

## Disruption of Terrorist Financing in Tanzania: An Analysis of the Legal and Human Rights Framework

By

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### Abstract

*The terrorist incidents that occurred in the late 1990s and early 2000s in different parts of the world brought a wakeup call to the law enforcement agencies, the intelligence community and the citizens at large on the threats that are apparent to the global peace and security. The major terrorist attacks have been perpetrated by terrorist groups like the Al Qaida and Al Shabab. Terrorism poses threats and imminent danger to the mankind globally and terrorist acts violate human rights. Some people suffer consequences through spill over effects of the attacks. In Tanzania, the August 7, 1998 terrorist attack where two massive bombs exploded simultaneously outside of the U.S. embassies in Dar es Salaam, Tanzania, and Nairobi, Kenya, killing 224 people and injuring 5,000, proved that the country was not free from terrorism. It is in this understanding that Tanzania, in a bid to heed an international call to all states to have counterterrorism measures has, in 2002, enacted the Prevention of Terrorism Act. The Act contains provisions on disruption of terrorist financing. It is on this note that this paper analyses the legal and human rights framework on prevention of terrorism generally and disruption of terrorist financing in Tanzania in particular. The research whose methodology was secondary method of data collection, has found that those provisions are effective and human rights compliant.*

**Keywords:** human rights, terrorism, terrorist financing, security challenges.

### 1. Introduction

Much as terrorism is as old as the history of mankind itself, the terrorist incidents that occurred in the late 1990s and early 2000s opened eyes of the law enforcement agencies, the intelligence community and the citizens at large to the

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threats that are apparent to global peace and security.<sup>2</sup>

Among the notable terrorist attacks that drew world attention include the August 7, 1998 incident where two massive bombs exploded simultaneously outside of the U.S. embassies in Dar es Salaam, Tanzania, and Nairobi, Kenya, killing 224 people and injuring 5,000.<sup>3</sup> This incident raised an alarm that terrorist threats and attacks are real. Equally true, the world witnessed that on 11 September 2001, commonly referred to as 9/11; the United States was hit by a set of unprecedented terrorist attacks, calculated to inflict massive civilian casualties and damage. Four hijacked commercial jets crashed, two into the World Trade Center towers in Manhattan, which collapsed shortly thereafter, one on the Pentagon in Washington DC, and the last one in Pennsylvania. Over 3000 people were killed, including hundreds of rescue personnel.<sup>4</sup> The 9/11 attack was considered the most egregious act of international terrorism. As such, it moved the world to come together and consolidate the available resources to try to defeat terrorism.

In Tanzania, the August 7, 1998 bombing of the United States Embassy in Dar es Salaam marked the first experience for the country to grapple with a terrorist attack. The attack was planned and executed by a terrorist group known as Al-Qaeda under the leadership of Osama Bin Laden. From there onwards, there have been some incidents in the country identified as terrorist attacks. They included acid attacks in Zanzibar and arson attacks on churches. Another incident was a violent attack that took place in October 19, 2020, at Kitaya village, in Mtwara, close to the border with Mozambique. The Islamic State (IS) fighters in Mozambique staged their first claimed attack on this southern part of Tanzania,

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<sup>2</sup> The United Republic of Tanzania, Ministry of Finance and Planning, (2022) *A Report on Assessment of Terrorist Financing Risk in Non-Profit Organisations in the United Republic of Tanzania*, p.14.

<sup>3</sup>Federica, B. (2000) "Killing a Fly with a Cannon: The American Response to the Embassy Attacks," (See also Aronson, S.L. (2011) "United States Aid to Kenya: A Study on Regional Security and Counterterrorism Assistance Before and After 9/11")

<sup>4</sup> OECD, (2002) "Economic Consequences of Terrorism," *OECD Economic Outlook*, 71, pp.117-140, p.117.

killing at least 20 people.<sup>5</sup> The fighters also burned down houses, destroyed an armored vehicle, and stole money and military equipment.<sup>6</sup> Furthermore, there is the incident that took place on 25 August, 2021 where a Tanzanian by the name of Hamza Mohamed aged 33 gunned down three Police officers and a security guard near the French Embassy in Dar es Salaam, before he was gunned down by the Police.<sup>7</sup>

There are some factors which facilitate terrorism to find its ways through different parts of the world. Among them is terrorist financing which in the United Republic of Tanzania emanates from foreign jurisdictions.<sup>8</sup> Financing is extremely important resource for terrorist groups to survive and carry out their activities. As such disrupting terrorist financing is found to be one of terrorist counter-measures. It is on this basis that this paper critically analyses the legal and human rights framework related to terrorist financing in Tanzania. The main objective is to inquire into the effectiveness of the provisions of the Prevention of Terrorism Act<sup>9</sup> generally and on disruption of terrorist financing in particular. But the paper starts with an investigation into the stake of terrorist activities on Tanzanian territory and also investigates whether the provisions of the Act are human rights compliant.

## 2. Methodology

This study used secondary data. The study was conducted through library research and literature survey. The research involved a review and assessment of various sources. Those sources included peer-reviewed journal articles and other literature reviews as found in cited footnotes in the main body of the paper and references part. Other sources in the form of theses, official reports and documents, text books and statutes were referred to.

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<sup>5</sup> Ouassif, A.E. and Kitenge, S.Y. (2021) *Terrorist Insurgency in Northern Mozambique: Context, Analysis, and Spillover Effects on Tanzania*, Policy Centre for the New South, Policy Paper, November, p.12.

<sup>6</sup> *Ibid.*

<sup>7</sup> The United Republic of Tanzania, Ministry of Finance and Planning, (2022), *op cit*, p.16.

<sup>8</sup> The United Republic of Tanzania, Ministry of Finance and Planning, (2022), *op cit*, p.13.

<sup>9</sup> Cap.19 [R.E. 2002].

### 3. Legal Framework, Meaning and the Effects of Terrorism

The effects of terrorism are far reaching. Terrorist attacks affect country's human capital, which is the most vital component in the national development. Furthermore, the attacks put a burden on the economy and society in terms of lost economic opportunities. The burden also goes to the increase in security expenditure. Sometimes funds are inevitably diverted to security matters. This is because the occurrence of the terrorist attacks might have not been anticipated during the budget sessions.

#### 3.1 Concept of Terrorism

Defining the term "terrorism" is somewhat difficult and complex. So far there is no consensus on what should be the definition of terrorism common to all people worldwide. The High Court of Tanzania, which has original jurisdiction to try terrorist offences,<sup>10</sup> is aware of the difficulty that arises in defining the term "terrorism" where Mlyambina, J. stated in the case of *Republic v. Seif Abdallah Chombo @ Baba Fatima and Five Others*<sup>11</sup> that:

"Despite the fact that terrorism has been troubling humanity for many years, it has defied any attempt to define it in very clear terms. Lucid efforts at global, regional and national levels to define this subject have not been successful. Even courts within one nation have come up with different interpretation of what constitutes terrorism."

It is easy to recognize terrorism but difficult to define it. This is due to the fact that terrorist activities take different dimensions aimed at achieving or furthering some ideological, religious or political objectives. Terrorism is therefore used as a strategy or means of expressing political, religious or social

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<sup>10</sup> Terrorist offences are tried in ordinary courts in Tanzania. There is no special court established for hearing these cases only. Under the Prevention of Terrorism Act, Cap.19 [R.E. 2002], section 34, it is the High Court, which has original jurisdiction to try these offences. All rights and obligations pertaining to any accused person of any other criminal offences are also available to the accused persons of terrorist offences. Those laws include mainly the Criminal Procedure Act, Cap.20 [R.E. 2022], sections 5, 11, 13, 14 and 23 and the Evidence Act, Cap. 6 [R.E. 2022].

<sup>11</sup> The High Court of the United Republic of Tanzania, The Corruption and Economic Crime Division at Songea Sub Registry, Economic Case No. 4 of 2022 (Unreported).

grievances by aggrieved individuals or groups.<sup>12</sup> Moreover, the changing nature of tactics that are used to effect terrorist attacks in the contemporary world complicates the matter. Terrorists are fast in adapting to new developments in communication. They use apps, social media sites and other online content-sharing services to communicate and coordinate their actions across the globe and to disseminate terrorist content.

Edwin Bakker and Beatrice de Graaf attempt to define terrorism by arguing that: “What is terrorism and what is the essence of this phenomenon? Even after more than fifty years of research into terrorism, there is no generally accepted answer to this question. Nonetheless, many scholars, as well as practitioners, would probably agree that terrorism is an instrument that – by way of threats and attacks – aims to create fear and anxiety and wants to intimidate people in order to achieve certain political goals. Most definitions of terrorism include direct and indirect goals that relate to the spread of fear.”<sup>13</sup>

According to Ferdinand Temba and Ignas Punge, terrorism has been described as unlawful threatening of the use of violence against individuals or property to coerce and intimidate governments or societies for political, religious or ideological objectives.<sup>14</sup> Komakeeh on the other hand defines terrorism as the unlawful use of violence and intimidation, especially against civilians in the pursuit of political aims.<sup>15</sup>

Terrorism has been defined in one report on terrorism and transnational

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<sup>12</sup> See Kunaka, K. (2021) “An Analysis of the Transnational Diffusion of Terrorism in Africa: The Case of Ansar Al-Sunna Armed Group in Northern Mozambique” *African Journal on Terrorism*, Vol.11 No.1, December, pp.91-106, p.91.

<sup>13</sup> Bakker, E. & de Graaf, B. (2014) *Towards a Theory of Fear Management in the Counterterrorism Domain: A Stocktaking Approach*, ICCT Research Paper, International Centre for Counter-Terrorism, The Hague, January, p.2.

<sup>14</sup> Temba, F.M. & Punge, I.S. (2014) “The Fight against Terrorism and the Protection of Human Rights in Tanzania: A Critical Analysis of the Prevention of Terrorism Act, 2002,” *The Tanzania Lawyer: Journal of the Tanganyika Law Society*, Vol. 1 No.2, pp. 1-41, p. 7.

<sup>15</sup> Komateeh, M.T. (2020) “Terrorism in East Africa,” *The Defender Magazine*, Senior Command and Staff College, Senior Command and Staff College, Kimaka, Jinja, Vol.15 No.15, June, p.146.

organized crime in West Africa in the following words:

“In this report, terrorism is defined as the premeditated use or threat of use of violence by an individual or group to cause fear, destruction or death, especially against unarmed targets, property or infrastructure in a state, intended to compel those in authority to respond to the demands and expectations of the individual or group behind such violent acts. Their demands or expectations may be for a change in status quo in terms of the political, economic, ideological, religious or social order within the affected state, or for a change in the (in)actions or policies of the affected state in relation to its interaction with (an)other group(s) or states.”<sup>16</sup>

Lack of common definition of the term “terrorism” is even seen within government quarters. It is for instance noted that there are various definitions of terrorism offered by the different governmental departments in the USA. The United States House of Representatives Permanent Select Committee on Intelligence defines terrorism as the illegitimate, premeditated violence or threat of violence by subnational groups against persons or property with the intent to coerce a government by installing fear amongst the populace.<sup>17</sup> On the other hand, State Department refers to “terrorism” as premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.<sup>18</sup> According to FBI, “terrorism” is defined as the unlawful use, or threatened use, of force or violence by a group or individual... committed against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.<sup>19</sup> Enders and Sandler define terrorism as:

“...the premeditated use or threat of use of extra-normal violence or brutality by sub-national groups to obtain a political, religious or ideological

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<sup>16</sup> Onuoha, F.C. & Ezirin, G.E. (2013) “*Terrorism*” and *Transnational Organised Crime in West Africa*, Report, Al Jazeera Center for Studies, 24 June, pp.2-3.

<sup>17</sup> Schmid, A. (2014) “Terrorism -The Definitional Problem,” *Case Western Reserve Journal of International Law*, Vol.56, Issue 2, 375-419, 377.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

objective through intimidation of a huge audience, usually not directly involved with the policy making that the terrorists seek to influence.”<sup>20</sup>

The Indian Supreme Court has once attempted to define the term “terrorism” in the case of *Hitendra Vishnu Thakur v. State of Maharashtra*<sup>21</sup>, where Dr. Anand, J. has perceptively given a detailed description thereof by stating that:

‘Terrorism’ is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilized society. ‘Terrorism’ has not been defined under TADA<sup>22</sup> nor is it possible to give a precise definition of ‘terrorism’ or lay down what constitutes ‘terrorism’...A ‘terrorist’ activity does not merely arise by causing disturbance of law and order or of public order...Experience has shown us that ‘terrorism’ is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes ‘terrorism’ from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation.”

In Tanzania the Prevention of Terrorism Act<sup>23</sup> does not define the term “terrorism”. However, the Act merely lists acts which constitute terrorism, that is to say it defines terrorist acts.<sup>24</sup> Under section 4 of the Act, an act constitutes terrorism if it seriously damages a country or an international organization and is intended to seriously intimidate a population, unduly compel a government to perform or abstain from performing any act, or seriously destabilize or destroy the fundamental political, constitutional, economic or social structure of the country or international organization.<sup>25</sup> The Act also provides that an act also constitutes terrorism within the scope of legal framework if it is an act or threat

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<sup>20</sup> Enders, W. & Sandler, T. (2002) “Patterns of Transnational Terrorism, 1970-1999: Alternative Time-Series Estimates,” *International Studies Quarterly*, Vol.46, pp.145-165, p.146.

<sup>21</sup> 1994 AIR 2623; 1994 SCC (4) 602.

<sup>22</sup> TADA is an abbreviation of the Terrorist and Disruptive Activities (Prevention) Act, 1987.

<sup>23</sup> Cap.19 [R.E. 2002].

<sup>24</sup> *Ibid.*, s.4.

<sup>25</sup> *Ibid.*, s.4(2)

of action which involves serious bodily harm to a person; involves serious damage to property; endangers a person's life; creates a serious risk to the health or safety of the public or a section of the public; involves the use of firearms or explosives; involves releasing into the environment or any part of it or distributing or exposing the public or any part of it to any dangerous, hazardous, radioactive or harmful substance; any toxic chemical; any microbial or other biological agent or toxin.<sup>26</sup>

Looking closely at these and other different definitions of terrorism by various authors, there are, some elements frequently used by them when defining the term. According to Schmid *et al* who conducted a thorough analysis of several definitions on terrorism, the following are some main elements used in the definitions of terrorism: (a) violence, force, (b) political, (c) fear, terror emphasized, (d) threat, (e) psychological effects and (anticipated) reactions, (f) victim-target differentiation, and (g) purposive, planned, systematic, organized action.<sup>27</sup>

Gathering from what has been stated above, terrorism may be defined as the unlawful use of threat and violence against targeted individuals or groups of people in a society in order to achieve political, religious or ideological goals. The use of threat and violence by terrorists serves as a means of sending a message through instilling or causing fear, destruction of property or infrastructure or death thereby coercing or intimidating governments or societies so that their objectives are achieved. In this understanding, terrorism aims to create fear of insecurity and belief in the targeted section of the society that it is no longer protected by leaders in power and their socio-economic and political rights are not taken care of.

### 3.2 Terrorism and Violation of Human Rights

According to the Office of the United Nations High Commissioner for Human

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<sup>26</sup> *Ibid.*, s. 4(3).

<sup>27</sup> Schmid, C. *et al.* (1988) *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature*, Transaction Books, North Holland, Amsterdam, p.27.



Rights, human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity.<sup>28</sup> The full spectrum of human rights involves respect for, and protection and fulfillment of, civil, cultural, economic, political and social rights, as well as the right to development. Human rights are universal—in other words, they belong inherently to all human beings—and are interdependent and indivisible.<sup>29</sup> Terrorism constitutes a serious violation of human rights and poses threats to peace, security, development and democracy in the world. It is one of the major threats to humanity and it continues to be a danger to world peace. As a result, it denies the targeted communities or peoples their fundamental right to be protected from such acts and to live freely without any fear or threats. The Office of the United Nations High Commissioner for Human Rights, states that:

“Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism can destabilize Governments, undermine civil society, jeopardize peace and security, and threaten social and economic development. All of these also have a real impact on the enjoyment of human rights.”<sup>30</sup>

It has also been stated that:

“It is widely accepted that terrorism constitutes a violation of human rights, especially the rights to physical integrity, life, freedom and security and also impedes socio-economic rights. All acts of terror —whether by a state or groups of individuals - seriously impair the enjoyment of human rights by persons in the places targeted. Thousands of people all over the world have lost their lives as a consequence of terrorist acts.”<sup>31</sup>

From what has been stated above, it is apparent that terrorism denies people of

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<sup>28</sup>Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-terrorism, Fact Sheet No. 32, p.3.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*, p.1.

<sup>31</sup> Lumira, C. (2007) “Counter-terrorism legislation and the protection of human rights: A survey of selected international practice,” *African Human Rights Law Journal*, Vol. 7, pp.35 -65, pp. 59-60.

the enjoyment of all human rights and fundamental freedoms, ranging from economic, social to cultural rights. This is because terrorism touches all aspects of human rights as stipulated under all declarations, covenants and conventions.<sup>32</sup> The Universal Declaration of Human Rights<sup>33</sup> provides for the right to equality, freedom from discrimination,<sup>34</sup> the right to life, liberty,<sup>35</sup> and personal security,<sup>36</sup> freedom from slavery,<sup>37</sup> and freedom from torture and degrading treatment.<sup>38</sup> Terrorist activities violate almost every sphere of human life, be it economic, political or social.<sup>39</sup> It also violates people's enjoyment of cultural rights. Cultural Rights are rights related to art and culture. They are human rights that aim at assuring the enjoyment of culture and its components in condition of equality, human dignity and non-discrimination.<sup>40</sup>

Terrorist attacks affect everyone in the targeted areas and beyond either directly or indirectly. In fact, they pose a serious violation of human rights and a threat to peace, security, development and democracy.<sup>41</sup> They also endanger the social fabric and economic development. Nations grapple with effects of terrorism, which range from claiming several lives of innocent human beings to destabilizing state governments, sovereignties and socio-economic stabilities. Effects of terrorism are felt not only by the targeted individuals or groups but also the world at large. What varies is the magnitude and frequency of the terrorist attacks.

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<sup>32</sup> Omar, M. (2018) *Draft Report on Negative Effects of Terrorism on the Enjoyment of Human Rights*, Human Rights Council Advisory Committee, Twenty-first session, 6-10 July, A/HRC/AC/21/CRP.2, 23 July, p.4.

<sup>33</sup> The Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets for the first time, fundamental human rights to be universally protected.

<sup>34</sup> Arts. 1 and 2

<sup>35</sup> Art. 3.

<sup>36</sup> Art. 3.

<sup>37</sup> Art. 4.

<sup>38</sup> Art. 5.

<sup>39</sup> Omar, M., *op cit.*

<sup>40</sup> *Ibid.*

<sup>41</sup> See preamble to the Protocol to the OAU Convention on the Prevention and Combating of Terrorism.

Worth mentioning is the Mumbai Attack on 26<sup>th</sup> November, 2008, which shook not only entire Indian nation but also its tremors were felt across the world.<sup>42</sup> The attack was among the deadliest acts of terrorism ever to occur in India. According to official figures, the 60-hour-long multiple strikes that started on the night of 26 November 2008 and lasted until 29 November 2008, across the India's financial capital, left at least 164 civilians and security personnel dead (including 26 foreign nationals) and 304 people injured.<sup>43</sup> On 11<sup>th</sup> July, 2010 the near simultaneous twin terrorist attacks took place in the Ugandan capital city of Kampala at the Ethiopian Village restaurant in Kabalabala and Kyadondo Rugby Club, where hundreds of football fans were watching the World Cup finals. In these incidents, 76 people were killed and at least 85 others were injured.<sup>44</sup> On April 2, 2015, gunmen affiliated with Somali's Al-Shabab jihadist – terror group, entered Garissa University College, Kenya, killing 148 and wounding dozens.<sup>45</sup>

### 3.3 Some Economic Effects of Terrorism

Terrorism has direct impact on the society's economic wellbeing. It has direct and indirect economic costs. The direct economic costs include the destruction of life and property, whereas indirect costs, whereas indirect costs cover such aspects as undermining consumer and investor confidence within the affected country.<sup>46</sup> Terrorism has effects to the victims globally ranging from losses from deaths, injuries and property destruction. It is on record that the global economic

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<sup>42</sup> Chowdhary, G.K.N. (2010) "Editorial", *The Indian Police Journal*, Vol. LVII, No.3, July-September, pp. 2-3, p. 2.

<sup>43</sup> Vaidya, A. (2017) "The 26/11 Mumbai Terror Attack: A Comparative Analysis of Indian and Pakistan Print Media," *World Affairs: The Journal of International Issues*, Vol.21, No.4 Winter (October-December), pp. 98-109, p.98.

<sup>44</sup> James, K. (2022) *State Capacity and Counter-terrorism Measures in Uganda*, Dissertation Submitted to the Directorate of Research and Graduate Training in partial Fulfilment of the Requirements for the Award of Master of Arts in International Relations and Diplomatic Studies, Makerere University, March, p.18. See also *The New York Times*, July 12, 2010.

<sup>45</sup> Odhiambo, E.O. S. *et al.* (2015) "Learning Institutions' Vulnerability to Terrorism: An Overview of Issue Coverage in Nowadays' Media and Specialised Literature & A Case Study of Garissa University College, Kenya," *Defense Resources Management*, Vol.6, Issue 2 (11), pp.21-29, at p.26. See also Shihundu, F. *et al.* (2021) "Experience of Terrorism in Kenya: What are the Vulnerabilities and Strengths?", *African Journal on Terrorism*, Vol.11, No.1, December, pp.127-144, at pp.129-130.

<sup>46</sup> Johnston, R.B. & Nedelescu, O.M. (2005) *The Impact of Terrorism on Financial Markets*, IFM Working Paper, WP/05/60, March, pp. 3-4.

impact of terrorism reached US\$52 billion in 2017, increasing by two thirds in the ten years from 2008.<sup>47</sup> The terrorist attacks on September 11, 2001 in New York and Washington D.C. had large economic impacts, with the losses from deaths, injuries and property destruction amounting to US\$73 billion.<sup>48</sup> This excludes the indirect costs to the US economy in general, which has been estimated at between 0.7 and one per cent of US GDP, or up to US\$190 billion. The total economic cost of terrorism in Africa from 2007 to 2016 is at a minimum US\$119 billion.<sup>49</sup>

As a result, economic undertakings become vulnerable whenever there is a terrorist attack, thereby reducing the number of jobs and total earnings among other things. Brodeur, who carried out a survey on economic consequences of the successful and failed terror attacks, found that successful attacks, in comparison to failed attacks, reduce the number of jobs and total earnings in targeted areas in a post-attacks period.<sup>50</sup> It needs to be understood that terrorist attacks render an economic environment in the affected country unstable for investment. Terrorism causes economic disruption. It has been argued that:

“The immediate economic costs of terrorism can be measured in terms of the value of lives lost, the disability that results from the injuries, and the destruction of private and public property.”<sup>51</sup>

It is further noted that:

“Depending on the scale and frequency of the terrorist events within a country, the economic impact of terrorism on growth, investment,

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<sup>47</sup> UNDP, (2019) *Measuring the Economic Impact of Violent Extremism Leading to Terrorism in Africa*, The research undertaken under the UNDP regional project entitled Preventing and Responding to Violent Extremism (PVE) in Africa: A Development Approach, with the support of the Government and people of Japan, The Report, p. 1.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> Brodeur, A. (2018) "The Effect of Terrorism on Employment and Consumer Sentiment: Evidence from Successful and Failed Terror Attacks." *American Economic Journal: Applied Economics*, 10 (4), pp. 246-282. p. 246.

<sup>51</sup> Bardwell, H. & Iqbal, M. (2021) "The Economic Impact of Terrorism from 2000-2018", *Peace Economics, Peace Science and Public Policy Journal*, 27(2); 227-261, 227.

consumption and tourism is a serious threat to the economic development and growth of a country. Terrorism alters economic behaviour, primarily by changing investment and consumption patterns.”<sup>52</sup>

In case of tourism industry, this is one of the economic undertakings where terrorism destroys capital and reduces the economic capacity of affected countries worldwide. Tourism industry is an important sector in most countries around the world. In fact, tourism is just not an industry; but it has multidimensional influence on the economy and the living standards of people.<sup>53</sup> Globally, tourism contributes significantly to the national economies in terms of employment creation and revenue generation.<sup>54</sup> It is playing a great role in world's economy.<sup>55</sup> Tourism is one of the major contributors in economic development, such as creating revenues, jobs, supporting culture and entertainment. There are many industries that show positive relations with the growth of tourism industry. Examples are hotel and lodging industry, food and beverage industry, transport industry, tour operations and industries which are dealing with real estate, finance and insurance.<sup>56</sup>

Africa, just like the other regions in the globe, is affected by international terrorism both in terms of massive loss of lives and property as well as economic development.<sup>57</sup> It needs to be understood that tourism is one of the largest and fastest growing economic sectors globally. However, while tourism generates lots of money in addition to promoting international cohesion, it is not immune to terrorism and terror attacks. The impact of terrorism on the travel and

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<sup>52</sup> *Ibid.*

<sup>53</sup> Khan, Y.H. (2018) “The Impact of Terrorism on Tourism Destination Image and Development,” *Asian Administration and Management Review*, Vol. 1 No. 2, July-December, pp. 71-87, p.71.

<sup>54</sup> Zhou, Z. (2022) “Critical Shifts in the Global Tourism Industry: Perspectives from Africa,” *GeoJournal* 87: 1245–1264, 1246. <https://doi.org/10.1007/s10708-020-10297-y>, ,0123456789(), -volV() 0123458697(),.l

<sup>55</sup> Aunga, D.A.O. and Mselemo, F. (2021) “Terrorism: A Threat to Tourism Industry in Arusha Region,” *International Journal of Advanced Research*, 6(6), 431-445, 431.

<sup>56</sup> *Ibid.*

<sup>57</sup> Anangwe, A. (2004) “International Terrorism and East African sub-regionalism: Developing a Sub-regional Tourism Industry in the Face of War.” *African Journal of International Affairs*, Vol. 7, Nos. 1&2, pp. 81–97, p.82.

tourism industry can be enormous.<sup>58</sup> It can lead to unemployment, homelessness, deflation, depression and many other social and economic ills. The contribution of tourism for many countries is so great that any downturn in the industry is a cause of major concern for many governments.<sup>59</sup>

Terrorism is an enigmatic and compelling phenomenon, and its relationship with tourism is complex and multifaceted.<sup>60</sup> To say the least, terrorism is the biggest factor, which pushes tourism industry down. Terrorism brings fear to tourists, which demotes tourism.<sup>61</sup> In East Africa, there has been a slump in the tourism industry because the region has shared infrastructure like railway lines, road networks, harbours and airports.<sup>62</sup> As such spill-over effects of terrorist threats and attacks are felt either directly or indirectly throughout the region.

In recent years, Kenya and its people have witnessed a surge in terrorist attacks, violent extremism.<sup>63</sup> In 2002, two terror attacks were carried out in the Coastal City of Mombasa. In one attack, an all-terrain vehicle crashed through a barrier outside the Paradise Hotel in Kikambala and blew up, killing 13 people and injuring 80.<sup>64</sup> In another attack, terrorists fired two off-target surface-to-air missiles at an Israeli charter plane that was leaving the Moi International Airport. Following the 2002 attacks, Kenya maintained a relative time of calm for slightly over a decade.<sup>65</sup> However, this peace has been violently disrupted over the last three years with the Country witnessing several attacks that have

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<sup>58</sup> Diriye, H.G. (2015) *The Effect of Terrorism on Tourism in Africa in the 21st Century: A Case Study of Kenya*, A Research Project Submitted in Partial Fulfilment of The Requirements for the Award of Master of Arts Degree in International Studies, University of Nairobi, p. xii.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> Ranabhat, K., (2015) *Effects of Terrorism in Tourism Industry: A Case Study of 9/11 Terrorist Attacks in World Trade Center*, Bachelor's Thesis, Central University of Applied Sciences Degree Program in Tourism, p. ii.

<sup>62</sup> Anangwe, A. (2004), *op cit.*, p.91.

<sup>63</sup> UNDP, (2017) *Articulating the Pathways of the Impact of Terrorism and Violent Extremism on the Kenyan Economy*, Policy Brief, Issue No: 1/2017, pp.1 -5, p.1.

<sup>64</sup> UNODC, *Kenya Training Manual on Human Rights and Criminal Justice Responses to Terrorism*, p. vii.

<sup>65</sup> *Ibid.*

resulted in the loss of lives and property. The most notable attacks have been the Westgate Attack (2013), the Mpeketoni Attack (2014) and the Garissa University Attack (2015).<sup>66</sup> Kenya has further borne the brunt of terrorism by sending its soldiers to the war-torn neighbouring Somalia under the aegis of AMISOM where several casualties and deaths have been reported despite the good progress made by the troops in neutralizing the threats of terrorism.<sup>67</sup>

Tourism is one of the key sectors in the Kenyan economy and a major source of foreign exchange earnings. The Kenyan tourism industry, which was most affected following Al Shabab frequent terrorist attacks, bears testimony. The country has witnessed a decline in visitor arrivals from peak of 1.8 million visitors in 2011 to about 1.5 million in 2013.<sup>68</sup> Terrorist threats and attacks were identified as the major reasons for the decline

According to Aunga and Mselemo who conducted a research on terrorism as a threat to tourism industry in Arusha Region, Tanzania, in 2018, there was a drop of income in tour operating companies. This implies that terrorist activities cause a drop on income in tour operating companies, which is a result of the decrease on the number of tourists visiting Arusha tourist destinations. Hotel occupancy levels plunged from an average of 75% to 14%.<sup>69</sup>

In view of what has been stated above, there is a need to understand and appreciate the economic impact of terrorism so that there is equitable re-allocation of financial resources in the post-terrorist attacks period. It has been noted that:

“Understanding the economic impact of terrorism provides a substantial evidence base for evaluating the allocation of financial resources to counterterrorism programs and activities. The estimate of the economic impact of terrorism is useful to inform policymakers as an evidence base for

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<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> Bugut, S. (2018) Effect of Terrorism on Demand for Tourism in Kenya,” *Tourism and Hospitality Research: a Comparative Analysis*, Vol.18, No.1, pp. 28-37, p.28.

<sup>69</sup> Aunga, D.A.O. and Mselemo, F. (2021), *op cit.*, p.439.

evaluations such as a cost-benefit analysis of terrorism prevention programs.”<sup>70</sup>

### 3.4 *Terrorism and Politics*

Terrorist activities have effects on politics. In the most affected areas, terrorism destabilizes political arrangements, makes the political system vulnerable. It challenges the existing political institutions so that the country becomes ungovernable. Frequent terrorist attacks may bring political instability – sometimes turning citizens against their governments and causing insecurity. All these impacts have effect on national development as noted by one Kenyan researcher that:

“Terrorism directly affects development of a country. Its direct cost on human life and injuries implies that people who have been victims cannot engage in productive activities or may not reach the productivity levels they had before the attack and more resources allocated in the securing the country would compromise national development agenda. The death of 147 Garissa University College students denied the country potential young and productive citizens who would, otherwise, have been absorbed into productive sectors of the economy.”<sup>71</sup>

At individual level, the surviving victims have to feel insecure due to wide spread of fear and also grapple with psychological trauma resulting from what they underwent during the attacks. Frequent attacks have rendered institutions and premises such as places of worship, schools, shops, restaurants and other public utilities unsafe. As a result, tight security measures have to be taken in order to have access to such places. Not only so but also deaths or fatal injuries to breadwinners result into loss of family incomes. More so, looking after victims who sustained permanent disabilities becomes a burden on close relatives whose income generating activities might be at times paralyzed.

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<sup>70</sup>Bardwell, H. & Iqbal, M. (2021), *op cit*.

<sup>71</sup> Kanyange, M.M. (2016) *International Terrorism and its Psycho-social Impacts in Africa: A Case Study of Kenya, 1998-2015*, A Research Project Submitted in Partial Fulfilment for the Requirements of Degree of Master of arts in International Studies, University of Nairobi, October, pp.54-55.



#### 4. Disruption of Terrorist Financing

The legal framework on prevention of terrorism generally and disrupting terrorist financing in particular in Tanzania is effective and complies with human rights provisions. Those human rights provisions are enshrined in the Constitution of the United Republic of Tanzania of 1977.<sup>72</sup> It has been noted that perpetrators of terrorism are financially facilitated by various individuals, organizations and agents so that they are able to carry out their activities. Terrorists need money for running their camps, feed their members and plan and carry out attacks on their targets. Terrorist organizations will not survive for long without constant supply of money for their sustenance.<sup>73</sup>

The Prevention of Terrorism Act<sup>74</sup> applies throughout the United Republic of Tanzania (both in Tanzania mainland and Zanzibar).<sup>75</sup> This legal position is clarified by the case of the *Republic v. Shaaban Morris Gama and Three Others*<sup>76</sup> where the Court of Appeal of Tanzania decided on the application of the Act by holding that it is applicable throughout the United Republic of Tanzania. So far there is no common definition of the term “terrorism” across the world. Different attempts are in place to define the term. Even the Prevention of Terrorism Act<sup>77</sup> is silent on defining the term. It only defines the “terrorist act” under section 4.

Given Tanzania’s proximity to countries where Al-Qaida, Al-Shabab and other terrorist organizations are based, presents a serious spill over risk for radicalization and recruitment in Tanzania. Indeed, Tanzanians have been reported to have been among the foreigners fighting for Al-Shabab in Kenya and Somalia. In 2015 a Tanzanian was involved in the Al-Shabab attack in Garissa University College in Kenya killing 150 people, mostly students. This is an indication that there are possible secret terrorist networks connected to Al-Qaida, Al-Shabab and other terrorist organizations operating in the country.

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<sup>72</sup> Cap.2 [R.E. 2002], Arts. 12-32.

<sup>73</sup> *Ibid.*

<sup>74</sup> Cap.19 [R.E. 2002].

<sup>75</sup> See the Prevention of Terrorism Act, Cap.19 [R.E. 2002], s.2.

<sup>76</sup> Court of Appeal of Tanzania, Criminal Appeal Case No. 269 of 2010 (Unreported).

<sup>77</sup> Cap.19 [R.E. 2002].

Table 1 below, shows the status of acts of violence perpetrated by various non-state actors such as terrorist groups, clan militants, community militants and unidentified armed groups:

**Table 1:** Violent incidences in the four EAC Countries

	2016	2017	2018	2019	Total
<b>Kenya</b>	54	225	145	42	466
<b>Somalia</b>	854	1,007	1,224	1,062	4,137
<b>Tanzania</b>	13	25	9	10	57
<b>Uganda</b>	36	40	59	36	171

**Source:** Global Terrorism Database<sup>78</sup>

The figures in the Table 1 above indicate that Tanzania experienced significantly fewer cases when compared to other neighbouring countries. It should, however, be underscored that the ISIS-Mozambique situation is worth taking note of and currently it poses the greatest threat to Tanzania, having conducted at least two attacks inside Tanzania between 2019 and 2020.<sup>79</sup> It is apparent that the threat posed by terrorism today is complex. The complexity comes from the fact that it is sometimes connected to a number of other international threats thereby posing threats to tranquility and global stability.

Matters get worse as perpetrators of terrorism are financially facilitated by various individuals, organizations and agents so that they are able to carry out this most heinous crime. It has been noted that the growth and continued spread of terrorism world-wide has been accentuated by the important role played by finance.<sup>80</sup> Terrorists need money for running their recruitment of new members, camps, feed their members and plan and carry out attacks on their targets. Terrorist organizations will not survive for long without constant supply of

<sup>78</sup> We acknowledge to have retrieved the table from the United Republic of Tanzania, Financial Intelligence Unit, (2022) *Terrorist Financing and Hawala Risk Assessment Report, 2022*, May, p.2.

<sup>79</sup> The United Republic of Tanzania, Financial Intelligence Unit, *Ibid*, p.3.

<sup>80</sup> Attah, C.E. (2016) "Financing Terrorism in Nigeria: Cutting off the Oxygen," *Africa Development*, Volume XLIV, No. 2, pp.5-25, p.5.

money for their sustenance.<sup>81</sup>

#### 4.1 Concept of Terrorist Financing

Terrorist financing may be understood in the following context: The UN Convention for the Suppression of Financing Terrorism provides the definition of terrorist financing under article 2(1).<sup>82</sup> It does so in the course of criminalizing terrorist financing by stating that:

“Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds...in order to carry out: (a) an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or (b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”<sup>83</sup>

In short, the Convention provides that terrorist financing is the provision or collection of funds to commit terrorist acts. The World Bank and the International Monetary Fund (IMF) also define terrorist financing as “the financial support, in any form, of terrorism or of those who encourage, plan or engage in it”<sup>84</sup> It should be understood that terrorists need funds in order to carry out their day to day activities and operations. Thus, terrorist countermeasures, including suppressing terrorist funding at global, regional and national levels are necessary.

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<sup>81</sup> *Ibid.*

<sup>82</sup> The objective of the International Convention for the Suppression of the Financing of Terrorism is to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators.

<sup>83</sup> The International Convention for the Suppression of the Financing of Terrorism, Art. 2.

<sup>84</sup> World Bank & International Monetary Fund (2003) *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism*, World Bank and IMF, Washington DC, United States.

According to the Financial Intelligence Unit in Tanzania, the definition of funds for the purpose of terrorist financing means assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, and legal document or instruments in any form, including electronic or digital, evidencing title to, or interest in, such asset and will include instrumentalities provided and used for the purpose of terrorist activity.<sup>85</sup> Terrorism financing typically involves four stages - the first being raising of funds through donations, self-funding (micro-loans or wages), or criminal activity; the second stage involves transferring funds to a terrorist, terror network, organization, or cell and third stage storage and fourth stage is using the funds, for instance, to purchase weapons to make payments to terrorists or insurgents, or to fund expenses of terror networks.<sup>86</sup>

Gathering from what has been stated above, terrorist financing can be referred to as an act of providing funds or property that has monetary value to individual terrorists or terrorist groups or persons and groups engaged in terrorist activities or engaging in financial transactions with terrorist groups with an intention to enable them carry out terrorist acts and activities. It is resourcing terrorists so that they are assured of their sustainability and carrying out their activities. This money can come from both legal and illegal sources. That is legal and illegal money-making activities are involved to raise funds for that purpose.

Legal activities may include profits from businesses, gifts and donations from sympathetic groups, charities and foundations. Illegal activities include criminal acts such as kidnapping for ransom, extortion, large-scale smuggling of end-use goods, narcotics trafficking, robbery, theft,<sup>87</sup> human trafficking, money laundering, illegal trafficking in small arms and light weapons (SALWs), trading

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<sup>85</sup> The United Republic of Tanzania, Financial Intelligence Unit, (2022) *Terrorist Financing Risk Assessment Report, 2022* (Revised in June, 2023), p.1.

<sup>86</sup> *Ibid.*

<sup>87</sup> Financial Action Task Force (FATF) (2002) *Report on Money Laundering Typologies 2001-2002*, Feb, pp.2-7.

or dealing in counterfeit products,<sup>88</sup> marine and wildlife criminal activities,<sup>89</sup> or direct provision of equipment to cells and the like. Regarding narcotics trafficking, which could support terrorist activities, the Financial Intelligence Unit in Tanzania provides that:

“Tanzania is located along major heroin trafficking routes from Southwest Asia. Tanzania’s location, porous borders and corruption present challenges to drug interdictions. Between June 2019 to December 2021, Tanzania experienced a surge on drug trafficking, and illegal trafficking of precursor chemicals and UNODC and other international partners have been at the forefront working with Tanzania to combat the surge. A total of 1100kg of heroin and 452 kg of Methamphetamine were seized by DCEA through the illicit drug trafficking of Southern Route from South East Asia.”<sup>90</sup>

Tanzania has been used as a transit route for drugs from Asia and the Middle East en route to the southern part of the continent and finally to the United States and Europe.<sup>91</sup> In the process, some of the drugs remain in the country and find a market. At times some Tanzanians have turned into drug dealers through this process.

Terrorists use financial infrastructure to mobilize and channel their funds to various destinations throughout the world. According to Financial Action Task Force on Money Laundering (FATF), terrorists use the same money laundering methods as other criminal groups, including cash smuggling, structured deposits and withdrawals from bank accounts, purchases of various types of monetary

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<sup>88</sup> For detailed discussion on counterfeit products and their effects, see Kaniki, A.O.J. (2014) “Proliferation of Counterfeit Products in Tanzania: A Threat to Human Security,” *The Tanzania Lawyer: Journal of the Tanganyika Law Society*, Vol. 1 No.2, pp. 42-73.

<sup>89</sup> Kideghesho, J.R. (2016) “Reversing the Trend of Wildlife Crime in Tanzania: Challenges and Opportunities,” *Biodiversity and Conservation*, March, Vol. 25(3), pp.427-449, p.427.

<sup>90</sup> The United Republic of Tanzania, Financial Intelligence Unit, (2022) *Terrorist Financing Risk Assessment Report, 2022*, (Revised in June, 2023), p.11.

<sup>91</sup> According to Gastrow, P. (2013) *Transnational Organised Crime: The Stepchild of Crime-combating Priorities*, Institute for Security Studies Policy Brief 46, ISS Pretoria, October, pp.1-4, at p. 3, the UN estimates that the number of global illicit drug users is set to rise by 25 per cent by 2050 and that the bulk of the increase is likely to come from the rapidly rising urban populations of developing countries. This means that developing countries should expect turnover from drug trafficking to increase by billions of dollars.

instruments, use of credit cards, and informal remittance networks.<sup>92</sup> Moreover, they are adaptive to new methods and making extensive use of the new information technologies in order to facilitate financing and avoid detection. It has been revealed that:

“International concern with the problem of the financing of terrorism was heightened after the September 11, 2001 terrorist attacks. While there had always been some suspicion that secret and fictitious bank accounts were being used to fund terrorist activities, investigations conducted after the attacks, primarily in the United States, Europe, the Middle East and Asia, revealed the existence of an extensive network of underground banking and other financing channels that have been used to finance terrorist activities.”<sup>93</sup>

Thus, countries throughout the world have been urged by the international community to criminalize terrorism in their respective jurisdictions as a matter of urgency. A series of measures at the national, regional and international level have been introduced and enforced in an effort to deprive terrorists of the means to inflict serious damage.<sup>94</sup> It is thus no wonder that the United Nations has come up with the International Convention for the Suppression of Financing of Terrorism of 1999,<sup>95</sup> which urges states parties to cooperate in fighting terrorism. As its title indicates, the Convention is designed to criminalize acts of financing terrorism.<sup>96</sup>

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<sup>92</sup> Source: Johnston, R.B. & Nedelescu, O.M. (2005) *The Impact of Terrorism on Financial Markets, IFM Working Paper, WP/05/60, March, p. 13, quoting Financial Action Task Force (FATF) (2002) Report on Money Laundering Typologies 2001-2002, Feb, pp.2-7.*

<sup>93</sup> Morais, H. V. (2005) “Fighting International Crime and Its Financing: The Importance of following a Coherent Global Strategy Based on the Rule of Law,” *Villanova law Review*, Vol. 50, Iss.3, pp.583-644, p.610.

<sup>94</sup> Hübschle, A. “Flogging a Dead Horse: The Incongruity of Measures Against Terrorist Financing in Southern Africa,” in Goredema, C. (Ed.) (2006) *Money Laundering Experiences, A Survey*, ISS Monograph Series, No.124, June, Institute for Security Studies, pp.91-120, at p.93.

<sup>95</sup> The Convention was adopted by the UN General Assembly on 9 December, 1999. The Convention has been signed by 132 states, and, as of April 30, 2003, it was in force among 80 states.

<sup>96</sup> It is a Convention that is aimed at cutting off funding for terrorist activities.

The Convention requires parties to take steps to prevent and counteract the direct and indirect financing of terrorists. It also commits states to hold those who finance terrorism criminally, civilly or administratively liable for such acts. In addition, immediately after the 9/11 attacks, the United Nations Security Council (UNSC) adopted Resolution 1373, which imposed unprecedented legal obligations on UN member states to comply with measures designed to counter terrorist financing, travel, recruitment and supply.

According to article 12 of the Convention, request for legal assistance may not be refused on the grounds of bank secrecy. That is to say bank secrecy is no longer adequate justification for refusing to cooperate. The reason behind is that:

“Criminals increasingly abuse bank secrecy, by which is meant all aspects of the confidentiality of customers’ accounts, not just secret or numbered bank accounts. More and more exceptions are being made for those cases, such as drug trafficking and money laundering, where the serious nature of the crimes outweighs the otherwise legitimate interest of an individual in keeping his financial affairs private.”<sup>97</sup>

In order to ensure the greatest degree of cooperation among the states parties with respect to the offences set out in the Convention, the Convention contains detailed provisions on mutual legal assistance and extradition. Regarding mutual legal assistance, the Convention envisages that states parties undertake to give each other the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set out under the Convention.<sup>98</sup>

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<sup>97</sup>Aust, A., “Counter-Terrorism-A New Approach,” in Frowen, J.A. & Wolfrum, R. (Eds.) (2001) *Max Planck Yearbook of United Nations Law*, Volume 5, Kluwer Law International, The Netherlands, pp.285-306, p.304. For some detailed discussion on more and more exception that have been made in Tanzania for making sure that criminals do not shield themselves behind the bank secrecy principle, see Longopa, E. (2014) “Cracking Down Criminality and Erosion of Banker’s Confidentiality Obligation in Tanzania,” *Eastern Africa Law Review*, Issue No. 2, Vol.41, December, pp.1-31. See also Mandopi, K. (2011) “Anti-Terrorists’ Financing: Does it Undermine Privacy of the Customer of a Bank?” *The Law Reformer Journal*, Vol.3, No. 1 April, pp.47-59.

<sup>98</sup> The UN International Convention for the Suppression of Financing of Terrorism of 1999, Art.11.

Regarding freezing, seizing, and forfeiting terrorist assets, the Convention requires each state party to take appropriate measures for the identification, detection and freezing or seizure of any funds used or allocated for the purposes of committing the offences set out in the Convention and for the forfeiture of funds used or allocated for the purposes of committing such offences and the proceeds derived from such offences.<sup>99</sup> Where it is established in the course of implementing those appropriate measures that assets were derived from or have been transferred to a third party who acted innocently or in good faith, rights of such third party shall be protected.<sup>100</sup> That is to say such assets shall not be forfeited.

#### *4.2 Prevention of Terrorism Act and Disruption of Terrorist Financing*

Tanzania, as is the case with other countries in the world, has in 2002 enacted the Prevention of Terrorism Act.<sup>101</sup> This is an Act, which provides for comprehensive measures of dealing with terrorism, to prevent and to co-operate with other states in the suppression of terrorism.<sup>102</sup> It has provisions for exchange of information and extradition of offenders between Tanzania and other countries.<sup>103</sup> Such information relates to terrorist groups, terrorist acts and movements of weapons and materials by the terrorist groups and their use of communication technology.

Part IV of the Act, which covers sections 13 up to 27, provides for offences amounting to terrorism, including financing of terrorism. They include provision or collection of funds to commit terrorist acts;<sup>104</sup> collection of property or provision of property and services, for commission of terrorist act;<sup>105</sup> use of property for commission of terrorist acts;<sup>106</sup> arrangements for retention or

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<sup>99</sup> *Ibid.*, Art.8.

<sup>100</sup> *Ibid.*

<sup>101</sup> Cap.19 [R.E. 2002].

<sup>102</sup> See its long title.

<sup>103</sup> See sections 37-39 of the Act.

<sup>104</sup> Cap.19 [R.E. 2002], s.13.

<sup>105</sup> *Ibid.*, s.14.

<sup>106</sup> *Ibid.*, s.15.



control of terrorist property;<sup>107</sup> dealing with property owned or controlled by terrorist groups;<sup>108</sup> soliciting and giving support to terrorist groups for the commission of terrorist acts;<sup>109</sup> harboring of persons committing terrorist acts;<sup>110</sup> provision of weapons to terrorist groups;<sup>111</sup> recruitment of persons to be members of terrorist groups or to participate in terrorist acts;<sup>112</sup> promotion or facilitation of the commission of terrorist acts in foreign states;<sup>113</sup> promotion of offences;<sup>114</sup> conspiracy to commit offences under this Act;<sup>115</sup> membership of terrorist groups;<sup>116</sup> arrangement of meetings in support of terrorist groups<sup>117</sup> and participation in the commission of offence under this Act.<sup>118</sup>

The following discussion goes into detail on the provisions of the Act relating to disruption of financing of terrorism in Tanzania. The main concern is to look at the extent to which the law in Tanzania addresses this aspect, which plays a double role in the fight against terrorism, namely preventing and combating on the one hand and pre-emptive measures on the other. It would be noted that by terrorist financing, the Act encompasses the provision or collection of funds to commit terrorist acts. Terrorist financing is covered under sections 13 and 14 of the Act by making it a crime. As a matter of noting, the Prevention of Terrorism Act<sup>119</sup> is applicable in Tanzania mainland and Zanzibar.<sup>120</sup> The Act provides under section 13 that:

“Every person who provides, or collects by any means, directly or indirectly,

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<sup>107</sup> *Ibid.*, s.16.

<sup>108</sup> *Ibid.*, s.17.

<sup>109</sup> *Ibid.*, s.18.

<sup>110</sup> *Ibid.*, s.19.

<sup>111</sup> *Ibid.*, s.20.

<sup>112</sup> *Ibid.*, s.21.

<sup>113</sup> *Ibid.*, s.22.

<sup>114</sup> *Ibid.*, s.23.

<sup>115</sup> *Ibid.*, s.24.

<sup>116</sup> *Ibid.*, s.25.

<sup>117</sup> *Ibid.*, s.26.

<sup>118</sup> *Ibid.*, s.27.

<sup>119</sup> Cap.19 [R.E. 2002].

<sup>120</sup> See s.2 of the Act. See also the United Republic of Tanzania, Ministry of Finance and Planning, (2022) *A Report on Assessment of Terrorist Financing Risk in Non-Profit Organisations in the United Republic of Tanzania*, June, p.18.

any funds, intending, knowing or having reasonable grounds to believe that the funds will be used in full or in part to carry out a terrorist act commits an offence and shall on conviction be liable to imprisonment for a term not less than fifteen years and not more than twenty years.”

The Act further states under section 14 that:

“14. Every person who, directly, collects property or provides, invites a person to provide, or makes available, property or financial or other related services -

(a) intending that they be used, in whole or in part, for the purpose of committing or facilitating the commission of, a terrorist act or for the purpose of benefiting any person who is committing or facilitating the commission of, a terrorist act; or

(b) knowing that in whole or part, they will be used by, or will benefit, a terrorist group,

commits an offence and shall on conviction, be liable to imprisonment for a term not less than twenty years and not more than twenty-five years.”

The Act also has provisions for forfeiture of any property used for, or connected with; or received as payments for the commission of terrorist acts. Orders for forfeiture of proceeds and instrumentalities of crime are made upon conviction for offences under the Act.<sup>121</sup> Property forfeited to the United Republic of Tanzania is vested in the Government.

The above provisions of the Act, which criminalize the provision of financial assistance to terrorists or terrorist groups, are in compliance with the International Convention for the Suppression of Financing of Terrorism of 1999. The Convention requires states to create an offence when a “person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used” to commit an act that constitutes a terrorist offence.<sup>122</sup> In addition, the Act complies with the United Nations

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<sup>121</sup> *Ibid.*, s.36(1) read together with ss. 42 and 43.

<sup>122</sup> See Art. 2(1) of the Convention.

Security Council (UNSC) adopted Resolution 1373, which imposed unprecedented legal obligations on UN member states to comply with measures designed to, among other things, counter terrorist financing.<sup>123</sup>

#### **5. Is the Prevention of Terrorism Act Human Rights Compliant?**

One of the measures of countering terrorism is enacting anti-terrorism laws. In so doing, states are urged to enact anti-terrorism laws that strike a balance between protecting national security and basic human rights.<sup>124</sup> Tanzania is not an exception. The country is obliged to observe fundamental rights and freedoms. With the entrenchment of the Bill of Rights in the Constitution of the United Republic of Tanzania of 1977<sup>125</sup> in 1984 as per the Fifth Constitutional Amendment,<sup>126</sup> Tanzania is duty bound to create avenues through which citizens are able to realise human rights. This can be achieved through, among other things, enacting national laws that are human rights compliant.

Terrorists and other criminals should not be denied their enjoyment of human rights, which are enshrined in the country's constitution. In the administration of criminal justice system, terrorism has equal status as any other offence punishable by penal law in Tanzania. As such, law enforcement agencies are required to observe human rights provisions when dealing with terrorist suspects. Among the basic rights to be observed include the right to freedom from arbitrary detention and arrest, the right not to be subject to torture, the right to privacy, the right to non-discrimination, and the right to an effective remedy for a breach of human rights.

All these can be observed if the anti-terrorism actions of the state are within the framework of the criminal justice systems and the scope of the rule of law. The fundamental question is: Does the Prevention of Terrorism Act<sup>127</sup> comply with

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<sup>123</sup> See sections 13 and 14 of the Prevention of Terrorism Act, Cap.19 [R.E. 2002].

<sup>124</sup> This means that the International Convention for the Suppression of Financing of Terrorism of 1999 should be read together with the Universal Declaration of Human Rights.

<sup>125</sup> Cap.2 [R.E. 2002].

<sup>126</sup> See the Fifth Constitutional Amendment Act No.15 of 1984.

<sup>127</sup> Cap.19 [R.E. 2002].

human rights provisions? The following discussion, which centers on one aspect, namely the investigation of terrorist offences, attempts to respond to this question. The main focus is on looking, albeit briefly, at the legal framework involved in relation to human rights provisions.

Regarding investigation of terrorist offences, the starting point is arrest. The Prevention of Terrorism Act provides under section 28 powers of arrest. The section empowers a police officer to carry out the arrest. For purposes of the section, police officer also includes an immigration officer or a member of Tanzania Intelligence Security Service. According to this section, any police officer of the rank of or above Assistant Superintendent may arrest without warrant any person suspected to have committed a terrorist offence. Provided that such police officer acts on reasonable ground, the arrest shall be deemed lawful.

However, much as the police officer arrests without warrant, he is duty bound to comply with the provisions of the Criminal Procedure Act,<sup>128</sup> which provides for modality of effecting arrests. The modality that is provided for under the Criminal Procedure Act reflects on what is provided for under the Bill of Rights in the country's Constitution. Among the conditions that an arresting officer should observe include the following. The arresting officer must have reasonable grounds to believe that the arrested person has committed an offence;<sup>129</sup> an arrested person should be informed of grounds of arrest,<sup>130</sup> no unnecessary restraint<sup>131</sup> and no use of unnecessary force. The law only allows use of reasonable force in the circumstances.<sup>132</sup> It should be noted that when a person is arrested in suspicion of committing any of criminal offences with or without warrant, he is deprived of his liberty. That being the case, an arresting officer must comply with modalities of carrying out the arrest. In other words, an arrest

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<sup>128</sup> The Prevention of Terrorism Act Cap. 20 [R.E. 2022], sections 5, 11, 13, 14 and 23.

<sup>129</sup> *Ibid.*, s. 5(1) and (2).

<sup>130</sup> *Ibid.*, s.23.

<sup>131</sup> *Ibid.*, s.12

<sup>132</sup> *Ibid.*, s.21

should be carried out in a proper manner and for a proper purpose.

Concerns have been raised by several commentators challenging provisions of the Prevention of Terrorism Act on empowering police officers to arrest terrorist suspects without warrant. However, given the imminent danger and threats posed by terrorist attacks to the targeted audience, the Legislature in its wisdom saw the urgent need to enable law enforcement machinery to be ready at any time to take action immediately, especially under state of emergency. It has been reminded that:

“The police play a crucial role in ensuring the security and safety of citizens. For this purpose they are vested with coercive power and with authority to impose limitations on an individual’s rights when this is necessary for the protection of others or for the promotion of the general welfare.”<sup>133</sup>

The fact that crime and violence activities such as terrorist acts cause social, material and bodily ill-being to a point of creating fear in the minds of the people that may result in impairing their very existence, citizens need to be assured by the government of their security and safety. If citizens are fearful of crime, they retreat in doors to safety and concede victory to criminals. Hence, they lose confidence in the Police Force and the Government as a whole. Thus, people see maintenance of law and order as government’s responsibility. As such breakdown in peace or tranquility is seen as a governance failure rather than a social issue.<sup>134</sup> Thus, the legal framework should enable the police officers to take actions whenever terrorist acts are about to be perpetrated.

Police officers are also empowered under the Act to carry out investigation of terrorist cases as a matter of urgency.<sup>135</sup> As such, they can in a case of urgency enter and search without warrant any premises or place, if they have reason to suspect that within those premises or at that place a terrorist offence is being

<sup>133</sup> Ntanda Nsereko, D.D. (1993) “The Police, Human Rights and the Constitution: An African Perspective,” *Human Rights Quarterly*, 15, pp.465-484, at p.482.

<sup>134</sup> See Report by Research and Analysis Working Group (2004) *Vulnerability and Resilience to Poverty in Tanzania: Causes, Consequences and Policy Implications*, Mkuki na Nyota Publishers Limited, Dar es Salaam, p.75.

<sup>135</sup> The Prevention of Terrorism Act, Cap.19 [R.E. 2002], s.29.

committed or likely to be committed, and there is evidence on commission of such offence, search, seize anything in connection therewith. They can as well arrest and detain any person whom they reasonably suspect to have committed the terrorist offence in that premises or place.<sup>136</sup>

As the Act criminalizes acts of terrorism and financing terrorism, it has provisions for forfeiture of any property used for, or connected with; or received as payments for the commission of terrorist acts.<sup>137</sup> Orders for forfeiture of proceeds and instrumentalities of crime are made upon conviction for offences under the Act. In order to realize all these, thorough financial investigation should be carried out by investigators from the very early stages of dealing with cases involving terrorism acts. In this endeavor, the provisions of the Act should operate alongside the Proceeds of Crime Act, which is the main forfeiture law in Tanzania.<sup>138</sup> Terrorism is among the predicate offences covered in this Act namely, the Proceeds of Crime Act.<sup>139</sup>

There is therefore a need to carry out financial investigation that involves bank accounts of individuals, groups or organizations that are suspected to finance terrorist activities. It should be noted that part of proceeds of crime usually ends up as deposits in domestic or foreign banks or is concealed by acquiring other assets.<sup>140</sup> Moreover, when assets flow through the financial system, the transfer of funds in and out of the accounts usually leaves an audit trail, which can be tracked and detected.<sup>141</sup> Therefore investigators need to have access to bank

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<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.*, s.36(1).

<sup>138</sup> Cap. 256 [R.E. 2022].

<sup>139</sup> For elaboration, see Tenga, R.W. (2017) "Money Laundering Prosecutions in Tanzania: A Tentative Assessment," *Eastern Africa Law Review*, Issue No.2, Vol. 44, December, pp.50-94 and Kaniki, A.O.J. (2020) *An Examination of the Law and Practice Relating to Asset Recovery in Tanzania*, PhD (Law) Thesis, University of Dar es Salaam.

<sup>140</sup> As noted in the foregoing parts of the discussion, some sources of finances that fund terrorist activities are illegal activities, hence are proceeds of crime.

<sup>141</sup> Monteith, C. & Dornbierer, A. (2013) *Tracking and Tracing Stolen Assets in Foreign Jurisdictions*, International Centre for Asset Recovery, Basel Institute on Governance, Basel, Switzerland, Working Paper Series No.15, p.13. Source: <http://www.fatf-gafi.org/pages/faq/Moneylaundering>, accessed on 10<sup>th</sup> November, 2022.

accounts and bank records of persons who are alleged to have assets that were acquired through criminal activities and which are funding terrorist activities. Access to a bank account by an investigator, *inter alia*, enables the investigator not only to have real-time financial surveillance of the ongoing suspicious transactions but also to establish trend and pattern of activities and identify new accounts, which are connected with the one under investigation. Investigation of a bank account may also reveal other persons who might be connected with facilitating concealment of criminally acquired assets. In case of large cash withdrawals, it may also present opportunities for cash seizure as the locations will be revealed.<sup>142</sup>

The Proceeds of Crime Act empowers investigators to have access to bank account of any person who has been involved in the commission of a serious offence, a predicate offence or money laundering and where there is likelihood of finding evidence on the commission of such offence in a bank account kept by that person, spouse or child or of any person reasonably believed to be a trustee or agent of such person.<sup>143</sup> In such a situation, the Inspector General of Police (IGP) or the Director of Criminal Investigation is empowered to authorize and direct a police officer of or above the rank of Assistant Superintendent of Police to investigate the bank account.<sup>144</sup> Such authorization is sufficient to warrant the production of the bank account for scrutiny by that police officer.<sup>145</sup>

The authorization also warrants the police officer to freeze a bank account and seize any document from that bank or financial institution for fourteen days during which leave of the court for continued seizure and freezing shall be obtained.<sup>146</sup>

Police officers are also empowered by the law to seize any property reasonably

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<sup>142</sup> Brun, J-P. *et al.* (2011) *Asset Recovery Handbook: A Guide for Practitioners*, StAR Initiative, Washington DC, p.53.

<sup>143</sup> The Proceeds of Crime Act, Cap. 256 [R.E. 2022], s. 63A.

<sup>144</sup> The Proceeds of Crime Act, Cap. 256 [R.E. 2022], s. 31A as amended by section 95 of the Written Laws (Miscellaneous Amendments) (No.2) Act, 2018, Act No.7 of 2018.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.* s.31A.

believed to have been used in the commission of a terrorist offence.<sup>147</sup> The police officers are required by law upon seizure of any of such property to as soon as possible to apply in court for a detention order. The court does not issue the order unless it gives every person appearing to have an interest in the property, a reasonable opportunity of being heard; and has reasonable grounds to believe that the property has been used in the commission of an offence under the Act.<sup>148</sup> The following part covers assets that are secured for freezing and seizure generally and funds used for financing terrorist activities in particular. This is because such funds may be transformed into physical assets such as landed property, motor vehicles, and the like. All these, whether in monetary terms or physical assets, make up funds that, at the end, finance terrorist activities.

Investigators should, however, note that freezing has to be approached carefully. Proper timing should be observed on when to effect asset freezing. Otherwise investigators can lose some more important evidence. Thus, before freezing takes place, an analysis of evidence that has already been collected should be undertaken. Then a conclusion should be made whether or not freezing at that time will affect gathering the other evidence which has not yet been retrieved. Atkinson sums it up in the following words:

“Freezing is a measure that must be approached carefully to ensure that it is taken at the appropriate moment during the process. Once assets are frozen, the investigator or prosecutor runs the risk of alerting the target of the investigation, which could hinder the tracing of other assets. On the other hand, the transfer of money has become extremely easy. It can be done online, over the telephone, etc. This means, that while criminals can move their monies around very quickly and conceal them very effectively, law enforcement takes much longer to trace them, as investigators are bound by the law.<sup>149</sup>”

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<sup>147</sup> The Prevention of Terrorism Act, Cap.19 [R.E. 2002], s.33.

<sup>148</sup> *Ibid.*

<sup>149</sup> Atkinson, P. (2010) “Effective Investigation of Assets, Practical Application of Mutual Legal Assistance and Asset Recovery,” in OECD Anti-Corruption Network for Eastern Europe and Central Asia, *Proceedings of the Seminar “Effective Means of Investigation and Prosecution,”* held in Bucharest, Romania, 20-22 October, pp.87-105, p.89.



The seized assets remain the property of the person(s) or entity (ies) that held an interest in them at the time of the seizure, although the competent authority will often take over possession, administration or management of the seized assets.<sup>150</sup> One of the most important aspects of forfeiture procedure is the ability, before trial, to secure the availability of assets for forfeiture.<sup>151</sup> It is for these reasons that emphasis is put that once assets have been seized, the investigation must be carried out to validate the measure and collect the elements of proof for possible further forfeiture.<sup>152</sup> Thus, assets that could be seized include those objects that can be considered as evidence of crime; instruments of the crime; proceeds of crime and other assets with illicit origin that cannot be proven but that may be useful for forfeiture of equivalent value.<sup>153</sup>

It is argued finally that the Prevention of Terrorism Act<sup>154</sup> is compliant with human rights provisions, especially when it is viewed as there to ensure protection and enjoyment of human rights for the public good. All rights and obligations pertaining to any accused person of any other criminal offences are also available, without exception, to the accused persons of terrorist offences. Laws such as the Criminal Procedure Act<sup>155</sup> and the Evidence Act,<sup>156</sup> which provide for rules and procedures in court, equally apply to all accused persons, including those who are accused to have committed terrorist offences. Such laws are against any discrimination.

## 7.0 Conclusion

In conclusion, it is argued that the major terrorist incidents that have been perpetrated by different terrorist groups such as Al Qaida and Al Shabab

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<sup>150</sup> *Ibid.*

<sup>151</sup> Gaumer, C. (2007) "Criminal Forfeiture," *United States Attorneys' Bulletin*, November, Volume 55, Number 6, pp.21-29, p.25.

<sup>152</sup> Schmid, J-B. (2008) "Seizure," in Pieth, M. (Ed.), *Recovering Stolen Assets*, Peter Lang, Bern, pp.231-242, p.237.

<sup>153</sup> European Union, (2009) *White Paper on Best Practices in Asset Recovery*, CEART [Centres of Excellence in Asset recovery and Training] Project, Published by Ministerio Del Interior, Madrid, pp.38-39. Source: [www.projectceart.org](http://www.projectceart.org), accessed on 24<sup>th</sup> October, 2022.

<sup>154</sup> Cap.19 [R.E. 2002],

<sup>155</sup> Cap. 20 [R.E. 2022], sections 5, 11, 13, 14 and 23.

<sup>156</sup> Cap. 6 [R.E. 2022].

throughout the world are testimonies that the global peace and security are at jeopardy. The discussion has underscored that terrorism has over time been increasingly posing threats to the world peace, security and stability. It also endangers the social fabric and economic development of the nations. It is one of the challenges that the world is facing since no part of the world is immune from this scourge. Effects of terrorism are felt at all levels.

In order to address terrorism, states the world-over are taking steps at international and national levels that are necessary to prevent the commission of terrorist acts. Among the steps is strengthening their legal frameworks. It is in this understanding that Tanzania, as is the case with other countries in the world, has in 2002 enacted the Prevention of Terrorism Act to provide comprehensive measures of dealing with terrorism in the country, to prevent and to co-operate with other states in the suppression of terrorism.

It needs to be underscored that terrorists need funds and other logistical arrangements in order to run their day to day activities and operations. The work has also looked at whether the Prevention of Terrorism Act is compliant to human rights provisions as enshrined under the Constitution of the United Republic of Tanzania of 1977<sup>157</sup>. It has been revealed that the Act is human rights compliant. This stems out of the fact that all rights and obligations pertaining to any accused person of any other criminal offences are also available to the accused persons of terrorist offences as envisaged under the Act. The Act should be operated alongside the provisions of the Criminal Procedure Act.<sup>158</sup>

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<sup>157</sup> Cap. 2 [R.E. 2002].

<sup>158</sup> Cap. 20 [R.E. 2022].

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