Global War on Terrorism and Protection of Human Rights

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The sixteenth issue of the East African Lawyer magazine focuses on global terrorism and human rights vis-à-vis the need for the region in particular and the world at large, to put their hands together in strengthening the resolve to contain terrorism. Though the focus of this edition is largely on international terrorism, it is important to underscore the fact that the impact of domestic terrorism is felt just as much if not worse, in the East African region.

Some of the acts of domestic terrorism that have been perpetrated in the region in the past by groups include *inter alia* the Janjaweed in Sudan, the Lord’s Resistance Army in northern Uganda, and, more recently, and to a smaller scale, the massacres by illegal outlawed groupings such as the Sabaot Land Defence Force and the Mungiki sect in Kenya.

Beyond that, the East African region has borne the brunt and shouldered its fair share of trouble with global terrorism. The 1998 al-Qaeda bombing of the US embassies in Nairobi and Dar es Salaam and the assassination of foreign journalists and non-governmental organization staff as well as some of the attacks allegedly carried out by the al-Shabaab followers in Somalia, are examples of international terrorism.

Only recently, the al-Shabab group announced threats of renewed attacks on Kenya. The unfortunate pronouncement occurred even as international piracy, itself an offence by international law, yet closely corroborated with terrorism, continued to threaten the region with vast implications on human rights considerations and economic integration.

Globally, the September “11” attack remains fresh in the minds of many and the ramifications of the unfortunate assault still linger on and are felt far and wide.

The published papers by various contributors herein, give an insight into the corollary of terrorism and the need to guarantee the protection of human rights. It is encouraging that countering terrorism is now taking a central role in the agenda of the East African Community, United Nations and in a number of countries continentally and globally. Essentially, human rights issues are key in countering and waging the war on terrorism.

Terrorism has devastating consequences and seriously infringes on human rights. Nonetheless, the aftermath of terrorism tendencies including the post September 11th developments prove that in times of fear and crises, one has a tendency to abandon human rights as recognized by the Universal Declaration of Human Rights. While not condoning terrorism, we take exception of various laws passed that tend to be visible examples of human rights violations in the name of the fight against terrorism.

Thus, it remains incumbent on the EAC and the international community to put more effort in developing a legal framework that emphasizes the link between terrorism and human rights protection. Essentially, EALS wants to see the rule of law prevail as the globe unites to combat the pre-mediated, politically motivated violence and espionage perpetrated against non-combatant targets by sub-national groups or international clandestine agents.

Let me conclude by appealing on stakeholders to focus on the bigger picture of combating and countering terrorism and in solving these critical challenges within the realm of the rule of law.

Dr. Alan C.S. Shonubi  
EALS President
From the CEO

Warm greetings to the entire membership and other stakeholders of EALs. At the moment, the East African Community (EAC) is the fastest-growing economic bloc in the African continent. The Community, and its Partner States, shares various mutual interests – economic, social, cultural, historical etc – with other countries and regions in the world, including those frequently referred to as the “global north.” The very nature of these intertwined or interlinked economies or societies makes us as a potential target of acts of terrorism: by those who have “issues” with our way of life, or with some of the countries and regions that we associate with. This threat is not academic; most of the EAC Partner States have suffered acts of domestic and international terrorism in the past, as the EALS President narrates in his Foreword.

It is apparent that, for whatever reasons – whether of commission or omission – terrorist operatives easily infiltrated the region in the early 1990s. It is alleged, for example, that al-Qaeda cells in Kenya took root in 1994 with the arrival in Nairobi of one Wadih el-Hage, who served as Osama Bin Laden’s personal secretary and had US citizenship. Eventually arrested by the Federal Bureau of Investigations (FBI), el-Hage was convicted of terrorism charges in 2001. Even after the twin attacks on Dar es Salaam and Nairobi, Kenya apparently remained a launching ground for al-Qaeda operatives and their associates; in 2002 they bombed the Israeli-owned Paradise Hotel in Mombasa, and attempted – but, mercifully, failed – to shoot down an Israeli passenger plane with missiles.

The same group allegedly targeted Tanzania using diamonds and other resources to make the cells in East Africa financially self-sufficient. Authorities captured two al-Qaeda suspects from Zanzibar, in a manner that itself raised eyebrows, on allegations that they took part in the 1998 bombing of the US Embassy in Dar es Salaam. One has since been convicted in a US Court and is serving a life term in Colorado. Some reports suggest that the other has been returned to Zanzibar, without any charges having been laid against him.

The unnerving ability of modern-day terrorism to be fostered by the “gentle family next door,” and then to strike directly, without warning and with massive casualties, instills fear among individuals and nations, leading to a sense of vulnerability and panic. Since it is difficult to predict with accuracy, and even more difficult to successfully prosecute it, with sufficient evidence, unless after the commission, it often drives governments and law enforcement organs to react with excess: excessive legislation and/or excessive use of force. We appreciate very much that governments, including our own, have to take effective measures against terrorism; but we are also very earnest that these measures will never have the effect intended, or the support of the communities, unless they are also in tandem with our hard-earned progresses in the just rule of law, and the protection and promotion of human rights. Too many times in the region we have seen instances of innocent people attacked, brutalized, traumatized and terrorized by those that ought to protect them, in the name of suspicion of terrorism, only to be found to have been innocent. I have personally seen incidents where it is hard to imagine, prima facie, how the person could have been labeled a suspect in the first place! A balance needs to be struck.

Numerous influential studies and dialogues have been undertaken that have formulated principles that sufficiently outline how to strike this balance. Within our own legal profession, two reports, with attendant recommendations, by the International Bar Association and the International Commission of Jurists, provide beacons with which we can negotiate this balance with our leaders and governments. The members of the East African Community, and the African Union at large, ought also to ensure that all measures taken to combat terrorism fully comply with their obligations under the African Charter on Human and Peoples’ Rights, as well as other international treaties that revolve around human rights.

The protection of human rights must be guaranteed in the dispensation.

Another area in which the African renaissance can act as mediator in the global scene is to analyze, WITHOUT condoning terrorism, what exactly is it that drives people to resort to terrorism. Are there valid grievances, even if they have been criminally ventilated? Thus, after prosecuting the immediate perpetrators, what is it that we can do to stop the children of today from becoming the terrorists of tomorrow? In this regard, I am happy to remind you that International Justice, alongside Regional Integration, and Doing Business in East Africa, form the tripartite themes of our 14th Annual Conference and General Meeting, which will be held in Kigali on 27th and 28th November 2009. Please come and join this interesting debate. And, further, we do not need to wait till November to start the dialogue. I welcome you to post your views on the EALS Blog: www.blog.ealawsoctety.org

Don Deya
Chief Executive Officer
**Human Rights Standards and Terrorism:**

An overview of the legal reading of the relationship between terrorism and human rights

By Senka N. Stanivukovicova

In response to the events of September 11th, 2001 and subsequent to UN Security Council Resolution 1373, Mary Robinson, the United Nations High Commissioner for Human Rights, Walter Shwimmer, Secretary General of the Council of Europe, and Ambassador Gerard Stoudmann, Director of the Office for Democratic Institutions and Human Rights (OSCE) gave the following joint statement:

‘While we recognize that the threat of terrorism may require specific measures, we call on all governments to refrain from any excessive steps, which could violate fundamental freedoms and undermine dissent.’

On the one hand, terrorist acts have devastating consequences and seriously infringe human rights recognized by the Universal Declaration of Human Rights. Thus, guaranteeing Citizens’ security should be the central focus of the international community. Nonetheless, post September 11th developments proved that in times of fear and crisis, one has a tendency to abandon human rights norms. The Abu Ghraib prison example and the recent crisis, one has a tendency to abandon human rights norms. The Abu Ghraib prison example and the recent legislation passed in the United Kingdom might be the most visible examples of human rights violations in the name of the fight against terrorism. It should be understood that the said examples are not the only ones. On March 25th, 2003, Human Rights Watch issued a comprehensive report about human rights abuses in the name of countering-terrorism. Among others, the report mentions that ‘Since the September 11th attacks, China sought to blur the distinction between terrorism and calls for independence...’, ‘since it launched a military operation in Chechnya in 1999, whereas Russia’s leaders have described the armed conflict there as counter-terrorism...’ Many of the measures adopted by the US government after the September 11th attacks violated fundamental provisions of International Human Rights and Humanitarian Law. The report concludes that governments have a responsibility to protect its citizens from politically motivated violence. However, the governments also need to ensure that by countering terrorism they will not violate international human rights, humanitarian, and refugee law.

It is questionable whether the present legislations, for instance, Security Council Resolution 1373 can represent an international joint response to terror attacks, since some of the obligations arising from the Resolution infringe the freedoms of movement of asylum and migration regime. Thus, the international community needs to examine the extent to which legal norms provide a framework to deal with terrorist threats to human security without challenging human rights.

Presently, there has been more disagreement than agreement on the international level regarding terrorism. There is no universally accepted legal definition for terrorism or terrorists. In International Humanitarian Law, ‘acts of terrorism’ are referred to in Article 33 of the IV Geneva Convention of 1949, Article 51(2), Additional Protocol I of 1977 and Article 3 and 14, Additional Protocol II of 1997. These provisions characterize an act of terror as an act of violence in breach of the principles of military necessity, proportionality and distinction, which is primarily aimed at spreading fear among the civilian population. However, the definition is vague and arises many disputes especially regarding national liberation movements.

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2 The 1373 resolution declares that ‘acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations.’ This directly affects the 1951 UN Refugee Convention on the basis that those involved in such acts are excluded from the application of this Convention. Moreover, the text of the Resolution fails to mention protection of human rights.


5 Ibid., 2-3.


The lack of agreement on basic terms such as a definition of terrorism seriously hampers a joint response to the problem. The inexistence of universally accepted legislation regarding terrorism that would assure a balance between freedom, security and justice is one of the main causes of human rights violations in domestic laws and policies on counter-terrorism. ‘Little, if any, attention has been given to the link between terrorism and human rights. Although some of the more obvious effects of terrorism on human rights have been documented in numerous resolutions of the UN General Assembly, the inextricable link between terrorism and human rights and its broader international implications were largely ignored.9

This institutional gap has dual consequences. On the one hand it fails to recognise the effects of terrorist attacks on life, liberty, and dignity of an individual.9 On the other hand, it also fails to condemn recently passed domestic anti-terrorism legislation that is in violation of human rights. Even though, Article 29 of the Universal Declaration of Human Rights recognises in case of emergency limitations of some International Human Rights, there are some obligations that need to be upheld regardless of the circumstances.10 The right to life, the prohibition against torture and other forms of cruel, inhuman, and degrading treatment or punishment cannot be sacrificed in the name of security.11 However, in the post September 11th world, these norms have been neglected. Thus, the international community should put more effort in developing a legal framework that puts emphasis on the link between terrorism and human rights violations. A joint approach that deals with terrorism without challenging the human rights framework is necessary. The recently passed anti-terror legislations in the United Kingdom and the United States result in an increase of State power vis-à-vis individuals and discriminate against particular ethnic and religious groups. It is wrong and dangerous to view freedom from fear as more important than other freedoms arising from the Declaration. Thus, any country that strongly upholds the international legal order, should adhere to the rule of law. In particular, we should stress the importance of a developed and internationally recognized legal framework for countering terrorism that goes in line with established human rights standards.


9 In line with this argument, van Krieken, when establishing a link between terrorism and human rights, mentions: ‘While there is no doubt that both the Universal Declaration of Human Rights...envisage positive or negative obligations of States...it is obvious that groups or persons can also act in violation of human rights and freedoms enumerated therein of other persons, especially the human rights and freedoms that concern the life, liberty, and dignity of the individual’. van Krieken, Peter J. Terrorism and the International Legal Order. Asser Press. The Hague (2002): 169.


Some considerations on the protection of human rights and the rule of law in the fight against terrorism in Africa

By Ibrahima Kane

Terrorism is a problem shared by many African countries. It has a link with the violence of dictatorial and authoritarian regimes, the economic crisis the continent has faced over the last three decades as well as with terrorism and organized crimes.

Between 1990 and 2002, for example, casualties totaling approximately 6,177 from 296 incidents of international terrorism were recorded on the African soil, placing the continent’s terrorism related death-toll second highest after Asia. In addition, many African countries are beset by domestic terrorism with a significant impact on stability, development and a devastating loss of human life.

African states have varying degrees of susceptibility to terrorist attacks based on the evidence of past experience although any country is a potential target. On the high-risk end of the scale stand countries such as Algeria and Kenya. In Algeria, domestic factors such as the cancellation of the 1992 elections led to the death of tens of thousands, with many more wounded, displaced or labelled as disappeared. Bombings peaked in 1998 with the detonation of 2,864 explosive devices. However, figures have been seen to decline with fewer than 900 deaths in 2003 in violence led by or directed against extremists.

Kenya and Tanzania have been victims of transnational terrorism in the simultaneous August 1998 attacks. The bombings killed 291 people in Nairobi, the Kenyan capital and an estimated 5000 people were injured in Dar es Salaam. The assassination attempt on Egyptian President Hosni Mubarak in Addis Ababa in 1995, the massacre of 58 foreign tourists and four Egyptians in Luxor, Egypt in November 1997, the July 2005 Sharm El Sheikh attacks and the unsuccessful attempts to destroy another embassy in Kampala are all further evidence of the prevalence of terrorism within Africa that pre-date 9/11. However, as numerous incidents since 9/11 have emphasised, terrorism is still prevalent in Africa. A Tunisian synagogue in April 2002 was bombarded killing 19 and wounding several others, Kenya was again targeted in the 2002 attack on the Paradise hotel explosion killing 15 people. In April 2003, a terrorist Jihad group kidnapped and murdered a British national working in Western Eritrea while in May 2003, five bombs manned by 12 suicide bombers exploded simultaneously in restaurants in Casablanca killing 43 and injuring dozens of others. These bomb detonations were followed by the ones in September 2003 where 20 people were killed by rebel forces after the latter terrorised locals in eastern Uganda.

Countries such as Nigeria and Ethiopia can be placed in the middle of the scale with terrorism incidents arising mainly as a result of ethnic, religious or tribal tensions. Senegal is an example of a low threat assessment country having no direct experience but yet joining and indeed initiating regional efforts to combat terrorism.

These statistics are demonstrative of the direct impact of terrorism on human lives; and the link between terrorism and human rights, including rights to life and bodily integrity, as well as freedom and security. Less direct, but nevertheless potentially damaging to human rights, are the serious effects on the stability and security of states and their socio-economic development, as well as the consequential backlash against certain elements of society. The repercussions on the economy of affected states, either through discouraging trade or tourism may result in less budget allocation to economic and social rights such as education housing and health care, as funds are shifted to counter-terrorism measures.

The introduction of repressive legislations and measures by African States often works towards the deprivation of life or liberty, curtailment of due process guarantees, privacy incursions, and limits on speech and restrictions on the rights of aliens, the right to own property and many more. Basic principles, especially vulnerable in fledgling democracies are flouted, thus undermining the rule of law.

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3. Ibid, at p. 65
4. Ibid
8. NEPAD Review, at p. 67
African perspectives

In the context of this background, Africa has taken a considerable number of initiatives regionally and nationally with the view of fighting terrorism that pre-date 9/11.

The Algiers convention and its precursors

Although the OAU Constitutive Act offers a rejection of terrorism listed among its principles in Article 4(o), a more assertive and formalized campaign began with the 1992 OAU Heads of State meeting in Dakar where the Resolution on the Relations between Member States espoused a clear rejection of extremism. Subsequently, the 1994 Declaration of the Code of Conduct for Inter-African Relations rejected fanaticism and extremism and condemned terrorist acts whatever their form or objective. The general African approach has been to tackle the root causes and these resolutions responded to contemporary realities. At the insistence of Algeria, African countries took tentative steps that eventually led to a UN Declaration on Measures to Eliminate International Terrorism (Annex to Resolution 49/60 of 9 December 1994).

Following several meetings and conferences, the 70th Ordinary Session of the Council of Ministers on 6-10 July 1999, produced the Report of the Experts meeting which debated inter alia definitional issues, finding it easier to define a “terrorist act” rather than “terrorism”. It also examined the mechanisms in place for mutual judicial assistance and placed emphasis on co-operation and bilateral treaties putting in place the necessary provisions for the OAU Convention on the Prevention and Combating of Terrorism adopted in 1999. The Algiers Convention is distinct, in that it offers a definition of what constitutes terrorism, rendering it the first regional instrument to do so.

The African Union’s strategy on terrorism after 9/11

Following 9/11, the African Union (AU) pursued its counter-terrorism strategy with renewed vigour. On the 17th October 2001, a Summit in Senegal was convened resulting in the Dakar Declaration against Terrorism. This Summit was significant because of its reiteration to outlaw terrorism in Africa in line with the prevailing global realities and to minimize the effect of 9/11 on development. This meeting called for an additional Protocol and structured the Plan of Action for an Effective Implementation of the Algiers Convention which was a detailed elaboration of the measures that need to be taken at all levels including national and continental. It serves as a road map for the AU counter terrorism programme. The Communiqué issued by the Central Organ of Mechanism for Conflict Prevention Management and Resolution (11 November 2001) reiterated African support for SC Resolution 1373 and underlined the required political will necessary to implement resolutions and relevant international instruments, as well as the importance of signing and ratifying them.

The first High-Level Intergovernmental meeting of 11-14th September 2002, saw the consideration and adoption of the Plan of Action as well as recalling the need to establish an African Centre for Study and Research on Terrorism. The Plan of Action intends to “give concrete expression to these commitments and obligations, to enhance and promote African countries’ access to appropriate counter-terrorism resources through a range of measures establishing a counter-terrorism co-operation framework in Africa.” However, no mention is made in its provisions of the importance of adhering to human rights standards when outlining the measures to be undertaken.

Many of its specific provisions (section III) dealing with Police and Border Control (Part A), Legislative and Judicial Measures (B), Suppressing the Financing of Terrorism (C) or the Exchange of Information (D) are open to abuse by states as they vest a significant amount of authority in the state to restrict individual freedoms. The four main priorities in the implementation of the Plan of Action were the establishment of a Counter-Terrorism Unit at the commission, ensuring that the policy organs of the Member States approved the Plan, defining the priorities in the implementation, and establishing the African Centre for the Study and Research on Terrorism (ACSRT). None of these initiatives seem to entail as part of their work or mandate the observance of human rights standards by states.

It was at the 2nd Ordinary Session of the Maputo conference in July 2003 that the Commission called a meeting of government experts and of the Permanent Representatives Committee (PRC) with the aim of finalizing the draft Protocol, which was offered before the 5th Ordinary Session in Addis Ababa, Ethiopia in July 2004. The draft Protocol reinforces the weak aspects of the Algiers Convention and updates the measures to be in line with recent developments. Improvements include providing for

9 AHG/Res. 213 (XXVIII)
10 OAU Assembly of Heads of State in Tunis - AGH/Decl 2 (XXX)
11 http://www.iss.co.za/Pubs/asr/12no1/eGored.html
an implementation mechanism, giving clearer details of the obligations of financial institutions and raising awareness of the new forms of terrorism, which harness technology.

The Protocol mentions the importance of human rights protection only in article 3(1)(a) when stipulating the commitments to be undertaken by states, but this reference is only to cases where human rights should be protected against all acts of terrorism, and does not indicate that states’ measures should also protect those fundamental rights. Article 5 of the Protocol envisions a role for the Commissioner in charge of Peace and Security together with his/her Unit and the African Centre for Study and Research on Terrorism to “provide technical assistance on law enforcement matters.” This offers a potential role for the African human rights bodies, such as the African Commission on Human and Peoples’ Rights and the African Committee of Experts on the Rights and Welfare of the Child to enter into dialogue with these two bodies and offer consultations on desirable legal frameworks to be adopted in Member States, which address and observe human rights concerns therein.

The second High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa on the 13-14 October 2004, was the most recent engagement at continental level. While the emphasis of the first meeting was “dedicated to devising strategies for the effective implementation” of the various instruments adopted. This second meeting was to “focus on evaluating the effectiveness of those strategies and how they have been put into practice.” The African Centre for the Study and Research on Terrorism (ACSRRT) was also established and launched at this meeting. It was confirmed that the ACSRRT shall serve to “centralize information, studies and analyses on terrorism and terrorist groups and develop training programs by organizing, with the assistance of international partners, training schedules, meetings and symposia.”

At the sub-regional level there has also been a certain degree of co-ordination and activity. The Common Market for Eastern and Southern Africa (COMESA) put in place a committee coordinating immigration services and facilitating the exchange of information, the Economic Community of West African States (ECOWAS) Member Countries created an intergovernmental group working against money laundering and illegal arms sales, while the Southern Africa Development Community (SADC) countries decided in 2001 to formulate appropriate legal instruments and an anti-terrorism plan of action specific to that sub-region. The Inter-Governmental Authority on Development (IGAD) meanwhile proposed to its Member States two draft Conventions on extradition and on mutual assistance in criminal matters including some anti-terrorism provisions.

### National legislation and human rights concerns

In the wake of 9/11 attacks, numerous laws have been passed in Africa, and many of them do not stand ground when held to scrutiny against human rights standards. Derogations provided for under international law are only permitted within clearly defined circumstances and must be of exceptional character, strictly limited in time and to the extent required by the exigencies of the situation, subject to regular review, consistent with other obligations under international law and not involve discrimination. The following address a few, but by no means, all of the human rights concerns that arise in the context of national measures.

While some states have sought to ratify some of the recommended international instruments annexed to the Algiers Convention, others have created structures or institutions to co-ordinate activities geared towards combating terrorism. Emphasis in affected states has been on reformulating pre-existing definitions of terrorism and the introduction of new legislation governing crimes associated with terrorism (such as drug trafficking, money laundering and the illegal sale of arms). Although some have incorporated the relevant provisions into their existing Penal Codes, most African countries have drafted new national legislations to deal with terrorism. These new laws have struggled to define terrorism and to bring together suitable counter-terrorism protection with upholding human rights. An individual

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16 Protocol to the OAU Convention on the Prevention and Combating of Terrorism, article 5(2)(a)
18 Draft Declaration of the second High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa [Mtg/HLG/Conv. Terror/Decl.(II)].
19 UN Counter-terrorism Committee on Rwanda, S/2002/1028, page 11
20 UN Counter-terrorism Committee Report on Senegal, S/ 2002/ 51, page 6
21 Final Communiqué of the Meeting of 17 and 18 December in Luanda (Angola) of the Committee of Ministers – SADC
22 See the Draft Conventions on Extradition and on mutual assistance in criminal matters dated from March 2009.
23 Such as Ghana, Malawi, Mali and Lesotho.
24 Burundi, Cape Verde, Comoros, Eritrea, Rwanda and Togo
25 Such as in Sudan [2000] and Tunisia [2003] respectively.
26 For example, Algeria and Senegal
27 Gambia for examples adopts and excessively broad definition (Gambia, Anti-Terrorism Act, Part 1 section 2(a)) and further includes legal provision for a proscribed list of terrorist organisations without adequate safeguards or any sufficient means of challenging inclusion on such a list (Part II section 4(c)) Uganda’s Anti-Terrorism statute offers an extensive definition of terrorism stipulating punishment for those who plan instigate support finance or execute acts of terrorism. However such punishment is also extended to those who are members of or profess membership of or convene meetings of terrorist organisations. Also included within the scope of the act is aggressive investigation techniques including authorisation of the interception of correspondence and the surveillance of individuals suspected of involvement.
seeking political asylum in a host country may also be refused entry as a result of extradition agreements in place thus, possibly violating the non-reroulement principle and denying a legitimate case for asylum. The Human Rights Committee has declared that before removing an individual, the state must offer sufficient guarantees, which conform to the provisions of article 13 of the ICCPR.28

Due process clauses entrenched in many constitutional Bills of Rights are relegated to the secondary status in some states which have empowered themselves to conduct pre-trial detentions. The existence of safeguards particularly that of habeas corpus is of extreme importance and even though such provisions may be present in national laws their effect has been undermined.29

It is generally at the time of arrest and preliminary interrogation that those suspected of complicity in terrorist acts may be subjected to torture and other inhuman or degrading acts and may even disappear. Some States have passed laws, which enable a suspect to be held in custody for up to 36 hours without access to any person other than a police officer of at least the rank of inspector.30 The subsequent trial may be conducted in camera.31 The right to a fair trial also carries with it the sub-rights of equal treatment, and the presumption of innocence. It also entails adjudication by an independent, competent and impartial tribunal, which are undermined by special or military courts and secret trials.

All prisoners also have the right to an Attorney, and to confidential consultations with the latter without interference or delay as espoused in Principle 8 of UN Basic Principles on the Role of Lawyers. The Human Rights committee has clearly stipulated that even in times of war or national emergency, only tribunals may judge or condemn an individual for crimes and as such, has reiterated the importance of the independence and impartiality of the Tribunal.32 Such practices also contravene articles 7 and 26 of the African Charter as well as jurisprudence33 and established doctrines of the African Commission. The Human Rights Committee further considers that bringing civilians before Military Tribunals is incompatible with article 14 of the ICCPR.34

The area of freedom of expression and information, which is vital to the proper functioning of democracies, is impacted negatively by restrictions in the name of counter-terrorism. Such restrictions are only acceptable on grounds of national security or public order or the health and morality of the public. Attention was drawn to this problem by the UN Special Rapporteur who noted that surveillance, monitoring of internet use, suppression of certain publications and other forms of censorship interfered with the freedom of expression.35 These concerns are particularly poignant not only in individual Member States, but also the regional mechanisms being formulated that emphasise intelligence and surveillance priorities on a national and regional level.

Certain states impose the death penalty on individuals found to be complicit in terrorist acts36. The right not to be arbitrarily deprived of life is a universally recognized and protected principle37 particularly safeguarded in article 4 of the African Charter, although a large number of African countries still retain the death penalty. Under the ICCPR, the Human Rights Committee has stated that trials, which ultimately impose the death penalty, must conform to the provisions of the covenant and provide all the requirements of a fair trial. The lack of procedural safeguards in many African States as well as extradition clauses makes the imposition of the death penalty a clear and unjustified violation of international law.38

The events leading to the case of Mohamed v President of the Republic of South Africa highlight the complex issues of such a situation.39 It is useful to be bear in mind in this context the decision of the UN Working Group on Arbitrary Detention in the case of Alvarez Machain in which the group considered that the removal of an individual in accordance with extradition agreements may constitute a certain type of arbitrary detention.40 The Human Rights Committee

29 Goredema, supra note 11.
30 Gambia, Anti-Terrorism Act, Part VIII section 60(1); Mauritius, Prevention of Terrorism Act 2002, section 27. In Algeria, suspects may be detained without outside contact for twelve days – a period of time which can be prolonged by the investigating judge (Algeria: Article 51 of the CPP which was criticized by the Human Rights Committee. UN documents CCPR/ C/ 79/ Add.95 18 August 1998, para 11) Following the Kilambala bombings near Mombasa, arbitrary detention of refugees lawfully resident in Kenya became commonplace.
31 Mauritius, Prevention of Terrorism Act 2002, section 27
33 Decision of 7 May 2001, Communication No 218/98 (Nigeria); Decision of 6 November 2000, Communication No 223/ 98 (Sierra Leone); Decision of 31 October 1998 Communication 137/94, 139/94, 154/96 and 161/97 (Nigeria)
34 See especially the observations and conclusions of the Human Rights Committee on the following countries: Libya, CCPR/ C/ 21/ Rev.1/Add.11 31 August 2001 para 16; Peru, CCPR/ C/79/Add.78, para 14; Slovakia, CCPR/ C/ 79/Add.79 para 20; Uzbekistan CCPR/ CO/71/ UZB
36 Some examples: Algeria, Comoros, Egypt, Eritrea, Ethiopia, Kenya, Libya, Mauritius, Nigeria, Rwanda, Senegal, Sudan, Togo and Tunisia.
37 Article 3 of the Universal Declaration on Human Rights; article 6 of the ICCPR; article 4 of the American convention on Human Rights; and article 2 of the ECHR
38 Goredema, supra note 11.
39 A Tanzanian national(Mohammed), was arrested in Cape Town, South Africa (where the death penalty has been abolished), for alleged involvement in the 1998 Dar-es-Salam bombing, and previously had duly been indicted in absentia before a Federal District Court in New York. On his interrogation, he admitted his involvement in the bombing, and was subsequently taken from South Africa to the US. No extradition procedures preceded Mohammed's removal, and there were no guarantees sought or given that he would not face the death penalty. Mohamed subsequently challenged the legality of his removal from South Africa, on the basis that it was an unlawful extradition and a violation of the right to life – which was upheld by the South African Constitutional Court.
has reaffirmed that it is a non-derogable right even in the exceptional cases of public safety because it the foundation of all other rights. Neither the odious nature, nor the gravity of the offence may justify derogation or undermine this right’s absolute character.

Responses of the African Commission on Human and Peoples’ Rights to the current situation

At the request of some International and Regional Organizations, the African Commission on Human and Peoples’ Rights initiated a series of consultations that ended up with the adoption at its 37th ordinary session held in Banjul (The Gambia) in November 2005, of a Resolution on “The Protection of Human Rights and Rule of Law in the fight against Terrorism,” in which it reaffirmed that “African States should ensure that measures taken to combat terrorism fully comply with their obligations under the African Charter on Human and Peoples’ Rights and other International Human Rights Treaties.” It also indicated its concern about the increase in the number of terrorist acts perpetrated on the continent and legislations, measures and practices of States parties to theses treaties that are inconsistent with their International and Regional obligations and decided to organize a regional meeting of experts on the protection of Human Rights and the Rule of Law within the framework of the fight against terrorism in Africa.

Since then, nothing significant has been done at the continental level to seriously deal with these important issues. Meanwhile, some African countries, in close collaboration with some Western countries, are continuing to violate their international and regional obligations. For example, in January 2007, at least 152 individuals, including Kenyan citizens were “deported” to Somalia and Ethiopia where they were the subjects of many human rights violations.

Clearly, something needs to be done to stop these massive human rights violations and to enhance the understanding of African continental and regional human rights bodies on the human rights standards applicable in the context of terrorism and counter terrorism activities in Africa.

41 Human Rights Committee, General Observation No. 14, para 1
42 ICCPR: article 2, 4, 9 & 10; Convention on the Rights of the Child: article 37; Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment: article 15
43 INTERIGHTS and ICI
44 The Institute for Human Rights and Development (IHRD) and the Human Rights Institute for South Africa (HURISA).
Acts of terrorism are a threat to human rights, democracy and the rule of law. They destabilise the authority of governments and undermine civil society. Acts of terrorism are a symptom of prevailing conflict. There has been an escalation of terrorist attacks worldwide. Africa has not been immune to these attacks. East Africa was particularly a target of terrorist attacks in 1998. There were bomb blasts at the US Embassies in Kenya and Tanzania that injured and killed many people. It was said that at the time, the bomb attacks were meant to simultaneously detonate in Uganda, Tanzania and Kenya, but security alerts averted the attack in Uganda. However, Uganda also experienced a wave of terrorism especially in the late nineties, which created tension and fear among the public. Bombs were detonated and thrown into bars, buses and markets. Many innocent people were injured and others killed. This has also been happening in Northern Uganda where the Lord’s Resistance Army rebels attack, maims, injure and kill innocent people.

The rising number of incidents of terrorism worldwide especially the September 11th attack in the United States and other terrorist attacks in the recent past have made States to take all due measures to eliminate it. Many governments have taken up their right and duty to protect their nationals and other people in their jurisdictions against terrorist attacks by ensuring that the perpetrators are brought to justice. Most countries in Africa were caught off-guard by the wave of terrorism and their response to the issue has had far-reaching implications in respect to human rights. This paper discusses the reaction by governments in Africa to counter terrorism. It also discusses the role played by various African National Human Rights Institutions in upholding human rights in such circumstances.

**Human Rights should not be forgotten while countering terrorism**

**By Roselyn Karugonjo-Segawa**

Acts of terrorism are a threat to human rights, democracy and the rule of law. They destabilise the authority of governments and undermine civil society. Acts of terrorism are a symptom of prevailing conflict. There has been an escalation of terrorist attacks worldwide. Africa has not been immune to these attacks. East Africa was particularly a target of terrorist attacks in 1998. There were bomb blasts at the US Embassies in Kenya and Tanzania that injured and killed many people. It was said that at the time, the bomb attacks were meant to simultaneously detonate in Uganda, Tanzania and Kenya, but security alerts averted the attack in Uganda. However, Uganda also experienced a wave of terrorism especially in the late nineties, which created tension and fear among the public. Bombs were detonated and thrown into bars, buses and markets. Many innocent people were injured and others killed. This has also been happening in Northern Uganda where the Lord’s Resistance Army rebels attack, maims, injure and kill innocent people.

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**Reaction by governments in Africa**

The counter-terrorism efforts in Africa have mostly involved ratification of the both the UN and regional instruments on terrorism, enactment of anti-terrorism legislation, illegal detention of suspects who are subjected to torture and not guaranteed the right to a fair trial. Some countries have taken to stringent controls on immigration especially on people of a particular nationality, ethnicity, religion, race, colour or descent.

**Ratification of UN and regional instruments relating to terrorism and enacting legislation**

A number of countries have ratified all or some of the UN and regional anti-terrorism instruments. For example, Mali, Rwanda and Tanzania have ratified all the UN Conventions and Protocols relating to terrorism while others like Nigeria, Sierra Leone, South Africa and Uganda have ratified some. Some countries have enacted anti-terrorism legislations—examples include countries like Egypt, Tanzania and Uganda.

However, some of the anti-terrorism legislations drafted are repressive and threaten human rights by having a wide and vague definition of terrorism that can also be used by various governments to oppress political opponents or civil society. The legislations also threaten the rights to freedom of expression and assembly.

**Illegal and long detention of suspects**

In response to acts of terrorism, some governments on the continent have responded by incarcerating persons suspected of terrorism not only for long periods but also in illegal detention places before being brought before courts of law. In Uganda, terrorism suspects have been detained in illegal detention places euphemistically called ‘safe houses’ which undermined the rule of the law and contravened the Constitution. Terrorism suspects are usually arrested without sufficient evidence or cause and are kept incommunicado, denied access to; next of kin, lawyers and sometimes even medical care.
Torture

The invoking of ‘counter-terrorism campaign’ has offered a measure of cover to those who commit human rights abuses. Most security agencies regard terrorism suspects as people whose rights, especially the right to protection against torture, can be dispensed with in any manner because of the nature of the offence they are charged with. Most of the complaints regarding torture before the Uganda Human Rights Commission Tribunal are from former terrorism suspects. Under international human rights law, the prohibition against torture is absolute. There are no circumstances, in which torture can be justified, matter how extraordinary the matter at hand may be. However, terrorism suspects are often subjected to torture, cruel, inhuman and degrading treatment while in detention in order to extract information. Indeed, torture is also facilitated by prolonged and incommunicado detention of terrorism suspects, which occurs in some countries.

Unfair trials

Trials of terrorism suspects on the continent have on many occasions not followed due process of the law. Although all countries usually provide for the right to a fair hearing and have ratified of the International Conventions providing for the same, this right is abridged in most instances. The presumption of innocence until proven guilty is usually overridden in terrorist cases. The Executive usually interferes with the judicial proceedings. There are instances where special courts have been established with special rules of procedure that do not observe the safeguards of a fair trial.

Strict controls on immigration on the basis of nationality or ethnicity origin, race, religion, colour or descent

As a result of terrorism, some African countries have become so strict on the immigration of certain people of certain nationalities or ethnic origin, race, religion, colour and descent. Such people are usually taken through rigorous checks. Moreover in effecting the anti-terrorism law, police and other law enforcement officers rely on nationality or ethnic origin, religion, race, colour or descent as a basis for determining whether an individual is involved in terrorist activity.

Best practices by African national human rights institutions in upholding human rights during conflict and as well as countering terrorism

African national Human Rights institutions are engaged in monitoring their respective governments’ compliance with International Human Rights standards and opposing anti-terrorism legislations. They handle complaints and enforce human rights respect and observance, as well as carrying out human rights and peace education, get involved in the conflict management and resolution processes in order to uphold human rights in conflict situations while countering terrorism at the same time.

Monitoring governments’ compliance with international human rights obligations during conflict and in countering terrorism

National human rights institutions have the duty to monitor their respective government’s compliance with international human rights standards. In line with this duty, some African national Human Rights institutions have been involved in reviewing proposed anti-terrorism legislation to ensure that repressive legislation is not passed and that the legislation passed complies with international human rights standards. They have vehemently opposed the passing of repressive anti-terrorism laws and have encouraged their governments to ratify all the International Instruments related to terrorism.

In Uganda, the Uganda Human Rights Commission has encouraged the government to ratify all the UN Conventions and Protocols relating to terrorism and also scrutinized the suppression of Terrorism Bill when it was brought before Parliament for the first reading. The Bill had the potential to, inter-alia; abuse the rights of refugees, the right to a fair trial, and the right to protection from political persecution. It had such a wide and vague definition of terrorism. It had reversed the presumption of innocence until proven guilty and could prohibit the freedom of the press and expression. The Uganda Human Rights Commission pointed out these anomalies in its presentation to the Parliament on the potential effect of the Bill on human rights observance. The Parliament amended various clauses that were pointed out and some of these were not included in the Anti-Terrorism Act that was passed in 2002. Other African national Human Rights institutions like in Kenya and other countries have also been involved in opposing repressive anti-terrorism legislation.

Complaints handling and enforcement of human rights standards

Most African national human rights institutions are involved in handling complaints of various human rights violations including violations of the rights of terrorism suspects. They investigate and find means of giving remedy to victims of such violations. Some national human rights institutions like the Uganda Human Rights Commission have given orders depending on the nature of human rights violations to give appropriate remedy to the victims. Other African national human rights institutions make recommendations following their findings of human rights

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CAPTIONS:

1. EALS President, Dr Alan Shonubi (left) presents an EALS publication to Hon Monique Mukaruliza, Rwanda Minister for EAC during the CLEs held in Kigali, Rwanda recently.

2. A section of Burundi lawyers during an EALS meeting. EALS has embarked on harmonization of legal practice in the region to get the best out of Civil Law (Francophone) and Common Law (Anglophone) systems.

3. Hon Hafsa Mossi, Burundi Minister for EAC Affairs (centre) remarks during the CLEs in Burundi recently. She is flanked on right by the Bâtonnier of Burundi Bar Association, Maître Isidore Rufyikiri and EALS President, Dr Alan Shonubi (left).

4. EALS governing Council members pose for a photo. The governing Council undertakes policy and administrative supervision while working closely with the Secretariat and various committees to develop programmes that promote cohesion amongst members and East Africans in general.
5. COLLABORATION: Participants at the recent launch of the Caucus for Children’s Rights (CCR) in Arusha. EALS sits on the Legal committee of the CCR as its contribution to corporate social responsibility.

6. KARIBU: David Nalo, Permanent Secretary, Ministry of EAC Kenya (left) shakes hands with the Bâtonnier of Burundi Bar Association, Maitre Isidore Rufyikiri when EALS governing Council paid a courtesy call at the Ministry’s headquarters recently.

7. Julie Mwalongo, EALS Resident (Arusha-based) Council Member, consults with Hon William Cheptumo, Kenya’s Assistant Minister for Justice, National Cohesion and Constitutional Affairs. EALS is working closely with the Partner States.
violations in relation to providing a remedy to the victims, which can be enforced in court. Due to the deplorable economic conditions on the continent, which make the enforcement of economic, social and cultural rights difficult, some national institutions have participated in programmes of poverty alleviation. In Uganda, the national institution ensured that human rights are integrated in the poverty alleviation programme.

Human rights and peace education

Many national human rights institutions in Africa are involved in the sensitisation and dissemination of information on human rights issues. They play an important role in educating and informing the public about peace and human rights values. Through the provision of human rights and peace education, people have acquired knowledge of their rights and responsibilities and have acquired basic skills such as critical thinking, communication skills, problem-solving and negotiation, tolerance and non-discrimination all of which are essential for the effective implementation of human rights standards and in the promotion of unity and peace building.

Particularly targeting conflicts and terrorism, the Uganda Human Rights Commission and similar institutions have trained the army on issues of human rights and humanitarian law in order for them to acquire conflict resolution and peace building skills. Human rights and peace education have also been targeted for civil servants, security agencies, police and prison officials to enable them appreciate their role in maintaining peace and upholding human rights in an era of conflict and terrorism.

Engaging government officials

Various African national human rights institutions engage government officials through dialogue on various human rights issues including the protection of the rights of terrorist suspects. This has bettered the protection of the rights of terrorism suspects.

Conflict management and resolution

Given the link between conflict and human rights violations, there is no way in which African national institutions can detach themselves from the conflicts prevailing in their various countries. As such, various African national human rights institutions have been engaged in attempts to provide early warning to prevent conflict through their periodic reports. Some use their position to analyse the prevailing conflicts to advise, mediate or reconcile the conflicting parties.

They co-operate with other stakeholders in conflict management and resolution so as to enable the peace building process in their countries to be done in an integrated, coherent and comprehensive framework. This enables their countries to handle conflict situations and terrorism in a better way.

Co-operation with international bodies to eliminate terrorism and end conflict

African national human rights institutions cooperate with international bodies to eliminate terrorism and to end conflict. This is usually through providing information on the situation in the country and giving recommendations on what should be done about the situation. For example, the Uganda Human Rights Commission has provided information to officials from the International Criminal Court on the situation in Northern Uganda.

The challenges of African national human rights institutions in balancing human rights and countering terrorism during conflict

African national human rights Institutions have faced challenges in providing redress to victims of war and terrorism attacks. Effective protection of the rights of terrorist suspects amidst demands that security needs should override human rights issues has proved difficult for African national human rights institutions to ensure in war stricken areas. As such, the war on terror has given an excuse to some governments to condone and encourage human rights abuses as expedient in combating terror. Although publicly condemned, the use of torture is one such case. Terrorism and conflict situations have led to disregard of human rights standards by security agencies. This often puts national human rights institutions in a difficult position to enforce human rights observance.

Providing re-dress to victims of war and terrorist attacks

It is not easy to provide re-dress to victims of terrorist attacks not only because it is harder to identify and bring the perpetrators to justice but also no appropriate remedy can be given. Wars and terrorist attacks usually result into the loss of life and no amount of money is sufficient to compensate such loss. As such, African national human rights institutions are at a loss of remedies to give to victims of war and terrorist attacks. Some countries have set up a victims fund to assist those affected by terrorist attacks. This however, remains a challenge even globally.

Deplorable economic conditions

The prevailing deplorable economic conditions on the African continent escalate conflicts, because of the struggle for meager resources. In such circumstances, human rights continue to be threatened. It is harder for national human rights institutions to operate in conflict areas because their
own security is at stake and operations are more expensive. Poor economies also complicate most African governments’ strengths to effectively combat terrorism. Some terrorists use such sophisticated technology in attacking nationals, which cannot be challenged by many African governments.

General recommendations

1. National human rights institutions all over the world should work together and share the best practices.

2. The same institutions should campaign for the establishment of a victims fund in their respective countries.

3. Although security issues are of prime importance, human rights of the person are equally important. Measures should be taken to ensure that security issues do not override human rights concerns. Issues of good governance, human rights and democracy are very vital to elimination of conflicts. National institutions should endeavor to incorporate in their agenda programmes that inculcate the culture of respect for these values in addition to the need for respect of the rule of law and justice.

4. National institutions should work with the regional mechanisms i.e. the African Union, the African Commission on Human and Peoples’ Rights and others to put pressure on African countries that are not measuring up to the international standards on issues of democracy, good governance, observance of human rights and the rule of law.

5. Regarding poverty, countries should put economic, social and cultural rights at the forefront and as a prerequisite for elimination of conflict. Concerted efforts should be made by national institutions to equally address these issues with the same importance as they attach to civil and political rights.

Conclusion

There is no doubt that African governments have legitimate reasons to take all due measures to eliminate terrorism which is an affront to human rights, democracy and the rule of law. However, the war on terror should not be carried out in such a manner that threatens human rights. Repressive legislation and illegal counter-terrorism measures in some countries have empowered African governments to abuse the rights of terrorism suspects.

African national institutions have responded by opposing any counter-terrorism measures that involve the violation of human rights; and have struggled to enforce human rights protection amidst conflict and terrorism. They have carried out human rights and peace education to bring about long-term solutions to conflict and terrorism. However, they have faced challenges in providing adequate relief to victims of war and terrorist attacks.

**Kigali spruces up for EALS AC/AGM**

EALS is now a few months away from the 14th AC/AGM which takes place in Kigali, Rwanda. The Host Committee in Kigali and EALS have hit the ground running as preparations continue in earnest. The theme of the AC/AGM is *Advancing the Status of East Africa: Business, Integration and International Justice in East Africa*. Speakers of international repute have been invited to participate in the AC/AGM.

The registration fee for the AC/AGM is USD 200 per person. The Banking details are attached below. In line with international best practice (e.g. by the International Bar Association, Commonwealth Lawyers’ Association, Southern African Development Community (SADC) Lawyers’ Association and others), EALS will only register participants for the conference. Delegates are encouraged to make their travel and accommodation plans well in advance.

Please visit the EALS website (www.ealawsoeiety.org) to access the AC/AGM webpage for more information. All interested paper presenters should meanwhile contact EALS Program Assistant, Regional Integration, Ms. Joyce Abalo on the following email address: JAbalo@ealawsoeiety.org

Law firms and corporate organizations interested in sponsoring the AC/AGM should contact EALS Information and Communications Officer, Bobi Odiko on email: BODiko@ealawsoeiety.org

**Banking Details for the EALS AC/AGM 2009**

Payment of the EALS AC/AGM registration fee should be made in cash/cheques (in favour of the East Africa Law Society) in US Dollars (USD) or the equivalent (converted at the current rate of exchange on the actual date of payment) in Kenya, Tanzania or Uganda Shillings and Burundi, Rwanda francs where such a local currency account exists. We encourage you to make payments directly to the EALS Bank Accounts or to the National Law Societies (clearly marked EALS 2009 AC/AGM) and accompanied by a duly filled registration form (obtained from the EALS website).

All participants shall be issued with an official EALS receipt.

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Global War on Terrorism: The role of the UN Security Council before and after 9/11

By Alice Nayebare

The Security Council has been dealing with terrorism issues since the early 1990s. Its actions took the form of sanctions against States considered to have links to certain acts of terrorism. Terrorism has been on the agenda of the United Nations for decades. Thirteen international conventions have been elaborated within the framework of the United Nations system relating to specific terrorist activities.

Security Council actions/role to counter terrorism

The SC has been active in countering terrorism through resolutions and by establishing several subsidiary bodies. At the same time, a number of programmes, offices and agencies of the UN system have been engaged in specific operational actions against terrorism in furtherance of its assistance to Member States in their efforts. Prior to September 11th, 2001, the SC had established a strong counter-terrorism tool and at its request, the Secretary-General appointed an Analytical Support and Sanctions Monitoring Team to assist the Committee. The Team is comprised of experts in counter-terrorism and related legal issues, arms embargoes, travel bans and terrorism financing.

In the immediate aftermath of 9/11 attacks, the SC passed resolution 1373 which bound all UN Member States to prevent and suppress the financing of terrorist act, to implement the Financing of Terrorism Convention and cooperate with other countries in this regard. It also calls on Member States to enhance coordination of efforts on national, sub regional, regional response to the challenge of international terrorism.

Resolution 1373 also created specific obligations for States to criminalise the financing of terrorism and also to freeze the assets of entities implicated in terrorism, take measures that assist and promote co-operation among countries including adherence to international counter-terrorism instruments. It is worthy noting that, this resolution builds upon a previous series of SC resolutions binding States to freeze the assets of individuals or entities related to al-Quaeda and the Taliban including those designated upon a list maintained by the SC Committee.

Following the September 11th incident, the SC established a Counter Terrorism Committee comprising all Council Members, under resolution 1373 requiring Member States to report regularly to the Counter Terrorism Committee on the measures they have taken to implement resolution 1373. On the 16th January 2002, the SC adopted Resolution 1390 which strengthened its existing measures aimed at Bin Laden, members of the al-Quaeda Organisation and the Taliban, and all their controlled entities and associates.

On the request of the US, the SC unanimously adopted Resolution 1540 on 28th April 2004 on preventing proliferation of Weapons of Mass Destruction (WMD).

Under the resolution, all members of the UN are legally bound to establish domestic controls including legislative measures to

1 The writer is an employee of East Africa Law Society in charge of Professional Development Programme. She is an Advocate of the High Court of Uganda. She also holds a Master Degree in Law in International Law and Human Rights from University of Groningen, The Netherlands, a Post Graduate Diploma from the Law Development Centre and an LLB from Makerere University.
2 Herein after referred to as SC.
3 Libya (1992); Sudan (1996) and the Taliban (1999 - expanded to include Al-Qaida in 2000 by resolution 1333).
5 Ibid
6 Ibid
7 The 1267 committee made up of all Council members established in 1999 by resolution 1267 and tasked with monitoring the sanctions against the Taliban (and subsequently Al-Qaida as of 2000).
8 http://www.un.org/docs/sc/committees/1267/1267mg.htm
9 UN S/RES/1373/2001. The Security Council after 9/11 stated in Resolution 1373 that it was acting under chapter VII of the UN charter and that terrorism constituted a threat to international peace and security. These determinations made the resolution legally binding on all member states. Resolution 1373 establishes that states have a legal obligation to refrain from providing any form of support, active or passive to entities or persons involved in terrorist acts.
10 Ramraj V.; Micheal Hor and Kent Roach: Global Anti-Terrorism Law and Policy, 2005 at 267
12 http://www.un.org/sc/ctc
14 Invoking its enforcement powers under chapter VII of the UN Charter, it affirmed the proliferation of nuclear, chemical and biological weapons constitutes a threat to international peace and security.
prevent the proliferation of WMD, in particular for terrorist purposes. The resolution calls upon all states, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in WMD.

The SC also, through resolution 1540, added counter-terrorism - related body to its arsenal, which was mandated to monitor Member States’ compliance with resolution 1540.

To assist the Committee’s work, in 2004, the SC adopted resolution 1535, which called for the setting up of a Counter Terrorism Committee Executive Directorate (CTED). The Council, also in 2004, adopted resolution 1566 which called on Member States to take action against groups and organizations engaged in terrorist activities that were not subject to the 1267 Committee’s review. In conjunction with the World Summit, on 14 September 2005 the SC held a high-level meeting and adopted Resolution 1624(2005).

**Criticisms of the SC actions on terrorism**

The listing procedures created by SC’s resolution 1267 committee typically do not provide targeted individuals or entities with prior notice. Under the 1267 committee’s listing procedure, it is not clear that listing decisions can be challenged before any sort of judicial body. In other jurisdictions, however, more substantial evidence and/or judicial finding may be required before steps will be taken to sanction an alleged terrorist organisation, particularly when it purports to be a charitable organisation.

The issue of dispensing with the need for proof that financing is connected to specific terrorist activities reduces the burden of proof on the law enforcement agencies makes it easy to secure a conviction and that may lead to miscarriage of justice.

Furthermore, there is a danger in organisational approach of proscribing legitimate as well as illegitimate dealings with terrorists. This problem normally and mostly arises in charitable organisations with mixed purposes and activities. Therefore, subjecting them or their supporters to harsh sanctions of counter terrorism measures may be a disproportionate response to the threat they pose. The prohibition upon financing terrorist activity also risks capturing transactions that are legitimate. Therefore, an unqualified ban on dealing with terrorists seems to render lawyers potentially liable for providing services to terrorists. Further, it can threaten legitimate economic activity when individuals or organisations have ambiguous purposes.

The language of the Security Council Resolution 1373 contains a sweeping ban upon dealings with terrorists. The regimes adopting this approach risk violating notions of procedural fairness with out giving suspects rights to judicial hearing or appeal before imposition of prohibitions upon dealings with them.

Resolution 1373 further, calls upon States to freeze the property of various actors in terrorism. However, this resolution is silent on the question of what sort of property is to be subjected to forfeiture as opposed to a freeze. This also has a disadvantage of depriving actors of property that is not linked to any particular terrorist activity.

Better still, the prohibitions initiated by SC are redundant because much of the conduct at issue could be prosecuted under the existing legislation imposing upon those who aid, abet, and conspire in the commission of terrorist activities. Finally, terrorists’ economic activities are often inherently difficult to detect because they involve property of relatively little value.

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16 Ibid.
17 The 1540 Committee - also made up of all Council members - http://disarmaments.un.org/committee1540. Also see UNSC Resolution 1540.
19 Ibid. The principal purpose of the committee is to monitor the implementation of Resolution 1373 and to facilitate the provision of technical assistance to Member States.
20 http://www.un.org/docs/sc committees/1566/Template.htm downloaded on 8/9/2007 at 10:50 am. Resolution 1566 established the 1566 Working Group made up of all Council members to recommend practical measures against such individuals and groups, as well as to explore the possibility of setting up a compensation fund for victims of terrorism.
21 UN Security Council Resolution 1624(2005). It also called on Member States to prohibit by law terrorist acts and incitement to commit them and to deny safe haven to anyone guilty of such conduct. The security council also condemned all acts of terrorism irrespective of their motivation, as well as the incitement to such acts.
23 Ramraj V.; Micheal Hor and Kent Roach, supra at page 183.
24 Second report of the monitoring group established pursuant to Resolution 1363 (2001) and extended by resolutions 1390 (2002) and 1455 (2003), on the sanctions against Al-Qaeda, the Taliban and individuals and entities associated with them, S/2003/1070 (second Report of the 1363 Monitoring Group, para. 39).
25 Ramraj V.; Micheal Hor and Kent Roach, supra at p. 184.
Collateral Damage: war on terror and protection of human rights

By Dr. Obote-Odora

The killing of persons who do not threaten combatants in the process of killing those who do, for lack of a better word, is described as ‘collateral damage’. In a legal sense, it is tempting to pin every killing on intention. However, the Law of War draws a distinction between legitimate and illegitimate targets via the notion of a threat. Combatants are ordinarily armed and threatening, non-combatants are not. Non-combatants include the civilian population (women and children) and all combatants who are hors de combat, prisoners of war, or the sick, wounded or shipwreck. These categories of non-combatants are not a threat, and therefore, not legitimate military targets.

Military ethics attempts to explain collateral damage by analogy to the doctrine of double effect. That doctrine applies to situations in which it may be necessary or unavoidable to take an action that will cause the loss of innocent life in order to achieve some greater good. The doctrine holds that such an action should be performed only if the intention is to bring about the good effect and the bad effect will be an unintended or indirect consequence – and therefore characterized as collateral damage.

As a general rule, four conditions must be satisfied before the doctrine of double effect is applied. First, it must be objectively demonstrated that the action itself is morally indifferent or morally good. Second, the bad effect is the means by which the good effect is achieved. Third, the motive is the achievement of the good effect only and, fourth, the good effect is at least equivalent in importance to the bad effect. Therefore, in theory at least, whereas intent to kill civilians is never permissible, according to the doctrine of double effect, foreseeing civilian deaths as an effect of a permissible action (such as aiming at a military target but striking a civilian one) is not prohibited. Such analogy tends to suggest that collateral damage, even when many civilians are killed, will not necessarily result in the commission of a war crime. In other words, it is an accidental but not intentional killing.

The issue of motive as stipulated in the third requirement, suggests that lack of motive is sufficient to exonerate the perpetrator. However, as persuasively argued by Walzer, not to intend to kill non-combatants is, by itself, not to show enough restraint. Walzer articulates his arguments as follows:


Simply not to intend the death of civilians is too easy; most often, under battle conditions, the intentions of soldiers are focused narrowly on the enemy. What we look for in such cases is some sign of a positive commitment to save civilian lives … And if saving civilian lives means risking soldiers’ lives, the risk must be accepted. But there is a limit to the risks that we require… We can only ask soldiers to minimise the dangers they impose … on civilians. Steps required of military commanders and their subordinates to “minimise the dangers” to non-combatants include measures such as ensuring proper intelligence-gathering about targets so as to enable combatants not to deliberately destroy homes of non-combatants just because leaving the houses standing, makes it more difficult to access military targets. It is not acceptable when a superior side in an asymmetric armed conflict uses advanced technology and weapons to fight from such a distance that the risk to its own combatants is minimal but the risk to non-combatants on the enemy side is unnecessarily increased.

Minimising the danger to non-combatants must be the concern of all belligerents. This requirement means that in some cases, fighter pilots must be ordered by their superior officers.
to fly low enough to clearly identify targets and to avoid ‘carpet bombings’ that will inevitably result in large numbers of civilian deaths.

Air combat, viewed in the context of the doctrine of double effect, and the resulting ‘collateral damage’ raises difficult questions in determining the norms and rules on the protection of civilians, civilian population and objectives. Air combat often results in ‘accidental’ killing of civilian, and the destruction of their property, which in turn is conveniently described as ‘collateral damage’. That term – collateral damage - is not a legal term, but a term of art, describing the striking of civilian targets. Therefore, in one sense, it may be argued that collateral damage is an accident caused, for example, by a bomb that has gone astray.

However, when a bomb misses a military target, and hits a civilian one, then a number of issues arise and the decisions taken by the superiors who selected the targets and thereafter ordered the fighter pilots to strike must be evaluated. First, it is important to determine, as a matter of fact, whether the strike was accidental. If it was not accidental, then the possibility that it was intentional may not be ruled out. Therefore, further steps should be taken to verify independently and objectively whether or not the strike was not intentional. It is more appropriate for third parties to conduct the investigation. Rules for such determination must exist. It is against the principle of natural justice for a suspect to investigate his own conduct that forms the basis of the allegation. In most of the armed conflicts in Africa and elsewhere, when government fighter pilots kill civilians, it is the same government that insists, and always, conducts the investigation and reports to itself. Such process goes against the principle of natural justice and must be discouraged if not completely avoided.

Second, both the quality and the threshold of the investigation should be agreed upon. Ordinarily, one would expect investigators to be objective. However, in the absence of a prior agreement by the parties, the problem is that the findings of the investigation may depend on who takes the key decisions, and what his motives are. The process of investigation may be subjective with all the inherent bias contained therein.

There are three scenarios under which killings of civilians may be alleged to constitute ‘collateral damage’. The first scenario is when an act or acts that caused collateral damage is an isolated one; the second is when an air strike is a result of a series of accidents; and the third is when the act or acts is a result of a consistent pattern of conduct. I will now look at these three different scenarios in turn in the context of the ‘war on terror’ and protection of human rights in conflict situations.

First, in determining whether an act that resulted in ‘collateral damage’ is an isolated one, it is important to ascertain factually, objectively and transparently if the ‘attack’ or ‘operation’ was an isolated act. If the answer is ‘yes’, then it may be concluded that it is an accident. A finding of accidental killing of civilians or destruction of civilian objects leads to the conclusion that the combatant, or in this case, a fighter pilot and the superiors in the chain of command, leading to the highest level are responsible for the resulting ‘collateral damage’, but bears no individual criminal responsibility. As a matter of law, not all accidental killings automatically translate into criminal acts. An example of an isolated act resulting in ‘collateral damage’ was when NATO fighter pilots, during the Yugoslavia war, accidentally bombed the Chinese Embassy in Belgrade killing four diplomats. Compensation may be paid to the victims without necessarily accepting responsibility for the unlawful bombings and the resultant deaths of civilians.

Second, where ‘collateral damage’ is caused by a series of military ‘attacks’ or ‘operations’, and over a period of time, the civilian population and civilian objects continue to be targeted, then it must be factually, objectively and transparently determined whether these series of military strikes are accidental or deliberate. Once evidence of regular striking of the civilian targets is established, then the evidential burden shifts to the offending party. In this case, the burden of proof is not beyond a reasonable doubt, but on a balance of probability. If it is determined that it was accidental, no criminal responsibility results, notwithstanding the high numbers of civilian deaths, or the frequency with which the civilian targets were hit.

If, on the other hand, the allegation is that the civilians targets was hit intentionally, then the party making the allegation has a higher burden of proof, though not beyond a reasonable doubt, to satisfy the prima facie requirement that the fighter pilot and the superiors in the chain of command have a case to answer. Therefore, under these circumstances, the resulting ‘collateral damage’ may or may not be a war crime. This level of burden of proof is intended to prevent the making of wild allegations without sufficient supporting evidence.

Third, where ‘collateral damage’ is caused by a consistent pattern of ‘attacks’ or ‘operations’, targeting civilians, then such actions tend to rise to the level of war crimes because it is illegal to target civilians. However, to prove that combatants intentionally targeted civilians is problematic. Even combatants, who deliberately and intentionally target civilians, often deny doing so. To that extent, not much credibility may be
attributed to regular press statements issued by parties to armed conflict restating their compliance with the Law of War and denying attacking civilians. On the contrary, one should treat such statements with caution and use a reasonable man’s (or woman’s) standard in assessing the available evidence prior to determining whether the attack was accidental or intentional. The test therefore depends on the facts on the ground as factually, objectively and transparently determined and whether a reasonable superior or commander, with sufficient knowledge of the factual situation, would order a fighter pilot to conduct an ‘attack’ or ‘operation’ when fully aware that civilians would be killed.

The Law of War does not expressly address the legal character of collateral damage. There is no mention of ‘collateral damage’ in the Four 1949 Geneva Conventions and its Additional Protocols I and II of 1977. Similarly, there is no mention of ‘collateral damage’ in the 1899 and 1907 Hague Conventions or in customary international law.

Acts described as ‘collateral damage’ resulting in deaths of civilians during the First World War led to an early, but unsuccessful, attempt to regulate air warfare. Use of air warfare, with its increasing ‘collateral damage’ continued during the Second World War. In less than three decades, air warfare became an important military strategy for many States engaged in armed conflicts. The Vietnam War (known to the Vietnamese as the ‘American war’ ending in 1975, the Arab-Israeli six-day war of 1967 and a second Arab-Israeli war of 1973, the Iraq wars of 1991 and 2003, the Afghanistan, the Palestinian-Israeli and Israeli-Hezbollah-Lebanon wars finally demonstrated the immense discrepancy between theory and practice of the law of air warfare as more civilians continue to get killed and combatants take no responsibility because these civilians are just ‘collateral damage’.

During the Nuremberg trials, at the instigation of the victorious Allied Powers, the violation of the principle of discrimination was excluded from the charges brought against the accused persons. The prosecutors at the Nuremberg Tribunal did not consider indiscriminate killing of civilians and the civilian population resulting in ‘collateral damage’ as war crimes and there were no criminal prosecution of fighter pilots and their superiors in the chain of command for the indiscriminate killing of civilians at Hiroshima, Nagasaki, Kobe, Hamburg or Dresden. At Hiroshima and Nagasaki, the two cities where the United States used atomic bombs against civilian population and objects that resulted in the death of thousands of Japanese for no apparent military reason at a time when Japan was all but defeated is one such example of indiscriminate bombing. At Kobe in Japan, Hamburg and Dresden in Germany, the Allied Air force destroyed cities resulting in the deaths of many civilians therein at a time when the Second World War was, for all practical purposes, over. No person was prosecuted for these horrendous crimes.

In the post Second World War period, in international and non-international armed conflicts, the killing of civilians took place on a massive scale, while air warfare was taken to horrifying excesses, consigning almost to oblivion, the basic principle that the civilian population should be protected as far as possible. The indiscriminate use of the air force made terrorising the civilian population the dominant purpose of air warfare. The practice threatened to bury all restrictions on the use of force.

At the instigation of the Allied Powers, the main question concerning the regulation of weapons, means and methods of warfare, including adjustment of warfare to the principles of military necessity and humanity, were subsequently excluded from the work of the Red Cross meetings which preceded the 1949 Geneva Conventions. However, the Geneva Red Cross Conventions of 1949 made efforts to regulate most of the violations that had arisen in the wake of the Second World War and to fill the gaps, which had become obvious in earlier treaties. These efforts were unsuccessful. Thus, the four 1949 Geneva Conventions are silent on the legal nature of ‘collateral damage’.

However, the Fourth Geneva Convention developed a legal regime that dealt with the problems of military occupation, but the questions of possible limits on air warfare, and on arms that cause unnecessary suffering were left within the scope of customary international law as codified in the 1899 and 1907 Hague Conventions. The Diplomatic Conference on the Re-affirmation and Development of International Humanitarian Law Applicable in Armed Conflict held in Geneva from 1974 until 1977 considered regulating the killing of civilians as a result of ‘collateral damage’ in a wider context under the general principles of protecting civilians and civilian population. Nonetheless, no specific provision proscribing the killing of civilians was adopted.

With the adoption of Additional Protocol I of 1977, the provisions

of Article 51 on the protection of the civilian population and Articles 52 to 56 on the protection of civilian objects, an attempt was nevertheless made to achieve such a specification of customary rules, although it remains an open question as to what extent these provisions constitute a pure codification of pre-existing customary international law and to what extent they constitute further development or even creation of new rules.

The provisions regulating how combatants may treat the civilian population was heavily criticised by some military experts, and in connection with the absolute prohibition against reprisals against the civilian population contained in Additional Protocol I – are probably the main reason important military powers still refuse to ratify Additional Protocol I of 1977.

It is against this background that the killing of civilians is conveniently described as ‘collateral damage’, notwithstanding the fact that the phrase is of no legal consequence.

Further, the Law of War continues to be complicated because when the basic underlying rules that regulate the protection of civilian is breached by combatants, whether accidentally or intentionally, once described as ‘collateral damage’, the phrase tends to acquire a new meaning, that is, of a combatant having killed a person by accident. It is this fact that makes it imperative that the phrase ‘collateral damage’ is brought within a legal framework, properly defined and the resulting acts criminalized.

The ‘War on Terror’ has further endangered the security and safety of the civilian population in times of armed conflicts resulting in grave abuses of human rights.
Gender Lens

Impact of the global war on terrorism on the rights of women in East Africa

By Roseline Odede

Terrorism has been defined by the United Nations as “All criminal acts directed against a State and intended or calculated to create a State of Terror in the minds of particular persons, or a group of persons or the general public.”  The United Nations in its resolution1, adopted a similar definition and widened it by including reasons for the terror. The reasons included political, philosophical, ideological, racial, ethnic and religious. The definition of terrorism has been criticized as being subjective, and propagating the views of one group against the other4. Each group may cite the other as a terrorist group. Terrorism however, has three distinctive attributes, namely criminal action, causing fear and terror on a particular group of persons or their perceived sympathizers and fighting for a cause.

Terrorism has existed for centuries past. The global war on terrorism however, was largely precipitated by the 2001 September, 11 attack on America. It was believed that the attack was planned and executed by the al-Qaeda group who allegedly operate under the command of Osama Bin Laden. The September 11 attacks claimed the lives of many innocent persons of several nationalities, and immediately drew worldwide sympathy for America. The attacks and rescue missions broadcast live on many television channels brought the images to the living rooms of many across the globe. The ugly face of terrorism was laid bare, and it was not difficult for nations and persons across the globe to unify and condemn terrorism. It also heightened the revulsion towards the al-Qaeda group and its activities. The group had previously been blamed for attacks on the American embassies in the East African States of Kenya and Tanzania, which indeed also claimed a lot of lives.

It was thus not difficult for America, who previously had called for sterner measures against al-Qaeda and other terrorist groups to push forth their agenda. The United Nations convened and passed a resolution condemning terrorism, and moved towards developing and implementing a global strategy to counter terrorism.5 The strategy aims to combat terrorism by promoting peace. It advocates dialogue, tolerance, respect, cultural and religious diversity. It also addresses the role of promoting human rights in eliminating conditions conducive to the spread of terrorism. Currently, there are sixteen universal instruments6 against international terrorism that have been elaborated within the framework of the United Nations systems relating to specific terrorist activities.7 The instruments relate to terrorist activities aboard aircrafts, naval ships and other transport modes; protects airports; criminalizes taking of hostages, regulates nuclear activities and making of bombs and other detonators; regulates financing of terrorist activities amongst other issues. The recent amendments highlight the importance of criminalization of terrorist offences, making them punishable by law and calling for prosecution or extradition of perpetrators. The amendments also provides for the need to eliminate legislation which establishes exclusions to such criminalization.8 The United Nations has therefore; set the pace as to how terrorism should be handled.

The global war on terrorism, seeks to have states, comply with the standards set by the United Nations by domesticating the international instruments against terrorism. It also seeks to have more interaction, intelligence sharing and co-operation between the collaborating states. It seeks to counter terrorism, and to stop any attacks before they can occur. The global war against terrorism is not limited to al-Qaeda, but is broadly intended to fan out and extinguish any terrorist cells.

To achieve this goal, the East African Partner States have not been left behind. The East African Community created a counter terrorism task force to study the framework relating to counter terrorism and the protection of human rights, even though the Treaty does not specifically mention counter terrorism as an area of cooperation.9 The East African Community has also developed a strategy on combating terrorism, which calls on Partners States to exchange information on terrorism, enhance border security and establish a regional forensic centre.10

The individual States have also been busy drafting laws to try and domesticate international laws on counter terrorism. Uganda and Tanzania lead in the number of Bills that have become law. These are mainly anti terrorism and counter terrorist financing laws. In Kenya, the parliament has been reluctant to pass the Bills, and they still remain to be domesticated. Security personnel in all three countries,

1 Roseline Odede is an advocate of the High Court of Kenya.
2 1937 League of Nations definition.
3 Resolution 1566 of the United Nations Security Council
4 Brian Jenkins quoted in Bruce Hoffman’s book, Inside Terrorism, says that “Use of the term implies a moral judgment; and if one party can attach the label terrorist to its opponent, then it has indirectly persuaded others to adopt its moral viewpoint.”
5 On 8th September 2006, the UN Global Counter Terrorism Strategy was adopted, and was launched on 19th September 2006. The strategy marks the first time that all member states of the United Nations have agreed to a common strategic and operational framework to fight terrorism.
6 Thirty three amendments.
7 A list of the specific acts are annexed at the end of this paper.
8 Exceptions on political, racial, ethnic, religious or similar grounds are discouraged.
9 The heads of the East African States in a memorandum of understanding in 1999, agreed to set up a mechanism to deal with terrorism in the region. This followed the simultaneous terrorist attacks on Tanzania and Kenya.
10 The Community has established cooperation in defense and police matters, aimed at countering the trafficking and proliferation of small arms and light weapons, in addition to improving regional police cooperation in combating cross border crime.
including Kenya continue to counter terrorism, and cooperate largely with America. The co-operation has led to the arrest, prosecution and extradition of individuals suspected to be terrorists.

The arrests and treatment of the suspects have however, evoked the ire of human rights advocates. Anti terrorist police forces set up, tend to believe that counter terrorism activities means a suspension of the rule of law and due regard for human and basic rights. Arrests have been indiscriminate, with entire households including women and children being arrested when a suspected missing relative is untraceable. Reports are made of the suspects being held incommunicado for days and torture during interrogation by foreign and local security persons. There are also reports of phone surveillance, and harassment of individuals who receive money from relatives based in Saudi Arabia. The counter terrorism activities in the region have thus impacted negatively on women and women's rights in the East African region.

The war on terrorism in the region has had the following effects on women:

1. It has affected the women’s right to be free from arbitrary arrest, the right to life and liberty. The modus operandi in netting the terrorist suspects has included arresting entire households including women and children in attempts to cause the suspect out of hiding. At one time, there was a five year old girl arrested in Kenya along with 76 people and incarcerated for over a week for terrorism. Her only crime was being born and present in the house where a suspect was supposed to have been - a house that she calls home. There were also reports of the wife of a suspect who was continually harassed by anti terrorist police forces because she was not able to divulge the whereabouts of her husband. The police arrested and detained her incommunicado for several days, and denied her lawyer access and/or information as to her whereabouts. There are several similar incidents where women have been arrested and detained for crimes they have not committed. The women have been tortured and subjected to humiliating and degrading treatment. Every person has a right to life, liberty and security of persons.

2. It has led to discrimination and stigmatisation of women. Muslim women as a group are considered suspect, and are automatically stigmatised. The activities of the anti terrorist police is concentrated against Muslim groups and their women are therefore, automatically discriminated against. A simple instance is at border crossings, Muslim women in their hijabs are subjected to greater discriminatory scrutiny than other persons. This is a violation of the spirit of the Convention on the Elimination of all forms of Discrimination Against Women. All are equal before the law and are entitled without any discrimination to equal protection of the law.

3. The right to privacy is also interfered with. The counter terrorism efforts ignore all legal protections in place. Surveillance and listening into ones private conversations are commonly done by the police without apology. Women having spouses or relatives suspected terrorism suspects have no privacy as their mail and telephone conversations are interfered with. No person should be subjected to arbitrary interference with his privacy, family, home or correspondence.

4. The right to maintain and keep a family is also interfered with. The arbitrary arrests of entire households or the male members thereof lead to a breakdown of the family unit. The constant lens of suspicion also causes some members of the family to flee the family unit to avoid harassment. This is an infringement of rights of each woman to have and found a family.

5. The greatest impact of the war on women’s rights however, is the reifying of fanatical religious persuasions that sideline women and erode their rights. Such religious persuasions deny women equality in all spheres of life. It has led to the denial of rights to education, which ultimately reduces the woman’s capacity to compete effectively with men in the economy. It retards the development and overall well being of the women. Similar practices also encourage traditions such as early and forced marriages, which deny the woman the right to choose a life partner. The global war on terrorism was also viewed as a war to liberate women. The Americans in justifying the invasion of Afghanistan, as setting basis for ending terrorism there, made several speeches that imputed that the removal of the Taliban from Afghanistan was a new dawn in the arena of rights for the afghan woman. This defined women’s rights as a western import, and resulted in anti-women rights sentiments, thus restricting further the rights space for Muslim women worldwide. It has slackened and held back attempts by Muslim women to fight for their rights on their own terms. Efforts must therefore, be made to deconstruct the identities that divide and conquer women.

6. The defence of human rights and upholding the rule of law while countering terrorism is a non negotiable issue. This view is supported by the United Nations. The Secretary General, has argued that terrorism is in itself an attack on human rights and the rule of law, and it cannot be sacrificed in the response to terrorism as that would be a victory for the terrorists. Defending human rights “is a prerequisite to every aspect of any effective counter-terrorism strategy. It is the bond that brings the various components together.”

11 The chairman of the Council of imams in Kenya claimed the counter terrorism measures were aimed at targeting Muslims who have relatives in Saudi Arabia, while decrying the indiscriminate arrests and harassments of Muslims suspected to be terrorists.
12 The Universal Declaration of Human Rights Article 3
13 The Kenya National Commission of Human Rights sought an explanation form the government as to why this was allowed to happen. It was reported in the East African Standard Newspaper on 31st January, 2001.
14 The Universal Declaration of Human Rights, Article 7
15 The Universal Declaration of Human Rights Article 12
16 The Universal Declaration of Human Rights Article16
17 The Universal Declaration of Human Rights, Article 26
18 Koffi Annan, while Secretary General of the United Nations.
The Dictionary

CIGARETTE:
A pinch of tobacco rolled in paper with fire at one end and a fool at the other!

MARRIAGE:
It’s an agreement wherein a man loses his bachelor degree and a woman gains her masters

DIVORCE:
Future tense of marriage

LECTURE:
An art of transmitting information from the notes of the lecturer to the notes of students without passing through the minds of either

CONFERENCE:
The confusion of one man multiplied by the number present

COMPROMISE:
The art of dividing a cake in such a way that everybody believes he got the biggest piece

TEARS:
The hydraulic force by which masculine will power is defeated by feminine water-power!

DICTIONARY:
A place where divorce comes before marriage

CONFERENCE ROOM:
A place where everybody talks, nobody listens and everybody disagrees later on

ECSTASY:
A feeling when you feel you are going to feel a feeling you have never felt before

CLASSIC:
A book which people praise, but never read

SMILE:
A curve that can set a lot of things straight!

OFFICE:
A place where you can relax after your strenuous home life

YAWN:
The only time when some married men ever get to open their mouth

ETC:
A sign to make others believe that you know more than you actually do

COMMITTEE:
Individuals who can do nothing individually and sit to decide that nothing can be done together

EXPERIENCE:
The name men give to their mistakes

ATOM BOMB:
An invention to bring an end to all inventions

PHILOSOPHER:
A fool who torments himself during life, to be spoken of when dead

DIPLOMAT:
A person who tells you to go to hell in such a way that you actually look forward to the trip

OPPORTUNIST:
A person who starts taking a bath and accidentally falls into a river

PESSIMIST:
A person who while falling from EIFFEL TOWER says in midway “SEE I AM NOT INJURED YET!”

CRIMINAL:
A guy no different from the other, unless he gets caught

POLITICIAN:
One who shakes your hand before elections and your confidence later

MISER:
A person who lives poor so that he can die RICH!

FATHER:
A banker provided by nature

DOCTOR:
A person who kills your ills by pills, and kills you
East Africa Law Society (EALS) is the premier regional Bar Association formed in 1995 by a visionary group of lawyers and the leadership of the national Bar associations in the East African Community (EAC) region. It is a dual membership organization, bringing together over seven thousand individual lawyer-members as well as the six national Bar associations: Burundi Bar Association, Kigali Bar Association, Law Society of Kenya, Tanganyika Law Society, Uganda Law Society and Zanzibar Law Society.

EALS is one of the largest organized Professional/Civil Society membership organizations with a strong interest in the professional development and practice of law as well as constitutionalism, democracy and good governance, the just rule of law, and the advancement, promotion and protection of human rights of all people in East Africa and beyond.

EALS recently developed a Strategic Plan (2008-2012) to guide its activities in the coming years.

It is uniquely positioned to promote cross border integration for the people of East Africa and enjoys formal Observer Status at the EAC.


Our Achievements

Despite been a relatively young organization, EALS has realized a number of successes. These include:

- On-the-ground credibility within the 5 EAC States: with lawyers, governments, civil society, citizens;
- Panoramic knowledge and contacts on legal, human rights, rule of law, regional integration issues in the EA region;
- Formal Observer Status and unparalleled competence on EAC law, including litigation at the EACJ and legislation in EALA;
- Key player in rule of law, human rights and regional integration;
- Strong continental linkages and networks with various institutions including the Coalition for an Effective African Court on Human and Peoples’ Rights (CEAC), SADC Lawyers Association and the West African Bar Association;
- Partnerships with the Canadian Bar Association and the Law Society of England and Wales;
- Active membership and networking initiatives with the Pan African Lawyers’ Union (PALU), Commonwealth Lawyers’ Association (CLA), International Bar Association (IBA); and International Institute of Law Association Chief Executives (IILACE).