

LLM (Human Rights and Democratisation in Africa) 2009

**Counter-Terrorism and Human Rights Protection in Uganda:
Preventing Wrongs without Violating Rights**

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DECLARATION

I, CHINEDU YVES NWAGU, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:

Date:

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

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Dedication

To my precious wife Ijeoma, you are truly above rubies.
And our princess, Chisom Jasmine, what a treasure you are!

Acknowledgements

This LLM has been a long walk. As I look back now, I'm amazed at how far I've come. Thus far, indeed, has the Lord led us and I'm immensely grateful to Him for guiding me every step of the way. My gratitude also goes out to everyone at the Centre for Human Rights - Prof Frans, Prof Hansungule, Norman, John, Magnus, Martin, Thsepo, Solomon, Tarisai, Waruguru and Bonolo. Thanks for being fine examples of academic excellence.

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Looking back home, I salute my father for inspiring me to study law by being a fine lawyer himself. I'm yet to match your industry. Many thanks also to my mother and my siblings for always having my back. You motivate me to be more every day. I'm especially indebted to my lovely wife and daughter for allowing me live this dream. Your sacrifice and support is deeply appreciated and I owe you my best self.

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List of Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACSRT	African Centre for the Study and Research on Terrorism
ADF	Allied Democratic Front
AU	African Union
CTC	Counter terrorism Committee (UN Security Council)
CTCED	Counter Terrorism Executive Directorate (Security Council)
EAPCCO	Eastern Africa Police Chief's Cooperation Organisation
EJP	Eminent Jurists Panel
GA	General Assembly (United Nations)
HRW	Human Rights Watch
ICJ	International Commission of Jurists
ICPAT	IGAD Capacity Building Programme against Terrorism
IGAD	Intergovernmental Authority on Development
JATT	Joint Anti Terrorism Taskforce
LRA	Lord's Resistance Army
OAU	Organisation of African Unity
PSC	Peace and Security Council
SC	Security Council (United Nations)
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission
UNHCR	United Nations High Commissioner for Human Rights
UN	United Nations
US	United States of America

Chapter I

Introduction

History shows that when societies trade human rights for security, most often they get neither.¹

1 Background to the Study

The import and impact of terrorism and counter-terrorism measures has remained a front-burner issue in global discourse on human rights and security since the 11 September 2001 terrorist attacks in the United States of America. Following the event, and the US led 'war on terror', the UN Security Council passed a number of far-reaching resolutions² calling for concerted action among states to prevent and combat terrorism. Although, similar events have not been experienced by each individual country in the world, the UN High Commissioner for Human Rights maintains that 'the human cost of terrorism has been felt in virtually every corner of the globe.'³ Africa has not been left out in all of this.

African states, under the auspices of the Organisation of African Unity (OAU) and subsequently the African Union (AU) took their first steps towards combating and criminalizing the phenomenon of terrorism with the adoption of the Resolution on the Strengthening of Co-operation and Coordination among African States in 1992 and the 1994 Declaration on a Code of Conduct for Inter-African Relations.⁴ Notwithstanding these pioneering steps, the 1998 bombing of the US embassy buildings in Kenya and Tanzania drove home the 'scope and seriousness of the phenomenon of terrorism and

¹ P Hoffman 'Human Rights and Terrorism' (2004) 934 *Human Rights Quarterly* Vol. 26 No 4 932

² UN Security Council Resolutions 1368, 1373 and 1377 of 2001, 1390 of 2002, 1455 and 1456 of 2003 and 1526 of 2004

³ Fact Sheet No 32, *Human rights, terrorism and counter terrorism*, Office of the United Nations High Commissioner for Human Rights (2008) 1.

⁴ F Viljoen *International human rights law in Africa* (2007) 299

the danger it poses to the stability and security of [African] states.’⁵ This awakening informed the adoption, in 1999, of the OAU Convention on the Prevention and Combating of Terrorism, to affirm that Africa states were convinced ‘that terrorism constitutes a serious violation of human rights’ and therefore, ‘cannot be justified under any circumstances and consequently, should be combated in all its forms and manifestations.’⁶ Following the growing anti-terrorism waves in the international community, African states, determined ‘to ensure Africa’s active participation, co-operation and co-ordination with the international community in its determined efforts to combat and eradicate terrorism’, adopted a Protocol to the OAU Convention on the Prevention and Combating of Terrorism 2004.⁷ The Protocol stressed that it was imperative for states parties to take all necessary measures to protect populations within their territories from acts of terrorism.

1.1 Preliminary literature review

Issues of counter-terrorism and its impact on human rights have drawn a lot of attention world over. However, literature on this issue as it affects Africa is not as extensive and in depth as it should be. Nevertheless, we cannot overlook the fact that these threats exist. Botha, in *African Commitments to Combating Organised Crime and Terrorism*,⁸ observed that African recorded 6,177 casualties from 296 acts of terrorism between 1990 and 2002. To this end, Viljoen highlighted, in *International human rights law in Africa*, the need for discussions on terrorism as a ‘manifold threat to human rights in Africa.’⁹ His work, however, only discussed this issue briefly. In *The African Union*,¹⁰ Kanu argues for an African approach to combating terrorism by tackling its root causes such as poverty,

⁵ OAU Convention on the Prevention and Combating of Terrorism (1999/2002) in C Heyns & M Killander (eds) *Compendium of key human rights documents of the African Union* (2007) 75

⁶ Heyns & Killander (n 5 above) 76.

⁷ Heyns & Killander (n 5 above) 78.

⁸ C Goredema and A Botha *Africa Commitments to Combating Organised Crime and Terrorism: A review of Eight NEPAD Countries* (2004) 51

⁹ Viljoen (n 4 above) 298.

¹⁰ AI Kanu ‘The African Union’ in G Nesi (ed) *International Cooperation in Counter-Terrorism: The UN and Regional organizations in the fight against terrorism* (2006) 175

underdevelopment, and inequality. These factors, he wrote, result in 'despair leading to frustration, anger and alienation, especially of the youths who, rightly or wrongly, believe that they have no stake in society and thus are exploited by terrorists.'¹¹ This work, however, did not consider the full impact of counter-terrorism on human rights in Africa.

Other works have discussed the need for a balancing act between respect for human rights and counter-terrorism measures. *Human rights and Terrorism*¹² is commendable here. It argues that the 'war on terror' undermines the very values it seeks to protect if it is waged without respect for the rule of law and human rights. *Human rights after September 11*¹³ examines the legal ambiguity surrounding international counter-terrorism efforts and submits that it has created conducive conditions for political authorities to evade legal accountability for human rights violations resulting from those unmonitored efforts. Terry Davis¹⁴ observed that respect for human rights is not an obstacle to the effective fight against terrorism. Lazarus and Goold also wrote that, 'the attainment of security and the protection of human rights are not necessarily antithetical, either as a matter of fact or principle.'¹⁵

Talbot¹⁶ considered the necessity of balancing competing needs of counter-terrorism effectiveness and civil liberties and submitted that some restrictions on civil liberties, though deplorable, can be effective in counter-terrorism terms *if* the goals are the aversion of immediate casualties and/or punishing terrorist offenders. The author however warns that 'allowing the scales to fall significantly against the protection of civil liberties frequently produces a legacy of counter-terrorism ineffectiveness as

¹¹ AI Kanu 'The African Union' in G Nesi (no 10 above) 175

¹² Hoffman (n 1 above) 932

¹³ International Council on Human Rights Policy *Human rights after September 11* (2002) 19.

¹⁴ T Davis Preface to *Human rights and the fight against terrorism: The Council of Europe Guidelines* (2005) 5

¹⁵ L Lazarus & BJ Goold 'Security and Human Rights: The Search for a Language of Reconciliation' in BJ Goold & L Lazarus (eds) *Security and Human rights* (2007) 1

¹⁶ R Talbot 'The balancing act: counter terrorism and civil liberties in British anti-terrorism law' in J Strawson (ed) *Law after Ground Zero* (2002) 123

hostility, violence and terrorism grow within this abusive culture.’¹⁷ Bourloyannis-Vrailas¹⁸ also warns of the inherent danger of accepting terrorism as anti-human rights while allowing anti-terrorism policies gain the aura of being ‘pro-human rights’.

More so, Botha notes that the threat of and vulnerabilities to terrorism differs between continents, sub-regions and states. She writes that Africa states, like most developing countries, are more susceptible to domestic terrorism as opposed to transnational terrorism, which is more prevalent among developed countries. She identifies the challenge of finding an ‘African interpretation of the reason, threat and impact of terrorism’ on the continent and the need to ‘develop and implement a counterterrorism strategy conducive to a human security perspective.’¹⁹ Lastly, Robert Hinde advocates that, ‘the root causes of terrorism will never be addressed as long as national governments are motivated solely by self-interest or guided by the self-righteous belief that their way is the right way and must be imposed on others.’²⁰

1.2 Significance of study

The priority and seriousness of security issues globally makes it imperative to examine Africa’s position in this regard. Unfortunately, as mentioned above, there is a dearth of studies on the human rights implications of counter-terrorism measures in Africa. This study seeks to fill that gap. The importance of finding a fine balance between counter-terrorism measures and the protection of human rights cannot be overstated. The UNHCR posited that the measures adopted by states to counter terrorism have themselves often posed serious challenges to human rights and the rule of law.²¹ The

¹⁷ R Talbot ‘The balancing act: counter terrorism and civil liberties in British anti-terrorism law’ in J Strawson (n 16 above), 134.

¹⁸ C Bourloyannis-Vrailas ‘United Nations Human Rights Standards as Framework conditions for Anti-Terrorism Measures’ in W Benedek & A Yotopoulos-Maragopoulos (eds) *Anti-Terrorist Measures and Human Rights* (2004) 24

¹⁹ A Botha ‘Challenges in understanding terrorism in Africa: A human security perspective’ in *African security Review* 17.2, 28

²⁰ R Hinde ‘Root causes of terrorism’ (2002) cited in J Boulden & TG Weiss *Terrorism and the UN: Before and after September 11* (2004) 237

²¹ n 3 above, 1.

Eminent Jurists Panel of the ICJ has observed that counter-terrorism in itself has been described as a human rights objective owing to the fact that every state has a responsibility to protect people within its territory from terrorism.²² The African Charter²³ recognizes that individual rights and freedoms shall be exercised with due regard to collective security and common interest based on every individual's duty to the family and society, the State and other legally recognized communities and the international community.

This study is also significant because Uganda, like most East Africa countries, has been victimized by terrorist activities, mostly linked to 'domestic insurgencies in the subregion'.²⁴ It is, therefore, imperative to assess the counter terrorism measures adopted by Uganda, comparing this with other states, to determine whether or not they have the necessary human rights protections built in.

1.3 Proposed research question:

The primary research question this study seeks to address is whether it is possible to effectively combat terrorism in Africa, using Uganda as a case study, while still ensuring the protection of and respect for human rights. Other questions which shall be addressed are as follows:

- (a) What are the root causes and manifestations of terrorism in Africa generally, and in Uganda specifically?
- (b) What is the impact of counter-terrorism measures on human rights in Africa, particularly in Uganda?
- (c) What are the international and regional frameworks for combating terrorism and how is Uganda complying with these?

²² *Assessing Damage, Urging Action*, Report of the Eminent Jurist Panel on Terrorism, Counter-Terrorism and Human Rights (EJP Report) (2009) 16

²³ Art 27, African Charter on Human and Peoples' Rights (1981)

²⁴ E Rosand, A Millar & J Ipe *Implementing the UN Global Counter-Terrorism Strategy in East Africa* (2008) 10

- (d) Are counter-terrorism measures and the protection of human rights conflicting or complementary and mutually reinforcing objectives?
- (e) When and how does counter-terrorism qualify as an exceptional circumstance to limit and derogate from certain human rights?
- (f) What are the possible remedies for state violations of human rights in the name of counter-terrorism?

1.4 Chapter breakdown

This study is undertaken in five chapters. Each chapter will aim at answering one or more of the research questions. This chapter serves as the introduction, and provides the general background and framework for the study. The second chapter considers the root causes and manifestations of terrorism in Africa, and particularly in Uganda. Chapter three is dedicated to an in-depth examination of the international and regional standards and human rights framework for combating terrorism. The fourth chapter focuses on Uganda's 2002 Anti-Terrorism Act while exploring the definition, dimensions and dynamics of counter terrorism in Uganda. It will include a comparative analysis of Uganda's counter terrorism efforts viz a viz those of selected African states and how these measures impact on human rights. The final chapter explores possible means of striking a balance between combating terrorism and protecting human rights in Uganda. It also looks at probable circumstances where state restriction of human rights can be justified and the feasible remedies for human rights violations caused by counter-terrorism measures. This chapter also contains the recommendations and conclusion.

1.5 Presumptions and limitations of study

This work does not purport to pioneer thinking in this area but will build on previous studies on the issues raised here. However, it seeks new ways to achieve the much needed balance between guaranteeing human security in the fight against terrorism whilst respecting and protecting human rights on the African continent. It does attempt to fill the gap in international law on an agreed definition of terrorism. It also focuses

mostly on how African states, using Uganda as a comparative case study, have fulfilled or are fulfilling their human rights obligations under various international instruments, particularly those ratified under the auspices of the AU.

1.6 Research methodology

This paper seeks to critically analyze the existing legal framework for counter terrorism in Uganda and draw from relevant regional and international instruments related to the topic. In conducting this analysis, the author assesses the conformity of the anti-terrorism legislation in Uganda, in comparison with relevant African states, with regional and international counter terrorism frameworks, and also examines the human rights implications of practically enforcing these legislations. Lastly, the author explores new ways of addressing the research question by comparatively exploring international and regional human rights standards and best practices in combating terrorism in other parts of the world.

Chapter II

Root Causes and Manifestations of Terrorism in Africa and Uganda

Terrorism, in its various incarnations, has plagued Africa for many decades. It has manifested itself in various forms, depending on time and space. For this reason, the history of terrorism in Africa should not be seen as a single progression from one point or level to another. It is variegated and nuanced. Similarly, the root causes of terrorism in African states should not be assumed to be identical or straightforward.²⁵

2 Introduction

Terrorism is neither a novel concept nor practice in Africa. From the earliest days of liberation struggles against colonialism on the continent, varied forms of terrorism have featured both as a 'deliberate strategy and an unintended consequence of most liberation wars, succession movements and insurgencies'.²⁶ Nearly all insurgent movements in Africa employed a combination of guerrilla warfare and terrorism towards the ultimate goal of snatching parts of the population from state control and eroding support for the government amongst those people.²⁷

Regardless of its form and manifestations, the concept of terrorism has remained a complex and sensitive issue in Africa and the rest of the world. However, in a broad effort to explain the concept of terrorism, various schools of thought on the issue have developed divergent theoretical frameworks through which its nature, causes and remedies can be appreciated. Thus, to the Realists, terrorism is an 'irresponsible use of force that must be countered by military power' and they prescribe 'military responses, including assassinations' as appropriate remedies. Liberals, on the other hand, view

²⁵ SM Makinda, 'History and root causes of terrorism in Africa' in W Okumu & A Botha (eds) *Understanding terrorism in Africa: In search of an African voice* (2006) 15

²⁶ J Cilliers 'Africa, root causes and the War on terror', *African Security Review* 15.3, 59

²⁷ as above

terrorism 'as a deviation from acceptable norms and prescribe the elimination of its underlying causes, such as poverty and social injustice'. However, to Constructivists, terrorism is 'primarily an ideational phenomenon'. They, therefore, regard terrorists as 'purposive social agents that are constituted by ideas, namely their norms, beliefs, and identities'.²⁸

It is, nonetheless, important here to draw a distinction between the various forms of terrorism in order to facilitate understanding of which kind is most prevalent in Africa. Most experts agree that there are essentially two kinds of terrorism. The first is sub-national or domestic terrorism which is rife in Africa and prevalent in the rest of the developing world. This form of terrorism is considered to be 'partly a hangover of the process of decolonization' but more so a product of the failure of African states to effectively sustain development, integrate the diverse interests of the people in resource management and promote accountability and transparency in government affairs. This is exemplified in several insurgencies, with a terrorism bend, in Africa such as the Mai Mai in the eastern Democratic Republic of the Congo (DRC), the Lord's Resistance Army (LRA) in northern Uganda, the activities of warlords in Somalia, Liberians United for Reconciliation and Peace, the Salafist Group for Preaching and Combat in Algeria, or the Revolutionary United Front in Sierra Leone. As noted by Cilliers,²⁹

These were all movements that relied heavily, but not exclusively, on the use of extreme violence against innocent civilians in pursuit of their objectives. As a result, some analysts would classify them as essentially terrorist organisations since they have employed terror as a systematic and widespread strategy.

The second is the trans-national or international terrorism mostly seen in developed countries. It became more prevalent as a result of the bipolarity in the balance of power existing during the Cold War which allowed states to form largely polarized opposing

²⁸ SM Makinda 'Terrorism, counter-terrorism and norms in Africa' *African Security Review* 15.3, 22

²⁹ Cilliers (n 26 above) 60

alliances and afforded them varied levels of protection from adversarial attacks and immediate retaliation. Explaining and differentiating the manifestations of international and transnational terrorism, Cilliers³⁰ also wrote that,

International terrorism has been used to describe those acts instigated by another state that have clear international consequences. This would include incidents where terrorists cross national borders to strike foreign targets, select victims or targets (such as diplomats or businessmen) because of their connection to a foreign country, attack aircraft on international flights, or force aircraft to fly to different destinations. Terrorism is 'transnational' through the nationality or foreign ties of its perpetrators, its location, its victims, and its ramifications beyond national boundaries. Most important of all, transnational terrorism is not directly linked to or instigated by a state, but thrives in the absence of effective state control over those territories where it may operate from. The best-known example is, of course, al-Qaeda.

2.1 The Underlying Causes of Terrorism in Africa

Broadly speaking, terrorism in Africa may be the result of one or more factors, whether political, religious, social, cultural, economic or environmental. However, it has not always been founded on these factors alone. A summary review of the history of terrorism in Africa indicates that the continent has experienced about four waves of terrorism. The first wave of terrorism was characterised by national liberation movements struggling to end western colonialism and empower Africans politically, economically, socially and culturally. The second wave of terrorism featured extensive civil wars on the continent, mostly as immediate results of post-colonial inequalities and imbalances politically, economically and territorially. International affairs, such as the Cold War and the Israeli-Palestinian conflict, are closely linked to the third wave of terrorism in Africa. African States are often caught in between international power plays and serve as good recruitment grounds for garnering support for international conflicts. Lastly, the fourth wave is associated with the activities of established terrorist groups,

³⁰ Cilliers (n 26 above) 61

like the al-Qaeda, and the weakness or failure of security and governance institutions in Africa.³¹

In adopting the OAU Convention on the Prevention and Combating of Terrorism (the Algiers Convention), African states proceeded on a conviction that terrorism 'should be combated in all its forms and manifestations, including those in which states are involved directly or indirectly, without regard to its origin, causes and objectives.'³² In the preamble of the 2004 Protocol to the OAU Convention on the Prevention and Combating of Terrorism, African states also acknowledged that 'the root causes of terrorism are complex and need to be addressed in a comprehensive manner.'³³ This position clearly underscores the significance of appreciating terrorism as much a result of the activities of vengeful individuals and other non state actors as well as the direct or indirect result of state activities. This appreciation facilitates the direction of whatever counter terrorism measures adopted in Africa to the origins and root causes of terrorism and not just to its manifestations. To this end, some experts have observed that,

Terrorism should be studied as a manifestation that 'something' in society, domestic or international, is 'not in order'.... If terrorism is treated merely based on its symptoms with the primary focus on arresting and prosecuting the perpetrators and without addressing the underlying causes, it will remain a threat to human security.³⁴

The vulnerability of African States to terrorism has been fueled by both internal and external factors. Externally, technological advancements, globalization, especially in telecommunications and the foreign policies of more powerful states, particularly the US, have provided viable causes for terrorism. However, terrorism in Africa has also found cause in internal factors such as 'economic deprivation, political oppression,

³¹ Makinda (n 25 above) 18

³² Preamble to the OAU Convention on the Prevention and Combating of Terrorism (1999/2002) in Heyns & Killander (n 5 above) 76

³³ Preamble to the Protocol to the OAU Convention on the Prevention and Combating of Terrorism (2004) in C Heyns & M Killander (eds) *Compendium of key human rights documents of the African Union* (2007) 78

³⁴ Botha (n 19 above) 34

governmental repression, and ethnic and religious persecution.³⁵ It must be noted that while the external factors might in most cases result in transnational terrorism, or local incidents like the bombing of embassies, domestic terrorism is mostly caused by domestic conditions, local grievances and internal factors. For the purpose of this study, hence, the focus is directed mostly on the internal and domestic causes of terrorism in Africa.

2.1.1 Political factors: Failed, Failing and Weak States

Part of the primary responsibilities of any State government is to ensure the security and protection of people within its territory and to preserve their 'norms, rules, interests, institutions and resources, in the face of military and non-military threats.'³⁶ Most African states, however, are yet to come to terms with this responsibility. In the absence of perhaps any truly democratic regime in Africa, most governments are more concerned with preserving themselves in power and they readily employ state security machineries for regime security instead of the traditional purpose of ensuring state and human security. More so, because restriction of basic human rights and fundamental freedoms, political oppression, weak institutions, corruption, mismanagement and abuse of state resources and lack of accountability characterize the business of governance amongst Africa states, most governments easily lose legitimacy and credibility with the people. This legitimacy crisis ultimately becomes a justification for the use of violent tactics in challenging, opposing or 'persuading' governments. The risk and vulnerability to domestic terrorism is greater in polarized societies with 'highly contentious politics and divided societies'.³⁷ It is, therefore, a small wonder that '[N]one of the organisations implicated in acts of terrorism in the past recognised their governments as legitimate.'³⁸

³⁵ Botha (n 19 above) 34

³⁶ Makinda (n 28 above) 24

³⁷ M Crenshaw 'Political Explanations' in *Addressing the Causes of Terrorism, The Club de Madrid Series on Democracy and Terrorism Volume I* (2005) 14 available at <http://www.safe-democracy.org/docs/CdM-Series-on-Terrorism-Vol-1.pdf> (accessed on 22 October 2009)

³⁸ Botha (n 19 above) 36

Failed, failing and weak states, whether as a result of the collapse of governance institutions or the existence of extensive civil conflict, usually have porous borders and uncontrolled populations, especially immigrants, refugees, internally displaced persons and stateless persons who eventually form alienated clusters in diaspora within which terrorist groups can blossom. Terrorist groups are usually quick to take advantage of these weak borders and the sheer volume of trans-border migrations to form cross-border terrorist cells that serve as hubs for spreading 'radical conspiracies that both impede stabilization and export terrorism to other targets and audiences.'³⁹

Terrorism is also a by-product of internecine conflicts in various regions in Africa. Most African countries are plagued with severe internal conflict and civil wars, often fuelled by support from other neighbouring states. For example, the war by the rebel Lord's Resistant Army against the Ugandan government seems to be a proxy war by the government of Sudan to perpetuate insecurity in northern Uganda and the government of Uganda appears to be reciprocating by supporting the Sudan People's Liberation Army war against the government of Sudan.⁴⁰ These conflicts create and entrench political instabilities that further make it near impossible for state governments to exercise full control over their state territories and borders, thus making it easy for terrorist organisations to access recruits and move weapons.

In addition, political marginalization, repression and closed political systems that disallow free political participation and dissent within legal boundaries serves to create a gulf between the state and the society. This eventually becomes a push factor for terrorists because in the absence of constructive means of engaging the government, aggrieved sections of society come to assume that the only way to effect change is by

³⁹ Crenshaw (n 37 above) 15

⁴⁰ A Long 'A survey of Terrorism and Human Rights in Uganda' available at http://www.du.edu/korbel/hrhw/digest/terror/uganda_2007.pdf (accessed on 20 October 2009)

taking matters into their own hands.⁴¹ The abuse of state power in the name of preventing, eliminating and countering terrorism also serves to promote instead of prevent terrorism. Some States, like Egypt and Zimbabwe, silence political dissent by targeting opposition groups and limiting political development in the guise of combating terrorism.⁴²

2.1.2 Socio-Economic Factors: Poverty and Social Inequalities

Although there are several opposing views as to whether poverty, by itself, has a direct causal link to terrorism,⁴³ it cannot be denied that the lack of the basic necessities of life, education and prospects for the future, unemployment and other social inequalities combined with political factors and ethnic or religious divisions can produce an alienated, radicalized, disenchanted and disillusioned populace, which could serve as a fertile recruitment ground for terrorists. David Shinn, shares this view and says that,

The environment created by poverty, social injustice and political alienation enhances the ability of religious extremists to export their philosophy and of terrorists to find local support for their nefarious acts.⁴⁴

A practical illustration of this can be found in Morocco where background checks on the individuals involved in the suicide attacks in Morocco revealed that a combination of poverty, unemployment, deprivation and other social tensions fueled their feelings of bitterness, desperation and recklessness.⁴⁵

⁴¹ Botha (n 19 above) 36

⁴² as above

⁴³ See DH Shinn 'Fighting terrorism in East Africa and the Horn', 38 available at <http://www.afsa.org/fsj/sept04/Shinn.pdf> (accessed on 20 October 2009). See also TR Gurr 'Economic Factors' in *Addressing the Causes of Terrorism, The Club de Madrid Series on Democracy and Terrorism Volume I* (n 12 above) 19

⁴⁴ Shinn (n 43 above) 38

⁴⁵ Botha (n 19 above) 38

Africa, as a continent, is home to some of the poorest countries in the world, which are still struggling to successfully integrate into the global economy. Most national economies cannot compete globally, with very high illiteracy and unemployment rates, falling and stagnant incomes, poor infrastructure, unsustainable development and socially polarized societies. These high levels of socio-economic disparity, social injustices and inequalities have been cited as a reason why parts of the continent have become good breeding grounds for terrorism. More so, the endemic corruption also makes terrorism easy and attractive in several parts of Africa, allowing lurking terrorists to 'buy off immigration and local security officials.'⁴⁶

2.1.3 Collective Security: Religious, Ethnic and Cultural Divides

Africa is peculiarly plagued with deep religious, ethnic and cultural divides and fault lines. And these factors have often been a constant source of conflict within states, sometimes spilling over into bordering countries. However, some experts have argued that by itself, religion, like ethnicity or cultural diversity, is more of a tool of mobilization or justification for terrorism than a direct cause. However, when fueled by political and economic frustrations, religious, ethnic and cultural justifications are usually combined with political or economic goals, like nationalism, resource control or self determination, to support terrorist activities. Unfortunately, most state governments in Africa neither fairly represent these diverse divides nor their interests in their policies and in the distribution of state resources. Thus, where any group is continually marginalized, particularly if they exist in any substantial majority within any geographic location without reasonable government representation, then the stage is, perhaps, set for isolation, alienation, radicalization, extremism and, ultimately, recourse to terrorism.⁴⁷

⁴⁶ Shinn (n 43 above) 38

⁴⁷ Botha (n 19 above) 38

2.2 Terrorism: The Uganda Experience

Since gaining independence in 1962, Uganda has known continual political unrest, widespread violence and gross violations of human rights perpetuated by both state and non-state actors. Successive regimes, particularly of presidents Obote and Amin, employed very brutal and violent tactics to quell opposition and silence dissent, often causing the death of as many as 300,000 civilians.⁴⁸

Non state actors, like the Lord's Resistance Army (LRA) in the northern part of Uganda and the Allied Democratic Front (ADF) operating from the Uganda/Congo borders have also spread considerable measures of terror in Uganda since 1987. The Joseph-Kony led LRA, a militant religious-cult rebel group started violent opposition to the government in 1987 and slowly turned Northern Uganda into a scene of violent conflict and terrorist activities in a war that has spanned over two decades. Since 1994, the LRA has driven its war towards the civilian population in northern and eastern Uganda and, in the process, terrorizing the people as they wantonly destroy lives and livelihoods in their path. The activities of the LRA have also spilled over into parts of neighbouring countries like the Democratic Republic of the Congo (DRC) and Sudan. The LRA is also well known for employing brutal tactics, 'routinely maiming and killing civilians, and abducting children for use as child soldiers, sex slaves and domestic workers.'⁴⁹

From 1997, the ADF also extended their terrorist activities to Uganda's main populace, throwing bombs into taxis and public buildings. The number of civilian casualties kept rising as more than 50 persons were killed and over 160 injured in these vicious attacks.⁵⁰

⁴⁸ Long (n 40 above) S51

⁴⁹ Long (n 40 above) S51-52. The LRA has abducted more than 25,000 children since 1986. It is designated as a terrorism organisation in Uganda and its leaders are also facing indictments from the International Criminal Court.

⁵⁰ 'Terrorism in Uganda' available at http://en.wikipedia.org/wiki/Terrorism_in_Uganda (accessed on 22 October 2009)

Concerned about the increased wave of terrorism being experienced in Uganda, groups like the Uganda Human Rights Commission (UHRC) called on the government to enact a law to control and eliminate terrorism. Against this backdrop, Ugandan proposed a Suppression of Terrorism Bill (No. 220) in 2001. This bill was greatly welcomed although with some caution by the UHRC, as it was considered likely to be misused and abused.⁵¹ A fuller analysis of this Bill which became the 2002 Anti-Terrorism Law will be done in Chapter four of this research. However, it is worth mentioning here that the LRA and ADF are listed as terrorist organisations in the 2002 Anti-Terrorism Act.

2.3 Conclusion

Terrorism is indeed a complex phenomenon with deep running root causes in Africa. Its existence and practice remains a potent threat to democracy, development, peace and security on the continent. To effectively deal with it, African States must look beyond the parochial interests of regime security and give adequate attention to the underlying causes why people resort to violent and terrorist strategies in addressing various grievances. Uganda, like most East African countries, such as Kenya and Tanzania, is also very vulnerable to terrorism. Apart from its internal history of state-led violence and conflict with non-state actors, it also shares borders with countries such as Sudan and DRC which have been engaged in very prolonged conflicts. This always has a spill over effect and coupled with poor and inadequate border control, Uganda's vulnerabilities to terrorist intrusions are increased. An appraisal of the root causes of terrorism in Africa shows some interconnectivity between African States, making it nearly impossible for any one State alone to effectively combat terrorism within its borders. Thus a clear understanding of the root causes of terrorism on the continent facilitates concerted action, at regional, sub-regional and finally national levels to prevent and eliminate terrorism in Africa.

⁵¹ Uganda Human Rights Commission Annual Report, January 2001-September 2002

Chapter III

Setting Standards: International and Regional Frameworks for Combating Terrorism

...any measures undertaken by Member States to prevent and combat terrorism must fully comply with their obligations under international law, including the Charter of the United Nations and relevant international conventions and protocols, in particular human rights law, refugee law and international humanitarian law.⁵²

3.0 Introduction

The above statement has been reiterated in several UN resolutions to underscore the conviction of the international community that, as urgent and compelling as the need to counter international terrorism may be, it would be self defeating to abandon international laws, norms and values in the 'war against terror'. Emphasizing this point the former UN Secretary General, Kofi Annan observed that 'terrorism is in itself a direct attack on human rights and the rule of law. If we sacrifice them in our response, we are handing a victory to the terrorists.'⁵³ It is, therefore, in line with this conviction to fight terrorism according to the rules governing the international community that various standards for combating terrorism have been set, internationally, regionally and sub-regionally. This Chapter examines these standards and how they establish a framework for combating terrorism without violating human rights.

3.1 International Framework for Combating Terrorism

The terrorist attacks in the United States on 11 September 2001 (9/11 incident) caught the attention of the entire international community and instantly made countering terrorism

⁵² United Nations General Assembly Resolution A/RES/62/272 (2008)

⁵³ K Annan, 'A Global Strategy for Fighting Terrorism', Keynote address to the Closing Plenary of the International Summit on Democracy, Terrorism and Security on March 10, 2005 available at <http://english.safe-democracy.org/keynotes/a-global-strategy-for-fighting-terrorism.html> (accessed on 26 October 2009)

a priority issue on the agenda of the United Nations (UN). In response, the UN Security Council adopted a number of resolutions to deal with the threat of terrorism and enjoined member states to cooperate in preventing, eliminating and combating terrorism in their various states and regions. Key amongst the resolutions dealing with the issue of terrorism is UN Security Council Resolution 1373 (2001) which, amongst other far reaching provisions, also established the Counter-Terrorism Committee (CTC).

Currently, there are 16 international counter terrorism instruments,⁵⁴ 12 of which were adopted by the international community even before resolution 1373 and the 9/11 incident. However, UN member states were lethargic in ratifying and adhering to these earlier instruments. But since the 9/11 incident and the adoption of resolution 1373, which enjoined states to become parties to these international instruments, the attitude of UN member States has changed positively. Presently about 'two-third of the UN member states have either ratified or acceded to at least 10 of the 16 instruments' and perhaps, encouragingly, 'there is no longer any country that has neither signed nor become a party to at least one of them.'⁵⁵

3.1.1 The Role of the UN Security Council in Combating Terrorism

Perhaps, the most significant and foundational contribution of the Security Council to combating international terrorism is the adoption of resolution 1373 (2001). By this resolution, it called on member states to cooperate in combating terrorism and in preventing and punishing 'the financing, planning, preparation or perpetration of terrorist acts'. Resolution 1373 also contains several other far reaching provisions which include the 'suppression of the recruitment of terrorists; provision of early warning and information sharing; prevention of the movement of terrorists and of trafficking in arms, explosives and hazardous materials; border controls'. The resolution also enjoins states to become parties to all relevant international counter-terrorism instruments and to

⁵⁴ Links to these instruments are available at <http://www.un.org/terrorism/> (accessed on 28 October 2009).

⁵⁵ UN Security Council Counter-Terrorism Committee 'International Laws', available at <http://www.un.org/sc/ctc/laws.html> (accessed on 26 October 2009).

support efforts in bringing terrorists to justice. It also requires member states to consider their obligations under international law, in particular international human rights and humanitarian law when addressing refugee issues. Another significant feature of resolution 1373 is the establishment of the Counter-Terrorism Committee which is mandated to monitor the implementation of the resolution by member states.⁵⁶

The Security Council, by resolution 1535 (2004), also established the Counter-Terrorism Committee Executive Directorate (CTED). The CTED applies a proactive policy on human rights as it was mandated to liaise with the Office of the UN High Commissioner for Human Rights (OHCHR) and other human rights organizations in matters related to counter-terrorism. A human rights expert was also appointed to the CTED staff to facilitate its work.⁵⁷

3.1.2 The UN General Assembly and Counter Terrorism

Terrorism has been on the agenda of the UN General Assembly since 1972 and has been addressed as an international problem through intermittent resolutions such as the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents and the 1979 International Convention against the Taking of Hostages.⁵⁸ In 1994, the General Assembly once more attended to the issue of terrorism through a Declaration on Measures to Eliminate International Terrorism.⁵⁹ In 1996, it further passed a resolution⁶⁰ to supplement the 1994 Declaration and established an *Ad Hoc* Committee to continually address means of developing a comprehensive legal framework of conventions dealing with international terrorism. Since then several other instruments have been adopted to address specific types of terrorist activities; these include the 1997 International Convention for the Suppression

⁵⁶ Security Council CTC 'Best Practices' available at <http://www.un.org/sc/ctc/practices.html> (accessed on 26 October 2009)

⁵⁷ Security Council Counter-Terrorism Committee 'Human Rights' <http://www.un.org/sc/ctc/rights.html> (accessed on 26 October 2009)

⁵⁸ (n 55 above)

⁵⁹ UN General Assembly Resolution A/RES/49/60.

⁶⁰ UN General Assembly Resolution A/RES/51/210.

of Terrorist Bombings, and the 1999 International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Acts of Nuclear Terrorism.⁶¹

UN member states, under the auspices of the General Assembly, adopted The United Nations Global Counter-Terrorism Strategy in 2006. This strategy, which was adopted in the form of a resolution with an annexed Plan of Action, is, perhaps, one of the most significant contributions of the General Assembly to global efforts at combating terrorism. This strategy marks the first time UN member states are agreeing on a common approach to eliminating terrorism and will thus enhance national, regional and international counter terrorism efforts. The strategy provides a wide array of measures to address conditions favorable to the spread of terrorism, to prevent and combat terrorism, to build states capacity and strengthen the role of the UN system in the fight against terrorism and most importantly, to 'ensure that respect for human rights and the rule of law as the fundamental basis of the fight against terrorism'.⁶² Specific consideration will be given to these measures in subsequent chapters when we examine the Uganda anti-terrorism legislation and its compliance with international and regional standards.

3.2 Regional Framework for Combating Terrorism in Africa

The significance of developing a regional framework for combating terrorism in Africa lies in the pressing need to find a balance between human security and state or regime security, especially considering the continent's chequered history of liberation movements, insurgencies, civil wars and militarized democracies. This history makes it very likely that African state governments would readily employ supposed 'counter-terrorism' measures as cloaks for repressing political opposition and undermining

⁶¹ (n 55 above)

⁶² The UN global counter terrorism strategy (UN 2006), General Assembly Resolution 60/288, available at <http://www.un.org/terrorism/strategy-counter-terrorism.shtml> (accessed 27 October 2009)

human rights. Thus, like the rest of the world, 'counter-terrorist measures pose a much greater risk to Africa's people than terrorism itself.'⁶³

However, efforts to regulate violent extremism and terrorism in Africa can be traced back to 1992 when the OAU adopted the Resolution on the Strengthening of Cooperation and Coordination among African States. This resolution was almost immediately followed by the adoption of the 1994 Declaration on a Code of Conduct for Inter-African Relations. The 1992 resolution called on member states to refrain from supporting and cooperate in combating extremism and terrorism, while the 1994 Declaration condemned as 'criminal' all terrorist attacks and activities.⁶⁴ In addition to these earlier efforts, there are a number of other recent, and not so recent, instruments which set forth the basic framework for combating terrorism in Africa. These instruments are reaffirmed and enumerated in the Preamble to the 2004 Protocol to the OAU Convention on the Prevention and Combating of Terrorism; they are the 1977 OAU Convention for the Elimination of Mercenarism in Africa, the 1999 OAU Convention on the Prevention and Combating of Terrorism, the 2001 Dakar Declaration against Terrorism and the 2002 Plan of Action for the Prevention and Combating of Terrorism. These instruments are discussed below.

3.2.1 OAU Convention on the Prevention and Combating of Terrorism

The OAU Convention on the Prevention and Combating of terrorism (Anti-Terrorism Convention) was adopted in 1999, two years before the 9/11 incident and the global war on terror that followed immediately. As far as standard-setting goes, the Anti-Terrorism Convention went beyond previous and even subsequent international counter terrorism instruments by broaching the sensitive topic of defining 'terrorism'. Thus, Article 1 (3) of the Anti-Terrorism Convention defines a terrorist act as:

⁶³ Viljoen (n 4 above) 299

⁶⁴ as above

- (a) any act which is a violation of the criminal laws of a state party and may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
 - (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
 - (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
 - (iii) create general insurrection in a state.
- (b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing or procurement of any person, with the intent to commit any act referred to in paragraph (a)(i) to (iii).

Although laudable for being a bold first attempt, this definition has been criticized as providing 'too broad a brush with which states may colour legitimate political opposition and civil dissent as acts of terrorism.'⁶⁵ Nonetheless, the Anti-Terrorism Convention, under article 2, obliges state parties to criminalize and punish terrorist acts in accordance with the Convention.

Another laudable, but similarly controversial, provision in the Anti-Terrorism Convention is article 3(1) which excludes 'the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination' from constituting terrorism. This exclusion clause applies even in cases of armed struggles but only when the struggle is against 'colonialism, occupation, aggression and domination by foreign forces'. This clearly leaves out cases of legitimate internal or domestic dissent or opposition, even against a repressive regime. More so, article 3(2) of the Convention provides that 'political, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act.'

⁶⁵ Viljoen (n 4 above) 300

The criticisms and even apparent short-comings of the Anti-Terrorism Convention notwithstanding, it remains the cornerstone instrument which upholds and supports the regional framework for combating terrorism in Africa. It is complimented, reaffirmed and implemented through the other regional instruments discussed below.

3.2.2 AU Plan of Action on the Prevention and Combating of Terrorism in Africa

In 2002, a Plan of Action on the Prevention and Combating of Terrorism in Africa⁶⁶ (Anti-Terrorism Plan of Action) was adopted by the Intergovernmental High Level meeting of member states of the African Union held in Algiers, Algeria. The Anti-Terrorism Plan of Action provides a framework of tactics for combating terrorism and requires member states, inter alia, 'to sign, ratify and fully implement' the Anti-Terrorism Convention and 'all relevant international instruments concerning terrorism.'⁶⁷ It also makes extensive provisions obliging member states to take appropriate measures to improve police, immigration and border control, to bring their judiciary and legislative functions up to speed with the regional counter terrorism framework, to suppress the financing of terrorism in compliance with resolution 1373 and to enhance the exchange of information and intelligence on terrorism related concerns.⁶⁸ The Anti-Terrorism Plan of Action also specifically acknowledges and sufficiently involves the Peace and Security Council and the AU Commission, but no mention is made of the African Commission on Human and Peoples Rights.⁶⁹

3.2.3 Protocol to the OAU Convention on the Prevention and Combating of Terrorism

The Protocol to the OAU Convention on the Prevention and Combating of Terrorism (Anti-Terrorism Protocol) was adopted in 2004 to ensure the effective implementation of

⁶⁶ AU Doc Mtg/HLIG/Conv.Terror/Plan.(I)

⁶⁷ (n 66 above), para 10.

⁶⁸ as above, paras 11-14 and 19-21.

⁶⁹ as above, paras 16, 17 and 18.

the Anti-Terrorism Convention.⁷⁰ The Anti-Terrorism Protocol established a laudable framework, consolidating previous provisions in earlier instruments, for countering terrorism. Reiterating in the Preamble to the Anti-Terrorism Protocol their conviction that ‘terrorism constitutes a serious violation of human rights and a threat to peace, security, development and democracy’, state parties undertake, *inter alia*, to ‘take all necessary measures to protect the fundamental human rights of their populations against all acts of terrorism’, to ‘become parties to all continental and international instruments on the prevention and combating of terrorism’ and to ‘outlaw torture and other degrading and inhumane treatment, including discriminatory and racist treatment of terrorist suspects, which are inconsistent with international law.’⁷¹

The Anti-Terrorism Protocol also recognises the responsibility of the Peace and Security Council (PSC) for coordinating counter terrorism efforts on the continent and provides that the PSC shall, *inter alia*, establish ‘an information network with national, regional and international focal points on terrorism’ and also ‘mechanisms to facilitate the exchange of information among parties on patterns and trends in terrorist acts and the activities of terrorist groups and on successful practices in combating terrorism.’⁷² However, in spite of the immense opportunities created by the Anti-Terrorism Protocol to effectively address the threat of terrorism in Africa, States parties have been very reluctant to ratify the Protocol, thus it is yet to enter into force.

3.2.4 The AU Peace and Security Council

The Peace and Security Council (PSC) was established by a Protocol⁷³ (the PSC Protocol), and adopted pursuant to article 5(2) of the AU Constitutive Act, to ‘co-ordinate and harmonise continental efforts in the prevention and combating of international terrorism

⁷⁰ Anti-Terrorism Protocol, Preamble.

⁷¹ Anti-Terrorism Protocol, Art 3(a),(j) and (k).

⁷² Anti-Terrorism Protocol Art 4(f) and (b).

⁷³ Protocol relating to the Establishment of the Peace and Security Council of the African Union (the PSC Protocol), adopted on 10 July 2002 and entered into force on 26 December 2003.

in all its aspects.’⁷⁴ The PSC in carrying out its functions shall be guided by the ‘principles enshrined in the AU Constitutive Act, the UN Charter and the Universal Declaration of Human Rights,’ but particularly, by other principles including ‘respect for the rule of law, fundamental human rights and freedoms, the sanctity of human life and international humanitarian law’.⁷⁵ Article 7(i) of the PSC Protocol empowers the PSC to,

[e]nsure the implementation of the OAU Convention on the Prevention and Combating Terrorism and other relevant international, continental and regional conventions and instruments and harmonise and co-ordinate efforts at regional and continental levels to combat international terrorism.

In fulfillment of its mandate, the PSC is also empowered and expected by the PSC Protocol to co-operate and work closely with the UN Security Council and other relevant UN agencies (Article 17), the Pan-African Parliament (Article 18). In addition, it is expected to ‘encourage non-governmental organisations, community-based and other civil society organisations, particularly women’s organisations, to participate actively in efforts aimed at promoting peace, security and stability in Africa’ (Article 20).

3.2.5 The African Commission on Human and Peoples’ Rights

Most regional instruments on terrorism in Africa do not substantially involve the African Commission on Human and Peoples’ Rights (ACHPR) in efforts to prevent, eliminate and combat terrorism. This is very unfortunate considering the enormous responsibility and potential of the ACHPR in promoting and protecting human rights on the continent. Perhaps, the only express mention and involvement of the ACHPR in an instrument on terrorism is Art 19 of the PSC Protocol which enjoins the PSC to ‘seek close co-operation’ with the ACHPR ‘in all matters relevant to its objectives and mandate.’ However, the most obvious step taken by the ACHPR, so far, towards addressing the issue of terrorism, counter terrorism and its human rights implications is

⁷⁴ PSC Protocol, Art 3(d)

⁷⁵ PSC Protocol, Art 4(c)

its resolution on the Protection of Human Rights and the Rule of Law in the Fight against Terrorism (2005) wherein it urged states cooperation and compliance with their obligations under the African Charter and other relevant international treaties.⁷⁶

3.2.6 Other (Sub) Regional Frameworks

As part of its continued efforts to combat terrorism on the continent, the AU in 2004 established the African Centre for the Study and Research on Terrorism (ACSRT), in Algiers, Algeria. The ACSRT is a structure of the AU Commission and the Peace and Security Council and its mandate includes sensitizing AU members of the threat of terrorism in Africa, providing training and capacity building assistance to member states and enhancing cooperation among AU members in the fight against terrorism.⁷⁷

At other regional levels, there have also been a number of other efforts to promulgate anti-terrorism instruments. Thus, in 1998 the League of Arab States, which has 9 African states among its 22 members, adopted the Arab Convention for the Suppression of Terrorism. The Convention entered into force in 1999. Also, the Organization of the Islamic Conference, which boasts membership of a number of African states as well, adopted the Convention of the Organization of the Islamic Conference on Combating International Terrorism in 1999.⁷⁸

Besides these arrangements, there are several other sub-regional mechanisms, such as intergovernmental cooperation, to combat terrorism. The Eastern Africa Police Chiefs' Cooperation Organisation (EAPCCO) and the Intergovernmental Authority on Development (IGAD) are good examples here. The EAPCCO is housed in the Interpol sub-regional bureau in Nairobi and works to 'promote sub-regional cooperation in combating transnational crime, including combating terrorism.' Through its affiliation to

⁷⁶ Viljoen (n 4 above) 302

⁷⁷ Rosand *et al* (n 24 above) 23

⁷⁸ S Iagwanth & F Soltau, 'Terrorism and human rights in Africa' in *Africa and Terrorism, Joining the Global Campaign*, Monograph No 74 (2002) 1-2

the Interpol, the EAPCCO is able to draw on the organisation's resources and expertise as it works to strengthen counter terrorism measures in the sub-region.⁷⁹ IGAD's efforts to deal with terrorism are done through its Capacity Building Programme against Terrorism (ICPAT). For instance, in May 2009, IGAD member states met to discuss issues of regional border security in East Africa and to adopt possible strategies to effectively control and secure their borders. This meeting, which was a follow-up to earlier ones held in 2007 and 2008 in Kenya, was cosponsored by the UN Counter-Terrorism Committee Executive Directorate (CTED) and ICPAT.⁸⁰

3.3 Conclusion

In sum, it is obvious that much effort has gone into providing a framework, at international, regional and sub-regional levels, for combating terrorism so as to avoid arbitrariness and abuse of 'counter-terrorism' initiatives. Respect for human rights remains a cornerstone concern in the fight against terrorism. These standards have been put in place to ensure their observance in an age of terrorism, but much depends on how state parties apply these standards at the national level. This will be the focus of the next chapters.

⁷⁹ Rosand *et al* (n 24 above) 25

⁸⁰ East African Tribune online article available at <http://www.eatribune.com/articles.php?id=784#> (accessed on 27 October 2009). IGAD members are Djibouti, Ethiopia, Kenya, Somalia, Sudan and Uganda.

Chapter IV

Definition, Dimensions and Dynamics of Counter Terrorism in Uganda

In order to fulfil their obligations under human rights law to protect the life and security of individuals under their jurisdiction, States have a right and a duty to take effective counter-terrorism measures, to prevent and deter future terrorist attacks and to prosecute those that are responsible for carrying out such acts. At the same time, the countering of terrorism poses grave challenges to the protection and promotion of human rights.⁸¹

4 Introduction

Like most anti-terrorism legislations in Africa, Uganda's 2002 Anti-Terrorism Act (Ugandan Act) is largely a by-product of the post 9/11 global response to the threat of terrorism. The Ugandan Act consists of 33 sections, nine parts and three schedules. The provisions of the Ugandan Act can broadly be broken down into the following: Institutional and judicial jurisdiction over terrorism (Part II); definition and punishment of terrorism and terrorist acts (Part III); designation of terrorist organisations and proscription of financial assistance for terrorism (Part IV and V); terrorism investigations and interception of communication and surveillance (Part VI, VII and VIII); finally, miscellaneous provisions (Part IX).

This chapter analyses the provisions of the Ugandan Act comparing it where appropriate with other anti-terrorism legislations in Africa particularly Tanzania's Prevention of Terrorism Act (Tanzanian Act) and Ghana's Anti-Terrorism Act (Ghanaian Act).⁸² It also considers its conformity with international and regional frameworks for countering terrorism and examines how its application impacts on human rights.

⁸¹ Fact sheet (n 3 above) 8-9

⁸² The Ugandan Act came into force on 7 June 2002, the Tanzania Act on 15 June 2003 and the Ghana Act on 10 October 2008.

4.1 When Definitions are not so definitive

The Ugandan Act contains a rather long list of broad activities which would constitute terrorism when carried out for the purpose of 'influencing the Government or intimidating the public or a section of the public and for a political, religious, social or economic aim' and is done "indiscriminately without due regard to the safety of others property."⁸³ The listed activities, which cover both treaty offences and common law crimes include: manufacturing, handling or detonating a lethal device in a public place, involvement in murder, kidnapping, abduction or maiming of any person, provision or collection of funds for terrorist activities, hijacking and hostage taking, unlawful seizure of an aircraft or vessel, unlawful importation or distribution of firearms, serious interference with or disruption of an electronic system, production and development of a biological weapon, and unlawful possession of explosives with intent to effect a terrorist act.⁸⁴

The Ugandan Act also makes it a crime to run a 'terrorist organisation' or an organisation that promotes, publishes and disseminates news or materials that promote terrorism.⁸⁵ It also provides for a 'wide accomplice, attempt, conspiracy and accessory liability.'⁸⁶ The Act also specifically lists four organisations as terrorist organisations in the Third schedule to the Act. These organisations are the Lord's Resistance Army, The Lord's Resistance Movement, Allied Democratic Forces and Al-Qaeda. The Ugandan Act further criminalizes membership, support or assistance to a terrorist organisation and also makes it an offence to contribute property, funds or any other resource to a terrorist organisation.⁸⁷

⁸³ Sec 7 of the Ugandan Act.

⁸⁴ as above.

⁸⁵ Sec 9 of the Ugandan Act.

⁸⁶ CH Powell 'Terrorism and governance in South and Eastern Africa' in VV Ramraj et al (eds) *Global Anti-Terrorism: Law and Policy*, (2005) 574

⁸⁷ Sec 10-16 of the Ugandan Act.

The definition of terrorism as provided in the Ugandan Act and the activities it criminalizes have been criticized as too broad, vague and far reaching. It obviously undermines a plethora of human rights guaranteed under both the Constitution of Uganda and other international instruments.

The provisions on the Ugandan Act clamp down on freedom of expression and could be interpreted to translate an ordinary civil demonstration or protest (which obstructs traffic or closes a public service as they are prone to) into a terrorist act. For instance, in September 2009, terrorism charges were brought against over 29 persons who allegedly burnt down a police station during a riot in the city of Kampala. This riot was a public protest against the government's refusal to allow the traditional ruler of the area (the Kabaka) to visit a neighbouring town.⁸⁸

The punishments prescribed for terrorist offences under the Ugandan Act also cause grave concern for their human rights implications. Section 7 (1) of the Ugandan Act makes the death penalty mandatory for acts of terrorism which result in death and makes it an option for lesser forms of terrorism. Under the Ghanaian Act, harbouring terrorists, providing lethal devices to terrorist groups, supporting terrorist activities, dealing with terrorist property, recruitment of members for terrorist groups are some of the offenses that attract not less than seven years and not more than 25 years imprisonment terms.⁸⁹

4.2 Terrorists on Trial

The Ugandan Act gives the executive a wide margin of discretion in deciding 'who is suspected of terrorism and how to act on that suspicion.'⁹⁰ The Ugandan Act empowers the Minister of Internal Affairs (Minister) to amend, by a statutory instrument and with the approval of the cabinet, the list of terrorist organisations specified in the second

⁸⁸ 'Riot suspects face terrorism charges' The New Vision, 22 September 2009 1

⁸⁹ Sec 10, 11, 12, 13 and 14 of the Ghanaian Act.

⁹⁰ Powell (n 6 above) 570

schedule of the Act.⁹¹ The Minister shall within two weeks present the instrument to parliament which can annul the instrument within three weeks after receiving it but the annulment does not 'affect the previous operation of the instrument.'⁹² This provision creates ample space for abuse by the executive, which has a five-weeks window of unfettered powers to take any measures it deems fit against any organisation it disapproves of. Thus, after an organisation has been declared to be a terrorist organisation, Section 10(5) of the Ugandan Act empowers the Minister to dissolve, wind up and provide for the forfeiture of the organisation to the state. In Tanzania, the Tanzanian Act also allows the Minister of Home Affairs to declare persons or groups to be terrorists or terrorist organisations where there is 'reasonable suspicion' and thereafter, to freeze their funds.⁹³ However, the requirement of 'reasonable suspicion' perhaps, creates room for judicial oversight but this provision or any other criteria for determining who is declared a terrorist is conspicuously missing from the Ugandan Act.

The Ugandan Act permits police or public officers to use reasonable force in discharging their functions under the Act and also accords them immunity from civil proceedings for anything done 'in good faith' in the exercise of that function.⁹⁴ It however holds authorized officers criminally liable for demanding or accepting a bribe, recklessly releasing information prejudicial to investigations and engaging in torture, inhuman and degrading treatment, illegal detention or intentionally damaging property.⁹⁵ Sections 29 and 33 of the Tanzanian Act grant civil and criminal immunity to all police officers who seize or damage property and cause injury or death while discharging their functions under the Act.

The Ugandan Act also impacts the rights to property and privacy. Article 27(2) of the 1995 Constitution of the Federal Republic of Uganda (Ugandan Constitution) provides

⁹¹ Sec 10(2) of the Ugandan Act.

⁹² Sec 10(3) of the Ugandan Act.

⁹³ Section 12 of the Tanzanian Act.

⁹⁴ Sections 30 and 32 of the Ugandan Act.

⁹⁵ Section 21 of the Uganda Act.

that “no person shall be subjected to interference with the privacy of that person’s home, correspondence, communication or other property.” This provision is greatly eroded by the counter terrorism provisions in the Ugandan Act. The Minister is allowed by the Ugandan Act to designate a security officer as an ‘authorized officer’ with the right to intercept the communications and conduct a surveillance of a person under the Act. The scope of this interception and surveillance extends to letters, postal packages, telephone calls, faxes, emails, meeting, movements, and access to personal bank accounts.⁹⁶ The Ugandan Act further makes it a crime, punishable with two years imprisonment or an option of fine, for anyone to obstruct an authorized officer carrying out this interception or surveillance operation.⁹⁷

In addition, the Third Schedule to the Ugandan Act provides that the court can order for a search and seizure of property and materials reasonably believed to be of substantial value to any investigation. However, these orders can be varied on an application by the investigating officer or revoked *suo moto* by the court or on the application of the person aggrieved by the order.⁹⁸ However, the Ugandan Act also empowers an investigating officer to issue a ‘search and seize’ warrant by himself where he ‘has reasonable grounds for believing that the case is one of great emergency and that in the interest of the state, immediate action is necessary.’⁹⁹ On the other hand, the police and the Minister must apply to the courts in Ghana for an order for seizure, detention, management, forfeiture and destruction of terrorism property.¹⁰⁰ More so, under the Ghanaian Act, only senior police officers can apply to the court for an order to conduct an interception operation.¹⁰¹ This procedure guarantees greater respect for human rights unlike the Uganda procedure, where the executive can interfere with and undermine the rights to privacy in the name of ‘great emergency’ and ‘state interest’.

⁹⁶ Section 18 and 19 of the Uganda Act.

⁹⁷ Section 20 of the Uganda Act.

⁹⁸ Paragraph 9, Third Schedule to the Uganda Act.

⁹⁹ Paragraph 12, Third schedule to the Ugandan Act.

¹⁰⁰ Sections 26, 27, 28, 29 and 30 of the Ghanaian Act.

¹⁰¹ Section 34 of the Ghanaian Act.

Another aspect of the Ugandan Act that raises concern is the relaxation of the rules of evidence in favor of the state. For example, Section 14(2) provides that in proceedings against person for assisting in the retention or control of terrorism funds, the onus is on the person to prove that they did not know or have reasonable cause to suspect that their activities related to terrorism funds.¹⁰² Furthermore, Section 22 of the Ugandan Act makes materials obtained from interception or surveillance admissible in evidence against the person. The Tanzanian Act and the Ghanaian Act also have similar provisions. Section 34(4) of the Ghanaian Act makes evidence obtained in similar circumstances admissible even when it contains hearsay, but requires the evidence to be corroborated.

4.3 Conclusion

From the foregoing, it can be said that though some steps have been taken nationally to criminalize, suppress, prevent and prosecute terrorist activities, these steps are not enough in themselves to deal with the threat of terrorism. The practical implementation of most national anti-terrorism acts, like the Ugandan Act, will only serve to foster underlying conditions and social imbalances that create a gulf between the state and the people, thereby causing them to resort to terror tactics. At worst, these national anti-terrorism legislations will provide state governments a dark cloak behind which they can undermine and violate human rights with impunity.

¹⁰² This provision appears not to be a violation of the right to be presumed innocent under Article 28(3)(a) of the Ugandan Constitution since sub-article (4)(a) allows a law to impose upon a suspect the burden of proving particular facts.

Chapter V

Ensuring Human Rights Protection in an age of Counter Terrorism

...in many countries around the world, the fear of terrorism has been allowed to override the need to uphold human rights. For some States that routinely abused human rights in the past, counter-terrorism is simply the newest excuse behind which to hide; for other States, counter-terrorism is claimed to be the justification for departing from long-cherished norms.¹⁰³

5 Introduction

The global war on terror has provided several African countries with viable excuses to delay necessary and perhaps long overdue reforms and further indulge in gross human rights violations. This has only served to lengthen the divide between the state and the society therefore creating room for violent dissent and extremist movements. Counter terrorism provides a chance to redress this situation but unfortunately, it has been employed as tool to repress political opposition and silence dissent. Countering terrorism takes its toll, not just on civil and political rights but also on the quality of life and socio-economic rights of the people, for instance, some states use counter terrorism as 'a smokescreen to justify increased budgetary allocations to the military at the expense of social spending.'¹⁰⁴

5.1 Preventing Wrongs without Violating Rights

The question remains therefore, whether it is possible to ensure human rights protection in this age of counter terrorism? Are human rights and counter terrorism mutually exclusive or are they complementary objectives? Can we have both or must we sacrifice one at the altar of the other? Experts, in answering these questions have written that,

¹⁰³ EJP report (n 22 above) 17

¹⁰⁴ Viljoen (n 4 above) 299

countering terrorism is itself a human rights objective, since States have a positive obligation to protect people under their jurisdiction against terrorist acts. This positive duty on States requires them to prevent, punish, investigate, and redress the harm caused by such acts. At the same time, States must accept that this positive duty to protect applies both to those who may be at risk from terrorism and to those who may be suspected of terrorism. The State has no authority in law to determine that some people do not qualify to have their rights respected.¹⁰⁵

The significance of human rights particularly in this age of terrorism and counter terrorism is, more so, strengthened by the history and development of the concept of human rights. The 1948 Universal Declaration of Human Rights and other instruments of humanitarian law were not products of peace but were forged from the horrific experiences of war and conflict. No where and at no time then is the protection of human rights more important than in these times of insecurity, fear, suspicion and terrorism.

Experience from better functioning democracies have shown that when freedom of expression and other civil liberties are protected, it provides the people non-violent ways to express political and social frustrations instead of resorting to violence and terrorism. Unfortunately, 'civil liberty is often the first casualty in the fight against terrorism and it is ironic that a lack of civil liberties in turn seems to be a major cause of terrorism around the world.'¹⁰⁶

5.2 Recommendations

Generally, it is recommended that as a matter of priority African states must, in addition to its short term plans to combat terrorism begin to 'develop and implement medium to long term strategies, particularly to address the root causes of terrorism and

¹⁰⁵ EJP report (n 22 above) 16

¹⁰⁶ Botha (n 19 above) 39

radicalization.¹⁰⁷ These medium to long term plans must have human security, social justice and development dimensions. A development approach to counter terrorism will help people redefine themselves, their identities and their interests in society. This will help them refocus their energies and greatly reduce the chances of terrorism. By also pursuing a social justice approach, states will diffuse whatever tensions that might have found expression through terrorism.¹⁰⁸

National counter terrorism efforts must also involve the judiciary even more to ensure that such measures are not left entirely to the whims and caprices of the executive. It has been strongly argued that an independent judiciary is one of the key to effective counter terrorism. Terrorism in itself is often fueled by feelings of injustice and the state would be shooting itself in the foot if it sidelines the judicial branch in the fight against terrorism. Thus some experts have observed that,

If counter-terrorist measures are to be effective in the long term, they must be seen to be legitimate, and an independent judiciary can contribute to providing that legitimacy. A well-operating criminal justice system will deter terrorists, disrupt terrorist networks, catch and punish those who commit crimes, and ensure that any innocent suspects mistakenly caught up in the law enforcement process are rapidly released.¹⁰⁹

Uganda like most African countries has a plethora of work to do to ensure effective human rights protection in its counter terrorism efforts. But a good starting point would be for it to ratify the AU Anti-Terrorism Protocol and the Optional Protocol to the Convention against Torture. An additional step would be to undertake an immediate and comprehensive review of its anti-terrorism legislation to ensure that it conforms with international human rights standards. It should cease illegal detention and torture of suspects and respect criminal procedure at each stage of any criminal investigation or

¹⁰⁷ A Botha *Terrorism in the Maghreb: The transnationalisation of domestic terrorism* (2008) 197

¹⁰⁸ Makinda (n 25 above) 28

¹⁰⁹ EJP report (n 22 above) 21

counterterrorism operation. Finally, it should thoroughly investigate and prosecute human rights violations by government security, police, armed forces and equally compensate victims of torture, ill-treatment and arbitrary detention swiftly and adequately.¹¹⁰

5.3 Conclusion

In sum, although the threats of terrorism are very real and potent in Uganda, Africa and the rest of the world, we cannot continue to ignore the significance of human rights both as a cause and a victim of terrorism and counter terrorism. A society where human dignity is respected, where people can openly express their views within the reasonable limits of the law, where the government is transparent and accountable to the people, where political dissent does not spell doom, where the wheels of justice grind efficiently and without discrimination is a society where terrorism will hardly find a foothold. Reverse the society and you have created a fertile ground for terrorism to thrive. The best counter terrorism initiative any state can adopt would therefore be the protection and promotion of equality and human rights for all.

Word Count: 10 135

¹¹⁰ Human Rights Watch 'Uganda: Accounts of Torture' (2009) available at www.hrw.org (accessed 30 October 2009)

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