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Editorial

Diligence: Perspectives on Interactions between Diplomacy and Intelligence in National Security

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The mission and vision of this *Journal* is to promote the appreciation and understanding of the interactions between Diplomacy and Intelligence in theory and practice. Indeed, this is the essence of its name, *Diligence*. The *Journal* is concerned with analyzing this relationship particularly at the strategic level of national security policy and decision making. Its predominant concern with the strategic level does not however rule out other levels, especially the operational level. But its engagement with the operational level will be demarcated at its higher end where it transforms into and meets the strategic level. Hence its concerns are not with lower operational levels where the tactical level is transformed to the operational level; or indeed with the middle operational level which in practice is the operational level *par excellence*.

The *Journal* will also serve as a platform for enlarging the African voice in Diplomacy, Intelligence, and their relationships and interactions. In particular, it will also examine the core strategic issues arising in the role of diplomacy as a source of continental power from African perspectives. The underlying theme of the *Journal* is Disciplinarian: convinced that Intelligence Studies [IS] is a

field in search of an anchoring discipline, it will explore the underlying theoretical perspectives attending Diplomacy's search for such a role.

The relationship between Diplomacy and Intelligence is even more fascinating - and challenging - at the theoretical level. The perspective of this *Journal* proceeds from the truth that Diplomacy is one of the sources of national power. It has been since the modern state began, and traces of this standing can even be found in ancient times. Diplomacy and its concerns with cooperation and conflict is also the founding discipline of all areas concerned with states' interests in their dynamic and volatile external environment. Other related Disciplines like International Relations – a Discipline whose academic study is only as old as the end of the first world war – have professed to assume this role: but in doing so, they have fished in stubborn waters. Diplomacy is the pre-eminent source of national power. It intervenes – at the outset, during and at the end - whenever cooperative national interests are threatened, and whenever such threats threaten conflict at all levels including its sharp end of war.

As a source of national power, Diplomacy engages the external environment at different levels: the strategic [foreign policy], the operational [diplomatic strategy], and the tactical, procedural levels. Indeed, it is through the appreciation of these that its relationship with Intelligence can best be highlighted. Intelligence

Studies [IS] acknowledges intelligence as a Field in search of a Discipline. There have been many Disciplinary suitors in the quest for rationalizing the practice of intelligence: History, Psychology, International Relations, Economics, Political Science and others. The mission of this *Journal* is *inter alia* to make the case for Diplomacy as the rationalizing Discipline in that relationship. It has done so academically in Kenya by the launch of the pioneer course – MA in Diplomacy, Intelligence and Security [MDIS] at Strathmore University. And a pioneer doctoral programme is also underway. The case will be made through case studies expounding on the roles of intelligence in diverse areas of cooperation and conflict in states' external environments. In doing so, while examining universal practices, the *Journal* will concentrate on African perspectives and experiences. In this effort, it will contribute to filling the current *lacuna* of the paucity of studies and research on Intelligence – and Diplomacy - in Africa.

In practice, the tenor of relationships between Diplomacy and Intelligence are manifested at the strategic, operational and tactical levels. Threading through these levels are Doctrines – diplomatic, economic and military - all ultimately tied up in a National Security Doctrine. The national security doctrine and these parts of its sum may suggest the case or part of it, for the choice of a Disciplinary rationalizing role. The case for Diplomacy for this role rests ultimately on the definition of national security as being

preoccupied with the state's interactions and survival in the volatile, uncertain, challenging and ambiguous [VUCA] external environment. This does not mean, and indeed cannot mean the relegation of the internal environment. It means rather that the concern of national security with the internal environment extends as far as how developments in that environment affect interactions with the external one. To paraphrase the poet John Dunne: "no [state] is an island entire of itself/ every [state] is a piece of the continent/a part of the main…"

At the strategic level in Africa and elsewhere, Intelligence Services are part of the membership of National Security Councils where they exist. In Kenya for example and in others like Zimbabwe this membership of the Intelligence Community is specified by the Constitution; and given the status of the constitution as the *grund norm*, this specification is virtually impossible to challenge. This eminently raises the question of the relationship between Intelligence and the strategic level of national security policy and decision making. This is an important aspect of the relationship because it is at this level that the role of Intelligence in especially national security policy making can be defined, and clearly enough to be cascaded to the operational and tactical levels. Answers to these issues can for example best be found through clear analyses of the structures of National Security Councils in Africa, and what such

analyses suggest has been the perceived – and in Africa, politically constructed - role of Intelligence in this domain.

Operationally, the general interaction of Diplomacy and Intelligence has long been recognized and enshrined in practice. While the role of Intelligence in diplomacy is recognized, it is not always acknowledged as part of the structural architecture of diplomatic services of states in Africa and indeed of many in the world. Historically, Intelligence Communities [IC] have always been part of the diplomatic establishment of diplomatic missions. While not openly acknowledged as such, nevertheless Intelligence Communities play, or should play, an important role in the core business of diplomatic missions as specified in the Vienna Convention on Diplomatic Relations. At the diplomatic missions however, their role at the higher level become confounded with the tactical level, and this gives room for tensions and conflicts between members of the Intelligence Community in diplomatic missions and their diplomatic counterparts. African case studies, properly directed can clearly help to resolve these from the perspective of the diplomatic practices of African states.

The interactions between the diplomatic and intelligence members of diplomatic missions have however been fraught with unending suspicions. Anecdotal evidence is replete with suspicions – and tensions - among members of the diplomatic staff that their intelligence counterparts are there to “spy on them”. And since

intelligence officers do not take time to downplay such suspicions, they entrench further the divisions between the two. The sources of these suspicions are founded in the lack of understanding at all levels about the role of intelligence officials in diplomacy and in diplomatic missions. In that relationship, members of the diplomatic staff consider themselves to be the "experts" on diplomatic issues, international relations and the like. They hence consider intelligence officials to be interlopers in the gentle, ideal world of diplomacy practiced purely through overt means. Heads of diplomatic missions also unfortunately consider themselves and their staff to have unchallenged credentials to analyze diplomatic issues; and in doing so sometimes overlook significant inputs of the intelligence officials.

Intelligence officials on the other hand do not help easing this trend of relationships at the operational level. They misunderstand their core role in diplomacy [or in other government agencies and ministries], hence further stoking the fires of intra-diplomatic mission and inter-ministerial tension and conflict. Their core business is aligned to two frames of reference. They have the ability to source information through covert means that their diplomatic and ministerial partners do not. The input of analysis gained through such means should always be to enable policy and decision makers to reach better informed decisions. They should not, in other words, engage in championing certain policy outcomes. If they do so, they range themselves against the policy [i.e.

diplomatic and ministerial] analysts, with the eventual outcome of tensions and conflicts among themselves, the policy analysts and the decision makers. This mix can unfortunately account for diverse diplomatic, intelligence, policy and decision-making failures.

The tactical level of the interaction of Diplomacy and Intelligence is equally, if not more problematical. It is, or has been perceived, as such because this level concerns the tools of trade of both and their rules of engagement in the world of diplomacy. The tools of trade in any profession are generally well-guarded by their practitioners. And yet, while the tools of trade of Diplomacy and Intelligence differ operationally and tactically, there are, or should be some areas of their congruence in the pursuit of the protection and promotion of the national interests guarded by Diplomacy. Their rules of engagement however are different: the jurisprudence of diplomatic practice requires engagement only in the overt sphere; and as Somalia's diplomatic quarrel with Kenya leading to a severance of diplomatic relations demonstrated, breach – or perception of breach - of these rules of engagement can lead to far reaching consequences. Intelligence however operates under different rules of engagement. At the diplomatic mission level - that is operational verging on the strategic - it is expected that its officials will primarily be guided by the rules of general diplomatic practice. But in pursuit of some national interests, they may end up relying on covert means. This happens in practice, and receiving states may

close their eyes on some breaches but not others. And when this happens the tour of the intelligence officials is short lived. At the national level the rules of engagement are rather different: foreigners using covert means in another state risk their freedom and even life.

Diligence refuses to stoke the tensions between Diplomacy and Intelligence further. It believes that, as its name suggests, the two are linked at important levels, and that this linkage is dynamic and hence serves the national interests better. Through theoretical analyses and empirical studies, it aims to demonstrate the wisdom that drove the two together. It champions the age-old wisdom that surveyed the national security interactions between two, and found that each contributes to the other, and is an important part of the whole.

Prof. Makumi Mwagiru
Chief Editor

Post-Independence Intelligence Oversight Mechanisms in East African Community [EAC] States

Isaiah Otieno Omburo

Abstract

The question how much national security intelligence oversight is sufficient confronts many states globally despite the adoption of one form of national security intelligence oversight or the other. Countries forming the East African Community (EAC) have preferred different forms of national security intelligence oversight, and are at different stages of implementing their national security intelligence oversight laws and policies. Different countries adopt national security intelligence regimes based on their national cultures of governmental accountability, national intelligence cultures and the character of national politics. Consequently, the imperative of comparing and contrasting national legislation and practice of national security intelligence in the EAC is inarguably important. The importance of comparing and contrasting national intelligence oversight practices in EAC states is partly premised on the increasing need for national intelligence communities to collaborate especially in tackling transnational crimes and threats in the region and beyond. This article traces the evolution of national security intelligence in EAC states and their current national security intelligence oversight practices. It concludes that while different EAC states have implemented national security intelligence oversight regimes, this is informed by the peculiarities of their different political cultures.

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Introduction

The term National Security Intelligence refers to intelligence organizations, their missions, processes and products that they

generate to policy makers to facilitate decision-making.[1] The main mission of national security intelligence is collection, analysis and dissemination of intelligence products to policymakers, counterintelligence and covert action.[2] National intelligence services are the pillars of national security intelligence. National intelligence service(s) are the organization(s) which are statutorily mandated to undertake the processes and missions of the national intelligence services. Intelligence services or agencies are generally clustered within the departments of national defense, but could further be classified into those serving civilian policy making departments or national militaries.[3] Irrespective of the cluster of national intelligence services, the agencies carry out their missions at the behest of the president or any other top policy maker within the executive.[4] Conventionally, the national security intelligence functions are premised on the intelligence cycle beginning with needs of the policy maker.[5]

The term intelligence has also been defined as analyzed information, and organizations vested with powers to perform the necessary activities to generate intelligence for national policy

[1] Loch K. Johnson, "National Security Intelligence," in *The Oxoford Handbook of National Security Intelligence* (Oxford: Oxford University Press, 2017), p. 6.
[2] Ibid.
[3] Ibid., p. 7.
[4] Ibid., p. 11.
[5] Ibid.

making and implementation.[6] National intelligence services are generally domiciled within the executive giving them latitude in decision making on issues of national interests especially those regarding foreign policy.[7] However, the autonomy of the top executive on issues of national security intelligence is occasionally not successful. It sometimes generates controversies about the role of the executive to authorize certain intelligence operations. And sometimes, intelligence operations end up aggravating threats to national interests.[8] Therefore, the legitimacy and efficacy of national intelligence services in executing their roles is important in the overall execution of national security intelligence.

The oversight of national intelligence services is an integral function in guarding or establishing the efficacy and legitimacy of the national intelligence service activities in the protection and promotion of national interests.[9] Whether perceived or real, cases of power abuses by the national intelligence services tend to weaken public trust in the institutions. National security crises may also lead to the marginalization or degrading of the national intelligence services.[10]

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[6] Ibid., pp. 12-13.
[7] Stephen Knott, "Executive Power and the Control of American Intelligence," *Intelligence and National Security* 13, no. 2 (1998), p. 175.
[8] Ibid.
[9] Njord Wegge, "Intelligence Oversight and the Security of the State," *International Journal of Intelligence and CounterIntelligence* 30, no. 4 (2017), p. 692.
[10] Ibid.

The East African Community (EAC) states have adopted different intelligence oversight regimes. This reflects the evolution of their intelligence services from colonialism, the early independence periods, the Cold War, during the political and constitutional reforms of the 1990s and the 2000s, and the post 9/11 terrorist attack. Different historical periods in the development of national intelligence services in EAC have reflected the emergence and evolution of different intelligence oversight mechanisms. These correspond to the security needs of either the colonial regimes, immediate post-colonial states, during and after the Cold War, and the era of heightened war on terrorism. Conversely, the efficacy and dynamics of intelligence oversight within the EAC is understudied, and there is a dearth of academic literature in the area. This article assesses the current state of intelligence oversight in the EAC within the diverse socio-political and cultural contexts of evolution. It also appreciates intelligence oversight regimes in the EAC in the face of emerging intelligence collaboration in the region.

Organization and oversight of the intelligence community in EAC

The six East African Community [EAC] states all have established national intelligence services and different oversight regimes. These evolved differently to serve their national security interests. Generally, there is a growing consensus that national intelligence services should be subject to oversight for purposes of legitimacy and effectiveness. The introduction of formal intelligence oversight

in EAC began in earnest in the late 1980s and into the 1990s and 2000s. Across the region, executive, legislative and judicial oversight of intelligence have been provided in the constitutions and other national laws of the member countries. However, these statutory requirements do not automatically translate to the actual oversight of the agencies because the states in the region are at different stages of political liberalization. Consequently, national intelligence services in the EAC may become susceptible to politicization by the executive.

Oversight of national intelligence services helps to cushion the agencies from potential executive political influence. Consequently, general issues of intelligence operations, financial and human resource administration and legal matters encompassing the activities of intelligence services and the character of executive control have been subject to oversight in many countries. Intelligence oversight is necessary for the agencies to maintain their fidelity to national security mandates and national security priorities.[11] In addition, robust intelligence oversight also protects the services and their officials from complying with illegal requests from the executive.[12] Intelligence agencies while critical to national

[11] Wegge, "Intelligence Oversight and the Security of the State." op. cit., p. 693.

[12] Patrick J. Donaldson, "Infiltrating American Intelligence: Difficulties Inherent in the Congressional Oversight of Intelligence and the Joint Committee Model," *American Intelligence Journal* 28, no. 1 (2010), p. 14.

security, may also pose threats to the constitution.[13] Some of these national security threats include illegal surveillance, targeted political policing, and controversial and illegal domestic and foreign intelligence activities.[14] There follows a public backlash whenever intelligence services operate beyond their mandates. And whenever there are national security failures, debilitating intelligence leaks become prominent.[15] The ensuing loss of legitimacy for national intelligence services may lead to a loss of budgetary appropriations and reputation in the short and long-term.

The backbone of national security and intelligence is premised on secrecy. This is turn makes intelligence oversight nearly impossible.[16] Consequently, legal provisions may not directly amount to acknowledgement, acceptance or implementation of intelligence oversight mechanisms. Indeed, the 9/11 Commission which examined circumstances surrounding the terrorist attack concluded that congressional oversight of the American national intelligence apparatus was lethargic.[17] Generally, there exists a

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[13] Thomas I. Emerson, "Needed: A New Cloak for Intelligence Agencies," *Human Rights* 7, no. 2 (1978), p. 14.

[14] Ibid., p. 15.

[15] Wegge, "Intelligence Oversight and the Security of the State.",op. cit p. 693.

[16] Donaldson, "Infiltrating American Intelligence: Difficulties Inherent in the Congressional Oversight of Intelligence and the Joint Committee Model", op. cit.,p. 16.

[17] National Commission on Terrorist Attacks upon the United States, "The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States," 2004,p. 105.

disconnect between the actual outcomes of intelligence oversight and policies or legal systems which establish the oversight practices in many countries. This is because intelligence activities are secretive and require a delicate balance between oversight and the need to know. Specific problems which may face intelligence oversight by institutions outside the secrecy loop include partisan politics in the legislative assemblies, the motivation of members of parliamentary intelligence committees, and whether or not the executive wishes to share certain privileged information with other intelligence oversight bodies.[18]

Important actors in the national security sector oversight in the EAC include the executive, legislature, ministries of internal and foreign affairs, defense, national financial audit bodies, and civil societies based on the laws establishing such bodies in the region. The character of the involvement of civil society in oversight of the national intelligence services in the EAC varies from one member state to another, depending on the national laws on the activities of such entities.

The national Intelligence Community [IC] are independent, executive level agencies that provide intelligence to the executive to

[18] Sterling Marchand, "Fixing What Isn't Broken: How Congressional Oversight Has Adapted to the Unique Nature of the Intelligence Community," *American Intelligence Journal* 28, no. 1 (2010), pp. 7-8.

inform national security policy decision-making.[19] The size, structure, organization and oversight of the IC entirely depends on the contexts the countries it operates in. While the EAC state security sector traces its origin to the colonial era, different waves of security sector reforms (SSRs) have led to restructuring the sector in ways commensurate with state and human security needs. While the aims and objectives of the SSRs may be specific to different countries, there are certain commonalities across the SSRs in several EAC states. Some of the SSRs aims and objectives in the region have included the increasing efficiency of national security organs to the state and citizens, observance of the rule of law, and accountability of the national security sector to the state and citizens.[20] In addition, some states have reformed their security sector as part of right-sizing, post conflict reconstruction, thus enhancing oversight, and making the security sector more legitimate.[21]

EAC states have reformed or are in the process of reforming their national security sectors. Kenya and Tanzania began reforming their national IC in the 1990s. Through an Act of parliament, Tanzania established the Tanzania Intelligence and Security Service

[19] Office of the Director of National Intelligence, "What Is Intelligence," 2020.
[20] Nicole Ball, "Lesson from Burundi's Security Sector Reform Process" (Washington, D.C., 2014), p. 2.
[21] Susanna Bearne et al., "National Security Decision-Making Structures and Security Sector Reform" (Santa Monica, 2005), p. 1.

(TISS) in 1996.[22] In Kenya, the 1998 Act established the National Security Intelligence Service (NSIS).[23] Uganda's parliamentary Act of 1987 established internal and external security services: the Internal Security Organization (ISO) and the External Security Organization (ESO).[24] Rwanda's constitution provided for the establishment of the country's National Intelligence and Security Services (NISS) in 2003.[25] Similarly, the Constitution of Burundi of 2005 provided for the creation of the country's NIS as part of the Corps of Defense and Security.[26] On the other hand, the South Sudan Constitution of 2011 provided for the creation of the country's National Security Service (NSS) with two operational organs: the Internal Security Bureau (ISB) and the General Intelligence Bureau (GIB).[27] The South Sudan NSS Act 2015 created the NSS specifying its organization and the legal parameters within which to carry out of its mandate.[28] While South Sudan at independence aspired for a liberal polity, the NSS began as

[22] United Republic of Tanzania, "The Tanzania Intelligence and Security Service Act 1996" (1996), http://www.vertic.org/media/National Legislation/Tanzania/TZ_Intelligence_Security_Services_Act.pdf.
[23] Republic of Kenya, "The National Security Intelligence Service Act, 1998" (2010).
[24] Uganda Legal Information Institute [ULII], "Security Organisations Act 1987" (1987), https://ulii.org/ug/legislation/consolidated-act/305.
[25] Constitute, "Rwanda's Constitution of 2003 with Amendments through 2015" (2015), constituteproject.org.
[26] Constitute, "The 2005 Burundi Constitution" (2005), constituteproject.org.
[27] Constitute, "South Sudan's Constitution of 2011" (2011).
[28] Republic of South Sudan, "National Security Service Act, 2014," Pub. L. No. Act 10 (2014).

a militarized apparatus, operating similarly to its predecessor, the Sudanese National Intelligence and Security Service (NISS).[29]

Intelligence oversight mechanisms in EAC states

The Constitutional foundation of the IC in the EAC states significantly introduced the era of statutory oversight of intelligence in the region. It did so despite disparities in the powers and character of the oversight practices of different national intelligence oversight entities in the region. Table 1 shows the distribution of various national intelligence oversight regimes across the EAC countries as established by their respective constitutions or parliamentary statutes establishing the ICs.

Table 1. Intelligence oversight regime in the EAC

Country	Executive Control	Internal Control	Parliamentary Oversight	Judicial Oversight/Review
Burundi	✓	✓	✓	✓
Kenya	✓	✓	✓	✓
Rwanda	✓	✓	✓	✓
South Sudan	✓	✓	✓	✓
Tanzania	✓	✓	✓	✓
Uganda	✓	✓	✓	✓

An analysis of the constitutional provisions and other national laws establishing the legal foundation of national intelligence services in the six EAC states reveals that various

[29] Brian Adeba, "Oversight Mechanisms, Regime Security, and Intelligence Service Autonomy in South Sudan," *Intelligence and National Security*, 2020, p. 3. https://doi.org/https://doi.org/10.1080/02684527.2020.1756624.

national intelligence service oversight mechanisms are uniformly distributed. They are either explicitly or implicitly stated in their constitutions or parliamentary acts establishing the intelligence services. However, the extent to which various intelligence oversight mechanisms are practiced across EAC states vary from one to the other. There are various reasons for the varied intelligence oversight mechanism in the region. These include political instability in some EAC countries and internal politics.

The analysis of oversight regimes in the EAC states indicates a gradual trend where EAC countries are opening up their national security intelligence services for formal and informal scrutiny by various players including parliament, the courts, the civil society and the media. These trends correspond with global developments of multilayered national security intelligence oversight. These have become a regimented characteristic of security sector accountability in many countries globally. However, it should be remembered that national security intelligence being one of the secretive executive level agencies, the rate of incremental changes and adoption of national security intelligence oversight laws vary across the six EAC member states. Some countries began shaping SSRs towards intelligence oversight in the late 1980s and mid-1990s, while others only began such reforms in the 2000s.

On the basis of national legal regimes spelling out multiple layers of intelligence oversight, EAC states have established various

legal provisions for different layers of national security intelligence oversight. These laws include parliamentary acts which established reformed national security intelligence across the different historical epochs during the evolution of intelligence agencies in the region.

Executive and internal control of national intelligence agencies in EAC states

Executive and internal control of the national intelligence services as an oversight mechanism spreads across all six EAC states. In all of them, all the national security organs are subordinated to the civilian authority making the executive, the ultimate vertical source of political power over the intelligence services. The executive plays a controlling role over the intelligence services across the six EAC countries in ways reflecting some of the general global trends in executive control of national security intelligence. As provided in respective constitutions of all EAC states, the executive generally oversees solely or consultatively, the formulation of national security and intelligence policies, strategies, plans. It also coordinates national security functions and tasks, and appoints the executives of the national security intelligence agencies. However, there are several differences in the extent to which executive control of intelligence agencies is exercised across the region.

In Rwanda, law N° 73/2013 of 11/9/2013 of the NISS makes the President preeminent in national security intelligence control.[30] The President has powers of appointing top executives of the NISS through a Presidential Order, although the constitution also provides for the Senate to approve such executive appointees.[31] In addition, the Presidential Order influences the internal organization of the NISS. The Presidential Order specifically determines the number of NISS directorates and departments, and responsibilities of the top management cadre of the organization.[32] The President through a Presidential Order may also limit the extent of the external audit of NISS through the classification of information held by the agency.[33]

In Tanzania, TISS Act of 1996 gives the President the prerogative of appointing the Director General [DG] of the intelligence agency, but does not explicitly state any requirement for parliamentary approval of the Presidential nominees to the executive positions at the agency.[34] In Uganda, the National Security Organizations Act of 1987 established the two national intelligence

[30] Republic of Rwanda, "Law N° 73/2013 of 11/9/2013 "Determining the Powers, Mission, Organisation and Functioning of the National Intelligence and Security Service," Pub. L. No. n° 73/2013 of 11/9/2013 (2013).

[31] Constitute, Rwanda's Constitution of 2003 with amendments through 2015.

[32] Republic of Rwanda, Law n° 73/2013 of 11/9/2013 determining the powers, mission, organisation and functioning of the national intelligence and security service.

[33] Republic of Rwanda.

[34] United Republic of Tanzania, The Tanzania Intelligence and Security Service Act 1996.

agencies the ISO and ESO whose respective DGs are appointed by the president.[35] The 1987 Act also gives the executive control authority relative to other arms of the government.[36] The law further empowers the President to either partake in day to day running of ISO and ESO or through a delegated minister who answers directly to the President.

In Kenya, South Sudan and Burundi, respective parliamentary Acts establishing national security intelligence services are explicit on parliamentary powers of approving persons nominated by the executive to head the agencies. The majority of Kenyan respondents in interviews, are clear that Kenya has remained steadfast in subjecting Presidential appointments to the post of Director General (DG) of the National Intelligence Service (NIS) to parliamentary vetting and approval.[37]

Across the EAC member states, internal control of the intelligence agencies is a well-established practice. There are however some similarities and differences depending on the extent of powers that the Constitutions or parliamentary statutes establishing the intelligence agencies bestow on several layers of the institutions involved in the oversight.

For example, The DG of TISS is responsible to the minister under whose ministry the agency falls. Subject to the power of the

[35] Uganda Legal Information Institute [ULII], Security Organisations Act 1987.
[36] Uganda Legal Information Institute [ULII].
[37] Republic of Kenya, "The National Intelligence Service Act, 2012" (n.d.).

executive control, the DG has powers of command and control, and giving direction and general superintendence and managerial duties on all matters concerning TISS.[38] The DG also consults with the minister on national intelligence operational policies or any other matter requiring such consultations.[39] On the basis of oversight powers bestowed on the minister in charge of national security in Tanzania, the minister has significant controlling powers on the TISS subject to directions and approval from the President. This arrangement is tricky, and given the general problems of politicization of intelligence when the executive is too close to the agency. There could be a real danger of politicization if the minister in charge of security agencies becomes more of an influencing factor on overall operational decisions and analysis of the agency especially when parliamentary oversight becomes moribund.

In Kenya, both the old NSIS Act 1998, and the succeeding NIS Act 2012 empowered internal and external independence oversight of the agency. The DG of the NIS oversees the overall management and operations of the whole agency and is answerable to the President, the National Security Council [NSC] and the Cabinet Secretary (CS) in charge.[40] The DG also ensures that the agency executes its mandate in compliance with the constitution,

[38] United Republic of Tanzania, The Tanzania Intelligence and Security Service Act 1996.
[39] United Republic of Tanzania.
[40] Republic of Kenya, The National Intelligence Service Act, 2012.

parliamentary acts and any other written law of the country specific to the NIS.[41] The DG also represents the organization at the executive level control body, the National Intelligence Service Council (NISC).[42] Interviewees for this article noted that the service regularly meets the NISC to account for its activities and administration as advised by it. NISC is the executive level body that advises the agency on issues of national intelligence polices, strategies, administration and expenditures.[43] NISC is composed of CSs who are responsible for issues of foreign affairs, Finance, the Attorney General and the NISDG.

The NIS Act 2012 allows the council to co-opt functional committees on the basis expertise and skills it requires at any given moment.[44] In Uganda, the roles of the of ISO and ESO DGs are not explicitly stated in the 1987 Act that established the two agencies.[45] However, the President of the Republic Uganda is empowered by the Act on the advice of NSC to decide on internal regulations of ISO and ESO affecting among other matters, code of conduct for the officers of the two agencies, conditions of service and disciplinary measures.[46] The Ugandan NSC plays a significant role in oversight

[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] Ibid.
[45] Uganda Legal Information Institute [ULII], Security Organisations Act 1987.
[46] Ibid.

and control of ISO and ESO at the executive level and advises the President accordingly.[47]

Burundi also uses its NSC which was established by an act of Parliament in 2008 to monitor its defense and national security organs.[48] All the NSC members in Burundi are presidential appointees whose consultative roles with the presidency cut across all matters of national security and defense policies, strategies and law and order during crisis.[49] The council also oversees the coordination and unity among the Burundi national defense and security organs.[50] Burundi's NSC is composed of seventeen members who are appointed by the President who is the chair of the council.[51] Among the members are two vice-presidents, ministers in charge of National Defense sector, Interior, Justice, Foreign Affairs, Public Security and International Cooperation, two women representatives as well as two bishops.[52]

Internal control of Rwanda's NISS is legally delegated to the Secretary General below whom are the Deputy Secretary General and DGs of the various Directorates of the national intelligence

[47] Ibid.
[48] Ibid.
[49] North-South Institute, "Security Sector Refom Monitor: Burundi" (Ontario, 2010).
[50] Ibid., p. 3.
[51] Ibid.
[52] Ibid.

agency.[53] The NISS executive is in charge of day-to-day management of the affairs, administration and operational matters of the agency. However, the overall supervision role of the agency lies with the Office of the President.[54]

In South Sudan, the NSS is organized as a militarized force under the control of a minister responsible to the President.[55] Like the other countries in the EAC, South Sudan has an NSC that oversees and sets the national defense and security policies, plans and strategies and coordinates all the national defense and security organs.[56] Membership of the South Sudan NSC include the President who is the Chairperson, Vice President, ministers responsible for defense, foreign affairs, justice, finance, interior and the NSS.[57] Other than the NSC, South Sudan also has a Technical Security Committee (TSC) chaired by the minister. The TSC is responsible for coordination of security plans of various security agencies as directed by the NSC, studying security plans developed by various security agencies before submitting them to the NSC for approval and preparation and submission of annual national security reports, performance and administration of the key national security

[53] Republic of Rwanda, Law n° 73/2013 of 11/9/2013 determining the powers, mission, organisation and functioning of the national intelligence and security service.
[54] Ibid.
[55] Republic of South Sudan, National Security Service Act, 2014.
[56] Ibid.
[57] Ibid.

organs.[58] The NSS DGs oversee operational functions and human resource and financial administrations of their divisions.[59] They also oversee the execution of tasks given to their divisions from minister or the NSC.[60]

Parliamentary intelligence oversight in EAC states

Parliamentary involvement in national security intelligence oversight in EAC states varies. It depends on the extent of powers bestowed on parliament, culture of accountability, the culture of the intelligence services, expertise of the parliamentary bodies, classification of certain national security issues, and motivation of individual parliamentarians to oversight the national security sector. Mark Phythian described intelligence culture as those acquired behaviors of the IC which underlie its operational ideas and responses in its operational environment.[61]

Across all the six EAC states, the requirement for parliamentary approval of budgets and scrutiny of their utilization by the national security intelligence agencies is common based on broad constitutional provisions in the respective countries. However, the extent of parliamentary involvement in intelligence

[58] Ibid.
[59] Ibid.
[60] Ibid.
[61] Mark Pythian, "Cultures of National Intelligence," in *Routledge Companion to Intelligence Studies*, ed. Robert Dover, Michael S. Goodman, and Claudia Hillebrand (London: Routledge, 2013), p.34.

oversight partly depends on the national intelligence cultures in the region. Parliaments in the EAC are empowered to form committees or commissions to execute oversight on the executive.

Tanzania's Constitution identifies its parliament as the principal organ to oversee, legislate and advise the government in the discharge of its responsibilities. However, Tanzania's President also has legislative powers and is part of the country's Parliament.[62] Practically, the enactment of legislative proposals in the country is subject to the involvement and consent of the President as required by article 62(3) of the Constitution of Tanzania. However, parliamentary powers in Tanzania do not provide for the legislative approval of persons appointed by the President to different state security organs, departments or agencies. This effectively means that the presidency may exclusively determine persons that occupy executive positions in key national defense and security organs including TISS at any given moment without legislative approval. The TISS Act of 1996 also does not provide for parliamentary involvement in the selection and appointment process of the executives of TISS or even scrutiny of the national intelligence agency.[63]

In South Sudan, the Constitution under Article 55(1) empowers the bicameral national legislature to oversee the

[62] United Republic of Tanzania, The Tanzania Intelligence and Security Service Act 1996.
[63] Ibid.

executive and all the government ministries, departments and agencies (MDAs). It also empowers the national legislative assembly to approve plans, policies and programmes of the national government, and all Presidential appointees.[64] The minister in charge of NSS is also required to submit annual NSS report on its performance to the national legislature.[65]

In Uganda, the constitution 1995 under article 79 provides for powers of law making to parliament on matters of development, peace, order, good governance, and protection of democratic governance.[66] In addition, the Ugandan parliament has powers to oversee the executive, and may form parliamentary committees to improve its efficiency.[67] While the Ugandan constitution under article 218 provides for parliamentary powers to enact laws determining the establishment of intelligence services in the country, it is not explicit on subsequent parliamentary role(s) in the oversight of such agencies.

In Rwanda, law N° 73/2013 of 2013 which established and determined the organization, missions and powers of the NISS does not specify any oversight role for the country's bicameral parliament

[64] Constitute, South Sudan's Constitution of 2011.
[65] Republic of South Sudan, National Security Service Act, 2014.
[66] Republic of Uganda, "The Constitution of the Republic of Uganda" (1995), https://washington.mofa.go.ug/data-smenu-71-The-Constitution-of-Uganda.html.
[67] Inter-Parliamentary Union and United Nations Development Programme, "Parliamentary Oversight: Parliament's Power to Hold Government to Account," 2017., p. 97.

over the national intelligence agency.[68] However, organic law N°06/2006 establishing rules of procedure for the Chamber of Deputies of Rwanda establish oversight roles for the chamber over the executive. It empowers the Chamber of Deputies to form various oversight committees.[69] The chamber's Committee on Security and Territorial Integrity has open-ended oversight functions on the organization of intelligence services, immigration and emigration, the military and the police.[70] On the other hand, the country's senate has powers of voting on national defense and security laws.[71]

In Burundi, the bicameral parliament is empowered to oversight general matters of governance and public administration. Article 187 of the country's constitution provides the Senate with powers to approve presidential appointments to executives of the Corps of National Defense and Security.[72] To this end, the senate has powers to approve persons nominated to executive positions in key organs of the national defense and intelligence. The law further allows Burundi's parliament to form specialized commissions to

[68] Republic of Rwanda, Law n° 73/2013 of 11/9/2013 determining the powers, mission, organisation and functioning of the national intelligence and security service.
[69] Republic of Rwanda, "Organic Law N°06/2006 of 15/02/2006 Establishing Internal Rules of Procedure of the Chamber of Deputies in the Parliament," Pub. L. No. N°06/2006 OF 15/02/2006 (2006).
[70] Ibid.
[71] Constitute, Rwanda's Constitution of 2003 with amendments through 2015.
[72] Constitute, The 2005 Burundi Constitution.

oversight specific issues on government action.[73] Article 242 of the constitution further empowers parliament to have authority of control over the maintenance of national security and defense.[74] The constitution specifically points out the parliamentary commission in charge of overseeing the Corps of National Defense and Security.[75] The country has established the Defence and Security Commission to oversee the key national defense and security organs.[76]

Lastly, Kenya's Constitution 2010 provides for parliamentary powers to oversight the national security sector, one of which is the NIS. Under Article 239 (6), the Constitution (2010) provides that parliament has powers to determine the establishment, functions and administration of national security organs.[77] Article 132(2) of the constitution further empowers parliament to approve presidential nominees to executive positions of the NIS. Under the principles of Kenya's national security in article 238, the supreme law empowers parliament to have diverse oversight functions on all the organs of national security with respect to observance of the rule of law, respect for democracy, human rights and fundamental freedoms, and respect for Kenya's diverse cultures and communities, and reflecting the population diversity in

[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Center for International Governance Innovation, "Security Sector Reform Monitor" (Ontario, Burundi, 2010), p. 6.
[77] Kenya Law, "The Constitution of Kenya," 2020, http://kenyalaw.org/kl/index.php?id=398.

recruitment into the agency.[78] NIS Act 2012 gives parliament power to form specialized or any other relevant committees for oversight of the NIS.[79]

Despite the existence of the law backing legislative oversight over national security sector in the EAC states, the actual practice of parliamentary oversight over the national intelligence services reveals fundamental incongruities in the various states. One of the reasons for this is that in the existing political systems that could fall anywhere between autocratic and liberal societies, the likelihood of state inclination towards either more or less security sector oversight depends on real and perceived threats domestically.[80] Generally, national security intelligence oversight bestrides among other matters, national security policies, personnel, general internal administration, weapon and equipment procurement, budgets and security operations.[81] The parliaments in EAC states operate both inside and outside the secrecy loop of the national security landscape. Therefore, matters they oversight about intelligence are generally limited to budget, top personnel

[78] Ibid.

[79] Republic of Kenya, The National Intelligence Service Act, 2012.

[80] Adeba, "Oversight Mechanisms, Regime Security, and Intelligence Service Autonomy in South Sudan.", p. 3.

[81] Hans Born, "Learning from Best Practices of Parliamentary Oversight of the Security Sector," in *Overight and Guidance: The Relevance of Parliamentary Oversight for the Security Sector and Its Reform: A Collection of Articles on Foundational Apsects of Parliamentary Oversight of the Security Sector*, ed. Hans Born, Philipp H. Fluri, and Simon Lunn (Brussels: DCAF, 2003), 38–52., p. 39.

recruitment and scrutiny of annual reports by the intelligence agencies in the respective states.

For the majority of research respondents from Kenya, the operational domain of the NIS is largely controlled internally because of the fear of any potential leaks of intelligence. Furthermore, the respondents raised the issue of operational intelligence oversight still being a grey area which requires some background experience and skills by legislators to oversight adequately. This sentiment reflects the assertion that the effectiveness of parliamentary intelligence oversight depends on the level of expertise and experience of committees allocated the oversight roles.[82] Further, the composition of the national security secrecy loop is restricted to top government executives and the national security organs in all EAC states. There is a widely accepted consensus that potential compromise of national security could be heightened if intelligence is leaked by parliamentarians that become privy to it, creating a hurdle for parliamentary intelligence oversight.[83] EAC states are not an exception to these notions in regard to their parliamentary intelligence oversight. Political partisanship in parliamentary oversight of the national intelligence services is well documented in the literature especially in the western democracies which have

[82] Hans Born and Gabriel Geisler Mesevage, "Introducing Intelligence Oversight," in *Overseeing Intelligence Services: A Toolkit*, ed. Hans Born and Aidan Wills (Geneva: DCAF, Geneva, 2012), 1–19., p. 11.

[83] Marina Caparini, "Controlling and Overseeing Intelligence Services in Democratic States," in *Democratic Control of Intelliegnce Services: Containing Rogue Elephants*, ed. Hans Born and Marina Caparini (Burlington: Ashgate, 2007)., p. 13.

practiced parliamentary oversight of the intelligence agencies for a long time.

Currently, EAC national parliaments do not have specialized committees but only those with broad mandates on the general issues of national security and defense. Some of the general legislative oversight committees across the region include: Security and Territorial Integrity Committee in Rwanda, Defence and Security Commission in Burundi, Foreign Affairs, Defense and Security Committee in Tanzania, Defense and Internal Affairs in Uganda, Security, Defence and Public Order in South Sudan and Kenya's Defense and Foreign Relations.

Such Parliamentary committees with a broad oversight mandate focus on general issues of national security. Their effectiveness in such roles depend on their level of access to classified information. Despite the popularity of these general committees in the region, the more structured and narrowly focused parliamentary committees tend to be more effective as they develop expertise and a deeper understanding of national security matters.[84] There are organizational and functional challenges to parliamentary intelligence oversight within the EAC owing to party politics in parliaments across the region. While all six EAC states practice multiparty politics, the composition of their parliamentary national security and defense oversight committees has a bearing on the

[84] Born and Mesevage, "Introducing Intelligence Oversight.", p. 11.

actual outcomes of intelligence oversight. The organizational characteristic of parliamentary committees includes the party affiliation of the chairpersons, opposition party representation in the committees, and the numbers of members whose parties form the government in power. A large body of literature has shown that each of these organizational characteristics affect the output of parliamentary oversight.[85]

For instance, in Uganda, between 2018 and 2019, the Defence and Internal Affairs committee had 22 members out of which 14 were drawn from the ruling party. The ruling Ugandan National Resistance Movement has repeatedly held positions of chairperson and vice chairperson in the committees.[86] Currently, Tanzania's Defense and Security Committee has 31 members out of which 26 are drawn from the ruling party, *Chama Cha Mapinduzi* (CCM).[87] In Burundi, Defence and Security Commission has also consistently been dominated by the ruling party.[88]

In Kenya, the Parliamentary Defence and Foreign Relations committee has a total of 19 members, with the ruling party having

[85] Stuart Farson, "Establishing Effective Intelligence Oversight Systems," in *Overseeing Intelligence Services: A Toolkit*, ed. Hans Born and Aisan Willis (Geneva: DCAF, Geneva, 2012), 25–42., pp. 27-28.
[86] Republic of Uganda, "Parliament of the Republic of Uganda," accessed April 9, 2020, https://www.parliament.go.ug/page/committees-parliament.
[87] United Republic of Tanzania, "Parliament of Tanzania," 2020, https://www.bunge.go.tz/polis/committees/35.
[88] Center for International Governance Innovation, "Security Sector Reform Monitor.", p. 6.

ten slots while the other parties and independent parliamentarians share 9 slots.[89] The composition of Kenya's Defence and Foreign Relations committee is relatively balanced to provide it with a robust ground for scrutiny of the national security sector because no single party has an explicit controlling majority.

In South Sudan, the parliament does not enjoy full oversight mandate over the executive for lack of the authority of a fully elected legislature. Some members of parliament in South Sudan were appointed by the political parties directly in 2011 following the country's independence and again in 2016. This derailed the oversight role of the parliament over the executive, especially issues of national security.[90] Furthermore, the President of South Sudan has powers to prorogue parliament making the legislative function susceptible to executive influence.[91]

The proportion of political parties' composition of the parliamentary oversight provides a double-edged incentive for either a thorough scrutiny of the executive or a tepid supervision. Ruling parties that represent the majority in oversight committees may have little incentive or low motivation of its members to oversight the executive because of fear of rebuttal from top political party organs or strict adherence to political party ideologies. In

[89] Republic of Kenya, "The National Assembly of the Republic of Kenya," n.d.
[90] Adeba, "Oversight Mechanisms, Regime Security, and Intelligence Service Autonomy in South Sudan.", p. 3.
[91] Ibid., p. 4.

Burundi for instance, the Defence and Security Commission has suffered an endemic problem of low motivation among some of its members that are drawn from the ruling party, the National Council for the Defense of Democracy-Forces for the Defense of Democracy (CNDD-FDD) and even the opposition parties to oversight the national security sector.[92]

The intricate connection between political party politics and key national security organs in some of the EAC states may also hamper or facilitate effective parliamentary oversight of the security sector. In Burundi, Uganda and South Sudan there is a significant level of national security organs' close associations with the respective ruling party's politics. The Sudan People's Liberation Army (SPLA) in South Sudan has close connections with the national uniformed or militarized forces and the NSS.[93] Over the years, SPLA has maintained a close relationship with the ruling political party, the Sudan People's Liberation Movement (SPLM), and some of the military officers engage in the country's civil matters.[94] In Uganda, the national security establishment since the return of multiparty politics from the mid-2000s has inclined towards the ruling party,

[92] Center for International Governance Innovation, "Security Sector Reform Monitor.", p. 9.
[93] Kuol Deim Kuol, "Report Part Title: Confronting the Challenges of South Sudan's Security Sector: A Practitioner's Perspective," 2018, p. 41.
[94] Ibid., p. 41.

National Resistance Movement (NRM).[95] In addition, Uganda's People Defence Force (UPDF) has 10 reserved parliamentary seats.[96] UPDF also has a slot in the parliamentary Defence and Internal Affairs committee.[97] In Burundi, post-conflict state building has been characterized by a nexus of entanglements between the ruling party, CNDD-FDD's ex-combatants and rebel generals who occupy strategic positions in state institutions including in the national defense and security organs, and hold a sway in the ruling political party structures both at the national level and at the grassroots.[98]

The relationship between the national security organs and ruling parties which have controlling majorities in their parliaments have divergent impacts on parliamentary oversight of the security organs. For instance, in Burundi, some of the CNDD-FDD members of the Defence and Security Commission have reportedly refrained from security sector oversight for fear causing cracks in a party which they share with some of their counterparts in key positions in the national defense and security organs.[99] In political systems characterized by a disciplined partisan majority in parliament,

[95] Sabiti Makara, "Deepening Democracy through Multipartyism: The Bumpy Road to Uganda's 2011 Elections," *African Spectrum* 45, no. 2 (2020), p. 86.
[96] Republic of Uganda, The Constitution of the Republic of Uganda.
[97] Republic of Uganda, "Parliament of the Republic of Uganda."
[98] Tomas Van Acker, "Understanding Burundi's Predicament" (Brussels, Belgium, 2015), p. 7.
[99] Center for International Governance Innovation, "Security Sector Reform Monitor.", pp. 7-9.

parliamentary oversight role is likely to become a rubber stamping tool more than a thorough scrutinizer of the executive.[100]

All parliaments in EAC states through the relevant parliamentary committees perform some budgetary scrutiny and approval for the national intelligence agencies or the ministries under which such institutions fall. However, the constitutions and other national laws establishing such bodies in the EAC do not specify the extent to which parliamentary scrutiny of national intelligence services budgets is undertaken. This reflects the general trends of parliamentary scrutiny and approval of budgets to national security organs globally where secrecy is indispensable. In respect to approval of the executive appointees to the national intelligences service, the laws of Kenya, South Sudan and Burundi are explicit. Table 2 below summaries some of the pertinent parliamentary intelligence oversight issues in the EAC states.

[100] Vibeke Wang, "The Accountability Function of Parliament in New Democracies: Tanzanian Perspectives" (Bergen, 2005), p. 11.

Table 2. Statutory parliamentary intelligence oversight mandates in EAC

Issues of Parliamentary Intelligence oversight in EAC					
Kenya	**Tanzania**	**Uganda**	**Rwanda**	**Burundi**	**South Sudan**
- Internal administration of NIS including recruitment of staff and budget -Approval of Presidential DG nominees -Oversight of NIS functions in respect to the rule of law, human rights and fundamental freedoms -Budgetary scrutiny and approval	- Scrutinizes and approves budgets of the Ministry of Defence, National Service and Internal Affairs	-Enactment of laws establishing state intelligence services -Annual budgetary approval	-Senate votes on national defense and security laws -Chamber of Deputies oversee the organization of intelligence, immigration, emigration, the military and security laws	-Approving presidential appointees to the executive positions in the Corp of national defense and security -Oversight of governance and public administration -Scrutiny of specific issues on government action from time to time	- Approval of governmental plans, policies and programmes and appointees to state institutions -Scrutiny of annual report of NSS

Judicial intelligence oversight in EAC states

There are no specialized courts that handle issues of national security intelligence oversight across all the EAC states. However, all the six states have constitutionally mandated all their national defense and security organs to comply with the provisions of their constitutions and other existing laws, and respect the rule of law, basic human rights and fundamental freedoms in addition to respecting societal diversities and democracy. These provisions are

the principal statutory foundations for judicial oversight of national intelligence services across the EAC states.

The jurisdiction of the courts in national security intelligence oversight in the EAC include issuing special warrants, adjudicating cases involving the agencies on matters of administration, constitution or civil cases. Kenya and South Sudan have in their constitutions provided for the creation of specialized intelligence oversight boards whose membership is partly constituted by judicial officers.

In Rwanda, a public prosecutor who is authorized by the minister for justice is legally allowed to issue a warrant for communication interception to national defense and security organs upon request.[101] In Tanzania, legal provisions require communications service providers to comply with the law enforcement agencies but do not specify whether or not judicial warrants are preconditions for such compliance.[102] In Uganda, a designated judge can issue a warrant for communication interception to the DG of ESO and ISO or to any other chief of the national security organs or their nominees.[103] In Burundi, there are a raft of laws regulating public communication. However, in 2018 the government of Burundi established public law No. 1/09 of May 11, 2018 which permitted the national security agencies to intercept communication subject to a warrant issued by a public prosecutor.[104]

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[101] Republic of Rwanda, "N° 60/2013 of 22/08/2013 Law Regulating the Interception of Communications," Pub. L. No. N° 60/2013 of 22/08/2013 (2010).

[102] Republic of Tanzania, "The Electronic and Postal Communications (Online) Regulations 2018," Pub. L. No. Government Notice No. 33 (2018).

[103] Republic of Uganda, "Regulation of Interception of Communication Act, 2010," Pub. L. No. Supplement no. 7 (2010).

[104] Collaboration on International ICT Policy for East and Southern Africa (CIPESA), "A New Interception Law and Blocked Websites: The Deteriorating State of Internet Freedom in Burundi," 2018.

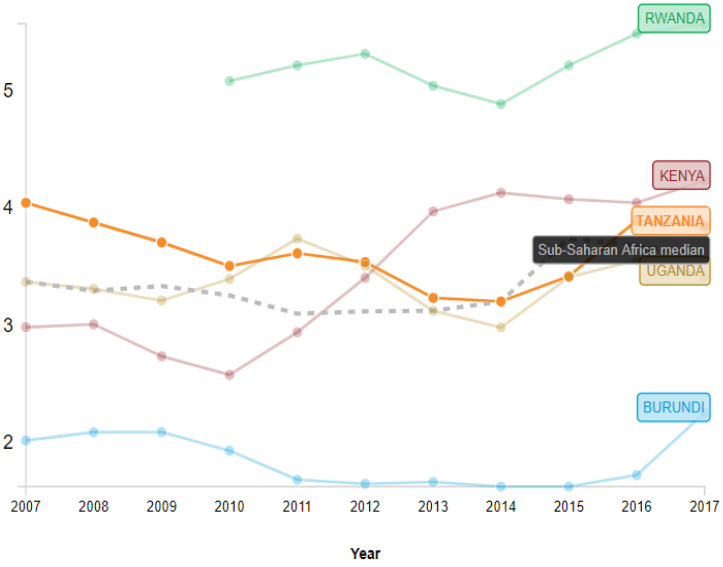
Unlike all the other countries in EAC, South Sudan NSS has police powers of arrest so long as it has reasonable belief that a subject is about to commit a crime, or has committed or committing such acts.[105] However, NSS is legally required to seek for a warrant from a high court judge when it reasonably believes that such warrant would facilitate its work.[106] Similarly, in Kenya, NIS Act 2012 legally requires the DG to apply for a warrant from a judge of the high court if there is a reasonable belief that such would facilitate the work of the agency.[107]

All the six EAC countries have had different historical trajectories, and are at different stages in inculcating the culture of accountability of the government bureaucracy. There are variances in the actual powers and the constitutionally spelled judicial oversight powers over the national intelligence services in the EAC. Executive influence on matters of national security overly affects judicial oversight of the national security agencies. In the World Bank's judicial independence ranking on a scale of 1 to 7 with 1 representing heavy influence and 7 entirely independent, the five EAC states enjoy a fairly ranked independence of the judiciary with the exception of South Sudan.[108] With fairly good scores on judicial independence, prospects of judicial oversight of national security organs in the region stands a better chances of impartiality over time. The lowest ranked EAC country is Burundi whose highest score between 2007 and 2017 was 2.26 in 2017.[109] If Burundi's low ranking on judicial independence is anything to go by, judicial oversight of the national security in the country is likely to be relatively more constrained by executive influence compared to other EAC states.

[105] Republic of South Sudan, National Security Service Act, 2014.
[106] Republic of South Sudan.
[107] Republic of Kenya, The National Intelligence Service Act, 2012.
[108] World Bank, "Judicial Independence," n.d.
[109] World Bank.

Moreover, in a country like South Sudan, the executive hold sway over the judiciary and parliament and therefore, the two oversight bodies cannot push the executive 'too much' for fear of dismissal.[110]

Figure 1:Judicial independence perception index of the EAC States between 2007 and 2017 [Adapted from the World Bank; https://tcdata360.worldbank.org/]



[110] Øystein H. Rolandsen, "Another Civil War in South Sudan: The Failure of Guerrilla Government?," *Journal of Eastern African Studies* 9, no. 1 (2015), p. 166.

Conclusions

Based on the analysis of various national laws and policy documents on intelligence governance, executive control, parliamentary and judicial oversight of intelligence is statutorily established in all the EAC states. However, provisions of such oversight mechanisms have marked differences with subtle or explicit differences across different states. National political dynamics and the culture of secrecy of the intelligence determine the extent to which constitutionally mandated intelligence oversight bodies approach and engage in the actual oversight processes. It is explicitly evident that constitutional guarantee for intelligence oversight across the EAC states is a work in progress since some countries are in their formative stages of SSRs especially the states which are emerging from conflicts.

The trend towards opening up national intelligence services for scrutiny in the region follows a distinct pattern reflecting shifts from colonization, Cold War, political liberalization of the early 1990s, the 9/11 terrorist attack on the USA and the subsequent war on terror, and the post conflict national SSRs. However, despite various constitutional provisions for intelligence oversight across the six EAC states, all are implementing the legal provisions at different paces. Kenya and Tanzania established their formative statutory intelligence oversight from the mid-1990s onwards. In Rwanda, Burundi, Uganda and South Sudan, part of national security oversight reforms is aimed at restructuring the intelligence agencies.

Lastly, statutorily mandated or relevant parliamentary oversight committees or commissions in the EAC states scrutinize general or specific aspects of intelligence services work, some of

which include approval or presidential appointees to executive positions in the intelligence services, budgetary oversight, policy legislation and approval of intelligence services activities. In actual practice, parliamentary intelligence oversight across EAC states tend to be largely focused on budgetary approval.

One of the overarching reasons for lesser parliamentary involvement on issues of intelligence policies, strategies and operations is the endemic fear of national security being compromised in case parliamentarians who get privileged information decide to leak it. Parliamentary committees in charge of intelligence are also broad based as they focus on the general national security and defense issues. Thus, many of them have not cultivated sufficient expertise on specific matters of national security in relation to national security intelligence.

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Intelligence and Kenya's War against *Al-Shabaab*

Stephen Gachoki Gichira

Abstract

The terrorism threat from *Al-Shabaab* remains a top national security issue in Kenya. National security issues are about existence of a country in its external environment. The concerns with the external environment of a country loops in Diplomacy, while the concerns of national security bring in Intelligence. By definition, Counter Violent Extremism (CVE) strategies are almost an element of diplomacy. Within this framework, this paper analyses strategic perspectives on the nexus of Intelligence and the war against *Al-Shabaab*. It reaches deeper insights into the entry point and contribution of Intelligence in these efforts, and whether CVE strategies in Kenya are conceived as an element of diplomacy. It concludes that Intelligence can make CVE strategies a more effective tool to deliver national security.

Introduction

For a long time, ever since Intelligence became a recognized activity, the world was very clear. The enemy and how it operated was known, and its rules were clear. The Intelligence Community (IC) was built primarily to

target "closed" societies of the Cold War world.[1] Both Intelligence and Foreign Policy operated in that kind of environment. However, with the end of the Cold War the operational environment changed drastically with new threats, actors, and changed ways of doing business. These changes were further accelerated by the events of September 11, 2001 (9/11) in USA. 9/11 changed the national security priorities of states and how they are organized.

Arising from this, people were unable to estimate threats or the limits of what the state needed to know. Governance of the state became more fluid and complex. States were prompted to reorganize their national security architecture to deal with the new security environment. Previously, Intelligence was a preserve of the government, but the new order challenged this position as non-state actors competed with the state for information. In Foreign Policy Analysis, new actors like non-state actors had to be incorporated.

In this changed security environment, terrorism replaced the Cold War as the overriding basis to view the world. The global War on Terror (WoT) led by United States, emerged as the dominant post-cold war

[1] Boren, David L. "The Intelligence Community: How Crucial?" *Foreign Affairs* 71, no. 3 (1992): 52-62.

framework for the international and national security policy of states. However, the pre-Cold War mindset of "us" versus "them" did not change.[2] The mindset did not also change the rules through which diplomacy operates. For instance, in diplomatic practice, states still do not accept to negotiate with non-state actors like terrorists.[3] Intelligence was encased in that framework.

The terrorism threat from *Al-Shabaab* is the most immediate and urgent threat to national security in Kenya.[4] It necessitates an urgent and strategic response. CVE strategies were conceived as that strategic response to terrorism threats in Kenya.[5] Questions have arisen on the nexus of intelligence and the war against *Al-Shabaab.* The issue arising is whether this war is anchored on a strategic national security policy, and the entry point of intelligence in these efforts. There are also debates about the standing of CVE strategies in Kenya, whether they are conceived an element of diplomacy, and their

[2] See transcript of President Bush's Address to a Joint Session of Congress on Thursday Night, September 20, 2001, *CNN*, 21 September 2001.
[3] See Harmonie, "We Don't Negotiate with Terrorists!" pp.407–426.
[4] Mwagiru, Makumi. "The War on Terror, Somalia and AMISOM Revisited" in Makumi Mwagiru, *The Three Anthems and Other Essays* (Nairobi: Three Legs Consortium) 2018. Chap 25.
[5] National Strategy to Counter Violent Extremism (Kenya) 2016.

implications. This article will suggest deeper insights into these perspectives.

Framework for analysis

A proper construction of a framework of analysis is core to examining the relationship between Intelligence and war against *Al-Shabaab* in Kenya. Only once this is done can one can enter debate, make any progress, or expect or expect a sharing of views. Central to this article are a number of related issues. First, is the relationship between policy and strategy, and the attendant processes that inform their philosophy and content. National security policy is the source of national security strategies.[6] Strategies are designed to implement policy.[7] With this appreciation, CVE strategies are founded on national security policy. This policy reflects on both external and internal environments in which the state strives to survive.[8]

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[6] Makumi Mwagiru, *Policy and Strategy in National Security: Contexts, Perspectives and Challenges in East Africa* (Nairobi: Three Legs Consortium Monographs on National Security.1. 2019).

[7] Mark Phillips. "Policy-Making in Defence and Security", *The RUSI Journal*, 157:1, (2012) 28-35.

[8] Stolberg, Alan G., US *Army War College Guide to National Security Issues. Report,* Strategic Studies Institute*,* US Army War College, 2012. 41-62.

Secondly, survival of the state in its operating environment necessitates Intelligence. Within that framework, the role of intelligence is not to make policy, but to contribute to policy. The role of Intelligence is not only an emerging policy agenda and sphere of security interventions, but also a vast and complex research agenda. The other issue is that CVE strategies are conceptually almost an element of diplomacy. They have been suggested as a remedy to terrorism which is threatening the survival of states. CVE strategies need to mediate terrorism conflict by importing a different dimension to the use of force. They are conceptualized as the domain of soft approaches to influence others to obtain desired outcomes.[9]

CVE strategies focus on addressing the root causes that drive violent extremism. They seek to win the hearts and minds of targeted individuals. To do this, CVE strategies need a better understanding of the 'other' actor. The issue is how Intelligence can enhance understanding of the other actor to CVE strategies to deliver national security.

[9] Nye Jr., "Public Diplomacy and Soft Power", pp.94-109.

Emerging issues

In the wake of the Iraq Weapons of Mass Destruction (WMD) controversy, there have been debates about the relationship between intelligence and national security policy.[10] Other developments prompting the debate were 9/11 and the Arab spring that begun in late 2010.[11] The debates point to the centrality of intelligence in national security policy discourses, especially in the events that have defined the new global security environment. However, these debates are not new. In 1960s, social science scholars analyzed intelligence failures in national security events and policies.[12]

During the Cold War, state security organs like the military, intelligence and the larger military-industrial complex in national security were geared towards a warlike posture.[13] With the collapse of USSR, states

[10] Hans Born & Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies* (Oslo, Parliament of Norway, 2005).

[11] Ehud Eiran, "The Three Tensions of Investigating Intelligence Failures" *Intelligence and National Security,* (2015).

[12] See Roberta Wohlstetter, *Pearl Harbor: Warning and Decision* (Stanford, CA: Stanford University Press 1962); and Harvey A. DeWeered, *Strategic Surprise in the Korean War* (Santa Monica, CA: Rand Corporation 1962).

[13] Wesley, Michael. Interpreting the Cold War, in Ball Desmond and Lee Sheryn (eds), *Power and International Relations: Essays in Honour of Coral Bell*, ANU Press, 2014, pp. 79-92.

abandoned this cold war philosophy and theme as the strategic basis for their national security.[14] 9/11 provided an opportunity for re-directing the national security industry. The WoT filled that strategic gap. Many states calibrated their national security policies and strategies on the basis of the WoT framework. There was more power diffusion within and among states in the face of new threats.[15] It was evident that the state infrastructure become more complex. These issues created challenges for the national security architecture.

The initial attribute of WoT was counter-terrorism (CT), characterized by the use of force. This was widely criticized because of its inability to address underlying issues of terrorism. Adjustments were made to incorporate CVE and Preventing Violent Extremism (PVE). The latter strategies use soft power approaches to co-opt people rather than coerce them.[16] In this way, the national security policies of states are shaped by the WoT.

Terrorism is a war of ideas and can only be fought and won by providing better ideas. Wars have

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[14] Eisenberg, Carolyn. "The New Cold War." *Diplomatic History* 29, no. 3 (2005): 423-27.

[15] Keohane, Robert O., and Joseph S. Nye. *Transnational Relations and World Politics*. (Cambridge, Mass: Harvard University Press.1972)

[16] Nye Jr. op.cit pp. 94-109.

been fought depending heavily on various forms of intelligence throughout the course of history. Intelligence is playing a critical role in both offensive and defensive operations in the WoT.[17] This underscores that Intelligence is at the center of concerns in the national security of the state.

The bulk of the literature on intelligence and the WoT is cluttered with legalistic, tactical and operational issues. There is an apparent gap in the analysis of the nexus of intelligence and national security policy at the strategic level. This emphasis on the tradecraft of intelligence in the WoT and statecraft has serious implications on the way the war is conducted.

The WoT is now in its 20th year, with no end in sight. This raises the question whether it is feasible for states to wage wars without end.[18] The implication of this is that with a war without a timeframe, limiting terrain or geographical locus, it is not possible to cordon off its parameters. As currently framed and conceptualized, the WoT is not anchored on a national security policy. It is at

[17] Hughbank, Richard J. & Githens, Don. "Intelligence and Its Role in Protecting Against Terrorism." *Journal of Strategic Security* 3, no. 1 (2010): 31-38.
[18] Hiro, D. *War without End: The Rise of Islamist Terrorism and the Global Response.* London and New York: Routledge. 2002.

this strategic level of policymaking where the primary entry point of the contribution of Intelligence lies. Without strategic national security policies by states, Intelligence will remain caged in operational realms. The issue is whether this could explain the obsession with tradecraft of intelligence in the WoT. If this war is fought like a battle, it will have serious implications on national security.

Secondly, the literature on Intelligence and the WoT is characterized by the domination of western narratives. There is a dearth of information on local, non-western contexts. This article provokes debates along these lines by exploring how Intelligence can contribute to understanding Kenya's operating environment and discourses on national security policy and strategies. Such intellectualizing is crucial in expanding spheres of the search for lasting solutions. Developing strategic national security policies begins with a commitment to theory to offer insight, and the ability to discern and conceive the big picture.

WoT, foreign and national security policy

The global WoT was precipitated by 9/11. The USA mobilized and brought together a 'coalition of the willing' that collectively invented a counter terrorism strategy. It

has been argued that following end of Cold War, there lacked a theme and a subject for states like the USA to base their international and national security policies on. The period between end of the Cold War and 9/11 marked strategic pause in the international security framework. States found it daunting because they no longer had the Cold War philosophy to use as a strategic basis. Yet, the military-industrial complex that developed since the end of 2nd world war and intelligization were in limbo. They were designed for the Cold War security framework. When the 9/11 tragedy struck, USA President George W. Bush declared and framed it as an act of war.[19] This 'war' provided a convenient opportunity to fill the strategic gap caused by the end of the Cold War.

The USA declared and began the global WoT, characterized by the use of force. This approach used military power and strategies like coercive diplomacy and sanctions.[20] It rallied states to join this war; it stated that "you are with us or against us".[21] The issue arising is whether the WoT can really replace the Cold War as the

[19] President Bush's Address, op cit.
[20] Coronado, J. P. "Between Soft Power and a Hard Place: Dilemmas of the Bush Doctrine for Inter-American Relations" *Journal of Developing Societies, 21*(3-4), (2005): pp.321-335.
[21] See President Bush's Address, op cit.

dominating framework for international and national security.

The cold war security framework worked because some states had nuclear capacity which could destroy the world.[22] In replacing Cold War framework with the WoT, there were clearly missing things like the existential threat to the whole world. President Bush tried to justify that existential threat to the whole world. He argued that Iraq held weapons of mass destruction.[23] It had none.[24] This made it difficult to return to the Cold War framework. It effectively killed the WoT as a strategic basis for international security.

The WoT refers to counter terrorism campaigns launched in response to 9/11. The consequence of the attacks was that the USA laid out an extensive set of policies aimed at pursuing and defeating *Al-Qaeda.* It focused on coercive measures like military action, expanding the powers of the police and intelligence services. In this regard, such policies were either outlined in public official speeches or policy documents, while

[22] Mullen, Robert K. "Mass Destruction and Terrorism." *Journal of International Affairs* 32, no. 1(1978): 63-89.
[23] Krepon, Michael. "Weapons of Mass Destruction: Reemerging Threat?" *Great Decisions*, 1999: 43-54.
[24] Higgins, Ronald. "Weapons of Mass Destruction: Rhetoric and Realities." *Connections* 2, no. 1(2003): 59-68.

others remained confidential. Immediately after 9/11, President Bush remarked: "Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists."[25] This was similar to the rationalizing framework of the cold war: that states were either on one side of the war or on the other.

In addition, USA foreign policy required compliance by other states in the WoT. It also upscaled denial that the effort did not target majority-Muslim states. In this regard, it demanded reporting on terrorist activities and responses from some countries. Initially, it argued that the primary objective of the global WoT was capturing members of *Al-Qaeda* thus disrupting potential terror plans.[26] It delineated the task to entail ousting of "hostile regimes" in Afghanistan and Iraq. In 2003, a further step was taken by unveiling the USA National Strategy for Combating Terrorism. This became the strategic tool to steer the global WoT. It aimed at identifying and defusing threats overseas. Underlying this strategy was a broad intention to deter terrorists from acquiring or manufacturing WMD.

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[25] President Bush's Address, op cit.

[26] Raphael Perl. *Combating Terrorism: The Challenge of Measuring Effectiveness*. (Washington, DC: Congressional Research Service, 2005).

The global WoT took a multidimensional approach through militaristic invasions and covert actions in Afghanistan, Iraq and Yemen. It was reinforced by military assistance to cooperative regimes and a radical increase in intelligence spending. Other aspects of the operationalization of WoT policies included capturing and detaining of terrorist suspects at Guantanamo Bay. The USA further enhanced liaison and cooperation with foreign intelligence agencies, tracking and interception of terrorist financing. It also established and maintained extensive public diplomacy campaigns to suppress criticism stemming from counter terrorism activities, particularly in the Middle East.

Domestically, the WoT precipitated legal and institutional reforms geared at the anchoring aggressive CT policies. This included the enactment of the Patriot Act, and establishment of Department of Homeland Security. These enhanced the expansion of covert operations and law enforcement. Other measures included detaining of terror suspects, capacity building of emergency-response capabilities, enhanced protective security at airports, borders and other public amenities. The 9/11 attack on the USA mainland become a global issue because it struck at a superpower, thus exemplifying

that no one is safe. It underscores the internationalization and globalization aspects of the problem at hand. Some of the responses by states are informed by these "global" approaches to the problem. Despite these efforts, the world continued to witness the evolution of terrorism. Groups like *Al-Qaeda, Islamic State in Syria* and *Levant* continue to hold ground.[27]

Intelligence and the war on terror

Having situated and grounded the WoT as a foreign/national security policy concern for states, a case can be made on nexus of intelligence and the WoT. The relationship between Intelligence and the war against terrorism is similar to the relationship of intelligence to policy making. States formulate policies and strategies to protect and promote their national security interests. The national security interests being protected could be strategic, military, economic or societal interests. The state then mobilizes resources within its disposal to protect or promote these interests. Intelligence is one of the resources at the disposal of the state.

There have been debates about the entry point and contribution of Intelligence in this policy making

[27] Hoffman, "The Changing Face of Al-Qaeda and the Global War on Terrorism", pp.549-560.

process. A good deal of inconsistent literature has been generated in these efforts. The literature offers many versions, which are preoccupied with tactical and operations aspects, but this only serves to protract the debate.[28] Concentrating on the tradecraft of intelligence will wash away the linkage of Intelligence with policymaking. Countries that have acknowledged this linkage have made better policies, while those that have not are struggling. This article focuses on the entry point and contribution of Intelligence at the strategic level.

Sun Tzu argues for the primacy of Intelligence as a force multiplier in preparation before outbreak of war, a campaign or battle.[29] An appreciation of a country's neighbourhood is a necessary in the formulation of a country's foreign and national security policies. This assessment provides anchorage for a country's grand strategy.[30] An intelligence assessment reflects on a country's threats and windows of opportunity that arise from time to time in its operating environment. Such

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[28] Boren, David L. "The Intelligence Community: How Crucial?" op.cit.

[29] Sun Tzu. n.d. *Art of War: the strategy of Sun Tzu*. [S.l.]: Athenaeum classics.

[30] Njoroge, Humphrey & Makumi Mwagiru (Eds*). Grand Strategy in Kenya* Vol. 1: *Concepts, Context, Process and Ethics* (Nairobi: Three Legs Consortium Publications on Grand Strategy .1., 2019).

assessments are a crucial input in framing the mental picture of policy for that environment.

From the onset, it is important to examine and appreciate the history and evolution of the IC, and how they have shaped it. The IC was built primarily to target "closed" societies of the Cold War world.[31] This exemplifies its centrality in advancing foreign policy. The context at that time was predominantly informed by issues of espionage on military strength and hostile intentions of potential adversaries who were at the heart of political influence by the cold war protagonists. For this reason, the IC was indispensable. However, with the collapse of the Union of Soviet Socialist Republics (USSR) in 1991, the dynamics changed fundamentally: the world became multipolar.

These developments prompted debates in the USA about whether there was a need to continue investing in intelligence collection and analysis. Some people argued that the threat no longer existed, hence the IC could be done away with.[32] Others associated the IC with state totalitarianism, where “leaders knew how to

[31] Boren, David L. op. cit.
[32] Lowenthal, Mark M., *Intelligence: From Secrets to Policy* (Thousand Oaks: SAGE Publications, 2014).

rule with the help of the secret police, but not with the secret ballot".[33]

There were also arguments that the post-Cold War period heralded new and complex threats which could no longer be understood through the prism of USA-Soviet rivalry; hence there was a need to retain and re-orient intelligence collection and analysis towards the emerging threats.[34] This notion enjoyed ample support from the government, theorists and practitioners alike arguing for a shift towards a more encompassing conceptualization of security threats to the state, taking into account non-military threats, and responses to both military and non-military threats.[35]

However, there were also those who contended that the USA no longer needed a separate IC. They suggested abolishing the Central Intelligence Agency (CIA) and placing all intelligence functions under the State Department. At the end, the IC was retained and re-oriented to collect and analyze intelligence on emerging

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[33] Kissinger, Henry, *Diplomacy* (New York: Touchstone, 1995), p. 793.

[34] Schraeder, Peter J. "The Horn of Africa: US Foreign Policy in an Altered Cold War Environment." *Middle East Journal* 46, no. 4 (1992): 571-93. http://www.jstor.org/stable/4328494.

[35] See Camilleri, Joseph A. "Security: Old Dilemmas and New Challenges in the Post-Cold War Environment." *GeoJournal* 34, no. 2 (1994): 135-45.

threats, from external and domestic environments. These developments saw it eventually elbowing its way into other businesses like foreign policy affairs, domestic affairs and Diplomacy, and it intend to stay there.[36]

The post-9/11 environment demanded that states adapt to the new national security architecture and worldview. 9/11 led to a dynamic similar to the rise of the Cold War in the late 1940s. Terrorism was perceived as an existential threat, which led to an unprecedented expansion of the security bureaucracy. The national security policies of states framed terrorism as the 'other' out there, not among us. This fear of the 'other' misdirected states to action even when results were displaced. For instance, USA intelligence suffered from a collective presumption that Iraq had an active and growing weapon of mass destruction (WMD) programme.[37]

The struggle in the WoT has occasioned extensions of new 'homeland security' complexes in the USA, blurring mandates between internal and external

[36] Hilsman, Roger. "Intelligence and Policy-Making in Foreign Affairs." *World Politics* 5, no. 1 (1952): 1-45.
[37] Senate Select Committee on Intelligence (SSCI) *Report on the US Intelligence Community's Pre-war Intelligence Assessments on Iraq,* July 7, 2004.

security.[38] The role of intelligence has been dragged into all these. As the WoT progressed, the American Intelligence was accused of abuses and excess in the fight against terrorism.[39] These are premised on the grounds that in the early years of the WoT, there was widespread criticism about its methods like detention without a trial, targeted killings, and mass surveillance. The CIA was said to be operating secret prisons and interrogation programmes for WoT suspects.[40]

Others argue that the IC in USA has been under intense scrutiny following the aftermath of 9/11, for failure to prevent the attack.[41] The issue is that Intelligence should make it more difficult for terrorists to strike at their targets. As a result, the logic of war and prevention has led the USA to continue taking controversial measures after 9/11. The far-reaching powers of Intelligence remains largely untouched and

[38] Quantson, Kofi Bentum, *Bogus informants: Nation-Wreckers*, (Accra: Napasvil Ventures, 2004).
[39] Harris, Grant T. "The CIA Mandate and the War on Terror." *Yale Law & Policy Review* 23, no.2 (2005): 529-76.
[40] Charlie Savage, "White House Pulls Back from Bid to Reopen C.I.A. 'Black Site' Prisons", *New York Times*, 4 Feb 2017.
[41] Busch K.G. & Weissman, S.H.*,* "The Intelligence Community and The war on Terror: The Role of Behavioral Science" *Behav Sci Law,* 2005;23(4):559-71.

were subsequently legalized.[42] President Bush made covert operations by Intelligence a central prank of his WoT campaign.

Outside the USA, terrorism prisoners and suspects were handed over to intelligence services of allies in the WoT through extraordinary rendition. [43] Many intelligence operations in the WoT were said to be amateurish.[44] The cohabitation of Intelligence with the operatives was a recipe for the politicization of intelligence. In this case, strategic intelligence became a prisoner of the foreign policy and diplomacy decision makers' dogma. The effectiveness of the WoT is disputed. As it continued, terrorist groups held ground. This was compounded by the emergence of homegrown, lone wolves and foreign fighters travelling to war theatres like Iraq, Syria and Somalia.

It was realized that the use of force was reactive, causing anger, frustration and radicalization. The military

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[42] Thimm, Johannes. 2018. *From exception to normalcy: the United States and the war on terrorism*. Berlin SWP Research Paper, Bd. 7/2018.

[43] Open Society Justice Initiative, *Globalizing Torture: CIA Secret Detention and Extraordinary Rendition* (New York, NY: Open Society Foundations, Feb. 2013).

[44] Thrall, A. Trevor & Erik Goepner. *Step Back: Lessons for U.S. Foreign Policy from the Failed War on Terror,* Cato Institute, 2017.

approach was considered counterproductive: it could not win hearts and minds, which was key in the WoT. To address these shortcomings, focus shifted to proactive measures that sought to address underlying factors, prevent violent extremism, and promote resilience in societies. These later CVE measures focused on the use of soft power approaches by co-opting people rather than coercing them.[45]

With the shift to CVE, little is known about its nexus with Intelligence. This deficiency has undermined responses by states to terrorism. If CVE is the preferred response to terrorism, the issue arising is whether Intelligence contributes to this effort to make CVE more effective as a tool to deliver national security. CVE emphasizes non-coercive attempts to reduce involvement in violent extremism.[46] These include pre-emptive and preventive measures like ideological and communicative interventions.[47] Others are political

[45] Nye Jr., J. S. "Public Diplomacy and Soft Power" *The Annals of the American Academy of Political and Social Science, 616*(1), 2008: 94-109.
[46] Harris-Hogan, Kate and Andrew, "What is countering violent extremism?" pp. 6-24.
[47] Rundle-Thiele and Renata, "Countering Violent Extremism", pp.53-64.

approaches to address grievances, nation-building and social cohesion.[48]

CVE efforts face challenges because they are eclipsed by coercive approaches. States grapple with the challenge of "winning the hearts and minds" of the involved or those targeted by terrorism. These challenges arise because the CVE approach represents an evolution in thinking. It aims at changing behavior, ideas and beliefs. States must confront this reality by directing resources at their disposal to these efforts. The responses should aim at what persuades people to become terrorists. [49]

Sun Tzu's maxim "know thy enemy and know thyself; in a hundred battles you will never be in peril", holds true.[50] Intelligence has a role to play in these efforts. It needs to develop insights informed by cognitive science to improve policymakers' understanding of the operating

[48] Minerva N., E., Bridget G., Katerina A., & Gilbert C. *Countering Violent Extremism (CVE) Literature Review* (Edinburgh, SA: Counter Terrorism and Security Technology Centre, Defence Science and Technology Organisation, 2011).

[49] Bjola, Corneliu, and James Pamment, *Countering Online Propaganda and Extremism: The Dark Side of Digital Diplomacy* (London: Routledge Taylor & Francis, 2019).

[50] Sun Tzu, *The Art of War*, trans.Smauel Griffith (Oxford Press, 1963), p.84.

environment.[51] This will enhance policymaking and capability to respond to the threats. But there is a *caveat:* Intelligence does not make or define policy or determine its efficacy, but it can make the policy and strategies more effective and, in that sense, better.[52]

Responses to terrorism in Kenya

Kenya initially responded to *Al-Shabaab* terrorism threats through the use of force. For instance, the Kenya Defence Forces (KDF) incursion into Somalia in 2011 was to tackle *Al-Shabaab* by uprooting the enemy who was perceived to be external from the source, once and for all.[53] Kenya cited the 'just war' doctrine of international law.[54] It was an offensive war against *Al-Shabaab* because it invaded terrorists in their turf. It aimed at protecting territorial integrity, sovereignty and the sanctity of national values and principles. Kenya argued on the right to self-defense

[51] Heuer, Richards J. *Psychology of Intelligence Analysis (*Washington, D.C.: Center for the Study of Intelligence, CIA, 1999).

[52] Fingar, *Reducing Uncertainty*, Ch.4; and Richard K. Betts, *Enemies of Intelligence: Knowledge and Power in American National Security* (New York: Columbia University Press, 2007).

[53] Makumi Mwagiru, "The War on Terror, Somalia and AMISOM Revisited", op. cit., pp.136-158.

[54] Von Elbe, Joachim. "The Evolution of the Concept of the Just War in International Law." *The American Journal of International Law* vol. 33, no. 4 (1939): 665-88.

as embodied in Article 51 of the UN Charter."[55] Other dimensions of the use of force entailed a raft of state-driven counter terrorism and security-related laws and operations.[56] The capacities of law enforcement agencies were also enhanced, increased security patrols and vigilance especially along the Kenya-Somalia border. These were aimed at responding to an external enemy.

As Kenya upscaled the use of force against *Al-Shabaab*, terror attacks in the country increased. The use of force triggered new waves of attacks as *Al-Shabaab* sought reprisals. The attack on Westgate Shopping Mall in Nairobi on 21st September 2013, was *Al-Shabaab's* response to the hard tackle by the state. To counter the new wave of attacks, Kenya upscaled security operations like *Usalama Watch* in 2014, to rid the country of terrorism. It also ordered refugees residing outside designated refugee camps to move to Kakuma and Dadaab refugee camps.[57] This was followed by the enforced closure of Dadaab refugee camp and the

[55] Article 51, Charter of the United Nations

[56] Interview with George Kabonga, Senior lecturer and consultant on *governance, conflict and security.* March 4, 2020, Nairobi.

[57] Al-Jazeera. "Kenya orders all refugees back into camps." March 26, 2014. https://www.aljazeera.com/news/africa/2014/03/kenya-confines-all-refugees-two-camps-201432521124526671 3.

repatriation of refugees back to Somalia. Refugee registration centres in urban areas were also closed. These were justified by claims that *Al-Shabaab* recruited and planned attacks from refugee camps.[58]

Opinion is divided on the implications of the use of force in responding to *Al-Shabaab* in Kenya. Some argue that CT measures succeeded by averting unrestrained cross-border incursions by *Al-Shabaab* insurgents from Somalia. There are arguments that the initial unilateral action by KDF in Somalia based on use of force worked well in the first year, and almost delivered the mission as planned.[59] Some hold that the use of force legalized security agencies to profile Somali Muslims, violate human rights and breach the law. It also inspired radicalization and disfranchisement of youths. Other studies observe that Kenya's responses to terrorism violates its own constitution.[60] They see them as "not made in Kenya". This raises issues on whose interests counter terrorism efforts in Kenya serve.

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[58] Interview with a top policy administrator at Ministry of Interior and Coordination of national government. March 1, 2020, Nairobi.

[59] Prof. Makumi Mwagiru, Written communication 20 February 2020.

[60] Wanjiru Carolyne Kamau. "Kenya & the War on Terrorism." *Review of African Political Economy* 33, no. 107 (2006): 133-41. Accessed March 22, 2020.

The use of force has legal and strategic implications on responses to the problem in Kenya. Questions about how to identify the enemy among own citizens, consequences of subjecting own citizenry to the use of force, and what this means to their support for this war and radicalization. If this war continues, it will lose citizens' support. Externally, Somalia is not keen in co-operating with Kenya in the fight against Al-Shabaab. Indeed, differences were apparent from the first year of KDF intervention. Kenya was pushing for creation of autonomous states like Jubaland, while Somalia wanted centralized system of governance.[61] The notion here is that Kenya's military strategy is problematic internally and externally.

It means that the strategic terrorism threat picture in Kenya is dyadic: it confronts both an external and internal war. Externally, terrorism is a global concern for all states and Kenya like other states is vulnerable to this problem. Kenya's affiliation with crusaders and supporters of global WoT like the USA and Israel exacerbates its external threat dimension. Groups like *Al Qeda, ISIS* and ISIL who are targets of the WoT, seek

[61] Interview with a retired senior military official March 6, 2020, Westlands.

reprisals on USA allies. Internally, homegrown radicalization of youths by *Al-Shabaab* networks poses the biggest threat to Kenya's national security.

Kenyan youths who joined *Al-Shabaab* stage attacks locally and participate in foreign *jihadist* missions. There is also a threat posed by the lone wolf-phenomenon. The enemy is now from 'within'. The threat within is the most immediate and urgent terrorism threat to Kenya. It necessitates an urgent and strategic response. Arising from all this, other options had to be explored.[62] Kenya incorporated CVE approaches to respond to the problem. It launched its National Strategy to Counter Violent Extremism (NSCVE) in 2016 with emphasis on soft approaches like job creation, business opportunities, and life skills to tame the recruitment of youth to violent extremism.[63]

CVE is suggested as a remedy to the problem. It is conceptualized as the domain of soft approaches to influence others to obtain desired outcomes.[64] CVE focuses on underlying root causes of violent extremism. It seeks to win the hearts and minds of targeted individuals.

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[62] Interview with Senior administrator at National Counter Terrorism Centre. March 4, 2020, Karen.
[63] National Strategy to Counter Violent Extremism, op.cit.
[64] Nye Jr., "Public Diplomacy and Soft Power", pp.94-109

Kenya's national security policy and strategy

A proper conception of national security policy making is core to understanding and analysis of nexus between Intelligence and CVE strategies in Kenya. Only once this is done can one enter the debate, or make progress. Central to this study is national security policy as a source of national security strategies.[65] Strategies are designed to implement policy.[66] With this appreciation, CT, CVE and PVE strategies are founded on national security policy. This policy reflects on both the external and internal environments in which the state requires to survive.[67]

Just as a diplomatic strategy exists to operationalize foreign policy, CVE strategies exist to operationalize a national security policy. This linkage is missing in Kenya's CVE policies, with serious implications. Key among the issues arising relates to counter terrorism and CVE policy/strategy making processes in Kenya. National security policy making entails decision making, creating of laws, setting standards, and operationalization

[65] Makumi Mwagiru, *Policy and Strategy in National Security: Contexts, Perspectives and Challenges in East Africa* (Nairobi: Three Legs Consortium, 2019).
[66] Mark Phillips. "Policy-Making in Defence and Security", *The RUSI Journal*, 157:1,(2012) 28-35.
[67] Stolberg, Alan G. *US. Army War College Guide to National Security Issues* op. cit., pp. 41-62.

of these policies.[68] A policy without strategy is useless. A strategy implements a policy. Strategy making begins (or should begin) with identifying the strategic objectives namely the long-term goals or objectives that are being sought by the policy.[69] CVE strategies are the implementing arm of national security/CT/CVE policy.

Whereas Kenya has a formal CVE strategy, it lacks a coherent and formal national security or counter terrorism/CVE policy. This begs the question of the basis of CVE strategies. The lack of a national security policy in Kenya denotes lack of a shared vision about count counter terrorism and CVE. A policy forms the basis of a strategy.[70] National security policies need to be clear and grounded on a sound appreciation of threats facing the state.[71] The question is whether it is possible to have a strategy in a vacuum (i.e. without a policy), and what policy the National Strategy to Counter Violent Extremism (NSCVE) implements. This question is important because there is a need to be clear on the kind of threat being faced. CVE strategies in Kenya are guided by *ad hoc* presidential and

[68] Mwagiru, *Policy and Strategy in National Security,* pp.1-26.
[69] Ibid.
[70] Ibid., pp.1-26.
[71] Paleri, Prabhakaran. *National security: Imperatives and challenges*. (New Delhi: Tata McGraw-Hill Pub. Co. 2008).

senior government officials' pronouncements.[72] This suggests that the strategies are reactive, *ad hoc* and based on operational and tactical issues.

Security & Foreign Policy, War against *Al-Shabaab* in Kenya

Like the global WoT, the war against *Al-Shabaab* in Kenya has significantly shaped the country's security and foreign policy. There are arguments that KDF's incursion into Somalia was pre-planned, and that Kenya's intention was to create a buffer zone between Kenya and Somalia. From this perspective Kenya's security was a key national interest. Its ability to maintain its independent identity and functional integrity is core.[73] However, some have viewed KDF interventions as attempts to impose regime change in Somalia.[74] This has significantly strained diplomatic relations between Kenya and Somalia.

Al-Shabaab in Somalia seeks to capture territories and implement *sharia*.[75] Outside Somalia, the

[72] Interview with top administrator Office of the Cabinet secretary, Ministry of Defence. March 2, 2020, Nairobi.
[73] Buzan Barry. *People, States and Fear,* (Boulder, CO: Lynne Rynner Publishers, 1992), p. 19.
[74] Interview with Kamau Munene, National security policy expert/commentator. March 6, 2020, Nairobi.
[75] Abdalla, A. "Africa and the Growth of Violent Radicalization in the name of Islam: The Need for a Doctrine Revision Approach', *IPSS Policy Brief*, Vol. 1, January/February 2016. *Institute for*

group focuses on creating foci and networks which can fan the objectives into regionalized and internationalized levels. It is thus argued that Kenya faces both a domestic and transnational threat. This perspective frames Kenya's military-diplomatic framework in responding to conflict in Somalia.

The most noticeable aspect of this approach was diplomatic negotiations for creation of the state of Somalia government in Jubaland region which would act as buffer zone to Kenyan border areas with Somalia, after which the military was to help in pacifying the region.[76] It was envisioned that as soon as the administration in Jubaland was functional and guaranteed security, KDF would exit Somalia. Kenya's diplomatic approach also entailed reaching out to countries particularly Uganda and Ethiopia to support the intervention in Somalia. At the international level, Kenya reached out to the USA and EU.[77] Consequently, it benefited from intelligence and

Peace and Security Studies, Addis Ababa University, Addis Ababa, Ethiopia.

[76] Makumi Mwagiru, "Beyond El Adde: Towards a New Kenya Foreign and Security Policy for Somalia", In Makumi Mwagiru, *The Three Anthems and Other Essays* (Nairobi: Three Legs Consortium, 2018), pp.142-147.

[77] Kisiangani, Emmanuel. "Kenya's Regional Diplomacy: Peripheral or Adaptive Pragmatism*?" South African Institute of International Affairs, Occasional Paper* No. 248 (2016).

technical support from foreign countries like the USA, Israel, United Kingdom, and EU among others.

Kenya leveraged on structures of the Inter-Governmental Authority on Development (IGAD) and hosted several consultative meetings to discuss strategies to solve the terrorism problem. Indeed, Jubaland was created under the auspices of IGAD. Kenya had earlier delved in tackling the security complex in Somalia through the Eldoret and Mbagathi peace processes.[78] The Somalia National Reconciliation Conference in Eldoret and Mbagathi entailed negotiations to pacify the country. Although the mediated diplomatic process led to among other things creation of the Somali transitional charter, and the transitional federal government, it collapsed along the way.[79] The process was infiltrated by Kenyan Somalis, lost goodwill from the federal government in Mogadishu amid turf wars by relevant the security agencies in Kenya. What remained was the military aspect.

The military-diplomatic framework was however undermined by the confluence of bureaucratic turf wars and interests among security actors managing the

[78]Mwagiru, "Beyond El Adde" op.cit., pp.142-147.
[79] Ibid.

processes.[80] What emerged was that the strategies were reactionary, emergency strategies that are resorted to whenever problems appear. Coordination among and within inter-ministerial or interagency concerned with the national security issues is lacking.[81] Kenya's a*d hoc* and reactionary strategies in responding to emerging issues lack coordination because they are founded on crisis thinking.[82]

Others have argued that Kenya is the USA's designated anchor state in the global WoT.[83] Its profile in fighting affiliates of *Al-Qaeda* in the region is on the rise. Prior to the 1998 USA embassy attack in Kenya, there was disinterest by the west in Kenya's counter terrorism issues. This is attributed to perceptions that earlier incidents were not considered as threats to western

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[80] Andrew Franklin. *National Insecurity: Kenya's Forever War on Terror.* The Elephant. Nairobi 2017.

[81] Kenya National Commission on Human Rights. "A Country under Siege: The State of Security in Kenya", *An occasional report* (2010 – 2014). KNCHR 2014.

[82] Makumi Mwagiru, Issues of Coordination in National Security Strategy: Towards a Metatheory of a Grand Strategy for Kenya (National Defence College, Kenya: Occasional Lecture, 2004.

[83] Barkan, J.D, and J.G. Cooke. "US policy towards Kenya in the wake of September 11. Can antiterrorist imperatives be reconciled with enduring U.S. foreign policy goals?", *African Notes* 4. 2001.

interests. From this analytical thrust, the KDF incursion into Somalia served external interests. The affiliation of *Al-Shabaab* to international terror groups like *Al-Qaeda* also link the country with global WoT lenses.

Philosophy of national security in Kenya

It is impractical to examine the spirit of responses to terrorism in Kenya without resorting to an appreciation of the philosophy and architecture of national security. The Constitution of Kenya 2010 anchors discourses on national security and supporting statutes. The question here is about the constitutional basis for CVE policies and strategies. Constitutional philosophy provides boundaries and guidelines about what precisely should be looked in national security policies. It is from this frame that arguments on issues like whether the policy is right, the basis of the inherent problems, whether it should continue or be discontinued, or even how to set right the policy should be pegged. Such a framework offers lenses for assessing the utility of counter terrorism/CVE policies and strategies in responding to the threat of terrorism.

There is an underlying philosophy and architecture of national security in Kenya. It is anchored by Chapter 14 of the constitution. Article 238 (1) defines national security as the protection against internal and

external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests. This understanding addresses the physical or traditional security conceptualization. It is a state-centric approach to national security.[84] This worldview emphasis the state as the referent object of national security.[85] The KDF incursion into Somalia is informed by the necessity of physical security. Attacks from *Al-Shabaab* had threatened Kenya's statehood.[86] In the circumstances, Kenya sought to protect its statehood and the safety of Kenyans. It was an offensive war against *Al-Shabaab*.

Kenya's state-centric conceptualization of security is further emphasized by the constitutional provisions that form basis and legal framework guiding the establishment of organs of national security, their structures and functions. Article 239 (1) establishes three organs of national security: the Kenya Defence Forces

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[84] Buzan Barry, Waever Ole and Wilde Jaap de. *Security: A New Framework for Analysis* (Lynne Rienner Publishers, 1998).
[85] Carr E. H, *The Twenty Years' Crisis* (New York: Harper and Row, 1964).
[86] Makumi Mwagiru, "The Roar on the Other Side of Silence: Framing the War on Terror and Combating Violent Extremism in Kenya", In Mwagiru M. and Morumbasi K. (eds). *Countering Violent Extremism in Kenya* Vol. 1 *Strategic and Legal Issues (*Nairobi: Thirty-Three Consortium, 2018), Chap. 5 p.93.

(KDF), the National Intelligence Service (NIS) and the National Police Service (NPS). The primary object of the national security organs and security system is to promote and guarantee national security in accordance with the principles of the constitution as stipulated in Article 238 (2). Article 240 (1) establishes National Security Council (NSC) and stipulate some of its functions. These include integrating domestic, foreign and military policies relating to national security. Up to this point, this provision attempts to give a broader view of national security. However, subsequent provisions provide that the purpose of that integration is to enable national security organs to co-operate and function effectively. This takes way what the earlier provision had given like idea of human security and reinstates the physical/traditional view of national security.[87]

This preoccupation with physical security in Kenya is emphasized by the domination of national security organs in discourses national security policy making and implementation. These organs of national security are the main actors in national security matters in Kenya. Nevertheless, there are other players who

[87] Makumi Mwagiru, *Dimensions of Grand Strategy: Essays on Theory,Practice, Institutions and Mechanisms in Kenya* (Nairobi: Thirty Three Consortium, 2016), Ch.3.

correlate with national power and work together with organs of national security in Kenya."[88]

The other function of the NSC according to the first part of Article 240 (6) (b) is to assess and appraise the objectives, commitments and risks. It relates to aspects of risk analysis, assessing and appraising the content of national security, and a SWOT analysis of national security capabilities in milieu of realities of Kenya's operating environment. However, the subsequent provision provides that the rationale of this for this assessment is in respect to actual and potential national security capabilities. This excludes other dimensions of national security. It thus reverts to the viewpoint to the physical/traditional view of security. The Constitution does not define "other" national interests. It leaves security as the only national interest. This shows a predisposition to physical security concerns.

It is clear that the constitutional philosophy in Kenya is very traditional in its conceptualization of national security. It gives prominence to physical security. In linking this aspect with CVE policies and strategies in Kenya, it becomes even clearer that this predisposition

[88] Interview with Kamau Munene, National security policy expert/commentator. March 6, 2020, Nairobi.

has surely shaped Kenya's response to this environment. This traditional perspective to national security does not suffice to address the demands of the dynamism and complexities of the terrorism threat. CVE strategies are shaped by the constitutional philosophy and conceptualization of national security. This has disconnected it with issues underlying terrorism conflict. These are about individual motivations, structural inequalities and unresolved grievances.[89]

Kenya responded to *Al-Shabaab,* a non-state actor, by resort to state-centric approaches. The contemporary conceptualization of national security resonates with the human security approach to security. It seeks to identify and address cross-cutting challenges to survival, livelihood and dignity of the people.[90] This calls for people-centered and context-specific responses to issues that strengthen people. For Kenya, the problem and the attendant response is not perceived as one responding to non-state actors or as linked with human security conceptualization. In diplomacy, there are no

[89] Harmonie Toros and Ioannis Tellidis, "Editor's Introduction: Terrorism and Peace and Conflict Studies: Investigating the Crossroad", *Critical Studies on Terrorism*, 6:1, [2013] 1-12.

[90] United Nations Development Programme. *Human Development Report: New Dimensions of Human Security*. NY: UNDP 1994).

solutions cast on stone. The solutions change and depend with circumstances.

CVE strategies in Kenya: missing diplomatic elements

The responses to terrorism in Kenya raise serious strategic issues on the character of the conflict faced and their utility. By definition, CVE strategies are an element of diplomacy. This means that the current status of the WoT necessitates diplomatic tools. There is indeed a conceptual and operational relationship between CVE and diplomatic strategies. Diplomatic strategy entails having a mental vision and map of how the country interacts with the external environment to advance its foreign policy and national security interests. It also entails how to achieve those aims.

CVE strategies are conceptualized as the domain of soft approaches to influence others to obtain desired outcomes.[91] CVE strategies did not overthrow the use of force in Kenya. What emerged is a hybrid use of force-CVE strategy to respond to *Al Shabaab*. It has been that way since then. The application of a CVE-use of force dual strategy in Kenya has implications. In particular, mediating CVE with use of force undermines the former.

[91] Nye Jr., "Public Diplomacy and Soft Power" op.cit.

This raises questions about the rationale of CVE practice in Kenya. Available literature does not illuminate this inconsistency. This implies that the policies of states are not based on the realities they are confronting, thus constraining their response policies and strategies. Conceptually, CVE is contested and ill-defined. Its varied conceptualizations are exported to policy responses by states. CVE is emerging as a catch-all phenomenon.[92] Its literature is characterized by limitations like disparities in the range of research methodologies, minimal reliance on field research and primary data, focus on certain regions and countries and domination of western narratives. There is dearth of information on local CVE contexts.

CVE efforts in Kenya face challenges. Core to these problems is that the state has adopted reactionary strategies whereby when terrorists attack, a military strategy is applied; when it does not work, counter insurgency is brought on board; when these do not work, CVE is contemplated.[93] CVE strategies in Kenya are also

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[92] Heydemann, Steven. "Countering Violent Extremism as a Field of Practice", *United States Institute of Peace Insights*, No. 1 (Spring 2014), pp. 1-5.

[93] Macharia, N., Rosalind, "Strategic Implications of the Shift from Counter Terrorism to Countering Violent Extremism and Counter Insurgency" in Mwagiru M. and Morumbasi K. (eds). *Countering Violent Extremism in Kenya* Vol. 1 *Strategic and Legal Issues* (Nairobi: Thirty Three Consortium, 2018) pp.70-91.

shrouded in narratives that perceive the problem to be external rather than internal. The problem of homegrown radicalization is not properly conceived and appreciated. There is also a problem with the availability of information on the realities of local CVE contexts in Kenya. Even where such knowledge exists, policies and practices are not grounded on it.

The participation and engagement of other players like the public, civil society, private sector and academic in CVE discourses in Kenya is still a mirage. A plurality of actors imparts new and varied perspectives as opposed to a unilateralist posture. This will enhance appreciation of local contexts in Kenya, which is necessary for appropriate CVE policies and practice to emerge.

This article argues that CVE strategies need to be conceived as an element of diplomacy. This will pave way for an alternative strategy like negotiation or mediation. An alternative strategy is necessary to give CVE strategies a convincing political purpose by transforming battlefield successes into peace. This strategy needs to go beyond mere reactionary and anticipatory frameworks to enter the yet uncharted waters of shaping an alternative environment devoid of the need for violence. The basis of this assertion is that the scope and complexity of

terrorism requires a more complex approach, containing a clear, comprehensive and coherent strategy. Devoid of such a strategy, states run the risk of formulating and pursuing policies grounded on operational and tactical issues. The end result of this is that states risk countering and responding to illusory threats and challenges.

CVE strategies must no longer be seen from a solely state-centric perspective. By taking advantage of occasional hurting stalemate plateaus, they can settle terrorism conflict. Despite misgivings about whether states can negotiate with terrorists, the literature on peace and conflict management show that it is possible to negotiate a solution. This literature is rich in strategies to solve political, structural and cultural contestations. CVE strategies can mediate terrorism conflict by importing new dimension as opposed to the use of force. They can condition certain frameworks leading to negotiation or mediation of the conflict.

In early 2020, the USA signed a deal with *Taliban*, setting the stage for the withdrawal of USA troops from the Afghanistan theatre.[94] This was an actual negotiation leading to a peace agreement apparently marking the end

[94] The Guardian. "US and Taliban sign deal to withdraw American troops from Afghanistan", Feb 29, 2020. https://www.theguardian.com/world/2020/feb/29/us-taliban-sign-peace-agreement-afghanistan-war

of USA's longest war in Afghanistan that began after 9/11. In April 2021, USA president Biden signalled the final withdrawal of USA troops in Afghanistan by the war's twentieth anniversary in September, 2021.

Case analysis and cross analysis like these are useful tools for drawing comparative and detailed analyses for other countries engaged in the WOT along these lines. The operating security environment is shifting from the traditional conceptualization of physical to asymmetric and symbolic terrains. These dynamics constrain policies and strategies by states.

Intelligence and the war against *Al-Shabaab* in Kenya

The context of examining Intelligence and war against *Al-Shabaab* in Kenya is that an appreciation of a country's operating environment is necessary in the formulation of a country's foreign and national security policies. This appreciation also provides anchorage for a country's grand strategy.[95] There a linkage between the intricacies of a country's operating environment and its national security. The relationship between Intelligence and the war against *Al-Shabaab* in Kenya is both conceptual and operational.

[95] Humphrey Njoroge & Makumi Mwagiru (eds.), *Grand Strategy in Kenya* Vol. 1*: Concepts, Context, Process and Ethics* (Nairobi: Three Legs Consortium, 2019).

Conceptually, terrorism threats from *Al-Shabaab* threaten the survival and existence of Kenya.[96] In other words, the threats are clearly concerns of national security policy. These concerns bring in intelligence. Intelligence tries *inter alia* to make sense of national security and foreign policy. Operationally, intelligence is a servant of national security and foreign policy. It exists to make the policy succeed.

There is a dearth of literature and analysis of intelligence services in Africa. Engagement with Intelligence issues and structures in Africa must contend with a political paradox.[97] Locally, Boinett's "The Origins of Intelligence System of Kenya" is among the pioneer works in this area.[98] He traces the roots of intelligence structures from community-based, colonial intelligence, and post-world war two intelligence after independence. Like other states in the global WoT, intelligence in Kenya

[96] Mwagiru, Makumi, "Countering Radicalization Beyond Kenya's War on Terror" in Mwagiru, Makumi, *The Three Anthems and Other Essays* (Nairobi: Three Legs Consortium) 2018 Ch. 27.

[97] Eboe Hutchful, "Preface", in Sandy Africa and Johnny Kwadjo (eds), *Changing intelligence Dynamics in Africa* (Birmingham: University of Birmingham Press, 2009).

[98] Boinett Wilson, "The Origins of the Intelligence System of Kenya" in *Changing Intelligence Dynamics in Africa*, Ibid.

has been working alongside other security agencies in the war against terrorism.

The bulk of these efforts are now nested on the multi-agency instrument of security agencies: "it was just a matter of time: the attack prompted the government to initiate a process to establish a multiagency framework on counter terrorism issues".[99] Correspondingly, the war against *Al-Shabaab* in Kenya has also prompted the creation of new police units, and an expansion of the roles of the police and intelligence. Legislation like the Prevention of Terrorism Act 2012, and the Security Laws (Amendment) Act of 2014 were enacted. However, this legislation has unclear definitions of terrorism. Expanded police powers allowed the monitoring of communication and creation of lists of suspects and terrorist organizations.[100] However, these developments have not stopped radicalization and the enlisting of Kenyan youths into terrorism.

The attacks on Garissa University College and Dusitd2 Hotel Complex in 2015 and 2019 respectively relied on Kenyan youths enlisted by *Al-Shabaab*. The

[99] Interview with a Senior administrator at National Counter Terrorism Centre. March 4, 2020, Karen.

[100] Freedom House, *Kenya's Antiterrorism Strategy Should Prioritize Human Rights, Rule of Law* (Nairobi: Freedom House, (2018).

group has tapped into the historical and perceived grievances like marginalization, poverty, and state oppression among others to radicalize and recruit.[101]It has been argued that radicalization is the most immediate and urgent terrorism threat to Kenya. It threatens the survival and existence of Kenya, and hence necessitates an urgent and strategic response. It is a national security concern, for which CVE strategies have been suggested as the remedy.

The issue arising is what intelligence contributes to this effort to make CVE more effective as a tool to deliver national security. To answer this, it is necessary to contextualize the reality and age that Kenya is dealing with. The country's operational environment is tied to challenges emanating from internal issues, globalization and internationalization, information technology age and the sharp rise of non-state actors like terrorist groups. These issues have eroded the authority of the state. They have challenged the state significantly especially in the monopoly of violence of the state.

The conflation of these issues has complicated efforts to analyze and isolate amenable issues from that

[101]Badurdeen, F.A. "Youth Radicalization in the Coast Province of Kenya", *Africa Peace and Conflict Journal*, 5(1): (2012) 53-64.

environment. This means that a proper analysis and appreciation of that environment is key towards framing suitable responses. Conceptually, CVE measures are focused soft power approaches by co-opting people rather than coercing them.[102] Intelligence must therefore help the policymaker in understanding what attracts people to violent extremism, and how to prevent it. CVE strategies entail (or ought to) understanding the other actor, influencing it, and negotiating for an optimal outcome, or influencing the decision-making environment.

The primary entry point of Intelligence in the war against *Al-Shabaab* in Kenya should be at the strategic level of policy making. Intelligence gaps have been identified in all the phases of national security policy formulation, and the task of intelligence is to fill these gaps. Alongside contributions of other stakeholders, Intelligence should provide a strategic assessment of issues arising in the country's operating environment. Policy should be informed by the totality of these contributions. Although the significance of intelligence in national security has been acknowledged, the linkage at the strategic level has been missing.

[102] Nye Jr. op.cit pp. 94-109.

For Kenya's war against *Al-Shabaab* to fully benefit from Intelligence, there is a need for a functional and a well-coordinated system of policy making. Core to this is the smooth functioning of Kenya's National Security Council (NSC). The Council provides the structure and mechanisms of coordination of national security policy making and implementation in Kenya. It serves as the President's forum for considering national security policy matters with the members of the NSC, which include the heads of the national security organs.[103]

The war against *Al-Shabaab* in Kenya seems to be dissociated from strategic analysis and national security policy making. It is not clear what anchors this war. This deprives it of the benefits of the contributions of Intelligence and from other stakeholders. This leads to a rejection of wider analyses of the country's operational environment. The task of Intelligence is to observe the operational environment and make an objective assessment on issues arising from it. This should help the policy makers to escape from the danger of their own subjectivity, and hence make the policy better.

[103] The members of the NSC in Kenya are analyzed in Makumi Mwagiru, *National Security Policy Making in Kenya* (Nairobi: Three Legs Consortium, 2020) pp.130-134.

In the absence of strategic CVE policies and strategies in Kenya, threats are not properly conceived. This process entails the input of many relevant agencies and institutions. The "iron rule of interagency" is that no national security or international affairs issue can be resolved by one agency along.[104] Like other national security policy issues, the formulation and implementation of counter terrorism/CVE policies and strategies is an exclusive affair of a few: the national security organs. This has excluded other critical players. Analysts have also raised issues of ethics and leadership in the national security discourse in Kenya. They argue that the strategic conceptualization and operationalization of national security policy in Kenya is lacking across security sectors.[105] Responses to the terrorism threat in Kenya have not appreciated the bigger picture of its operational environment.

Conclusions

This analysis on Intelligence and war against *Al-Shabaab* in Kenya brings out important conclusions. First, that the

[104] Marcella, Gabriel. *Affairs of State: Interagency and National Security* (Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2008).

[105] Katumanga, Musambayi, "Leadership and the National Security Policy Process in Kenya", in Humphrey Njoroge & Makumi Mwagiru (eds) *Grand Strategy in Kenya*), op. cit., pp.87-107.

relationship between Intelligence and the war against terrorism is very complex. These complexities are both contextual and perceptual. Intelligence remains a core tool of statecraft. However, the obsession with the tradecraft of intelligence is threatening to wash away the crucial linkage between Intelligence and policymaking. An appreciation of this linkage could help Kenya – and other states – to make better policies, by enhancing their understanding of the operational environment. It will also unclog certain mindsets and worldviews, and encourage the focus on new frontiers and horizons.

The strategic assessments of various stakeholders including Intelligence, are key input towards formulating strategic policies and strategies to address threats in Kenya's operating environment. This is the missing link, and explains the sub-optimality of Kenya's national security policies in responding to the terrorism threat. Secondly, the institutionalization of policymaking provides states with a proper legal framework to formulate strategic policies. The inability to formulate a national security policy in Kenya has certain legal and strategic implications. It makes it difficult to examine the nexus of Intelligence and national security policy making processes at the strategic level. The difficulty arises out of subjective constructions in the conduct of the war against

Al-Shabaab. It makes it difficult for various stakeholders to contribute to the problem. Kenya's responses to violent extremism has however, lacked an appreciation of the country's operating environment.

Finally, if the relationship between national security policy and strategy in Kenya is dysfunctional, the country is likely to miss out on long term survival and prosperity. This means Kenya should avoid *ad hoc* CVE strategies because such strategies are inherently short term, and hence unequal to the optimal waging of the war against terror.

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Relationship of Strategic Multi-Agency Policies in Coordinating Responses to Terrorism in Kenya

Musoma Albert Lusiola

Abstract

Kenya has faced constant terror threats from *al-Shabaab*, ISIS and *al Qaeda* in the last decade. This article examines the coordination of strategic multi-agency policies in Kenya's responses to international terrorism using mixed methods and exploratory research designs. Primary data was collected from respondents through questionnaires and interviews. Secondary data was obtained from library-based research *inter alia* from books, journals, government publications, and academic research. Interview data was analyzed thematically, establishing key themes and trends from which findings and conclusions were drawn. The article concludes that strategic multi-agency policy on coordination in response to terrorism in Kenya enhances coordination in response to international terrorism. It also concludes that the extent to which Kenya's security agents are guided – or not - in their responses by well-formulated and clear policies affects the quality of coordination of responses to international terrorism. It ultimately recommends constant review of multi-agency operation guidelines and standard operating procedures to enhance the management of the increased sophistication of terrorist attacks.

Introduction

Territorial integrity and sovereignty are core national interests that no state can negotiate. Kenya has in the last decade been faced by a constant terror threat from *al-*

Shabaab, ISIS and *al Qaeda*, threatening its very existence by undermining its sovereignty. This necessitates creating facilities, programmes, policies, laws, and institutions to prevent, protect, counter or neutralize the effects of such terror threats.

There is now consensus that terrorism is "a product of extremity of beliefs, behaviors, and feeling supporting perceived oppression or threat of the existence of a group." [1] Although many scholars attribute terrorism to "divergence in political opinions and feelings of disorientation which leads to radicalization," its main contemporary cause has been religious extremism.[2] It has been argued that the greatest cause of conflict in the postmodern world is the clash between western and non-western, especially Islamic civilization values.[3] This explains the prevalence of terrorism even in democratic countries. As a result, no meaningful response to terrorism that failed to address religious radicalization has been worth it.[4]

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[1] McCauley, C., & Moskalenko, S., "Mechanisms of Political Radicalization: Pathways toward Terrorism" *Terrorism and Political Violence*, 20(3), (2008), pp. 415-433.

[2] Weinberg, L.B., Eubank, W.L., & Francis, E.A., "The Cost of Terrorism: The Relationship between International Terrorism and Democratic Governance" Terrorism and Political Violence, 20(2), (2008), pp. 257-270.

[3] Huntington, Samuel P. *The Clash of Civilizations and the Remaking of World Order*, New York, Simon & Schuster, 1996, p.256.

[4] Jeroen Gunning & Richard Jackson, "What's So 'Religious' about 'Religious Terrorism'?" *Critical Studies on Terrorism* 4, no. 3 (2011), 369–388.

Terror attacks leave their victims traumatized, stressed, and depressed among other negative psychological effects.[5] Economically, terrorism discourages investors especially by targeting restaurants and shopping malls. [6]Globally, hotels and shopping malls are often the targets of numerous terror attacks. This is exemplified by the 2019 Easter holiday attacks in Sri Lanka, and other numerous places in the USA, Britain and France, where hotels have suffered a barrage of terrorist attacks.[7] There is consensus that the economy is one of the three sources of national power. As such, it is one of the three pillars the Grand Strategy of a country rests on. Without a sound and effective economy, the other two sources of national power - diplomacy and the military - cannot respond to threats effectively. All terrorist attacks in Kenya have recorded very negative economic impacts especially on the tourism and service sectors.[8]

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[5] Waxman, Dov. "Living with Terror, Not Living in Terror: The Impact of Chronic Terrorism on Israeli Society." *Perspectives on Terrorism*, no. 5/6 (2011): 4-26.

[6] Makumi Mwagiru, *Dimensions of Grand Strategy: Essays on Theory, Practice, Institutions and Mechanisms* (Nairobi: Thirty-Three Consortium Publications, 2016).

[7] Rudolph, Christopher *National Security and Immigration; Policy Development in the United States and Western Europe Since 1945* (California: Stanford University Press, 2006).

[8] Aaron M. Hoffman, Dwaine H. A. Jengelley, Natasha T. Duncan, Melissa Buehler, and Meredith L. Rees, "How Does the Business

The reality of globalization means that terror attacks attract much global attention. This causes artificial pressure for states to respond almost immediately to protect their image in the name of sovereignty. Such knee-jerk responses at times act against the very intentions of the states by highlighting [9]Globally, hotels and shopping malls have often been subject to numerous terror attacks. This is exampled in the Easter holiday of 2019 attacks in Sri Lanka as well as other numerous places such as the USA, Britain, and France where hotels have suffered a barrage of terrorist attacks.[10] [11]Globally, hotels and shopping malls have often been subject to numerous terror attacks. This is exampled in the Easter holiday of 2019 attacks in Sri Lanka as well as other numerous places such as the USA, Britain, and France where hotels have suffered a barrage of terrorist attacks.[12] [13]Globally, hotels

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of News Influence Terrorism Coverage? Evidence from *The Washington Post* and *USA Today*," *Terrorism and Political Violence* 22 (2010): 576.

[9] Makumi Mwagiru. *Dimensions of Grand Strategy: Essays on Theory, Practice, Institutions and Mechanisms* (Nairobi, Thirty-Three Consortium Publications, 2016).

[10] Rudolph, Christopher, *National Security and Immigration*, op.cit.

[11] Makumi Mwagiru. *Dimensions of Grand Strategy*, op.cit.

[12] Rudolph, Christopher, *National Security and Immigration*, op.cit.

[13] Makumi Mwagiru. *Dimensions of Grand Strategy*, op.cit.

and shopping malls have often been subject to numerous terror attacks. This is exampled in the Easter holiday of 2019 attacks in Sri Lanka as well as other numerous places such as the USA, Britain, and France where hotels have suffered a barrage of terrorist attacks.[14] [15]Globally, hotels and shopping malls have often been subject to numerous terror attacks. This is exampled in the Easter holiday of 2019 attacks in Sri Lanka as well as other numerous places such as the USA, Britain, and France where hotels have suffered a barrage of terrorist attacks.[16] [17]Globally, hotels and shopping malls have often been subject to numerous terror attacks. This is exampled in the Easter holiday of 2019 attacks in Sri Lanka as well as other numerous places such as the USA, Britain, and France where hotels have suffered a barrage of terrorist attacks.[18] [19]Globally, hotels and shopping malls have often been subject to numerous terror attacks. This is exampled in the Easter holiday of 2019 attacks in Sri Lanka as well as other numerous places

[14] Rudolph, Christopher, op. cit.
[15] Makumi Mwagiru. *Dimensions of the Grand Strategy* op.cit.
[16] Rudolph, Christopher, op.cit.
[17] Makumi Mwagiru. *Dimensions of Grand Strategy*, op.cit.
[18] Rudolph, Christopher, op. cit. s
[19] Makumi Mwagiru. *Dimensions of Grand Strategy*

such as the USA, Britain, and France where hotels have suffered a barrage of terrorist attacks.[20]

The reality of globalization brings terrorist attacks to global attention. This causes artificial pressures on states to react immediately in the name of protecting sovereignty. Such knee-jerk responses highlight states' disjointed organs, different government voices, and in some cases, blue on blue outcomes. Sometimes in such responses, states increase physical and technical surveillance on the civilian population, and thereby creating debates on the observance of human rights even in national security actions. Some countries respond by curfews, round-up of certain segments of the population for profiling, random arrests and hard interrogations amongst other measures. Some states even conduct preemptive attacks on terrorist locations, often with high civilian casualty rates.

The theme of investigation

All these developments form the basis of the theme of this article: to establish and analyze the existence of strategic multi-agency policies and inspect the consequences where they do not exist, on the coordination of responses to terrorism in Kenya.

[20] Rudolph, Christopher, op.cit. s

Kenya has in the past six decades been affected by international terrorism, and in the last two been a direct target of terror attacks. In response, it has adopted various ways to respond. Initially, Kenya responded in a silo bureaucratic way where the military was the main responder as evident in the 1998 USA embassy bombing in Nairobi. In 2013, Kenya employed its first multi-agency approach to responding to international terrorism during the Westgate attack. In its responses, Kenya like many other countries established many institutional, normative, and structural changes to address terrorism. It has also adopted international resolutions and enacted national laws.

National legal responses to coordination in response to terrorism include inter alia: the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA), Prevention of Organized Crime Act, 2010 (POCA), Prevention of Terrorism Act, 2012 (POTA), and Security Laws (Amendment) Act, 2014 (SLAA)."[21] These amongst the multi-agency institutions were the basis for the creation of the National Counter Terrorism Center. This centre was established by the SLAA, the Anti-Terror Police Unit (ATPU), and the Joint Intelligence Analysis Center.

[21] http://frc.go.ke/downloads.html

The aim of all these is to synergize and consolidate efforts to deal with terrorism in the country.

However, in spite of all these creations the Dusit D2 terror attack still happened. Unlike in earlier experiences, response to the Dusit 2 attack showed much improvement in the tactical response between the Kenya Defence Forces [KDF], Special Operation Forces (SoF), and the recce teams from the National Police Service [NPS]. There was also great improvement in the dissemination of information at strategic levels.

However, several issues need to be investigated and questions answered in order to address the issue of coordination in response to terrorism at strategic and higher operational levels. For instance, the laws governing deployment, training and inter-operability of various multi-agency actors, the policies, strategies, and doctrines underlying the coordination of information amongst various multi-agency teams, and documentation of the successes and failures attached to the existence or lack of these laws and policies.

The intellectual domain

There is a growing intellectual and other domain on the themes of this article: to establish the strategic multi-agency policies on coordination in response to terrorism.

There is some existing literature on the relationship between Kenya's National Police Service (NPS) and the international and transnational agencies that fight against crimes and terrorism.[22] It is argued that cooperation from the international arena happens at two stages. The first is the conceptual stage, where ideas and policies are formulated, the agenda is set and consultations happen. The second stage is the implementation phase addressing the operationalization of such blueprints and ideas. At this stage, countries will train together, standardize their policies, legislate laws and sign treaties that deal with common issues like extradition, sharing of intelligence, forming multiagency task forces, creating combined and joint centers of operations and intelligence among other areas.

The KDF, the National Intelligence Service (NIS), NPS and other agencies mandated to deal with terror have benefitted much from these initiatives. Multilateral training institutes like the International Peace Support Training Centre (IPSTC) in Karen, Kenya offer many courses on terrorrism and related areas. Others are exchange programmes and sponsored courses abroad for

[22] Francis Kipkurui Arap Sang' "Kenya",in Daniel J. Koenig & Dilip K. Das (eds.) *International Police Cooperation: A World Perspective*,2015.

security agencies. Indeed, Kenya has concluded extradition treaties with several countries which is a positive move towards fighting crime including terrorism.[23] However it is also maintained that sometimes bureaucratic procedures and political goodwill affect the implementation of such treaties.

Sang particularly notes that the uneven standards in terms of training, equipment, technology, and know-how between the various responders to terror have a significant impact on the success or failure rate of such responses. The lack of a common curriculum, doctrine and *modus operandi* among various response teams tends to kill the multi-agency idea. Criminals have also been seen to be heavily armed. On various occasions, the *al-Shabaab* has indeed flushed police out of their posts or even overran military defensive positions like during the el- Adde attack.

There is a view that each country has national interests: core or primary, and peripheral or secondary national interests. Primary national interests are non-negotiable.[24] States are willing to use all their instruments

[23] Ibid.

[24] Macharia Munene, "Reflections on Kenya's National and Security Interests", *Journal of Language, Technology & Entrepreneurship in Africa* Vol. 3 No. 1 2011.

of national power including that of last resort - the military - to defend such interests. While secondary national interests are also important, states prefer using the first two instruments of national power - diplomacy and economy - to defend them. Analysts like Munene warn that Kenya should guard its national interests jealously and not trade them in exchange for pleasing super-powers. In this respect, Kenya has been urged to use its regional influence to project its national interests, especially in its core operating environment that has for long been a hostile one. Focusing on terrorism, Munene for instance notes how the porous Kenya-Somalia border has witnessed an influx of illegal and untaxed goods into Kenya whose proceed have aided the *al-Shabaab*.

The Combined Joint Task Force-Horn of Africa (CJTFHOA) is one of the combined multi-country-multi-agency task forces that address terrorism related cases.[25]The strategic objectives of these forces are

> "to foster a regional perspective on security problems, build littoral capabilities, and support the African Union and United Nations peacekeeping operations in its Area of Responsibility."

They also help the entire East African region to build the counterterrorism capabilities of regional states. This,

[25] Angel Rabasa, *Radical Islam in East Africa* (RAND Corporation, 2009) pp. 84-180.

however, happens with a major input of the states themselves, with the CJTFHOA providing technical support and training.

They have conducted counterterrorism training in Yemen, and helped build its Coast Guard to deal with pirate issues that are a cash cow for terrorists who extract heavy ransoms. They have further provided military training to Ethiopia, Uganda, and Djibouti especially in special operations. Kenyan and Djibouti navies have been major beneficiaries of this training. As other past and current counter-insurgency and counter-terrorism campaigns show, "civil affairs operations can be critical in gaining the support of the population against terrorist elements."[26]

The debates in the literature urge for more expanded philosophical thinking amongst national security policy and decision-makers.[27] They argue that the traditional militaristic perspective of security narrows national security into a tunnel vision where only a few organs or agencies are considered to be concerned with

[26] Ibid

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

national security. In is also underlined that the 1994 UNDP Report on human security is vital for states to expand their view of security and move from tunnel to more holistic approaches. Mwagiru for example asserts that factors like the end of the cold war, globalization, and 9/11 have shifted the philosophy of security from statist to expanded perspectives. They have also challenged the concept of sovereignty. They have further introduced power diffusion by showing that non-state actors can acquire capabilities previously enjoyed only by states, and can cause mass casualties. Besides, globalization and modern threats like terrorism have up opened borders. They have reduced states to acting within certain frameworks like foreign policies, domestic policies and with regional and international organizations like the African Union [AU] and the United Nations [UN]. [28]

The various measures employed by African governments in countering terrorism have also been scrutinized. These measures have been classified into four main groups. The first group includes those measures taken to deal with "liberation movements, guerrillas, bandits, criminal gangs, cattle rustlers, pirates and

[28] Mwagiru Makumi. "Globalisation and African Foreign Relations: Historical and Intellectual Antecedents'." *Djibouti Journal of International Relations*, 2008.

vigilantes that are not categorized as terrorists." The second group of measures include the counterterrorism strategies employed by states to ensure that national security is enhanced for regime survival.

The third are hard measures taken by states to combat and confront the menace of terrorism. It has however been noted that these hard strategies - heavily militaristic - end up infringing on the human rights of individuals. The last group of measures are soft policies are aimed at cutting terrorism in the bud. This is done through policies dealing with poverty eradication, illiteracy, and unemployment that could be effective in countering radicalization and violent extremism. Kagwanja urges efforts to improve coordination in all levels, and the strengthening of laws and the security sector.[29]

Framework for analysis

This article enters the debate on coordination in response to international terrorism through the Terror Management Theory (TMT) as articulated by Greenberg, Pyszczynski, and Solomon. It posits that terrorists, being mortal beings, thrive by existential illusions or

[29]Peter Kagwanja (2006) "Counter-terrorism in the Horn of Africa: New Security Frontiers, Old Strategies", *African Security Review*, 15:3, 72-86, DOI: 10.1080/10246029.2006.9627608

perceptions.[30] Such fictions regarding existence can be pivotal in coping with the main existential factors or concerns: identity, death, freedom and social connections.[31] They give people a sense of purpose and meaning in the world despite science telling them that they are simply material beings with a short lifespan in an indifferent world and are part of a species that will soon probably be extinct. It argues that since death is inevitable, their identities and meanings are mainly cultural constructions that do not last forever.

The theory argues that desired relationships are limited and people are "unable to realize the inner life of another being or reliably expect another person to put their desires above theirs." While they work hard to be free, they still remain prisoners of their cultural upbringing and are largely keen on adhering to others' rules for survival.[32] All this leads to anxiety and stress if there is too much freedom, which they do not know how to react to.

Out of the five existential concerns, the focus is on death, the crucial focus of TMT. It is crucial since

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[30] J. Greenberg, T. Pyszczynski, and S. Solomon, 'The Causes and Consequences of a Need for Self Esteem: A Terror Management Theory.' in R.F. Baumeister (ed.), *Public Self and Private Self*, New York: Springer-Verlag (1986).

[31] R. Prinz,2011, op. cit.

[32] J. Greenberg, T. Pyszczynski, and S. Solomon "The Causes and Consequences of a Need for Self Esteem", op.cit.

people constantly focusing on how to cope with it. The theory begins with the view that all beings are biologically predisposed to desire longer lives, and intelligent enough to realize that eventually "they will die and it may be a result of various reasons or causes"[33] like terrorism. In the light of this predicament, the issue is how can they function without being perpetually anxious. The maintains that:

> "they do so by perceiving themselves as enduring beings in a permanent and meaningful universe of symbols rather than the characterization: as just material living organisms in an indifferent world destined only to stop existing upon demise or death."

People are socialized all their lives into a global cultural that they are superior and important beings in a meaningful world. They have souls and can live after death through entities that outlive like countries and family lines. They possess identities that live beyond their death and celebrate achievements they made in the world through posterity, memorials, artistic creations and milestones in science, business and others.[34] Consequently, people keep their innate anxiety under wraps if convinced that they are enduring, crucial players

[33] R. Prinz, op. cit.

[34] T. Pyszczynski, J. Greenberg, S. Koole and S. Solomon, Experimental Existential Psychology: Coping with the Facts of life" in S. Fiske, D. Gilbert, & G. Lindzey (eds.), *Handbook of Social Psychology,* London: John Wiley and Sons, 2010.

in a relevant and permanent world. It is this perceived sense of being able to endure that terrorism threatens.

Besides searching for survival or pleasurable encounters, people spend most their time "trying to buttress their claims of significance and legacy in the symbolic reality they psychologically call home or inhabit."[35] If perception is threatened,

> "people tend to feel worried and fight against such threats to reassert their value together with the groups that they relate and reinforce their belief in the meaningful universe in which they believe."

The hypotheses formulated by this theory are supported by many studies. The most attractive reinforcement of the theory is mortality salience (MS):[36] that universal perception and self-worth save human beings from:

> "anxiety concerning mortality…the reminders of one's mortal nature must instigate attempts to strengthen one's value and that of other groups (self-esteem striving), and faith in an orderly, stable perception of the social realm and one's self."

In striving for self-esteem death becomes salient, and people base their self-worth on championing their ability die more boldly. They also oppose those who question

[35] Ibid.

[36] C. Campbell and J.J. Ma, "Looking Forward, Looking Back: Drawing on the Past to Shape the Future of Marketing" *Proceedings of the 2013 World Marketing Congress*, Cham: Springer International Publishing (2016).

their beliefs, and oppose any other group or country that criticizes or attacks their homeland or its allies. This explains why states' policy – that champions the dedication to live for long as possible – challenge terror organizations, and strengthen their capacity to deal with terror groups. In the context of this article, this strengthening of capacity is the essence of multiagency cooperation: to operationalize the fight against international terrorism in Kenya.

A basic terror management function of this worldview is to give "an orderly, structured and articulated perception of reality and oneself that enables the possibility of being a crucial player in a meaningful existence." Hence, MS must inspire human beings to:

> "desire their cognitions to fit together, for them [people] and events to be reliable, for a just world, for a meaningful art and for the self to become an enduring entity, connected from the past to the future."[37]

The theory also leads to the view that people tend respond to reminders of their death with two different sets of defenses or preparedness. This is why country put in place elaborate plans aimed at averting security risk vulnerabilities. In order to ensure that mortal threats through terrorism are eliminated, security agencies are

[37] Ibid.

established. These are elaborately equipped to deal with terror threats that could possibly result in death. This underlines the essence of international responses to terrorism in Kenya. It also explains why elaborate legal and policy frameworks have been formulated to deal with the challenges related to international terrorism in the country.

Methodology

This article is based on mixed methods and exploratory research design, which fits well where there are limited or fewer studies, is important for obtaining background information about a given topic, and is flexible, able to address a variety of research questions.[38] It also "employs both qualitative and quantitative research designs to complement each other by overcoming the weaknesses of each other."[39] The target population was all the members of the KDF SoFs, the NPS Recce Squad, ATPU officers and policy level military and police officers. The target population is estimated at 3400 personnel. The sample size for this study was obtained from a sampling formula by Yamane:[40]

[38] Streb, pp. 372-373.

39 Creswell, John, W. *Research Design: Qualitative, Quantitative and Mixed Methods Approaches* 4th Ed., Thousand Oaks: Sage Publications, 2014.

[40] Yamane, Taro. "Statistics: An introductory analysis." (1973).

$$n = \frac{N}{1 + N(e)^2} = 97.1$$

Where:

n= the sample size

N = the size of the population

e= the error of 10%

The calculation from a population of 3400 was 97. Therefore, a sample of 97 respondents was chosen from the various security agencies as indicated in Table 1.

Table 1: Sample Size Categories

Operations Teams	**Population Size**	**Sample Size**	**Sampling Technique**
KDF SoF terror-related	2,000	50	Purposive Sampling
NPS Recce terror-related	400	12	Purposive Sampling
ATPU Officers	800	25	Purposive Sampling
Policy Level Officers	200	10	Purposive Sampling
TOTAL	**3,400**	**97**	

Validity is key in making sure that "the instrument measures what is intended to measure."[41] To

[41] Kothari, B. L. *Research Methodology: Tools and Techniques*. ABD Publishers, 2007.

ensure this, the data collection instruments were submitted for expert review. Reliability, on the other hand, ensures consistency, dependability or trustworthiness in measurements of the desired study variables. To aid this, a test-retest technique was used.

Primary and secondary data collection techniques were used. Primary data was collected from the respondents mainly through questionnaires and interviews. Secondary data was obtained from library-based research through books, journals, government publications, and research theses, among other reputable academic publications.

The data collected from questionnaires was analyzed using the Statistical Package for the Social Sciences (SPSS) version 24. The findings were presented in descriptive statistics, tables, graphs, charts and inferential statistics. Data from interviews was analyzed thematically based on the objectives so as to establish the key themes and trends from which findings, conclusions, and recommendations were drawn.

Results and analysis

The study sampled 97 officers out of which 85 responded. This constituted an average response rate of 87.6% as shown in Table 2. From these, 77 were presented with the questionnaires while 8 were interviewed.

Table 2: Response Rate

Unit	Sampled	Responded	Response Rate
KDF SoF	50	44	88.0
NPS Recce Squad	12	11	91.7
ATPU Officers	25	21	84.0
Policy Level Officers	10	9	90.0
Total	**97**	**85**	**87.6**

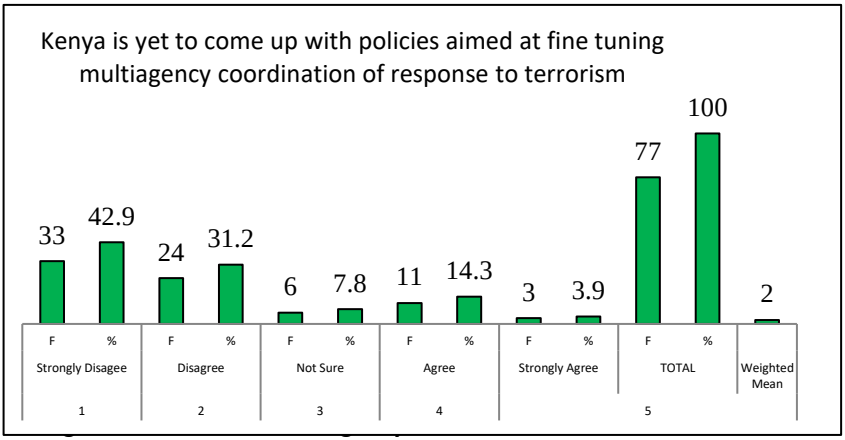
Policies for Multiagency Coordination

When presented with the statement, "Kenya is yet to come up with policies aimed at fine-tuning multiagency coordination of response to terrorism," the majority of the respondents (42.9%) strongly disagreed. These findings as presented in Figure 3.2 show that although Kenya had enacted various legislation to enhance multi-agency cooperation in information sharing during counterterrorism initiatives,[42] there are no strong policies to ensure that multiagency response to terrorism is highly synchronized.

These findings agree with those of Opon, Okoth, and Onkware that show that Kenya was faced with "the lack of constant surveillance and sharing of intelligence

[42] Kibet, K.R. *Terrorism and Kenya's Foreign Policy: A Contextual Analysis*, MA thesis, United States International University – Africa, 2016.

among others."[43] This inhibited the reliability of the intelligence shared among various security agencies, and challenged the efficacy of intelligence sharing processes as was the case in other countries.[44] As a result, efficiency in response coordination could be compromised, leading to security breaches and other consequences.



The respondents were also presented with the statement, "Kenya borrows from the United Nations Security Council (UNSC) resolutions to prevent and

[43] Opon, D.O., Okoth, P.G., & Onkware, K." Immigration Border Control Human Resource Challenges and Opportunities Affecting Counter-terrorism Strategies in Kenya" *International Journal of Education and Research*, , Vol.3, issue 5, (2015), pp.301-314. Accessed 12 November 2015 from: http://www.ijern.com/journal/2015/May2015/26.pdf

[44] Jody R. Westby, "Countering Terrorism with Cyber Security" *Jurimetrics*, Vol. 47, No. 3 (Spring 2007), pp. 297-313.

suppress terrorism." The findings show a high level of agreement with the statement. In this light, about half of the respondents (48.1%) agreed with it. This shows that Kenya had endeavored to domesticate UNSC resolutions.[45] This was done through the formulation of policies pegged on the recommendations of the UNSC,[46] a trend also witnessed in some other states, especially from the west.[47] It was thus possible for the country to see improvements in formulating policies for enhancing the smooth coordination of response to terrorism. However, the efficacy of these policies was still questionable given that while the response to the Dusit D2 attack was better coordinated than the Westgate Attack,[48] it still had some gaps.

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[45] UN Security Council, Letter dated 2002/09/29 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning Counter-terrorism addressed to the President of the Security Council, 31st July 2002, S/2002/856, p 3.

[46]Alistair Millar and Eric Rosand, *Building Global Alliances in the Fight Against Terror*, Washington: Center on Global Counterterrorism Cooperation, 2008.

[47] Christian Walter, "Defining Terrorism in National and International Law," in Christian Walter, Silja Vöneky, Volker Röben, & Frank Schorkopf (eds.) *Terrorism as a Challenge for National and International Law: Security Versus Liberty?* (Berlin: Springer, 2004), pp. 23–43.

[48] Maluki, P.M. (2019, January 21). How Kenya's security forces made sure they responded better this time. African Arguments. https://africanarguments.org/2019/01/21/how-kenya-security-forces-responded-nairobi-attack/

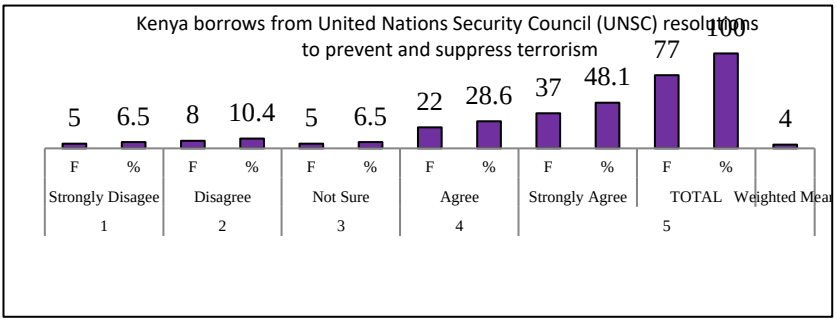


Figure 2 Policies Guided by UNSC Resolutions

Policies synchronizing primary responder operations

When presented with the statement, "Kenya has policies for synchronizing the operations of various primary responders to terrorism such as the police and affiliated units (e.g. GSU, ATPU, RECCE Company of GSU in Kenya) and the military," most of the respondents tended to either strongly agree or agree, each at 27.5%. This shows that Kenya had come up with some policies to enhance the synchronization of operations between the various responders. This supports the view that there were improvements in the way security forces responded to the Dusit D2 attack compared to the Westgate attack. Since 2013, Kenya enhanced surveillance equipment, and established the National Counter-Terrorism Centre.[49] It also established an anti-terrorism police unit aimed at

[49] Anderson, D. M., and McKnight, J. "Kenya at War: Al-Shabaab and Its Enemies in Eastern Africa", *African Affairs*, 2014, pp.1-27.

detecting and thwarting terror threats. As a result, the Dusit D2 operation was considered highly successful due to prompt and precise security response.

There was also proper inter-agency cooperation among forces drawn from the NPS, the NIS, Kenya Defense Forces (KDF), and other security organs.[50] However, the fact that the remaining 45% of the respondents were of contrary opinion or not sure shows that these policies were not very effective. It can thus be concluded that coordination was still not very strong.[51] This could thwart the overall success of a multiagency response to terrorism. These findings are shown in Figure 3.

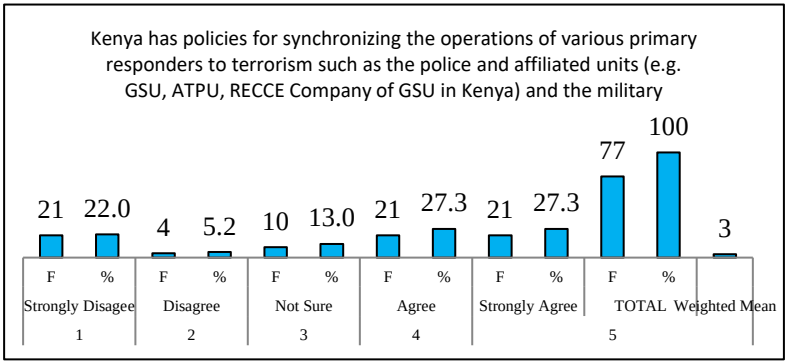


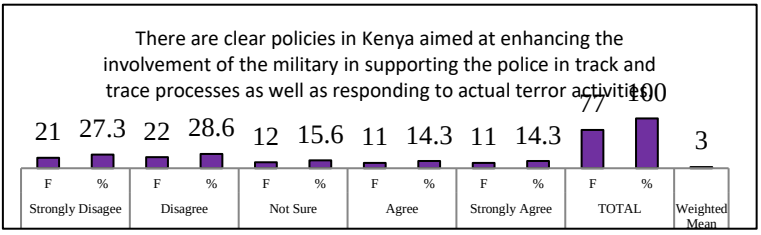
Figure 3: Policies Synchronizing Primary Responder Operations

[50] Maluki, 2019, op. cit.

[51] Samini Magogo, *The Effectiveness of Counter Terrorism Strategies in Kenya: A Case Study of Eastleigh Location, Nairobi County*, MA Thesis, University of Nairobi, 2017.

Policies enhancing military involvement in police support

Lastly, the respondents were presented with the statement, "there are clear policies in Kenya aimed at enhancing the involvement of the military in supporting the police in track and trace processes and responding to actual terror activities." The responses obtained show that there were some policies aimed at enhancing these involvement, they were not very clear. There were more than 50% of the respondents who either disagreed or strongly agreed to the statement. These findings indicate that although some policies were in place,[52] their clarity – at least among responders - was questionable.[53] It can also be argued that most of the respondents had probably not been clearly briefed on these policies. This was a recipe for chaos during terror attacks, since clear flow of information in a hierarchical manner - or configuration - could be compromised.[54] These findings



[52] Maluki, 2019.
[53] Samini, 2017.
[54] Yengoude, E.A. The Enemy Achieves Surprise: Are Intelligence Failures Avoidable? Journal of Political Sciences & Public Affairs, 2017, 5, 4.

Figure 4 Policies enhancing involvement of the military in police support

Findings from open-ended questions and interviews

The respondents were presented with the question, "in which other ways do you rate the existence of strategic multi-agency policies on coordination in response to terrorism in Kenya?" Similarly, the interviewees were posed with the question, "are there strategic multi-agency policies on coordination in response to terrorism in Kenya?" The responses obtained show that there were indeed policies aimed at enhancing coordination among and between the various security forces during terrorist attacks.[55] Although each unit had own policies, it was subject to the elaborate umbrella policy that guided joint operations. These policies heightened the circumstances under which the various security forces were required to share information, equipment, and strategies during attacks. These saw improvements in the way various agencies handled the Dusit D2 attack[56] in comparison with the Westgate Attack.[57] However, lack of preparedness

[55] Kibet, *Terrorism and Kenya's Foreign Policy*, op. cit.
[56] Asamba, 2019.
[57] BBC. (2018). Kenya profile-Timeline. Retrieved from https://www.bbc.com/news/world-africa-13682176

among citizens in the areas attacked often challenged the efficacy of response initiatives.[58]

Based on these findings, it is clear that the lack of existence of a strategic multi-agency policy on coordination in response to terrorism in Kenya leads to poor coordination in response to international terrorism. In this regard, it is evident that the level to which Kenyan security agents are guided by well formulated and clear policies in their response would affect the quality of their coordination to international terrorism and vice versa.[59]

Conclusions and Recommendations

The study findings make it manifest that strategic multi-agency policy on coordination in response to terrorism in Kenya enhances coordination in response to international terrorism. In this light, the level to which Kenyan security agents are guided by well formulated and clear policies in their response affects the quality of their coordination to international terrorism. Additionally, the existence of structural and legal frameworks guiding multi-agency operations on countering terrorism in Kenya had led to effective response through standardization of operation

[58] Chiharu, M. A. (2015). Effects of Terrorism on International Tourists: A Case of Kenya. Doctoral dissertation. United States International University-Africa.
[59] Maluki, 2019, op.cit.

guidelines, better sharing of information, joint training, and exchange of best practices among the various responders. This was evidenced in responses to the Dusit D2 attack where the synchronization of operations showed better response by the various operational and tactical teams as compared to the Westgate Attack. Lastly, it is evident that Kenya is yet to display that it has finally dealt with the terrorism menace. This can only be attested to when the country stays for a long period – at least exceeding 5 years – free from an attack.

Based on the findings, this article recommends that the multiagency response teams should constantly review their operation guidelines and standard operating procedures. This will address the ever-changing sophistication of terrorist attacks. This is pivotal in the wake of the constant evolution of terrorism, and will ensure responsive interventions.[60] Without constant review, it is possible for terrorist organizations to repeatedly identify loopholes that could be readily exploited in response processes.

[60] As defined by Matt Bryden & Premdeep Bahra, "East Africa's Terrorist Triple Helix: The Dusit Hotel Attack and the Historical Evolution of the Jihadi Threat."

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Operational Challenges in Use of Force and Related Policies and Strategies in the War on Terror in Kenya

Ruth Kelly`

Abstract

This article analyses Kenya's policies and strategies driving its military response to war on terror. It examines Kenya's policy and strategy making, and the policies and strategies used in the war on terror. It establishes that three important strategies have been used in the military response to war on terror: foreign, economic, and defense policies, as operationalized by diplomatic, economic and military strategies. It finds that Kenya relied heavily on both defense policies and military strategies. In particular, the article identifies the operational challenges faced by Kenya in its resort to a military and associated strategies. It concludes that to avoid these operational challenges, Kenya should make laws to entrench the best policies and strategies required to respond to error attacks in the country.

Introduction

Terrorism encroaches on the right to life for the affected populations, and has negative effects on their economic,

social, psychological, and political well-being.[61] In Kenya, terrorist attacks have increased uncertainty in the investment climate, and reduces foreign investment that plays a critical role in the growth of the economy.[62] The surge of terrorist attacks forced law enforcement and intelligence agencies to formulate policies and strategies to prevent and respond to terrorist attacks. Some of the attacks exposed the unpreparedness and inexperience of the intelligence community and response teams in preventing and mitigating attacks. For example, there was confusion and lack of a clear response protocol during the Westgate terrorist attack.[63]

Although the government has been proactive in improving policies and strategies to address the issue, there is still debate whether the strategies adopted by the country are sufficient to handle the complex and dynamic global problem. Recent counter terrorism measures have also seen the community bear the brunt of security

[61] Hoffman, Bruce. *Defining Terrorism*. Edited by Howard Russell and Sawyer Reid. Guilford, CT: McGraw-Hill/Dushkin, 2003.
[62] Hadji, Ahmed, and Hassan Ndugwa. "The Role of CSOs in Countering Violent Extremism (CVE) - A Case of Actors in East African Region," 2016.
[63] *The Guardian*,"Terror in Westgate Mall: The Full Story of the Attacks That Devastated Kenya," 2013.

operations.[64] Some experts argue that the militaristic approach adopted by the government has created a conducive environment for violent extremism and recruitment of Kenyan youths from marginalized and disadvantaged communities.[65] There have been concerns that human rights have been violated as a result of extrajudicial killings, torture, and arbitrary detention by government forces.[66] Such violations have polarized some sections of the country encouraging extremism.

Terrorist experiences in Kenya

Kenya embraced a serious counterterrorism agenda after the 1998 terror attack targeting American Embassies in East Africa. After 9/11, it was one of the countries that joined the global war against terrorism.[67] The country's responses to terrorism included enacting legislation like the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA); the Prevention of Organized Crime Act, 2010 (POCA); the Prevention of Terrorism Act, 2012

[64] Buluma, Godfrey. *Al-Shabaab: The Threat to Kenya and the Horn of Africa*. Carlisle Barracks, Pennsylvania: United States Army War College, 2014.
[65] Hadji, 2016. Op. cit.
[66] Vergani, Matteo. *How Is Terrorism Changing Us?: Threat Perception and Political Attitudes in the Age of Terror.*, 2018.
[67] Aronson, Samuel. "Kenya and the Global War on Terror: Neglecting History and Geopolitics," *African Journal of Criminology and Justice* 7, no. 1 (2013): 26.

(POTA), and Security Laws (Amendment) Act, 2014. Other measures include the establishment of organs like the Anti-Terror Police Unit (ATPU), and the National Counter-Terrorism Centre (NCTC). These were followed later by the Kenya Defense Force's (KDF) incursion into Somalia. Most of these approaches have been reactionary and leaning mostly towards the use of force. In spite of these measures, acts of terrorism have increased rather than declined. Between 1999 and 2017 there were more than 465 attacks that caused about 1074 deaths and about 1665 injuries.[68] In January 2019 the DusitD2 terrorist attack left at least 20 people dead and several others injured. There were also several attacks in north eastern Kenya in January 2020.

The process of policy and strategy making starts with identifying a problem. It then enters the arena of agenda setting where different aspects of the policy are deliberated by different stake holders.[69] After that, a policy is then adopted after approval by relevant authorities like parliament or the cabinet. A strategy to

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

[69] Makumi Mwagiru, *Policy and Strategy in National Security; Context, Perspective & Challenges in East Africa* Nairobi: Three-Legs Consortium, 2017.

implement the approved policy is then formulated following the same process as the policy formulation. The next step after the strategy is approved is the process of implementation. In this stage, there should always be some feedback that gives policy and decision makers an idea of how the policy and strategy is faring. If there is a problem, it could be an indicator of a wrong strategy or a flawed framework of implementation, requiring the policy and strategy makers to go back to the drawing board to remedy the situation. It is against background that this article examines the policies and strategies targeting terrorism in Kenya in a bid to identify their success, challenges, and how these can better be remedied to guarantee national security.

Perspectives in the literature

The war on terror was popularized after the 9/11 attack in America. The United States of America declared war on any terror group particularly those led by Osama Bin Laden. Ever since, the USA has engaged terror groups in Afghanistan, Iraq and Iran in the war. The war on terror is not a conventional war. The laws of war specified in the 1949 Geneva Conventions mainly point to observances to be enforced once war erupts. The laws of Geneva pertain to the protection of Prisoners of War [PoWs], the

wounded and sick, civilians and humanitarian personnel. However, terrorism does not meet any of these laws in its practices. Fighting terrorism does not therefore qualify as war, although countries allied to the USA still refer it as a war on terror.

The war on terrorism was intended to represent a new phase in global political relations, and has had important consequences for security, human rights, international law, cooperation, and governance. The war on terrorism is thus a multidimensional campaign whose scope is almost limitless. The USA is involved militarily in Afghanistan and Iraq, and has covert operations in Yemen.[70] Elsewhere, it is involved large-scale military-assistance programmes for cooperative regimes, and has led to major increases in military spending. However, fighting terrorism which is not strictly speaking a war.[71] Labelling it one falls into the political discourse of the American use of the term 'war': as a metaphor for dealing with all kinds of 'enemies' from global warming to drugs, poverty and now terrorism.

[70] Rogers, Paul. *Iraq and the War on Terror: Twelve Months of Insurgency 2004/2005*. IB Tauris & Co Ltd, 2006.
[71] Record, 2003. Op. cit.

The use of the military in dealing with these 'enemies' seems to be enough justification to the usage of the term 'war'. This departs greatly from the classical description of war where traditionally most wars, especially those waged in the European tradition, had clear beginnings and endings.[72] They were declared or initiated on a certain day, and on another certain day one side agreed to stop fighting. This is not the case when it comes to fighting terrorism. There are no given standard measures of success. Terrorists do not work in the open as furnished units, and mostly do not seize or hold an area.[73] They intentionally abstain from getting involved with rival military powers, and rarely practice any immediate control or influence over individuals or a region.[74]

War on terror in Kenya

Kenya has been unable to effectively counter terrorism because of the ineffectiveness of law enforcement and counterterrorism strategies. For example, the efforts by Somalis on the Somalia side to take over the Northern Frontier District [NFD] has also been part of the *Al-*

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

Shabaab ideology of wanting to establish an Islamic Caliphate.[75] This threat to Kenya's territory has greatly influenced Kenya's policy towards Somalia and the *Al-Shabaab,* and was one of the major reasons for formulating strategies like operation *Linda Nchi*.[76] However, the policies are affected by institutional weakness and corruption and are sometimes guided by flawed intelligence.[77] Indeed, it has been asserted that the approach adopted by Kenya is flawed since it neglects the history and geopolitics of the country, and is undermined by corruption.[78]

The contemporary challenge of responding to terror is attributed to globalization and its processes: these have helped to dissolve the old borders and opened up new frontiers, which are challenging traditional conceptions of sovereignty.[79] It is also attributed to the lack of definition of what constitutes a regional security strategy, the traditional focus of security, and of physical security, whose response is the through the military. It

[75] Korwa, Adar. *Kenyan Foreign Policy Behavior towards Somalia, 1963-1983*. Lanham: University Press of America, 1994.
[76] Ibid.
[77] McGregor, James. "How Kenya's Failure to Contain an Islamist Insurgency Is Threatening Regional Prosperity." *Terrorism Monitor* 15, no. 20 (2017).
[78] Aronson, (2013), op. cit.
[79] Cha, Victor. "Globalization and the Study of International Security" *Journal of Peace Research* 37, no. 3 (2000).

fails to address the insecurity dilemma: the view that threats to the security of third world countries emanate internally.[80] There is a need to adopt a modern way of thinking about security that is wider in scope and allows for the participation of other entities like communities in securing the state.[81] Institutions mandated to address regional security should be functional and flexible to guarantee the region's continued survival. There is also a need for the adoption of a systemic perspective that deals with the internal causes of insecurity.[82]

The impetus behind Kenya developing counterterrorism strategies has been the American government and the Global War on Terror (GWoT).[83] Strategies designed to counter terrorism in Kenya include operation *Linda Nchi*, Operation *Usalama* Watch, and integration with the AU mission in Somalia (AMISOM).[84] Operation *Linda Nchi* goal was aimed at creating a

[80] Mwagiru,. *Policy and Strategy in National Security,* op.cit.

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

[82] Ibid

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

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

'friendly' buffer-zone the state in the Somalia state of Jubaland that would help in preventing the entry of *Al-Shabaab* terrorists into Kenya.[85] The operation *Linda Nchi* initiative later integrated with the AMISOM in the war against terrorism in Somalia. Another strategy adopted was Operation *Usalama* Watch, which began in early April 2014 following increased attacks in many parts of the country among them Nairobi, Dadaab, Garissa and Mandera.[86]

Kenya's policies and strategies in the war on terror

Policy and strategy cannot be separated in national security contexts.[87] While policy outlines the plans to ensure national security, strategy outlines how these plans can be best applied, and who is responsible for the execution of the different plans and the expected outcome.[88] Policy making also involves creating laws, setting standards and decision making. Policy or strategy making begins with identifying strategic objectives, that is, the long-term goals to be sought. This is followed by

[85] Bruton, Bronwyn & Paul Williams. "Counterinsurgency in Somalia: Lessons Learned from the African Union Mission in Somalia, 2007-2013." *JSOU Report* 14, no. 5 (2014): 1–130.
[86] Amnesty International. "Amnesty International Report 2014/15: The State of the Worlds Human Rights," 2015.
[87] Ibid
[88] Ibid

the enactment of laws and policies, and the formulation of an implementation strategy. Without implementation, the policy itself is not of much use.[89]

The strategies and policies employed by Kenyan in its war on terror mainly involved the use of force.[90] Thus, the government deployed military forces at the Kenyan borders where terrorists were thought to gain entry. Since the enemy in question were thought to be of Somali origin, the government strategies targeted areas that harbored the individuals from Somalia, especially the refugee camps.[91] Nonetheless as war progressed so did the tactics by both the Kenya and the *al-Shabaab*.[92] As Kenya employed the military strategy, the *al-Shabaab* responded by the same strategy. More deployment eventually led to the *al-Shabaab*'s recruitment of not only the Somali militants but also Kenyan ones.[93] The war on terror has forced states to make policies "on the run".[94]

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[89] Moran, Michael, Martin Rein & Robert Goodin, *The Oxford Handbook of Public Policy*. Oxford; New York: Oxford University Press, 2008.
[90] Aronson, 2013, op. cit.
[91] Mwagiru, 2019, op. cit.
[92] Buluma, 2014, op. cit.
[93] Mwagiru, 2019, op. cit.
[94] Mwagiru, Makumi & Kigen Morumbasi (eds.), *Countering Violent Extremism in Kenya* Vol 1*: Strategic and Legal Issues*. Thirty-Three Consortium Publications, 2018.

Kenya's response to terrorism was marred by the lack of clarity on the relevant aspects of foreign policy. There was the further problem of the strategies to implement the policies thus complicating the war on terror.[95]

Framework for analysis

The systems theory[96] highlights the valuation of incorporation of parts of an issue. In it, all things and occasions known to man are connected to and interface with one another. An occasion happening today is influenced by previous ones. Similarly, occasions that will occur later on will be influenced from the occasions of today.[97] Systems theory examines how an event or an individual influence a more extensive mass or nature. Rather than accusing somebody or a few offices while dealing with issues, the theory attempts to see the role of the entire framework.[98]

Following the systems theory, terrorism is a social problem which should be handled by using social

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

[96] Skyttner, Lars, *General Systems Theory*. World Scientific Publishing Company, 2008.

[97] Luhmann, Nikla, *Introduction to Systems Theory,* Polity Press, 2011.

[98] Ibid.

dimensions.[99] The use of military force against terror groups creates divisions between the member of public. As a result, sympathizers emerge who may in future join or actively support the terrorists. Such conditions avert the security personnel in making sound choices in the battle. Systems theory proposes that terrorism is not an individual, self-acknowledged occasion. If there is terrorism, it implies that there is a systemic issue.[100] Security administration organs thus ought to know about this reality and should alter their approaches in like manner. In battling terrorism, the System point of view guarantees sound correspondence between the people and the establishments, and the productive utilization of resources.

Methodological issues

The target population informing research for this article was the general public and government agencies like the national intelligence service (NIS), anti-terrorism police unit (ATPU), national police service, and the ministries of interior and defense. Purposive sampling was used to identify participating respondents. Both

[99] Bailey, Kenneth. *Sociology and the New Systems Theory: Toward a Theoretical Synthesis*, Albany: State University of New York Press, 1994.
[100] Ibid.

primary and secondary data were used. Questionnaires targeting security and intelligence experts from relevant government agencies like the NIS, NPS and ATPU were used to gather primary data. Selected members of the ministry of interior and coordination of national government were interviewed. Secondary data was collected through a review of journals, books, working papers, periodicals, newspapers articles, and policy documents. Content analysis was used in analyzing qualitative data.

Analysis of Kenya's WoT policies and strategies

The empirical data revealed that the policies employed by the Kenyan government in its war on terror range from military, diplomacy, legislation, and collaboration and cooperation.

The use of force: defence policy and military strategy

Kenya has mainly utilized military strategy in the war on terror. It is an important strategy for guarding the country especially when an outside enemy is unforeseen. The military strategy does not stand on its own, and is mandated by the defense policy. The national security council must authorize the creation and implementation of any policy under the defense sector. The grand strategy is primarily the use of the national sources of power to

defend core national interests and promote national security. The armed forces are the principal guarantor of peace and security in the country from external armed threats. The military undertakes active and passive surveillance, intelligence gathering, physical patrols, and protection of borders and other likely terrorist targets.[101]

The Kenyan government has principally relied on security operations as a way of dealing with terrorists. The use of security involves employing measures aimed at identifying, removing, or eliminating those that are suspected or proved to belong to terror groups. The first security operation conducted in Kenya was termed Operation *Linda Nchi*, meaning 'protect the country.' The operation's aim was securing the country and its borders by getting the insurgents from their hideouts in Somalia. The operation was launched in October 2011 by the Kenya Defence Forces that cooperated with the Somali military forces. The process lasted for five months, starting on 15th October 2011 and ending on 9th March 2012. On 30th October, the Kenya Air Force (KAF) bombarded an IDP camp located outwards of Jilib town in Somalia.

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

The 2014 *Usalama* Watch was engineered to detect and arrest those illegally staying in Kenya, and subsequently persecution those said to have aided their stay or cooperated with any persons suspected of carrying out terror acts. On its launch, the operation had more than 6000 police officers deployed in Nairobi, particularly in the Eastleigh area.[102]

Operation Boni was launched in July 2015 but began in September the same year. The procedure was later renamed to Boni Enclave Campaign. It was enacted as a result of the Mpeketoni massacre in Lamu County and Garissa university attack in Garissa county. The operation involved some security agencies, including the KDF, the NPS, the AP, and the NIS.[103] The government realized, through NIS information, that terrorists who carried out the attack used the forest as their haven. Jaysh Ayman, a small section of the *Al-Shabaab* in Kenya, was using Boni forest as their hideout, and an entry point of terrorists from Somalia into Kenya.[104] The group was behind terror

[102] Mwagiru, 2018, op. cit.
[103] McGregor, James. "How Kenya's Failure to Contain an Islamist Insurgency Is Threatening Regional Prosperity" *Terrorism Monitor* 15, no. 20 (2017).
[104] Walloga, Laban. "KDF Intensifies Security Operations in the Boni Forest." *Daily Nation*, 2016.

attacks in Lamu and Garissa counties between 2014 and 2015.

It was established that the military strategy was an imperative component of national power. Threats posed by terrorism have changed the traditional picture as terror groups can emanate internally. In Kenya, dangers posed by terror groups in the country have continued to outweigh those from outside. Internal threats are considered more lethal as they may weaken a state in its survival in its external environment. Kenya deployed the military strategy from time to time, depending on the lethality of the situation. It was found that a diplomatic approach has to be established to outline how such an occurrence is handled. This is due to an anticipation of collision with external territories. However, the diplomatic strategy must be guided by the country's foreign policy, and hence the two are intertwined.[105]

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

Foreign policy and diplomatic strategy

Diplomacy is critical in the war on terror. Countries united in the fight on terrorism use strategies like prohibitions on funds and economic resources. The war on terror saw countries sign, ratify, or accede to many of the protocols and international conventions on terrorism. Kenya, through its foreign policy, employed diplomacy. Diplomacy helps to build political will and strengthen international cooperation. The front diplomatic exchanges help promote counter-terrorism cooperation with friendly states that serve the mutual interests of both. The fact that international terrorism has no boundaries makes it prudent for governments to reach out to their neighbors and allies to forge a multilateral approach in the fight against the threat. Diplomacy supports the other instruments of national power in numerous ways. For example, extradition treaties help in applying criminal law by facilitating the transfer of fugitive terrorist suspects.[106]

Kenya has sought bilateral and multilateral cooperation as one method of dealing with acts of terror in the country. A state must liaise with others, especially

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

those with advanced technology like western and European countries. The most significant collaboration that has helped Kenya in the WoT is with the USA government. The USA considers Kenya as a vital partner in Africa in the WOT.[107] Kenya is also one of the 69 members under the GWoT led by the USA. Such member countries declared their support to the USA government in the war on terror and, as a result, have been receiving support under the Anti-Terror Assistance (ATA) programme.[108] The government also relies heavily on the intelligence service, which is another unit funded by the ATA programme. The intelligence body focuses on the detection and investigation of possible threats and, in accordance, advises the government on measures to undertake.[109]The intelligence services defend the interest of all individuals, be it politicians, tourists, or the general public, in ensuring credibility.

The government mainly depends on the intelligence services of developed countries like the UK and the USA. Under the programme, Kenya receives approximately $8 million annually. GWOT members are

[107] Lind, (2017). Op. cit.
[108] Buluma, 2014. Op. cit.
[109] Pashley, Libert, and Leroy Cools "Private Intelligence Services: Their Activities and Role in Public-Military Intelligence Strategies" *Journal of Intelligence Studies* 7, no. 1 (2017): 131–39.

required to utilize the aid in securing their borders, responding to crises, and carrying out investigations related to terror. ATA has helped Kenya to strengthen several units, for instance, the National Security Advisory Committee, ATPU, and NCTC.[110] The units were created to help detect, disrupt, and dissuade terror acts. Besides, they act as awareness agencies and developers of counterterrorism strategies.[111]

Following repeated threats to Kenya and the impact of these threats on the national economy and security, Kenya initiated multilateral and bilateral initiatives to build partnerships with affected countries inside and outside the region.[112]

As part of its regional counter-terrorism initiatives, Kenya has participated in numerous discussions under local organizations like the IGAD, AU, the Commonwealth, and the UN. Nevertheless, the most prominent diplomatic initiative is the bilateral

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

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

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

cooperation with the USA on improving Kenya's counter-terrorism readiness. [113]

Kenya also approached the Israeli government for assistance in rescue operations.[114] For example, after the 2002 terrorist attack in Kikambala, it invited the Israeli government to investigate the incident to enhance its diplomatic front. The USA and Israeli security teams were dispatched by their respective governments to team up with Kenyan counter-terrorism experts to help track those responsible for the Paradise hotel suicide bombing and an attempted missile strike on an Israeli charter jet. [115]

Legislative response in Kenya

Most states have tended to global terrorism by turning up at gatherings to conclude peaceful accords on this subject. The reason for these arrangements is to create structures for worldwide collaboration in battling terrorism.[116] Agreements concerning hostility to terrorism have been concluded on a worldwide premise.

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[113] Makumi Mwagiru, *Contemporary Security in Africa*, Vol. 3, no. 1 (2015): 78–92.

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

[115] Ibid.

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

A few multilateral shows and deals identified with terrorism making predefined terrorist violations extraditable offenses in any current or future custom arrangements between the states participating at the gatherings. These shows likewise suggest that such violations constitute the lawful reason for removal. Besides, many multilateral understandings incorporate arrangements forcing common help with law requirement commitments for the contracting countries associated with inquiry and trial of the predefined terrorist crimes.[117]

The adoption of specific counter-terrorism legislation is critical to ensure that the planning, financing, incitement, and conduct of terrorism are criminalized. This will allow for extradition and other forms of international cooperation. It will also ensure that the criminal justice system is fully equipped to combat terrorism within the bounds of the rule of law. The basic legislative requirements to combat terrorism can be found in the international conventions and protocols related to terrorism made under the auspices of the United Nations. The 1999 OAU Convention on the Prevention and Combating of Terrorism is also essential in fighting terrorism. Most countries in the region have

[117] Ibid

ratified the conventions and protocols. They have also enacted anti-terrorism legislation.[118]

Kenya supports the UN Security Council resolutions 1269 and 1373. Resolution 1269 provides that states are permitted to use acts of suppression in international terrorism to maintain peace and security. Under Resolution 1373, states are mandated to prevent any funds for supporting terrorism. Kenya has taken both military and non-military measures.[119] The legislation enacted enables the bases of legal measures undertaken to be identified. Prior to the legislation, it was difficult to build a strong case against an accused.[120] The country thus enacted legislation to help in the war on terror. The legislation includes the Prevention of Organized Crime Act [2010], the Anti-Money Laundering Act [2011], and the Prevention of Terrorism Act [2012].[121]

Kenya made huge strides towards improving its Anti-Money Laundering (AML) system through enactment of the Proceeds of Crime and AML Act that were endorsed

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

[119] United Nations. 2013, op. cit.

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

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

in December 2009, and became effective on 28th June 2010. The Prevention of Organized Crime Act [2010] was created to prevent, investigate, and punish organized crimes in Kenya. It targets fundraisers, organizers, or those directly involved in organized crimes. Most of these statutes require officers to act in conjunction with other institutions like the banks, ATPU and the Kenya Police Service. The country has been succeeded in averting some internal attacks especially within the capital city.[122]

The Anti-Money Laundering Act [2011] was formally amended in 2017. The amendment strengthens the Financial Reporting Centre (FRC) to issue instructions, directions, and rules. It helps in detecting, tracing, freezing, and seizure and confiscation of crime earnings. Also, under that statute, the FRC is mandated to help identify crime proceeds and prevent money laundering and the bankrolling of terrorism.[123] It stipulates that individuals not complying with FRC instructions are liable to a fine of up to 5 million Kenya shillings, and fourteen

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

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

years to life imprisonment for those convicted. Further punishment includes forfeiture of assets to the state.[124]

The Prevention of Terrorism Act [2012] was amended to strengthen the criminalization of financing acts of terrorism, and was passed in 2013.[125] Through this amendment, Kenya specified the police and the Financial Intelligence Unit (FIU) as the institutions responsible for the collection of data and reports on terrorist activities. This amendment additionally formalized the cycle for freezing resources for individual and suspected terrorists, and for sharing data between government offices. A jail term not exceeding 30 years is specified for persons acting contrary to the act.[126]

In 2014, the Security Laws (Amendment) Act (SLAA) was created to strengthen the war on terror.[127] The SLAA contained aspects of criminalizing individuals participating in training by insurgents, ensuring coordinated border control, strengthening the NCTC mandate, and involving the use of electronic evidence.[128] It gave the NCTC a legitimate organizing request for

[124] Mwagiru, *Policy and Strategy in National Security,* op.cit.
[125] Aronson, 2013, op. cit.
[126] Ibid.
[127] United States Department of State. "Country Reports on Terrorism 2015 - Kenya," 2016.
[128] Ibid.

counter-terrorism, public commitment on CT issues, planning and public counter and de-radicalization procedures, preparing and limiting building, and a few duties in avionics security. A Kenya high court ruling however, nullified the Act in 2015.[129]

Cooperation and collaboration

The African Union (AU) adopted a broad counter-terror approach for Africa. It adopted The Convention on the Prevention and Combating Terrorism in 1999. This was the first African legislative framework for combating terrorism. Under the Convention, member states are obliged to criminalize terror acts in their national laws.[130] It also specifies the use of border patrols, judicial means and exchange of information to curb terrorism.

Kenya is a part of the international community's coalition against terrorism. It is also a member of the Inter-Governmental Authority for Development (IGAD), and has ratified the Algiers 1999 Convention on Countering Terrorism. It has spearheaded regionalism in combating terrorism as a member of the African Union and the United Nations. Kenya is a lead state in regional

[129] NCTC, National Strategy to Counter Violent Extremism: The Mandate of NCTC," 2016. www. counteterrorism.go.ke.
[130] Byman, Daniel, "Eighteen Years On: The War on Terror Comes of Age." *Combating Terrorism Center* 12, no. 8 (2019): 1–32.

counter-terrorism efforts. It collaborates with, and participates in all international and local partnerships and initiatives, thus, ensuring the safety of life and property against terrorist threats and violence, and supports the Regional Fusion Centre.[131]

Kenya has partnered with Uganda and Tanzania in the war on terror.[132] Following alliances among these states, it has become easier to oust members of terror groups from East Africa. It is also a central partner in the EACTI programme. The EACTI was announced by USA President George W. Bush in 2003 to strengthen East African countries' capacity to fight terrorism. Under the programme, Kenya has participated in joint military exercises with neighboring countries on counter-terrorism readiness. There has been joint military training in maritime and coastal border security and equipment purchase for patrol under the EACTI. Kenya has also received funding to improve the NCTC and fund the joint counter-terrorism task force under the initiative. The joint task force was established to improve interagency and

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

information sharing to better target and disrupt terrorist activities in the country and the region. The task force was however disbanded in 2004.[133]

Kenya is an active member of the Partnership for Regional East Africa Counterterrorism, and the AU - including membership on the Peace and Security Committee - and as a troop-contributing country to the AMISOM.[134] It remains engaged with the IGAD, and hosted an IGAD Security Sector Program validation workshop on a countering violent extremism study. It also organized and hosted a regional CVE conference as a follow-up to the White House CVE Summit. These events were Kenya's significant contributions to local capacity building. It was also selected as a beneficiary of the Global Community Engagement and Resiliency Fund.[135]

Kenya is also a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), which was founded in August 1999.[136] ESAAMLG assists member states in complying with

[133] Lind, Jeremy, Patrick Mutahi & Marjoke Oosterom "Killing a Mosquito with a Hammer" op. cit.
[134] Bruton, 2014, op. cit.
[135] Ibid.
[136] Mogire, Edward, and Kennedy Agade. "Counter-Terrorism in Kenya." *Journal of Contemporary African Studies* 29, no. 4 (2011): 473–491.

international standards against funding terrorism (originating from the Financial Action Task Force (FATF) recommendations). FATF is an intergovernmental body founded in 1989, to set standards and promote effective implementation of legal, regulatory measures to combat money laundering and terrorist financing.[137]

Its member states include South Africa, Zimbabwe, Uganda, Lesotho, Mozambique, Angola, and Zambia.

Operational challenges in Kenya's war on terror

The main challenge hindering effective response to war on terror are the retaliatory attacks by *Al Shabaab*. Kenya's response to terrorism through military means was informed by its expectation that it would enhance peace and security. The security operational environment has however, worsened, especially following the introduction of the *Linda Nchi* operation.[138] The war in Somalia is mainly blamed for the frequent attacks that have happened in the last few years. It is estimated that more than 300 attacks happened after KDF forces engaged in the war in Somalia.[139] The Global Terrorism

[137] Ibid.
[138] Anderson, 2015, op. cit.
[139] Mwagiru, Makumi. *Policy and Strategy in National Security,* op.cit..

Database indicates that between 2013 and 2017, Kenya suffered 373 terror attacks. A total of 929 individuals have been killed, 1,149 injured and 666 taken hostage. Major attacks orchestrated by the *al-Shabaab* in Kenya as retaliatory attacks include Westgate attack, Mpeketoni attack, Garissa university attack, and the Dusit 2 attack.[140]

In September 2013, a group of terrorists gained access to Westgate mall in Nairobi, and a shootout ensued. The aftermath was 67 causalities and a significant loss of property. Later the following year, two attacks occurred in Mpeketoni in Lamu county where insurgents from *al-Shabaab* killed 60 people.[141] They cited historical injustices as one of the reasons for their attack. Most of the fatalities were identified as Kikuyu, whose ancestors had acquired the land through Kenya's founding president Jomo Kenyatta. It is said that the former president liked to reward people loyal him, especially the Kikuyu ethnic group. In Lamu, the founding president is thought to have rewarded his loyalists because laxity of the locals.[142] The attacks reached a climax in 2015 when shooters attacked Garissa University, massacring about

[140] Ibid.
[141] The Guardian "Terror in Westgate Mall: The Full Story of the Attacks That Devastated Kenya," 2013..
[142] Anderson, 2015, op. cit.

150 students and injuring many more.[143] In 2016, the KDF base at El-Adde in Somalia, was assaulted by the *al-Shabaab*.

Kenya's counter-terror measures have resulted in the loss of lives. The ATPU, the GSU, Military intelligence, and the National Intelligence Service allegedly conducted extrajudicial killings and forceful disappearances. ATPU was also suspected of being behind the killings of radical imams including Sheikh Aboud Rogo, Ibrahim Omar Rogo, and Makaburi.[144] The clerics were accused of using the Masjid Musa in Mombasa to recruit youths to join *Al-Shabaab*. Rogo and Makaburi had pending court cases concerning these accusations. In 2015 human rights activists raised the alarm over the disappearances of Kenyan Somali men. They claimed that 100 men were missing from Mandera county, 50 from Garissa, and 39 from Wajir county, while security forces abducted at least 20.[145]

Other killings include the killing of Suspects like Shabaan Namusenda Makotse in April 2013 in Mombasa, Hassan Omondi Owiti and Shekha Wanjiru on 18th May

[143] BBC News, "Kenya Attack: 147 Dead in Garissa University Assault," 2015.
[144] Human Rights Watch. "Disappearances and Extrajudicial Killings Wanted Terrorist Threats," 2015.
[145] Ibid.

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

Bodies of youths believed to be victims of extrajudicial killings have been found in different parts of Kenya, including Nairobi, Mombasa, and Murang'a.[146] A research conducted by the Human Rights Watch (HRW) between November 2013 and June 2014 documented 10 cases of extrajudicial killings and 10 of enforced disappearances, mainly in Nairobi. The KNCHR is the body mandated by the constitution to investigate and report on human rights observance in Kenya and take appropriate measures to redress human rights violations. Kenya's security agencies are also allegedly behind 25 extrajudicial killings and 81 imposed disappearances.[147]

The counter-terror effort of the Kenyan state led to the acceptance of refugees moving from terror

[146] Ibid.
[147] Ibid.

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

The government of Kenya has resorted to the forceful transfers of individuals and refugees suspected to be involved in terror activities. In 2007, at least 90 people including Kenyans, believed to be involved in terror activities were arrested in the then North Eastern province and were rendered to Somalia and Ethiopia. The same year, Mohammed Abdulmalik, a Kenyan, was arrested in Mombasa for allegedly planning to conduct bombings in Kenya. At the Jomo Kenyatta International airport, he was handed over to USA personnel who rendered him to Djibouti, where he was held at t h e USA's military base before being rendered

to Afghanistan and later on moved to Guantanamo Bay where he is imprisoned to date.[148]

The Kenyan government blames the Somali refugee population for the increased insecurity in the country.[149] In December 2012, in a decision aimed at curbing terrorism, it issued a directive to relocate all urban refugees to Dadaab and Kakuma refugee camps. However, in July 2013, a ruling by the Kenya high court declared the plan illegal for violating the rights of refugees and their dignity. Another government directive was soon issued and implemented. The 2014 Anti-terrorism law limited the number of refugees residing in Kenya to 150,000. A five-judge bench in February 2015 declared the clause to be unconstitutional since it violated Kenyan laws and international treaties.[150]

In 2014, Kenya expelled 359 Somalis to Somalia, including at least three registered refugees. 28 Ethiopians were also expelled, 6 Ugandan asylum seekers were arrested, and returned to Uganda, while a total of 412 refugees were relocated to Kakuma and Dadaab refugee camps. Those expelled had foreign identity documents, with some claiming that their

[148] Ibid.
[149] UNHCR, "Kenya Comprehensive Refugee Programme," 2015.
[150] Human Rights Watch, 2015, op. cit.

identity documents were confiscated or destroyed following their arrests by police officers who demanded bribes to secure their release. Expelling the refugees breached the principle of *non-refoulment* enshrined in international refugee law, and article 2 (3) of the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa.[151]

Islamophobia has grown as the war on terror advances. There is no freely accessible proof that the 'prevent strategy' has forestalled the demonstration of "terrorism."[152] The war on terror has primarily centered around Muslim populaces, adding up to racial profiling. It has fuelled the Islamophobic recognition that Muslims have an issue of radicalism. It has likewise encouraged the notion that Muslim group pioneers are liable for policing their societies.[153] Kenya's more extensive techniques to forestall *Al-Shabaab* assaults include measures to distinguish and eliminate people who are in the country illicitly, proceeding with a type of 'ethnic security planning' and profiling.

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[151] Bruton, 2014, op. cit.
[152] Kaufmann, Mareile. *Ethnic Profiling and Counter-Terrorism: Examples of European Practice and Possible Repercussions*. Berlin: LIT, 2010.
[153] Ibid.

The government, in many instances, has held the Somali community collectively liable for the actions of its criminals and terror suspects. This was also the case in 2011 when the government ordered an audit of all Somali properties and assets, alleging that Somali business people were using proceeds from terrorism and piracy in the Somalian coast to invest in the real estate of Kenya.[154] The *Usalama* Watch launched in 2014 mainly targeted Somalia.[155] The police and the KDF conducted the 2014 Operation *Usalama* Watch without search warrants in Mombasa and Nairobi, particularly in areas inhabited by ethnic Somalis and Muslims. It created a perception that it was an ethnic and religious profiling operation.

According to IPOA, the operation violated the principles of equality and non-discrimination despite the need to carry out a nationwide operation since some terror suspects trace their origins in the country.[156] The report further indicated that the police did not observe human rights protections. They were accused of asking

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

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

[156] Ibid.

for bribes from the captives ranging from Kenya shillings 1,000 to 20,000. Victims reported exploitation by military forces and police who cited a lack of identity cards as the reasons for their actions. Individuals were detained without appearing in court beyond the 24 hours legal limit provided for in the constitution. The people arrested during the operation were detained for several days in different cells without food and access to their lawyers.[157]

Although a big gamble, the decision in October 2011 to deploy thousands of KDF troops in Somalia's Gedo region to wage war on *Al-Shabaab* unilaterally, bore fruits. Several gains were made including the liberation of several towns like Kismayu and Hoosingow. After 're-'hatting into AMISOM, KDF has faces challenges like falling into AMISOM's mandate in Somalia. Waiting for AMISOM bosses to give authority to conduct offensive attacks took time and this slowed down KDF progress in Somalia. Meanwhile, *Al Shabaab* continued conducting sporadic attacks using guerilla tactics which required prompt response. There is a need to reconsider the AMISOM mandate to accommodate this threat

[157] Ibid.

dynamic[158] The other problem was mutual support by other AMISOM contributing countries. This was blamed for the Elade attack where KDF lost almost the entire Company.

Conclusions

The Kenyan government has heavily relied on military policy and strategy in its war on terror. The government deployed military forces at the Kenyan borders from where the terrorists were thought to gain entry. Since the enemy in question were of thought to be of Somali origin, the government strategies targeted areas that harbored the individuals from Somalia especially the refugee camps. Nonetheless, as the war progressed, so did the tactics by both the Kenyan government and the *al-Shabaab* groups. As Kenya employed the military strategy, the *al-Shabaab* responded by the same strategy. More deployment eventually led to the *al-Shabaab*'s change of strategy to recruitment of not only Somali militants but also Kenya ones.

Policy and strategy cannot be separated in implementing national security. Policy making involves the creation of laws, setting of standards and decision

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

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

Kenya does not have an official policy on counter terrorism in Kenya. There however exists legislation addressing the threat. The Avoidance of Terrorism Act 2012; the Security Laws (Amendment) Act [2014]; and the 2017 Proceeds of Crime and Anti-Money Laundering (Amendment) Act [2017] emphasize tendencies to fierce radicalism through policing, money laundering controls, intelligence sourcing, and arraignment. Kenya's 2015 CVE strategy now supplements these security-centered counter-terrorism measures with a system for CVE

measures, which incorporate the arrangement of work alternatives, business openings, and fundamental abilities, among different intercessions, geared towards diminishing youth weakness to fierce fanaticism.

The government of Kenya, should make bills that recommend the best policies and strategies to incorporate to reduce terror attacks in the country. It should involve the citizens - as indeed the Constitution of Kenya [2010] requires - in the creation of policies to avoid *ad hoc* policies. Since the members of communities are the likely victims, they may give opinions based on facts. It is clear that when the task is left to a particular sector it tends to focus on particular policies and strategies and ignore the rest. All the ministries should consider working together in drafting necessary policies and strategies for the war on terror. The government should further consider formulating a grand strategy. Such a step would ensure that the government balances between the military, foreign and economic policy. This would move smoothly towards making defense, diplomatic and economic strategies to help fight terrorism.

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Book Review

Some Comments on Responses to the War on Terror

Stephen Gachoki Gichira, *Rethinking Kenya's War Against Al-Shabaab (*Nairobi: Three Legs Consortium, 2020)

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Rethinking Kenya's War Against Al-Shabaab is an excellent contribution and addition to a missing literature: that highlighting policy and strategy and specifically focusing on Kenya's war against *Al-Shabaab.* This aspect of the war on terror has been a thorn in the Kenya's security environment for the last twenty years. The author highlights the existing policy and strategic environment in Kenya, the threats posed to it by terrorism, and its responses. In doing so, it also critically evaluates the strategy and policy response to this threat, and the current domestic landscape informed by them.

It cannot be gainsaid that terrorism is a global problem. The African continent is the main overarching theme of the book, with a particular focus on Kenya. By the definition of terrorism, the state provides the context for one of its main challenges in addressing its various

forms. While terrorism is an asymmetric threat, states have however responded to it symmetrically. This has been the folly of many states including the USA, whose response unleashed the global war on terror. In all cases also, the response to terrorism was handled reactively. In contrast, the cold war era drew clear lines of the enemy. In the post-cold war period however, the asymmetric threat created major challenges because the enemy now blends in with the population as opposed to the cold war era where it was clearly defined. In that period, many state relationships were also binary, and created a clear distinction between friend and foe.

Rethinking Kenya's War Against Al Shabaab clearly articulates the ever evolving and adaptive character of terrorism. Regardless of state strategies and responses, terrorism has proved to be challenging in states' responses both in developed and developing countries.

The responses to terrorism in Kenya have essentially been through the use of force, as exemplified by Kenya's external intervention in Somalia. Some have argued that this intervention was a strategic blunder. Others maintain that it was necessary to deal with the problem at the source: this was indeed the premise of the Kenya Defence Forces [KDF] intervention in Somalia. This

intervention however was never meant to have become as protracted as it has been. Additionally, as the book mentions, while there were numerous hard responses to terrorism, softer responses to the threat were lacking. The terrorism threat required to be addressed through more varied approaches, hence the later introduction of Countering Violent Extremism [CVE] as one of the strategies in addressing terrorism especially at the grass roots levels.

According to the author, every intended strategy, however articulate, encounters implementation challenges. In this particular case, the challenge was radicalization not just in the Muslim sections of the main cities, but in areas and regions traditionally not populated by adherents of the Muslim faith. This confronted Kenya's national security policy makers with numerous challenges. The realization also dawned that *Al Shabaab* had shifted strategies. This strategic shift meant that the war had shifted its character from the enemy being external to Kenya to within. This change in strategy and tactics is a typical adaptive characteristic and behaviour of terrorist groups like *Al-Shabaab.* It is also one of the main reasons why it has managed to pose constant national security challenges to Kenya.

Besides, the fact that those now recruited by *Al Shabaab* deviate from the traditional notion of a terrorist as one that looked typically Muslim and spoke Arabic. Those now being recruited through radicalization are regular ordinary looking Kenyans. This kind of strategy change has increased since the strategic shift, and has presented conceptual difficulties to the security services.

There has now emerged an overarching theme and consensus that addressing radicalization through softer approaches is more effective than the traditional reactionary state use of force response to attacks. The use of force is a normal tendency for states in the same situation. But alone, it is now acknowledged that it is insufficient to deal with terrorists. It requires to be supported by the application of other approaches through strengthening state tools like diplomacy in the mitigation of future terrorist attacks.

The first two chapters of the book address the definition and contextual challenges of addressing terrorism through Kenyan security lenses. However - as the title of the book suggests – the context is the terrorist group *Al-Shabaab* that has challenged Kenya and other regional African countries like Tanzania and Somalia. It engages these countries not through kinetic means alone,

but by engaging in disinformation and propaganda. This strategy sows diminished trust in the state governments. It also increases sympathy towards *Al Shabaab* and its cause; and thereby pleaded to justify various attacks and motives it engages in. State responses to this strategy, in particular, have been through the winning hearts and minds approach. This was a missing link when Kenya initially engaged the *Al Shabaab*.

The War on Terror [WoT] as illustrated in the first chapter, demonstrates the challenges of terrorism not just in Africa, but world-wide. The declaration of the WoT by the USA especially during the George W. Bush administration highlighted various challenges. In particular, because of the binary language of the declaration of the war on terror, states were forced to either be in consensus with this declaration, or be deemed enemies of the fight against terrorism.

The post-9/11 security environment as analyzed in the book created contemporary challenges. These posed challenges not just at the state level, but at institutional levels like the various national security entities in the country like the Intelligence Community [IC], police service and the military. Because of the asymmetric character of the war on terrorism, and the

initial responses against non-state actors like *Al-Shabaab* in Kenya, many states - in Africa and beyond - experienced great challenges of addressing the terrorist threat through conventional military intervention. Additionally, although many countries addressed and confronted these terrorist groups, it only increased and drove them to adjust and change their strategic responses to states' use of force interventions. The terrorists hence changed their approach from direct engagement with state security entities to more indirect, long-term approaches. These essentially make use of the recruitment of individuals internally, thus by-passing the traditional profiling of individuals from certain ethnic backgrounds. This has increased the difficulty of national security institutions in addressing terrorism internally.

The premise of the book is centered on the analysis of terrorism as a form of conflict. However, as the author notes, there remains the question of why this conflict is not seen and analyzed through the analytical lens and framework of peace and conflict management. These frameworks appreciate the presence of a conflict, and hence the need for a different approach to it. As noted earlier and is well- illustrated in the book, there still exists the complexity of dealing with a mutating and

adaptive adversary, whose continued shift in strategies and tactics forces states to adjust theirs to contain the continuing threat of terrorism.

Furthermore, as the book observes, countries that aligned with the USA on counter-terrorism like Kenya became victims of increased terrorist attacks due to that relationship. Kenya for instance, is an important democratic and anchor state in Eastern Africa. Being a democratic and an anchor state, it also has strong relationships with Israel. This has further increased its susceptibility to attacks based on the partnerships with the USA and Israel. This compounded the threat of terrorism in Kenya. This is amply reflected in various state legislative initiatives like the granting of increased powers to the police and intelligence agencies as amplified in the *Prevention of Terrorism Act 2012.* Since its inception, this statute has created implementation controversies. For instance, as the book mentions in its first chapter, is the ability of the police to create lists of suspected individuals and groups without due process. Furthermore, the increase in extrajudicial killings and the targeting of organizations and members of the public have encouraged scrutiny on the implementation of this statute.

There has generally been - and there still is - a disparity and divided belief about counterterrorism responses. These responses have traditionally been divided into policing, military and the socio-economic. All the three have in common the belief that the driving principal response actor is the state. With the increase in the threats from terrorism, there has been a push for greater cooperation, and the integration of services at different levels like the tactical and operational ones. As the book argues, there is a practical need for increased intelligence sharing and cooperation among the police, the military and the intelligence services in Kenya. This has however has been affected by different bureaucratic wars, budgetary constraints and cultural operational differences. This is not endemic to Kenya alone. The problem has been noted globally whenever there is an engagement of the different security services.

A landmark and turning point in Kenya's national security was the Westgate terrorist attack. It prompted a realization and appreciation of the gaps and weaknesses in Kenya's inter-agency functioning. This inspired the establishment of the National Counter Terrorism Centre (NCTC). One major role of the NCTC is to bridge the missing links between the security services, in particular

those whose focus is counter-terrorism. The creation and establishment of the NCTC was an *ex post facto* mechanism to improve coordination and information sharing in counter-terrorism matters.

From the perspective of policy and strategy responses to the adaptation and state response to terrorism, the author observes and highlights that national security policy in Kenya is disposed to the physical conceptualization of security. As a result there has been a predisposition to the use of force, which mirrors the cold war framework.

Kenya's National Strategy to Counter Violent Extremism [NSCVE] mirrors the UN Plan of Action on Preventing Violent Extremism. This highlights the challenges of implementing a strategy that is more externally that internally oriented towards the country. This in turn presents a myriad of challenges both in terms of its implementation and its effectiveness in addressing the terrorism threat.

From the policy perspective, the book observes that the assumptive threat and its policy perception is divorced from adequate engagement with non-security actors and discourse in its implementation and development. This dissociation has created a cooperative

disparity with relevant non-security actors. This in turn brought about the advantageous propaganda push through deceptive narrative depiction that targeted the vulnerability of groups. It also projected narratives that essentially rigidly inferred that the target audience of the national security policy and strategy was specifically aimed at Somalis and Muslims. The book further highlights that in turn, this led to increased sympathy with *Al Shabaab*, and pushed these marginalized groups towards greater recruitment and radicalization.

In general, this book points out important realizations and realities in Kenya's strategic response. The strategies undertaken by Kenya have been reactionary. In line with this is a critically important observation made by the author on the pattern of the reactionary strategy response process:

> "…when terrorists attack, a CT strategy is applied, when that does not work, counter insurgency is reigned in, when that proves overwhelming CVE is contemplated."

The combination of a generic NSCVE and the adaptation of reactionary strategies has created serious dissonance and hence the lack of a harmonious strategy process. Finally, the book provides a contextual basis with insight, reasoning, and rationale into the policy and strategy

operational environment in Kenya. It also analyses their strategic implications on implementation. It further evaluates them with a focal lens on the various threats posed and engendered by terrorism.

The author demonstrates a clear understanding of the threat at hand. He offers insightful alternatives to traditional and generic responses to terrorism by introducing the threat from terrorism as a conflict in transition. The book suggests a more functional recourse to the ripe moments perspective in mediating the varied challenges that terrorism has created. It would also mediate the complex geopolitical operating environment that Kenya operates in, and the multitude of challenges in addressing the contemporary terrorism threat.

The **Three Legs Consortium** was registered in Nairobi, Kenya in 2018. It is a research organization and think tank specializing in the broad domain of national security. Its research associates are drawn from academics and practitioners of the three sources of national power: Diplomacy, the Economy and the Military. Its founding Associates are Prof. Makumi Mwagiru, Prof. Macharia Munene, Prof. Musambayi Katumanga, Lt Gen [rtd.] Humphrey Njoroge, and Amb. Boaz Mbaya.

While its main preoccupation is with analyses of the strategic level of national security policy making, it is also concerned with other levels - especially operational – in the analysis of the problems of implementation of national security policy. Its research output touches on the areas of conflict management in Africa, national security policy and strategy, formulation, the role of the Intelligence Community [IC] in national security policy decision making, implementation and coordination of grand strategy, foreign policy in Africa, constitutional aspects of national security, and the broad areas of the international and regional relations of Africa, especially the East African region.

The Consortium is also dedicated to nurturing future African scholars and leaders in these diverse areas. In this pursuit, it has formed Working and Discussion Groups that inspect academic, policy and emerging issues in these areas, and organizes thematic Symposia, Seminars and Conferences for their dissemination.

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