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Policies and strategies in Kenya's response to the war on terror: a critical evaluation.

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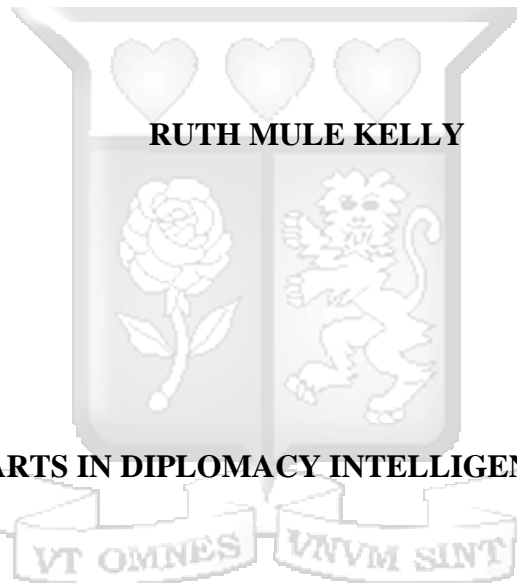
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MASTER OF ARTS IN DIPLOMACY INTELLIGENCE AND SECURITY

2020

Policies and Strategies in Kenya's Response to the War on Terror: A Critical Evaluation

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Submitted in partial fulfillment of the requirements for the Degree of Master of Arts Diplomacy, Intelligence and Security

SCHOOL OF HUMANITIES AND SOCIAL SCIENCES
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Nairobi, Kenya

October, 2020

DECLARATION AND APPROVAL

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ABBREVIATIONS AND ACRONYMS

ACSRT	Africa Centre for Studies and Research on Terrorism
AMISOM	AU Mission in Somalia
ATA	Anti-Terror Assistance
ATPU	Anti-Terrorist Police Unit
AU	African Union
AUMF	Authorization for Use of Military Force
CP	Community Policing
CT	Counter Terrorism
CVE	Countering Violence Extremism
EACC	Ethics and Anti-Corruption Commission
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FRC	Financial Reporting Centre
FRELIMO	Frente de Libertação de Moçambique
GWOT	Global War on Terror
ICPAT	Intergovernmental Authority on Development, Capacity Building Program Against Terrorism
ICU	Islamic Court Union
IGAD	Inter-Governmental Authority on Development
IPOA	Independent Police Oversight Authority
ISIS	Islamic State of Iraq and Syria
KDF	Kenya Defence Forces
KNCHR	Kenya National Commission on Human Rights
LeJ	Lashkar-e-Jhangvi
MoU	Memorandum of Understanding
NCTC	National Counter Terrorism Centre
OAU	Organization of African Unity

OLN Operation Linda Nchi

POWs Prisoners of War

REMANO Mozambican National Resistance

SLAA Security Laws Amendment Act

SSP Sipah-e-Sahaba Pakistan

UN United Nations

UNHCR United Nations High Commissioner for Refugees

USA United States of America

WOT War on Terror

ABSTRACT

This study is a critical evaluation of policies and strategies used in Kenya in response to war on terror. The study was guided by several objectives; a) Examine the policy and strategy making b) Evaluate the strategies and policies on the war on terror in Kenya c) Assess critically the strategies and policies used in war on terror. The study was guided by systems theory, that all things and events known to man are connected to and interface with one another. An event happening today is influenced from certain occasions previously and similarly, a few occasions that will occur later on will be influenced from the occasions of today. The study used a qualitative research design. A case study approach focusing responses on war against terror in Kenya was used. Qualitative data was obtained from use of surveys and key informant interviews. The target population was government agencies such as National Intelligence Service (NIS), Anti-Terrorism Police Unit (ATPU), National Police Service and Ministry of Interior and Defense. The study employed purposive sampling to identify respondents to participate in the study. The study used both primary and secondary data. Content analysis method were used in analyzing qualitative data. It was established that the three important strategies in the war on terror are defense policy, foreign policy and economic policy. The strategies included military, diplomatic and economic strategy. It was noted that Kenya relied heavily on both defense policies and military strategies. The military policy is not independent is mandated by the defense policy. The foreign policy is implemented through a diplomatic strategy. The study concludes that the Kenyan government, through the parliamentarians should make bills that recommend on the best policies and strategies to incorporate to reduce terror attacks in the country.

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

This dissertation evaluates the policies and strategies in the war against terrorism in Kenya. It analyzes how different approaches in terms of policy and strategy have led to the changes in the threat of terrorism. Over the years, different strategies have been adopted based on different views by different policy makers on the threat of terrorism. For instance, prior to Kenya's incursion into Somalia, terrorism was viewed as a threat targeting Western interests, Kenya was just a collateral target. Hence, strategies adopted were mostly directed and driven by the west. However, following the incursion, Kenya became a target by its own right as the *Al Shabaab* terror group supported by the Al Qaeda issued a *fatwa* against Kenya and since then Kenya has been the target of various attacks.

In September 2013, Westgate mall was hit by terrorists and at least 67 lives lost.[1] In June 2014, a village in Mpeketoni, Lamu county was attacked by al-Shabaab and about 60 individuals maimed.[2] In November the same year a bus from Mandera to Nairobi was attacked and about 28 people left dead. In 2015, the al-Shabaab confirmed attacking Garissa university college where more than 100 people, mostly students, were killed.[3] In January 2019, 21 individuals were killed when DusitD2 complex was attacked by terrorists.[4] Following these targeted attacks by the *Al Shabaab* Kenya has adopted various policies and strategies to deal with the *Al Shabaab* menace therefore entering the theatre of the global war against terrorism.

Terrorism not only encroaches on the right to life for the affected populations but also has a negative impact on their economic, social, psychological, and political wellbeing.[5] In Kenya, terrorist attacks have increased uncertainty in the investment climate and reduced the amount of foreign investment that play a critical role in the growth of the economy.[6] The surge of terrorist

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[1] One95. "Extremism & Counter-Extremism. Counter Extremism Project," 2020.

[2] BBC News. "Kenya Attack: 147 Dead in Garissa University Assault," 2015.

[3] FoxNews. "Nearly 150 Dead in Al-Shabaab School Attack, Kenyan Officials Say," 2015.

[4] Kamau, John. "Anatomy of Terrorist Attack on DusitD2 Hotel." Daily Nation, 2019..

[5] Hoffman, Bruce. *Defining Terrorism*. Edited by Howard Russell and Sawyer Reid. Guilford, CT: McGraw-Hill/Dushkin, 2003.

[6] Hadji, Ahmed, and Hassan Ndugwa. "The Role of CSOs in Countering Violent Extremism (CVE) - A Case of Actors in East African Region," 2016.

attacks forced the law enforcement and intelligence agencies to formulate policies and strategies to prevent and respond to terrorist attacks. Some of the attacks exposed the unpreparedness and inexperience of the intelligence community and response teams in preventing and mitigating attacks. For example, there was confusion and lack of a clear protocol during the Westgate terrorist attack.[7]

Even though the government has been proactive in improving policies and strategies to address the issue, there is still debate whether the strategies adopted by the country are sufficient to handle the complex and dynamic global problem. The recent counter terrorism measures have also seen the community bear the brunt of security operations.[8] Some experts argue that the militaristic approach adopted by the government has created a conducive environment for violent extremism and recruitment of Kenyan youths from marginalized and disadvantaged communities.[9] There have been concerns that human rights have been violated as a result of extrajudicial killings, torture, and arbitrary detention by government forces.[10] Such violations have polarized some sections of the country encouraging extremism.

1.2 Statement of the Research Problem

After the 1998 terror attack targeting American Embassies in East Africa Kenya embraced a serious counterterrorism agenda. After the 9/11, it was one of the countries that joined the global War against terrorism.[11] The country's responses have included enacting legislation like the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA); the Prevention of Organized Crime Act, 2010 (POCA); the Prevention of Terrorism Act, 2012 (POTA), and Security Laws (Amendment) Act, 2014. Other measures include establishment of organs such as Anti-Terror Police Unit (ATPU), and the National Counter-Terrorism Centre (NCTC); and, the Kenya Defense Force's (KDF) incursion into Somalia. Most of these approaches have been reactionary and leaning mostly towards the use of force. In spite of these measures, acts of terrorism have been on the increase rather than on the decline. Between 1999

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[7] Guardian, The. "Terror in Westgate Mall: The Full Story of the Attacks That Devastated Kenya," 2013.

[8] Buluma, Godfrey. *Al-Shabaab: The Threat to Kenya and the Horn of Africa*. Carlisle Barracks, Pennsylvania: United States Army War College, 2014.

[9] Hadji, 2016. Op. cit.

[10] Vergani, Matteo. *How Is Terrorism Changing Us?: Threat Perception and Political Attitudes in the Age of Terror.*, 2018.

[11] Aronson, Samuel. "Kenya and the Global War on Terror: Neglecting History and Geopolitics," in Approaches to Counterterrorism." *African Journal of Criminology and Justice* 7, no. 1 (2013): 26.

and 2017 there were more than 465 attacks that caused about 1074 deaths and about 1665 injuries.[12] In January 2019 there was DusitD2 which left at least 20 people dead and several others injured. There were also several attacks in north eastern Kenya in January 2020.

The process of policy and strategy making starts with identifying a problem. It then enters the arena of agenda setting where different aspects of the policy are deliberated by different stake holders.[13] After that, a policy is then adopted after approval by relevant authorities like parliament or the cabinet. A strategy to implement the approved policy is then formulated following the same process as the policy formulation. The next step after the strategy is approved is them the process of implementation. In this stage, there should always be some feedback that serves to give the policy makers and decision makers an idea of how the policy is fairing. If there is a problem, it could be an indicator of a wrong strategy or a flawed framework of implementation hence the need for the policy and strategy makers to go back to the drawing board to remedy the situation. It is against this that this study examines the strategies and policies targeting terrorism in Kenya in a bid to identify their success, challenges and how these can better be remedies to guarantee national security.

1.3 Objectives of the Study

The broad objective of the study was to evaluate the policies and strategies employed in the war against terrorism in Kenya.

Specific objectives are to:
i. Examine the policy and strategy making
ii. Assess critically the strategies and policies used in war on terror outside Kenya
iii. Evaluate the strategies and policies on the war on terror in Kenya

1.4 Literature Review

The main aim of the literature review is to examine the existing literature on the themes arising from the study and to identify the existing gaps. The literature review will first examine the emergence of war on terror. It will also explore the approaches to the war on terror. Further,

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[12] LaFree, Gary. "The Global Terrorism Database: Accomplishments and Challenges." *Perspectives on Terrorism.* 4, no. 1 (2010).

[13] Mwagiru, Makumi. *Policy and Strategy in National Security; Context, Perspective & Challenges in East Africa*. 1st ed. Three-Legs Consortium, 2017.

it will explore the literature on the war on terror in Kenya and its response. Finally, the literature review will critically analyze the strategies and policies used in the war on terror in Kenya.

1.4.1 Emergence of the War on terror

Scholars debate about calling the global war on terrorism a war and how nations should respond to this threat.[14] On September 11, 2001, when the New York's World Trade Center and the Pentagon was attacked by al-Qaeda terrorists, President, George W. Bush, pronounced a "war on terror." Subsequently, he and other authorities utilized the expressions "war on terror," "global war on terror". This led to the use of the term 'war on terror' or the 'global war on terror' [GWOT].[15] GWOT generally describes the American-led global counterterrorism campaign launched after the attack and the rallying of the rest of the world to join forces to fight terrorism which was seen to be a global threat to security.

In its scope, expenditure, and impact on international relations, the war on terrorism was comparable to the Cold War.[16] It was intended to represent a new phase in global political relations and has had important consequences for security, human rights, international law, cooperation, and governance. The war on terrorism is therefore a multidimensional campaign whose scope is almost limitless. For the USA it involved a military dimension in Afghanistan and Iraq, and covert operations in Yemen.[17] Elsewhere, it involved large-scale military-assistance programmes for cooperative regimes, and major increases in military spending. However, fighting terrorism may not necessarily be called a war.[18] Calling it a war falls into the political discourse of the American use of the term "war' as a metaphor for dealing with all kinds of "enemies" from global warming to drugs, poverty and now terrorism.

The use of the military in dealing with these "enemies" seems to be enough justification to the usage of the term "war". Record states that this departs greatly from the classical description of war where he says that traditionally, most wars, especially those waged in the European tradition, have also had clear beginnings and endings.[19] They were declared or initiated

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[14] Frey, Bruno. *Dealing with Terrorism: Stick or Carrot?* Cheltenham, UK: Edward Elgar Pub, 2004.

[15] Ibid

[16] Record, Jeffrey. *Bounding the Global War on Terrorism*. Fort Belvoir, 2003.

[17] Rogers, Paul. *Iraq and the War on Terror: Twelve Months of Insurgency 2004/2005*. IB Tauris & Co Ltd, 2006.

[18] Record, 2003. Op. cit.

[19] Ibid

on a certain day, and on another certain day one side agreed to stop fighting. This is not the case when it comes to fighting terrorism. There are no given standard measures of success. Terrorists do not work in the open as furnished units, and mostly do not seize or hold an area.[20] They intentionally abstain from getting involved in rival military powers and rarely practice any immediate control or influence over individuals or a region.[21]

Although the use of the term Global War on terrorism is common, the term describes a new kind of war fought by a new kind of enemy.[22] Both state and non-state actors are involved. It contains elements that are war and non-war. It is a mixture of combat operations, military operations other than war and operations by various nonmilitary departments of government.[23] Critiques on the concept of a broad "war on terror," have been advanced by some authors such as Dudziak.[24] There is an irony in government use of "war on terror" as "war" in itself brings out the perception on use of military strategies.[25]War is "an act of violence intended to compel our opponents to fulfil our will".[26] Jeffery argues that war involves military operations between states or between a state and an insurgent enemy for ultimate control of territory.[27]

States have become so inured to a militarized foreign policy, fighting wars, and indefinite in-between periods such as the Cold War that have lost sense of what constitutes 'peacetime'.[28] Declaring war on terrorists or on terrorism is at once to accord terrorists a status and dignity that they seek and that they do not deserve. It confers on them a kind of legitimacy.[29] Hoffman further argues that to declare that one is at war create a war psychosis that may be entirely counterproductive for the goal being pursued. It provokes an instant anticipation, and demand, for enormous military action against some easily discernable opponent.[30] Wars and acts of terrorism are alike since they include the use of violence and terror that affect civilian

[20] Hoffman, Bruce. *Defining Terrorism*. Edited by Howard Russell and Sawyer Reid. Guilford, CT: McGraw-Hill/Dushkin, 2003.

[21] Ibid

[22] Leonhard, Robert. *The Evolution of Strategy in the Global War on Terror*. Annapolis, MD: Naval Institute Press, 2005.

[23] Record, 2003. Op. cit.

[24] Dudziak, Mary. *War Time: An Idea, Its History, Its Consequences*. New York: Oxford University Press, 2013.

[25] Gleeson, Kathleen. *Australia's 'War on Terror' Discourse*. Farnham, Surrey, UK: Burlington, VT: Ashgate, 2014.

[26] Blannin, Patrick. *Defence Diplomacy in the Long War*. Leiden: Brill, 2017.

[27] Simon, Jeffrey. "The Forgotten Terrorists: Lessons from the History of Terrorism." *Terrorism and. Political Violence* 20 (2008).

[28] Dudziak, Mary. *War Time: An Idea, Its History, Its Consequences*. New York: Oxford University Press, 2013.

[29] Hoffman, Bruce. *Defining Terrorism*. Edited by Howard Russell and Sawyer Reid. Guilford, CT: McGraw-Hill/Dushkin, 2003.

[30] Ibid

populations. Scholars such as Walt argue that it is unpersuasive to use the act of targeting civilians deliberately as the defining characteristic of terrorism since wars also involve similar acts.[31]

1.4.2 Approaches to the war on terror

Traditional approaches have been the common responses used in the war on terror. A traditional approach is the use of the military to deal with terrorism. Though the end of the cold war brought an end to the war between [states], new wars emerged, such as the savage wars in Africa, the Balkans, the Gulf wars, and the 9/11 attacks that birthed the war on terror.[32] In the post-Cold War era, those who have turned to military actions in the West seek legality for those actions on the grounds of charitable concerns. They insist that the use of force should be for the good of humanity.[33] Responding to the 9/11 attacks in the USA that resulted in the deaths of about 3,000 people, President George W. Bush ordered an attack on Afghanistan. It was a military strategy aimed at dealing with the terrorism threat to America. After that, it has based its militaristic policy on terrorism.[34]

Traditional approaches to the war on terrorism are based on the pre-cold war policies where war was between states.[35] Applying such tactics on new wars may prove to be very ineffective. While traditional approaches to security are limited to the military aspect based on a realist approach to handling the threat, terrorism requires a wider and dynamic security approach.[36] Security against terrorism has always been volatile, kidnapping of authorities been the new norm of modern terrorism. The Al Qaeda combined the tactic of hijacking with the tactic of suicide attack to attack the Twin Towers and the Pentagon.[37] While it is good to hunt down

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[31] Walt, Stephen. "Revolution and War." *World Politics* 44, no. 3 (1992): 321–68.

[32] Dexter, Helen. "The 'New War' on Terror, Cosmopolitanism and the 'Just War' Revival." *Government and Opposition* 43, no. 1 (2008): 55–78.

[33] Walt, (1992). Op. cit.

[34] Pyszczynski, Tom, Sheldon Solomon, and Jeff Greenberg. *In the Wake of 9/11: The Psychology of Terror*. Washington, DC: American Psychological Association, 2003.

[35] Ejime, Raphael. "Countering Modern Terrorism: Military and Other Options." *European Scientific Journal* 13, no. 32 (2017): 1857 – 1881.

[36] Barkin, Samuel. *Realist Constructivism: Rethinking International Relations Theory*. Cambridge University Press, 2010.

[37] Simon, (2008). Op. cit.

and kill terrorist leaders, shooting them down without helping the communities they prey on is a recipe for extending, not ending, the war on terror.[38]

The GWOT has become a never-ending war because the world is yet to back a tactic that will overthrow the terror groups across the globe.[39] Terrorism has become very complex and sophisticated over the years. It has become a tool of choice for players to use for their own interests domestically, regionally and even internationally.[40] Globalization, technology, financing through global money transfers and sophisticated means of communication such as use of coding are some of the major contributors to this complication.[41] Given this development and its potential for destruction, terrorism cannot be fought using the traditional pre-cold war approaches. The cycle of military deployments—costly in both human economic investments. It will not end so long as the conditions such as use of technology and money laundering that make it favorable for the terror groups to thrive remain.[42] Thus, approaches like Counter Insurgency (COIN) and CVE come in.

Counter insurgency entails understanding why the terror or insurgent group is forming in the first place. It requires identifying the gaps that exist in the society and concurrently filling those gaps while driving out the insurgents.[43] The gaps could be poor economic conditions, lack of proper governance or poor infrastructure.[44]Thus a systems approach to handling terrorism is recommended. It aims at identifying what is wrong with the system or whether the system provides a conducive environment for terrorism to thrive. Then it proposes ways of dealing with those elements to rid the system of the threat.[45] CVE as a concept was declared in Europe after the Madrid attacks in 2004 and London in 2005. It was not until 2015 when this concept gained

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[38] Byman, Daniel. "Eighteen Years On: The War on Terror Comes of Age." *Combating Terrorism Center* 12, no. 8 (2019): 1–32.

[39] Leonhard, Robert. *The Evolution of Strategy in the Global War on Terror*. Annapolis, MD: Naval Institute Press, 2005.

[40] Byman, (2019). Op. cit.

[41] Çetin, Hakan. "War on Terrorism: What Went Wrong in Afghanistan?" *International Journal of Human Sciences* 10, no. 2 (2013): 532–43.

[42] Rohan, Gunaratna. "Combating Terrorism and Extremism: A Shift in US Approach?" *Counter Terrorist Trends and Analyses* 7, no. 2 (2015): 4–7.

[43] Galula, David. *Counterinsurgency Warfare: Theory and Practice*. 106 Seiten: Greenwood Publishing Group, 2006.

[44] Ibid

[45] Bertalanffy, Ludwig Von. *General Systems Theory: Foundations, Development, Applications*. New York: George Braziller, 1968.

global recognition. In a three-day CVE summit held at White House chaired by President Obama and attended by representatives from over 70 countries the concept was discussed.[46]

The idea behind CVE is that violent extremists should not be fought exclusively with intelligence, police, and military means.[47] This largely borrows from the UN approach dubbed PVE. The idea of the UN PVE initiatives was to use human rights-based approaches as opposed to stiff hard-security counterterrorism responses.[48] In line with this, the USA CVE summit recommended "soft" strategies for dealing with terrorism. One of the strategies was creating awareness comprising of sessions on the drivers and pointers of radicalization and admission to violence.[49] The second was countering extremist narratives by unwaveringly addressing and countering their recruitment narratives. Further proposals included accentuating community-led intervention such as empowering community efforts to interrupt the radicalization process prior to people being recruited in terror groups.[50]

Some participants in the summit opposed to this CVE approach. They argued that this might lead to stigmatization of certain people in society identified as potential recruits like the Muslims and the poor youth.[51] The other challenge with this approach is that many who adopt it have copy pasted approaches from other communities instead of tailoring them specifically for the community being addressed.[52]There is also too much government involvement in the programs causing the communities to be reluctant in embracing the CVE programs. This calls for a whole of society approach where relevant actors in the CVE efforts should involve the communities and civil society actors in the development and implementation of CVE programs.[53]

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[46] Rohan, Gunaratna. "Combating Terrorism and Extremism: A Shift in US Approach?" *Counter Terrorist Trends and Analyses* 7, no. 2 (2015): 4–7.

[47] Moeckli, Daniel. *Human Rights and Non-Discrimination in the "War on Terror."* Oxford: Oxford University Press, 2008

[48] Thiessen, Chuck. *Preventing Violent Extremism While Promoting Human Rights: Toward a Clarified UN Approach*. New York: International Peace Institute, 2019.

[49] LaFree, Gary. "The Global Terrorism Database: Accomplishments and Challenges." *Perspectives on Terrorism.* 4, no. 1 (2010).

[50] Katzenstein, Peter. "Same War—Different Views: Germany, Japan, and Counterterrorism." *International Organization* 57 (2003): 731–60

[51] Rapport, David. "Fear and Trembling: Terrorism in Three Religious Traditions." *American Political Science Review* 78, no. 3 (1984): 668–72.

[52] Hadji, Ahmed, and Hassan Ndugwa. "The Role of CSOs in Countering Violent Extremism (CVE) - A Case of Actors in East African Region," 2016.

[53] Frazer, Owen, and Nünlist Christian. "The Concept of Countering Violent Extremism." *CSS Analyses in Security Policy* 183, no. 1 (2015): 1–4.

1.4.3 War on Terror in Kenya

Kenya has been unable to effectively counter terrorism due to the ineffectiveness of law enforcement and counterterrorism strategies. Korwa explains the efforts by Somalis on the Somalia side wanting to take over the NFD and this has also been part of the Al-Shabaab ideology in wanting to establish an Islamic Caliphate.[54] This threat to Kenya's territory has greatly influenced Kenya's policy towards Somalia and the Al-Shabaab and was one of the major reasons for formulating strategies such as the operation *Linda Nchi*.[55] However, the policies are affected by institutional weakness and corruption and are sometimes guided by flawed intelligence.[56] Aronson asserts that the approach adopted by Kenya is flawed since it neglects the history and geopolitics of the country and is undermined by corruption.[57]

The challenge is attributed to globalization and its processes that have helped to dissolve the old borders and opened up new frontiers, which are challenging traditional conceptions of sovereignty.[58] It is also attributed to lack of definition of what constitutes regional security strategy, the traditional focus of security, that of physical security, whose response is the military. It fails to address the insecurity dilemma that takes the view that threats to the security of third world countries emanate internally.[59] There is need for adoption of a modern way of thinking about security that is wider in scope and allows for the participation of other entities such as communities in securing the state.[60] Institutions mandated to deal with regional security should be functional and flexible to guarantee the region's continued survival. There is also a need for the adoption of a systemic perspective that deals with the internal causes of insecurity.[61]

The impetus behind Kenya developing counterterrorism strategies has been the American government and the Global War on Terror (GWoT).[62] Strategies put in place to counter terrorism

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[54] Korwa, Adar. *Kenyan Foreign Policy Behavior towards Somalia, 1963-1983*. Lanham: University Press of America, 1994.

[55] Ibid

[56] McGregor, James. "How Kenya's Failure to Contain an Islamist Insurgency Is Threatening Regional Prosperity." *Terrorism Monitor* 15, no. 20 (2017).

[57] Aronson, (2013). Op. cit.

[58] Cha, Victor. "Globalization and the Study of International Security." *Journal of Peace Research* 37, no. 3 (2000).

[59] Mwagiru, Makumi. *Policy and Strategy in National Security; Context, Perspective & Challenges in East Africa*. 1st ed. Three-Legs Consortium, 2017.

[60] Mwagiru, Makumi. *Towards a Security Architecture in the IGAD Region, Makumi Mwagiru (Ed.), African Regional Security in the Age of Globalization*. Nairobi: Heinrich Böll Stiftung, 2004.

[61] Ibid

[62] Mogire, Edward, and Kennedy Agade. "Counter-Terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 473–491.

in Kenya include operation *Linda Nchi*, Operation *Usalama* Watch, and integration with AU mission in Somalia (AMISOM).[63] Operation *Linda Nchi* goal was to create a 'friendly' buffer-zone state in Jubaland that would help in preventing the entry of Al-Shabaab terrorist into Kenya.[64] The operation *Linda Nchi* initiative later integrated with the AMISOM in the war against terrorism in Somalia. Another strategy adopted was Operation *Usalama* Watch, which began in early April 2014 following increased attacks in many parts of the country among them Nairobi, Dadaab, Garissa and Mandera.[65] The ATPU conducted thorough raids on mosques, homes and businesses arresting Al-Shabaab suspects most of whom were of Somali Origin. Security forces concentrated their efforts in areas such as Eastleigh which were seen as hotspots as they harbored majority of refugees of Somali origin.

In 2015, the Kenyan government set out to construct a multifaceted wall of about 700km along the border which was meant to stop Al-Shabaab militants from crossing into Kenya. The border wall has since been resisted by the local communities and largely affected by tensions in the region.[66] In 2016, President Uhuru Kenyatta laid out a CVE plan that focused on de-radicalization as opposed to military tactics in the counterterrorism efforts. In 2017, the government formed a committee to counter and prevent radicalization.[67] The effort was a cross cutting campaign that was focused on rehabilitative, mitigation, and preventative measures against terrorism in line with the US CVE Summit of 2015. In 2018, security experts and scholars noted that the military strategy adopted by Kenya had decreased violent activities by Al-Shabaab.[68] However, there was an increase of online radicalization, a development that has seen more youths join the group.[69]

Kenya's counterterrorism strategy is characterized by human rights abuses including torture of suspects, arbitrary arrest and detention of suspects without charge, holding of suspects

[63] Lind, Jeremy, Patrick Mutahi, and Marjoke Oosterom. "Killing a Mosquito with a Hammer': Al-Shabaab Violence and State Security Responses in Kenya." *Peacebuilding* 5, no. 2 (2017): 118–35.

[64] Bruton, Bronwyn, and Paul Williams. "Counterinsurgency in Somalia: Lessons Learned from the African Union Mission in Somalia, 2007-2013." *JSOU Report* 14, no. 5 (2014): 1–130.

[65] Amnesty International. "Amnesty International Report 2014/15: The State of the Worlds Human Rights," 2015.

[66] Cannon, Brendon. "Terrorists, Geopolitics and Kenya's Proposed Border Wall with Somalia." *Journal of Terrorism Research* 7, no. 2 (2016): 23–37.

[67] McGregor, James. "How Kenya's Failure to Contain an Islamist Insurgency Is Threatening Regional Prosperity." *Terrorism Monitor* 15, no. 20 (2017).

[68] Byman, (2019). Op. cit.

[69] Ibid

incommunicado, detaining suspects' relatives and rendition of suspects.[70] Additionally, the brutal counterterrorism practices adopted by the security agencies undermine the impetus of counterterrorism by failing to differentiate between the radicalized terrorists and the theologically conservative Muslim both present in the country.[71]

There is need for efforts to improve coordination in all levels and the strengthen of laws and the security sector.[72] Nevertheless, the counterterrorism measures adopted by the government presents several challenges.[73] First, definition of terrorism remains obscured leaving liberation movements, guerrillas, bandits, criminal gangs, cattle rustlers, pirates and vigilantes to be categorized as terrorists. Secondly, counterterrorism strategies adopted are to ensure regime survival. Thirdly, most of these strategies are 'hard' impacting negatively on human rights.[74] Kenya as a proxy of the United States in counterterrorism received extensive training and funding.[75]

1.4.4 Policies and Strategies on war on terror in Kenya

The idea of policy has been broadly discussed. The word policy is mainly defined to suit the needs of those who make it, usually indicating the overall objective of the policy for example "we will take an effective action to combat the act of terrorist threat".[76] Policy can also be a guiding principle or a specific action plan which can help the policy maker to reach a desired objective. An example of a policy definition for a particular purpose is the government whitepaper on modernizing government in 1999. It defined policy as the process by which governments translate their political vision into programs and actions to deliver outcomes or desired changes in the world.[77]

Policy is a set of decisions which are oriented towards a long-term purpose or to a particular problem.[78] These are statements of intention either subjectively or objectively guide in

[70] Mogire, Edward, and Kennedy Agade. "Counter-Terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 473–491.

[71] Aronson, (2013). Op. cit.

[72] Kagwanja, Peter. "Counter-Terrorism in the Horn of Africa: New Security Frontiers, Old Strategies." *African Security Review* 15, no. 3 (2006): 72–86

[73] Ibid

[74] Ibid

[75] Aronson, (2013). . Op. cit.

[76] Moran, Michael, Martin Rein, and Robert Goodin. *The Oxford Handbook of Public Policy*. Oxford; New York: Oxford University Press, 2008.

[77] Savage, Alexis, and Linda Lumbasi. "The Impact of Decentralization in Kenya," 2016, 20.

[78] Mwagiru, 2019. Op. cit.

making decisions towards a particular direction. Policies therefore differ from one state to the other depending on the objective the state intends to achieve. Policies fall under three categories; long-term versus short-term policies, coercive versus accommodating policies and domestic versus international policies.[79] For policies to succeed there is a need to encompass all the objectives intended to be achieved by the state and to understand the terrorist point of view.[80]

Policy and strategy cannot be separated in national security contexts.[81] While policy outlines the plans to ensure national security, strategy outlines how these plans can be best applied, who is responsible for the execution of the different plans and the expected outcome.[82] Policy making also involves the creation of laws, setting of standards and decision making. Policy or strategy making begins with identifying strategic objectives, that is, the long-term goals to be sought, this then leads to the creation of laws and policies and the formulation of an implementation strategy. Without implementation, the policy itself is not of much use.[83] The process of policy and strategy making starts with identifying a problem, then the agenda setting where different aspects of the policy are deliberated by different stakeholders. After that, a policy is then adopted after approval by relevant authorities like the parliament or cabinet.[84]

The strategies and policies employed by the Kenyan government in the war on terror mainly involved use of force.[85] Thus, the government deployed military forces at the Kenyan borders where terrorists were thought to gain entry. Since the enemy in question were thought to be of Somali origin, the government strategies targeted areas that harbored the individuals from Somalia especially the refugee camps.[86] Nonetheless as war progressed so did the tactics by both the Kenyan government and the al-Shabaab.[87] As Kenya employed the military strategy, the al-Shabaab responded by the same strategy. More deployment eventually led to the al-Shabaab's

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[79] Crelinsten, Ronald, and Alex Schmid. *Western Responses to Terrorism: A Twenty-Five-Year Balance Sheet*. London: Frank Cass Publishers, 1993.

[80] Mwagiru, Makumi. *Policy and Strategy in National Security; Context, Perspective & Challenges in East Africa*. 1st ed. Three-Legs Consortium, 2017.

[81] Ibid

[82] Ibid

[83] Moran, Michael, Martin Rein, and Robert Goodin. *The Oxford Handbook of Public Policy*. Oxford; New York: Oxford University Press, 2008.

[84] Mwagiru, Makumi. *Policy and Strategy in National Security: Context, Perspectives and Challenges in East Africa*. 2019.

[85] Aronson, (2013). Op. cit.

[86] Mwagiru, 2019. Op. cit.

[87] Buluma, 2014. Op. cit.

recruitment of not only the Somali militants but also Kenya ones.[88] The war on terror has forced states to make policies "on the run".[89] Kenya's war on terrorism was marred by the unclarity on policies pertaining to diplomacy. Further was the problem on strategies to implement the policies thus complicating the war on terror.[90]

A grand strategy would have solved the dilemma.[91] A grand strategy would encompass a national security strategy to help implement the national security policy.[92] Failure by the Kenyan government to have a grand strategy hindered the decision-making capability in regard to war on terror.[93] There is no official policy regarding counter terrorism in Kenya. There is however legislation addressing the threat. The Prevention of Terrorism Act 2012; the Security Laws (Amendment) Act, 2014; the Proceeds of Crime and Anti-Money Laundering (Amendment) Act 2017 are laws that focus on addressing violent extremism through policing, money laundering controls, intelligence gathering, and prosecution.[94] The CVE strategy adopted in 2015 now complements these security-focused counterterrorism measures with a framework for CVE measures.

1.4.5 Gaps in the Literature

This literature review analyzed perspectives on terrorism and counterterrorism response. From the literature, the US emerges as a key player in the fight against terrorism and shaping counterterrorism efforts in other states. The majority of the countries responses to terrorism have been largely military approaches or the use of force have predominantly been embraced.

The literature reviewed is skewed to show Kenya's preference for use of force as a strategy in responding to the threat of terrorism and emphasizes the western influence on the policies adopted. There is a limited literature on other policies and strategies that Kenya has used

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[88] Mwagiru, 2019. Op. cit.

[89] Mwagiru, Makumi, and Kigen Morumbasi. *Countering Violent Extremism in Kenya. Vol 1: Strategic and Legal Issues*. Thirty-Three Consortium Publications on International Security, 2018.

[90] Spencer, Alexander. "The Social Construction of Terrorism: Media, Metaphors and Policy Implications." *Journal of International Relations and Development Advance Online Publication* 48 (2012).

[91] Savage, Alexis, and Linda Lumbasi. "The Impact of Decentralization in Kenya," 2016, 20. http://aidlink.ie/wp-content/uploads/2016/08/The-Impact-Of-Decentralization-In-Kenya-.pdf.

[92] Mwagiru, Makumi. *Grand Strategy in Kenya: Concepts, Context, Process and Ethics*. Edited by Humphrey Njoroge. Volume 1. Thirty-Three Consortium Publications on International Security, 2017.

[93] Mwagiru, 2018. Op. cit.

[94] Mogire, Edward, and Kennedy Agade. "Counter-Terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 473–491.

in the effort to quell the menace. This dissertation tried to fill the literature gap by critically analyzing the policies and strategies used in Kenya in the war on terror.

1.5 Theoretical Framework

The study was guided by systems theory to facilitate the understanding, analysis and investigation of the phenomena.

1.5.1 Systems theory

The theory was presented by von Bertalanffy during the 1930s.[95] The Systems Theory highlights the valuation of incorporation of parts of an issue. As per the theory, all things and occasions known to man are connected to and interface with one another. An occasion happening today is influenced from certain occasions previously and similarly, a few occasions that will occur later on will be influenced from the occasions of today.[96] Systems theory examines how an event or an individual impact a more extensive mass or nature. Rather than accusing somebody or a few offices while dealing with issues, the theory attempts to see the role of the entire framework.[97]

The primary point of the theory is to utilize the entire of the elements and relations that structure the framework in the arrangement of the issue, in the most effective way.[98] Since the relations are influencing the activities, the activities are influencing the individuals lastly the individuals are influencing the framework.[99] In the war on terror, the theory imagines common aptitude and shared activity as irreplaceable components. It recommends that both individuals and organizations should put aside their needs and seize values that will empower them.[100] Howard contends that its wastage of both time and assets to furnish security powers with a wide range of military deadly implements while they are unconscious of the system point of view.[101]

The System theory recommends proceeding with the battling efficiently and to restore those that conflict with it without pushing them from it.[102] Lessening the terror issue down to only one of the significant reasons, for example, monetary, social, ethnical and strict so as to

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[95] Skyttner, Lars. *General Systems Theory*. World Scientific Publishing Company, 2008.
[96] Luhmann, Niklas. *Introduction to Systems Theory*. Polity Press, 2011.
[97] Ibid
[98] Ibid
[99] Skyttner, Lars. *General Systems Theory: Problems, Perspectives, Practice*. Hackensack, NJ: World Scientific, 2005.
[100] Howard, Lawrence. 1992. *Terrorism: Roots, Impact, Responses*. New York: Praeger.
[101] Ibid
[102] Skyttner, 2005. Op. cit.

comprehend the issue and to battle against it, isn't expanding the chance of achievement, however diminishing it. These reasons are powerful for terrorism and they ought to be managed carefully.[103] Rearrangements of an issue for unraveling it is distinctive to indicating an issue as straightforward, when it isn't. The theory, while it recommends scanning for indispensable answers for the issues, additionally makes it important to focus on the intricacies also. Recognizing a policy for battling against terrorism by exploiting the system theory will both diminish the costs to be made in the battling and will make maintainable measures.

According to system theory, terrorism is a social problem which should be handled by use of social dimensions.[104] Use of military force against terror groups creates division between the member of public. As a result, sympathizers emerge who in future may join or actively support the terrorists. Such conditions avert the security personnel in taking sound choices in the battle. Systems theory proposes that terrorism isn't an individual, self-acknowledged occasion. If there is terrorism, it implies that there is an issue in the system.[105] The organs that give security administrations ought to know about this reality and ought to alter their approaches in like manner. In battling terrorism, the System point of view guarantees sound correspondence between the people and the establishments, productive utilization of the sources.

1.6 Hypotheses

  i.   Coercive strategies and policies have failed in the war on terror
 ii.   There is no relationship between coercive strategies and policies and the success or failure
       in the war on terror

1.7 Research Methodology

This section describes the research design that was used, population of study, data collection instruments and procedures, and the techniques for data analysis. It also shows how content analysis was used to make interpretations on the qualitative information gathered from the respondents. The study used a qualitative research design. A case study approach focusing responses on war against terror in Kenya was used. Qualitative data was obtained from use of surveys and key informant interviews.

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[103] Fellman, Philip, Bar-Yam Yaneer, and Minai Ali. *Conflict and Complexity: Countering Terrorism, Insurgency, Ethnic and Regional Violence*. New York, NY: Springer, 2014.
[104] Bailey, Kenneth. *Sociology and the New Systems Theory: Toward a Theoretical Synthesis*. Albany: State University of New York Press, 1994.
[105] Ibid

1.7.1 Target Population

Target population are the individuals or items to which the study obtains its data. The target population was the general public and government agencies such as national intelligence service (NIS), anti-terrorism police unit (ATPU), national police service and ministry of interior and defense.

1.7.2 Sampling Techniques and Sample Size

The study employed purposive sampling to identify respondents to participate in the study. The study used both primary and secondary data. To gather primary data, the study utilized questionnaires which targeted security and intelligence experts from relevant government agencies such as the NIS, NPS and ATPU. Selected members of the ministry of interior and coordination of national government were interviewed on policies and strategies in Kenya's response to the war on terror. The KII aimed at achieving in-depth information on policies and strategies in Kenya's response to the war on terror. Secondary data on policies and strategies in Kenya's response to the war on terror was derived. Secondary data was collected through a review of journals, books, working papers, periodicals, newspapers articles, and policy documents.

1.7.4 Data Analysis

Content analysis method were used in analyzing qualitative data. Content analysis helps to determine the presence of key words or concepts within text. This tool helps researchers quantify and analyze the presence, meaning and relationships of such words and concepts and make inference about messages.

1.7.5 Research Ethics

Some of the ethical considerations that were made in the study include observing confidentiality, ensuring reliability and validity, and obtaining consent of the respondents. Some respondents may fear to disclose information as the questions asked may appear sensitive. The researcher assured them that the response was used for academic purposes only. The researcher experienced difficulties accessing the interviewees due to their demanding schedules. To counter this, the researcher made prior appointments with the officers by setting appointments two week before the interview could take place.

1.8 Outline of the study

This dissertation will be divided into five chapters;

Chapter One: Introduction to the study. The chapter covers the chapter introduction by offering background of the study, statement of the research problem, objectives, literature review, theoretical framework and the methodology.

Chapter Two: Policies and strategies on war on terror. The chapter will focus on the policies and strategies used globally on the war on terror. It frames the idea of the war on terror, its content, philosophy, applications etc. The chapter further explores the possible approaches to the response on the war on terror.

Chapter Three: Policies and strategies on War on terror in Kenya. The chapter explores the policies and strategies used in Kenya in response to war on terror. The chapter will dwell on major terrorist attacks and the response applied the Kenyan government and other concerned agencies. The chapter will investigate all the policies and strategies that have been employed in the past to respond to terrorism in Kenya.

Chapter Four: Critical analysis of Kenya's policies and strategies on the war on terror. The chapter critically analyzes the strategies and policies used in the war on terror in Kenya. It assesses Kenya's response to terrorism in terms of policy and strategy their impact.

Fifth Five: Conclusions. The chapter analyzes the meaning of the findings and the issues that have emerged. The analysis and the assessment leads to the conclusion as to whether the strategies and policies were either adequate or inadequate in Kenya's war on terrorism.
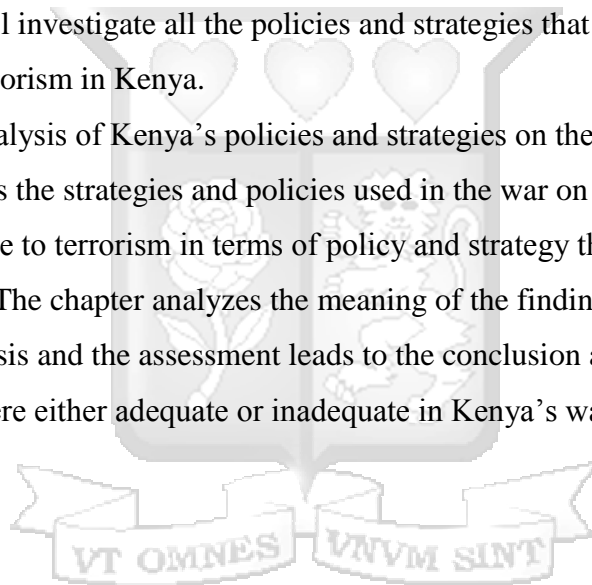
CHAPTER TWO

POLICIES AND STRATEGIES IN WAR ON TERROR

2.1 Introduction

The use of the phrase "war on terror" was created and popularized after the 9/11 attack by the then USA president, George W. Bush.[106] On September 11th, 2001, the U.S. was attacked on multiple fronts by Islamic extremists. Terrorists associated with Osama Bin Laden and the Taliban terrorist organization hijacked four passenger planes within American airspace. Two of these planes were flown directly into the World Trade Center's killing around 3,000 people. The third airliner rammed into the Pentagon and killed hundreds more. Soon after 9/11, the US government began to depict the attacker as a web of terrorists who enjoyed the protection of the Taliban in Afghanistan. The U.S. had to change its priority because of the attacks and embarked on taking vigorous action to eradicate global terror networks.[107] The U.S. started a war-on-terrorism policy against al-Qaeda and its affiliations.

The decision to name the effort the "war on terror" was intended to cater to the cultural and political sensitivities of Muslims.[108] The term "war on terrorism" depicted the internationally linked terrorists. The Bush administration focused its efforts on denying al-Qaeda sanctuaries overseas—by destroying or deterring regimes that shelter it—and on rolling up their global organization through intelligence and police work.[109] The United States government aimed at attacking Afghanistan and the removing of its extreme Taliban system, which had shielded al-Qaeda in return for many dollars. The ejection of the Taliban was a triumph.[110] It denied al Qaeda secure access to sufficient preparing bases and annihilated the limit of al Qaeda's pioneers to speak with their overall system by putting these pioneers on the run.[111] The loss of these bases and death of its leader was a devastating hit to al-Qaeda.

The chapter bases its argument on the psychology of war on terror. The concept helps explain reasons why war occurs mainly as a result of human being's actions. The conventional occurrences are compared with the war on terror which fails to satisfy the criteria. The chapter further looks at the laws of war embedded on the principle of *jus in bello*. The 1949 Geneva conventions helps explain the laws that should be followed for any war. In comparing such laws to the war on terror, again it fails to pass the test. The chapter also looks at the

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[106] Dudziak, Mary. *War Time: An Idea, Its History, Its Consequences*. New York: Oxford University Press, 2013.

[107] Çetin, Hakan. "War on Terrorism: What Went Wrong in Afghanistan?" *International Journal of Human Sciences* 10, no. 2 (2013): 532–43.

[108] Leonhard, Robert. *The Evolution of Strategy in the Global War on Terror*. Annapolis, MD: Naval Institute Press, 2005.

[109] Schmitt, Eric, and Shanker Thom. *Counterstrike: The Untold Story of America's Secret Campaign against Al Qaeda*. New York: St. Martin's Griffin, 2012.

[110] Ibid

[111] International crises group ICG. "Exploiting Disorder: Al Qaeda and the Islamic State." Special Report, 2016.

responses to the war on terror. Global responses especially by the united states forms the base of this argument. The chapter concludes by outlining the aftermaths of war on terror.

2.2 Psychology of War on terror

War is not a natural product of the human psyche, though the psyche seems to support it quite naturally.[112] Compared to animals who also engage in conflicts, human being intensity and frequency of war is associated to their thirst for power and accumulation of resources.[113] Psychologists argue that its natural for people to wage wars owing to their selfish nature. They see it as a natural survival tactics for human beings as they try to protect what they have accumulated in terms of wealth.[114] This explanation helps to explain the occurrence of traditional form of war. Nonetheless, war on terror presents a totally new phenomenon on how states as well as individuals view war.

The war metaphor helps understand the threat of terrorism as introduced by the Americans.[115] If terrorism is war then the national security is threatened, and the aftermath is a one-sided victory. State of war calls for national unity with the opposers seen as being unpatriotic.[116] War arises as a result of one group desire to humiliate another.[117] The psychological rationale of war is to bring the enemy to its knees.[118] The struggle against terrorism in several ways contrasts meaningfully from conventional war. Foremost, the entity that attacked the U.S. was not a state. It was a group, al Qaeda, with a regional base within a frail "failed state," Afghanistan.[119] Military strikes against terrorist targets do not generally lessen the motivation to engage in violence. Instead, it may even boost it due to the hostility that foreign occupation typically engenders and of the injustice and excesses of war.[120]

Group identity is a common psychological element in any war.[121] The same applies to war on terror. Generally, people feel a great need of identifying and belonging in particular organs such as religions, tribes, nationalities among others.[122]People tend to cling to their cultural values.[123] Though the war on terror initiated by the Americans aimed at targeting a particular organization within a state, that ended up being unachievable in the long run. The Taliban group for instance, associated itself with the Muslim faith. It also had a particular

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[112] Baechler, Jean. "Outline of a Psychology of War." *Res Militaris* 3, no. 3 (2013): 1–20.

[113] Ibid

[114] Taylor, Steve. *The Psychology of War; Why Do Humans Find It so Difficult to Live in Peace?* Psychology today, 2014.

[115] Kruglanski, Arie, Martha Crenshaw, Jerrold Post, and Jeff Victoroff. *The Psychology of the War on Terror*. Scientific American mind, 2008

[116] Ibid

[117] Taylor, 2014. Op. cit.

[118] Kruglanski, 2008. Op. cit.

[119] Çetin, (2013). Op. cit.

[120] Hudson, Rex, Lundell Majeska, and Library of Congress. "The Sociology and Psychology of Terrorism: Who Becomes a Terrorist and Why?" Charleston SC: CreateSpace Independent Publishing Platform, 2012.

[121] Fry, Douglas, and Patrick Söderberg. "Lethal Aggression in Mobile Forager Bands and Implications for the Origins of War." *Science* 341 (2013): 270–73.

[122] Taylor, 2014. Op. cit.

[123] Pyszczynski, Tom, Sheldon Solomon, and Jeff Greenberg. *In the Wake of 9/11: The Psychology of Terror*. Washington, DC: American Psychological Association, 2003.

geographical station inside a state.[124] The act of America directing its wrath to this group was over the time seen as a fight to the general Muslim people and the Afghanistan people. With time, the original intention was unconceivable bearing in mind the destruction that had been done throughout the war period.[125]

2.3 Laws of War

The laws of war (also known as "*jus in bello*") are embodied and interpreted in a variety of sources: treaties, customary law, judicial decisions, writings of legal specialists, military manuals, and resolutions of international organizations.[126] The basic principles of *jus in bello* [are contained in the Geneva Conventions of 1949 and its Additional Protocols. These pertain to the wounded and sick, protection of prisoner of wars (POWs) and civilians, minimal civilian casualties, and respect of humanitarian and peacekeeping personnel.[127] The principles also contain rights and duties of states as well as the prohibition of certain weapons.[128] The four 1949 Geneva Conventions—the settlements that structure the cornerstone of the advanced laws of war—are for the most part worried about the security of survivors of war who have fallen under the control of an enemy, as particular from the lead of military activities.[129]

Settlements on the laws of war are the result of arrangements between states. They mirror their encounters and interests, including those of their military.[130] For a considerable length of time these guidelines, yet habitually the subject of contention, have had a fundamental capacity in the approaches and practices of states occupied with military tasks. Concerning worldwide alliances engaged with battle, given the requirements of the individuals to orchestrate their activities on a scope of down to earth issues, these principles have since quite a while ago had specific hugeness. Indeed, even in circumstances in which their conventional pertinence might be flawed, they have in some cases been acknowledged as applicable rules.[131] The laws of war have an extent of use that isn't restricted to conflicts between perceived states.

In the 1949 Geneva Conventions, Common Article 1 indicates that the involved states "attempt to regard and to guarantee regard for the current Convention in all conditions." Common Article 2 determines that the Conventions "apply to all instances of announced war or of whatever other outfitted conflict which may emerge between at least two of the High Contracting Parties, regardless of whether the condition of war isn't perceived by either.[132] Common Article 3 contains specific minimum provisions to be applied in the case of armed conflict not

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[124] Cutler, Leonard. *Sident Obama's Counterterrorism Strategy in the War on Terror: An Assessment*. New York: Palgrave Macmillan, 2017.
[125] Ibid
[126] Roberts, Adam. "The Laws of War in the War on Terror." *International Law Studies* 76, no. 3 (2004): 1–56.
[127] Ibid
[128] Boon-Kuo, Louise, Ben Hayes, Vicki Sentas, and Gavin Sullivan. *Building Peace in Permanent War: Terrorist Listing & Conflict Transformation*. London; Amsterdam: International State Crime Initiative; Transnational Institute, 2015.
[129] Roberts, (2004). Op. cit.
[130] Boon-Kuo, 2015. Op. cit.
[131] Roberts, (2004). Op. cit.
[132] America RedCross. "Summary of the Geneva Conventions of 1949 and Their Additional Protocols. International Humanitarian Law," 2011.

of an international character, concentrating mainly on the treatment of persons taking no active part in hostilities. Certain other agreements, especially those concluded since the early 1990s, apply in non-international as well as international armed conflicts.[133]

During the post-1945 era, the laws of war between global and non-international armed conflict come under challenge. The reason was because of the nature of the counter-terrorist operation and the fact that they involved aspects of civil and global war.[134] Often, the war does not meet all the criteria required for the application of parts of the law governing non-international armed conflict.[135] They can also have elements that are more closely similar to international war, primarily if the terrorists operate in armed units far from their nations. The application of the law is not necessarily dependent on the formal designation of conflict as international or non-international. In some instances, the UN Security Council or particular belligerents have deemed the rules governing global armed conflict to apply even to a significant internal situation.[136]

In 1977, two Protocols strengthening to the Geneva Conventions were embraced by a global discretionary gathering to give more prominent security to survivors of both universal and interior conflicts.[137] Convention I extend security for the non-military personnel populace just as military and non-military personnel clinical specialists in global equipped clashes. Convention II explains on securities for casualties got up to speed in high-force inward clashes, for example, common wars. It doesn't have any significant bearing to such inward unsettling influences as mobs, exhibits and segregated demonstrations of savagery. Convention II extends and supplements the non-universal assurances contained in Article 3 basic to every one of the four Geneva Conventions of 1949.[138]

Terrorism fails to adhere to the laws of war, as depicted by several characteristics it exhibits.[139] First, terrorist activities and counter-terrorist military operations do not constitute armed conflict between states. Terrorist movements themselves generally have a non-state character. According to 1949 Geneva Conventions and the 1977 Geneva Protocol, military operations between a country and the enemy are not necessarily such as to bring them within the scope of application of the full range of provisions regarding the international armed conflict.[140] It does not matter whether they involve the state's armed forces acting outside its territory.[141]

Second, Counter-terror activities may expect the type of activities by a legislature against powers working inside its region, or, all the more infrequently, perhaps activities by resistance powers against an administration

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[133] Boon-Kuo, 2015. Op. cit.
[134] Leonhard, 2005. Op. cit.
[135] Roberts, (2004). Op. cit.
[136] UN, Terrorism, United Nations office of counter. "UN Global Counter-Terrorism Strategy," 2015.
[137] America RedCross. "Summary of the Geneva Conventions of 1949 and Their Additional Protocols. International Humanitarian Law," 2011.
[138] Ibid
[139] Roberts, (2004). Op. cit.
[140] America RedCross. "Summary of the Geneva Conventions of 1949 and Their Additional Protocols. International Humanitarian Law," 2011.
[141] Roberts, (2004). Op. cit.

saw to submit or supporting fear monger acts.[142] In both these cases, the contention may have more the character of civil war as particular from global war. Less laws-of-war rules have been officially applied to general society as isolated from worldwide war, despite the fact that the circumstance is presently changing in certain regards.[143]

Third, the attributes and actions of a terrorist movement may not come within the field of application even of the modest body of rules relating to non-international armed conflict. The assumption stipulated under the 1977 Geneva Protocol II is the existence of a dispute between a state's armed forces and organized armed groups.[144] The opposition group is considered to be under responsible command, exercise control over a part of its territory, and carry out sustained and concerted military operations. The protocol expressly does not apply to situations of internal disturbance and tension, such as protests and isolated and infrequent acts of violence.[145]

Fourth, the resolve of the counter-terrorist forces to observe them may also be weakened since terrorist forces often have little regard for internationally agreed rules of restraint.[146] Finally, a fundamental principle of the laws of war is that attacks should be directed against the adversary's military forces rather than against civilians. This principle can be challenging to apply in counter-terrorism operations because the terrorist movement may not be composed of defined military forces distinguishable from civilians.[147]

2.4 Policies and Strategies in the WOT

In fighting terrorism, countries allied to US have used numerous strategies. The responses range from military action, diplomatic means, cyber security, military courts and putting in place regulations. Use of force is one of the most commonly used strategies by the U.S. in the war on terror.[148] The U.S. adopted an Authorization for Use of Military Force (AUMF) on September 14, 2001. Ever since the war on terror began, thousands of allied troops have been deployed between Afghanistan and Iraq alone by the U.S. government.[149] The U.S. further engaged the military courts in the war on terror. The U.S. captured the rebels affiliated to Al-Qaeda and sent them to military prisons before presenting them to military courts. The prisoners were either dealt with in Afghanistan, taken to Guantanamo, or held against trial in other jails.

2.4.1 Use of Military

The first grand strategy is mainly concerned with a balance of global military power. It is concerned with the adequate projection by the State's military force to secure its long-term security. The second grand strategy is orientated towards working through the Bretton Woods institutions such as the World Bank and world trade

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[142] Ibid
[143] Leonhard, 2005. Op. cit.
[144] Gurski, Phil. "An End to the War on Terrorism," 2018.
[145] Ibid
[146] Leonhard, 2005. Op. cit.
[147] Roberts, (2004). Op. cit.
[148] Ruschmann, Paul, and Alan Marzilli. *The War on Terror*. Philadelphia: Chelsea House Publishers, 2005.
[149] Cutler, Leonard. *Sident Obama's Counterterrorism Strategy in the War on Terror: An Assessment*. New York: Palgrave Macmillan, 2017.

organizations.[150] The United States faces imperial overstretch prospects if it seeks to take on by itself a global war against terror without bringing its allies on board as well. It may use a limited form of deterrence strategy against states that harbor terrorists while, similarly, it will need the support of global economic institutions to rebuild failed states. [151]

The use of military forces to destroy or damage a target group's facilities or supplies became commonplace. It included; security sweeps of cities, raids on buildings suspected of harboring terrorists, the leveling of their homes, shoot-to-kill the terrorist, and the occupation and control of areas/buildings suspected of hosting terrorists. The Armed Forces are the principal guarantor of peace and security in the nation from external armed threats. The military undertakes active and passive surveillance, intelligence gathering, physical patrols, and protection of borders and other likely terrorist targets.[152]

The United States has also devised a special operations force to counter-terrorism. The squad comprises of specialized units with different roles. These forces perform two types of tasks: direct tasks such as rescuing hostages, and those involved in indirect missions such as reconnaissance in gathering critical intelligence. In Pakistan, the use of military force was also common to dismantle operations of Al-Qaeda after the 9/11 attack. The Pakistan anti-terrorism bill of March 2013 redefined terrorism and expanded government powers, including the ability to confiscate the assets of terrorist financiers. In 2014, authority was extended to law enforcement agencies; a law enforcement official above grade 15 was given the power to shoot a terror suspect, arrest suspects without bail. The military option by Pakistan involved the use of coercive security operations against suspected militants in tribal areas, i.e., fighter jets and heavy artillery and less forceful actions settled areas in settled areas. Rampant arrests, extrajudicial killings, and massacres were used and consequently created a rift between the community and security forces.[153]

2.4.2 Diplomacy

Diplomacy is critical in the war on terror. After 9/11, U.S. partnerships expanded to over 100 countries.[154] They played a crucial role in apprehending and killing suspected terrorists.[155] The U.S. significant allies in the war on terror were India, Indonesia, and Pakistan.[156] Other allies included Iraq, Yemen, Saudi Arabia, and Kenya. Contact administrations can work with their nations' police powers when they capture terrorists and

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[150] Ibid

[151] Rudner, Martin. "Hunters and Gatherers: The Intelligence Coalition Against Islamic Terrorism." *International Journal of Intelligence and Counter-Intelligence* 17, no. 2 (2004): 193–230.

[152] LaFree, Gary. "The Global Terrorism Database: Accomplishments and Challenges." *Perspectives on Terrorism.* 4, no. 1 (2010).

[153] Morin, Adrien. "Is China's Counterterrorism Policy in Xinjiang Working?" The Diplomat, 2017.

[154] Rudner, Martin. "Hunters and Gatherers: The Intelligence Coalition Against Islamic Terrorism." *International Journal of Intelligence and Counter-Intelligence* 17, no. 2 (2004): 193–230.

[155] Priest, Dana. "Foreign Network at Front of CIA's Terror Fight." The Washigton Post, 2005..

[156] Byman, (2019). Op. cit.

enroll sources.[157] The U.S. tries to improve its partners' abilities. It may help with specialized help with specific, the same number of creating world governments battling jihadis are weak.[158] Countries allied to the United States have also intensified the scope of its counter-terrorism measures by passing specific implementing rules for the counter-terrorism law.

Countries united in the fight on terrorism use regulations such as prohibitions on funds and economic resources. The EU defines 'funds' to include "financial assets and benefits of every kind" while 'economic resources' include "assets of every kind, which are not funds but may be used to obtain funds, goods or services". The information that resources are offered to perform acts that 'threaten the peace, security or stability of Somalia' or 'obstruct the delivery of humanitarian assistance' is not required to breach these protocols. Nonetheless, it is enough that one either knows or ought to have known that the recipient is Al-Shabaab or an individual included on the Somalia sanctions list.[159] War on terror saw countries sign, ratify, or accede to many of the protocols and international conventions and conventions on terrorism.

Peace negotiations has been one of the major measures employed in averting war and conflicts in Africa. Two groups in Mozambique had to make a negotiation for war to end in the country. In 1964, the FRELIMO group opposing the Portuguese colonizers were mainly using military actions. Through negotiations, a peaceful transfer was reached at and the ruling party agreed to relinquish power to the FRELIMO.[160] In 1992, there was another peace agreement signed in Mozambique between FRELIMO and REMANO.[161] Angola has made several peace accords in trying to refrain from war. In 1991, the Bicesse accord aimed at achieving a ceasefire between two Angolan parties. In 1994, Lusaka Protocol was created with an aim of strengthening the previous accord. In 2002, Luena MOU was signed between the government and UNITA in an effort to supplement the Lusaka Protocol. Despite the agreements made over the years, the country continues to be accused of massive rigging.[162]

2.4.3 Legal Responses

Most Nations have addressed the problem of international terrorism by becoming parties to international agreements on this topic. The purpose of these agreements is to establish a framework for international cooperation to fight terrorism.[163] Contracts concerning anti-terrorism have been concluded on a global as well as regional basis. Several multilateral conventions and treaties related to terrorism provide that the specified terrorist crimes shall be deemed extraditable offenses in any existing or future tradition treaties between the parties to the assembly. These conventions also provide that parties consider it as the legal basis for extradition. Besides, much multilateral

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[157] Pillar, Paul. *Terrorism and U.S. Foreign Policy*. Washington, D.C: Brookings Institution Press, 2003.

[158] Byman, (2019). Op. cit.

[159] Boon-Kuo, 2015. Op. cit.

[160] Anyona, Rosemary. *Conflict and Mediation in Mozambique and Angola*. Nairobi: Three Legs Consortium, 2019.

[161] Ibid

[162] Ibid

[163] Howard, Lawrence. *Terrorism: Roots, Impact, Responses*. New York: Praeger. 1992.

agreement includes provisions that impose mutual assistance in law enforcement obligations on the contracting nations connected with the investigation and prosecution of the specified terrorist offenses.[164]

The adoption of specific counter-terrorism legislation is critical to ensure that the planning, financing, incitement, and conduct of terrorism are criminalized. This will allow for extradition and other forms of international cooperation. It will also ensure that the criminal justice system is fully equipped to combat terrorism within the rule of law's bounds. The Basic legislative requirements to combat terrorism can be found in the international conventions and protocols related to terrorism made under the United Nations' auspices. The 1999 OAU convention on the prevention and combating of terrorism is also essential in fighting terrorism. Most countries in the region have ratified the conventions and protocols. They have also enacted anti-terrorism laws.[165]

Governments also engage measures such as tapping into private networks for suspected terrorists. In the U.S, cyber warfare is an emerging strategy that the government is using in the war on terror.[166] The NSA, in collaboration with the major telephone companies, monitors phone calls and e-mails in which either the sender or the recipient of the communication is located abroad. The content of communications suspected of being related to Al-Qaeda was scrutinized. Providers of internet services, such as social media or cloud services, are obliged to transmit the data of specific users to the U.S. authorities. Both programs are not limited to metadata and can also access the content.[167] Internet companies help in taking down terrorist content.[168]

Finances are critical to successful terrorist operations. Like any other enterprise, terrorist groups and organizations must rely on financial resources to build networks and safe havens and provide training and equipment to their operatives. Unfortunately, many parts of Africa face limited and sometimes shrinking private sector and state capacity to deliver essential social services. It has led to the dynamic development of charitable associations and non-governmental organizations to fill the gap. The work of charities and non- profit organizations in Africa is often unregulated. Individual donors are hard to identify, and funding for projects is rarely made transparent for government scrutiny.[169]

A wide range of charities affiliated with terrorist activities around the world is present in Africa. Therefore, efforts to combat money laundering and improve financial monitoring and regulation are critical issues. This includes the creation of financial intelligence units and the *necessary legislation* to make them useful. In East Africa (Kenya, Uganda, and Tanzania), national capacities to combat terrorist financing are supplemented by the Eastern and Southern Africa Anti-money laundering Group (ESAAMLG). It is based in Dar-es-Salaam. It

[164] Ibid

[165] Boon-Kuo, Louise, Ben Hayes, Vicki Sentas, and Gavin Sullivan. *Building Peace in Permanent War: Terrorist Listing & Conflict Transformation*. London; Amsterdam: International State Crime Initiative; Transnational Institute, 2015.

[166] Harris, Shane, and Nancy Youssef. "U.S. Ratchets Up Cyber Attacks on ISIS," 2016.

[167] NATO, Minchev Zlatogor, and Bogdanoski Mitko. "Countering Terrorist Activities in Cyberspace," 2018.

[168] Byman, Daniel. "Eighteen Years On: The War on Terror Comes of Age." *Combating Terrorism Center* 12, no. 8 (2019): 1–32.

[169] Ibid

cooperates with the Financial Action Task Force and the Eastern Africa Police Chiefs Co-operation Organization (EAPCCO), which cooperates with Interpol. The members of EAPCCO are; Sudan, Eritrea, Ethiopia, Djibouti, Somalia, Kenya, Uganda, Tanzania, Rwanda, Burundi, and Seychelles.[170]

2.4.4 Cooperation and Collaborations

The African Union (AU) adopted a broad counter-terror approach for Africa. In 1999, the organization adapted The Convention on the Prevention and Combating Terrorism as the first legislative framework for combating terrorism. under the legislature, member states are obliged to criminalize terror acts in their national laws.[171] The protocol recommends use of border patrols, judicial means and exchange of information in curbing terrorism.

In October 2002, the United States Central Command (CENTCOM) developed a Joint Task Force to detect, disrupt and defeat transnational terrorist groups operating in the region" and provide a forward presence in the area. The headquarters is Djibouti. Approximately 1800 US military and civilian personnel make up the Combined Joint Task Force-Horn of Africa (CJTF-HOA), which covers the land and airspace in Kenya, Somalia, Sudan, Seychelles, Ethiopia, Eritrea, Djibouti, and Yemen, as well as the coastal waters of the Red Sea, the Gulf of Aden and the Indian Ocean. The CJTF personnel trains the regions' security forces on counter-terrorism and collection of intelligence.

Regional Counter-Terrorism Conference (RCTC) of Intelligence and Security Services was established in 2004. It has the following members; Burundi, Comoros, DRC, Egypt, Ethiopia, Kenya, Rwanda, Tanzania, Sudan, Uganda, Zambia, Botswana, Djibouti, Madagascar, and Zimbabwe.[172] The conference is held every year on a rotational basis. Its Plan of Action includes; strengthening counter-terrorism cooperation, integrating technology in counter-terrorism efforts, strengthening regional security through pooling resources, exchanging information, harmonizing the legal system and operating within the law, and identifying and addressing the root causes of terrorism.

In 2004, Africa Centre for Studies and Research on Terrorism (ACSRT) was created to facilitate cooperation between member states on counter-terrorism. It provides technical and professional advice, research and analysis, developing strategy, and promoting coordination of the counterterror strategies.[173] ACSRT was established in Algiers-Algeria under section H paragraphs 19 to 21 of the African Union Plan of Action on *preventing and combating terrorism.* The center was established as a structure of the AU Commission, in conformity with the OAU convention protocol to prevent and combat terrorism. The ACSRT assists the

[170] Mwagiru, Makumi. *Towards a Security Architecture in the IGAD Region, Makumi Mwagiru (Ed.), African Regional Security in the Age of Globalization*. Nairobi: Heinrich Böll Stiftung, 2004.

[171] Byman, Daniel. "Eighteen Years On: The War on Terror Comes of Age." *Combating Terrorism Center* 12, no. 8 (2019): 1–32.

[172] Anyona, Rosemary. *Conflict and Mediation in Mozambique and Angola*. Nairobi: Three Legs Consortium, 2019.

[173] Sahan. "Al-Shabaab as a Transnational Security Treat," 2016.

Member States of the African Union in developing strategies for preventing and combating terrorism. ACSRT develops and maintains a database on a range of issues relating to the prevention and combating of terrorism.[174]

The Eastern Africa Standby Brigade (EASBRIG) was formed with an aim of intervening in emergency cases of insecurity. There is also Defence Co-operation among the East African countries. In November 2004, the EAC Sectoral Committee on Cooperation in Defence met in Mombasa Kenya to discuss a joint strategy against terrorism and develop an early warning mechanism. The committee also decided to create and harmonize the EAC standard operating procedures for disaster management and counter-terrorism.

Committee for Intelligence and Security Services in Africa (CISSA) was established in 2004 in Abuja, Nigeria. It promotes strategies to facilitate interaction among African Security Organs. Such forums continue to keep the importance of cooperation in the fight against terrorism high on the political agenda. Through them, a bond of mutual respect and interdependence has developed among the various Regional Countries.[175]

After the lifting of the arms embargo, the AU Peace and Security Council meeting in January 2007 authorized the deployment of an African Peace Mission in Somalia (AMISON) to train personnel and protect the Transitional Federal Government (TFG) and its institutions, to facilitate inter-Somali dialogue and to support humanitarian assistance. Further in 2011, creation of The African Model Law on Counterterrorism aimed at helping member states in the implementation of continental and international counter-terrorism instruments.[176]

2.5 Effectiveness of policies and strategies in the WOT

Failure by the United States government to accomplish its goals in the war on terror might have provoked individuals to join terror groups.[177] The U.S. activities expanded the motivation, both as far as complaint and voracity, for individuals to join the terrorist's positions and for the extremists to step up the pace of assaults. When the U.S. ousted Saddam's system and afterward failed to guarantee adequate economic and power, it paved way for the Sunni-Shia crack.[178] The enormous American military proximity in these Muslim terrains gave fear enrollment specialists a suffering complaint to control. A tidal wave of US dollars boosted defilement and criminal components inside and outside the legislature. Also, inadequate and degenerate state security powers gave a tolerant domain to associations occupied with illicit and dread action.[179]

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[174] Anyona, Rosemary. *Conflict and Mediation in Mozambique and Angola*. Nairobi: Three Legs Consortium, 2019.

[175] Anyona, Rosemary. *Conflict and Mediation in Mozambique and Angola*. Nairobi: Three Legs Consortium, 2019.
[176] Davis, Paul. "Deterrence & Influence in Counterterrorism: A Component in the War on Al Qaeda." Santa Monica, Calif: Rand, 2002.
[177] Goepner, Erick. "Learning from Today's Wars Measuring the Effectiveness of America's War on Terror." *Parameters* 46, no. 1 (2016): 107–20.
[178] Çetin, (2013). Op. cit.
[179] Goepner, (2016). Op. cit.

Military forces ignored the ideological aspect that served as an impetus. Counterterrorism policy left out the group of literates, urbanized, and ideologically motivated terrorists who had migrated to the urban center.[180] In Pakistan, for instance, the coercive approach has not brought about the desired results as the country continues to experience an upsurge in terrorism. Although Pakistan used repressive measures such as arrests and assassinations on SSP and LeJ terrorists, a section of these groups was excluded because their role in liberating Kashmir, they were branded as "good Taliban." These kinds of shortcomings weigh down on the efforts to get rid of terrorism.[181]

Democracy is another element overlooked in the war on terror. In the EU, despite the expansions of the mandate and powers of the European Commission in these areas, their functions are still minimal.[182] These decision-making bodies suffer a "democratic deficit. Navarro indicates that the responses failed because their development is unmoored from any substantial process of democratic accountability. Security establishments set the aims and means of current counter-terrorism policy based on their interests and values.[183] This security establishment has not sought to provide a consistent and precise definition of terrorism or fight terrorism in an evidence-based way. It has not found ground security policy in the actual problems of political violence that communities face.[184]

War on terror continues to disregard human rights concerns.[185] The scope of lives lost in apparently battling "jihadist" terrorism was commonly more noteworthy than those that have ever been lost or could have been lost because of "jihadist" terror itself. The chief focuses of these practices have been Muslim, Kurdish, and Tamil people group. In any case, the presence of this shadow framework inside the structures of government implies the potential is consistently there for these techniques to traverse to different classes, for instance, serene protestors.[186] The removal arrangement utilized regularly includes long stretches of detainment followed by protracted periods in pre-preliminary isolation jails, with limitations on correspondence among litigants and their attorneys.[187]

Kenya has been relatively stable compared to other African nations. This does not however mean that it is free of conflicts. Although cases of community crashes are minimal it continues to be a victim of terror attacks

[180] Ejime, Raphael. "Countering Modern Terrorism: Military and Other Options." *European Scientific Journal* 13, no. 32 (2017): 1857 – 1881.

[181] Ibid

[182] Navarro, Jose, and Jessica Villaverde. "The Future of Counter-Terrorism in Europe. The Need to Be Lost in the Correct Direction." *Eur J Futures Res* 2, no. 50 (2014): 21–33. https://doi.org/10.1007/s40309-014-0050-9.

[183] Ibid

[184] Boon-Kuo, 2015. Op. cit.

[185] Jenkins, Brian. "Fifteen Years on, Where Are We in the 'War on Terror'?," 2016.

[186] Simon, Jeffrey. "The Forgotten Terrorists: Lessons from the History of Terrorism." *Terrorism and. Political Violence* 20 (2008).

[187] Jenkins, 2016. Op. cit.

particularly coming from Somalia. The country has employed various measures to secure the country. The next chapter looked into details the war in Kenya and the response mechanisms it has put in place.

CHAPTER THREE

POLICIES AND STRATEGIES IN THE WAR ON TERROR IN KENYA

3.1 Introduction

The study aimed at evaluating the policies and strategies used in Kenya in response to war on terror. The previous chapter covered the notion of war on terror. It particularly focused on psychology of war on terror, laws of war and responses to war on terror. Responses used globally by other countries such as United States, Pakistan were investigated. The responses by African countries such as Nigeria, Mozambique and Angola have been examined. This chapter focuses on war on terror in Kenya. Under the chapter we shall study the responses that have been employed by the Kenyan government as well as other NGOs within the country.

Kenya has, for a long time, been a victim of terror. The acts of terror have hurt Kenya's image to the outside world.[188] The attacks are believed to have been facilitated by several factors, among them Kenya-Somali porous border, relations with western allies, youth unemployment, corruption, and historical injustices. The collapse of the Somali government in 1991 enabled insurgents to thrive in the country.[189] The fact that Kenya shares a porous border with Somali meant that the country was deemed to be affected in one way or another. Somalia also has the longest unguarded coastline in Africa, making it an ideal entry point for terrorists who thrive in Middle East countries with the dominant Muslim community.[190]

The historical injustices have played a significant role in the growth of terrorism in Kenya. The North Eastern region and Coastal region thought to host a lot of terrorist sympathizers, have for many years, complained of neglect and suppression by the central government.[191] During the colonialist rule, the North Eastern area wanted to be associated with Somalia, a plea that was rejected by the British rulers.[192] The government neglected the region by denying them development, and as if that was not harsh enough, resorted to using force to eliminate the insurgents who were growing stronger. This resulted in the Shifta war in 1963 that continued even after the country gained independence.[193]

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[188] United States Department of State. "Country Reports on Terrorism 2015 - Kenya," 2016.
[189] Cannon, Brendon. "Terrorists, Geopolitics and Kenya's Proposed Border Wall with Somalia." *Journal of Terrorism Research* 7, no. 2 (2016): 23–37.
[190] Tase, Peter. "Terrorism, War and Conflict, an Analysis into the Horn of Africa." *Academicus International Scientific Journal* 1, no. 7 (2013): 27–35.
[191] Cannon, (2016). (2004). Op. cit.
[192] Ibid
[193] Aronson, (2013). Op. cit.

Corruption in Kenya is institutionalized.[194] The national police service has topped various national and international bribery rankings for several years. Police service is the most corrupt institution in Kenya.[195] The EACC and the Judiciary also experience high levels of corruption, thus denying justice to the victims. High levels of unemployment among the youths also act as a reason why individuals may opt to join terror groups. Unemployment lures Kenyans to terror groups including, ISIS and Al-Shabaab.[196]

3.2 Kenya responses to War on Terror

Kenya has been at the forefront in the war on terror, after America witnessed the deadliest terror attack in its history. Before the 9/11 attack, Kenya had an issue with terrorism though it had not received global attention. The most lethal of its kind in Kenya happened in August 1998 where a U.S. embassy was bombed, and more than 200 lives were lost. The then al-Qaeda group leader, Osama bin Laden claimed to be behind the attack. Fast forward to 2002, al-Qaeda bombed a hotel in Mombasa, said to belong to an Israeli national killing 15 people and injuring more than 50 people.[197] The government has employed several measures to counter terrorism in the country. Commonly used response to the war on terror in Kenya has been security measures such as Operation *Linda Nchi* and *Usalama* Watch. Collaboration measures with other countries such as the US and international organizations such as the AU, UN, among others have also been employed. Preventable measures among them use of intelligence services, creation of NCTC, and community policing have been utilized.[198]

3.2.1 Use of Military

Kenya's decision to deploy thousands of KDF troops in Somalia's Jubba Valley was guided by Article 51 of the UN Charter, the Right of Self-Defense. [199]Article 51 states that 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security.' It clearly shows that its adherence to international law guides Kenya's foreign policy and implementation. Since independence, Kenya has taken a radical departure for a country that has never sent its soldiers abroad to fight. The lack of stability in Somalia has made it a haven for terrorist groups to operate their networks regionally and internationally.[200]

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[194] Ibid

[195] Human Rights Watch. "Disappearances and Extrajudicial Killings Wanted Terrorist Threats," 2015. https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police.

[196] Taşpınar, Omer. "Fighting Radicalism, Not 'Terrorism': Root Causes of an International Actor Redefined." *SAIS Review of International Affairs* 29, no. 2 (2009): 75–86.

[197] International crises group ICG. "Exploiting Disorder: Al Qaeda and the Islamic State." Special Report, 2016.

[198] Lind, Jeremy, Patrick Mutahi, and Marjoke Oosterom. "Killing a Mosquito with a Hammer': Al-Shabaab Violence and State Security Responses in Kenya." *Peacebuilding* 5, no. 2 (2017): 118–35.

[199] Otiso, Kefa. "Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery." *Kenya Studies Review* 1, no. 1 (2009): 107–31.

[200] Mogire, Edward, and Kennedy Agade. "Counter-Terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 473–491.

The Ethiopian TFG blame Al-Shabaab and the African Union Mission in Somalia (AMISOM) forces for the deterioration of security. The spillover of conflict to neighboring countries, including Kenya's grave humanitarian situation, persists in Somalia. Kenya, however, had emerged as a target for terrorist attacks well before the emergence of Al-Shabaab. With international support, Kenya had planned to move into the Somalia conflict years before October 2011. With the planned military intervention in Somalia, the GoK wanted to create a buffer zone in Southern Somalia, close to Kenya's border.[201]

Kenya was forced to intervene militarily in Somalia earlier than expected because of several cross-border kidnapping attacks carried out by attackers suspected to be Al-Shabaab targeting mainly tourists from Western countries on the Kenyan coast and aid workers refugee camp in Dadaab. [202]Tourism is a key industry, and Kenya, particularly Nairobi, is host to a large UN presence, including many international and local NGOs involved in humanitarian relief and other activities. When several Europeans were seized in the Lamu area in September and October 2011, the tourism industry was hit hard. The last straw appeared to be when two Spanish aid workers with Médecins Sans Frontières (MSF) were kidnapped in Dadaab refugee camp, near the Kenya-Somalia border, on 13th October 2011. Several days later, Kenyan troops moved into Somalia.[203]

Even though Al-Shabaab has been weakened due to Kenyan troops' incursion into Somalia, it remains a formidable adversary that understands local dynamics better than its foreign foes and can maximize its asymmetric advantage. One tactical change has already become evident. Rather than fight in the open, it has melted into the background, allowing Kenyan mechanized infantry to move deeper into its heartland.[204] Its fighters blend into the civilian population and distribute weapons. To protect its borders due to the increased terrorist threat after the 2002 terrorist attacks, the government increased security along the Kenya-Somalia border, which precipitated all the borders' sealing.

In a bilateral approach to combating international terrorism, the Kenyan and French navies collaborated in the Indian Ocean by patrolling to keep terrorists away. The patrols are geared at tightening border controls and thus prevent the entry to Kenya of terrorists linked to Al-Shabaab and Al-Qaeda through the porous Kenyan coastline. A significant drawback to this initiative is the lack of a stable government in Somalia, making it challenging to coordinate and monitor border security.[205]

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[201] Lind, Jeremy, Patrick Mutahi, and Marjoke Oosterom. "Killing a Mosquito with a Hammer': Al-Shabaab Violence and State Security Responses in Kenya." *Peacebuilding* 5, no. 2 (2017): 118–35.
[202] Lind, Jeremy, Patrick Mutahi, and Marjoke Oosterom. "Killing a Mosquito with a Hammer': Al-Shabaab Violence and State Security Responses in Kenya." *Peacebuilding* 5, no. 2 (2017): 118–35.

[203] Ibid
[204] Otiso, Kefa. "Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery." *Kenya Studies Review* 1, no. 1 (2009): 107–31.
[205] Mogire, Edward, and Kennedy Agade. "Counter-Terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 473–491.

The Kenyan government has principally relied on security operations as a way of dealing with terrorists. The use of security involves employing measures that aim at identifying, removing, or eliminating those that are suspected or proved to belong to terror groups. The first security operation conducted in Kenya was termed Operation *Linda Nchi*, meaning 'protect the country.' The operation intention was securing the country and its borders by getting the insurgents from their hideouts in Somalia. The second operation was referred to as Operation *Usalama* Watch, basically undertaken in Kenya.[206]

Operation *Linda Nchi*

Operation Linda Nchi (OLN) is the most significant security operation undertaken by Kenya in another country. The operation was launched in October 2011 by the Kenya Defence's cooperation and the Somali military forces. The operation was given the go-ahead after the abduction of two French nationalities by the al-Shabaab in September 2011. The process lasted for five months, starting on 15th October 2011 and ending on 9th March 2012. On 30th October, the Kenya Air Force (KAF) bombarded an Internally Displaced Persons (IDP) camp located outwards of Jilib town in Somalia.

Other countries started issuing travel alerts on Kenya, citing insecurity. The tourism industry being the third majority earner of foreign exchange into the country, Kenya could not risk losing in the tourism industry. Therefore, a hard decision had to be made. Kenya's invasion into Somalia was mainly accelerated by the following factors: the evolving anxieties of regional insecurity, the chronic refugee crisis on its borders, and the threat posed to the country's economy by the destabilization of the coastal regions.[207] One interviewee noted;

> Deploying defense forces in our neighboring country has helped Kenya fight terrorism. People should stop concentrating on the recent attacks that have happened in the country. In its place they should see the number of attacks has been avoided as a result of having our troops in Somalia. Though the operation *linda nchi* is no more, it helped our country in averting so many attacks especially at the coastal region.[208]

In October 2011, Kenya deployed 1500 soldiers in Somalia, marking the commencement of OLN.[209] The operation involved Kenyan troops carrying out ground and aerial attacks in Somalia. A year prior to Kenyans moving over the border, the country's foreign minister tried to gain U.S. support for the invasion plan but was rejected. The Americans questioned whether such a mission could be fruitful. It however supported other, more indirect approaches to the Al-Shabaab issue.[210] Kenya's attack proceeded without the help of its most noticeable

[206] Opon, Dan, Okoth, and Onkware. "Immigration Border Control Human Resource Challenges and Opportunities Affecting Counter-Terrorism Strategies in Kenya." *International Journal of Education and Research* 3, no. 5 (2015): 301–14.

[207] Bruton, Bronwyn, and Paul Williams. "Counterinsurgency in Somalia: Lessons Learned from the African Union Mission in Somalia, 2007-2013." *JSOU Report* 14, no. 5 (2014): 1–130.

[208] Interview with George Gatimu, staff at ministry of Interior and Coordination of National Government. January 20, 2020

[209] Cannon, (2016). (2004). Op. cit.

[210] Buluma, Godfrey. *Al-Shabaab: The Threat to Kenya and the Horn of Africa*. Carlisle Barracks, Pennsylvania: United States Army War College, 2014.

Western partners. The country, however, received support from Uganda and Somali leader following negotiations with the then Kenya president Mwai Kibaki.

By December 2011, Kenya had garnered support from Ethiopia and Uganda, with the Ethiopian military being deployed at Baidoa. By June 2012, the KDF signed an agreement to work with AMISOM forces.[211] The troops were able to capture the Kismayu after a year into the war on 28th September 2012. With little resistance, the port was secured.[212] mission to secure Kismayu port was signaled as the start of Al-Shabaab's demise,[213] though that has not been the case. After being scattered throughout Jubaland and Shebelle valley, the al-Shabaab regrouped themselves, and by July 2014, they had a force of over 4000 soldiers.[214]

The Médecins sans Frontières reported having treated over 45 injured persons, most of whom were about 31 children. At about the early morning hours on 4th November, the Kenya Naval Force (KNF) at Kiunga, an area in the Kenyan coast close to Somali-border, fired series of shots at an anchored boat that the KNF had earlier intercepted on 3rd November. The attack killed four and injured two unarmed persons. The injured and uninjured survivors were arrested and detained but were later released since they were not guilty.

On 11th November, the Kenya forces detained several persons based on their appearance like Somalis. It happened across several Pubs in Garissa, in DRC Pub and Locus Pub. Those arrested were treated inhumanely as most of them were immediately made to sit or lie down on the muddy-water, and some wore beaten severely. Subsequently, those arrested and detained without charges were released since they were found to have committed no offense. On 2nd December, the KDF targeted the Somali base at El Adde village close to Bardhere in the Gedo region. The bombardment killed four civilians and injured 35; only 9 out of the 35 injured persons were Al-Shabaab militant.

The KDF, on 4th January, detained about hundreds of Somalis in just a one-night raid in Mandera. The invasion was a follow-up on the landmine that targeted the KDF in the previous day. The hundreds of people detained were not confirmed to have qualified to be branded as suspect or guilty of the attack. This incident repeated itself on 2nd February, where about 20 suspects were also detained after the landmine attack. On 12th January 2012, the KDF burnt about 6 Somali nationals traveling from Hargardera camp to IFO camp. By the end of the operation, the Kenya security forces were accused of gross human rights abuses that included looting, beatings, rape, arbitrary arrests, and detentions.

Operation *Usalama* Watch

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[211] United Nations. "Security Council, Adopting Resolution 2111, Renews Mandate of Sanctions Monitoring Group in Somalia, but Eases Way for Domestic Troop Development," 2013.

[212] Anderson, David, and Jacob Mcknight. "Kenya at War: Al-Shabaab and Its Enemies in Eastern Africa." *Sociology* 114, no. 454 (2015): 1–27.

[213] Meleagrou-Hitchens, Alexander, and Solomon Hussein. "Factors Responsible for Al-Shabab's Losses in Somalia." *Combating Terrorism Center* 5, no. 9 (2012).

[214] Anderson, (2015). Op. cit.

After the Kenya military forces were deployed in Somalia, retaliation attacks happened in many parts of the country, among them Nairobi, Dadaab, Garissa, and Mandera. *Al-hijra* was pointed out as the local affiliate to al-Shabaab hence the attacks.[215] The Kenyan government-initiated operation *usalama* Watch in retaliation to attacks carried by the al-Shabaab in the country. This directive began in early April 2014.[216] The Anti-Terrorist Police Unit (ATPU) led the security clampdown on *Al-Hijra*. The 2014 Usalama Watch was engineered to detect and arrest those illegally staying in Kenya and subsequently persecution those said to have aided their stay or cooperated with any person(s) suspected of carrying out terror acts. On its launch, the operation had more than 6000 police officers deployed in Nairobi, particularly in the Eastleigh area.[217] One respondent added that

> The *usalama* watch helped us reduce terror cases within Nairobi. We were able to track down most of the suspects before they could carry out their attacks. We lured some to give us more information on the planned attacks and those who were responsible. Our collaboration with telecommunication firms however contributed greatly in identifying the suspects. I can confidently say that the operation was a success.[218]

The operation was regarded as a counter-terrorism strategy. Critics point out that the operation made the Somali community in Kenya an easy target.[219]A total of more than 50,000 refugees who had relocated to urban areas were targeted. The security operation led to the arrest of many refugees and asylum-seekers of different nationalities in widespread swoops, mainly in Nairobi, Eastleigh area. Initially, about 650 people were arrested in Eastleigh alone before the operation spread to other areas in Nairobi, such as South C, Kawangware and Langata.[220] The operation used to round up Al-Hijra's alleged supporters by invading the mosques and other places that Muslims would gather, such as hotels. The police also invaded residential homes at night and made discriminatory arrests. An officer at the NIS noted;

> Any operation is bound to have its strengths and its weaknesses. Of course, it expected that some people would suffer for the greater good of Kenyan citizens to be achieved. The greatest challenge we faced during the *usalama* watch operation was the hide and seek games. The majority of the perpetrators especially those of Somali origin were not easily identifiable. Once they mingled with the Kenyan Somalis, it became hard to identify them. We therefore had to use unorthodox ways such as visiting their

[215] Mwagiru, Makumi, and Kigen Morumbasi. *Countering Violent Extremism in Kenya. Vol 1: Strategic and Legal Issues*. Thirty-Three Consortium Publications on International Security, 2018.

[216] Amnesty International. 2015. Op. cit.

[217] Mwagiru, 2018. Op. cit.

[218] Interview with Luka Zidia, Investigations officer at anti-terrorism police unit. January 27, 2020

[219] Amnesty International. 2015. Op. cit.

[220] Odero, Cynthia. "Economic Asset or National Security Burden? Rethinking Kenyan Government Policies Towards Somali Urban Refugees." *International Institute of Social Studies* 14, no. 2 (2015): 1–48.

homes and demanding them to produce their identity cards. Those sheltering them had to face consequences as well. [221]

Amnesty International found out that the suspects were taken to Kasarani stadium or local police stations for interrogation. They were roughed-up and usually beaten.[222] Many complained that this happened after extortions and blackmail by police who threatened to arrest them back if they did not return to their country. The offices were also said to loot personal property such as jewels, phones, money, laptops, among others. Suspects were asked to produce identification documents, leading to extensive abuses.[223] The majority of foreign nationals, especially of Somali origin, were deported back into their country. Their fear was the drought season, as well as a high level of insecurity in Somalia.[224] Some were taken back to refugee camps where they had left insinuating deplorable conditions. At the end of the operation, more than 3000 refugees were taken back to the territories while others were deported to Somalia.[225]

Nonetheless, the operations met with criticism by human rights groups, Muslim clerics, and political leaders. They termed the process as biased and targeting a particular ethnic group and the Muslim community at large.[226] Thousands of Somalis were detained inhumanly. The operation was further challenged with the problematic nature of differentiating Kenya-Somali from the Somali migrants. About 300 persons were deported back to Somalia within the first two weeks of the operation and created Somali ethnic profiling.

There were several unexplained killings of prominent Muslim activists whose murder was connected to the ATPU.[227] Between 2011 and 2014, there were about 31 deaths in Nairobi and 12 in Mombasa due to direct counter-terror operations. About 12 deaths were in separate instances recorded as extrajudicial killing, making 55 deaths from counter-terrorism operations. A total of 8 were injured in Mombasa in 2014 alone. Within the same period of 3 years between 2011 and 2014, there were about 261 independent cases of illegal arrests and detentions in Nairobi alone and over 4,000 cases in Kenya.

IPOA found that police personnel failed to observe human rights protections and demanded bribes from the detainees ranging between $10 to $200.[228] The killings generated a climate of fear and anxiety amongst Muslim leaders of all shades of opinion: and it is difficult to avoid the conclusion that this is precisely the intention.[229] The Muslim communities in Kenya have accused the Kenyan government of Muslims' targeted

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[221] Interview with Agnes Kimani, analyst, Somali Desk at national intelligence service. January 24, 2020

[222] Amnesty International. 2015. Op. cit.

[223] IPOA. "Monitoring Report on Operation Sanitization Eastleigh, Publically Known as Usalama Watch," 2014.

[224] Otiso, Kefa. "Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery." *Kenya Studies Review* 1, no. 1 (2009): 107–31.

[225] UNHCR. "Kenya Comprehensive Refugee Programme," 2015.

[226] Amnesty International. 2015. Op. cit.

[227] Lind, Jeremy, Patrick Mutahi, and Marjoke Oosterom. "Killing a Mosquito with a Hammer': Al-Shabaab Violence and State Security Responses in Kenya." *Peacebuilding* 5, no. 2 (2017): 118–35.

[228] Ibid

[229] Anderson, 2015. Op. cit.

persecution using the counter-terror apparatus. Further indications accused the ATPU of unlawful raids with harassment and extortion within the Islamic communities. The claims cannot be said to be false considering a report in 2008 that explicitly stated the illegal transfer in persons considered to be of abuse risk in the 3rd country to which they have been transferred. Countries like Ethiopia, Somalia, and the US are frequent cases with high records of extraordinary renditions. Those renditions would have otherwise not been challenged with criticism if they were lawfully conducted.

Operation *Linda Boni*

The operation was launched in July 2015 but began in September the same year. The procedure was later renamed to Boni Enclave Campaign. It was enacted as a result of the Mpeketoni massacre in Lamu County and Garissa university attack in Garissa county. The operation involved some security agencies, including the KDF, the NPS, the AP, and the NIS.[230] The government realized (through NIS information) that terrorists who carried out the attack used the forest as their haven. Jaysh Ayman, a small section of the Al-Shabaab in Kenya, was using Boni forest as their hideout and an entry point of terrorists from Somalia into Kenya.[231] The group was behind terror attacks in Lamu and Garissa counties between 2014 and 2015.

Terrorists launched attacks on both civilians and security forces in areas near the forest. The al-Shabaab prefers the forest as they can easily access food and water from the rivers within and around it.[232] The heavy presence of the KDF in and around the forest has not made Lamu County any secure. The militia group has killed many people and caused untold suffering in Lamu. They beheaded nine locals in the region, abducted Mariam El Maawy, former Public Works P.S and killed six more at Nyongoro area, including passengers and fishermen. Many people have been displaced from their homes, left businesses, and farms citing government invasion of the forest.[233]

Military Training Strategy

The US has supported Kenya's counter-terrorism operations, which have been on the rise since 1998. Despite the high-profile cooperation between the two countries, the US views Kenya's counter-terrorism measures as inadequate. According to President Bush administration, there was little progress made by Kenya on the war on terror. In its annual *Patterns of Terrorism* report, the US State Department faulted Kenya for disbanding the Joint Terrorism Task Force established in 2004 with US funding to improve cooperative work on counter-terrorism among the police and armed forces. According to the report, the GoK did not complete the National Counter-terrorism Strategy, nor did it sensitize the country on the terrorist threat.[234]

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[230] McGregor, James. "How Kenya's Failure to Contain an Islamist Insurgency Is Threatening Regional Prosperity." *Terrorism Monitor* 15, no. 20 (2017).

[231] Walloga, Laban. "KDF Intensifies Security Operations in the Boni Forest." *Daily Nation*, 2016.

[232] Ibid

[233] McGregor, (2017). Op. cit.

[234] Opon, Dan, Okoth, and Onkware. "Immigration Border Control Human Resource Challenges and Opportunities Affecting Counter-Terrorism Strategies in Kenya." *International Journal of Education and Research* 3, no. 5 (2015): 301–14.

The US further offers free military training to Kenya.[235] Kenyan military students are allowed to study in military institutions in America through sponsorship. Kenya has a training camp in Lamu Island that is fully funded by the United States government.[236] Kenya also hosts the US military in the Eastern part of the country. The base acts as a blockade to the insurgents coming from Somalia hence helping in the war on terror.

The nature of support from the US government has been varied. It ranges from the provision of military hardware to counter-terrorism training. A press release from the CJTF-HOA secretariat indicated that "the goal, for what will be an extended period of operations in coastal and international waters between Kenyan and CJTF-HOA forces, is the integration of a variety of advanced technologies into coastal and maritime counter-terrorism plans and operations."

Operationally, CJTF-HOA covers the total airspace, land areas, and coastal waters of Kenya, Somalia, Sudan, Djibouti, Ethiopia, Eritrea, and Yemen. Other joint operations carried out were in June and July 2003 when the Kenya Navy and USS Joint Venture (HSV-XI) undertook joint coastal and interdiction operations. Other training operations were jointly conducted with the USS Jarret (FFG33) and Kenya's Shupavu in January 2004. Kenya's Defence Department and the USS Central Command signed a memorandum providing joint maritime operations at least two times a year under the US military's CJTF-HOA.[237]

According to the Kenya Navy's top commanders, it was anticipated that the training operations were to enhance both the Navy's operational and tactical capacity to protect Kenya's coastline. Ultimately, this was expected to "produce and increase Kenya's counterterrorism capability, deter cross-border movement, and create credible pressure on terrorism activities within Kenyan waters and in Somalia from the south." Apart from joint counter-terrorism training of military personnel, Kenya is also a major beneficiary of 100 million US Dollars East African Counter-terrorism Initiative (EACTI) that was launched by President Bush in 2003.[238]

Kenya received funding for police training and modernization of its communication equipment. In addition to these more visible programs, with support from the US government, the GoK became part of the Terrorist Interdiction Program (TIP).[239] Through this program, custom officials can identify terrorist suspects entering the country. The data can then be shared among states for the effective monitoring of suspected terrorists.

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[235] Lind, (2017). Op. cit.

[236] Cannon, (2016). (2004). Op. cit.

[237] Opon, Dan, Okoth, and Onkware. "Immigration Border Control Human Resource Challenges and Opportunities Affecting Counter-Terrorism Strategies in Kenya." *International Journal of Education and Research* 3, no. 5 (2015): 301–14.

[238] Anderson, David, and Jacob Mcknight. "Kenya at War: Al-Shabaab and Its Enemies in Eastern Africa." *Sociology* 114, no. 454 (2015): 1–27.

[239] McGregor, James. "How Kenya's Failure to Contain an Islamist Insurgency Is Threatening Regional Prosperity." *Terrorism Monitor* 15, no. 20 (2017).

Another important aspect of border control is the Export Control and Related Border Security Assistance project that has received substantial funding from the US government. Under this program, the GoK is provided with funds to improve border controls to prevent the transfer of weapons of mass destruction through its borders. These and other programs remain some of the most critical outcomes of bilateral negotiations between Kenya and the US in the GWOT.[240]

The establishment of the national counter Terrorism Center (NCTC) to coordinate counter-terrorism efforts and resources and create the national anti-terrorist police unit have been completed and operational. The military has also formed an anti-terrorist squad, which is currently based at Embakasi Garrison. The first group of the core elements was trained in Israel, and it's the group that is conducting the rest of the training. Other experts from Israel assist them.[241]

The enhancement of border control and surveillance by implementing the personal identification secure comparison and evaluation system (PISCES) is now operational. The establishment of a regional fusion center that coordinates intelligence and operations on terrorism in the region and international players is also functional. Establishing a well-equipped forgery detection unit at the immigration department and developing the standing operations procedures (sops) for border control points are equally applicable. [242]

3.2.2 Intelligence Services

The key to winning the battle against terrorism is winning the intelligence battle. Intelligence enables the early detection of terrorists in time for law enforcement officers or the military to act. Intelligence sharing among nations potentially discourages terrorists from operating in those countries and facilitates monitoring groups operating in the Region. Therefore, intelligence services and law enforcement agencies are essential for counter-terrorism strategies to succeed. Intelligence must be supported by effective law enforcement in conducting apprehensions and disruptions of terrorist cells.[243]

The cooperation by countries in the Horn of Africa (HOA) has realized intelligence sharing between these countries. It has enabled law enforcement agencies to combat the threat of international terrorism. To boost its counter-terrorism efforts on the diplomatic front, Kenya has ratified twelve international UN counter-terrorism conventions and protocols, which shows that the government is taking global terrorism threats seriously and does not intend to be left behind. Kenya also joined the US in the GWOT, playing a pivotal role in the HOA region by

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[240] Mwagiru, Makumi. "Contemporary Security in Africa." *Journal of The National Defence College, Kenya* 3, no. 1 (2015): 78–92.

[241] McGregor, James. "How Kenya's Failure to Contain an Islamist Insurgency Is Threatening Regional Prosperity." *Terrorism Monitor* 15, no. 20 (2017).

[242] Anderson, David, and Jacob Mcknight. "Kenya at War: Al-Shabaab and Its Enemies in Eastern Africa." *Sociology* 114, no. 454 (2015): 1–27.

[243] Buluma, Godfrey. *Al-Shabaab: The Threat to Kenya and the Horn of Africa.* Carlisle Barracks, Pennsylvania: United States Army War College, 2014.

allowing the US to use Kenya as a launching pad for counter-terrorism efforts. By being a member of the willing nations, the country has benefited from intelligence sharing.[244]

Before the 1998 terrorist attack on the US embassy in Nairobi, intelligence and law enforcement agencies failed to detect domestic and foreign terrorists freely operating within the country. The ease with which these terrorists were entering and leaving the country before the attacks raised questions about intelligence activities and law enforcement's ability and efficiency at the time. Had there been a useful intelligence and law enforcement mechanisms, terrorists who were assembling the bomb in River Road's truck would have been detected, and their actions nipped in the bud.[245]

Because of institutional corruption during president Moi's regime, a person could quickly obtain a Kenyan birth certificate, passport, national identity card, or other documents through Kenya's black market. International terrorists exploited such loopholes to enter the country disguised as immigrants, tourists, or business people.[246] In the mid-1990s and early 2000s, the Immigration Department was riddled with so much corruption. Thus, many Pakistanis and other illegal immigrants entered the country, engaging in microeconomic activities. After the 1998 US embassy bombing, the GoK fully cooperated with the US government in intelligence sharing and gave US investigators access to investigate the incident. The government also helped apprehend and hand over the suspects to US investigators to stand trial in the US.[247]

In November 2001, more than 20 people suspected of having links with Al-Qaeda were arrested in Lamu. Even though intelligence and law enforcement agencies continued to track terrorist suspects and their sympathizers in the country, it was evident that there was a missing link. It appeared that either a practical approach was not applied, or initial successes resulted from external pressure. The lack of useful intelligence and law enforcement contributed to the failure to deter the 2002 terrorist attacks and the subsequent terrorist attacks. In 2007, Abdulmalik Mohammed Bajabu, a Kenyan citizen and a protégé of Harun Fazul, was handed over to the US authorities. Abdulmalik confessed, under interrogation, to have played a role in the 2002 bombing of the Paradise Hotel in Kikambala.[248]

3.2.3 Foreign policy

To combat the threat of international terrorism, Kenya, through its foreign policy, employed diplomacy. Diplomacy helps to build political will and strengthen international cooperation. The front diplomatic exchanges

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[244] Whitaker, Beth. "Reluctant Partners: Fighting Terrorism and Promoting Democracy in Kenya." *International Studies Perspectives* 9, no. 1 (2008): 254–71.

[245] Ibid

[246] Korwa, Adar. *Kenyan Foreign Policy Behavior towards Somalia, 1963-1983*. Lanham: University Press of America, 1994.

[247] Aronson, Samuel. "Kenya and the Global War on Terror: Neglecting History and Geopolitics," in Approaches to Counterterrorism." *African Journal of Criminology and Justice* 7, no. 1 (2013): 26.

[248] Buluma, Godfrey. *Al-Shabaab: The Threat to Kenya and the Horn of Africa*. Carlisle Barracks, Pennsylvania: United States Army War College, 2014.

help promote counter-terrorism cooperation with friendly nations that serve each other's mutual interests. The fact that international terrorism has no boundaries makes it prudent for governments to reach out to their neighbors and allies to forge a multilateral approach in the fight against the threat. Diplomacy supports the other instruments of national power in numerous ways. For example, extradition treaties help in applying criminal law by facilitating the transfer of fugitive terrorist suspects.[249]

Kenya has sought bilateral and multilateral cooperation as one method of dealing with acts of terror in the country. A state must liaise with others, especially those with advanced technology such as the western and European countries. The most significant collaboration that has helped Kenya in the war on terror is with the United States. U.S. considers Kenya as a vital partner in Africa in the WOT.[250] Kenya is also one of the 69 members under the global war on terror led by the U.S. Such member countries declared their support to the U.S. government on the war on terror and, as a result, have been receiving support under the Anti-Terror Assistance (ATA) program.[251] The government also relies heavily on intelligence service, which is another unit funded by the ATA program. The intelligence body focuses on the detection and investigation of possible threats and, in accordance, advise the government on measures to undertake.[252]The intelligence services defend the interest of all individuals, be it politicians, tourists, or the general public, in ensuring credible clearance are upheld. One interviewee noted

> We have achieved this great mile in the fight against terrorism due to the international support accorded. The funds that we get from countries such as America have ensured that our forces protecting the borders are maintained. Collaboration with other countries have also helped Kenya detect terror attacks before they are launched. Their intelligence mechanisms are more advanced than ours hence the collaboration.[253]

The government mainly depends on the intelligence services of developed countries such as the UK and the U.S. Under the program, Kenya receives approximately $8 million yearly. GWOT members are required to utilize the aid in securing their borders, responding to crises, and carrying out investigations related to terror. ATA has helped Kenya come up with several units, for instance, the National Security Advisory Committee, ATPU, and NCTC.[254] The units were created to help detect, disrupt, and dissuade terror acts. Besides, they act as awareness agencies and developers of counterterrorism strategies.[255]

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[249] Aronson, Samuel. "Kenya and the Global War on Terror: Neglecting History and Geopolitics," in Approaches to Counterterrorism." *African Journal of Criminology and Justice* 7, no. 1 (2013): 26.

[250] Lind, (2017). Op. cit.

[251] Buluma, 2014. Op. cit.

[252] Pashley, Libert, and Leroy Cools. "Private Intelligence Services: Their Activities and Role in Public-Military Intelligence Strategies." *Journal of Intelligence Studies* 7, no. 1 (2017): 131–39.

[253] Interview with Dorcas Musila, staff at ministry of Interior and Coordination of National Government. January 23, 2020

[254] Whitaker, Beth. "Reluctant Partners: Fighting Terrorism and Promoting Democracy in Kenya." *International Studies Perspectives* 9, no. 1 (2008): 254–71.

[255] Aronson, Samuel. "Kenya and the Global War on Terror: Neglecting History and Geopolitics," in Approaches to Counterterrorism." *African Journal of Criminology and Justice* 7, no. 1 (2013): 26.

Following repeated threats to Kenya and the impact of these threats on the national economy and security, the Kenya initiated multilateral and bilateral initiatives to build partnerships with affected countries both inside and outside the region.[256] As part of its regional counter-terrorism initiatives, the Kenya has participated in numerous discussions under local organizations such as IGAD, the AU, the Commonwealth, and the UN. Nevertheless, the most prominent diplomatic initiative is the bilateral cooperation with the US government on improving Kenya's counter-terrorism readiness. [257]

Kenya also approached the Israeli government to obtain its assistance in rescue operations.[258] For example, after the 2002 terrorist attack in Kikambala, the GoK invited the Israeli government to investigate the incident to enhance its diplomatic front. The US and Israeli security teams were dispatched by their respective governments to team up with Kenyan counter-terrorism experts to help track those responsible for the Paradise hotel suicide bombing and an attempted missile strike on an Israeli charter jet. [259]

Kenya, through its foreign policy, took center stage internationally because of what was perceived as the terrorists' change in operations to focus on soft targets in countries where the phenomenon of terrorism had not yet been experienced. The government allowed the US to use Kenya for logistical support. It investigated terrorist incidents, which resulted from the perceived notion that Kenya was a victim of terrorism because of US interests. The US had to play a significant role in investigating the attacks. However, the Kenya government did not apply much effort to incorporating the HOA region countries in a unified regional counter-terrorism strategy because Kenya was a victim rather than a source of international terrorism.[260]

3.2.4 Regional collaborations

Kenya is a member of the international community and coalition against terrorism. Kenya is also a member of the Intergovernmental Authority for Development (IGAD) and has ratified the Algiers 1999 convention on countering terrorism. Kenya has spearheaded regionalism on terrorism as a signatory of the African Union and the United Nations. Kenya is a lead nation in regional counter-terrorism efforts; it collaborates with and participates in all international and local partners and initiatives, thus, ensuring the safety of life and property against terrorist threats and violence and providing for the regional Fusion center.[261]

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[256] McGregor, James. "How Kenya's Failure to Contain an Islamist Insurgency Is Threatening Regional Prosperity." *Terrorism Monitor* 15, no. 20 (2017).

[257] Mwagiru, Makumi. "Contemporary Security in Africa." *Journal of The National Defence College, Kenya* 3, no. 1 (2015): 78–92.

[258] McGregor, James. "How Kenya's Failure to Contain an Islamist Insurgency Is Threatening Regional Prosperity." *Terrorism Monitor* 15, no. 20 (2017).

[259] Ibid

[260] Aronson, Samuel. "Kenya and the Global War on Terror: Neglecting History and Geopolitics," in Approaches to Counterterrorism." *African Journal of Criminology and Justice* 7, no. 1 (2013): 26.

[261] Lind, Jeremy, Patrick Mutahi, and Marjoke Oosterom. "Killing a Mosquito with a Hammer': Al-Shabaab Violence and State Security Responses in Kenya." *Peacebuilding* 5, no. 2 (2017): 118–35.

Eastern Africa member states cooperate and exchange information through meetings of national leaders and officials. In 2002 a regional summit of Heads of State took place in Khartoum to endorse a resolution against terrorism.[262] In 2003, Internal Affairs Ministers from the East Africa region met in Seychelles and signed an agreement on a range of measures to combat transnational illegal activities. The deal is intended to strengthen regional cooperation to fight cross-border organized crime, terrorism, and narcotics trade. In 2004, ministers representing the ten-member states of the Eastern Africa Police Chiefs Cooperation Organization signed three agreements designed to bolster cross-border work on the extradition of criminals, the fight against terrorism, and narcotics trade. During the first EAPCCO meeting held in Kampala Uganda in 1998, an institutionalized body was set up to fight crime in the region jointly.

Within the region, Kenya has partnered with Uganda and Tanzania in this war.[263] Through an alliance, it has become easier to oust terror members from East Africa. Kenya is a central partner in the EACTI. The EACTI was announced by former US President George W. Bush in 2003 to strengthen East African countries' capacity to fight terrorism. Under the program, Kenya has participated in joint military exercises with neighboring countries in counter-terrorism readiness. As part of the EACTI, there have been joint military training in maritime and coastal border security and equipment purchase for patrol. Under the initiative, Kenya received funding to improve the NCTC and fund the joint counter-terrorism task force. The joint task force was established to improve interagency and information sharing to better target and disrupt terrorist activities in the country and the region. The task force was later disbanded in 2004.[264]

Kenya is an active member of the Partnership for Regional East Africa Counterterrorism and the AU, including on the Peace and Security Committee, and as a troop-contributing country to the AMISOM.[265] It remained engaged with the IGAD and hosted an IGAD Security Sector Program validation workshop on a countering violent extremism study. Kenya also organized and hosted a regional CVE conference as a follow-up to the White House CVE Summit. These events were Kenya's significant contributions to local capacity building. It was also selected as a beneficiary of the Global Community Engagement and Resiliency Fund.[266]

Kenya is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), which was founded in August 1999.[267] ESAAMLG assists member states in complying with international standards against funding terrorism (originating from the Financial Action Task Force (FATF) recommendations). FATF is an intergovernmental body that was founded in 1989 to set standards and promote

[262] McGregor, James. "How Kenya's Failure to Contain an Islamist Insurgency Is Threatening Regional Prosperity." *Terrorism Monitor* 15, no. 20 (2017).

[263] Ibid

[264] Lind, Jeremy, Patrick Mutahi, and Marjoke Oosterom. "Killing a Mosquito with a Hammer': Al-Shabaab Violence and State Security Responses in Kenya." *Peacebuilding* 5, no. 2 (2017): 118–35.

[265] Bruton, (2014). Op. cit.

[266] Ibid

[267] Mogire, Edward, and Kennedy Agade. "Counter-Terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 473–491.

effective implementation of legal, regulatory measures to combat money laundering and terrorist financing.[268] Some member states include South Africa, Zimbabwe, Uganda, Lesotho, Mozambique, Angola, and Zambia. One interviewee noted

> Our good relations with neighboring countries have contributed to the success on war on terror. Countries such as Tanzania and Uganda experience low cases of terror attacks. The collaboration between these governments has ensured that Al-Shabaab members are not hosted in their countries. This has helped the government efforts as it focuses on just one border and that is the Somalia-Kenya border. [269]

In 2006, Kenya, alongside Ethiopia, Sudan, Somalia, Djibouti, Eritrea, Uganda, and South Sudan, founded the Intergovernmental Authority on Development, Capacity Building Program Against terrorism (ICPAT). ICPAT was created for regional security cooperation and to build national capacity to combat terrorism in five key areas. [270] It's further mandated to promote strategic collaboration, share information and best practices, provide counter-terrorism training to law enforcers, and enhance border patrols and judicial capacity.[271]

Kenya has been actively involved in both Somalia and Sudan Peace Processes within the IGAD framework to achieve stability and functioning institutions in these countries. It is worthy to note that the peace efforts have already borne fruits with the independence of South Sudan hence bringing some stability in that region. Stability in these countries will reduce their use as potential safe havens and recruiting grounds for terrorists. However, the longstanding mistrust among the countries in the region could easily hinder intelligence sharing. The Ethiopian government has accused Kenya of allegedly supporting the rebel group Oromo Liberation Front (OLF).

3.2.5 Legislation

The country has been in the forefront in implementing measures that would help identify incidences that may trigger violent and terror acts. Use of legislation is thought to play an important role as it imposes hefty fines and other consequences to perpetrators. The legislation acts as a way of scaring individuals from being recruited or associating with others who may be representatives of terrorists. In 2002, Kenya joined other AU members in declaring war on terrorism. It happened after the United States had declared war on terror, prompting the Kenyan government to take precautionary measures.[272]

Kenya, therefore, supports the UN security council resolutions 1269 and 1373. Resolution 1269 states that states are permitted to use acts of suppression in international terrorism to maintain peace and security. Under

[268] Ibid

[269] Interview with Dorcas Musila, staff at ministry of Interior and Coordination of National Government. January 23, 2020

[270] Aronson, (2013). Op. cit.

[271] IGAD. *Alshabaab as a Transnational Security Threat*. IGAD Security sector program (ISSP) and Sahan Foundation. March 2016. P.2

[272] Record, Jeffrey. *Bounding the Global War on Terrorism*. Fort Belvoir, VA: Defense Technical Information Center, 2003.

resolution 1373, states are mandated to prevent any funds backing terrorism. Measures taken by the Kenyan government have included both military and non-military.[273] Using the instituted legislation, we are able to form the bases of cases. Before the legislations were enacted it was hard to build a strong case against an accused. [274]The country has drafted legislation to help win the war on terror. The legislation includes the 2010 Prevention of Organized Crime Act, the 2011 Anti-Money Laundering Act, and the 2012 Prevention of Terrorism Act.[275]

Anti-Money Laundering Act

Money has often been described as key to international terrorism, thus tracking is paramount to counter-terrorism efforts. As an instrument of power, the early 2000s did not enact any legislation on financial controls. However, the government then established a task force on anti-money laundering and the financing of terrorism. The task force's mandate was to review existing legislation and develop a draft of a national policy on combating the financing of terrorism. Since then, Kenya has taken significant steps towards improving its Anti-Money Laundering (AML)/Combating the Financing of Terrorism (CFT) regime via passing the Proceeds of Crime and Anti-Money Laundering (AML) Act that was signed in December 2009 and came into effect on 28th June 2010.

The Prevention of Organized Crime Act 2010 was created to prevent, investigate, and to punish organized crimes in Kenya. The act targets fundraisers, organizers, or members directly involved in organized crimes. Most of these Acts require our officers to act in conjunction with other institutions such as banks, ATPU and Kenya police. We have been successful in averting some of attacks in the country especially within the capital city.[276]

The anti-Money Laundering Act 2011 was amended in 2017 and signed by President Kenyatta. The amendment strengthens the authority of the Financial Reporting Centre (FRC) to issue instructions, directions, and rules. It enables the identification, tracing, freezing, and seizure and confiscation of proceeds of crime. Also, under the act, FRC is mandated to help in identifying the crime proceeds and prevent money laundering and bankrolling of terrorism.[277] The act stipulates that individuals not complying by the FRC instruction are liable to a fine of up to 5 million Kenya shillings. Fourteen years to life imprisonment are stated for those convicted. Further punishment includes forfeiture of assets to the state.[278]

Until April 2013, the hawala system of money transfer was unregulated. There are numerous hawala systems of money transfer operating in the country. The hawala traditional money transfer system is based on mutual trust, and sometimes transactions are made by a phone call leaving no paper trails. For example, you deposit money in the US then instruct the agents in the beneficiary country to issue the funds to the beneficiary. A

[273] United Nations. 2013. Op. cit.

[274] Interview with John Ndirangu, officer at national police service, Wajir. January 28, 2020

[275] Mogire, Edward, and Kennedy Agade. "Counter-Terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 473–491.

[276] Interview with Agnes Kimani, analyst, Somali Desk at national intelligence service. January 24, 2020

[277] Odero, Cynthia. "Economic Asset or National Security Burden? Rethinking Kenyan Government Policies Towards Somali Urban Refugees." *International Institute of Social Studies* 14, no. 2 (2015): 1–48.

[278] Mwagiru, Makumi. *Policy and Strategy in National Security: Context, Perspectives and Challenges in East Africa*. 2019. (Nairobi: Three Legs Consortium, 2019).

key component of anti-terrorism strategy should be starving terrorists of the resources they need to operate as a sign of commitment to fighting terrorism. The Central Bank of Kenya, in April 2013, introduced rules to outlaw the hawala money transfer system. The rules, seen as part of the regulator's effort to curb money laundering, require operators of cash remittance firms to register with CBK and pay Kenya shillings 5 million licensing fees in addition to maintaining a minimum core capital of Sh20 million. The CBK indicated that the regulation was meant to tighten regulation around outflow and inflows in the country.

Prevention of Terrorism Act

In 2003, the GoK published the Suppression of Terrorism Bill with broad-ranging provisions on what amounted to terrorism. The bill defined terrorism, among other things, as "the use of threat or action" where: a) the action used or threatened: (I) involves serious violence against a person, (ii) involves severe damage to property (iii) endangers the life of any person other than the person committing the action (iv) creates a serious risk to the health or safety or the public or a section of the public or (v) is designed seriously to interfere with or seriously disrupt an electronic system; (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public; and (c) the use of risk is made to advance a political, religious or ideological cause.[279]

Like most counter-terrorism legislation, the bill was described as being riddled with vague and broad parameters that open them to abuse by the State. As a result, it was met by stiff opposition from all quarters, including parliament, civil society, and international human rights organizations, which subsequently led to the bill's withdrawal pending further consultations. It took six years for the terrorism bill to be re-introduced in parliament. On 28th August 2012, Yusuf Haji, then the defense minister and acting internal security minister, tabled the Prevention of Terrorism Bill 2012 in parliament. The bill was passed by parliament, and President Mwai Kibaki assented to it on 12th October 2012.

It became the Prevention of Terrorist Act 2012, giving law enforcement agencies more powers to combat terrorism in the country. Under the Act, persons found engaging in terrorism activities leading to other persons' deaths will be imprisoned for life. Simultaneously, actions that do not result in fatalities will attract jail terms of up to 30 years. Those convicted of assisting in the commission of terrorist acts and those found in possession of property intended for the commission of the acts are on conviction liable for a term not exceeding 20 years. The Act that drew sharp criticism from Muslim community members also provides stiff penalties for membership offenses to terrorist groups, recruitment, and training.[280]

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[279] Otiso, Kefa. "Kenya in the Crosshairs of Global Terrorism: Fighting Terrorism at the Periphery." *Kenya Studies Review* 1, no. 1 (2009): 107–31.

[280] Lind, Jeremy, Patrick Mutahi, and Marjoke Oosterom. "Killing a Mosquito with a Hammer': Al-Shabaab Violence and State Security Responses in Kenya." *Peacebuilding* 5, no. 2 (2017): 118–35.

The Prevention of Terrorism Act 2012 was amended to strengthen the criminalization of financing acts of terrorism and passed in 2013.[281] Through this amendment, the Kenyan government established the police and the Financial Intelligence Unit (FIU) as the institution responsible for the collection of data and reports on terrorist activities. This amendment also formalized the process for freezing assets, deeming a person a suspected terrorist, and sharing information between government agencies. A jail term not exceeding 30 years is specified on persons who go contrary to the act.[282]

In 2014, the Security Laws (Amendment) Act (SLAA) was created to strengthen the war on terror.[283] The SLAA contained aspects of criminalizing individuals participating in training by insurgents, ensuring coordinated border control, strengthening the NCTC mandate, and involving the use of electronic evidence.[284] The act gave NCTC a legal coordinating order for counter-terrorism, public engagement on CT issues, designing and coordinating national counter- and de-radicalization strategies, training, and capacity building, and some responsibilities in aviation security. The high court ruling, however, nullified the Act in 2015.[285]

3.2.6 Community Policing

Use of community policing is another preventable measure that involves both security agencies and the general population. Community policing (CP) is a change in outlook manned by the police administrations, which are the network individuals, are entirely occupied with guaranteeing the maintenance of security. It was set up to act far in advancing equity and quality police administration.[286]CP calls for three things; network organization, change the executives, and critical thinking. CP approach emerged predominantly because of the quick change in the crime situations, which rendered most policing endeavors to be insufficient. For CP to be fruitful, rallies and open seminars ought to be led to teach the residents concerning the work of the police and about how network contribution will help reinforce the security activities.[287] One participant noted

> We get a lot of tips about possible attacks from members of the community. Some are relatives of the attackers who get concerned of their loved ones and prefer them in jail than dead. Other tips are from inside members after the deal has gone sour. These members however use means that cannot be easily retrievable. Members of the public who get suspicious of individuals within their areas or plots also tip the police. Upon follow-up, we have been able to arrest some individuals and confiscated their gadgets. [288]

In Kenya, CP started in 2003 and included merging the resources and efforts of the administration offices and the individuals in the society. One major initiative under the CP in Kenya that was introduced to fight

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[281] Aronson, (2013). . Op. cit.

[282] Ibid

[283] United States Department of State. "Country Reports on Terrorism 2015 - Kenya," 2016.

[284] Ibid

[285] NCTC, National Strategy to Counter Violent Extremism. "The Mandate of NCTC," 2016. www. counteterrorism.go.ke.

[286] Coquilhat, Jenny. *Community Policing: An International Literature Review*. New Zealand: New Zealand Police, 2008.

[287] Ibid

[288] Interview with Mariam Kwamboka, officer at national police service, Nairobi HQ . January 28, 2020

terrorism is the *Nyumba Kumi* initiative.[289] The *Nyumba Kumi* initiative was introduced in Kenya following the Westgate terror attack in 2013. The strategy was formulated in attempts to engage the community more in preventing and curbing terrorism in the area and complement CP initiatives.[290] It is a strategy of anchoring community policing at the household level. Individuals are required to form a group of 10 houses. It is borrowed from the Tanzanian Ujamaa Policy informed by the African ubuntu philosophy. Members are entrusted with oversight of community commotions and, in particular, to help lessen cases of crimes.

In situations where security issues emerge, the ten neighbors meet up to explain to them before the problems get out of control. Serious security dangers are sent to the community leaders in the village who again forward the matter to higher-level authorities.[291] Though the Nyumba Kumi Initiative is guided by principles, among other things, equal representation of members, it mainly involves the elderly members of the community. Youth do not engage in its activities, and neither are they included in matters of crime and security. Over time, this has led to a lot of friction and tension between the youth and the elders. There is a great deal of disarray concerning participation in Nyumba Kumi due to a lack of legal structures and rules. Guidelines are fundamental in checking individuals just as basic leadership.[292]

3.3 Challenges facing war on terror in Kenya

Under this section, the study focuses on the aftermaths of Kenya's responses to war on terror. The main challenge that has hindered effective response to war on terror is the retaliatory attacks. Other issues that arose from war on terror in Kenya include; extra-judicial killings, refugee's crackdown, and ethnic and religious profiling. They are discussed in detail in subsequent themes.

3.3.1 Retaliatory attacks

When Kenya introduced military means of curbing terror attacks in the country, its expectation was the dominance of peace and security. The security situation has, however, worsened, especially following the introduction of *Linda Nchi* operation.[293] The war in Somalia is mainly blamed for frequent attacks that have happened in the last few years. It is estimated that more than 200 attacks happened after KDF forces engaged in war in Somalia.[294]Global terrorism database indicates that between 2013 and 2017, Kenya has suffered 373 terror attacks. A total of 929 individual have been killed, 1,149 injured and 666 taken hostage. Major attacks orchestrated by the al-Shabaab in Kenya as retaliatory attacks include Westgate attack, Mpeketoni attack, Garissa university attack, and Dusit 2 attack.[295]

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[289] Ndono, Phylis, John Muthama, and Kariuki Muigua. "Effectiveness of the Nyumba Kumi Community Policing Initiative in Kenya." *Journal of Sustainability, Environment, and Peace* 1, no. 2 (2019): 63–67.

[290] Ibid

[291] Ibid

[292] Savage, Alexis, and Linda Lumbasi. "The Impact of Decentralization in Kenya," 2016, 20.

[293] Anderson, (2015). Op. cit.

[294] Mwagiru, Makumi. *Policy and Strategy in National Security: Context, Perspectives and Challenges in East Africa*. 2019.

[295] Ibid

In September 2013, a group of terrorists gained access to Westgate mall in Nairobi, and a shootout ensued. The aftermath was 67 causalities and a significant loss of property. Later the following year, two attacks occurred in Mpeketoni in Lamu county where insurgents hailing from al-Shabaab killed 60 people.[296] They cited historical injustices as one of the reasons for their attack. Most of the fatalities were identified as Kikuyu, whose ancestors had acquired the land through former president Jomo Kenyatta. It is said that the former president liked to reward his loyal people more so the Kikuyus. In Lamu, the president is thought to have rewarded the 'friends' due to the laxity of the locals.[297] The attacks reached a climax in 2015 when shooters attacked Garissa University, massacring around 150 students and injuring many more.[298] In 2016, the KDF base in Somalia, El-Adde, was assaulted by the al-Shabaab.

3.3.2 Extrajudicial killings

Kenya's counter-terror measures have resulted in the loss of lives. The ATPU, the GSU, Military intelligence, and the National intelligence allegedly conducted extrajudicial killings and forceful disappearances. A 2010 report by Human rights watch uncovered series of killings carried out by the Police at the border and unlawful arrests and detention and inhumane treatments.

ATPU is suspected of being behind the killings of radical imams, including Sheikh Aboud Rogo, Ibrahim Omar Rogo, and Makaburi.[299] The clerics were accused of using the Masjid Musa in Mombasa to recruit youths to join Al-Shabaab. Rogo and Makaburi had pending court cases concerning the accusations. In 2015 Human rights activists raised the alarm over the disappearances of Kenyan Somali men. They claimed that 100 men were missing from Mandera county, 50 from Garissa, 39 from Wajir county, while security forces abducted at least 20.[300]

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

Bodies of youths believed to be victims of extrajudicial killings have been found in different parts of Kenya, including Nairobi, Mombasa, and Murang'a.[301] A research conducted by the Human Rights Watch between November 2013 and June 2014 documented 10 cases of extrajudicial killings and 10 cases of enforced

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[296] Guardian, The. "Terror in Westgate Mall: The Full Story of the Attacks That Devastated Kenya," 2013..

[297] Anderson, (2015). Op. cit.

[298] BBC News. "Kenya Attack: 147 Dead in Garissa University Assault," 2015.

[299] Human Rights Watch. "Disappearances and Extrajudicial Killings Wanted Terrorist Threats," 2015.

[300] Ibid

[301] Ibid

disappearances, mainly in Nairobi. The Kenya National Commission on Human Rights (KNCHR) is the body mandated by the constitution to investigate and report on human rights observance in Kenya and take appropriate measures to redress human rights violations. Allegedly that Kenya's security agencies are behind 25 extrajudicial killings and 81 enforced disappearances.[302]

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

Families of missing people have searched for them in prisons and police cells. In contrast, some have sought the help of religious and political leaders, registered complaints with the KNCHR, and others use social media to try and locate their loved ones. According to Amnesty International, government authorities usually deny knowledge of missing people, and in some cases, those seeking information and accountability from the security agencies have been intimidated or harassed.[303]

An Al Jazeera documentary aired in 2014, on extrajudicial killings in Kenya, revealed that ATPU police officers assassinated terror suspects. They said they were ordered to do so by the Kenya's National Security Council since police failed to produce sufficient evidence to prosecute terror suspects. In the same year, the then county commissioner, Nelson Marwa, confirmed the reports when he complained that courts hardly prosecuted terrorists in the area.[304] However, the government came out to deny these allegations.

3.3.3 Refugees crackdown

The counter-terror effort of the Kenyan State led to the acceptance of refugees moving from terror incidences and insecurity in Somali. After the influx of refugees from Somalia in 2006-2010, there were reports of abuses of asylum seekers' rights and refugees' homes by the Kenya Police. There were records of inhospitable police cells used to detain asylum seekers due to overcrowding, maltreatments, and other elements of poor living conditions. The refugees are often continually detained without charging them to a court or securing their release on bail. Between 2008 and 2009 alone, about hundreds to thousands of persons were refouled back to Somalia despite Somalia's insecurity and the risk of persecution and loss of freedom of the returnees.

The government of Kenya has been using forceful transfer of individuals and refugees suspected to be involved in terror activities. In 2007, at least 90 people believed to be involved in terror activities were arrested in the then North Eastern province and were rendered to Somalia and Ethiopia; they included Kenyans, Somali nationals, and Ethiopians. The same year, Mohammed Abdulmalik, a Kenyan, was arrested

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[302] Ibid
[303] Amnesty International. 2015. Op. cit.
[304] Mwahanga, Stanley. "Police Issue Shoot to Kill Order on Terrorism Suspects." *Standard*, March 26, 2014.

in Mombasa for allegedly planning to conduct bombings in Kenya. At the Jomo Kenyatta International airport, he was handed over to USA personnel who rendered him to Djibouti, where he was held at the USA's military base before being rendered to Afghanistan and later on moved to Guantanamo Bay where he is imprisoned to date.[305]

Kenyan politicians and government officials have continually blamed insecurity on the country's refugee population, which the UN estimates are over 80% Somali.[306] In December 2012, in a decision aimed at curbing terrorism, the government issued a directive to relocate all urban refugees to Dadaab and Kakuma refugee camps. However, in July 2013, a ruling by a Kenyan High court declared the plan illegal and violated the rights of refugees and their dignity. Another government directive was soon issued and implemented. The 2014 Anti-terrorism law limited the number of refugees residing in Kenya to 150,000. A five-judge bench in February 2015 declared the clause to be unconstitutional as it violated Kenyan laws and international treaties.[307]

In 2014, Kenya expelled 359 Somalis to Somalia, including at least three registered refugees, 28 Ethiopians were also expelled, 6 Ugandan asylum seekers were arrested, and returned to Uganda, while a total of 412 refugees were relocated to Kakuma and Dadaab refugee camps. Those expelled had foreign identity documents, with some claiming that their identity documents were confiscated or destroyed following their arrests by police officers who wanted bribes in order to secure their release. Expelling the refugees breached the principle of non-refoulment provided for in international law as well as article 2 (3) of the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa.[308] UNHCR stated that Kenyan authorities denied them access to detainees in the cell as well as at the airport to identify registered refugees and asylum seekers, and it is still unclear how authorities decided whom to charge and whom to deport without charging.[309] Though Kenya is mandated by international law to host the refugees the issue of national security should preface this mandate when it comes to the decision to repatriate or keep them.

3.3.4 Religious and Ethnic Profiling

Islamophobia has heightened as the war on terror progresses. There is no publicly available evidence that Prevent policy has prevented the act of "terrorism."[310] The war on terror has almost entirely focused on Muslim populations, in effect amounting to a form of racial profiling. As such, it has fueled the Islamophobic perception that Muslims have a problem of "extremism." It has also encouraged the idea that Muslim community leaders are responsible for policing their communities.[311] Kenya's broader strategy to prevent Al-Shabaab attacks involves

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[305] Ibid

[306] UNHCR. "Kenya Comprehensive Refugee Programme," 2015.

[307] Human Rights Watch. 2015. Op. cit.

[308] Bruton, (2014). Op. cit.

[309] UNHCR. 2015. Op. cit.

[310] Kaufmann, Mareile. *Ethnic Profiling and Counter-Terrorism: Examples of European Practice and Possible Repercussions*. Berlin: LIT, 2010.

[311] Ibid

measures to identify and remove individuals who are in the country illegally, continuing a form of 'ethnic security mapping' and profiling.

The government, in many instances, has held the Somali community collectively liable for the actions of its criminals and terror suspects. As was in 2011, when the government ordered an audit of all Somali properties and assets alleging that Somali business people were using proceeds from terrorism and piracy in the Somalian coast to invest in the real estate of Kenya.[312] The *Usalama* Watch launched in 2014 mainly targeted Somalia.[313] The police and the KDF conducted the 2014 Operation *Usalama* Watch without search warrants in Mombasa and Nairobi, particularly in areas inhabited by ethnic Somalis and Muslims. It created a perception that it was an ethnic and religious profiling operation.

According to IPOA, the operation violated the principles of equality and non-discrimination despite the need to carry out a nationwide operation since some terror suspects trace their origins in the country.[314] IPOA found that police personnel failed to observe human rights protections and demanded bribes from the detainees ranging between Kenya shillings 1,000 to 20,000. Victims reported exploitation by military forces and police who cited a lack of identity cards. Individuals were detained without appearing in court beyond the 24 hours legal limit provided for in the constitution. The people arrested during the operation were detained for several days in different cells without food and access to their lawyers.[315]

3.3.4 Challenges arising from KDF rehatting to AMISOM

Though a big gamble, the decision in October 2011 to deploy thousands of KDF troops in Somalia's Gedo region to wage war on Al-Shabaab unilaterally bore fruits. Several gains were made including the liberation of several towns like Kismayu and Hoosingow. After rehatting into AMISOM, KDF has faces challenges like falling into AMISOM mandate. Waiting for AMISOM bosses to give authority to conduct offensive attacks took time and this slowed down KDF progress in Somalia. Al Shabaab were conducting sporadic attacks using guerilla tactics which required prompt response. There is need to rethink AMISOM mandate to accommodate this threat dynamic[316] The other problem was mutual support by other AMISOM contributing countries. This was blamed for the Elade attack where KDF lost almost the entire Company. In this case ETHIOPIA TROOPS failed to give KDF support due to lack of proper coordination in command and communication.[317]

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[312] World Bank rules out piracy cash in Kenya property boom.www.businessdailyafrica.com/cxe7g6/index.html Retrieved 2, September 2016.

[313] IPOA. "Monitoring Report on Operation Sanitization Eastleigh, Publically Known as Usalama Watch," 2014.

[314] Ibid

[315] Ibid

[316] Uhuru Kenyatta, statement at the AMISOM Summit, Djibouti, February 28, 2016, available at www.president.go.ke/2016/02/28/

[317] Ibid

CHAPTER FOUR

A CRITICAL ANALYSIS OF KENYA'S POLICIES AND STRATEGIES ON THE WAR ON TERROR

4.1 Introduction

This chapter critically evaluates the policies and strategies in Kenya's response to the war on terror. Data was collected by the use of both primary and secondary means. Primary data was collected by the use of questionnaires and interview guide (Appendix I) security personnel in NIS, ATPU, and NPS in Kenya. Secondary data was from newspapers, articles, books, and reviewed journals.

4.3 Policies in the war on terror

Policies must never be based on laws that are contrary to the constitution or which offend its letter and spirit.[318] The respondents were asked to indicate their level of agreement on the given statements. They pertained to the use of policy in the war on terror. The respondents strongly agreed that the national security council guided them in adapting defense policies. The defense policies are made after wide consultations with different security institution.[319] They agreed that they worked hand-in-hand with other countries in fighting terrorism in the country. In 2014, Kenya partnered with mission forces mainly comprised of Ugandan forces in fighting terror groups in Somalia. The Somalia government also collaborated with the AMISOM and KDF in chasing the al-Shabaab.[320]

The respondents agreed that they responded quickly to threats in the country before they could escalate. Intelligence officers get tips of planned attacks in the country. The attackers who have withdrawn from terror activities provide vital information that help us forestall possible attacks.[321] They agreed that they cooperated with other authorities in times of emergency such as terror cases. Foreign policy guided them in peace restoration within their borders and outside territories. They were undecided whether they had power through the economic policy to ensure that terrorism did not thrive through money laundering. Several policies were being used to curb terrorism in the country. They noted the existence of defense policy and its role in reducing and controlling terror. Other polices indicated included foreign policy and economic policy.

Defense Policy

The respondents noted that defense policy was the common tool employed in the fight against terrorism. Kenya has a defense policy that guides all sectors of security, including the military.[322] One respondent through an interview noted

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[318] Mwagiru, Makumi. *Policy and Strategy in National Security: Context, Perspectives and Challenges in East Africa*. 2019. (Nairobi: Three Legs Consortium, 2019).

[319] Interview with George Gatimu, staff at ministry of Interior and Coordination of National Government. January 20, 2020

[320] Ibid

[321] Interview with Ahmed Mohamed, Special collections officer at anti-terrorism police unit. January 27, 2020

[322] Mwagiru, Makumi. *Policy and Strategy in National Security; Context, Perspective & Challenges in East Africa*. 1st ed. Three-Legs Consortium, 2017.

We are always governed by policies created by the government of Kenya. The constitution of Kenya stipulates measures that the ministry is supposed to follow to curb terrorism in the country. We have been following those measures to help us reduce cases of terror all over Kenya.[323]

On matters relating to defense policy, the Cabinet Secretary (CS) is the chief advisor to the president. It is the work of the CS to ensure the creation of defense policy.[324] Another respondent added that

The military policy, as stipulated under Article 240 (6)b has mainly been utilized in the war on terror. When our officers were sent to Somalia, this policy was implemented in guarding our country. Cases of use of military force are, however, not recommended as our first resort. We have tried working with intelligence services in the country and outside as well to detect terror attacks cases before they occur and subvert them.[325]

The military policy does not stand on its own and is mandated by the defense policy. The national security council has to authorize the creation and implementation of any policy under the defense sector.

Foreign policy

Kenya's foreign policy outlines how the country will interact with other countries, politically, militarily, socially, and economically. It is chiefly concerned with the boundaries between the exterior setting outside the country and the local setting, with its variety of sub-national sources of influence. Foreign policies are designed to help protect a country's national interests, national security, ideological goals, and economic prosperity. The aforesaid can occur as a result of peaceable collaboration with other countries. Generally, there are three determinants of foreign policies in any given state; leadership, goals and power. These have both local and global impact. Under section 8(1)a of article 238(1) of the national defense policy, the foreign policy is included Yes but there exists a foreign policy document that you must read and analyze!! And then for the purposes of this chapter, read it and the defence policy together and work out whether there is or is not a disengagement between the two.]. The section stipulates that "the defense and protection of the sovereignty and territorial integrity of the republic.[326] It responds to threats emanating from outside the country's territories. Section (1) b and c indicate that KDF should collaborate with other agencies in an emergency and should restore peace in any area in Kenya experiencing conflict.[327] It was noted by one respondent that

We always coordinate with other sectors, particularly the ministry of foreign affairs, to undermine the occurrence of attacks in our country. We have had so many cases occurring in areas bordering Somalia because of our porous border in the region. Our foreign ministry has not been able to come up with a conclusive agreement with the government of Somalia on what needs to be done.[328]

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[323] Interview with Capt. Kamau, analyst, Department of Military intelligence, KDF. January 21, 2020

[324] Mwagiru, 2017. Op. cit.

[325] Interview with Maj Oyolo, Special operations team, Ranger Batallion based in Hulugho. January 22, 2020

[326] Mwagiru, M, H Njoroge, and M Makumi. *Where We Are Now: Commentary, Perspectives, and Issues on Kenyas Defence White Paper (2017)*. Three Legs Consortium, 2019.

[327] Ibid

[328] Interview with Capt. Kamau, analyst, Department of Military intelligence, KDF. January 21, 2020

Sectors need to cooperate to win the war on terror.[329] It is mandatory of the foreign policy to cover all emergencies and disasters that occur from outside the country and have an effect on the peace of the nation.[330] Internal conflicts are also classified under foreign policy if they are deemed to distress the peaceful coexistence that Kenya has with other countries. In complying with regional and international security relations, nations may create buffer zones to protect their sovereignty. This is done inside their own land resulting in the creation of no man's land.[331] Kenya created a buffer zone with Somalia to uphold its peace accords.

This response pointed out to the importance of A foreign policy and a diplomatic strategy in the war against terrorism.

Economic policy

Kenya does not have a well outlined economic policy to cater to the war on terror. Resources are paramount when a government decides to engage in any form of defense of its territory. One respondent said

> We cannot have our security personnel engage in war anyhow. Considerations are made beforehand. They cater to essential needs such as food shelter and clothing to luxuries such as entertainment. Concerns for their loved ones are also made in case an officer gets injured or dies in the line of duty. Economic policy is, hence fundamental when deliberating on the security of the country.[332]

Mwagiru, quoting Napoleon, says that an army cannot march on an 'empty stomach'.[333] Without a functional economy, functional national security can exist. Resources should be utilized in a manner that national security is enhanced. The rational allocation of resources to security departments determines whether or not the security of a nation prevails.[334]

4.4 Strategies in the war on terror

Strategies are only created after policies have been enacted. Strategies can, therefore, not exist devoid policies.[335] The respondents were asked to indicate the level of agreement to the given statements on strategies used on the war on terror in Kenya. The respondents agreed that they had have implemented a team approach that had been effective in the war on terror. They had an effective intelligence service that detects threats in the country. They further agreed that they had a counter-terrorism strategy that incorporated patrols and screening. They were undecided whether they had ready personnel to respond to cases of terror in the country. whether they implemented policies to subvert terror attacks.

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[329] Mwagiru, Makumi. "Contemporary Security in Africa." *Journal of The National Defence College, Kenya* 3, no. 1 (2015): 78–92.
[330] Mwagiru, 2019. Op. cit.
[331] Mwagiru, (2015). Op. cit.
[332] Interview with Maj Oyolo, Special operations team, Ranger Batallion based in Hulugho. January 22, 2020
[333] Mwagiru, Makumi. *Policy and Strategy in National Security; Context, Perspective & Challenges in East Africa*. 1st ed. Three-Legs Consortium, 2017.
[334] Ibid
[335] Ibid

From the interview responses, it was clear that the use of military strategy was common. Many respondents indicated the utilization of military strategies in the war on terror in Kenya. Other strategies used included diplomatic strategy and economic strategy.[336] From the model of grand strategy, three pillars-diplomacy, economy, and military, ensure its stability.[337] The grand strategy would destabilize if one fails to exist or if overlooked in place of the rest.[338]

Military strategy

A country cannot endure without the military as it is an imperative component of national power. In the olden days, threats were thought to come from an outside enemy, and therefore military played a significant role in protection.[339] Threats posed by terrorism have changed the traditional picture as terror groups can emanate internally. In Kenya, dangers posed by terror groups in the country have continued to outweigh those from outside. Internal threats are considered more lethal as they may weaken a state in its survival in the external setting.[340] The respondents were in favor of the use of military strategies to subvert acts of terrorism in the country. One respondent indicated that

> We have to employ military strategy from time to time, depending on the lethality of the situation. In tackling terrorism, these groups are not here for a negotiation. They come to maim with no fear or favor. This shows how inhuman they are, and thus, we have to use similar tactics only that we have to be extra careful and better equipped.[341]

Diplomatic strategy

According to Mwagiru, 'diplomacy is the handmaiden of foreign policy.'[342] The created foreign policy is implemented through a diplomatic strategy. A diplomatic approach has to be put in place to outline how such an occurrence is handled. This is due to an anticipation of collision with external territories. However, the diplomatic strategy has to be guided by the country's foreign policy; thus, the two are intertwined. One respondent indicated 'each security docket has its strategies for handling insecurities in the country.[343] The respondent was backed by yet another who said

> Sometimes, the mandate of one security sector overlaps the other. Through collaborations, we can know how to relate with other countries as well as respond to threats. Nonetheless, not all threats have to be handled militarily, and in such cases, the ministry of foreign affairs takes charge.[344]

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[336] Interview with Maj Maina, senior Analyst Department of Military intelligence, KDF. January 21, 2020

[337] Mwagiru, 2017. Op. cit.

[338] Mwagiru, Makumi. *Grand Strategy in Kenya: Concepts, Context, Process and Ethics*. Edited by Humphrey Njoroge. Volume 1. Thirty-Three Consortium Publications on International Security, 2017.

[339] UN, Terrorism, United Nations office of counter. "UN Global Counter-Terrorism Strategy," 2015.

[340] Mwagiru, 2017. Op. cit.

[341] Interview with Dorcas Musila, staff at ministry of Interior and Coordination of National Government. January 23, 2020

[342] Mwagiru, 2017. Op. cit.

[343] Interview with Maj Maina, senior Analyst Department of Military intelligence, KDF. January 21, 2020

[344] Interview with Bob Kisukwa, Analysis at national intelligence service. January 24, 2020

Diplomacy is the instrument of power that builds political will and strengthens international cooperation.[345] Diplomatic exchanges promote counter-terrorism cooperation with friendly nations that serve each other's mutual interests. International terrorism has no boundaries and requires governments to reach out to their neighbors and allies to forge a multilateral approach in the fight against this threat.[346] Diplomacy supports the other instruments of national power in numerous ways. For example, extradition treaties help in the application of criminal law by facilitating the transfer of fugitive terrorist suspects. Intelligence sharing among nations potentially discourages terrorists from operating in those countries and facilitates the monitoring of groups operating in the region.

4.5 Effectiveness of policies and strategies on the war on terror

The respondents noted that though some policies had been effective, generally, the war on terror continued to be a burden to the country. The use of military strategies in Kenya has been a significant effort in the fight against Al Shabaab. The terror group has its critical operations inside Somalia. The Kenya government, in conjunction with AMISOM, was thought to have weakened the organization in 2013 when it captured Kismayu, its primary source of income at the moment. However, the destructions that emerged after that have outweighed the need for the invasion. According to one respondent, a military strategy should be minimized. He said

Since Kenya invaded Somalia in an effort to fight terrorism, cases of attacks in the country have increased. This is an indication that the military strategy has failed completely. It is high time that the government starts thinking of better policies and strategies to put in place.[347]

It was noted that public participation was an essential element in helping draft better policies that would result in implementable strategies. Having a system for policy formulation and implementation can help strengthen the strategies.[348] One respondent indicated

We have *ad hoc* policies that lead to the creation of strategies with weak bases. It is vital to incorporate the views of all citizens instead of enacting policies behind closed doors. The citizens know what is happening in the group and are likely victims of attacks. It is hence crucial to listen to them.[349]

The respondents cited several challenges as hindrances to the enactment of policies and deployment of policies hence affecting the end goal, which is the eradication of terror in Kenya. The majority cited corruption, limited resources, and lack of political will as the main limitations to winning the war on terror. One respondent said

For good policies to be created, corruption has to be eliminated. Some people benefit either directly or indirectly from terror group activities. Some of these people are in government, and they play critical roles

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[345] Anyona, Rosemary. *Conflict and Mediation in Mozambique and Angola*. Nairobi: Three Legs Consortium, 2019.

[346] Interview with Maj Maina, senior Analyst Department of Military intelligence, KDF. January 21, 2020

[347] Interview with Ahmed Mohamed, Special collections officer at anti-terrorism police unit. January 27, 2020

[348] Mwagiru, 2017. Op. cit.

[349] Interview with Maj Maina, senior Analyst Department of Military intelligence, KDF. January 21, 2020

in policymaking. How do you expect them to create policies that will fight the vice when they are orchestrated in it? [350]

The respondent raised an important point on how corruption can cripple a state due to a few greedy individuals. Corruption in many developing countries has been as a result of poor governance and greed among the ruling party.[351] The respondent was backed by yet another who complained of a lack of political will in drafting better policies to help eradicate terrorism. He noted

> Politicians can make or break the country. They make laws and pass the bill as they deem fit. The majority are, however, only convinced through handouts to pass or fail certain motions. Terror groups have not only connections but also enough money to buy such politicians.[352]

The way to measure this effectiveness is not just by the number of attacks but also going back to the people who are largely affected by terrorism, the citizens along the Kenya-Somali border and finding out if the policies and strategies adopted have made the situation better in terms of attacks and relations with their neighbors in Somalia. This is the feedback that is supposed to happen during the implementation stage of policy making.

4.6 Summary

Chapter four focused on the analysis of policies and strategies in response to the war on terror in Kenya. From the findings, it's clear that policy creation and enactment have been a slow process. As a result, strategies have not been strictly emphasized. Thus, policies and strategies have not been very effective in fighting terrorism.

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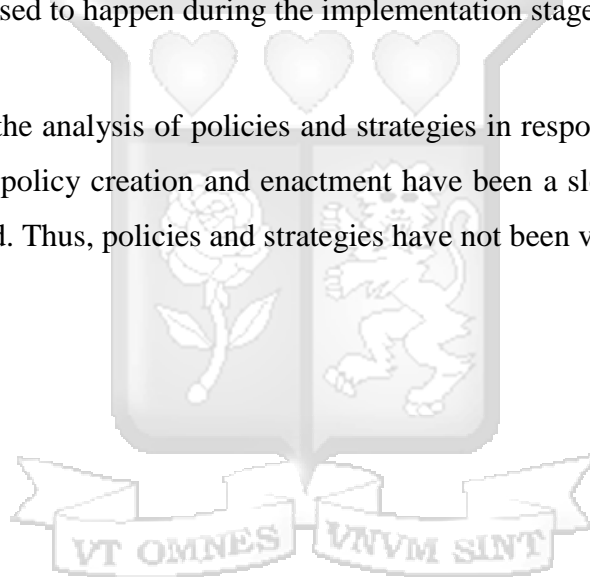
[350] Interview with Luka Zidia, Investigations officer at anti-terrorism police unit. January 27, 2020

[351] Morgenthau, Hans, and Thompson Kenneth. *Politics among Nations: The Struggle for Power and Peace*. Beijing: Peking University Press, 2005.

[352] Interview with Agnes Kimani, analyst, Somali Desk at national intelligence service. January 24, 2020

CHAPTER FIVE

CONCLUSIONS

5.1 Introduction

The chapter presents the discussion, conclusion, and recommendations of the study findings. They are based on the study's objectives, which are; to examine the emergence of war on terror, to explore the possible approaches to response to the war on terror, to explore the war on terror in Kenya and its response and to critically analyze the strategies and policies used in war on terror in Kenya.

5.2 Summary of Findings

5.2.1 War on terror

War on terror was a popularized term after the 9/11 attack in America. The United States declared war on any terror group particularly those led by Osama Bin Laden. Ever since, the US have been engaged in war with terror groups in Afghanistan, Iraq and Iran. Psychologist Krugalanski does not term war on terror as a conventional war. The laws of war as stipulated in the 1949 Geneva Convention mainly points to observances when war erupts. The rules pertain to protection of POWs, wounded and sick, civilians and the humanitarian personnel. Basing on these laws, it is noted that terrorism does not meet any of them. Fighting terrorism doesn't therefore qualify as war though countries allied to US still refer to the battle as war on terror up to date.

5.2.2 Approaches to the war on terror

Different countries all over the world have engaged several measures in their war on terror. Measures not followed by the war on terror as is in the conventional war are pointed out. Conventional war would involve a state with another. This is different from terrorism where organizations that thrive within a country attacks the same country or another country. Further, conventional war is aimed at bringing down the enemy on his knees while terrorism means to instill fear and to destroy nations with different opinions from the terrorists. Numerous responses to the war on terror have been studied. The research has looked at responses employed by various countries such as US, China, European union and Pakistan.

The responses range from military action, diplomatic means, cyber security, military courts and putting in place regulations. The use of force has been the common response to war on terror in many nations. The aftermath of war on terror has been found to be detrimental in most cases. The massive American military presence in these Muslim lands gave terror recruiters an enduring grievance to manipulate. Corruption was also incentivized across the participants nations. Military forces ignored the ideological aspect that served as an impetus. Democracy is another element overlooked in the war on terror. Finally, war on terror has been blamed on ignorance of human rights. The prisoners of war, civilians and humanitarians have been murdered in many cases under the guise of war on terror.

5.2.3 War on terror in Kenya

The study establishes that responses used by Kenya in its war on terror have mainly been military based. Security measures being the main response that has been employed by the government includes the famous Operation *Linda Nchi*, Operation *Usalama* Watch and Operation *Linda Boni*. Collaboration with other states and international organizations has also been highlighted as a typical measure by the Kenyan government. Other responses used are legislation and community policing particularly the eminent *nyumba kumi* initiative. Kenya has also involved collaboration with other countries such as the US and international organizations such as the AU, UN, among others. Other means include the use of intelligence services, the creation of NCTC, and community policing.

The Kenya's government responses to war on terror has been marred by a number of challenges. The main challenge that has hindered effective response to war on terror is the retaliatory attacks. Other issues that arose from war on terror in Kenya include; extra-judicial killings, refugee's crackdown, and ethnic and religious profiling. It is clearly therefore that the responses used have not been effective in plummeting terrorism in Kenya. Under the next chapter, the study looks at the policies and strategies that the country can employ in the war on terror.

5.2.4 Policies and strategies in war on terror in Kenya

Findings have indicated that Kenya has been employing preexisting policies and strategies in the war on terror. War on terror has forced states to make policies "on the run".[353] Kenya fight on terrorism was marred by the unclarity on policies pertaining to diplomacy. Further was the problem on strategies to implement the policies thus complicating the war on terror. The defense policy together with the foreign policy have been relied upon by the Kenyan government in fighting terrorism. The defense and security departments are governed by policies created by the government of Kenya through the constitution. Following the measures to help us reduce cases of terror all over Kenya. As stipulated under Article 240 (6)b, military policy has mainly been utilized in the war on terror. It is an important policy in guarding the country especially when an outside enemy is unforeseen. The

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[353] Mwagiru, Makumi, and Kigen Morumbasi. *Countering Violent Extremism in Kenya. Vol 1: Strategic and Legal Issues*. Thirty-Three Consortium Publications on International Security, 2018.

military policy does not stand on its own and is mandated by the defense policy. The national security council has to authorize the creation and implementation of any policy under the defense sector.

Foreign policies are intended to help ensure a nation's national advantages, national security, ideological objectives, and financial success. The mentioned can happen because of peaceable participation with different countries or through misuse. Under section 8(1)a of article 238(1) of the national defense policy, the foreign policy is included. The section stipulates that "the defense and protection of the sovereignty and territorial integrity of the republic.[354] It responds to threats emanating from outside the country's territories. It was found that different ministries coordinated to weaken the occurrence of attacks in our country. It is mandatory of the foreign policy to cover all emergencies and disasters that occur from outside the country and have an effect on the peace of the nation.[355]

It was established that Kenya does not have an elaborate economic policy. Resources are paramount when a government decides to engage in any form of defense of its territory. For security personnel to engage in war they have to put several things into considerations. They cater to essential needs such as food shelter and clothing to luxuries such as entertainment. Concerns for their loved ones are also made in case an officer gets injured or dies in the line of duty. Without a functional economy, functional national security cannot exist. Resources should be utilized in a manner that national security is enhanced. The rational allocation of resources to security departments determines whether or not the security of a nation prevails.[356]

It was established that military strategy was an imperative component of national power. Threats posed by terrorism have changed the traditional picture as terror groups can emanate internally. In Kenya, dangers posed by terror groups in the country have continued to outweigh those from outside. Internal threats are considered more lethal as they may weaken a state in its survival in the external setting. It was noted that Kenya deployed military strategy from time to time, depending on the lethality of the situation. It was found out that a diplomatic approach has to be put in place to outline how such an occurrence is handled. This is due to an anticipation of collision with external territories. However, the diplomatic strategy has to be guided by the country's foreign policy; thus, the two are intertwined.[357]

5.3 Conclusions

The study concludes that the Kenyan government has heavily relied on military policy and strategy in its war on terror. The government deployed military forces at the Kenyan borders where terrorists were thought to gain entry. Since the enemy in question were of thought to be of Somali origin, the government strategies targeted areas that harbored the individuals from Somalia especially the refugee camps. Nonetheless as war progressed so

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[354] Mwagiru, Makumi. *Policy and Strategy in National Security: Context, Perspectives and Challenges in East Africa*. 2019.
[355] Ibid
[356] Ibid
[357] Pashley, Libert, and Leroy Cools. "Private Intelligence Services: Their Activities and Role in Public-Military Intelligence Strategies." *Journal of Intelligence Studies* 7, no. 1 (2017): 131–39.

did the tactics by both the Kenyan government as well as the al-Shabaab groups. As Kenya employed the military strategy, the al-Shabaab responded by the same strategy. More deployment eventually led to the al-Shabaab's recruitment of not only the Somali militants but also Kenya ones.

Policy and strategy cannot be separated while regarding national security. Policy making involves the creation of laws, setting of standards and decision making. Policy or strategy making begins with identifying strategic objectives, that is, the long-term goals to be sought, this then leads to the creation of laws and policies and the formulation of an implementation strategy. Without implementation, the policy itself is not of much use. The process of policy and strategy making starts with identifying a problem, then the agenda setting where different aspects of the policy are deliberated by different stake holders. After that, a policy is then adopted after approval by relevant authorities like the parliament or cabinet. The government of Kenya, through the parliamentarians should make bills that recommend on the best policies and strategies to incorporate to reduce terror attacks in the country.

Further, the study concludes the Kenyan government does not have an official policy regarding counter terrorism in Kenya. There are however legislation addressing the threat. The Prevention of Terrorism Act 2012; the Security Laws (Amendment) Act, 2014; the Proceeds of Crime and Anti-Money Laundering (Amendment) Act 2017 are laws that focus on addressing violent extremism through policing, money laundering controls, intelligence gathering, and prosecution. The CVE strategy adopted in 2015 now complements these security-focused counterterrorism measures with a framework for CVE measures, which include the provision of employment options, business opportunities and life skills, among other interventions, aimed at reducing youth vulnerability to violent extremism. The government should consider involving the citizens in creation of policies to avoid ad hoc policies. Since the members of communities are the likely victims, they may give opinions based on facts.

It can also be concluded that cases of attacks in the country have increased. The use of military strategies in Kenya has been a significant effort in the fight against Al-Shabaab. The terror group has its critical operations inside Somalia. The Kenya government, in conjunction with AMISOM, was thought to have weakened the organization in 2013 when it captured Kismayu, its primary source of income at the moment. However, the destructions that emerged after that have outweighed the need for the invasion. This is an indication that the military strategy has failed completely. It is the high time that the government starts thinking of better policies and strategies to put in place.

It is clear that when the task is left on a particular sector, it tends to focus on particular policies and strategies and ignore the rest. All the ministries should therefore consider working together in drafting necessary policies and strategies for the war on terror. The ministry of interior and coordination of national government should consider adopting the grand strategy. Such a step would see to it that the government balances between the military policy, foreign policy and economic policy. Resultantly, it would move smoothly towards making defense, diplomatic and economic strategies to help fight terrorism.

5.4 Recommendations

The study findings make the following recommendations:

i. The government of Kenya, through the parliamentarians should make bills that recommend on the best policies and strategies to incorporate to reduce terror attacks in the country.

ii. The ministry of interior and coordination of national government should consider adopting the grand strategy. Such a step would see to it that the government balances between the military policy, foreign policy and economic policy. Resultantly, it would move smoothly towards making defense, diplomatic and economic strategies to help fight terrorism.

iii. All the ministries should consider working together in drafting necessary policies and strategies for the war on terror. It is clear that when the task is left on sector, it tends to focus on particular policies and strategies and ignore the rest.

iv. The government should consider involving the citizens in creation of policies to avoid ad hoc policies. Since the members of communities are the likely victims, they may give opinions based on facts.

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APPENDICES

Appendix I: Questionnaire

Introduction

My name is Ruth Kelly, a Masters student from Strathmore University. I am currently carrying out an academic research study as part of a requirement of the Master's degree. The purpose of the research is to critically analyze the policies and strategies that have been put in place to fight terrorism in Kenya. I would appreciate you taking few minutes to fill this questionnaire. The data collected from this research will be used for academic and research purposes only. Your participation is completely VOLUNTARY and ANONYMOUS. The information will be kept strictly CONFIDENTIAL. For any inquiry, kindly call me on 0723822006 or email ruth.kelly06@gmail.com.

Section I: Policies on War on Terror

To what extent do you agree with the following statements on response to war on terror. Use a scale of 1-5 where 1=strongly disagree, 2=disagree, 3= undecided, 4= agree and 5= strongly agree.

	1	2	3	3	5
We respond quickly to threats in the country before they can escalate					
We are guided by the national security council in adapting defense policies					
We cooperate with other authorities in times of emergency such as terror cases					
The foreign policy guides us in peace restoration within our borders and outside territories					
We work hand in hand with other countries in fighting terrorism in the country					
We have power through the economic policy to ensure that terrorism does not thrive through money laundering					

i.   Which specific counter terrorism policies are you familiar with?

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……………………………………………………………………………………

ii.   How is the implementation of these policies in your sector in response to war on terror?

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……………………………………………………………………………………

Section II: Strategies on War on Terror

iii.   Which specific strategies have been used to fight or eradicate terrorism?

………
……………………………………………………………………………………

To what extent do you agree with the following statements on response to war on terror. Use a scale of 1-5 where 1=strongly disagree, 2=disagree, 3= undecided, 4= agree and 5= strongly agree.

	1	2	3	3	5
We have an effective intelligence service which detects threats in the country					
We implement policies to subvert terror attacks					
We have a counter terrorism strategy which incorporates patrols and screening					
We have ready personnel to respond to cases of terror in the country					

We have implemented a team approach which has been effective in war on terror					

iv.   Describe the implementation of strategies your sector in response to war on terror

………

………………………………………………………………………………………

Section III: Effectiveness of policies and strategies

v.   Do you believe the current strategies and policies implemented to fight terrorism are working?

If yes, how

………

………………………………………………………………………………………

If No, Why

………

………………………………………………………………………………………

vi.   What are the existing gaps even after strategies and policies have been employed?

………

………………………………………………………………………………………

vii.   In your own opinion, what would be the best means of eradicating terror in the country?

………

………………………………………………………………………………………
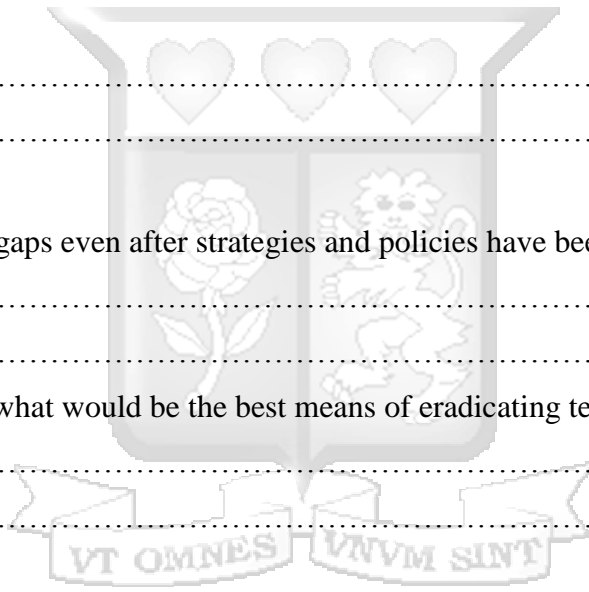
Appendix II: Interview Guide

Questions

i.   Which specific anti-terror policies and strategies are you aware of?

ii.   Which of those policies and strategies are being implemented in your sector?

iii.   Who do you think is responsible for implementing these policies and strategies?

iv.   How effective are these strategies and policies?

v.   What challenges have you met in implementing the anti-terror policies and strategies in your sector?

vi.   How do you think these challenges can be mitigated?

vii.   What would be the best means of eradicating terrorism in Kenya?

Appendix III: Ethical Clearance

Strathmore
UNIVERSITY

21st April 2020

Mrs Kelly, Ruth
ruth.kelly@strathmore.edu

Dear Mrs Kelly,

RE: Policies and Strategies in Kenya's Response to the War on Terror: A Critical Evaluation

This is to inform you that SU-IERC has reviewed and **approved** your above research proposal. Your application approval number is **SU-IERC0762/20.** The approval period is **21st April 2020 to 20th April 2021.**

This approval is subject to compliance with the following requirements:

i.   Only approved documents including (informed consents, study instruments, MTA) will be used
ii. All changes including (amendments, deviations, and violations) are submitted for review and approval by SU-IERC.
iii. Death and life threatening problems and serious adverse events or unexpected adverse events whether related or unrelated to the study must be reported to SU-IERC within 72 hours of notification
iv. Any changes, anticipated or otherwise that may increase the risks or affected safety or welfare of study participants and others or affect the integrity of the research must be reported to SU-IERC within 72 hours
v.   Clearance for export of biological specimens must be obtained from relevant institutions.
vi. Submission of a request for renewal of approval at least 60 days prior to expiry of the approval period. Attach a comprehensive progress report to support the renewal.
vii. Submission of an executive summary report within 90 days upon completion of the study to SU-IERC.

Prior to commencing your study, you will be expected to obtain a research license from National Commission for Science, Technology and Innovation (NACOSTI) https://oris.nacosti.go.ke and also obtain other clearances needed.

Yours sincerely,

Dr Virginia Gichuru,
Secretary; SU-IERC

STRATHMORE UNIVERSITY INSTITUTIONAL
ETHICS REVIEW COMMITTEE
(SU-IERC)

2 1 APR 2020

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**Ce: Prof Fred Were,
Chairperson; SU-IERC**

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Email info@strathmore.edu www.strathmore.edu

Appendix IV: NACOSTI Permit

REPUBLIC OF KENYA

NATIONAL COMMISSION FOR
SCIENCE, TECHNOLOGY & INNOVATION

Ref No: **940806**

Date of Issue: **18/August/2020**

RESEARCH LICENSE

This is to Certify that Miss., RUTH MULE KELLY of Strathmore University, has been licensed to conduct research in Nairobi on the topic: Policies and Strategies in Kenya's Response to the War on Terror: A Critical Evaluation for the period ending : 18/August/2021.

License No: **NACOSTI/P/20/6165**

940806

Applicant Identification Number

Director General
NATIONAL COMMISSION FOR
SCIENCE, TECHNOLOGY &
INNOVATION

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