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LLM (Human Rights and Democratisation in Africa) 2010

**The Impact of Terrorism and Counter-Terrorism on the Right to  
Education**

Submitted in partial fulfillment of the requirements of the degree LLM  
(Human Rights and Democratisation in Africa)  
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Declaration

I, *Ivy W. Kihara*, 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 Mum, Sarah Njoki Kihara

'A mother is the truest friend we have, when trials heavy and sudden, fall upon us; when adversity takes the place of prosperity; when friends who rejoice with us in our sunshine desert us; when trouble thickens around us, still will she cling to us, and endeavor by her kind precepts and counsels to dissipate the clouds of darkness, and cause peace to return to our hearts.' - Washington Irving

Thank you for your unwavering support and the weekly phone calls since I began this journey.

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## List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ACSRT	African Centre for the Study and Research of Terrorism
AU	African Union
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CTC	Counter-Terrorism Committee
FIS	Islamic Salvation Front
GA	General Assembly (United Nations)
GIA	<i>Groupe Islamique Armé</i>
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IHL	International Humanitarian Law
LRA	Lord's Resistance Army
OAU	Organisation of African Unity
PSC	Peace and Security Council
SC	Security Council (United Nations)
SER	Socio-Economic Right
SRCT	Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism
SRRE	Special Rapporteur on the Right to Education
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Education, Science and Cultural Organisation
UPDF	Uganda People's Defence Force
US	United States of America
USSR	Union of Soviet Socialist Republics



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## Chapter I

### Introduction

#### 1.1 Background

After the 9/11 terrorist attacks in the United States of America, there has been a shift in the policies of many countries to combat terrorism. Terrorism has had a devastating effect on many citizens of the world. These include 'the enjoyment of the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism can destabilise Governments, undermine civil society, jeopardise peace and security, and threaten social and economic development.'<sup>1</sup> All of these also had a real impact on the enjoyment of human rights. Therefore the fight to curb further terrorist attacks is paramount. States are charged with the responsibility of curbing terrorism by their citizens. But with responsibility comes obligations to the citizenry.<sup>2</sup> States should therefore not engage in policies or actions that further deprive others of their enjoyment of human rights. This is well put by Hoffman when he says 'history shows that when societies trade human rights for security, most often they get neither.'<sup>3</sup>

One of the definitions of terrorism is 'a strategic policy to attain certain goals and objectives (of individual/group/state) through spreading fear or threat by any means'.<sup>4</sup> Counter-terrorism measures and armed conflict differ as in counter-terrorism states sanction most of the acts. While terrorism differs from armed conflict as the acts are not restricted to one part of the world or to one group of people. The key component of terrorism is that it is a threat and use of fear which on the whole does not mean that even if a political group reaches its objectives, the group who were in fear will automatically believe that they are safe.<sup>5</sup>

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<sup>1</sup> Security Council resolutions 1373 (2001) and 1377 (2001); General Assembly Resolutions 48/122, 49/185, 50/186, 52/133, 56/160 and 58/174, as well as its Declaration on Measures to Eliminate International Terrorism Resolution 49/60; Commission on Human Rights Resolutions 2001/37 and 2004/44, Human Rights Council Resolution 6/28 and the Resolution on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (28 March 2008).

<sup>2</sup> T Becker *Terrorism and the State Rethinking the Role of State Responsibility* (2006) 2.

<sup>3</sup> P Hoffman 'Human Rights and Terrorism' (2004) 26(4) *Human Rights Quarterly* 934.

<sup>4</sup> Nur Khan 'Impact of Terrorism and Counter Terrorism on Human Rights' (2007) *Ain o Salish Kendra (ASK) newsletter* <http://ejp.icj.org/IMG/ASKSubmission.pdf> (accessed 25 July 2010).

<sup>5</sup> World Vision 'City of fear' <http://www.worldvision.org.uk/server.php?show=nav.465> (accessed 14 October 2010).

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States have the obligation to protect their citizens from terrorism and contribute to the maintenance of international peace and security.<sup>6</sup> The United Nations has recognized the importance of the state's obligation and through its various organs has articulated key principles which states should adhere to while combating terrorism: counter-terrorism laws and practices must comply with human rights law; counter-terrorism law and practice must be established by due process; counter-terrorist measures seeking to limit rights must be justifiable and necessary; counter-terrorist measures seeking to limit rights must be proportional.<sup>7</sup> The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (SRCT) has compiled good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight.<sup>8</sup> These guidelines add to existing principles for the protection on human rights while countering terrorism. They include 'All measures must be strictly necessary for an intelligence service to fulfill its legally prescribed mandate; Measures taken must be proportionate to the objective. This requires that intelligence services select the measure that least restricts human rights, and take special care to minimize the adverse impact of any measures on the rights of individuals; no measure taken by intelligence services may violate peremptory norms of international law or the essence of any human right and finally that there is a clear and comprehensive system for the authorization, monitoring and oversight of the use of any measure that restricts human rights.'<sup>9</sup>

States should not be held responsible for acts of terrorism as the state did not commit the act. Further, due to the nature of terrorism and that terrorist acts are committed by private actors, it is difficult to hold states responsible.<sup>10</sup> However, 'states can have a separate and distinct duty to exercise due diligence in preventing certain activities.'<sup>11</sup>

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<sup>6</sup> A Conte, Hand book on Human Rights Compliance while Countering Terrorism (January 2008) 1 [http://www.globalct.org/images/content/pdf/reports/human\\_rights\\_handbook.pdf](http://www.globalct.org/images/content/pdf/reports/human_rights_handbook.pdf) (accessed 8 September 2010).

<sup>7</sup> UN Commission on Human Rights, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, E/CN.4/1985/4 Annex (1985); UN Human Rights Committee, *General Comment 29, States of Emergency (Article 4)*, CCPR/C/21/ Rev.1/Add.11 (2001), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.6 (2003) at 186; UN Commission on Human Rights, *Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights*, E/CN.4/2002/18 Annex (2002) ("Proposals for 'further guidance' for the submission of reports pursuant to paragraph 6 of Security Council resolution 1373 (2001): Compliance with international human rights standards").

<sup>8</sup> Report to the General Assembly A/HRC/14/46/Add.1 (17 May 2010). 1.

<sup>9</sup> (n 8 above) 17 – 18.

<sup>10</sup>United Nations Counter-Terrorism Implementation Task Force Working Group 'Protecting Human Rights While Countering Terrorism' Expert Seminar on 'The impact of terrorism and counter-terrorism measures on the enjoyment

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There has also been enactment of legislation as well as policy implementation at the country, regional and international level to aid in counter-terrorism. Many of these laws and policies focus on counter-terrorism but have compromised and violated human rights and violated human security and the rule of law.<sup>12</sup> A majority of the violations that have received scholarly ink in this regard are civil and political rights and education with regard to post-conflict, reconstruction or peace building.<sup>13</sup> Examples of civil and political rights include the rights to fair trial, privacy, cruel inhuman and degrading treatment and rights of accused persons.

The United Nations General Assembly has adopted a number of Resolutions on terrorism, counter-terrorism and human rights since December 1972.<sup>14</sup> The Assembly has reiterated that states must comply with their international human rights obligations and international law while fighting terrorism.<sup>15</sup>

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of economic, social and cultural rights (ESCR)' (2008) 12

[http://www.un.org/terrorism/pdfs/wg\\_protecting\\_human\\_rights.pdf](http://www.un.org/terrorism/pdfs/wg_protecting_human_rights.pdf) (accessed 1 August 2010).

<sup>11</sup> (n 2 above) 24.

<sup>12</sup> T Deen 'UN Human Rights Body to Scrutinise U.S. abuses' *Inter Press Service News agency* (September 20, 2005) <http://ipsnews.net/news.asp?idnews=30355> (Accessed 11 September 2010).

<sup>13</sup> Fen Osler Hampson with J. Daudelin, J.B. Hay, T. Martin, and H. Reid, *Madness in the Multitude: Human security and World Disorder* (2002) 124, in W Nellis 'Education, Human Security, and the Terrorism Problematique: Reflections on UNESCO, ISESCO, and Iran' (2006) 7 *Whitehead Journal of Diplomacy & International Relations* 116.

<sup>14</sup> 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 UN Security Council Counter-Terrorism Committee 'International Laws', available at <http://www.un.org/sc/ctc/laws.html> (accessed on 4 September 2010); The 1994 Declaration on Measures to Eliminate International Terrorism. UN General Assembly Resolution A/RES/49/60; The 1996 establishment of an *Ad Hoc* Committee to continually address means of developing a comprehensive legal framework of conventions dealing with international terrorism. UN General Assembly Resolution A/RES/51/210; The 1997 International Convention for the Suppression 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. UN Security Council Counter-Terrorism Committee 'International Laws', available at <http://www.un.org/sc/ctc/laws.html> (accessed on 4 September 2010); The 2006 United Nations Global Counter-Terrorism Strategy; 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 4 September 2010).

<sup>15</sup> United Nations General Assembly Resolution A/RES/62/272 (2008) Apart from this the Security Council has made similar recommendations See, for example, Security Council Resolution (SC Res.) 1373 (2001), preamble para. 5; SC Res. 1438 (2002), preamble para. 2; SC Res. 1440 (2002), preamble para. 2; SC Res. 1450 (2002), preamble para. 4; SC Res. 1455 (2003), preamble para. 3; SC Res. 1456 (2003), preamble para. 8; SC Res.1535 (2004), preamble para. 4; SC Res. 1540 (2004), preamble para. 14; SC Res. 1566 (2004), preamble paras. 3 and 6; SC Res. 1611 (2005), preamble para. 2; SC Res. 1618 (2005), preamble para.4; SC Res. 1624 (2005), preamble para. 2.

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The SRCT has in his work linked counter-terrorism measures with the right to education.<sup>16</sup> This has mainly been during country visits where he has found that the right to education has been infringed by implementation of counter-terrorism measures. For example school enrolments in some parts of Turkey are low due to the migration of Kurds and their displacement within the country.<sup>17</sup> The right to education has also been infringed in some Muslim countries where religious schools have been shut down and others refused operating licences as a counter-terrorism strategy.<sup>18</sup> There has also been restriction of certain university degrees to foreign nationals in the United States as a measure to counter terrorism.<sup>19</sup>

Economic, social and cultural rights have received less attention than civil and political rights.<sup>20</sup> This is no different in regards to the impact of counter-terrorism on economic, social and cultural rights. Their character as rights and/or their capacity to create obligations binding on states in international law has been denied.<sup>21</sup> The realisation of these rights generally has encountered a number of challenges. These include: defining their content, the nature of the obligations that attach to them, enforcement mechanisms, and the lack of effective and enforceable remedies.

Education is one of the most important rights as it is an empowerment right.<sup>22</sup> Without it society cannot function properly.<sup>23</sup> This means that education enables society to advance and be able to understand their rights and responsibilities within a community. The importance of education is underlined by making education for all (EFA) a commitment to be achieved by 2015<sup>24</sup> and the Millennium Development Goals (MDGs) where education is cited as MDG 2.<sup>25</sup>

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<sup>16</sup> For example see the Special Rapporteur's report to the General Assembly A/62/26 paras 73 and 75.

<sup>17</sup> Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism covering the period 1 January – 31 October 2007  
<http://imeu.net/news/article007329.shtml> (accessed 3 July 2010).

<sup>18</sup> (n 17 above).

<sup>19</sup> GJ Knezo 'Possible Impacts of Major Counter Terrorism Security Actions on Research, Development and Higher Education' (2002) *Congressional Research Service, The Library of Congress*  
[http://assets.opencrs.com/rpts/RS21270\\_20030205.pdf](http://assets.opencrs.com/rpts/RS21270_20030205.pdf) (accessed 3 July 2010).

<sup>20</sup> J Oloka-Onyango 'Beyond the rhetoric; Reinvigorating the struggle for economic and cultural rights in Africa' (1995) 26(1) *California Western International Law Journal* 1, P Hunt *Reclaiming Social Rights: International and Comparative Perspectives* (1996) 69

<sup>21</sup> CA Odinkalu 'Analysis of paralysis or paralysis by analysis? Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights' (2001) *Human Rights Quarterly* 331.

<sup>22</sup> F Coomans The Core Content of the Right to Education (2002) in D Brand & S Russell (eds) *Exploring the Core Content of Socio-economic Rights: South African and International Perspectives* 182

<sup>23</sup> R Maheu (Former Director - General UNESCO) in D Hodgson *The Human Right to Education* (1998) 39.

<sup>24</sup> M Richmond foreword to *Education under attack* (2010) UNESCO

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The right to education is a SER that is provided for in the International Covenant on Economic, Social and Cultural Rights under article 13.<sup>26</sup> As a SER, the right to education should be progressively realised.<sup>27</sup> As this maybe the case, counter-terrorism measures have adversely affected the right to education. This has been through various ways for example the right to education has been delegated to the bottom of the ladder in favour of counter-terrorism with regard to government budget allocations. Moreover mechanisms of counter-terrorism have led to the destruction of schools and learning institutions including limiting access to institutions of learning. Though the state has a duty to counter terrorism, international obligations are such that states also have a duty to respect, protect and fulfill human rights including the right to education.<sup>28</sup> This means that a state has the obligation to act in a way that does not deprive citizens of education, that the state takes measures to protect the right to education from infringement by others and finally to help those who are vulnerable in the society or have become victims due to the state being unable to respect or protect their right to education.<sup>29</sup>

The right to education is important because it can be used as one of the tools to reduce the incidence of terrorism. Therefore protecting this right is a way of countering terrorism. This is more so because counter-terrorism measures should prevent radicalization and marginalisation.<sup>30</sup>

The Special Rapporteur on the Right to Education (SRRE)<sup>31</sup> has commented on the impact of terrorism and counter-terrorism on the right to education. These views will be discussed as well.

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<http://unesdoc.unesco.org/images/0018/001868/186809e.pdf> accessed 8 September 2010.

<sup>25</sup> MDG 2 Universal Primary Education for all by 2015 <http://www.un.org/millenniumgoals/education.shtml>  
Accessed 8 September 2010.

<sup>26</sup> The right to Education is also recognized by other international Conventions but the ICESCR is the main one. These other instruments include the Universal Declaration of Human Rights (Article 26), Convention on the Rights of the Child (Articles 28 and 29), International Convention on the Elimination of all Forms of Racial Discrimination (Article 5(v)(e)), Convention on the Elimination of All Forms of Discrimination against Women (Article 10), Convention on the Rights of Persons with Disabilities (Article 24), ICCPR (Article 18(4))

<sup>27</sup> Article 14 ICESCR. Article 14 continues and states that the realization of this right should be within a reasonable time. This is as opposed to Art 2(1) which states the rights within the IESCR should be realised progressively and according to state resources.

<sup>28</sup> KD Bieter *The Protection of the Right to Education by International Law* (2006) 48.

<sup>29</sup> (n 28 above) 73.

<sup>30</sup> (n 2 above) 1.

<sup>31</sup> The mandate of the Special Rapporteur on the right to education was originally established by the Commission on Human Rights in April 1998 by Resolution 1998/33.

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## 1.2 Objectives of the study

This paper will seek to find a meeting point where the two Special Rapporteurs can work together to further the right to education while countering terrorism.

In accessing the impact of terrorism and counter-terrorism, African case studies will be used to show the impact on the right to education. There will also be case studies outside Africa that will be used to advance this point.

This study aims at researching the impact of terrorism and counter-terrorism on the right to education in order to assist the Special Rapporteurs in their work. It also acts as a starting point to understand the infringement on the right to education by terrorism and counter-terrorism measures and identifying opportunities for dealing with the problem of terrorism, counter-terrorism, terrorism and the right to education.

## 1.3 Significance of the study

The study of the impact of terrorism, counter-terrorism on the right to education is important as terrorism is spreading throughout the globe. Socio-economic rights have also been neglected with regard to counter-terrorism and terrorism. It is also important because education can be one of the tools that can be used as a counter-terrorism measure and therefore the limitation or infringement of this right by counter-terrorism measures undermines the 'war against terror.' Thus the illustration of the extent of how terrorism and counter-terrorism measures infringes the right to education can shed light as to the magnitude of the problem and the possible avenues available for both Special Rapporteurs to work together.

## 1.4 Research questions

- a) What is the link between the right to education, counter-terrorism and terrorism?
- b) What are the international and regional frameworks available for countering terrorism?
- c) What does the right to education entail? What are the obligations of states and non-state actors?
- d) What are the effects of counter-terrorism and terrorism on the right to education in Africa as well as other states?
- e) What state and or regional/international bodies done to remedy the situation to date?
- f) What lessons and measures can be learned from these countries?

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<http://www2.ohchr.org/english/issues/education/rapporteur/index.html> (accessed 4 September 2010). For example see Special Rapporteur's annual report to the Economic and Social Council E/CN.4/2002/60.

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- g) How can the SRCT and the SRRE as well as other Special Rapporteurs work together in improving the right to education while countering terrorism?

### 1.5 Literature review

There is generally less literature on economic, social and cultural rights as compared to civil and political rights. There is some literature on terrorism and counter-terrorism and the right to education separately, but there is none that addresses them jointly. There are, however, reports that shows a link between terrorism, counter-terrorism and the right to education. This dissertation therefore will draw from reports on the effects of terrorism and counter-terrorism and from academic works in on socio-economic and cultural rights and specifically the right to education.

The annual reports of the Special Rapporteur form a starting point to this exploration in showing that there is a gap in connecting the impact of counter-terrorism and the right to education. There are reports by different agencies with regard to the effects of counter-terrorism but these have not been connected to the infringement of the right to education. General comments by the Committee on Economic, Social and Cultural Rights (CESCR) have also been useful in evaluating the situation of social, economic and cultural rights generally. The United Nations Counter Terrorism Implementation Task Force (Working Group Protecting Human Rights While Countering Terrorism) expert seminar reports dabble into the effect of counter-terrorism on the right to education and call for further research to be carried out in this field of study.<sup>32</sup> This dissertation aims to add to this discourse while presenting practical situations in Africa.

### 1.6 Methodology

This dissertation is library-based where the available literature on the subject has been made use of. Hard copy sources and electronic sources accessed from the Internet are utilised. Reliance is made on information relating to reports by the SRCT and the SRRE and reports of United Nations Counter-Terrorism Implementation Task Force Working Group Protecting Human Rights While Countering Terrorism as accessed on the Internet.

### 1.7 Limitation and scope

This dissertation draws inspiration from the SRCT and the United Nations Counter-Terrorism Implementation Task Force Working Group which call for there to be more research

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<sup>32</sup>(n 10 above) 17.

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into the impact of terrorism and counter-terrorism on the right to education.<sup>33</sup> The right to education will be limited by the social dimensions of the right to education.<sup>34</sup> These are accessibility and availability of education.

## 1.8 Overview of chapters

The paper is divided into six chapters.

Chapter one introduces the dissertation and all the components that the dissertation will cover. Chapter two lays the framework of what the problem of counter-terrorism, terrorism and education. Chapter three examines the legal framework and monitoring systems that specifically deal with terrorism. Chapter four discusses the legal framework and monitoring systems that differ from those that will deal with terrorism. Four case studies are discussed in chapter five and an analysis of the impact of counter-terrorism and terrorism on the right to education. Conclusions and recommendations are discussed in chapter six.

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<sup>33</sup> (n 32 above).

<sup>34</sup> (n 22 above).



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## Chapter 2

### Understanding the Problem

#### 2.1 Introduction

Countering terrorism while respecting human rights has proven to be a difficult task to balance. This is articulated in Resolution 1456 in 2003. This Resolution mandates 'States to ensure that any measure taken to combat terrorism comply with all their obligations under international law, that they should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.'<sup>35</sup> The reason for this is that states can use security as a reason to infringe the human rights of their citizens. The Security Council Resolution is firm that security concerns and counter-terrorism measures cannot override obligations under international human rights and humanitarian law. This chapter will seek to explain the nature of the dual obligations of states to combat terrorism, and respect human rights, more specifically the right to education.

#### 2.2 Understanding the term terrorism

There is no agreed legal definition of terrorism.<sup>36</sup> One of the reasons for this, especially in Africa, is that 'one man's terrorist is another man's freedom fighter.'<sup>37</sup> However, from the thirteen existing conventions on different aspects of terrorism and United Nations Resolutions on terrorism, a definition can be inferred.<sup>38</sup>

In 1994, the General Assembly adopted the Declaration on Measures to Eliminate International Terrorism. It defined terrorism as 'criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes. These acts are in any circumstances unjustifiable, whatever the considerations of a

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<sup>35</sup> UN Security Council Resolution 1456 (2003) adopted on 20 January 2003 UN Doc S/RES/1456 (2003).

<sup>36</sup> International Commission of Jurists 'Assessing damage, urging action' Report on Eminent Jurists Panel on Terrorism, counter terrorism and human rights (2009) 7.

<sup>37</sup> This phrase encompasses the situation that existed in Africa and other states that were fighting for independence and self determination. O Schachter 'The lawful use of force by a state against terrorists in another country' (1989) 19 *Israel Yearbook of International Law* 209, 211.

<sup>38</sup> A Hübschle 'The T word: Conceptualising terrorism' *African Security Review* 15.3 Institute for Security Studies 16. [http://www.issafrica.org/uploads/HUBSCHLE15\\_3.PDF](http://www.issafrica.org/uploads/HUBSCHLE15_3.PDF) (accessed 15 September 2010).

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political, philosophical ideological, racial, ethnic, religious or any other nature that maybe invoked to justify them'.<sup>39</sup>

In 1999, UN Security Council Resolution 54/10 added to the definition of terrorism terming terrorism as 'criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes'.<sup>40</sup>

In Africa, terrorism is not defined and the closest definition comes from the 35th Ordinary Session of Heads of State and Government which adopted the Organisation of African Unity Convention on the Prevention and Combating of Terrorism (the Algiers Convention) in July 1999.<sup>41</sup> This definition elucidates what a terrorist act is in Article 1.<sup>42</sup> The Convention further encompasses the nature of Africa in Article 3(1) which gives exemptions of terrorist acts as struggles waged in the pursuit of liberation, self determination including colonialism, occupation aggression and domination by foreign forces.<sup>43</sup> This exemption is fundamental in Africa as it protects freedom fighters from being labeled as terrorists. States can however circumvent this by refusing to ratify the Convention.

The United Nations definitions are clearly outlined but the coverage of the Algiers Convention is more detailed and therefore has more protection especially with regard to education.

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<sup>39</sup> Resolution 49/60. Measures to eliminate international terrorism A/RES/49/60 9 December 1994

<http://www.un.org/documents/ga/res/49/a49r060.htm> (accessed 20 September 2010).

<sup>40</sup> GA Res 54/110, UNGAOR 54<sup>th</sup> UN Doc A/RES/54/110 (1999).

<sup>41</sup> (n 38 above) 17.

<sup>42</sup> OAU, The Organisation of African Unity Convention on the Prevention and Combating of Terrorism, July 1999.

Article 1 "Terrorist Act" means:

(a) any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

(i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or

(ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or

(iii) create general insurrection in a State.

<sup>43</sup> (n 42 above).

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### 2.3 The link between counter-terrorism, terrorism and the right to education

State obligations under international conventions should be implemented in good faith.<sup>44</sup> The ICESCR like any other treaty creates legal obligations on states.<sup>45</sup> These obligations are to respect, protect and fulfil, and failure to perform any one of these three obligations constitutes a violation of such rights.<sup>46</sup> States that have ratified this Covenant have the obligation to respect, protect and fulfil the right to education under Article 13.

Though some have questioned the obligations of states of the rights under the ICESCR compared to the obligations under the ICCPR, the rights under the ICESCR are as important as civil and political rights. This is based on the premise that human rights are indivisible, inter-dependent and inter-related.<sup>47</sup> The lack of separation means that one right should not override the other as the rights cannot be separated.

Counter-terrorism is defined as 'the practices, tactics, techniques, and strategies that governments, militaries, police departments and corporations adopt in response to terrorist threats and/or acts, both real and imputed.'<sup>48</sup> Member states should take appropriate measures against terrorist acts, but they must take action within a framework of protecting human rights.<sup>49</sup> This means that all human rights should be respected while countering terrorism.

The right to education is an important human right which can be used as a counter-terrorism mechanism as it broadens understanding among civilisations in an effort to prevent the indiscriminate targeting of different religions and differences between diverse people.<sup>50</sup> The Working Group on countering terrorism has stressed the importance of counter-terrorism measures looking at economic, social and cultural rights like education as a possible condition conducive to terrorism and as part of any solution.<sup>51</sup> The Working Group also stressed that

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<sup>44</sup> Article 26 Geneva Convention on the Law of Treaties (1969).

<sup>45</sup> M Scheinin 'Economic, social and cultural Rights as legal rights' in Eide A, Krause C and Rosas A (eds) *Economic, social and cultural rights: A textbook* (1995) 41.

<sup>46</sup> Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997) para 6 [http://www1.umn.edu/humanrts/instate/Maastrichtguidelines\\_.html](http://www1.umn.edu/humanrts/instate/Maastrichtguidelines_.html) (accessed 20 September 2010).

<sup>47</sup> The World Conference on Human Rights; Vienna Declaration and Programme of action: UN Doc A/CONF.157/23 part 1, para 5.

<sup>48</sup> U.S Foreign Policy [http://usforeignpolicy.about.com/od/defense/a/what-is-counterterrorism.\(accessed](http://usforeignpolicy.about.com/od/defense/a/what-is-counterterrorism.(accessed) (28 September 2010).

<sup>49</sup> UN Security Council Resolution 1456 (2003) UN Doc A/RES 1456, Geneva Assembly Resolution 60/158 (2005) UN Doc A/RES 60/158.

<sup>50</sup> UN Security Council Resolution 1624 (2005) UN Doc A/RES/1624 (2005).

<sup>51</sup>(n 10 above) 11.

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counter-terrorism measures that violate economic, social and cultural rights can lead to radicalisation and violent and criminal behavior.<sup>52</sup>

The Convention on the Rights of the Child (CRC) has been ratified by most of the states in the world.<sup>53</sup> In addition to the ICESCR, the CRC entails that states should eliminate obstacles impeding children's enjoyment of their right to education.<sup>54</sup> Considering that the CRC is ratified by most of the world, it is safe to conclude that states have agreed to be bound to enhance the right to education for children. Counter-terrorism measures can be considered as obstacles if they impede the right to education which would constitute a breach of states' obligations.

Education is described as an empowerment right that 'is the glue that holds society together'<sup>55</sup> and also enables the fulfillment of other basic rights and fundamental freedoms.<sup>56</sup> This means that the impact on/of education should always be a starting point when examining any branch of human rights. The impact of counter-terrorism and terrorism should therefore do the same as violence and/or anything that deters learning impacts negatively on the right to education.<sup>57</sup>

Moreover 'the World Bank has argued that provision of education, particularly for girls, is the single most effective intervention that countries can make to improve human development, the reverse is also true: attacks on primary schools, particularly girls' primary schools, and the degradation of the education system that results from persistent attacks and fear of attacks, are particularly damaging for development.'<sup>58</sup> In short, for development in the world to improve, the right to education must be preserved and strengthened at all costs.

Education can also be used as counter-terrorism measure, but it has also been used to further terrorism by encouraging intolerance and extremism. Before 9/11 in Afghanistan and Pakistan *madrassa* education was being used to propagate Islamic extremism.<sup>59</sup> There has also

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<sup>52</sup> (n 10 above) 12.

<sup>53</sup> 193 of the 195 States of the world have ratified the CRC. The exemptions are the USA and Somalia. Status of ratification CRC, [www.bayefsky.com/pdf/crc\\_ratif\\_table.pdf](http://www.bayefsky.com/pdf/crc_ratif_table.pdf) (accessed 28 August 2010).

<sup>54</sup> Commission on Human Rights 'Annual report of the Special Rapporteur on the right to education' (7 January 2002) E/CN.4/2002/60 Para 49 (7 January 2002).

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/ae1a0b126d068e868025683c003c8b3b?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/ae1a0b126d068e868025683c003c8b3b?Opendocument) (accessed 11 September 2010).

<sup>55</sup> (n 54 above).

<sup>56</sup> B O'Malley '2010 Education under attack' UNESCO Report 14.

<http://unesdoc.unesco.org/images/0018/001868/186809e.pdf> (accessed 1 August 2010).

<sup>57</sup> (n 56 above 3).

<sup>58</sup> (n 56 above 28).

<sup>59</sup> W Nelles [Comparative education, terrorism and human security: from critical pedagogy to peace building?](#) (2003) 20. *Madrassa* 'generally refers to Muslim schools with core emphasis on Islamic studies and Arabic literacy. It is a

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been blame heaped on education, for terrorist acts. For example as most of the 9/11 hijackers were Saudis, the Western newspapers vilified education in Saudi Arabia calling it Islamic intolerance breeding extremism.<sup>60</sup>

In addition to education being a fundamental right, it has been deemed to be a contributor to the spread of terrorism. States should therefore comply with their international obligations to the right to education as it impacts society's development and touches various aspects of life that are important to society.

#### 2.4 Nature of 'competing' interests of states to counter terrorism and to providing education

There is a trend within international law moving towards states legislating on collective security when peace is threatened. This legislation mostly involves states using arms to maintain order.<sup>61</sup> This is the case with terrorism. The main problem with this is that the international community has not been able to come up with one uniform solution; instead the responses have been based on reactions to terrorist attacks.<sup>62</sup> This is an important factor to consider on the impact of counter-terrorism on human rights generally. This is because counter-terrorism strategies are dynamic and thus change depending on the latest terrorist attack and thus can continuously affect human rights in different ways. This has particularly led to individual liberties being sacrificed for the benefit of national security.<sup>63</sup> The balance between countering terrorism and upholding human rights within a state then becomes a challenge.

States have positive and negative obligations in the international human rights law regime. Positive obligations are to ensure that human rights are protected. Negative obligations are not to violate protected rights.<sup>64</sup> The ICCPR and the ICESCR states 'nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant; There shall be no restriction upon or derogation from any of the fundamental human

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privately-operated school which relies on the support of the local community or foreign donors, particularly from Islamic or Muslim countries'. <http://www.muslimindanao.ph/madrassa.html> (accessed 29 September 2010).

<sup>60</sup> TL Friedman 'Dear Saudi Arabia' New York Times 12 Dec 2001 <http://www.nytimes.com/2001/12/12/opinion/dear-saudi-arabia.html> (accessed 29 September 2010). The debate of whether an education system can be solely blamed for acts of individuals will not be discussed in this paper, but is important to keep in mind when it comes to education.

<sup>61</sup> IA Shearer, I. A *Starke's International Law* (1994). (11<sup>th</sup> ed).484.

<sup>62</sup> C Then & E Shorts (eds) *International Criminal Law and Human Rights* (2003) 236.

<sup>63</sup> T Lee 'Malaysia and the Internal Security Act; The insecurity of Human Rights after September 11' *Singapore Journal of Legal Studies* (2002) 56 – 72.

<sup>64</sup> H Duffy, *The 'War on Terror' and the framework of International law* (2005) 274 – 275.

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rights recognised or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognises them to a lesser extent.<sup>65</sup>

Not all human rights are absolute, rights can be limited.<sup>66</sup> In times of emergencies, suspension of rights may be permissible. The state must show due cause for this.<sup>67</sup> Derogations are permissible but must be considered a temporary measure and must be justified to the international community.<sup>68</sup>

Despite the fact that derogations in emergency situations are allowed, the Human Rights Committee set clear parameters in which states can justify derogations. The Committee held that the measures that lead to derogations must be necessary, legitimate and limited to the extent strictly required by the necessity of the situation. The action must also be proportional to the situation.<sup>69</sup> With regard to the right to education, destruction of schools as collateral damage during counter-terrorism missions cannot be justified as proportional and neither can the army recruiting children to fight be justified as a counter-terrorism measure that is justified and proportional for states to derogate from their international obligations.

An example of an emergency is during armed conflict and IHL is very specific as to what can be attacked.<sup>70</sup> Under Article 51 of the First Additional Protocol of the Geneva Conventions,<sup>71</sup> it prohibits the threat or acts of violence aimed at civilians.<sup>72</sup> Consequently, civilian objects, like schools should not be a target of any of the parties. States may claim that they cannot be reasonably expected not to attack a terrorist base near a school to avoid destroying the

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<sup>65</sup> ICCPR and ICESCR Article 5.

<sup>66</sup> The non derogable rights are the right to life, freedom from slavery or servitude, freedom from torture, cruel and inhuman treatment or punishment, the non-retroactivity of criminal law) and a ban on involuntary medical treatment. University of Minnesota 'The administration of justice during states of emergency' (the administration of justice) <http://hei.unige.ch/humanrts/monitoring/adminchap16.html> (accessed on 20 September 2010).

<sup>67</sup> (n 36 above) 18.

<sup>68</sup> Report of the Independent Expert on the Protection of human rights while countering terrorism UN DOC E/CN4 2005/103, 17 February 2005. State reporting to the treaty bodies can be one way of states explaining their actions on derogations.

<sup>69</sup> Human Rights Committee, States of Emergency (article 4): CCPR General comment 29. (General Comments), U.N. Doc. CCPR/C/21/Rev.1/Add.11, 31/08/2001, paragraph 4.

<sup>70</sup> International Committee of the Red Cross (ICRC), Henckaerts & Doswald-Beck (eds) *Customary International Humanitarian Law* (2005) 497-98.

<sup>71</sup> Additional Protocol 1 of the Geneva Convention of 12 August 1949,

<sup>72</sup> Article 51 and relating to the protection of victims of international armed conflicts (Protocol I), of 8 June 1977.

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school.<sup>73</sup> According to IHL, Article 57(2)(a), once an attack is planned, all necessary means should be taken to avoid destroying civilian objects.<sup>74</sup> Regardless of the state's obligation to provide security, it is also obligated to respect IHL and thus enable access to education by not intentionally destroying schools. Security Council Resolution 1456 confirms the importance of state obligations to comply with international law, IHL especially, while combating terrorism.<sup>75</sup>

Moreover disrespect for fundamental human rights will lead to lack of public confidence, reducing public participation in countering terrorism, which is important, as no state is capable of countering terrorism alone, a combined effort of states is required.<sup>76</sup>

Kofi Annan while Secretary General of the UN summed it up best when he said "We face a nearly unsolvable conflict between two imperatives of modern life--protecting human rights and at the same time ensuring the safety of citizens from terrorist attacks with catastrophic consequences." Particular attention needs to be given to balancing anti-terrorism measures and the observance of human rights standards; otherwise the fight against terrorism is "self-defeating."<sup>77</sup>

## 2.5 States and their accountability for acts of terrorism

It is widely accepted in human rights law that acts of terrorism are mostly perpetrated by non-state actors who are considered third parties, meaning that the state is not responsible for these acts. However, there is evidence that this is shifting and that states can be held accountable for the (terrorist) actions of non-state actors.<sup>78</sup>

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<sup>73</sup> This was the case in Gaza where the Israeli state claimed that they had been bombing a Hamas base less than 80 metres from a UN operated school in Gaza. Israeli Ministry of Foreign Affairs, "The Operation in Gaza: Factual and Legal Aspects," 29 July 2009,

[http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Hamas+war+against+Israel/Operation\\_in\\_Gaza-Factual\\_and\\_Legal\\_Aspects.htm](http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Hamas+war+against+Israel/Operation_in_Gaza-Factual_and_Legal_Aspects.htm). (accessed 29 September 2010).

<sup>74</sup> Article 57 (n 72 above).

<sup>75</sup> UN Security Council Resolution 1456 S/RES/1456 (2003) 20 January 2003 para 6.

[http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/S.RES.1456+\(2003\).En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/S.RES.1456+(2003).En?Opendocument) (accessed 29 September 2010).

<sup>76</sup>(n 3 above) 936.

<sup>77</sup> Human Rights Watch Briefing Paper for the 59th Session of the United Nations Commission on Human Rights (March 25, 2003) 3

<http://iilj.org/courses/documents/HRW10CountrySurveyofConcernsaboutHumanRightsandCTCMeasures.pdf> (accessed 21 September 2010).

<sup>78</sup>(n 2 above) 50.

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The Inter-American Court of Human Rights found in the case of Velasquez Rodriguez (1988),<sup>79</sup> the Honduras government to bear responsibility for the disappearance of a university student as Honduras either conducted or tolerated the spate of kidnappings.<sup>80</sup> The Court held that Honduras could however, not be held 'directly responsible for the acts of private individuals, such acts can lead to the international responsibility of the state, not because of the act itself, but because of due diligence to prevent the violation or to respond as required by the Convention.'<sup>81</sup>

In the European Court of Human Rights, the court found that Turkey was responsible for the death of the claimant's sister. An ambush against the Workers Party of Kurdistan (PKK) led by the Turkish security forces led to the death. It was not clear whether the gun fire came from the PKK or the security forces, but the court held that the duty of the state to plan and conduct their security operations and lack of effective investigation were the reasons for finding that Turkey was responsible for the death.<sup>82</sup>

The ACHPR also held Nigeria responsible for the actions of a third party in the case of *Social Economic Rights Action Centre (SERAC) v Nigeria*.<sup>83</sup> The African Commission held Nigeria responsible for the conduct of oil companies that severely harmed the Ogoni community and that the state had the responsibility to ensure that third parties did not violate the rights of the people and therefore failure to do so make them liable for the actions of the oil companies.<sup>84</sup>

It is thus possible that states can be held responsible for acts of third parties<sup>85</sup> especially as states have the duty to protect, respect and fulfil human rights.<sup>86</sup>

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<sup>79</sup> Inter – American Court of Human Rights Decisions and Judgements 91 (Ser. C) No. 4 (1988)

[http://www1.umn.edu/humanrts/iachr/b\\_11\\_12d.htm](http://www1.umn.edu/humanrts/iachr/b_11_12d.htm) (accessed 15 September 2010).

<sup>80</sup> (n 79 above) 140 – 145.

<sup>81</sup> (n 79 above) 154.

<sup>82</sup> *Ergi v Turkey* (2001) 32 European Court of Human Rights

<http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/d0cd2c2c444d8d94c12567c2002de990/1533f3cf8800cba3c1256658002a3d36?OpenDocument> (accessed 22 September 2010).

<sup>83</sup> (2001) AHRLR 60 (ACHPR 2003).

<sup>84</sup> (n 83 above).

<sup>85</sup> (n 2 above) 57.

<sup>86</sup> (n 46 above).



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## 2.6 Conclusion

Though there is no clear definition as to what terrorism is, there is a clear basis as to how terrorism links with the right to education. Understanding that human rights and security are not competing interests but complimentary as the enhancement of human rights may lead to be a method of countering terrorism. Although derogations are allowed, States must justify them as necessary and legitimate which is difficult to when it comes to the right to education. International Jurisprudence has shown that states can be held liable for the actions of non-state actors

It is important to examine the legal framework that governs counter-terrorism to examine if there is existing support for the right to education.

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## Chapter 3

### The Legal Framework

#### 3.1 Introduction

The terrorist attacks of September 11 and subsequent terrorist attacks<sup>87</sup> highlight ‘the importance of the rule of law and the consequences of its disregard.’<sup>88</sup> What followed these attacks was international and national legislation to counter terrorism to respond to these attacks. This chapter examines the international and regional legal and framework to analyse the impact of these on the right to education and state obligations.

#### 3.2 International framework for countering terrorism

This section will focus only on the ICESCR, the role of the UN Security Council and the General Assembly in countering terrorism as key organs of the United Nations and the role of the SRCT and the role of the SRRE as non-treaty based monitoring mechanisms.

There is only one instance within the international and regional legal framework where the right to education is mentioned with regard to countering terrorism<sup>89</sup> indicating that the right to education as part of SERs have been marginalised but more importantly that education has not been fully embraced as a counter-terrorism measure of itself.

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<sup>87</sup> The bombing of a hotel in Kenya - BBC ‘Israel evacuates tourists from Kenya’ 28 November 2002 <http://news.bbc.co.uk/2/hi/africa/2525931.stm> (accessed 4 October 2010), The British consulate bombing in Turkey - BBC ‘Istanbul rocked by double bombings’ 20 November 2003 <http://news.bbc.co.uk/2/hi/europe/3222608.stm> (accessed 4 October 2010), the Madrid bombing- The Guardian ‘the 2004 Madrid bombings’ 31 October <http://www.guardian.co.uk/world/2007/oct/31/spain.menezes> (accessed 4 October 2010), just to name a few examples.

<sup>88</sup> (64 above) 1. It should be noted that the obligation to counter-terrorism pre-dated 9/11 but that after 9/11, there as an escalation of activity with regard to counter-terrorism. The International Summit on democracy, terrorism and security confronting terrorism the Club de Madrid series on democracy and terrorism (2005) 2 vol 28.

<sup>89</sup> General Comment 13 The right to education (Art.13) (8 December 2010) E/C.12/1999/10 [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/ae1a0b126d068e868025683c003c8b3b?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/ae1a0b126d068e868025683c003c8b3b?Opendocument) (accessed 12 September 2010).

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### 3.2.1 International Convention on Economic, Social and Cultural Rights

The ICCPR and the ICESCR and the legally binding Universal Declaration of Human Rights (UDHR) form the International Bill of Rights.<sup>90</sup> The HRC and the CESCR examine state compliance with the ICCPR and the ICESCR and the Optional Protocols. These committees play a role in highlighting human rights violations by states while countering terrorism through the state reporting mechanism where they have issued recommendations to states. The committees work with the SRCT in enhancing human rights. These committees also submit reports to the General Assembly in the form of General Comments which can then be used by states parties as guidelines as how to best interpret certain articles and/or rights.<sup>91</sup>

### 3.2.2 The role of the UN Security Council in countering terrorism

The Security Council (SC) can take decisions that are binding on all states under Chapter VII rules of the United Nations Charter. This empowers the Security Council to take decisions and make resolutions that will maintain international peace and security.<sup>92</sup> The Security Council has made a number of contributions to countering terrorism and these are highlighted below.

The first is Resolution 1267 of 1999. This resolution dealt with terrorism financing and freezing of Al Queda and Taliban affiliated accounts. The accounts to be frozen would be determined by a committee that the resolution created.<sup>93</sup>

Resolution 1373 of 2001 called on members states to cooperate in countering terrorism, 'prevent and punish the planning, preparation or perpetration of terrorist acts.' It also provides for the 'suppression of recruitment of terrorists', sharing and support between states with regard to early warning systems, information sharing, prevention of movement of terrorists, trafficking of arms, explosives and hazardous materials as well as border controls. The Resolution urges states to become parties to all the relevant counter-terrorism conventions while considering their obligations under international law particularly international human rights and humanitarian law, when addressing refugee concerns as well as granting refugee status. It stresses on member states providing support in bringing terrorists to justice. Resolution 1373 established the

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<sup>90</sup> AF Jacobson *human rights monitoring, a field mission manual* (2008) 41.

<sup>91</sup> GA Assembly 'Resolution adopted by the GA on the Third Committee (A/62/439/Add.1)' A/RES/62/147 <http://www.undemocracy.com/A-RES-62-147.pdf> (accessed 13 August 2010).

<sup>92</sup> Article 25 Charter of the United Nations.

<sup>93</sup> UN Security Council Resolution 1267 S/RES/1267 (1999)

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/300/44/PDF/N9930044.pdf?OpenElement> (accessed 1 October 2010).

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Counter–Terrorism Committee<sup>94</sup> (CTC) whose mandate is to monitor the implementation of this resolution by member states.<sup>95</sup>

In building on Resolution 1373, the SC in 2004 adopted Resolution 1535, creating the Counter–Terrorism Committee Executive Directorate (CTED). It was mandated to work with the Office of the UN High Commissioner for Human Rights (OHCHR) in matters related to counter-terrorism and human rights and a human rights expert appointed to the CTED staff to facilitate its work.<sup>96</sup>

Security Council Resolution 1624 stresses that States must ensure that any measures they take to implement the resolution which is based on incitement and promoting cultural dialogue complies with all their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.<sup>97</sup>

Security Council Resolution 1805 (2008) established, on recommendation of the CTED Executive Director, a working group on issues raised by Resolution 1624 and human rights concerns emanating from Resolution 1373. Its mandate is to enhance human rights expertise and develop approaches for CTED staff, and encourage member states to comply with their international human rights obligations.<sup>98</sup>

The Security Council, through Resolution 1612 (2005) established the Monitoring Reporting Mechanism (MRM) on Children and Armed Conflict, which has an explicit mandate to monitor attacks on schools, teachers, and students. The MRM is established only in countries named by the Secretary-General in the annexes of his annual reports to the Security Council on children and armed conflict in situations where children are recruited and used as soldiers or, since August 2009, killed and maimed or subjected to grave sexual violence.<sup>99</sup>

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<sup>94</sup> Resolution 1373 (2001) S/RES/1373 (2001) 28 September 2001 [http://www.coe.int/t/e/legal\\_affairs/legal\\_cooperation/fight\\_against\\_terrorism/4\\_Theme\\_Files/UN%20SC%20Res%201373%20\(2001\)%20E.pdf](http://www.coe.int/t/e/legal_affairs/legal_cooperation/fight_against_terrorism/4_Theme_Files/UN%20SC%20Res%201373%20(2001)%20E.pdf) (accessed 13 August 2010).

<sup>95</sup> Security Council CTC 'Best Practices' <http://www.un.org/sc/ctc/practices.html> (accessed 13 August 2010).

<sup>96</sup> Resolution 1535 (2004) S/RES/1535 26 March 2004, Security Council CTC <http://www.un.org/en/sc/ctc/rights.html> (accessed 13 August 2010).

<sup>97</sup> Resolution 1624 (2005) S/RES/1624 14 September 2005, Security Council CTC <http://www.un.org/en/sc/ctc/rights.html> (accessed 13 August 2010).

<sup>98</sup> Resolution 1805 (2008) S/RES/1805 20 March 2008, Security Council CTC <http://www.un.org/en/sc/ctc/rights.html> (accessed 13 August 2010).

<sup>99</sup> Resolution 1612 (2005) S/RES/1612 (2005) 26 July 2005, Security Council <http://www.auswaertiges-amt.de/diplo/de/Aussenpolitik/Themen/Menschenrechte/Download/Resolution1612.pdf> (accessed 17 October 2010)

and Resolution 1882. S/RES/1882 (2009) 4 August 2009, Security Council [http://www.un.org/children/conflict/\\_documents/SC-RESOLUTION1882-2009.pdf](http://www.un.org/children/conflict/_documents/SC-RESOLUTION1882-2009.pdf) (accessed 17 October

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As the highest organ of the UN, the SC demonstrated particular leadership in framing and reiterating that counter-terrorism measures must comply with international human rights and humanitarian law.

### 3.2.3 The UN General Assembly and counter-terrorism

The GA has been used by member states to advance their legal and operational counter-terrorism strategies. Apart from member states adopting conventions to suppress terrorism<sup>100</sup>, the GA has adopted the first Global Counter Terrorism Strategy in September 2006.<sup>101</sup> The salient features of this strategy include measures to address the conditions conducive to the spread of terrorism, measures to prevent and combat terrorism, measures to build states' capacities to prevent and combat terrorism, strengthen the role of the UN in this area and measures to ensure human rights and the rule of law while countering terrorism. The strategy also calls for the GA to monitor, review and update it regularly.<sup>102</sup>

The GA, through this resolution, urged states to become parties to the key human rights, refugee and international humanitarian law instruments and implement them. It also urged member states to accept the competence of international and regional monitoring bodies. States were also urged to utilize the training expertise of the Office of the United Nations High Commissioner for Human Rights to train their agencies on human rights while countering terrorism. States were also urged to support the SRCT.<sup>103</sup>

In 2008 and 2010, the Secretary General issued reports on the review of the strategy and the activities of the UN with regard to the Global Counter Terrorism Strategy reaffirming the UN's enhanced role in countering terrorism.<sup>104</sup>

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2010). Therefore a country like Thailand would fall outside the scope of the MRM as child soldiers are not used when education is under attack.

<sup>100</sup> This is as early as 1973 with the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons and in 1979 the International Convention against the Taking of Hostages. More Conventions like 1997 International Convention for the Suppression of Terrorist Bombings, the 1999 International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Acts of Nuclear Terrorism have also been passed.

<sup>101</sup> It should be noted that the strategy was informed by the 2005 World Leaders Summit, recommendations by the Secretary General Kofi Annan in 2006 which led to consultations between member states and eventually to the adaptation of the strategy. UN action to counter-terrorism 'GA actions to counter terrorism'

<http://www.un.org/terrorism/ga.shtml> (accessed 11 September 2010).

<sup>102</sup> UN action to counter terrorism 'UN GA adopts Global Counter Terrorism Strategy'

<http://www.un.org/terrorism/strategy-counter-terrorism.shtml> (accessed 11 September 2010).

<sup>103</sup> (n 102 above).

<sup>104</sup> (n 101 above).

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‘Currently, Member States are negotiating a draft comprehensive convention on international terrorism. The convention would complement the existing framework of international anti-terrorism instruments.’<sup>105</sup>

It is important to mention that in July 2010, the GA unanimously adopted a Resolution on the right to education in emergency situations. This Resolution directs member states, UN agencies and other partners to dedicate significant effort to ensure that the right to education is strengthened and supported when crises occur.<sup>106</sup>

The GA has been instrumental in advancing human rights while countering terrorism in monitoring and finding new innovative ways of using existing mechanisms in countering terrorism while protecting human rights and protecting education.

### 3.2.4 The Role of the UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism

In 2005, the member states considered that to aid the fight against terrorism, and protect human rights, a special rapporteur was required. The reason for this was the need to make human rights an integral part of the fight against terrorism.<sup>107</sup>

The SRCT working under the Human Rights Council, was charged with the mandate of ‘identifying, exchanging and promoting best practices on measures to counter terrorism that respect human rights and fundamental freedoms. The Special Rapporteur also addresses allegations made with regards to states of human rights violations in the course of countering terrorism. The SRCT conducts visits to selected individual countries and engages in correspondence with more than 40 countries about their laws and practices and how to make them human rights compliant. The Special Rapporteur reports regularly to both the Human Rights Council and to the General Assembly, including on selected thematic issues and his country visits.’<sup>108</sup>

The Special Rapporteur is also supposed to cooperate with other Special Rapporteurs and UN special measures to ensure that human rights requirements are complied with while countering terrorism. He also has a proactive role which calls for the provision of advisory services, technical assistance, dialogue with member states of the UN and key stakeholders

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<sup>105</sup> (n 102 above).

<sup>106</sup> United Nations General Assembly ‘The right to education in emergency situations’ (30 June 2010) U.N. Doc A/64/L.58 <http://www.unesco.org/education/postconflict/educationinemergencies.pdf> (accessed 13 October 2010).

<sup>107</sup> UN action to counter – terrorism ‘Protecting Human Rights while countering terrorism’ <http://www.un.org/terrorism/terrorism-hr.shtml> (accessed 20 October 2010).

<sup>108</sup> (107 above).

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and production of best practices of promotion and protection of human rights while countering terrorism.<sup>109</sup>

### 3.2.5 The Role of the UN Special Rapporteur on the Right to Education

In 1998 the Commission on Human Rights appointed a SRRE.<sup>110</sup> The mandate of the Special Rapporteur was extended by the Human Rights Council in Resolution 8/4 of 12 June 2008.<sup>111</sup>

The mandate of the Special Rapporteur is to report on the status, throughout the world, of the realisation of the right to education, including access to primary education, and the difficulties encountered in the implementation of this right, taking into account information and comments received from governments, organisations and bodies of the UN system, other relevant international organisations and non-governmental organisations; to promote, as appropriate, assistance to governments in working out and adopting urgent plans of action. To develop a regular dialogue and discuss possible areas of collaboration with relevant UN bodies,<sup>112</sup> civil society and other relevant actors to improve implementation of the right to education; undertake country visits; respond to information received on allegations concerning violations of the right to education in particular countries and submit annual reports to the Human Rights Council and the GA relating to their activities with regard to their mandate.<sup>113</sup>

The SRRE's annual report to the Economic and Social Council in 2002 highlighted the challenge of combating terrorism and preventing violence. He noted the concerns of individual and collective security with regard to terrorism and the effects that this would have on education especially that funding may be drawn away from education to counter-terrorism, citing Afghanistan as an example. Furthermore, he raised concerns that the education system would be compromised by what can be taught in schools and by whom, if education was not being funded by the state. The SRRE also raised concerns about children in emergency situations

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<sup>109</sup>M Scheinin statement by the Special Rapporteur of the Commission on Human Rights on the protection and promotion of human rights and fundamental freedoms while countering terrorism ,60th session of the GA (26 October 2005) Document (A/60/370) <http://www2.ohchr.org/english/issues/terrorism/docs/GAstatement26Oct05.doc> (accessed 11 September 2010).

<sup>110</sup>Commission on Human Rights Resolution 1998/33 ECN 4 RES 1998/33.  
<http://www2.ohchr.org/english/issues/education/rapporteur/index.htm> (accessed 13 August 2010).

<sup>111</sup>OHCHR Special Rapporteur on the Right to Education.  
<http://www2.ohchr.org/english/issues/education/rapporteur/index.htm> (accessed 13 August 2010). The Human Rights Council replaced the Human Rights Commission in 2006.

<sup>112</sup> (n 109 above).

<sup>113</sup> (n 110 above).

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and their appropriate educational needs, as well as the need for education to be used to promote tolerance, respect and peace amongst different groups of people. The SRRE also called for further research to be carried out in respect of the right to education and the obstacles to its full enjoyment.<sup>114</sup>

### 3.3 Regional framework for combating terrorism in Africa

Africa started experiencing terrorism attacks by the late 1990s when US embassies in Kenya and Tanzania were attacked in 1998.<sup>115</sup> Africa's many liberation struggles throughout the years led many countries to adopt counter-terrorism legislation with the aim of silencing government critics. Examples of this include Swaziland,<sup>116</sup> Uganda, Nigeria and Zimbabwe.<sup>117</sup> The development of regional legislation on counter-terrorism began in 1992 when the Organisation of African Unity (OAU) came up with a framework for countering terrorism. OAU Heads of State and Government adopted a Resolution<sup>118</sup> aimed at enhancing co-operation and coordination between member states in order to fight terrorism.<sup>119</sup> In 1994 in Tunis, the OAU Assembly adopted a Declaration on the Code of Conduct for Inter-African Relations, condemning terrorists' acts in all their forms and rejected acts of religious fanaticism and extremism.<sup>120</sup>

This section looks at the regional legal framework aimed at combating terrorism after 1992 to present.

#### 3.3.1 OAU Convention on the Prevention and Combating of Terrorism

The OAU Convention on the Prevention and Combating of terrorism (Algiers Convention) was adopted in 1999 (after the US embassy bombings) and took the bold move of defining terrorism. Article 1 defines a terrorist act as an act that may violate criminal laws of a

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<sup>114</sup>(n 54 above).

<sup>115</sup>'Homeland Security' Attacks on U.S. embassies in Kenya and Tanzania'  
<http://www.globalsecurity.org/security/ops/98emb.htm> (accessed 1 October 2010).

<sup>116</sup> Amnesty International 'Swaziland: An atmosphere of intimidation: Counter-terrorism legislation used to silence dissent in Swaziland' <http://www.amnesty.org/en/library/info/AFR55/004/2009/en> (accessed 1 October 2010).

<sup>117</sup> Africa Renewal "Africa looks beyond 'war on terror' (October 2009) 16.  
<http://www.un.org/ecosocdev/geninfo/afrec/vol23no3/233-terrorism.html> (accessed 1 October 2010).

<sup>118</sup> AHG/Res. 213(XXVIII).

<sup>119</sup> F Viljoen *International human rights law in Africa* (2007) 299.

<sup>120</sup> AHG/Decl. 2(XXX).



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member state, endanger and cause harm to the lives of citizens as well as destruction of public property. Intimidation and imparting fear are also considered to be terrorist acts.<sup>121</sup>

Apart from defining a terrorist act, the Preamble to the Convention sets the general tone, emphasising cooperation among its member states relations; promotion of human values based on tolerance rejecting all forms of terrorism irrespective of their motives for example self determination, liberation struggles.<sup>122</sup>

Article 2 requires states parties to review their national laws and establish criminal offences for terrorist acts as defined in the Convention and make such acts punishable by appropriate penalties that take into account the grave nature of such offences. States parties are also required to notify the Secretary-General of the OAU of all the legislative measures on terrorist acts within one year of ratification of, or accession to the Convention.<sup>123</sup>

Article 4 of the Convention deals with areas of cooperation, and identifies certain activities by states as prohibited as they further terrorism. It also requires states to cooperate and share information without using confidentiality as a reason not to share information. Investigations and arrest of persons involved in terrorist activities is within the jurisdiction of national law of each state, exchange of information and establishment of data bases and extradition between states is paramount.<sup>124</sup>

Though the Convention is well intended it does not address the issue of states' scarce resources and how they are supposed to implement the Convention.<sup>125</sup> It also does not have a

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<sup>121</sup> (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).OAU Convention on the Prevention and Combating of Terrorism, July 1999.

<sup>122</sup> Preamble OAU Convention on the Prevention and Combating of Terrorism, July 1999

<sup>123</sup> Article 2

<sup>124</sup> Article 4.

<sup>125</sup> OHCHR, Centre on International organisation, Columbia University 'Human rights, the United Nations, and the struggle against Terrorism' (2003) 6, [http://www.ipinst.org/media/pdf/publications/human\\_rights.pdf](http://www.ipinst.org/media/pdf/publications/human_rights.pdf) (accessed 1 October 2010).

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monitoring mechanism. This gap was, however, filled by Article 23(2) of the Constitutive Act of the AU in 2000 which can give sanctions to states for non-compliance of AU policies and decisions. There is no precedent of sanctions being given to a state.<sup>126</sup>

### 3.3.2 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 Africa (Anti-Terrorism Plan of Action) was adopted by the Intergovernmental High Level meeting of member states of the African Union held in Algiers, Algeria.<sup>127</sup> The Anti-Terrorism Plan of Action provides a tactical road map for countering terrorism. It also calls on states to sign and ratify and implement the Algiers Convention as well as international conventions that are concerned with counter-terrorism. Member states are encouraged to cooperate internationally with states in countering terrorism and to take note of the correlation between terrorism and other related activities such as drug trafficking. States are also urged to improve border security and ensure that their immigration processes are fool proof to ensure that falsification of travel documents is minimal. The Anti-Terrorism Plan of Action further urges states to enact legislation and equip the judiciary with the necessary tools to be able to use the laws once they are enacted. Financing of terrorism is also covered by the Anti-Terrorism Plan of Action. The Peace and Security Council is charged with the responsibility of coordinating counter-terrorism in Africa through public awareness and implementation of all counter-terrorism legislation by member states within the region. There is, however, no mention of the role of the African Commission on Human and Peoples Rights.<sup>128</sup>

### 3.3.3 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. This Protocol consolidates the provisions of earlier African Conventions. Its main purpose is to coordinate and harmonise continental efforts in countering and preventing terrorism and implementation of other international standards through the Peace and Security Council.<sup>129</sup> The Protocol is, however, not yet in force.<sup>130</sup>

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<sup>126</sup> K Sturman 'The AU plan on terrorism: joining the global war or leading an African battle?' (2002) 11(4) African Security Review 106.

<sup>127</sup> Plan of action of the African Union High-level Inter-governmental Meeting on the Prevention and Combating of Terrorism in Africa <http://bibliotecavirtual.clacso.org.ar/ar/libros/iss/pdfs/oau/PoAfinal.pdf> (accessed 1 October 2010).

<sup>128</sup> (n 127 above).

<sup>129</sup> Protocol to the OAU convention on the Prevention and Combating of Terrorism <http://www.africa-union.org/root/au/Documents/Treaties/Text/The%20Protocol%20on%20Terrorism%2026July2004.pdf> (accessed 2 October 2010).

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### 3.3.4 The AU Peace and Security Council

The Peace and Security Council (PSC) was established by a Protocol (the PSC Protocol), and adapted 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 in all its aspects.'<sup>131</sup> The PSC, in carrying out its functions, is guided by the principles within the AU Constitutive Act, the UN Charter, the UDHR and respect for human rights, the rule of law, fundamental freedoms, sanctity of life and humanitarian law. The PSC is mandated to implement the Algiers Convention, as well as other counter-terrorism conventions and coordinate efforts within the region to counter terrorism. The PSC should also work with the UN and other international organisations including NGOs to contribute to peace and security within the region. The PSC also has systems in place to deal with outbreaks of conflict within the region including early warning systems and troop contributions to a combined force.<sup>132</sup>

### 3.3.5 The African Commission on Human and Peoples' Rights (African Commission)

Apart from Article 19 of the PSC Protocol, the other regional conventions do not expressly mention the relationship with the African Commission.<sup>133</sup> This is unfortunate as the regional legal framework on counter-terrorism is not in conformity with the international standards which call for protecting and promoting human rights while countering terrorism.

The African Commission made a positive move at its 38<sup>th</sup> Session when it adopted a resolution on the Protection of Human Rights and the Rule of Law while Countering Terrorism. The African Commission has also planned, funds permitting, to hold seminars on terrorism and human rights.<sup>134</sup> The Resolution calls on states to cooperate with each other and international organisations while protecting human rights and the rule of law.<sup>135</sup>

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<sup>130</sup> (n 129 above).

<sup>131</sup> Protocol relating to the establishment of the Peace and Security Council of the African Union [http://www.africa-union.org/rule\\_prot/PROTOCOL-%20PEACE%20AND%20SECURITY%20COUNCIL%20OF%20THE%20AFRICAN%20UNION.pdf](http://www.africa-union.org/rule_prot/PROTOCOL-%20PEACE%20AND%20SECURITY%20COUNCIL%20OF%20THE%20AFRICAN%20UNION.pdf) (accessed 2 October 2010).

<sup>132</sup> (131 above).

<sup>133</sup> Article 19 states 'The Peace and Security Council shall seek close cooperation with the African Commission on Human and Peoples' Rights in all matters relevant to its objectives and mandate. The Commission on Human and Peoples' Rights shall bring to the attention of the Peace and Security Council any information relevant to the objectives and mandate of the Peace and Security Council.' (n 131 above).

<sup>134</sup> 19<sup>th</sup> Activity report of the African Commission on Human and Peoples' Rights Executive Council Eighth Ordinary Session 16 – 21 January 2006 EX.CL/236 (VIII) [http://www.achpr.org/english/activity\\_reports/19th%20%20Activity%20Rpt..pdf](http://www.achpr.org/english/activity_reports/19th%20%20Activity%20Rpt..pdf) (accessed 1 October 2010).

<sup>135</sup> (n 134 above ) Annex 3.

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In 2004, the AU established the African Centre for the Study and Research of Terrorism (ACSRT) based in Algiers, Algeria. It is part of the AU Commission and the PSC and is mandated to provide training and capacity building of member states and enhance cooperation between member states.<sup>136</sup>

### 3.3.6 The African Charter on Human and People's Rights (ACHPR)

The ACHPR is silent on the issue of counter-terrorism and human rights. The AU has, however, expressed concern that terrorism violates

basic human rights, particularly freedom of expression, freedom from fear, the right to life, rights to development, to practice religion and security and stands in the way of aspirations of Africans as based in the Constitutive Act of the AU as well as other frameworks within the AU like the African Charter.<sup>137</sup>

### 3.4 Conclusion

The international legal framework has emphasis on promoting and protecting human rights while countering terrorism. The African instruments, however, lack specific emphasis on protection of human rights while countering terrorism. They however encourage member states to ratify international instruments and cooperate with other states. There are definitions of terrorism within the African regional system. There is however, no specific protection for the right to education showing that education has not been embraced as a counter-terrorism measure.

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<sup>136</sup> E Rosand, A Millar & J Ipe *Implementing the UN Global Counter-Terrorism Strategy in East Africa* (2008) 23.

<sup>137</sup> African Union 'Combating Terrorism and Human Rights Concerns in Africa' <http://www.au.int/?q=node/450> (accessed 1 October 2010).

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## Chapter 4

### The Right to Education

#### 4.1 Introduction

Apart from education being an empowerment right which can aid in the suppression of terrorism,<sup>138</sup> education is a good strategic method of imparting knowledge that can be used to either change a generation. In Africa, education has been used as a political tool. For example in South Africa, apartheid was used as a tool of subjugation.<sup>139</sup>

Education is important and therefore the right to education needs to be understood. This chapter will examine the scope of the right to education as well the limitations to the right and the obligation of states looking at the international systems as well as the African legal frameworks pertaining to the right to education.

#### 4.2 The scope of the right to education

The right to education is found in three main human rights instruments. These are Article 26 of the UDHR, Article 13 and 14 of the ICESCR and Article 28 and 29 of the CRC.

Article 13 of the ICESCR, states that the right to education should be universally granted to everyone without discrimination.<sup>140</sup> There are two aspects of the right to education. One is the social aspect and the second is the freedom dimension which entails an individual's right to choose between private and state operated education.<sup>141</sup>

The social dimension obligates the state to make education available and accessible and imposes positive obligations on the state.<sup>142</sup> General Comment no. 13 describes the nature of the essential features of the social dimension of the right to education as it being available, accessible, acceptable and adaptable.<sup>143</sup>

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<sup>138</sup>(n 54 above) paragraph 58.

<sup>139</sup> WR Johnson 'Education: keystone of Apartheid' (1982) 3(13) *Anthropology and Educational Quarterly* 214.

<sup>140</sup>(n 22 above) 163.

<sup>141</sup> n 22 above) 162.

These dimensions are derived from Article 13 and 14 of the ICESCR. Article 13(1) relates to the aims and objectives of education. Articles 13(2) and 14 relates to the social dimension while Article 13(3) deals with the freedom dimension of the right to education.

<sup>142</sup> (n 22 above) 162.

<sup>143</sup> Economic and Social Council, The right to education (article 13) Implementation of the ICESCR General Comment 13 E/C.12/1999/10 12/08/1999 paragraph 6.

<http://www.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument> (accessed 24 July 2010).

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Availability of education entails that state parties should have educational institutions and programmes which are available in sufficient quantities and should be operational. The institutions require buildings that are protected from ‘the elements,’ sanitation facilities, clean drinking water, trained teachers and teaching materials to function adequately.<sup>144</sup>

Accessibility requires that educational facilities are accessible to everyone without discrimination within the state party. Accessibility refers furthermore to political accessibility - non discrimination, physical accessibility and economical accessibility.<sup>145</sup>

Acceptability requires that the curricula and teaching methods are acceptable to enable children to be adequately prepared for the future. Examples of what constitutes acceptable are that the curriculum is relevant, culturally appropriate and of good quality to students and subject to the aims of education being met and the freedom dimension of education allowed.<sup>146</sup> Acceptability is important as the curriculum must be used to ensure that the contents of education honour human rights and that the system is not used to promote intolerance. This applies to the text books used in teaching as well.<sup>147</sup>

Adaptability requires that the education system be flexible to adapt to the ever-changing societal needs as well as children who may have special needs and requirements.<sup>148</sup> The curriculum should keep up with developments to ensure that the students are able to function in society.

With regard to the freedom component, UN General Comment 13 holds that the state should respect the right of the parents and guardians to choose an education system for their children that is in conformity with their religious and moral convictions.<sup>149</sup> This replicates Article 18(4) of the ICCPR.<sup>150</sup> The Human Rights Committee under General Comment 22 makes this right under Article 18 non-derogable even in times of public emergencies.<sup>151</sup> The right to

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The 4As were introduced by the former Special Rapporteur Katarina Tomaševski and was subsequently adopted by the CESCR. (n 28 above) 493 - 494.

<sup>144</sup> (n 22 above) 163.

<sup>145</sup> (n 143 above) paragraph 6(b).

<sup>146</sup> (n 22 above) 163.

<sup>147</sup> (n 28 above) 493.

<sup>148</sup> (n 143 above) paragraph 6(d).

<sup>149</sup> (n 143 above) paragraph 32.

<sup>150</sup> ICCPR Article 18 (4) ‘The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.’

<sup>151</sup> Human Rights Committee, General Comment 22 (Article 18) The right to freedom of thought, conscience and religion CCPR/C/21/Rev.1/Add.4 (1993). Paragraph 6.

<http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15> (accessed 1 August 2010).

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education is recognised in the CRC.<sup>152</sup> The right to education in the CRC is nearly identical to the right in the ICESCR. The major difference is that Article 28 of the CRC imposes other duties on states apart from the provision of basic education.<sup>153</sup>

It is important to note that human rights are universal, indivisible, interconnected and interdependent to other human rights and therefore, the right to education maybe positively affected by other rights. The human right to education is inextricably linked to other fundamental human rights.<sup>154</sup>

#### 4.3 Limitations of the right to education

Article 4 of the ICESCR provides that rights within the covenant can be limited. It allows states parties to limit these rights. It also gives protection as to how these rights can be limited.<sup>155</sup> However, Article 5 is clear that states cannot destroy any of the rights within the Convention or hold that the rights within the convention are of lesser value.<sup>156</sup>

A state when limiting this right must do so through legislation, justifying why the limitation is necessary. General Comment 13 on the ICESCR reiterates this, requiring that the state must justify sufficiently why it would limit the right to education.<sup>157</sup> The Vienna law of treaties clearly states that national law cannot be used to justify failure to provide education.<sup>158</sup>

With regard to states limiting access to education, for example by closing schools, the state must justify why it had limited access and availability of education, and whether this limitation 'promotes the general welfare of a society.' General Comment 1 on the CRC gives the

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<sup>152</sup> As the most ratified convention in the world, where it is applicable, it should be mentioned.

<sup>153</sup> (n 28 above) 461. These rights relating to secondary and tertiary education, dropout rates, discipline within schools and international cooperation with other organisations are included in Article 28 and not Article 13 of the ICESCR.

<sup>154</sup> Human Rights Education Associates 'Right to education' [http://www.hrea.org/index.php?base\\_id=144](http://www.hrea.org/index.php?base_id=144) (accessed 10 October 2010).

<sup>155</sup> Article 4 'The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.' Article 4 ICESCR

<sup>156</sup> Article 5 ICESCR.

<sup>157</sup> The Committee wishes to emphasize that the Covenant's limitations clause, article 4, is primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State. Consequently, a State party which closes a university or other educational institution on grounds such as national security or the preservation of public order has the burden of justifying such a serious measure in relation to each of the elements identified in article 4. (n 143 above) paragraph 42.

<sup>158</sup> Article 27 Vienna Convention on the Law of Treaties (1969).

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aims of education.<sup>159</sup> A state cannot justify that destruction or occupation of a school while countering terrorism as a legitimate purpose that meets the criteria of promoting the welfare of the society. Moreover, the Vienna Law of Treaties clearly mandates that state parties should act in good faith when performing a treaty.<sup>160</sup> Limiting education does not constitute good faith on the implementation of the CRC and the ICESCR.

General Comment 1 of the CRC also stresses that children should learn human rights in school but not only from the learning but from seeing and experiencing human rights in school.<sup>161</sup> On 3 February 2010 in Pakistan, a convoy en route to the re-opening of a school in North-West Frontier Province was bombed, killing four school girls, three US soldiers in civilian clothes and a Pakistani soldier; the school was destroyed.<sup>162</sup> This attack would not serve as a method of ensuring that children should experience human rights in schools. The state while providing security should ensure that education is not compromised as large numbers of military personnel put a school at risk of attacks.

States may want to derogate from their treaty obligations by limiting the right to education. This is not permitted by international law. If they must derogate from their obligations then the states must seek international approval and the proposed derogation must be in good faith. Derogations are also meant to be of a temporary nature and destruction of infrastructure would not serve as such.

#### 4.4 Obligations of States

States are obliged to respect, protect and fulfill human rights which include the social dimension features (availability, accessibility, acceptability and adaptability) of the right to education.<sup>163</sup>

The obligation to respect means that States should not interfere with the right to education. This can be considered an obligation of conduct which requires the state to follow the stipulations within the treaty to protect education therefore a negative obligation, requiring the state to do nothing but abide by the stipulations within the various conventions which they are party to.<sup>164</sup> This means that a state should not go against the purpose of a treaty in its actions.<sup>165</sup>

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<sup>159</sup> Committee on the CRC, The aims of education Article 29(1) General Comment NO. 1 CRC/GC/2001/1 17/04/2001 paragraph 1(D).

<sup>160</sup> Article 26 Vienna Law of Treaties.

<sup>161</sup> (n 154 above) note 18 paragraph 15.

<sup>162</sup> D Walsh 'US soldiers and teenage girls killed in bombing near Pakistan school' Wednesday 3 February 2010 <http://www.guardian.co.uk/world/2010/feb/03/pakistan-reports-death-mehsud-taliban> (accessed 4 October 2010).

<sup>163</sup> (n 143 above) paragraph 50.

<sup>164</sup> (n 22 above) 177.



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The obligation to protect mandates the state to guarantee the non-interference of individuals, third parties or anyone including the state itself, from children's enjoyment to the right to education.<sup>166</sup>

The nature of the obligation to fulfill is such that the state should take positive action to ensure that education is available and accessible. This includes legislative, financial and budgetary support. Here states have discretion in complying with its treaty obligations. This means that the state is free to comply with this obligation as it deems fit and should be judged more on result than process.<sup>167</sup> That is, on measures ensuring that children are able to go to school.

There are four minimum core obligations which states should provide in relation to the right to education. These are, to respect free access to public education in policy, legislation and practice without discrimination; provide special education to those with an educational deficit; and counter coercion by others using education while protecting the freedom of choice of education.<sup>168</sup>

#### 4.5 International implementing framework for the right to education

The international monitoring systems for the right to education fall under the ICESCR and the CRC. The ICESCR has been discussed in chapter 3. The role of the CRC and will also be discussed.

##### 4.5.1 The CRC

The implementation system under the CRC is very similar to that of the ICESCR as states are required to submit periodic state reports. From these reports the CRC Committee

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<sup>165</sup> Vienna law of treaties.

<sup>166</sup> (n 22 above) 177.

<sup>167</sup> (n 22 above) 177 – 178. General Comment no 13 gives concrete example of the obligations to respect, protect and fulfill. 'a State must respect the availability of education by not closing private schools; protect the accessibility of education by ensuring that third parties, including parents and employers, do not stop girls from going to school; fulfil (facilitate) the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all; fulfil (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world; and fulfil (provide) the availability of education by actively developing a system of schools, including building classrooms, delivering programmes, providing teaching materials, training teachers and paying them domestically competitive salaries.' Paragraph 50.

<sup>168</sup> (n 22 above) 182.

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then draws up General Comments which expand on certain rights within the CRC,<sup>169</sup> such as General Comment 1 on the aims of education.<sup>170</sup>

#### 4.6 Regional monitoring framework

The regional framework will highlight the ACHPR, the Protocol of the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the African Charter on the Rights and Welfare of the Child (ACRWC).

##### 4.6.1 The African Charter on Human and Peoples' Rights

The Charter states under Article 17(1) that 'every individual shall have the right to education.' It does not elaborate what this right entails.<sup>171</sup>

The supervision of the Charter is undertaken by the African Commission<sup>172</sup> and the African Court on Human and Peoples' Rights.<sup>173</sup> The Court is however facing some challenges.

The Commission under Article 48 and 49 is mandated to examine state reports as well as deal with communications submitted by state parties and other organisations, including NGOs. Under the African system these organisations can submit reports on massive human rights violations committed by state parties.<sup>174</sup>

If these communications do not result in amicable settlements, the Commission will decide the case. Subsequently the state parties or the Commission may refer the case to the court.<sup>175</sup> The Court may also allow individuals and NGOs to bring cases against state parties, provided that the state party has made a declaration accepting the competence of the court to receive these complaints.<sup>176</sup> So far no cases or communications have been submitted on the right to education and counter-terrorism.

The ACHPR has avenues available for monitoring the right to education but these are not adequately used.

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<sup>169</sup> Article 44 CRC.

<sup>170</sup> (n 28 above) 368. It should be noted that the Committee of the CRC showed the importance of the right to education by basing their first General Comment on the aims of education.

<sup>171</sup> Article 17(1) The ACHPR adopted June 27, 1981, OAU Doc. CAB/LEG/67/3.

<sup>172</sup> Article 30 The ACHPR.

<sup>173</sup> Protocol to the ACHPR on the establishment of an African Court on Human and Peoples' Rights OAU Doc OAU/LEG/EXP/AFCHPR/PROT(III).

<sup>174</sup> Articles 48, 49 and 55.

<sup>175</sup> Article 5(1) (n 173 above).

<sup>176</sup> Article 5(3) (n 173 above) read together with Article 34(6) of the ACHPR. The NGOs must have observer status with the African Commission to be eligible to submit a complaint.

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#### 4.6.2 The Maputo Protocol

The right to education is found in Article 12 of the Maputo Protocol. The Protocol calls for non-discrimination in respect of women and girls to access education and elimination of stereotypes in educational textbooks. It also calls for protection of the girl child in schools from sexual harassment and calls for sanctions against such perpetrators.<sup>177</sup> The Maputo Protocol mandates the ACHPR to monitor state parties' compliance.<sup>178</sup>

#### 4.6.3 African Charter on the Rights and Welfare of the Child

Article 11 of the ACRWC is the main article that gives rise to the right to education under the ACRWC. It, amongst other things, stresses the importance of children receiving education that prepares them to grow up to be responsible and live in a society where they will live in 'understanding tolerance, dialogue, mutual respect and friendship among all peoples' ethnic, tribal and religious groups.<sup>179</sup>

The ACRWC and the CRC are very similarly worded with regard to the right to education, but the ACRWC introduces notions that relate to Africa, such as that education should respect and promote positive African culture and morals.<sup>180</sup>

The monitoring of this Charter is left to the Committee on the Rights and Welfare of the Child. States are required to submit state reports to the Committee. The Committee is also empowered to receive communications from states, individuals and NGOs. The Committee may investigate any matter that it deems fit requiring this course of action.<sup>181</sup>

#### 4.7 Conclusion

The right to education is well developed in the various instruments especially within the Africa region and thus states can be held accountable for the violation of the right to education. There are also mechanisms that can be used for state violation on the right to education. Counter-terrorism measures that violate this right are clear contraventions to state obligations under international law and regional law. Despite this, there have been no cases submitted to any of the monitoring bodies in Africa with regard to counter terrorism and the right to education.

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<sup>177</sup> Article 12(1) The Maputo Protocol.

<sup>178</sup> Article 26(1) The Maputo Protocol to be read with Article 62 of the ACHPR.

<sup>179</sup> Article 11(d) ACRWC.

<sup>180</sup> Article 11(c) ACRWC.

<sup>181</sup> Articles 32, 43(2) and 44(1) ACRWC.

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## Chapter 5

### Case studies

#### 5.1 Introduction

The legal framework with regard to counter-terrorism and the right to education has been discussed showing that states have legal obligations which they should comply with to uphold human rights. This chapter will discuss the situations in Uganda, Algeria, Afghanistan and Thailand as countries where counter-terrorism and terrorism have affected the right to education to show the reality of how education can be affected by terrorism and counter-terrorism and also lessons learned from these countries.

UNESCO defines an attack on education as 'targeted violent attacks, carried out for political, military, ideological, sectarian, ethnic, religious or criminal reasons, against students, teachers, academics and all other education personnel, including: support and transport staff, from janitors to bus drivers; education officials, from local civil servants to ministers of education; education trade unionists; and education aid workers. It includes night watchmen, police officers and soldiers attacked while guarding education institutions and personnel or on their way to or from guarding them. It also covers targeted attacks on educational buildings, resources, materials and facilities, including transport.'<sup>182</sup>

#### 5.2 Case studies

##### 5.2.1 Uganda

The conflict in Northern Uganda began in 1986 when President Yoweri Museveni took power. The Lord's Resistance Army (LRA) began opposing Museveni's government in 1989 after breaking off with a rebel group known as Ugandan People's Democratic Army. The LRA's leader Joseph Kony mainly directed his troops from base camps in southern Sudan and inside Uganda.<sup>183</sup>

The LRA has been listed as a terrorist organisation and a Bill to capture the rebel leader Joseph Kony has been introduced by the US government. Kony is also wanted by the ICC for crimes against humanity for his activities in Uganda and the DRC.<sup>184</sup> The LRA has commonly

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<sup>182</sup>(56 above) 17.

<sup>183</sup> Human Rights First, 'Background on the conflict in Northern Uganda'

<http://www.humanrightsfirst.org/cah/ij/regions/uganda/uganda.aspx> (accessed 4 October 2010).

<sup>184</sup> U.S clears anti – LRA Bill (14 May 2010) <http://allafrica.com/stories/201005140002.html> (accessed 12 October 2010).

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attacked schools and abducted children. The main reason for this is that children are easier to control and the girls used for sexual exploitation as they are less likely to be HIV positive.<sup>185</sup>

The LRA has also destroyed schools. In 2002 they attacked 18 schools in Kitgum and Pader districts.<sup>186</sup> Apart from these districts they also attacked Akwang and Lukolu sub-counties, abducting children, burning and destroying schools. Incidents of this nature took place throughout 2002 and early 2003.<sup>187</sup> Similar attacks were recorded in 2003 where Lwala Secondary School was attacked and 100 girls abducted.<sup>188</sup> The attack on schools continued and this caused many schools to be closed down, children displaced and parents afraid to send their children to school for fear of abduction. Many of the schools that remained open started school at 10am and closed by 3pm to enable children to travel safely to and from school due to attacks in Kitgum and Pader districts.<sup>189</sup>

According to the Gulu District Inspector of Schools, nearly half of the district's schools – 116 of 234 – had been displaced due to the LRA and only 56% of primary school-age children were attending school during the 2002- 2003 period.<sup>190</sup>

The state Ugandan Peoples Defence Force (UPDF) has also violated the right to education by recruiting children into the armed forces. An example of this was advertising a scholarship registration event which was in fact a recruitment drive into the UPDF allegedly to participate in Operation Iron Fist which was an attack on an LRA camp in South Sudan by a combined force of UPDF and US military. The children also had their identification and school certificates burned.<sup>191</sup> Citizens believe that the UPDF did not sufficiently protect the civilian population placing the children at risk. Between June and December 2002 LRA carried out at

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<sup>185</sup> Human Rights Watch 'Stolen children: Abduction and recruitment in Northern Uganda' (March 2003) Vol.15, No. 7 (A) 7 [www.hrw.org](http://www.hrw.org) (accessed 4 September 2010).

<sup>186</sup> Human Rights Watch 'Uganda - Abducted and abused: renewed conflict in Northern Uganda (July 2003) Vol. 15, No. 12 (A) 16 <http://www.unhcr.org/refworld/docid/45dac8872.html> (accessed 4 September 2010).

<sup>187</sup> (n 186 above) 35.

<sup>188</sup> Refugee Law Project 'Behind the violence: causes, consequences and the search for solutions to the war in Northern Uganda' (2004) working paper no.11 35 [http://www.refugeelawproject.org/working\\_papers/RLP.WP11.pdf](http://www.refugeelawproject.org/working_papers/RLP.WP11.pdf) (accessed 25 July 2010).

<sup>189</sup> (n 186 above) 35. The closure of schools is not new as it began in 1986 when there was armed conflict in Uganda. Unpublished Dissertation R Ochola-Lukwiya 'The Acholi Religious Leaders' Peace Initiative in the battlefield of Northern Uganda: An example of an integral, inculturated and ecumenical approach to pastoral work in a war situation' (2006) 50 [http://www.comboni.de/literatur/ochola\\_diplomarbeit.pdf](http://www.comboni.de/literatur/ochola_diplomarbeit.pdf) (accessed 1 August 2010).

<sup>190</sup> (n 186 above) 35.

<sup>191</sup> (n 186 above) 19 – 20.

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least 456 attacks in Kitgum and Pader districts and the UPDF intervened in only 33 of the incidents, despite their close proximity<sup>192</sup>

In Uganda the right to education is enshrined in the Constitution under Article 14(2).<sup>193</sup> However, the state's main focus on the right to education has been directed at the aftermath of the terrorist attacks, when people are displaced. Though this is the case the 'schools' are ran from under trees where there is a ratio of 1 teacher to 200 children and no textbooks or teaching materials. Some of the children travel long distances to the schools. The government's priorities have recently shifted from education and agriculture to security.<sup>194</sup>

Uganda has specific counter-terrorism legislation in the form of the Anti – Terrorism Act 2002. This Act makes no provision with regard to violators of economic, social and cultural rights including education. It, however, has an ambiguous definition as to what a terrorist act constitutes<sup>195</sup> with regard to education as some of the loss cannot be quantified. It however provides that a person who commits an act of terrorism against a public building or intimidates anyone in public or destroys a public building can be charged with an act of terrorism.<sup>196</sup>

Uganda acceded to the ICESCR on 21 January 1987<sup>197</sup> and ratified the CRC on 17 August 1990.<sup>198</sup> It also ratified the ACHPR on 10 May 1986<sup>199</sup> and the ACRWC on 17 August

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<sup>192</sup> (n 185 above) 7.

<sup>193</sup> 'All Ugandans enjoy rights and opportunities and access to education.' Constitution of the Republic of Uganda <http://www.issafrica.org/pubs/multimedia/TerrorSep2010/pages/National%20legislation/Uganda/Uganda%20Constitution%201995.pdf> (accessed 8 October 2010).

<sup>194</sup> (n 186 above) 72.

<sup>195</sup> 'An act committed by a person "for purposes of influencing the Government or intimidating the public or a section of the public and for a political, religious, social or economic aim indiscriminately without due regard to the safety of others or property [...]actually resulting in major economic loss", may constitute a terrorist act" Institute of Security Studies (ISS) Comprehensive database on African Counter-terrorism law and policy <http://www.issafrica.org/pubs/multimedia/TerrorSep2010/pages/National%20legislation/Uganda/Uganda%20Anti-Terrorism%20Act%202002.pdf> (accessed 7 October 2010).

<sup>196</sup> Art 7(2)(b) Anti – terrorist Act 2002 of Uganda.

<sup>197</sup> UN Treaty collection 'status of ratifications ICEECR' [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) (accessed 7 October 2010).

<sup>198</sup> UN Treaty collection 'status of ratifications CRC' [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (accessed 7 October 2010).

<sup>199</sup> African Union 'List of countries which have signed, ratified/acceded to the ACHPR' [http://www.aidh.org/Biblio/Txt\\_Afr/Images/Charte%20A%20Ratifications.pdf](http://www.aidh.org/Biblio/Txt_Afr/Images/Charte%20A%20Ratifications.pdf) (accessed 7 October 2010).

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1994.<sup>200</sup> This makes the international obligations imposed on member states of the above instruments applicable to Uganda.

The ICC is investigating with an aim to prosecute Joseph Kony and two others for war crimes and attacks on education in relation to the abduction and use of child soldiers.<sup>201</sup>

Uganda has international obligations as well as national legislation that provides for the right to education. The situation within the education sector in Northern Uganda is a violation of their obligations as the state has failed to protect the right to education.

### 5.2.2 Algeria

Algeria has experienced terrorist attacks since the 1991 and until 2007, targeting mainly civilians.<sup>202</sup> It began in 1991 when the government cancelled election results and installed its own President over the 'elected' Islamic Salvation Front (FIS).<sup>203</sup> Armed attacks, massacres and large-scale human rights violations were perpetrated in the rural areas by Islamist groups.<sup>204</sup>

Algeria is important to the discussion on the right to education as it has a dual impact. One is the denied access and availability of education due to counter-terrorism and terrorism attacks and the second is the effects of the change to the education curriculum by the government as a counter-terrorism measure. This last aspect is important because some of the recent terrorists kidnapping foreign westerners in the Maghreb are believed to have attended Islamic schools in Algeria.<sup>205</sup>

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<sup>200</sup> University of Minnesota Human rights law library 'ACRWC, OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999, ratification information' <http://www1.umn.edu/humanrts/instree/afchildratifications.html> (accessed 7 October 2010).

<sup>201</sup> (n 56 above) 150.

<sup>202</sup> United States Department of State, *2009 Country Reports on Terrorism - Algeria*, 5 August 2010, available at: <http://www.unhcr.org/refworld/docid/4c63b65a21.html> (accessed 4 October 2010).

<sup>203</sup> News hour transcript 'Algerian crisis' October 1, 1997 [http://www.pbs.org/newshour/bb/africa/july-dec97/algeria\\_10-1.html](http://www.pbs.org/newshour/bb/africa/july-dec97/algeria_10-1.html) ((accessed 4 October 2010).

<sup>204</sup> Algeria Watch 'More than one million internally displaced people ignored by the international community' (November 2003) USDOS, Bureau of Near Eastern Affairs <http://www.algeria-watch.org/de/infomap/27/displaced.htm> (accessed 4 October 2010).

<sup>205</sup> The ages of the alleged terrorists belonging to the Sahara Mujaheddin are between 14 – 24 making the timeline of when the disturbances began in Algeria important. J Swain and B Pancevski Sunday Times He wept, hands bound. Then I heard two shots' <http://www.timesonline.co.uk/tol/news/world/europe/article6446276.ece> (accessed 10 October 2010).

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In 1994 within a two month period 500 schools were burnt by Groupe Islamique Armé (GIA).<sup>206</sup> A *fatwa*<sup>207</sup> forbidding children from attending school was also issued in 1994.<sup>208</sup> Apart from burning of schools, the GIA attacked schools bombing them and killing a number of girls who refused to wear veils in 1997. In September 1997, eight men attacked a school killing eleven teachers while the students watched.<sup>209</sup> Terrorists continued to bomb schools and kill civilians and warned the children not to attend school.<sup>210</sup> Those who tried to attend schools suffered the consequences.<sup>211</sup> There are allegations that while some of the attacks within different villages and schools were on-going, the security forces were close by or that government forces were involved<sup>212</sup> and where they were not involved, did not arrest the perpetrators.<sup>213</sup>

The education system in Algeria has been confusing to the young generation. In the 1990s schools were Islamic and in 1994 GIA attacked Islamic – led schools that they

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<sup>206</sup> 1993: GIA joins forces with Al Queda

[http://www.historycommons.org/timeline.jsp?timeline=complete\\_911\\_timeline&geopolitics\\_and\\_9/11=complete\\_911\\_timeline\\_algerian\\_militant\\_collusion](http://www.historycommons.org/timeline.jsp?timeline=complete_911_timeline&geopolitics_and_9/11=complete_911_timeline_algerian_militant_collusion) (accessed 4 October 2010).

<sup>207</sup> A *fatwa* is Islamic declaration on aspects of religious law issued by respected clerics which usually constitutes a ban or denunciation. [www.fpri.org/education/911webcast/WaronTerrorKeyTerms.doc](http://www.fpri.org/education/911webcast/WaronTerrorKeyTerms.doc) (accessed 15 October 2010)

<sup>208</sup> Report of the panel appointed by the Secretary-General of the United Nations to gather information on the situation in Algeria in order to provide the international community with greater clarity on that situation (1998) <http://www.un.org/NewLinks/dpi2007/contents.htm#four> (accessed 4 October 2010).

<sup>209</sup> '11 Algerian Women Killed As Rebel Attacks Continue' (September 30, 1997).

<http://www.nytimes.com/1997/09/30/world/11-algerian-women-killed-as-rebel-attacks-continue.html> (accessed 4 October 2010).

<sup>210</sup> Amnesty International 'Algeria: Civilian population caught in a spiral of violence' (November 1997) AI Index: MDE 28/23/97 19 <http://www.amnesty.org/en/library/asset/MDE28/023/1997/en/7d3af252-e9cf-11dd-a490-5f9258d9f20e/mde280231997en.pdf> (accessed 4 October 2010).

<sup>211</sup> On 5 October 1997, 16 children, aged between 12 and 15 with their driver were shot dead as their van was machine gunned on the way from their mountain village of Sidi Selhane to their school in Bouinan (near Blida). The separate security detail that was escorting the van were killed when their vehicle drove over a mine and exploded. (n 210 above) 20.

<sup>212</sup> (n 210 above). This was corroborated by Former colonel Mohammed Samraoui who was in the Algerian army and deserted due to the methods used by the army. He said 'we used terrorist methods to attack terrorism even before it had appeared.' French Court Ruling Backs Allegations of Widespread False Flag Attacks in Algeria' (September 27, 2002)

[http://www.historycommons.org/timeline.jsp?timeline=complete\\_911\\_timeline&geopolitics\\_and\\_9/11=complete\\_911\\_timeline\\_algerian\\_militant\\_collusion](http://www.historycommons.org/timeline.jsp?timeline=complete_911_timeline&geopolitics_and_9/11=complete_911_timeline_algerian_militant_collusion) (accessed 4 October 2010).

<sup>213</sup> Amnesty International 'Algeria: children caught in the conflict' (27 November 1997) AI Index: MDE 28/31/97 <http://asiapacific.amnesty.org/library/Index/ENGMDE280311997?open&of=ENG-DZA> (accessed 4 October 2010).



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considered not conservative enough.<sup>214</sup> In 2001, the Algerian government in a bid to reduce the recruitment of young people by Islamic terrorist groups, changed the education curriculum neutralising the Islamic component and introducing a more western component. This has led to a high number of students dropping out of school. The change in the education system has also led to a generational discord between parents who were educated under the French system who have youth educated under an Islamic system while their younger siblings are being educated in a more westernised system of education. Some of the youths have toyed with the idea of joining Islamic extremists.<sup>215</sup>

Algeria ratified the ICESCR on 12 September 1989<sup>216</sup> and the CRC on 16 April 1993.<sup>217</sup> Algeria ratified the ACHPR on 10 March 1987<sup>218</sup> and signed but not ratified the ACRWC; on 21 May 1999.<sup>219</sup> This makes the international obligations on the right to education applicable to Algeria.

Apart from the regional and international instruments, the Algerian Constitution of 1989 guarantees the right to education under Article 53.<sup>220</sup> The Constitution also places international conventions above national legislation.<sup>221</sup> The Penal Code also provides that the UN Conventions be incorporated automatically into national legislation on ratification.<sup>222</sup>

Algeria has legislation dealing with terrorism in the form of No 93–05 of September 1992, article 87b is of Ordinance No 95.11 of 25 February 1995, the Penal Code and the Code of Penal Procedure. These laws define terrorism focusing on domestic terrorism, combating subversion and terrorism, and strengthening national legislation on terrorism.

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<sup>214</sup> T Kjeilen 'Algerian Civil War' [http://lexicorient.com/e.o/algerian\\_civil\\_war.htm](http://lexicorient.com/e.o/algerian_civil_war.htm) (accessed 4 October 2010).

<sup>215</sup> M Slackman 'In Algeria, a Tug of War for Young Minds' (June 23, 2008) New York Times <http://www.nytimes.com/2008/06/23/world/africa/23algeria.html?pagewanted=1&r=3> (accessed 4 October 2010).

<sup>216</sup> (n 197 above).

<sup>217</sup> (n 198 above).

<sup>218</sup> (n 199 above).

<sup>219</sup> (n 200 above).

<sup>220</sup> The right for education is guaranteed. Education is free within the conditions defined by the law. Fundamental education is compulsory. The State organizes the educational system. The State ensures the equal access to education and professional training. Constitution of the People's Democratic Republic of Algeria 1989 (amended by the constitutional revision of 1996)

<http://www.issafrica.org/pubs/multimedia/TerrorSep2010/pages/National%20legislation/Algeria/Algeria%20Constitution%201989.pdf> (accessed 7 October 2010).

<sup>221</sup> Article 132 (n 220 above).

<sup>222</sup> ISS 'African commitments to combating organised crime and terrorism' (2010) 81.

[http://www.iss.co.za/pubs/Other/ahsi/Goredema\\_Botha/pt2chap9.pdf](http://www.iss.co.za/pubs/Other/ahsi/Goredema_Botha/pt2chap9.pdf) (accessed 7 October 2010).

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Algeria has legislation dealing with terrorism. ‘Legislative Decree No 92–03 of 30 September 1992 on combating subversion and terrorism, amended and supplemented by Legislative Decree No 93–05 of 9 April 1993, defines the remit of the public authorities with regard to the sanctioning of terrorist acts. Under the Penal code, Algerians can be tried for engaging in terrorist acts on foreign soil.<sup>223</sup> There is nothing in the terrorism legislation that specifically relates to the destruction of schools or the violation of the right to education.

The aims of education include the preparation of the child for responsible life in a free society, is not happening in Algeria due to the counter-terrorism measure to change the education curriculum. Algeria has international obligations to provide education that is adaptable to the changing society and should also help those who have an education deficit. Algeria should therefore come up with a curriculum that will not alienate the youth to avoid them being recruited into terrorist groups as the counter-terrorism measure will be deemed to have failed and instead acted as an indirect avenue for terrorist recruitment.

### 5.2.3 Afghanistan

Due to its strategic position between the Middle East, Central Asia and the Indian subcontinent, foreign armies have fought over Afghanistan since the 1970s. In the 1990s, the Taliban took over control of Afghanistan and imposed strict *Sharia* law where the education curriculum was strictly Islamic. After the 9/11 attacks, the Taliban refused to hand over Osama Bin Laden leading to the international community’s war against terror which began with bombings in October 2001.<sup>224</sup>

Afghanistan is ranked 54<sup>th</sup> out of 60 countries in the population without universal basic education study.<sup>225</sup> Attacks by insurgents on educational facilities have jumped dramatically in the last couple of years.<sup>226</sup> A CARE report on Afghanistan for the World Bank found that between January 2006 and December 2008, 1,153 attacks on education targets were reported, including the damaging or destruction of schools by arson, grenades, mines and rockets; threats to teachers and officials delivered by “night letters” or verbally, the killing of students, teachers

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<sup>223</sup> (n 213 above) 12. It is important to note that Algeria has contributed the 3<sup>rd</sup> largest contingent of foot soldiers to Al Qaeda with 2,800 soldiers being trained in Afghanistan. J Cilliers ‘Terrorism and Africa’ (2003) 12(4) African Security Review 96 <http://www.issafrica.org/pubs/ASR/12No4/Cilliers.pdf> (accessed 1 August 2010).

<sup>224</sup> BBC ‘Quick guide: Afghanistan’ (20 May 2009) [http://news.bbc.co.uk/2/hi/south\\_asia/5140380.stm](http://news.bbc.co.uk/2/hi/south_asia/5140380.stm) (accessed 8 August 2010).

<sup>225</sup> Global campaign for education ‘Back to school: the worst places in the world to be a school child in 2010’ (2010) 19 <http://www.reliefweb.int/rw/rwb.nsf/db900SID/MYAI-89N7R2?OpenDocument> (accessed 10 October 2010).

<sup>226</sup> AIHRC ‘Economic and Social Rights Report in Afghanistan’ III (2008) 61 <http://www.unhcr.org/refworld/pdfid/4a03f56b2.pdf> (accessed 1 August 2010).

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and other education staff, and looting. The number of incidents stayed stable at 241 and 242 respectively in 2006 and 2007 but then almost tripled to 670 in 2008.<sup>227</sup> Between June 2006 and December 2007, 6% of schools were burned or closed down.<sup>228</sup>

From September 2008 the Ministry of Education reported that 99 schools had been attacked, burned or destroyed by terrorists, including the Taliban, and 600 schools were closed since the start of the year, with 80% of the closures being in the southern provinces of Helmand, Kandahar, Zabul and Urozgan. Schools had also been destroyed when security and international military forces were fighting insurgents<sup>229</sup> Attacks on actual schools are usually the last step in a chain of intimidation that keeps Afghan children, particularly girls, out of school.<sup>230</sup> Terrorists, who were promised 100,000 rupees for every girl they burned, threw acid on a group of girls' faces as they went to school.<sup>231</sup> Terrorist attacks mostly target girls' schools or schools where boys and girls are taught together citing that it is anti-Islamic to educate girls.<sup>232</sup> The insecurity has led to families keeping girls from school.<sup>233</sup>

Community based schools have been set up to provide education. These schools are funded by International NGOs like Catholic Relief Services (CRS). The community is asked to provide the space for the school, administrative support and a teacher. The NGOs then train the teachers and provide the teaching materials. The Ministry of Education provides the government text books. The teaching space is usually a mosque which reduces the risk of attack.<sup>234</sup>

Afghanistan acceded to the ICESCR on 24 January 1983<sup>235</sup> and ratified the CRC on 28 March 1994.<sup>236</sup> The right to education is guaranteed by the Constitution under Article 43 and 44.

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<sup>227</sup> B O'Malley 'The threat of political and military attacks on schools, students and education staff' Background paper prepared for the Education for All Global Monitoring Report (2010) 3  
<http://unesdoc.unesco.org/images/0018/001866/186621e.pdf> (accessed 2 August 2010).

<sup>228</sup> (n 226 above) 11.

<sup>229</sup> Report of the UN Secretary General 'Children and armed conflict' (2009) General Assembly and Security Council UN Doc A/63/785-S/2009/158 paragraph 14 [http://www.humansecuritygateway.com/documents/UNGA\\_A64254](http://www.humansecuritygateway.com/documents/UNGA_A64254) (accessed 15 October 2010).

<sup>230</sup> (n 229 above).

<sup>231</sup> (n 229 above).

<sup>232</sup> (n 56 above) 72.

<sup>233</sup> (n 229 above).

<sup>234</sup> UNESCO 'Protecting education from attack a state of the art report' (2010) 283  
<http://unesdoc.unesco.org/images/0018/001867/186732e.pdf> (accessed 5 September 2010).

<sup>235</sup> (n 197 above).

<sup>236</sup> (n 198 above).

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The Constitution under Article 51 allows individuals get compensation from the government when it is responsible for any harm caused by its actions.<sup>237</sup>

Under Article 7 of the Afghanistan Constitution, the state has international obligations based on the international conventions that it has ratified. The same article also prohibits terrorist acts in the state.<sup>238</sup> Apart from the Constitution, Afghanistan has a Law on Combat against Terrorist Offences which describes that an educational facility is an infrastructural establishment<sup>239</sup> destruction of which is prohibited.<sup>240</sup>

Education in Afghanistan especially for girls is threatened by terrorism. The state has a duty to provide protection for the girls to go to school. As the terrorist target schools where girls are students, it is not difficult for the state to provide protection for these girls in keeping with their international and domestic law obligations.

#### 5.2.4 Thailand

Since January 2004, there has been political unrest in southern Thailand and a state of emergency has been in force in Pattani, Yala, Narathiwat and Songkhla since then. This has been due to attacks by separatists.<sup>241</sup> There have also been bombings and attacks in other parts of Thailand due to political unrest caused by nullification of officials in the 2008 elections.<sup>242</sup> There are also other disputes between Cambodia and Thailand and fighting at the border with Myanmar as well.<sup>243</sup> The main reasons for the insecurity and conflict in the area are the distinctive religious, ethnic, linguistic, cultural, and historical traits of the region.<sup>244</sup>

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<sup>237</sup> AIHRC 'Economic and Social Rights in Afghanistan' (May 2006) 44

[http://www.aihrc.org.af/2010\\_eng/Eng\\_pages/Reports/Social\\_Economic/I/rep\\_economic\\_socail\\_may\\_2006.pdf](http://www.aihrc.org.af/2010_eng/Eng_pages/Reports/Social_Economic/I/rep_economic_socail_may_2006.pdf) (accessed 10 October 2010).

<sup>238</sup> Article 7 Afghanistan Constitution (2004)

<https://www.unodc.org/tldb/showDocument.do?documentUid=1183&country=AFG> (accessed 12 October 2010).

<sup>239</sup> Article 3(6) Law on Combat against Terrorist Offences [https://www.unodc.org/tldb/pdf/Afghanistan\\_anti-terrorism\\_law\\_2008.pdf](https://www.unodc.org/tldb/pdf/Afghanistan_anti-terrorism_law_2008.pdf) (accessed 12 October 2010).

<sup>240</sup> Article 16 (n 238 above).

<sup>241</sup> Department of Foreign Affairs Ireland 'Thailand' <http://www.dfa.ie/home/index.aspx?id=8493> (accessed 14 October 2010).

<sup>242</sup> T Pongsudhirak 'Thailand's only hope lies in political compromise' (20 May 2010) The Guardian <http://www.guardian.co.uk/world/2010/may/20/thailand-thaksin-redshirts-abhisit> (accessed 14 October 2010)

<sup>243</sup> (n 242 above).

<sup>244</sup> Human Rights Watch 'No One Is Safe: Insurgent attacks on civilians in Thailand's Southern Border Provinces' (2007) 13 <http://www.hrw.org/en/reports/2007/08/27/no-one-safe> (accessed 14 October 2010). It should be noted terrorism is a strategy during insurgency. A Merari 'Terrorism as a Strategy of Insurgency' (1993) 5(4) *Terrorism and Political Violence* [http://www.martinfrost.ws/htmlfiles/strategy\\_insurgency.html](http://www.martinfrost.ws/htmlfiles/strategy_insurgency.html) (accessed 14 October 2010).

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Sixty five percent of Thailand's estimated three million Muslims live in the southern provinces where the attacks on schools have occurred. On 4 January 2004, 17 schools were hit by arson attacks.<sup>245</sup> By 27 January 2004, nearly 700 schools (out of the total 925) across the southern border provinces had to be shut down temporarily as a result of growing fears of attacks.<sup>246</sup> Since then '56 schools have been hit by arson attacks, resulting in the temporary closure of schools that were destroyed or badly damaged. Around 4,400 children have lost their schools, their textbooks and school materials due to the arson attacks'. Teaching has to end an hour earlier so that children get home before dark, losing on the required learning hours.<sup>247</sup>

It is estimated that between January 2004 and early September 2010, 327 schools have been burnt down.<sup>248</sup> This has been carried out using arson, bombs and improvised explosive devices. This has fed terror to the children and their parents are afraid to let them go to school.<sup>249</sup>

The government military forces in Thailand have also infringed on the right to education. This should be distinguished with the forces providing security to the school. The presence of large numbers of military personnel make the school a target for attack. The forces instead occupy the school as the schools are usually large enough to accommodate the large number of troops, are usually in the centre of the community so are strategic and also have electricity and water. Some of the troops have been living in schools for as long as two years. Children have been moved from these schools because of various reasons including that the students are afraid of the soldiers and teachers are unable to concentrate while the soldiers are in the compound. The army also occupies parts of the school therefore interfering with education.<sup>250</sup>

Thailand acceded to the ICESCR in 5 September 1999<sup>251</sup> and the CRC in 27 March 1992.<sup>252</sup> The 2007 Constitution of Thailand under section 49 gives the right to receive education

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<sup>245</sup> N Rodraksa 'Schools targeted in Southern Thailand violence' UNICEF real lives (August 2005) [http://www.unicef.org/thailand/reallives\\_3754.html](http://www.unicef.org/thailand/reallives_3754.html) (accessed 14 October 2010).

<sup>246</sup> (n 244 above) 73.

<sup>247</sup> (n 245 above).

<sup>248</sup> It should be noted that between 2006 and 2007, the number of attacks quadrupled and then returned to the 2007 statistics. UNESCO 'Protecting education from attack a state of the art report' (2010) 38 <http://unesdoc.unesco.org/images/0018/001867/186732e.pdf> (accessed 5 September 2010).

<sup>249</sup> Human Rights Watch ' "Targets of Both Sides" Violence against Students, Teachers, and Schools in Thailand's Southern Border Provinces' (2010) 70 <http://www.hrw.org/node/93085> (accesses 14 October 2010).

<sup>250</sup> (n 244 above) 62 – 69.

<sup>251</sup> (n 197 above).

<sup>252</sup> (n 198 above).

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for 12 years.<sup>253</sup> Furthermore, the National Education Act makes nine years of education compulsory for children.<sup>254</sup>

Thailand does not have a specific counter-terrorism law. It instead has amended its criminal code to be in line with Security Council Resolution 1373.<sup>255</sup> Section 135 of the Penal Code identifies the acts constituting terrorist acts. The spread of fear, destruction of buildings of public interest are considered terrorist acts.<sup>256</sup> Without dedicated terrorist legislation, it is difficult to have sanctions that specifically deal with the right to education counter-terrorism and terrorism.

The right to education in South Thailand is under attack from both terrorism and counter-terrorism measures. Thailand's legislative framework can, to some extent, hold perpetrators accountable for their actions, for example, destruction of school buildings and materials. It, however, has no direct remedy for state interference on education which is in contravention of Thailand's international obligations. Under Thailand law, the occupation of schools can be termed as a terrorist attack as it instills fear in the teachers, children and their parents.

Apart from physically limiting the availability of education by destroying the schools and the teaching materials, it is important to show what other impacts of counter-terrorism and terrorism have had on the right to education.

### 5.3 The impact of counter-terrorism on the right to education

Apart from the physical destruction of schools and loss of life, there are other factors that need to be examined.

A basic human right is violated by the attack on schools denying education which promotes a person to claim other rights and have a dignified life. These attacks constitute attacks on human dignity.<sup>257</sup> For example, the girls burned with acid in Afghanistan will have a difficult time as they will either be forced to undergo painful plastic surgery and if they cannot afford that, then they will be scarred for life. The possibility of having a dignified life becomes slim as they will most probably be unable to go back to school.

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<sup>253</sup> Constitution of the Kingdom of Thailand B.E. 2550 [https://www.unodc.org/tldb/pdf/Thailand\\_const\\_2007.pdf](https://www.unodc.org/tldb/pdf/Thailand_const_2007.pdf) (accessed 14 October 2010).

<sup>254</sup> National Education Act of the Kingdom of Thailand B.E.2542 (1999) sections 17 <http://www.edthai.com/act/index.htm#2> (accessed 14 October 2010).

<sup>255</sup> Bangkok Pundit' Thailand's anti- terrorism law; (2006) <http://bangkokpundit.blogspot.com/2006/02/anti-terrorism-legislation-in-thailand.html> (accessed 14 October 2010).

<sup>256</sup> Criminal code <https://www.unodc.org/tldb/showDocument.do?documentUid=7878> accessed 14 October 2010).

<sup>257</sup>(n 227 above) 97.

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When schools are repeatedly attacked, children are afraid to go to school and parents become unwilling to send them to school. Teachers are also afraid to go to work. Governments may also decide to keep the schools closed until such a time that they deem that the threats will have passed.<sup>258</sup> The net result is that children are denied an education, but also are idle and thus easy to recruit for terrorist and criminal activities. It also places children in situations where they are at risk as they lose the structures and stability of attending school.<sup>259</sup> In schools that have feeding programmes, the children lose out on a stable and nutritious diet.

Children also suffer psycho-social effects where the children are too traumatised to go to school. In Uganda, children are afraid of going to school due to LRA attacks. Their parents are afraid to let them out of their sight for fear of abduction.<sup>260</sup>

The migration of teachers away from the conflict areas has a long term effect on the education economic viability in the area.<sup>261</sup> The state may also struggle to recruit teachers within an area where attacks repeatedly occur, which affects the right to education in the long run.<sup>262</sup> The state is also faced with a huge economic burden and in countries which are considered poor, education facilities are inadequate for the population and destruction of the schools further hinders the realisation of the right to education.<sup>263</sup>

The attack on education hinders development. For example, in Afghanistan, despite a 500% increase in school enrolments in the last eight years, seven million Afghan children are currently out of school, out of these, 92% are girls in rural areas who cannot access secondary education. Less than 20% of young Afghan women are literate.<sup>264</sup> There are few female teachers in Afghanistan and in a society that is Islamic and insists on separation of the sexes; it becomes difficult for parents to take their girl children to schools where the school have male teachers.<sup>265</sup> It perpetuates the situation if girls do not attend secondary they cannot become teachers and thus the next generation of girls' education will be affected.

For every year that a child attends school, their wages rise by an average of 10%. Furthermore, the education of a mother significantly increases the survival of her child and the

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<sup>258</sup> (n 227 above) 97 – 98.

<sup>259</sup> (n 227 above) 98.

<sup>260</sup> Save the Children Canada 'rewriting the future'

[http://www.savethechildren.ca/index.php?option=com\\_content&view=article&id=764&Itemid=446&lang=en](http://www.savethechildren.ca/index.php?option=com_content&view=article&id=764&Itemid=446&lang=en)

(accessed 14 October 2010).

<sup>261</sup> (n 244 above) 39.

<sup>262</sup> (n 227 above) 98.

<sup>263</sup> (n 227 above) 98.

<sup>264</sup> (n 225 above) 19.

<sup>265</sup> (n 225 above) 71.

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possibility that her child will go to school.<sup>266</sup> In situations where the right to education is affected the benefits of education will not be gained.

There are lessons that can be learned from these case studies. A large presence of military forces within the school makes the schools targets, therefore states should abstain from setting bases in school compounds. States should involve the community where they intend on countering terrorism. This is a measure that is being employed by the US in Afghanistan and Iraq in the 'war against terror'.<sup>267</sup> The community should be involved in setting up the schools. The schools are less likely to be attacked as it is not a government building and if it is housed in a mosque, destruction of a religious building is not likely. Involving the community also gives a sense of ownership of the education curriculum and the school, therefore reducing attacks. The education curriculum is also useful in countering terrorism; however, it must be relevant and able to keep children in school to be effective.

The occupation of schools and the recruitment of children as counter-terrorism measures can be deemed as terrorist acts as they make the children and the community in general more afraid and as most of the definitions of terrorism reiterate that instilling fear is a terrorist act.

Terrorism has an effect on a society apart from the physical destruction of education facilities. The counter-terrorism measures that include limiting access to education also have a similar effect. This is due to education not being accessible leading to the same consequences for the children as they cannot attend school and miss out on getting an education. The impact is not immediately felt but the long term effects are quite grave when education is disrupted.

#### 5.4 Interventions by international organisations

International aid organisations have been instrumental in assisting once schools have been destroyed.

In Kandahar Province of Afghanistan, Save the Children worked with local organisations to form community based child protection committees. These committees would guard the schools to ensure that they are not burned and that the teachers and students are safe.<sup>268</sup>

UNICEF in 2005 provided teaching materials and temporary facilities four days after an attack and rebuilding of the school to a habitable standard for education to continue in Afghanistan.<sup>269</sup>

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<sup>266</sup> (n 225 above).

<sup>267</sup> US Army Manual 'Counterinsurgency' FM 3-24/MCWP 3-33.5 (2006) <http://www.fas.org/irp/doddir/army/fm3-24.pdf> (accessed 24 October 2010).

<sup>268</sup> Save the Children 'The future is now: education for children affected by conflict' (2010) 29.



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International organisations have trained communities to negotiate with terrorist groups to stop attacking the schools. Arrangements have been reached but evidence of compliance has not been weighed to monitor the success of this intervention.<sup>270</sup>

UNESCO has spear headed the research and documentation on the attacks on education with its two reports in 2009 and 2010. These reports have informed the subject and have therefore been useful in accessing the impact of conflict on education. The minor challenge of this report is that it does not deal with specifically attacks on education by terrorist acts or as a result of counter-terrorism. Apart from UNESCO, Human Rights Watch and Amnesty International have also documented the attacks on education. The publication of these material has also been made possible by the local community based organisation and the media for highlighting some of these issues.<sup>271</sup>

## 5.5 Conclusion

It is clear that education has come under attack in the recent years. The reasons for this have varied for example to scare the community, recruiting children as soldiers or even as methods of ensuring that the system of education is compromised. It is important to note that states have contributed to the violation by intentionally limiting the right to education or not intervening where necessary. The biggest challenge for countries is that the destruction of schools and materials is generally covered under law but the violation of denial of education is not therefore making it difficult to completely hold states accountable.

It is important to note that governments like Thailand and Afghanistan have tried to protect schools by posting security forces outside the school. Such measures have not deterred terrorist attacks but have made the children and teachers feel safer and thus education has continued in those schools.<sup>272</sup>

Counter-terrorism measures that impact education have similar effects to the children as terrorist attacks as the children are unable to access education. The state should always take into account human rights while countering terrorism and should therefore consider this when dealing with counter-terrorism that will impact education.

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<sup>269</sup> (n 234 above) 119.

<sup>270</sup> (n 223 above) 116.

<sup>271</sup> (n 234 and 227 above).

<sup>272</sup> (n 234 above).

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International organisations have worked with communities to start community schools which ensure that education is safeguarded. They have also provided lessons for education under attack.

Apart from physically limiting the availability of education by destroying the schools and the teaching materials, there are other effects that last longer than the physical destruction.

### Conclusions and recommendations

#### 6.1 Introduction

Human rights have been the casualties of counter – terrorism and terrorism. The right to education has been severely affected and the attack on education is on the rise.<sup>273</sup> This is both as a direct consequence of counter-terrorism or using terrorist attacks on schools to advance various causes. There is some legislation and frameworks available that can be used to hold perpetrators accountable for their actions. These have, however, not been used to ensure that the right to education is protected.

#### 6.2 Summary of chapters and conclusions

Chapter one sets out the background to the problem and sets the stage for the dissertation. It discusses the shift in the war against terror after the 9/11 attacks and how this has negatively affected human rights. It also introduced the campaign by the United Nations against human rights violations in relation to counter-terrorism, where social economic rights have been ignored and instead there has been a drive to protect civil and political rights.<sup>274</sup> The chapter then sets out the road map to addressing this issue.

Chapter two concretises the relationship and the tension that exists between counter–terrorism, terrorism and the right to education finding that human rights and security are not competing interests and are complimentary to each other. Education has been identified as one of the ways that can be used as a counter-terrorism measure. This is because education is able to impart knowledge and understanding and respect for other peoples' religion, culture and way of life. Education has also been blamed for grooming terrorists therefore the link between the two is important. Although derogations are allowed, States must justify them as necessary and legitimate. The chapter also finds that states can be held responsible for acts of third parties due to the obligations to provide security for their citizens. The UN Secretary General has also added his voice to the campaign to counter–terrorism and that human rights must be protected at all times no matter what as the erosion of human rights while countering terrorism will be self defeating.

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<sup>273</sup>S Coughlan 'Rise in school terror attacks' (2010) BBC [http://news.bbc.co.uk/2/hi/uk\\_news/education/8500404.stm](http://news.bbc.co.uk/2/hi/uk_news/education/8500404.stm) (accessed 14 October 2010).

<sup>274</sup> These include illegal detention, cruel, inhuman and degrading treatment, right to a fair trial and non – *refoulement*.

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Chapter three sets out the legal framework and the monitoring mechanisms specifically related to terrorism. There are treaty implementing and monitoring bodies that look at different treaties and are mandated to take various actions on non-compliant states. There are also non-enforceable mechanisms that exist where states which violate human rights can be censured. The UN has taken a lead in monitoring counter-terrorism and terrorism. In Africa there are also various mechanisms that address counter-terrorism and terrorism. The important roles of the SRCT and the SRRE and their roles are discussed. The legislative and monitoring mechanisms however, are not mandated to specifically protect counter-terrorism, terrorism together with the right to education together. There is, however, no mention of education in the legislation illustrating that education has not been embraced as a counter-terrorism measure.

Chapter four examines the specific protections under the right to education. These are well-established in the world and also within the African system. The different avenues available for dealing with the right to education are covered. The mechanisms available for the right to education have not been used to take states to task on their responsibility to protect the right to education while countering terrorism.

Chapter five explores four case studies on the impact of counter-terrorism and terrorism on education to illustrate the reality of the problem. The situations in Uganda, Algeria, Afghanistan and Thailand are highlighted and the impact on those countries apart from the destruction of schools is severe and has an impact on the future of states. There are also some lessons learned from these countries.

### 6.3 Recommendations

The SRCT and the international debate have mostly focused on violations of civil and political rights.<sup>275</sup> It is important that there be a shift towards economic, social and cultural rights.

The SRRE and the SRCT should collaborate and carry out joint missions to areas where counter-terrorism and terrorism has affected the right to education. In addition to this, the Special Rapporteurs should carry out in depth research on the impact of the attacks on education and set up a system of sharing information within their two mandates. Once this research is completed, the Special Rapporteurs can issue a set of guidelines. They can also issue joint public statements on situations where education is affected by counter-terrorism and terrorism. The two Special Rapporteurs can establish a system whereby if any complaints against states are brought to them individually, they can consider these jointly.

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<sup>275</sup> (n 10 above) 11.

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The SRRE and the SRCT can also work with some of the other Special Rapporteurs to gather information and generally to collaborate to ensure that any attacks on education as a result of counter-terrorism and terrorism are reported to the two Special Rapporteurs. Some of the Special Rapporteurs who can collaborate with the SRCT and the SRRE are the Special Rapporteurs on Torture, Housing, Extra-judicial, Summary or Arbitrary Executions and Freedom of Religion or Belief.<sup>276</sup>

The SRRE should spear-head discussions for the international community to adopt a universal emblem for schools and places of education.<sup>277</sup> This would enable schools to be easily identifiable and an international sign like the Red Cross may deter states and terrorists from violating the right to education.

There should be local mechanisms which can be used by citizens to report these attacks, for example Ombudsmen or National Human Rights Institutions. These organisations should be competent to receive this information as well as have the capacity to investigate these matters.<sup>278</sup> This is important because these reports get reflected in reports that are submitted to the SRCT and the Special Rapporteur on seeing that a complaint has an education aspect can alert the SRRE who can then establish an early warning system.<sup>279</sup> Apart from early warning systems, it is important to have an effective system in place that can hold those responsible for attacks on schools responsible for their actions.

Apart from the Special Rapporteurs, the Universal Periodic Review and state reports can be used to highlight situation where education has been violated by counter-terrorism, terrorism and the right to education. This will encourage NGOs to highlight areas where these violations are ongoing and need urgent attention. At the African level, NGOs should be encouraged to

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<sup>276</sup> There are 43 experts covering 29 human rights themes. These are Adequate Housing, Contemporary Forms of Slavery, Cultural Rights, Education, Effects of Economic Reform Policies and Foreign Debt on Human Rights, Extrajudicial, Summary or Arbitrary executions, Right to Food, Freedom of Opinion and Expression, Freedom of Religion or Belief, Human Rights Defenders, Independence of Judges and Lawyers, Minority Issues, Physical and Mental Health, Protecting Human Rights while Countering Terrorism, Racism, Racial Discrimination, Xenophobia and Related Intolerance, Sale of Children, Child Prostitution and Child Pornography, Torture, Trafficking in Persons, Use of Mercenaries to Impede the Right of Peoples to Self-Determination, Violence against Women, Human Rights and Access to Safe Drinking water and Sanitation. Human Rights and Bioethics (Human Genome), Human Rights and Extreme Poverty, Human Rights and International Solidarity, Human Rights and the Illicit Movement of Toxic Waste, Human Rights and Transnational Corporations and other Business Enterprises, Human Rights of Indigenous People, Human Rights of Internally Displaced Persons and Human Rights of Migrants.

<sup>277</sup> (n 227 above) 116.

<sup>278</sup> The international summit on democracy, terrorism and security 'Madrid Towards a Democratic Response' (2005) (III) The Club de Madrid Series on Democracy and Terrorism 16.

<sup>279</sup> (n 278 above).

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bring communications to the ACHPR against states which have violated the right to education while countering terrorism.

The Committee on Economic Social and Cultural Rights as well as the Committee on the Rights of the Child can also ensure that while examining state reports, states report on the impact of counter-terrorism, terrorism on the right to education.<sup>280</sup>

Consistent monitoring of the situation of the right to education, counter-terrorism and terrorism should be established. Although the UN-led Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict exists, its mandate is to monitor attacks on schools, teachers, and students in armed conflict situations. In addition to this, the MRM only operates in states named by the Secretary-General in the annexes of his annual reports to the Security Council on children and armed conflict where, in situations of armed conflict, children are recruited and used as soldiers or, since August 2009, killed and maimed or subjected to grave sexual violence.<sup>281</sup> The mandate of the MRM can be extended to include monitoring violations on the right to education by counter-terrorism and terrorism.

From 1 July 2002, the ICC can include attacks on schools (as they are not military objects) as war crimes. Members of the public can submit communications and complaints to the ICC.<sup>282</sup> Though the ICC will be unable to take up most of the cases, it can act as a depository and can forward the communications to a competent national or regional body. As of October 2010, there have been no cases that have no charges have been preferred on the right to education.<sup>283</sup>

These recommendations are diverse but the key components that are needed for the success of understanding and acting to protect the right to educating while countering terrorism and terrorism are collaboration between all the necessary actors and a coordinating body which ensures that efforts are not being duplicated and that the necessary assistance is being given to emergency situations.

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<sup>280</sup> This is important because the right to education will be covered and not just the narrow focus of the right to education that is covered here. This will ensure that the legislation of states as well as practice do not impact the right to education.

<sup>281</sup> UN Security Council, *Resolution 1612*, S/RES/1612 (2005); and UN Security Council, *Resolution 1882*, S/RES/1882 (2009).

<sup>282</sup> (n 234 above) 120.

<sup>283</sup> International Criminal Court (ICC), "All Cases," <http://www.iccnw.org/?mod=casessituations> (accessed 17 October 2010).

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#### 6.4 Conclusion

Although terrorism is a real threat to the society, human rights cannot be put aside to counter-terrorism. Human rights like the right to education must be protected and respected. The impact of counter-terrorism, terrorism on the right to education is significant and should be held dear. Measures to ensure that this right is protected are imperative and should not be ignored as this may have a negative effect on the future of the world.

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