Human Rights was initiated after the Second World War as a response to the violations of human rights by some States on their own Citizens, or perceived enemy Countries during that war. “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” This study emphasizes that human rights belong to all by the virtue of being human beings.

Human rights are often portrayed as a potential barrier to effective protection from terrorists’ acts rather than a pre-requisite for genuine security. Every State has a duty and a right to protect her Citizens from terrorism and other criminal acts; however such measures must be implemented within a framework of human rights protection that do not undermine legitimate dissent. “Some rights may not be derogated from under any circumstances. These include the right to life, freedom of thought, conscience and religion, freedom from torture or cruel, inhumane or degrading treatment, and the principles of precision and non-retroactivity of criminal law except where a later imposes a lighter penalty. For other rights, any derogation is only permitted in the special circumstances defined in International human rights law” Such statements reaffirm the need for States to come up with counter-terrorism legislation and policies that protect human rights and not those that undermine fundamental rights and freedoms.

13Article 1 of the Universal Declaration of Human Rights
15Joint Statement issued by Mary Robinson, the UN High Commissioner for Human Rights, Walter Schwimmer, Secretary General of the Council of Europe and Ambassador Gerard Stauder, Director of the OSCE’s Office for Democratic Institutions and Human Rights on 29 November 2001. (http://www.osce.org/odihr/54035 Access on 13/07/2016.)
1.2 Historical Context

What is terrorism? The precise definition of what constitutes terror or terrorism has been disputed since time immemorial. How one defines it goes to the root of the origin of terrorism. The historical context can be traced back to the 1st Century and even beyond, from the Sicarii in the 1st Century to the present day Al-Shabaab. The Sicarii, a Jewish group murdered enemies and collaborators in their campaign to oust the Roman Rulers from Judea. They are regarded as the Zealots or a sub-sect of the same; a political party who opposed the Roman Rule in Judea. The Hassashin, from where the name assassin is derived from was a secretive Islamic Sect in the present Iran from the 11th to the 13th Century.

Terrere means, “to make tremble” in Latin. The 1st Mesopotamian Empire that of Sargon of Akkad was founded on terror. The same was later true of antiquity’s 1st military empire, the Assyrian, whose brutal methods of reprisal were intended to crush the spirit and break the will.

Modern terrorism traces its roots to the French Revolution’s reign of terror in 1789 until 1799. The French Revolution is regarded as one of the important events in the human history. The reign of terror was prompted by Maxmillen Robespierre who had enemies of the revolution killed. He was a dictator who justified his methods as a way of stabilizing the Country from a Monarchy to a liberal democracy. Violence was used during this period that included mass executions by guillotine as a way of intimidating the perceived regime enemies so as to become loyal to the authority.

Until the mid-19th Century, terrorism was associated with the State when non-State terror activities were experienced. Several factors contributed to the emergence of non-State terror activities such as the blossoming of ethnic nationalism for example in Ireland, the Irish Republic Brotherhood which traces its roots to the extent that this can be interpreted to suggest that the IRB was championing Catholicism it can be challenged. Instead state the issue better.

Irish nationalism in the early 1990s was an organization dedicated to the establishment of an independent Ireland free from the Great Britain. The group was considered a terror group.

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16 See n 1 above
17 See n 2 above
18 The Assassins were a Medieval Shite sect known as the Nizari Ismailis who were in Syria and Persia (present day Iran) who carried out assassinations.
21 He was a French lawyer and politician and one of the most influential figures of the French Revolution and the Reign of Terror.
22 A device, invented in France, consisting of a sharp blade in a tall frame, used in the past for killing criminals by cutting off their heads. (http://dictionary.cambridge.org/dictionary/english/guillotine - Accessed on 13/07/2016)
as it used bombings and assassinations to oppose the British rule in Ireland. Other factors that encouraged non-state terror activities included the clamour for State independence during the anti-colonial campaigns and new ideas such as communism.

International terrorism became prominent in the 1960’s. The 1972 Munich Olympics is an example of International terrorism in Munich West Germany where 11 Israeli Olympics team members were taken hostage and eventually killed, along with a German police officer, by a Palestine terrorist group known as Black September. The true meaning and nature of international terrorism has given contemporary sense of terrorism as highly theatrical, religious, symbolic acts of violence by organized groups with specific political grievances. Terrorism today, has therefore, been transformed into a trans-national, high-tech, lethal and global phenomenon. Terrorists have now resorted to using violent tactics, including rioting and setting off explosives.

The 21st terrorism has been religiously motivated and is considered the most alarming terrorist threat today. Terrorists groups such as the Al-Qaeda have in the past justified their violent acts on ideological grounds.

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"TERRORISM TODAY, HAS THEREFORE, BEEN TRANSFORMED INTO A TRANS-NATIONAL, HIGH-TECH, LETHAL AND GLOBAL PHENOMENON."

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23 A political theory derived from Karl Marx, advocating class war and leading to a society in which all property is publicly owned and each person works and is paid according to their abilities and needs.
1.3 Definition of Terrorism

It is no secret that arriving at a consensual definition of the term terrorism is an uphill task. Constructing a characterization of terrorism that would be acceptable to everyone is a downright impossible undertaking and as such various legal systems, scholars, international organizations such as the United Nations have defined terrorism differently. Many reasons have been fronted as to why there is no universally accepted definition of terrorism. Angus Martyn in a briefing paper for the Australian Parliament observes that the United Nation’s attempts to define terrorism in the 1970’s and 1980’s never succeeded due to differences of opinions between various members about the use of violence in the contexts of national liberation and self-determination\(^\text{26}\).

Some of the definitions of terrorism are:

**The UN General Assembly Resolution 49/60** adopted on December 9, 1994\(^{27}\) describes terrorism as criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.

**The League of Nations Convention of 1937** defined terrorism in Article 1 of the Convention for the Prevention and Punishment of Terrorism adopted on November 16, 1937 as criminal acts directed against a State and intended or calculated to create a state of terror in minds of particular persons or a group of persons or the general public.

**UN Security Council Resolution 1566** refers to terrorism as 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.

**The Arab Convention for the Suppression of Terrorism** which was adopted by the Council of Arab Ministers of Justice in Cairo, Egypt on 22nd April, 1998\(^{28}\) defines terrorism as any act or threat of violence, whatever its motives or purposes, that occurs for the advancement of an individual or collective criminal agenda, causing terror among people, causing fear by harming them, or placing their lives, liberty or security in danger, or aiming to cause damage to the environment or to public or private installations or property or to occupy or to seize them, or aiming to jeopardize a national resource.

**The European Union**\(^{29}\) defines terrorism as offences under National law which, given their nature or context, may seriously damage a country or an international organization where committed with the aim of:

i. seriously intimidating a population, or

ii. unduly compelling a Government or international organization to perform or abstain from performing any act, or

iii. Seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

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\(^{27}\)UN General Assembly Resolution 49/60: measures to eliminate International terrorism

\(^{28}\)Article 1 of the Arab Convention on Suppression of Terrorism, 1998 adopted in Cairo Egypt.

\(^{29}\)Article 1 of the European Union Framework Decision on Combating Terrorism (2002)
The African Union defines terrorism 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.

Kenya’s Prevention of Terrorism Act, 2012 defines a terrorist act as an act or threat of action- 

a) Which-

i. involves the use of violence against a person;

ii. endangers the life of a person, other than the person committing the action;

iii. creates a serious risk to the health or safety of the public or a section of the public; results in serious damage to property; involves the use of firearms or explosives;

iv. involves the release of any dangerous, hazardous, toxic or radioactive substance or microbial or other biological agent or toxin into the environment;

v. interferes with an electronic system resulting in the disruption of the provision of communication, financial, transport or other essential services;

vi. interferes or disrupts the provision of essential or emergency services;

vii. prejudices national security or public safety; and

b) which is carried out with the aim of-

i. intimidating or causing fear amongst members of the public or a section of the public; or

ii. intimidating or compelling the Government or international organization to do, or refrain from any act; or

iii. destabilizing the religious, political, Constitutional, economic or social institutions of a country, or an international organization.

30Article 1 of the OAU Convention on the Prevention and Combating of Terrorism, 1999
31Section 2 (1) of the Prevention of Terrorism Act, 2012
### 1.4 Terrorist Organizations

Some of the terrorist groups in the world are discussed in the table below:

<table>
<thead>
<tr>
<th>NAME OF GROUP</th>
<th>REGION</th>
<th>IDEOLOGY</th>
</tr>
</thead>
</table>
| AL-NUSRA FRONT, OR JABHAT AL-NUSRA                 | SYRIA                   | • Made up of Syrian jihadists.  
• Its goals are to  
  i. Overthrow President Bashar al-Assad’s government and in Syria  
  ii. To create and Islamic State under Sharia law. |
| AL-QAEDA                                           | GLOBAL PRESENCE         | • Al-Qaeda is an international terrorist network founded by Osama bin Laden in 1988  
• Was formed as part of Afghan resistance to defeat the Soviet Union.  
• Al-Qaeda’s current goal is to establish a pan-Islamic Caliphate throughout the world by working with allied Islamic extremist groups to overthrow regimes it deems “non-Islamic” and expelling Westerners and non-Muslims from Muslim countries. |
| Al-Shabaab                                         | SOMALIA                 | • The Group wages jihad against “enemies of Islam”.  
| BOKO HARAM                                         | NIGERIA                 | • Seeks to overthrow the Nigerian Government and replace it with a regime based on Islamic law.  
• It opposes Western education and influence.  
• It opposes the concentration of the wealth of the Country among members of small political elite, mainly the Christians from the South of Nigeria. |
| ISLAMIC STATE-ISLAMIC STATE OF IRAQ AND THE LEVANT(ISIL) | GLOBAL PRESENCE         | • Follows an extremist interpretation of Islam.  
• Promotes religious violence  
• It has sought to establish itself as Caliphate, an Islamic State led by a group of religious authorities under a supreme leader. |
1.5 Effects of Terrorism

The effects of terrorism have been far reaching and are often felt miles away from where a major terrorist activity has occurred. The feelings it elicits are always universal, shocking, and uncertain. The question that lingers on many minds is how the terrorist groups planned a major attack undetected. Terrorism influences not only people who have become the unwilling participants of the action but also their families, friends and even strangers.

Some of the effects of terrorism include:

- **Death**: many of the terror activities lead to death of many people. Many of the past terrorism have resulted in loss of lives of thousands of people.

- **Mental torture on survivors and families**: many who survive from terrorism are traumatized and depressed. It has an influence on even those who are not directly connected to the act.

- **Terrorism impairs the economy**: investors will shy away from terror hit States. Many governments will also set aside large amounts of money to combat terrorism in their yearly budgets; money that could have been used on our other project.

- **Abuse of human rights**: counter-terrorism measures have to be crafted by Countries. Some of the measures meant to curb terrorism have criticized for not respecting the human rights.

- **Terrorism also destabilizes governments**: Some terrorist groups have managed to conduct coups on democratically elected governments thus destabilizing them.

- **Refugees**: citizens always have to flee their Countries to neighbouring countries as a result of terrorism.
2.1 Human Rights and Counter Terrorism

The preamble of the Universal Declaration of Human Rights (UDHR) recognizes that the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. UDHR recognizes that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Kenya has ratified various international and regional instruments and resolved to take measures to uphold the rule of law without violation of human rights as it combats terrorism. As the government fulfills its obligations to protect the life and security of its citizens, it has a duty to prosecute those who are responsible for terrorist acts as well as to protect individuals within its jurisdiction.
2.2 Sequence of Terrorists Attacks in Kenya

United States of America Embassy bombing

On 7th August 1998, suicide bombers in trucks laden with explosives parked outside the USA embassy in Nairobi. 213 people were killed and an estimated 4,000 in Nairobi were wounded. The explosion damaged the embassy building and collapsed the neighbouring Ufundi Building where most victims were killed, mainly students and staff of a secretarial college housed there.

Kikambala Hotel Bombing

On 28th November 2002, there was an attack on the Kikambala Hotel when it was receiving Israeli tourists. The bomb blast killed 13 and 80 injured people.

Al Shabaab Attacks

According to US Embassy between 2011/2012, there were at least 17 attacks involving grenades or explosive devices in Kenya. At least 48 people died in these attacks, and around 200 people were injured. Nine of these attacks occurred in North Eastern Province, including locations in Dadaab, Wajir, and Garissa. Four attacks occurred in Nairobi, and four in Mombasa. Targets included police stations and police vehicles, nightclubs and bars, churches, a religious gathering, a downtown building of small shops, and a bus station. This included two simultaneous assaults on churches in Garissa on 1st July 2012. In this attack, 17 people were killed and about 50 people were injured.
Westgate Mall Shooting

On 21st September 2013, Al Shabaab associated gunmen targeted and shot customers at Nairobi’s Westgate Shopping Mall. At least 67 people were killed in the attack. The militants said they wanted Kenya’s military to pull out of Somalia.

Mpeketoni Attacks

Between 15th June and 17th June 2014, more than 60 people were killed in attacks in and near Mpeketoni, Lamu County. On 15th June 2014, about 50 masked gunmen hijacked a van and raided a police station in the predominantly Christian town of Mpeketoni, as well as burning hotels, restaurants, and government offices. At least 53 people were reportedly killed during the attack, and eight others were unaccounted for as of 18th June. On 17th June 2014, assailants set fire to houses in the villages of Majembeni and Poromoko, near Mpeketoni. At least fifteen people were killed. According to an eyewitness, the attackers also went door-to-door, pulling people out of their homes and demanding they prove they were Muslim.

In April 2014, the government carried out a security operation dubbed ‘Usalama Watch’ which ostensibly aimed at flushing out foreigners linked to terrorism in targeted locations mainly in Nairobi and Mombasa. The operation was preceded by two major terrorist attacks in Mombasa (23rd March) and Nairobi (31st March) which killed 11 people and left scores of others injured. The attack in Mombasa targeted worshipers in a church in Likoni while the one in Nairobi targeted customers in several food cafes in Eastleigh Estate.32

Garissa University Attack

On 2nd April 2015, gunmen stormed the Garissa University College killing almost 148 and wounding 79 people. The attackers claimed to be from the Al Shabaab group, and indicated that they were retaliating over non-Muslims occupying Muslim territory.

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*32*The Error of fighting terror with terror. Preliminary Report of KNCHR Investigations on Human Rights Abuses in the Ongoing Crackdown against Terrorism; September 2015

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2.3 Focusing on specific human rights

Right to life

Measures should be taken to preserve the life as everyone is entitled to right to life as provided in the UDHR article 3. The African Charter article 4 states that human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person and no one may be arbitrarily deprived of this right. Both international and regional human rights law recognize the right and duty of States to protect those individuals subject to their jurisdiction. Kenya has taken appropriate steps to protect and promote this right and it is enshrined in the Constitution in Article 26.

In practice, however, some of the measures that States have adopted to protect individuals from acts of terrorism have themselves posed grave challenges to the right to life. They include “deliberate” or “targeted killings” to eliminate specific individuals as an alternative to arresting them and bringing them to justice. The Human Rights Committee has stated that targeted killings should not be used as a deterrent or punishment and that the utmost consideration should be given to the principle of proportionality.

Non-discrimination

Article 2 of UDHR sets out the basic principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms, forbids “distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The fight against terrorism should respect all human beings rights without discrimination.

Right to liberty and security of person

UDHR article 3 provides for the right to liberty and security of person. The International Covenant on Civil and Political Rights, 1966 also recognizes a right to security of person. Article 9 states that “Everyone has the right to liberty and security of person," and the section prohibits “arbitrary arrest or detention.” The section continues, “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Article 6 of African Charter - No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained. All States have an obligation to avoid people being unlawfully or arbitrarily detained. “Arbitrary detention is a profound threat to liberty and to the enjoyment of all other rights,” said Gerald Neuman, Human Rights Committee member.

Article 29 of the Constitution of Kenya states that every person has the right to freedom and security of the person, which includes the right not to be—

(a) deprived of freedom arbitrarily or without just

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33 Article 2 of The Universal Declaration of Human Rights
cause; (b) detained without trial, except during a state of emergency, in which case the detention is subject to Article 58; (c) subjected to any form of violence from either public or private sources; (d) subjected to torture in any manner, whether physical or psychological; (e) subjected to corporal punishment; or (f) treated or punished in a cruel, inhuman or degrading manner.

Several cases have been documented by KNCHR on the violation of this right. Several persons have been arbitrary arrested and detained for being suspected of engaging in terrorist activities. One of such cases is that of Abeid Swaleh (19 years). The case was reported to KNCHR by his brother. He stated that on 4th July 2015 at around 5:45 pm his neighbor came to their home and informed them that his brother, Abeid Swaleh, had been arrested at Guraya by persons believed to be police officers. The petitioner immediately called his brother, Abeid, but there was no response from his phone. The petitioner subsequently rushed to the alleged scene of arrest where eye witnesses confirmed that Abeid had been arrested by gun-wielding men who the suspected to be police officers.

Abeid was reportedly on his way to sell fish together with his friend, one alias ‘Biggy’ when they were arrested handcuffed and whisked away in a white Land Cruiser, which is commonly used by the Anti-Terror Police Unit. The Petitioner reported that efforts to trace his brother in all police stations within Mombasa County were unsuccessful. A report was thereafter lodged at Makupa police station vide OB NO. 65/4/7/2015. Later that day, the Petitioner mentioned that Biggy, who had been arrested together with his brother, came back home and alleged to have been abandoned somewhere in a thicket in Nyali. Abeid is still missing.

**Prohibition against torture**

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute under international law. UDHR under article 5 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. This prohibition is non-derogable even in states of emergency threatening the life of the nation under international and regional human rights treaties. The use of torture and other cruel, inhuman or degrading treatment to elicit information from terrorist suspects is absolutely prohibited, as is the use in legal proceedings of evidence obtained by torture, whether at home or abroad, and of “secret evidence” put forward by prosecuting and other authorities in judicial proceedings, in violation of the principle of non-admissibility of evidence extracted by torture, contained inter alia in article 15 of the Convention against Torture.

The entry into force of the Optional Protocol to the Convention against Torture on 22 June 2006 is a significant development towards ensuring the practical protection of detainees against torture and other cruel, inhuman or degrading treatment. There are several case studies in Kenya that attest to violation of this right in Kenya. They include, the case of Affey Ali Abdullahi(48 years) was on 4th May 2015.

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34 Kenya National Commission on Human Rights report “The error of fighting Terror with Terror” September 2015, Page 6-32
35 Article 15 of the Convention against Torture
at around 9:00 pm seated outside his house in Shalatey village, Wajir County when he saw men in military fatigue knocking at the house of Maalim Ismail, his neighbor. He was arrested and detained for days in an unknown place and tortured so as to confess that he is a member of the Al-shabaab terror group. He suffered a lot as a result of the torture but was later released and taken back to Wajir. He was warned against telling anyone of what he had gone through.  

Right to fair trial

According to Article 10 in the UDHR everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11 of the same states - Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

In July 2007, the Human Rights Committee adopted general comment No. 32, revising its general comment on article 14 of the International Covenant on Civil and Political Rights (ICCPR) on the right to a fair trial and equality before the courts and tribunals. The revised general comment notes that the right to a fair trial and to equality before the courts and tribunals is a key element of human rights protection and serves to safeguard the rule of law by procedural means. Article 14 of the Covenant aims at ensuring the proper administration of justice and to this end guarantees a series of specific rights, including that all persons should be equal before the courts and tribunals, that in criminal or civil cases everyone has a right to a fair and public hearing by a competent, independent and impartial tribunal, that everyone charged with a criminal offence should have the right to be presumed innocent until proved guilty according to law, and that everyone convicted of a crime should have the right to have his or her conviction and sentence reviewed by a higher tribunal according to law.

According to the Constitution of Kenya Article 51- A person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or a fundamental freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned A person who is detained or held in custody is entitled to petition for an order of habeas corpus.

Freedom of expression

Article 19 of the ICCPR provides that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or
in print, in the form of art, or through any other media of his choice. Proscribing incitement to terrorism is integral to the protection of national security and public order, which are both set out as legitimate grounds for limiting freedom of expression in article 19(3). It is also consistent with its article 20(2), which require States to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Freedom of movement

Article 12 of ICCPR - Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. (2) Everyone shall be free to leave any country, including his own.

However, these above-mentioned rights are subject to restrictions stipulated in article 12(3). People should have the freedom to move within their country without fear of terrorist attacks and the State has an obligation to ensure that its citizens feel safe.

Freedom of association

Art 22 of ICCPR stipulates that everyone shall have the right to freedom of association with others. Although necessary in a democratic society, these associations should not go against the interests of national security or public safety, public order or the protection of the rights and freedoms of others. It is important for the State to take measures to assess the activities of the association thus ensure that the association is not a terrorist group or undertaking terrorist acts.

Realization of economic social and cultural rights

Article 22 of the universal declaration of human rights state that everyone has the right to social security, is entitled to realization through national effort and in international cooperation in accordance with the resources of each state in order to attain economic, social, cultural rights that are indispensable for human dignity and personal development. Article 6(2) of the international covenant on economic, social and cultural rights (ICESCR), states that steps should be taken by state parties to achieve the full realization of this right which include technical, vocational guidance, training programmes, policies and techniques to achieve steady economic, social, cultural development, full productive employment under conditions safeguarding fundamental political and economic freedoms of the individual.

Article 1(2) of the international covenant on civil and political rights states that all peoples may for their own and freely dispose of their national wealth and resources without prejudice to any obligations arising out of international economic cooperation based upon the principle benefit and international law.

Therefore, the fight against international terrorism should not curtail the realization of economic, social, cultural rights of people's but foster them while countering terrorism. However, according to the report of the UN commissioner
for Human Rights, 2015 on the effects of countering terrorism and human rights paints a grim picture in the year under review, for instance the loss of livelihoods, destruction of property, negative economic growth, poverty, inequality and underdevelopment in regions that are prone to terror activities in the world⁹⁰.

2.4 Assessment of the nature and extent of counter-terrorism and human rights protection in Kenya

According to the Kenya National Commission on Human Rights report “The error of fighting Terror with Terror” September 2015, Kenya security agencies have continued to conduct abusive operations against individuals and groups suspected to be associated with terror attacks in various parts of the country.

The report documents over one hundred and twenty (120) cases of egregious human rights violations that include twenty five (25) extrajudicial killings and eighty one (81) enforced disappearance, these violations are widespread, systematic well-coordinated and include but not limited to arbitrary arrests, extortion, illegal detention, torture, killings and disappearances.

2.4.1 Disappearances

Cases of individuals disappearing are frequently being reported to the relevant authorities by their families but nothing much seems to be done about the recurring issue. A 2016 report by the Human Rights Watch reported that Kenyan security forces have forcibly disappeared at least 34 people in the past two years during abusive counterterrorism operations in Nairobi and in north-eastern. The report further stated that those arbitrarily arrested during the security sweeps included young ethnic Somali Kenyans, Imams, and Islamic school teachers. They were detained, at least initially, in military bases and makeshift military camps in forests in the northeast and other parts of the country. In some cases, police officers arrested people, and then handed them over to the military.

Families have searched far and wide for news about their loved ones, including in detention facilities, asked political and religious leaders for their help, and, in some cases, turned to social media to try to locate the missing relatives. Some families have filed habeas corpus petitions, seeking a court order to compel the government to provide information.

The Executive Director at Human Rights Watch stated “There is no doubt that Kenya faces serious security challenges, but the authorities have an obligation to respond effectively and respect due process in any law enforcement operation. The disappearances and uninvestigated deaths in the northeast are illegal and risk alienating local communities, whose cooperation is needed.” Kenya has signed the International Convention
for the Protection of All Persons from Enforced Disappearance which acknowledges the ‘extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity’. Kenyan authorities should end the abuses in counterterrorism operations and promptly investigate the enforced disappearances and deaths of detainees in Kenya.

2.4.2 Extra Judicial Killings

The Constitution provides in “Art 26 that (1) every person has the right to life... (3) A person shall not be deprived of life intentionally, except to the extent authorized by this Constitution or other written law”.

The KNCHR report documents twenty five cases of extrajudicial killings. There have been numerous reports on the murders of people who are suspected to be Al-Shabaab sympathizers. These killings have continued unabated and Kenyan government has been accused of involvement in the murders. The high profile murders included that of Sheikh Aboud Rogo Mohammed, a radical Muslim cleric from Mombasa. He openly preached and supported the holy war fought by the Somali Islamic militant group, the Al-Shabaab. Another example would be Abubaker Shariff Ahmed "Makaburi" a Muslim clergy who was accused of recruiting Muslim youth for terrorism activities through the mosque. After public outcry over the killing of Muslim cleric Ibrahim “Rogo” Omar, the government set up a task force to investigate his murder. The director of public prosecution promised in 2013 that he will institute an inquest, but has not done so yet.

2.4.3 Alleged Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The KNCHR report, 2015 gives multiple narratives of suspects being rounded up and detained for periods ranging from a few hours to many days in extremely overcrowded and inhumane and degrading conditions. Many have been tortured while in detention sustaining serious physical injuries and psychological harm as a result. The torture methods include beatings, water boarding, electric shocks, genital mutilation, exposure to extreme cold or heat, hanging on trees, mock executions, and exposure to stinging by ants in the wild, denial of sleep and food. The report describes a narrative by a man from Wajir:

“He was taken to Wajir Police station where he spent two nights. He was then taken from the police station on Wednesday, 6th May 2015 at around 9:00pm. He was blindfolded and taken into what seemed to be a pick-up vehicle. He says he heard about four people in the car speaking in Swahili. He was made to lie face down on the floor of the car as their legs stepped on him. He was then transferred to an aircraft, ordered to lie face down and taken away. After about an hour, he was taken somewhere into a tiny room while still blindfolded and ordered to sit down.

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41Is the Rise of Terrorism Activities Leading to the Extrajudicial Killings in Kenya? Jack Gordon Osamba; October 2015
He was woken up the following day and served with bread and tea. He was told that he was accused of having links with Al-shabab which he denied. He was then subjected to a series of torture sessions for days in a bid to confess that he had links to Al-Shabab. The torture included severe whipping, kicking with boots, electric shocks, mock execution and denial of food. He says that on 9th May 2015, he became mentally unstable due to the severe beatings. The beatings subsided due to his sickly state. The officers in the place offered him treatment for the severe wounds he had sustained during the torture before returning him to Wajir Police Station on 18th May 2015 where he was released and warned against disclosing what he had gone through.

2.4.4 Restriction of movement for Somali nationals in Kenya

Somali nationals living in Kenya have been targeted before and blamed for the terror activities that have been witnessed in the Country. A raft of measures which undermine their human rights have been deployed by the government. Such of those measures include moving thousands of refugees and asylum-seekers from Somalia who are in the urban areas like Nairobi to refugee camps. This restriction on the free movement violates a number of basic human rights in camps that are already overcrowded and insecure. The over-crowding in the camps comes with it a number of violation of human rights, i.e. the refugees lack basic needs such as shelter, water and food. The blanket condemnation of a whole group is hugely discriminatory and an unjust way of countering terrorism.43

2.4.5 Violation of Freedom of Association in addition this is a rule of law issue as the government seeks to act extra juridically

The Kenyan government has often used administrative measures to restrict the operating space for civil society. On 28 October 2015, the Kenyan NGO Registration Board passed a decision to de-register 957 Kenyan organisations, including the Kenya Human Rights Commission (KHRC), if they failed to present audited accounts to the Board within 14 days. The KHRC was accused of failing to account for approximately 1.2 billion KES (approx. 10 million Euros), managing four illegal accounts, and transmitting inaccurate financial reports. On 30 October 2015, the Cabinet Secretary for Devolution and National Planning revoked the decision to de-register the 957 organisations, and the Kenyan Human Rights Commission launched a lawsuit against the NGO board.

High Court Ruling in Mombasa

On 12 November 2015, the High Court sitting in Mombasa revoked the freezing of the bank accounts for MUHURI and HAKI Africa. In his ruling, Justice Emukule stated that the Inspector General of Police (IGP), Joseph Boinnet’s actions to freeze the organisations’ bank accounts were unconstitutional and therefore invalid.

MUHURI and HAKI Africa’s bank accounts were frozen in April 2015 after being listed as specified entities under the Prevention of Terrorism Act (2012). The Judge ruled that only the Cabinet Secretary has the powers to name “specified entities” if satisfied with the IGP’s recommendations. Justice Emukule further stated that it was unclear when the 24 hours’ notice given to the two organisations to respond to the Gazette Notice commenced and the actions of the IGP should have been specific.45

43KNCHR Report, 2015
45“Kenya: Court’s Decision to Unfreeze The Banks Accounts For Haki Africa And Muslims For Human Rights”, OMCT – World Organisation Against Torture, 13 November 2015
2.5 Effect of Counter-terrorism measures on Economic, Social and Cultural Rights in Kenya

The Office of the United Nations High Commissioner for Human Rights (OHCHR) describes Economic, Social and Cultural rights to include the rights to adequate food, adequate housing, education, health, social security, the right to take part in cultural life, to water and sanitation and to work. These rights are protected under various international, Regional treaties and conventions as well National laws; the main one being the International Covenant on Economic, Social and Cultural Rights that ensures protection of these rights at an International level. The Universal Declaration on Human Rights also recognizes a number of these rights.

Terrorism has a direct effect on the enjoyment of human rights; the Economic, social and cultural rights are greatly affected by terrorism. Human rights do not hamper the fight against terrorism and extremism but underline its legitimacy. In many instances, national strategies and legislation on countering terrorism have affected the enjoyment of these rights. Pillar IV of the 2006 UN Global Counter-Terrorism strategy provides that counter-terrorism measures should respect human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

Kenya is a party to the International Covenant on Economic, Social and Cultural Rights and thus has a legal obligation to ensure the progressive realization of the Socio-economic rights. Counter-terrorism measures should ensure compliance with these rights. The Counter-terrorism measures should not violate for instance the right to housing, adequate food, education, health among others. The aftermath of terror has been greatly felt in Kenya. The Kenyan government has the sole responsibility of protecting its citizens and safeguarding its territory. The same government is however, expected to come up with counter-terrorism measures that respect human rights and meet the standards provided for by the many International and Regional Instruments on Human Rights and the National laws and policies on human rights.

Counter-terrorism measures in Kenya have had shortcomings on the socio-economic rights as well access to justice to victims of counter terrorism operations. Some examples are discussed below:

**Usalama Watch:** the Kenyan government carried out an operation known as *Usalama Watch* between April-July 2014 after several terror related crimes in Nairobi’s Eastleigh and the Kenyan Coast. This operation violated several rights such as the right to an adequate standard of living. The Operation was characterized by arbitrary arrests and detentions in inhumane conditions that included police abuse, extortion, harassment and ill- treatment of thousands of individuals. It resulted to unlawful expulsion of the Somali community. This violated the National laws in particular the Constitution and other International laws that Kenya has ratified. Hundreds of these persons were detained in the Kasarani Sports Stadium in Nairobi.

The conditions in which these persons were subjected to greatly violated their socio-economic rights such as the right to food, clean water and sanitation, housing, health.

**The Human Rights Watch Report 2015**

reported that on 4th and 8th of April 2014, hundreds of detainees were packed into cells designed to accommodate 20 people. They cells were filthy with urine and excretion. These were violations of basic human rights. The deplorable conditions violated the right to adequate standard of living and human treatment for all. Being detained beyond the 24 hour period prescribed by the Kenyan Constitution violated several rights as this meant that the detainees were unlawfully denied the right to clean water and sanitation, the right to work among many other socio-economic rights.

Socio-Economic rights of minorities: many counter-terrorism activities in Kenya have targeted the Somali Community in Kenya. The Usalama Watch is a good example where Somalis were forcefully expelled/deported from the Country. These violations or rather measures taken by the Kenyan government to counter-terrorism have serious impact on the Economic, Social and Cultural rights of minorities.

Relocation of Somalis to Refugee Camps: several Somalis have been relocated to Refugee Camps even without proper Refugee Status Determination process established. The camps are overcrowded and insecure. In several instances, children have been separated from their parents during such relocations. These greatly impact on rights such as the right to housing as the camps do not provide adequate housing except for tents provided for by United Nations High Commissioner for Refugees (UNHCR).
3.1 Combating International Terrorism

There have been global efforts in preventing and combating terrorism. National, Regional and International Community have come up with various efforts including coming up with legislation and policy to prevent and combat terrorism. While States have a right and duty to protect her citizens and other individuals under their jurisdiction from acts of terrorism and to bring to justice persons who commit terrorism, the human rights of the suspects must also be addressed. The Counter-terrorism strategies or rather efforts must adhere to the protection of human rights.

Some of the Counter-terrorism legislation is discussed in the next pages:
3.1.1 National

Kenya has also had its fair share of terrorist attacks and as such come up with counter-terrorism legislation and policy. They include:

1. **Constitution of Kenya, 2010**

The State has a duty to protect her citizens. Article 238 (1) defines national security as the protection against internal and external threats to Kenya’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity and other national interest. This mandate is carried out by the national security organs. Terrorism is a threat to national security and Kenya has a duty to counter it. The Constitution places this duty on the national security organs. This duty must be undertaken while taking into considerations the law on human rights.

Chapter Four of the Constitution of Kenya, 2010 provides for the Bill of Rights. It has been hailed as being very progressive. The Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies. It further provides that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings. These Articles of the Kenyan Constitution reaffirm the need for respect of human rights and protection of the same even to those who are suspects of terrorism. The Bill of rights applies to all law and binds all State organs and all persons; suspects of terrorism must also be accorded dignity and treated with respect as far as their rights as being human beings are concerned.

Chapter Fourteen of the Constitution on the other hand provides for National security. Article 238 on principles of national security provides that the national security of Kenya shall be promoted and guaranteed in accordance with the following principles:

i. National security is subject to the authority of the Constitution and Parliament;

ii. National security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental principles.

The provisions in the Constitution indeed point out the need for respect and protection of human rights when enforcing security. All legislation and policy to counter terrorism must adhere to the Constitution as far as respect and protection of human rights are concerned.

2. **Prevention of Terrorism Act, 2012**

An Act of Parliament enacted in 2012 to provide measures for the detection and prevention of terrorist activities. The Act was necessitated by sporadic attacks by the Al-Shabaab terror group.

The Act came into force after the Constitution of Kenya, 2010 which ushered in a new Chapter

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47 Article 239 (1): national security organs include: the Kenya Defence Forces, the National Intelligence Service and the National Police Service.
48 Article 19 (1) of the Constitution of Kenya, 2010
49 Article 19 (2) of the Constitution of Kenya, 2010
50 Article 20 (1) of the Constitution of Kenya, 2010
51 Article238 (2) of the Constitution of Kenya, 2010
on Bill of Rights. It is hailed for addressing some of the human rights issues though not adequately. The Act is divided into seven parts which includes:

i. Part I- Preliminary provisions that include interpretation of terms in the Act.

ii. Part II- Specified Entities, revocation of a declaration as a specified entity, the procedure and the Appeal process.

iii. Part III – Offences that constitute a terrorist act and punishment.

iv. Part IV- Investigation of offences. It outlines the process of investigation and includes the power to arrest, to remand and limitation of certain rights.

v. Part V- Trial of offences. This part deals with the jurisdiction of the Kenyan courts to deal with terrorist acts committed within and without Kenya.

vi. Part VI- Miscellaneous provisions that include among other provisions the duty to disclose information relating to any terrorist act, powers to refuse refugee application, provision of information relating to persons leaving or entering the country.

The Prevention of Terrorism Act, 2012 also has a subsidiary legislation; the Prevention of Terrorism (Implementation of the United Nations Security Council Resolution on Suppression of Terrorism) Regulations, 2013. The regulations have been made by the Cabinet Secretary responsible for internal security pursuant to section 50 of the Prevention of Terrorism Act, 2012. The measures that Article 41 of the Charter of the United Nations provides for are measures not involving the use of armed force to give effect to its decisions.

The Act has addressed civil liberty concerns as it has balanced national security and civil liberties where certain safeguards have been put in place to minimize terrorism and at the same time protecting the people of Kenya. It still has shortcomings but it is a better legislation compared to other laws that dealt with terrorism before the promulgation of the Constitution of Kenya, 2010. Section 32 of the Prevention of Terrorism Act, 2012 provides for the right to be released.

Any person suspected of terrorism must be brought before a court of law within 24 hours. Further remand may only be ordered by the Court as provided for under section 33 of the Act. The Court must have the following reasons so as to remand a suspect:

i. There are compelling reasons for believing that the suspect shall not appear for trial, interfere with witnesses or the conduct of investigations, or commit an offence while on release;

ii. It is necessary to keep the suspect in custody for the protection of the suspect or where the suspect is a minor, for the welfare of the suspect;

Section 50 (2): where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed to give effect to any of its decisions and calls upon member States to apply those measures, the Cabinet Secretary may by regulations make such provisions as may be necessary or expedient to enable those measures to be applied.
iii. The suspect is serving a custodial sentence; or

iv. The suspect, having been arrested in relation to the commission of an offence under the Act, has breached a condition for his release.

3. **Security Laws (Amendment) Act, 2014 No. 19 of 2014:**

An Act of Parliament to amend the various laws relating to security. The Act was highly criticized by political parties, civil societies among others for violation of the Constitution of Kenya, 2010 and particularly the Bill of Rights. Several sections of the Act were challenged in Court in Petition Nos. 628 and 630 in **Coalition for Reform and Democracy (CORD) & another v Republic of Kenya & Others [2015] eKLR.** The Act amended laws such as the Penal Code, the Criminal Procedure Code, and the Prevention of Terrorism Act among other laws.

**High Court ruling in Nairobi**

The following sections of the Act were declared unconstitutional by the Court for violation of human rights:

a) Section 12 of the Security Laws (Amendment) Act and Section 66A of the Penal Code is hereby declared unconstitutional for violating the freedom of expression and the media guaranteed under Articles 33 and 34 of the Constitution.

b) Section 64 of Security Laws (Amendment) Act which introduced Sections 30A and 30F to the Prevention of Terrorism Act is hereby declared unconstitutional for violating the freedom of expression and the media guaranteed under Articles 33 and 34 of the Constitution.

c) Section 16 of the Security Laws (Amendment) Act and Section 42A of Criminal Procedure Code are hereby declared unconstitutional as they violate the right of an accused person to be informed in advance of the evidence the prosecution intends to rely on as provided under Article 50(2) (j) of the Constitution.

d) Section 20 of the Security Laws (Amendment) Act which amended Section 364A of the Criminal Procedure Code is hereby declared unconstitutional for being in conflict with the right to be released on bond or bail on reasonable conditions as provided for under Article 49(1) (h) of the Constitution.

e) Section 26 of the Security Laws (Amendment) Act which introduced Section 26A into the Evidence Act is hereby declared unconstitutional for violating the right of an accused person to remain silent during proceedings as guaranteed under Article 50(2) (i) of the Constitution.
The fight on terrorism has been enhanced regionally and internationally. The World at large has had to come up with counter-terrorism measures that includes coming up with regional conventions. Regional bodies such as the African Union, the European Union, and Asia have various conventions to counter terrorism. Some of the Regional Conventions on terrorism include:

1. **OAU Convention on the Prevention and Combating Terrorism, 1999**

The Convention was adopted at Algiers on 14 July 1999 by Member States of the Organization of African Union having deep concerns over the scope and seriousness of the phenomenon of terrorism and the dangers it poses to the stability and security of States. The Convention was determined to eliminate terrorism in all forms and manifestations.

Article 1 (3) of the Convention elaborately describes what a terrorist act is. Articles of the Convention that address rights of terror suspects include:

   a. Article 4 (2) of the Convention- State Parties shall adopt any legitimate measures aimed at preventing and combating terrorist acts in accordance with the provisions of the Convention and their respective national legislation, in particular, they shall:

       Ascertain, when granting asylum, that the asylum seeker is not involved in any terrorist act;

   b. Article 22 of the Convention provides that nothing in the Convention shall be interpreted as derogating from the general principles of international law, in particular the principles of international humanitarian law, as well as the African Charter on Human and People’s Rights.

4. **2005 Council of Europe Convention on the Prevention of Terrorism**

The preamble of the Convention recalls the need to strengthen the fight against terrorism and reaffirming that all measures taken to prevent or suppress terrorist offences have to respect the rule of law and democratic values, human rights and fundamental freedoms as well as other provisions of international law, including where applicable, international humanitarian law.

Article 2 of the Convention on its purpose provides that it is to enhance the efforts of parties in preventing terrorism and its negative effects on the full enjoyment of human rights, in particular the right to life, both by measures to be taken at national level and through international co-operation, with due regard to the existing applicable multilateral or bilateral treaties or agreements between the Parties.
Article 12 (1) provides for the Conditions and safeguards for the protection of human rights. It provides that each Party shall ensure that the establishment, implementation and application of the criminalization of terrorist acts as provided for in the Convention are carried out while respecting human rights obligations, in particular the right to freedom expression, freedom of association and freedom of religion.

The Convention provides that where applicable to the Party, the following International Instruments should be taken into considering when implementing the Convention:

a) The Convention for the Protection of Human Rights and Fundamental Freedoms;

b) The International Covenant on Civil and Political Rights

c) Other obligations under International Law.

Article 12 (2) on the other hand provides that the implementation and application of the criminalization of the terrorist acts under the Convention should be subject to the principle of proportionality, with respect to the legitimate aims pursued and to their necessity in a democratic society, and should exclude any form of arbitrariness or discriminatory or racist treatment.

5. **The Arab Convention on the Suppression of Terrorism**

The preamble provides for the commitment of member States to the highest moral and religious principles that rejects all forms of violence and terrorism and advocates the protection of human rights, with which precepts the principles of international law.

Section III of the Convention on judicial cooperation in Article 18 where a contracting State requests another State where a suspect is being held to prosecute him or her, provides that the transfer of such competence for prosecution shall not prejudice the rights of the victim of the offence, who reserves the right to approach the courts of the requesting State or the prosecuting State with a view to claiming his civil-law rights as a result of the offence.

6. **ASEAN Convention on Counter Terrorism**

The Preamble recalls the Charter of the United Nations and relevant principles of international law, the relevant international conventions and protocols relating to counter terrorism and relevant resolutions of the United Nations on measures aimed at countering international terrorism, and reaffirming the commitment to protect human rights, fair treatment, the rule of law, and due process. Article VIII of the Convention on fair treatment provides that any person taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to the Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the laws of the Party in the territory of which that person is present and applicable provisions of international law, including international human rights law.\(^{53}\)

\(^{53}\) Article VIII (1)
7. **Inter-American Convention Against Terrorism**

The Preamble considers that terrorism is a serious criminal phenomenon, which is of deep concern to all member states; attacks democracy; impedes the enjoyment of human rights and fundamental freedoms; threatens the security of states, destabilizing and undermining the foundations of all society; and seriously impacts the economic and social development of the states in the region.

It also reaffirms that the fight against terrorism must be undertaken with full respects for national and international law, human rights, and democratic institutions, in order to preserve the rule of law, liberties and democratic values in the Hemisphere, which are essential components of a successful fight against terrorism. Article 15 of the Convention is on human rights. It provides that the measures carried out by the State parties under the Convention shall take place with full respect for the rule of law, human rights and fundamental freedoms. It also provides that the nothing in the Convention shall be interpreted as affecting other rights and obligations of states and individuals under international law, in particular the Charter of the United Nations, the Charter of the Organization of American States, international humanitarian law, international human rights law, and international refugee law.

It further provides that any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to the Convention shall be guaranteed fair treatment, including the enjoyment of all rights and guarantees in conformity with the law of the state in the territory, of which that person is present and applicable provisions of international law.

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44Article 15 (1) of the Inter-American Convention against Terrorism
Countering the scourge of terrorism is of interest to all Nations and the issue has been on the international agenda for decades. The League of Nations in 1934 initiated the process of coming up with a Convention to prevent and punish terrorism. Since 1963, the international community has elaborated 19 international legal instruments to prevent terrorist acts. Those instruments were developed under the auspices of the United Nations and the International Atomic Energy Agency (IAEA), and are open to participation by all Member States. Some of the legal instruments include:

1. **International convention for the suppression of the financing of terrorism**

   The objective of the International Convention for the Suppression of the Financing of Terrorism is to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators. Article 17 of the Convention provides that any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to the Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

2. **Convention for the suppression on unlawful seizure of aircraft, 1970**

   Makes it an offence for any person on board an aircraft in flight to “unlawfully, by force or threat thereof, or any other form of intimidation, [to] seize or exercise control of that aircraft” or to attempt to do so; Requires parties to the convention to make hijackings punishable by “severe penalties “Requires parties that have custody of offenders to either extradite the offender or submit the case for prosecution; and Requires parties to assist each other in connection with criminal proceedings brought under the Convention.

3. **Convention for the suppression of unlawful acts against the safety of civil aviation, 1971**

   Makes it an offence for any person unlawfully and intentionally to perform an act of violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of the aircraft; to place an explosive device on an aircraft; to attempt such acts; or to be an accomplice of a person who performs or attempts to perform such acts; Requires parties to the Convention to make offences punishable by “severe penalties”; and Requires parties that have custody of offenders to either extradite the offender or submit the case for prosecution.

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Defines an “internationally protected person” as a Head of State, Minister for Foreign Affairs, representative or official of a State or international organization who is entitled to special protection in a foreign State, and his/her family; and

Requires parties to criminalize and make punishable “by appropriate penalties which take into account their grave nature” the intentional murder, kidnapping or other attack upon the person or liberty of an internationally protected person, a violent attack upon the official premises, the private accommodations, or the means of transport of such person; a threat or attempt to commit such an attack; and an act “constituting participation as an accomplice”.

5. **International convention against the taking of hostages, 1979**

Continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostage within the meaning of this Convention”.

6. **Convention on the physical protection of nuclear material, 1980**

Criminalizes the unlawful possession, use, transfer or theft of nuclear material and threats to use nuclear material to cause death, serious injury or substantial property damage.


Establishes a legal regime applicable to acts against international maritime navigation that is similar to the regimes established for international aviation; and Makes it an offence for a person unlawfully and intentionally to seize or exercise control over a ship by force, threat, or intimidation; to perform an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of the ship; to place a destructive device or substance aboard a ship; and other acts against the safety of ships.

8. **Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the convention for the suppression of unlawful acts against the safety of civil aviation, 1988**

Extends the provisions of the Montreal Convention to encompass terrorist acts at airports serving international civil aviation.
9. **Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf, 1988**

Establishes a legal regime applicable to acts against fixed platforms on the continental shelf that is similar to the regimes established against international aviation.

10. **Convention on the marking of plastic explosives for the purpose of detection, 1991**

Designed to control and limit the use of unmarked and undetectable plastic explosives. Parties are obligated in their respective territories to ensure effective control over “unmarked” plastic explosive, i.e., those that do not contain one of the detection agents described in the Technical Annex to the treaty. Each party must, inter alia, take necessary and effective measures to prohibit and prevent the manufacture of unmarked plastic explosives; prevent the movement of unmarked plastic explosives into or out of its territory; exercise strict and effective control over possession and transfer of unmarked explosives made or imported prior to the entry into force of the Convention; ensure that all stocks of unmarked explosives not held by the military or police are destroyed, consumed, marked, or rendered permanently ineffective within three years; take necessary measures to ensure that unmarked plastic explosives held by the military or police are destroyed, consumed, marked or rendered permanently ineffective within fifteen years; and, ensure the destruction, as soon as possible, of any unmarked explosives manufactured after the date of entry into force of the Convention for that State.

11. **International Convention for the Suppression of Terrorist Bombings, 1997**

Creates a regime of universal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in, into, or against various defined public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place.


Covers a broad range of acts and possible targets, including nuclear power plants and nuclear reactors; Covers threats and attempts to commit such crimes or to participate in them, as an accomplice; Stipulates that offenders shall be either extradited or prosecuted; Encourages States to cooperate in preventing terrorist attacks by sharing information and assisting each other in connection with criminal investigations and extradition proceedings; and Deals with both crisis situations (assisting States to solve the situation) and post-crisis situations (rendering nuclear material safe through the International Atomic Energy Agency (IAEA)).
13. *Amendments to the Convention on the Physical Protection of Nuclear Material, 2005*

Makes it legally binding for States Parties to protect nuclear facilities and material in peaceful domestic use, storage as well as transport; and Provides for expanded cooperation between and among States regarding rapid measures to locate and recover stolen or smuggled nuclear material, mitigate any radiological consequences or sabotage, and prevent and combat related offences.

14. *Protocol to the convention for the suppression of unlawful acts against the safety of maritime navigation, 2005*

Criminalizes the use of a ship as a device to further an act of terrorism; Criminalizes the transport on board a ship various materials knowing that they are intended to be used to cause, or in a threat to cause, death or serious injury or damage to further an act of terrorism; Criminalizes the transporting on board a ship of persons who have committed an act of terrorism; and Introduces procedures for governing the boarding of a ship believed to have committed an offence under the Convention.

15. *Protocol to the protocol for the suppression of unlawful acts against the safety of fixed platform located on the continental shelf, 2005*

Adapts the changes to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation to the context of fixed platforms located on the continental shelf.

16. *Convention on the suppression if unlawful acts relating to international civil aviation, 2010*

Criminalizes the act of using civil aircraft as a weapon to cause death, injury or damage; Criminalizes the act of using civil aircraft to discharge biological, chemical and nuclear (BCN) weapons or similar substances to cause death, injury or damage, or the act of using such substances to attack civil aircraft; Criminalizes the act of unlawful transport of BCN weapons or certain related material; A cyber-attack on air navigation facilities constitutes an offence; A threat to commit an offence may be an offence by itself, if the threat is credible. Conspiracy to commit an offence, or its equivalent, is punishable.

17. *Protocol supplementary to the convention for the suppression of unlawful seizure of aircraft, 2010*

Supplements the Convention for the suppression of Unlawful Seizure of Aircraft by expanding its scope to cover different forms of aircraft hijackings, including through modern technological means; incorporates the provisions of Beijing Convention relating to a threat or conspiracy to commit an offence.

Kenya affirmed it is commitment to the eleven existing international treaties and conventions it had previously signed and ratified, in relation to counter-terrorism and signed and ratified two subsequent conventions in 2002 and 2005.

19. **UN global strategy on counterterrorism**

The international legal framework for the fight against terrorism consists of relevant United Nations Security Council Resolutions. Following 11th September 2001, the Security Council established a general framework on counterterrorism and acting under Chapter VII of the UN Charter, it adopted Resolution 1373. Resolution 1373 calls upon Member States to implement a number of measures intended to enhance their legal and institutional ability to counter terrorist activities, including taking steps to:

- Criminalize the financing of terrorism,
- Freeze without delay any funds related to persons involved in acts of terrorism,
- Deny all forms of financial support for terrorist groups,
- Suppress the provision of safe haven, sustenance or support for terrorists,
- Share information with other governments on any groups practicing or planning terrorist acts,
- Cooperate with other governments in the investigation, detection, arrest, extradition and prosecution of those involved in such acts; and,
- Criminalize active and passive assistance for terrorism in domestic law and bring violators to justice.

Resolution 1624 (2005) pertains to incitement to commit acts of terrorism, calling on UN Member States to prohibit it by law, prevent such conduct and deny safe haven to anyone “with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct.”

Resolution 1373 also established the Counter-Terrorism Committee (CTC) to monitor the implementation of the Resolution. The CTC works to bolster the ability of United Nations Member States to prevent terrorist acts both within their borders and across regions. It was established in the wake of the 11 September terrorist attacks in the United States. The CTC is assisted by the Counter-Terrorism Committee Executive Directorate (CTED), which carries out the policy decisions of the Committee, conducts expert assessments of each Member State and facilitates counter-terrorism technical assistance to countries.

In September 2014, in response to an unprecedented flow of foreign terrorist fighters, the Security Council adopted resolution 2178 (2014). According to this resolution, Member States shall prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their State of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and or their activities.

The United Nations member States have been negotiating a comprehensive convention on International terrorism since 2000. The attacks
on the United States on 11 September 2001 resulted into the Security Council to adopt resolution 1373 which established the Counter-Terrorism Committee. The resolution decided that all Member States among other things shall prevent and suppress the financing of terrorist acts.

In 2006, the United Nations member States, agreed on a global strategy to coordinate their counter-terrorism efforts. The strategy contains practical recommendation in four key areas: Tackling the conditions conducive to the spread of terrorism; Preventing and combating terrorism; Building Countries’ capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard; and Ensuring respect for human rights for all and the rule of law while countering terrorism.

3.2 Selected National Counterterrorism Legislations

USA patriot Act, 2001

The aim of the Act is to preserve life and liberty. Act allows officers to use surveillance against crime of terror, federal agents to follow sophisticated terrorists trained to enable detection, conduct of investigations without tipping of terrorists, court orders to obtain business records in national security terrorism cases, facilitation of information sharing and cooperation among government agencies, obtaining of search warrants anywhere a terrorist related activity occurs, provides tough penalties for those who commit terrorist crimes, prohibits harboring of terrorists and provides for punishment of terrorist attacks on mass transit system bioterrorists.

Guantanamo Bay Detainees

Guantanamo Bay Detention Camp also known as Gitmo is a United States of America’s detention Camp located in South-Eastern Cuba from January 2002 to detain Muslim militants and suspected terrorists captured by United States Forces especially in Iraq and Afghanistan. The camp continues to receive calls for its closure due to the gross human rights abuses perpetrated by the United States government in the name of countering terrorism. The Guantanamo Bay Camp, the detainees are held in place where neither the United States nor International law applies.
Hundreds of prisoners from several countries have been held in the Camp without charge and without legal means to challenge their detentions; they have been denied the right to habeas corpus. Detainees continue to be subjected to torture during interrogations and other cruel, inhuman or degrading treatment. They are also denied the right to personal integrity, right to an effective remedy, right to legal representation among other rights.

The Interrogation methods constitute a wide violation of human rights, they include ill treatment, including stress positions, sensory deprivation, prolonged isolation, the use of 20 hour interrogations, hooding during transportation, stripping, forcible shaving and seeing detainee’s phobias to induce stress57.

The United States’ Supreme Court in a landmark ruling in 2004, in the case of Rasul v. Bush that the detainees could bring habeas corpus proceedings in the federal courts under the Federal Habeas Statutes. Congress however, overturned this by enacting the Detainee Treatment Act in 2005 and the Military Commissions Act, 2006 that amended the Federal Statute to eliminate habeas jurisdiction for any enemy combatant held in the United States custody. In 2008, the Supreme Court held in the case of Boumediene v. Bush upheld the right of habeas corpus in majority decision, of 5-4. It ruled that foreign detainees have the right to challenge their detention in the federal courts. It also ruled that part of the Military Commissions Act, 2006 that had attempted to block federal courts from hearing habeas corpus cases for detainees was unconstitutional.

In January 2009, the United States President, Barrack Obama fulfilled his election pledge by ordering the closure of the Camp within one year and transfer the detainees to the United States for imprisonment or trial. He also ordered that the interrogation methods be reviewed and only those contained in the U.S Army’s Field Manual. This was delayed by the Opposition Republicans and some Democrats in Congress who argued that relocating the detainees to United States would be a security threat. The situation has however, changed as detainees have been relocated to the United States and other Countries i.e. United Arab Emirates. Some are still remaining and the Camp has not been closed.

UK anti- terrorism, crime and security Act, 2001
The Act is modeled on the European human rights convention provides for the freezing of assets, makes provisions on immigration and asylum, powers for preventing the crime of terrorism, control of pathogens and toxins, retention of communications data.

Part I sections 1-5 provisions deal with terrorist property for forfeiture of terrorist cash, that is intended for the purpose of terrorism, resources of an organization which is proscribed, part 2 sections 1, 2, 3 provides for powers to make freezing orders by the treasury if satisfied that an action is a threat to the life and economy of nationals or residents of the united Kingdom. Part 3 section 17 provides for disclosure of information for the purpose of criminal investigations, criminal proceedings in terrorist related offences in the United Kingdom.

Part 4 section 21 provides for certification of suspected international terrorists 21 (1) where the secretary of the state (a) believes that the person’s presence in the United Kingdom is a risk to national security (b) suspects that the person is an international terrorist (2) defines an international terrorist as a person who is or has been concerned in the instigation of acts of international terrorism, is a member or belongs to an international terrorist group or has links with a member who belongs to an international terrorist group.

Section 22 provides for deportation or removal of international terror suspects from the United Kingdom Section 23, detention of suspected international terrorists through international agreements, section 24 provides for bail conditions suspected international terrorists in line with Article 5 (1) of the European convention on human rights, which relates to the detention of a person where there is an intention to remove or deport him from the United Kingdom and section 14 (1) of the Human Rights, 1998 Section 43, provisions on transfer of biological agents and toxins, 1 (a) (b) states that a person shall not transfer any biological agent or toxin to another person or enter into an agreement to do so, or make arrangements under which another person transfers any biological agent or toxin or enter into an agreement with a third person to do so, and section 45, prescribes offences and prosecution regarding biological weapons, that entail the offence of aiding, a betting, counseling, prosecuting, inciting the commission of attempting conspiring to commit such an offence.

Recent Counter-Terrorism Legislation in United Kingdom (UK)

Terrorists continue to evolve; they are becoming more sophisticated and more organized. Countries have to change tactics to combat terrorism. Legislations and policies have been key to combating the changing face of terrorism. United Kingdom continues to come up with legislation and policies to combat terrorism. This has however, not had its fair share of challenges. Strong anti-terror intervention, i.e. legislation is highly recommended for any Country; United Kingdom included, nevertheless, every country should fine tune its laws that encroach on human rights and liberties.

The recent Counter-Terrorism and Security Act, 2015 in the United Kingdom has continued to receive criticism as inhibiting human rights. Among the provisions in the Act that have been criticized for violating human rights include:

The relocation of terror suspects placed under control orders.

Allow the government to ban British citizens and residents from returning to the UK for two years, rendering them effectively stateless during that period;

Interception of communication and data-the Act allows for mass interception of communication and lacks sufficient safeguards against arbitrary interference with the right to privacy.

Reintroduce compulsory, internal relocation in the UK for terrorism suspects not convicted of any crime; and

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*UK anti-terrorism, crime and security Act, 2001*
Allow police to confiscate passports for extended periods for British citizens and others suspected of planning to leave the UK to engage in terrorism-related activities abroad. These provisions among others have been considered to violate basic human rights. Countering terrorism is a challenging task and at times countries come up with radical measures to tackle terrorism. On hand, States must adhere to the human rights instruments that they are party to. These counter-terrorism measures must not violate human rights. One of such cases in the United Kingdom was the case of Serdar Mohammed v. Secretary of State for Defence where on 30 July 2015, the Court of Appeal ruled that it the detention of an Afghan detainee by British armed forces for almost four months was unlawful. The Court found that the detention was arbitrary and therefore in violation of this person’s right to liberty under Article 5 of the European Convention on Human Rights, which also applies to overseas detention.59

Australia, terrorism Act, 2002

Article 1 the act may be cited as the terrorism Act 2002 Article 2, the purpose of the act is to contain matters relating to terrorist Acts. 2(a) (b) (c) defines a terrorist Act as an action that is done with the intention of advancing a political, religious or ideological cause or coercing influencing and intimidating the public or section of the public causes serious harm that is physical harm to a person, causes serious damage to property, causes a person’s death, endangers a person’s life, creates serious risk to the health or safety of the public. Seriously interferes with disrupts or destroys an electronic system.

Section 101.1 (i) (2) states that a person commits an offence if a person engages in terrorist act; the penalty is imprisonment for life.

Section 101.2, providing or receiving training connected with terrorism Acts (I) a person commits and offence if (a) the person provides or receives training (b)the training is connected with preparation for the engagement of a terrorist act (c) penalty, imprisonment for 25 years.

Section 101.4, possessing things connected with terrorists acts (i) a person commits an offence if (a) the person possess a thing that is connected with preparation for the engagement in assistance in a terrorist act, penalty, imprisonment for 15 years.

Section 102.1 provides definitions for terrorist organizations, which means an organizations that is directly or indirectly engaged in preparing, planning assisting, fostering a terrorist act. Section 102.6 funding of terrorist organization, a person commits an offence if (a) the person intentionally receives funds from or makes funds available to a terrorist organization penalty imprisonment for 25 years60.

One of the short-comings of this law is the provision of special powers for the Australian Federal Police to question terrorism suspects without charge. These powers mean that upon arrest for a terrorism offence, a person can be detained without charge for the purposes of

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60Australia, Terrorism Act, 2002
investigating whether the person committed the terrorism offence for which he or she was arrested or another terrorism offence that an investigating officer reasonably suspects the person committed.61

Sweden Act on criminal responsibility for terrorist offences, 2003

Section 2, a person commits a terrorist offence if the person (1) seriously intimidates a population or group of population, seriously destabilizes or destroys fundamental, political, constitutional, economic, social structures in a state or an intergovernmental organization.

Section 3 describes what constitutes terror offences as the following murder, man slaughter, gross assault, kidnapping, unlawful deprivation of liberty, gross infliction of damage, devastation endangering the public, gross sabotage, high-jacking, maritime or air sabotage, spreading poison or a contagious substance, unlawful handling of chemical weapons.

Section 7, deals with property in relation to financing of terrorist offences, the manner such property may be valued and for forfeited.

Israel prevention of terrorism Act, 194

Section 1, on interpretation defines a terrorist organization, as a body of persons resorting in its activities to acts of violence calculated to cause death or injury to a person, threats of such acts of violence.

Section 2, Activity in Terrorist Organization section 3, membership to terrorist organization, section 4, supporting of a terrorist organization Section 5, is about confiscation of property in terror related offences, Section 6, closing of places of action, (a) States that the chief of the General staff of the Defense Army of Israel, the Inspector General of the Israel Police, a military Governor or military commander of an area, may decide in writing to close any place serving a terrorist organization or its members, Section 7, is on proof of the existence of a terrorist organization. Section 8, is on declaration by the government of an organization to be a terrorist organization. Section 9, proof of membership in a terrorist organization, Section 10, proof by a publication of a terrorist organization, states in order to convict an accused under this ordinance and also for the purposes of the confiscation of property, any matter which appears from its contents to have been published, in writing or orally, by or on behalf of a terrorist organization may be accepted as evidence of facts.

Section 11, states that judgment to be prima facie evidence. (a) If it is determined by a final judgment that a particular body of persons is a terrorist organization, the judgment shall in any other legal proceeding be considered as prima facie evidence, that the body of persons is a terrorist organization.

Section 12 provides for a competent court to try terror offences under a military court. Section 14, release on bail of persons charged with terror offences.

**Curfew in France**

Terrorism continues to be a global problem. Every Country remains at risk of terrorism; developed Countries alike. France has witnessed terror attacks of late. In 2015, two devastating attacks claimed By Islamic State of Iraq and Syria (ISIS) where 147 people were killed in Paris. This prompted the French Government to introduce a series of extra-judicial measures to curb terrorism and punish those considered a threat to national security. Such measures included the declaration of a State of Emergency handling the police a raft of new powers such as allowing for raids and arrests without judicial oversight. The measures also include the power given to the State to revoke the French nationality of citizens holding dual citizenship if they are suspected of involvement in terrorism. The other measures include the power to collect, read and store communications and metadata without authorization or review by a judge.

Some of these measures have been criticized for violating human rights. The police raids and house arrests have been both abusive and discriminatory against Muslims. The measures undermine the principles of equality, privacy and liberty. A group of UN Rapporteurs have recommended the introduction of judicious oversight for counter-terror measures and electronic surveillance. This will ensure adequate protection against abuse in the use of these powers granted to the authorities.

### 3.3 Key Elements

The fight against terrorism must adhere to the International human rights law. All measures including legislations should be anchored on international human rights law, Promotion and protection of human rights.

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62 Israeli Prevention of Terrorism Act, 1948
63 David Kaye-Special Rapporteur on freedom of opinion and expression, Maina Kiai-Special Rapporteur on the rights to freedom of peaceful assembly, Michel Forst-Special Rapporteur on the situation of human rights defenders, Ben Emmerson-Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism and Joseph Cannataci-Special Rapporteur on the right to privacy.
“Our responses to terrorism as well as our efforts to thwart it and prevent it, should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism not privileges to be sacrificed at a time of tension.” Former UN Secretary General, Kofi Annan (2003)

Terrorism has been a global challenge for decades now, national, regional and international legal instruments have been enacted to counter-terrorism. Legislation and policies have been crafted to prevent and punish terrorist acts and suspects. This has not had its fair share of challenges as far as respect for human rights is concerned. The many Conventions ratified by States contain dispositions concerning the protection of human rights such the general provisions often contained in the preamble indicating the obligations in the Conventions vis a vis other international obligations of the State Party as far as the protection of human rights are concerned. Such obligations include: the right of an accused person, fair trial, right of detained persons, provisions on extradition and transfer of prisoners among other obligations.
States have an obligation in protecting their citizens; protection against terrorism being one of the key obligations of any State. States all have an obligation to ensure human rights are protected. Acts of terrorism always infringe on human rights such as; the right to life, protection from torture among many other rights. Failure by the State to prevent and suppress terrorism often leads to violation of these rights and as States will be blamed for not upholding their obligations in protecting human rights. Measures against terrorism can have an important role in protecting human rights.

States have to come up with counter-terrorism measures to avoid the violation of these rights or less they take responsibility for their violations. These counter-terrorism measures have to be effective as they are often regarded as part of the State’s human right obligation. They must on the other ensure that they do not infringe on the rights of the suspects and other related persons.

Some of the rights and freedoms that have often been infringed by various counter-terrorism measures include:

The right to a fair trial; The right to privacy; The right to non-discrimination; The right not to be subjected to arbitrary detention; The freedom from torture and cruel, inhuman or degrading treatment.

Counter-terrorism mechanisms and enforceable human rights standards are intimately linked. Counter-terrorism laws and practice that damage or destroy human rights are self-defeating and unacceptable in a society governed by human rights, the rule of law and democratic values.

64“The OSCE participating States will not yield to terrorist threats, but will combat them by all means in accordance with their international commitments…. They will defend freedom and protect their citizens against acts of terrorism, fully respecting international law and human rights. They firmly reject identification of terrorism with any nationality or religion and reconfirm the norms, principles and values of the OSCE.” OSCE Bucharest Ministerial, Decision No. 1 on Combating Terrorism.

Despite of the various challenges that counter-terrorism measures have been facing as far as protection of human rights are concerned, there are a number of measures that have been hailed for protecting human rights and upholding the rule of law and at the same time effectively countering terrorism. Some of the best practices on counter-terrorism and protection of human rights are:

4.1 United Nations Counter-Terrorism Center

On 8 September 2006, the United Nations General Assembly, acting by consensus, adopted the landmark United Nations Global Counter-Terrorism Strategy. The Center was established in September 2011 to promote international counter-terrorism cooperation and support Member States in the implementation of the
Global Counter-Terrorism Strategy. The strategy was to undertake specific measures to counter terrorism under four pillars as:

i. Pillar I- measures to address the conditions conducive to the spread of terrorism;

ii. Pillar II- preventing and combating terrorism;

iii. Pillar III- building States’ capacity to prevent and combat terrorism;

iv. Pillar IV- ensuring human rights and rule of law.

The United Nations through a Resolution adopted by the General Assembly on 8 September 20016; 60/288-the United Nations Global Counter-Terrorism Strategy developed a Plan of Action that make up with counter-terrorism measures which included measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism. It was resolved that:

i. the promotion and protection of human rights and the rule of law is essential to all components of counter-terrorism strategy;

ii. Effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.

The following measures were resolved as measures that ensure the protection of human rights in counter-terrorism strategies:

1. The affirmation that the General Assembly resolution 60/158 of 16 December 2005 provides the fundamental framework for the Protection of human rights and fundamental freedoms while countering terrorism;

2. States must ensure that any measures taken to combat terrorism comply with their obligations under international law especially human rights law;

3. States that are not members of core international instruments on human rights become members and implement them as well as accepting the competence of internal and relevant regional human rights monitoring bodies;

4. States to make effort to develop and maintain an effective and rule of law based criminal justice system that provides for suspects being brought to justice with due respect to human rights and fundamental freedoms;

5. States to reaffirm the United Nations systems role in strengthening the international legal architecture by promoting the rule of law, respect for human rights, and effective criminal justice systems, which constitute the fundamental basis the common fight against terrorism.
4.2 Human Rights Council

The Human Rights Council’s Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism identifies key considerations that are considered best practice on counter-terrorism legislation that States should adopt in coming up with counter-terrorism legislation. They are:

The various legislation on counter-terrorism should be consistent. Many States have different pieces of legislation on Counter-terrorism such as having a section in the Criminal Code on counter-terrorism. The Best practice should be to have a specific legislation on Counter-terrorism that is then consistent with the various International laws on human rights.

The Agencies involved in countering terrorism must be in compliance with human rights law. The legislation should clearly provide for this and also provide for the remedy for breach by the Agencies while countering terrorism. Where the law relating to terrorism confers discretionary powers upon any public agency, adequate safeguards including judicial review must be provided for in the Counter-terrorism legislation.

Legislation to expressly provide for the application of the principle of legality, the rule of law and human rights in the Counter-terrorism legislation. The Azerbaijan Law on the Struggle Against Terrorism 1999(as amended in 2005) is an example of such legislation. Article 3 of the Law provides that the Struggle against terrorism in the Azerbaijan Republic is implemented for following the provisions of human rights and freedoms, public and State security. Article 4 of the same Law on principles of struggle against terrorism provides that such struggle shall be based on the principles of legality, combined use of legal, political, socio-economical and organizational-preventive measures as well as prioritized protection of rights of persons endangered by terrorist activities.

The Counter-terrorism legislation should provide for mechanisms for regular review of counter-terrorism laws and practices. The Australian Security Legislations Amendment Act, of 2002 at Section 4 provides for public and independent review of operation of Security Acts relating to terrorism. It provides that the review of the laws relating to terrorism must be undertaken as soon as practicable after the third anniversary of the commencement of the amendments.

The counter-terrorism legislation should provide for effective remedies for those whose rights have been violated by counter-terrorism measures.

The Counter-terrorism legislation should address the rights of the victims; such as having the adequate compensation for victims of terrorist’s activities. Such provision is provided for in the Canada Criminal Code of 1983 at Section 83 (14) (5.1) that provides that any proceeds that arise from the disposal of property under the Act may be used to compensate victims of terrorist activities and to fund anti-terrorist initiatives.

Any counter-terrorism legislation should adequately provide for the definition of terrorism. There should be no ambiguity as to what terrorism is or what constitute a terrorist activity.
The counter-terrorism legislation should provide for the listing of terrorist entities.

The Counter-terrorism legislation should provide for the rights of the suspects; such as the rights of those arrested, provisions on detention, legal assistance to suspects.

4.3 The European Court of Human Rights

The European Court of Human Rights is an International Court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. Some of the cases on violation of human rights in regard to countering terrorism that have been decided in the Court are:

Case of Brogan & Others v the United Kingdom (1998) - the applicants were arrested in Northern Ireland under the Prevention of Terrorism (Temporary Provisions) Act 1984 for suspicion to have committed terrorist acts. They challenged several sections of the Act on: The power to arrest; Suspicion of involvement in the commission of a terrorist act; Preparation or instigation of acts of terrorism.

They claimed that their arrest and detention were not justified under Article 5 of the European Convention for the Protection of Human Rights and fundamental freedoms. Article 5 (2) provides that everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (art. 5-1-c) shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. They claimed that this Article had been violated for being held for seven days.

The applicants noted that a person arrested under the ordinary law of Northern Ireland must be brought before a Magistrates’ Court within forty-eight hours; and that under the ordinary law in England and Wales (Police and Criminal Evidence Act 1984) the maximum period of detention permitted without charge is four days, judicial approval being required at the thirty-six-hour stage. The Court held by twelve (12) votes to seven (7) that there had been a violation of Article 5 (3) in respect of all the four applicants.

The case of Güler and Uğur v Turkey 2 December 2014 (Article 9 of the European Convention on Human Rights that provides for the freedom of thought, conscience and religion):

This case concerned the applicants’ conviction for propaganda promoting a terrorist organization on account of their participation in a religious service organized on the premises of a political party in memory of three members of an illegal organization (the PKK) who had been killed by security forces. The applicants alleged that their conviction had been based on their participation in a religious service, which had consisted in a simple public manifestation of their religious practice.

Council of Europe: European Court of Human Rights http://www.coe.int/t/democracy/immigration/bodies/echr_en.asp (accessed on 7 August 2016)
They also submitted that their conviction had not been sufficiently foreseeable, having regard to the wording of the Anti-Terrorism Act. The Court considered that the prison sentence imposed on the applicants amounted to an interference with their right to freedom to manifest their religion, irrespective of the fact that the persons in memory of whom the service had been held had been members of an illegal organization or that the service had been held on the premises of a political party where symbols of the illegal organization had been displayed. The Court held that there had been a violation of Article 9 of the European Convention on Human Rights (right to freedom of thought, conscience and religion) finding that the interference in question had not been “prescribed by law” in so far as the domestic-law provision on which it had been based had not met the requirements of clarity and foreseeability.

The right to life- Article 2 of the European Convention on Human Rights provides that everyone’s right to life shall be protected by law. In McCann & Others v. The United Kingdom(27 September 1995) before the European Court of Human Rights, three members of the Provisional IRA, suspected of having on them a remote control device to be used to explode a bomb, were shot dead on the street by SAS (Special Air Service) soldiers in Gibraltar. The applicants, who were representatives of their estates, alleged that the killing of the deceased by members of the security forces constituted a violation of Article 2 (right to life) of the Convention. The Court held that there had been a violation of Article 2 (right to life) of the Convention because the operation could have been planned and controlled without the need to kill the suspects.

Nada v. Switzerland 12 September 2012 (Grand Chamber): The right to respect for private and family life-Article 866 and the right to an effective remedy –Article 1367 of the European Convention on Human Rights:

The Swiss Federal Taliban Ordinance was enacted pursuant to several UN Security Council Resolutions. It had the effect of preventing the applicant, an Egyptian national, from entering or transiting through Switzerland due to the fact that his name had been added to the list annexed to the UN Security Council's Sanctions Committee of persons suspected of being associated with the Taliban and al-Qaeda. The applicant had been living in an Italian enclave of about 1.6 square kilometers surrounded by the Swiss Canton of Ticino and separated from the rest of Italy by a lake. He claimed that the restriction made it difficult for him to leave the enclave and see his friends and family, and that it caused him suffering due to his inability to receive appropriate medical treatment for his health problems. He further found it difficult to remove his name from the Ordinance, even after the Swiss investigators had found the accusations against him to be unsubstantiated.

The Court held that there had been a violation of Article 8 (right to respect for private and family life) of the Convention, and a violation of Article 13 (right to an effective remedy) taken in conjunction with Article 8. It observed in particular that Switzerland could not simply rely

66 Art.8(1)- Everyone has the right to respect for his private and family life, his home and his correspondence
67 Art.13- Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.
on the binding nature of the Security Council resolutions, but should have taken all possible measures, within the latitude available to it, to adapt the sanctions regime to the applicant’s individual situation.

Aksoy v. Turkey 18 December 1996: Article 3—prohibition of torture or inhuman or degrading treatment or punishment—and Article 5—Right to liberty and security:

The applicant complained in particular that his detention in 1992 on suspicion of aiding and abetting PKK terrorists was unlawful and that he had been tortured (“Palestinian hanging” i.e. stripped naked, with arms tied together behind back, and suspended by arms). The Court, considering that the treatment inflicted to the applicant had been of such a serious and cruel nature that it could only be described as torture, held that there had been a violation of Article 3 (prohibition of torture) of the Convention. It also found a violation of Article 5 (right to liberty and security) and a violation of Article 13 (right to an effective remedy) of the Convention.

*Article 3: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*
5.1 Achievements

The NIS Annual Report, 2015 reveals that Kenya has intercepted several radicalized youth on their way to Somalia to join Al-shabaab. Over 100 children who were undergoing indoctrination and radical teaching have been rescued, and more than 50 Al-shabaab terrorists were arrested and brought to court⁶⁹.

National strategy on countering violent extremism, 2015

The development of this strategy is in line with the recommendations of the UN Secretary-General’s plan of Action on countering violent extremism (2016). This strategy was developed and launched but is not within the public domain. This therefore excludes public

⁶⁹Kenya National strategy on countering violent extremism, 2015
5.2 Challenges

The government of Kenya is facing enormous challenges in combating terrorism and insecurity, however, it is crucial that it also uphold human rights and principles as stipulated in the international, regional and national laws. Although the government is seeking out ways to address the country’s growing insecurity problems, it is key for the government to ensure accountability for security forces abuses and other serious rights violations undermining the rule of law and public confidence. The government is aware of the fact it is has the support of other nations in the fight against terrorism and that it is not alone in this global struggle.
6.1 Conclusion

The UN Global strategy on counter terrorism is a unique global instrument to enhance national, regional and international efforts to counter-terrorism.

Through its adoption all member states agreed to a common strategic approach to fight terrorism. Members resolved to take practical steps individually and collectively to prevent and combat terrorism, it’s a living document attuned to member states counter terrorism priorities. Effective counter terrorism can be achieved through the implementation of pillar four, which requires states to adopt measures that ensure respect for human rights for all and the rule of law.

6.2 General Recommendations

Enhancement of efficacy: UN global strategy on counter terrorism first and pillar four.

Member states should focus on the implementation of Pillar 1 Addressing conducive conditions to the spread of terrorism and Pillar 4 ensuring the respect for human rights for all and the rule of law as the fundamental basis for countering terrorism.

According to the recommendations the National strategies by UN member states to fight against terrorism and extremism, must shift from military led counter terrorism to a more holistic approach, which demands a fine balance between the use of the hard power and technologies of soft power to win hearts and minds and drain swamps of radicalization.

\[^{70}\] \[^{71}\] UN Global Strategy on Counter-terrorism – 1st and 4th Pillar
\[^{71}\] UN security-General’s plan of action on countering violent extremism, 2016
Spread of Terrorism

Report of the special rapporteur on the promotion and protection of Human rights while countering terrorism February, 2016 according to the rapporteur, a strict security approach to countering terrorism has failed to prevent the spread of terrorism. The Secretary-General's plan of action, which focuses on human rights implementation of measures to address the conducive conditions, is a promising framework for the United Nations and member states\(^2\).

Violent extremism

Violent extremism is an obstacle to any in-depth examination of the impact of strategies and policies to counter violent extremism on human rights as on their effectiveness in reducing the threat of terrorism. The special rapporteur also notes that any evaluation of the proportionality and necessity of rights limiting measures that have been adopted is a challenge. Lack of transparency by some governments with respect to some of their counter-terror programmes.

Compliance with international human rights law

The rapporteur therefore, recommends increased research to better understand the phenomenon of violent extremism focus on the implementation of their first and fourth pillars of the global counter-terrorism strategy.

Strategies and policies adopted by states to counter violent extremisms must be firmly grounded in and comply with international Human Rights Law.

6.3 Specific Recommendations to the Government of Kenya

Coordination (The Executive arm of government)

The government of Kenya should adopt better coordination mechanisms for all state organs entrusted with preventing and combating terrorism. The coordination must consider public participation in the fight against terrorism.

Funding (The National Assembly)

The government should provide sufficient funds and resources to the state organs responsible for the fight against terrorism in annual budget estimates.

Legislation (The National Assembly)

The government should enact a specific legislation on counter terrorism that is consistent with the various international laws on human rights considering that nine sections of the security amendment laws 2014 were declared unconstitutional by the courts. The process must be inclusive, open and transparent.

Training of national security organs. (The Executive arm of Government)

All national security organs involved in countering terrorism should be trained on human rights and compliance with human rights law. The training should be considered mandatory for promotion officers.

\(^2\)Recommendations of the UN Special Rapporteur on the promotion and protection of Human Rights, while countering Terrorism, 2016

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**REPORT ON SECURING NATIONAL SECURITY & PROTECTION OF HUMAN RIGHTS**

**A COMPARATIVE ANALYSIS OF THE EFFICACY OF COUNTER TERRORISM**

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Accountability (The judiciary)

National security organs should account for all their actions in counter terrorism activities in accordance with the constitution and the law regarding state and public officers' conduct.

Death penalty (The National Assembly)

1. Abolish the death penalty by reviewing and formulating a new legal framework that is in tandem with article 26(1) of the constitution that guarantees the right to life. Fund.