

**COUNTER-TERRORISM STRATEGIES AND HUMAN RIGHTS
PROTECTION IN KENYA, 1998-2019**

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DECLARATION

This research project is my original work and has not been presented for a degree in any other University.

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DEDICATION

This project is dedicated to my wife Christine and children Diana, Brenda and Malcolm.

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To my family, a very big thank for the support you extended to me during the period of the course. Special thanks and appreciation go to my employer, the Parliamentary Service Commission and especially the Clerk of the National Assembly for allowing me to enroll and pursue the course.

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It is my hope the study will contribute positively in counter-terrorism that upholds the fundamental human rights.

TABLE OF CONTENTS

DECLARATION	ii
DEDICATION	iii
ACKNOWLEDGEMENTS	iv
TABLE OF CONTENTS	v
LIST OF TABLES	viii
LIST OF FIGURES	ix
LIST OF ABBREVIATIONS AND ACRONYMS	x
OPERATIONAL DEFINITION OF TERMS	xi
ABSTRACT	xii
CHAPTER ONE	1
INTRODUCTION	1
1.1 Background to the Study.....	1
1.2 Statement of the Problem.....	9
1.3 Objectives of the Study.....	10
1.4 Research Questions	10
1.5 Significance of the Study	10
1.6 Scope of the Study.....	11
1.7 Limitations and Delimitations.....	12
CHAPTER TWO	13
LITERATURE REVIEW	13
2.1 Introduction.....	13
2.2 Literature Review	13
2.2.1 Counter-Terrorism Measures in Kenya	13
2.2.2 Allegation of Human Rights Violation during Counter-Terrorism Measures	15
2.2.3 Counter-Terrorism Upholding Human Rights	18
2.3 Theoretical Framework.....	22
2.3.1 Regime Theory	22
2.3.2 Theory of Change Approach.....	24
2.4.1 Conceptual Framework.....	26

CHAPTER THREE	28
METHODOLOGY.....	28
3.1 Introduction.....	28
3.2 Research Design.....	28
3.3 Study Area	28
3.4 Target Population	29
3.5 Sampling Procedure and Technique.....	30
3.6 Sample Size.....	31
3.7 Data Collection Instruments.....	32
3.7.1 Interview Schedule	33
3.7.2 Questionnaire	33
3.8 Pre-testing	34
3.9 Validity and Reliability of the Instruments.....	35
3.9.1 Validity	35
3.9.2 Reliability.....	35
3.10 Data Collection Procedures.....	35
3.11 Methods of Data Analysis.....	36
3.12 Ethical Considerations	37
CHAPTER FOUR.....	38
PRESENTATION AND ANALYSIS OF DATA AND DISCUSSION.....	38
4.1 Introduction.....	38
4.2 Response Rate	38
4.3 Demographics of the Study.....	39
4.3.1 Gender.....	39
4.3.2 Organizations, Period and Experience of the Respondents	40
4.3.3 Respondents Experience in Counter-Terrorism and Human Rights	42
4.4 Counter-Terrorism Strategies.....	44
4.4.1 Organisation-Based Counter-Terrorism Strategies	45
4.4.2 Government Counter-Terrorism Strategies.....	47
4.4.3 Security Counter-Terrorism Strategies	51
4.5 Allegations of Human Rights Violation during Counter-Terrorism Operation	55
4.5.1: Are there Human Rights Violation in Counter-Terrorism Measures?	57
4.5.2 Extent to Which Counter-Terrorism Measures Violate Human Rights....	58

4.5.3: Are there Human Rights Violation in Counter-Terrorism Measures?	60
4.5.4 Right against Discrimination. Religion, Race or Ethnicity.....	61
4.5.5 Allegations of Extra-Judicial Killings	63
4.5.6 Allegations of Terrorising, Arrest, Detain, Arrest, Search and Kill of Innocent Citizens.....	64
4.5.6 Challenges in Counter-Terrorism Operations	65
4.6 Counter-Terrorism Measures Upholding Human Rights	69
4.6.1 Recommended Counter-Terrorism Strategies that Respect Human Rights.....	70
4.6.2 Human Rights Practices that Government can adopt to Counter- Terrorism	71
4.6.3 Remodeling Counter-Terrorism Operations to be Human Rights Sensitive.....	73
4.7 Conclusion	77
CHAPTER FIVE.....	79
SUMMARY, CONCLUSION AND RECOMMENDATIONS.....	79
5.0 Overview.....	79
5.1 Summary	79
5.1.1 Counter-Terrorism Measures	79
5.1.2 Counter-Terrorism Measures that Uphold Human Rights.....	80
5.1.3 Counter-Terrorism Strategies that Promote Human Rights.....	80
5.2 Conclusion	81
5.3 Recommendations	82
5.4 Recommendations for Further Studies	82
REFERENCES.....	83
LIST OF KEY INFORMANTS	90
APPENDICES	85
APPENDIX I: WORK PLAN.....	85
APPENDIX II: INTERVIEW SCHEDULE.....	86
APPENDIX III: QUESTIONNAIRE	87
APPENDIX IV: BUDGET ESTIMATES	91
APPENDIX V: RESEARCH PERMIT	92

LIST OF TABLES

Table 3.1: Target Population Matrix.....	30
Table 3.2: Sample Size Determination	32
Table 4.1: Gender of Informants and Respondents	40
Table 4.2: Cross Tabulation of Organisation and Period in the Organisation.....	41
Table 4.3: Cross Tabulation of Organization and Experience in Counter Terrorism, Human Rights and Security.....	43
Table 4.4: Organization Based Counter-Terrorism Strategies	45
Table 4.5: Government Counter-Terrorism Strategies	47
Table 4.6: Security Counter-Terrorism Strategies.....	52
Table 4.7: Counter-Terrorism Measures Upholding Human Rights	69
Table 4.8: Counter-Terrorism Strategies Government Adopt to Respect Human Rights	70
Table 4.9: Human Rights Practices that Government can Adopt to Counter-Terrorism	72

LIST OF FIGURES

Figure 2.1 Conceptual Framework.....	27
Figure 4.1: Response Rate	39
Figure 4.2: Increased Human Rights Violation in Counter-Terrorism Measures	57
Figure 4.3: Counter-Terrorism Measures that Violate Human Rights.....	59
Figure 4.4: Right against Discrimination Religion, Race or Ethnicity Violated.....	62
Figure 4.5: Allegation of Extra-judicial Killings	63
Figure 4.6: Security Law (2014) used to Terrorise, Detain, Arrest, Search and Kill Innocent Citizens.....	64
Figure 4.7: Importance for Government to adopt counter-terrorism practices that promote human rights protection.	71

LIST OF ABBREVIATIONS AND ACRONYMS

AU	African Union
AP	Administration Police
ATPU	Anti-Terrorism Police Unit
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women.
CCTV	Closed-Circuit Television
CNN	Cable News Network
EACJ	East African Court of Justice
EU	European Union
EC	European Commission
GDP	Gross Domestic Product
GTTR	Global Terrorism on the Rise
JTTF-K	Joint Terrorism Task Force-Kenya
INTERPOL	International Criminal Police Organisation
ISIS	Islamic States of Iraq and Syria
KDF	Kenya Defence Force
MRC	Mombasa Republican Council
NCTC	National Counter -Terrorism Centre
OAU	Organisation of African Union
UNDOC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council

OPERATIONAL DEFINITION OF TERMS

This study adopts the following operational definition in the context of the study:

Counter-terrorism: It consists of tactics, techniques and strategies employed by government, military and security agencies to combat or prevent terrorism (OSCE ODIHR, 2008).

Counter-terrorism laws: These are legislations giving judicial, prosecutorial and law enforcement authorities the competences needed to counter terrorism (Shinn, 2014).

Human Right: This is a basic freedom which is believed to belong to every person despite of their gender, race, religion or colour. It belongs to a person from birth until death (Viljoen, 2017).

Human Rights Violation: Any act committed that contravenes the letter and spirit of the Universal Declaration of Human Rights which can be in the form of arbitrary deprivation of life; torture, cruel or degrading treatment or punishment; slavery and forced labour; arbitrary arrest or detention.

Human rights complain strategies: Refer to measure to reduce or mitigate the terrorism threats while enhancing or upholding human rights protection.

National Security: National security is the ability for state to ensure its existence through any necessary means such as diplomacy, economic and political power.

Terrorism: It is the act of creating fear to persons either by coercion or violence, in order to achieve a goal.

ABSTRACT

Many counter-terrorism measures enacted by states have been criticized for violating human rights. This study sought to assess the Kenya's counter-terrorism framework to ascertain whether the established counter-terrorism measures violate or adhere to the protection of human rights. The specific objectives focused on, firstly, to evaluate counter-terrorism strategies used by Kenyan authorities to reduce the propensity of terrorism. Secondly, to investigate the allegation of human rights violations committed during the implementation of Kenya's counter-terrorism measures. Third, to analyze counter-terrorism strategies that can promote human rights protection in Kenya. The study used two theories. The regime theory was used to analyze the domestic and international strategies used in counter-terrorism and the theory of change approach to analyze carrot and stick measures of counter-terrorism that violate human rights as well as strategies that uphold human rights protection. This study adopted an exploratory research design to assess the counter-terrorism measures and alleged human rights violations in Kenya. The target population was the national security organs, counter-terrorism agencies, civil societies championing human rights protection, security enforcers and watchdog bodies. The sample of 200 respondents and informants was drawn from the National Assembly, Ministry of Interior and Coordination of National Government, the Kenya National Commission on Human Rights, the International Federation for Human Rights, UN Counter-Terrorism Centre and Amnesty International Kenya. A stratified and purposive sampling technique was employed in selecting the respondents and informants during the study. While the respondents completed questionnaires that yielded quantitative data, the informants provided qualitative data. Collected data was analyzed using both quantitative and qualitative approaches and presented using simple descriptive statistics and narratives. Content, thematic and theoretical analysis was then employed. The findings of the study established that there were various stick and carrot counter-terrorism strategies used by organizations, Government and security apparatus in Kenya. These strategies are faced by a number of challenges. A number of those measures violate human rights. There are however, some counter terrorism strategies that uphold human rights. The counter-terrorism strategies that the Government can adopt in respect of human rights include youth empowerment and employment, enhance surveillance and intelligence gathering, stop renditions and use of force, proper investigations, uphold human rights and rule of law and public education, awareness and participation. The study recommends to the Government to adopt counter-terrorism strategies that promote human rights protection. Further, the study recommends that the Governments needs to create public awareness and participation in counter-terrorism strategies and introduce measures to build public confidence in its efforts to fight terrorism.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Terrorism has existed over several centuries. It is considered that the term terrorism was first used during the French Revolution (Crenshaw 1981). Commonly flaunted causes or drivers of terrorism include issues revolving around western civilizations, ideologies and culture that seem to be at odd and clashing with other cultures, especial the Islamic cultures (Huntington, 1992). Other causes include advent of globalization, religious differences and the never-ending Israeli-Palestinian conflict. Further, there is the ever increasing competition among superpowers, including the United States of America (USA) and Russian, especially in the invasion of Afghanistan. There are other more personal or individual-based reasons for terrorism. This includes: Frustration and deprivation of goals, existence of negative ethnic or racial identity, and narcissistic rage among communities and moral disengagement among the youth that feel disenfranchised.

The following types of terrorism have emerged over the ages. They include: First state-sponsored terrorism which mostly enjoys state support of powerful government officials. It is usually practiced by government or quasi-government personnel against its own people, other people or in support of international terrorism. Secondly, there exists the so-called dissent terrorism which involves terrorist groups, which have rebelled agitations against the existing regime. Usually, the motivation or intention of such terror groups is to seek de-legitimization of the existing government and maintain status quo of state insecurity. There exist other types of terrorism. These include: Left and Right Wing where groups perpetuating it are

rooted in certain political ideology and side or not side with the government. Religious terrorism is yet another form of terrorism. This involves terrorist groups with extreme religious motivation. They are occasionally indoctrinated and radicalized along extreme religious beliefs such as jihadist and crusaders.

Beyond the types stated above, there is terrorism believed to be triggered by criminal tendencies perpetuated by terrorists aiming at aiding crime. Foreign terrorism executed by terror gangs domiciled and originating outside the state where the terror act is committed, domestic terrorism involving acts of terror committed by nationals against their own state. Further, there is ideological terrorism and ethno-nationalist terrorism. Finally, the new and emergent type of terror is cyber-terrorism which is carried within the cyber space. This involves the use of computer and internet network and all tools associated with computers to harm or shut down targeted infrastructures.

Although terrorism has occurred over ages, the most significant terror attack of the 21st century occurred in the USA on 11th September 2001. This attack on the world superpower brought worldwide attention to the impact of terrorism. It raised the need for counter-terrorism in the world (Fisher, 2013). This culminated in global war on terror. The September 11 attack on the World Trade Center in New York ushered in a series of terrorism activities that occurred all over the world, in Latin America, Europe and Asia. Africa is no exception to terrorism as the terror occurrences by extremist groups have made their presence felt in the region (Hills, 2006). Those terrorist groups operate both locally and regionally in more than 15 countries. Bachmann (2012) identifies Europe, USA, France, Afghanistan, Syria,

Pakistan, Nigeria, Cameroon, Somalia and Kenya as some other countries that have experienced widespread terrorism.

To deal with increasing incidences of terror attacks, governments all over the world have tried various strategies and approaches in an attempt to manage and de-escalate acts of terrorism. According to Seidenberg (2003), counter terrorism strategies can assume many different ways. One way is countering terrorism as equal to warfare that is done by military intervention as in the case of United States of America war on terror against Al-Qaida, Israel Army versus the Hamas, Nigeria forces versus Boko Haram and Kenya Defence Forces (KDF) versus Al-Shabaab. The second way is considering terrorism as crime to be handled by the criminal justice system by investigating, arresting, preferring charges against the alleged criminals and sentencing the same if found guilty. Another way of countering terrorism is by adopting strategies that reduce radicalization such as empowerment, economic development, job creation and political co-options into government. Empirical studies point out, however, that the most trusted counter-terror stratagem is suppression, Lutz & Lutz, (2011). Other strategies which do not employ repression and are considered to be sensitive to human rights protection include: Intelligence gathering and dissemination, improved physical security around individual and key installations, assault of terrorist sources of finances, enactment of law and international regimes on counter-terrorism. Other strategies may involve state cooperation with groups that use force, reforms and concession of hardliners among many more. In general, Lutz & Lutz, (2011) argues that there are many counter-terrorism strategies that are available to security agencies and governments, but none of those strategies is a “magic bullet” that will work to eradicate situations of terrorism once and for all in isolation.

The European Union (2008) outlines several sweet carrot and painful stick counter terror measures that influence the decline of terrorism. The sweet carrot measures include: Cooptation of groups that use force into the state's political process, accommodation and, sometimes, offering softer sentences for terror suspects who disclose information on terrorism or their past activities. Having dialogue with terrorist groups is considered another move. The painful stick strategies are: Identification of terror suspects, arrests, and imprisonment of terrorists, killing of terrorists, dismantling terror cells, isolating members of terrorists' groups and blocking the sources of funds for funding of terrorist activities. Further, the government may decide to destroy terrorists' safe havens in total. It may also demolish training camps. These painful stick measures are called repression measures (European Union, 2008).

In deep introspection of the classification offered by Seidenberg (2003) and European Union (2008), we conclude that there are two approaches to countering terrorism. These are isolation and engagement (Lederach, 2017). Isolation fundamentally proposes a strategy where terror suspects are identified, targeted and eliminated. Engagement denotes an approach that requires increased contact, discussion and discourse with terror groups. (Lederach, 2012). Tactical utilization of those strategies is promising to offer better approach to eradication of terrorism.

Many approaches to reduce terrorism employed immediately after the September 11th (9/11), attack in the United States were designated as 'listing'. These were mainly captured under the dictum of global war on terror. Isolation made considerable success in elimination Al-Qaida and other terror groups. But isolation

never eradicated terrorism entirely because many other groups emerged. The emergence of more terror groups called for severe militant strategies to deal with them. Unfortunately, the employment of more repressive tactics increased instances of human rights violations. Human rights activists have condemned those counter-terrorism measures arguing that the war on terror cannot be won by violating human rights of innocent citizen alleged as terror suspects.

In recent years, the debate on counter-terrorism and human rights has been the subject matter for scholars, researchers and practitioners of international relations. Those think-tanks have cogitated the possibilities and efficiency of using force while upholding human rights. The argument is premised on the fact that the United Nations Security Council (UNSC) is mandated to maintain international peace and security among its members by exercising use of force. It also mandates states to undertake all counter-terrorism measures it desires under her jurisdiction since matters of internal affairs are not subject of international law. But the UNSC is also obligated to ensure protection of human rights and fundamental freedoms are observed throughout counter-terrorism operations. It has, therefore, formulated guidelines on how states are to implement counter-terrorism measures in a manner that respects human rights. On 28th September 2001, it adopted Resolution 1373 (2001) that confers obligations to member States to respect human rights on counter-terrorism measures (UNSC, 2013). UNSC resolutions (1998, 1999 and 2001) aims to mainstream counter-terrorism strategies such as intelligence-sharing and foreign and national policies are aligned to existing international conventions on terrorism. The United Nations Security Council also advocates for national laws and regulations that criminalizes terrorism with extreme sentences (Talmon, 2005). It is aimed that such measure will promote human rights protection.

Many at times, government, military or police-led operations by any of their names or nature have involved the use of force; where terror suspects are apprehended, imprisoned and, sometimes, killed. This is sometimes made legitimate in the existing state legal framework. It is argued that when the military or the police use force, they use excessive force which violates human rights. The excessive use of force in both internal and external operations has received widespread criticism. There have been numerous allegations leveled against counter terror activities under the cover of war on terror.

The common acts of human rights violation reported include: Forced disappearance, excessive use of force, extra-judicial killings, and exposing suspects to degraded human treatment, arbitrary arrests, holding in solitary confinement and torture. Some of those accusations of human rights violation have been reported by both local and international media stations. In addition, human rights organizations such as Human Rights Watch and Amnesty International and other civil society organizations have unswervingly accused the military and security apparatus for committing gross human rights abuses in their reports. Although military and police authorities have strongly denied and disassociated themselves with those claims, it is not clear if all counter-terrorism measures violate human rights or there those that are human rights compliant. In most cases, the counter-terrorism agencies denied any sort of wrongdoing and absolved themselves from any allegation of human rights violations. Upholding of human rights is expected in any security operation.

According to West (2005); a number of states have adopted counter-terrorism strategies that respect human rights by providing legal frameworks and mechanisms that effectively and independently enforce and uphold the rule of law. However, only 14 States have fully implemented counter-terrorism legal frameworks that respect human rights. West (2005) also advocated for the introduction of laws and legal measures to control the manufacture, arms trade and proliferation of arms.

UNSC Resolution 1566 defines terrorism as any criminal act that provokes fear to the public or group of persons or coerces a government to abstain from any act. This implied that States consider non-violent activities that threaten the basic human rights as terrorist acts (Coolsaet, 2010). Adherence to international human rights law (IHRL) still remains one of the agendas for the Security Council in combating terrorism. Member states have an obligation to uphold human rights in their implementation of Resolution 1373 (2001), (Sandler, 2015).

Human Rights Watch (2015) requires international community to universally respond with legal regulations despite the increased global threat on international peace and security. Traditionally, the international legislative process faces the inadequacy to fully implement universal human rights obligations. Each State enjoys equal sovereignty under the UN membership and, therefore, as a primary actor in the international system, a State has the right to decide on its own internal matters independently without any external interference (OHCHR, 2014). With this in play, the UN as an international organization, whose survival relies on each member State total compliance, adoption, ratification and implementation of the given treaties, is faced with a challenge in coming up with uniform solutions to counter-terrorism in

the world as different States have their own vested interests in the whole process termed as 'National Interests'.

One of the pertinent and contemporary discourses in international affairs is the dichotomy between countering terrorism and respect for international human rights obligations as envisioned in the Office of the United Nations High Commission for Human Rights (OHCHR) and other subsequent human rights watch groups. Despite this debate, human rights protection while enforcing counter-terrorism measures ought to be subject not to violate the Right Against Discrimination based on either race, religion or ethnicity, has trickled down from the UNSC body to the African Union's Peace and Security Council, IGAD and then to the Kenyan Parliament (Senate and National Assembly) all in one accord trying to find the definite definition of terrorism (Magogo, 2017).

The Kenyan Parliament in 2014 passed the Security Laws (Amendment) Bill to counter increased terrorist attacks within its borders and neighbouring countries such as Somalia, Uganda, Tanzania and Ethiopia. Since 16th November 2011, when the Kenya Government began the Operation Linda Nchi, there has been a spike in the number of terror attacks (Mogire & Mkutu Agade, 2011). In January 2016, Al-Shabaab claims to have killed more than one hundred KDF soldiers in El-Adde, a military camp in Somali (Anzalone, 2016). Despite various failed attempts by the Kenyan Government to have terrorism legislation, it continuous to rely on existing legal regime envisioned in the 13 International Conventions and treaties on counter-terrorism. It is in this context that this study investigated the extent to which counter-terrorism measures uphold the protection of human rights in Kenya.

1.2 Statement of the Problem

Amnesty International Report (2010) alleges that counter-terrorism measures in Kenya discriminate persons on the basis of race, ethnicity and religion. Civil societies have also raised concern over the increased extra-judicial killings, use of force by uniformed personnel, ethnic profiling and the right to access judicial services by the offenders. According to the Amnesty International's Revisioning and Repositioning Amnesty in Kenya Annual Report 2018, on the Waning Accountability for Justice and Human Rights, there has been illegal detentions, enforced disappearances and deportation of individuals (Amnesty International, 2018). An indication that each year, at least, 100 individuals 'disappear' from their homes and never to be found on grounds of the implementation of the counter-terrorism measures in areas and regions suspected to host 'terrorists' as aforementioned (Redress & Reprieve, 2009).

Many reports indicated that the Kenya Security Agencies had a direct hand in detentions after being suspected to be terrorists, a good case of arbitrary detention which violates the rights against torture and cruelty, human dignity and access to judicial process and also, UNSC Resolution 1373 (2001) that confers obligations to member States to respect human rights on counter-terrorism measures and UNSC resolutions (1998, 1999 and 2001) that aims to mainstream counter-terrorism strategies such as intelligence-sharing and foreign and national policy are aligned to existing international conventions on terrorism.. Those are some of the obligations that Kenya still struggles to meet when implementing the counter-terrorism measures on the human rights protection. Therefore, it is with this spirit that this study seeks to assess the counter-terrorism measures on the protection of human

rights in Kenya, while focusing on the right against discrimination based on ethnicity, religion or race.

1.3 Objectives of the Study

The main objective was to examine how counter-terrorism measures uphold human rights in Kenya. The study specific objectives were to:

- i. Evaluate counter-terrorism strategies used by Kenyan authorities to reduce the propensity of terrorism between 1998 and 2019.
- ii. Investigate allegation of human rights violations committed during the implementation of Kenya's counter-terrorism strategies between 1998 and 2019.
- iii. Analyze counter-terrorism strategies that promote human rights in Kenya.

1.4 Research Questions

The study was guided by:

- i. Which counter-terrorism strategies are used by Kenyan authorities to reduce the propensity of terrorism?
- ii. What kind of human rights are violated during the implementation of Kenya's counter-terrorism strategies?
- iii. Are there counter-terrorism strategies that promote human rights used in Kenya?

1.5 Significance of the Study

The legislation and formulation of polices is a key to counter-terrorism as failure to prevent attacks brings pressure to a country and its agencies, which have to ensure that citizens are safe in their own country. This study seeks to enrich the national

security experts and the Kenyan Government at large on the relevance and contribution of the present counter-terrorism strategies to the national security discourse. It also seeks to understand the role of Government and non-governmental agencies in legislative implementation of human rights especially on the right against discrimination on race, ethnicity or religion.

1.6 Scope of the Study

The study focused on evaluating counter-terrorism strategies that are used by Kenyan authorities to reduce the propensity of terrorism. It also sought to investigate allegations of human rights violations that are committed during the implementation of Kenya's counter-terrorism measures as well as to analyze counter-terrorism strategies that promote human rights in Kenya. The data to fulfill this objective was sourced from security agencies responsible for counter-terrorism and extremism control, the National Assembly in charge of legislation in Kenya where the researcher targeted the Members of Parliament in the National Assembly and, more specifically, those who chair the Security Committees and those responsible for debating National Security Bills in the House. The study also sought the contribution from the Kenya National Commission of Human Rights and Amnesty International Kenya to try and understand how the counter-terrorism actions by the Government have been used to protect or violate the fundamental human rights among the Kenyan citizens. The study covered a period between 1998 and 2019. The year 1998 was chosen to coincide with August 7, 1998 when Kenya witnessed a deadly bomb attack targeting the American Embassy in Nairobi. The year 2019 was chosen to give the study currency.

1.7 Limitations and Delimitations

Dealing with terrorism cannot be structured and, therefore, several authors have not clearly given “commandments” to observe in counter-terrorism, although several attempts have been made to give methods that are used for counter-terrorism and identifying cracks in strategies. As terrorism reinvents, then governments have to get creative by themselves coming up with appropriate counter-terrorism strategies. Finally, materials related to security data, especially intelligence materials are limited, similar to unwillingness by top government operatives to accept interviews concerning abuse of human rights such as the right against discrimination based on ethnicity, race or religion.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter analyzed scholarly works that are related to the topic of study. The literature reviewed followed by an exhaustive examination of the theoretical framework and the conceptual framework. The chapter concluded by giving the scholarly gaps the study seeks to unearth and then the summary of literature review.

2.2 Literature Review

2.2.1 Counter-Terrorism Measures in Kenya

According to the recent studies on international terrorism (Mogire & Mkutu, 2011), most of the countries affected by terrorism have come together on platforms of regional organizations and programs. Kenya's commitment is evident in the ratification of eleven international treaties and conventions. In 2002 and 2005, Kenya ratified two subsequent conventions in relation to counter-terrorism.

Studies by Katabazi (2007), indicate that Kenya's counter-terrorism efforts were geared towards creating a stable East Africa thus leading to its intervention in Somalia. *Operation Linda Nchi* is an operation intervention that begun in Southern Somalia in 2011 and saw regional forces join the operation under AMISOM later in 2012 (Ichani, 2019). The intervention in Somali was prompted by several security, economic and strategic threats including, increased Al Shabaab attacks that had intensified their threat on the territorial boundary of Kenya, and regional and international peace and security on which the UN was founded on.

Consequently, Kenya, to a certain degree, had the responsibility to protect her citizens and sovereignty against any external attacks even if that invasion was met with debate on Kenya's justification on the use of force, which remains a prohibition under the UN Charter Article 2(4) (MRG 2014). This is a justified cause under the exception on self-defence as envisaged under Article 51 of the United Nations Charter. The study analyzed the stated justification for military intervention in counter-terrorism.

The Kenya's counter-terrorism agencies, since the ratification of the Security Laws (Amendment) Bill into law, formed the Joint Terrorism Task Force Kenya (JTTF-K) in 2018 (Byman, 2008). It joined with the American based FBI in January 2019 in counter-terrorism training and capacity building efforts. Regional cohesion has been a challenge in coming together to fight against terrorism (Botha 2014). The leaders of government and heads of states have not been able to embrace this ideology above their vested national interests. The study examines how the enacted laws promote human rights protection.

Since 2002, studies indicate that Kenya has complied with UNSC Resolution (1373) which provide international counter-terrorism framework in line with human rights. However, this counter-terrorism legislative has faced serious criticism from various factions in Kenya (Kituo Cha Sheria 2009). The UNSC Resolution 1373 which was formulate after 9/11 attack in the US had drastic counter-terrorism measures that informed other countries to follow suit to formulate counter-terrorism measures amid several concerns on human rights. In Africa, the East African Counter-terrorism Initiative (EACTI) and Joint Task Force-Horn of Africa goal is to fight terrorism.

Lastly, studies have indicated that despite the lack of any legal framework in Kenya, the Government has taken various initiatives in counter-terrorism. It has seen the establishment of the National Intelligence Service (World Today, 2015), Anti-Terrorism Assistance (ATA) Program, Anti-Terrorism Police Unit (ATPU), Joint Terrorism Task Force (JTTF-K), National Counter-Terrorism Center (NCTC) and National Security Advisory Committee (NSAC) (Okinda 2016). The Government also participates in the Terrorist Interdiction Program (TIP) that screens travelers and gathers intelligence at airports and border points.

2.2.2 Allegation of Human Rights Violation during Counter-Terrorism Measures

The enactment of Suppression of Terrorism Bill (2003) by the Kenyan government has been greatly opposed by the Law Society of Kenya as it targeted persons on race and religion (Kamau, 2006). Amnesty International Annual Report (2018) highlights the detention of 21 different nationalities totaling to 150 persons who were mostly fleeing the conflict in Somalia. Human Rights Watch (2016) acknowledges that majority of persons detained faced challenges such as denial to access a lawyer, assistance for consular services and opportunity to challenge their detention or refugee status. Detainees alleged that they were tortured and conditions at detention were degrading and cruel. The detainees also purported to have been interrogated by foreign intelligence services, confined to host countries or deported.

In the hub of terror, human rights and counter-terrorism strategies should strive to work together as citizens have the right to protection by the State. Magogo (2017) posit that counter-terrorism measures should always have a provision for human

rights standards and democracy. However, human rights and counter-terrorism is inter-twined as human rights require counter-terrorism measures to thrive (OSCE ODIHR 2008). In situations of terror, States focus on national interests rather than human security, thus neglecting the link between human rights and counter-terrorism. The General Assembly Resolution 66/290 considers human security as an approach for States to consider the cross-cutting challenges that face the livelihoods and dignity to people (Botha 2014).

In East Africa, Kenya has been considered as a democratic State due to its alignment to the West, best policies and international geographical location but, still, remains one of the most affected States. Counter-terrorism in Kenya faces numerous challenges especially when the Government is criticized on un-democratic measures. Civil organizations have criticized Kenya's counter-terrorism strategy as being an ethnic-based profiling tool that targets an ethnic community. The strategy in most cases profile Somali nationals as key perpetrators of terror attacks (Botha 2014). The Operation Usalama Watch (2014) was fronted with several legal implications right from human rights violations, extra-judicial killings, arbitrary detentions and torture by security forces as reported by the World Today, (2015). The failure of the Kenyan Government to offer accountability for the security forces abuses and other serious rights violations undermined the rule of law and public confidence; hence led to the demise of the operation (World Today, 2015).

The 21st Century has witnessed increase terror activities. Terrorism comes at a time when military technology has revolutionized and war and warfare has changed. The weapons have become sophisticated. These new dynamics have increased the complexity of counter-terrorism. Today, more than before, the casualty rate in any

internal security operation is tremendously on the rise. As result, the use of military force in internal operations has become inevitable (Szayna *et.al* 2017). Further, the recent rise of terrorism has justified the use of the military in quelling insurgencies and terrorism. This move is however without challenges of its own (Azinge, 2013). Military commanders and troops are more often than not faced with various operational challenges during counter-terrorism operations. This study examines the operational challenges and dilemma of troops and security officers caring out counter-terrorism operations.

One major challenge for armed forces in internal security operations is ignorance of what law they are operating under (ICRC, 2002). It is the commander's responsibility to ensure troops adhere to laws governing conduct of hostilities during internal security operations. Unfortunately, those laws and rights are not set during counter-terrorism. The study noted that LAOC and IHL are sometimes violated during counter-terrorism operations.

It is touted that allegations of human rights violations associated with counter-terrorism operations occur because of the challenge of military superiority complex associated with the military. It is considered that the military is a noble profession compared to the police. According to Brown (2014), societal construction of state security organs is such that the military is viewed as a more powerful agent than paramilitary police or civil police. This mentality poses challenges during internal security operations. This study analyzed the allegations that when the military swing into action to counter terrorism, they do so because the police are overwhelmed, (Brown, 2014). In addition, military personnel are habitually oriented to believe that they are licensed to kill. As such, they use more lethal force within their mandate.

Human rights violations may also result from the failure of soldiers to exercise restraint on the use of minimum force (ICRC, 2002). In most cases, the military or the paramilitary summarily deal with the enemy or criminals by shooting to dismember or to kill. Their whole ethos of military training and equipment is based on inflicting maximum pain and damage as well as destroy the enemy. The enemy must, therefore, be defeated in the shortest possible time irrespective of the rules and the laws of engagement. Key features of internal security operations, on the other hand, are restraint and minimum use of force. Soldiers need proper training to adjust to this new way of operating.

2.2.3 Counter-Terrorism Upholding Human Rights

With the growing cognizance surrounding human rights violations, there is need to re-assess counter terrorism strategies. The existing argument posits that the military strategy employed in dealing with terrorism has tainted the public image of security organs as greatest violators of human rights. They argue that isolation tactics employed by the military alienate human rights. Thus, there is need to change the public perception of counter-terrorism strategies. This will aver the public criticism over internal security strategies employed on terrorism.

Scholars like Lederach (2017), aver that adoption of engagement strategies of dealing with terrorism are more likely to increase the accuracy of counter-terrorism since it addresses the root causes and key grievances of terrorist groups. Lederach further argues that engagement provides alternative means of dealing with counter-extremism. Engagement also goes into unearthing contested issues and history of

terrorism, thus opening the potential for reducing all instances of violent means of counter-terrorism that are likely to infringe on human rights.

According to Lederach (2017), proponents of isolation often opposed engagement strategies because it advocates for negotiation with terrorists. The concept of negotiating with terrorists is politically unpalatable to many governments. By promoting engagement, governments risk to be seen as promoting terrorism rather countering it. It also serves to justify violence over innocent civilians (Lederach, 2017). This is, however, untrue. Engagement, according Lederach, offers an avenue or the process of change. It advocates for trustworthy communication and dialogue.

Many people in social spheres of life argue that there is nothing as unpopular as the so-called entering into talks with terrorists. Time and again, governments and innocent civilians face the unpalatable reality from terrorist attacks. Under such circumstances, counter-terrorism strategies such as military repression, policing, isolation, targeted killing, profiling and arrest may not work or may be insufficient to end terrorism. On the contrary, they may worsen the problem. Furthermore, the violence to obliterate terrorism may be so bloody and may lead to indiscriminate killing of innocent civilians and violations of international law, or destabilize the state while become morally repulsive at the initial terror attacks. Ironically, the cure may be worse than the disease, when the military operation results in more damage than intended. In such conditions, entering into talks with the perpetrators may be viable, as it limits the excessive use of force. (USIP, 2010).

Ultimately, harsh and aggressive policies in response to terrorism fail so often in their stated aims because they are so badly misunderstood and ignore the psychology of the enemy and of observers (Silk, 2012). Force, power and supremacy alone are

not sufficient to defeat terrorism. Aggression and force are too basic because they betray by attaining short term psychological success on the war on terror. Terrorist can endure military strikes, if past experiences are anything to go by. Considering military campaign cases such South Africa Apartheid rule against African National Congress (ANC) and the British against Irish Republican Army (IRA), it shows that terrorism may not be defeated by aggression but through engagement (Silk, 2012). The study will assess how state aggression in eradicating terrorism, while ignoring the psychology of the enemy and that of observer groups such religious leaders, non-governmental organizations and civil society groups that are involved in countering violent extremism.

To allay fears that negotiation with the “enemy” may set a bad precedence and lead to mushrooming of such groups, governments should pursue both stick and carrot measures in dealing with internal disputes (Ichani, 2019). Since military intervention plays a significant role in countering terror and reducing the occurrence of violence, there is need to enhance respect for human rights during such operations to avoid widespread criticism. This can be done by re-direction of the armed tactic to address the impact of its operations. For example, it is essential to change the isolationist tactics that are non-responsive and are short-sighted. This can be implemented through adoption of the international surrogate security institution (Lederach, 2017). This adjustment, however, might be done with little disruption to the operational routines in the military. It is, therefore, very possible, though with challenges, for the military intervention to bring sustainable peace without compromising their security role.

According to Huntington (1957), civilian authority over the military is key in ensuring that the military does not violate human rights. Civilian control of the military is a doctrine that is widely accepted and that places civilian leaders to make main decisions for the country rather than allowing decisions to be made by the military leadership (Huntington, 1957). Although this is enshrined in the constitution, the actual participation of the civilians in military decision-making process is often overlooked. This study examined how human rights and public participation is overlooked in counter-terrorism operations. This is necessary in affirming the public opinion that, for a long-time, public opinion has been disregarded by military commanders or state agents as inconsequential.

Anderson (2014) also argues that remodeling of military to assume surrogate roles may allay fears of human rights violations during counter-terrorism. Surrogacy is about acting as an alternative and supporting activities of communities facing the brunt of security operations. According to Anderson (2014), societies experiencing misery from terrorism readily welcome the military interventions because they believe the military will offer a substitute that replaces the pain (Croissant, 2013). Therefore, the military is expected to transform the position. According to Gouly (2000), it is expected that during counter-terrorism operations, the military should establish goodwill through ethical behavior, impartial implementation of the mandate, basic humanity and military professionalism.

Fearson and Latin (2014) argue that when the military is involved in civilian-military cooperation (CIMIC), it allays the fears of violation of human rights. Those authors argue that, that can be achieved by having the military engaged in community service before, during and after the combat. Civilian-military cooperation is vital for the

civilian population to regain its footing in order to build a stable society. Military participation in community service helps in winning the minds and heart of the victims of intervention. Without community pacification, the goodwill towards the military intervention fades. The community will desist from divulging information that would aid the armed forces to restore law and order. This study examined what hampers counter-terrorism strategies in Kenya.

According to Ichani (2014), having a proper complaint process over actions of security operations increases the accountability of security organs. Ichani (2014) argued that to improve military credibility, it is important to have a proper complaint process and that the military should guarantee a free and fair complaint process. There should be an office of an independent ombudsman; which offers feedback on citizens' complaints on alleged human rights violations. The creation of such an office would assist in building self-assurance within the civil society that the military does not commits such violations voluntarily. Ichani (2019) further argues that the military ombudsman's office employs civilian personnel who receive complaints from fellow civilians witnessing human rights violations. This study examined allegations of human right violations.

2.3 Theoretical Framework

The study identified regime theory and the theory of change approach to inform the study.

2.3.1 Regime Theory

Regime theory is part of the liberal tradition. The theory based its tenets on the fact that international institutions influence the behavior of States. This theory is associated with Stephen D. Krasner (1983) and Robert Keohane (1984). They argue

that the international environment is generally one of anarchy dominated by states where there is no authority that makes states play nice with each other. Nevertheless, states are not the only actors on the world stage today, and there is oftentimes cooperation between the actors. Regime theory attempts to explain that power in the international system is distributed across different states and non-state actors, such as non-governmental organizations, inter-governmental organizations and multinational companies that cooperate on specific issues based upon a set of international regimes. Regimes are the manifestation of cooperation among actors in the international system. It assumes that cooperation can be achieved when States are faced by a global problem such as terrorism, which forces international cooperation.

Krasner and Stephen (1983) arguments can be used to explain on how states have dealt with counter-terrorism measures through multilateral counter-terrorism cooperation. The theory offers this study three analytical lenses that can be used to examine counter-terrorism. These include the offensive and defensive, preventive and protective measures, elements of counter-terrorism policy and counter-terrorism instruments. The regime theory argues that institutional arrangements focus on both global and regional spectrum of counter-terrorism tools and instruments. The theory acknowledges that internal security (national) is affected by the transnational characteristic of terrorism thus counter-terrorism measures have to consider those external aspects. The theory suggests that global and regional counter-terrorism arrangements require the support of private and non-state actors.

Finally, the regime theory becomes relevant to analyze this study for it identifies the role of multilateral counter-terrorism cooperation which is universally practiced by majority of the States. This study will focus on the regime theory to assess the counter-terrorism measures on the protection of human rights as adopted by states.

2.3.2 Theory of Change Approach

Theory of change framework advanced by Paul Lederach (2017) is based on a continuum of two counter-terrorism strategies namely isolation and engagement. Isolation basically suggests an approach meant to identify terrorists, and target to eradicate all individuals associated with groups that espouse the use of force. This strategy is also called 'listing'. Engagement denotes to approaches that call for enactment of contact, consultation and dialogue with groups listed as terrorists. Engagement intends to get to the root cause of terrorism. It aims at introducing radical shift or means of dealing with terrorism. The theory of change approach recommends for two-folds approach to terrorism where violent counter-terrorism measures are interlaced with carrot measures in exchange of individuals abstaining from terror activities. Complementary application of both isolation and engagement is seen as plausible in dealing with extremism. This is because there is no one technique that is a "magic bullet" in dealing with terrorist situations.

Alongside engagement is the question of negotiating with groups that use force. The much-asked question is: Should the government reach out and engage terrorists in negotiations with the aim to persuading them to eschew violence? This question is not new. Since 11th September 2001, the question of negotiating with enemies has provoked controversial debate. Often becoming an exchange of politically and morally charged heat. Understandably, governments seek to shield themselves from

such heat by categorical asserting that they will not talk to terrorists. Despite such claims, a number of governments do talk and continue to dialogues with groups and individuals regard as “terrorists”. Such interactions are, however, not common.

Passionate debates about “negotiating with terrorists” produce plenty of heat but scarce light, having more to do with the emotional aftermath of an attack (Cronin, 2010). Although nothing is as unpopular as the so-called “entering into talks with terrorists”, time and again, governments and innocent civilians face the unpalatable reality from terrorist attacks. Under such circumstances, counter-terrorism strategies such as military repression, policing, isolation, targeted killing, profiling and arrest may not work or may be insufficient to end terrorism. On the contrary, they may worsen the problem. Furthermore, the violence to obliterate terrorism may be so bloody and can result in indiscriminate killing of innocent civilians, violations of international law, or destabilize the state while become morally repulsive as the initial terror attacks. Ironically, the cure may be worse than the disease. In such condition, entering into talks with the perpetrator may be viable.

Ultimately, harsh, aggressive counter terrorism often fail to achieve their specified goals because they are heavily criticized for brutality and likely to radicalize sympathizers and member of the public in the event terrorist mobilize their constituents against government security operations. It is argued that military strength and power without psychology of the mind is not sufficient enough to defeat the motivation behind terrorism. Isolation in itself is considered crude and short term. Yet, defeating the psychological needs of terrorists requires more time. Disabling terrorists and confiscating their weapons does not automatically disrupt their networks.

To allay fears that negotiation with the “enemy” may set a bad precedence and lead to burgeoning of similar groups, régimes should utilize both carrot and stick measures in countering terrorism. Military interventions, therefore, are necessary, but not sufficient enough to end terrorism. Engagement strategies can work without compromising their security. This theory is relevant to the study since engagement measures seem to be sensitive to human rights violation.

2.4.1 Conceptual Framework

The conceptual framework adopted by this study was informed by the regime theory and the theory of change approach. The regime theory explaining the existing cooperation among states and organization in counter-terrorism and human rights and theory of change approach alluding to engagement that is largely complaints to human rights protection.

This study identified three variables to include the independent, dependent and intervening variables. The independent variable in this study was counter-terrorism measures and the dependent variable was Human Rights and intervening variable will be external influencers. Independent variables were divided into three. First, counter-terrorism measures which included organizational measures, government led measures, multi-agency security approaches and military intervention. The second independent variable was alleged human rights violations including forced disappearance, force, extra-judicial killing and degrading treatment of citizens. The third and last independent variable was counter-terrorism measures that respect human rights. These included engagement, negotiation, youth empowerment, surveillance, intelligence gathering, rule of law and public awareness and education. The human rights to be protected were: Personal liberty, due process of law,

freedom of thought, right against discrimination and freedom of expression. The conceptual frame work is as follows.

INDEPENDENT VARIABLE

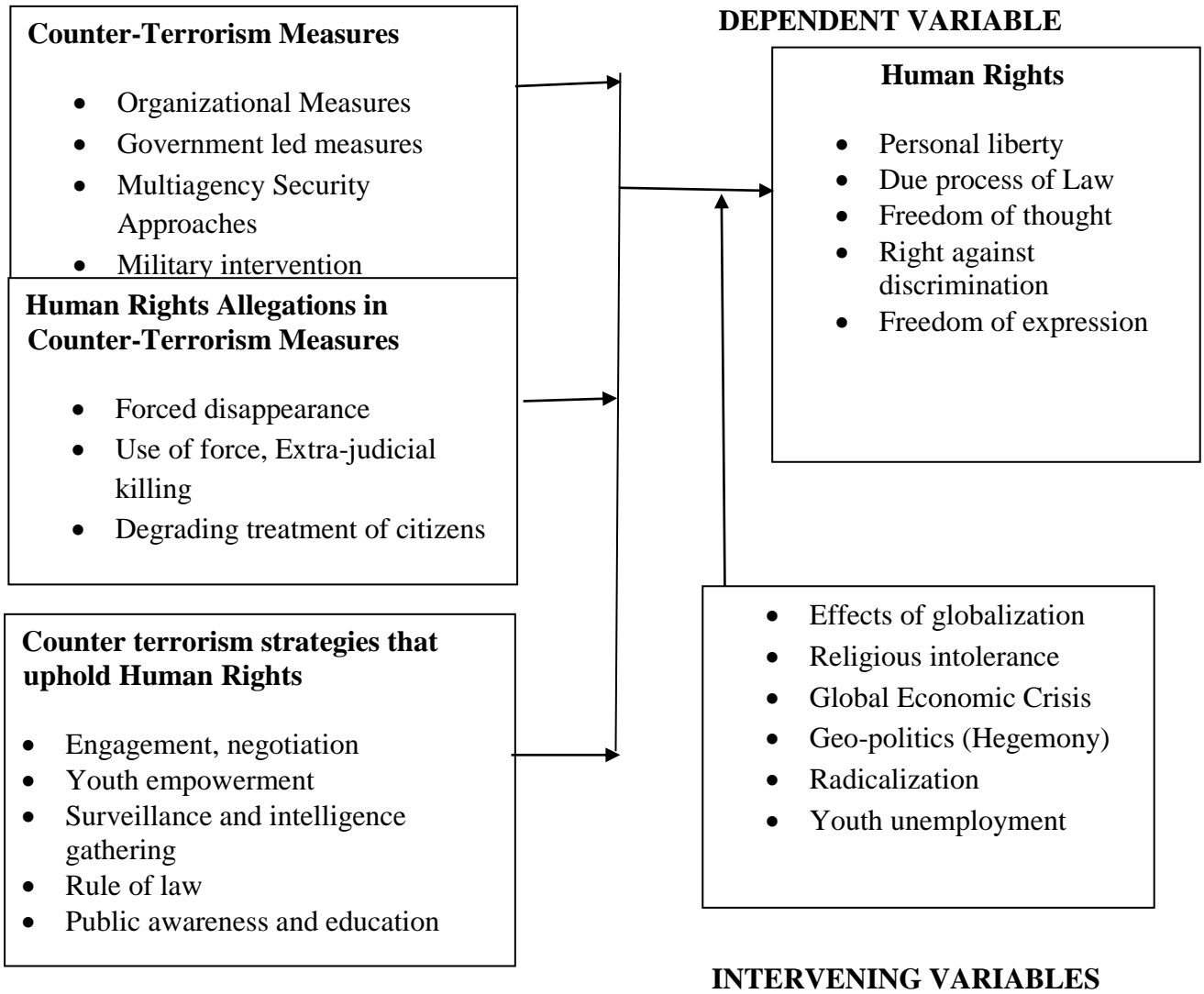


Figure 2.1 Conceptual Framework
Source: Researcher, 2021.

CHAPTER THREE

METHODOLOGY

3.1 Introduction

This chapter presented the research design, location of the study, target population, sampling techniques and sample size, and data collection and data analysis.

3.2 Research Design

The study adopted an exploratory research design. This design is suitable for analyzing non-explored phenomenon. The choice of the research design was guided by the fact that this study was to achieve an inductive analysis through a systematic procedure commonly used in qualitative research. This research design was beneficial in gathering data on terrorism and counter-terrorism measures and analyzing allegations of human rights violations. The design for this reason was necessary in order to decipher from different facets and generating an understanding and a credible conclusion for this study. The study was consequently, necessary in evaluating theoretical underpinnings and outcomes of the use of the regime theory and theory of change approaches in dealing with the impact of Kenya's counter-terrorism measures on human rights protection.

3.3 Study Area

This study was carried out in Nairobi Metropolitan that plays host to a number of counter-terrorism agencies including the military, police, GSU, RDU and ATPU. Nairobi also headquarters a number of civil societies involved in human rights protection. Further, Nairobi hosts the following listed study locations: The National Assembly in charge of legislation in Kenya where the researcher will be targeting

the Members of Parliament in the National Assembly and, more specifically, those who chair the Security Committees and those responsible in debating National Security Bills in the House.

This study was also carried out in offices of human rights organizations in Kenya such as: The Kenya National Commission on Human Rights as well as Amnesty International Kenya to try and understand how the counter-terrorism actions by the Government have been used to protect or violate the human rights in Kenya.

3.4 Target Population

Ogula (2005) defines population as any group of people that share similar characteristics. The target population of this study was both infinite and definite. The infinite population include the members of security organs and agencies whose total population was undisclosed for security purposes. Those security organs and agencies include members of the Kenya Defence Forces (KDF), the National Police Service (NPS), National Intelligence Service (NIS), members of different multi-agency agencies including, General Service Unit (GSU), Rapid Deployment Unit (RDU), Anti-terrorism Police Unit (ATPU) and members of counter-terrorism and extremism control units. The definite target population included the 416 Members of both the National Assembly and the Senate in charge of legislation in Kenya. More specifically, the 28 Members who form the National Security, Defence and Foreign Relations Committee from both houses and those responsible for debating National Security Bills in the House.

This study also targeted 108 members of the civil society from the Kenya National Commission on Human Rights (KNCHR), 65 officials from the International Federation for Human Rights (IFHR), 45 officials from the UN Counter-Terrorism

Centre-GCTF, as well as the 128 members from the Amnesty International Kenya. Those categories were targeted so as to understand how the alleged human rights are violated by security agencies during counter-terrorism actions. The protection of human rights is both the responsibility of the government as well as that of the civil societies.

Table 3.1: Target Population Matrix

Target Locations	Target Population	Percentage
Kenya Defence Forces (KDF), the National Police Service (NPS), National Intelligence Service (NIS), General Service Unit (GSU), Rapid Deployment Unit (RDU), Anti-terrorism Police Unit (ATPU)	Infinite	
The Kenyan Parliament (National Assembly & Senate)	416	52
Amnesty International	128	16
The National Security, Defence & Foreign Relations Committee	28	4
The Kenya National Commission of Human Rights (KNCHR)	108	14
UN Counter-Terrorism Centre-GCTF (Nairobi)	45	6
The International Federation for Human Rights (FIDH)	65	8
Total	798	100

3.5 Sampling Procedure and Technique

Sampling can be defined as the process of selecting a sub-group from a population to partake in a study (Mugenda & Mugenda, (2013). To draw the sample for this study, both non-probability and probability sampling techniques were used. The researcher began by stratifying the population in the following strata. The first strata comprised of counter-terrorism security agencies which included: Kenya Defence Forces (KDF), the National Police Service (NPS), National Intelligence Service (NIS), members of different multi-agency agencies including, the General Service

Unit (GSU), Rapid Deployment Unit (RDU) and Anti-terrorism Police Unit (ATPU). The second strata is made up of 416 Members of both the National Assembly and the Senate in charge of legislation in Kenya. More specifically, the 28 Members who form the National Security, Defence and Foreign Relations Committee from both houses and those responsible in debating National Security Bills in the House. The third strata comprised the civil society. Categories included here were 108 members of the civil society from the Kenya National Commission on Human Rights (KNCHR), 65 officials from the International Federation for Human Rights (IFHR), approximately 45 officials from the UN Counter-Terrorism Centre-GCTF, as well as the 128 members from Amnesty International Kenya.

After stratifying the different categories, simple random sampling technique was employed in selecting the respondents from each stratum during pre-testing and on the actual study. Finally, purposive sampling was used to draw key informants of the study. These techniques were chosen for convenience sake so as to save time of data collection. In this particular study, the researcher purposively selected the highest number of informants. Purposively selected respondents or the informants were perceived to be more instrumental in giving the relevant information about the research topic than those selected randomly.

3.6 Sample Size

A sample size that lies between the ranges of 10-50 % in exploratory research will be suitable for this study using (Mugenda & Mugenda, 2003) determination. This was determined from infinite and definite target population of 798, which comprised of 416 Honourable Members of Parliament responsible for debating National Security and Defence Bills, the 28 Members from both houses of parliament who sit

in the National Security, Defence and Foreign Relations Committees of Parliament in Kenya, the International Federation for Human Rights 65 officials, UN Counter-Terrorism Centre-GCTF 45 officials, the 108 staff members of the KNCHR and the 128 members from Amnesty International in Kenya. The sample of approximately 200 respondents which was a tentative value to represents 20% of the target population was identified using purposive sampling. Table 3.2 below displays the target population and the sample size for the target locations.

Table 3.2: Sample Size Determination

Target Population Category	Target population	Sample size	Percentage (%)
Kenya Defence Forces (KDF), the National Police Service (NPS), National Intelligence Service (NIS), General Service Unit (GSU), Rapid Deployment Unit (RDU), Anti-terrorism Police Unit (ATPU)	Infinite	40	
Parliament of Kenya (Both the National Assembly and Senate)	416	84	20%
The National Security, Defence & Foreign Relations Committee	28	6	20%
Kenya National Commission of Human Rights (KNCHR)	108	22	20%
Amnesty International, Kenya	128	26	20%
UN Counter-Terrorism Centre-GCTF (Nairobi)	45	9	20%
The International Federation for Human Rights (FIDH)	65	13	20%
Total	798	200	20%

3.7 Data Collection Instruments

The data collection instruments employed to collect data were structured and semi-structured questionnaires and interview schedules.

3.7.1 Interview Schedule

This study is making reference to Tromp (2006) guidelines on thesis writing. He argues that an interview tends to provide in-depth data which is not possible to get using a questionnaire. Therefore, this instrument enabled the researcher to interact with the respondents face to face and to observe non-verbal cues and expressions which would not be observed in other techniques. The interview allowed the researcher to acquire better lucidity of facts that are being pursued e.g., questions might be revised if it appears that they are being mis-interpreted. Control over the research is also enabled through judicious use of probes.

Therefore, for this research, the interview schedules contained the questions which enabled the informants to respond to the key tenets around the research objectives as most of the questions were similar to those that are in the questionnaire. Unlike the scope that the questionnaire covers, the interview schedules were limited to key informants, the top officials from the National Security Committee in Parliament, from the KNCHR and from Amnesty International as outlined in the sample size. This was done to obtain information from the person who alone knows the subject matter as per the exploratory research outlines.

3.7.2 Questionnaire

Items in the questionnaire were organized in a logical arrangement bestowing to the themes being deliberated and items that produced comparable answers being grouped together. The questionnaires allowed the researcher to obtain more information as the respondents filled in the responses in discretion and confidence that their details or the content of the research instrument were not breached.

The closed-ended queries were used since they are easy to examine as they are in an instant operational form, are effective to administer and are inexpensive to use with regard to money and time (Mugenda & Mugenda, 2003). Therefore, the scope that the questionnaires achieved highly contributed to other quantitative data from the primary sources, as the information is fast-hand and original, hence passes through the lenses of authenticity, reliability and validity.

3.8 Pre-testing

The researcher did a pilot study so as to perceive the flaw in strategy, design and composition of the research instruments. Pre-testing was intended to offer a chance to sense and remedy a wide array of possible glitches with an instrument. By piloting, it warranted that a suitable question to be included, the affirmative and correct data is collected and that methods of data work. The application of the rule of the thumb of 1% of the sample size was used to institute the pre-testing exercise that is making reference to (Cooper & Schindler, 2013, Creswell, 2013). By using the Simple Random Sampling, the researcher conducted the pre-test among the members of the Senate of Kenya who in total are 67 senators; a simple non-probability formula was used to obtain a 20% from the total population.

The anticipated pre-testing was delimited to the agreed grid. Pre-tested data enabled the researcher to either make further adjustments if the outcome cannot be justified by the use of the research instruments as there was to be the measure of the research hypothesis of interest, interviewer corroboration, peer debriefing and conformability to check on the overall goal of the research process in determining the authenticity and originality of the findings.

3.9 Validity and Reliability of the Instruments

3.9.1 Validity

Validity in this study was meant to establish the connection between the questionnaire and interview guide research items and data collected. The items were developed and subjected to scrutiny to ensure that they are able to yield meaningful data and being able to yield similar responses from the sample. The study utilized content validity that tested the intended research question on counter-terrorism strategies, human rights compliant strategies and challenges in countering-terrorism. To guarantee accurateness of data, the researcher pre-tested the questionnaire and investigated the results and made modifications on the questions that were not clear. Additionally, the researcher visited the sampled respondents to make them cognizant of the need of the study. This guaranteed validity of the data collected.

3.9.2 Reliability

The reliability of this study was the degree of consistency that the research instrument procedures demonstrated. The extent informed the degree to that specific measure of reliability that the researcher administered the questionnaires to the respondents, collected them and analyzed the responses. After a period of about two weeks, the questionnaires were re-tested by administering them again to the same respondents at the pre-test level. This guaranteed internal uniformity of the questionnaire and confirmed the responses from the designated sample.

3.10 Data Collection Procedures

An authorization letter was obtained from Kenyatta University, Research Permits from Clerks of both houses of parliament (The Senate and the National Assembly), and the KNCHR and from Amnesty International. Another permit was sought from

the National Commission for Science, Technology & Innovation (NACOSTI) and Research Permit Code from the relevant County Commissioner's Office before going out to the field. The researcher then sampled the target population as per the formula reached at both stages of the study (Pre-test and actual study), administered and collected questionnaires on the same day from each study location.

Where it was not possible, further arrangements were made for those in charge to have them collected from the respondents after one week or so. The application of the ethical considerations was taken into account. The primary data collected by questionnaires and interviews was tabulated and analyzed by the use of relevant statistical data analysis instruments. Data collected and composed was both qualitative and quantitative.

The study reviewed published materials including the use of reports, statistical reports, news articles and books that provide information on the use of force and repressive policies as counter-terrorism measures employed in the war against Al-Shabaab. The data collected provided exhaustive knowledge to further substantiate the research questions in this study. Quantitative or primary data was obtained from one-on-one and interactive interviews.

3.11 Methods of Data Analysis

The collected data was analyzed by the use of critical qualitative data analysis and processed by the Statistical Package for the Social Sciences (SPSS) Version 24. The collected data was tabularized and categorized according to its shared features and loaded into excel sheet. This quantitative data was then uploaded into the application. The findings were then generated and presented in table and relevant graphs. Data collected through interviews was thematically arranged in themes that were corresponding with the objectives of the study. It was also used to support

quantitative data. Qualitative data was presented in narrations and verbatim. Secondary data was acquired from an assortment and review of un-published and published materials, academic papers, periodicals and statistical reports. All was engaged through rigorous analysis and quantitative data and analyzed using critical content analysis. It examined the use of repressive policies, with a laser focus on key areas of study namely, the Coastal region and Nairobi suburbs as strategic areas that have experienced escalating repression especially after attacks and during police operations. The study areas helped address the issue of indiscriminate use of repressive and hardline approaches and the tangible evidence to back the arguments and gaps brought out in the literature. Then the data was presented in form of tables, graphs and diagrams.

3.12 Ethical Considerations

Approval to conduct the study was sought from Kenyatta University; the School of Security, Diplomacy and Peace Studies. Further, a research permit was obtained from NACOSTI and the Clerks of both houses of parliament, KNCHR and from Amnesty International. A written consent was also sought from the respondents and key informants from the aforementioned study locations before inclusion into the study and, more importantly, confidentiality and respect to privacy was highly emphasized as matters to do with terrorism, violation of human rights and counter-terrorism are matters that are subject to the security agencies and are confidential for security reasons. The researcher also took into consideration the concerns of anonymity of members who wished their identity not to be revealed.

CHAPTER FOUR

PRESENTATION AND ANALYSIS OF DATA AND DISCUSSION

4.1 Introduction

This chapter presents the data analysis and interpretation of the study. The chapter discusses the findings of the study based on the three main objectives which include: Identify counter-terrorism strategies in Kenya, determine whether the counter-terrorism strategies uphold human rights in Kenya and identify counter-terrorism strategies that promote human rights in Kenya.

4.2 Response Rate

The total sample of the study was 200. Out of this, 152 responded while 48 declined to respond. The response rate from the sample size was, therefore, approximately 76%, while those who declined or non-response constituted 24%. This total response constitutes 121 through questionnaires and 31 key informants. This high rate of response was attributed to the use of online platforms that enabled interviews remotely. They include zoom and Google meet which were used to reach more respondents and informants during the COVID-19 Pandemic. Figure 4.1 shows the response rate.

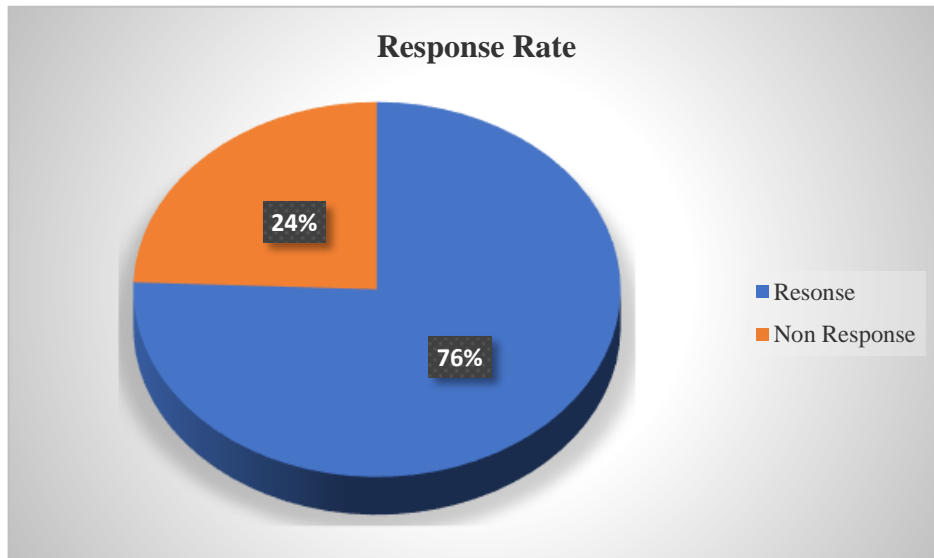


Figure 4.1: Response Rate
Source: Researcher, 2021.

4.3 Demographics of the Study

The respondents were purposively identified based on the nature and sensitivity of the study. The demographics of the study included gender and years worked in the organization, experience in counter-terrorism, human rights and security management.

4.3.1 Gender

The analysis of gender of the respondents and informants used by study was 86.5% male and 13.5% female, respectively. This gender disparity is attributed to the employment of more male in the security sectors as well as the National Assembly and Senate, which is yet to achieve the two-thirds gender rule. Moreover, female respondents randomly chosen to participate in the study declined to complete the questionnaires or never returned the questionnaires altogether. Majority of the female respondents and informants were from civil society.

Table 4.1: Gender of Informants and Respondents

Target Population Category	Sample size	Male	Female
Kenya Defence Forces (KDF), the National Police Service (NPS), National Intelligence Service (NIS), General Service Unit (GSU), Rapid Deployment Unit (RDU), Anti-terrorism Police Unit (ATPU)	40	35	5
Parliament of Kenya (Both the National Assembly and Senate)	84	80	4
The National Security, Defence & Foreign Relations Committee	6	5	1
Kenya National Commission of Human Rights (KNCHR)	22	15	7
Amnesty International, Kenya	26	20	6
UN Counter-Terrorism Centre-GCTF (Nairobi)	9	8	1
The International Federation for Human Rights (FIDH)	13	10	3
Total	200	173	27
Percentage	100	86.5%	13.5%

Source: Researcher, 2021.

4.3.2 Organizations, Period and Experience of the Respondents

The study analyzed respondents' organization with the years worked in those organizations so as to ascertain the knowledge ability in their area of profession. As reported in table 4.2 in the next page, the findings show the respondents included the Parliament of Kenya (National Assembly and Senate) 23.1%, National Security, Defence & Foreign Relations Committee 19.0%, Kenya National Commission on Human Rights (KNCHR) 11.6%, Amnesty International Kenya 15.7%, UN Counter-Terrorism Centre-GCTF (Nairobi) 15.7%, and the International Federation for Human Rights (FIDH) 14.9%. The findings also show that the period of the respondents in the organization ranged from 1-3 years 33.9%, 4-6 years 30.6%, 7-9 years 24.0% and 10 years and above 11.6%, respectively. This number of years in the organization was a cross-analysis in all the organizations as shown in Table 4.2.

Table 4.2: Cross-Tabulation of Organisation and Period in the Organisation

Organisation	Period in the Organisation (Years)				Total
	1-3	4-6	7-9	10 and above	
Parliament of Kenya (National Assembly and Senate)	7	20	1	0	28
	25.0%	71.4%	3.6%	.0%	100.0%
	17.1%	54.1%	3.4%	.0%	23.1%
	5.8%	16.5%	.8%	.0%	23.1%
The National Security, Defence & Foreign Relations Committee	14	2	7	0	23
	60.9%	8.7%	30.4%	.0%	100.0%
	34.1%	5.4%	24.1%	.0%	19.0%
	11.6%	1.7%	5.8%	.0%	19.0%
Kenya National Commission of Human Rights (KNCHR)	0	7	7	0	14
	.0%	50.0%	50.0%	.0%	100.0%
	.0%	18.9%	24.1%	.0%	11.6%
	.0%	5.8%	5.8%	.0%	11.6%
Amnesty International Kenya	4	0	8	7	19
	21.1%	.0%	42.1%	36.8%	100.0%
	9.8%	.0%	27.6%	50.0%	15.7%
	3.3%	.0%	6.6%	5.8%	15.7%
UN Counter-Terrorism Centre-GCTF (Nairobi)	6	3	3	7	19
	31.6%	15.8%	15.8%	36.8%	100.0%
	14.6%	8.1%	10.3%	50.0%	15.7%
	5.0%	2.5%	2.5%	5.8%	15.7%
The International Federation for Human Rights (FIDH)	10	5	3	0	18
	55.6%	27.8%	16.7%	.0%	100.0%
	24.4%	13.5%	10.3%	.0%	14.9%
	8.3%	4.1%	2.5%	.0%	14.9%
Total	41	37	29	14	121
	33.9%	30.6%	24.0%	11.6%	100.0%
	100.0%	100.0%	100.0%	100.0%	100.0%
	33.9%	30.6%	24.0%	11.6%	100.0%

Source: Researcher (2021)

From table 4.2, sizeable percentage of the informants and respondents had little work experience. Despite this shortcoming, the study was able to gather meaningful data. This was aided by the fact that parliamentary committees engage in research

and thus the members, despite being one-term members of parliament, were well informed on matters relating to counter-terrorism and human rights violations in Kenya. On the same breath, the Committee on Security was also abreast with all operations and was able to provide very valuable information.

4.3.3 Respondents Experience in Counter-Terrorism and Human Rights

The study analyzed respondent's and informant's organizations, work experience and their experience in counter-terrorism measures and human rights. The purpose was to ascertain how knowledgeable they are in matters of counter-terrorism and human rights. Table 4.4 below shows the analysis of the demographic information. The findings show the respondents experience in their respective organizations ranged from 1-3 years 43.0%, 4-6 years 24.8%, 7-9 years 17.4%, 10 years and above 14.9%.

From table 4.3 that is found overleaf in the next page, a sizeable percentage of the informants and respondents who include: Parliament of Kenya (National Assembly and Senate), the National Security, Defence and Foreign Relations Committee, Amnesty International Kenya, UN Counter-Terrorism Centre-GCTF (Nairobi) and the International Federation for Human Rights (FIDH) had little work experience. Despite this shortcoming, the study was able to gather meaningful data. This was aided by the fact that parliamentary committee engage in research and thus the members, despite being one-term members of parliament, were well informed on matters relating to counter-terrorism and human rights violations in Kenya. On the same breath, the Committee on Security was also abreast with all the operations and was able to provide very valuable information. Moreover, civil society organisations like Amnesty International Kenya and the International Federation for

Human Rights (FIDH) publish periodical reports on matters of human rights violations.

Table 4.3: Cross-Tabulation of Organisation and Experience in Counter-Terrorism, Human Rights and Security

Organisation	Experience in Counter-Terrorism, Human Rights and Security (years)				Total
	1-3	4-6	7-9	10 and above	
Parliament of Kenya (National Assembly and Senate)	12	14	2	0	28
	42.9%	50.0%	7.1%	.0%	100.0%
	23.1%	46.7%	9.5%	.0%	23.1%
	9.9%	11.6%	1.7%	.0%	23.1%
The National Security, Defence & Foreign Relations Committee	15	4	3	1	23
	65.2%	17.4%	13.0%	4.3%	100.0%
	28.8%	13.3%	14.3%	5.6%	19.0%
	12.4%	3.3%	2.5%	.8%	19.0%
Kenya National Commission on Human Rights (KNCHR)	11	0	1	2	14
	78.6%	.0%	7.1%	14.3%	100.0%
	21.2%	.0%	4.8%	11.1%	11.6%
	9.1%	.0%	.8%	1.7%	11.6%
Amnesty International Kenya	8	4	0	7	19
	42.1%	21.1%	.0%	36.8%	100.0%
	15.4%	13.3%	.0%	38.9%	15.7%
	6.6%	3.3%	.0%	5.8%	15.7%
UN Counter-Terrorism Centre-GCTF (Nairobi)	3	1	15	0	19
	15.8%	5.3%	78.9%	.0%	100.0%
	5.8%	3.3%	71.4%	.0%	15.7%
	2.5%	.8%	12.4%	.0%	15.7%
The International Federation for Human Rights (FIDH)	3	7	0	8	18
	16.7%	38.9%	.0%	44.4%	100.0%
	5.8%	23.3%	.0%	44.4%	14.9%
	2.5%	5.8%	.0%	6.6%	14.9%
Total	52	30	21	18	121
	43.0%	24.8%	17.4%	14.9%	100.0%
	100.0%	100.0%	100.0%	100.0%	100.0%
	43.0%	24.8%	17.4%	14.9%	100.0%

Source: Researcher, 2021.

4.4 Counter-Terrorism Strategies

This study, through the first objective and corresponding research question, sought to identify and evaluate counter-terrorism strategies that are used by Kenyan authorities to reduce the propensity of terrorism. According to Seidenberg (2003), international terrorism has elicited many measures. First, it can be dealt with as equivalent to war by use of military intervention. Secondly, terrorism may be countered through the court system perceived here as a crime. Proponents of counter-extremism suggest that terrorism requires economic empowerment to deal with grievance-escalation radicalization tendencies.

Informants and respondents were asked to elaborate on strategies used to counter terrorism. One of the key informants informed the study as follows:

“Following the September 11th terrorist attacks, the United States and several states have enacted a number of measures. The attack brought the concept of war on terror. In this, states would use their armed forces to engage terrorists. Though controversial, the military is key in counter-terrorism. The military defend the country. The police protect the state and capture and kill targeted terrorist leaders. States liaise with INTERPOL to pursue terrorists abroad. But those measures and policies have attracted strong criticism. They are failing to protect civil liberties. (KI1).”

From the information above, it is clear that governments in most cases use force and that seems reliable. Those assertions are supported by Lederach (2017) who argues that the most relied upon counter-terror strategy is repression. According to Lederach (2017), repression is equated to isolation. This calls for identification of terrorists, imprisonment and killing of the terrorists as well as destroying their safe havens. In general, Lutz & Lutz, (2011) argues that there are many counter-terror strategies at the disposal of governments and that there is never a single technique or “magic bullet” that will work to eradicate situations of terrorism. The study therefore, identified and evaluated counter-terrorism measures in Kenya. Those

strategies were analyzed in three lenses; namely, measures by different organizations and institutions, government and measures by security apparatus.

4.4.1 Organisation-Based Counter-Terrorism Strategies

The study asked the respondents to identify some of the counter terrorism strategies that are used by organisations in Kenya. The respondents identified five major strategies that most organisations use in counter-terrorism. Those strategies include use of intelligence, installation of protective measures, physical security and deployment of security and intelligence officers, sensitization and awareness among the employees. The study sought to establish to what extent those strategies were utilized. The feedback from 121 respondents of the study is depicted in the table below.

Table 4.4: Organisation-Based Counter-Terrorism Strategies

Strategies	Frequency	Percent %
Use of intelligence	43	35.5 %
Installation of protective measures	36	29.8 %
Physical security (restricting access, safety screening and security checks at entry points)	21	17.4 %
Deployment of security and intelligence officers	14	11.6 %
Sensitization and awareness	7	5.8 %
Total	121	100.0

Source: Researcher, 2021.

From the table, respondents indicated that organizations used intelligence-based measures which accounted for 35.5%, installation of protective measures accounted for 29.8%, physical security 17.4%, and deployment of security and intelligence officers stood at 11.6%. Sensitization and awareness among the employees accounted for 5.8%, of all counter-terrorism measures.

The study also interrogated further on why those strategies were preferred by organisations. The key informants of this study indicated that first, organisations preferred the use of intelligence from security apparatus as it was more reliable information and data as most organizations were targets by terrorist groups. According to KI2, security apparatus always has information of terrorism targets and information shared to organisations is key in protecting staff and the general public.

Second, organisations preferred the installation of protective measures such as employment of private security personnel and surveillance cameras (CCTV). This is one of the most common strategies that organisations have opted to employ in their premises not only against terrorism, but also crime in general.

Third, physical security has become an important aspect for organisations given the recent rise in terrorist activities in Kenya. The government is also advocating for increased physical security in organisations as a counter-terrorism strategy. Physical security includes the increased restriction to access of premises, safety screening and security checks at entry points. This has become a safety standard requirement for organisations just as fire and disaster preparedness in Occupational Health and Safety Act (OSHA, 2007) and Occupational Safety and Health Act (2007).

Fourth, the deployment of security and intelligence officers within organisations, especially those with massive public interest, has been encouraged by governments and security apparatus. The Government, through its participatory security sector reforms, advocate for collaboration of organisations and the public through deployment of security and intelligence officers and community policing.

Last but not least, organisations conduct sensitisation and awareness initiatives among the employees to equip them with the necessary skills in case of a terror attack. The increased terror attacks have prompted organisations to have employees get training on counter-terrorism preparedness drills that will save lives in case of emergencies.

4.4.2 Government Counter-Terrorism Strategies

The study asked the respondents to identify the counter-terrorism strategies used by the Government of Kenya. The findings of the study show the strategies the Government uses to include intelligence sharing and gathering, degrading the capacities and capabilities of terrorist organisations, enhancing surveillance and capacity of security, increase in border control and screening and increase in cooperation with international security bodies e.g. INTERPOL.

Table 4.5: Government Counter-Terrorism Strategies

Strategies	Frequency	Percent (%)
Intelligence sharing and gathering	31	25.6%
Degrading the capacities and capabilities of terrorist organizations	28	23.2%
Enhancing surveillance and capacity of security	23	19%
Increase in border control and screening	17	14%
Increase in cooperation with international security bodies e.g., INTERPOL	13	10.7%
Legislation and policy making	9	7.5%
Total	121	100.0%

Source: Researcher, 2021.

The findings show the strategies identified as 25.6% intelligence sharing and gathering, 23.2% degrading the capacities and capabilities of terrorist organizations, 19% enhancing surveillance and capacity of security, 14% increase in border control

and screening, 10.7% increase in cooperation with international security bodies e.g., INTERPOL and 7.5% legislation and policy making. The study went further to interrogate how those strategies are implemented.

The findings of the study show that intelligence sharing and gathering is one of the most relied upon strategies by the Government. The Government has invested in intelligence sharing and gathering through its security organisations like the National Intelligence Service (NIS) and National Cohesion and Integration Commission (NCIC). The findings of the study show that the National Intelligence Service regularly shares information with police agencies while the National Cohesion and Integration Commission (NCIC) investigates ethnic hate speech. Kenya's National Counter-Terrorism Center (NCTC) works with private security companies on preventing soft target attacks. The Government has also established Inter-Agency and Joint Operations Centers which serve as institutions that promote information sharing in a bid to counter terrorism.

The findings of the study show that degrading the capacities and capabilities of terrorist organizations is a Government strategy that is used in counter-terrorism. Degrading of capacities and capabilities is the treatment of persons or groups in a lesser manner than other persons thus dehumanizing them. The Government uses degradation of terrorist organisations by discrediting and dehumanising tactics to counter-terrorism activities as a way to discourage sympathisers. The study interrogated ways in which states utilize the means for reducing the propensity of terrorist attacks. The informants gave numerous answers.

Key informant 2 (KI2) argued that:

“Government rely on degrading because it offers numerous advantages. First, by eliminating terrorist, the Government reduces the incidences, sends a warning and also eliminates skilled and dangerous terrorists who can carry out dangerous activities. Killing and arrest also disrupt the operations of a terrorist organisation. When this is done, it takes more time for the organisation to regroup. This is a success to government strategies. (KI2)

A Third Key Informant (KI3) raised the following reasons.

“The killing of terrorism increases success of operations. If the pace of arrests and killings is rapid enough, then the terrorist organisation can lose the critical personnel and key trained persons equipped with skills and capabilities that the organisations requires to function. Usually, terrorism operates in clandestine manner. Therefore, it has very few trained personnel who offer to be suicide bombers.”

The Fourth Key Informant (KI4) informed the study:

“Killing works well for many governments. Though governments may not be strong enough to fight terrorism, targeting and killing of terrorist proves that security agencies are stronger than the terrorists in the event of an open confrontation. Therefore, the argument that some governments want to crack down on terrorists but cannot is an argument that should not be accepted. Arrests, targeted killings and defensive measures are means of managing a conflict.”

From these excerpts, it is evident that there are a number of reasons in support of the use of force ranging from eliminating skilled personnel of terrorism, extend period of regrouping, deterrence of likely terrorists, among others. Many of the informants supported the use of force.

The findings of the study show that the Government has also enhanced surveillance and capacity of security agencies to tackle terrorism. The Government has increased budget allocation to security agencies to enable them equip their institutions with modern technology and surveillance training necessary to counter terrorism threats. According to the Daily Nation (10th June 2021) security agencies were among the

biggest top three beneficiaries of the 2020/21 budget with an allocation of Kshs168 billion which was to be shared among the National Police Service, Defence Forces and the National Intelligence Service. In the Budget for (FY 2021/22), the allocation of Kshs119.8 billion was allocated for Defence, Kshs42.5 billion for the NIS and Kshs110.6 billion for policing and prison services. This allocation to the security agencies was to enable them to create an enabling environment for businesses to thrive while aiding faster economic recovery. This is evident that the Government is keen to enhance surveillance and capacity of security agencies in counter-terrorism strategies and measures.

The findings of the study show that the Government has increased border control and screening, especially in hotspot areas such as Lamu, Garissa, Isiolo, Marsabit and other regions. The United Nations Counter-Terrorism Centre (UNCCT) and Global Counter-terrorism Forum (GCTF) have collaborated to develop the Border Security Initiative (BSI) which provides a guide to Border Security Management (BSM) in the context of counter-terrorism. Kenya is an active member having held a workshop in Dec 2015 and has implemented the BSI strategy in porous borders, particularly along remote border areas. The Government has also deployed immigration officers as watch-lists to screen and monitor at smaller points of entry.

The finding of the study shows that the Government advocates for the increase in cooperation with international security bodies, especially INTERPOL. The Government is keen in international and regional cooperation in security matters such as KDF participation in AMISOM, Global Coalition to Defeat ISIS and its frequent participation in regional Global Counter-Terrorism Forum (GCTF).

The findings of the study show that legislation and policy making is another strategy that the Government uses in counter-terrorism. Currently, the Kenya Government uses the Prevention of Terrorism Act (2014) to investigate and prosecute terrorism. Since 2019, Kenyan officials have been developing a border security strategy despite the challenges faced. The Government, in collaboration with the US, intends to adopt Automated Targeting System-Global (ATS-G) software to screen air travelers. The adoption of ATS-G together with PISCES will enhance border management system, enhance capabilities, target potential threats and counter terrorist travel. This faces challenges from the data protection law which has delayed the implementation of ATS-G.

The Government has also gone an extra-mile in counter-terrorism strategies as it has a devolved programme for countering violent extremism in the counties (CVE). Under the county action plans, the Government has a programme for the 47 counties to further implement its National Strategy to Counter Violent Extremism. Those efforts by the Government have seen it host a high-level international CT/CVE Conference in July 2019.

The findings of the study only mentioned some of the strategies the Government deploys in its counter-terrorism measures. The study also shows that the Government is still undertaking various counter-terrorism strategies and measures that the study was limited to due to the sensitivity of the study.

4.4.3 Security Counter-Terrorism Strategies

The study asked the respondents to identify the counter-terrorism strategies used by security apparatus in Kenya. The findings show the strategies security apparatus use

to include use of intelligence and surveillance, deploying security personnel, use of force and invasion, renditions, illegal detentions and detainee abuse, investigations and infiltration into recruitment installations.

Table 4.6: Security Counter-Terrorism Strategies

Strategies	Frequency	Percent (%)
Use of intelligence and surveillance	30	24.8%
Deploying security personnel	23	19.0%
Use of force and invasion	18	14.9%
Renditions, illegal detentions, and detainee abuse	18	14.9%
Investigations	18	14.9%
Infiltration into recruitment installations	14	11.6%
Total	121	100.0%

Source: Researcher, 2021.

Table 4.6 shows the response of the strategies identified as use of intelligence and surveillance 24.8%, deploying security personnel 19%, use of force and invasion 14.9%, renditions, illegal detentions and detainee abuse 14.9%, investigations 14.9%, and infiltration into recruitment installations 11.6%, respectively.

The findings of the study show that security apparatus use intelligence and surveillance as a counter-terrorism strategy. The use of surveillance for counter-terrorism operations has been legally operationalized by National Intelligence Service Act (2012) and the Prevention of Terrorism Act (2012). Intelligence Service mandate has also been expounded by the Security Laws Act (2014) under special operations to national security. This has given security agencies discretion in the access to data and communications of persons thus raising the debate of the right to privacy (Article 31). Michael Katundu (Acting Director, Communication Commission of Kenya - 2012) acknowledges this failure in the use of surveillance in

counter-terrorism and states that the war on terror compels intrusion of personal privacy. The study shows that security apparatus or agencies use both communication content and call data records to gather intelligence, prevent crime and prepare criminal cases.

The findings of the study show that deploying security personnel is also used by security agencies as a counter-terrorism strategy. The increase of terrorist attacks in Kenya has led to the increased deployment of security personnel both inter-state and intra-state. The deployment of security personnel includes regular police, General Service Unit (GSU) and Rapid Deployment Unit (RDU), Anti-Terror Police Unit (ATPU) and Kenya Defence Forces (KDF) soldiers. This increased deployment began with the Kenya Defence Forces (KDF) to Somalia (2011) as a counter-insurgency campaign and then evolved to an intervention with AMISOM (African Union Mission in Somalia), Kenya's Anti-Terrorism Police Unit (ATPU) in major towns such as Lamu, Kwale, Mombasa, Nairobi, Garissa and other parts of the country.

The findings of the study show the use of force and invasion is a strategy that most governments have opted to use following the declaration of war on terror after the 9/11 attacks in the US. In Kenya, the use of force is stipulated in the Sixth Schedule of the NPS Act (Cap. 84) by security forces. The findings of the study show that security agencies use renditions, illegal detentions and detainee abuse. The study shows that after the World Cup bombing in Uganda, Kenyan, US and UK authorities used renditions, illegal detentions and detainee abuse as a strategy to counter-terrorism. The Kenyan Joint Terrorism Task Force (JTTF-K) and Kenya's Anti-

Terrorism Police Unit (ATPU) have used renditions, illegal detentions and detainee abuse as a strategy to handle counter-terrorism.

The findings show that investigations are a strategy that is used by security agencies in counter-terrorism. Kenya is a member of a global effort to fight terror and, thus, it has partnered with US in counter-terrorism investigations, prosecution, incident response and regional counter-terrorism cooperation. Counter-terrorism functions are divided among the three branches of the National Police Service which include: Kenya Police Service, Directorate of Criminal Investigations and Administration Police. The National Intelligence Service, KDF, and inter-agency organisations also shared responsibility. Kenya's National Counter-terrorism Center (NCTC) continued to work with private security companies on preventing soft target attacks. In 2019, the Inter-Agency Joint Terrorism Task Force was established to handle trans-national terrorism. The Kenya Defense Forces (KDF) together with AMISOM supports border security and counter-improvised explosive devices (IED) efforts.

The findings of the study show that infiltration into recruitment installations is another strategy security agencies use in counter-terrorism. Counter-terrorism strategies in general have created a paradox with human rights agencies as the use of force in countering violent extremism has been rejected. This has led to the emergence of new actors who advocate for preventive and non-coercive initiatives in counter-terrorism as hard military and security approaches foster radicalization and mobilisation to violence. The understanding of community resilience to the use of force has led to security agencies develop a more receptive approach to counter violent extremism practice and programs. Practitioners and policy-makers advocate for the use countering violent extremism programs to build trust among communities

and religious communities against violent extremist on the vulnerable. The findings of the study show that security agencies are currently using countering violent extremism as infiltration into recruitment installations. The agencies have gone further to develop the Child Safety and Security against Violent Extremism (C-SSAVE), National Strategy to Counter Violent Extremism (NSCVE) and County Action Plans (CAPs) in all counties as tools to detect radicalization and violent extremism. These are joint efforts between security agencies, county governments, civil society and citizens.

4.5 Allegations of Human Rights Violation during Counter-Terrorism Operation

The second objective of this study intended to investigate the allegations of commission of human rights violation committed by security officers. To this end, the study sought to ascertain the views of the respondents on this matter. The study noted that counter terrorism operations that are carried out by security agencies elicits mixed reactions when they occur or fail to occur. When they occur, some members of the public welcome them while others abhor it. When they fail to occur, the security organs are criticized for not being proactive. They are accused of laxity and indecisiveness. But what makes counter-terrorism operations so controversial? Allegation of human rights violation is one such reason and operation challenges is another. This section begins by analyzing allegations of human rights and then the challenges of counter-terrorism operations.

Key informants noted that almost all counter-terrorism security operations, be it military or police-led operations by any of their names or nature, involve the use of force which is defined within a certain legal framework. When the military or the

police use force against civilians or other unauthorized targets, in excess of the limits provided by the law, they violate human rights. The excessive use of force in both internal and external operations has received widespread criticism. There have been abundant accusations leveled against the armed forces for violating human rights during counter terror operations in Kenya. One informant from Amnesty International had the following to say:

“Whereas many states embrace violence or use of force to deal with terrorism, these acts are by all means abhorrent crimes. These are seen as perpetuation of crime on the alleged terrorist or their families. Besides violating human rights, these can be elevated to crimes against humanity. As an organisation with vested interest in human rights watch, we condemn these acts of crime perpetuated in the disguise of counter-terrorism. It is the responsibility of governments to protect their citizens. It is a must for states to guarantee human rights. It must ensure that counter-terrorism measures respect human rights. Our role is to voice human rights violations so that the government and agencies engaged in terrorism do not infringe on the rights to life, protection from torture and ill-treatment or any other form of violation of human rights.”
(KI6).

From this excerpt, acts of human rights violation include forced disappearance, excessive use of force, extra-judicial killings, and degrading treatment of citizens, rape, torture and arbitrary arrests. All those are condemned by civil societies. Some of those accusations of human rights violations have been reported by both local and international media stations. In addition, human rights organisations such as Kenya National Commission on Human Rights, Human Rights Watch and Amnesty International and other civil society organisations have reliably accused the military and police for violating human rights. Both the military and police have strongly denied and disassociated themselves with those allegations. While absolving themselves from any wrong doing, the military and the police aver that security operations are conducted professionally and in line with human rights law.

This study also sought to investigate whether the counter-terrorism strategies and measures employed in Kenya violated or upheld human rights in Kenya. The study examined the level of awareness of citizens on counter-terrorism on human rights, the extent to which the counter-terrorism measures violate human rights and the implication of the counter terrorism measures on human rights protection in Kenya. The analysis on the allegations of human rights are presented here.

4.5.1: Are there Human Rights Violation in Counter-Terrorism Measures?

The study asked the respondents whether there are human rights violations in Kenya in implementing the counter-terrorism measures. The responses are as indicated in figure 4.1 below.

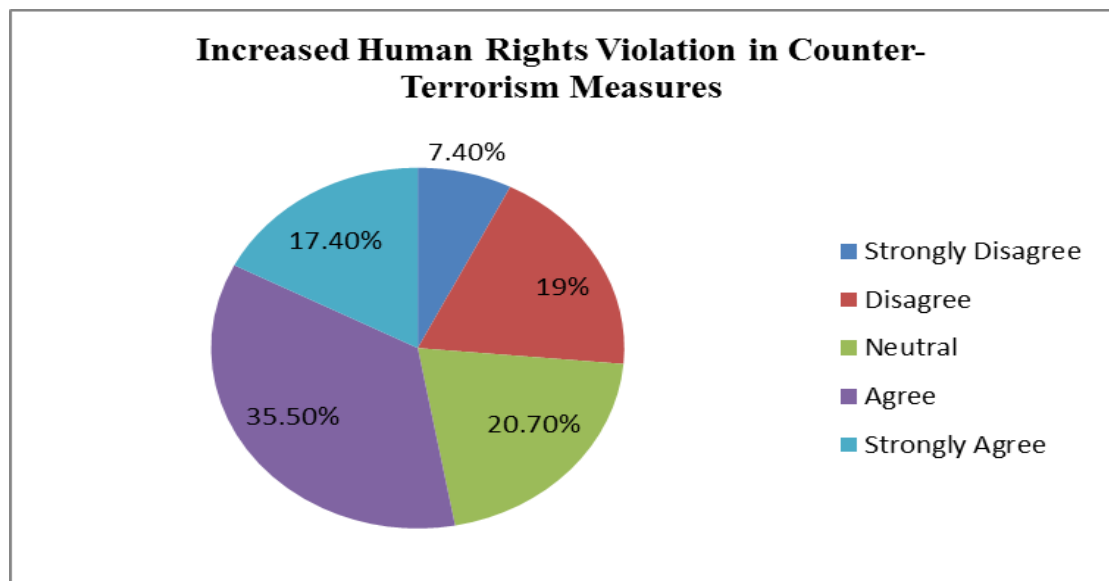


Figure 4.2: Increased Human Rights Violation in Counter-Terrorism Measures
Source: Researcher, 2021.

Figure 4.2 shows the response as to whether there has been an increase of human rights violation as a result of counter-terrorism strategies. Approximately 35.5% of the respondents agreed, 17.4% strongly agree, 19% disagree, 7.4% strongly disagree and 20.7% were not sure whether security officers violate human rights during

counter terrorism operations. In total, more than 52% affirmed that there are violations of human rights in the country during counter-terrorism operations.

The study found that a majority of the respondents agreed that there have been increased human rights violations in implementing counter-terrorism, while a considerable number have no clue as to whether there have been increased human rights violations. This is because the Government does not publicly involve the citizens in matters of national security. The nature and scope of counter-terrorism is handled by a selected task force which carries its activities with discretion.

The findings of the study also show that those who were in disagreement that there have been increased human rights violations thought that the Government needs to take all necessary measures in implementing counter-terrorism strategies. The findings also show that the respondents felt that the use of force was necessary, thus this was not a violation of human rights per se.

4.5.2 Extent to Which Counter-Terrorism Measures Violate Human Rights

This study was interested to ascertain to what extent the counter-terrorism measures violate human rights? The respondents were asked to indicate the extent to which counter-terrorism measures violate human rights in Kenya. The findings showed that 62.8% agreed that counter-terrorism measures violate human rights to a great extent, while 22.3% disagreed that counter-terrorism measures violate human rights. From those findings, we can deduce that the current counter terror strategies used by a large extent violate human rights. Those finding were supported by oral interviews in which the key informant stated as follows:

“In response to increased acts of terror and the ever-growing number of people ascribing to extremism, especially Al-Shabaab, the Kenya Government has adopted a largely militaristic and security-focused approach against terrorism. That approach largely violates human rights.” (KI8).

In the above excerpt, key informant eight from the civil society, Human Right Watch, was assertive that the current counter terror approaches violated human rights. The informant alluded to reports in Kenya which indicate that security agents usually violate human rights when they react through counter-terrorism actions that follow the bombings allegedly committed by terrorists. Some of the actions that characterise human rights violations include allegations of arbitrary detention, unlawful renditions, physical abuse, and denial of due process rights. This, however, is refuted by those from security sector who argue that there are no human rights violations.

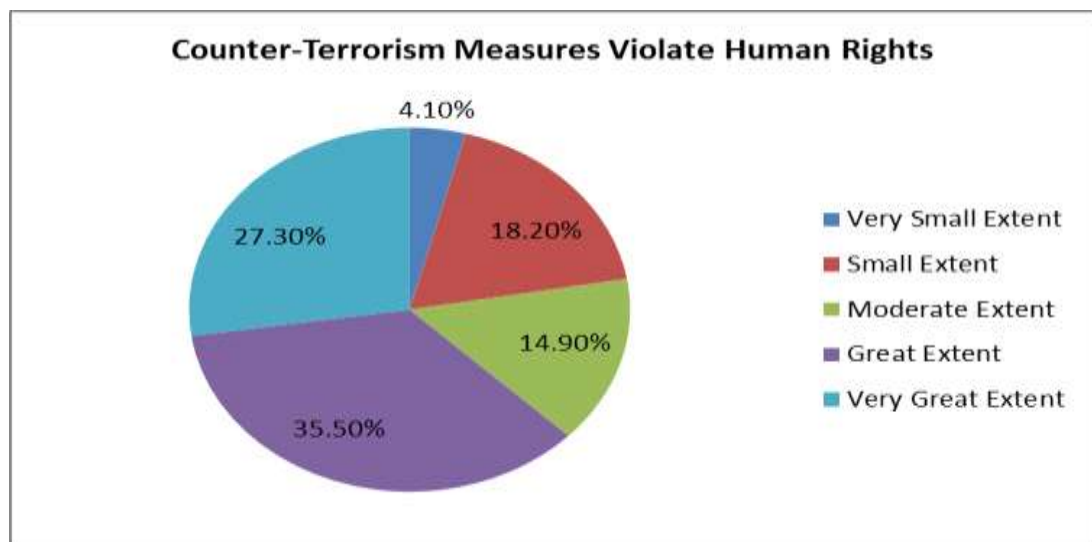


Figure 4.3: Counter-Terrorism Measures that Violate Human Rights

Source: Researcher, 2021.

Figure 4.3 above shows the response to the extent to which counter-terrorism measures violate human rights as 35.5% very great extent, 27.3% great extent, 14.9% moderate, 18.2% small extent and 4.1% to a very small extent, respectively.

The study went further to ascertain why a majority of the respondents felt that counter-terrorism measures violate human rights by looking at the implication of the counter-terrorism measures on human rights protection. The study identified six characteristics to assess the implication of counter-terrorism on human rights. Those characteristics include the increase in human rights violations in the implementation of counter-terrorism measures, success in the fight against terrorism by counter-terrorism agencies, effectiveness of the counter-terrorism strategies is work in progress, the right against discrimination based on religion, race or ethnicity, perception that the Joint Terrorism Task Force (JTTF-K) agencies are agents of extra judicial killings and the Security Law (Amendment) Act (2014) used to terrorise, detain, arrest, search and kill innocent persons.

4.5.3: Are there Human Rights Violation in Counter-Terrorism Measures?

This study sought to establish which categories of human rights are violated. There are three generation of human rights, namely, first, second and third generation. These correspond to the three types of human rights norms: civil-political, socio-economic and collective-developmental (Vasek, 1977). The first two, which represent potential claims of individual persons against the state, are firmly accepted norms identified in international treaties and conventions. The final type, which represents potential claims of peoples and groups against the state, is the most debated and lacks both legal and political recognition.

Civil-political human rights include two sub-types: Norms pertaining to physical and civil security (for example, no torture, slavery, inhumane treatment, arbitrary arrest and equality before the law) and norms pertaining to civil-political liberties or

empowerments (for example, freedom of thought, conscience and religion, freedom of assembly and voluntary association and political participation in one's society).

Socio-economic human rights similarly include two sub-types: Norms pertaining to the provision of goods meeting social needs (for example, nutrition, shelter, health care, education) and norms pertaining to the provision of goods meeting economic needs (for example, work and fair wages, an adequate living standard and a social security net).

Collective-developmental human rights also include two sub-types: The self-determination of people and certain special rights of ethnic and religious minorities. This section examined alleged violation of these rights. A brief analysis is discussed here below:

4.5.4 Right against Discrimination. Religion, Race or Ethnicity

The Universal Declaration of Human Rights (UDHR) proclaims that every individual is entitled to all the rights relating to freedoms, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other rights. This study asked the respondents whether the right against discrimination of suspected terror suspects had been violated based on religion, race or ethnicity. The findings of the study are shown in figure 4.6.

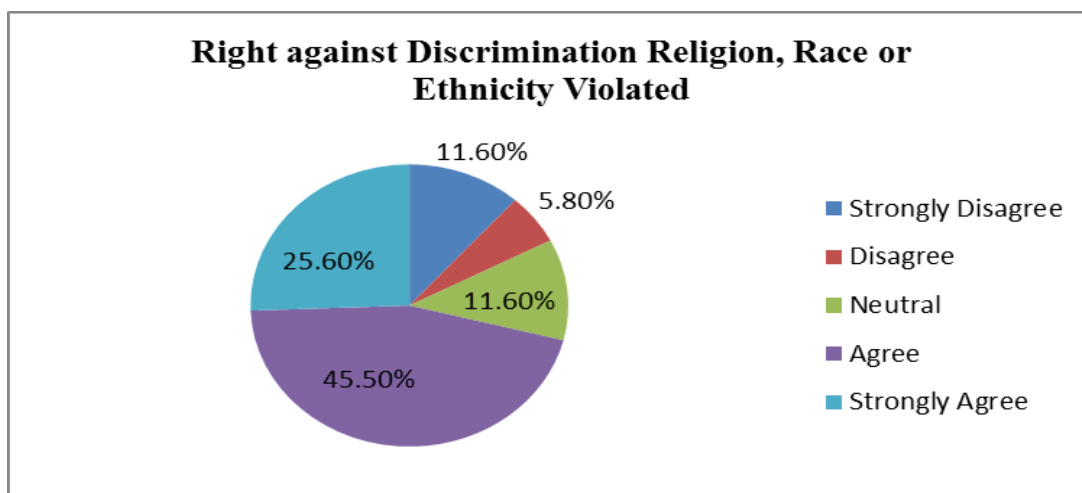


Figure 4.4: Right against Discrimination Religion, Race or Ethnicity Violated
Source: Researcher, 2021.

Figure 4.4 shows the right against discrimination based on religion, race or ethnicity has been the most violated human right as 45.5% agree, 25.6% strongly agree, 11.6% neutral, 11.6% strongly disagree and 5.8% disagree. The findings were supported by the recommendation of Amnesty International (Kenya) who argued that discrimination strikes at the very heart of being human. It harms the individuals and denies them all the rights to enjoy their fundamental freedoms. As one of the key informants notes:

“We all have the right to be treated equally, regardless of our race, ethnicity, nationality, class, caste, religion, belief, sex, gender, language, sexual orientation, gender identity, sex characteristics, age, health or other status. Yet all too often, we hear heart-breaking stories of people who suffer cruelty simply for belonging to a different group from those in positions of privilege or power.” (KI7).

This concern voices that discrimination robs individuals of their rights. Further, not even Government machinery should deny or violate human rights or other legal rights on an equal basis with others because of an unjustified distinction made in policy, law or treatment.

4.5.5 Allegations of Extra-Judicial Killings

The study asked the respondents whether Kenya citizens perceive the Joint Terrorism Taskforce (JTTF-K) agencies as agents of extra-judicial killings of innocent citizens suspected for terrorism. The findings of the study show that 71% agreed while 17.4% disagreed that citizens perceive the Joint Terrorism Taskforce (JTTF-K) agencies as agents of extra-judicial killings.

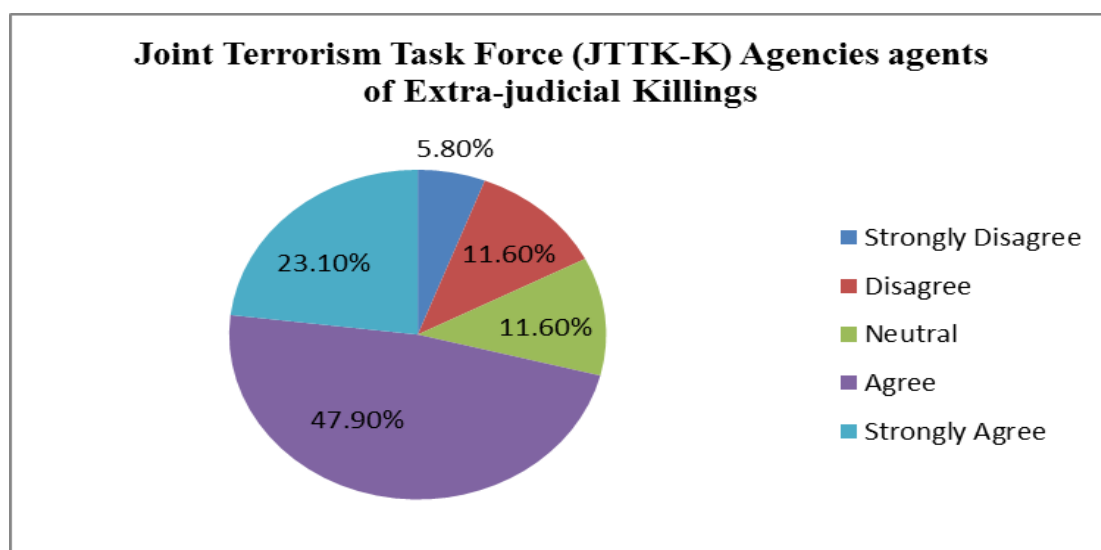


Figure 4.5: Allegation of Extra-judicial Killings

Source: Researcher, 2021.

Figure 4.5 shows Kenya citizens perceive the Joint Terrorism Taskforce (JTTF-K) agencies as agents of extra-judicial killings of innocent citizens suspected for terrorism as 47.9% agree, 23.1% strongly agree, 11.6% neutral, 11.6% disagree and 5.8% strongly disagree.

According to a report by Privacy International (2017), the use of intelligence and surveillance by security agencies in counter-terrorism has been abused because of torture and extra-judicial killings. Security agencies such as the Joint Terrorism Task Force - Kenya (JTTF-K), GSU-Recce Company and Anti-Terrorism Police Unit (ATPU) have used communication surveillance, profiling, locating, tracking and

arresting targets for abuse, torture, abduction and extra-judicial killing. Human Rights Watch (2013) and Muslim Human Rights Forum (2007/8) records show 85 male, 19 women and 15 children were arbitrary detained and unlawfully extradited from Kenya to Somalia and Kampala, Uganda, following the July 2010 World Cup bombings.

4.5.6 Allegations of Terrorising, Arrest, Detain, Arrest, Search and Kill of Innocent Citizens

The study asked the respondents whether the Security Laws (Amendment) Act as passed by the National Assembly in 2014 has been hijacked by some security agencies to terrorise, detain, arrest, search and kill innocent members of the Muslim community suspected of terrorism. The findings of the study show 65.3% agreed while 28.2% disagreed that the Security Laws (Amendment) Act as passed by the National Assembly in 2014 has been hijacked by some security agencies to terrorise, detain, arrest, search and kill innocent citizens.

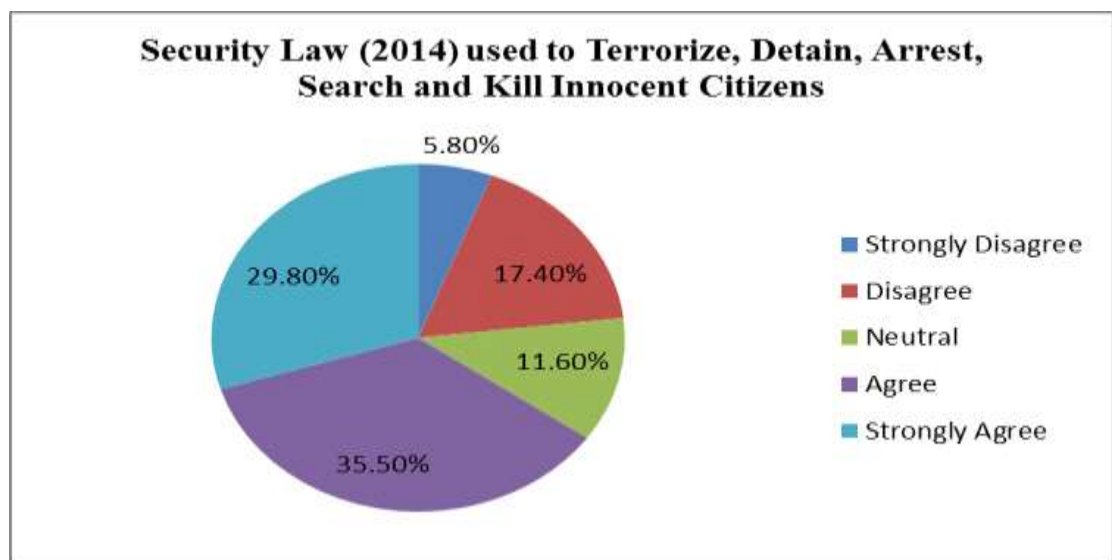


Figure 4.6: Security Law (2014) used to Terrorise, Detain, Arrest, Search and Kill Innocent Citizens
Source: Researcher, 2021.

Figure 4.6 shows the response on whether the Security Laws (Amendment) Act as passed by the National Assembly in 2014 has been hijacked by some security agencies to terrorise, detain, arrest, search and kill innocent members of the Muslim community suspected for terrorism as 35.5% agree, 29.8% strongly agree, 11.6% neutral, 17.4% disagree and 5.8% strongly disagree, respectively. Since 2013, a Kenyan non-governmental organisation Independent Medico-Legal Unit has documented 764 extra-judicial killings in the fight against terrorism.

4.5.6 Challenges in Counter-Terrorism Operations

The propensity of terrorism in the recent past has increased significantly. The increased terror attacks have occurred at a time when military technology has revolutionized war and warfare. With sophisticated weapons readily available to terror cells and groups, they have become more military adept. This new twist calls for more robust force when the military or police intervene to thwart terror activities. Today, more than before, the casualty rate of both security officers and suspected terrorists is in tremendous rise. Therefore, the cost of counter-terrorism has also increased immensely. As such, the use of military force in countering terrorism has become inevitable (Thomas et. al 2017).

Further, the recent rise of terrorism has justified the use of the military in quelling insurgencies. Reported military success in controlling terrorism in the global war on terror has elevated military roles beyond traditional combat roles, to providing support, and complementary or replacement roles of non-military capabilities (Olivera, 2016). This move is, however, with challenges of its own (Azinge, 2013). As militarisation of counter terrorism continues, military commanders and troops are

more often than not faced with various operational challenges during counter terror operations. This last and final section of analyzing the allegation of human rights during counter terrorism operation examines the operational challenges and dilemma that security officers face during counter-terror operations. Those challenges predispose security agents to commit gross human rights violations.

One major challenge for security officers or armed forces during internal security operations is ignorance of what law they are operating under (IRCR, 2002). It is the senior officer's duty to ensure laws governing conduct of hostilities are observed and that provisions of IHRL are applied. A key informant said that those laws and rights are not set forth in the basic military training or the police curriculum except in pre-deployment training sessions of United Nations Peace Keeping Operations (UNPKOs). The study recommends that training on LAOC, IHL and UDHR is important for all security officers if respect of human rights is to be actualized during counter terrorism operations.

The second challenge facing troops during military intervention emanates from superiority complex and mind-set on the use of force possessed by the members of the armed forces. Key informants in the study opined that the military is a noble profession compared to the police. Those views resonate well with Brown's assertion who argues that society's construction of state security organs is such that the military is viewed as a more powerful agent than paramilitary police or civil police. This mentality poses challenges during internal security operations. For instance, when the military is called upon to aid the police, they assume that they have a more-noble role than this and some even think they have been called upon because of the incapacity and inefficiency of the police in maintaining law and

order. In addition, military personnel are habitually oriented to believe that they are licensed to kill. As such, they use more lethal force which is within their mandate. Military orientation also dictates that any potential threat to national security has to be dealt with using maximum force. Having this type of mind-set during internal operations could be dangerous and violate the principles of discrimination.

Soldiers also face the challenge of restraint or use of minimum force. Their core role is defeating the enemy summarily. They seek to inflict maximum damage within a short time. As such, they may not be interested in safeguarding human rights but kill. This may be contrary to the rules of engagement in internal operations. Key features of internal security operations, on the other hand, is restraint and use of minimum force, the exact opposite of what is usually required of soldiers in conventional warfare.

The KDF and police also face the challenge of applying minimum force due to use of inappropriate equipment and arms. Often, the army may not have appropriated equipment to undertake internal security operations. This has impacted on their ability to work with the stipulated conduct. Soldiers confronted by terror suspects may shoot to kill. However, if they have protective devices, their lives are not threatened. They can therefore apply a graduated response to dissuade or deter, without having to resort to extreme measures. The forces involved in internal security operations need a range of equipment to enable them to produce a graduated response. They must be trained in the use of that equipment.

The military and other security agencies also face a challenge of implementing the 'use of force continuum'. The use of force continuum is a graduated model used to

designate the echelons of force a lawful officer may use to exercise control over a resistant subject. The level of force applied depends on the level of resistance the subject may exhibit. While the use of force continuum describes each of the different levels of force an authorised security agent may use in response to subject behavior, it is not necessary to mechanically apply the levels of force step by step. Depending on the circumstances, an authorised security officer may have to rapidly escalate or de-escalate through the continuum, depending on the totality of facts and circumstances of the particular situation. The potential value of this visual and conceptual aid is that it provides a model that military officers can use to evaluate and plan their response without violating human rights.

Management of joint operations is another challenge of internal military interventions. One problem with internal disputes is that there are many actors involved in a theatre of operations. Some operations like counter-terrorism require joint operations between the military and the police. Planning and management of joint operations pose operational problems, especially in identifying the different characteristics and capabilities of friendly forces. A military force or other grouping derives its freedom of action, physical strength, or will to fight when operating exclusively on its own. Question of who is in charge; who should undertake what task and how; when should military take over or what is the role of the police in joint operations are common dilemmas that military commanders are faced with during joint interventions. Such challenges faced the Kenya Counter-terrorism Strategy in the Westgate Mall Operation.

4.6 Counter-Terrorism Measures Upholding Human Rights

With the general conviction that a number of human rights are violated during counter-terrorism measures, there is the ever increasing need to reassess counter-terrorism strategies that are used in various countries. This study sought to evaluate a number of strategies that can reduce the propensity of terrorism while upholding and respecting human rights. Lederach (2017), among others, aver that the adoption of engagement strategies in dealing with terrorism can be done without violating the rights of the suspected terrorists.

The study asked the respondents to rate how counter-terrorism strategies uphold human rights in Kenya. Using a scale of 1-10, where 1 is “low” and 10 is “high” to rate. The findings of the study show a majority of the respondents, 58.7%, rated below 4 which is low while minority of the respondents, 17.4%, rated above 6 which is high on upholding human rights, respectively. The findings of the study also show that a considerable number of respondents, 24%, were indecisive on whether counter-terrorism strategies uphold human rights.

Table 4.7: Counter-Terrorism Measures Upholding Human Rights

Rating	Frequency	Percent (%)	Cumulative Percent (%)
2	14	11.6%	11.6%
3	34	28.1%	39.7%
4	23	19.0%	58.7%
5	29	24.0%	82.7%
6	7	5.8%	88.5%
7	7	5.8%	94.3%
8	7	5.8%	100%
Total	121	100.0	100%

Source: Researcher, 2021.

The findings of the study show that counter-terrorism strategies and measures are generally considered not to uphold human rights.

4.6.1 Recommended Counter-Terrorism Strategies that Respect Human Rights

The study asked the respondents some of the counter-terrorism strategies that the Government can adopt in respect of human rights. The findings of the study identified several counter-terrorism strategies which included youth empowerment and employment, enhancement of surveillance and intelligence gathering, stoppage of renditions and use of force, proper investigations, upholding of human rights and the rule of law and public education, awareness and participation.

Table 4.8: Counter-Terrorism Strategies Government can adopt to Respect Human Rights

	Frequency	Percent (%)
Youth Empowerment and Employment	27	22.3 %
Enhance surveillance and intelligence gathering	20	16.5 %
Stop renditions and use of force	18	14.9 %
Proper investigations	21	17.4 %
Uphold human rights and Rule of law	21	17.4 %
Public education, awareness and participation	14	11.6 %
Total	121	100.0 %

Source: Researcher, 2021.

Table 4.8 identified counter-terrorism strategies the Government can adopt to respect human rights as 22.3% youth empowerment and employment, 16.5% enhancement

of surveillance and intelligence gathering, 14.9% stoppage of renditions and use of force, 17.4% proper investigations, 17.4% upholding of human rights and rule of law and 11.4% public education, awareness and participation.

4.6.2 Human Rights Practices that Government can adopt to Counter-Terrorism

The study sought to investigate which counter-terrorism strategies the Government can adopt in order to promote human rights protection. To start with, respondents were asked whether it was important for government agents to adopt those practices. The responses were as per figure 4.3.

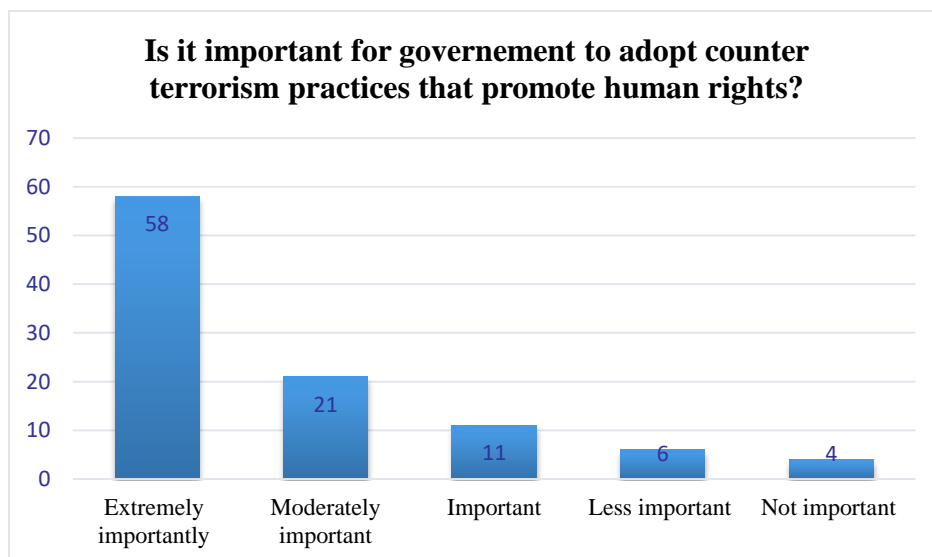


Figure 4.7: Importance for Government to adopt counter-terrorism practices that promote human rights protection.

From figure 4.3, 58% percent of the respondents indicated that it was extremely important that the Government moves with speed to adopt counter-terrorism practices that promote human rights protection. Approximately 21% said it was moderately important for Government to adopt counter-terrorism practices that promote human rights protection. About 6% and 4% of the respondents indicated

less important and not important. This meant that majority of Kenyans supported that the Government should adopt counter-terrorism practices that promote human rights protection.

The study further asked the respondents some of the human rights practices that the Government can adopt in counter-terrorism. The findings of the study identified several human rights practices to include improved relations between the security agencies and the citizenry, respect for human rights, non-discrimination and community policing. The table below summarises the suggested practices.

Table 4.9: Human Rights Practices that Government can adopt to Counter-Terrorism

	Frequency	Percent (%)
Improve relations between the security agencies and the citizenry	27	22.3 %
Respect for human rights	29	24.0 %
Non-discrimination	30	24.8 %
Community policing	35	28.9 %
Total	121	100.0 %

Source: Researcher, 2021.

Table 4.9 shows the identified human rights practices that the Government adopted in counter-terrorism as 22.3% improved relations between the security agencies and the citizenry, 24% respect for human rights, 24.8% non-discrimination and 28.9% community policing. The findings of the study show that there are several human rights practices that are adopted by counter-terrorism agencies. They included improved relations between the security agencies and the citizenry, respect for human rights, non-discrimination and community policing.

4.6.3 Remodeling Counter-Terrorism Operations to be Human Rights Sensitive

Since terrorism is on the rise, there is no doubt that states will enact a raft of measures to counter it. Some of those measures can be at odds with the respect for human rights. Moreover, there is no assurance that the new measures will succeed without the employment of proved and tested strategies such as isolation. It is, therefore, important to strike a balance between counter-terrorism and human rights. To this end, it is prudent to remodel current counter-terrorism measures to enhance the promotions of human rights. How can security agencies remodel counter-terrorism operations to be sensitive to human rights?

The starting point is to put into practice the prescriptive supposition that the civilians control the military (Huntington, 1975). Civilian control of the military means that key decisions of the military should be done by legitimate elected leaders and not senior professional military officers (Croissant *et.al*, 2013). Although this is enshrined in the Constitution, the actual participation of the civilians in military decision-making process is often overlooked. It is important that before counter-terrorism operations are conducted, public participation should be sourced. Currently, civilians make little contribution towards security operations.

Secondly, military intervention can be remodeled to assume the role of a surrogate institution through capitalising on opportunities provided in civic-military operations (CMO) during counter-terrorism operations. Anthony Anderson argues that societies suffering from the impact of terrorist welcome the military interventions because the post-conflict societies view the military as a surrogate that replaces former discredited institutions. Therefore, the military is expected to have a significant

impact on the transformation of the negative attitude that is leveled against the military and other security agencies. Thus, when carrying out counter-terrorism operations, it is important that security agencies apply ethics during such interventions. (Gouly, 2002).

The third way to improve civilian-military cooperation (CIMIC) is by having the military and security agencies engaged in community service before, during and after combat. Civilian-military cooperation is vital for the civilian population to regain its footing in order to build a stable society. Military participation in community service helps in winning the minds and heart of the victims of intervention.

The fourth way to improve the tainted image of security agencies is through developing a good process of addressing complaints. The military, like the police, should be receptive to the formation of an independent ombudsman-type of office to which citizens could take complaints to in the event of human right violations. The formation of such arrangements and structures assists in building confidence within the civil society. The ombudsman's office in most cases is controlled by civilians. It, therefore, provides a check on military excesses.

Democratic participation and transparency are also key in improving public perception of military intervention. During the intervention, government agents and military commanders should be democratic. The military should also remain apolitical at all times and avoid political manipulation. Security agents, politicians and provincial administrators should not take sides.

Another way of rethinking counter terrorism operation is through interlacing military stick measures with community-based carrot measures during the operations. Regan argues that stability in military-civil operations is likely to be successful when military interventions are partnered with civilian-led peace building initiatives that implements reform packages within a broadly defined resolution process. Regan concurs that those mixed strategies of combining negotiations with force are the most successful in shortening violence (Regan, 2000). Regan further argues that negotiated settlements and consent prior to interventions appear to be the most important ingredients of success in ending violence.

Finally, there is also need to rethink the concept of counter-terrorism. Since 11th September 2001, governments world over have experimented with various counter terror approaches. According to Seidenberg, terrorism can be handled like war through military intervention or be dealt through the court system. The most relied upon counter terror strategy is repression (Seidenberg, 2003), where military action was expected to diminish terrorist ability to engage in violence. This has proven to be counter-productive and, hence, the need to appreciate the theory of change approaches. Theory of change framework is based on a continuum of isolation and engagement (Lederach, 2017). Isolation is a strategy of identifying, targeting and eliminating individuals and groups which espouse violence that is defined as terrorism, and is famously referred to as 'listing'. Engagement refers to strategies that require contact, consultation and dialogue. Complementary application of both isolation and engagement is seen as plausible in dealing with extremism. This is because there is no one technique that is a "magic bullet" in dealing with terrorist situations.

Alongside engagement is the question of negotiating with groups that use force. The much-asked question is: Should the Government reach out and engage the terrorists in negotiations with the aim to persuading them to eschew violence? This question is not new. Since 11th September 2001, the question of negotiating with enemies has provoked controversial debate. Often becoming an exchange of politically and morally charged heat. Understandably, governments seek to shield themselves from such heat by categorically asserting that they will not talk to terrorists. Despite such claims, more than a few governments have talked and do talk with groups and individuals they regard as “terrorists”. Such interactions are not routine, and they are also rare.

Although nothing is as unpopular as the so-called “entering into talks with terrorists”, time and again, governments and innocent civilians face the unpalatable reality from terrorist attacks. Under such circumstances, counter-terrorism strategies such as military repression, policing, isolation, targeted killing, profiling and arrest may not work or may be insufficient to end terrorism. On the contrary, they may worsen the problem. Furthermore, the violence to obliterate terrorism may be so bloody and may result in indiscriminate killing of innocent civilians and violations of the international law, or destabilisation of the state while the citizens becoming morally repulsive at the initial terror attacks. Ironically, the cure may be worse than the disease. In such conditions, entering into talks with the perpetrators may be viable (USIP, 2010).

Ultimately, isolation as a response to terrorism fail so often in its stated aims because it is so badly misunderstood and ignores the psychology of the enemy and of observers (Silk, 2012). Strength and power alone are not enough to defeat

terrorism. Aggression and force are too crude because they deceive by meeting short term psychological needs of the state and its citizens by offering indications of success, terrorists disabled; weapons confiscated; operations and networks disrupted. Yet, appearances and accolades may be deceiving. Terrorists can endure military strikes.

To allay the fears that negotiations with the “enemy” may set a bad precedence and lead to mushrooming of such groups, governments should pursue both stick and carrot measures in dealing with internal disputes. Since military interventions plays a significant role in bringing about peace, there is need to enhance its performance to avoid widespread criticism by re-imagining and re-modeling it. This can be done through re-orientation of the military strategy to address the impact of its operations. For instance, there is need to change the isolationist and responsive short-sightedness of the military that tends to ignore the impact of their activities on the people. This can be implemented through adoption of the international surrogate security institution. This, adjustment, however might be done with little disruption to the operational routines in the military. It is, therefore, very possible, though with challenges, for the military interventions to bring sustainable peace without compromising their security role.

4.7 Conclusion

The findings of the study identified various counter-terrorism strategies that are used by organizations, governments and security apparatus. Organizations’ strategies include use of intelligence, installation of protective measures, physical security and deployment of security and intelligence officers, sensitization and awareness among the employees. Government strategies include intelligence-sharing and gathering,

degrading the capacities and capabilities of terrorist organizations, enhancing surveillance and capacity of security agencies, increase in border control and screening and increase in cooperation with international security bodies such as INTERPOL. Security apparatus strategies include use of intelligence and surveillance, deployment of security personnel, use of force and invasion, renditions, illegal detentions and detainee abuse, investigations and infiltration into recruitment installations.

The findings of the study identified that the counter-terrorism strategies do not uphold human rights and they violate human rights in Kenya. This had implications on increased human rights violations in the implementation of counter-terrorism measures, little success in the fight against terrorism by counter-terrorism agencies, effectiveness of the counter-terrorism strategies is work in progress, the right against discrimination based on religion, race or ethnicity, perception that the Joint Terrorism Task Force (JTTF-K) agencies are agents of extra judicial killings and the Security Laws (Amendment) Act (2014) is used to terrorise, detain, arrest, search and kill innocent persons.

The findings of the study found the counter-terrorism strategies that the Government can adopt in respect of human rights to include youth empowerment and employment, enhancement of surveillance and intelligence-gathering, stoppage of renditions and use of force, proper investigations, upholding human rights and rule of law and public education, awareness and participation. The findings of the study show human rights practices the Government can adopt in counter-terrorism include improved relations between the security agencies and the citizenry, respect for human rights, non-discrimination and community policing.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.0 Overview

This chapter presents the summary, conclusion and recommendation of the study. The summary was informed by the objectives of the study while the conclusion and recommendations were informed by the data analysis.

5.1 Summary

The summary was informed by the objectives of the study. The objectives included to explore counter-terrorism measures used in Kenya, determine whether the counter-terrorism measures used uphold human rights in Kenya and suggest counter-terrorism strategies that promote human rights protection in Kenya.

5.1.1 Counter-Terrorism Measures

The study identified counter-terrorism measures in Kenya. It looked into the various counter-terrorism strategies used by organisations, Government and security apparatus. The study identified five major strategies that most organisations use in counter-terrorism. These strategies include use of intelligence, installation of protective measures, physical security and deployment of security and intelligence officers, sensitization and awareness among the employees. The study identified the strategies the Government uses to include intelligence-sharing and gathering, degradation of the capacities and capabilities of terrorist organizations, enhancement of surveillance and capacity of security, increase in border control and screening and increase in cooperation with international security bodies such as INTERPOL.

5.1.2 Counter-Terrorism Measures that Uphold Human Rights

The study investigated whether the counter-terrorism strategies and measures uphold human rights in Kenya. The study also examined the level of awareness of citizens on counter-terrorism on human rights, the extent to which counter-terrorism measures violate human rights and the implications of counter-terrorism measures on human rights protection in Kenya.

The study found that the counter-terrorism strategies do not uphold human rights and they violate human rights in Kenya. The study found that the violation of human rights by counter-terrorism was characterised by six implications of upholding human rights. Those characteristics include the increase on human rights violations in the implementation of counter-terrorism measures, success in the fight against terrorism by counter-terrorism agencies; effectiveness of the counter-terrorism strategies is work in progress; the right against discrimination based on religion, race or ethnicity; perception that the Joint Terrorism Task Force (JTTF-K) agencies are agents of extra-judicial killings; and the Security Laws (Amendment) Act (2014) used to terrorise, detain, arrest, search and kill innocent citizens.

5.1.3 Counter-Terrorism Strategies that Promote Human Rights

The study identified counter-terrorism strategies that promote human rights in Kenya. It examined the counter-terrorism strategies to be adopted in respect of human rights and human rights practices to be adopted in counter-terrorism. The study found the counter-terrorism strategies that the Government can adopt in respect of human rights to include youth empowerment and employment, enhancement of surveillance and intelligence-gathering, stoppage of renditions and

use of force, proper investigations, upholding of human rights and rule of law and public education, awareness and participation.

The study found the human rights practices the Government can adopt in counter-terrorism to include improved relations between the security agencies and the citizenry, respect for human rights, non-discrimination and community policing.

5.2 Conclusion

The study concludes that the counter-terrorism measures in Kenya used by organisations, government and security apparatus vary depending on the threat they are likely to face against terrorism. The counter-terrorism strategies and measures do not uphold human rights and they violate human rights in Kenya. There have been increased violations of human rights in the implementation of counter-terrorism measures, little success in the fight against terrorism by counter-terrorism agencies, effectiveness of the counter-terrorism strategies is work in progress, the right against discrimination based on religion, race or ethnicity, perception that the Joint Terrorism Task Force (JTTF-K) agencies are agents of extra-judicial killings and the Security Laws Amendment Act (2014) used to terrorize, detain, arrest, search and kill innocent citizens.

The counter-terrorism strategies that the Government can adopt in respect of human rights to include youth empowerment and employment, enhancement of surveillance and intelligence gathering, stoppage of renditions and use of force, proper investigations, upholding of human rights and rule of law and public education, awareness and participation. The human rights practices the Government can adopt

in counter-terrorism to include improved relations between the security agencies and the citizenry, respect for human rights, non-discrimination and community policing.

5.3 Recommendations

The study makes the following recommendations. First, the Government needs to create public awareness and participation on counter-terrorism strategies and measures to build public confidence in its efforts to fight terrorism. Secondly, the Government should encourage inter-agency cooperation in the implementation of counter-terrorism strategies and measures. Thirdly, counter-terrorism strategies and measures need to uphold and respect human rights during their implementation. Fourthly, the Government should come up with a policy on how counter-terrorism strategies and measures are to be undertaken in respect to human rights. Finally, modernize and equip the security organs to enable them tackle terrorism. The study recommends that the Government agencies involved in counter-terrorism should use measures and practices that promote human rights. Further, the Government should create public awareness of those counter-terrorism strategies to build public confidence on her efforts to counter-terrorism.

5.4 Recommendations for Further Studies

The following are suggested topics for future study. First, a study on the efficiency of carrot and stick measures of counter-terrorism. Secondly, a study on contribution of human rights compliant counter-terrorism strategies on containing dissent terrorism.

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LIST OF KEY INFORMANTS

- KI1: Amnesty International
- KI2: Human Rights Watch
- KI3: Kenya National Commission of Human Rights
- KI4: Amnesty International
- KI5: Amnesty International
- KI6: UN Counter-Terrorism Centre-GCTF (Nairobi)
- KI7: The International Federation for Human Rights (FIDH)
- KI8: Defence and Foreign Relations Committee National Assembly
- KI9: Defence and Foreign Relations Committee Senate
- KI10: Rapid Deployment Unit (RDU)
- KI 11: Intelligence Service (NIS)
- KI 12: Anti-terrorism Police Unit (ATPU)
- KI 13: Kenya Defence Forces (KDF),
- KI 14: National Police Service (NPS)

APPENDICES

Appendix I: Work Plan

This is the Work Plan that the researcher intends to use in the whole process of developing the project.

	October	November	December	January
Proposal writing				
Collection of data				
Data analysis				
Research project				
Report Submission for examination				

Appendix II: Interview Schedule

The purpose of this study is to assess the Impact of Kenya's Counter-Terrorism Measures on Human Rights Protection. This Interview schedule will focus on the top officials both from the Parliamentary Security Committee, Commissioners from KNCHR and regional directors for Amnesty International Kenya.

What is the nature of the terrorist incidents suffered by Kenya citizens between 1998 and 2019? (Please explain)

.....
.....
.....

What are some of the counter-terrorism measures adopted by the Kenyan authorities to protect its citizens? (Please explain)

.....
.....
.....

How can you assess the human rights violations amid the implementation of counter-terrorism measures by Kenyan authorities? (Please explain)

.....
.....
.....

Has there been enough effort by Kenya's Counter-Terrorism Security Agencies in the fight against terrorism in Kenya and East Africa Region at large? (Please explain)

.....
.....

Has Kenya adhered to the regional and international human rights obligation? (Please explain)

Appendix iii: Questionnaire

Part A: Demographic Data

1. Kindly state the organisation you work with:

- Parliament of Kenya (National Assembly and Senate) [1]
- The National Security, Defence & Foreign Relations Committee [2]
- Kenya National Commission of Human Rights (KNCHR) [3]
- Amnesty International Kenya [4]
- UN Counter-Terrorism Centre-GCTF (Nairobi) [5]
- The International Federation for Human Rights (FIDH) [6]

2. Kindly indicate the number of years you have worked on counter-terrorism and human rights issues

- 1-4 Years [1]
- 5-8 Years [2]
- 9-12 Years [3]
- 12-15 Years [4]
- 15 Years and Above [5]

3. Kindly indicate your gender

- Female [1]
- Male [2]

4. Duration of time serving in the institution?

- 1 to 5 years [1]
- 5 to 10years [2]
- 10 to 15 years [3]
- Above 15 years [4]

Part B: Counter-Terrorism Strategies

5. Kindly identify some of the counter-terrorism strategies that are used by your organisation?

.....
.....
.....
.....
.....

6. What are the strategies that the Government uses in counter-terrorism in Kenya?

.....

7. Mention some of the counter-terrorism measures that have been used by the security personnel in Kenya?

.....

Part C: Counter-terrorism on Human Rights

8. On a scale of 1-10, how would you rate the counter-terrorism strategies in upholding human rights?

Very Little

Sufficient

1	2	3	4	5	6	7	8	9	10

9. To what extent do you agree that the counter-terrorism measures violate human rights in Kenya?

- Very small extent [1]
- Small extent [2]
- Moderate extent [3]
- Great extent [4]
- Very great extent [5]

10. To what level do you approve with the following statements on the implication of the Counter Terrorism Measures on Human Rights Protection in Kenya?

Using a scale of 1-5, please rank your level of agreement with each statement. (The key is as follows: 5 = Strongly agree, 4 = Agree, 3 = Neutral, 2 = Disagree, 1 = Strongly disagree).

Implication of the Counter-Terrorism Measures on Human Rights Protection	1	2	3	4	5
There has been an increase on human rights violations in Kenya in implementing the counter-terrorism measures.					
There has been little success in the fight against terrorism by Kenya's counter-terrorism agencies.					
The effectiveness of the counter-terrorism strategies can be best described as work in progress in Kenya.					
The right against discrimination based on religion, race or ethnicity has been the most violated human right in Kenya post-1998.					
Kenya citizens perceive the Joint Terrorism Task force (JTTF-K) agencies as agents of extra- judicial killings of innocent citizens suspected for terrorism.					
The Security Laws (Amendment) Act, as passed by the National Assembly in 2014 has been hijacked by some security agencies to terrorise, detain, arrest, search and kill innocent members of the Muslim community suspected for terrorism.					

Part C: Counter-terrorism Strategies that Respect Human Rights

11. What are some of the counter-terrorism strategies that the Government can adopt in respect of human rights?

.....

.....

.....

.....






12. What are some of the human rights practices the Government can adopt in counter-terrorism?

.....
.....
.....
.....

Appendix IV: Budget Estimates

Item	Quantity	Cost (Kshs.)	Total (Kshs.)
1. Personnel	1	@ 20,000.00	20,000.00
2. Materials			
Photocopy paper	3 reams	@ 550.00	1,650.00
Ball pens	5	@ 20.00	100.00
Fools caps	1 ream	@ 300.00	300.00
Calling card			2,000.00
Scratch card			3,000.00
Internet			5,000.00
3. Travel expenses			
Principal investigation			10,000.00
Two field assistants			6,000.00
4. Data analysis			
Statistical analysis			30,000.00
5. Report Preparation			
Typing			6,000.00
Printing			3,000.00
Binding			2,000.00
Total			83,050.00

Appendix v: Research Permit

 <p>REPUBLIC OF KENYA</p>	 <p>NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY & INNOVATION</p>
Ref No: 647839	Date of Issue: 06/September/2021
RESEARCH LICENSE	
	
This is to Certify that Mr. Stephen Kimathi Mutungi of Kenyatta University, has been licensed to conduct research in Nairobi on the topic: COUNTER-TERRORISM MEASURES AND HUMAN RIGHTS PROTECTION IN KENYA for the period ending : 06/September/2022.	
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