



Strathmore University
Law School

**ANTI-TERROR LAWS AND THE CURTAILMENT OF MEDIA
FREEDOM: A COMPARATIVE STUDY BETWEEN KENYA
AND ETHIOPIA**

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT
OF THE BACHELOR OF LAWS DEGREE**

**STUDENT'S FULL NAMES: MUTUNGI ZIPPORAH
KAGWIRIA**

REGISTRATION NUMBER: 072479



**ANTI-TERROR LAWS AND THE CURTAILMENT OF MEDIA
FREEDOM: A COMPARATIVE STUDY BETWEEN KENYA AND
ETHIOPIA**

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF
THE BACHELOR OF LAWS DEGREE**

STUDENT'S NAME: MUTUNGI ZIPPORAH KAGWIRIA

STUDENT'S REGISTRATION NUMBER: 072479

SIGNATURE OF STUDENT:



DATE:

14/01/2016

STRATHMORE UNIVERSITY LAW SCHOOL

NAME OF SUPERVISOR:

MS. MUKAMI WANGAI

SIGNATURE OF SUPERVISOR:

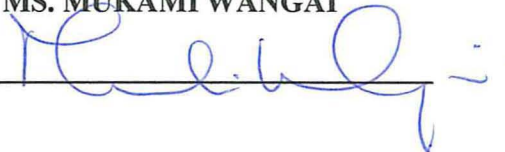


Table of Contents

1.0 Introduction	1
A. Background to the study	1
B. Statement of the Problem	4
C. Research Questions	4
D. Assumptions	4
E. Theoretical Framework	4
F. Literature Review	6
G. Research Methodology	9
H. Limitations of the study	9
I. Chapter Breakdown	9
J. Timeline	10
2.0 Theoretical Framework	12
3.0 Case Study	15
A. To what extent can curtailment of media freedom be justified?	15
B. Comparison of Anti-terror laws in Kenya and Ethiopia and their repercussions and their effect on media freedom	18
4.0 Discussion of Findings	22
6.0 Conclusion and Recommendations	28
7.0 Bibliography	31

ACKNOWLEDGEMENT

I thank God for His grace and sustenance throughout this academic year. My sincere gratitude goes to my dissertation supervisor, Ms. Mukami Wangai, for her thorough and incisive guidance throughout the entire research. Thanks are also due to all the LL.B pioneer class 2016, who have enriched my studies and contributed to this work in various ways. Great appreciation to Santana Monda and Ambani Osogo. I would also like to thank my parents and all my family for their support, motivation and guidance.

DECLARATION

I, MUTUNGI ZIPPORAH KAGWIRIA do certify that this Dissertation is my original work. It is a reflection of my personal research. I declare that this Dissertation has not been presented anywhere else before.

Signed:Date:

Zipporah Mutungi

ABSTRACT

This paper aims to study anti-terror laws and their use in the curtailment of media freedoms. It will be a comparative study between the anti-terror laws present in Ethiopia and those we have in Kenya with a view of establishing what future anti-terror laws in Kenya will look like or what direction they will take. The study established that section 12 of the Security Laws Amendment Act 2014 and the Anti-Terrorism Proclamation (652/2009) of Ethiopia did indeed curtail the freedoms of the media and imposed unreasonable punishment on members of the media in the undertaking of their duties with regards to reporting on terrorist activities. The powers of the Kenyan and Ethiopian governments have been taken into account in this study and a parallel drawn to demonstrate how they have influenced the media through their use and interpretations of the anti-terror laws. In a bid to work toward anti-terror laws that do not curtail media freedoms but at the same time do not put Kenya at risk some of the recommendations would be laws that do not undermine the media in the fight against terror as the media are the eyes and ears of the people. At the same time the media must operate in a responsible manner and seek to work in a manner that does not jeopardize the security of the nation or that of any individual. The media must thus work towards effective and efficient self-regulation in a bid to prevent interference with national security operations while reporting responsibly on terror activities in the country so as to keep the masses informed. Effective self-regulation will in turn ensure that there is minimal interference from the government as the media disseminates information regarding any terror activities responsibly.

ABBREVIATIONS

AISO – Australia Security Intelligence Organisation

CPJ – Committee to Protect Journalists

DW – Deutsche Welle

IG – Inspector General

KTN – Kenya Television Network

MEAA – Media, Entertainment and Arts Alliance

UK – United Kingdom

UN – United Nations

VOA Voice Of America

CASES

Frost v Perry

CHAPTER ONE

INTRODUCTION

A. BACKGROUND TO THE STUDY

Terrorism is commonly understood to refer to acts of violence that target civilians in the pursuit of political or ideological aims.¹ In legal terms, although the international community has yet to adopt a comprehensive definition of terrorism, existing declarations, resolutions and universal “sectoral” treaties relating to specific aspects of terrorism define certain acts and core elements. The Security Council, in Resolution 1566 (2004), referred to terrorism as “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing any act”.²

The war on terrorism is a global war and is not limited to any single area. Earlier this year, armed gunmen wearing black hoods stormed the offices of French satirical publication Charlie Hebdo on January 7, 2015, killing 12. Following the attack, residents Paris took to the streets. They claimed that they had to be on guard against the already audible attempts to justify a further curtailment of media and internet freedoms in the interests of national security in the aftermath of the Paris terror attacks. The threats posed to investigative journalism by mass surveillance, data retention and the criminalization of reporting certain information under anti-terrorism legislation, they claimed, were already significant.³ On November 13, 2015 at least 129 people died after a series of violent incidents around Paris, France. Gunmen and bombers attacked restaurants, the Bataclan theatre where a US rock band were playing, and the Stade de France national stadium where there was an international friendly going on between France and Germany. The attack will no doubt have a further impact on France’s anti-terror laws.

¹ *Fact Sheet No. 32, Human Rights, Terrorism and Counter-terrorism*, Office of the United Nations High Commissioner for Human Rights, 5 on 10 February 2014

² *Fact Sheet No. 32, Human Rights, Terrorism and Counter-terrorism*, 5 on 10 February 2015

³ Julie Posetti: The Paris unity march shows we must protect freedom of expression, not curtail it further’ *The Guardian*, 12 January 2015

In Turkey, on the evening of 28 October 2011, the Turkish publisher, human rights activist and journalist Ragıp Zarakolu closed the door of his small publishing house in the Istanbul district of Sultan Ahmed and set off home. But before he got there, he was arrested. He was not alone; 50 other people were arrested that same evening. Necati Abay, a spokesman for the detained journalists and writers in Istanbul, provides more detail where he says that "There are presently 4,000 lawsuits and 6,000 investigations against journalists. So that means that 10,000 journalists are in danger, some of whom have been in detention for four years without being charged. What is also shocking is the fact that with 105 journalists in detention at the moment, Turkey holds the worldwide 'record'. The situation in Turkey at the time was where the government was using anti-terror laws to fight press freedom. Thus any journalist who reported anything the government did not like was thrown in jail.⁴

Recently in Australia, towards the end of 2014, the Media, Entertainment and Arts Alliance (MEAA) the union and industry advocate for journalists in Australia, described the National Security Legislation Amendment Bill No. 1 which was passed by the Australian Parliament as an outrageous attack on press freedom in Australia. The Australian Parliament passed legislation that hands extraordinary powers to the government and its spy agencies. Section 35 of the Bill imposes a jail term of up to 10 years on journalists for 'unauthorized disclosure of information' criminalizing the work of journalists if they receive information about a special intelligence operation, particularly from whistle-blowers or trusted insiders as the Bill notes in its explanatory notes. The Bill can also deem journalists and their employers to be third parties if they interview persons of interest to the Australia Security Intelligence Organization (ASIO).⁵

Journalists in Ethiopia have never truly been free to report. However developments in the region over the last few years have had a detrimental effect on the media environment. With the disputed 2005 general election, the continued conflict with separatist groups and the spectre

⁴ 'Semiran Kaya: Fighting Press Freedom with Anti-Terrorism Laws *De Qantara*,
2 February 2012

on 11 February 2015

⁵ 'Commonwealth Attorney-General's Department' *The Australian Newspaper*,
1 October 2014

on 11 February 2015

of the Arab Spring arriving in the country – the government in Addis Ababa has been cracking down on the media.

One of its most effective tools is a vague, far reaching anti-terrorism law that has sentenced at least 11 journalists to harsh prison terms. In 2009, former Prime Minister Meles Zenawi's government passed the Anti-Terrorism Proclamation. Much of the reporting on Ethiopia these days is done at a safe distance. According to media watchdogs, 49 journalists fled the country between 2007 and 2012 to get away from a government that does not want to talk about this issue.⁶

In Kenya the Security Laws Amendment Act 2014 despite major doubts and uproar had retained until February of 2015, provisions penalizing journalists and social media users. Journalists could be jailed for up to three years and fined 5 million shillings for publishing or broadcasting photographs of terror victims without police consent. Another provision forbids broadcast of any information which undermines investigations or security operations relating to terrorism. It applies to journalists and anyone using social media. However it is worth noting that parts of the Security Laws Amendment Act were suspended and in February of 2015, declared unconstitutional by the High Court of Kenya.

This paper thus aims to assess security laws as regards terrorism with respect to curtailment of media freedoms. The paper will be a comparative study between Ethiopian and Kenyan anti-terror laws with a view to establishing what Kenyan anti-terror laws will look like in the future in regard to curtailment of media freedom.

⁶Tamerat Feyis: Ethiopia Journalism under Anti-terrorism law. *The Ethiopia Observatory*,
19 March

B. STATEMENT OF THE PROBLEM

Does the Security Laws Amendment Act (2014) Section 12 curtail freedom of the media in Kenya?

How do the terror laws of Kenya compare to those of Ethiopia with regards to the curtailment of media freedoms?

C. RESEARCH QUESTIONS

1. To what extent can curtailment of freedom of the media be justified?
2. What would the repercussions of Section 12 of the Security Laws Amendment Act (2014) be when compared to The Anti-Terror Proclamation of Ethiopia (652/2009) on the freedom of the media in Kenya?
3. Conclusion and Recommendations: What is the primary focus on the future anti-terror laws of Kenya and what are their expected effects on media freedom?

D. ASSUMPTIONS

Section 12 of the Security Laws Amendment Act unjustly curtails the freedom of the media.

The Anti-Terror Proclamation of Ethiopia curtails media freedom.

E. THEORETICAL FRAMEWORK

This paper aims to study anti-terror laws and their use in the curtailment of media freedoms. It will be a comparative study between the anti-terror laws present in Ethiopia and those we have in Kenya with a view of establishing what future anti-terror laws in Kenya will look like or what direction they will take.

For the purposes of the theoretical framework, we will consider the common law theory as proposed by Sir William Blackstone in his Commentaries on the Laws of England 1765-1769.

According to Blackstone, when the Supreme Being formed the universe, and created matter out of nothing, he impressed certain principles upon that matter, from which it can never depart, and without which it would cease to be. When he put that matter into motion, he established certain laws of motion, to which all moveable bodies must conform.

“By the sovereign power, is meant the making of laws; for wherever that power resides, all others must conform to, and be directed by it, whatever appearance the outward form and administration of the government may put on. For it is at any time in the option of the legislature to alter that form and administration by a new edict or rule, and to put the execution of the laws into whatever hands it pleases; by constituting one, or a few, or many executive magistrates: and all the other powers of the state must obey the legislative power in the execution of their several functions, or else the constitution is at an end.

In a democracy, where the right of making laws resides in the people at large, public virtue, or goodness of intention, is more likely to be found, than either of the other qualities of government. Popular assemblies are frequently foolish in their contrivance, and weak in their execution; but generally mean to do the thing that is right and just, and have always a degree of patriotism or public spirit. In aristocracies there is more wisdom to be found, than in the other frames of government; being composed, or intended to be composed, of the most experienced citizens; but there is less honesty than in a republic, and less strength than in a monarchy. A monarchy is indeed the most powerful of any; for by the entire conjunction of the legislative and executive powers all the sinews of government are knit together, and united in the hand of the prince; but then there is imminent danger of his employing that strength to improvident or oppressive purposes.”⁷

Blackstone has outlined the sovereign power, the nature of the law and discussed the various powers given to the various authorities that come up with laws in various societies. He points to the power given to governments by the sovereign to make laws. At the same time he has recognized that governments though they may have good intentions may end up making laws that are unjust in one way or the other.

Another theory that can be applied is the Mosaic theory. The theory holds that individually harmless pieces of information, when combined with other pieces, can generate a composite -

7

a mosaic - that reveals national security vulnerabilities. Because of this informational synergy, records that would be unclassifiable in their own right may require protection.⁸

F. LITERATURE REVIEW

Ethiopia passed the Anti-terrorism Proclamation 652/2009 in July 2009. The proclamation contains far-reaching statutes giving the executive branch sweeping powers to imprison for as long as 20 years "whosoever writes, edits, prints, publishes, publicizes, disseminates" statements deemed "encouraging, supporting, or advancing" terrorist acts. This statute effectively institutionalizes censorship of reporting the government deems favourable to groups and causes it labels as "terrorist." Worse, the law grants the federal police and national security agency exclusive discretion to carry out warrantless interception of communications, and search and seizure solely on the basis of "reasonable belief" that a terrorist act is in progress or "will be" committed.⁹

This law and its application have been controversial since its promulgation. Some of the areas that have come under serious deliberation as regards the law are to begin with, whether the law is needed at all. Proponents argue that the clear and present danger of terrorism in Ethiopia coupled with inadequacy of ordinary laws to deal with this reality necessitated the law. They also contend that the United Nations Security Council resolution 1373 (2001) requires Ethiopia to pass the law. Challengers dismiss these justifications as pretexts and maintain that the real reason for passing the law is to discipline dissent and crack down on opposition.¹⁰

According to Article 6 of the Anti-terrorism Proclamation, "Whosoever publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism stipulated under Article 3¹¹ of this Proclamation is punishable with rigorous imprisonment from 10 to 20 years."

⁸ on 20 February 2015

⁹ Joel Simon, An open letter to his Excellency former Prime Minister Meles Zenawi from the Committee to Protect Journalists, 2009

¹⁰ Wondwossen DK, Examining some of the Raisons D'etre for the Ethiopian Anti-Terrorism Law, *Mizan Law Review* Vol. 7 No.1, September 2013

¹¹ Terrorist Acts

This statute effectively institutionalizes censorship of reporting what the government deems favourable to groups and stamps on it labels of "terrorist." The law grants the federal police and national security agency exclusive discretion to carry out warrantless interception of communications, and search and seizure solely on the basis of "reasonable belief" that a terrorist act is in progress or "will be" committed.¹²

Human Rights Watch has repeatedly raised concerns about the anti-terrorism law's overly broad definition of "terrorist acts." The law's provisions on support for terrorism contain a vague prohibition on "moral support" under which only journalists have been convicted. The right to freedom of expression is guaranteed in the Ethiopian constitution, and in numerous African and international conventions, including the African Charter on Human and Peoples' Rights, which Ethiopia has ratified. In November of 2013, Ethiopia was appointed to the United Nations Human Rights Council and as such has made a commitment to uphold "the highest standards of human rights as enshrined in the constitution of the country and in the international freedom of expression."¹³

In Kenya the Security Laws Amendment Bill of 2014 had placed a ban on publishing or broadcasting of "insulting, threatening, or inciting material", images of dead or injured people "likely to cause fear" and information that undermines security operations inclusive of social media. This was determined by the Bill to be punishable by a fine of 5 million Kenya shillings, a three-year jail term or both.¹⁴ However a five judge bench found the laws to violate freedom of the expression and the media as a whole yet these freedoms are guaranteed in Articles 33¹⁵ and 34¹⁶ of the Constitution.

causes a person's death or serious bodily injury; creates serious risk to the safety or health of the public or section of the public; commits kidnapping or hostage taking; causes serious damage to property; causes damage to natural resource, environment, historical or cultural heritages; endangers, seizes or puts under control, causes serious interference or disruption of any public service; or threatens to commit any of the acts stipulated under sub-articles (1) to (6) of this Article; is punishable with rigorous imprisonment from 15 years to life or with death.

¹² Section 14, The Anti-terrorism Proclamation, Ethiopia.

¹³ <http://www.hrw.org/news/2013/05/03/ethiopia-terrorism-law-decimates-media> on 20 February 2015

¹⁴ Section 12 of the Security Laws Amendment Bill 2014

¹⁵ 33. (1) Every person has the right to freedom of expression, which includes—

- a) freedom to seek, receive or impart information or ideas;
- b) freedom of artistic creativity; and
- c) academic freedom and freedom of scientific research.

¹⁶ 34(2) The State shall not—

According to the judges, Section 12 of the security law is unjustifiable in any democratic society to the extent that it purports to limit media freedom. They found it unconstitutional for violating the freedom of expression and media as guaranteed by the Constitution.¹⁷

According to the judges, the section had left many unanswered questions since it did not specify who would determine what story undermines police investigation or what image would cause fear among the public and help terrorists.

However, the government said it may consider filing an appeal against the High Court ruling which declared eight clauses from the controversial security laws unconstitutional.

In a statement issued to the public, Presidential Spokesman Manoah Esipisu said the government may alternatively consider sending the matter back to Parliament with necessary changes because it still holds that the laws are necessary to shield the country from security threats.

This study aims to assess what the future of anti-terror laws with respect to their effect on the media in Kenya will be or look at the direction these laws are likely to take as compared to those of Ethiopia. This study will focus on the occurrences that have been concerned with terror activity given their increase in the country over the past few years and the legislative measures taken and their implications as well as the direction to which they have pointed the country as far as future legislation is concerned. The study will also consider the international dimension of terrorism requires an all-encompassing approach and how Kenya's response has evolved over the years.

For the purpose of the study books such as *Militias, Rebels And Islamist Militants: Human Insecurity And State Crises In Africa* by Wafula Okumu and Augustine Ikelegbe and articles such as *The roots of radicalism* by Anneli Botha should inform government's response to terror, Senior Researcher, Transnational Threats and International Crime Division, ISS Pretoria shall

a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or
(b) penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.

¹⁷

on 22 February 2015

be incorporated. These have been incorporated in order to better understand the dynamic of terrorism in our country and how we must approach it so as to deal with it.

G. RESEARCH METHODOLOGY

For the purposes of this study, the research methodology shall be qualitative. The main sources of information will be secondary sources. These are books, reports, journals and articles that focus on the subject matter of this paper.

H. LIMITATIONS OF THE STUDY

i) Availability of information.

Given the subject matter of the study is relatively new in our society, meaning that while terrorism may be a problem that we have had around for a while, in the context of anti-terror laws and their influence over media freedoms, the area is still quite ripe given that Ethiopia's laws were passed in 2009 while those of Kenya were passed in 2014. This means that information on the area may be scarce.

ii) Time factor.

The study is limited by the fact that it must be done in a specified time frame. Thus it must be practical, in that, the objectives can be met within the specified time frame.

iii) Changing laws.

There is always the possibility that the laws can change before the study is completed thus rendering the study redundant especially given the sensitive nature of the subject in question and the fact that Ethiopia has come under fire from the international community to make amendment to their Anti-Terror Proclamation.

I. CHAPTER BREAKDOWN

1. Introduction

This will largely be constituted by the dissertation proposal which contains an introduction and background to the study as well as the theoretical framework the research is built around and an introductory literature review so the readers can be aware of what they should expect.

2. Theoretical Framework

This will contain analysis of the commentaries of Sir William Blackstone on common law as well as the mosaic theory and tie them to the study.

3. Case Study

This chapter will be directly concerned with the first two research questions.

- a. To what extent media freedom can be curtailed.

This chapter will focus on the place of media and the freedoms granted to the media and up to what point those freedoms are allowed to exist.

- b. Comparison of anti-terror laws in Kenya and Ethiopia and repercussions.

This chapter will also focus on what brought about these anti-terror laws and the effects that they have had since their enactment in Ethiopia.

4. Discussion of Findings.

This chapter will focus on the overall findings of the study based on the case study in chapter 3 and the theoretical framework in chapter 2. This chapter is to review and analyze the research findings discussed above in a wider context.

5. Conclusion and Recommendations

This chapter will focus on what we can conclude the future of anti-terror laws in Kenya will look like and the recommendations which can make these laws not only just, but also effective.

J. TIMELINE

September 14 th -27 th	Polishing of Chapter one.
October 5 th -17 th	Chapter 2
October 19 th - 31 st	Chapter 3.
November 2 nd – 14 th	Chapter 4.
November 16 th -28 th	Chapter 4
December 1 st – 12 th	Chapter 5.

December 18 th – 7 th January 2016	Make any necessary amendments.
8 th January	Submit final copy of the dissertation.

CHAPTER 2

THEORETICAL FRAMEWORK AND METHODOLOGY.

For the purposes of the theoretical framework for this study, we will consider the common law theory as proposed by Sir William Blackstone in his Commentaries on the Laws of England 1765-1769.

According to Blackstone, when the Supreme Being formed the universe, and created matter out of nothing, he impressed certain principles upon that matter, from which it can never depart, and without which it would cease to be. When he put that matter into motion, he established certain laws of motion, to which all moveable bodies must conform.

“By the sovereign power, is meant the making of laws; for wherever that power resides, all others must conform to, and be directed by it, whatever appearance the outward form and administration of the government may put on. For it is at any time in the option of the legislature to alter that form and administration by a new edict or rule, and to put the execution of the laws into whatever hands it pleases; by constituting one, or a few, or many executive magistrates: and all the other powers of the state must obey the legislative power in the execution of their several functions, or else the constitution is at an end.

In a democracy, where the right of making laws resides in the people at large, public virtue, or goodness of intention, is more likely to be found, than either of the other qualities of government. Popular assemblies are frequently foolish in their contrivance, and weak in their execution; but generally mean to do the thing that is right and just, and have always a degree of patriotism or public spirit. In aristocracies there is more wisdom to be found, than in the other frames of government; being composed, or intended to be composed, of the most experienced citizens; but there is less honesty than in a republic, and less strength than in a monarchy. A monarchy is indeed the most powerful of any; for by the entire conjunction of the legislative and executive powers all the sinews of government are knit together, and united

in the hand of the prince; but then there is imminent danger of his employing that strength to improvident or oppressive purposes. “¹⁸

Blackstone has outlined the sovereign power, the nature of the law and discussed the various powers given to the various authorities that come up with laws in various societies. He points to the power given to governments by the sovereign to make laws. At the same time he has recognized that though governments may have good intentions may end up making laws that are unjust in one way or the other. At the same time there always remains the possibility that governments will make these laws for selfish purposes in a bid to oppress certain groups in society so as to fulfil their own selfish ends. This has occurred in various instances especially in Africa. For example in Kenya, we see every so often Members of Parliament adding provisions to the laws to increase their salaries and allowances while millions of Kenyans languish in abject poverty and many of the projects promised to be undertaken by the government fail to take off as a result of disappearance of funds or diversion of funds into personal accounts of the members of Parliament.

Blackstone goes ahead to say that democracies are usually the best calculated to direct the end of a law, we must consider whether or not the laws made in response to terrorism have been made in a manner that benefits all the parties involved or whether they are oppressive in nature as they aim to achieve their end. While Kenya and Ethiopia each want to protect their citizens and fight terrorism are the laws curtailing the freedom of the media? If so are they justified in doing so?

Another theory that can be applied is the Mosaic theory. The theory holds that individually harmless pieces of information, when combined with other pieces, can generate a composite - a mosaic - that reveals national security vulnerabilities. Because of this informational synergy, records that would be unclassifiable in their own right may require protection¹⁹. The mosaic theory is, essentially, a theory of informational synergy. It describes a process through which adversaries or individuals collect, combine, and compile items of information, some or even all of which are harmless in their own right. And it suggests an outcome whereby this process, in a feat of analytic alchemy, converts the harmless information into something useful. All

¹⁸

¹⁹

intelligence agencies, collect seemingly disparate pieces of information in the hope of assembling them into a coherent picture. That is, they all make mosaics, constantly. It would be illogical, therefore, to make classification decisions on an item-by-item basis; instead, “protection through classification is required if the combination of unclassified items of information provides an added factor that warrants protection of the information taken as a whole.”²⁰ To determine the security risk of disclosing a given document, the mosaic theory stipulates, one must consider the possible mosaics to which the document might contribute. The mosaic, not the document, becomes the appropriate unit of risk assessment. This can be used to justify limiting of media freedoms only in so long as sharing the information in question will expose the country to national security vulnerabilities²¹. This is especially where investigative journalism is involved so as to ensure sensitive information with potential to increase the security risk of the nation is not released to the public where everyone can access it.

²⁰ *Frost v. Perry*, 161 F.R.D. 434, 436 (D. Nev. 1995)

²¹ Pozen DE, *The Mosaic Theory, National Security, and the Freedom of Information Act*, 115 *Yale Law Journal* 628, 2005, 633.

CHAPTER 3.

CASE STUDY.

The media generally plays a pivotal role in society. In this day and age everything is exposed to the media. Be it in print, television or even social media. We live in an age whereby the general population has access to media be it through newspapers, television, radio or online mediums. Thus the question of the media and terrorism is a fundamental one. As discussed in chapter one of this dissertation, terrorism is global and has adversely affected the masses. Kenya is no exception and is rooted deeply in the fight against terror. However we must consider all aspects of this fight. This paper in particular deals with the curtailment of media freedoms as a result of anti-terror laws.

A. To what extent can curtailment of freedom of the media be justified?

As we have seen in chapter one, Section 12 of the Security Laws Amendment Act of 2014, a ban had been placed on publishing or broadcasting of “insulting, threatening, or inciting material”, images of dead or injured people “likely to cause fear” and information that undermines security operations inclusive of social media. The section had imposed a fine of 5 million Kenya Shillings, a three-year jail term or both. The laws were found by the court to violate the freedom of expression and the media as a whole yet they are freedoms guaranteed in the Constitution of Kenya 2010 articles 33²² and 34²³.

In Ethiopia the Anti-terrorism Proclamation 652/2009 contains far-reaching statutes giving the executive branch sweeping powers to imprison for as long as 20 years "whosoever writes, edits, prints, publishes, publicizes, disseminates" statements deemed "encouraging, supporting, or advancing" terrorist acts. This statute effectively institutionalizes censorship of reporting the government deems favourable to groups and causes it labels as "terrorist." The law grants

²² 33. (1) Every person has the right to freedom of expression, which includes—

- a) freedom to seek, receive or impart information or ideas;
- b) freedom of artistic creativity; and
- c) academic freedom and freedom of scientific research.

²³ 34(2) The State shall not—

- a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or
- (b) penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.

the federal police and national security agency exclusive discretion to carry out warrantless interception of communications, and search and seizure solely on the basis of "reasonable belief" that a terrorist act is in progress or "will be" committed.²⁴

According to Article 6 of the Anti-terrorism proclamation, "Whosoever publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism stipulated under Article 3²⁵ of this Proclamation is punishable with rigorous imprisonment from 10 to 20 years." Rigorous imprisonment is whereby the prisoners are subjected to hard labour such as breaking rocks or building roads for the duration of their sentence. This statute effectively institutionalizes censorship of reporting what the government deems favourable to groups and stamps on it labels as "terrorist." The law grants the federal police and national security agency exclusive discretion to carry out warrantless interception of communications, and search and seizure solely on the basis of "reasonable belief" that a terrorist act is in progress or "will be" committed.²⁶

There have been concerns that the law has been used to corner the media and subdue them into silence. On 18 September 2014, a group of United Nations human rights experts²⁷ urged the Government of Ethiopia to stop misusing anti-terrorism legislation to curb freedoms of expression and association in the country, amid reports that people continue to be detained arbitrarily. They said the laws were being used to target journalists, bloggers and opposition

²⁴ An open letter to his Excellency former Prime Minister Meles Zenawi from the Committee to Protect Journalists

²⁵ Terrorist Acts

causes a person's death or serious bodily injury; creates serious risk to the safety or health of the public or section of the public; commits kidnapping or hostage taking; causes serious damage to property; causes damage to natural resource, environment, historical or cultural heritages; endangers, seizes or puts under control, causes serious interference or disruption of any public service; or threatens to commit any of the acts stipulated under sub-articles (1) to (6) of this Article; is punishable with rigorous imprisonment from 15 years to life or with death.

²⁶ Section 14, The Anti-terrorism Proclamation, Ethiopia.

²⁷ The experts: Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson; Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye; Special Rapporteur on the situation of human rights defenders, Michel Forst; Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez.

politicians.²⁸ There have been similar laws in France and Australia. Australia passed a bill that gives extraordinary powers to the government and spy agencies allowing a jail term of up to 10 years on journalists for unauthorized disclosure of information thereby criminalizing their work if they receive information about any special intelligence operation, particularly from whistle-blowers or trusted insiders. The Bill can also deem journalists and their employers to be third parties if they interview persons of interest to the Australia Security Intelligence Organization (ASIO)²⁹. It is clear that the issue is not limited to Kenya or Africa but it is global. As a result of the aforementioned we must then consider to what extent it is justified for media freedoms to be curtailed if at all it can be justified.

While media freedom is important we must also appreciate the fact that it cannot exist fully independent without care. It must be mindful of the circumstances and the society in which it is allowed to exist. For instance as was the case with the French satirical newspaper, Charlie Hebdo. The French satirical weekly has a controversial history in its treatment of Islam and Islamic culture, including the covers that led to the firebombing of its office and a lawsuit against it alleging blasphemy. In reality, some of Charlie Hebdo's most offensive cartoons would not be published in most parts of the world. Few media would print a cartoon of the Prophet Mohammad crouched on all fours with his genitals bared.

But the French weekly insisted on publishing this kind of caricature, which has pushed the freedom of expression to its limits, rather than making a satirical point. The attacks against Charlie Hebdo should not be simplified as attacks on press freedom, for even the freedom itself has its limits, which does not include insulting, sneering or taunting other people's religions or beliefs. The world is diversified and every religion and culture has its own core values. It is thus important to show respect for the differences of other peoples' religious beliefs and cultures for the sake of peaceful coexistence in the world, rather than exercising unlimited, unprincipled satire, insult and press freedom without considering other peoples' feelings and

²⁸

on 19 October 2015

²⁹ 'Commonwealth Attorney-General's Department' *The Australian Newspaper*,

1

October

2014

on 19 October 2015

the very beliefs they hold dear as a part of their existence³⁰. This is in accordance with the offence principle. The Offence Principle, introduced in 1985 by Joel Feinberg refers to the moral position or feelings of a journalist's audience, arguing that preventing serious offence is necessary and in the general interest of the community at large³¹.

Another justification to allow for the limiting of media freedom would be along the lines of prevention of harm. Certain systems of regulation have, at their core, an awareness of John Stewart Mill's Harm Principle which proposes that the only justification for preventing freedom of speech is the prevention of harm to an individual³². For example, the Editors' Code of Practice in the UK is designed, not to prevent the press publishing varied and robust opinions, but to protect vulnerable individuals from genuine harm (be that through misrepresentation, intrusion or discrimination by newspapers or magazines)³³. This form of regulation is based on Mill's premise that 'the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others and, provided his employer is actively observing the regulatory rules, the newspaper journalist will find his freedom of expression limited to this effect.

Thus limiting of press freedom in a manner that prevents the media from fulfilling their obligation as a result of anti-terror laws is not only wrong but contradictory to the very purpose for which laws exist.

B. Comparison of Anti-terror laws in Kenya and Ethiopia and their repercussions and their effect on media freedom.

Ethiopia has employed the use of various laws in order to limit the rights to freedom of expression and access to information of its people especially journalists. Among those laws is the Anti-terrorism Proclamation 652/2009. At least 60 journalists have fled their country since 2010 while at least another 19 languish in prison. The government has shut down dozens of

³⁰ 'Xiang Bo: Press Freedom Has Its Limits' *Xinhuanet News*,
12 January

2015
on 19 October 2015

³¹ Feinberg J, *The Moral Limits of the Criminal Law, Vol 2: Offense to Other*, Oxford University Press, New York 1985, 90

³² Mill JS, *On Liberty*, Yale University Press, London, 2003, 13

³³ Editors' Code Committee. Code of Practice. Press Complaints Commission, 2009.

protect Ethiopians enjoying their constitutional rights³⁶. His statements were in direct contradiction of the situation on the ground.

In Kenya Section 2 of the Security Laws Amendment Act despite major doubts and uproar had retained until February of 2015, provisions penalizing journalists and social media users. Journalists could be jailed for up to three years and fined 5 million shillings for publishing or broadcasting photographs of terror victims without police consent. Another provision forbids broadcast of any information which undermines investigations or security operations relating to terrorism. It applies to journalists and anyone using social media. However it is worth noting that parts of the Security Laws Amendment Act were suspended and in February of 2015, declared unconstitutional by the High Court of Kenya. The judges said that the sections had left many questions unanswered as it did not specify who would determine what story undermines police investigation and what image would cause fear among the people and help terrorists. More so Section 12 was unconstitutional in that it would in no doubt violate the freedom of expression and the media as a whole yet they are freedoms guaranteed in the constitution.

It is clear that Section 12 of the Security Laws Amendment Act would have had similar effects in Kenya as those that have been felt in Ethiopia as a result of the Anti- Terror Proclamation. Many independent publications were shut down and editors have been imprisoned. Today most of the media in Ethiopia is state owned. Even the international media are not immune to political interference which is as a result of the Anti-Terror Proclamation which is out to criminalise their work. Media houses such as Voice of America (VOA) and Deutsche Welle (DW) have had their frequencies jammed because of what was termed by the then Communications minister as 'conducting interviews with terrorists'. This was in response to interviews the networks had conducted with opposition members. Journalists in the country have been arrested and charged with outrageous claims raging from terrorism to treason to genocide as a result of their work which in any other country is simply reporting³⁷.

³⁶ 'CPJ Officials meet Bereket Simon' *Awramba Times*,
12 June 2012
on 5 November 2015

³⁷ 'Caelainn Barr: Ethiopian media gagged by anti-terror laws' *The Bureau of Investigative Journalism*,
29 September 2011

Another repercussion that has been felt is that the Anti-Terror Proclamation has left the journalists exposed. They can no longer receive due process in their cases and are subject to harassment and fearing for their lives as a result of charges of terrorism being levelled against them whenever they report something the state does not approve of. In July 2012, at the height of the Muslim protests in Ethiopia, chief editor Yusuf Getachew at Muslimoch Guday (Muslim Affairs) magazine was arrested and charged with incitement under the anti-terrorism law. He had written articles about the Muslim protests and the concerns of protesters that the government was interfering in religious affairs³⁸. It is clear from the aforementioned, that the Ethiopian government is using the Anti-Terror Proclamation to crack down on journalists who are critical of the regime.

The crackdown on journalists using the Anti-Terror Proclamation escalated in 2014. In April of 2014, six members of the prominent blogging collective Zone 9 were arrested in Addis Ababa. Blogging under the slogan “we blog because we care,” the Zone 9-ers covered social, political, and other events of interest to young Ethiopians. The six bloggers in custody were Atnaf Berahane, Befekadu Hailu, Abel Wabela, Mahlet Fantahun, Natnael Feleke, and Zelalem Kibret. Soliana Shimeles, a seventh blogger, was charged in absentia³⁹. The Zone-9ers were working to foster political debate and discussion in a country where most media outlets fall under heavy control by government authorities. They wanted to help fellow citizens better understand their rights, as guaranteed by the constitution. This was plain to see from the contents of their writings and the nature of their research. All were charged under the criminal code and Anti-Terrorism law in July 2014. On July 8 and 9, 2015, one of the bloggers was released from Kilinto Prison in Addis Ababa. Charges were dropped without warning or explanation, several days prior to Barack Obama's historic visit to the country. On October 16, 2015, the remaining four bloggers were acquitted of terrorism charges. Three of the four bloggers were released on October 19, and Befekadu Hailu was released on bail on October 21, pending a separate seemingly dubious charge of incitement to violence.⁴⁰

on 23 October

2015

³⁸ Human Rights Watch, “*Journalism Is Not a Crime*” *Violations of Media Freedom in Ethiopia*, 22

³⁹ Human Rights Watch, “*Journalism Is Not a Crime*” *Violations of Media Freedom in Ethiopia*, 22

⁴⁰ Endalk Chala: Campaign To Free Ethiopia’s Zone9 Bloggers’ *Global Voices Advocacy*,

CHAPTER 4.

DISCUSSION OF FINDINGS

Based on the study to this point, the findings are as follows:

Anti-terror laws are necessary. In this day and age, as established by the numerous examples, terrorism is a global threat. No part of this world can exist in absolute security and thus further measures must be taken to secure citizens all over the world. This is done through international and national anti-terror laws.

The media's rights must be recognised in anti-terror laws. This is so as to effectively cater both for the protection of the media itself as well as the masses to which it provides coverage. The media plays an important role in disseminating of information and cannot be ignored in the making of anti-terror laws. It must be governed as well as protected.

We must however consider other factors at play. In Kenya, the media has a lot of freedom as compared to the media of Ethiopia. This is evident in the way the media in Ethiopia is undermined by a number of laws including the Ant-Terrorism Proclamation. In Ethiopia, information concerning any terror activities is not readily disseminated to the public while in Kenya, the media is allowed to report on any terror activities in the country as was evident during the Garissa, Westgate and Mpeketoni attacks. The media was allowed to report on the attacks and government officials including the President, his Excellency Uhuru Kenyatta gave statements concerning the attacks. It is however worth noting that the statements given were not offered in a timely manner and there was a lot of doubt with regard to their truth. Ethiopian media does not enjoy this kind of freedom. The Ethiopian government is extremely powerful and often chooses to mute the media as it has the ability to do so. The same cannot be said of the Kenyan government. While the Kenyan government is indeed powerful, it cannot silence the media as there would be an outcry in the nation not only from the media fraternity but also from the human rights groups and members of the public.

Another thing we must look at is that security in Kenya is also increasingly politicised just like most things in the country, which affects the way the government responds to terrorism. For

on 5 January 2016

example, following the killing of at least 15 people in the village of Poromoko near Mpeketoni on the Kenyan coast on 15 June 2014, President Uhuru Kenyatta blamed official political opponents, even though Al-Shabaab accepted responsibility⁴¹. In the same way it is likely that the government frowns upon efforts by the media to confront terrorism and bring issues to the attention of the public. A good example would be the unfortunate scandal that befell journalists Johna Allan Namu and Ali Mohammed.

Ali and Namu of Kenya Television Network (KTN) did an expose on what really happened during the Westgate Mall attack in 2013. The government turned against them. The then Inspector General (IG) David Kimaiyo had disclosed plans to arrest individual journalists over alleged propaganda, in the wake of the terror attack at Westgate Mall, Nairobi. He was specific they are targeting Namu and Ali and he accused them of incitement and propaganda⁴². This was in the wake of a time in the nation when the government was not forthcoming with information concerning the attack and other details surrounding the issue.

While the Kenyan government gives room for the media to operate, we must also appreciate that sometimes the media can go too far. While shows such as Jicho Pevu and other investigative journalism shows are often very informative, they can also mislead the public and make it difficult for the government to work in an efficient manner to safeguard the security of the nation. This points to the mosaic theory discussed in the theoretical framework of this dissertation. Where these journalists are able to gather information and come to a certain conclusion, releasing that information may very well in some instances jeopardize the efforts of the government in some regard or put the nation's security at risk.

In Kenya the Security Laws Amendment Act of 2014 Section 12 had placed a ban on publishing or broadcasting of "insulting, threatening, or inciting material", images of dead or injured people "likely to cause fear" and information that undermines security operations

⁴¹Botha A, The roots of radicalism should inform government's response to terror, Institute Security Studies 2014

⁴²Cyrus Ombati: Police want journalists John-Allan Namu and Mohammed Ali over Westgate story? *Standard Media Online*, 23 October 2013

inclusive of social media. This was determined by the Bill to be punishable by a fine of 5 million Kenya shillings, a three-year jail term or both.

The High Court of Kenya found the laws to violate the freedom of the expression and the media as a whole yet these freedoms are guaranteed in articles 33 and 34 of the Constitution. According to the judges, Section 12 of the security law is unjustifiable in any democratic society to the extent that it purports to limit media freedom. They found it unconstitutional for violating the freedom of expression and media as guaranteed by the Constitution.

According to Article 6 of the Anti-terrorism proclamation of Ethiopia, "Whosoever publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism stipulated under Article 3 of this Proclamation is punishable with rigorous imprisonment from 10 to 20 years. The law grants the federal police and national security agency exclusive discretion to carry out warrantless interception of communications, and search and seizure solely on the basis of "reasonable belief" that a terrorist act is in progress or "will be" committed. Human Rights Watch has repeatedly raised concerns about the anti-terrorism law's overly broad definition of "terrorist acts." The law's provisions on support for terrorism contain a vague prohibition on "moral support" under which only journalists have been convicted. The right to freedom of expression is guaranteed in the Ethiopian constitution, and in numerous African and international conventions, including the African Charter on Human and Peoples' Rights, which Ethiopia has ratified.

Curtailement of media freedom can be justified if it is done in accordance with the offence principle or the harm principle. The Offence Principle, introduced in 1985 by Joel Feinberg refers to the moral position or feelings of a journalist's audience, arguing that preventing serious offence is necessary and in the general interest of the community at large. John Stewart Mill's Harm Principle proposes that the only justification for preventing freedom of speech is the prevention of harm to an individual. Curtailement of freedom of the media can also be justified if the reason falls within the scope of the mosaic theory thus curtailement is done in a bid to protect the security of the nation.

Ethiopia's reasons for curtailing media freedom do not fall under any reasonable category and have caused outcry from the international community. They are not within the reasons of prevention of offence or harm or protection under the mosaic theory. Human Rights Watch has repeatedly raised concerns about Ethiopia's anti-terrorism law's overly broad definition of "terrorist acts" and the blatant disregard for the freedom of expression which is guaranteed in the Ethiopian constitution and the African Charter on Human and Peoples' Rights, which Ethiopia has ratified. In November of 2013, Ethiopia was appointed to the United Nations Human Rights Council and as such has made a commitment to uphold "the highest standards of human rights as enshrined in the constitution of the country and in the international freedom of expression."⁴³

Ethiopia's Anti-Terror Proclamation has been used to detain and punish members of the media in a manner that is unfair and against their right to freedom of expression. United Nations human rights experts urged the Government of Ethiopia to stop misusing anti-terrorism legislation to curb freedoms of expression and association in the country, amid reports that people continue to be detained arbitrarily. They said the laws were being used to target journalists, bloggers and opposition politicians.

Ethiopia's Anti-Terrorism Proclamation 652/2009 may have been made with good intentions but it is currently being used to curtail the freedom of the media. This is both national and international media houses. This is clear from the number of journalist currently in jail and cases such as that of chief editor Yusuf Getachew at Muslimoch Guday (Muslim Affairs) magazine who was arrested and charged with incitement under the anti-terrorism law. He had written articles about the Muslim protests and the concerns of protesters that the government was interfering in religious affairs⁴⁴. For media houses such as VOA and DW they had their frequencies jammed when they aired interviews from members of the opposition. VOA had their signal jammed in March of 2010 as they aired an interview with a member of opposition. VOA has mentioned that when elections draw closer, they are often targeted by the government and their frequency interrupted⁴⁵. DW had their frequency jammed in April of 2011 as had

⁴³

on 18 November 2015

⁴⁴ Human Rights Watch, "Journalism Is Not a Crime" *Violations of Media Freedom in Ethiopia*, 19

⁴⁵

on 14 December 2014

occurred in 2010 around the time of local elections. Their frequency was interrupted the same time about 200 members of the opposition group Oromo were arrested.⁴⁶ Their frequencies were jammed on the grounds that they were conducting interviews with terrorists.

One journalist wrote a series of editorials on the late president Meles Zenawi, including one criticizing the secrecy surrounding his health in the weeks before his death. The journalist said that somebody from Maekelawi called him to office number 38 at Maekelawi in August 2012, because of his editorials. They told him to stop writing or he would be prosecuted under the anti-terrorism law. He was there for eight days before being released on bail. There was no political motive to his editorials. They were looking for information on who he was working with and why he was writing those articles. They would beat him with a stick on the back of the head and his family did not know where he was.⁴⁷

From the experiences and occurrences documented so far in this study it is clear that the Ethiopian government has used and continues to use the Anti-Terror Proclamation as a tool to terrorise its own journalists in a bid to protect their own interests. For as long as the private media is afraid to operate freely, the only access Ethiopians will have to information will be only what the government wants the people to know. As mentioned earlier, Blackstone spoke of a situation where the laws made may not always have good intentions and may be used for oppressive purposes. That is what is happening in Ethiopia. The Anti-Terror proclamation has been used to institutionalize censorship of reporting the government deems favourable to groups and causes it labels as "terrorist."

There are various similarities between the Anti-Terror Proclamation and Section 12 of the Security Laws Amendment Act. While the intention may have been good, they have ultimately failed in their purpose. They punish the media for undertaking in their duty to inform the public and contravene their right to freedom of expression while imposing unfair and unnecessary punishment.

When Ethiopia's Anti-Terror Proclamation was compared with Kenya's Security Laws Amendment Act Section 12 in particular, they were dangerously similar. They punish the

⁴⁶

on 14 December 2015

⁴⁷ Human Rights Watch interview with journalist #44, location withheld, October 2014, 18

media for undertaking in their duty to inform the public and contravene their right to freedom of expression while imposing unfair and unnecessary punishment. This is evident in the way the judges of the High Court declared Section 12 to be in contravention of the constitution which allows for the freedom of expression in articles 33 and 34. It was also not clear who would determine what stories or publications would undermine police investigation or what images would cause fear among the public and aid terrorists. The fact that this was not clear left this open to abuse by various government officials who would find themselves in a position to abuse the ambiguity of the section. This would have ended up with Kenya facing a dilemma just like that of Ethiopia whereby journalists live in fear as their role becomes defunct if they were reporting from the side of private media.

Ethiopia's government has used the Anti-Terror Proclamation to further its personal agenda using it to harass local and international journalist and opposition members. They have used it to ensure that only information that favours them is available to the public. The results are that there is no free reporting taking place in the country and the journalists as well as opposition members are living in fear having seen fellow journalists detained as a result of the Anti-Terror Proclamation.

With regards to the limitations that had been expected at the beginning of the study, information was not as limited as had been anticipated. There was a lot of material on the issue prior to when the various laws were passed as well as some information that came after the laws had been passed. The objectives of the study were met within the given time frame. This however posed a challenge in its achievement. With regards to changing laws, at the beginning of this study section 12 was still part of the Security Laws Amendment Act but was eventually declared unconstitutional. However, it does not affect the study as such as the study sought to use it as a bench mark to understand whether or not it curtails media freedoms and use it to anticipate the coming anti-terror laws and how they shall impact the media given the experience of section 12.

CHAPTER 5.

CONCLUSION AND RECOMMENDATIONS

In conclusion Section 12 of the Security Laws Amendment Act does indeed curtail the freedom of the media. It does so in a manner that is unconstitutional as it violates the freedom of expression and media as guaranteed by the Constitution.⁵² The implications of this study upon comparison of Kenya's anti-terror laws with those of Ethiopia, Kenya must strive to avoid a situation whereby the laws are used to curtail freedom of the media in a manner that is unjust as well as avoid a situation whereby the laws are used as a tool to exercise power over journalists and members of the opposition.

The fact that the High Court of Kenya did away with Section 12 of the Security Laws Amendment Act is a sign that Kenya is headed in the right direction with regards to anti-terror laws. The unconstitutionality of the laws was recognised early enough and has paved the way for positive development in the area. The future of anti-terror laws in the country and their relation to the media is bright so long as the government and all those involved in the law making process are mindful of the rights of the media and seek to protect them and the nation as well without bias or ill-intent.

Kenya's media generally enjoys more freedom than Ethiopia's media as a result of the almost dictatorial powers the Ethiopian government has. Therefore while looking at the curtailment of media freedoms as a result of security laws we must take into consideration this freedom and the fact that the media may sometimes overstep in their reporting of terrorist activity.

Recommendations are as follows:

To the government:

The government of Kenya must formulate a section in the Security Laws Amendment Act that governs the media but at the same time complies with the right to freedom of expression under Kenya's Constitution and regional and international human rights law. The government can

⁵²

on 2 December 2015

borrow from the UK legislation that does not seek to prevent the press publishing varied and robust opinions, but seeks to protect vulnerable individuals from genuine harm. This will ensure that the information that the media is allowed to disseminate places no individual or groups in harm's way.

The government must strive to depoliticise the security laws of the nation and cease and desist from interfering with the affairs of the media until the point at which the media may operate in a manner that is against the law. As long as the media reports on terror activities in the country is true, the government must not chase after the media houses because they have said things that may reflect poorly on the government.

The government must allow the media to do their job and not instil fear in the media in so far as the media is operating in a legal manner and in a way that does not jeopardise the safety of the nation.

The government must allow private media to thrive in order to prevent biased reporting in the country. Even while reporting on terror activities in the country the government must not impose sanctions or tamper with private media houses.

To the media:

The media must work towards effective self-regulation. Through effective institutional mechanisms, self-regulation is the preferred system of promoting ethical standards in the media in Kenya. However, the system is currently beset by a myriad challenges, among them lack of commitment by the media industry and a crisis of confidence in its ability to rein in errant media.⁵³ This would enable the media to work within themselves to ensure they do not interfere with the work of security forces.

In their self-regulation, the media must consider formulating steps that would determine whether their reporting on certain stories or releasing of certain information may jeopardize the security of the nation or endanger more lives.

⁵³Obuya J, Self-regulation as a tool for ensuring media accountability: The Kenyan experience, *Pacific Journalism Review* (2012)

The media must strive to report with the offence principle in mind. They must not mock or report in a manner that offends certain groups as was seen in the Charlie Hebdo case.

To other researchers:

In order to further this study, one can look at an ideal working framework for anti-terror laws and compare that with the one we have as well focus on whatever laws may exist at the time in relation to media freedom and anti-terror laws.

One may also choose to incorporate an evolution of the security laws in the Kenya to date and compare how they have affected the media.

CHAPTER 6

BIBLIOGRAPHY

Legislation

The Constitution of Kenya, 2010

The Anti-terror Proclamation (Ethiopia) 652/2009

The Security Laws Amendments Act (Kenya), 2014

Editors' Code Committee, Code of Practice (United Kingdom) 2009

Books

Okumu W and Ikelegbe A, *Militias, rebels and Islamist militants: Human insecurity and state crises in Africa*, 2010

Botha A, *The roots of radicalism should inform government's response to terror*, Senior Researcher, Transnational Threats and International Crime Division, Institute Security Studies, 2014

Human Rights Watch, *"Journalism Is Not a Crime" Violations of Media Freedom in Ethiopia*, 2015

Feinberg J, *The Moral Limits of the Criminal Law, Volume 2: Offense to Other*, Oxford University Press, New York 1985

Mill JS, *On Liberty*, Yale University Press, London, 2003

Reports

Fact Sheet No. 32, Human Rights, Terrorism and Counter-terrorism, Office of the United Nations High Commissioner for Human Rights

Journals

Pozen DE, 'The Mosaic Theory, National Security, and the Freedom of Information Act', *Yale Law Journal* 628, (2005)

Wondwossen DK, 'Examining some of the Raisons D'etre for the Ethiopian Anti-Terrorism Law', *Mizan Law Review* Vol. 7 No.1, September (2013)

Obuya J, 'Self-regulation as a tool for ensuring media accountability: The Kenyan experience', *Pacific Journalism Review*, (2012)

Articles

'Julie Posetti: The Paris unity march shows we must protect freedom of expression, not curtail it further' *The Guardian*,
12 January 2015

on 14 January 2015.

'Semiran Kaya: Fighting Press Freedom with Anti-Terrorism Laws' *De Qantara*,
2 February 2012

on 11 February 2015.

Commonwealth Attorney-General's Department' *The Australian Newspaper*,
1 October 2014

on 11 February 2015.

Tamerat Feyis: Ethiopia Journalism under Anti-terrorism law. *The Ethiopia Observatory*,
19 March 2013

on 13 February 2015.

on 20 February 2015.

on 20 February 2015.

on 22 February 2015.

on 5 October 2015

on 6 October 2015.

on 19 October 2015.

'Commonwealth Attorney-General's Department' *The Australian Newspaper*, 1 October 2015

on 19 October 2015.

'Caelainn Barr: Ethiopian media gagged by anti-terror laws' *The Bureau of Investigative Journalism*,

29

September

2011

on 23 October 2015.

'CPJ Officials meet Bereket Simon' *Awramba Times*,

12

June

2012

on 5 November 2015.

'Xiang Bo: Press Freedom Has Its Limits' *Xhinuanet News*,

12

January

2015

on 19

October 2015.

on 2 December 2015.

'Endalk Chala: Campaign To Free Ethiopia's Zone9 Bloggers' *Global Voices Advocacy*,

17

October

2015



Strathmore University

Law School

**ANTI-TERROR LAWS AND THE CURTAILMENT OF MEDIA
FREEDOM: A COMPARATIVE STUDY BETWEEN KENYA AND
ETHIOPIA**

PROJECT PROGRESS LOG BOOK

STUDENT'S NAME: MUTUNGI ZIPPORAH KAGWIRIA

STUDENT'S REGISTRATION NUMBER: 072479

STRATHMORE UNIVERSITY LAW SCHOOL

NAME OF SUPERVISOR: MUKAMI WANGAI

PROJECT PROGRESS LOG BOOK

DATE	SUPERVISOR	CORRESPONDENCE	SUBJECT
5 th January 2014	Santana Monda	E-mail	Dissertation proposal title
21 st January 2014	Santana Monda	E-mail	Organise meeting
22 nd January 2014	Santana Monda	In person	Timelines for completion and research options
4 th February 2014	Santana Monda	E-mail	Submission of draft of introduction after narrowing down of topic
18 th February 2014	Santana Monda	In person	Review of introduction and theoretical framework
24 th February 2014	Santana Monda	E-mail	Submission of reworked title, draft of introduction and theoretical framework
1 st March 2014	Santana Monda	E-mail	Submission of dissertation proposal
20 th March 2014	Santana Monda		Defence of dissertation proposal

Due to unavoidable circumstances, I was not able to continue with Ms. Monda as my supervisor and was subsequently reassigned to Ms. Mukami Wangai who served as my supervisor until completion of the dissertation.

DATE	SUPERVISOR	CORRESPONDENCE	SUBJECT
16 th November 2015	Mukami Wangai	E-mail	Submission of the dissertation proposal
23 rd November 2015	Mukami Wangai	Email	Review of dissertation

			proposal with corrections.
8 th December 2015	Mukami Wangai	Email	Submission of Chapters 2, 3 and 4
14 th December 2015	Mukami Wangai	Email	Comments regarding chapters 2, 3 and 4 and submission of chapters 4, 5 and 6.
15 th December 2015	Mukami Wangai	In person	Discussion of the entire project. Corrections, comments and suggestions.
6 th January 2016	Mukami Wangai	Email	Resubmission of the dissertation with corrections.
7 th January 2016	Mukami Wangai	Email	Final comments and reminder of necessities for submission.
8 th January 2016	Mukami Wangai	In person	Submission of dissertation.

I confirm that the information I have given in this Log is a true and accurate record:

Student: Zipporah Mutungi

Student Number: 072479

Signed: Date:

Supervisor: Mukami Wangai

Signed: Date: