

**AN ANALYSIS OF MILITANT RADICAL TERRORISM AND COUNTER
TERRORISM MEASURES IN KENYA, 1985 - 2010**

BY

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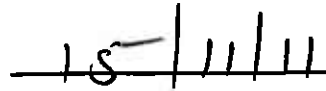
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Declaration

This project is my original work and has not been submitted to any other University.



Stephen Njoroge Karanja

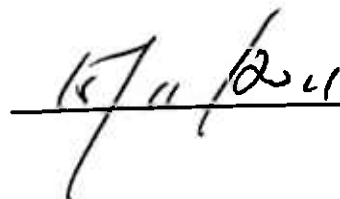


Date

This project has been submitted for examination with my approval as University Supervisor.



Dr. Ibrahim Farah



Date

Dedication

To all those who believe in the strength of religion to unite rather than divide people, to those who are true to their faith and believe that the greatest commandment is to show love even to strangers.

Acknowledgement

The writing of this dissertation has been very challenging and without the support, patience and guidance of the following people, this study could not have been completed. To them I owe my deepest gratitude. To my supervisor Dr. Ibrahim Farah who found time to guide me despite many other academic and professional commitments. His wisdom, knowledge, commitment to the highest standards inspired and motivated me. Also, great appreciation goes to my colleagues at IDIS and my family who in various ways inspired and encourage me throughout the process. To all I say may God bless you.

Abbreviations

ACSRT- African Centre for Study and Research on Terrorism
AMISOM-African Union Mission in Somalia
AQ- Al Qaeda
AQAP-Al Qaeda in the Arabian Peninsula
AQIM-Al Qaeda in the Maghreb
ATPU- Anti-terrorism police Unit
AU-African Union
AWSJ- Ahlu Sunna Wal Jamma
CBK-Central Bank of Kenya
CCK-Communication Commission of Kenya
CIPK- Council of Imams and Preachers of Kenya
CJTF-HOA- Combined Joint Task Force Horn of Africa
COG-Centre of Gravity
COIN-Counter-Insurgency
CSIRT- Computer Security Incident Response Team
CTC- Counter Terrorism Committee
CTED- Counter Terrorism Executive Directorate
DMI- Drought Management initiative
EAC - East African Community
EAPCCO- East African Police Chiefs Cooperation Organisation
ESAAMLG- East and Southern Africa Money Laundering Group
FATF- Financial Accounting Task Force
FBI-Federal Bureau of Investigation
FRC-Financial Reporting Centre
GSPC- Salafist Group for Preaching and Combat
GWOT- Global War on Terrorism
ICPAT- IGAD Capacity Building Program against Terrorism
ICT-Information Communication and Technology
IGAD- Inter-Governmental Authority on Development
IVTS- Informal Value Transfer System

KEMRI- Kenya Medical Research Institute
LIFG- Libyan Islamic Fighting Group
MLA- Mutual Legal Assistance
MSSI- Maritime Security and Safety Information System
MYC- Muslim Youth Center
NGO- Non-Governmental Organizations
NSIS- National Security Intelligence Services
OPDAT- Office of Overseas Prosecutorial Development, Assistance and Training
OPEC- Organization of Petroleum Exporting Countries
PIs- Prohibited Immigrants
PISCES- Personal Identification Secure Comparison Evaluation system
PLO- Palestinian Liberation Organisation
RBPU- Rural Border Patrol Unit
SARs- Suspicious Activity Reports
SIM- Subscriber Identity Module
SUPKEM- Supreme Council of Kenya Muslims
TIP- Terrorist Interdiction Program
TPB- Terrorism Prevention Branch
TPU- Tourist Police Unit
UIC- Union of Islamic Courts
UNDP- United Nations Development Programme
UNODC- United Nations Office on Drugs and Crime
UNSC- United Nations Security Council
UN- United Nations
USD- United States Dollar
US- United States

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Abstract

Globalised radical militant Islamist terrorism has been on the rise. Located in the fourth wave of modern terrorism, this kind of terror differs from other since it is deeply rooted in religion. In effect its religious root makes the deployment of terror a sacred act. Overtime it has spread from its Middle Eastern roots and currently no state is safe from attacks by these terrorists.

Taking cognizance of the threats posed, Kenya which has been a victim has developed a raft of counter terrorism measures. The measures range from legislative and institutional measures which spawns the domestic, regional and international levels. Despite the presence of these measures, the threat of terror persists. This study has analyzed the growth of radical militant Islamist terrorism, its presence in Kenya and measures put in place to counter it. Significantly it has critically and in a comprehensive way examined the international, regional and domestic challenges which Kenya faces in its quest to secure itself against terrorism.

Data for the study have been collected using interviews and case study methodologies. Regarding Interviews, semi structured interview schedules were used and purposive sampling method was utilized in the selection of respondents. The primary data collected was augmented by case study analysis. This involved collecting of data from secondary sources such as mass media, books, scholarly journals, policy papers and internet sources. The methodologies have been appropriate for the study and have generated valuable and usable data. Data generated has been qualitatively analyzed and inferences made against the studies objectives and hypotheses.

The study has established that at Kenya is not only a victim of this kind of terror but also a source. More Kenyans are joining the terrorist ranks motivated by both intrinsic factors such as desire to revenge, re-affirm one's identity, religious motivations and extrinsic ones such as the nature of international system, regional dynamics and presence of grievances and perceptions of discrimination. Significantly it has established that Kenya's counter terrorism measures have been faced by legislative, institutional and operational challenges. Additionally Kenya's cooperation in the war against terrorism, the centrality of radical ideology and a hostile regional environment pose fundamental challenges.

On the strength of the findings the study concludes that, Kenya needs to enhance its counter terrorism measures through addressing the challenges identified and proactively countering emergent threats such a cyber and bio-terrorism. In doing so a holistic, rule of law and human rights respecting framework must underpin such measures.

Chapter One

Introduction to the Study

Globalised, militant and radical Islamist terrorism has proliferated. Currently all states are faced with terror threats, from numerous groups which profess a militant Islamist ideology. Unlike other forms of threats to security, which are identifiable and to a large extent predictable, terrorist threats are hard to identify and predict when they shall happen. Indeed, the planning and execution of terror attacks is dependent on the ability of terrorists to maintain secrecy of their operations. This way, they can attack unexpectedly, and cause widespread fear in the target society.

In the past two decades, terrorism inspired by militant and radical Islamist ideology has been the dominant kind of terror. Unlike previous forms of terrorism, which were largely geographically localized, with limited out of area operations mainly driven by the need to draw international attention and recognition, Islamist terrorism has a global theatre.¹ A single terrorist organisation such as Al Qaeda has terrorism infrastructure in all regions. The infrastructure is further reinforced by a network of terror organisations, brought together by a shared militant Islamist ideology.²

In Kenya, such terrorist infrastructure is present, and has been responsible for attack which has led to loss of lives and properties. Additionally, the attacks have had far reaching negative economic consequences, especially on the tourism sectors, which is central to Kenya's economy. On 7th August, 1998, Al Qaeda operatives drove into the United States embassy and blew up a truck full of explosives. The attack led to loss of 252 lives and left more than 5,000

¹ H. Kitschelt, 'Origins of International Terrorism in Middle East', International Parliamentary Group Report, 1/2004, pp.181-185.

² M. Zanini, 'Middle Eastern Terrorism and Net war', *Studies in Conflict and Terrorism*, 22, 1999, pp.247 -256.

persons injured.³ Almost four years later, on November 28, 2002 at around 8.30 am, Al Qaeda suicide bombers detonated a truck load of explosives in an Israel owned hotel in Kikambala near Mombasa. The attack left sixteen people dead (twelve Kenyans and 2 Israelis) and injured more than eighty people. The terrorists had also simultaneously targeted an Israeli airliner, carrying 264 passengers, which was taking off from Moi international air port in Mombasa.⁴ Fortunately, the two surface to air missiles fired at the plane missed the target.

After the 1998 attack, Kenya viewed itself not as a target of the attacks, but a victim. That the target was the United States embassy encouraged this perception. The perception persisted until the 2002 attacks which came almost a year after the September, 2001 spectacular Al Qaeda's terrorist attacks in the United States. Indeed, intelligence information showed that Kenya was not only a target but a source of terrorism, with two of the three most wanted African members of Al Qaeda being Kenyan.⁵

Since then, terrorist threats have in no way subsided. Rather, they have become complex, especially due to increased networking between Al Qaeda and Somali based radical Islamist group *Harakat Al Shabaab* which has threatened to launch terror attacks against Kenya.⁶ Both Al Qaeda and *Harakat Al Shabaab* have presence in the country. Aware of the threats posed by militant Islamist terrorism, the government has developed counter-terrorism responses, especially from 2001. The study has critically analysed the growth of militant Islamist terrorism and how Kenya has countered this kind of terrorism.

³ M. Bradbury and M. Kleinman, *Winning Hearts and Minds? Examining the Relationship between Aid and Security in Kenya*. Boston: Feinstein International Center, Tufts University, 2001, pp.25-26

⁴ Ibid, pp.25 -26

⁵ Ibid, p.27; Also, United States Institute of Peace, *Terrorism in the Horn of Africa*, Special Report: Washington: USIP, 2004, pp.7-14.

⁶D. GarteinStein -Ross, 'The Strategic challenge of Somalia's Al Shabaab', *Middle East Quarterly*, 2009, pp 25 – 36, R. Grossman – Vermass et al, *Minimizing Threat Convergence Risks in East Africa and the Horn of Africa: Prospects for Achieving Security and Stability*. Washington; Centre for Threat Convergence, 2010, p.7.

Statement of the Research Problem

No country is immune to terrorist attacks by militant and radical Islamist organisations. The increased global infrastructure especially in information, communication and technology has made global interactions more intense than ever before. Importantly, it has led to increasingly shared transnational values and networks, which has largely been positive. For instance there exist transnational values and networks of democracy and human rights, which have led to the betterment of the human conditions in states which were previously theatres of human misery and indignity.

The downside of these increased interactions has been the proliferation of threats posed by transnational networks especially terrorist networks. These groups are exploiting globalised infrastructure to spread terror and stage attacks. At the apex of these organisations are radical Islamist terrorist groups, which have showed the capacity to attack countries directly or through local surrogates and proxies professing a similar ideology.

In Kenya, the premier terrorist organisation Al Qaeda has an established network which has been responsible for two successful attacks. Al Qaeda presence dates back to early 1990s when it was headquartered in Khartoum. During this period, the organisation recruited, indoctrinated and radicalized some Muslims and establish terrorist cells in Kenya.⁷ Over time, Al Qaeda cells have networked with radical Islamist groups especially the Somalia's Al Shabaab, an organisation which has issued bellicose threats to Kenya. As such, terrorist attacks are an ever present danger that calls for sustained and proactive counter terrorism responses.

⁷ B. M. Kraxberger, The United States and Africa: Shifting Capacities in an 'Age of Terror', *African Today*, Vol.52, No.11. 2005, pp.47- 68; P. N. Lyman, 'The Terrorist Threat in Africa', *Foreign Affairs*, vol 83, No.1, 2004, pp.75-86.

Accordingly, Kenya has put in place counter terrorism infrastructure especially since 2001. The infrastructure includes legal and institutional counter terrorism frameworks, specialised law enforcement agencies such as Anti-terrorism police unit, and other measure aiming at addressing the root causes of terrorism. At the core of this measure is the need to drain the swamps which serve as the breeding ground for terrorism, pre-empt terrorist attacks through neutralizing terrorist groups, disruption of terror plots and apprehending individual responsible and responding decisively in case terrorists manage to stage an attack. This study has critically analysed radical Islamist terrorism and Kenya's counter terrorism strategy.

Objectives of the Study

The study main objective is to critically analyse radical Islamist terrorism and Kenya's responses to threats posed this kind of terrorism. In this analysis the study has been guided by the following sub-objectives:

- i. To comprehensively analyse the growth and dynamics of militant Islamist terrorism.
- ii. To review Kenya's counter terrorism legal and institutional/organisational regimes and initiatives.
- iii. To identify the shortcomings in the responses and propose measures which can address these shortcomings.

Literature Review

This section review literature on conceptual/theoretical issues on militant and radical Islamist terrorism and responses to it. The literature reviewed in this section is divided into three sections. The first section reviews the literature on the definition of terrorism and the characterisation of militant Islamist terrorism. How terrorism is defined has practical consequences for it influences

counter terrorism strategies, its target and means used. On the characterisation of Islamist terrorism the review is important since it identifies the main attributes which have made this kind of terrorism a potent transnational force. Importantly any counter terrorism strategy must be evaluated on how it effectively deals with these attributes. The second section review literature on perspectives on responses to this kind of terrorism and the problems that such responses face. The final section summarises the literature reviewed.

Definition of Terrorism

Copeland and Gambill have argued that concept of terrorism is essentially contested. This is because whether an act constitutes terrorism is defined differently by various groups depending on whether they are perpetrator(s) or victim(s) and on one's relationship with the perpetrator(s) and victim(s).⁸ Thus, the definition of terrorism is a case of 'where you sit determine where you stand', hence the popular cliché that 'one man's terrorist is another man's freedom fighter'.⁹

Crenshaw for instance defines terrorism as any action that is intended to cause death or serious bodily harm to civilians and non-combatant, where the purpose of such acts, by its nature or context is to intimidate a population or to compel a government or an international organization to do or to abstain from doing an act.¹⁰ Elsewhere he observes that the overall aim of terrorism is to intrinsically eradicate solidarity, cooperation and interdependence upon which social cohesion and functioning depend. The hope is that eventually the community will be reduced to pockets of frightened individuals concerned only with own safety and isolated from wider social context.¹¹

This will lead to "Strangeness" of the "other". Equally important, by exposing the government to

⁸ See T. Copeland, 'Is the 'New Terrorism, Really New: An Analysis of the New Paradigm of Terrorism', *Journal of Conflict Studies*, Vol XXI, No. 2, 2001, p.93; G.C. Gambil, 'The Balance of Terror: War by other Means in the Contemporary Middle East', *Journal of Palestinian Studies*, vol 28, No.1, 1998, p.52

⁹ *Ibid*, p.93

¹⁰ M. Crenshaw, 'Terrorism and Global Security' in Crocker C et al (eds), *Leashing the Dogs of War: Conflict Management in a Divided World*. Washington: USIP, 2007, p.73

¹¹ M. Crenshaw 'The Concept of Revolutionary Terrorism' *Journal of Conflict Resolution*, 16.3,1972, pp.386-396

perceptions that it can no longer fulfill its primary security function. terrorism seeks to undermine political order and substitute security and trust with insecurity and distrust.¹²

Hoffmann defines terrorism as propaganda by deed whose aim is to deliver a message to an audience other than the target, draw attention to and support a cause.¹³ The targeting of a broader audience has made Combs characterise terrorism as a synthesis of war and theatre, a dramatisation of the most proscribed violence that is played before an audience in the hope of creating a mood of fear for a political purpose.¹⁴ This way terrorism becomes a kind of psychological warfare since terrorist cannot hope to win militarily. A view captured by Fromkin's argument that terrorism aims first at psychological results.¹⁵

Lutz and Lutz in response to this contestation have analyzed hundred of definitions by organizations and government agencies, and concluded that rather than trying to have a water tight definition of terrorism, several variables are identifiable, which when present makes an act be defined as terrorism. The key variables include: political aims and motives, that is, terrorism is violent or threatens violence and is designed to generate fear in a target audience that extends beyond the immediate victims of violence; the violence is conducted by an identifiable organization or person(s) related to such organizations either directly or through a shared ideology; it predominantly involves non-state actor(s) either as perpetrator(s) or victim(s) or both and finally, the acts of violence are designed to create power in situations in which power

¹² D.Chalk, 'The Response to Terrorism as a Threat to Liberal Democracy', *Australian Journal of Politics and History*, vol 44, No.3, 1999, p.376

¹³ B. Hoffman, *Inside Terrorism*. New York: Columbia University Press, 1988, p.17

¹⁴ C. Combs, *Terrorism in the 21st Century*. New Jersey: Prentice Hall, 1997, p.71

¹⁵ D. Fromkin, 'The Strategy of Terrorism', *Foreign Affairs*, Vol 53, No.4, 1975, p.692

previously had been lacking- the violence attempts to enhance the power base of the organization undertaking the actions.¹⁶

Beyond the definition issues much of the literature on terrorism has focused on the changing dynamics of terrorism. At the center of this focus is the argument that we are in a new age of globalised and religious inspired terrorism with markedly different characteristics from the previous kinds of terrorism. This terrorism is predominantly driven by radical and militant brand of Islam. However this does not in any way imply that other religions and secular ideologies do not generate terrorism. It only reflects the current global reality where much of terrorism is inspired by radical and militant Islamist ideology.

The following section reviews the literature on the rise of Islamist terrorism which has currently become globalised. It is this kind of terrorism that has affected Kenya beginning with August, 1998 bombing of United States embassy.

The Rise of Islamist Terrorism

There are no clear datelines which mark the transition from previous forms of terrorism to Islamic terrorism rather various key watersheds can be identified. Rapoport, describes terrorism in waves, and locates Islamist terrorism in fourth wave – religious wave – whose watershed was the 1979 Islamic revolution in Iran. The previous waves were the Anarchist, Anti colonial and new left waves respectively.¹⁷

Jazel observes that the modern Islamist terrorism is connected to the literature on radical Islam appearing in 1960s. A key thinker in this period was Egyptian Sayyid Qutb, who 'advocated for military force (jihad) as necessary for breaking down the human imposed order so

¹⁶ See for instance, J. M. Lutz and B. J. Lutz, *Global Terrorism*. London: Routledge, 2004, p.8.

¹⁷ D. C. Rapoport. 'The Four Waves of Rebel Terror and September 11', *Terrorism and Political Islam*, pp.2002, 18-21

that people held under it would be free to serve God alone'.¹⁸ According to Haas these writings are important because they aimed at not only appealing to Muslims but filling the void left after dissipation of Arab nationalism and socialism, the inability of such movement to redress the 'humiliation' of Muslims and degeneration of Islamic values. As such, they provided intellectual/philosophical foundation of modern Islamist terrorism.¹⁹

Mamdani, Pillar, Gunaratna and Bergen have attributed the rise of Islamist terrorism to the Soviet Union – Afghanistan War.²⁰ A key factor in this period was the US exportation of its Latin America and Africa anti-communist strategies of organizing, training arming and funding of rightist 'terrorist' groups to Afghanistan. The difference was that, unlike in other regions where such movements were secular, in Afghanistan, the US exploited the prevalent strong Islamic beliefs as a rallying call against 'Godless' soviets. Operationally, this involved recruiting, training and arming of thousands of *mujahidin* (Islamist guerrillas) by the Central Intelligence Agency (CIA) in collaboration with Pakistan's inter-service intelligence (ISI), from across the Middle East. Importantly, the recruits were dominated by fighters with strong purist Salafist/Wahabist beliefs especially from Saudi Arabia.²¹

According to Bergen the main outcomes were: the resurrection of the notion of violent Jihad as a way of reordering the state; training of an estimated 100,000 foreign Islamist guerrillas. These Islamists would later try to effect changes in their respective countries; the defeat of the Soviets which had a cathartic effect, convincing the guerrillas that, it was possible

¹⁸ Cited in, S.E. Zabel, *The Military Strategy of Global Jihad*. Carlisle PA: Strategic Studies Institute, 2007, p.4

¹⁹ See a similar argument in R. N. Haas, 'The New Middle East', *Foreign Affairs*, Vol 85, No.6. 2006, p.7.

²⁰ M.Mamdani, 'Good Muslim, Bad Muslim: A Political Perspective on Culture and Terrorism', *American Anthropologist*, 104:3, pp.766-775; P. Pillar, *Terrorism and Foreign Policy*. Washington DC: Brookings Institution Press, 2001, p. 47; R. Gunaratna, *Inside Al Qaeda: Global Network of Terror*. New York: Berkley Books, 2002, p. 1; P. L. Bergen, *The Osama Bin Laden I Know: An Oral History of Al Qaeda's Leader*, New York: Free Press, 2006, pp. 74-75.

²¹ See, M. Mamdani, *Ibid*, pp.766 -775; R. Gunaratna, *Inside Al Qaeda: Global Network of Terror*, *ibid*, pp.5-6

to militarily achieve their objectives; it created enduring network of *mujahidin* across the region who believed in holy war and fighting anywhere in the Muslim lands. Lastly, the mujahidin were equipped with terror tactics, operational infrastructure and sources of financing especially through opium trade.²²

Drinkwine has identified the reaction of Middle East monarchies, especially, the Saudi one, to increased attacks that they were 'apostate', and willing collaborators in effecting western imperialists in the region as critical factor encouraging radical and militant Islam . In reaction, the Saudi kingdom, for instance, rejuvenated *Wahabism* reform movement. *Wahabism* promotes return to Islamic states based solely on the first generation of interpretation of the teachings of the prophet and the Quran, and abandoning of secularism. It is estimated that, the Saudi government has spent 70 billion dollars towards this end, financing hundreds of radical mosques, extremist *madarasas* and Islamic centres across the globe.²³ This has led to expansion of Islamic radicalization in Saudi Arabia and other regions which previously professed moderate beliefs.

The final critical dynamic has been the 9/11 terrorist attacks in US and the aftermath. Hoffmann has observed that the subsequent global war against terror which played into Al Qaeda strategy led to resurgence of radical Islamist and made Islamist terrorism more appealing. It completed the circle of discourses of victimhood and narratives of 'years of domination and humiliation by Christian crusaders'; promoted 'Islamophobia' further alienating Muslims especially in Western Societies and opened multiple fronts for waging global jihad. That, the war against terror is predominantly been waged in Muslim lands by a coalition of non-Muslim forces

²² See, P. L. Bergen, *The Osama Bin Laden I Know*, Op cit, pp.74-75.

²³ Cited in, B.M. Drinkwine. *The Serpent in our Garden: Al Qaeda and the Long War*. Carlisle PA: Institute of Strategic Studies, 2009, p.55.

and their 'apostates sympathisers' have provided Islamist terrorists with a powerful counter ideology which projects the war as against Islam.²⁴

Certainly these are not the only dynamics that have inspired the rise of Islamist terrorism. For instance Campbell and Flourmoy, Pillar, Tarrow has identified low social-economic conditions and injustices as creating a fertile ground for radicalization and recruitment of potential terrorists.²⁵ However these factors are present in many societies and they do not generate terrorism. Rather they may cause civil wars based on a secular ideology and targeting localities rather than generating a global terrorist project.

Hence it is important to understand Islamist terrorism as driven by particular dynamics and exhibiting different characteristics relative to insurgencies and civil wars. This understanding is critical if an effective counter terrorism strategy is to be realised. The following section review literature on characteristics of Islamist terrorism.

Characteristics of Militant Islamist Terrorism

Zanini and Gambil have argued that Islamist terrorism is different from previous forms of terrorism. Earlier terrorism was based on Secular Ideology (i.e. nationalism); was limited in geographical reach, usually concentrating in a given region and whenever out of area operations were conducted, the objective was recognition, forcing the issue to global attention and effecting a form of coercive diplomacy.²⁶ Further, such organisations usually had state sponsors who

²⁴ See, For instance, Osama statement on 3rd, Nov, 2001, cited in R. Hoffman, 'Rethinking Terrorism and Counter Terrorism since 9/11', *Studies in Conflict and Terrorism*, 25, 2002, p.308.

²⁵ S. Tarrow, *The New Transnational Activism*. Cambridge: Cambridge University Press, 2005, P. Pillar, *Terrorism and US Foreign Policy*. Washington DC: Brookings Institution Press, 2001, pp.30-32; K. M. Campbell and M.A.Flourmoy, *To Prevail: An American Strategy for Campaign against Terrorism*. Washington DC: Center for African Strategic Studies, 2001, pp.255-6

²⁶ See different authors, for instance G. C. Gambill, 'The Balance of Terror: War by Other Means in Contemporary Middle East', *Journal of Palestinian Studies in Conflict and Terrorism*, 22, 1999, p 248. M. Zanini, 'Middle Eastern Terrorism and Netwar', *Studies in Conflict and Terrorism*, 22, 1999, p.248

provided them with diplomatic and material resources. Though, this trend has not ended, it is currently more of an exception than norm.

Further, earlier terrorism was conducted by hierarchical organisations. Byman and Levitt states that in terms of organization, previous terrorism was conducted by hierarchical and bureaucratic organizations characterised by 'Great man leadership' as exemplified by Palestinian Liberation Organisation's Yasser Arafat. Finally it took place in a totally different global infrastructural landscape, limiting its potential in utilizing information, communication and technological platforms.²⁷

To fully bring out differences between Islamist terrorism and its predecessors, much of the review will focus on the literature on Al Qaeda (AQ) as an organisation, AQ as an ideology and AQ associated movements (AQAM). This is because, AQ and its derivatives fits within the profile of an Islamist terrorism organisation. Other organisations such as Palestinian HAMAS, Egypt's Muslim Brotherhood, Lebanon's Hezbollah and so on do not fully fit this profile.²⁸ They are more nationalist oriented, have not embraced violent 'global jihad and in case of HAMAS and Hezbollah, their preferred strategy is guerrilla warfare.

Ideology

The ideology driving Islamist terrorism is the most differentiating element. This is because unlike previous terrorism rooted in secularist – nationalist ideologies, Islamist terrorism is rooted in a radical Islamist ideology. According to Zabel Islamist terrorism rejects any secularist ideology especially democracy. The argument is that democracy 'collectively promotes principles that corrupts Islam by encouraging practices that exceed or contradict the *Sharia* such

²⁷ D. Byman, 'Should Hezbollah be Next', *Foreign Affairs*, vol 82, No 6, 2003, Also, M. A. Levitt, 'The Political Economy of Middle East Terrorism', *Middle East Review of International Affairs*, Vol 6. No 4, 2002, p.49.

²⁸ See similar argument in, S. Zuhur, *Hamas and Israel: Conflicting Strategies of Group Based Politics*. Strategic Studies Institute, 2008, pp.15-60

as freedom of belief (or unbelief). equating of believers and non-believers, freedom of speech (even blasphemy) and equating of men with women in all situations, regardless of the role God meant them to play. Also, it infringes on the rule that, 'the command is for none but Allah'. since democracy says the command is for none but the majority of the people. ²⁹

Additionally, Hoffmann and Paz observe that the ideology advocates for violent jihad. Paz quotes late Qutb-a key modern radical Islam ideologue- philosophical writing that, secular order prevents people from following God's governance, instead keeping the people in servitude to their own man made government and laws.... to defeat this, military (jihad) was necessary.³⁰ Consequently, terrorism as a form of jihad is first and foremost a sacramental act or divine duty executed in direct response to some theological imperative or demand.³¹ This makes the conception and conduct of terrorism a holy war.

Klaussen, Bar and Tucker have argued that the religious nature of the ideology means that Islamist terrorism is based on a historic and dichotomist view of the world. To the terrorists, there can only exist two camps that is, *Dar al Islam* (House of Islam) and *Dar al Harb* (House of war), and this houses are engaged in apocalyptic clash, which will end after Islamic victory over non-believers.³² For instance, Osama Bin Laden has constantly called upon Muslims to fight all anti-Islamic forces (until) they are wiped off the face of this earth and Islam takes over the whole world and all other false religions.³³ A similar view cited by Klaussen was stated by would be Times Square bomber, Faisal Shazad, in video posted in You tube, that 'Islam is

²⁹ S.E. Zabel, *The Military Strategy of Global Jihad*. Carlisle PA: Strategic Studies Institute, 2007, p.3

³⁰ R. Paz, 'Middle East Nationalism in European Arena', *Middle East Review of International Affairs*, Vol 6, No.3, 2002, pp.66-70

³¹ B. Hoffman, *Holy Terror: The Implications of Terrorism Motivated by Religious Imperative*. Santa Monica CA: Rand, 1993, p.2.

³² See, S. Bar, 'The Religious Sources of Islamic Terrorism: What the Fatwa Say', *Hoover Institution Policy Review*, No.114

³³ Cited in D. Tucker, 'What's New About the New Terrorism and How Dangerous is it?', *Terrorism and Political Violence*, 13, 2001, p.5

coming to the world. Democracy will be defeated. and so was communism defeated and all other isms' and 'schisms' will be defeated and the word of Allah will reign supreme'.³⁴

Arquilla et al have brought another dimension of the ideology. They observe that ideology provides Islamist terrorism with a global theatre, unlike previous forms of terrorism. For instance, the notion of AQAM captures this globalisation of violent jihad. Such movement do not necessarily need to be under any hierarchical command, rather they are unified with Al Qaeda central on the basis of a shared ideology which obligates radicalized Muslims to wage jihad. This is best represented by the view that, members do not have to resort to hierarchy; they know what they have to do.³⁵

Strategic Objectives

There is an agreement among scholars that Islamist terrorism has strategic objectives different from previous forms of terrorism. Arquilla et al argue that previously, organisations such as PLO conducted terrorist activities with an aim of pushing a specific political agenda, that is, as a form of coercive diplomacy.³⁶ For example, whatever terrorist actions Islamists undertake, the objective is creation of a new kind of order shaped to their preferences, whose climax will be establishing of an Islamic caliphate. The objective is non-negotiable and achievable only after total victory over the house of war. As such, their actions are not geared towards securing a seat in governments or negotiation table but to shatter either.³⁷ Hoffman substantiates this view by

³⁴ Cited in, J. Klaussen, *Al Qaeda- Affiliated and Home-grown Jihadism in UK: 1999 – 2010*, A Research Report by Institute of Strategic Dialogue, 2010, p.32

³⁵ See J. Arquilla et al, 'Networks, Net war and Information Age' in Khalizad et al (ed), *The Changing Role of Information in Warfare*. Santa Monica CA: Rand, 1999, p.86.

³⁶ Ibid, pp.101-103

³⁷ Ibid.

quoting the words of the late terrorist Mussawi that 'we are not fighting so that the enemy recognises us and offer us something; we are fighting to wipe out our enemy.'³⁸

Zabel has argued that Islamist terrorism does not care about creating a balance between making a statement and retaining popular support nationally or globally. This is because their goal is destruction of the enemy.³⁹ Hence unlike classical insurgencies where the population was the centre of gravity or in Mao's words was like water to little fishes, Islamist terrorists are not shackled by such priorities since they can manage to control the population through fear.⁴⁰

Kilcullen and Mackinlay have brought out martyrdom as a strategic objective of some Islamist terrorists. Kilcullen has argued that beyond the identifiable objective of establishing an Islamic caliphate, fighting against the infidel is considered an end in itself. In this case the terrorist may not seek to achieve any practical objective but to be a *mujahidin*, earning God's favour (and hope of ultimate victory through his intervention) through the act itself.⁴¹ Consequently, Mackinlay states that a terrorist goal motivated by faith cannot be translated into negotiable objectives since it has a transcendental end.⁴² The terrorist can only be disabled before he strikes.

This calls for a different strategy based on the knowledge that the population is not the enemy but a victim and hence a willing counter terrorism partner. Also that terrorist are not willing to compromise demands that such a strategy must have a strong component directed against terrorists ideology and pre-emption of terror plots . Such a strategy will counter propaganda, isolate terrorists and make recruiting difficult.

³⁸ B. Hoffman, 'Holy Terror', Op cit, p.5.

³⁹ S.E. Zabel, 2007, Op cit, p.7

⁴⁰ R. Thompson, *Defeating Communist Insurgency: Experiences from Malaya and Vietnam*. London: Chatto and Indus, 1974, p.63.

⁴¹ D. Kilcullen, 'Countering Global Insurgency: A Strategy for the War on Terrorism', *Journal of Strategic Studies*, Vol 28, No.4, pp.597-617

⁴² J. Mackinlay, *Defeating Complex Insurgencies beyond Iraq and Afghanistan*. London: RUSI, 2005. p.32

Modes of Financing

Unlike previous terrorism which was largely dependent on state sponsorship, financing of Islamist terrorism is highly privatized and diversified. It includes legitimate and illegitimate sources of self-financing and contributions from individuals and organisations sympathetic to the jihadist cause.

Atarodi observed that Islamist terrorism has legitimate sources of finance mainly from private enterprises run by such organisations. For instance, when Al Qaeda was headquartered in Sudan in early 90s, it had investments in the most lucrative economic sectors, generating millions of dollars.⁴³ Such sources are augmented by funds from illicit sources. Levit and Gartenstein-Ross state that the illegitimate sources of finance include engagement in drug trade, organised criminal activities, extortion, fraud and smuggling of contrabands. In 2002, for instance, it was estimated that Al Qaeda raised 35 percent of its income from drug trade.⁴⁴ In Somalia, an Al Qaeda affiliated movement Al Shabaab has established symbiotic relationship with the pirates and shares a part of proceeds from piracy, while in Maghreb the Al Qaeda in Maghreb, is notorious for engaging in smuggling of contrabands, kidnapping westerners and demanding ransoms.⁴⁵

Apart from self-financing activities, fundraising has been a key source of finances. According to Levit the post 9/11 investigations revealed a network of humanitarian organisations which acted as front for fund raising. For instance, a key financier of Al Qaeda, Al-Qadi was the head of *Muwafaq* Foundation which was characterised by investigators as an organisation

⁴³ A. Atarodi, *Yemen in Crisis: Consequences for the Horn of Africa*. Stockholm: Swedish Defence Research Agency, 2010, P.21

⁴⁴ M.A. Levit, Op cit, p.53

⁴⁵ See for instance, D. Gartenstein-Ross, 'The Strategic Challenge Somali's Al Shabaab: Dimensions of Jihad', *Middle East Quarterly*, Fall 2009, pp.25-36.

through which 'wealthy Saudis send millions of dollars to Al Qaeda. .⁴⁶ In Kenya Kagwanja states the post-1998 terrorist attacks investigations revealed the role of humanitarian organisations such as *Al-Haramain*, Islamic Relief Organisation and Help Aid International fundraising for and financing the attacks.⁴⁷

These finances are augmented by *Zakat*, given towards furthering Islamist cause. Basile observes that *Zakat* is legitimate and has legality in Koran and Islamic legal traditions, which command individuals to invest their wealth in assisting Jihad. As such believers willingly give such money to finance Islamist terrorism.⁴⁸ That believers willingly and knowingly contribute towards Jihad requires a counter strategy which challenges the interpretation of Jihad as a physical struggle and a justification for violence. This shows the importance of including moderate Muslim clerics as key counter-terrorism actors.

Organization

The organization of Islamist terrorism is novel compared to the predominant hierarchical and bureaucratic organizations characteristic of previous terrorisms. The innovative organization is best understood reviewing literature focusing on different dimensions of Al Qaeda (i.e. Al Qaeda as an organization, a network and an ideology).

When it comes to Al Qaeda the organisation, Basile concludes that the structure mirrors previous organizations. The top level is hierarchical and tightly knit. It is headed by an Emir (Osama) and his deputy Zahawiri. Below them is *Majlis al Shura* council and operational

⁴⁶ See M. A. Levit, Op cit, pp.50 -56.

⁴⁷ P. Kagwanja, *Counter-Terrorism in the Horn of Africa: New security Frontiers, Old strategies*. Pretoria: ISS, 2006, pp.76-7

⁴⁸ See. M. Basile, 'Going to the Source: Why Al Qaeda's Financial Network is Likely to Withstand the Current War on Terrorist Financing', *Studies in Conflict and Terrorism*, 27, 2004, pp.173

committees on military, political information, administration-finance, security and surveillance affairs. Each committee has sub-committees performing specific tasks.⁴⁹

However when it comes to Al Qaeda as a movement different forms of organization are evident. Mayntz observes that it is characterised by loosely linked and decentralized networks, operating in different regions.⁵⁰ The networks may have strategic guidance from Al Qaeda but enjoy tactical independence within acceptable parameters. This way, a group can simultaneously pursue its local and Al Qaeda agenda. For instance, a group may identify a local strategically important target and under strategic support from Al Qaeda conduct terrorist attacks.⁵¹

Isaacs and Hoffman state that in this case, Al Qaeda operates like a venture capitalist. More so, a group previously not associated with Al Qaeda may willingly court such an association with a goal of enhancing its visibility and operational abilities. This way, Al Qaeda organizes as a franchise.⁵² This is exemplified by the transformation of Algeria's Salafist Group for Combat and Preaching, into Al Qaeda in Maghreb, or increased linkages between Somalia's Al Shabaab and Al Qaeda.

An analysis of Al Qaeda's dimension as an ideology brings out a different structure. Kilcullen has characterized the structure 'self synchronizing swarm of independent cooperating cells; cells which need not refer to Al Qaeda as an organisation since 'they are of one mind and know what to do'.⁵³ Some of these cells are made of individual(s) who may not have any link to other cells but are inspired by the Islamist ideology. In other cases such cells pursue independent

⁴⁹ See M. Basile, 2004, Op cit, p.171.

⁵⁰ See R. Mayntz, *Organization Forms of Terrorism: Hierarchy, Network or a Type Sui Generis*. Cologne: Max – Planck Institute, Discussion paper 04/04, 2004.

⁵¹ B. Hoffman, 2002, Op cit, p.310.

⁵² See for example B. Hoffman, *Al Qaeda Trends in Terrorism and Future Potentialities: An Assessment*. Washington DC: The Rand Corporation, 2003, p.14, also, R. J. Isaacs, 'The North African Franchise: AQIM Threat to US Security', *Strategic Insights*, vol 8 (5), 2009, pp.89-93.

⁵³ D.Kilcullen, 'Counter Insurgency Redux', *Survival*, vol 48, No 4, 2006, p.6

activities but also come together (swarm) to undertake a given mission. For instance, Gunaratna shows how the US invasion in Iraq led to 'swarming' of multiple terrorist cells in response to call to wage Jihad. This included fighters from Al Qaeda in Mesopotamia, Al Qaeda in Arabian Peninsula, North Africa cells, Al Ansar al Islam, European cells and many other radical Islamist groups.⁵⁴

This kind of 'organizations' makes Islamist terrorism more complex. Tucker has noted that it helps Islamist terrorists to simultaneously project perceptually a unified global Islamist terrorism infrastructure capable of operating anywhere, and practically a highly decentralized network, difficult to counter. Unlike previous terrorist groups which could easily be destroyed by decapitation, these groups retain their ability to operate even if one or two cells are destroyed.⁵⁵ Also Garteinstein-Ross concludes that the decentralized but collaborating nature provides for mobility of individuals across networks/cells, enhancing transfer of skills and terrorist tactics. For instance, within Al Shabaab, some of its Somali members are trained in Afghanistan (other networks) and at the same time it has attracted jihadists from elsewhere, who are bringing in new tactics such as Improvised Explosive Devices, car and suicide bombings.⁵⁶

Terrorist Tactics

Though Islamist terrorism utilizes tactics present in previous terrorism, such as targeting civilians and civilian facilities, use of civilian infrastructures to launch attacks, reliance on global media and so on, there are marked differences in the way such tactics are mobilized and utilized. For instance, though organization like PLO used to hijack civilian planes, crashing of the same on other targets, the way al Qaeda did on 9/11 was novel.

⁵⁴ See for instance, R. Gunaratna, 'The Post - Madrid Face of Al Qaeda', *Washington Quarterly*, 27:3, 2004, pp.91-100.

⁵⁵ See for instance, D. Tucker, Op cit. 2001, p.1.

⁵⁶ See, D. Garteinstein-Ross, 2009, Op cit. pp.25-36.

The main tactics closely associated with Islamist terrorism is use of suicide bombing. Though suicide attacks predates this kind of terrorism, Spencer has argued that how it is executed and motivation behind it is entirely new. Previous suicide attacks placed the attacker close to would be target exposing him to possible death. In new suicide attacks, first used by Hezbollah and Palestinian organizations, death of the attacker is not only guaranteed but glorified as an act of martyrdom.⁵⁷ This poses serious challenge of detecting terrorists since a key weapon is their body wrapped with explosive devices. To deter suicide attacks intelligence gathering is central to counter terrorism.

Another tactic is extensive use of ICT infrastructure to mobilize, recruit, disseminate terrorist skills, indoctrinate and attack the enemy. Mackinlay and Al-Baddawy and Weimann have stated that though this is not an entirely new tactic, the presence of global ICT infrastructure such as global media, internet, websites, face book, twitter and chat rooms has made global jihad movement a reality. Islamist terrorists use ICT for: psychological warfare, publicity and propaganda, fundraising, recruitment and mobilization, data mining, networking, information sharing, and planning and coordination Hence, in Islamist terrorism, the virtual dimension has operational and by extension strategic centrality.⁵⁸ This was reiterated by Al Qaeda's Al – Zawahiri who stated 'we are in a battle and more than half of this battle is taking place in the battlefield of the media'.⁵⁹ The importance of communication infrastructure to Islamist terrorism poses a challenge to counter terrorism especially in a democratic state with

⁵⁷ See, A. Spencer, 'Questioning the concept of 'New terrorism'', *Peace Conflict and Development*, Issue 8, 2006, p.10.

⁵⁸ For instance see, J. Mackinlay and A. Al-Baddawy, *Rethinking Counterinsurgency*. Santa Monica CA: Rand Corporation, 2008, pp.36-37; G. Weimann. *Terror on the Internet: The New Arena, The New Challenges*. Washington. DC: United States Institute of Peace. March, 2004, p. 1.

⁵⁹ Cited, B.M. Drinkwine, Op cit. p.55

liberalised media. Importantly, it points out the need to develop a communication strategy capable of undermining the information generated by these terrorist organisations.

Literature on Counter Terrorism

Counter-terrorism refers to the set of measures and responses which aims at neutralizing threats to terrorism. Though initially a reactive activity, Makinda observes that counter terrorism has become a continuing practice that anticipates, prevents or pre-empt terrorist activities.⁶⁰ This is born out of the fact that threats posed by terrorists are ever dynamic and demands a pro-active response.

However, despite this need there are different views on the best counter terrorism responses. The views are split between those who advocates to hard and soft approaches to terrorism. The hard approach has been advocated by Jurgensmeyer, who argues that such an approach should be used as a way of deterring persons from becoming involved in planning and executing of terrorist activities.⁶¹ It involves offensive military engagement against terrorist groups and their allies. The response is best represented by the United States counter terrorism measures which involves aggressive pursuing of terrorists both at home and abroad.

The hard approach has been critiqued on various grounds. One, such a hard approach has a pre-conceived wrong view of what the terrorists are. Jackson notes that a closer analysis of western states counter terrorism measures shows that they are de-contextualized and de-historicized. As a result, terrorists are described as evil ones, meaning that their character

⁶⁰ S. M. Makinda, 'Terrorism, Counter Terrorism and norms in Africa', *Africa Security Review*, vol 15:3, p.27.

⁶¹ M. Juergensmeyer, *Terror in the Mind of God: The Global Rise of Religious Violence*. California: California University Press, 2001, pp.229- 231.

precedes their actions, that is, they did what they do because it is in their nature to do so.⁶² Such a notion, deny that there could be legitimate grounds driving radical Islamist terrorism.

Importantly, a hard approach, especially military one runs the risk of increasing terror threats. As such, it is counterproductive. Mazzetti has observed that the so called 'war against terrorism' has provided fertile grounds for terrorism. For instance, Iraq which was not previously linked to international terrorism turned to be a fertile breeding ground for terrorism.⁶³ Similarly, Paz observes that Somalia had been largely insulated against radical Islamist ideology till the US started war against terror and wrongly identified Somalia, as a frontline in this war.⁶⁴ In Lebanon, Beinon concludes that Israel invasion and occupation led to radicalization of Shia community and gave birth to Hezbollah which has launched numerous terrorist attacks against Israel.⁶⁵

Third, hard approach plays into the terrorist strategy. This is because, it provides terrorist group with a powerful propaganda weapon, projecting themselves as reluctant warriors fighting against an unjust system.⁶⁶ Also it plays into terrorist's strategy. Drinkwine observes that the Al Qaeda attack on US aimed at forcing the United States into a military response. An article appearing in Al Qaeda's website *Al-Thabitun ala al-ahd* in part stated 'by drawing the enemy into direct combat engagement without proxies, Al Qaeda wanted to realize an eighth valuable objective: to subject the enemy into bloody exhaustion first, to bleed him dry economically and

⁶² R. Jackson, *Writing the War on Terrorism: Language, Politics and Counter Terrorism*. Manchester: Manchester University Press, 2005, pp.5-13.

⁶³ M. Mazetti, 'Spy Agency say Iraq War Worsens Terror Threat', *Washington Quarterly*, vol 2, 2006, p.5.

⁶⁴ R. Paz, 'Middle East Islamists in the European Arena', *International Affairs*, vol 6, No.3, 2002, p.70.

⁶⁵ J. Beinon, 'Is Terrorism a Useful Term in Understanding the Middle East and the Palestinian - Israel Conflict?', *Radical History Review*, Issues 85, 2003, pp.12-23: 20.

⁶⁶ M. Andreas, *Containment Review: An Alternative Way to Cope with Terrorism*, Op cit, pp.25-38, S. Reinke, 'The Impact of Psychological - Cultural Factors on the Concept of Fighting Terrorism.' *Journal of Strategic Security*, vol 11, No 1, 2009, pp.58-80.

then to bleed him humanly, socially and psychologically in a way he cannot bear to compensate.⁶⁷

Additionally, the hard response has led to increased networking of groups sharing radical Islamist ideology. Previously localized groups have aligned themselves with Al Qaeda. Keenan and Isaacs conclude that, war against terrorism has led to increased fundamentalist and militant jihadist values in Morocco, Somalia and Algeria. In Morocco, the radical Islamist terrorist, Morocco Islamic Combatant Group, which rose in reaction to this war, was responsible for Casablanca and Madrid terrorist attacks. In Algeria, the nationalist Salafist Group for Preaching and Combat (GSPC) in reaction to war against terror across the Sahel transformed into Al Qaeda in the Maghreb (AQIM), with operations across the region.⁶⁸ Currently, AQIM is one of the most active Al Qaeda associated terrorist organisation.

The fourth critique of hard approach has been that it has allowed gross human rights violation, justified on the ground that such measures are necessary to counter terrorists. Assamoah argues that in Africa, counter terrorism strategies have been used to suppress political opponents and groups with socially divergent views. In Zimbabwe, the incumbent ZANU – PF regime has viciously invoked ‘war on terror’ to justify opponents as ‘agents of terrorism’ or ‘terrorist sympathizers’ and harassing them. Government critics are labelled terrorists and detained without charges. Similar situation exists in Egypt, Ethiopia and Eritrea, where government security agencies organise random ‘sweeps’ under the boarder goal of counter terrorism. The arrested and detained persons are abusively interrogated and tortured.⁶⁹ This

⁶⁷ B.M. Drinkmine, *The Serpent in Our Garden*, Op cit, p.40

⁶⁸ R. J. Isaacs, ‘The North African Franchise: AQIM’S Threat to US Security’ Op cit, pp.90 -92, J. H. Keenan, ‘Security and Insecurity in North Africa’, *Review of African Political Economy*, No 108, 2006, pp.269-296.

⁶⁹ A. Atta – Asamoah, ‘Counter Terrorism and the National Security of African States: Points of Convergence and Departure’, *Journal of Security Sector Management*, vol 6, No. 1, 2008. pp.6 -9.

creates culture of retaliation owing to the radicalisation of detainees who upon release then find reasons to revenge.

He concludes that counter terrorism has resulted to over securitization and politicisation of issues, and the abuse of counter terrorism for suppression, personal vendettas, persecution of innocent citizens and religious groups. Such actions are counterproductive, for they practically diverge from the primary demands of national security policy by contributing to insecurity.⁷⁰ Similarly, Botha notes that hard approach leads to hostile relation between the public and security agencies.⁷¹ This hampers information sharing yet information is critical in counter terrorism.

The weakness of hard counter terrorism approach has led to perspectives demanding for a more comprehensive approach which contextualizes and historicizes terrorism. The argument is that by understanding the history and context of terrorism, appropriate strategies can be developed. Pillar arguing for such an approach notes that any sound policy towards a terrorist group requires an understanding of what is and what is not important to that group, what drives its leaders and members, what stimulates to attack, and what it would take to give up terrorism.⁷²

Taking the cue Lee has advocated for strategies that emphasizes on socio-economic development to mitigate root causes of terrorism such as poverty and marginalization. This should be reinforced by use of diplomacy and information campaigns with the objectives of

⁷⁰ Ibid, p. 9

⁷¹ A. Botha, 'Challenges in Understanding Terrorism in Africa: A Human Security Perspective', *African Security Review*, 17. 2, 2008, pp.37-38

⁷² P. Pillar, *Terrorism and US Foreign Policy*. Washington DC: Brookings Institution Press, 2001. pp.30 -32.

winning hearts and minds, and challenging the theological interpretations which encourages radicalization and militancy.⁷³

Morrison, Shapiro and Benedict, have bought out the role of having a supportive legal framework and specialized training of law enforcement agencies involved in terrorist investigations and prosecutions. The goal is to prevent the actions of such agencies from being counterproductive, by insisting that they should act in accordance to the law at all times and should respect human rights.⁷⁴ Indeed the issue of human rights is critical. Kenneth argues that the tendency to ignore human rights in fighting terrorism is not only disturbing, but also dangerously counterproductive.⁷⁵ This is because it generates resentment, put off potential anti-terrorism allies and weakens efforts to curb terrorist atrocities.

Makinda has made a similar case by noting that, while terrorists may appear to be bandits whose aim is to cause fear and destruction, they represent the values, interests and identities of the social formation from which they emerge. They may use the wrong strategies to register their grievances, but that does not in any way negate those grievances. He concludes that since terrorism is embedded in a given social structures, to address it, the most effective strategy must undermine the social structures, processes and values that produce terrorism.⁷⁶ This way, terrorists' centre of gravity can be weakened or neutralized.

Stern and Geerty have pointed out the risks of treating terrorism as heinous and counter terrorism as right, even if it involves human rights violations. This is because such an approach

⁷³ L. Ling, *War against Global Terrorism: Winning Hearts, Minds and Souls of the Muslim World*. Washington DC: National Defence University Press, 2004, p.66.

⁷⁴ B. Hoffman and J. Morrison, *A Strategic Framework for Counter Terrorism*. England; Ashgate Publishing Company, 2000, pp.12 – 13. J. Shapiro and B. Susan, *The French Experience of Counter Terrorism*. Washington DC: The International Institute for Strategic Studies, 2003, pp.89.

⁷⁵ R. Kenneth, *Human Rights, the Bush Administration and the Fight against Terrorism: The Need for a Positive Vision*, Available at www.hrw.org.

⁷⁶ S. M. Makinda, *Terrorism and Counter Terrorism*, Op cit, p.24

strips terrorism its political context and ignores its inherent attraction to helpless social segments in the face of more powerful actors. Instead, counter terrorism must aim at delegitimizing use of terrorism, by providing an environment which encourages alternative means of struggle.⁷⁷

Summary of the Literature

The two perspectives point out to the dilemma which counter terrorism responses need to resolve. On one hand, as shown in the literature on militant and radical Islamist terrorism, some of these groups pursue non-negotiable goals, such as desire to establish a purist Islamic caliphate, or wage jihad against infidels as a religious duty. To such groups, they can only be neutralized through elimination. However, such a hard approach can be counterproductive, especially for it plays into the strategy of terrorists. Fromkin argues that terrorism achieve its goal not through its acts but through response to its acts.⁷⁸

This calls for a careful implementation of responses based on treating terrorism as a criminal act, which can be dealt with by the law and order agencies. Such responses should be driven by sound intelligence gathering (both overt and covert) capable of identifying individuals involved terrorism, terrorist networks, sources of financing, recruitment and indoctrination. The intelligence gathered should be used to disrupt and neutralize terrorist threats, through measures such as arresting and prosecution, freezing of financial sources and dismantling radicalizing and recruiting agencies.

On the other hand, counter terrorism must respect human rights and take cognizance of the fact that, no matter how evil terrorism might be, there exist underlying grievances which encourages and motivate terrorism. Hence, any counter terrorism response must drain the

⁷⁷ C. Greetzy, 'Terrorism and Morality', *RUSI Journal*, 2002, pp.36-37; J. Stern; *Terror in the Name of God: Why Religious Militants Kill*. Op cit. 2003, p.169.

⁷⁸ D. Fromkin, 'The Strategy of Terrorism', *Foreign Affairs*, vol 53, No 41, pp.683-698.

swamps. in order to eliminate the breeding ground of terrorism. To do so. there is a need to focus on the cause of profound social. economic and political injustices. Importantly, the literature review on radical Islamist terrorist brought out the centrality of ideology. That terrorist of organisation operates like a mass of self synchronizing cells is because they have a shared ideology. The ideology is the terrorists center of gravity and to defeat terrorism. this ideology must be challenged and illegitimised.⁷⁹ To do so, there is a need to counter the information and propaganda generated and spread by radical Islamist groups. That way, it is possible to win the hearts and minds of terrorist supporters, sympathizers and potential recruits.

The above requirements must be simultaneously undertaken and harmonised under a terrorism response mechanism. West makes a case for such an approach. noting that good response must be able to thwart and respond to terrorist attack, and prevent the violent radicalization of the local population which might resort to terrorist violence in the future.⁸⁰ The first goal concerns law and enforcement agencies, whereas the second goal involves social, economic and political institutions.

Hypotheses

The study has tested the following hypotheses

- i. Kenya lacks a comprehensive legal and institutional framework for guiding its responses to radical Islamist terrorism
- ii. Militant radical Islamist terrorism has become glocalized.
- iii. Kenya's responses do not address the root cause of radical Islamist terrorism.

⁷⁹ P. Shemelin, *Reducing Ideological Support for Terrorism*. Monterey: Centre for Contemporary Conflict. 2004, p.3.

⁸⁰ D. L. West, *Combating Terrorism in the Horn of Africa and Yemen*. Cambridge MA: Beefer Centre for Science and International Affairs, 2005. pp.16-17.

- iv. Kenya lacks a good counter-information and propaganda infrastructure capable of neutralizing radical Islamist terrorists' centre of gravity (COG).

Justification of the Study

The study has both academic and policy justification. Academically, there is a need to seriously engage with militant and radical Islamist terrorism, which currently present serious security threats globally. Unlike other forms of terrorism which were largely localized and driven by secular and nationalist ideologies, Islamist terrorism represents a different kind of terrorism. It is global and inspired by radical interpretation of Islam. As such, old counter terrorism strategies are inappropriate since they are based on assumptions that terrorist groups are amiable to political and territorial concessions, military force and negotiations. Islamist terrorists pose a different set of problems and hence the goal is to neutralize their appeal, based on warped interpretation of religion, eliminate active operatives through arrest and prosecution, as well as disruption of terror networks, and addressing social and economic conditions which encourages terrorism. This calls for a balanced response based on particular contextual analyses, coupled with the understanding of Islamist terrorism. The study has contributed to this endeavour by critically appraising the dynamics of radical Islamist terrorism in Kenya and the response mechanisms present.

On policy grounds, counter terrorism is no longer a reactive process. It has become a continuing practice that anticipates, prevents and pre-emptes terrorist activities. This is necessarily since terrorism is a complex and ever-changing process, which demands possession of up to date information. The information must be grounded on the right conceptual and practical understanding of the kind and dynamics of terrorism policy makers are dealing with. This study

has contributed to such theoretical and practical understanding and pointed out shortcomings which need to be addressed.

Conceptual Framework

The study is based on a conceptual framework which is constituted of three main variables, drawn from the literature reviewed. The variable focuses on the three clusters of elements that should be present in a response mechanism targeting radical Islamist terrorism. Since the responses are determined by the nature and dynamics of Islamist terrorism these variables address the generators and enablers of this kind of terrorism.

The variables are: Security, political and Developmental. Security variable is concerned with identifying, pre-empting and disrupting terrorist activities and terrorist networks.⁸¹ The security variable is dealt with by government agencies tasked with provision of internal security. The political variable focuses on the ideology underpinning radical and militant Islamist terrorism. This ideology which is based on militant interpretation of Islam has emerged as the centre of gravity for Islamist terrorism, and its potency has been enhanced by presence of global ICT infrastructure. Ideology constitutes the virtual frontline of terrorism and counter terrorism with each group exploiting multiple communication channels to project its own message and undermine the message put out by the other(s).⁸²

Any counter terrorism responses must focus much attention to defeating this extremist ideology, through delegitimizing it, challenging the principles and values it embodies and replacing it with moderate and non-militant interpretation of Islam. To do so, there is a need to have a communication strategy which incorporates state and non-state actors- especially Imams,

⁸¹ M. Bradbury and M. Kleinman, Op cit, p.53

⁸² J. Mackinlay and A. Al – Baddawy, *Rethinking Counter Insurgency*, Op cit, pp.36-42.

Sheikhs and moderate Islamic scholars – who exercise great influences over the Muslim faithful. The content of the strategy must be communicated through various forms of media.

The third variable which is developmental is aimed at addressing the root causes of radicalization and militancy. The goal is to drain the metaphorical swamps of poverty, marginalization and exclusion; issues which makes moderate Muslims vulnerable to indoctrination and radicalization.⁸³ This is done through clear diagnosis of underlying grievances and developing appropriate responses, which addresses perceptions of relative deprivation in the short run and delivers social-economic development in the long run.

Using the three variables, the conceptual framework has enabled the researcher to focus on particular cluster of generators and enablers of terrorism and critically examine how the state has responded to them. In addition, it has helped to identify specific shortcomings within each cluster and suggest possible remedies. By doing so, the framework has been useful in generating a more comprehensive understanding of radical and militant Islamist terrorism and counter terrorism strategies.

Research Methodology

The research has used a qualitative case study design. This involves an in-depth investigation of an individual, group, institution or phenomena.⁸⁴ The design is appropriate for the study for it has enabled the researcher to capture critical issues, opinions and view expressed by scholars and practitioners who have written on radical Islamist terrorism and the responses to it. This has been integrated with ground research which has been used to collect and collate data from individuals who have been purposively sampled by the researchers.

⁸³ B. M. Kraxberger, 'The United States and Africa', Op cit, p.97

⁸⁴ O. Mugenda, *Research Methods: Quantitative and Qualitative Approaches*. Nairobi: ACTs Press. 1999, pp.17

The study has two types of data: primary and secondary data. Secondary data has provided the conceptual/ theoretical grounding of the study. It has been used to develop the research problem and will provide key data for the first three chapters of the study. The data has been sourced from academic/scholarly writings especially textbooks, journals, and monographs. In addition policy papers, counter terrorism strategic plans and opinions expressed in both print and electronic media have been used.

Primary data has been gathered through semi-structured conversations, with purposively sampled interviewees. The objective was to compile opinions, expectations and critical issues raised by interviewees from both governmental and non-governmental organisations/agencies. The semi-structured conversations alternatively referred to as general interview guide approach involves outlining a set of issues that are to be explored with each respondent before interviewing begins. The issues covered need not be standardised or taken in a particular order.⁸⁵ Rather, the question serves the purpose of reminding the interviewer of the overall themes to be discussed. As such, they allow for fluidity of the dialogue and give the interviewee an opportunity to expand on the theme in which he/she has further knowledge and experiences, express opinions and personal insights.⁸⁶

Data gathered from primary and secondary sources have been analysed qualitatively. The findings have been used to test the study's hypotheses and make conclusions.

Chapter Outline

The study is structured out into seven (7) chapters: -

- i. It presents the research problem, reviews the literature, and develops a conceptual framework and the methodology of the study.

⁸⁵ M. Q. Patton, *Qualitative Evaluation Methods*, London: Sage Publications, 1980, p.198.

⁸⁶ Ibid, p.198

- ii. It has covered the historical growth of radical and militant Islamist terrorism.
- iii. It has examined the presence of the radical and militant Islamist terrorism in Kenya.
- iv. It has focused on the root and proximate drivers of this kind of terrorism.
- v. It has provided a review of Kenya's Counter terrorism strategy focusing on international and domestic legal and institutional structures as well as initiatives.
- vi. It has critically analysed the counter terrorism challenges which Kenya is facing and tests the study's hypotheses.
- vii. It has concluded the study.

Chapter Two

An Overview of the Study

Introduction

The previous chapter has introduced the broader themes which the study intends to address. In the literature it has identified the characteristics of radical militant Islamist terrorism which is currently networked globally and poses threat to international security. It has shown that this kind of terrorism which is located within the fourth wave of global terror is deeply rooted in religion giving it a transcendental nature and making the use of terror a sacred act.

This chapter traces the rise of terrorism in general and specifically the growth of Islamist terrorism. It is divided into sections. The first section traces the etymological roots of terrorism. This is important since the concept of terrorism is essentially contested as reflected in the cliché 'one man's terrorist is another man's freedom fighter.'¹ The second section traces the rise of militant Islamist terrorism, especially after 1960's when Islamist ideology started to displace Pan-Arabism in the Middle East. The final section focuses on the globalization of this kind of terrorism.

The Etymological and Sociological Roots of the Concept of Terror and Terrorism

The concern with the etymology of terrorism is critical since meanings are social constructs and how they are constructed have fundamental epistemological and ontological consequences. This view is best captured by the arguments put forward by constructivist paradigm which is rooted on both social and material ontologies. It argues that words have both constitutive and regulative effects. This is because one cannot explain the link between cause and effect in social life

¹ T. Copeland, 'Is the 'New 'Terrorism Really New: An analysis of the New Paradigm of Terrorism', *Journal of Conflict Studies*, Vol XXI, No 2, 2001, p.93.

without understanding the meaning that the activity under study has for the subject, that is, for an action to have a meaning it must be socially/culturally contextualised. Essentially there should be a focus on ideational forces and how they constitute and regulate actors through intersubjective context.² This is because material structures only acquire meaning through the agency and structure of human knowledge in which they are embedded and there is a need to problematize the concepts and assumptions used in providing the meanings.³ As such concepts must be sociologically understood and must not be treated as external and independent of actors. Rather they are social constructs woven from rules and meanings, which define relationships and give interactions their purpose.⁴

Etymologically, the word terror derives from the middle age English word *terroure*, whose root is from the old French 'terreur'.⁵ The old French word 'terreur' was derived from the Latin noun 'terror' and verb 'terre' which meant to frighten. Before 1600's, the word terror was devoid of any political connotation and simply referred to a state of mind, whereby an individual was frightened by an external stimuli.⁶ It simply referred to a situation of great fright or panic. However beginning in 1600s, the word terror started acquiring new meaning rooted in politics of that era. During this period there was increased governmentalization of society in Western Europe. This was as a result of the establishment of Westphalian state system in 1648. This state

² See excellent elaboration of constructivist approach in A. Wendt, 'Anarchy is What States Make of it: The Social Construction of Power Politics', *International Organisation*, Vol 40, No.2, 1992, pp.391-425; A. Wendt, 'Constructing International Politics', *International Security*, Vol 20, No. 1, 1998, pp.71-81; T. Hopf, 'The Promise of Constructionism in International Relations Theory', *International Security*, Vol 23, No 1, 1998, pp.171-200

³ Wendt has used such an approach to show that anarchy is what we make of it. See A.Wendt, 'Anarchy is What States Make of it: The Social Construction of Power Politics', Op cit

⁴ J. Milken, 'Intervention and Identity: Reconstructing the West in Korea' in Weldes J et al (ed), *Cultures of Insecurity: States, Communities and the Production of Danger*. Minneapolis: University of Minnesota, 1999, pp.92-103. Also, J. Milken, *The Social Construction of Korean War: Conflict and its Possibilities*. Manchester: Manchester University Press, 2001, pp.30-39.

⁵ M. Blain, 'On the Genealogy of Terrorism', A paper presented during the 37th conference of International Institute of Sociology, Stockholm, 5th-9th, July, 2005, p 7.

⁶ M. Blain, 'On the Genealogy of Terrorism', *Ibid*, pp 8 – 9.

system led to a shift from fiefdoms, principalities and city states to a modern state characterised by a whole range of government institutions. The institutions aimed at enhancing social control of citizens and were founded on the philosophy that a well disciplined and docile population would enhance in a multiplicative way the sovereign's political power.⁷

However, the process of exercising control over the citizens was hardly democratic. As a result, it evoked a contemporaneous process of citizens' resistance to the power of tyrants to tax, conscript, and arbitrarily punish. The resistance birthed an emergent liberal mode of politics based on the notion of citizens as free subjects or own sovereigns. The simultaneous processes of increased governmentalization of the society and citizens resistance ultimately led to civil and revolutionary wars as citizens rose against tyrannical regimes. This made the process of state formation a bloody one, as war became the main technique of state building.⁸

It is within the rubric of liberal state formation that the word terror acquired a political meaning. This was best exemplified by the revolutionary France in 17th Century when citizens rose against the ancient regime. After deposing the tyrannical monarchy, the French revolutionaries especially the Jacobins led by Robespierre instituted a 'reign of terror' between March 1793 and July 1794. It is during the 'reign of terror' that the concept of terror acquired three additional dimensions. One, terror moved from being an individual experience (a frightened state of mind) to a communal experience. Two, it started refer to a state where the general community lives in dread of repression by a ruling faction that engages in organized

⁷ In disciplining and social control see M. Foucault, *Discipline and Punish: The Birth of the Prison*, Translated by A. Sheridan, New York: Danthen Books, pp.77

⁸ On War and state making see authoritative texts such as A. Giddens, *The Nation State and Violence: A Contemporary Critique of Historical Materialism*. Berkeley: University of California Press, 1985. Also, C. Tilly (ed), *The Formation of Nation states in Western Europe*. Princeton, NJ: Princeton University Press, 1975

intimidation. Three, new words emerged; terror was suffixed to give the words terrorism and terrorists.⁹

In the revolutionary French, the term terrorists referred to the Jacobins and their agents especially those engaged in tribunals during the reign of terror. More so, terrorism was used to refer to the cruelty and merciless severity subjected to those identified as the enemies of the regime. At this point terrorism remained a technique used by the state to coerce citizens' discipline and obedience.¹⁰

One fundamental move made by the Jacobins was to sociologically moralize and legitimize terrorism. For instance in a speech delivered on 5th February, 1794, the leader of Jacobins, Robespierre justified the revolutionary terror by arguing that, 'In times of peace, virtue is the source from which the government of the people takes its power. During the revolution, the sources of this power are virtue and terror: Virtue without which terror will be a disaster and terror, without which virtue is powerless.'¹¹

The speech which evidences the view of that period about terrorism shows that terror as long as it was virtuous was legitimate and morally acceptable. Importantly, the notion of virtue reconstructed the meaning of terrorism based on the dichotomy of legitimacy and illegitimacy. Blair notes that 'this legitimation had a fundamental impact on the meaning of terrorism. It brought on board a dichotomy hitherto absent in the word terrorism; the difference between legitimate and illegitimate terror.'¹² Henceforth, new concept emerged to represent the moral shift. The word 'police' terror emerged to refer to terror deployed by government which would

⁹ M. Blain, *On Genealogy of Terrorism*, Op cit, p.18.

¹⁰ Ibid, p.18

¹¹ The speech was delivered on 5th, February, 1794, Cited in Hachey and Weber, *Principles of Public Morality*. London; Routledge, 1972, p.17

¹² M. Blain, *On Genealogy of Terrorism*, Op cit, p.12.

generally be defined as legitimate use of police and military force and violence. This was contrasted with actions of force and violence directed against the established governments or colonial regime. Individuals engaged in anti-establishment violence started being vilified as 'terrorist'. Further, a person who attempted to counter government views by a system of coercive intimidation was tagged with the label terrorists. For instance, in Kenya the Mau Mau fighters in 1950's were labelled by the colonial government as terrorists.¹³

This labelling of anti-establishment forces as terrorists has made the concepts of terror, terrorism and terrorist essentially contested. This is because due to its western roots, the word terrorism and terrorist became a referent for abnormality, extremism and barbarism, which stood in contrast to the western values of normality, moderation, rationality, liberty and freedom.¹⁴ Importantly the labelling became a convenient way of tagging segments of society engaged in coercive intimidation as terrorists irrespective of their grievances or whether they have been denied political space to express their grievances. It is this convenience which for instance enabled colonial regimes to label freedom fighters as terrorists, yet they were engaged in liberation of their states and were heroes in the eyes of the colonised subjects.¹⁵ It is such opposing views that have led to the cliché 'one man's terrorist is another man's freedom fighter.'¹⁶

¹³ See for instance an analysis by C. Elkins, 'The Struggle for Mau Mau Rehabilitation in Late Colonial Kenya', *International Journal for African Historical Studies*, Vol 33, No.1, 2000, pp.25-57

¹⁴ For excellent analysis on the social construction of terrorism see, S. Ranke, 'The Impact of Psychological – Cultural Factors on the Concepts of Fighting Terrorism', *Journal of Strategic Security*, Vol 11, No 1, 2009; Also, R. Jackson, *Writing the war on Terrorism: Language, Politics and Counter Terrorism*. Manchester: Manchester University Press, 2005.

¹⁵ For instance Nelson Mandela (former president of South Africa and a Nobel Peace Prize Laureate) was labelled by the Apartheid regime and the United States as a terrorist. See S.M. Makinda, 'Terrorism, Counter-Terrorism and Norms in Africa', *Africa Security Review*, 15, 3, p.23

¹⁶ T. Copeland, 'Is the 'New' Terrorism Really New: An Analysis of the New Paradigm of Terrorism, Op cit, p.93.

However, despite the western roots of the concept of terrorism, and the argument that, 'one's man's terrorist is another man's freedom fighter', this subjective concept of terror has been universalized. This is because the conceptualization has been elaborated through social sciences and shared by those who are in privileged position of power. The specific conceptualization of terrorism and the professing of this conceptualization by those in power have led to a specific discourse of terrorism.

To elaborate on the relationship between power and meaning creation, the work of French philosopher Michel Foucault on discourses is essential. In a seminal study Foucault argued that, it is in the discourse that knowledge and power become one. Knowledge in the form of broad discourses constitutes the building blocks of social systems in a profound and inescapable way. In constructing the available identities, ideas and social objects, the context of power is reformed. Thus it is in the discourse that power and knowledge are joined.¹⁷

Basically, those who control the production of knowledge control the condition of knowing, by suppressing rival alternatives of explaining and understanding a given phenomenon. In this suppression, the criterion of knowing is determined by whether a given form of knowledge sustains or undermines a given context of power. This view is well captured by Hoogensen and stuvooy who note that, discourses creates relations of dominance and non-dominance by defining norms and practices and who must follow them, who is important and who is not, who defines the parameters of debate and does not, who is valuable and who is not.

¹⁷M. Foucault, *The Will to Knowledge: The history of Sexuality, Vol 1*. London: Penguin, 1998, p.100. Also M. Foucault, 'On Archaeology of Science: Response to the Epistemology of the Circle', In Fabion, J.D. (ed), *Aesthetic: Essential work of Foucault, 1954 – 19184, Vol 2*. London: Penguin Books, 1998.

These are profound and long standing inequalities of the world because dominant discourses determine what we can hear and learn.¹⁸

The dominance of specific discourses has led to a certain regime of truth on what constitutes terrorism. For instance, since 9/11, the West especially the United States has advanced a certain understanding of terrorists. The terrorist has been characterised as barbarians, inhuman and civil individuals who threaten the innocent, kind caring and peaceful citizens who subscribe to the values of the free world. As such, terrorist attacks those values which separates us from animals. Additionally, terrorism is constructed as 'evil' battling the 'good', and hence the need to be defeated using all means.¹⁹ In this discourse, whatever issues motivating terrorism are glossed over, and counter terrorism measures legitimized. This is because terrorism is an act of anti-globalization, where globalization is projected as a civilising mission and terrorism as a form regression to barbarism. More so terrorists are characterised as the 'evil ones' meaning that their character precedes their actions. They do what they do because it is their nature to do so. As a result, terrorism has become de-contextualized and de-historicized and terrorists criminalized.²⁰

The above analysis shows that the meaning of the word terror has changed over time. In the process, it has acquired a political dimension and become illegitimised. It is viewed as a reactionary activity aimed at undermining the status quo, though coercive intimidation by non-governmental actors. Importantly, this subjective conceptualization of terrorism has become universalized, though specific regime of truth contained in the westernized discourse of truth. Consequently, terrorism is being viewed as opposed to the values of the free world (western values) and terrorists as social rejects using non-political means to push the society back to

¹⁸ G. Hoogensen and K. Stuvooy, 'Gender. Resistance and human Security', *Security Dialogue*, 37 (2), 2006. pp.197-228.

¹⁹ R. Jackson, *Writing the War on Terrorism*, Op cit, pp.23 - 41.

²⁰ *Ibid*, pp.5-13

barbarism. The following sub-section traces the growth of militant radical Islamist terrorism. To do so, it will first historicize the growth of terrorism in general.

The Historical Emergence of Militant Islamist Terrorism

The emergence of modern terrorism can be understood using Rapoport's four wave model. The model is appropriate for it captures the dominant dynamics of each phase of terrorism. Significantly it contextualizes and historicizes terrorism as opposed to the current practices of condemning terrorism without giving due consideration to its origins and motivations.

The Four Waves of Terrorism of Modern Terrorism

In the analysis of terrorism, Rapoport argues that modern terrorism can be classified into four waves each emerging from a specific historical context. The waves are: the Anarchist, anti colonial, new left and religious waves²¹. The anti-Christ wave first appeared in 1880s in Russia. Under this wave, the anarchists who were revolutionaries were motivated by the need to change the conventions of the society in a dramatic way beyond 'generating and distributing' seditious manifestoes. To achieve this aim they resulted in to assassination campaigns against prominent officials. For instance on January 24th, 1878, Vera Zasulich fatally wounded a Russian police commander who abused political prisoners. After the attack, she threw her weapon on the ground and proclaimed that she was a terrorist not a killer. By invoking that she was a terrorist, she symbolized, glorified and valorised terrorism as an inherent social good. In this case, the motivation was to challenge the convention which allowed the abuse of political prisoners²². Under this wave, terrorism was viewed as a virtuous act against suppressive conventions.

The anarchist wave gave way to anti-colonial wave which began in mid 1940's. Under this wave, terror campaigns were used by colonial regime. It was prominent in Israel, Kenya

²¹ D. C. Rapoport, 'The Four waves of Modern Terrorism', *Current History*, December, 2001, pp.47

²² *Ibid*, pp.50-51

Algeria, Cyprus and Northern Ireland. During the anti-colonial wave, the terrorist became the freedom fighter using terror as a tactic of terror to force the withdrawal of the colonialists (e.g. in Kenya and Algeria), and implement his dream of the new order (e.g. in Cyprus and Northern Ireland).²³

The defining characteristics of this wave were that the 'terrorist' appealed to universal values of freedom and liberty, right to self determination, and nationalistic sentiments in order to legitimise his actions. Also, groups using terrorism would link to other similar minded groups internationally as well as states sympathetic to their course. This marked the beginning of internationalisation of terrorism with groups such as Algeria's FLN launching attacks in France to force it to withdraw from Algeria.²⁴ Also, there was increased state sponsorship in form of materiel, financing and provision of safe havens.

With the end of colonisation in much of the world in 1960s and early 1970s, the anti-colonial wave waned. It was gradually replaced by the new left wave, which was ushered in by the Vietnam War and furthered by the Palestinian Liberation Organisation (PLO). This wave combined nationalism and radicalism. It was more concerned with hitting theatrical targets such as international airline hijacking, hostage taking and assassinations of prominent individuals. The goal of these acts was to seek recognition or force a crisis which will make the target of terror or its allies to negotiate or back the activities of the terrorist group or to merely secure a ransom.²⁵

During the third wave, the PLO was the most dominant. It engaged in out of area operations and also increasingly cooperated with other terrorist groups such as the German Red

²³ W.F. Shughart II, 'The Analytical History of Terrorism, 1945 – 2000', *Public Choice*, Vol 28, No 1/2, 2006, pp.17 – 23.

²⁴ D.C. Rapoport, 'The Four Waves of Modern Terrorism', in Cronin H. K. and Lundes J.M. (Eds), *Attacking Terrorism: Elements of a Grand Strategy*. Washington D C: George Town University Press, 2004, pp.46-73.

²⁵ Ibid

Brigade. PLO was behind the Munich Olympic massacre (1972) and kidnapping of OPEC ministers (1975). Additionally it started training other terrorist groups in the Jordanian camps.²⁶ This practice of establishing transnational terrorist training camps has persisted up to today.

From the brief overview of the three waves, it is observable that they exhibited common ideological denominator. They were secular, propounding values such as liberty, freedom and self-determination. Also, they enjoyed state support and usually pursued territorial agendas. As such, extra-territorial operations were mainly for theatrical effects. Indeed under these waves, terrorists were folk heroes, for they were viewed to be morally pursuing the aspirations of their territories. Finally, the use of terrorism was combined with other political means making it an 'acceptable' tactic of the weak. It is this 'acceptability' which made groups such as PLO enjoy international recognition in spite of deploying terror.

The third (new left) wave began to be overshadowed by the fourth wave of religious terrorism. This religious wave emerged in late 1970s. It is important to note that, though religious elements are not a new component of terrorism, under this wave religion became central.²⁷ In the previous waves, even where religion was used the goal was to create a secular order. As such though groups such as *irgun zvai la'umi* in Israel or the Tamil Tigers in Sri-Lanka had a strong religious component as a part of their identity, their goals were secular.²⁸ In contrast under the fourth wave terror became sacralised and aimed at creating a theocratic order based on shared faith and sharp boundaries of exclusion.

It is under this wave that militant Islamist terrorism is located. This is a kind of terror where terrorist activities are viewed through a sacred prism and their pursuit aims at fulfilling

²⁶ W. Shughart II, 'The Analytical History of Terrorism, 1945 – 2000', Op cit, p.73

²⁷ B. Tilbi, *The Challenges of Fundamentalism: Islam and the New World Disorder*. Berkeley: California University Press, 2002, p.24.

²⁸ D. C. Rapoport. 'The Four waves of Modern Terrorism', Op cit, p.62.

both worldly and transcendental goals.²⁹ For instance, a Muslim suicide bomber would not only be motivated by a desire to punish the enemy, but also to fulfill transcendental goal of martyrdom and its rewards which have been elaborated in the following paragraph.

‘A martyr has six privileges with God. He is forgiven his sins on the shedding of the first drop of blood, he is shown his place in the paradise, he is redeemed from the torments of the grave, he is made secure from the fear of hell and a crown of glory is placed on his head, on which one ruby is worth more than the world and all that is in it; he will marry seventy two of the Huris with black eyes, and his intercession will be accepted for seventy two of his kinsmen.’³⁰

The Militant Islamist Terrorism Roots in Middle East

The rise of militant Islamist terrorism is closely connected to the politics of Middle Eastern region. Prior to World War I, the whole of Middle East with exception of Persia (modern day Iran) was under the Ottoman Empire whose core was the Turkish Nation. The empire was headed by a caliph who combined both political and religious powers and stood as unquestioned leader of Muslims.³¹ It is during the reign of the Ottoman Empire that the first goal of Islamic revivalism appeared in 1890s as citizens started protesting against the degeneration of Islamic values and traditions. However, during the period, the call for Islamic revivalism did not include use of terrorism, since it was unimaginable to rise against the Caliph. Indeed, the subjects of the empire could not imagine any other political organization outside the Ottoman Empire.³²

However, this changed when the Young Turkish Officers took power in 1908. The Young Turks were dedicated towards modernizing the empire and invoked Turkish nationalism,

²⁹ See, A. Spencer, ‘Questioning the concept of ‘New Terrorism’, *Peace, Conflict and Development*, Issue 8, 2006, p.10. Also, B. Hoffmann, ‘*Holy Terror*’: *The Implications of Terrorism Motivated by a Religious Imperative*. Santa Monica CA: Rand Corporation, 1995, p.2.

³⁰ Alk- Khatib Al – Tibrizi, *The Niches of Lamps*, cited in D.C. Rapoport, ‘Sacred Terror: A Contemporary Example from Islam’, in Reich W(ed), *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind*. Washington DC: Woodrow Wilson Center, 1990, pp.117 -118.

³¹ See R. Owen, *State Power and Politics in the Making of Modern Middle East* (3rd ed). London: Routledge, 1992, pp.6-10.

³² *Ibid*, p 6

leading to a shift in ideology from ‘Ottomanism’ to ‘Turkification’.³³ In response the Arab subjects started identifying more with their primordial identities rather than Ottoman one. This marked the beginning of Arab nationalism.

The nascent Arab nationalism was further fuelled by the defeat of Ottoman Empire during the World War I. The defeat led to the partition of Arabs Middle East into British and French mandates and colonial possession. The subdivision of the Arabs into artificial states despite having supported these powers during the World War I, under the promise that they shall be granted independence after successful defeat of Turkey, led to resentment of the Western powers.³⁴ As result, the anti-Turkish nationalism was replaced by anti-European one.

Contemporaneous to this betrayal was the British promise to the Jews of their own state. Under Balfour declaration of 1917, the British envisaged a Jewish homeland located in Palestine. This was implemented in 1930’s with eventual declaration of Jewish state in 1947.³⁵ The process of the establishment of the Jewish state led to massive displacement of Arabs in Palestine and this evoked shared sympathies from fellow Arabs. Consequently, rabid anti-Jewish sentiments emerged and became the core of Middle East international relations. Leadership came to be judged more on the basis of their position on the Palestinian question rather than their internal performance.³⁶

The partition of Middle East and displacement of Palestinians led to a different kind of nationalism. Rather than having a state-based nationalism such as the one experienced in Africa, Middle East develop a de-territorialized nationalism based on Pan-Arabism, and a glorious past

³³ Ibid, p.6

³⁴ See F. Halliday, *Islam and the Myth of Confrontation: Religion and Politics in the Middle East*. London: IB Tarris and Company Ltd, 2003, pp.20 -23. Also, E. Kedourie, ‘This End of the Ottoman Empire’, *Journal of Contemporary History*, vol 3, No. 4, 1968, pp.19 – 28.

³⁵ R. Bryen, ‘Palestine and the Arab State System: Permeability, State Consolidation and the Intifada’, *Canadian Journal of Political Science*, vol 24, No 3, 1991, pp.595 – 621.

³⁶ Ibid, p.600

of great Arab civilization in the region.³⁷ This nationalism was fused with anti-Jewish sentiments.

Beginning from 1950s, Pan- Arabism was further fuelled by various dynamics. One, the World War II had changed the power balance in the region, with an Anglo-American alliance gaining dominance. The alliance had imperial design for the region. For instance, the Baghdad Pact of 1958 and the Eisenhower doctrine under which United States military and economic resources were committed to the Middle East were enunciated as a strategy of curtailing the influence of the Soviet Union and its surrogate (Egypt) in the region.³⁸ Further, Britain and US supported monarchies which were unpopular with the People as long as they were willing to further their interests in the region.

Two, in 1950's there emerged a new group of leaders committed to Pan-Arabism which manifested itself in ideologies such as Nasserism or Baathism. These leaders took over power through coup in Egypt (1952), Syria (after 1949) and Iraq (1958). Due to their beliefs, they imbued Pan-Arabism with revolutionary fervour. The goal was to revive the Arab nation which had been fragmented by the partitioning of Middle East.³⁹

Three, the Suez Canal crisis of 1957 elevated the status of the then president of Egypt Gamal Nasser as a leader of Arabs. He had resisted the intimidation of Israel and British military and went ahead to nationalize the Suez Canal. This move was supported by other major powers such as United States, which feared the possible war between it and the Soviet Union. The Soviet Union had threatened to militarily intervene in defence of Egypt. This success and the feverish

³⁷ M. Barnett, 'Institutions, Roles and Disorder: The Case of Arab State System', *International Studies Quarterly*, vol 37, No.3, 1993, p.282.

³⁸ I. S. Lustock, 'The Absence of Middle Eastern Great Powers: Political 'Backwardness' in the Historical Perspective', *International Organisation*, 51, 4, 1997, pp.677 -679.

³⁹ I. Gershoni, *Rethinking the Formation of Arab-Nationalism in the Arab Middle East*. New York: Columbia University Press, 1997, pp.12 -24.

support, it brought to Nasser led him to pursue the other dream close to Arabs the Palestinian question.⁴⁰

As a result of Nasser's effort in promotion Nasserism, Pan-Arab nationalism had solidified in 1960s. It was based on anti-Jewish, anti-European, anti-imperialism sentiments. This was reinforced by myths and narratives of a glorious Arab past. However, despite its solidification, the successful defeat of Arab forces by Israel in 1967 and 1972 wars led to mass disillusionment.⁴¹ The Arab nation had been defeated and the revival of glorious past became an illusion. It is upon the ashes of this defeat that radical Islamist ideology found appeal, especially in Egypt.

In Egypt, a United States trained educationist, Sayyid Outb, rejected the western values and argued that they were the cause of the failure of Arab nation and obstacle to the establishment of an Islamic caliphate. Outb argued that, 'secular authorities of modern state were using state structures and power to prevent the people from following God's governance, instead keeping the people in servitude to their own man made governments and laws. To defeat this, military force (Jihad) was necessary to break down the human imposed order so that the people held under it would be free to serve God alone'.⁴² Additionally, he condemned democracy as a sin at individual level and collectively an affront against Islam. This is because democracy provided principles that corrupted Islam such as freedom of belief (or unbelief), freedom of speech (even blasphemy), equating believers and non-believers, sinners with innocent and men and women in all situations regardless of the role God meant them to play.⁴³

⁴⁰ See J. Abadi, 'Egypt's Policy Toward Israel: The Impact of Foreign Policy and Domestic Constraints', *Israel Affairs*, vol 12, No. 1, 2006, pp.159 -176.

⁴¹ See I. Tuttle, 'Egypt's War for Peace', *The History Teacher*, vol 42, No. 1, 2005, pp.57 -94.

⁴² Cited in, S. E. Zabel, *The Military Strategy of Global Jihad*, Carlisle PA: Strategic Studies Institute, 2007, p.4

⁴³ Ibid, p.4

Further Qutb developed a radical ideology which was based on the writings of the 18th century Islamic scholar Wahabbi. Wahhabi had advocated for a return to puritanical and literalist interpretation of Islam as practiced by the prophet and rejected other Islamic practices which had evolved since the time of Muhammad. He used the notion of *Tawhid* (the unity of God) to argue that Muslims had become strangers to Islam. This is because saying 'there is no God but Allah' was not enough. It had to be matched by actions and any action which contradicted the essence of 'no God but Allah' could put one outside the boundaries of Islam. Further he rejected important rituals practised by Shia and Sufi Muslims such as veneration of tombs, holy men and saints considering them as a form of idolatry.⁴⁴ On this basis Wahabbi would declare other Muslims who were did not subscribe to literal translation of Quran as not true Muslims.

Building on Wahabbi thoughts, Qutb advocated for ex-communication of Muslims. He divided the world into two: The world of Islam and the world of *jahiliya* (ignorance). Traditionally *Jahiliya* was used to refer to the pre-Islamic 'age of ignorance'. He de-historicized *jahiliya* and argued that it can exist at any period and referred to a spiritual condition. Using this understanding he declared God as the only indivisible sovereign and deference to worldly rule was a form of idolatry. On this basis Qutb categorized Muslim societies as *Jahiliya* because apart from worshipping Allah they also worshiped their leaders by granting them sovereignty. The argument formed the basis upon which radical/ Purist Muslims would later use to declare Jihad against other Muslims who have refused to leave *Jahiliya* and hence are apostates.⁴⁵ This is captured by the ideology of *takfir* (declaring that individuals or groups previously considered

⁴⁴ See the most influential book by Wahabbi is *Kitab Al-Tawhid (the Book of God's Unity)*. The English translation is available at www.islamicweb.com/beliefs/creed/abdulwahab. Also see D. Commins, *The Wahhab Mission and Saudi Arabia*. London: I.B. Tauris, 2006

⁴⁵ On Qutb's arguments see, W.E. Shepard, 'Sayyid Qutb and the Doctrine of Jahiliya', *International Journal of Middle East Studies*, Vol 35, 2003; Also R. Nettler, 'A Modern Islamic Confession of Faith and Conception of Religion: Sayyid Qutb's Introduction to the Tafsir, Fi Zilal al-Quran', *British Journal of Middle Eastern Studies*, Vol 35, No.1, 1994, pp.108-114

Muslims are in reality non-believers and can be fought legitimately.⁴⁶ Under this ideology a Muslim opposed to the radical interpretation can be condemned as an apostate.

Qutb's writings formed the ideological basis of militant Islamist terrorism. It projected a glorious past which could be achieved in the present through Jihad by the sword. This ideology was and is reinforced by subjective interpretation of the holy Quran. For instance the Jihadists have de-contextualized and popularised the following verses to justify their activities: 'indeed Allah has purchased from the believers their lives and their properties, for that they will have paradise. They fight in the cause of Allah, so they kill and are killed'.⁴⁷ Further, 'Allah has preferred the Mujahedeen through their wealth and their lives over those who remainAllah has preferred the Mujahedeen over those who remain with a great reward'.⁴⁸ Additionally, 'Fight those who do not believe in Allah and who do not consider unlawful what Allah and his messenger has made unlawful and who do not adopt the religion of truth'.⁴⁹

Through subjective interpretation of these and other verses, the militant Islamists have justified use of violent jihad. Also, they have made jihad an individual duty of every single Muslim (*Fard 'ayn*) rather than a collective obligation undertaken by an official authority (*Fard Kifaya*).⁵⁰ Yet, as leading Islamic scholar has argued, Jihad was not merely a duty to be fulfilled by each individual (*Fard 'ayn*). It was above all a political obligation imposed collectively upon the subjects of the state so as to achieve Islam's ultimate aim – the universalization/ victory of the faith (*Izhar al-Din*) and establishment of God's sovereignty over the world (*hakimmiyat*

⁴⁶ See B. Lewis, 'The Revolt of Islam', *New Yorker*, 77(36), p 59.

⁴⁷ *The Holy Quran*, 9: 111, Sahil International Version. Available at www.Quaran.com.

⁴⁸ *The Holy Quran*, *Ibid*.

⁴⁹ *Ibid*, Verses 9:29.

⁵⁰ The two terms can also be used to refer to Jihad as a compulsory/complete obligation (*fard 'ayn*) of every individual Muslim, or Jihad as a mitigated obligation (*fard Kifaya*). See Harmony Project, *Militant Ideology Atlas*. West Point: Combating Terrorism Centre. 2006. p.145

Allah).⁵¹ What this means is that Jihad must be declared by a legitimate authority and fought justly.

Additionally, the ideology of Takfir had a profound impact on encouraging fundamentalist Islamist ideology. This is because it forced regimes in Middle East especially Saudi Arabia (the birth place of Islam) to embrace radical Islamist Ideology as a survival strategy. This was out of fear of being labelled apostate. Since then Saudi Arabia monarchy has generously funded the spread fundamentalist ideology. It is estimated that it has spent over 100 billion US dollars globally to finance the spread of Wahabbism.⁵²

The ideology of radical militant Islam remained ossified until late 1970's. During this decade the republic of Iran underwent an Islamic revolution which deposed the regime of king Shah and replaced it with an Islamic state. Though a predominantly Shia Islamic state which did not share in the Sunni inspired militant ideology, the success had a cathartic effect. It symbolized the victory of Islam over Western imperialism.⁵³ Also it showed that it was possible to establish an Islamic caliphate, and Iran was just the beginning.⁵⁴

Parallel to Iranian revolution was the Afghan war after Soviet Union invaded Afghanistan. As a strategy of countering Soviet Union, the US, Saudi Arabia and Pakistan used religion to rally warriors from Islamic states to go to Afghanistan and fight against the Godless Soviets. Due to this strategy, the war produced thousands of Mujahedeen such as Osama bin Laden. To these Mujahids, the successful defeat to the Soviet Union convinced them that through

⁵¹ See Ibid, P.72: Also S. Helfont, *The Sunni Divide: Understanding Politics and Terrorism in the Arab Middle East*. Philadelphia PA: Foreign Policy Research Institute, 2009, p.3.

⁵² Ibid, p.7; Also, B.M. Drinkwine, *The Serpent in our Garden: Al Qaeda and the Long War*. Carlisle PA: Institute of Strategic Studies, 2009, p.55.

⁵³ The difference between the Sunni and Shia sects of Islam is well explained in S. Heliont, *The Sunni Divide: Understanding Politics in the Arab Middle East*. Philadelphia PA: Center for Terrorism and Counterterrorism, 2009.

⁵⁴ See M. Mamdani, 'Good Muslim, Bad Muslim: A Political Perspective on Culture and Terrorism', *American Anthropologist*, 104 (3), pp.766-775.

Jihad it was possible to radically alter the society. Consequently, after the war, these Afghan war veterans returned to their states with a radical reformist agenda.

However, faced by extremely authoritarian regimes such as Libyan and Saudi ones their goal was not achievable. Frustrated they turned their attention to the west especially the United States, under the understanding that, the west supported and protected these client regimes in Middle East. Hence, there was a need to neutralize the west by attacking it both at home and its interests abroad.⁵⁵ This way, the west would be forced to withdraw from the Middle East, exposing the apostate regimes which prevented the formation of an Islamic caliphate. The strategy of attacking the West and its interests explains the globalization of militant radical Islamist terrorism. Through the globalization process, this terrorism has found its way to Kenya as discussed in the next chapter.

Conclusions

The chapter has traced the development of the concept of terror. It has shown that the concept has transformed from being a referent to an individual state of mind to communal and political one. Currently, it is subjectively used to refer to a form of 'regression to barbarism' and interpreted in contrast to the values of a free society. Further, the chapter has historicized the emergence of radical militant Islamist terrorism which belongs to the fourth wave of terrorism. It was an outcome of the failure of secularism to address the problems bedeviling the Arab world and sought to change this through establishment of an Islamic caliphate through Jihad. To achieve this goal, it has drawn from Holy Quran and other Islamic writings to justify the use of violence even against fellow Muslims. Importantly it has adopted a global strategy.

⁵⁵ W. Blum, *Killing Hope: US Military and CIA Interventions since World War II*. Monroe ME: Common Courage Press, 1995, pp.340 - 45

Chapter Three

The Emergence of Militant Islamist Terrorism in Kenya

Introduction

The preceding chapter has provided an analysis of the concept of terrorism. It has traced its sociological and etymological roots showing that the concept has evolved from referring to an individual experience to its current political, subjective and illegitimised meaning. Further it has located the emergence of the militant radical Islamist terrorism which is located in the fourth wave of modern terrorism. Lastly it has examined the dynamics which has led to its globalization.¹

This chapter examines the emergence and development of militant Islamist terrorism in Kenya. It builds on the observation made in the previous chapter that the strategy of attacking the West especially the United States which is viewed as an obstacle towards the realisation of the militant Islamist goals, has led to globalisation of this kind of terrorism.² The chapter is divided into three sections. The first section traces the presence of Al-Qaeda in the region and its activities in Kenya. The second section examines the changing nature of terrorism using the concept of glocalization. This concept is used to capture the simultaneous dynamic of globalisation and localization of militant Islamist terrorism. The final section focuses on the Somali radical militant group Al-Shabaab as an example of the glocalization process and its activities in Kenya which currently pose terror threats.

¹ See Chapter Two

² See Chapter Two, P.52

The Presence of AL-Qaeda in Kenya

Al-Qaeda presence in the region is traceable to 1991 when it shifted its headquarters from Afghanistan to Khartoum, where it enjoyed protection by the hard line faction of the Islamic regime. From its camps in Sudan, it trained hundreds of militants from Horn of Africa. For instance, it trained the Eritrean Islamic Jihad movement and Somalia's Al-Ittihad Al-Islam (the predecessor of today's militant Islamists in Somalia).³

Apart from training Islamists, Al Qaeda operatives started scouting for western targets in the region, with special focus on Kenya, due to the high numbers of western interests. In 1993, Bin Laden, instructed his aide Ali Mohammed to set up a terrorist cell in Nairobi, with a goal of supporting Al Qaeda operations in Somalia where the United States forces were leading a humanitarian intervention mission. Mohammed did so, by setting up car, fishing, scuba diving equipment, luxury automobiles and diamond businesses. The businesses acted as a cover for Al Qaeda activities in Kenya and also as a source of finance. In addition, Mohammed established a bogus charity 'Help Africa People', which served as a front for money transfer to Al Qaeda cells in Kenya and provided employment to other operatives.⁴

Beginning in 1993, Al Qaeda operatives started surveillance operations in Nairobi, targeting US embassy. Their activities led to the bombing of the embassy on August, 1998. A subsequent investigation revealed an extensive Al Qaeda network in Kenya. For instance, in May 21st 1996, a boat accident occurred in Lake Victoria. Among the dead was Abu Al – Bashiri, a top Al Qaeda military commander. During the rescue operations, other top operatives Wadih el

³ USIP, *Terrorism in the Horn of Africa*. Washington: Special report, 2004, p 14. Also D. Shinn, 'Terrorism in the Horn and East of Africa: An Overview', *The Journal of Conflict Studies*, Fall 2003, pp.79-91, D' Shinn, 'Al-Qaeda in East and the Horn', accessed at http://www.lib.unb.ca/texts/jcs/summer07/shinn_Al_Qaeda.pdf

⁴See, investigative and intelligence reports, 'Ali Mohammed Sets up Nairobi cell: Trains Somalis to Fight', Available at www.historycommons.org

Hage and Fazul Abudullah Mohammed were pictured at the scene by journalists.⁵ Further, during the 2001 trial of L'Houssain Kherchotou in US, he revealed that most of the international officials of Mercy International, a non-governmental organisation operating in Kenya were Al Qaeda operatives.⁶ Additionally, the US agents who had been spying on Al Qaeda operatives in Kenya revealed that they had intercepted 40 phone calls made by Osama to Ahmed Sheik Adam, who was the director of Mercy International.⁷ More so, the 1998 embassy bombing masterminds Faizul Mohammed, Saddiq Odeh, Abdalla Wacha and Mohammed Al-Ouhali had worked in the organization.⁸

The entrenchment of Al Qaeda in Kenya was further evidenced by the fact that, a Saudi Charity Al-Haramain Islamic foundation played a central terrorist financing role. The charity operated a wholesale fish business and channelled the profits towards Al Qaeda operations in Kenya. Its activities were coordinated by Al Hage who was Osama's personal secretary beginning in 1991.⁹ In addition to terrorist financing, the charity also facilitated the movement of Al-Qaeda operatives in and out of the country through procuring of travel documents under the guise that they were humanitarian workers.¹⁰

Going though the Al-Qaeda's operations in Kenya, evidence shows that the US and Kenya agents were aware of the terrorists presence. Since 1993, the US agents constantly

⁵ *'Boat Accident Helps Alert CIA to Al-Qaeda Cell in Kenya'*. Available at www.historycommons.org

⁶ *United States of America V. Osama Bin Laden et al.*, Day 8, 2001. Southern District of New York, 21st February, 2001. Accessed at www.historycommons.org

⁷ *'US Listens in as Bin Laden Speaks to Planners of Embassy Bombings in Kenya'*. Available at www.historycommons.org

⁸ *'Four Embassy Bombers Worked for Monitored Charity that could be CIA front'*, *United States V. Osama Bin Laden et al.*, Day 20, 2001. Southern District of New York, 20th March, 2001, Accessed at www.historycommons.org.

⁹ *'CIA ignores Tip Linking Saudi Charity to Al Qaeda plot on US embassy in Kenya'*, Also, *'FBI and CIA investigating Bin Laden's Personal Secretary'*. Accessed at www.historycommons.org

¹⁰ Ibid

monitored five phone lines which were used by Al-Mohammed, Al-Liby and Kherchtou to coordinate operations locally and with Osama. This awareness explains the 21st August, 1997, joint FBI and Kenya agents' raid of Hage house where they recovered a phone address of operatives locally and internationally as well as evidence of possible terrorist attacks in Kenya.¹¹ In addition to possession of intelligence, Al Qaeda operative Mustafa Mohamood Said, an Egyptian national who had become disillusioned by Al-Qaeda, had walked into US embassy (Nairobi) and provided detailed information on plan for an imminent attack of the embassy. However, the information was not acted on and the operatives who were known to both the US and Kenya intelligence were not arrested.¹² Indeed, the 1998 embassy bombing happened due to intelligence failures. This is because the US and Kenya agents were aware of the Al Qaeda activities, but failed to act timely.

After 1998 bombings, Kenya viewed itself as victim of a war which it was not involved. The target was the United States. This inevitably led to laxity, allowing Al Qaeda cells to continue their operations in the region. Al Qaeda head in East Africa, Fazul Mohammed later relocated to Lamu under an alias Abdul Karim. He established a lobster fishing business, taught at a local *madarassa*, established a local football club poignantly called Al-Qaeda and married a local woman as a cover for his activities.¹³ Living among the Arab population, he passed off as quiet but a devout Muslim, who did not raise suspicions.

During this period Faizul led cell was busy scouting for possible targets in Coastal region. AQ operatives Issa Osman Issa, Salim Samir, Mohamed Fumo, Swaleh Nahban, Harun

¹¹ 'Ali Mohammed and Anas Al-Liby Scout Targets in Africa'; Also, 'US raids Al Qaeda Cells Members House but Fails to Stop Embassy Bombing Plot'. Available at www.historycommons.org

¹² 'No Action Taken After Precise Warning of Embassy Attack', Accessed at www.historycommons.org

¹³ M. Bradbury and M. Kleinman, 'Winning Hearts and Minds?'. *Examining the Relationship between Aid and Security in Kenya*. Boston: Feinstein International Centre: Tufts University, 2010, p.26.

Bamusa. Issa Said and Abdulmalik among others were involved in various stages in effecting the common plan. The scouting and planning did bore fruits in November, 28th 2002, when Al-Qaeda's suicide bombers Fumo Mohamed Fumo and Harun Bamusa drove a car full of explosives into Kikambala hotel, which is frequented by Israel nationals leading to fifteen deaths and scores injured. Also, AQ operatives Issa Osman Issa and Swaleh Nabhan unsuccessfully fired air to surface missiles at an Israel jet, taking off from Moi international airport in Mombasa.¹⁴ The attack brought home the reality that Kenya was extremely vulnerable to terror attack.

Similar to the 1998 bombings, the 2002 attack was indicative of failure in counterterrorism measures. Prior to the attack Al Qaeda leader Osama had warned of an imminent attack during a live broadcast in Al-Jazeera. Also, despite the intelligence information linking Faizul to Al Qaeda, he had been moving in and out of Kenya, travelling on a Kenyan passport. The passport had been issued by corrupt immigration officials. Further, the materiel used during the attacks had been smuggled to Kenya via Somalia. This was made possible due to the presence of ungoverned and porous borderlands.¹⁵ More so, Al-Haramain charity had financed the attacks, which reflected a serious omissions since the same clarity had been linked to 1998 embassy bombing.¹⁶ Finally, intelligence agents had overlooked the attractiveness of Lamu to terrorists. Yet Al Qaeda operatives Fazul, Salih Ali Sahil, Nabhan and Suddiq Odeh, lived and operated businesses there.

¹⁴ 'Al-Qaeda Stages Attack in Kenya'. Available at www.historycommons.org; the names of the operatives have been extracted from the confession made by Omar Said Omar who was among the arrested operatives after the attack. The full confession is contained in Appendix C-III in Harmony Project. *Al-Qaeda (Mis) Adventures in the Horn of Africa*. West Point: Combating Terrorism Center, 2007. pp.147-168

¹⁵ 'Al Qaeda Leader Faizul Narrowly Escapes Capture in Kenya'. Available at www.historycommons.org

¹⁶ On activities of *Al-Haramain* in funding terrorism globally, see J. Millard Burr and R.O. Collins, *Alms for Jihad: Charity and Terrorism in the Islamic World*. Cambridge: Cambridge University Press, 2009. pp.38-41.

The success of AQ in Kenya has made Menkhaus rightly observe that. Kenya is the most important safe havens for Al Qaeda operatives and Al Qaeda sleeper cells in the region. This is because foreign Al Qaeda operatives have been able to enter Kenya freely, set up businesses, establish and operate Islamic charities, marry locally, transfer and launder money, and engage in years of surveillance on possible targets for terrorist attacks.¹⁷ This has been made possible by corrupt government officials especially in immigration and security agencies. Additionally, the presence of these terrorist sympathisers and operatives of Kenyan origin has made this possible.

Though Al Qaeda has not successfully launched another attack in Kenya since 2002, this does not imply that the sleeper cells have been dismantled. Since 2002, several terrorist plots have been disrupted before AQ could launch attacks. In 2003, the US and British intelligence foiled an AQ attack on the new US embassy in Nairobi. The operative had planned to crash an aeroplane and drive a truck full of explosive into the embassy.¹⁸ Unlike other AQ operations which were mainly conducted by foreigners, the foiled attacks revealed intensive involvement of Kenyan operatives and evidenced the presence of top ranking Kenyan AQ operatives.¹⁹

In 2004, a similar plot of crashing a light aircraft into the US embassy was disrupted. Also, another plot whose objective was to shoot down aircrafts leaving Nairobi's Jomo Kenyatta International airport was uncovered. Further, intelligence officials intercepted communication between QA operatives which led to a discovery of a terrorist safe house in Mombasa. In a

¹⁷ K. Menkhaus, *Terrorist Activities in the Ungoverned Spaces: Evidence and Observations from the Horn of Africa*. A paper presented in a conference on Southern Africa and International Terrorism, on 25th – 27th January, 2007, p.10.

¹⁸ 'US Learns of Plot to Crash Airplane into US embassy in Nairobi'. Accessed at www.historycommons.org

¹⁹ Two Senior Al Qaeda members Usama Al-Kini and Sheikh Ahmed Salim Swedan, who were killed in January, 2009 by US drone strike in Pakistan tribal region, were Kenyans. They had been linked to all terror plots in Kenya. By the time they were killed, Al-Kini alias Fahid Muhammad Ally Msalam had been Al - Qaeda's chief of operations in Pakistan since 2007. See 'US Drone Kills Two Long-time Al Qaeda Leaders Al - Kini and Swedan in Pakistan's Tribal Region'. Accessed at www.historycommons.org

subsequent raid, intelligence officials recovered five anti-tank missiles which were to be used against soft targets in Coast.²⁰ On September 7th 2009, another terrorist plot was uncovered. The target of the attack was the Hilton hotel, where the visiting US secretary of State Hilary Clinton was staying and a nearby bus station was popularly known as Kencom.²¹

These disrupted plot evidence the strong presence of Al Qaeda in Kenya. This presence has been made complex by the emergence of terrorist groups in Somalia, which have established networks with Al Qaeda and Kenyan individuals and Somalia refugees either residing in Kenya or in other states but with operations in Kenya. This has led to globalization of militant Islamist terrorism in Kenya.

The Globalization of Militant Islamist Terrorism in Kenya

There is no doubt that the world has become more interconnected than ever. Infrastructural revolution whether in physical, technological and communication sphere have created a dense network of international and transnational networks. Though these linkages have led to increased positive interactions between states and non-state actors, the downside of globalization has been proliferation of illicit and criminal networks taking advantage of opportunities availed by globalized infrastructure.²²

Among the main beneficiaries of the globalised infrastructure are terrorist groups which are more networked than ever.²³ Through exploitation of globalised information, communication and technology platform, terrorist groups have managed to put across their messages globally

²⁰ K. Menkhaus, *Terrorist Activities in Ungoverned Spaces*, Op cit, p.8.

²¹ see 'Jihadist Attacks Thwarted in Kenya', Accessed at <http://www.jihadwatch.org/2009/09>

²² See for instance M. Kaldor, 'Terrorism as Regressive Globalization'. pp.1-7, September, 2003. Accessed at www.opendemocracy.net; also S.Hoffmann, 'Clash of Globalizations', *Foreign Affairs*, Vol 81, No.4, 2002, pp.104-115

²³ See for instance R. Manytz, *Organizational Forms of Terrorism: Hierarchy, Network or a Type Sui Generis*. Cologne: Max-Planck Institute, Discussion Paper, 04/04, 2004.

calling upon Muslims to join their Jihadist cause and wage war against the 'enemies of Islam'. Additionally, the ICT platform has made it possible to transfer terrorist technology via ICT. For instance jihadists provide details on bomb making, document forgery and training via the World Wide Web. More so, ICT platforms have provided a critical channel for propaganda, mobilization, fundraising and financial transfer.²⁴

The benefit of globalised ICT platform was best captured by the current leader of Al Qaeda, Ayman Al-Zawahiri. In an interview he observed that Al Qaeda is in a battle and half of this battle is taking place in the battlefield of the media. He stated 'We are in a battle for hearts and minds of the ummah'.²⁵ This remark pointed to the importance of globalised media (television networks, websites chat rooms social media and so on) in spreading of Jihadist ideology.

In a 2011 analysis, the Jihad Website Monitoring Group identified 4,500 jihadist websites. These are augmented by thousands of chat rooms and web blogs.²⁶ Indeed every terrorist group maintains a number of websites which it uses to reach out to Jihadist, terrorism seekers and sympathizers and its perceived enemies. For instance, one of the most active Al Qaeda franchises, the Al Qaeda in the Arabian Peninsula has maintained a strong web presence. Since July, 2010, through *al-malahim* media, it has published an online English magazine called *Inspire*. A review of July 2010 magazine reveals the terrorist media strategy. Its editorial stated that the goal of *Inspire* is to 'radicalize and train millions of English speaking Muslims in the West Africa, South Asia, and South East Asia. Further, the editor made a call on every Muslim

²⁴ J. M. Venhauss, *Why Youth Join Al Qaeda*. Washington: USIP Special Report, 236, 2010, p.5.

²⁵ Cited in B. M. Drinkwine, *The Serpent in our Garden*, Op cit, p.55

²⁶ See 'Retracting-Using Ideological Means for the Purpose of De-Radicalization'. January, 2011. Accessed at www.ict.org

who feels any jealousy for their religious beliefs to expel the polytheists from the Arabian Peninsula, by killing all of the crusaders working in embassies or otherwise and declare war against the crusaders in the land of the prophet, on the ground, air and sea'.²⁷

In Somalia, the militant Islamist group Al-Shabaab has a well crafted media strategy aimed at attracting foreign fighters or refugees seeking to return to Somalia, gaining financial support and obtaining worldwide media exposure. According to Wells and Cuevas, the media strategy is three pronged. It aims at partnering with global Islamic media front, development of an online magazine *Millat Ibrahim* and conducting and posting of news, interviews and online chat sessions with senior Al Shabaab leadership.²⁸ For example on January 5, 2007, Al-Shabaab released a video calling Jihadist to go to Somalia to wage holy war in support of the then besieged Union of Islamic Courts. In February, 2008, it released a well polished video showing Al-Shabaab militant training in camps in Somalia. To further the appeal to jihadist, the video featured Abu Mansoor, a jihadist who had served in elite United States Special Forces and currently a lead military trainer for Al-Shabaab.²⁹ The symbol of Mansoor aimed at attracting foreign jihads and diasporic Somalis. This seemed to have paid off, with increasing number of foreigners and diasporic Somalia moving to Somalia to wage Jihad.³⁰

Due to globalized infrastructure, Curran notes that by early 2009, Al-Shabaab had successfully changed its narrative from that of a nationalist struggle to one firmly grounded in broader Islamic principles namely establishments of Sharia and the pursuit of a global caliphate.

²⁷Stratfor, 'Fanning the Flames of Jihad Available at www.stratfor.com/weekly/20100721_flanning_flames_jihad?utm_source

²⁸ M. Wells et al, *Somalia: Line in the Sand-Identification of MYM vulnerabilities*. Carlisle PA: US Army War College. Letort papers, 2010. p.17.

²⁹'Al -Shabaab Release Jihadist Video', Available at www.historycommon.org.

³⁰ For instance, among the arrested terrorists after September 2009 terror plot by Al-Shabaab during the Visit by the US secretary of State Hilary Clinton to Kenya was foiled was a Dutch national of Somali origin see '*Jihadist Attacks Thwarted in Kenya*', Accessed at <http://www.jihadwatch.org/2009/09>

Over the course of 2009 – present, waging global Jihad became the leading Al-Shabaab stated goals.³¹ Also, Al-Shabaab owing to the possibilities offered by globalised infrastructure has established symbiotic relationship with Al-Qaeda and has increasing being recognized as AQ franchise in the Horn of Africa. In a web-based video, Al-Qaeda leader Al Zawahiri, stated, ‘my brother, the lions of Islam in Somalia, hold tightly to the truth and don’t put down your weapons before a *Mujahid* state of Islam and *Tawheed* has been set up in Somalia.’³²

The globalization processes have led to new kind of terrorism which is referred in this study as globalized terrorism. This is a terrorism which is simultaneously globalized and localized. On one hand terrorist groups operates in a transnational scale. On the other hand, the groups have a localized presence pursuing both domestic (own core interests) and global jihadist agenda. Consequently, there has been the globalisation of the local as well as localization of the global.

This strategic manoeuvre provides local groups with more visibility and potency since they can draw from the expertise and resources possessed by more established groups such as Al-Qaeda. For example Al-Shabaab has mobility of individuals across networks/cells, enhancing transfer of skills and terrorist tactics. Some operatives have been trained in Afghanistan (other networks) and at the same time it has attracted jihadists from elsewhere, who are bringing in new tactics such the use Improvised Explosive Devices, car and suicide bombings.³³

³¹ C. Curran , ‘*Global Ambitions: An Analysis of Al-Shabaab Evolving Rhetoric*’, Accessed at www.criticalthreats.org

³² Cited in D. Gartenstein – Ross, ‘The Strategic Challenge of Somali’s Al Shabaaab: Dimensions of Jihad’, *Middle East Quarterly*, 2009, pp.30-31.

³³ See, D. Gartenstein-Ross, ‘The Strategic Challenge of Somali’s Al Shabaaab: Dimensions of Jihad’, *Ibid*, pp.25-36.

In Kenya, due to the activities of Al-Shabaab and Al-Qaeda, there has emerged glocalized terrorism. Indeed, Kenya is currently not only a victim of terrorism but a source of terrorism. This is best exemplified by the activities of the Somalia based *Harakat Al Shabaab* in Kenya. Al-Shabaab which was established by the more radical members of the Union of Islamic Courts, after the courts were defeated by Ethiopian forces. in 2006. has been active in Kenya.³⁴ Though apart from issuing bellicose threats, it has not launched terrorist attacks on Kenya soil. the group has aggressively pursued its terrorism agenda in Kenya. This has been through recruitment, spreading of radical militant ideology, money laundering. fundraising.

Due to lack of comprehensive data there is no formal figure of the number of Kenyans who have been recruited by Al Shabaab. However conservative estimates put the numbers into hundreds. The recruits are mainly young Muslim youths across ethnic groups. These youths are promised an opportunity to train militarily and fight within Al Shabaab`s ranks.³⁵ However, it is worth noting that, the youths are more motivated by economic concerns – a promised salary of about 40,000 shillings per month – than profession of radical Islamic ideology. Despite the promise of economic rewards, once in Somalia, the youths are subjected to Jihadist ideology through rigorous indoctrination. Those who resist are executed. Consequently, despite prior motivation, the youths end up radicalized. full of hatred of those who have been identified as enemies. Indeed, some Kenyan youths have conducted suicide bombings in Somalia.³⁶

³⁴ On the rise of Al Shabaab, See C. Curran ‘ Global Ambitions, Op cit and M. Wells et al, Somalia Line in the Sand, Op cit, pp.8-15

³⁵ Christian Monitor Science, ‘ Somali’s Al – Shabaab Recruits “Holy Warriors” with \$400 Bonus’, Available at www.csmonitor.com/world/Africa/2010/0415/

³⁶ The suicide attacks in African Union Mission in Somalia Compound and the May, 25th suicide attack on AMISOM troops, 2010 were allegedly undertaken by two Kenyan-Somalis, Ahmed Tawakhal and Yusuf Mohammed Warsame respectively. See released US embassy (Nairobi) secret cable, ‘A Portrait of Al – Shabaab Recruitment in Kenya’, Accessed at www.cablesatresearch.net/cable.

Significantly the recruitment has spawned a network of Jihadist who poses a long term terrorist threat to Kenya once they return home.

To further enhance the entrenchment of the Jihadist ideology Al-Shabaab, in collaboration with Al Qaeda and network of Salafist Islamic preachers have been advancing Salafist beliefs in Kenya especially in Eastleigh which has a large Somali population and coastal regions. Religious centers such as the Abubakar Al-Saddiqie, Al-Hidaya mosque, Belt-ul-Mal madrassa and the Masjid-ul-Axmar have been identified as a resource base for Somali Islamist militants. Clerics preaching in these mosques such as Sheik Mohammed Abdi Omar (Imam of Al-Saddique Mosque), Sheik Hassan Hussain and Mohammed Ma'alin Nahar (brother to abu Uteyba, a former Al Shabaab commander) have been spreading militant salafist ideology.³⁷ These sheikhs take advantage of youths, who are not well grounded in holy Quran, and inculcate them with twisted interpretations of Islamic teachings.

Additionally, Al Shabaab has used Kenya as a source for financing terrorism in the region. As Shapiro argues, financial resources are central to terrorist operations. Money is needed to recruit, set up training camps, equip terrorists, and carry out propaganda.³⁸ Hence, for a terrorist group to undertake its activities, it must have a financial resource base both legitimate and illegitimate. Legitimacy sources include registered businesses, charity groups and *Zakat*. Illegitimate sources include trade in narcotics, smuggling, ransom payments, arm and human trafficking.

Though there is no evidence linking Al-Shabaab to illicit business activities in Kenya, there are genuine concerns that its members directly or indirectly have business interests in

³⁷ See United Nations, Report of the Monitoring Group in Somalia Pursuit to Security Council Resolution 1853 (2008), March, 2010. Available at www.un.org/documents

³⁸ A. Shapiro, 'Obama Stays the Course on Terrorist Financing', 11th, March, 2009, pp.1-4. Accessed at npr.org

Kenya. Further, Al-Shabaab operatives have engaged in aggressive fundraising especially from diasporic and Kenyan Somalis. Additionally, Al Shabaab has been involved in extensive money laundering, especially from piracy.³⁹ Due to lack of appropriate infrastructure in Somalia, the ransom payments and other illicit finances are moved to Kenya where they are invested in businesses, stocks and real estate.

Apart from fundraising, Kenya provides Al-Shabaab with a convenient hub for money transfer. This is mainly through informal money transfer methods especially the Hawallah system. A key informal money transfer system which is used by Al-Shabaab is *Dalsan Hawalla*⁴⁰ service. In the past the service has been linked to terrorist financing. In its management it has had persons closely linked to Al-Itihad Al-Islamiya (an ideological forerunner of Al-Shabaab). Also, at some stage it was chaired by Mohammed Sheikh Osman (former spokesperson of Al-Itihaad). Other prominent individuals having direct interest in *Dalsan Hawalla* include a brother of the fiery Jihadist, the late Aden Hashi Ayro who was killed by US missile strike in 2008. Dalsan has been linked to financing and transferring and laundering of money on behalf of Somali Islamist militant.⁴¹

More so, Kenya provides an important transit point for Al-Shabaab operatives and foreign recruits. The operatives take advantage of the well developed international travel infrastructure in Kenya and the widespread corruption among immigration and security officials

³⁹ See, J. Peter Pham, 'Financing Somalia's Islamist Warlords', *World Defence Review*, September, 2006, pp.11 – 16, Available at <http://worlddefencereview.com>

⁴⁰ Ibid, p.8

⁴¹ Ibid, p.8

tasked with border security.⁴² This enables them to travel internationally and allows foreign nationals especially from the west to transit through Kenya on their way to joining Somalia Jihadists.

Finally Kenya has become an important hub for Eritrea support of terrorism, as a strategy of fighting Ethiopia. Eritrea has provided logistical and operational support to the Islamists (*Al – Shabaab* and Hizbul al Islam).⁴³ A report by the UN monitoring group noted that on January, 2011, Ethiopian intelligence agency unearthed an Eritrean backed terror plot whose target was the on-going AU summit. The aim was to blow up the summit venue which would have led to deaths of many heads of states and governments. Significantly the report identified Eritrean embassy in Nairobi as actively coordinating such plots. It stated ‘the fact that the same Eritrean officers responsible for the planning and direction of this operation are also involved, both in supervisory and operational roles, in external operations in Djibouti, Kenya, Uganda, Somalia and Sudan implies an enhanced level of threat to the region as a whole’. Further, ‘the embassy of Eritrea in Nairobi continues to maintain and exploit a wide network of Somali contacts, intelligence assets and agents of influence in Kenya.’ Under the period of review the embassy had transferred 80,000 US dollars monthly to known Al-Shabaab operatives in Kenya.⁴⁴

⁴² B. Finlay et al, *Beyond Boundaries in the Eastern Africa: Bridging the Security Development Divide with International Security Assistance*. Stimson Centre , 2011, Accessed at <http://reports.stanleyfoundation.org>

⁴³ IGAD, ‘*IGAD Ministers Deplore Eritrea and UN Security Council Impose Arms Embargo*’, www.igad.org

⁴⁴ See David Clarke ‘Eritrea behind AU summit attack plot: UN report’, 28th July, 2011, af.reuters.co

Conclusions

From the analysis of militant radical Islam in Kenya, there is no doubt of its presence. Initially, Al Qaeda cells were the only source of threats. Also, the terrorists in these cells were mainly foreigners taking advantage of the enabling environment and presence of multiple western interests to launch attacks. However by 2005, this has changed with Kenyans increasingly joining Al Qaeda. West observes that in 2005, among the three most wanted Al Qaeda African members, two were Kenyans.⁴⁵ Since then, the situation has become more complex with the rise of globalized terrorism. Currently Kenya is not only a rich source of highly visible terrorist targets but also terrorists operating locally and internationally. This poses a critical threat to the national security and has led to establishment of a multiple measures to counter radical Islamist terrorism. The measures are comprehensively discussed in the following chapter.

⁴⁵ D. L. West, *Combating Terrorism in the Horn of Africa and Yemen*. Cambridge MA: Belfer Centre for Science and International Affairs, 2005, p.17. Also Two Senior Al Qaeda members Osama al-Kini and Sheikh Ahmed Salim Swedan, who were killed on January, 2009 by US drone strike in Pakistan tribal region were Kenyans; they had been linked to all terror plots in Kenya. By the time they were killed, Al-Kini also Fahid Mohammed Ally Msalam had been Al – Qaeda's chief of operations in Pakistan since 2007. See 'Us Drone kills two long-time Al Qaeda Leaders Al-Kini and Swedan in Pakistan's Tribal region', Accessed at www.historycommons.org

Chapter Four

The Root causes of Militant Islamist Terrorism

Introduction

The presence of militant Islamist terrorism in Kenya is no longer in doubt. As discussed in the previous chapter, militant radical Islamist terrorism has been globalized as exemplified by the presence of Al-Qaeda cells and activities of Al-Shabaab in the country.¹ These terrorist groups have not only launched attacks on Kenyan soil, but they are certainly actively conducting surveillance and planning to stage further attacks. That Kenya has not been a target of such attacks in the recent past, does not in any way imply reduction of threats. As evidenced in the previous chapter, several terror plots have been disrupted before their maturity.² Additionally, terror plots take a long time to plan due to the fact that they need utmost secrecy and rely on windows of opportunities for them to be successful.³ Importantly, terrorists in the face of aggressive global counter terrorism measures are becoming more sophisticated in their operations and this makes it hard to uncover terror plots.

This chapter identifies and examines the proximate and root cause of militant Islamist terrorism. Some of the factors such as the failure of pan-Arabism, enabling ideology and globalization have been elaborated substantively in previous chapters.⁴ However they have been explained further, here, bringing on board new dimensions connected to them. In addition other collective and individual factors which engender terror have been analysed. The chapter

¹ See chapter Three

² Chapter Three, pp.58-59

³ For instance the 1998, US Embassy attacks were commenced in 1993, See chapter Three, p.55

⁴ See Chapter Two, P.48, Chapter Three, pp.60-64

has two broad sections. Section one focuses on the root cause and section two on proximate individual and collective factors.

In the wider scholarship of conflict, one of the most fundamental contributions has been the concept of structural violence.⁵ The concept is rooted in the understanding that conflict is not an event but a process going through cycles. Prior to eruption of violence, there are underlying structural factors which motivate individuals and groups to engage in violence. According to Galtung, any violence has three dimensions. These are direct (overt), structural (indirect) and cultural. Direct violence involves use of physical and verbal violence, with an aim of harming body, mind and the spirit. Structural violence refers to violence inbuilt into the economic and political structures of society and shows up as social injustice defined as an unequal distribution of power and resources, whereas cultural violence which is interpreted as 'those aspects of culture, the symbolic sphere of our existence that can be used to justify and legitimise direct and structural violence.'⁶ From this observation the study argues that terrorism is caused and made permissible by the above types of violence, real and perceived, which negatively impact on individuals and groups.

When it comes to terrorism which is a form of violence, various structures are identifiable which motivates the growth of militant Islamist terrorism. This is because, as discussed in chapter two, the rise of radical Islamist ideology in 1960s was closely linked to the failure of secular ideologies specifically Pan-Arabism to solve societal problems.⁷ Essentially, it

⁵ J. Galtung, 'Violence, Peace and Peace Research', *Journal of Peace Research*, 6 (3), 1969, pp 167-192. Also, J. Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization*. London: Sage, 1996, pp 194-198.

⁶ See various works of Galtung such as J. Galtung, 'Violence, Peace and Peace Research', *Journal of Peace Research*, Op cit, pp.167-192. Also J. Galtung, *Peace by Peaceful Means: Peace and Conflict, Development and Civilization*, Op cit, p.196

⁷ Chapter Two,

was a reaction to structural constraints, which some individuals believed could only be addressed through establishment of purist Islamic caliphate.

Among the key factor linked to the failure was the nature of the international system. This is because pan-Arabism was a form of reactive nationalism. It sought to remedy wrongs generated by the international dynamics.⁸ Logically, even the shift towards radical Islamist ideology was premised on belief that a return to purist Islam provided the solution to these internationally generated problems. The belief is evidenced by the fact that all militant Islamists have always cited the way the system has been dominated by hegemonic West, which is accused of humiliating Muslims worldwide. This was best captured by Osama Bin Laden in a 1998 manifesto titled *The International Islamic Front for Jihad against Jews and crusaders*. In the manifesto, he denounced the United States for occupying the lands of Islam in the holiest places, the Arabian Peninsula, plundering the riches, dictating its rulers, humiliating its people and terrorizing its neighbours. In order to reverse the experience, he called upon Muslims to kill Americans and allies as an individual duty in order to liberate the Al-Asqa Mosque (Jerusalem) and the Holy mosque (Mecca) from the US grip.⁹

Similarly, after the September (9/11) terrorists attacks, in a video broadcast, Osama justified the attack on the ground that they were in reaction to the western policies in the Middle East. He talked of 'Our Islamic nation' that has been 'tasting its blood spilled, its sanctities desecrated for over 80 years'.¹⁰ The 80 years period refers to the time since the Ottoman Turkish

⁸ Chapter Two,
⁹ See J. Lehrer, 'Al-Qaeda's Fatwa', 23rd February, 1998. Available from <http://www.pbs.org/newshour/terrorism/international/fatwa/1998.html>

¹⁰ New York Times, 12th, September, 2001.

victimization.¹³ It symbolises the humiliation of Muslims by an alliance of 'crusaders' who have turned a blind eye to the fact that the Palestinians are held in an "open air" prison full of control points, and Israel does whatever it wants, supported by the US and the rest of the world watches without doing anything. The weakness of Muslim has been amplified by experiences in Bosnia, Chechnya, Nagorno-Karabakh, Afghanistan, Kosovo and Iraq, all of which points to the defeat of Muslims.¹⁴

The structure of international system and how to change it has not only led to emergence of militant Islam but has also influenced the terrorist military strategy. As observed in chapter two, the failure to defeat the 'apostate' regimes in Muslim lands led to the thinking that, unless the West is forced out of the Muslim lands, the original goal of establishing an Islamic caliphate is unachievable.¹⁵ To defeat the West, notably the United States, terrorist groups have been operating as many battle fronts as possible through establishing of global terror network, with previously nationalist groups such as the Algerian Salafist Group for Preaching and Combat (currently Al-Qaeda in the Maghreb) and Al-Shabaab, transforming into Al-Qaeda franchises. An article appearing in Al Qaeda's website, *Al- Thabitun, Ala al-Ahid*, captures this strategy stating that,

'By drawing the enemy into direct combat engagement without proxies, Al Qaeda wanted to realize eighth valuable objective: To subject the enemy to a bloody exhaustion [globally]. First to bleed him dry economically, and then bleed him humanly, socially and psychologically in a way he cannot bear to compensate. This is what will lead to defeat in the end and to turn in on him, losing his ability, desire, or determination to continue the conflict. This will surely be accompanied by social and civil collapse within the enemy.'

¹³ S. Lancer, 'Combat against Religionist Terrorism: Lessons from the Turkish Case', *The Journal of Turkish Weekly*, Available at www.turkishweekly.net.

¹⁴ Ibid

¹⁵ Chapter Two, p.48

At best, his state might disappear; at worst, his power to intervene in the Muslim affairs will collapse'.¹⁶

The global strategy in reaction to the way international system is structured has remained a key driver of militant Islamist terrorism globally.

Closely connected to the international system is the jihadist ideology. Indeed ideology remains the main driver of globalized terrorism. This is because though grievances are a necessary factor, they are not sufficient cause of terrorism. Gupta notes that there can be a wide ranging social, political, economic or even religious grievances in the society but this will not necessarily lead to violence.¹⁷ Political violence takes place when grievances are given a voice through a well defined social construction of the collective identity and grievances based on 'us' versus 'them' logic.¹⁸ This is done through framing of the grievances in a manner that justifies violence. Framing refers to the active construction and dissemination of meaning and the success of a social movement with regard to mobilizing resources and gaining adherents.¹⁹ The frames are authoritatively presented as the correct interpretation of a situation.

Regarding terrorism, though there are genuine grievances concerning the structure of the international system, this alone does not explain the emergence of militant Islamist terror. Rather, it is the manner which these grievances have been framed and presented by leaders of terrorist groups. They have mixed history, mythology and religion to frame the grievances thereby creating a coherent story, replete with the archetypes of 'good' and 'evil' that resonate

¹⁶ Open Source Center, 'Jihadist Website Analyzes al-Muhajir Statement, Al-Qaeda Between a Past Stage and One Announced by al-Muhajir', Available from www.opensource.gov/portal/server.pt/gateway

¹⁷ D. K. Gupta, 'Exploring the Root of Terrorism', in Bjorg T(ed). *The Root Causes of Terrorism: Myths, Reality and Way Forward*. New York: Routledge, 2005, p.19.

¹⁸ Ibid.

¹⁹ See, M. Crenshaw, *Decision to Use Terrorism: Psychological Constraints and Instrumental Reasoning*, in Porta D (ed), *Social Movements and Violence*. London: JA Press, 1992, p. 31. Also, D. Porta, 'Introduction: Individual Motivation in Underground Political Organisations', in Porta D (ed), *Social Movements and Violence*, Ibid, p.5; D. Snow 'Frame Alignment Processes, Micro-mobilization and Movement Participation', *American Sociological Review*, 51, pp.464-481.

with a large number of people. The ideology is embedded on the concept of *Nizam Islami* (Islamic order) as opposed to secular order, *Sharia* (Islamic law) as opposed to human positive law and above all an idea of *hakimiyat Allah* (God's rule).²⁰

This ideology has inspired terrorists who strongly believe that their goal of establishing an Islamic caliphate is a noble one driven by Allah's mandate. This is best captured by Osama's statement in relation to the 9/11 hijackers. He stated, 'Our work is rooted in Allah's true law, we aim to please him and establish his rein on earth. The slightest aspect of our work should have this imprint and be based on a religiously legitimate political path. This will calm the hearts of masses and the mujahidin and make them feel well about participating in the fight.'²¹ Further, he stated, 'this small group of Muslims by taking up to the international coalition against them and Islam, proved that it's possible to militarily fight against the super power. They were able to protect their religion and their Ummah much more than the governments and people of these fifty odd Islamic countries, because this group chose the path of Allah.'²² Similarly in a web blog 'Street mimbar', a jihadist justified the attack thus, 'after the death of the holy prophet during Khalifah of Abu Bakr, Abu Dujan fought until he was *shaheed* (martyr). To us, his life is a legacy of sacrifice and lessons of bravery and fierceness against *kufr*, may he guide our Muslims towards the example he left behind.'²³

Indeed it is through understanding the role of ideology that Islamist terrorism makes sense. This is because the ideology capitalizes on a profound and fundamental need of human

²⁰ M. Tibi, *The Challenges of Fundamentalism: Political Islam and the New World Disorder*. Berkeley: California University Press, 2002, p.35.

²¹ Osama Bin Laden, 'Exposing the New Crusader War', February, 2002, accessed at www.islamistwatch.org/texts

²² *Ibid.*

²³ Cited in J. Ryan, *Countering Militant Islamist Radicalisation on the Internet: A user Strategy to Recover the Web*, Op cit, p.57

being; the need for a belief system. Tibi notes that religious appeals override all other appeals, and religious ties are unlike political commitments. Religion as a cultural system gives meaning as no secular ideology can. Religious fundamentalism, by politicizing, religion, is thus an ideology of special calibre.²⁴

Despite the strong role of religion, there is a need to understand how fundamentalist ideology has appealed to individuals. This is because among the estimated 1.5 billion Muslims in the world, only a handful has embraced Jihadist ideology. This brings us to the analysis of the proximate causes of militant Islamist terrorism. It focuses on individual level factors which makes it possible for individuals to be receptive to the calls of Jihad.

Proximate Causes

A starting point is the core argument of the frustration – aggression theory that violence is a response to oppression. According to the theory when an individual find his or her ambitions blocked, the individual might react by either fright (retreat) or fight (violence).²⁵ This way, individuals joining terrorist groups are driven by a narcissistic rage. The rage arises out of a strong need for revenge for righting a wrong; for undoing a hurt by whatever means.²⁶ This is more so when such wrongs are committed against one's fundamental goals or values. More so such motivation is more experienced by individuals from societies where honour and valor is a glorified virtue and alternative means to violence are suppressed.

The insights of the frustration – aggression theory are reinforced by psychological theories of identity seeking. The theories argue that identity is important for people who are

²⁴D. Tibi, *The Challenges of Fundamentalism*, Op cit, p.24.

²⁵ See, J. Horgan, 'The Search for the Terrorist Personality', in Silke A (ed), *Terrorist Victims and Society: Psychological Perspectives in Terrorism and its Consequences*. London: John Willey and Sons Ltd, 2003, p.12.

²⁶ J. M. Venhaus, '*Why Youths Join Al --Qaeda*'. Washington: USIP Special Report, 236 May, 2010, p.8.

constantly searching for an identity which provides a sense of belonging and purpose.²⁷ As such, individuals with a need for identity consolidation would be attracted to terrorism as a radical reaffirmation of their roots and traditions. This is because terrorist groups provide unambiguous identity and purpose based on notions of Mujahidin and *Shaheed*. These notions are deeply rooted in religious system and hence are not open to human debate for adherents are always indoctrinated to believe that they are the vanguards of their faith and belong to a brotherhood of the oppressed (*Mustadh 'afin*) fighting to eliminate evil (*taghuttiyah*) and apostate regimes (*Bilad Al-Riddah*) so that Allah's reign on earth will become a reality.²⁸ To foreclose the debate on the appropriateness of the purpose and means adherents are always reminded of the human limits to comprehend the ways of Allah referring to verses such as this one which states, 'Fighting is ordered for you even though you dislike it and it may be that you dislike a thing that is good for you and like a thing that is bad for you. Allah knows but you do not know'.²⁹

Further, as group processes theories observe in trying to understand the motivation of individuals who join terrorist groups, the focus should be on the psychology of rewards than psychology of needs. This is because apart from the quest to right wrongs committed, revenge or reaffirm one's identity and purpose, Jihadists are motivated by a promise of rewards here and hereafter. For instance martyrs are not only praised for their actions here on earth but once in heaven,

²⁷ See B. A. Thayer, 'Causes and Solutions to Islamic Fundamentalist Terrorism', In Sagarin, R.D. and Taylor T (eds), *National Security: A Darwinian Approach to a Dangerous World* California: California University Press, 2005, Pp.130-133.

²⁸ R.Paz, 'Middle East Islamism in the European Arena', *Middle East Review of International Affairs*, Vol.6, No.3, 2002, p.68

²⁹ Holy Koran 2:216,

'A martyr has six privileges with God. He is forgiven his sins on the shedding of the first drop of blood, he is shown his place in the paradise, he is redeemed from the torments of the grave, he is made secure from the fear of hell and a crown of glory is placed on his head, on which one ruby is worth more than the world and all that is in it; he will marry seventy two of the Huris with black eyes, and his intercession will be accepted for seventy two of his kinsmen.'³⁰

From the explanations propounded by these theories, several proximate factors which drive individual to terrorism can be identified. The first factor is individual's desire to dominate or to have his will imposed on others. The desire arises out of a profound belief that the individual is capable of making a difference or to have an influence. The quest to right what an individual perceives as 'wrong' makes the persons view themselves as active participants in a socially attractive cause. They feel they are reluctant warriors, sacrificing on behalf to the society. For instance, Khalid Sheikh Mohammed, one of the 9/11 masterminds, in his justification of the attack, during his trial by a United States military tribunal argued that he was reacting to US foreign policy. He stated, 'I feel sorry that they [innocent people] have been killed. But I want to make it a great awakening between Americans, stop the foreign policy in our land. American people have been torturing us since seventies'.³¹

The second factor is the desire to compensate for the feeling of alienation, emasculation or deprivation caused by perception of weaknesses. This is more acutely felt by the youths who feel like they lack a voice and are constantly searching for a meaningful purpose of their lives. The feelings push individuals especially youths to joining terrorist groups where they believe they can overcome the strong sense of emasculation and weakness. The desperation is best

³⁰ Alk- Khatib Al -- Tibrizi, *The Niches of Lamps*, cited in D.C. Rapoport, 'Sacred Terror: A Contemporary Example from Islam', in Reich W(ed), *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind*. Washington DC: Woodrow Wilson Center, 1990, pp.117 -118.

³¹ Cited in, J. Ryan, 'Countering Militant Islamist. Radicalisation on the Internet', Op cit, p.52

captured by Umar Farak Abdul Mutallab, the 'underwear bomber', who failed to blow up a US airliner in December, 2010. In an online forum, he wrote, 'I do not have a friend, I have no one to speak to, no one to consult, no one to support me and I feel depressed and lonely. I do not know what to do'.³² To individuals like Abdul Mutallab, joining terrorist groups presents the most direct path to satisfying their needs, by providing a clear narrative that appeal to their concerns.

The third proximate factor is the desire to reap transcendental rewards. Thayer argues that the faith of the suicide bomber and the reality of the afterlife for the suicide terrorist are real and attractive enough for him to undertake suicide mission.³³ More so, the suicide terrorist will know that he will be venerated in some social circles for his suicide actions. Indeed, one of the most unique elements of Islamist terrorism is the centrality of religious rewards for those who join the cause. As an online post in a jihadist website noted, 'Islamic history is not written except with the blood of the *shaheed* (martyr) and except with the story of *shaheed*. Importantly for his actions, *shaheed* is glorified for his act of ultimate sacrifice.³⁴ Further, imagery of walking past Allah, with scars of jihad provides ecstatic attraction to such individuals due to the promised rewards.

In a series of interviews with captured terrorists, Post has excellently brought out the centrality of rewards in motivating militant Islamist terrorism. In an interview with a captured terrorist, a reference of him as a suicide bomber elicited a bitter response. He argued that, 'this is not suicide. Suicide is selfish, it is weak, and it is mentally disturbed. This is *Istishad* (martyrdom or self sacrifice in the service of Allah). Another one regretted for not being chosen for a suicide

³² J. Venhaus, *Why Youth Join Al Qaeda*, Op cit, p.2.

³³ B. A. Thayer, 'Causes and Solutions to Islamic Fundamentalist Terrorism', Op cit, p.132

³⁴ Cited in, J. Ryan, 'Countering Militant Islamist Radicalisation', Op cit, p.46

operation which his two friends were chosen. He stated, 'I felt slighted that he had not asked me to be the third martyrdom operation bomber. This is because martyrdom is the highest level of Jihad, and highlights the depth of our faith. The bombers are holy fighters who carry out one of the most important articles of faith.'³⁵

In addition to the above factors, inadequate understanding of Islam is another key factor driving individuals into Jihad. Contrary to the self perception of militant Islamist terrorists as the vanguards of Islam, most of them are victims of inadequate understanding of Islam. Venhaus has argued that individuals do not become terrorists because they are Muslims. Instead they actually have inadequate understanding of their own religion, which makes them vulnerable to misinterpretations of the religious doctrines. Drawing from interviews with captured terrorists, he observes that, 'their teachers and religious leaders valued memorization of key phrases over vigorous analysis of texts. They were not exposed to the over 4,000 years of Quranic commentary and scholarship, nor were they allowed to question instructors on the finer points.'³⁶

This view can further be exemplified by information provided by one of the mastermind of Tanzania embassy bombing in 1998. He came into contact with radical Islam in a *madrassa* where he was taught not to question the learned authorities. It is in the mosque where he learned from the Imam that they were all members of the Ummah, the community of observant Muslims and had an obligation to help Muslims wherever they were being persecuted. He was shown videos of Muslim mass graves in Bosnia and Serbia, the bodies of Muslim women in Chechnya. This powerful media images inspired him and made him vow to become a soldier of Allah. Using his own resources, he travelled to Pakistan and then to Afghanistan for training where he

³⁵ J. M. Post, 'When Hatred is Bred in the Bone: Psycho-Cultural Foundations of Contemporary Terrorism', *Political Psychology*, Vol 26, No.4, 2005, p.267.

³⁶ Ibid, p.635

was taught weapons and explosives handling and had four hours of ideological training each afternoon.³⁷ Through intensive indoctrination he came to believe in the subjective interpretation of the radical salafist preachers.

Indeed a common denominator of interviewed terrorists is that among their most quoted Quranic verses were ones on *Istishad* (martyrdom) and intolerance to non-Muslims and 'apostates'.³⁸ Also, they had a profound belief that they had liberated themselves from *jahiliya* (ignorance) and were the true believers. Finally they believed in the holiness of their actions, even justifying the killing of innocent (both Muslims and non-Muslims), an act prohibited by the Quran, under the argument that they were pursuing a far greater and noble goal, and such killings were acceptable.

Another set of proximate factors can be lumped together as terrorism enabling logistical factors. These are factors which makes it possible to conduct terrorist activities (recruitment, indoctrination, financial mobilization and carrying out attacks). On top of the list is the global media. As discussed previously, globalized militant Islamist terrorism has been made possible by the spread of jihadist ideology globally through the use of ICT.³⁹ Additionally, globalised ICT has made jihadist ideology the centre of gravity for global terrorism. Through global communications, terrorist's acts, grievances, radicalizing sermons, and terror technology are within reach to individuals worldwide.⁴⁰ The ease of access for instance has made it possible for self-radicalization where individuals are increasingly getting radicalized via media, and independently stage acts of terrorism. A good example is the US soldier Nidal Hussein,

³⁷ Ibid, pp.625-26

³⁸ Ibid.

³⁹ See chapter Three, pp.60-63

⁴⁰ See chapter,

responsible for Fort Hood massacre in November, 2009. Investigations showed that he had no significant contacts with other Islamist terrorists.⁴¹

In addition to globalized media, the local environment determines the extent upon which terrorism thrives. This is because, terrorism thrives where there are weak counter terrorism measures. In Kenya, such environment explains the success which terrorist groups have enjoyed. The environment is characterised by a marginalized Muslim community especially in the coast province. Though there is no direct connection between marginalization and resorting to terrorism, the feeling of marginalization has motivated individuals to join terrorist groups for economic reasons. A report by the Harmony project pointed out that Kenyan Muslims complain of discrimination in many spheres such as education, obtaining identification papers and exclusion from government employment.⁴² These local experiences are then given new meaning by global events which make some Kenyan Muslims believe to be a part of a transnational religious community that is under attack from the United States and its allies.

Apart from the widespread feelings of marginalization, how the government responds to terrorism has a profound impact. For instance, Asamoah notes that harsh counterterrorism measures are counterproductive because detaining and torturing individuals encourages a culture of retaliation owing to the radicalisation of detainees who upon release find a reason of revenge.⁴³ Similarly, close cooperation with the perceived main target of Islamist terrorist, motivated by the need to extract some rewards, is bound to attract terrorists' backlash, as a strategy of discouraging further cooperation. As such, state's foreign policy matters. Finally,

⁴¹ Sebastian Abbot, 'Bin Laden was logged off, but not Al - Qaeda', Associated Press, 15th May, 2011

⁴² Harmony Project, *Al -Qaeda's (Mis) Adventures in the Horn of Africa*. West Point: US Military Academy, 2006, p.30.

⁴³ A. Atta-Assamoah, 'Counter Terrorism and the National Security of African States: Points of Convergence and Departure', *Journal of Security Sector Management*, Vol 6, No. 1, 2008, p.8

ineffective implementation of counterterrorism measures may accentuate divisions and create religious fault lines, in effect generating terror. Such measures include labelling of a certain social group as terrorists, rather than identifying and arresting individuals associated with terrorism.

Conclusions

The analysis of the causes of militant Islamic terrorism has shown that, it is a response to both global and local contexts. Key among them is the nature of international system which is perceived to be generating injustices against Muslims. The injustices have been framed in a 'we' versus 'them' ideology which glorifies the struggle of Muslim against the West and its allies. Owing to globalized infrastructure, the ideology has become global and currently is the centre of gravity for militant Islamist terrorism. The narrative of marginalization and injustices /has attracted individuals whose goal is to radically transform the society, revenge against 'perpetrators' of these injustices or achieve the status of *Shaheed*.

These individuals are in every state which has a Muslim population and herein remain the risk that, whatever local context they find themselves in, they tend to interpret it along the contours of the jihadist ideology. Such interpretations motivate terrorism, ultimately leading to a network of terrorist groups with a global reach. To respond to such terrorism, Kenya, which is not only a victim but a source of terrorism, has put in place counter terrorism measures. The measures have international, regional and local dimensions as analysed in the subsequent chapter.

Chapter Five

Kenya's Counter-Terrorism Legislations, Institutions and Initiatives

Introduction

The preceding chapters have provided an in-depth examination of the phenomenon of radical militant Islamist terrorism. They have analysed its roots in the fourth wave of modern terrorism, how it is structured and the factors which have led to its emergence and continuity.¹ Additionally they have shown that Kenya is not only a target of this kind of terrorism but a source. More so, the increased activities of terrorist groups in the country are a pointer that the terrorist infrastructure is becoming embedded in some segments of the society. The examination is important for it forms the bedrock of any analysis of counter terrorism measures. This is because, counter terrorism is a reaction to the phenomenon of terror, and as such it should be developed in a manner that addresses all the dynamics, which lead to this kind of terror in its different phases. This chapter analyse the counter terrorism measure which Kenya has put in place to address glocalised militant Islamist terrorism. The analysis will focus on international and regional measures which Kenya has engaged in. Significantly it will examine the domestic counter terrorism regime. The concern with international, regional and domestic measures is necessary since Islamist terrorism is a transnational phenomenon, which calls for both local and international efforts. It is divided into three sections. The first section provides an overview of the treaties Kenya has ratified on counter terrorism. The second part provides a review of the domestic counter terrorism legislations, since Kenya lacks a specific anti-terrorism legislation. The review will draw from various legislations which have a bearing on the various dimensions

¹See chapters one to five.

of terrorism. The third part examines the organisational/ institutional structures that have been set up under various treaties and legislations to deal with terrorism.

International Counter Terrorism Treaties Ratified by Kenya

The reality of globalized terrorism has made the United Nations an important actor against terrorism. Since 1960s, it has provided a platform for states to negotiate and develop measures that addresses the threats posed by terrorism. Currently, there are thirteen anti-terrorism United Nations conventions which Kenya has ratified. A summary of each convention is provided below.

The first anti-terrorism convention is the UN *Convention on Offences and certain other Acts Committed on Board of Aircrafts (1963)*. The convention applies to acts affecting in flight safety. It authorizes the aircraft commander to impose reasonable measures, including restraint on any person, who he or she has reasons to believe has committed or is about to commit such an act. Also, it obligates member states to take custody of offenders and return control of the air craft to the lawful commander.²

In the face of increased hijacking of aircrafts by terrorist, the UN developed another treaty named the *Convention for the Suppression of Unlawful Seizure of Aircraft (1970)*.³ The convention made it an offence for any person on board an aircraft to unlawfully, by force or threat thereof, or any other form of intimidation, to seizure or exercise control to that aircraft or attempt to do so. It further requires states parties to the convention to make hijacking punishable

² See the 1963 *Convention on Offences and Certain Acts Committed on Board of Aircraft*. Accessed at <http://treaties.un.org/pahrd/DB.aspx?path=DB/studies/page2-en>

³ In 1970s Hijacking of aircrafts was a preferred strategy. For instance the Palestinian Liberation Organisation. See W. F. Shughart II, 'The Analytical History of Terrorism, 1945 – 2000, *Public Choice*, Vol 125, No1/2, 2006, pp.7-

by severe penalties. Where necessary, such offenders should be extradited and states should fully cooperate on their prosecution.⁴

The treaty was quickly followed by the *Convention for the Suppression of Unlawful Acts against Civil Aviation (1971)*. The convention criminalizes unlawful and intentional violence against a person on board an air craft in flight, if that act endangers the safety of the aircraft, placement of explosive devices in aircraft, attempt to perform such an act or being an accomplice in such an act. Similar to the above conventions, it requires contracting states to mete out severe penalties on the offenders, and where necessary extradite them to states aggrieved by such acts.⁵ In the face of increased terrorist threats against leaders, the UN in 1973 passed the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons*. The convention requires parties to criminalize such acts and make punishment by appropriate penalties which take into account the grave nature of the intentional murder, kidnapping or other attack upon person or liberty of an internationally protected person, a violent attack on official premises, the private accommodation or the means of transport of such persons. The punishing covers both the perpetrator and his accomplices.⁶

Following increased hostage takings especially during the third wave of terrorism, the *International Convention against the Taking of Hostages (1979)* was established. The convention provides that any person who seizes or detains another person in order to compel a third party, namely, a state, an international intergovernmental organization, a natural or juridical person, or

⁴ See, *The United Nations Convention for the Suppression of Unlawful Seizure of Aircraft*. Accessed at <http://treaties.un.org/pages>.

⁵ See *United Nations convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*. Accessed at <http://treaties.un.org/pages>

⁶ See the *United Nations Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons*. Available at <http://treaties.un.org/pages>

a group of persons, to do or abstain from doing any acts as an implicit or explicit condition for the release of the hostages commit offence of taking hostage within the meaning of this convention.⁷

In 1980 due to increased concerns that fissile nuclear materials might fall into hands of terrorists the *United Nations Convention on the Physical Protection of Nuclear Material* was passed. The convention 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. Further, it legally binds states to protect nuclear facilities and material in domestic use, storage and well as transport. Additionally, the convention obligate states to cooperate in locating and recovering of stolen or smuggled nuclear material, mitigate any radiological consequences or sabotage, and prevent and combat related offences.⁸

The 1980 treaty was followed by the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation* (1988). The protocol supplemented the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*. The protocol expands the Air safety convention to encompass criminalization of terrorist acts at airports serving international civil aviation.⁹

Taking cognizance of the threats posed by terrorists to maritime operations the *UN Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* was adopted in 1988. The convention established a legal regime similar to the one on international

⁷ See the *United Nations convention Against Taking of Hostages* (1979) Available at <http://treaties.un.org>

⁸ See the *United Nations Convention on the Physical Protection of Nuclear Material*. Accessed at <http://treaties.un.org>

⁹ See *United Nations 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*. Accessed at <http://treaties.un.org>

civil aviation. It made it an offence for a person to unlawfully and intentionally seize or exercise control over a ship by force, threat or intimidation. Further, it criminalized acts of violence against a person on board a ship if the act endangers the safe navigation of the ship, placement of destructive device or substance aboard a ship and any other acts against the safety of ships.¹⁰

The convention was strengthened by the *Protocol to the Convention for the Unlawful Acts against the Safety of Maritime Navigation (2005)*. The protocol criminalized the use of a ship as a device to further an act of terrorism, transportation of materials intended to further an act of terrorism and transporting on board a ship persons who have committed an act of terrorism. Finally, the protocol introduced procedures governing the boarding of a ship believed to have committed an offence under the convention.¹¹

The further enhance the international maritime anti-terrorism regime, the UN developed a convention to protect fixed maritime platforms. The 1988 *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf*. The protocol criminalizes any act whose objective is to cause damage or injury to persons in such platforms.¹²

In the aftermath of the 1988, Pan Am flight 103 bombing by terrorists over Scotland, the UN commenced on the negotiations for a convention regulating the possession and handling of plastic explosives. This led to the *Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991)*. The convention obligates state parties to ensure effective control

¹⁰ See the *United Nation Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*. Available at <http://treaties.un.org>

¹¹ See the *United Nations Protocol to the Convention of Suppression of Unlawful Acts against the Safety of Maritime Navigation*. Available at <http://treaties.un.org>

¹² See the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf*. Also, *Protocol to the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf*. Available at <http://treaties.un.org>

over unmarked plastic explosives, that is, those plastic explosives that do not contain any of the detection agents described in the technical Annex to the treaty. Further states are required to generally prohibit and prevent the manufacture of unmarked plastic explosives, prevent the movement of unmarked plastic explosives, in and out of its territory and exercise strict and effective control over possession and transfer of unmarked explosives. Furthermore, states are required to make sure that all unmarked plastic explosives which are not held by police or the military are destroyed, consumed, marked or permanently rendered ineffective.¹³

In the wake of increased threats by terrorists, exemplified by the 1995 terrorist bombing of the Federal building in Oklahoma city by McVeigh and sarin nerve gas attacks in Tokyo subways by a Japanese religious cult Aum Shinrikyo the UN initiated a move to prevent terrorist bombings.¹⁴ This culminated to the *International Convention for the Suppression of Terrorist Bombing (1997)*. The convention created a regime of universal jurisdiction over the unlawful and intentional use of explosives or other lethal devices in, into or against various defined public places with intent to cause extensive destruction of the public place.¹⁵

To further bolster the international anti-terrorism legal regime, the United Nations initiated a move to counter financing of terrorism. The initiative led to the *International Convention for the Suppression of the Financing of Terrorism (1999)*. The convention whose objective is to choke sources of terrorist financing compels states, to take steps to prevent and counteract financing of terrorists, whether directly or indirectly through groups claiming to have charitable, social or cultural goals or which engage in illicit activities such as drug trafficking or

¹³ See the *Convention on the Marking of Plastic Explosives for the Purposes of Detection*. Accessed at <http://treaties.un.org>

¹⁴ On the attacks see W.F. Shughart II, 'The Analytical History of Terrorism', 1945-2000', Op cit, pp.30-32

¹⁵ See the *International Convention for the Suppression of Terrorist Bombings*. Available at <http://treaties.un.org>

gun running. The treaty also obligates states to hold those who finance terrorism criminally, civilly or administratively liable for such acts. Further, it provides for identification, freezing and seizure of funds allocated for terrorist activities as well as the sharing of forfeited funds with other states on case-by-case basis.¹⁶

The final UN counterterrorism convention which Kenya has ratified is the *International Convention for the Suppression of Acts of Nuclear Terrorism (2005)*. The convention covers a broad range of acts and possible targets including nuclear power plants and nuclear reactors. According to the convention persons engaging in acts prohibited or their accomplices are liable to prosecution or extradition. Further the convention encourages states to cooperate in preventing terrorist attacks by sharing information and assisting each other through cooperation in criminal investigations and extradition proceedings.¹⁷

These conventions are important especially when viewed through the prism of the new constitution (2010). This is because, the constitution in article 2(5) states that 'the general rules of international law shall form part of the law of Kenya. Significantly, article 2 (6) clearly states that, 'any treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution.¹⁸ Though the provisions are subject to differing opinion on the basis of whether Kenya will continue with the dualist approach to international law, this project holds the position that, the provisions means that Kenya's approach to international law is monist, and the

¹⁶ See the *United Nations Convention for the Suppression of the Financing of Terrorism*. Accessed at <http://treaties.un.org>

¹⁷ See the *United Nations International Convention for the Suppression of Acts of Nuclear Terrorism*. Accessed at <http://treaties.un.org>

¹⁸ See the Constitution of Kenya (2010), Articles 2 (5).

conventions are a part of the Kenyan law whether they are accompanied by domestic legislations or not.¹⁹

Importantly, these conventions have informed the development of domestic legislations which have a bearing on counter terrorism. As observed, Kenya does not have unified counter terrorism legislation, like other states in the region, following the failure to pass the Suppression of Terrorism Bill in 2003.²⁰ However, previous laws and subsequent legislations have anti-terrorism functions as analysed below. The key legislations include the Penal Code, the Non-governmental Organisations (Coordination) Act, the Banking Act, Extradition Act, the Prevention of Organised Crimes Act, Mutual Legal Assistance Act and the Proceeds of Crimes and Anti-Money Laundering Act among other laws.

Domestic Counter-terrorism Legislations

The first source of counter terrorism laws in Kenya is the Penal Code. The code which consolidates criminal prosecution has provisions for various activities which are present in terrorism and terrorism related activities. The first activity is committing of murder which is prohibited and attracts a life imprisonment (section 220).²¹ In order to deter cooperation with terrorists, section 224 of the code makes it a crime to conspire with any other person to kill and such an act attracts an imprisonment of 14 years.²² Further, section 393, makes it an offence of

¹⁹ The monist theory of international law argues that there is no distinction between domestic and international legal systems and as such once an international convention is ratified it automatically become a part of the state's law. See N.M. Shaw., *International Law*, Cambridge University Press, 2003, pp.120-143

²⁰ The Bill was rejected after concerted effort by civil society organizations especially Islamic ones that the bill was discriminatory and opened up avenue for human rights abuses. See for instance, H. Ndzovu, *Muslims and Party Politics and Electoral Campaigns in Kenya*. North Western University: Institute for the Study of Islamic Thought in Africa, Working Paper Series, No 09 – 001, 2009, Pp.1-12.

²¹ See the *Penal Code*, Laws of Kenya, available at www.kenyalaw.org.

²² Ibid

any person to solicit employment in any organization engaged in activities of a terrorist nature.²³

Regarding explosives, section 235 provides that 'any person who unlawfully and with intent to do any harm to another, puts any explosive substance in any place is guilty of a felony and is liable to imprisonment of 14 years'.²⁴ Also, to deter transnational planning of attacks whether originated from or targeting in Kenya, section 6 makes it an offence of persons to participate in any part of such an act, and gives the state the right to prosecute 'as if such act had been committed wholly within the jurisdiction of Kenya'.²⁵

In order to deal with threats posed by terrorists to civil aviation, the Protection of Aircraft Act under section three states 'any person who, on board an aircraft in flight, whether in Kenya or elsewhere unlawfully, by force of threat thereof be guilty of the offence of hijacking and liable to imprisonment for life'.²⁶ The act domesticates the International Civil Aviation Law.

In response to individuals who are ready or willing to harbour people with intent to commit a crime, including acts of terrorism, section 7 of the Official Secrets Act criminalises such an act. It states, 'any person who knowingly harbours anyone who he knows, or he has reasonable grounds for suspecting he is about to commit or who has committed an offence under this act; or knowingly permits to meet or assemble in any premises in his occupation or under his control any persons he knows or has reasonable grounds for suspecting, to be persons who are about to commit or who have committed an offence under this act; or having harboured any

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ See *Protection of Aircraft Act*, Available at www.kenyalaw.org.

person as aforesaid, wilfully omits or refuses to disclose to a police any information that is in his power to give in relation to any such person shall be guilty of an offence.²⁷

To curb the financing of terrorism several legislations have been put in place. The first legislation is the Banking Amendment Act, 2001 which requires banks to forward any information related to suspicious financial transactions to the Central Bank. Also, the Central Bank is obligated to cooperate with other institutions within and outside Kenya in order to prevent terrorist financing.²⁸ To further strengthen the financial control, the Prevention of Organised Crimes Act allows the state to demand information from any financial institution, trustee, cash dealer or custodial on any business transaction conducted by or on behalf of persons involved in organized crime²⁹. Additionally, authorised offices are compelled to seize money imported or exported from Kenya upon reasonable grounds that the cash belongs to an organized criminal group.³⁰

In order to seal possible loopholes in the above finance legislations, a more comprehensive law the Proceeds of Crime and Anti-Money Laundering Act was passed in 2010. The Act requires bank to monitor and report money laundering activities, creates obligations of verifying customers identity, establishing and monitoring of customer records and setting up internal suspicious transactions reporting procedures.³¹ It also establishes the yet to be operationalised Financial Reporting Centre whose primary obligation will be identification of the proceeds of crime and the combating of money laundering. Additionally, it sets up Anti-money Laundering Advisory Committee tasked with advising the director of FRC. To enhance the

²⁷ See the *Official Secrets Act*. Available at www.kenyalaw.org

²⁸ See the *Banking Amendment Act (2010)*. Available at www.kenyalaw.org

²⁹ See *Prevention of Organized Crimes Act (2010)*, 15(1), (b). Available at www.kenyalaw.org

³⁰ *Ibid*, Articles 17(1).

³¹ *Proceeds of Crime and Anti-Money Laundering Act (2010)*, Available from www.kenyalaw.org

seizure, confiscation and freezing of suspicious finances, the act establishes Asset Recovery Agency whose mandate is to recover proceeds of crime.³²

In response to the centrality of ideology and mobilization in furthering the activities of criminal groups (the term includes terrorist groups) the government has passed the Prevention of Organised Crimes Act. The act has various provisions which criminalizes the profession of an ideology of an organised criminal group, recruitment of persons to become members and providing support (financial or material) to an organized criminal group.³³ Further, it makes it an offence for persons to engage in training for purposes of staging a criminal activity, possession, collecting or transmitting documents which can be used by a person to commit serious crime involving an organised criminal group, addressing meetings for the purpose of encouraging support of organised criminal groups or furthering its activities. Offences under the act attract a fine of 1 million shillings or imprisonment for a term not exceeding 14 years or both.³⁴

In order to further strangle terrorist activities particularly transnational ones, legislations to address the issue of cooperation with other states have been put in place. The legislation provides procedures for extradition and mutual legal assistance. The key laws dealing with extradition are the Extradition (Commonwealth Countries) Act and Extradition (Contiguous and Foreign Countries) Act which obligates Kenya to surrender criminals on a reciprocal basis.³⁵ These acts are augmented by provisions in the Proceeds of Organised Crimes Acts which amends

³² Ibid.

³³ *Prevention of Organized Crimes Act*, Article 3

³⁴ Ibid, Article 3 (J) (O)

³⁵ See *Extradition (Contiguous and Foreign Countries) Act and Extradition (Commonwealth Act)*. Available at www.kenyalaw.org

the acts, by including organised criminal groups, piracy and other offences in the list of crimes which persons can be extradited for.³⁶

The above Acts on extradition have been reinforced by the more comprehensive Mutual Legal Assistance Act (MLA). MLA allows Kenya to confiscate and freeze properties and intercept delivery of parcels or communications of persons under surveillance.³⁷ This should be done upon a legal request by other states. Further, it allows foreign states to conduct covert electronic surveillance in Kenya in accordance with the law.³⁸ More so, the Act gives Kenya jurisdictions over crimes committed in other states by persons residing in Kenya, provided that such act constitutes a crime under Kenyan law.³⁹

In taking cognizance that non-governmental organizations can be used as front for terrorism, the Non-Governmental Organisation (Coordination) Act contains various provisions aimed at regulating the activities of these organisations. Before registration of an NGO applications for registration must be forwarded to the National Security Intelligence Services for vetting to ascertain where there are any objectives or linkages with any banned outfit and to track records of proposed officials.⁴⁰ Also, the Act requires NGOs to submit reports to NGO council at the end of every financial year. This aims at monitoring the collection and use of funds and other resources. Significantly, under the Act any NGO that flouts the laws outlined above or deviates from its stated objectives or is found to have links with any proscribed organisation can be deregistered.⁴¹

³⁶ *Prevention of Organised Crime Act*, Articles 21, 25, Op cit

³⁷ See the *Mutual Legal Assistance Act (2010)*, Article 26. Accessed at www.kenyalaw.org

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ The *Non-Governmental Organisation (Coordination) Act*, Section 10. Accessed at www.kenyalaw.org

⁴¹ Ibid, Section 24.

From the analysis in previous chapters, it has been shown that Kenya has been home to foreign Islamist militants. In order to address the presence of aliens who poses a threat to Kenya, two pieces legislations address the question of both Aliens and Refugees. The Immigration Act prohibits entry of persons to Kenya, whose presence threatens national interests or who have entered unlawfully.⁴² Further, with exception to persons enjoying immunities and privileges, outlined in the second part of the fourth schedule of Immunities and Privileges Act, the minister responsible for immigration is mandated to order the removal of such persons to their place of origin or any other place he consents provided that the government of that place accepts to receive him.⁴³ Additionally, the act criminalises false declaration by persons applying for entry, forgery or alteration of travel documents and harbouring of a person who one has a reasonable cause to believe he has committed or is planning to commit an offence.⁴⁴

The Immigration Act is enhanced by the Aliens Restriction Act. The act establishes the legal basis upon which restrictions can be placed on aliens. It empowers the minister responsible for immigration to impose restrictions on aliens on occasions when it appears that the country is faced by imminent danger or great emergency.⁴⁵ In addition, the act gives ministers the power to prohibit aliens from landing or in otherwise entering Kenya either generally or at certain places; prohibit aliens from embarking or otherwise leaving Kenya and imposing restrictions or conditions on aliens landing or arriving at any part in Kenya. Finally the act empowers

⁴² See *Immigration Act of 1967*, Section 3 (1a-c) .Available www.kenyalaw.org

⁴³ *Ibid*, Section 4(2)

⁴⁴ *Ibid*, Section 13.

⁴⁵ See the *Aliens Restriction Act of 1977 (Revised 1985)*, Section 13 (1) (C). Available at www.kenyalaw.org

immigration officers to arrest any person without warrant who have violated immigration laws and procedures.⁴⁶

In dealing with threats posed by refugees, the Refugee Act addresses various threats including terrorism. In order to keep track of refugees entering the country, all refugees are required to avail themselves to the relevant authority with 30 days upon entry into the country.⁴⁷ Importantly, the Act empowers the commissioner of refugees to withdraw refugee status of any person if there are reasonable grounds for regarding that person as a danger to the national security or to any community.⁴⁸ Lastly the act denies refugee status to persons who have committed a crime against peace, war crimes or crimes against humanity as defined in any international instrument which Kenya is a party and which has been drawn up to make provisions in respect of such crimes or acts contrary to the purposes and the principles of the United Nations and the African Union.⁴⁹

All these laws, which cover different facets of terrorism, are grounded on the constitution which constitutes the fundamental law of Kenya. Important constitutional provisions relate to the issue of freedoms and rights of persons which should not be violated. The goal is to deter abuse of such laws by both governmental and non-governmental agencies.⁵⁰ A position best stated by Justice Warsame, in a ruling which barred the extradition of Kana to Uganda on the grounds that he was a member of both A- Qaeda and Al-Shabaab after the world cup terrorist attacks. He ruled, 'the significant issue which we must not lose sight is that the new constitution has enshrined the bill of rights of all citizens and to say one group cannot enjoy the rights enshrined

⁴⁶ Ibid, 3 (1a - h)

⁴⁷ See *Refugee Act (2006)*, section 9 and 111. Available at www.kenyalaw.org

⁴⁸ Ibid, Section 19.

⁴⁹ Ibid, section 52.

⁵⁰ See Chapter Four, *Constitution of Kenya (2010)*. Available at www.kenyalaw.org

under the bill of right is to perpetrate fundamental breach of the constitution and to legalise impunity at a very young age of our constitution'.⁵¹

Counter Terrorism Institutions/Organizations/Initiatives

After reviewing the key legislations which among other functions, are aimed at counter-terrorism the following sections reviews the institutions which have been put in place to counter terrorism at international and domestic level. The focus on International Institutions and initiatives is imperative since Kenya has actively cooperated at bilateral and multilateral levels in the fight against militant Islamist terrorism. However, the review will only focus on key institutions which have a bearing on domestic counter terrorism strategies.

The United Nations Institutions/Initiatives

As noted in the preceding sections, Kenya has signed all the thirteen United Nations counter terrorism conventions. Under the conventions, it has been obligated to cooperate with other states in addressing the threats posed by terrorism. Due to the multifaceted nature of terrorism, it can be argued that several UN agencies, have whether explicitly or implicitly, some counter terrorism functions. However, the focus will be on three institutions which have explicit mandate to deal with terrorism.

The first institution is the UN Counter Terrorism Committee (CTC) and its expert group, the Counter Terrorism Executive Directorate (CTED). CTC is charged with the monitoring of the implementation of UN Security Council resolution 1371 (2001) which imposed a range of law enforcement and other security related counter terrorism obligations on all UN member states. Among other functions CTC/CTED is responsible for facilitating the delivery of counter

⁵¹ 'Kenya Judge Reprimands Kibaki', Available from www.afrika.no/DETAILED/19940.html

terrorism technical assistance to states that it has identified as needing helping implementing the provisions of the UNSC resolution 1373 (2001).⁵²

Through CTED Kenya has received assistance on financial law and practice, police and law enforcement, military counter terrorism training and capacity building for the judiciary, maritime security, civil aviation and customs and border control. The assistance is aimed at strengthening the country's capacity to detect, pre-empt and prosecute persons engaged in terrorism.⁵³

The other key UN agency which is directly cooperating with Kenya is the United Nations Office on Drugs and Crime (UNODC) Terrorism Prevention Branch (TPB). Under the TPB, Kenya has benefited from technical and legislative assistance whose goal is to reduce terrorism, financing of terrorism and money laundering. This has been through the strengthening of the capacity to effectively and comprehensively prevent, investigate and prosecute terrorism, counter-terrorism financing and money laundering. The assistance has been provided bilaterally or through regional multilateral platforms such as Inter-Governmental Authority on Development.⁵⁴

In addition to UNODC's TPB cooperation, the United Nations Development Programme (UNDP) has assisted Kenya to counter terrorism. Though UNDP lacks a counter Terrorism mandate to avoid politicising its work, it has taken an exception in Kenya where it has been implementing a Danish funded counter-terrorism project. The project is been implemented in

⁵² The UNSC resolution 1373 calls upon all member states to comply with the 13 United Nations counter terrorism conventions. On CTC/CTED see J. Cockayne, et al, *An opportunity for Renewal: Revitalizing the United Nations Counter terrorism Program: An independent Strategic Assessment*, September, 2010, Center on Global Counter Terrorism Cooperation, Accessed at www.globalctc.org

⁵³ See UN Counter Terrorism Committee executive Directorate Technical Assistance Matrix: Kenya, 25th October, 2007, www.un.org/sc/ctc/matrix/reports/KEN.pdf

⁵⁴ On UNODC activities see www.unodc.org. On its activities in Kenya see UNODC, *Thematic Evaluation of the Global Project on Strengthening the Legal Regime against Terrorism*. Vienna: Independent Evaluation Unit, 2008.

cooperation with Kenya National Counter Terrorism Centre under the Office of the President. The goal of the project is to ensure that national counter terrorism legislations safeguards human rights and raise awareness among the general public of the reasons why such legislations are needed. Additionally, the UNDP has been in the frontline addressing the issues which encourages terrorism. This has been through the promotion of good governance, the rule of law, social inclusion and addressing of other conditions conducive to the spread of terrorism.⁵⁵ In undertaking these roles, UNDP has actively collaborated with the government agencies, civil society and faith based groups.

In order to enhance international cooperation on terrorist financing Kenya is a member of the Financial Accounting Task Force. The FATF is a 35 member organisation established by the G7 to address money laundering activities globally. Since 2001, its mandate was widened to include terrorist financing.⁵⁶ The FATF has closely collaborated with Kenya especially in enabling the implementation of 40 + 9 financial recommendations. These are policy guidelines aimed at addressing avenues for money laundering and terrorist financing. For instance FATF provided critical assistance in the development and drafting of the Proceeds of Crime and Anti-money Laundering Act.⁵⁷

Continental and Regional Institutions/Initiatives

At continental level, where Kenya has ratified the *AU Convention against Terrorism (1999)* and its 2002 protocol under the *AU Algiers Convention on the Prevention and Combating of Terrorism*, it has actively cooperated with the AU in combating terrorism in all its forms and manifestations. The conventions underlines the link between terrorism and organized crime, and

⁵⁵ Ibid, p.31

⁵⁶ On FATF activities see the web <http://www.fatf-afi.org>

⁵⁷ See J. Gathii 'Money Laundering Law Faces Tough Test', *Nairobi Law Monthly*, 03//02/11.

obligates states to cooperate through combating illicit trafficking of arms, drugs and money laundering, extradition, extra-territorial investigations and mutual legal assistance.⁵⁸ Additionally, Kenya has benefited from the assistance extended by the AU's counter terrorism technical arm, African Centre for Study and Research on Terrorism (ACSRT). ACSRT has organised a number of meetings and training seminars in the region which have addressed various dimensions of terrorism.⁵⁹

Regionally, Kenya is a member of various institutions initiatives that have been set up to counter terrorism. These initiatives are housed in various regional organisations such as Inter-Governmental Authority on Development (IGAD), and East African Community (EAC). Under IGAD, there has been a concerted effort, led by Kenya to address conflicts in the region. This has been through mediation activities. Though the goal is peace, there exist a connection between conflicts and terrorism. For instance, Al-Shabaab has emerged and thrived due to lawlessness in Somalia. Hence though mediating the ongoing conflict, the enabling environment for terrorism is addressed.⁶⁰

Importantly IGAD has established a specific counter terrorism initiative since 2006. The IGAD Capacity Building Program against Terrorism (ICPAT) has been undertaking the following functions in the sub-region: Enhancing of countries legal capacities including ratifying and implementing of international standard of counter terrorism, encouraging regional actions to strengthen border management and provision of counter terrorism training to national personnel

⁵⁸ See E. Rosand et al, *Implementing the UN Global Counter-Terrorism Strategy in East Africa*, 2009, www.globalct.org, p.21

⁵⁹ *Ibid*, p.22

⁶⁰ On Kenya's involvement in mediation of Somalia conflict see Interpeace Report, *A History of Mediation in Somalia Since 1988*, www.crdsonalia.org, 2009

such an law enforcement , border control and customs officers.⁶¹ Since its inception, ICPAT has conducted trainings in Kenya, facilitated border security meetings along Kenya – Ethiopian border and provided technical support towards legislative harmonization of anti-terrorism laws. This has been done in close cooperation with UNODC’s TPB and East African Police Chiefs Cooperation Organisation (EAPCCO), International Organisation for Migration (IOM), Commonwealth Secretariat, and high level experts from the region, Institute of Security Studies and the Centre on Global Counter Terrorism Cooperation.⁶²

Apart from cooperation through International Organizations, Kenya is also a partner in several regional multilateral initiatives which are aimed at countering terrorist activities. It is a member of East and Southern Africa Money Laundering Group (ESAAMLG). Under this group which works closely with FATF, Kenya has benefited from Institutional capacity building against money laundering. This is especially through ESAAMLG mutual peer evaluation of member states, which is used to assess country’s anti-money laundering capacities and developing solutions to plug in loopholes. For instance between 24th May – 4th June, 2010, Kenya was subjected to evaluation which involved several financial institutions and law enforcement agencies. The findings of the study will be discussed in September during ESAAMLG conference.⁶³

Another key initiative is the East Africa Regional Strategic initiative. This is a multi-million dollar United States funded initiative whose goal is to enhance regional counter terrorism capabilities. Under the initiative, assistance has been provided for enhancing border security through training and provisions of equipments such as tactical vehicles and advanced personal

⁶¹ See ICPAT website, www.icpat.org

⁶² See ICPAT website, www.icpat.org

⁶³ Central Bank of Kenya, *Bank Supervision Annual Report*. Nairobi: CBK, 2010, p.50.

identification systems; coastal security which focuses on maritime training and equipment provision to Kenya Navy and coastal patrols and joint counter terrorism military exercises. Additionally the assistance covers police training which include provision of communication and tactical assets; curriculum development; counter terrorism financing capacities through assistance in drafting terrorist financing and anti-money laundering legislations, and supporting of ESAAMLG. Also the assistance targets the enhancement of intra-agency counter terrorism coordination which involves establishing of national counter terrorism coordination centre, communication and information sharing among various governments and countering of extremist influence through education initiatives in disadvantaged Muslim communities. These include supporting teachers training, adult literacy, radio instruction, girl child education and public diplomacy via Islamic controlled media outlets.⁶⁴

Under the initiative Kenya has been the largest recipient of US assistance. For instance in 2006, Kenya Navy received six boats for boosting maritime security and combating terrorist who exploit the poorly policed Kenyan coast. In 2007, the US announced a new funding worth 14 million US dollars. The assistance was for training and equipping various law enforcement and security programs (5.5million US dollars), training and equipping of four coastal security patrol units (1.5 million US dollars), construction of coastal maritime training facility at camp Manda (3 million dollars), grants for purchasing two boats with equipment to Mombasa port (260, 000 US dollars), port security initiative to provide training on security management and training (450,000 million dollars), provision of secure information technology network and case management project to anti terrorism police Unit (2.08 million dollars) support of cyber forensics

⁶⁴ For a Comprehensive review see L. Ploch, *Countering Terrorism in East Africa: The US Responses*, November, 2010, Congressional Research Service, www.crs.gov.

lab and cyber crime training (1.24 million dollars) and border control management course (200,000 million dollars).⁶⁵

The final bilateral initiative is the Kenya- Combined Joint Task Force Horn of Africa (CJTF – HOA) cooperation. The CJTF – HOA was established in 2003 by the US military and is headquartered in Djibouti. Though it was initially established with a goal of identifying and destroying the terrorist threats through capturing/killing terrorists, the initiative has been changed to primarily focus on winning the hearts and minds. This is done in collaboration with Kenya's military and focuses on the provision of services to communities especially in Coastal and North Eastern regions which are vulnerable to terrorist ideology. The services provided include human and livestock health under MEDCAP and VETLAB projects whereby US military medical personnel provide inoculations and basic health services; building of schools, roads, bridges, hospitals and provision of humanitarian aid. Under this initiative, 151 projects were implemented in Kenya between 2003 and 2009.⁶⁶

Apart from these non-kinetic activities, CJTF – HOA has partnered with Kenya military to enhance Kenya's counter terrorism capacity. This is through training of the military in counter-terrorism and other areas such as military professionalization, collecting of information, conducting of civil affairs project, overseeing and supporting humanitarian assistance efforts. Under the assistance, Kenya military has managed to establish two counter terrorism infantry battalions and highly trained special operations units with rapid deployment capabilities.⁶⁷

⁶⁵ K. Serossi, *Kenya and Counter Terrorism: Time for Change*. A report by REDRESS and REPRIEVE, 2009, available at www.redress.org

⁶⁶ M. Bradbury and M. Kleinman, *Winning Hearts and Minds? Examining the Relationship between Aid and Security in Kenya*. Medford MA: Feinstein International Centre, 2010, p.12.

⁶⁷ J. Vitton and K. Brener, *Islam in Tanzania and Kenya: An ally or Threat in the War on Terror*. Carlisle PA: US Army War College, 2001, p.25

The above overview of the International Institutions and initiatives which forms a key plank of Kenya's counter terrorism measures is in no way exhaustive. Rather, it brings out the depth of Kenya's cooperation in global counter terrorism efforts. One cross cutting thread in the overview is that Kenya has benefitted from this cooperation in form of enhancing and boosting its counter terrorism capacities. These benefits especially since 1998 are evidenced by the range of counter terrorism institutions and initiatives which have been instituted at the domestic level. The institutions/initiatives are discussed below.

Domestic Institutions/Initiatives

The first institution which was established in response to the 1998 embassy bombing was the National Security Intelligence Services (NSIS). NSIS was created by the enactment of the National Security Intelligence Act (1998) in January 1999. Under the Act, NSIS was mandated to identify threats against the security of Kenya, collect and analyse intelligence on these threats, and advise the government accordingly through appropriate intelligence reports.⁶⁸

The NSIS has agents who are embedded in the society and are engaged in covert and overt surveillance. It has been monitoring the activities of refugees both in camps and major urban areas. Also, they have been focusing on the money transfer system commonly referred to as Hawalla and other cross border business activities. Due to its secrecy, it is not possible to detail the NSIS counter terrorism activities but as a respondent revealed, they have surveillance on terrorist operatives in Kenya. They actively gather intelligence which they pass on to other security agencies.⁶⁹ This is done through the National Security Advisory Council, which acts as a

⁶⁸ See NSIS website, www.nsis.go.ke. Also W. Boinet, 'The Origin of the Intelligence System of Kenya', in Kwadjo J et al(eds), *Changing Intelligence Dynamics in Africa*, a publication by GFN-SSR, 2009. Accessed at www.ssmnetwork.net

⁶⁹ An Interview with a Security sector Expert conducted on 10th, June, 2011

clearing house for security issues and provides coordination mechanisms among various security agencies.⁷⁰ Further, NSIS has been conducting security background of individuals applying for passports and registration of Non-governmental organisations. Through this background verification, the agency aims at rooting out passport fraud and misuse of NGOs as front for terror.

Under the NSIS, there is a specialised National Counter Terrorism Centre. The centre was established in 2004. The objective of the centre is to develop, guide and help both preventive and post-active issues related to terrorism. It is also tasked with developing sustainable counter terrorism strategies, investigate money laundering and other terrorist related illicit activities. Additionally, the centre serves as a counter terrorism clearing house creating focal points for inter agency cooperation domestically and internationally. Domestically the centre brings together specialist from intelligence, police, defence, immigration, customs, airports and ports agencies. At international level, the centre collaborates with regional intelligence agencies as well as the Federal Bureau of Investigation (FBI), Britain's M16 and Israel's Mossad.⁷¹ Through such cooperation Kenya has managed to disrupt various terrorist plots already discussed in the preceding chapters.

To augment the Intelligence gathering efforts of the NSIS and in order to provide the hard edge of counter terrorism efforts, the Kenya Defence Forces are increasingly developing counter-terrorism capacities. Through joint efforts especially with the United States, the three Kenya forces, that is, the Army, Navy and Air force have developed specialized counter terrorism units. The Army has trained two infantry battalions on counter terrorism and

⁷⁰D. Poggiohne, New Terrorism Data Bank for Kenya: Airports, safety and Security', *Emergency Services*, Vol 25, 3, 2004, pp.38

⁷¹ Ibid

established special operation forces codenamed ranger strike force. The units have been active in securing the porous Kenya – Somali border against infiltration by terrorists.⁷² For instance, in 2006, following the invasion of Somalia by Ethiopia, the forces prevented fleeing militias from entering Kenya and managed to detain hundreds of fighters.⁷³ Currently the units in concert with other security agencies, have been monitoring the movement of refugees to ascertain whether they are a threat to Kenya's security.

Additionally, the forces have covertly cooperated with moderate Somalia militias especially Ahlu Sunna Wal Jamma (AWSJ) in fighting Al Shabaab.⁷⁴ In such cooperation, they have provided heavy artillery fire from across the borders, aimed at weakening Al Shabaab and facilitating (AWSJ) forward movement. Such support has enabled AWSJ to retake key regions such as Bula Hawa from Al-Shabaab control. Further, Kenya army has actively recruited and trained Somalia forces on behalf of the transitional federal government.⁷⁵ Lastly, the army has become a key source of intelligence to the United States forces striking Al-Shabaab positions in Somalia.

Regarding the Air force, it has acquired additional firepower especially F-5 jetfighters and attack helicopters with a goal of enhancing its counter terrorism capacities. The acquisition has enabled the air force to conduct surveillance and strikes against suspected terrorists both at land and sea.⁷⁶ Concerning Kenya Navy, the navy through joint exercises with the United States has boosted its maritime capabilities. Through training, acquisition of patrol boats, radar and

⁷² See 'Country Reports on Terrorism – Kenya' United States Department of State, 5th August 2010, accessed at <http://www.unhcr.org/refworld/globalsecurity.org>

⁷³ See Human Rights Watch, *Why Am I Still Here? The 2007 Horn of Africa Renditioning and the Fate of those Still Missing*. New York: Human Rights Watch, 2008, p.17.

⁷⁴ An discussion with a Ministry of Defense official, conducted on 15th June, 2011

⁷⁵ See 'Al-Shabaab Threats Panic Kenya as Fighting Erupts on the Border with Somalia', Accessed at www.jamestown.org

⁷⁶ 'Kenya Working to Preserve Peace and Stability', Available at republicofkenya.org/ally/peace

other surveillance equipments, the Navy has become the best trained and equipped unit in the Horn of Africa.⁷⁷ Furthermore, the Navy has established Regional Maritime Centre of Excellence designed to deal with terrorism and other maritime threats. Also acting in concert with the US CJTF-HOA, the navy has installed Maritime Security and Safety Information System (MSSI) in key positions along the Kenyan coast which could be exploited by terrorists.⁷⁸

A key plank of Kenya's military counter terrorism strategy is the Jubaland project. The project aims at creating a buffer zone in South Western Somalia to contain Al-Shabaab. Jubaland which is modelled along Puntland and Somaliland will be composed of three Somalia regions: Lower Juba, Middle Juba and Gedo. Apart from keeping Al-Shabaab at bay, the region owing to its envisaged stability will help stem the flow of refugees to Kenya since refugees fleeing other parts of Somalia will be domiciled there.⁷⁹

In an effort to win hearts and minds Kenya military has engaged in developmental activities in regions perceived as potential sources or havens for terrorists. For instance under the civil affairs team the Kenya army engineering corps in collaboration with partners particularly the CJTF-HOA has been involved in building and repair of social amenities in Lamu and North Eastern regions.⁸⁰ The projects are aimed at winning the confidence of the host communities which is critical in enhancing civil-military relations especially in areas where the military is treated suspiciously owing to its past conduct. This is more so in North Eastern province.

⁷⁷ J. Prestholdt, 'Kenya, the United States and Counterterrorism', *Africa Today*, Vol 57, No.4, 2011, pp.2-27; Also Sentinel Country Risk Assessment, 'Kenya Navy', Available at articles.jane's.com

⁷⁸ *CIA Factbook*, Kenya Report. Available from <https://www.cia.gov/library/publications/the-world-factbook/geos/KE.html>,

⁷⁹ Jamestown Foundation, 'The Jubaland Initiative: Is Kenya Creating a Buffer State in Southern Somalia?', 28th April 2011. Available at: <http://www.unhcr.org/refworld/docid/4dbeab352.html>

⁸⁰ see <http://www.hoa.africom.mil>

Within the Kenya police services, Kenya has established specialised anti-terrorism units. The main units are Anti-terrorism police Unit, Tourist Police Unit under Kenya police services and the Rural Border Patrol Unit (RBPU) under administration Police Services. ATPU has remained the most visible anti-terrorism unit. It was established in 1998 after the embassy bombing. Since then the unit, with heavy presence in regions vulnerable to terrorism especially in Nairobi, Coast and North Eastern has actively conducted surveillance and arrested terrorists in Kenya. Its capacity has been enhanced through acquisition of advanced IT system, and training especially from the FBI.⁸¹ The unit has managed to arrest terrorists and disrupt plots in Kenya acting in concert with foreign intelligence agencies.

The Tourist Police Unit as the name suggests, was established to protect tourists from a range of security threats. Owing to the huge number of tourists especially from the West, Kenya has become an attractive target of Islamist terrorists. Also, the position of Kenya as a key tourist destination has been threatened in the past due to various travel advisories by western states cautioning their nationals against visiting Kenya due to potential terrorist attacks. In order to address these twin challenges, the TPU is mandated to pre-empt threats against tourists and tourist facilities.⁸²

These units are complemented by RBPU. The RBPU is a paramilitary unit under the Administration Police Services which has been mandated with rapidly responding to security threats. The unit in concert with the Army has been actively involved in border security management. Overtime, it has become a critical cog in enhancing border security owing to its

⁸¹ ATPU is a highly secretive unit answering directly to the police commissioner. Its information is scanty. It was established in February, 2014. See M. Ruteere, 'Perils of Secrecy in war on Terror', *Nairobi Law Monthly*, 30/04/2011.

⁸² On Tourist Police Unit see www.tourism.go.ke/ministry/pages/security

rapid response when it comes to militarily responding to threats posed by Somalia militant Islamist.⁸³

In order to counter terrorism financing, the government has instituted a range of institutional measures. The first measure, was the establishment of the Task Force on the Anti-money Laundering and Combating the Financing of Terrorism. The task force was gazetted on 25th April 2008 and was mandated with the following tasks: sensitizing the public on dangers of money laundering and financing of terrorism; development of national policy framework on anti-money laundering and combating of terrorism; liaising with regional and international organisations reviewing of terrorism legislation and making appropriate recommendations.⁸⁴

The task force which is a multidisciplinary group made up of 14 government ministries/agencies and officials from Kenya Bankers Association has been holding training of stakeholders in the money laundering and terrorist financing. For instance it has participated on various international forums such as a joint Egmont-Financial Action Task Force Experts workshop in Cape Town in November, 2010 and Joint India, IMF/World Bank training on the establishment of Financial Intelligence Units (FIUs). Further, the task force has contributed to the development of the national policy on money laundering and terrorist financing as well as the proceeds of crime and Anti-money laundering Act.⁸⁵

To further bolster Kenya's capacity to curb terrorist financing, the Proceeds of Crime act has envisaged the setting up of more institutions. These include the Financial Reporting Centre, Asset Recovery Agency and Anti-money Laundering Committee. In absence of these institutions

⁸³ For more information on RDU see <http://www.administrativepolice.go.ke>

⁸⁴ Central Bank of Kenya, Bank Supervision Annual Report, Op cit, p.43

⁸⁵ Ibid, p.42

which are yet to be institutionalised the Central Bank's Anti-Banking Fraud Unit has been handling the functions of the Financial Reporting centre.⁸⁶

Additionally, the Central Bank has released financial transactions regulations guidelines. Under the guidelines, which elaborates the Proceed of Crimes Act, financial and non-financial institutions are compelled to exercise due diligence in handling of financial transactions, maintain customer financial records for a minimum of seven years, provide such information to relevant agencies upon demand and forward Suspicious Activity Reports (SARS) to the Central Bank on amounts exceeding 10,000 US dollars or its equivalent or smaller amounts that are doubtful. Further the guidelines provide for the watch listing of designated individuals and entities contributing to conflict in Somalia and exercising of due diligence when dealing with transactions from high risk jurisdiction and high risk customers.⁸⁷

In response to the presence of foreign terrorists in Kenya and the fact that terrorist/jihadist are transiting through Kenya on their way to Somalia , that they are accessing forged travel documents in Kenya, the Ministry of Immigration has instituted various counter terrorism measures. A key initiative is the United States funded Terrorist Interdiction Program (TIP).⁸⁸ TIP is an initiative whose aim is to constrain terrorist mobility globally by helping countries at risk from terrorist activity to enhance their border security capabilities. Under the initiatives countries are provided with a system known as PISCES (Personal Identification Secure Comparison Evaluation system).⁸⁹

⁸⁶ See *Proceeds of Crime and Anti-money Laundering Act*, Article 49, Op cit

⁸⁷ See CBK, Guidance Note 1 of 2010 on ant-Money Laundering and Guidance Note No. 1-Suspicious Transactions Reporting, 2011. Accessed at www.centralbank.go.ke

⁸⁸ On Terrorist Interdiction Program see, 'Terrorist Interdiction Program', Available from www.state.gov

⁸⁹ See Kenya-county Report. Available at www.state.gov

PISCES is a sophisticated boarder management tool to help in the fight against terrorism. It is used for watch-listing of suspected terrorists and is networked to the participating nation's security agencies.⁹⁰ In Kenya, PISCES has been installed in the three international airports (Jomo Kenyatta, Eldoret and Moi).⁹¹ A key component of the PISCES is the alert list or watch-list. The watch-list is a database containing details and travel details relating to persons engaged in terrorism and other illicit activities such as drug and human trafficking. The database is networked globally, enabling immigration officials to access information on persons in the list and apprehend them immediately they enter Kenya.

To further argument the counter terrorism capabilities the Ministry of Immigration has developed terrorist profiling guidelines. These guidelines help in identifying characteristics or behaviour of concerns thus enabling personnel to identify suspicious persons. These include signs of nervousness and stress. Also under the guidelines, officials are supposed to pay strict scrutiny of persons from high risk states such as Pakistan and Saudi Arabia which are key source of Islamist terrorism. Finally, they are required to pay attention to the travel information and history such as the countries visited in the last three years.⁹²

In an effort to address marginalization of the Muslim communities especially in North Eastern region, the government has increasingly recognized the regionalized underdevelopment which usually coincides with ethnic or religious lines. Since 2008, the government has set up the Ministry for North Eastern and other Arid Lands whose mandate is to enhance accelerated

⁹⁰ On detailed analysis of PISCES, see 'Personal Identification Secure Comparison and Evaluation System': Accessed at intelfiles.egoplex.com/2002-02-09-911-pisces.pdf.

⁹¹ Kenya Anti-Corruption Commission', *Examination Report on the Systems, Policies, Procedures and Practices for the Ministry of Immigration and Registration of Persons*. Nairobi. KACC, April, 2006, p.21

⁹² See Department of Immigration, *Kenya Immigration Border Procedures Manual*. Nairobi: Department of Immigration, 2008, pp 35, 63. Also, Appendix 10

development in such regions. Under the Ministry several initiatives have been put in place as elaborated below.

The flagship project has been the Arid Land Resource Management project. This is a community based drought management initiative by the government of Kenya whose main goal is to address complex problems of vulnerability, enabling communities to move beyond survival and subsistence to sustainable development through three ways: Empowering communities so that they can successfully identify, implement and sustain their development priorities through community development; strengthening and institutionalising natural resources and drought management; fostering a conducive and enabling environment for development in the arid lands through policy support.⁹³

Additionally, the Ministry in collaboration with the European Union have launched Drought Management Initiative (DMI). The initiative aims at improving capacities of drought management systems in Kenya. Further, in order to protect the residents from vulnerabilities occasioned by hunger, the hunger Safety net Program is in nascent phase. Under the program, the government aims at using cash transfers to address chronic hunger. Finally, the ministry is in preparatory stages of setting up a Northern Kenya Education Trust whose vision is to boost education standards from the current primary school enrolment rate of thirty percent.⁹⁴

These initiatives have been provided with a solid foundation by the newly promulgated constitution. In order to address regional inequalities in development, the constitution in article 204, has set up an equalisation fund whose goal is to provide money for basic services such as water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring

⁹³ Ministry of State for Development of Kenya and other Arid Lands, *'Arid Land Resource Management Project'*, Accessed at www.regional.dev.go.ke

⁹⁴ *Ibid.*

quality of those services in these areas to the level generally enjoyed by the rest of the nation as far as possible⁹⁵

Conclusions

From the analysis it is certain that Kenya has responded to militant Islamist terrorism in a comprehensive manner. It has partnered with international and regional organisations to prevent and punish acts of terrorism. This is through ratification of treaties, active participation in bilateral and multilateral arrangements. More so, it has put in place domestic legislative and institutional measures addressing various dimensions of terrorism. Nevertheless, the measures are not without challenges. The challenges are comprehensively analysed in the next chapter.

⁹⁵ The Constitution of Kenya (2010), Article 204 (1). Available at www.kenyalaw.org

Chapter Six

An Analysis of Militant Radical Terrorism and Counter-terrorism Measures in Kenya

Introduction

The previous chapter has provided a detailed review of the legislative and institutional measures that Kenya has put in place to address the threats posed by radical Islamist terrorism. It has shown that Kenya has a range of instruments in place whose goal is to prevent, deter and punish acts of terrorism.¹ The measures spawn international, regional and national arenas, reflecting the nature of transnational militant Islamist terrorism.

This chapter critically analyses the challenges facing the counter terrorism measures. Accordingly it is divided into four sections. Section one focuses on the international challenges. Section two addresses the regional challenges especially those emanating from the horn of Africa insecurity complex. Section three focuses on domestic challenges especially the legislative and institutional/organizational ones. The fourth section evaluates whether the study has met its objectives and tests the hypotheses.

International Challenges

From the analysis of the drivers of terrorism, a key factor identified was the fact that what has been labelled as global militant Islamist terrorism is a product of Palestinization of Middle East and by extension Middle Easternization of the globe.² It is this process which moved this kind of terrorism from Middle East to the global stages. Right from its origins, militant Islamist terrorism is a reaction to the nature of the international system, which terrorist and sympathizers argue that

¹ See Chapter Five.

² See Chapter Four, pp.72-73; Also, S. Lancer, 'Combat against Religionist Terrorism: Lessons from the Turkish Case', *The Journal of Turkish Weekly*, Available at www.turkishweekly.net.

it has generated injustices and humiliated Muslims for decades.³ The injustices are symbolized by the West and its allies.

What this means is that Kenya, which has aligned its foreign policy firmly with the West and has been identified as a key strategic partner in the Global War on Terrorism (GWOT), faces an avoidable and fundamental challenge when dealing with terrorism. The challenge is because, in a quest towards securing its interests, it cannot avoid to align with the West. This alignment poses challenges for it places Kenya on the second concentric ring of targets as an ally. Indeed Al-Shabaab has issued threats based on this connection.

For instance during a press conference in Mogadishu, the Al-Shabaab spokesman Sheikh Ali Mahamud Raage told reporters,

'Kenya has been working to undermine the existence of Sharia in Somalia. It has opened training camps inside Somalia territories to train apostate Somalia militant and also offered military bases to Ethiopia forces who are invading military neighbouring Islamic region of Gedo. It has cooperated with our enemies especially the United States. We shall no longer tolerate the constant aggression and ill acts by Kenya against our Muslim society. Kenya will bear responsibility for the consequences of continuing aggression. Previous warnings to Kenya were nothing compared to this one, we are going to retaliate against Kenya harshly.'⁴

Additionally, the close alignment of Kenya with the West means that Kenya has multiple and attractive targets. It serves as the regional, economic, diplomatic military and travel hub. As a result there are numerous public and private Western related targets. This has made it remain in the radar of Al Qaeda.⁵ As already discussed several AQ initiated terror plots have been disrupted, and importantly such plots will continue.⁶

³ S. Lancer, 'Combat against Religionist Terrorism', *Ibid.*

⁴ *Daily Nation* (Nairobi), February 28, 2011.

⁵ An interview with a respondent working for Institute of Security Studies, conducted on 15th June, 2011.

⁶ See Chapter Three, pp.58-9

More so, in the GWOT, Kenya has opened its territories to United State forces especially under CJTF – HOA initiatives as well as the close intelligence sharing and cooperation with CIA, MI6, FBI, and Mossad. The presence of such operatives poses challenge in the sense that, AQ and its affiliates are motivated to launch attack against such groups. This is evidenced by respondents. In a question on the attitudes of residents towards the presence of US military personnel in the Coast and North Eastern region, a respondent noted that 'the presence of Western operatives would bring AQ in with intention of targeting such operatives'.⁷ Another noted 'the residents do not want the US presence in the province because AQ will follow the Americans here. We face risks of AQ attacks now more than ever before because we might be seen as collaborators of Americans.'⁸

The other important challenge connected with the international stage is captured by the Islamic notion of *Ummah*. The notion underlines a belief that Islam is de-territorialized and believers irrespective of where they are, are one, united by religion.⁹ On the basis of this notion, an act committed against Muslims anywhere in the world is perceived as an assault against all Muslims, and Muslims have an obligation to react to such actions. For instance, the Palestinian issue has been a central component in the narrative of humiliation and injustices against Islam and has motivated the emergence and growth of militant Islamist terrorism.¹⁰

The de-territorialized nature of Islam exemplified by the notion of *Ummah*, means that, even if Kenya adopted a neutral stance in the GWOT, some sections of Kenyan Muslims will still be influenced by what is happening in other Muslim lands and are sympathetic to the

⁷ An interview with a respondent working for ISS, Op cit

⁸ An informal discussion with Hussein Osman, a resident of North Eastern Province, on 8th June, 2011

⁹ On the concept of *Ummah*, see R. A. Saunders, *The Ummah as a Nation: A Reappraisal in the Wake of the 'Cartoons Affair'*, *Nations and Nationalism*, Vol 14, Issue, 2, 2008, pp.303-321.

¹⁰ A discussion with a respondent conducted on 8th June, 2011.

terrorist cause, willing to harbour terrorists and actively join such groups. This was best captured by a respondent who noted that, Islam is a global community and what happens in Palestine, Iraq and Afghanistan resonates here. The pain inflicted on one Muslim anywhere is felt everywhere by all the Muslims.¹¹

Related to the notion of Islamic Ummah and its consequences, is the challenge of dealing with globalized Jihadist ideology. The jihadist ideology as previously discussed is the militant Islamist terrorism centre of gravity (COG).¹² The phenomenon of globalized terrorism has been made possible by the Al Qaedaization of Muslims grievances, in the sense that all the grievances are attributed to the decay in Islam and hence the solution lays in the establishment of purist Islamic caliphates. This ideology through multiple mediums have found resonance in Kenya among some segments of the Muslim especially Youths. A respondent noted that in some mosques which have been taken over by radical salafis, 'they show jihad PowerPoint presentations and distribute Islamist DVDs to impressionable young men'. Also, some business outlets especially in Eastleigh are selling such radical sermons.¹³

This ideological indoctrination and its consequences is best exemplified by the fate of the Kenyan-Somali Yusuf Mohammed Warsame, who was one of the suicide bombers, in the February, 22, 2010 attack of the AU mission in Somalia compound. Warsame was indoctrinated in Isiolo, where Masjid Hidayah and the Count Council mosques have become important satellite of the Eastleigh's sixth street mosque which directs the Al -shabaab recruitment operations in Kenya.¹⁴ Also Al-Shabaab has actively been exploiting this ideology to indoctrinate youths in

¹¹ Ibid

¹² See Chapter Four, pp.74-6

¹³ An interview with a Muslim resident of Eastleigh conducted on 12th June 2011.

¹⁴ See, 'A portrait of Al - Shabaab Recruitment in Kenya', Accessed at www.cablegatesearch.net/cable

their formative stages, in various madarassas in Eastleigh. A moderate Muslim Sheikh Ibrahim Moalin who has opened a counter-Al Shabaab madarassa Fath Ramah, opines that, 'they tell our children to kill other Muslims, Christian and Jews. And they say if they if they kill them, Allah will grant them paradise.'¹⁵ A student in one of the madarassa expressed similar view that, 'my teacher tells us Al -habaab is fighting for religion and for our country. Sometimes they ask us if we would like to go and fight'.¹⁶

Regionalised Challenges

In dealing with security issues the regions and sub-regions have become important cogs. This is because at any given region, there are benefits to be accrued by addressing security issues from regional level. Members of a given region can utilize multilateral structures to address security issues which they have intimate understanding on.¹⁷ Further, they can share the security burden since as Buzan argues, states in a given region constitutes a security complex. That is, states which are contiguous have interlinked security concerns and none can guarantee its own security without cooperating with the neighbours.¹⁸

Within the regional level, Kenya is a member of the African Union and has signed all the AU's counter terrorism conventions and protocols. At a sub-regional level, Kenya is a member of both the EAC and IGAD, both which have counter terrorism functions.¹⁹ EAC which is more of an economic grouping lacks any dedicated structures for countering terrorism, relative to IGAD whose mandate and working has predominantly focussed on Horn of Africa security

¹⁵ Cited in 'Somalia's Al-Shabaab Spread its Message', Accessed at www.hiraan.com

¹⁶ Ibid.

¹⁷ See B. Franke, 'In Defence of Regional Peace Operations in Africa', *Journal of Humanitarian Assistance*, Article 185, 2006 and B. Franke, 'Competing Regionalism in Africa and the Continent's Emerging Security Architecture', *Africa Studies Quarterly*, vol. 9, issue No 3, 2007.

¹⁸ B. Buzan and O. Waever, *Regions and Powers: The Structure of International Security*. Cambridge: Cambridge University Press, 2003, pp.4-5.

¹⁹ See Chapter Five, pp. 104-5

issues. In analysing the regionalized challenges, this section will focus on IGAD, since it is within IGAD sub-region that most of the counter terrorism challenges emanates.

The first challenge is the nature of the international relations in IGAD sub-region. The international relations are characterised by regional rivalries, enmity among member states and preference of unilateral approach to security issues due the prevalence of mutual suspicions and in the extreme there is state sponsorship of militant Islamist terrorism.²⁰ This makes the counter terrorism environment a complex one.

IGAD has been characterised as an organisation of hostile brothers, which is a reflection of inter-state relations characterised by enmity rather than amity.²¹ This enmity has made it impossible to establish a sub-regional peace and security architecture capable of comprehensively addressing regional security threats. Importantly, the enmity has encouraged state sponsorship of terrorism. As already observed, the presence of AQ in the region is traceable to the period when the Islamic regime of Sudan provided the headquarters for AQ.²² Currently, Eritrea, has been supporting Al Shabaab, as a strategy of undermining its arch enemy Ethiopia.²³ The support which includes political and military dimension has helped to strengthen Al-Shabaab, making it capable of launching out of area terrorist attacks. On January, 2011, Ethiopian intelligence agency unearthed an Eritrean backed terror plot whose target was the on-going AU summit. According to the UN monitoring Group in Somalia and Eritrea, the aim was

²⁰ On Analysis of the Challenges See N. Mwaniki, *What Challenges have Hampered the Implementation of IGAD's Peace and Security Architecture (PSA)*, MA (War Studies) Thesis (Unpublished), Kings College London, 2011, pp.33-59.

²¹ See, U. Terlinden, *IGAD – Paper Tiger facing Gigantic Tasks*. Berlin: Fredrich-Elbert Stiftung, 2004, p.5.

²² USIP, *Terrorism in the Horn of Africa*. Washington: Special Report, 2004, p 14.

²³ See IGAD, 'Ministers Deplore Eritrea and UN Security Council Impose Arms Embargo', www.igad.org. Also, 'Summit Attack Plot: UN Report', 28th July 2011. Available at af.reuters.com, Also, *United Nations Report of the Monitoring Group on Somalia Pursuant to Security Council Resolution 1853, July 2011*

to blow up the summit venue which would have led to deaths of many heads of states and governments.

Significantly the report identified Eritrean embassy in Nairobi as actively coordinating such plots. It stated "The fact that the same Eritrean officers responsible for the planning and direction of this operation are also involved, both in supervisory and operational roles, in external operations in Djibouti, Kenya, Uganda, Somalia and Sudan implies an enhanced level of threat to the region as a whole. More so the embassy of Eritrea in Nairobi continues to maintain and exploit a wide network of Somali contacts, intelligence assets and agents of influence in Kenya. Under the period of review the embassy had transferred 80,000 US dollars monthly to known Al-Shabaab operatives in Kenya.²⁴

Further, owing to mutual hostilities and suspicions in the region, states are motivated to pursue their security unilaterally with total disregard of the negative regional security consequences. A good example is the 2006 of Ethiopia's invasion of Somalia in order to destroy the then increasingly powerful Union of Islamic Courts (UIC). Though Ethiopia argued that the presence of the courts posed a serious threat to its national security, the outcome of the invasion created more regional insecurities, compared to the relative stability which the courts had brought to Somalia.²⁵

The invasion led to the alienation of the moderate Islamists such as Sheikh Sharif Ahmed Yusuf (the current Somalia president and the then leader of the UIC). The alienation led to emergence of more radicalized Islamist groups notably Hizbu Al-Islam and Al-Shabaab.

²⁴ See D. Clarke, 'Eritrea behind AU summit attack plot: UN report', 28th July, 2011. Available from af.reuters.com

²⁵ See S. Heally, *Peacemaking in the Midst of War: An Assessment of IGAD's Contribution to Regional Security*. London: Crisis States Working Papers, November, 2009, p.15. Also, B. Habte-Giorgis, 'The War on Terrorism in the Horn of Africa and its Aftermath', in Sthlm (ed), *Faith, Citizenship, Democracy and Peace in the Horn of Africa: A Report of the 7th Annual Conference on the Horn of Africa*. Lund: Sthml Press, 2008, pp.52 – 53.

Importantly, owing to the historical enmity between the two, Ethiopia's invasion provided the radicals with ideological capital as they exploited Somalia nationalism and wove it with anti-Christian Ethiopia and United States sentiments, to present themselves as liberators of Somalia.²⁶ This enhanced their recruitment and mobilization capacity.

Further, the invasion pushed the Islamists towards embracing Al-Qaeda as a strategy of countering Ethiopian - US activities in Somalia. Ultimately, the invasion became a war between Christian invaders and Muslim defenders. Al Shabaab transformed itself into an AQ franchise in the Horn of Africa, and actively recruited foreign jihadists and diasporic Somalis under the pretext that Al -habaab was waging a holy war against infidels and the 'apostate' regime of Somalia.²⁷

At a regional strategic level, the enmity means that is practically not possible to develop a comprehensive and working regional counter terrorism strategy. Yet, such a strategy is critical for it will provide a bird's eye view of the threats posed by terrorism and guide concerted responses. In its absence IGAD is left wrestling with trees rather than shaping the forests.²⁸ This poses fundamental challenge to all member states, since none is capable of comprehensively addressing terrorism individually.

More so, in absence of a mutually agreed regional security strategy, there are competing visions of how regional security should look like. Due to such competition, it has become impossible to address the Somalia lawlessness which currently stands as the greatest enabler of

²⁶ N. Mwaniki, *What Challenges Have Hampered the Implementation of IGAD's PSA*, Op cit, p.49.

²⁷ Ibid, p.49

²⁸ Ibid, p. 50

militant Islamist terrorism in the region.²⁹ This state of affairs is because every state in the region has been pursuing unilateralist agenda, which is in conflict with other states. For instance the Kenya's Jubaland initiative though publicly supported by Ethiopia, has been objected to privately. This is because Ethiopia fears that the on-going establishment of statelets within Somalia will further motivate the restive and secessionist Ogaden region, where ethnic Somalis have been fighting to secede from Ethiopia.³⁰

As a result of the above dynamics, IGAD's initiatives such as ICPAT have not achieved much beyond training of security agencies in members. Though it has managed to overcome funding challenges which have hampered the working of other sub-regional institutions, it is yet to develop a regional counter terrorism framework or deterrence measures which can be applied against states which are directly or indirectly encouraging terrorism in the region.³¹ Importantly the regional environment has become a major source of terrorist threats facing Kenya. Indeed, Kenya's greatest challenge in its counter terrorism effort emanates from the hostile sub-regional environment it operates in. An environment which has enabled the emergence of globalized militant Islamist terrorism.

Domestic Challenges

The international, regional and sub-regional challenges have been compounded by the way Kenya has gone about the business of counter-terrorism. Within Kenya, there are legislative,

²⁹ On Somalia's mediation efforts see Interpeace Report, a History of Mediation in Somalia since 1988. Published on 2009. Accessible at www.crdssomalia.org

³⁰ James Town Foundation, 'The Jubaland Initiative: Is Kenya Creating a Buffer in Southern Somalia', 28th April, 2011. Accessed at www.unhcr.org/refworld/country/kenya

³¹ See, E. Rosand et al, 'Enhancing Counter Terrorism Cooperation in Eastern Africa', *Africa Security Review*, 18.2, pp.98-99.

historical, organisational and institutional shortcomings which have hampered the counter-terrorism efforts. These challenges are elaborated below.

Legislative Challenges

From the preceding sections, it is clear that Kenya has passed various laws which can be used to pre-empt, and prosecute terrorism.³² However, that the legislative framework is contained in various laws poses challenges, particularly because terrorism is a unique crime which calls for a very specific and self contained law, dealing with all its aspects.

The first challenge is that there lacks a legal definition of terrorism and acts which can be categorized as constituting terrorism.³³ Efforts to address this lacuna have been unsuccessful since the government has been unable to counter the resistance against the proposed Suppression of Terrorism Bill 2003. The bill has been criticized on the basis that it was merely an import of the United States Patriot Act (2001) and contains clause which are discriminatory against Muslims and can be used arbitrarily by the police to harass innocent Muslims.³⁴ These fears are well founded especially when one reads article 12 (1) of the bill which states;

‘A person who in a public sphere (a) wears an item of clothing or (b) wears, carries or displays an article in such a way in such circumstances as to arouse reasonable suspicion that he is a member or a supporter of a declared terrorist organization shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding six months or to a fine or both’.³⁵

Such fears have been confirmed by the information given by those who have been arrested on suspicions of terrorism. During interrogations, they were questioned about their dress code such

³² See Chapter six,

³³ See, Office of Overseas Prosecutorial Development Assistance (OPDAT), *Country Reports – Kenya*. Accessed at justice.gov/criminal/opdat/worldact-programs/ctu.html

³⁴ See, H. Ndzovu, *Muslims and Party Politics and Electoral Campaigns in Kenya*. North Western University: Institute for the Study of Islamic Thought in Africa, Working Paper Series, No 09 – 001, 2009, p.10

³⁵ See The Suppression of Terrorism bill, 2003. Nairobi: Government Printer, 2003, p 455

as the robe (kanzu), the Islamic cap and wearing of long beards.³⁶ Importantly, that someone professes or is in possessions of materials that propound salafist/ Wahabist beliefs does not in any way make him a terrorist.³⁷ As such, in presence of such clauses, innocent fundamentalist Muslims will be vulnerable to charges that they are terrorists.

In absence of a self contained and specific counter terrorism law, the prosecution, of terrorists have been hampered. This is because unlike other crimes, when dealing with terrorist, time is of essence, especially when one is faced with imminent threats. The current laws do not recognize this leading to loophole, which have been exploited by terrorists. For instance, the legal requirement that an arrested person must be produced in court before twenty four hours are over, should not apply to terrorism suspects as some are extremely radicalized and hard to interrogate.³⁸ Also, the high standard of proof beyond any reasonable doubt has led to acquittal of terrorists, yet there is 'enough' evidence to prove that they are terrorists. Further, terrorists have abused the legal process to frustrate the prosecution.³⁹

Indeed, it is these legislative shortcomings that have encouraged extra-ordinary renditions which run the risk of being counter-productive. This is because the extradition process as provided at the Extradition Acts is a long process, which can even take years. Individuals have a right to challenge extradition all the way to the constitutional courts, yet their apprehension and handing over to extra-territorial authorities might be urgent especially in the face of an imminent terror attacks.⁴⁰

³⁶ H. Ndzovu, Muslims and Party Politics, Op cit, p.10.

³⁷ On wahabbist/salafist beliefs see Chapter Two pp.48-50

³⁸ An interview with a Terrorism Expert, ISS, conducted on 8th June, 2011.

³⁹ Ibid.

⁴⁰ T. Erasmus, 'Time to Review extradition Procedures in East Africa', *ISS Today*, available at www.the-african.org/blog/?p=364

The other legislative challenge lies in the fact that some of the sanctions laid out in laws are not deterrent enough. For instance, under the Aliens Restriction Act, a person who commits offences under the act is liable to a fine of 3,000 shillings or six months jail term. This penalty is too lenient.⁴¹ Further, all laws relating to immigration do not provide a clear criteria for dealing with Aliens once they are charged with offences under the acts. Due to this absence, at times, magistrates impose fines and do not make repatriation orders. This leads to a situation where the illegal immigrants pay the fine and are subsequently set free.⁴² However, the situation might change once the proposed immigration bills have been enacted into law.

A similar loophole is present in the Proceeds of Crimes and Anti-money Laundering Act, which deals with among other things, financing of terrorism. The main gap exists in the amount of money financial and non-financial institutions are supposed to report of 10,000 US dollars. The amount which at current exchange rates translates into 900,000 Kenya Shillings is pretty high considering that, the average terrorist attack since September 9/11 has cost less than 10,000 US dollars.⁴³ Such amounts fall below the Anti-money laundering institutions radar. Significantly, by making multiple small transfers not subject to reporting requirements terrorists are able to make their payments indistinguishable from legitimate financial transactions. For instance under the Safaricom's M-Pesa mobile money transfer services customers are allowed to transfer a maximum of 100,000 Kenya shillings daily. Under such system it is possible for an individual possessing multiple Safaricom's Subscriber Identity Module (SIM) cards to transfer 900,000 shillings without raising suspicions.

⁴¹ Kenya Anti-Corruption Commission, *Examination on the Systems, Policies, Procedures and Practises of the Ministry of Immigration and Registration of Persons*. Nairobi: KKACC, 2006, p.31.

⁴² Ibid.

⁴³ W.G. Rich, 'Money Laundering and Terrorism Financing: The Buck Stops Where?' *Policy Matters Journal*, fall, 2008, p.2

Additionally, the act does not effectively address Informal Value Transfer System (IVTS) and mobile money transfers. IVTS such as *Hawalla* lacks traceable paper trail and transfers are hard to detect.⁴⁴ The same situation applies to mobile money transfers such as Safaricom's M-Pesa, since this sector is under regulated. Furthermore, the Act does not cater for money transfers through human couriers. For instance, much of the illicit finance coming to Kenya from Somalia is moved physically by individuals contracted to smuggle the money.

More so, the Suspicious Transactions Reporting (STR's) requirements is rather ignorant of the fact that banks in a competitive environment are constantly engaged in operational costs cutting. As such, they are not enthusiastic about assigning their resources towards non-profit activities such as STR's, which requires training of personnel's and maintenance of records and setting up a department to deal with such issues.⁴⁵ Additionally, that such suspicious transaction are supposed to be reported, without informing the client violates the financial institution – Client confidentiality, considering that many legitimate businesses and individuals transfers amounts exceeding 10,000 US dollars daily.⁴⁶

Indeed, the unwillingness of financial and non-financial institutions to report suspicious transactions is evidenced by the statistics on the STR's. For example, a county analysis report by FATF notes that during the 2007 – 2010 period, Kenya government did not report any money laundering or terrorist financing, arrests, prosecutions or convictions.⁴⁷ Yet an authoritative report by the United States Department of State shows that an estimated 100 million US dollars

⁴⁴ Ibid, p.5

⁴⁵ See J. Gathi, 'Money Laundering Law Faces Tough Test', *Nairobi Law Monthly*, 3rd, February, 2011.

⁴⁶ A discussion with a Kenya Commercial bank employee on 17th June 2011

⁴⁷ See 'Your Country Reports. Accessed at www.knowyourcountry.com

in laundered annually in Kenya.⁴⁸ Indeed Kenya is currently a strategic money laundering jurisdiction

The loophole on money laundering and terrorist financing regime is further evidenced by the fact that when the Al Qaeda head in East Africa Abdullah Faizul was killed in Somalia, he had 40,000 US dollars. Considering that Faizul has been transiting through Kenya, it is possible that he had moved the money over land from Kenya. Also his accomplice a Kenya- Somali Abdullahi Dheere alias Musa Al- Kinyi (Musa the Kenyan), who resided in South C estate, Nairobi, was a key conduit for such financial transfers. He took advantage of the fact that he had legal Kenyan documents needed to conduct such money transfers, and he was a familiar face at Kenya – Somalia border crossings, when he would either move money to Somalia or Kenya under the pretext that he was a businessman.⁴⁹

The final legislative challenge is related to the fact that the government does not have any law which can possibly deter the proselytization of radical Islamist beliefs. Indeed, it is not legally possible to deter such indoctrination or spread since attempts to control such activities violates the constitutionally guaranteed freedom of religion, belief and opinion. The constitution in article 32 (2) is clear that 'every person has the right to either individually or in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship.'⁵⁰ Considering that the constitution in its letter and spirit requires that the chapter on rights and freedom should be interpreted in a manner that 'most favours the enforcement of a right or fundamental freedom, it

⁴⁸ Country Reports on terrorism, 2010. Available at www.state.gov/s/ct/ros/ct/2010

⁴⁹ 'Somali Report' available at www.somalireprot.com

⁵⁰ The Constitution of Kenya, Article 32(2).

is not possible to regulate the espousing of fundamentalist Islamic beliefs.⁵¹ This is because though, most of the captured militant Islamist terrorists, traces their indoctrination to radical madarassas or mosques, a huge number of salafist Muslims embraces purist Islam but they do not support or engage in terrorism. This remains a fundamental challenge since ideology is the centre of gravity for the globalized militant Islamist terrorism.

Organisational/Institutional Challenges

Under these categories, various challenges not related to legislative gaps are identifiable. Such challenges are mainly related to lack of capacity and the manner which counter-terrorism strategies have been implemented. The challenges are discussed below.

Government Infrastructural Power Deficit

The key challenge concerns the governments infrastructural under capacity which has led to the presence of ungoverned spaces in the country. Such ungoverned spaces are sites of lawlessness where all manner of illicit activities such as narcotic and human trafficking, small and light weapons proliferation and terrorism takes place.⁵² This is because in absence of government's infrastructural power in terms of provision of public goods such as legal and administrative, structures, basic services and such, the infrastructural deficit acts as an enabler of lawlessness, in various ways.

Firstly, the ungoverned spaces provide a site where terrorists can establish sleeper cells, smuggle terror material and spread their ideology of hate. In the analysis of presence of Islamist terrorist in Kenya, it is discernible that Kenya has been attractive to terrorists due to the contradictory forces. On one hand, it has a relatively developed and globally connected travel,

⁵¹ Ibid, Articles, 20 (3) (b)

⁵² See J. Shapiro, *Reassessing Security Threats in Ungoverned Spaces: Al Qaeda, Shabaab and the Horn of Africa*, 2011, available at allacademic.com

financial and communication infrastructures, which terrorists need to organise terror plots. On the other hand, there are various sites where owing to Kenya's weak infrastructural capacity, terrorist can undertake their activities without fear of detection. For instance, the Lamu archipelago with its sparse population, myriad islands and forest cover has for years provided such a cover to AQ operatives. From there, they can easily travel to Somalia via sea as well as smuggle weapons and jihadists who easily blend with the local population.⁵³ Similarly, the absence of governance structures in North Eastern has enhanced the activities of Al-Shabaab with some close border regions reportedly under their indirect control.⁵⁴

Secondly, the infrastructural deficit provides opportunities for non-state actors to step in under the pretext of providing services. Though majority of such actors are genuine, others have ulterior motives. This has been the case with some Islamic charities and mosques which have actively promoted Wahhabism either through provision of scholarships to Saudi Arabia (the heartland of Wahabism), proselytization, or acting as conduits for terrorist financing. Charities such as Mercy International, Help African People and Al-Harmain Islamic Foundation were linked to terrorism financing. Also religious centres such as Masjid-al-Hidaya mosque, Belt-el-Mal madrassa, Masjid-ul-Xmar, the Sixth Street mosque (Eastleigh), Pumwani Riyadhha Mosque and County Council Mosque (Isiolo) and Masjid Musa Mosque (Majengo, Mombasa) have been active in advancing radical and militant ideology as well as recruiting terrorist groups.⁵⁵

Related to proselytization of jihadist ideology and financing of terrorism, is the symbiotic relationship which develops between such groups and the recipient of their services.

⁵³ M. Bradbury and M. Kleinman, *Winning Hearts and Minds? Explaining the Relationship between Aid and Security in Kenya*. Boston: Feinstein International Centre, 2010, pp 25 – 27.

⁵⁴ See, S. Chemboi, 'Kenya: Sugar and Arms barons Rule Somali Border', Daily Nation (Nairobi), 29th May, 2010.

⁵⁵ See Chapter Three on role of such organisations in assisting terrorism in Kenya.

These organisations steps in to fill critical services gap and overtime residents become dependent on them. Consequently, they are willing to turn a blind eye to potentially or actual terror related activities, out of fear that reporting such activities to authorities will lead to deregistration of the concerned charity and ultimately loss of services provided by the charity.

Equally significant, in the face of infrastructural power deficit, the government has responded to this gap through increasing its despotic (police and military) infrastructure presence in such regions. For instance, the predominantly Muslim North Eastern region encounter with Kenya's government has been mainly through despotic power. Historical incidences such as Garissa massacre (1980), Wagalla massacre (1984) and recently the forceful disarmament in Mandera (2008) which left over thousand casualties and dozens of women and girls raped, plus other numerous security exercises has created a strong sense of victimization and grievances, among the local residents.⁵⁶

Though the presence of grievances and victimization does not necessarily lead to terrorism, it provides ingredients which can be exploited and used to fit such experiences into the global narrative of humiliation and subjugation of Muslims. Such narrative when carefully crafted and projected to desperate and frustrated youths, makes them vulnerable to indoctrination and recruitment by terror groups. Further, the traumatic encounter of the government by locals makes it hard to cooperate on counter terrorism, since the locals are highly sceptical of government efforts. Finally, individual experiences such as killing of loved ones, dishonouring

⁵⁶ On government Security Operations in Northern Kenya see for example Human Rights Watch, *Bring the Gun or You Will Die: Torture, Rape and other Serious Human Rights Violations by Kenyan Security Forces in the Mandera Triangle*, 2009, Accessed at <http://www.hrw.org>. Also, H. Whittaker, 'Pursuing Pastoralists: the Stigma of Shifita during the 'Shifita war' in Kenya, 1963-68, ERS Edition, 10, 2008. Available at www.arts.monash.edu.au/publications/eras

of one's mother or female kin's through rape, creates a strong motivation for revenge, which may push individuals to joining terror groups.⁵⁷

Institutional Incapacity

Institutional incapacity is here used to refer to situations whereby institutions are willing to counter terrorism but they lack the necessary tools or where such tools are present, they are inadequate. This is because of inadequate deployment of such tools, lack of sufficient human resource and skills or overstretching of such resources. Each of this challenge is expounded on below drawing examples from various agencies involved in counter-terrorism activities.

Regarding inadequate deployment of counter-terrorism tools, a good example is the immigration department. This department which is tasked with filtering the entry and exit of foreigners in Kenya has been faced by under-capacity in various ways. One, it has been unable to deploy the PISCES in all entry points. As observed, the system has only been deployed in three international airports.⁵⁸ This has left out crucial entry points such as Wilson airport which acts as key travel hub for travellers coming into Kenya from Somalia. Indeed, it is common knowledge that Al-Shabaab operatives have freely moved between Kenya and Somalia via Wilson airport.⁵⁹ Further, there is no border point where the system has been put in place. In various border crossings such as Liboi, Mandera, Busia, Lwakhakha, Soam, Isebania, Namanga, Loitokitok, Taveta, Moyale and Lunga Lunga border crossings there lacks comprehensive security management systems. In this closings, immigration officials are given bulky print outs bearing

⁵⁷ See Chapter Four on root and proximate causes of terrorism

⁵⁸ See Chapter Five, pp.117

⁵⁹ KACC Immigration Systems Report, Op cit, p.22

the names of Prohibited Immigrants (PIs). This makes it difficult for them to check all the details of such persons such as physical profile, finger prints and biometric data.⁶⁰

This makes Kenya highly vulnerable to entry of terrorists, who simply change the names on their passports. For instance, Faizul Abdul, though on terrorist watch list often managed to sneak through the border points using various aliases. Also, the lack of PISCES on land borders has been exploited by persons who travel first travel to other states in the region where they are not PIs and then enter Kenya through various border crossings. Such was the case of the radical Jamaican Abdullah Al- Faisal who entered Kenya through the poorly policed Namanga border crossing.⁶¹ Also one of the arrested suspects of the Easter (2011) terror plot in Kenya Ali who had a Sudanese passport had entered Kenya via Namanga and his passport had not been stamped.⁶² The situation is made dire considering that Kenya has an estimated 4000 people on its watch list and it is hardly possible to conduct surveillance on all these individuals.⁶³

The other institutional under capacity is related to lack of enough and well managed border crossings. This is best exemplified by the situation along Kenya-Somali border where there are only two formal border crossings yet the border is 700 kilometres long. This has left numerous illegal entry points where persons can access Kenya from Somalia and smuggle weapons.⁶⁴ The magnitude of entry is best captured by the fact that despite Kenya having crossed the border, on average 350 refugees manages to cross the border on daily basis. As such

⁶⁰ An informal discussion with a Department of Immigration Officer on 18th June, 2011

⁶¹ T. McConnel, 'Kenya deports Radical Muslim Cleric Sheikh Al-Faisal convicted of Inciting Racial Hatred and Murder', 7th January, 2010. Accessed at globalpost.com

⁶² Star (Nairobi), Saturday, 23 April, 2011

⁶³ See www.cablegates.com

⁶⁴ An informal discussion with Department of Immigration Official on 16th June, 2011

from 1st January and 30th April 2010, over 140,000 Somali crossed into Kenya.⁶⁵ Among the refugees are Al-Shabaab operatives who have been using refugee camps as their rear bases.⁶⁶ More so the ease of entry has allowed the smuggling of weapons as was the case in 2002 whereby the surface to air missiles which were fired at an Israel-Arta jetliner were smuggled from Yemen via Somali into Kenya.

The other source of institutional under capacity relates to lack of adequately trained human resource. This challenge exists across various institutions which have counterterrorism functions. For example, Kenya lacks the resource capacity to combat terrorist financing. This is because, terrorists financing has global linkages and terrorists are constantly adapting their money transfer methods to defeat global counter efforts. A report by the FATF concluded that, Kenya lacks institutional capacity, investigative skills and equipment to conduct complex investigations independently. The conclusion is backed by the fact that from 2007- 2010, the government did not report any terrorist financing, yet on average 100 million USD is illicitly injected into the economy annually. Some of this money is connected to militants operating in Somali.⁶⁷

Another glaring human resource challenge is in the prosecution of terrorists. Generally, Kenya prosecutorial capacity is weak since much of the prosecution is left to the police officers who are not well versed with criminal justice system. The lack of professionally trained legal experts has often led to bungling of evidence and procedures leading to release of terrorists, even where there is reasonable evidence connecting such suspects to terrorism. A good case was the

⁶⁵ See Human Rights Watch, *Welcome to Kenya: Police abuse of Somalia Refugees*, 2010, p.18. Available at <http://www.hrw.org>

⁶⁶ An interview with a senior Kenya Army Officer conducted on 8th June, 2011.

⁶⁷ See report available at www.knowyourcountry.com.

bungled prosecution of Omar Said Omar, who was connected to the Paradise hotel bombings. In spite of Omar's comprehensive confession, the evidence was ruled as admissible on procedural ground that he had been held in police cells longer than the constitutionally stipulated period before been taken to court and was released.⁶⁸ Yet as a western diplomat commented 'anyone who followed the case and heard the evidence in court could see that Said was involved, it was just because of bungling, starting from the evidence that they could not make the connection between what was found in his house and the hotel bombing.'⁶⁹ Significantly, declassified documents by US agencies on the activities of Omar and his accomplice are similar to the confessions he had made.

In a similar case Magistrate Aggrey Muchelule acquitted Kubwa Mohammed Seif, Said Saggar Ahmed, and Salmin Mohammed Khamis who were charged with the bombing of the Israeli-owned Paradise Hotel in Kikambala and the attempt to shoot down a chartered Israeli plane at the nearby airport. In his judgement the magistrate noted that the prosecution relied on circumstantial evidence and suspicions and 'however strong this suspicion is, it remains only a suspicion. Quite unfortunately, in a criminal case, suspicion alone, however strong, cannot be a basis for a conviction. The outcome of the ruling was as a result of prosecutor's lack of capacity to build a water tight case and match the zeal, energy and expertise of the defense lawyers.'⁷⁰

However several bilateral initiatives have been put in place to enhance the investigative and prosecutorial capacities in Kenya. For instance the US department of Justice, Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) has provided training to prosecutors in order to enhance their capacities to deal with complex investigations and

⁶⁸ 'Kenya: terror Suspect Acquitted', www.loc.gov/law/library

⁶⁹ M. Bradbury and M. Kleinman, *Winning Hearts and Minds*. Op cit, p.140.

⁷⁰ Associated Press, 'For third time in 2 years, terror suspects acquitted in Kenya', 28th June 2005

prosecution of terrorism and terror related crimes such as piracy and money laundering.⁷¹ Similarly Britain's National Policing Improvement Agency, a unit under the Criminal Investigation Department has recently partnered with Kenya's Criminal Investigation Department to provide specialized and advanced training on terrorism and piracy.⁷²

Governance and Human Rights Challenges

The challenge of governance and respect for human rights remains a fundamental obstacle in Kenya's efforts to counter militant Islamist terrorists. This is because despite the presence of laws prohibiting acts such as corruption, human rights violations and other forms of discrimination, the laws have not been followed owing to the entrenched culture of impunity. Impunity here refers to 'the impossibility, *de jure* or *de facto*, of bringing perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.'⁷³

At a general level, there exists a feeling among Muslims of exclusion from the government and victimization. Though as earlier noted, this does not necessarily lead to terrorism, the discourse of victimization when woven to the global Al Qaeda narrative of subjugation of Muslims has been used to lure some individuals into financing or joining terrorist groups under the belief that by doing so, they will be capable of undoing the wrongs committed against Muslims.

⁷¹See Office of Overseas Prosecutorial Development, Assistance and Training. Accessed at <http://www.justice.gov/criminal/opdat/worldact-programs/ctu.html>

⁷²'Britain partners with Kenya on terrorism and Against Somalia Piracy', 25th March, 2011. Available from www.xogta.com

⁷³ United Nations Commission on Human Rights definition. Cited in the *Commission of Inquiry into Post-Election Violence in Kenya Report*, 2008, p.443

The perception that violations against Muslims such as Wagalla Massacre or dispossession of Muslims in the Coastal region have not been addressed is quite widespread. For instance, in reaction to police response to demonstrations at Jamia Mosque against the arrest of the Jamaican cleric Faisal, the authoritative Friday bulletin editorial noted, "official discrimination of Muslims have been the norm since independence and even with numerous complaints little has been done to reverse the trend. The January 15th incident was the culmination of series of events over the years, which unfortunately have not gone well with Muslim community.⁷⁴ This perception explains the ease of recruitment especially in Coast province, where Muslim resident have resented the post-colonial treatment, and domination by up-country governments.

Beyond the general realities and perceptions of victimization, the prosecution of war against terror has led to human rights violations against Muslims. The violations are either at group or individual levels, and they pose a risk that rather than counter terrorism achieving its objectives, it may lead to further militancy and radicalization. At group level, there is increasing tendency by various counter terrorism agencies of ignorantly equating Islam with terrorism. This has led to group victimization whereby security agents use the threat of labelling Muslims as members of Al Qaeda and Al-Shabaab, in order to extort money from them.⁷⁵ Additionally, Muslims especially of Somali ethnicity have wrongly been abused by agents. A comprehensive report by the Kenya Human Rights Commission has documented detailed experiences of Somalia refugees crossing into Kenya. The refugees have been subjected to beatings, detention,

⁷⁴ 'Lest We Forget' Friday bulletin, www.islamkenya.com
⁷⁵ 'Somalia's Al-Shabaab spread its Message', Available at www.hiraan.com

rape, extortion and other forms of degrading treatment.⁷⁶ Such treatment builds up resentment, which provides an enabling environment upon which terrorism thrives.

Additionally, individuals from Muslim community, under the suspicion of belonging to terrorist groups have been subjected to torture and other degrading treatments. Since 9/11, Kenya in cooperation with western intelligence and regional states has initiated a policy of extraordinary rendition. This is a situation whereby, Kenyan Muslims are arrested, beaten up and transferred to other states such as Ethiopia and Uganda without following the extradition laws.⁷⁷ For instance, in 2007, Ethiopian foreign Ministry acknowledged that Ethiopia was holding at least 41 individuals who had been renditioned from Kenya. Additionally, it was reported that more than 85 men and women were flown to Somalia from Nairobi and handed over to Ethiopians.⁷⁸ The detainees were held for long periods illegally, some disappeared while others were tortured. A good example is a Kenyan Muslim Noor, who in his testimony after release two years since he was arrested, stated,

‘They would start to beat me. They beat me from head to toe. They used stick made from a tree called *Bahrasaf* that is known for its hardness. They beat me on the arms, legs and on the back of my head. They would tie my hands behind my back and force me to lean against the wall. If I fell over they would beat me up on the side I was exposed. If they thought I was too strong they would target my testicles. Then I would fall unconscious. I often urinate blood. I haven’t had an erection since that time.’⁷⁹

Noor’s testimony captures the fate of Kenyans who have been arrested by the notorious ATPU in concert with the FBI and taken to jurisdictions where torture is permissive. Though the policy of extra-ordinary rendition has been justified on the ground that extradition process is long and

⁷⁶ See Human Rights Watch, ‘Welcome to Kenya’, *A Police Abuse of Somali Refugees*, Op cit.

⁷⁷ Prof Bussaidy Press Statement on 24th September, 2010, *Friday Bulletin*

⁷⁸ Human Rights Watch, *Why am I Still Here? The 2007 Horn of Africa Renditions and the Fate of those Still Missing*. New York: HRW, 2008, p.17.

⁷⁹ Ibid, p.25

tedious, even taking years, to complete, and when fighting terror, time is of essence, such renditions makes Kenya complicit in the US led GWOT and also leads to anger and desire for revenge. Such situations motivate revenge-seeking individuals to join terrorist groups. Currently in response to the world cup bombing by Al-shabaab in Uganda, 13 Kenyans were illegally renditioned to Uganda. Among them is the prominent Human Rights Activist Al-Amin Kimathi, who was arrested when he attended court proceeding there.⁸⁰

The complicity of Kenyans in rendering these individuals and governments refusal to heed demands that they should be brought back and charged in Kenyan courts has led to increasing frustration and feeling of hopelessness. For instance, Zuhura, a wife to Mohammed Hamid Suleiman, a suspect was quoted stating, 'It made me wonder if being a Muslim does not make me a Kenyan. What future is there for our children if this is the way the government is going to treat us'. Similarly, the Supreme Council of Kenya Muslims (SUPKEM) issued a statement whose part read, 'we live in fear that there is no law in Kenya to secure the safety and security of Muslims, not from thugs and thieves, but from the impunity and hooliganism of Kenyan security forces'.⁸¹ This feeling of despair runs the risk of making some Muslim sympathetic to the jihadist cause, willing to harbour such jihadists or actively join terror gangs. The sub-section has so far focussed on the governance and human rights challenges and the way they have impacted on Muslims. Beyond these challenges, poor governance has also rendered some security agencies collaborate with terrorist, due to their proclivity to corruption. That corruption permeates all sectors in Kenya is without doubt. However the extent which some security officers motivated by personal gains are willing to compromise the national security for

⁸⁰I. Ongiri, '8 Nabbed in terror Operations', Nairobi Star, 23rd, April, 2011.

⁸¹'Police Commissioner and Anti-Terrorism Chief Summoned Over Kampala Blast Arrests,' 17th August, 2010. Accessed at English.alshahid.net/archive/11285

private gains is a serious challenge. This is more acute among police officers and immigration officers, who have knowingly taken bribes and allowed terrorist to enter or escape from Kenya. A prime example is the case of the late Fazul, the then AQ head in East Africa. Faizul had acquired two Kenyan passports and had been arrested and released twice from police custody. Further, he had 'miraculously' escaped police dragnet on several occasions. As a commentator noted, Faizul escape was because 'Kenyan security officers cannot resist the temptation to pocket a few hundred dollars and look the other way as the terrorist continue with his escapades. After all they are among the most corrupt in the world. Despite police spokesman denials of police complicity in the matter, the circumstances under which Faizul escaped from police custody or evaded arrest are quite telling.'⁸²

Recently an internationally wanted terrorist, Hussein Hashi Farah, an Australian-Somali managed to escape from police cells in mysterious circumstances. Farah who was connected to the failed attack in Australia which targeted a military barrack was arrested when he attempted to cross into Kenya through Busia border crossing. Two hours after he was booked and was supposed to be transferred to Nairobi, the police alleged that he managed to escape. However considering that he had 258, 400 Kenya shillings in US dollars when he was arrested, it is highly probable that he used some of the money to bribe his way to freedom. This is possible since procedure requires persons arrested to leave their possession in custody before they are locked up and police officers who were later interdicted could not explain how Farah managed to get his possessions back before escaping.'⁸³

⁸² M. Vermeulen, 'Kenya accused of illegally transferring suspects', 19th August, 2010. Available at <http://legalift.wordpress.com/2010/18/19>

⁸³ Daily Nation, 'Reports says the suspected terrorist who escaped in Kenya is a wanted criminal in Australia', 25th March, 2010

Absence of Strategic Communication to Counter-Extremist Ideology

Throughout the study, a critical dynamic fuelling globalized militant Islamist terrorism has been identified as the jihadist ideology which terrorist groups have exploited traditional and modern communication mediums to propagate. Hence, any counter terrorism strategy must have a strong strategic communication component aimed at countering the spread of this extremist ideology. The need to counter this ideology is informed by learned experiences from counter-insurgency (COIN) operations. An enduring lesson has been that 'insurgency is 20 percent military and 80 percent political.'⁸⁴ Further, Mao, a master strategist of guerrilla warfare succinctly captured the relationship between the guerrilla and the population thus, 'the guerrilla must be to the population as little fishes in water'.⁸⁵ The observation implies that when conducting COIN operations, the goal should be more towards achieving political rather than military victory. This is because, by successful winning of the population politically, the insurgent (in our case terrorist) will become like a fish out of water. A key component of this political battle is countering the extremist ideology through exposing ideological inconsistencies, exploiting divisions within the ranks, initiating de-radicalization programs and collaborating with moderate and highly respected religious actors to counter the radicals as well as explaining persuasively that counter terrorism is not against Islam.

In Kenya, the government has not developed a strategic communication strategy. Yet facts on the ground such as increased indoctrination and radicalization of youths, expansion of Salafism among previously Sufi Muslims, indicates that Jihadist ideology is increasingly gaining

⁸⁴ Z. Ochieng, 'Is Kenya Becoming a Terrorist Haven? Police accused of Complicity as Terror Suspect Shuttles in and out of the Country', Accessed at www.obynynews.com/articlesview/articleview.asp?

⁸⁵ D. Galula, *Counter Insurgency Warfare: Theory and Practice*. London: Praeger, 2006, p.63.

root in Kenya. Rather, the response has been a dis-jointed characterised by denials that there are Kenyans involved in terrorism to extreme secrecy in counterterrorism and politicisation.⁸⁶

A recently released UN monitoring group report points to increased ability of Al-Shabaab to indoctrinate and recruit Kenyans to wage jihad in Somalia. The report identified the Muslim Youth Center (MYC) which is connected to the Pumwani Riyadhha mosque as actively recruiting youths to fight in Somalia. Further the committee running the mosque has been diverting financial resource to Al-Shabaab. Significantly Ahmed Iman a key individual in the mosque serves as a key focal point for Al-shabaab activities in the area, a fact which has seen him rise in prominence within the group's rank. He has about 200-500 Kenyan fighters under his command and his ambition is to launch terrorist attacks in Kenya and the region. This ascendancy evidences the increased receptiveness of Al-Shabaab's ideology by some Muslims and indicts the government for failing to effectively counter the extremist ideology.⁸⁷

The importance of winning Kenyan Muslims, majority of who do not subscribe to terrorism is critical since it will address two challenges. One, it will repair the suspicious security agencies – Muslims relations. This is necessary since partnership with Muslims is vital to successful counter-terrorism. Truism is that countering terrorism is a whole-society endeavor, although the government clearly needs to steer, coordinate and ensure that core values are maintained in the face of the terrorist threat. As such it only works when both sides-government and society- are committed, when common interests and concerns can be identified, and where fine words are matched by routines, structures and rules.

⁸⁶ Mao Zedong 1937, cited in R. Thompson, *Defeating Communist Insurgency: Experiences from Malaya and Vietnam*. London: Chettu and Indus, 1974, p.63.

⁸⁷ see the summary of the report 'Kenyan Muslim networks fund Al-Shabaab: UN report', Thursday July, 28th, 2011, af.reuters.com

Two, it will encourage the moderate Muslim to rise up against the radicals who have constantly intimidated them with the ideology of Takfir and degenerated Islam from being a religion of peace to that of war. Indeed, the rejection of terrorist ideologies by moderates remains the most effective counter-terrorism strategy. This view is supported by the recent demonstrations in Mombasa by Muslims in opposition to the recruitment of Kenyan youths into Al-Shabaab. During the demonstrations, the Council of Imams and Preachers of Kenya (CIPK) was candid enough to not only condemn the recruitment, but also point out Mosques, madrasas and individuals involved in such activities.⁸⁸

In the effort to counter extremist ideology, the role of moderate Islamic clerics (imams) and religious authorities (Muftis) cannot be gainsaid. This is because this group of persons are insiders and hence are not perceived as working with the enemies. Instead, they tend to draw their message from the Quran and other authoritative writings on Islam to challenge the radical extremist interpretations of Islam and justifications for that. Such opinion shapers who are held in high esteem by the followers are bound to have more influence than any other counter terrorism measures. They should be supplemented by civil society groups which would provide a voice for disgruntled segments of Muslims. Through provision of such a voice, Muslims vulnerable to extremist ideology, due to feeling of hopelessness and despair, will be dissuaded from resorting to terrorism since they will have faith that they can peacefully influence the system in a way which addresses their real and perceived grievances.

Indeed states which have successfully countered militant Islamist terrorism have done so through initiating de-radicalization programs. A good example is Libya which in the face of increasing threats from AQ and its local affiliates set up de-radicalization initiatives targeting the

⁸⁸ See M. Ruteere, 'Perils of Secrecy in War on terror', *Nairobi Law Monthly*, 30th April, 2011.

hard core extremists. Under the program initiated by Said Al-Islam Gaddafi, arrested terrorists were subjected to critical debates on Islam, challenging their narrow interpretations. This was reinforced by government support and use of senior clerics and muftis to de-legitimize terrorism. As a result the Libyan Islamic Fighting Group (LIFG) declared its abandonment of jihad.⁸⁹

Beyond the specific challenges, the government has not successfully managed to address the economic plight of youths in Kenya, youth unemployment and economic powerlessness has remained a key security challenge. This is because they are vulnerable to manipulation by ethnic/political violence or terrorism entrepreneurs who promises economic rewards in exchange for support. Though the link between terrorism and economic status is highly debateable considering that terrorist groups attracts individuals across economic classes, in Kenya, there is emerging evidence that some Muslim youths are increasingly joining Al Shabaab more for economic gains than religious motivation. In a British Broadcasting Corporation Interview, Kenyan youths who had deserted Al-Shabaab, were clear that their main motivation for joining the group was economic. They had been promised a monthly salary of 300 - 400 US dollars. Similarly, the 25th May, 2010 suicide bomber, targeting AMISOM troops a Kenyan-Somali Ahmed Tawkhal, was reportedly paid 6,000 US dollars to undertake the mission.⁹⁰

From the analysis of the challenges, it is evident that Kenya counter terrorism strategy is far from being comprehensive and adequate. There exists international, regional, legislative, institutional communication, human rights and governance gaps which have hampered the fight against militant radical Islamist terrorism. Though the capacity to disrupt terrorist plots has

⁸⁹ Jihad Website Monitoring Group, 'Retracting-Using Ideological Means for the Purpose De-Radicalization', Institute of Counterterrorism, January, 2011. Accessed at www.ict.org.il

⁹⁰ United States Embassy (Nairobi), 'A Portrait of Al-Shabaab Recruitment in Kenya'. Accessed at www.cablegatesearch.net/cable

increased, that Kenya has not witnessed any major terrorist attacks since 2002, does not mean that the threat has dissipated. This is more so, considering that terrorist attacks takes long time to plan and terrorists are constantly adapting their strategies and tactics in the face of increased pressure from governments across the globe. This demands continuous improvement of counter terrorism strategies and the starting point is to first address the existing challenges, and taking cognizance of emerging threats such as bio and cyber terrorism.

The cognisance of emerging threats posed by terrorism is critical for Kenya since it has one of the largest laboratory complexes in Africa, dealing with highly dangerous pathogens, such as Ebola and Marburg viruses, Anthrax and Small Pox bacteria, which can be weaponised and used by terrorists. Though the study did not address the challenges faced in trying to secure these laboratories, there is increasing concern that they are not adequately secured. Such is the case with the Kenya Medical Research Institute (KEMRI) lab which borders Kibera slums and has low, easily scaled cement walls.⁹¹ The security of such labs is paramount since terrorist groups especially AQ has long been trying to develop biological weapons. For instance, on January, 2009, 40 members of AQ franchise, Al-Qaida in the Maghreb (AQIM) died from plague, which they contacted while trying to develop a bio-weapon.⁹²

~~Concerning cyber terrorism, the dynamic has shifted from not only using global ICT platforms to spread the ideology of terror, recruit, mobilize and romanticize terrorism to targeting such infrastructures. That the world, Kenya included is more dependent on ICT to conduct a whole range of transactions has made cyberspace attractive to militant Islamist terrorism. A successful attack of a cyber system can lead to collapse of communication system~~

⁹¹ The Economist, 'How safe are health laboratories in developing countries?', January 6th, 2011

⁹² Daily Telegraph (London), 'Al Qaeda cell killed by Black Death was Developing Biological Weapons', 20th Jan, 2009, www.telegraph.co.uk/news

(private and public) leading to huge economic losses, create panic and lead to loss of lives especially in health facilities that provide critical and techno-dependent services and endanger national security.

Commendably, Kenya is increasingly realizing the threats posed to the cyberspace. The Communications (amendment) Act of 2009 mandated the Communication Commission of Kenya (CCK) to develop a national electronic transactions framework. This has been put in place. Further, the CCK has set up a Computer Security Incident Response Team (CSIRT) with a mandate of rapidly respond to cyber threats.⁹³ However, CCK has grapple from the challenge posed by the private sector which has been poaching IT experts from the public service, after the government has trained them.⁹⁴

Evaluating the Study's Objectives and Testing the Hypotheses

Drawing from the analysis, the following section reviews whether the study has met its objectives and tests the hypotheses.

The first objective was to comprehensively analyse the growth and dynamics of militant Islamist terrorism.⁹⁵ The objective has been met in the chapters two, three and four. The chapters have provided historical growth of terrorism in general locating militant Islamist terrorism in the fourth wave. Further, they have provided a comprehensive characterization of this kind of terrorism, how it has increasingly become glocalized and the root and proximate factors which has enabled this glocalization.

The second objective was to provide a review of Kenya's counter terrorism legal and institutional, organisational regimes and initiatives. Towards this objective, chapter five has

⁹³ The Standard (Nairobi), 'CCK forms team to fight increased cases of cyber crime', 24/07/2011.

⁹⁴ Business Daily (Nairobi), 'Private firms poach IT experts from public institutions', 27th July 2011

⁹⁵ See Chapter One, P.4

comprehensively provided a review of counter terrorism efforts from international, regional, sub-regional and domestic perspectives.⁹⁶ The review shows the depth of Kenya's effort to counter militant Islamist terrorisms.

The third objective of the study was to examine the challenges encountered in effecting counter terrorism measures in Kenya. This has been done in chapter six which has provided a comprehensive and critical appraisal of international, regional and domestic challenges.⁹⁷ The chapter, drawing from evidence gathered conclude that the measures are faced with numerous challenges, which unless addressed will lead to increased embeddedness of militant Islamist terrorism in Kenya.

On the strength of the analysis and objectives, the study has tested the hypotheses as discussed in this sub-section. The first hypothesis was that Kenya lacks a comprehensive legal and institutional framework for guiding its responses to radical Islamist terrorism.⁹⁸ The hypothesis has been validated by the analysis on the challenges faced by Kenya in its effort to counter Islamist terrorism. The challenges exist at international, continental, sub-regional and regional levels.

The second hypothesis was that militant Islamist terrorism has become glocalised.⁹⁹ The hypothesis has been validated throughout the study. The study has conclusively shown that this kind of terrorism has moved from its Middle Eastern roots, and currently is simultaneously globalised and localized. Globalised in the sense that terrorist groups have increasingly become networked, cooperating strategically and tactically and sharing a similar ideology which is

⁹⁶ Ibid, p.5

⁹⁷ Ibid, p.5

⁹⁸ Ibid, p.28

⁹⁹ Ibid, p.28

fuelled by global ICT infrastructure. In term of localization, the study drawing from dynamics exhibited by groups such as Al-Shabaab has shown how local groups, in response to local issues have successfully managed to weave their discourses of grievances in a manner which links them to Muslim experiences of 'humiliation' and 'injustices' perpetrated by Western/Christian hegemony. On this basis, the local becomes global.

The third hypothesis was that Kenya's responses do not address the root causes of radical Islamist terrorism. This hypothesis can be linked with the fourth hypothesis that Kenya lacks a good counter information and propaganda infrastructure capable of neutralizing, radical Islamist terrorist centre of gravity.¹⁰⁰ Throughout the study, ideology has been identified as the key driver of militant radical Islamist. The ideology is what has led to globalization of radical Islamist terrorism and remains the key root cause, for it provides a simplifying frame of interpreting the world and exploits the fundamental human need for a belief system. Kenya has not managed to counter this ideology of hatred, as evidenced by the increasing number of Kenyans joining terrorist groups and receptiveness to the purist wahabist/salafist interpretations of Islam.

¹⁰⁰ Ibid, p.28

Chapter Seven

Conclusions

Introduction

The study set out to analyze the growth of militant Islamist terrorism and the counter-measures which Kenya has put in place. The goal was to develop a clear understanding of this kind of terrorism since counter terrorism is logically predicated on this understanding. Essentially, Islamist terrorism is co-constitutive of counter-terrorism measures put in place to deal with it. Further, the study aimed at providing a comprehensive and critical examination of the challenges facing Kenya's counter-terrorism efforts.¹ As already discussed these goals have been met. This chapter makes a synthesis of the research findings by providing a summary of the study, drawing conclusions and suggesting solutions.

Summary

The first chapter developed the foundation for the study through reviewing of literature on Militant Islamist terrorism and counter terrorism. Additionally, it set out the objectives and hypotheses of the study as well as the conceptual framework and methodology of the study.² The chapter showed that militant Islamist terrorism has become globalized posing threat to all states. Importantly, it showed that this terrorism exhibits versatile dynamics which have been enabled by development of globalised infrastructure and the ascendancy of jihadist ideology as its centre of gravity.³

The second chapter traced the historical development of terrorism. Etymologically the chapter showed that in pre-modern-state system period the concept of terrorism referred to an

¹ See Chapter One on the objectives, p.4

² See Chapter One, p.28

³ See chapter One, pp.11-21

individual state of mind. This shifted with the emergence of modern state system, when terrorism became a collectivised, noble and theatrical act aimed at reforming the government system.⁴ However with increased governmentalization of society, the concept started referring to illegitimate anti-establishment activities. Since then the concept has undergone transformation captured by the various waves of terrorism discussed in the chapter. Within these waves, militant Islamist terrorism belongs to the fourth wave.

Chapter three analysed the emergence of radical militant Islam in Kenya. It has shown that, radical militant Islam has been present since early 1990s when Al Qaeda was headquartered in Khartoum. It is during this period that AQ actively trained militants and established terrorist cells in Kenya, which were responsible for the 1998 US embassy bombing. Since then, AQ has been active in Kenya, as evidenced by AQ's various terrorist plots that have been disrupted.⁵ Importantly, through networking with local groups, AQ has made glocalization of Islamist terrorism a reality in Kenya. This is exemplified by the symbiotic relationship between AQ and Al-Shabaab, a Somalia based group with extensive recruiting, indoctrination, fundraising and latent terror networks in Kenya.⁶ From the analysis, the chapter shows that terrorism has become globalized, a fact that counter terrorism measures should take into consideration.

The fourth chapter has identified the root and proximate causes of terrorism. Using Galtung's triangular approach to conflict the chapter has shown that Islamist terrorism is caused by structural injustices generated by the international system, which terrorist accuses of humiliating Muslims.⁷ To justify these accusations, all terrorists have particularly pointed out to the Palestinian-Israeli conflict as a symbol of Muslims weakness and helplessness and the

⁴ See Chapter Two, pp.35-38

⁵ See Chapter Three, p.59

⁶ Ibid, pp.64-67

⁷ See Chapter Four, pp.71-74

international system failure to remedy the injustices. Further, the chapter has identified the Jihadist ideology as a key factor fuelling the globalization of Islamist terrorism. The Jihadist ideology has currently become its centre of gravity. More so, the chapter has identified various individual factors which drive persons to embrace terrorism.⁸ This ranges from search for identity, purpose, and desire to revenge, quest for martyrdom and lack of objective understanding of Islam.

In chapter five, the study has brought out the counter-terrorism measures which Kenya has put in place in response to threats posed by Islamist terrorism. The chapter has shown that Kenya has ratified all the thirteen UN conventions against terrorism. Also, it has actively cooperated with the UN, AU and sub-regional organisations to address those threats. Domestically, Kenya has undertaken legislative, institutional/organisational measures aimed at preventing, disrupting and punishing terrorist. The measure addresses multiple facets of Islamist terrorism such as financing, mobilizing, recruiting, planning and execution.⁹

Drawing from the analysis done in the above chapters, chapter six has critically examined the challenges faced by counter terrorism measures. Among the challenges include Kenya's foreign policy, hostile sub-region and legislative loopholes, institutional under capacity, human rights and governance deficit. The chapter has concluded by testing the study's hypotheses. On the basis of evidence generated, the hypotheses were validated. As such, there is a need to simultaneously address these challenges and adapt to new challenges such as bio-and cyber-terrorism. This is because counter-terrorism is a continuous process, and as a rule should always be ahead of terrorist strategies.

⁸ See Chapter Four, pp.77-82

⁹ See Chapter Five

Findings and Recommendations

The research has brought out various findings brings on issues which need to be addressed. The findings are elaborated below:

One, Kenya is not only a victim but also a source of terrorism. The decades presence of Al Qaeda cells and the accelerated activities of Al-Shabaab, has led to various groupings of individual sympathetic to militant Islamist terrorist. These groups are best captured by the metaphor of an onion. The onion has compressed inner core, and layers of leaves. Using this metaphor it is observable that there exist a hard core minority which fully professes and actively supports Islamist terrorism. Then there is an intermediate layer, which is not directly involved, but is proactive in their support. They are willing to mobilize, finance and harbour terrorists. The third group are those individuals whose position is ambivalent. They do not possess fixed opinion on whether or not to support terrorism. This group which is presumably large can be mobilized to counter terrorism. Finally, there is the majority Muslims in Kenya, who are totally opposed to terrorism.¹⁰ They are the vanguards of Islam as a religion of peace, and remains the most potent force which can effectively counter extremism in their midst. This group need to be put at the centre of any counter terrorism effort.

Two, there is a drought of critical studies focussing on the militant Islamist terrorism in Kenya. Though this study has in many ways contributed to the understanding of this kind of terrorism, it is imperative that such studies should be given more attention. This is because, as the study has shown the glocalization of Islamist terrorism is made possible by multiple factors which are woven together to form a discourse of victimization, humiliation and injustices. There is a need to critically understand this process of framing issues, in order to effectively counter it.

¹⁰ A similar conclusion that majority of Muslims in Kenya are opposed to terrorism has been made in Harmony Project, *Al - Qaeda's (Mis) Adventures in the Horn of Africa*. Westpoint: Combating Terrorism centre, 2011, p.56

Additionally, such studies will promote a shift from what is currently the embracing of the United States war against terrorism to an evidence based paradigm which takes cognizance of the local contexts and draws from the fact that Kenya has enjoyed stable interfaith coexistence. This coexistence for instance, provides a critical asset in any counter terrorism effort.

Three, contrary to widespread mainstream view that grievances are the cause of Islamist terrorism the study has shown that the ideology has become the Centre of Gravity (COG).¹¹ The presence of grievances, do not translate into political action, until the grievances are simplified and presented in form of an ideology which attributes the grievances to 'them' and manages to dehumanize the 'them' as deserving to be violated or killed, and creates a sharp dichotomy between 'us' and 'them'.

Taking cognizance of the centrality of ideology in fuelling militant Islamist terrorism will bolster any counter terrorism effort. This is because, going back to the onion metaphor, the second and third layer of Muslims are highly amenable to informed persuasion which discredits the ideology of hatred fronted by the inner core of committed jihadist. For instance, there is a need to discredit the ideology of takfir which is not supported anywhere in the Quran.¹² Importantly, through the use of moderate muftis and imams, the whole notion of jihad can be exposed of its hypocrisy and illegitimacy. This is because fighting fellow Muslims as has been the case in Somali is not jihad but naked pursuit of power under the cover of religion.¹³

Four, counter terrorism measures must be holistic in their approach. As the study has shown any measures must be founded on sound legislation, institutions and organisation.

¹¹ Chapter Four, pp.74-76

¹² See D. Snow, 'Frame Alignment Processes, Micro-mobilization and Movement Participation', *American Sociological Review*, 57, pp.464-481.

¹³ Kleponis has made a similar argument on the need to expose the hypocrisy of terrorists, See G. Kleponis, *Throwing the Book at the Taliban: Undermining Taliban Legitimacy by Highlighting their Own Hypocrisy*. Carlisle PA: Strategic Studies Institute, 2010.

Significantly it should address the different dimensions of terrorism. Focusing on one facet, for instance, terrorist financing, without giving due attention to indoctrination will not be effective. A better way of understanding the importance of a holistic approach is captured by using an analogy of Malaria. In studying the epidemiology of malaria, four elements are identifiable. These are: the malaria protozoan (infectious agent), female anopheles mosquito (vector), breeding sites (swamps) and the vulnerable population.¹⁴ In order to effectively deal with malaria, there is a need to drain and spray the breeding sites of mosquitoes. This will inhibit the production of the vector. Additionally, the spread of the infectious agent must be suppressed through vaccinations and other protective measures.

In case of Islamist terrorism, the breeding sites are swamps of marginalization, humiliation and victimization. These swamps need to be drained through targeted measures which for instance promotes inclusion, addresses youth unemployment, good governance, violent conflict and provision of public goods. This will reduce feelings of bitterness which makes some Muslims vulnerable to militant Islamist terrorist appeal.

The agent is the jihadist ideology. The ideology is currently the centre of gravity for this kind of terrorism. Thus, there is a need to develop effective and multi-stakeholder's strategic counter-extremist communication capable of effectively denting appeal of jihadist ideology and motivates majority peace loving Muslims to reject the misinterpretation of their religion by a minority self-appointed vanguards of Islam. Indeed the rise up against extremist ideology remains the most effective means of defeating these terrorists.

¹⁴ On the Metaphor of Draining the Swamp see J. M. Post, 'Countering Islamist Militancy: An Epidemiological Approach', in Victoroff J. (ed) *Tangled Roots: Social and psychological factors in the Genesis of Terrorism*. Amsterdam: Tens Press, 2006, pp.399-408.

In addition to draining the swamps and countering the spread of the infectious agent (jihadist ideology) there is a need to inhibit the vector. In this case, the vectors are the framers of grievances (leaders, radical preachers/madrassas, virtual and financing networks). As argued in the studies, grievances need to be framed in a manner which aligns with potential constituency interests, values and beliefs, either through active promotion of the frame by its entrepreneurs or through appealing to a 'sentimental pool' already sharing the grievances and attribution tendencies of the framers but lack the means of organizing and expressing these grievances.¹⁵ Without such framing, the grievances cannot lead to violence. Importantly, that grievances need to be framed means that there exist alternative frames which can be used to present the grievances in a constructive manner.

A counter-terrorism ideology must be capable of pre-empting the work of the vectors. The focus should be inhibiting potential recruits from joining in the first place for once an individual is in the grip of the terrorist group, the power grip of the terrorist group, and its organizational psychology will increasingly dominate his psychology.¹⁶ In this bid, the government should combine both hard and soft measures. Individual vectors need to be aggressively pursued, arrested, prosecuted and assassinated. Virtual and financial networks should be thoroughly monitored and disrupted. Also radical madarassas/mosques should be infiltrated and kept under 24 hours surveillance. Aware of such surveillance, radicalizing entrepreneurs will be choked from openly advocating hatred. The hard approach should be balanced with soft measures especially implemented by religious insiders, such as sermons and public statements denouncing vectors, and their activities as well as educational and media programs targeting the general population (both Muslim and non-Muslim).

¹⁵ See Chapter Four, pp.74-75

¹⁶ D. M. Snow, 'Frame Alignment Processes, Micro mobilization and Movement Participation, Op cit, p.464.

Lastly, there is a need to focus on protecting vulnerable population from infection. Going back to the onion metaphor, there are various groups of individuals ranging from committed terrorists to ambivalent groups and majority Muslim population which is against militant Islamist terrorism. These groups, with exception of committed terrorists, must be engaged with constructively and treated as allies. As shown in the study, Kenya Muslims have complained of the way they have been treated, especially because of a tendency of equating Muslims with terrorists, extra-ordinary rendition and human rights violations.¹⁷ These runs the risks of making counter-terrorism measures have opposite consequences of fuelling terrorism.

Hence in countering militant Islamist terrorism, there is a need to promote a human rights and rule of law respecting counter terrorism framework. Indeed, one of the cardinal rules for strategy is to keep your enemies to a manageable number. A strategy whose ambition or implementation provokes the formation of an array of enemies whose defeat exceeds the resource available to that strategy is doomed to failure¹⁸. To prevent such formation, the government must publicly appeal and apologise to Muslims, punish human rights violation, renounce extra-ordinary rendition and compel security agencies to respect and be sensitive to Muslim as critical allies. This way, the confidence of Muslims can be won, leading to more fruitful cooperation.

Additionally, the current iron-curtain of secrecy surrounding counter terrorism measures needs to be lifted. In the course of this research, it became apparent that counter terrorism activities are not accessible, and agencies such as ATPU, NSIS, and National Counter-Terrorism centre are unwilling to be subjected to public audit. Granted that there is a justification for such secrecy, it should be limited to sensitive issues, Blanket secrecy makes it conducive for arbitrary

¹⁷ See Chapter Six, pp.144-147

¹⁸ See J. Record, *The Global War on Terrorism*. ST Monica CA: Strategic Studies Institute, 2003, p.9.

arrest, abuse and torture of suspects away from the public glare. Significantly, an open door policy may generate critical information from the public.

Fifth, the government must invest enough in intelligence gathering, both covert and overt. Actionable intelligence is a key asset in counter terrorism, for it enables disruption of terror plot and gathering of enough evidence to prosecute suspects. As evidenced in the study, Kenya's record of prosecuting terrorists is poor. This has led to acquittal of individuals involved in terrorism and encouraged extra ordinary renditions.¹⁹ The failure is due to inability by investigators to deal with the complexity of terrorism. To address this shortfall there is a need to enhance human intelligence gathering capacities. This should be augmented with enhanced electronic surveillance, forensic laboratories and sophisticated analytical systems capable of collating data, identifying and analyzing networks, establishing relationships between individuals and groups.²⁰ The presence of strong intelligence capability will also enable security agencies to focus on individual suspect as opposed to the current practices of mass sweeps, where innocent persons end up being arrested or abused.

Sixth, counter terrorism is not a unilateral effort. The globalized nature of terrorism is fuelled by both domestic and extra-territorial dynamics. Thus, as the government focus on domestic sphere, it should not negate regional and international environment. The government should maintain a balance between its national interests and interests of its partners. This is more so when it comes to cooperation with the United States whose activities in the region at times have been counter-productive, leaving Kenya more exposed. Further the government must use its diplomatic machinery to deal with violent conflict in Somalia which has allowed terrorism to thrive and also to forge regional counter terrorism structures and strategies.

¹⁹ See Chapter Six, pp.142-143

²⁰ J. Stern, *The Ultimate Terrorist*. Harvard: Harvard University Press, 1999, pp.88 - 90

The issues discussed are important and should be incorporated in Kenya's counter-terrorism strategy. This will enhance the capability to anticipate, prevent or pre-empt terrorist activities, prosecute arrested terror suspects, and forge a state-society coalition against terrorism.

Conclusions

Militant Islamist terrorism is a different form of terrorism. Unlike previous forms of terrorism, it is deeply rooted in religious ideology. As a result, terrorist violence is first and foremost a sacramental act or divine duty executed in direct response to some theological demand or imperative.²¹ Sacralisation of terror exploits the fundamental human need for a belief system, a connection with a divine power and innate desire to make ultimate sacrifice on behalf of that power.

Due to its religious root, counter-terrorism measures must increasingly incorporate religion as a counter-force. As Gopin has authoritatively argued, contrary to the apocalyptical clash of religion thesis, religion is a powerful constituent of cultural norms and values, deeply implicated in individual and social conceptions of peace. It addresses the most profound existential issues of human life such as freedom/inevitability, fear/security, right/wrong, sacred and profane.²² Additionally, all religions have developed laws and ideas, symbols and rituals of civilization with cultural commitment to critical peace related values, including openness to or even love for strangers, suppression of unbridled ego and acquisitiveness, respect for human rights, unilateral gestures of forgiveness and humility, interpersonal repentance, reconciliation and drive for social justice. This positive values need to be exploited to counter the ideologies of hatred in the name of religion.

²¹B. Hoffman, *Holy Terror: The Implications of Terrorism Motivated by Religious Imperative*: Santa Monica CA: Rand Corporation, 1993, p.2.

²² M. Gopin, *Between Eden and Armageddon: The Future of World Religions, Violence and Peacemaking*. New York: Oxford University Press, 2000, p.13.

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