

FIGHT AGAINST TERRORISM AND THE HUMAN RIGHTS CONCERN: A CASE STUDY OF ISRAEL AND HAMAS CONFLICT IN GAZA STRIP

Oyepho, Akeuseph, PhD*

Abstract

Terrorism includes criminal acts intended or circulated to provoke a state of terror in the general public which acts are unjustifiable in any circumstance by whatever considerations. In recent times terrorism has increased exponentially in different parts of the world where hitherto it never occurred. The brazen style of attack on Israel by Hamas terrorists and eventual counter measures by Israel led to war against Hamas terrorist in the Gaza. The pursuit of the war further led to quantum violation of fundamental rights and how peoples' basic freedoms have been affected in the course of the war in the Gaza are evaluated. The work critically examined the fight against terrorism and human rights concern particularly the fight against Hamas by Israel in response to the October 7, 2023 attack on Israel by Hamas. The doctrinal research methodology was adopted. It was found that the October 7th Hamas terrorists attack on Israel violated the Isrealis human rights without justification and further resulted in egregious repression of fundamental rights and basic freedoms of the inhabitants of the Gaza Strip. It was concluded that Hamas invasion of Israel on October 7th, 2023 and the corresponding reprisal attack and further war by Israeli Defence Force (IDF) against the Hamas in Gaza have occasioned continual repression of human rights and fundamental freedoms. Such as the rights to life, dignity of human person, privacy fair trial, education, health; and rights against torture, and so on. It is recommended that Israel adopts counter-terrorism strategies that will not violate human rights and fundamental freedoms in Gaza.

Keywords: Terrorism, Fight against Terrorism, Human Rights, Gaza and Israel Conflict.

1.0 Introduction

The term terrorism is not subject to a universally agreed definition; terrorism can be generally understood as a method of coercion that utilizes or threatens to utilize violence in order to spread fear and thereby attain political or ideological goals.¹ Contemporary terrorist violence is thus distinguished in law from "ordinary" violence by the classic terrorist 'triangle'; A attacks B, to convince C to change its position regarding some action, or policy desired by A, The attack spreads fear as the violence is directed unexpectedly against innocent victims, which in turn put pressure on third parties such as governments to change their policy or position.² Contemporary terrorists utilize many forms of violence, and indiscriminately target civilians, military facilities and state offices³ and so on.

The term 'terrorism' was initially coined to describe the Reign of Terror during the French Revolution from 5th September 1793 to 27th July 1794, during which the Revolutionary Government directed violence and harsh measures against citizens suspected of being enemies of the Revolution.⁴ Also, popular resistance to Napoleon's invasion of the Spanish Peninsula led to a new form of fight – the "guerrilla" which derives from the Spanish word *Guerra*, meaning 'little war'.⁵

* Oyepho, Akeuseph, LLB. LL.M (RSU), BL (Abuja), Ph.D Research Candidate (RSU), Managing Solicitor, Oyepho, Oyepho & Co. No. 10a Deacon Iheke Street, Mgbuoba, Off NTA Road, Port Harcourt, Rivers, State Nigeria. Tel: 08035761997, oyepho.akuseph@ust.edu.ng, akeusephoyepho@gmail.com

¹ United Nations Office on Drugs and Crimes, 'Introduction to International Terrorism' <<https://www.unodc.org>> accessed 16th April, 2024.

²*Ibid.*

³*Ibid.*

⁴*Ibid.*

⁵ AR Friedlander, 'the Origins of International Terrorism: A Micro Legal Historical perspective' (1976)(6) *Israel Yearbook on Human Rights*, 52.

As a weapon of politics and warfare, the use of terrorism by groups can be traced back to ancient times; in its various forms terrorism is as old as government and armed struggle.⁶ The advent of computers and ancillary gadgets, tools, information communication technologies have brought about a new dimension of terrorism, called ‘cyber terrorism’, which refers to the use of computers and/or computer networks, technologies and internet powered equipments to unleash violence or fear on civilian, military facilities, state officials, or attack on critical national information infrastructure of a state in order to attain political or ideological benefits. Accordingly, terrorists carryout their terrorist activities via offline and online or through the physical world and the cyber world. Consequently, countering terrorism now requires technical and scientific knowledge on the workability of computers and computer networks and related technologies in addition to the conventional methods of combating crimes and insecurity.

It has been said that terrorism includes ‘criminal acts intended or circulated to provide a state of terror in the general public, a group of persons or particular persons for political purposes’, and that such acts are in any circumstances unjustifiable, whatever the considerations of a political philosophical, ideological, racial, ethnic, religious or other nature that may be involved to justify them.⁷ Similarly, it has also been said to include “criminal acts” including against civilians, committed with the intent to cause death or serious bodily harm, or taking of hostages, with the intent to provoke a state of terror in the general public or in a group of persons or particularly persons, intimidate a population or compel a government or an international organization to do or to abstain from doing an act.⁸

In the United States of America, the Department of State under the Bureau of Counterterrorism has listed many foreign organizations as terrorist organizations. They include but not constraint to: Segundo Marquetalia, a Revolutionary Armed Forces of Colombia – Peoples’ Army designated on the 1st day of December, 2021 as terrorist organization;⁹ ISIS – Democratic Republic of Congo, designated on 11th day of March 2021 as terrorist organization,¹⁰ ISIS – Mozambique, designated on 11th day of March, 2021 as terrorist organization;¹¹ Harakat Sawa’d Misr (HASM), designated on 14th January, 2021;¹² Asa’b Ahl at-Haq, designated on the 10th of January, 2020;¹³ Islamic Revolutionary Guard Corps (IRGC), designated on the 15th of April, 2019;¹⁴ Jama’at Nusrat al Islamic wal-muslim (JNIM), designated on the 6th of September 2018;¹⁵ al- Ashtar Brigades, designated on the 11th July, 2018;¹⁶ ISIS in the Greater Sahara (ISIS-GS), designated on 23rd May, 2018.¹⁷ Boko Haram in Nigeria, designated on 14th November 2013;¹⁸ Hamas in Gaza strip, designated on 8th October, 1997,¹⁹ Hezbollah in Lebanon, designated on 8th October 1997;²⁰ and so on.

At the United Nations level, the United Nations Office of Counter – terrorism is the body charged with the responsibility to promote international cooperation in the fight against terrorism

⁶ AR Falk, ‘Revolutionaries and Functionaries: The Dual Face of Terrorism’ in Charles C Kegle (ed) *International Terrorism: Characteristics, causes, controls* (Charles St. Martin’s press 1990), 39 – 41.

⁷ UN General Assembly Declaration on Measures to Eliminate International Terrorism (Resolution 49/60) 1994.

⁸ United Nations Security Council Resolution 1566 (2004).

⁹ U S Department of State, ‘Foreign Terrorist Organizations’ <www.state.gov> Accessed 18th April, 2024.

¹⁰*Ibid.*

¹¹*Ibid.*

¹²*Ibid.*

¹³*Ibid.*

¹⁴*Ibid.*

¹⁵*Ibid.*

¹⁶*Ibid.*

¹⁷*Ibid.*

¹⁸*Ibid.*

¹⁹*Ibid.*

²⁰*Ibid.*

and support member states in implementing the global counter – terrorism strategy.²¹ At the national levels, the responsibility of fighting terrorism principally rest on their various Armed Forces and special units; the fight against terrorism whether cyber-terrorism or the conventional one requires international cooperation for optimal results.

Terrorism and counter-terrorism impact negatively on human rights. A reasonable number of political & civil rights, economic and social rights as well as the right to live in a wholesome environment and development are usually negatively impacted. These rights include the rights to life,²² right against torture, cruel, inhuman or degrading punishment or treatment,²³ right to liberty and security of the person;²⁴ right to non-discrimination,²⁵ right to freedom of expression,²⁶ right to health²⁷ and so on.

The October 7, Hamas attack on Israel and Israel reprisal attack and eventual war against Hamas in Gaza have as well affected negatively the human rights of Israelis as well as Palestinians in Gaza. This work will examined and exposed the human rights concerns in the on-going Israel – Hamas conflict in the Gaza strip, with a view to proffering solutions that will assist the actors to respect, protect and honour human rights even in the face of the armed conflict.

2.0 Major Terrorist Attacks in the World

The terrorist attacks of September 11, 2001 has heightened awareness and focus on terrorism around the world; while the 9/11 was certainly one of the worst terrorists' attacks in world history, it is far from the only one.²⁸ Below are some of the worst terrorist attacks around the world; from bombings to hijackings to mass shootings; these attacks have claimed thousands of lives and left families and communities reeling in their aftermath:

2.1 New York City September 11th, 2001 Attacks: In the morning of 11th September, 2001, nineteen terrorist hijacked four planes and carried out coordinated attacks on New York City and Washington D.C, forever changing the course of history; two million, nine hundred and ninety-six (2,000,996) people were killed in the attacks,²⁹ and over six million people were injured making it the deadliest terrorist attack in human history.³⁰

2.2 Boko Haram Uprising: The group Boko Haram, which means 'Western Education is Forbidden' in Hausa was formed in 2002; however, it was in 2009 that they began to gain traction and carry out attacks.³¹ Between 2009 and 2015, Boko Haram carried out a number of attacks; in that time frame, they bombed the United Nations Headquarters in Abuja, killing at least 21 persons and injured sixty (60).³² They also carried out attacks in Baga, where a large number of Boko Haram

²¹ Office of Counter-Terrorism <<https://www.un.org>> Accessed 18th April, 2024.

²² African Charter on Human and Peoples' Rights 1981,art 4; Constitution of the Federal Republic of Nigeria 1999 (as amended), s.33(1); International Covenant on Civil and Political Rights 1966, art 6; Universal Declaration of Human Rights 1948, art 3.

²³*Ibid*, art 5; *Ibid*, s. 34; *Ibid*, art 7; *Ibid*, art 5.

²⁴ Constitution (n²²), s. 35; African Charter (n²²), art 9; International Covenant on Civil and Political (n²²), art 9.

²⁵*Ibid*, s. 42; *Ibid*, art 2; *Ibid*, art 26.

²⁶*Ibid*, s. 39; *Ibid*, art 9; *Ibid*, art 19.

²⁷ Universal Declaration (n²²), art 25.

²⁸ World Atlas, 'Worst Terrorist Attacks in World History' <<https://www.worldatlas.com/articles/worst-terrorist-attacks-in-history.html>> Accessed 18th April, 2024.

²⁹*Ibid*.

³⁰*Ibid*.

³¹*Ibid*.

³²*Ibid*.

fighters seized the town and invaded the multinational joint task force headquarters and army base. The death toll was over seven hundred.³³

2.3 Yumbi Violence of December 16, 2018: Not fewer than eight hundred and ninety people, predominantly Banunus, were killed in Yumbi and three other nearby villages (Bongende, Nkolo, and Cam Nbanz) in Mai – Ndombe province, Democratic Republic of the Congo (DRC), between December 16 and 18, 2018.³⁴ The violence was sparked by a dispute over burial of a local Chief. The violence in Bongende fishing village was the worst seen in years; an estimated 465 houses and buildings were burned down or looted. Many people were left homeless, and without food or water.³⁵

2.4 Yazidi Communities Bombings in Iraq in August 14, 2007: On the 14th day of August, 2007, Yazidi communities in Iraq were bombed by Sunni insurgents; the attack killed seven hundred and ninety six (796) people and wounded one thousand, five hundred (1,500) more.³⁶ The bombings were some of the deadliest attack against the Yazidi people. The Yazidi is a religious minority group that is persecuted by Sunni Muslims in Iraq. Many homes and businesses were destroyed and many people were killed or wounded.

2.5 Mogadishu Bombing of October 14, 2017: On the 14th day of October, 2017, series of bombings occurred in the capital city of Somalia, which resulted in the killing of over five hundred and eighty seven (587) people and victims were civilians, including many women and children.³⁷ The bombings were carried out by a group of suicide bombers who drove trucks loaded with explosives into busy market places and then detonated them. The explosives occasioned widespread destruction leveling entire buildings, and leaving large craters on the ground.

2.6 Cinema Rex Fire in Iran on 29th August, 1978: The Cinema Rex was one of the most popular movie theaters in Abadan, Iran. On the night of August 19, 1978, while theater goers' were watching the Deer, four men locked the doors and doused the theatre with airplane fuel, and set it ablaze. The Fire killed between three hundred and seventy seven (377) and four hundred and seventy (470) people. Only a couple of hundred people managed to escape.³⁸

2.7 Hamas Terrorist Attack on Israel on October 7, 2023: On the 7th day of October, 2023 armed attacks and massacres by Hamas in kibbutz Re'im, kibbutz Be'ri, kfar Aza, Ofakim, and other communities near Gaza border plus rocket attacks throughout central Israel left 2,199 killed and about 5,400 people injured, while many taken hostage.³⁹

2.8 Beslan School Siege in Russia on September 1, 2004: The siege began early in the morning on September 1, when a group of armed men burst into school number one during a ceremony to mark the start of the school year. The militants took more than 1,100 people hostage, including 777 children.⁴⁰

³³*Ibid.*

³⁴*Ibid.*

³⁵*Ibid.*

³⁶*Ibid.*

³⁷*Ibid.*

³⁸*Ibid.*

³⁹ W R Johnson, 'Worst Terrorist Strikes Worldwide' <<https://www.johnsonsarchive.net/terrorism/wrijp255.html>> Accessed 21st April, 2024.

⁴⁰ World Atlas (n²⁸).

From the above stated major terrorist attacks, one thing is evident, that is, terrorism attacks human rights and basic freedoms; same is true of badly prosecuted counter-terrorism efforts.

2.9 Hamas Terrorist Attack in Israel on October 7, 2023

Hamas attack of October 7, 2023 violates a number of human rights and fundamental freedoms. The rights to life,⁴¹ the right against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁴² rights to freedom of movement,⁴³ association⁴⁴ and assembly⁴⁵ and the right to sound physical and mental health⁴⁶ were violated. There were unlawful interference with privacy, enforced disappearances and abductions, restrictions to freedom of expression and media freedom, including violence or threats against journalists,⁴⁷ and violation of right to liberty and security of the person.⁴⁸ The Hama attack on Israel left 2,100 individuals killed and injuring more than 5,400 and abducting 253 hostages.⁴⁹ It has been approximated that 30,000 persons are internally displaced as a result of the Hamas attack of October 7, 2023 on Israel communities.⁵⁰ Houses and valuable properties were set ablaze by the various blasts from the attack, consequently, houses and families were shattered. All these are clear human rights violations and violators must be held accountable.

3.0 Specific Human Rights Violations in the Context of Israel Counter – Terrorism Efforts in Gaza

Terrorism and counter- terrorism or the fight against terrorism generally affects the enjoyment of human rights. While it is not possible to provide an in-depth analysis of all human rights concerns in the context of the on-going conflict in Gaza, this sub-section identifies current and emerging human rights challenges.

3.1 The Right to Life

Both international human rights law,⁵¹ regional human rights law⁵² and national laws⁵³ recognize the right and duty of states to protect those individuals subject to their jurisdiction. Article 6 of the International Covenant on Civil and Political Rights 1966 provides for the right to life as follows: ‘Every human being has inherent right to life; the right shall be protected by law; no one shall be arbitrarily deprived of his right to life’. Similarly, Article 4 of the Universal Declaration of Human Rights 1948, guarantees the right to life thus: ‘Everyone has the right to life liberty and security of person. The state of Israel has obligation under international law to respect, and protect the right to

⁴¹ Constitution (n²²), s. 33; African Charter (n²²), art 4; International Covenant on Civil (n²²), art 6; Universal Declaration (n²²), art 3.

⁴²*Ibid*, s. 34; *Ibid*, art 5; *Ibid*, art 7; *Ibid*, art 5.

⁴³*Ibid*, s. 41; *Ibid*, art 12.

⁴⁴*Ibid*, s. 40; *Ibid*, art 10; *Ibid*, art 22.

⁴⁵*Ibid*; *Ibid*, art 11; *Ibid*, art 21.

⁴⁶ International covenant on Economics, Social and Cultural Rights 1966, art 12.

⁴⁷ US Department of State, ‘2023 Country Reports on Human Rights Practices’ <<https://www.state.gov>> accessed 22nd April, 2024.

⁴⁸*Ibid*

⁴⁹*Ibid*.

⁵⁰ J K Rozdilsky, ‘Gaza War: The Displaced survivors of the October 7 Attack Remain in Need of Support’<<https://theconversation.com>> Accessed 22nd April, 2024.

⁵¹ International Convention on Civil (n²²), art 6; Universal Declaration (n²²), art 3.

⁵² African Charter (n²²), art 4; European convention for the protection of Human Rights and Fundamental Freedoms 1950, art 2(1); 1969, art 4.

⁵³ Constitution (n²²), s. 33(1); African Charter on Human and Peoples’ Right (Ratification and Enforcement) Act, Cap A 9 Laws of Federation of Nigeria, 2004, s.4; Constitution of India 1949, art 21; Constitution of the Republic of South Africa 1996, s. 11; 14th Amendment to the United States Constitution (1868), s.1; Constitution of the Federal Republic of Brazil 1988; art 5.

life of inhabitants of the Gaza Strip. On the other hand Israel owes a duty to life of its nationals and non-nationals resident in Israel or the Gaza Strip from attack from state and non-state actors. Some of the measures that states (including the state of Israel) have adopted to protect individuals from acts of terrorism have themselves posed serious challenges; 'deliberate or targeted killings' to eliminate specific individual as an alternative to arresting them and bring them to justice; shoot-to-kill law enforcement polices in response to perceived terrorist threats.⁵⁴ These measures, which are: shoot-to-kill and deliberate or targeted killings have been adopted by the IDF in Gaza. The Israel Defence Force has shot and killed many Hamas terrorists and non-Hamas individuals in their on-going war in Gaza against Hamas terrorists group. The Gaza ministry of Health has reported that about 34,183 have been killed, and about seventy two percent of those killed were children.⁵⁵

It has been expressed by the Pakistani Court, that implicit in the right to life is the right to food and protection against wastage of excess food.⁵⁶ In *Shehla Zia v Wapda*,⁵⁷ it was held by Paskistani Supreme Court that the right to healthy environment was part of the fundamental right to life and right to dignity under article 9 and 14 of the Constitution of Pakistan respectively. Similarly the Indian Supreme Court in *Francis Choleric v Union Territory of Delhi*,⁵⁸ observed Par Justice Bhagwati regarding the right to life as follows:

We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and, co-mingling with fellow human beings.⁵⁹

It was further held in Indian case of *Subash kumar v State of Behar*,⁶⁰ that the right to life as a fundamental right under Art 21 of the Constitution of India includes the right to enjoyment of pollution free water and air for full enjoyment of life. In *Olga Tellis* case,⁶¹ the Supreme Court of India observed that an important facet of the right to life is the right to the means of livelihood, because no person can live without the means of livelihood; if the right to the means of livelihood is not treated a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

The United Nations Human Rights Committee in its General Comment No.36 has stated that Article 6 of the International Covenant on Civil and Political Rights recognizes and protects the right to life of all human beings. The right to life is the supreme right for which no derogation is permitted, even in situation of armed conflict and other public emergencies that threaten the life of the nation.⁶² The right to life has crucial importance both for individuals and for society as a whole.⁶³

⁵⁴ P Alston, 'Extrajudicial, Summary or Arbitrary Executions: Report of the Special Rapporteur Phillip Alston' (E/CN4/2006/53, paras 44 – 54; MSchenin, 'Report and protection of Human and Fundamental Freedoms while countering terrorism' (A/HRC/4/26 paras 74 – 78.

⁵⁵ Aljazeera, 'In numbers: 200 Days of Israel War on Gaza' <<https://www.aljazeera.com>> Accessed 24th April, 2024.

⁵⁶ *Mohammed Ahmad Panson and Others v Federation of Pakistan*, HCJDA 38, Write Petition No. 840 of 2019 (24 December, 2019).

⁵⁷ PLD 1994 SC 693.

⁵⁸ Air 1981 SC 746.

⁵⁹*Ibid.*

⁶⁰ (1991) ISCC 598.

⁶¹ 1986 SC 180.

⁶² Human Rights Committee, General Comment No. 6 (1982) on the Right to life, para 1; General Comment No. 14 (1984) on the Right to life, para 1; *Camargo v Colombia*, communication no. 45/1979, para 13.1; *Babaeram-Adhim v Suviname*, communications nos. 146/1983 and 154/1983, para 14.3.

⁶³ Human Rights Committee General Comment No. 36 on Article 6 of ICCPR on Right to life.

The committee further stated that the right to life is a right that should not be interpreted narrowly; it concerns the entitlement of individuals to be free from acts and omissions that are intended to cause premature death, as well as to enjoy a life of dignity.⁶⁴

Considering the above positions on the right to life, it is hereby expressed that the destruction of over sixty two percent of residential homes by relentless bombing by IDF,⁶⁵ over one million people facing catastrophic lack of food,⁶⁶ lack of water and unprecedented air and land pollutions are clear infractions of the right to life of dwellers of the Gaza strip and Israel ought to be held by the International Community to account. Though, it is the right of the nation of Israel to defend itself and citizens against attacks from within and outside, however, this right is not to be exercised outside the circumference of international law. Hamas terrorist violated international law when it invaded the nation of Israel and killed over two thousand (2,000) persons and injured over five thousand persons. Both of them are supposed to be held accountable by the international community for war crimes.

3.2 The Right Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The right against torture and other cruel, inhuman or degrading treatment or punishment is absolute under international law. It is a peremptory norm or a norm of *jus cogens* and is non derogable even in state of emergency threatening the life of the nation under international and human rights treaties.⁶⁷ Article 5 of the Universal Declaration of Human Rights 1948 provides for the right against torture, as follows: ‘No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. On the same vein, Article 7 of the International Covenant on Civil and Political Rights 1966, states that ‘No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment; in particular, no one shall be subjected without his free consent to medical or scientific experimentation’.

The prohibition of torture does not submit to the threat posed by terrorism or alleged danger posed by individuals or group of individuals to the security of a state.⁶⁸ It does not also submit to counter terrorism efforts by state actors. In practice however, states have often adopted policies and methods to confront terrorism that affect, circumvent and undermine this absolute prohibition.⁶⁹ For instance, the use of torture to elicit information from terrorist suspects is absolutely prohibited, as is the use in legal proceedings of evidence obtained by torture, whether at home or abroad, and of ‘secret evidence’ put forward by prosecution in violation of the principle of non-admissibility of evidence extracted by torture.⁷⁰ Regarding conditions of detention, practices such as the use of secret and incommunicado detention,⁷¹ as well as prolonged solitary confinement and similar measures aimed at causing stress, may amount to torture, cruel, inhuman or degrading treatment.⁷²

The 2023 country reports on Human Rights practices on Israel, West Bank and Gaza by the United States Department of State indicated torture, and other cruel, inhuman, or degrading treatment or

⁶⁴*Ibid.*

⁶⁵ Aljazeera (n⁵⁴).

⁶⁶*Ibid.*

⁶⁷ International Convention on Civil (n²²), art 7 and 4(2); European Convention on Human Rights (n⁵¹), arts 3 and 15(2); American Convention on Human Rights (1969, art 5 and 27(2)); African Charter (n²²), art 5; Geneva Convention art 3; Inter-American Commission on Human Rights, ‘Report on the situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System’ (OEA/ser.L/Vii.105, doc. 40 rev, para 118).

⁶⁸ Committee against Torture, Views on Communication No. 39/1996, *Tapia Paez v Sweden*, 28 April, 1997.

⁶⁹ Committee against Torture Report (A/59/44. Paras 67, 126 and 144; M Nowark, (special Rapporteur). On question of torture and other cruel inhuman or degrading treatment or punishment report (E/CN4/2006/6).

⁷⁰ Convention against Torture and other cruel inhuman or degrading treatment or punishment 1984, art 15.

⁷¹ Commission on Human Rights Resolution 2005/39.

⁷² Human Rights Committee, General Comment No. 20 (1992), para 6; and situation of Detainees at Guantanamo Bay (E/CN4/2006/120, para. 53).

punishment by the Israel defence forces.⁷³ Human rights organizations raised concerns over reports of systemic torture and cruel, inhuman and degrading treatment or punishment of Palestinian detainees in Israeli facilities after October 7.⁷⁴ Prisoners are being tortured to death in some detention centers in Israel as capture by the 2023 country reports on Human Rights practices in Israel, West Bank and Gaza.⁷⁵

3.3 Right to Liberty and Security of the person

All persons are protected against the unlawful or arbitrary interference with their liberty. This protection is applicable in the context of criminal proceedings, as well as other areas in which the state might affect the liberty of person.⁷⁶ In practice, states as part of their efforts to counter terrorism, have adopted measures which have impacted on the liberty of persons, such as: pretrial procedures for terrorism offences, including provisions concerning bail and remand of persons in custody awaiting trial.⁷⁷ administrative detention,⁷⁸ control orders,⁷⁹ and compulsory hearings.⁸⁰

States in their quest to counter terrorism, can lawfully detain persons suspected of terrorist activity, as it is with other crimes; however, if a measure calls for denial of an individual liberty, due compliance with international and regional human rights laws related to liberty and security of persons, the right to recognition before the law and right to due process are essential. Any such measures must at least, allow for judicial examination and the ability of detained persons to have the lawfulness of their detention determined by a judicial authority.⁸¹ Adherence to due process and the right to fair hearing is pertinent for the proper safeguarding of persons liberty and scrutiny. Most of the measures adopted by the Nation of Israel in her fight against Hamas terrorists since the 7th October 2023, have violated the right to liberty and security of the person.⁸²

It is reported that since the Hamas terrorist attack of 7th October 2023 on Israel which over a thousand persons were killed and over two hundred and fifty abducted, the number of Palestinians arrested in the Gaza strip exceeds seven thousand, three hundred and fifty (7,380).⁸³ It is further stated that those figures do not include the thousands of adults and children the Israeli Army has reportedly detained, tortured and interrogated in the makeshift prisons across Gaza, outside any legal or civilian oversight.⁸⁴ Similarly, it has also been reported that Israel has also employed quasi-judicial measures to arrest thousands of Palestinians without charge; of all the Palestinians detained since October 7, about 3,050 are held in 'administrative detention', an emergency measure that Israel inherited from the colonial British mandate for Palestine.⁸⁵ Under administrative detention, prisoners

⁷³ United States Department of State, 'The 2023 country reports on Human Rights practices: Israel West Bank and Gaza' (n⁴⁶).

⁷⁴*Ibid.*

⁷⁵*Ibid.*

⁷⁶ Human Rights Committee, General Comment No. 8 (1982) on the right to liberty and security of persons (art 9), para s.1 and 4.

⁷⁷ This simply means detention before laying a criminal charge against a person for purpose of further investigation whether that person was involved in the commission, or assisted in the commission, of a terrorist offence

⁷⁸ This means detention to prevent a person from committing, or assisting in the commission of, a terrorist offence.

⁷⁹ Imposing conditions on a person, short of detention, to prevent that person from committing or assisting in the commission of, a terrorist offence, including in the detention of a person awaiting determination of immigration or refugee status

⁸⁰ This is detention and compulsory questioning of a terrorist suspect, or non-suspect, to gather intelligence about terrorist activities

⁸¹ International Covenant on Civil (n²²), art 9(3) – (4); *Civil Liberties Organization v Nigeria, Communication No. 137/94, No. 139/94, No. 154/96 and No. 161/97*, para 33.

⁸² United States Department of States (n⁴⁶).

⁸³ Aljazeera, 'more than 7,350 West Bank Palestinians arrested by Israel during Gaza War' <www.aljazeera.com> Accessed 30/07/2024.

⁸⁴*Ibid.*

⁸⁵*Ibid.*

are held indefinitely and given no information about the charges against them or the ostensible evidence incriminating them.⁸⁶ In many cases, Israeli authorities do not inform Palestinian families of the whereabouts of their detained loved ones – which amounts to an enforced disappearance, a violation of international law.⁸⁷ According to the Israel – Palestine Director at Human Rights Watch ‘Israel’s sweeping use of administrative detention is not lawful.’⁸⁸

3.4 Right to non – discrimination and prohibition of profiling

The Principles of equality and non-discrimination are central to human rights law and are recognized as norms of *jus cogens*.⁸⁹ The Inter-American Court of Human Rights, for instance, has stated that ‘the principles of equality before the law, equal protection before the law and non-discrimination belong to *jus cogens*, of national and international public order rest on it and it is the principle that permeates all law’.⁹⁰ In the specific context of counter – terrorism, the committee on the Elimination of Racial Discrimination has said that the principle of non-discrimination is not capable of limitation since it has become a norm of *jus cogens*; this is reflected within international and regional documents on the promotion and protection of human rights while countering or fighting against terrorism.⁹¹

Also, in its General Recommendation⁹², the committee on the Elimination of Racial Discrimination has called on states to ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, decent or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping. On its part, the Inter-American Commission on Human Rights has cautioned, ‘any use of profiling or similar devices by a state must comply strictly with international principles governing necessity, proportionality and non-discrimination and must be subject to close judicial scrutiny’.⁹³ Similarly, the European Commission against Racism and Intolerance has asked Governments to ensure that no discrimination ensues from legislation and regulations, or their implementation, in the field of law enforcement checks.⁹⁴

On their part, the European Union Network of Independent Experts on Fundamental Rights has expressed serious concerns about the development of terrorism profiles; profiling on the basis of characteristics such as nationality, age or birth place, the experts have cautioned, ‘presents a major risk of discrimination’.⁹⁵ This is also applicable to profiling based on their religion. Profiling or similar devices must strictly comply with the principles of necessity, proportionality and non-discrimination; they should be subject to close judicial scrutiny and should be periodically reviewed’.⁹⁶

The 7th October attack on Israel has given rise to her adoption of measures apparently discriminatory and profiling in nature in the fight against Hamas terrorists on the Gaza strip. It has been reported by the United States Department of State, that the October 7th, 2023 attack gave rise

⁸⁶*Ibid.*

⁸⁷*Ibid.*

⁸⁸*Ibid.*

⁸⁹ Universal Declaration (n²²), art 1; International Covenant on Civil (n²²), art. 26.

⁹⁰ Inter-American Court on Human Rights, Advisory Opinion OC – 18/03 on the juridical condition and rights of the undocumented migrants, 17 September 2023, para 101.

⁹¹ Human Rights Committee, General Comment No. 29 (2001) on Stats of Emergency (art 4), paras 8 and 16, and E/CN4/2002/18 annex, para 4(1).

⁹² No.30 (2004)

⁹³ Inter-American Commission on Human Right, ‘Report on Terrorism and Human Rights’, para 353.

⁹⁴ European Commission against racism and intolerance, general policy recommendation No. 8 on combating racism while fighting terrorism’ (CRI (2004) 26).

⁹⁵ European Union Network of Experts in Fundamental Rights, ‘The Balance between freedom and security in the response by European union and its member states to the terrorist threats’ (2003), p.21.

⁹⁶ E/CN4/2005/103, paras 71 – 76; A/HRC/4/26, paras 32 – 62.

to significant concerns, including heightened fear and mistrust between Jewish and Arab citizens in daily life, impacting workplaces, campuses, and social media as well as a widespread fear of potential for inter communal violence within the country; there were numerous reports of discrimination against Arab/Palestinian and Druze Israel citizens and residents.⁹⁷ Citizens, including Arab/Palestinian Muslims, Ethiopian origin, faced persistent institutional and societal discrimination.⁹⁸ Palestinian doctors in Israel penned an open letter decrying ‘racism’, militarism and hypocrisy’ in Israeli medical system.⁹⁹ These and many more are evidences of discriminatory measures adopted by the nation of Israel in the fight against Hamas terrorist, particularly, after the October 7 attacks on Israel by Hamas.

3.5 Other Human Rights Violations by Israel in the Fight Against Hamas Terrorism in Gaza

The right to freedom of expression and opinion, right to privacy and unlawful surveillance, right to freedom of movement and association, right to property, right to fair trial are constantly being violated in the on-going Israel – Hamas Wars in Gaza according to the 2023 Country Reports on Human Rights Practices on Israel, West Bank and Gaza by the United States Department of State.

4.0 Conclusion and Recommendations

Terrorism includes criminal acts intended or circulated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes and such acts are in any circumstances unjustifiable, whatever the considerations of the political, philosophical, ideological, racial, ethnic, religious or other nature that may be involved to justify them. It can also be understood to mean criminal acts including against civilians, committed with the intent to cause death or serious bodily harm, or taking of hostages, with the intent to provoke a state of terror in the general public or 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 an act.

Acts of terrorism injure or violate human rights and curtail the exercise of fundamental freedoms. It also aims at destabilization of democratic governments. Whenever terrorists attacked a people, rights such as the rights to life, dignity and security of human person, non-discrimination, privacy, due process and fair trial; and the right against torture, and other cruel, inhuman or degrading treatment or punishment are majorly infringed. Terrorism is an enemy of the exercise and enjoyment of human rights and fundamental freedoms. The fight against terrorism must be carried in consonance with international and regional human rights instruments. Any measure adopted by states in the fight against terrorism should be laced in conformity with international human rights law, as any such measure adopted by states without considering human rights obligations may be counterproductive.

The fight against Hamas terrorists’ organization by Israel in Gaza has witnessed large-scale violations of human rights and basic freedoms. The right to life of Palestinians in Gaza is constantly violated as about 34,185 Palestinians including women and children have been killed as reported by Gaza Ministry of Health; the rights to live in a wholesome environment, the right to the means of livelihood, shelter, water are near elusions to the inhabitants of the Gaza strip. There are serious cases of torture, discrimination, profiling on religious, ethnic and nationality and so on. It is therefore recommended and of the essence too that Israel adopts measures that conform to International Laws in the fight against terrorism to minimize human rights violation and allow citizens especially civilians enjoy fundamental freedoms in Gaza.

⁹⁷ United States Department of State (n⁴⁶).

⁹⁸*Ibid.*

⁹⁹ J Deaz and L Frayer, ‘Palestinians in Israel cite threats, firings and discrimination after Oct. 7’ <www.npr.org> accessed 29th April, 2024.