Kenya's Changing Counterterrorism Policy: From the Unsecuritization to the Securitization of Terrorism

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Declaration

I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary education institution.

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November 11, 2019

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Date

Abstract

This study investigates why Kenya, unlike other states around the world, did not enact anti-terrorism legislation that would have enabled it to have counterterrorism measures in the aftermath of 9/11 and only did so in 2012. Previous studies argue that concerns about the negative effects of anti-terrorism laws on Kenya's nascent democratic system and its civil liberties were the main reasons why Kenya's government could not enact proposed anti-terrorism legislation in 2003 and 2006. However, these studies do not explain why those who had previously opposed anti-terrorism legislation supported the enactment of an anti-terrorism law in 2012 even though their views about the importance of civil liberties and democracy had not changed.

Similarly, previous studies which suggest that Kenya enacted anti-terrorism legislation in 2012 because of the detrimental effects of terrorism on the country's security and economic interests do not explain why these factors did not elicit the same response in 2003 and 2006. Departing from previous studies, this research hypothesises that Kenya's enactment of counterterrorism measures was dependent on consensus building among the country's executive and legislative arms of government. To test this hypothesis, this thesis proposed six contextual factors that were used to explain how and why perceptions about the terrorism threat in Kenya developed and changed.

Two methods, discourse analysis and process tracing, were used to establish the relationships between the variables in this study. In this regard, discourse analysis provided rich descriptions of the construction and evolution of the terrorist threat in Kenya. The rich descriptions were initially derived from written texts including the Kenya National

Assembly Hansard, policy documents, court documents and public testimonies. The data was then triangulated with descriptions obtained from spoken texts including semi-structured interviews, archival press conferences and media recordings. The recurring linguistic patterns obtained from these descriptions formed the narratives that explained how Kenya's government framed terrorism and the impact that this had on the enactment of anti-terrorism legislation. Process tracing supplemented discourse analysis by pinpointing the conditions under which the securitization of terrorism occurred.

In addition to unravelling Kenya's puzzling counterterrorism behaviour, this thesis contributes to knowledge in two ways. First, it identifies and expounds on new variables that explain Kenya's puzzling counterterrorism behaviour. Second, this thesis extends literature in securitization studies by explaining how contextual factors can be used to understand both unsecuritization and securitization processes.

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List of Abbreviations

ABC: Australian Broadcasting Corporation

AIAI: Al-Itihaad al-Islamiya

ASWJ: Ahlu Sunna wal Jamaa

AU: African Union

AMISOM: African Union Mission in Somalia

ATPU: Anti-Terrorism Police Unit

BATUK   British Training Unit Kenya

CIPK: Council of Imams and Preachers of Kenya

CKRC: Constitution of Kenya Review Commission

CORD: Coalition for the Restoration of Democracy

EALS: East African Law Society

EU: European Union

FBI: Federal Bureau of Investigations

FDI: Foreign Direct Investment

FORD-Kenya: Forum for the Restoration of Democracy-Kenya

GDP: Gross Domestic Product

GSU: General Service Unit

GSPC: Salafist Group for Preaching and Combat

GWOT: Global War on Terror

HREC: Human Research Ethics Committee

IED: Improvised Explosive Device

IGAD: Intergovernmental Authority on Development

IPK: Islamic Party of Kenya

IPOA: Independent Policing Oversight Authority

IS: Islamic State

JKIA: Jomo Kenyatta International Airport

KADU: Kenya African Democratic Union

KANU: Kenya African National Union

KNHCR: Kenya National Commission on Human Rights

KHRN: Kenya Human Rights Network

LAPSSET: Lamu Port-South Sudan-Ethiopia Transport

LRA: Lord's Resistance Army

LDP: Liberal Democratic Party (Kenya)

MUHURI: Muslims for Human Rights

MUF: Mwambao United Front

MOU: Memorandum of Understanding

MRC: Mombasa Republican Council

MYC: Muslim Youth Centre

NDP: National Development Party

NAM: Non-Aligned Movement

NAMLEF: National Muslim Leaders Forum

NFD: Northern Frontier District

NGO: Non-Governmental Organization

NSC: National Security Council

NIS: National Intelligence Service

NPSC: National Police Service Commission

OAU: Organization of African Unity

OBOR: One-Belt One-Road

ODM: Orange Democratic Movement

PNU: Party of National Unity

PLO: Palestine Liberation Organization

PFLP: Popular Front for the Liberation of Palestine

PATRIOT Act: Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act

RZ: Revolutionary Cells (Germany)

SLDF: Sabaot Land Defence Force

START: The National Consortium for the Study of Terrorism and Responses to Terrorism

SUPKEM: Supreme Council of Kenya Muslims

TFG: Transitional Federal Government

UN: United Nations

UNEP: United Nations Environment Programme

UNODC: United Nations Office on Drugs and Crime

UIC: Union of Islamic Courts

US: United States

USC: United Somali Congress

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Chapter One

Introduction

Research Puzzle and Significance of the Study

The shocking terrorist attacks in the United States (US) on September 11, 2001 (9/11) had a profound impact on the fight against terrorism around the world. Many states, including democratic ones, reacted to these attacks by developing counterterrorism measures that transcended traditional policing and legislative practices (Roach 2011; Jenkins and Godges 2011).

Counterterrorism measures essentially involved two things: 1) Legislative measures that greatly expand the definition of terrorism-related offenses, the scope of punishment for terrorism-related crimes and police powers to deal with terrorism offenses; and 2) Greater use of force and coercive measures to prevent, minimize and eliminate terrorism and terrorism-related offenses. As a result, the post-9/11 fight against terrorism, commonly referred to as "the war on terror," was characterized by the use of military force, the use of diverse surveillance methods and technologies, enhanced interrogation techniques, the indefinite or prolonged detention of terrorist suspects, the prosecution of terrorist suspects with a lower burden of proof in comparison to other criminal cases, extraordinary rendition as well as warrantless and blanket police searches (Simmons 2010; Tsoukala 2008; Boot and Kirkpatrick 2011).

This section of the study expounds on Kenya's pathway to counterterrorism measures as two successive research puzzles. It begins by highlighting how 9/11 changed the way many states in Africa combated terrorism before discussing how Kenya's behaviour initially differed from, and then resembled, that of other African states. The section then explains why Kenya's behaviour is puzzling and lays out the focus of this thesis. The last part of this section briefly states the potential benefits of this research and the overall impact it will have on scholarship and policy in the field of terrorism and counterterrorism.

Several African states enacted counterterrorism measures after 9/11. In East Africa, Uganda, Tanzania and Mauritius passed counterterrorism laws in 2002 while Ethiopia and Rwanda enacted counterterrorism legislation in 2009 (Whitaker 2010; Ploch 2010). Although these pieces of legislation were unique to each East African state, there were salient similarities between the laws. In Ethiopia, for instance, the *Proclamation on Anti-Terrorism Law, 2009* gave law enforcement agencies the right to gather evidence through interception and surveillance, the power to detain terrorist suspects for a period of up to four months as well as the right to "make a sudden search in order to prevent the act [of terrorism]" (Proclamation on Anti-Terrorism Law 2009 [Ethiopia], part 3[16]). These provisions were similar to those in Uganda's *Anti-Terrorism Act, 2002* which stated that "subject to this Act, an authorised officer shall have the right to intercept the communications of a person and otherwise conduct surveillance of a person under this Act" (The Anti-Terrorism Act 2002 [Uganda]*,* part VII [19]). The law also gave Uganda's police force unlimited stop and search powers and allowed for the indefinite detention of terrorist suspects without trial.

Other African states also enacted counterterrorism legislation to deal with the growing terrorism threat in the continent. In West Africa, for instance, Ghana and Gambia enacted their counterterrorism laws in 2002. Within the same region, Nigeria included counterterrorism provisions in its *Economic and Financial Crimes Commission Act* in 2002 and later developed aspects of this law into the *Terrorism Prevention Act* in 2011 (UNODC 2011). All countries in the Sahel and northern part of Africa enacted counterterrorism legislation by 2008. While some countries in this region, such as Mali, Niger, Tunisia and Mauritania, passed new counterterrorism legislation in 2008 (Alexander 2016; UNODC 2009, 121-137), others, including Egypt and Algeria, revised their counterterrorism laws in the wake of 9/11 (Blaydes and Rubin 2008).

As states in Africa aggressively enacted laws to combat the spread of terrorism, Kenya appeared to be indisposed to this new wave of counterterrorism measures and only enacted counterterrorism legislation in 2012. The contrast between Kenya's behaviour and that of other African states was clearly demonstrated in Kenya's lacklustre attempts to enact two proposed counterterrorism laws, namely the *Suppression of Terrorism Bill* in 2003 and the *Anti-Terrorism Bill* in 2006. In his examination of counterterrorism practices in Kenya, Fisher (2013) noted that unlike several African countries, such as Uganda, which passed counterterrorism laws quickly and without controversy, Kenya's government gave in to opposition from several Non-Governmental Organizations (NGOs) and politicians who campaigned against the country's proposed counterterrorism laws in 2003 and in 2006. Lind and Howell (2010) made similar observations when they noted that the Kenyan government quickly and silently withdrew both bills amidst opposition from civil society.

Another indication that Kenya did not want to enact counterterrorism measures was its reluctance to use military force against terrorist groups. Even though Kenya was a significant facilitator of peace in Eastern Africa and had a long history of being at the forefront of peacekeeping missions in many parts of the world, the country was reluctant to include its troops as part of the African Union Mission in Somalia (AMISOM) - a regional peacekeeping mission that was created in 2007 to battle Al-Shabaab militants in Somalia (Fisher 2012; Olsen 2014; Ahere 2015).

Close to a decade after 9/11, Kenya shifted its approach to counterterrorism in 2012. Three key events mark 2012 as a watershed in Kenya's counterterrorism approach. First, it was in October of this year that Kenya enacted the *Prevention of Terrorism Act, 2012* which was the country's first counterterrorism legislation. Second, the enactment of Kenya's first counterterrorism legislation appeared to embolden the country's Anti-Terrorism Police Unit (ATPU), which significantly increased its counterterrorism operations in 2012 leading to the arrest and detention of hundreds of terrorist suspects (Whitaker 2014). Third, it was also in 2012 that Kenyan troops became part of the AMISOM forces in Somalia (Fisher 2013; Mwangi 2016a).

Kenya's reluctance to enact counterterrorism measures between 2001 and 2011 and the subsequent shift in its policy in 2012 presents two puzzling scenarios for this study. In the first scenario, Kenya's behaviour is puzzling for several reasons. First, the country bore the brunt of terrorism in East Africa. Between 1998 and 2011, Kenya was the victim of several large and small-scale terrorist attacks. While large-scale attacks included the 1998 bombing of the US Embassy in Nairobi as well as the 2002 suicide bombing of a hotel in Mombasa, small-scale attacks involved sporadic kidnappings, grenade attacks,

indiscriminate shootings and bombings in various parts of Nairobi, Mombasa, Garrissa, Wajir and Mandera (Meservey 2013; Miyandazi 2012). These attacks not only resulted in hundreds of deaths and thousands of injuries but also huge financial losses for Kenya and the entire East African region. Although direct financial losses, such as the destruction of property, were mainly experienced in Kenya, other losses, such as disruptions and stagnation in the tourism sector, as well as significant reductions in the flows of Foreign Direct Investment (FDI), were felt in most parts of the East African region (Morris 2015; Were 2015; Business Monitor International 2014).

Kenya was also under considerable pressure from its development partners to enact counterterrorism measures. This is largely because the country has been a key geopolitical partner of Western democracies since it gained independence in 1963. Not only is Kenya home to some of the largest diplomatic missions in Africa, including the US Embassy and the British High Commission, it also hosts the United Nations Environment Programme (UNEP), which is one of four major United Nations (UN) offices in the world. Kenya also serves as the headquarters of several key international NGOs in Africa.

Furthermore, the country has signed several formal security agreements with Western states, such as the US, the UK and Germany. These agreements allow these states to use Kenya's military facilities in counterterrorism operations and to set up military bases, training grounds and surveillance teams for purposes of promoting the security interests of Western states (Global Security 2016). In fact, in 2005, the former US Ambassador to Kenya, Johnnie Carson, stated that "no other country in East Africa or the greater Horn of Africa is more important to the United States [in the fight against terrorism] than Kenya" (Carson 2005, 173). He went on to say, "although the United States has

developed increasingly close ties with the armed forces of Ethiopia and Uganda, Kenya remains a core partner and ally in tracking down Al Qaeda affiliated terrorists in East Africa and preventing any further anti-terrorist Western attacks in Kenya and the region" (Carson 2005, 173).

Consequently, the US expected Kenya to support the war on terror by enacting counterterrorism measures. This was not only because of Kenya's long-term relations with the US and its allies, but also because both Kenya and the US had been victims of Al Qaeda terrorist attacks. On its part, the US provided economic incentives to facilitate the development of counterterrorism measures in Kenya. These included generous financial aid packages as well as training and technical support for Kenya's security agencies (Prestholdt 2011; Olsen 2014; Ploch 2010). Despite this, the Kenyan government did not demonstrate a great deal of enthusiasm for counterterrorism measures until 2012.

Kenya's development partners also expected the country to enact counterterrorism measures in line with its obligations as a member of the UN. The UN Security Council reacted to 9/11 by adopting Resolution 1373, which obliged all states to enact measures that would prevent and punish acts of terrorism. Two key factors, besides the significant terrorism threat that Kenya faced, made Resolution 1373 important to the country's security. First, there were indications that transnational terrorist groups, such as Al Qaeda, had established recruitment, training and financial hubs in African states including some of Kenya's neighbours. For instance, Osama bin Laden, who was Al Qaeda's leader until his death in 2011, not only set up businesses worth millions of dollars in Sudan but also established training camps in the country where "hundreds of his followers were tutored in paramilitary tactics" (Bergen 2001, 82). In fact, the Clinton administration held Sudan

responsible for the 1998 US Embassy bombing in Kenya and had retaliated against Sudan with a series of missiles aimed at a pharmaceutical company that was suspected of manufacturing a toxic nerve agent (Guyatt 2000; Lobel 199).[1] It, therefore, seemed logical for Kenya to domesticate Resolution 1373 to protect itself from terrorist threats emanating from within East Africa.

The second factor that made Resolution 1373 significant to Kenya as well as Africa was concern over the rise of religiously-inspired terrorist groups in some African states and the capacities of these groups to carry out attacks beyond the states of their origin. These groups included the Lord's Resistance Army (LRA) from Uganda and the Islamic Maghreb from Algeria (formerly known as the Salafist Group for Preaching and Combat [GSPC][2]). Indeed, three years before the enactment of Resolution 1373, concerns about the violence meted out by these groups led the Organization of African Unity (OAU) to adopt the Convention on the Prevention and Combating of Terrorism[3] in 1999. This Convention defined what constituted a terrorist act, codified counterterrorism norms and outlined common strategies for combating terrorism in Africa (OAU 1999). When the OAU transformed into the African Union (AU) in 2002, it urged its members to adopt a unified counterterrorism framework that was in line with Resolution 1373 (UN 2001; Allison 2015; Makinda, Okumu and Mickler 2016). Despite these developments, Kenya did not enact counterterrorism measures until 2012.

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[1] On August 20, 1998, the US launched several Tomahawk missiles against the Al-Shifa pharmaceutical company in Sudan to retaliate against the 1998 US Embassy bombings in Kenya and Tanzania. The US alleged that the pharmaceutical company had links to Al Qaeda and was manufacturing the toxic VX agent that can be used in chemical warfare (Lobel 1999).
[2] GSPC was founded by a former commander of the Armed Islamic Group (GIA).
[3] Also known as the Algiers Convention.

The Kenyan government's decision to enact counterterrorism measures in 2012 was equally puzzling. This is because several politicians and members of civil society who supported counterterrorism measures in 2012 had aggressively opposed similar measures when they were proposed in 2003 and 2006. Indeed, influential members of Kenya's parliament, together with prominent members of Kenya's civil society, blocked efforts to enact the *Suppression of Terrorism Bill* in 2003 and the *Anti-Terrorism Bill* in 2006. These individuals publicly declared that they would not support the proposed counterterrorism laws because the laws would compromise human rights and civil liberties in the country (Whitaker 2008, 2010; Lind and Howell 2010; Carson 2005; Mogire and Mkutu 2011). Hence, it is surprising that those who opposed the enactment of counterterrorism laws in 2003 and 2006 played a key role in the successful passage of a similar law, the *Prevention of Terrorism Act*, in 2012 (Whitaker 2014; Lind, Mutahi and Oosterom, 2015). Furthermore, it is puzzling that the reasons that led to the enactment of counterterrorism measures in 2012, such as concerns over Kenya's security and the effects that terrorism was having on its economic interests (Whitaker 2014; Mwangi 2016 a and b), did not prompt a similar response between 2001 and 2011.

The two puzzles discussed above raise two important research questions that this thesis will answer. First, why did the Kenyan government fail to enact counterterrorism measures between 2001 and 2011 when it had good domestic and external reasons for doing so? Second, why did the Kenyan government shift its position in 2012 and enact counterterrorism measures?

Answering these questions will contribute to knowledge about Kenya's national security decision-making process, which could, in turn, enrich the discipline of terrorism

and counterterrorism studies in several ways. First, the study provides a better understanding of how and why terrorism threats have been unsecuritized and securitized in Kenya. In the context of a securitization process, unsecuritization is the rejection of extraordinary security measures, whereas, securitization is the acceptance of extraordinary security measures to address an existential threat.[4] As is explained in the literature review section, even though previous studies identify several causal factors, such as protecting Kenya's nascent democracy, that may explain why Kenya did not enact counterterrorism measures between 2001 and 2011, they do not explain why these factors ceased to be important in 2012 resulting in the enactment of counterterrorism measures that year. Moreover, the reasons that the studies identify as causal factors that led to the enactment of counterterrorism measures in 2012, such as concerns over Kenya's security and economic interests, were also present between 2001 and 2011. Yet, Kenya did not enact counterterrorism measures during those years. Explaining how and why terrorism threats have been unsecuritized and securitized in Kenya will, therefore, provide insights into these gaps.

Second, the study will critically evaluate the conventional belief that after 9/11 governments in developing states tended to bandwagon with the US in the war on terror. Indeed, in a book chapter on "African Agency in International Relations," Blaauw (2016) noted that "because of their relative weakness African states are expected to bandwagon with stronger or greater power(s)" (Blaauw 2016, 97) on security issues in international relations. Within the context of counterterrorism measures, the discussions in the preceding pages showed that even though the behaviour of several African states conformed to this

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[4] Unsecuritization and securitization are explained further in the theoretical framework section.

assumption, between 2001 and 2011 the Kenyan case did not. The investigation of Kenya's puzzling behaviour will provide a better understanding of why some African states, such as Kenya, did not join the war on terror in the wake of 9/11.

Lastly, the study will provide a better understanding of the development of Kenya's counterterrorism measures by drawing inferences from primary data about the phenomenon. It has been noted by several scholars in the field of terrorism and counterterrorism studies, such as Schuurman and Eijkman (2013) as well as Crelinsten (2009) that one of the key weaknesses of research in the field is its overreliance on secondary data. While there is nothing wrong with the reviewing of literature in scholarship, "the overreliance on this form of research has starved terrorism studies of the empirical data needed to validate the claims and theories being presented" (Schuurman and Eijkman 2013, 2). The National Consortium for the Study of Terrorism and Responses to Terrorism (START) in the US has made similar observations. In 2015, START reviewed all scholarly works on terrorism and counterterrorism in Africa and noted that a key weakness in most studies was the shortage of empirical analyses (START 2015). Indeed, the commentaries and conclusions made in several studies that were reviewed during this research were problematic because they did not have an empirical research base.

The information that was analysed in this thesis was, therefore, drawn from a wide variety of both primary and secondary sources. The sources used in this research included records from Kenya parliament's Hansard, court records, interviews with key informants who have knowledge of or have participated in the securitization of terrorism in Kenya, audio and video recordings as well as written material from Al Kataib which is responsible

for Al Shabaab's media productions, video recording from individuals who were responsible for radicalizing young people in Kenya and material that was obtained from the archives of major media houses including the Nation media group, Standard media group, Royal media services, the British Broadcasting Corporation (BBC) and Al Jazeera.

Literature Review

This section reviews studies about the development of counterterrorism measures in Kenya. It is organized into five clusters that represent the themes that previous studies have used to explain Kenya's counterterrorism behaviour. These themes are: civil liberties and democracy; the role of Kenyan Muslims; perceptions about terrorist threats in Kenya; Kenya's economic interests; and anti-American sentiments.

Civil Liberties and Democracy

Several studies have examined how concerns about civil liberties and democracy influenced the development of counterterrorism measures in Kenya. Lind and Howell (2010) argued that Kenya failed to enact counterterrorism measures from 2001-2011 because a few influential members of Kenya's civil society protested against the illiberal nature of the country's proposed anti-terrorism bills. They noted that Kenya's attempt to pass its first counterterrorism bill, the *Suppression of Terrorism Bill*, in 2003 elicited strong opposition from a coalition of human rights organizations, the media, Muslim groups and members of the Parliamentary Committee on Justice and Constitutional Affairs. These groups, Lind and Howell (2010) argued, were opposed to the Bill because of the discriminatory language that was used to define and identify terrorism activities and

suspects. In their view, such language, including the criminalization of modes of dressing that might raise suspicion, was prejudicial against the Muslim community in Kenya. In this context, human rights organizations accused Kenya's government of using the proposed laws "to enhance intelligence gathering as well as policing and surveillance of suspect communities" (Lind and Howell 2010, 341).

In addition to this, some civil society groups believed that the discretionary powers that the proposed Bill had allocated to law enforcement agencies was subject to abuse and would reverse the democratic achievements that Kenya had gained after 24 years of despotic rule by its second president Daniel arap Moi. Instead of the draconian provisions in the proposed Bill, the civil society groups suggested that "mechanisms for fighting terrorism must safeguard human rights and that counterterrorism should be a partnership between the state and society and not a unilateral extension of bureaucratic and policing powers" (Lind and Howell 2010, 345). In conclusion, Lind and Howell (2010) observed that even though the majority of Kenya's civil society was indifferent to the proposed counterterrorism measures, Kenya's government withdrew the Bill in 2003 due to the opposition that it faced.

According to Mogire and Mkutu (2011), organizations such as Amnesty International and the East African Law Society (EALS), as well as some members of Kenya's opposition parties, campaigned against attempts to enact counterterrorism laws in Kenya. These organizations criticized the proposed laws because their ambiguous description of terrorist acts could be used to stifle the activities of opposition parties and undermine fundamental rights and freedoms in Kenya. Concerns over human rights and

democracy were brought to the fore when the government could not garner support for two proposed counterterrorism laws namely; the *Suppression of Terrorism Bill* in 2003 and the *Anti-Terrorism Bill* in 2006. These laws were rejected for being "unconstitutional, incompatible with international human rights standards, discriminatory towards Muslims and a threat to democracy as well as national harmony" (Mogire and Mkutu 2011, 477).

Whitaker (2007, 2008, 2010, 2014) also argued that the main reason Kenya failed to enact counterterrorism measures between 2001 and 2011 was because political leaders and other members of civil society wanted to protect the country's emerging democratic system. She noted that the country's transition from autocratic to democratic rule in 2003 emboldened political leaders to challenge any policies that they thought would roll-back Kenya's democratic achievements. One such policy, Whitaker (2007) argued, was Kenya's proposed counterterrorism legislation. She pointed out that political leaders in Kenya opposed counterterrorism legislation because the concerns that they had about the moral and legal implications of some of the counterterrorism laws superseded their fears about terrorist threats in Kenya.

Whitaker's analysis of Kenya's experience drew parallels between concerns that were raised about counterterrorism measures in the US and Kenya. The US counterterrorism law, known as the *Patriot Act*,[5] "limits individual freedom in the name of national security" (Whitaker 2007, 1018). For instance, the *Patriot Act* permits law enforcement agencies in the US to carry out enhanced surveillance and detain some

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[5] Some of the provisions in the *Patriot Act* were changed when the *US Freedom Act* was enacted into law on June 2, 2015. The new Act put restrictions on how US law enforcement agencies collect mass data from the public (USA Freedom Act 2015).

terrorist suspects indefinitely. Like the *Patriot Act*, Whitaker (2007) contended that, Kenya's proposed anti-terrorism legislation, which included the *Suppression of Terrorism Bill, 2003,* and the *Anti-Terrorism Bill, 2006*, placed constraints on individual freedoms and rights as trade-offs for security. Whitaker (2007, 2008, 2010) further noted that while various organizations and individuals started litigation processes to oppose the *Patriot Act*; human rights groups, politicians and some members of civil society were at the forefront of opposing counterterrorism legislation in Kenya. In a nutshell, Whitaker (2007, 2014) asserted that democracies, be they advanced, as is the case in the US, or emerging, as is the case in Kenya, cannot easily enact counterterrorism measures because of opposition from various groups, including civil society, that operate in a democratic space.

Most of the works reviewed argued that civil liberties and human rights were important considerations in the development of counterterrorism measures in Kenya. However, there are two substantial issues that warrant further investigation. First, even though previous studies contend that Kenya did not enact counterterrorism measures to protect civil liberties from 2001-2011, there are no studies that explain why Kenya, which was still a democratic state in 2012, suddenly changed its position. In other words, was the protection of democracy ever important if civil liberties were quickly relegated to the back burner in favour of counterterrorism measures in 2012? Second, there is disagreement on the impact that civil society had on Kenya's decision not to enact counterterrorism measures after 9/11 and by extension protect the country's emerging democracy. While some researchers give prominence to the role played by civil society (Mogire and Mkutu 2011; Whitaker 2007, 2008, 2010, 2014) others are more cautious and point out that several

civil society groups were surprisingly unperturbed by the possibility of having draconian counterterrorism laws (Lind and Howell 2010). The conflicting arguments about the role of civil society and the importance of civil liberties weaken the assertion, made in most studies, that civil society blocked the enactment of counterterrorism measures.

The Role of Kenyan Muslims

Several studies have examined whether and how Kenyan Muslims have influenced the development of counterterrorism measures in Kenya. In her assessment of the development of counterterrorism measures in Kenya, Whitaker (2010) contended that Kenya's political leaders were unwilling to enact counterterrorism measures after 9/11 because they did not want to alienate Muslims who make up a significant voting bloc in Kenya's presidential election. She noted that multiparty politics and the constitutional requirement that presidential candidates were expected to win a minimum of 25% of the votes in every province (and every county after the promulgation of the new constitution in 2010) made it difficult to win Kenya's presidential race without the Muslim vote. Politicians, therefore, had to be sensitive to the views of Kenyan Muslims, who were opposed to the proposed counterterrorism laws.

Whitaker's (2010) arguments concurred with those of Mogire and Mkutu (2011) who argued that the only reason why Kenya attempted to develop counterterrorism measures was because "US [military and economic] assistance was dependent on the country's support of the Global War on Terror (GWOT)" (Mogire and Mkutu 2011, 484). Nevertheless, authorities in Kenya did not enact the counterterrorism laws in 2003 and

2006 "because of concerns about the reaction of [Kenyan] Muslims" (Mogire and Mkutu 2011, 477).

When examining why Kenya enacted counterterrorism laws in 2012, Whitaker (2014) argued that support from the Muslim community that had campaigned against counterterrorism legislation in the past boosted the government's efforts to enact counterterrorism measures. She observed that Kenyan Muslims, including those from the Association of Muslim Organizations in Kenya, supported the *Prevention of Terrorism Bill* when it was tabled in parliament in July 2012. In addition to this, senior politicians as well as military and intelligence officials from Kenya's predominantly Muslim Somali community appeared to support the country's efforts to enact counterterrorism measures in 2012. In this context, Whitaker (2014) observed that ethnic Somalis in Kenya's government wanted Kenya to fight against Al Shabaab terrorists in Somalia. They, therefore, lobbied for Kenyan troops to create a buffer zone[6] that would separate Al Shabaab controlled areas in Somalia from Kenya, and supported Kenya's military incursion into Somalia in 2011.

The reviewed studies highlighted the significance of the Muslim community in Kenya's quest to enact counterterrorism measures. Nevertheless, it is unclear why Muslims, who vehemently opposed counterterrorism legislation after 9/11 because they believed that they would be unfairly targeted by the laws, later supported a similar law in 2012. In fact, contrary to the arguments made in previous studies, there were Muslims who opposed the enactment of the *Prevention of Terrorism Act* in 2012. For instance, a month

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[6] The proposed name for the buffer zone was Jubaland (Whitaker 2014, 95).

before Kenya's president assented to the new law, senior politicians from Kenya's Somali community and other Muslim leaders held a press conference to protest against what they described as "a foreign agenda being imposed on the government of this land [Kenya] through threats of sanctions" (Citizen TV September 23, 2012, 0:39). They also stated that the law was "draconian … and that it would reverse our hard gains of fundamental freedoms and civil liberties provided by our constitution" (Citizen TV September 23, 2012, 0:59). The conflicting reactions towards counterterrorism measures among prominent members of Kenya's Muslim community warrant further investigation.

Perceptions about the Terrorist Threat in Kenya

Several studies draw a link between how the terrorist threat was perceived in Kenya and the effects that this had on the country's decision to enact counterterrorism measures. According to the former US Ambassador to Kenya, Johnnie Carson (2005)[7], Kenya was reluctant to enact counterterrorism legislation after 9/11 because its political leaders did not believe that terrorism was a significant threat to Kenya's security. Although Carson (2005) pointed out that Kenya cooperated with the US in the area of intelligence sharing, he wondered why top Kenyan politicians refused to acknowledge the existence of foreign terrorist cells or the possibility of home-grown terrorists in the country. This was despite evidence showing that at least two "Al Qaeda-affiliated cells had been operating in Kenya for over a decade" (Carson 2005, 174). Carson (2005), therefore, concluded that the US

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[7] In addition to serving as the US Ambassador to Kenya from 1999-2006, Carson headed the US State Department task force to respond to the 1998 US Embassy bombings in Kenya and Tanzania. Carson also served as the Vice President of the National Defence University from 2003-2006 before being appointed as the National Intelligence Officer for Africa at the National Intelligence Council in the US (The American Academy of Diplomacy n.d).

and the Kenyan governments had different perceptions about the threat of terrorism in Kenya. While US officials genuinely believed that Kenya was susceptible to terrorist attacks, Kenyan officials, including top politicians and bureaucrats, thought that the US was exaggerating the presence of terrorist cells within Kenya.

Kenyan officials were not the only ones who did not think that terrorism was an existential threat to Kenya. Lind and Howell (2010) pointed out that a section of Kenya's civil society opposed anti-terrorism legislation after 9/11 by claiming that terrorism was not a significant threat to Kenya's national security. Some members of civil society argued that the terrorist attacks carried out in Kenya targeted American interests and that Kenyans were unfortunate collateral victims of the attacks. Many Kenyans also believed that counterterrorism was not a public policy priority when compared to other public problems such as "economic disparities, limited access to resources and criminal activity" (Lind and Howell 2010, 347). In addition to this, some of Kenya's political leaders felt that the US was forcing Kenya to institute legal and security measures against a war that was between the US and foreign terrorists.

Mogire and Mkutu (2011) made similar observations. They argued that Kenyan politicians perceived counterterrorism as an imperialist tool that the US was using to pursue its global security agenda. Kenyan politicians and prominent members of civil society further believed that the US was the driving force behind the development of counterterrorism measures because the US government viewed Kenya as a strategic location for its counterterrorism operations in the Horn of Africa. Hence, Kenyan politicians and members of civil society claimed that the proposed *Suppression of*

Terrorism Bill, 2003, and the *Anti-Terrorism Bill, 2006* were not designed to address Kenya's security needs, but rather to tackle what the US government perceived as terrorist threats against American interests in Africa.

The shift in Kenya's counterterrorism policy in 2012, from unsecuritization to securitization, is attributed to attacks that took place in Lamu in 2011. In a study that examined why Kenya enacted counterterrorism measures in 2012, Lind, Mutahi and Oosterom (2015) suggested that Al Shabaab's kidnapping of tourists and aid workers from Kenya, in September and October 2011, triggered the Kenyan government's resolve to adopt counterterrorism measures. The kidnappings made the country's leaders finally believe that terrorism was a serious threat to peace and stability in Kenya. This was reflected in comments made by Kenya's Internal Security Minister, George Saitoti, in the immediate aftermath of the kidnappings. Noting that Kenya had a right to defend itself under international law, the Internal Security Minister observed:

> Kenya has been and remains an island of peace, and we shall
> not allow criminals from Somalia, which has been fighting
> for over two decades, to destabilize our peace. The
> kidnappers in Lamu who sneaked in and ran away must not
> be given a chance again (Lind, Mutahi and Oosterom 2015,
> 22).

Following on from the above declaration, Kenya launched Operation Linda Nchi (Operation Defend the Nation) and sent troops to Somalia in what became the country's

"first significant cross-border military campaign since its independence" (Lind, Mutahi and Oosterom 2015, 22).

Based on the arguments above, previous studies concur that Kenya did not enact counterterrorism measures between 2001 and 2011 because members of Kenya's parliament and the country's cabinet ministers did not believe that terrorism was a serious national security threat (Carson 2005; Mogire and Mkutu 2011; Lind and Howell 2010). The studies also argue that many senior Kenyan politicians and bureaucrats, who had rejected the idea that terrorism was a national security threat in the aftermath of 9/11, later changed their views leading to the enactment of counterterrorism measures in 2012 (Lind Mutahi and Oosterom 2015).

Other than making references to the two kidnapping incidences in Lamu in 2011, the studies do not explain what other factors led to the realization that terrorism was an existential threat in 2012. In so doing, the studies overlook the clear disconnect between what Kenya's politicians and cabinet ministers claimed between 2001 and 2011 and what was happening in Kenya during that time. For instance, the Global Terrorism Database (2018) shows that terrorist threat levels in Kenya remained relatively high between 2001 and 2011. There was also a sharp increase in the number and severity of terrorist attacks in Kenya after 9/11; there were several terrorist attacks in big cities, such as Nairobi and Mombasa, as well as in smaller towns, such as Garissa, Wajir and Mandera (Meservey 2013; Miyandazi 2012). These attacks included: Al Qaeda's bombing of a hotel in Mombasa in November 2002; a suicide bombing at a religious gathering in 2007; the kidnapping of a Kenyan worker in Somalia in April 2008; Al Shabaab's kidnapping of two Kenyan aid workers in November 2008; Al Shabaab's kidnapping of two nuns from Kenya

in November 2008; Al Shabaab's kidnapping of a Kenyan cleric in 2009; an Al Shabaab grenade attack on a bus in Nairobi in December 2010; a rocket attack in Garissa in October 2011; an Al Shabaab bomb attack on a Kenyan security vehicle in October 2011, Al Shabaab's kidnapping of two doctors at the Dadaab refugee camp in October 2011 and several grenade bombings in Nairobi in October 2011 (For details see Appendix 1; Mickolus 2014; Al Jazeera 2017a; Global Terrorism Database 2018; Institute for Economics and Peace 2015).

Furthermore, between 2001 and 2011, Kenya featured in several lists of the top ten countries most affected by terrorism in the world (Institute for Economics and Peace 2015). Given this evidence, why did Kenya's government reject counterterrorism measures amidst the fatalities and destruction caused by terrorist attacks between 2001 and 2011? In addition to this, previous studies do not explain why members of parliament, cabinet ministers and civil society, who were often deeply divided on several policy issues, could create a unified front against counterterrorism measures for almost a decade only to turn around and support the very measures that they had earlier opposed. This thesis answers these questions by explaining the factors that led to the realignment of the Kenyan government's position on counterterrorism measures.

Kenya's Economic Interests

Did efforts to protect Kenya's traditional and emerging economic interests influence the government's decisions about enacting counterterrorism measures in the country? Carson (2005) noted that Kenya's government was wary that the country's image as a tourism

destination would be undermined if it publicly admitted that terrorism was a security threat. Hence, although President Mwai Kibaki supported the proposed counterterrorism legislation in 2003, the Kenyan government silently withdrew the legislation as it could not garner enough support in parliament.

Within the context of Kenya's traditional and emerging economic interests, Mwangi (2016b) argued that in addition to security concerns, Kenya's decision to enact counterterrorism measures in 2012 was motivated by economic concerns. By taking a stance against terrorism, Kenya hoped to secure Lamu, a coastal town that is approximately 690 kilometres from the Kenya-Somali border. Mwangi (2016b) gave two reasons why Lamu was important. First, Lamu was an essential part of Kenya's US$1 billion tourism industry. Second, Kenya is constructing a multi-billion-dollar port in Lamu that will serve the East African region. The Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) corridor will pass through Kenya's north-eastern regions and provide a link between Kenya, Ethiopia and South Sudan. It will include "pipelines, rail line, highways, airports, an oil refinery and extra deep berths for next generation super tankers" (Mwangi 2016b, 123; Al Jazeera 2017b).

There are two limitations with the arguments that link Kenya's economic interests to the decisions that the country made about counterterrorism measures. First, it is important to interrogate the claim that Kenya failed to enact counterterrorism measures because its government believed that doing so would taint the country's image as a safe tourist destination and have a negative impact on tourism revenue. Even though some Kenyan politicians and some stakeholders in the tourism industry held this view, many others did not. For instance, after 9/11, political leaders from regions that depended on

tourism revenue as well as individuals who had invested in the tourism industry urged the government to increase security and take a tougher stance against terrorism as a strategy of safeguarding the tourism industry (Munene 2012).

Besides, from the perspective of its development partners in the West, Kenya's image as a safe tourism destination was pegged to its government's willingness to be part of the war on terror. Therefore, Western states that were among the biggest suppliers of tourists to Kenya issued travel advisories against Kenya on the ground that its failure to enact counterterrorism measures was tantamount to its unwillingness to fight terrorism (Munene 2012; Fisher 2013). The economic consequences of such travel advisories were deeply adverse. As Okumu (2007) noted, "income from tourism-related industries [dropped] by at least 70 percent whenever such [travel] alerts [were] issued against countries [like Kenya] that are dependent on revenue from tourism" (Okumu 2007, 46). Indeed, in 2004, Kenya's Ministry of Foreign Affairs estimated that the country had lost approximately USD 139 million because of the travel ban issued by the UK government (Okumu 2007).

Based on the premises above, enacting counterterrorism measures immediately after 9/11 would have pacified Kenya's development partners and bolstered the country's image as a safe tourism destination. Hence, the argument that Kenya's government rejected counterterrorism measures to protect the country's image needs further investigation.

Second, Mwangi (2016b) does not explain why some of the key economic concerns that triggered the enactment of counterterrorism measures in 2012 did not result in a similar response between 2001 and 2011. Afterall, as Mwangi (2016b) stated, "Lamu has always been of strategic importance to Kenya's US 1 billion coastal tourism industry" (Mwangi

2016b, 123). Given this fact, why did it take Kenya so long to enact counterterrorism measures if such measures were integral to protecting the country's tourism industry? Given the shortcomings in the previous studies, what other reasons, economic or otherwise, triggered the Kenyan government's decision to enact counterterrorism measures in 2012?

Anti-American Sentiments

A few studies have argued that anti-American sentiments and efforts to demonstrate political autonomy from the US were key reasons why Kenya did not enact counterterrorism measures in the immediate aftermath of 9/11. According to Whitaker (2007, 2014), some Kenyan politicians believed that the US was coercing the government to enact counterterrorism laws that were similar to the US *Patriot Act*. For instance, the politicians[8] claimed that the US had issued travel alerts against Kenya because the country had not given in to US demands to pass counterterrorism legislation.

A number of Kenyan human rights activists[9] also believed that the US was the driving force behind Kenya's proposed counterterrorism legislation in 2003 and 2006. The activists claimed that US foreign aid to Kenya was contingent upon the enactment of an anti-terrorism law. Whitaker (2007, 2014) disputed this claim arguing that US foreign aid to Kenya increased despite the country's failure to pass counterterrorism legislation after 9/11. However, she acknowledged that US diplomats tried, without success, to push for the

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[8] Although Whitaker's articles do not indicate who the politicians were, parliamentary debates indicate that a few members of parliament such as Titus Ngoyoni and Aden Duale, wondered whether the travel advisories had been issued with the intention of pressuring Kenya to enact an anti-terrorism law (Kenya. Parliament. July 28, 2004, 3029-3031).

[9] They included: 1) Kangethe Mungai, the coordinator of Release Political Prisoners which is a human rights group in Kenya and 2) Isaak Hassan, an advocate of the High Court in Kenya and a member of the Constitution of Kenya Review Commission (VOA 2009; Hassan 2003).

adoption of counterterrorism legislation in Kenya. Whitaker (2007, 2010, 2014) noted that US diplomatic efforts did not bear fruit as prominent members of Kenya's parliament reacted to US pressure by vowing to block any attempts by the government to pass counterterrorism legislation.

Whitaker's studies (2007, 2010, 2014) show that some politicians and human rights activists in Kenya rebuffed counterterrorism measures after 9/11 because they believed that the US was imposing these measures on Kenya. The anti-American views that were expressed can be understood within the framework of post-colonial nationalism. Post-colonial nationalism is associated with political elites, in former colonies, who share a common interest in protecting their states from new forms of economic, political and social control by former colonial powers and other powerful states. In the case of Africa, the suspicions that political elites have about powerful states (particularly former colonial states) is intrinsically tied to the continent's experiences during the colonial period (Ahluwalia 2001). For instance, the term terrorist was used and abused in the context of liberation struggles during the colonial period (Ford 2011).

Another facet of post-colonial nationalism is the belief that Africa's engagement with developed countries is largely based on an exploitative relationship. This belief is often used as a lens through which some political elites view policies that have originated from Western states. In Kenya's case, counterterrorism measures, especially counterterrorism legislation, was often viewed as an American agenda. As Mogire and Mkutu (2011, 485) observed, "critics [of counterterrorism] argue that Kenyan counterterrorism policy serves as a cover for US imperialism."

Notwithstanding the compelling arguments above, it is highly unlikely that anti-American sentiments had a significant impact on Kenya's failure to enact counterterrorism measures between 2001 and 2011. This is because there are several indications that a section of Kenya's politicians had historically encouraged and welcomed America's influence in domestic politics in Kenya. For instance, the US was credited with helping some members of Kenya's opposition to exert pressure on the country's second president, Moi, leading to Kenya's transition from a one-party state to a multi-party state in 1991 (Munene 2001). Indeed, several members of Kenya's opposition, who had campaigned against the Moi government before and after Kenya became a multiparty state, were prominent members of Kenya's parliament between 2001 and 2011. Moreover, surveys on pro- and anti-Americanism revealed that Kenya was consistently ranked as a pro-American state (Datta 2014; Gettelman 2006). In light of these arguments, it is unclear if anti-Americanism played a decisive role in Kenya's rejection of counterterrorism measures in the aftermath of 9/11. By extension, it is also unclear if a shift in Kenya's attitude towards the US in 2012 contributed to the securitization of terrorism and the enactment of counterterrorism measures.

Organization of the Thesis

This thesis is divided into six chapters that unravel Kenya's puzzling counterterrorism policy. It begins with a detailed account of the theoretical framework and research design of the study. This is followed by a critical assessment of political violence in Kenya noting that the country's oscillation between ethnopolitical violence and terrorism had an impact on how the terrorism threat was perceived and constructed. Chapter three also explains

how several factors that affected counterterrorism policymaking in Kenya emerged. They range from the contextual factors that were identified in chapter one to underlying factors that were used to instigate ethnopolitical violence and terrorism in Kenya. Essentially, chapter three sets the stage for many of the arguments that are made in subsequent chapters.

Chapter four focuses on the rise of homegrown terrorism in Kenya. The chapter explores whether homegrown terrorism in Kenya is linked to the rise of Al Shabaab, first in Somalia and later in Kenya. The chapter examines Al Shabaab's recruitment and radicalization patterns in Kenya and investigates their effects on terrorism attacks in the country. Furthermore, chapter four identifies a new variable which may explain why Kenya is the preferred target of Al Shabaab attacks outside Somalia. The new variable has not been discussed in previous studies and may provide insights about the way forward for Kenya's counterterrorism policy.

Next, is chapter five which explains how and why Kenya's transition from autocracy to democracy affected the country's counterterrorism making process. This chapter begins with a brief but critical discussion about how autocratic rule was entrenched in Kenya over a period of 40 years before the country elected a coalition of opposition parties in 2002. By discussing Kenya's autocratic past, chapter five identifies the root causes of impunity and unprofessionalism in Kenya's security agencies and institutions and examines whether these factors impeded the government's ability to identify threats to national security. Chapter five also examines the intrigues of key actors in Kenya's coalition government as they grappled with the machinations of power-sharing amid efforts to enact counterterrorism measures.

The last half of chapter five focuses on events that happened after the promulgation of a new constitution in Kenya in 2010. The new constitution was hailed as an important development because it provided the framework for reforming Kenya's security agencies and institutions. The reforms that were implemented and their impact on Kenya's counterterrorism policy are critically discussed. Additionally, the 2010 constitution contains several provisions that safeguard the individual rights and freedoms of Kenyan citizens. In many ways, the 2010 constitution was a critical step in the long struggle to entrench democracy in Kenya. This chapter examines the effects of democracy on Kenya's counterterrorism policy.

Chapter six focuses on the economic costs and benefits of enacting counterterrorism measures in Kenya. It investigates why the LAPSSET project and the discovery of oil in Kenya changed how the country's securitization actors perceived the terrorism threat. The anticipated economic benefits of the LAPSETT project and Kenya's oil discovery are discussed and the vulnerability of their installations to Al Shabaab attacks are analysed. Additionally, the chapter discusses the importance of tourism to Kenya's economy and the impact that this had on counterterrorism policymaking.

Finally, the last chapter of this thesis is divided into three parts. The first part provides an overview of the puzzle that the research sought to solve, the motivations for the research as well as its objectives. This is followed by discussions on the key findings of this research and some of their policy implications. The third part of the conclusion highlights the contributions that this research has made to knowledge about Kenya's counterterrorism policy and securitization theory.

Chapter Two

Theoretical Framework, Hypothesis and Research Methods

Introduction

The aim of this chapter is to critically discuss the theoretical framework, hypothesis and methodology that were used to study Kenya's counterterrorism making process. Security policymaking processes can be studied using a variety of frameworks. Given the sheer number of frameworks in International Relations, this thesis will only highlight some of the alternative theories that have been used to understand security decision making processes before focusing on securitization theory as the most appropriate framework for this study. This chapter also explains how the hypothesis was developed and elaborates on the methods that were used to collect and analyse data.

Alternative Frameworks for Studying Security Policymaking Processes

Security making processes can be studied using an array of frameworks. They range from liberalism which can be used to understand how liberal ideas impact policy decisions to pluralism which focuses on the role of non-state actors in policymaking processes. One of the most commonly used frameworks in security research is Graham Allison and Phillip Zelikow's conceptual model on decision making. According to Allison and Zelikow (1999), the behaviour of governments during the process of decision making can be

understood and predicted by combining three models of analysis. The first model known as the rational policy model postulates that states make decisions based on the selection of the most pragmatic policy from several policy choices. The process of selection is guided by a logical analysis of the pros and cons of each policy choice until an optimum decision is made. While it may appear as if governments are the sole decision makers in foreign policy and security matters, they do not act unilaterally rather, other actors play critical roles in the decision-making process.

The role of other actors can be understood by using the second and third models. The second model known as the organizational process model views the decision that a government makes as a cumulative output of the rules, structures, cultures and procedures of all the bureaucratic organizations whose tasks and responsibilities are relevant to the policy choice that must be made. Since policy related to security matters such as counterterrorism are quite complex, their implementation will often involve several organizations, each working to achieve its assigned task. Allison and Zelikow (1999) also point out that because governments are made up of several organizations with varying standards of procedures, a government policy may not reflect the overall security strategies of other key actors in the political system. The third model, referred to as bureaucratic politics, focuses on the role of political actors at the top of organizations whose tasks and responsibilities are relevant to the policy choices that are under consideration. These political actors engage in various bargaining games that eventually result in a policy that represents the interests of the most influential negotiators. Allison and Zelikow (1999) conclude that irrespective of the competing policy interests that may exist in a political

system, decision making processes must be guided by a state's capacity to distinguish between vital interests and other interests.

Allison and Zelikow developed a very useful model for understanding how different stakeholders in a government influence the policymaking process. However, by placing emphasis on the objectivity of security problems and the decision-making process, the model leaves very little room for exploring how security policies develop in different socio-political contexts. The study is, therefore, founded on securitization theory which provides a framework for investigating how varying contextual settings impact security policies.

Securitization Theory and Counterterrorism Policymaking in Kenya

This study is grounded in the assumptions of securitization theory which provides a framework for understanding the processes through which security threats are constructed and addressed. Balzacq (2011b) identified two prerequisites for using securitization theory in research. First, the problem being investigated should be "a focus of public attention or debate" (Balzacq 2011b, 32). Second, "the issue should be a target for activities related to public opinion or legal and/or political actions" (Balzacq 2011b, 32). As discussed in the puzzle and literature review of this thesis, terrorism and counterterrorism were key issues in Kenya's public debate for many years. Securitization theory is, therefore, well suited for this study.

Initiated by Ole Wæver in the early 1990s, securitization theory departs from the traditional notion that security issues are objective threats[10] and instead views security as subjective problems that are socially constructed into threats through discursive processes (Wæver 2000, 2003). According to Buzan, Wæver and de Wilde (1998) the discursive process is illocutionary and intersubjective. It involves social interactions, referred to as speech acts, between: 1) a securitizing actor, who has the authority to formulate a problem as a security threat to a referent object;[11] 2) an audience that endorses a problem as an existential threat; and 3) functional actors who have the ability to influence decisions that are made during the securitization process.

It then follows that the selection and conceptualization of the securitization actors is dependent on the function that the securitization act is intended to serve (Vuori 2008; Balzacq 2011a). On this basis, the criteria for selecting the securitization actors for this study stemmed from their functional descriptions' vis-a-vis the securitization of terrorism in Kenya. By virtue of their constitutional role as the key decision makers in matters of national security, the executive branch of Kenya's government which was made up of the president, the prime minister (2008-2012)[12] and cabinet ministers was the securitizing actor for this study. Another reason why the executive arm of government was selected as the securitizing actor for this study is because it has the power to propose laws and policies

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[10] Securitization theory differs from realism and neorealism which objectively define insecurity as independent threats that exist in the anarchic international system (Booth 2007).

[11]Something whose survival is being threatened (Buzan, Wæver and de Wilde 1998, 36). Huysmans (2006, 25) elaborates that when framing the security threat, the securitizing actor must demonstrate that the operation of every other activity such as the economy, democracy and freedom depends on the survival of the referent object.

[12] The position of a prime minister was created in 2008 as part of the negotiations for a coalition government after the 2007 post-election violence in Kenya.

that affect Kenya's national security (Constitution of Kenya 2010). Kenya's parliament, which has the power to approve and enact laws that pave the way for changes in security policy were the audience for this study.

Functional actors included groups and individuals who had vested interests in the outcome of Kenya's counterterrorism policy and were able to influence actors who controlled the outcome of the policy namely; members of the executive branch of government as well as members of Kenya's parliament. This study identified civil society in Kenya, security agencies and institutions in Kenya, Kenya's development partners and international organizations involved in counterterrorism policymaking as the functional actors. They included the US, the United Kingdom (UK), the UN, the EU, the AU, NGOs religious organizations and security agencies that are represented in Kenya's National Security Council.

Although the securitizing and functional actors play important roles in the securitization of a threat, it is the audience that ultimately determines the outcome of the process. Consequently, even though a securitizing actor may have the power to identify and construct a security problem as an existential threat, their power is not absolute and does not guarantee that an audience "will accept a claim for necessary security action" (Buzan, Wæver and de Wilde 1998, 31). To successfully securitize a problem as an existential threat, a securitizing actor's utterances must be based on events or factors that an audience can relate to. Therefore, a securitizing actor will not simply succeed because they have the power to securitize a threat but because their words are able to tap into the psyche of an audience and invoke feelings that a security problem is an existential threat.

Once the audience identifies a problem as an existential threat, it ceases to be part of normal politics and paves the way for the use of extraordinary measures to address the threat (Balzacq 2011a; Buzan, Wæver and de Wilde 1998).

The use of extraordinary measures is synonymous with security measures that denote a clear shift in security policy (Buzan, Wæver and de Wilde 1998, 33). To distinguish between normal politics and securitization Buzan, Wæver and de Wilde (1998) noted that any decision related to public policy falls within a spectrum of three categories. The first category, known as non-politicized, consists of issues that have not elicited any public debate. The second category is made up of politicized issues that are part of normal politics or public policy and are subject to government decisions as well as the allocation of public funds. The third category, referred to as securitized, includes issues that are described as existential threats which require extraordinary measures for them to be addressed.

Buzan, Wæver and de Wilde (1998) also argued that successful securitization is an anomaly because it results from the failure of normal politics – a process through which issues are openly debated upon before a final decision is made. This differs from securitization where issues are regarded as being so critical that they "should not be exposed to the normal haggling of politics" (Buzan, Wæver and de Wilde 1998, 29). Therefore, rather than accept securitization as an end result, Buzan, Wæver and de Wilde (1998) argued against the successful securitization of threats in favour of their

desecuritization/ non-securitization,[13] described as a process through which security threats are reconstituted and addressed within the realm of normal politics.

Even though the founders of securitization theory contributed to a better understanding of threat construction in security studies, there is one critical aspect of the securitization process that the theory does not clearly explain. While the illocutionary and intersubjective nature of the securitization process gives eminence to the roles played by the securitization actors (the securitizing actor, the audience and the functional actor) the theory does not provide a clear conceptualization of some of these actors. The lack of clarity about the features of the securitization actors makes it difficult for researchers to operationalize these concepts in empirical studies (Balzacq 2011a, 2016; Stritzel 2007; Salter 2011; McDonald 2008). Indeed, in an article that expounds on securitization theory, Wæver (2003) admits to this shortcoming and gives two suggestions on how researchers can clarify the roles of one of the actors, that is, the audience in securitization processes.

First, he noted that the audience should have "a better definition and probably differentiation" (Wæver 2003, 26) in the securitization process. This is because a political system and nature of a security problem can result in multiple and varied audiences taking part in securitization. Consequently, the audience does not have to comprise of the population in a democratic state but may also include other constituencies within the state such as bureaucratic institutions whose tasks and responsibilities are relevant to the problem under securitization. Second, Wæver (2003) recommended that researchers should divide the audience into different categories so as to have a better understanding of

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[13] Roe (2004), refers to desecuritization as non-securitization, whereby, threats are not framed as security issues. Rather than desecuritizing threats Roe (2004) suggests that security problems should be either managed or transformed within the framework of security discourse.

their impact on the securitization process. He, however, did not give any details on what these categories may be, how they can be developed or how they would relate to each other in the securitization process.

Building on the works of Wæver, a few scholars have divided the audience into different categories in efforts to clarify the concept and unpack the "politics of consent" (Salter 2008, 324). Vuori (2008) suggested that distinct audiences can be identified based on the impact that they will have on the securitizing actor's capacity to enact extraordinary security measures. He, therefore, divided the audience into two broad categories. The first category is made up of audiences that provide formal support to the securitizing actor while the second includes audiences that morally support the use of extraordinary security measures. Even though the two categories of audiences have the power to legitimize the use of extraordinary measures, it is the formal audience that ultimately gives the securitizing actor the mandate to enact extraordinary security measures. In this context, the formal audience determines the success or failure of the securitization process.

Like Vuori (2008), Roe (2008) provided a distinction between formal and moral audiences. He categorized the general public as moral supporters of the securitization process and policymakers as formal supporters of the process. Whereas, formal support is critical to the successful securitization of a threat, Roe (2008) noted that an increase in the level of congruence between formal and moral support increases the likelihood of successful securitization. Adding to this, Biba (2016) noted that the political elite, defined as a small group of individuals who hold significant economic and political power, have a higher chance of successfully securitizing an issue when compared with non-state actors.

This is because they are more likely to get the government support that is needed to implement extraordinary security measures.

Other factors that should be considered when identifying the audience, categorizing them into groups and assessing their influence on the securitization process are the amount of power that they wield and, to a lesser extent, their level of expertise in relation to the security problem. Since the construction of a security problem is discursive power relations as well as knowledge have a profound impact on how the security problem develops into a threat and the choice of measures that are used to address the threat (Balzacq 2011a). Furthermore, factoring in power relations and knowledge into the analysis of the securitization process can enable a researcher to identify and explain cases of failed securitization or unsecuritization.

Using power relations and knowledge as determining factors, Salter (2008, 2011) developed a model with four levels of analysis namely: elite, technocratic, scientific and popular audiences.[14] He stated that the model enables researchers to interrogate the "different logics of persuasion, different epistemologies and [different] power networks" (Salter 2011, 122) under which each category operates. In so doing, the researcher is able to determine specific intricacies of the securitization process such as the dominant or prime audience in relation to the success and failure of securitization as well as the effects of the interaction between the categories on the securitization process. Balzacq, Léonard and Ruzicka (2016) also pointed out that identifying diverse audiences involved in

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[14] Salter does not describe or define these audience categories.

securitization and analysing the impact that each audience has on the process will enable a researcher to avoid false generalizations.

In addition to disaggregating the audience into different categories, proponents of securitization theory indicate that political and historical context have an impact on the securitization process. While acknowledging the importance of speech acts in the securitization process several theorists, including Stritzel (2007), Salter (2008, 2011), Balzacq (2011a), Vuori (2011) and Balzacq, Léonard and Ruzicka (2015), suggested that analysing securitization acts that take place alongside[15] and antecedent[16] to the speech acts may provide insights on the reasons why securitization succeeds or fails. Similarily, Ciută (2009), argued that a contextual approach allows a researcher to strengthen "the empirical focus of security analysis without losing its conceptual and theoretical sophistication" Ciută 2009, 324).

According to Balzacq (2005, 184) "securitization is a complex repertoire of causes." It does not occur in a vacuum. Therefore, an investigation that is solely based on the discursive component of the securitization process may not identify why a securitization move succeeded or failed. In addition to this, Vuori (2011) argued that examining the process of securitization in as many contexts as possible may reveal how different securitization actors perform in different contexts. This would enable a researcher to uncover how context empowers and disempowers securitizing actors and the effects of this on the securitization process.

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[15] Within the context of this study, the researcher will examine the impact that Kenya's incursion against Al Shabaab in Somalia, in 2011, had on its decision to enact its first counterterrorism law in 2012.
[16] The study also examines the effects of historical events on counterterrorism policymaking in Kenya.

Adding to this, Roe (2008) and Balzacq (2011b) suggested that observing "the degree of congruence between different circumstances that constrain and drive a securitization process" (Balzacq 2011b, 49) can reveal why an audience rejects or accepts a securitizing move. This means that the audience does not simply accept, at face value, a securitizing actor's claim that a security problem is an existential threat. On the contrary, such a claim is evaluated against the context in which it is made.

Successful securitization is also dependent on the securitizing actor's ability to tap into "the audience's feelings, needs and interests" (Balzacq 2005, 184). Vuori (2008) refers to this ability as the perlocutionary effect, whereby, the securitizing actor relates the threat to the audience's experiences. Expounding on this, Salter (2011, 2008) argued that securitization is more likely to succeed if the securitizing actor makes securitization speech acts when there is a receptive environment for securitization. In his assessment, the most conducive environment for successful securitization is when there is a "climate of fear."[17]

Another important analytical component of securitization theory is the failure of securitization or what Salter (2011) referred to as unsecuritization. He identified two scenarios that would result in unsecuritization. First, there could be faults in the speech act that is used to frame the security threat. In this case, the audience would not be convinced that the security problem is an existential threat. Second, even though the securitizing actor

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[17] For an in-depth account of Salter's arguments see Salter, Mark. 2011. "When Securitization Fails: The Hard Case of Counterterrorism Programs." In *Securitization Theory: How Security Problems Emerge and Dissolved*, edited by Thierry Balzacq, 116-132. London: Routledge; Salter, Mark. 2008. "Securitization and Desecuritization: A Dramaturgical Analysis of the Canadian Air Transport Security Authority." *Journal of International Relations and Development* 11, no. 4: 321-349.

may successfully frame a security problem as an existential threat, the process of securitization may fail if a section of the audience rejects the extraordinary security measures that are proposed to address the threat. In this instance, the audience would respond with an alternative speech act that counters the proposed measures.

While the audience's rejection of a speech act or extraordinary security measure may denote the end of a securitization process, there may be instances where speech acts, between the securitizing actor and the audience, are reignited until securitization occurs. In such cases, securitization would succeed if the audience concedes that a security problem is an existential threat that must be addressed using extraordinary security measures. This aspect of securitization, how and why a securitization process shifts from unsecuritization to securitization, depicts the puzzle of counterterrorism policymaking in Kenya and is the focus of this thesis.

The last analytical component of securitization theory is desecuritization/non-securitization. As explained earlier, Buzan, Wæver and de Wilde (1998) viewed securitization as an anomaly and advocated for its deconstruction through the process of desecuritization. While acknowledging the importance of desecuritization in the study of security issues, this study is limited to understanding the unsecuritization and securitization of terrorism in Kenya.

Hypothesis

The literature review identified five themes that explain the development of counterterrorism measures in Kenya. While these themes provide insights on the issues that have permeated counterterrorism debates in the country, they do not fully or

satisfactorily answer the research questions. To reiterate, why did the Kenyan government fail to enact counterterrorism measures between 2001 and 2011 when it had good domestic and external reasons for doing so? Second, why did the Kenyan government shift its position in 2012 and enact counterterrorism measures? To answer these questions, the study puts forward and tests one main hypothesis that is founded on securitization theory.

Proponents of securitization theory agree that the outcome of a securitization process, namely the unsecuritization or securitization of a threat, largely depends on how the securitizing actors and the audience perceive a security problem. In the case of counterterrorism policymaking in Kenya, the securitizing actors were individuals who had the authority to declare that terrorism was an existential threat to Kenya and that the country had to enact counterterrorism measures to survive. They included the president, the prime minister and cabinet ministers who were members of the executive arm of Kenya's government. The audience were individuals who had the power to reject or accept the claim that terrorism was an existential threat and block attempts to enact counterterrorism measures. They comprised of Kenya's lawmakers also known as members of parliament.

One of the defining features of counterterrorism policymaking in Kenya in 2003 (when the *Suppression of Terrorism Bill* was rejected) and 2006 (when the *Anti-Terrorism Bill* was rejected) was the discordant perceptions that the president, cabinet ministers and members of Kenya's parliament had about the terrorist threat in Kenya and the measures that were proposed to address the threat. This contrasted with counterterrorism policymaking in 2012 when most securitization actors, including those who had opposed the 2003 and 2006 anti-terrorism bills, spoke with one voice in support of enacting counterterrorism measures.

Based on the arguments above the hypothesis tested in this study is: Kenya's enactment of counterterrorism measures depended on consensus building among the country's executive (securitizing actors) and legislative (audience) arms of government. It then follows that the challenge for the securitizing actors (president, prime minister and cabinet ministers) was to arrive at "a fundamental and stable national consensus" (George 1980, 234)[18] with the audience (members of Kenya's parliament). However, achieving national consensus on counterterrorism policy is not simply a matter of cajoling those who oppose security measures into accepting that a security problem is an existential threat. As several securitization theorists have stated, the contextual factors in which the securitization process takes place, that is - all significant events that occur prior to and during the securitization process, have an impact on the outcome of the securitization process (Balzacq 2005; McDonald 2008; Balzacq Léonard and Ruzicka 2016; Salter 2008, 2011; Vuori 2011).

Security is usually constructed over time through a range of incremental processes. Hence, narrowly focusing on the moment that an audience accepts that a security problem is an existential threat will not account for the factors that contributed to the securitization of the threat or the enactment of extraordinary security measures (McDonald 2008). It is, therefore, important for researchers to include contextual factors in the analysis of securitization processes. This thesis proposes three contextual factors that contributed to a lack of consensus that terrorism was an existential threat in 2003 and 2006

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[18] George's (1980) argument is based on his analysis of domestic constraints on US foreign policy.

(unsecuritization) and three factors that led to consensus that terrorism was an existential threat in 2012 (securitization).

Contextual Factors in the Unsecuritization of Terrorism in Kenya

Three contextual factors contributed to a lack of consensus that terrorism was an existential threat to Kenya. They were; 1) the perception that foreigners, who were carrying out attacks against American and Israeli installations in Kenya, were the main perpetrators of terrorist attacks in the country; 2) the inability of Kenya's security agencies and institutions to securitize terrorism as an existential threat; and 3) the preoccupation of Kenya's securitizing actors (the president and cabinet ministers)[19] with the machinations of power sharing in Kenya.

Foreign Attackers Targeting American and Israeli Installations

The US Embassy bombing in Kenya in 1998 and the bombing of an Israeli hotel in Mombasa in 2002 became the focal points of discussions about enacting counterterrorism measures in Kenya after 9/11. The fact that the perpetrators and planners of the attacks were predominantly foreign nationals who attacked foreign installations in Kenya contributed to the narrative that the threats were not directed at the Kenyan state. This thesis argues that Kenya's government could not arrive at a consensus that terrorism was an existential threat to Kenya because several members of parliament and cabinet ministers were unconvinced that the terrorists' intention was to destroy the Kenyan state. In their view, it was the United States' and Israel's survival that was under threat from transnational

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[19] The position of the prime minister did not exist during this time. It was created in 2008.

terrorist groups that had declared jihad against the two states. The validity of this contextual factor is examined in chapter three.

Kenya's Security Agencies and Institutions

Security agencies and institutions are supposed to provide the president and his Cabinet with information that is used to inform national security policy. In Kenya's case, however, security agencies and institutions had a culture of subservience to the office of the president that had been entrenched over a period of 40 years of the Kenya African National Union's (KANU's) rule. As a result, the main role of Kenya's security agencies and institutions, when KANU was in power, was to clamp down on political dissidents that were portrayed as threats to the Kenyan state. This limited their view of security to buttressing the president and those who were close to him from individuals and groups that dared to challenge the status quo.

On this basis, this thesis argues that the election of a new democratic government in Kenya in 2002 did not automatically transform the country's security agencies and institutions into professional and functional entities. On the contrary, the new government inherited security agencies that needed to be reformed before they could become functional. Hence, in the aftermath of 9/11 Kenya's security agencies and institutions lacked the professional aptitude that would have enabled them to identify significant threats to Kenya's national security. They, therefore, did not identify terrorism as an existential threat to Kenya even though other actors, such as the US, cautioned Kenya about the presence of terrorist cells in the country. The validity of this contextual factor is examined in chapter four.

Preoccupation with Power Sharing

The interests of the president and cabinet ministers in Kenya played a significant role in the securitization process. As was discussed earlier in this chapter, the president and cabinet ministers were the securitizing actors in Kenya's counterterrorism policymaking processes in 2003 and 2006. Since securitizing actors set the tone for the seriousness of existential threats, their demeanour towards a threat will affect the outcome of a securitization process.

This thesis argues that the governing elite in Kenya, who came to power just over a year after 9/11, were preoccupied with the machinations of power sharing in the government which impeded their ability to consolidate support for the enactment of counterterrorism measures. Consequently, Kenya's government could not reach a consensus that terrorism was an existential threat, nor could it garner the political will that was needed to enact counterterrorism measures. The validity of this contextual factor is examined in chapter four.

Contextual Factors in the Securitization of Terrorism in Kenya

Successful securitization in Kenya can be attributed to three contextual factors that made Kenya's executive and legislative arms of government agree that terrorism was an existential threat. These factors were: 1) the rise in domestic radicalization; 2) the enactment of a new constitution in 2010; and 3) the emergence of new economic interests. These three factors provided compelling reasons that were used to justify the enactment of extraordinary security measures. As a result, there was congruence between the claim that terrorism was an existential threat to Kenya and events that were unfolding during the time

leading up to the enactment of counterterrorism measures. In addition to validating the securitizing actor's claim that terrorism was an existential threat in Kenya the contextual factors provided a unifying rationale that enacting counterterrorism measures was critical to Kenya's survival.

Domestic Radicalization in Kenya

This thesis argues that an increase in domestic radicalization in Kenya was one of the contextual factors that contributed to the securitization of terrorism. Domestic radicalization is a risk factor for terrorism.[20] It is an indication that more individuals are willing to engage in/or support terrorism activities, which, in turn, increases the likelihood of terrorism attacks. There are two main reasons why domestic or homegrown terrorists pose a significantly higher security threat to states when compared to foreign terrorists.

First, terrorist groups are increasingly using domestic terrorism as their preferred mondus operandi because it is part of their strategy to decentralize and expand their terrorist operations worldwide (Schuurman and Horgan 2016). As Ayman al Zawahiri, the leader of Al Qaeda, once stated "all Mujahid brothers must consider targeting the interests of the Western-Zionist Crusader alliance in any part of the world as their foremost duty. They must exert efforts to the best of their ability for this purpose" (al Zawahiri n.d). Based on this statement, fighters who have received training in terrorist camps abroad as well as terrorist sympathizers, who may not be able to travel for training but have access to online

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[20] While acknowledging that radicalization is not synonymous with terrorism, this argument is premised on several studies which draw a clear pathway between radicalization and terrorism (Smith 2018; McCauley and Moskalenko 2008; Neumann 2013). The link between radicalization and terrorism is discussed in greater detail in chapter three.

training material, are encouraged to turn their countries into frontline battlegrounds for terrorist organizations.

Second, this thesis argues that domestic terrorists, and their networks, are more likely to carry out successful terrorist attacks in their home countries. The knowledge that domestic terrorists have about their targets and their ability to blend in with the local population, without causing suspicion, gives them the upper hand that foreign terrorists do not have. Furthermore, the increased scrutiny of foreign travellers and the tightening of border security, especially after 9/11, made it more difficult for terrorists to travel and carry out attacks outside countries of their citizenship or permanent residency[21] (Baldaccini 2008; Boer 2015). States, therefore, face a bigger threat from domestic terrorists when compared to foreign terrorists.

Perceptions about radicalization also play a role when considering the threat posed by domestic terrorists. Even though radicalization does not always lead to the support of/or involvement in terrorist activities, research shows that radicalization is often a preclude to the use of violence (Neumann 2013a, 2015, 2016, 2017; Klausen et al. 2015; McCauley and Moskalenko 2008, 2017; Horgan 2009; Kruglanski et al. 2014; Moghaddam 2005). According to Neumann (2013), many individuals who resorted to terrorism, across different historical periods, among different groups and in different geographical regions, were powered by radical beliefs and ideologies. Like Neumann, McCauley and Moskalenko (2008, 2017), as well Kruglanski et al. (2014), contended that those who are

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[21] For instance, Baldaccini (2008) noted that in the aftermath of 9/11, border security agencies around the world increased their usage of biometrics to identify terrorist suspects and criminals.

willing to commit acts of terror are radicalized individuals who exhibit an unwavering commitment to a particular cause.

The change in Kenya's counterterrorism policy, from unsecuritization to securitization, occurred because there was evidence of increased radicalization in the country. The increase of young Kenyans who were willing to carry out terrorist attacks in Kenya was linked to Al Shabaab, a terrorist group in Somalia. Indeed, studies on radicalization in Kenya show that there was a steady increase in the number of young Kenyans who joined Al Shabaab in the period leading up to the enactment of counterterrorism measures in 2012 (Finn et al. 2016; Williams 2014; Botha 2014; Anderson and Mcknight 2014). On this basis, this thesis argues that the realization that terrorism was a home-grown threat rather than a foreign threat changed the national security discourse leading to the securitization of terrorism which culminated in the enactment of counterterrorism measures in 2012. In other words, Kenya shifted its position and enacted counterterrorism measures because terrorism was no longer perceived as an American or Israeli problem carried out by foreign terrorists. Instead, Kenya's executive and legislative arms of government concurred that Kenya was under siege from within and that counterterrorism measures were essential to its survival. The validity of this contextual factor is examined in chapter three.

Kenya's 2010 Constitution

The promulgation of a new constitution in Kenya in 2010 is another contextual factor that had a profound impact on the securitization of terrorism in Kenya. The 2010 constitution addressed many of the pitfalls that undermined democracy in Kenya. In this regard, the

constitution reduced the powers of the president and limited the office bearer's capacity to interfere with other branches of government. Consequently, security agencies and institutions whose responsibilities involved or affected counterterrorism activities in Kenya were no longer solely answerable to the president. They were also answerable to the legislature and oversight bodies which were created to scrutinize their activities.

These changes empowered security agencies that were responsible for matters of national security by giving them the leeway that they needed to perform their duties without undue influence from the office of the president. As Hellmuth (2016) pointed out, "as government structures change, restraints [also] change shaping not only the nature of decision-making processes and interagency dynamics but also affecting the choice of security policies" (Hellmuth 2016, 282). In Kenya's case, the empowerment of security agencies and institutions led to the strengthening of the country's stance against terrorism.

As explained earlier, within the context of securitization theory, Kenya's security agencies and institutions played the role of functional actors. Essentially, functional actors can shape the outcome of a securitization process by influencing the perceptions that other securitization actors have about a security problem. This argument is based on two interconnected logical explanations. First, through their involvement, security agencies have the capacity to legitimize policymaking processes thus facilitating the enactment of laws that are needed to implement policy (Villalobos 2012; Meier and O'Toole, 2006). Villalobos (2012), argued that the involvement of state agencies in policy development infuses "bureaucratic objectivity, expertise and transparency" (Villalobos 2012, 838) into the policymaking process which can be used to convince legislators to support a policy. The input of state agencies creates the impression that the proposed policy is not simply a

representation of partisan political goals but rather, a concerted effort to come up with a solution that serves the public good (Romero and Villalobos 2015). This increases the chances of policy acceptance and approval among the audience.

Second, state agencies and institutions in democratic societies often have a profound impact on policy outcomes (Morin and Paquin 2018; Shobe 2017; Verschuere 2009; Halperin and Clapp 2006; Allison and Zelikow 1999). Morin and Paquin (2018), contended that "the bureaucracy's principle resource is no doubt its expertise. It selects the information presented to the leaders and arranges it intelligibly. By presenting the problems or possible actions in a certain way, it structures the leaders' decision-making" (Morin and Paquin 2018, 102). In a study on the role of state agencies in policymaking, Shobe (2017) arrived at similar findings noting that state agencies have a big impact on the decisions that political leaders make. He observed that state agencies are not only involved in drafting the material that is used to make policies, in some instances, they also play a pivotal role in reviewing and editing policy documents. It then follows that the interests of state security agencies would be reflected in the policies that they help to draft, review and edit. Ultimately, Kenya's president, prime minister, cabinet ministers and members of parliament enacted extraordinary security measures because security agencies and institutions in Kenya stated that terrorism was an existential threat to the country.

To further consolidate democracy in Kenya, the 2010 constitution included a Bill of Rights. Article 19(2) of the Bill of Rights states that "the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings" (The Constitution of Kenya 2010, Article 19[2]). The consideration of

human rights and fundamental freedoms was an important factor in the securitization of terrorism in Kenya. Like many other democratic states around the world, Kenya's government had to weigh out the restrictions that counterterrorism measures could have on individual rights and liberties.

Counterterrorism measures are enacted on grounds that they are targeted at terrorists rather than the general population. However, in order to identify and weed out terrorists, who are usually clandestine and difficult to detect, governments use counterterrorism measures that may limit the rights and liberties of the entire population (Donohue 2008). This creates a dilemma for the securitization actors. On one hand, there may be a backlash against the enactment of counterterrorism measures as citizens feel that the state is eroding their rights and liberties. On the other hand, citizens may perceive failure to act on terrorism as irresponsible and lackluster (Liow 2017). This may not only lead to criticism of a government's counterterrorism policy but also high political costs as the electorate punishes those who hold elective positions for failing to protect the state and its citizens from terrorist attacks. The securitization of terrorism and enactment of counterterrorism measures, therefore, are strategic decisions that must be made at an opportune time (Salter 2011; Altheide 2002, 2017; Robin 2004; Massumi 2005). Ideally, the best time to enact counterterrorism measures is when a government can justify the use of extraordinary security measures and reassure the public that such measures will not be abused.

Based on the discussions above, this thesis argues that the inclusion of the Bill of Rights in Kenya's 2010 constitution was one of the contextual factors that Kenya's president, prime minister, cabinet ministers and members of parliament coalesced around

to justify the enactment of counterterrorism measures. Coupled with other changes in the 2010 constitution, securitization actors in Kenya presented the Bill of Rights as a guarantor of individual rights and liberties as they sought to expand the state's powers to counter terrorism. There was, therefore, consensus that the 2010 constitution had safeguards that would stop the president and those close to him from maliciously using counterterrorism measures to infringe on the rights and liberties of Kenyan citizens. The validity of this contextual factor is examined in chapter four.

Kenya's New Economic Interests

The last contextual factor that led to the enactment of counterterrorism measures in Kenya was the emergence of new economic interests in the country. This contextual factor is based on the argument that securitization does not simply depend on the successful construction of a security problem as an existential threat. It also depends on the securitizing actor's ability to convince the audience that the extraordinary measures that will be used to address the security threat are worth their economic costs.

The significance of economic costs on policymaking in democracies can be found in the seminal writings of Downs (1957), Niskanen (1975), and Bueno de Mesquita et al. (2005). All these scholars argued that during policymaking processes, leaders who hold elective positions, such as members of parliament and the head of state, must anticipate how their constituents will react to their policy choices. As a result, individuals who hold or are vying for elective positions are unlikely to support policies whose costs cannot be

justified to the electorate because such policies may result in the loss of popularity and failure to get re-elected.

Although it is difficult to pinpoint the exact economic cost of counterterrorism, there is consensus that states must dedicate a considerable amount of government expenditure to defence and security activities such as counterterrorism (Mueller and Stewart 2014; Gold 2004; Dunne and Tian 2013; Dunne and Nikolaidou 2012; Zycher 2003). Since government expenditure is pegged on government revenues, securitizing actors must bargain for counterterrorism funding from three main sources namely: 1) taxation revenue, 2) the reallocation of government resources; and 3) revenue obtained from new sources of government income. Funding for counterterrorism activities using taxation revenue is difficult to justify because an increase in government taxes often raises living expenses for the average household (Zycher 2003; Stewart, Ellingwood and Mueller 2011).

Moreover, funding for counterterrorism activities must be competitively sourced because resources for security-related expenses often have opportunity costs. This means that more spending, in the areas of security, may result in the reallocation of resources from other areas of government expenditure, such as healthcare, education and infrastructure (Gold 2004; Hou and Chen 2013; Zhang et al. 2017). As Baldwin (1997) stated, security costs are "the sacrifice of other goals that could have been pursued with the resources devoted to security" (Baldwin 1997, 16). The successful securitization of terrorism is, therefore, dependent on the securitizing actor's ability to convince the audience that the increased economic costs of counterterrorism measures are a necessary trade-off for the sake of security. Failure to do so may lead to the rejection of the proposed measures.

While funding counterterrorism activities using taxation revenues and the reallocation of resources is difficult to justify, the discovery of new sources of government income often bolsters security spending. A study that investigated the relationship between economic growth and the expansion of defence capabilities in five countries[22] revealed that states are likely to expand their defence capabilities if they face a significant security threat and experience an increase in national revenue (Castillo et al. 2001). In this context, the securitization of terrorism and subsequent implementation of counterterrorism measures is likely to succeed because there is a positive correlation between an increase in national income and the expansion of a country's security apparatus.

The construction of the Lamu Port - South Sudan - Ethiopia Transport (LAPSSET) corridor and the discovery of oil and gas in Kenya contributed to the securitization of terrorism in Kenya. The projected socio-economic benefits of the LAPSETT project and the potential for Kenya to become an oil exporter provided the impetus for increased spending. Hence, 2012 marked the year when Kenya's president, prime minister, cabinet ministers and parliamentarians arrived at a consensus that enacting an anti-terrorism law was a public good whose benefits outweighed its economic costs. The validity of this contextual factor is examined in chapter five.

Research Methods

Case Study

This thesis is based on a single case study of Kenya. The advantages of using case studies are widely documented. They include: 1) identifying "new or omitted variables or

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[22] These countries were the US, the UK, France, Germany and Russia.

hypotheses" (Bennet 2002, 27); 2) using causal mechanisms to explain the historical causes of a phenomenon; and 3) identifying complex relationships, such as path dependency (Bennet 2002). In addition to this, Bennet (2002) and Kacowicz (2002) pointed out that single case studies can contribute to the development or clarification of theories by uncovering empirical data that support or challenge existing theories about the phenomenon being studied. This is especially relevant in studies that focus on a deviant case which previous studies have not fully understood or explained.

Kenya was selected as a case study for this research after a comprehensive literature review that examined how states have reacted to the threat of terrorism since 9/11. The literature review revealed that, unlike other countries, Kenya did not enact counterterrorism measures until 2012 even when it had good domestic and external reasons to do so in the aftermath of 9/11.

Bennet (2002) also stated that cases whose outcomes are not predicted or explained well using existing theories can be particularly useful in identifying new or left-out variables. Based on the literature review and the hypothesis for this study, new variables that were either not considered or comprehensively explained in previous studies were tested. These variables are: 1) the perception that foreign fighters who were carrying out attacks against American and Israeli installations in Kenya, were the main perpetrators of terrorist attacks in the country; 2) the inability of Kenya's security agencies and institutions to securitize terrorism as an existential threat; 3) the preoccupation of Kenya's securitization actors with the machinations of power sharing; 4) the rise in domestic radicalization; 5) the enactment of a new constitution in 2010; and 6) the emergence of

new economic interests. Lastly, the novelty of the Kenyan case justifies the use of a single case study and outweighs its disadvantages.[23]

Data Collection Methods

The study was conducted through two data collection phases. In the first phase, archival data from the Kenya National Assembly Hansard, policy documents, public statements and court records were reviewed. The information gathered through the review of archival data informed the semi-structured interviews that were conducted during the second phase of the data collection process. Semi-structured interviews were done in the second phase rather than the first phase of the study so that the researcher could detect misleading, inconsistent or false information that was obtained during the interviews. This is a common problem in security research where securitization actors may intentionally or unintentionally manipulate, obscure or conceal information about securitization processes (Jorgensen 1989, 14). The interviews were used to corroborate and expound on the information collected from official public documents and statements.

Interviewees were selected using purposive and snowball sampling. While purposive sampling is a technique that is used to identify key informants, who have vast knowledge about the study under investigation, snowball sampling is a technique through which key informants introduce potential interviewees to the researcher. The two techniques were used interchangeably. Purposive sampling was used to identify key

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[23] Bennet (2002) noted that the key disadvantage of case study methods is that it is unlikely for findings to be generalized to the wider population.

respondents who had been involved in the securitization of terrorism in Kenya. These informants mostly comprised of functional actors who held senior positions in Kenya's security agencies and institutions. Interviews were conducted using a semi-structured format. This is a flexible interview method where the researcher asks pre-determined questions that lead up to further discussions on the topic (see Appendix 7).

The biggest challenge when collecting primary data about Kenya's counterterrorism policy was that Kenya's security agencies and institutions do not share a lot of information about the country's security with the public more so, when it relates to terrorism activities. Therefore, the key informants who agreed to speak with the researcher were reluctant to share sensitive details about the terrorism threat in Kenya that would have illuminated some of the questions that were asked. This was probably because of provisions in Kenya's Official Secrets Act, 1970 (Revised 2016) that obligates all public servants not to share information that may jeopardize Kenya's national security. There is also a culture of secrecy among former and current employees of Kenya's security agencies and institutions. To add to this, current and former employees of Kenya's security agencies and institutions do not write about their experiences. Despite these shortcomings, inferences about Kenya's counterterrorism policy were drawn from the public statements of key security actors in Kenya. In addition to this, a leaked National Intelligence Service (Kenya) report that *Al Jazeera* obtained provided information that was factored into the analysis of this research.

Data Analysis

Balzacq (2011b) identified discourse analysis, ethnographic research, content analysis and process tracing as the most appropriate methods for analysing data in studies about securitization processes. While ethnographic research and content analysis have been successfully used in other studies (for example Wilkinson 2011; Salter 2011; Vuori 2011) they are not appropriate for this study. Ethnographic research is unsuitable because it is based on participant observation – a technique that requires prolonged access to key policymakers and practitioners in Kenya's security apparatus. It is highly unlikely that the researcher would have been granted unlimited access to this group. In addition, ethnography was unsuitable because it could not be used to explain the causal relationship between variables. Content analysis was also unsuitable for this study because it is a purely descriptive method that focuses on 'what' rather than 'why' questions. It concentrates on "the analysis of text as an independent entity" and does not factor in "the reaction that the text provokes in a given audience" (Balzacq 2011b, 51). Content analysis focuses on the outcome rather than the process of securitization. As a result, it may not have revealed the underlying reasons why Kenya did not enact counterterrorism measures when it appeared to have good reasons to do so. In the same vein, it would not have explained why Kenya enacted counterterrorism measures in 2012.

Two methods, discourse analysis and process tracing were used to establish the relationships between the variables in this study. The main advantage of combining the two methods was to expose aspects of the relationships that a single method would not have revealed. As Checkel (2008) argued, "better answers to the questions we ask [can be achieved through] epistemological and methodological boundary crossing [which is both]

essential and possible" (Checkel 2008, 126). In this regard, discourse analysis was used to give rich descriptions of the construction and evolution of the terrorist threat in Kenya. Balzacq (2011b) stated that rich descriptions are obtained when a researcher:

> examine[s] various genres of texts, at different points in time, in distinct social contexts [because] discourses are always connected to other discourses which were produced earlier, as well as those which are synchronically and subsequently enacted (Balzacq 2011b, 43).

The rich descriptions, for this study, were initially derived from written texts including the Kenya National Assembly Hansard, policy documents, court documents and secondary sources of information. The data was then triangulated with descriptions obtained from spoken texts including interviews, archival press conferences, media interviews and other audio and video recordings. The recurring linguistic patterns obtained from these descriptions formed the narratives that explained how terrorism was framed and the impact that this had on the enactment of counterterrorism measures.

Process tracing supplemented discourse analysis. According to George and Bennet (2005), process tracing is a method that is used to identify and explain the intervening process between a cause and an outcome. Within the context of examining securitization processes, Balzacq (2011b) contended that process tracing enables a researcher to pinpoint the conditions under which securitization occurs, that is, the causal chains that link independent variables to the dependent variable(s). He further argued:

If the investigator inquires "why securitization was successful?" answering "because an audience accepted" would be a platitude, if not a tautology. Process tracing is particularly useful for uncovering the scope conditions under which securitization is likely to succeed (Balzacq 2011b, 43).

Process tracing, therefore, complements discourse analysis by preventing confirmation bias. Unlike discourse analysis which focuses on whether securitization has occurred and how it has happened, process tracing seeks to explain why and when securitization has occurred as well as the conditions for unsecuritization (Balzacq 2011b).

All the data that was collected during this research was coded according to the contextual factors that caused the unsecuritization and securitization of terrorism in Kenya before it was analysed. In order for the findings to meet quality standards, validity and reliability checks, such as confirming and disconfirming evidence as well as research reflexivity, were incorporated into all stages of the research process. Lastly, the ethical considerations for this study are guided by the Human Research Ethics Committee (HREC) at Murdoch University. Human ethics approval was obtained before commencing the research (Appendix 5).

Conclusion

The aim of this chapter was to discuss the theoretical framework, hypothesis and methods that were used to investigate Kenya's puzzling counterterrorism behaviour. Securitization theory was selected as the most appropriate theory for this study because it provides the framework for explaining why and how a security problem becomes an existential threat leading to the enactment of extraordinary security measures. The hypothesis for this research was founded on the core assumptions of securitization theory and identified Kenya's securitization actors as the executive and legislative branches of government. The hypothesis also identified and elaborated on the contextual factors that contributed to the unsecuritization and securitization of terrorism in Kenya.

Both primary and secondary data were used to investigate the securitization of terrorism in Kenya and the enactment of counterterrorism measures. The sources of data included archival material from the Kenya National Assembly Hansard, court records, policy documents and public statements. Information was also gathered through semi-structured interviews that were done after a review of archival material. Although, the initial plan of the research was to conduct interviews between August and October 2017, this could not be done because of political violence in Kenya after the 2017 General Elections. The interviews, therefore, did not take place until November 2017. While several participants who had been contacted earlier during the planning stage of field work were willing to meet with the researcher in November, others were unable to do so either because they had been transferred to other locations in Kenya or had voluntarily withdrawn from the research. Despite this challenge, useful information about Kenya's counterterrorism

policy was obtained from leaked intelligence reports as well as the participants who were interviewed during the field work phase of this study.

Chapter Three

Political Violence in Kenya: Oscillating between Ethnopolitical Violence and Terrorism

Introduction

This chapter delves into the history of political violence in Kenya with the objective of explaining how some of the key contextual factors[24] that shaped Kenya's counterterrorism policy emerged. It begins in 1980 when Kenya experienced its first major post-independence terrorist attack. Other terrorist attacks that are discussed in the chapter are the 1998 US Embassy bombing in Nairobi and the 2002 bombing at a hotel in Kikambala, Mombasa. While these attacks killed hundreds of Kenyans and injured over 4000 others, they were not the only incidences of political violence that occurred in Kenya. Ethnopolitical violence also became a malignant feature of Kenyan politics when the country became a de jure multiparty state in 1992.

Analysing Kenya's oscillation between ethnopolitical violence and terrorism uncovers some of the important factors that had an impact on the country's counterterrorism policymaking process. These include the dominance of foreign perpetrators in carrying out terrorism attacks in Kenya in 1980, 1998 and 2002 and the

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[24] The key contextual factors were identified in chapter one. They are: 1) the perception that foreigners, who were carrying out attacks against American and Israeli installations in Kenya, were the main perpetrators of terrorist attacks in the country ; 2) the inability of Kenya's security agencies and institutions to securitize terrorism as an existential threat; 3) the preoccupation of Kenya's securitizing actors (the president, cabinet ministers and prime minister) with the machinations of power sharing in Kenya; 4) the rise in domestic radicalization in Kenya; 5) the enactment of a new constitution in 2010 and; 6) the emergence of new economic interests in Kenya.

belief among Kenya's opposition parties that ethnopolitical violence was the biggest threat to Kenya's security. This chapter argues that members of Kenya's opposition parties blamed ethnopolitical violence on KANU which had been in power for close to 40 years. KANU's ouster from power in 2002 marked a new beginning for Kenya and had significant implications on the country's counterterrorism policy. Moreover, many of the underlying factors that have been used to instigate political violence in Kenya for decades are founded in the policies and practices of KANU's 40-year autocratic rule. This chapter, therefore, sets the stage for some of the arguments that are made in chapters three, four and five.

The 1980 Norfolk Hotel Bombing

On December 31, 1980 a sophisticated time bomb went off at the Norfolk hotel in Kenya's capital city, Nairobi, as guests were celebrating a New Year's Eve dinner party. The bomb which had been strategically placed in a room that was directly above the dining area killed 20 people and left over 80 injured. A lot of the details about the hotel bombing are unclear. Nevertheless, there is some information about the perpetrators who carried out the attack, the method that was used to carry out the attack and the motive of the attack. Nine days before the attack a Moroccan citizen, Qaddura Mohammed Abdel al-Hamid, booked the room that was directly above the dining area and proceeded to construct the bomb. Investigations revealed that a woman with a German accent was a frequent visitor to his room and it is suspected that she supplied al-Hamid with some of the components that he needed to construct the bomb. It is also believed that she bought the plane ticket that al-Hamid used to flee the country a few hours before the bomb went off (UPI 1981; Special 1981; Bar 2016).

In the aftermath of the attack, the Kenyan government as well as several Western diplomats blamed the Popular Front for the Liberation of Palestine (PFLP), a Palestinian guerrilla organization that had links with the Revolutionary Cells (RZ) terrorist group that was based in West Germany. They suspected that the Norfolk hotel was deliberately targeted in retaliation for Kenya's role in the rescue of Jewish hostages in Uganda in 1976. In July that year, Kenya had provided critical logistical, medical and intelligence support to Israel during Operation Yonatan,[25] a rescue mission of hostages after the hijacking of an Air France plane that was forced to land in Entebbe, Uganda. The hijackers, who were members of the PFLP and the RZ, wanted to trade-off the hostages for 53 prisoners who were being held for their roles in terrorist related activities in various parts of the world.[26] Among these prisoners were five people accused of attempting to shoot down an El Al Israeli jet at an airport in Nairobi in January 1976[27] (UPI 1980; Special 1981; Bishku 2017; Hornsby 2012, 319).

Rather than give into the terrorists demands, the Israeli government, with the cooperation of Kenya, raided the Entebbe airport and freed the hostages. Kenya's role included turning a lounge at the Jomo Kenyatta International Airport (JKIA) in Nairobi into a makeshift field hospital that had anaesthetic equipment, oxygen cannisters and an operating table. A paramilitary wing of Kenya's police service known as the General

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[25] The rescue mission which was initially referred to as Operation Entebbe was renamed Operation Yonatan to honour the mission's commander, Jonathan Netanyahu, who was killed during the operation.

[26] The prisoners were being held in Israel, Kenya, France and Germany.

[27] In January 1976, three Palestinians had entered Kenya and set up Russian hand-launched anti-aircraft missiles at the perimeter of the Jomo Kenyatta International Airport in Nairobi, before the expected arrival of a jet belonging to Israeli airline El Al. However, Israeli intelligence alerted Kenya's law enforcement agencies who captured the men before they could launch the missiles. Further investigations revealed that their vehicle contained machine guns, grenades and pistols that appeared to have come from Uganda. Two more suspects were arrested later that week (Bishku 2017, 87).

Service Unit (GSU) as well as Kenyan troops were also stationed at the airport to provide

extra security during the mission (Muendo 2016). In the end, Kenya's collaboration with

the Israeli government contributed to the success of the mission despite the death of four

hostages[28] and the mission's commander, Jonathan Netanyahu.

When news broke out that Nairobi had supported the Israeli operation, several

African, Arab and Asian states condemned Kenya's government for its actions.[29] At the

forefront was Idi Amin, the president of Uganda, who wrote to the OAU and the United

Nations Security Council to protest against Kenya's willingness to collaborate with Israel.

Part of the letter addressed to the President of the Security Council on July 5, 1976, stated:

> I should like to bring to your attention some aspects of the
>
> Israeli invasion showing that it had been well planned and
>
> rehearsed with the full collaboration of some other countries.
>
> According to the information available to us, which has been
>
> repeatedly confirmed by the international press, the Zionist
>
> Israeli plan to invade Entebbe was decided on Thursday, 1
>
> July. This decision was communicated to the Kenyan
>
> authorities whose consent and assistance in the operation
>
> was immediately obtained … Uganda reserves her right to

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[28]The hostages who died were Jean-Jacques Mimouni, Pasco Cohen, Ida Boruchovich and Dora Bloch.
[29] Such condemnation included an OAU *Resolution on Israel Aggression against Uganda* which, among other things, stated that an aggression against one-member state was an aggression against all member states of the OAU. It urged all member states to "intensify their efforts in order to isolate Israel and compel her to change her aggressive policy" (OAU 1976).

retaliate in whatever way she can to redress the aggression against her (Idi Amin Dada to the United Nations 1976, 2).

Several top Kenyan officials tried to counter the accusations of collaboration and change the narrative of Kenya's role in Operation Yonatan. On July 7, 1976, Kenya offered a rebuttal to Uganda's letter stating:

> There is no evidence whatsoever to indicate [Kenya's] collaboration with Israel in the Entebbe episode as alleged in the Ugandan statement. Kenya has not and will not be used as a base for aggression against a neighbouring or indeed any other country in the world, least of all Uganda, which Kenya has consistently assisted with supplies since Uganda's coup d'état in 1971 … [The] Israeli aggressor must have overflown a number of countries, both Arab and African, on their way to Entebbe Uganda [on this basis] Kenya, too, was the victim of aggression and, therefore, condemns most unreservedly this blatant aggression and violation of our air space ... the landing of the Israeli aircraft … after the Israeli raid was only allowed for [the use of] medical facilities with respect to the injured persons … on humanitarian grounds and in accordance with international law (Kasina to the United Nations Secretary General 1976, 1).

Moi, Kenya's Vice President at the time, also denied Kenya's involvement in the rescue operation. In his address to an OAU Heads of State Summit meeting in 1976, Moi referred to Israel as an aggressor and criticized it for violating Kenya's airspace during the hostage rescue operation. Hornsby (2012, 319) suggested that Moi was probably not aware of the intrinsic details of Operation Yonatan and his comments were made out of ignorance rather than a deliberate attempt to mislead the Summit about the extent of Kenya's involvement in the operation. In addition to this, it is likely that Kenya's top officials had underestimated the backlash that the country would receive when other countries found out that Kenya had assisted Israel to carry out a military operation. In fact, Idi Amin was outraged that "Kenya, a neighbouring sister State which is a member of both the OAU and the United Nations, assisted Israel to invade Uganda" (Idi Amin Dada to the United Nations 1976, 3). Kenya, therefore, downplayed its involvement in the operation not only to appease Uganda but also to deflect the growing notion that it was an Israeli supporter in the protracted Israeli-Palestinian Conflict.

Kenya reiterated its assertion that it was not an Israeli ally in the aftermath of the 1980 Norfolk hotel bombing. Responding to a question about Kenya's diplomatic relations with Israel a few months after the attack, the Minister for Foreign Affairs Robert Ouko informed Kenya's National Assembly that:

> The Government of Kenya suspended diplomatic relations
> with Israel in 1973 as a result of the Organization of African
> Unity's resolution. Kenya is committed to the principles of
> the Organization of African Unity and has no intention of

action in contravention of its decision ... [The] Kenyan Government has permitted the Palestine Liberation Organization (PLO) to open an office in Nairobi and to enjoy the usual diplomatic privileges. (Republic of Kenya. Parliament. March 10-May 7, 1981, 608)

These assertions were made even as Kenya continued to work closely with Israel on security matters. For instance, the military and training assistance that Kenya had started receiving from Israel in 1963 did not stop despite Kenya being party to the OAU's resolution that severed relations between African states and Israel as a result of the Yom Kippur War in 1973. Kenya also maintained the extensive intelligence-gathering partnership that it had established with Israel in 1963 when Nairobi was designated as Mossad's centre of operations in East Africa. In fact, the successful interception of a PFLP terror plot to shoot down an El Al flight using a SAM - 7 rocket, in 1976, was because of the close security partnership between Kenya and Israel (Bishku 2017; Mogire 2008). Further demonstrating just how close Kenya and Israel were during the time that diplomatic relations were officially severed between the two countries, Arye Oded, an Israeli diplomat who was based at the British High Commission in Kenya, stated that he "served as an interest officer in Nairobi between 1978 to 1981, operating as an ambassador in every regard apart from external, formal aspects" (Oded 2000, 214).

The disconnect between what Kenya stated about its relationship with Israel vis-à-vis what appeared to be de facto diplomatic ties between the two countries as well as Kenya's support of the PLO was driven by pragmatic considerations. Kenya's behaviour

also revealed how cabinet ministers in Kenya's government perceived terrorism at the time. Pragmatically, Kenya's leaders were aware that they needed to partner with states that were interested in economic and security projects in the country. Israel, among other Western states, had shown great interest in providing economic, security and technical assistance to Kenya. By 1996, for instance, Kenya was among only ten African countries that were receiving direct military assistance from Israel. This included the training of Kenya's fighter pilots in Israel and the provision of military equipment. Over the years, Kenya also received technical aid in agriculture and other civilian fields (Bishku 2017, 89).

The generous support that Kenya received from Israel contrasted with the marginal interest that other states, in the Middle East, had shown during the same period. Furthermore, it appeared as if Arab states in that region were supporting irredentist demands in East Africa. When Somalia joined the Arab League in 1974, it received support for its territorial claims vis-à-vis Kenya and Ethiopia from Arab states (Oded 2000). Kenya regarded this move as an affront to its sovereignty.

Arab states also channelled developmental aid and financial assistance for religious activities to various organizations based in Kenya's Coastal and Northeastern regions (Oded 2000; Mogire 2008). While there was no evidence to suggest that the financial assistance was used to fund irredentist activities, Kenya's government was wary that ethno-nationalistic groups might receive funding for their cause disguised as developmental aid. It is because of these suspicions that Kenya's government closely watched over all political activities in the Coastal and Northeastern regions and clamped down on groups or individuals that it perceived as a threat to Kenya's territorial integrity and stability. In

certain instances, efforts to control political activities in these regions led to the excessive use of force as was witnessed during the Wagalla massacre[30] in 1984 (Anderson 2014; Oywa 2011). Over the years, the relationship between Kenya's government and communities in the Coastal and Northeastern regions deteriorated resulting in the widespread belief that these two regions have been politically marginalized since Kenya gained its independence in 1963. It is, therefore, not surprising that Kenya's government valued its close relations with Israel and Western states.

Notwithstanding the close ties that Kenya had with Israel and other Western states, the country's leaders knew that they could not ignore the plight of the Palestinians because of Kenya's membership in the OAU and its association with the Non-Aligned Movement (NAM).[31] Additionally, some of Kenya's leaders did not want to criticize the PLO because they could relate to the group's quest to establish an independent state in the Middle East. Between 1973 and 1980, for instance, several members of Kenya's parliament passionately spoke about their roles as freedom fighters and the need to support groups that were fighting for independence around the world. These sentiments not only reflected the key proclamations of NAM but were also expressed because Kenya's founding leaders had once been condemned for using political violence to fight for independence. For instance, Jomo Kenyatta, Kenya's first president, had been accused of taking part in terrorism because of his affiliation with the Mau Mau (Edgerton 1989). In this instance, even though

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[30] The Wagalla massacre happened over a period of four days in February 1984 when attempts to disarm the Degodia clan who are part of Kenyan Somalis led to human rights abuses and killings of Somalis in Wajir (Truth, Justice and Reconciliation Commission 2013; Oywa 2011; Anderson 2014).
[31] The NAM was created during the first conference of Heads of State or Government non-aligned countries that was hosted in Belgrade in September 1961 to denounce colonialism, apartheid, racism and Zionism (Tassin 2006).

the British had designated the Mau Mau as an ethno-nationalistic terrorist group, it enjoyed the support of Kikuyus who perceived its members as freedom fighters.

The preceding discussions provide the context for one of the key factors that affected perceptions about terrorism in Kenya. Even though the Norfolk hotel bombing had been carried out in Kenya, it was perceived as an attack on Israeli interests rather than an attack on the Kenyan state or its people. The fact that the perpetrators of the attack were foreigners who belonged to groups that were fighting against Israel reinforced the belief that Kenya was not the target of the attack. Consequently, Kenyan victims of the attack were perceived as innocent bystanders who were caught in the crossfire of the conflict between the Israelis and the Palestinians. The emphasis on foreign fighters carrying out attacks against foreign entities in Kenya became a recurrent theme in the unsecuritization of terrorism. Furthermore, cabinet ministers in Kenya's government, though critical of the attack, were sympathetic to the plight of the Palestinians on whose behalf the attackers claimed to have acted. As a result, no one in Kenya's government, at the time, declared that Kenya was under threat from terrorists or that the country had to enact counterterrorism measures to address terrorism threats.

Ethnopolitical Violence in Kenya

After the Norfolk hotel bombing, Kenya did not experience any terrorist attacks until the US Embassy bombing in 1998. However, the country was far from peaceful. Ethnopolitical violence became a malignant feature of Kenya's electoral process. The genesis of the violence can be traced to 1991, the year that the Cold War officially ended. The changing relationship between Russia and the US affected how Western states related to developing

states. After the collapse of the Soviet Union, Western states had new impetus to focus on the entrenchment of democracy in developing states. In Kenya's case, local groups and individuals, alongside Western states and international organizations, put pressure on Moi's government to allow multiparty politics in Kenya.[32] In December 1991, Moi yielded to pressure and led Kenya's parliament in repealing Section 2A of the constitution which made Kenya a de jure multiparty state (Makinda 1996; Brown 2001; Adar and Munyae 2001).

Even though Moi agreed to open democratic space in Kenya, his government zeroed in on the instigation of ethnopolitical violence as a way of maintaining its hold on political power. Ethnopolitical violence refers to ethnic or religiously motivated conflict that occurs between two or more ethnic groups. It usually takes place when ethnic identities are manipulated to pit two or more groups against each other. As Oloo (2010) stated, the rallying cry of ethnopolitical violence is that "it [will] advance the interests of particular groups in society, the members of which often share and unite around common experiences of actual or perceived social and economic injustice, relative to the wider society of which they form part of and exist" (Oloo 2010, 33).

Kenya's colonial legacy and some of the practices of its postcolonial governments provided fertile ground for the growth of many social and economic grievances that were used to instigate ethnopolitical violence as well as terrorist attacks in the 1990s and beyond. When Kenya became independent in 1963, Kenyatta's government embarked on a scheme

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[32] Kenya had been a one-party state from 1982 when Kenya's parliament passed the *Constitution of Kenya Amendment Act No. 7* of 1982. The Act introduced Section 2A that changed Kenya from a de facto to a de jure one-party state.

whose key objective was to reacquire land from the European settlers. From the onset, Kenyatta made it clear that the process of getting land back would not include evicting any of the occupants of the land. Indeed, part of Kenyatta's Independence Day speech stated, "I would not like to feel that my shamba (farm) or house belongs to the government. Titles must be respected and the right of the individual safeguarded" (Branch 2011, 9). In Kenyatta's view, Africans who wanted to own land in the White Highlands, or anywhere else in Kenya, would have to purchase the land from European settlers who were willing to sell their land. To the chagrin of African nationalists such as Oginga Odinga and Bildad Kaggia, Kenyatta "explicitly ruled out the nationalization of foreign-owned assets, including land, or the compulsory purchase of European-owned land" (Branch 2011, 9).

On paper, Kenyatta's policy appeared plausible and transparent. However, its implementation was plagued with controversies and the inconsistent allocation of land. The key beneficiaries of the post-colonial land reacquisition scheme were African elites. According to the Truth Justice and Reconciliation Commission (2013) within 12 years of Kenya's independence, "one sixth of the settler land had been sold, intact, to Kenyatta, his wife, children and close associates" (Truth Justice and Reconciliation Commission 2013, 19). In addition to buying land in the former White Highlands, Kenyatta and his close associates were also privileged in land transactions at the Kenyan Coast. Their land purchases at the Coast included areas that indigenous Mijikenda groups[33] occupied, thus,

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[33] The Mijikenda consists of nine closely related but distinct ethnic groups that are also known as the nine houses. They are: Kauma, Chonyi, Giriama, Jibana, Ribe, Rabai, Digo, Kamabe and Duruma.

rendering members of these groups landless and exacerbating the squatter problem in Kenya (Kanyinga 1988).

Apart from selling large tracts of land to Kenyatta and his close associates, Kenyatta's government bought land from some of the European settlers that was then reallocated to former occupants of Native Reserves and workers in former settler farms. In other instances, individuals formed ethnic-based cooperatives that were used to purchase land that was then shared among members of the cooperative. Some of the areas where such settlement schemes were established included Uasin Gishu, Molo, Nakuru, Trans Nzoia, Nandi, Narok, Kwale and Mpeketoni (Kanyinga 2009). Decades later, these regions would become hotspots of political violence in Kenya.

The initial plan for the resettlement schemes was to allocate land to individuals whose forebearers had lived in or around the designated areas. However, the principle of willing buyer willing seller made it impossible to prevent individuals from other ethnic groups to settle in the designated areas. For instance, Kikuyus and Kalenjins acquired pieces of land in Burnt Forest,[34] an area in the Rift Valley that is considered to belong to members of the Kalenjin community. While many occupants of the new settlement schemes lived harmoniously, there were incidences of violence between members of different ethnic groups because of the belief that outsiders (those with no direct-historical connection to the region) were unfairly allocated land in the settlement areas. One of the

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[34] This area would later become an epicentre of ethnopolitical violence. Because of the negative connotation of the name Burnt Forest, residents have called for the area to revert to its original name, Tarakwa.

violent incidences included the 1967 land clashes in Narok between members of the Kikuyu and Kalenjin ethnic groups (Truth Justice and Reconciliation Commission 2013).

The notion that members of some ethnic groups had occupied land that they did not deserve became a toxic undercurrent that opportunistic politicians and terrorist groups used to enflame political violence in Kenya. Instigators of political violence not only pointed out that those with ancestral links to the land had lost their land to outsiders but also criticized the socio-economic activities of the outsiders. There were claims that outsiders dominated lucrative economic activities and were taking away economic opportunities from the rightful inhabitants of the land. Closely linked to allegations of economic domination were accusations of a political takeover (Boon 2012; Kanyinga 2009; Truth Justice and Reconciliation Commission 2013). Outsiders were accused of distorting the voting preferences of various regions depending on the ethnic affiliation of presidential candidates. For instance, during Moi's presidency, it was widely presumed that Kikuyus living in the Rift Valley would never vote for Moi if a Kikuyu was running for president.

Armed with propaganda about the impact that outsiders could have on the socio-economic interests of those who had ancestral claims to land, political candidates called for the expulsion of outsiders. At face value, narratives about the expulsion of outsiders were framed as a campaign to protect the socio-economic interests of local communities. In reality, several political candidates used violence to preserve their political, social and economic power through ethnic cleansing (Odhiambo 2004; Ruteere 2011; Klopp 2002; Anderson and Lochery 2008; Kanyinga 2009; Ajulu 2002). In this context, ethnic identity

was associated with political affiliation, thus, providing the justification to violently expel members of ethnic groups that were linked to opposing political parties.

Witnesses who testified during the Kiliku Commission's inquiry into the 1992 post-election violence stated that politicians incited violence. In one account, a witness described how a politician repeatedly told attendees at political meetings that all foreigners, that is, anyone who was not a Maasai, "would have to leave Maasai land and return to their ancestral home" (Truth Justice and Reconciliation Commission 2013, 519). Further testimony at the inquiry implicated the government in orchestrating attacks against civilians. During one testimony, a resident from Chebilat, in the Rift Valley, stated that the Chief in his area informed members of his community (Kikuyus) that "the attacks by young Kalenjins was a government project" (Truth Justice and Reconciliation Commission 2013, 522). The Chief advised anyone who feared for their life to "leave Rift Valley province and go back to Murang'a[35] [because] they would not be offered security by any policeman" (Truth Justice and Reconciliation Commission 2013, 522).

Similar scenarios played out in other parts of the Rift Valley. Perpetrators of the violence identified with the ruling KANU political party and sought to expel members of ethnic groups that were suspected of supporting any other political party (Adar and Munyae 2001; Klopp 2002). In one case that happened in 1993, a prominent politician[36] was enraged that KANU had not received as many votes as anticipated in parts of the Rift Valley. The politician asked his supporters "to lynch and forcibly expel Luo people from

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[35] Murang'a is a county in Kenya that is predominantly inhabited by the Kikuyu.
[36] Although the identities of inciters of violence is not a secret in Kenya, the official government reports on election violence do not mention any of the politicians by name. They are referred to in code.

Bomet and Kericho [which were districts in the Rift Valley at the time]" for allegedly supporting an opposition party (Truth Justice and Reconciliation Commission 2013, 521).

In yet another case that happened after the results of the 1992 elections had been announced on November 28, 1993, a prominent politician delivered a speech at Makutano stadium in Kapenguria "where he ordered Kikuyus to leave West Pokot district in 48 hours and warned that the Kalenjin and Pokot communities would take the law into their own hands if they did not comply with his orders" (Truth Justice and Reconciliation Commission 2013, 521). These cases, and many others that happened around the country, show that the threat of ethnopolitical violence in Kenya did not dissipate once political candidates had been elected. The threat continued to simmer during the period between elections and re-erupted during subsequent election periods.

Violence broke out again during the 1997 election period. This time, ethnic cleansing and violence not only took place in the Rift Valley but also at the Kenyan Coast where approximately 100 people identified as 'watu wa bara' (upcountry people/outsiders) lost their lives and another 100,000 were internally displaced (Steeves 2006). The most affected areas at the Coast were Msambweni in Kwale and Likoni in Mombasa. On August 19, 1997 a group of young men mainly from the Digo[37] community, who called themselves vijana wa Kaya Bombo (the Kaya Bombo youth), stormed into the Likoni police station and stole 40 firearms and 3000 rounds of ammunition. They then proceeded to attack

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[37] The Digo are one of nine ethnic groups that make up the Mijikenda. They hail from the Kenyan Coast.

residents from upcountry with guns and machetes (Nation Reporter 2004; Truth Justice and Reconciliation Commission, 2013).

Even though the violence sent shockwaves across the Coastal region, it did not come as a surprise. Months before the attack, the Kaya Bombo youth had distributed leaflets warning outsiders to move out of the Coastal region. The leaflets had a clear deadline and once it passed, the Kaya Bombo youth went on the rampage. It was also an open secret that groups of young men were being recruited into the group before taking oaths and undergoing training at designated spots in the Kaya Bombo forest. The young men were lured into the group on claims that they would be fighting against members of ethnic groups that had not only exploited their land and resources but also marginalized the original inhabitants of Kenya's Coastal region for a long time (Truth Justice and Reconciliation Commission 2013, 525-526; Nation Reporter 2004).

There were also pockets of violence in the Western Highlands and Kenya's capital city Nairobi. As was the case in 1992, KANU leaders were identified as the main instigator of violence during the 1997 elections, although, there were also cases of retaliatory attacks against members of ethnic groups that were affiliated with KANU. In some parts of the Rift Valley, it was alleged that a prominent politician bought weapons and provided funds for Kikuyu youth to carry out attacks against members of the Kalenjin, Luhya and Luo communities on allegations that members of these communities were KANU loyalists (Truth, Justice and Reconciliation Commission 2013, 519-520). In total, ethno-political violence in Kenya from 1992-1997 resulted in over 1900 deaths, the displacement of over 350,000 people, financial losses in the tourism industry as visitor numbers dwindled, loss

of property worth billions of Kenya shillings and disruptions to farming activities in the affected areas (Human Rights Watch 1993, 2002).

The 1998 US Embassy Bombing in Kenya

As Kenyans in several affected regions rebuilt their lives after another spate of ethnopolitical violence in 1997, the country experienced its second major terrorist attack. On August 7, 1998, two trucks loaded with bombs exploded at the entrance of the US Embassy that was situated in Kenya's capital city Nairobi. The explosion not only damaged the American Embassy building but also destroyed several surrounding buildings killing approximately 213 and injuring over 4000 people, the majority being Kenyans. It later emerged that Al Qaeda operatives who had lived in Kenya for a period of five years, were responsible for the attack. Among them was Ali Mohamed, an American citizen and a former sergeant in the US army, who said that he had conducted surveillance of American, British, French and Israeli targets in Nairobi in 1993 (Moghadam 2008). Other key planners of the attack, Mohammed Saddig Oden, a Palestinian who was born in Saudi Arabia and Fazul Abdullah Mohammed (alias Abdulkarim), a citizen of the Comoro Islands, had moved to Kenya from Afghanistan in 1994 and 1996 respectively. They both settled in Mombasa, a coastal town in Kenya, and mingled with locals as they planned the Embassy bombing. While Oden set up a fishing business in Mombasa, Fazul Mohammed ran a gem business there. Both men used these businesses as a cover for their clandestine operations. They were not only able to meet regularly with other Al Qaeda members in Kenya but also managed to travel in and out of the country freely as they planned the bombing of the US Embassy in Nairobi (Mickolus and Simmons 2014).

In addition to encouraging its operatives to assimilate with locals in Kenya, the Al Qaeda network was flexible and decentralized. When Wadi el-Hage, a Lebanese-born American citizen credited with establishing the group's Kenyan cell in 1994[38] came under the radar of the United States' Federal Bureau of Investigations (FBI), Al Qaeda replaced him with an Egyptian citizen, Ali Saleh, who continued with preparations for the attack. El-Hage was quickly replaced because the FBI, in collaboration with Kenyan authorities, had visited his house in August 1997 where they confiscated papers and personal computers. Since el-Hage had travelled out of the country when authorities visited his home, the FBI warned his wife and mother-in-law about staying in Kenya and advised them to go back to the US. Immediately el-Hage returned to Kenya, he and his family, who were all American citizens, sold everything they owned and went back to the US where he took up a job at a tire store in Texas (Zill 2001).

El-Hage's quick departure from Kenya gave authorities the false impression that Al Qaeda's Kenyan cell was no longer operational because its leader, el-Hage, had fled to the US. Al Qaeda's plans to attack the US Embassy in Nairobi were, therefore, not disrupted because US and Kenyan authorities believed that the group had ceased its operations in Kenya not knowing that Saleh had been appointed as the new head of Al Qaeda in Kenya. The decentralized nature of the group also made it difficult for the FBI as well as law enforcement agencies in Kenya to identify members of Al Qaeda's network in the country. Despite arresting several suspects including eight Yemeni and thirteen Somali

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[38] El Hage's was also Osama bin Laden's secretary and his Al Qaeda cell operated under the disguise of a Muslim charity organization called Help Africa People. The organization claimed that it was involved in malaria control projects in Kenya (Zill 2001).

citizens some of the key planners of the 1998 bombing remained at large (United States Institute of Peace 2004; Jacquard 2002).

As the deadliest attack since Al Qaeda's creation in 1988, the 1998 bombing demonstrated the group's capabilities as a dangerous transnational terrorist organization and drew the world's attention to the motives of its leader Osama bin Laden. On February 23, 1998, just a few months before the attack, bin Laden issued a fatwa[39] urging all Muslims to fight against Americans whom he accused of occupying Muslim lands, exploiting its riches and killing its people with impunity. Although the fatwa did not make specific references to Kenya as an Al Qaeda target, bin Laden explicitly instructed his followers "to kill the Americans and their allies, civilians and military … in any country in which it is possible to do it" (bin Laden 1998). Bin Laden's fatwa did not distinguish between the US and any country that was perceived to support it.

Bin Laden also had grievances against Israel and anyone who supported the Jewish state. A brief biography that he gave to *Nida'ul Islam*, an Australian based magazine that interviewed him in 1996, points to 1973 as the year of his political awakening (Nida'ul Islam 1996).[40] While the 1996 interview did not reveal why the year 1973 was significant for bin Laden, a letter dated December 29, 1994, to the then Chief Mufti of Saudi Arabia, Abdul Aziz bin Abdullah bin Baz, did. It gave a scathing attack of Israel's policy in the Middle East. Part of the letter stated that the "Jewish enemy is not an enemy settled in his own original country fighting in its defence until he gains a peace agreement, but an

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[39] A fatwa is "an Islamic legal pronouncement issued by an expert in religious law" (The Islamic Supreme Council of America 2017).
[40] This was the year that Israel defeated Egypt and Syria in the Yom Kippur war, after getting weapons and supplies from the United States. For details see Boyne (2002).

attacking enemy and a corrupter of religion and the world, for whom the words of the Sheikh of Islam Ibn Taymiyya apply" (Lawrence and Howarth 2005, 23).[41] In this instance, bin Laden was referring to Ibn Taymiyya's fatwa which stated that threats to Islamic identity, such as the Mongol threat that inhabitants of Syria faced in the thirteenth century, must be repulsed through jihad (holy war). Bin Laden equated the Mongol's threat against Syria to what he described as the Western civilization's threat against the Muslim world. Just as Ibn Taymiyya had called upon Muslims to fight against the Mongols, bin Laden expected all Muslims to fight against Western states and their allies (Doran 2002).

The letter also berated anyone who either supported or was willing to negotiate with Israel, and bin Laden later reiterated these sentiments during an *Al Jazeera* interview in December 1998. When asked whether he was involved in terrorist activities, including the attack in Kenya, bin Laden said that he and his followers were fighting against "the global crusader alliance with the Zionist Jews, led by America, Britain and Israel [who attack] my land" (quoted in Lawrence and Howarth 2005, 73). Even though he did not identify Kenya as an enemy, he declared that it was within their right to avenge mistreatment despite the loss of innocent life as had happened in Kenya.

Although bin Laden repeatedly denied that he had ordered the attack on the US Embassy in Kenya, there are indications that Kenya was selected as a battlefield for Al Qaeda's fight with the West because of its close relations with the US, Britain and Israel. Since it gained independence in 1963, Kenya had maintained cordial relations with all three countries except for a period of low-key relations with Israel after the Yom Kippur war.

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[41] For an English translation of the entire letter see Lawrence and Howarth (2005, 23-33).

Security cooperation has been an important component of Kenya's relations with these countries. For instance, the US started providing military assistance to Kenya in 1976, the year that Kenya played a pivotal role in the rescue of Jewish hostages in Entebbe, Uganda. After the rescue mission, the US Secretary of State at the time, Henry Kissinger, authorized the positioning of an aircraft carrier group near Mombasa as a warning to Idi Amin who had threatened to retaliate against Kenya for its assistance in the Entebbe raid (Hornsby 2012, 318-319).

In addition to this, the two countries signed a military agreement that allowed the US to access Kenya's ports and airfields in pursuit of US security objectives in the Indian Ocean region. It is because of this agreement that the US military was able to use facilities in Kenya to support the UN's 1992 multinational relief effort in Somalia dubbed, Operation Provide Relief (Poole 2005). The fact that the US was playing a pivotal role in Somalia's affairs irked bin Laden. In a letter to the Chief Mufti of Saudi Arabia, dated December 29, 1994, bin Laden protested against the proliferation of Western influence in the Horn of Africa, among other regions, and claimed that the UN was being used as a cover to control Muslims in countries such as Somalia (Lawrence and Howarth 2005, 23-33).

One of bin Laden's former bodyguard's, Nasir Ahmad Abdallah Al-Bahri (alias Abu-Jandal), reaffirmed bin Laden's views about the US and its allies in an interview with *Al-Quads Al-Arabi* – a pan-Arab newspaper published in London. During the interview, Al-Bahri revealed that bin Laden was vehemently opposed to US intervention in Somalia viewing it as a sinister plot to spread US hegemony in the region, stifle Islamic movements

and set up a US base that would be close to the Arabian Gulf (Al-Quads Al-Arabi 2004; Vadlamudi 2007, 121).

Like the US, the UK signed several bilateral defence agreements with Kenya beginning in 1963 when Kenya became an independent state. Among them was an agreement that established the British Training Unit Kenya (BATUK). This agreement allowed the British government to train its troops in parts of Kenya in preparation for deployment in regions, "with a similar terrain and climate such as parts of Afghanistan and Iraq" (Tossini 2017, para. 3).

Kenya also had close security ties with Israel for many years. The relationship began in 1962 during a meeting between Mossad agents and Jomo Kenyatta, who went on to become Kenya's first president in 1964. After the meeting, Israel designated Kenya as one of its centres of intelligence activity and security cooperation in Africa, the others being Zaire (now the Democratic Republic of Congo) and Nigeria (Vargo 2015). The close ties between the two countries led to several joint security missions, including the interception of plans to attack an Israeli plane in Nairobi in January 1976 and the rescue of hostages later that year in Entebbe, Uganda.

The cordial relationship between Kenya and Israel was reaffirmed in the aftermath of the 1998 US Embassy bombings when the Israel Defence Forces became the first rescue team to arrive from abroad (Otiso 2009). It is these events, among others,[42] that give credence to Bishku's (2017) assertion that Kenya is Israel's closest and most reliable partner in Africa. Based on its relations with its Western allies, it is evident that Kenya was

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[42] For further details about Kenya-Israel relations see Bishku (2017), Mogire (2008) and Oded (2000).

instrumental in supporting American, British and Israeli security interests. It is, therefore, likely that bin Laden and his supporters targeted Kenya because of its long-standing and close relations with countries that he had identified as his arch nemeses.

The 1998 US Embassy Attack and Implications on Kenya's Counterterrorism Policy

The 1998 US Embassy bombing underscored the presence of Al Qaeda operatives in East Africa and the dangers that they posed in the region. Prior to the bombing, law enforcement agencies in Kenya and the US knew that Abu Ubayda al-Banshiri, an Al Qaeda military commander who was born in Egypt, was part of an Al Qaeda cell, in Nairobi, that facilitated the travel of Al Qaeda operatives going to Somalia. However, they did not consider this to be a significant threat to Kenyan or American interests in the region mainly because of conflicting intelligence on the intentions of Al Qaeda cells in East Africa. The Accountability Review Board report on the 1998 US Embassy bombing noted that while intelligence reports about threats to US and other targets were taken seriously, they were later "discounted because of imprecise, changing and non-specific dates about the attacks" (Accountability Review Board Report n.d, 2).

Law enforcement agencies also thought that their actions against organizations and persons associated with Al Qaeda in Nairobi had foiled the possibility of attacks in East Africa (Accountability Review Board, n.d). For instance, Wadi el-Hage, the founder of Al Qaeda's cell in Kenya, appeared to heed warnings from the FBI and Kenyan authorities when he quickly left the country after authorities visited his home in August 1997 (Zill 2001).

The FBI and Kenya's law enforcement authorities had also confronted a suspected terrorist group, the Al-Haramayn Foundation (Kenya), in Nairobi in 1997. The Al-Haramayn Foundation in Kenya was one of several branches of the Saudi Arabia based Al-Haramain Islamic Foundation.[43] Even though the Al-Haramain foundation claimed to be a charitable and educational NGO that operated in several countries around the world, investigations linked the foundation's activities to Al Qaeda. Through its worldwide network of so-called charitable foundations, Al-Haramain provided material, financial and logistical support to Al Qaeda operatives. Indeed, el-Hage, one of the masterminds of the 1998 US Embassy bombings, had visited the offices of Al-Haramayn (Kenya) and kept in touch with a senior official from the organization before the bombings in Kenya and Tanzania (United Nations Security Council 2015). Additionally, the foundation's Kenyan branch Al Haramayn (Kenya) was linked to Al-Itihaad al-Islamiya (AIAI), an Islamist group in Somalia. Kenyan authorities believed that they had dissipated all the alleged threats because they arrested and later deported foreigners who worked for Al-Haramayn (Kenya) (United Nations Security Council 2009).

Even as Kenya's law enforcement agencies worked with the FBI to flash out and rid Kenya of foreign terrorists, Moi's government never considered terrorism to be a serious threat in Kenya. Consequently, terrorism was not part of national security discourse during Moi's presidency. Moi's reaction after the US Embassy attack provides insight on his government's perceptions about terrorism during that time. Despite being a president

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[43] The Al Haramain Foundation in Saudi Arabia had branches in several starts including Bosnia and Herzegovina, Somalia, Indonesia, Ethiopia, Pakistan, Bangladesh, the Netherlands, Tanzania, Afghanistan, Albania, Tanzania and the Union of the Comoros (United Nations Security Council 2015).

who never shied away from condemning anyone who he perceived as a threat to his government, Moi did not have much to say about the bombing of the US Embassy in Kenya and only made two brief comments shortly after the attacks. A few hours after the bombing, Moi addressed the media at the attack site stating "kuleta vita kwetu sisi watu wa amani hatujui ni kwanini. Watu wa Kenya hawana vita na mtu yeyote" (We do not know why war has been brought to our peace-loving nation. The people of Kenya are not at war with anyone) (KTN News 2018a, 1:01). A few days later, Moi and Benjamin Mkapa, Tanzania's president at the time, held a joint press briefing where Moi confirmed that Kenya and Tanzania were cooperating with the US to investigate the US Embassy bombings in Nairobi and Dar es Salaam (Associate Press Archive 2015).

Based on his choice of words and the tone of his voice, Moi expressed shock about the attack and empathy towards the victims of the attack. However, he did not express outrage towards the attackers even as details about the attack were revealed to the public. This was unusual given the magnitude of the attack and the fact that the main victims of the attack were Kenyans. Moreover, it was out of character for Moi, an authoritarian president who had ruled Kenya for almost 20 years,[44] not to talk about how Kenya was going to protect itself and prevent another terrorist attack. Moi had always presented himself as Kenya's protector and would walk into public ceremonies and gatherings to chants of "baba wa taifa" (father of the nation) (KTN News 2014). He prided himself as a powerful leader who knew everything that was going on in Kenya and believed that he was in control of the country's destiny.

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[44] Moi ruled for a total of 24 years. From 1978-2002.

On this basis, Moi's nonchalant attitude towards Al Qaeda's attack on Kenyan soil was an indication that he did not perceive the attack as a security problem for Kenya. It is likely that Moi's government perceived the US Embassy bombing as an attack on the US even though it happened on Kenyan soil. The reason behind Moi's government's attitude towards the attack is discussed further in chapter three of this thesis.

In contrast to Kenya, policymakers and political leaders in the US repeatedly stated that there was need for a policy shift in efforts to counter transnational terrorism. Reacting to the attacks, the US president at the time, Bill Clinton, declared that "law enforcement and diplomatic tools are simply not enough" and "we must take extraordinary steps to protect the safety of our citizens" (Clinton 1998, para. 7). Clinton categorically criticized the perpetrators of the attack and promised them that the US would retaliate against the attacks stating:

> These acts of terrorist violence are abhorrent, they are inhuman. We will use all the means at our disposal to bring those responsible to justice no matter what or how long it takes (Associate Press Archive 2015b, 0:01).

Clinton predicted that what lay ahead was "a long, ongoing struggle between freedom and fanaticism, between the rule of law and terrorism" and was emphatic that "we must be prepared to do all that we can for as long as we must" (Clinton 1998, para. 14).

Other key policymakers in the Clinton administration including Secretary of State Madeline Albright, Defence Secretary William Cohen and National Security Advisor Sandy Berger made similar remarks. The dominant theme in their public statements was

that the United States' counterterrorism policy, henceforth, would be based on proactive and extraordinary security measures (Perl 1998). This view was reinforced after the terrorist attacks on 9/11 leading to the enactment of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) and the adoption of the United Nations Security Council's Resolution 1373.

The 2002 Kikambala Bombing

Shortly after 9/11, Kenya's vulnerability to transnational terrorist attacks was, once again, brought to the fore. On November 28, 2002, Al Qaeda militants attacked the Israeli-owned Paradise Hotel in Kikambala, Mombasa. They also attempted to shoot down an Israeli charter plane that had just taken off from the Moi International airport in Mombasa with 261 passengers on board. Although the fired surface-to-air missiles failed to hit the plane, a suicide bomber drove a car packed with explosives into the Paradise hotel killing 15 people and injuring 40 others (Fighel 2011; Muiruri 2003; Gunaratna 2002).

One of the masterminds of the attacks, Fazul Abdallah Mohammed, a Comoran, had fled from Kenya after the 1998 US Embassy bombing before sneaking back into the country from Afghanistan between 2001 and 2002. He settled in Lamu, an island off the Kenyan coast, married a Kenyan woman from the area and entrenched himself into the community as a Muslim cleric and mentor for the youth. He was even able to establish three football teams - Al Qaeda, Kandahar and Kabul - for boys and young men in Lamu without raising any suspicions about his intentions (Fighel 2011; Muiruri 2003; Gunaratna 2002). After the 2002 attacks in Mombasa, he slipped into Somalia through the Lamu

border where he became Al Qaeda's East African leader and a top commander in Al Shabaab until his death in 2011.

Security Discussions in the Aftermath of the 2002 Kikambala Bombing

The second major terrorist attack in Kenya happened a month before the 2002 elections were held in the country. This time, Moi's name was not on the ballot paper. However, he had handpicked Uhuru Kenyatta, the son of Kenya's first president Jomo Kenyatta, as his preferred candidate on a KANU ticket. To counter Uhuru Kenyatta's bid for presidency, several prominent opposition members had come together under the umbrella of the National Rainbow Coalition (NARC). The main objective of the coalition, which was made up of 15 opposition parties,[45] was to make sure that KANU's 40-year rule came to an end (Awori 2017).

Many opposition members viewed KANU as a destructive force in Kenya considering its leaders involvement in ethnopolitical violence in the country among other vices. Indeed, some members of the opposition had referred to ethnopolitical violence in Kenya as a form of state terrorism. On April 17, 1997, Kiraitu Murungi, who was in the opposition at the time and would later serve in the NARC Cabinet when it won the elections in 2002, stated:

> One of the courses which I studied at graduate level was a
>
> course called Political Violence and Terrorism. This

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[45] NARC was made up of 15 opposition parties and the most prominent of these were: Raila Odinga's Liberal Democratic Party (LDP), Kijana Wamalwa's Forum for the Restoration of Democracy (Ford-Kenya), Charity Ngilu's Social Democratic Party (SDP) and Mwai Kibaki's Democratic Party (DP).

[ethnopolitical violence] is one of the strategies of state

terrorism in this country. There are people in this country

who think that they can win, maintain power and preserve

their economic privileges … by using terrorism … We want

president Moi to be told that we, in the opposition, would

like him to retire peacefully and play with his grandchildren

(Kenya Hansard 1997, 298).

Murungi's speech was not just a candid expression of how Kenya's opposition felt about

Moi and KANU, but also one of the main reasons why members of the opposition came

together to form a coalition party. For NARC, KANU was the malignant threat that had to

be stopped and not what they believed were a few foreign terrorists who were targeting

foreign installations in Kenya. Transnational terrorism was, therefore, not a priority for

policymakers in Kenya in the immediate aftermath of 9/11.

When NARC ousted KANU and won the elections in 2002, Kenya started a new

chapter in its history. For the first time in almost a decade, Kenya had relatively peaceful

elections with no major incidences of ethnopolitical violence. Plus, NARC had pledged to

uproot the despotic system that KANU had developed over a period of almost 40 years.

NARC's strategy to lead Kenya on a new path of prosperity focused on two key things.

First, entrenching democracy in Kenya through institutional and constitutional changes and

second, pursuing innovative economic policies that would revamp Kenya's economy

(Ndegwa 2003). The changes that NARC instituted and the processes that accompanied

the changes set in motion a series of events that had a profound impact on counterterrorism policymaking in Kenya. These changes are discussed in chapters three, four and five.

Conclusion

This chapter focused on major incidences of political violence in Kenya with an objective of identifying some of the contextual factors that affected the unsecuritization and securitization of terrorism in Kenya. Kenya experienced several incidences of ethnopolitical violence as well as three major terrorist attacks in 1980, 1998 and 2002. Kenya's government and members of the opposition condemned the terrorist attacks. Nevertheless, the prominence of foreign nationals in orchestrating the attacks was perceived as a sign that terrorism was a foreign threat. This view was reinforced by the fact that the targets of the attacks, which included the Israeli owned Norfolk hotel in Nairobi, the US Embassy in Nairobi and the Israeli owned Kikambala hotel in Mombasa, were foreign installations in Kenya.

Additionally, securitization actors in Kenya, that is, the president, cabinet ministers and members of parliament, were preoccupied with the politics of ethnopolitical violence in Kenya. Unlike terrorist incidences in the country which occurred infrequently and were targeted at foreign installations, ethnopolitical violence in Kenya was a cyclical phenomenon that worsened during the subsequent election year. Moreover, even though violence subsided once the election results had been announced, Kenya was never really at peace. Once ethnic animosity was ignited in 1992, it became impossible to extinguish mainly because it was coupled with narratives of historical injustices. Hence, at the time,

the problem of transnational terrorism was far less menacing when compared to ethnopolitical violence in Kenya.

The terrorist attacks in the US on 9/11 happened just over a year before NARC was elected in Kenya. NARC's election victory in December 2002 was a new starting point for Kenya. After almost 40 years of despotic rule under KANU, Kenya had a chance to become a democracy and embark on activities that would revamp its economy. The changes that Kenya went through under the NARC government combined with geopolitical developments in the Horn of Africa had a big impact on counterterrorism policymaking in Kenya. These changes and their impact on the unsecuritization and securitization of terrorism in Kenya are discussed in subsequent chapters.

Chapter Four

The Rise of Al Shabaab: From Foreign Attackers to Home-Grown Jihadists

Introduction

Chapter three elaborated on political violence in Kenya including three of the country's major terrorist attacks. The three terrorist attacks had two factors in common. First, foreign nationals were predominantly involved in planning and executing the attacks. Second, despite the high number of Kenyan casualties, the terrorist attacks were directed at American and Israeli installations in Kenya.

From 2009, there was a shift in the nature of terrorism incidences in Kenya. The frequency of terrorist attacks increased and many of the attacks were directed at Kenyan targets such as local restaurants, police stations and the country's public transport system. In addition to this, Kenyan citizens were identified as the perpetrators of many of the attacks which were attributed to an Islamist terrorist group known as Al Shabaab. While Al Shabaab's original goal was to create an Islamic state in Somalia, governed by a punctilious application of religious texts and teachings, it gradually spread its influence on other parts of East Africa including Kenya (Botha 2013, 2014, 2017). It is the spread of Al Shabaab's influence in Kenya that led to concerns that a growing population of young radicalized Kenyans made terrorism an existential threat to the country.

The key objectives of this chapter are to elaborate on how and why terrorism incidences in Kenya changed and to explain the effect of the changes on Kenya's counterterrorism policy. This chapter begins with discussions about why radicalization is a significant part of the recruitment process of many terrorist groups including Al Shabaab. As discussions in this chapter will reveal, ongoing radicalization is part of Al Shabaab's recruitment and retention strategy. The group's media branch, Al Kataib, has produced hundreds of video and audio recordings, statements and several copies of a digital magazine that contain comprehensive lessons about Al Shabaab's ideology. The lessons are not only targeted at potential recruits. Several of the video recordings feature individuals who eloquently give lectures to groups of Al Shabaab fighters about the merits of jihad and other Al Shabaab objectives. Some of the video and audio recordings are quite lengthy and participants can be heard asking questions just as students would in a classroom setting. For instance, in 2012 Al Kataib media released a video entitled *A Lecture: But if they Seek Your Help in Religion, It is your Duty to Help Them by Mujahid Brother Ahmad Iman Ali* (Al Kataib Media 2012). Given the emphasis that Al Shabaab places on the radicalization of its members, it is important to explain what radicalization is and how it is linked to terrorism.

Next, this chapter elaborates on the emergence of Al Shabaab before analysing the role of key individuals who acted as conduits of radicalization in Kenya. Radicalization conduits propagate ideas that not only attract young people to terrorist groups but also galvanize individuals to carry out lone-wolf attacks. Several studies note that the presence of radicalization conduits, irrespective of whether they are members of a terrorist group, contributes to an increase in the number of individuals who join terrorist groups (Barbieri

and Klausen 2012; Neumann 2017). Examining the roles of radicalization conduits in Kenya provides insights about the levels of radicalization in the country.

The last part of this chapter establishes whether an increase in the levels of radicalization in Kenya led to an increase in terrorist incidences as well as an increase in the number of Kenyans involved in terrorist activities. The discussions in this section of the chapter are juxtaposed with narratives about the terrorism threat in Kenya and debates about counterterrorism measures.

The Link between Terrorism and Radicalization

Attracting and recruiting individuals who are willing to support and carry out terrorist acts is critical to the success and survival of terrorist groups. It is through recruitment that terrorist groups obtain the human resources that they need to carry out attacks and other operational activities. Terrorist recruitment strategies are varied and complex involving different methods such as personal contact, the use of social media and the distribution of written and recorded propaganda material.

Central to the recruitment methods is the process of radicalization which is defined as the progressive adoption of "beliefs, feelings and behaviours in directions that increasingly justify intergroup violence and demand sacrifice in defence of the ingroup" (McCauley and Moskalenko 2008, 416). While radicalization does not always lead to the use, facilitation or support of violence (Schmid 2013; Borum 2011) it can be a precondition for terrorism. Neumann (2013, 2016), argued that politically motivated violence, including terrorism, has always been the product of ideas, feelings and beliefs that venerate the use

of violence to achieve a political goal. He noted that terrorist groups that espoused different political beliefs, across different regions around the world and in different historical periods used radical ideas to create a sense of purpose and belonging among their members.

Similarly, Rapoport (2012) found that since the late 1870s radical ideas and beliefs have been the cause of four waves of modern terrorism namely; the anarchist, the anti-colonial,[46] the new left and the current religious wave. Anarchists were motivated by the idea of overthrowing political systems. Anti-colonialists envisioned colonial territories that were free from European rule. New leftists wanted to overthrow the capitalist state and replace it with a society that was founded on Marxist ideas. Lastly, religious terrorists, which will be the focus of this chapter, strive to create puritanical religious societies that are devoid of what they perceive as infidels or non-believers. (Rapoport 2012; Rasler and Thompson 2009; Jones, 2008; Rink and Sharma 2018).

Several case studies that have examined why fighters joined terrorist groups lend credence to the integral role of radicalization in terrorist groups' recruitment and retention processes. In a study that examined why 58 defectors joined the Islamic State (IS) the International Centre for the Study of Radicalization and Political Violence found that three key radicalization narratives were used to lure recruits to Syria. These were: 1) that Sunni Muslims in Syria were facing genocide from Bashar al Assad's government and needed help from devote Muslims; 2) that the IS was the perfect Islamic state and every Muslim was obligated to join and support it; and 3) that all mujahideen[47] would be rewarded with

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[46] It is important to note that many anti-colonial groups had the support of the communities on whose behalf they carried out political violence.
[47] The term Mujahedeen refers to Jihadi fighters.

luxury goods and become coveted members of the IS brotherhood of heroes (Neumann 2015).

Other studies which carried out interviews to find out the root causes of terrorism among members of the Lord Resistance Army (LRA),[48] the Allied Democratic Forces (ADF)[49] and Al Shabaab revealed that many members joined these groups because of what the groups' advocated for. LRA fighters joined the group because they had been told that Uganda's president, Yoweri Museveni, wanted to wipe out the Acholi people in Northern Uganda and take away their land. Hence, the LRA was largely made up of Acholis who believed that they were defending their people and land (Dubal 2018; Botha 2015). In the cases of the ADF and Al Shabaab, the majority of those interviewed joined the groups because they believed that Muslims faced widespread discrimination in East Africa and that this injustice would be resolved through the violent creation of an Islamic caliphate in the region (Botha, 2013, 2014, 2015, 2017; Titeca and Vlassenroot 2012).

The Collapse of Somalia and the Rise of Al Shabaab, Its Goals and Recruitment Strategies

Several studies have concluded that Al Shabaab gained prominence after the Ethiopian invasion of Somalia in December 2006 (Hansen 2013; Marchal 2009; Solomon 2014; Wise 2011). However, the group's formation and its ambition to create an Islamic state in Somalia and possibly the entire East African region predates the Ethiopian invasion. Prior

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[48] The Lord Resistance Army (LRA) is a heterodox Christian insurgency group that employs terrorist tactics to fight against Yoweri Museveni's government in Uganda. It is important to note that even members of the LRA who had been abducted and forcefully recruited as young children were indoctrinated and many of them gradually believed in the group's cause (Dubal 2018).
[49] The Allied Democratic Forces (ADF) is an insurgency group that operates in Western Uganda and the Democratic Republic of Congo (DRC) (Titeca and Vlassenroot 2012).

to the invasion, Al Shabaab formed an important part of the UIC militant wing. Under the leadership of Hassan Dahir Aweys and Adan Hashi Farah Ayro, militants, then known as Mu'askar Mahkamad (troops of the Islamic Courts) and later as Al Shabaab, successfully facilitated the UIC's takeover of Mogadishu in June 2006 (Menkhaus 2014; Marchal 2009). Aweys was a former leader of AIAI, an Al Qaeda affiliated organization that fought to overthrow Somalia's former president Mohammed Siad Barre with a view to installing a Somali government founded on Wahhabism and spreading its influence on other parts of East Africa (United Nations Security Council 2011a; Unites Nations Security Council 2011b).

AIAI's ambitions were outlined in a document entitled "The Manifesto of an Islamic Party," which clearly stated that the group's main goal was to bring all Somalis together under an Islamic state devoid of any foreign influence or associations (Loewenstein 2010; UNSC 2011b). When AIAI decentralized and dispersed after the 9/11 attacks to evade the United States' counterterrorism operations (UNSC 2011a) its key leaders, such as Aweys, joined the UIC and became influential members of its leadership council. From his position within the UIC Council, Aweys appointed Ayro as the commander of UIC's military wing sometime in 2005 (Marchal 2009; Rabasa 2009; Maruf and Joseph, 2018). It is likely that Ayro was selected for this position because of his willingness to commit acts of political violence. He had received training in Afghanistan

before 9/11 and did not shy away from expressing his desire to carry out jihad against infidels or anyone else who stood in his way (Marchal 2009; Rabasa 2009).[50]

Other prominent personalities of the UIC, who had received training in Afghanistan and went on to become leaders in Al Shabaab included Ahmed Aw Abdi Godane (aka Mukhtar Abu Zubair), Mukhtar Robow (aka Abu Mansur) and Ibrahim al-Afghani (aka Ibrahim Haji Jama Mead). Together with Ayro, the three embarked on an aggressive recruitment strategy modelled on the lessons that they had undertaken in Afghanistan (Marchal 2009; Rabasa 2009).

Marchal (2009) noted that those who were initially recruited into Al Shabaab "were not average young Somalis" (Marchal 2009, 389) with the majority being teenage boys who were either orphans or did not have strong family ties. The boys were housed and trained at a camp that was established after UIC militants destroyed a colonial Italian cemetery in the Huriwa district in the northern part of Mogadishu. The camp was named Salahuddin Muaskar and Godane was appointed as its leader. It had all the necessary equipment and infrastructure that the recruits needed for their training including a mosque, a training campus, a weapons store, a weapons repair section, an emergency clinic and a women's section where food was prepared for the trainees (Maruf and Joseph 2018; BBC 2005). There was, therefore, no need for the boys to have any contact with the outside world and the radicalization process took place uninterrupted.

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[50] It is, however, important to note that the training of Somalis in Afghanistan was not the norm. Their appearance is different from that of Afghanis and this would have made them stand out in Afghanistan and drawn unwanted attention to their groups.

The Salahuddin Mu'askar camp became a blueprint for future camps where mostly young men, including children below the age of 18, were isolated and radicalized. The 2006 *UN Report of the Monitoring Group on Somalia* found that, by October 2006, the UIC's military wing had set up approximately 16 camps in Central and Southern Somalia with a total of approximately 400 young fighters. The report further stated that in addition to Somali trainers who focused on conventional military techniques, the camps hosted foreign trainers from Pakistan, Afghanistan, the Arabian Peninsula and Chechnya who gave lessons on kidnapping techniques, bomb making, the use of bombs against transportation and building targets as well as assassination methods such as sniping and ambush.

The fact that the UIC's military wing training regime included techniques associated with terrorist and insurgency groups suggests that their long-term goal was not limited to establishing and maintaining order within Somalia. Instead, the group's militant wing was preparing its recruits to carry out acts of terrorism as part of its commitment to global jihad. Although this goal was not explicit at the time, the prominent role of Afghanistan-trained members in the UIC's military wing and their connections to jihadist networks in other parts of the world meant that the group's identity as part of the global jihad network was always on the horizon. Perhaps the most influential leader in this regard was Godane. In addition to travelling to Afghanistan, Godane had studied in Sudan and Pakistan after receiving funding from Saudi donors. It is in Pakistan where Godane was radicalized before he travelled to Afghanistan to train and fight alongside the Taliban and later on to Kashmir (Raghavan 2013).

Hence, even though several studies (Hansen 2013; Marchal 2009; Solomon 2014; Wise 2011) described the UIC as a mixture of moderate and radical Islamic leaders whose objective was to restore and maintain order in Somalia, it is unlikely that the group's radical members, such as Ayro, Godane, Robow and al-Afghani, who also happened to be in charge of its military wing, would have been content with operating within the confines or behind the shadows of a moderate UIC. This may explain why rifts within the UIC, such as Ayro's public criticism of moderate UIC members including Abukar Umar Adaan and Ahmed Nuur Ali Jim'ale, began to appear months before the group disintegrated in December 2006 (Marchal 2011; Barnes and Hassan 2007). It also explains why the UIC's military wing, which came to be known as Al Shabaab, did not make any attempts to reintegrate with moderate members of the UIC after it recaptured and extended its political power in Somalia from 2007.

Another indication that the UIC's military wing was not enthusiastic about being part of a moderate UIC was its repeated attempts to dominate the agenda of the UIC and its uncompromising stance towards the views of other UIC members. According to Barnes and Hassan (2007) "there was serious ideological friction between the moderate wing led by the Chairman of the Islamic Courts' Executive Council Sheikh Sharif and the radical wing led by the Chairman of the Courts' Shura (Consultative or Legislative Council) Sheikh Aweys" (Barnes and Hassan 2007, 155). For instance, as soon as the UIC had defeated warlords in Mogadishu in June 2006, its military wing demanded that order in Mogadishu should be based on a strict Wahhabi interpretation of Sharia law. The militants were staunchly opposed to the long-standing Sufi traditions that were an important part of

religious practices among several Somali clans (Marchal 2011; Uexkull and Pettersson 2018).

Furthermore, in line with the UICs military wing's strict laws, Somalis were subjected to public floggings as well as the banning of music and TV programs because they were deemed un-Islamic (Kebede 2007; Sjah 2014). The military wing also demanded that the UIC should be open to membership from foreign fighters (Marchal 2011), a request that contradicted the objectives of moderates within the group who wanted it to be made up of Somalis interested in rebuilding their country. It is, therefore, not surprising that the UIC's military wing faced "growing opposition from different quarters within the UIC leadership" (Marchal 2011, 17) who disagreed with the rules that the militants were imposing on the Somali people. Given the tumultuous relationship within the UIC, it was only a matter of time before its military wing broke away from moderate elements in the group. Consequently, the Ethiopian invasion of Somalia, in December 2006, acted as a catalyst rather than the main cause of the rise of Al Shabaab in Somalia.

When Ethiopian forces invaded Somalia in December 2006, the UIC collapsed and several members of its leadership council sought refuge outside Somalia. Members of its military wing retreated to the Southern part of Somalia where they regrouped and launched a guerrilla campaign against Ethiopian forces. Throughout most of 2007 and 2008 former UIC militants, who now went by the name Al Shabaab, used Improvised Explosive Devices (IEDs), bombs and assassinations to push back against Ethiopian advancement into Southern Somalia. Al Shabaab's attacks against Ethiopian forces were largely successful because the group had the backing of local populations which resented the presence of

Ethiopia in Somalia[51] and welcomed the services and security that Al Shabaab provided in ungoverned regions where crime had been rampant for several years. Wise (2011), noted that Al Shabaab brought a sense of normalcy in regions that it controlled through the provision of goods and services such as "policing, judicial decision making and welfare" (Wise 2011, 6). This made the group popular, especially in 2007, leading to an increase in the number of young, mostly uneducated, Somalis who wanted to be part of what appeared to be a nationalistic organization that was fighting to restore order and kick out foreign invaders from Somalia (Wise 2011).

Moreover, the fact that the Transitional Federal Government (TFG), Somalia's government at the time, was holed up in Baidoa due to security concerns and had no control over other parts of Somalia made it easy for Al Shabaab to attract and train recruits. The group disseminated its propaganda through broadcast stations and print media in regions under its control without fear of reprisal from the government. New recruits were openly trained in specialized camps including a hand-to-hand and small-arms training camp in Ras Kamboni as well as a kidnapping training camp in Eel Aarfid (Wise 2011). By the end of 2007, Al Shabaab had grown into one of the most powerful militant groups in Africa with thousands of fighters and millions of dollars' worth of funds obtained from revenues in the areas under its control as well as donations from its supporters both within and outside Somalia (Wise 2011; Mwangi 2012).

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[51] Somalia and Ethiopia have a long history of acrimonious relations dating back to the period when part of Ethiopia was known as Abyssinia (Ahmed 1999; Abbink 2003).

From mid-2008, Al Shabaab's outlook took on a more transnational focus. Two key factors led to this change. First, some of the communities under its control started rebelling against Al Shabaab's style of governance. They were particularly upset because Al Shabaab, which adhered to Wahhabism, had banned several religious practices associated with Sufism. The resentment that this elicited among the Somali people was captured in Abdurahman Abdullahi's observation where he noted that:

> [Wahhabis] are engaged in an uncompromising conflictual campaign against Sufis. In that way [Wahhabism], as projected in Somalia, is not a reform movement but a revolutionary approach that aims to obliterate and completely change traditional Islam as practiced in Somalia for centuries. This stream of thought is followed by Al-Itihaad and its more extreme versions such as Al Shabaab and Hizb Al-Islam which engage in the destruction and desecration of the tombs of prominent Sufi scholars (Abdullahi 2011, 51-52).

Al Shabaab's waning popularity coincided with the emergence of groups that challenged its authority. One such group, the Ahlu Sunna wal Jamaa (ASWJ), battled it out with Al Shabaab in areas where it had imposed strict Wahhabi rules (Sjah 2014). Despite being a formidable opponent, the ASWJ did not dislodge Al Shabaab from Somalia. Nevertheless, ASWJ's commitment to defending Sufism demonstrated that Al Shabaab

was unlikely to exert full control over the Somali people because of their rich history of Sufi traditions.

Faced with the prospect of attracting fewer recruits within Somalia, Al Shabaab repositioned itself as a global jihadist organization. On April 5, 2008 the group released a statement entitled "Shabaab al-Mujahideen Announces New Campaign of Terrorism in Somalia," where it reaffirmed not just its commitment to rid Somalia of foreign influence but also its pride in being part of a global jihad network that was working towards the creation of an Islamic caliphate. Part of the statement stated that Al Shabaab was "going through a crucial stage in which the oppressors have crossed the line" (Shabaab al-Mujahideen 2008, para. 1). It appealed to all Muslims and other Islamist fighters around the world to "round up and join forces under one leadership and uniform flag in order to frustrate the enemies of Allah [and] make our jihad stronger and more harmful to our enemies" (Shabaab al-Mujahideen 2008, para. 1).

The second factor that contributed to Al Shabaab's transnational focus was the change of leadership from Ayro to Godane. On May 1, 2008, Ayro was killed in a US airstrike shortly after the US Department of State had designated Al Shabaab as a terrorist group. Unlike Ayro who emphasized the importance of pursuing both nationalistic and transnational objectives, his successor, Godane, was more enthusiastic about projecting Al Shabaab as a transnational terrorist group. Soon after being declared the Emir (supreme leader) of Al Shabaab, Godane announced that the struggle in Somalia was "an integral part of global jihad" (Sjah 2014, 39). Godane reiterated Al Shabaab's commitment to global jihad in 2009 when he stated "we will establish Islamic rule from Alaska to Chile

and South Africa, Japan, Russia to Solomon Island and all the way to Iceland. Be warned!
We are coming" (Al Jazeera 2013, 2:36; Appendix 3)

In line with Godane's transnational outlook, Al Shabaab started releasing propaganda videos that encouraged foreign fighters, including Kenyan Somalis and Muslims, to travel to Somalia and become Al Shabaab Mujahedeen. One of the videos released in November 2010 featured Ali Rage, Al Shabaab's spokesperson at the time, inviting fighters from East Africa to Somalia saying "to our family in East Africa we say welcome to Somalia, *hakuna matata* (there are no worries) (Al Shabaab 2010c, 22:10). These activities constituted part of Al Shabaab's recruitment strategies in Kenya.

Al Shabaab's Kenyan Recruits

There are myriads of factors that explain why radicalization takes place. They range from perceived and real social, economic and political grievances (Gurr 1970; Makinda 2003; Botha 2014; George 2016; Okafor and Piesse 2017) to situations where individuals are experiencing social identity crisis (Sambanis and Shayo 2013; Kfir 2017). However, not everyone who feels aggrieved or is in a social crisis will resort to the use of political violence in pursuit of justice or a sense of belonging. So, what would make an aggrieved individual decide to support or become a member of a terrorist group?

Increasingly, evidence has linked radicalization to individuals (referred to as radicalization conduits in this thesis) who propagate ideas that not only compel young people to join terrorist groups but also galvanize some of them to carry out lone-wolf terrorist attacks. For instance, a study on Al Qaeda related networks in London between

1999 and 2010 showed that over 80% of the 350 Britons convicted of terrorist offenses during that time got their inspiration from four radical preachers (Klausen 2010; Klausen, Libretti, Hung and Jayasumana 2018; Barbieri and Klausen 2012). Similarly, an MI5 report entitled *International Terrorism* (2008) stated that most Al Qaeda recruits in London had diverse demographic characteristics and the only common denominator among them was that they were linked to two radical preachers from an area called Luton (Rayment 2008; Neumann 2017). Another study on the IS's foreign fighters in Syria found that most of the 300 fighters surveyed in the study chose to travel to Syria because of the messages that they had received from radicalization conduits. Neumann (2017) referred to these conduits as cheerleaders of radical Islamic groups because of their capacity to mobilize young people on behalf of terrorist groups.

Like the cases of London and Syria, radicalization hotspots and trends in Kenya can be linked to conduits of radicalization who tell young people that terrorism is the only option through which they can seek redress for perceived and real grievances. Among the conduits was a fiery preacher known as Aboud Rogo Mohammed who regarded himself as a leading Wahhabi voice in Kenya and East Africa as a whole (Rogo n.d, 2010). In 2002, Rogo was arrested on suspicions of aiding the perpetrators of the 1998 US Embassy bombing in Nairobi and the Kikambala terrorist attacks in Mombasa. It was alleged that he hosted one of the masterminds of the attacks, Fazul Mohammed, and introduced him to a Kenyan woman who later became his wife. However, the charges against Rogo were dropped in 2005 due to insufficient evidence linking him to any of the attacks (United Nations Security Council 2011). Kenya's acting Foreign Affairs Minister at the time, Moses Wetangula, expressed disappointment with the court's ruling attributing it to the

lack of anti-terrorism legislation. The acting Foreign Affairs Minister said that even though the government had no doubt of Rogo's involvement in the 1998 US Embassy bombings and the Kikambala hotel attacks, nothing could be done because of legal loopholes in Kenya's laws (Government of Kenya 2005).

Although Rogo denied all charges and insisted that he did not support terrorism, his utterances between 2009 until his death in 2012 painted a different picture. Rogo usually issued weekly summons at the Masjid Musa Mosque in Mombasa which called for the separation of Kenyan Muslims from the rest of the population in the country. Some of his sermons were also widely distributed on CDs and uploaded on YouTube (United Nations Security Council 2012). Rogo's sermons meshed local grievances with rhetoric that was similar to that of other terrorist groups, such as Al Qaeda, in efforts to rally young Kenyans against what he called "the unholy evil of Kenya's secular state" (quoted in Amble and Meleagrou-Hitchens 2014, 526). In this context, Rogo provided what several analysts refer to as a cognitive opening which is a period when a child, teenager or young adult is receptive to conversations about engaging in terrorist acts (Neumann 2017; Vidino, Pantucci and Kohlmann 2010; Bergen 2016; Wiktorowicz 2005).

In one sermon, for example, Rogo claimed that life for Muslims at the Kenyan Coast was equivalent to life in hell. He told his audience that they were victims of poverty, discrimination and unemployment because they had neglected Allah and that the living conditions of his audience was a clear sign that while "you (Muslims) love non-believers they do not love you" (Rogo 2010, 10:15). He claimed that non-believers all over the world were out to destroy Muslims and that they unfairly labelled heroic defenders of the Muslim

faith, such as bin Laden, Muammar Gaddafi[52] and Omar al-Bashir,[53] as terrorists. He was emphatic that 'real' Kenyan Muslims should go for jihad stating: "ukitaka kufa shahid ndio utaaishi maisha mazuri, ukitaka kufa baki mjini, ukitaka kuishi nenda jihad," (if you want to live a good life you should die as a martyr, if you want to die as a nonbeliever stay in the city, if you want to continue living go for jihad) (Rogo 2010, 17:11).

In addition to giving sermons in support of jihad, radicalization conduits may act as gatekeepers for terrorist groups. Usually, gatekeepers have direct contact with key leaders in terrorist groups and identify new recruits who are provided with the skills, resources and support that they need to join terrorist groups. According to the United Nations Security Council:

> Kenya-based extremist Aboud Rogo Mohammed has threatened the peace, security, or stability of Somalia, by providing financial, material, logistical, or technical support to Al Shabaab, an entity listed by the UNSC Committee established pursuant to Resolution 751 (1992) concerning Somalia and resolution 1907 (2009) concerning Eritrea for engaging in acts that directly or indirectly threaten the peace, security, or stability of Somalia. Aboud Rogo Mohammed is an extremist Islamic cleric based in Kenya. He continues to

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[52] Muammar Gaddafi, the president of Libya from 1962 to 2011 was implicated in the Lockerbie bombing of Pan Am flight 103 on December 21, 1988.
[53] Omar al-Bashir was the president of Sudan from 1989 to 2019. He has been linked to Al Qaeda because Sudan hosted Osama bin Laden from 1991 to 1996. He has also been accused of genocide and crimes against humanity in Darfur (Astil 2001; Associated Press in the Hague 2010).

exert influence over extremist groups in East Africa as part

of his campaign to promote violence throughout East

Africa. Aboud Rogo's activities include fundraising for Al

Shabaab (United Nations Security Council 2012, para.3).

Rogo's main sources for recruits were the Masjid Musa and the Masjid Sakina mosques[54] in Kenya's Coastal city of Mombasa. These two locations were ideal venues for recruitment because they had an abundance of young people from disadvantaged backgrounds who were susceptible to Rogo's sermons. Mosques play important roles especially in Muslim communities where there are high levels of poverty. They are often the only source of welfare, education and employment for poor youth (Interview with religious leader F November 20, 2017). Hence, young people who were members of the two mosques and were exposed to Rogo's sermons, which were inundated with allegations about the Kenyan state's mistreatment of Muslims, had no other authoritative source of information. Accordingly, the mosques were identified as key recruitment and radicalization centres for young Kenyans who were sent off to Somalia as Al Shabaab fighters (United Nations Security Council 2011).

Like instigators of ethnopolitical violence in Kenya, Rogo and other radicalization conduits exploited grievances that Kenyan Muslims had with the Kenyan state to incite violence. Among the grievances was the issue of land ownership at the Kenyan Coast that

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[54] The Masjid Sakina was a mosque in Mombasa, Kenya where Rogo would give his lectures. After Rogo's death on August 27, 2012 a group of youth forcefully took over the mosque and renamed it Masjid Mujaheeden (fighters) (Nation Reporter 2014).

was also the cause of ethnopolitical violence at the Coast and many other parts of Kenya. For instance, absentee landlords own hundreds of thousands of acres in the 10-mile Coast strip, Kilifi and Malindi even though hundreds of thousands of indigenous residents remain landless (Kanyinga 2000; Truth Justice and Reconciliation Commission 2013).[55] While the land injustices committed against indigenous people at the Kenyan Coast, comprising of Muslims, Christians and others, should be redressed, those who use land as a call to arms omit the historical intricacies surrounding the distribution of land in the region.

Indeed, the annexation of land from indigenous populations at the Kenyan Coast goes as far back as the 12th century when Arabs arrived in the Coastal region and gradually dispossessed the Mijikenda of their ancestral land. In 1908, the *Land Ordinance Act* sealed the fate of the landless indigenous populations by awarding title deeds to mostly rich Arab and Swahili individuals. As Kanyinga (2000) wrote:

> The Ordinance did not seek to establish Mijikenda claims,
> even those which had been recognized by the Sultan [of
> Zanzibar] because their rights amounted to a tribal and not
> an individual title … those whose claims succeeded were the
> Arabs, the Swahili and the Indians (Kanyinga 2000, 59).

Furthermore, some of the land that was awarded through the *Land Ordinance Act* has changed ownership through several economic interactions. Consequently, the issue of land

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[55] Land owners include the descendants of the Liwalis who inherited land that was given to their families by the Sultanate of Zanzibar along the 10-mile Coast strip. Many of the land owners live in Oman and are referred to as absentee landlords (Kanyinga 2000; Truth Justice and Reconciliation Commission 2013).

injustices is quite complex and cannot be surmised based on Kenya's post-colonial governments' relations with indigenous communities at the Kenyan Coast.

Notwithstanding some of the complexities of land ownership, Kenyan Muslims have grievances that can be attributed to the actions of Kenya's post-colonial governments. As Hassan Khalid, the Director of Muslims for Human Rights (MUHURI), pointed out:

> There has been very clear discrimination and marginalization of the Muslim-dominated regions … if you look at education, for example, our region [the Coastal region] remains to be the one with the least number of schools per population if you compare the ratio. We have poor infrastructure and there is no other region that has more resources than Coast but unfortunately it receives the least from the central government (PBS Newshour 2013, 2:31).

Khalid's claims, about marginalization, are backed up with data from Kenya's Commission on Revenue Allocation. Five out of the six counties in Kenya's Coastal region are ranked among the most marginalized and underdeveloped counties in the country. They include Kwale, Tana River, Kilifi, Taita Taveta and Lamu which lag behind other counties in education and infrastructural development. Counties in other Muslim-dominated regions namely Mandera, Wajir, Marsabit, Garissa and Isiolo are also identified as marginalized areas. Other marginalized counties that do not have a substantive Muslim population are Turkana, Samburu, West Pokot and Narok. Hence, 10 out of the 14 most marginalized

counties in Kenya are areas where most Kenyan Muslims reside (Commission on Revenue Allocation 2018, 15-16).

In addition to marginalization Khalid noted that:

> Every other week we hear of a raid, police raiding a home [inhabited by Muslims] probably harassing people and then a few hours later they will come back and tell you we didn't find anything … when a community feels aggrieved and harassed there is no way someone will come to their aid. There is no way the law will be used to address their issues. Then, you feel completely helpless (PBS Newshour 2013, 3:28).

The helplessness that Khalid spoke about is what drove young Muslims into the hands of radicalization conduits who purported to offer a solution to their predicament. By repeatedly talking about the grievances that Muslims had against the Kenyan state radicalization conduits, such as Rogo, spurred Muslim youth to join Al Shabaab so that they could fight against the Kenyan state.

Additionally, Rogo's support for Al Shabaab appears to have been geared towards an ambitious, long-term plan to destroy all forms of secularism in predominantly Muslim regions in Kenya, such as the Coast region, and impose Wahhabi practices in those regions. Many of his edicts were similar to those of groups that professed Wahhabi teachings such as Boko Haram and the IS. They included warnings against secular education saying that it was morally corrupting and drew Muslim children away from the Islamic way of life.

His most damning sermon was issued a few months before the national elections that were scheduled to take place in 2012.[56] He encouraged Muslims to boycott the elections claiming that they interfered with their ability to establish a global caliphate. Rather than participate in the elections, Rogo (2012) asked his followers to assassinate key government officials including the country's president at the time, Mwai Kibaki, and the prime minister, Raila Odinga.

Another radicalization conduit, Abubaker Shariff Ahmed (aka Makaburi) was instrumental in facilitating the travel of Al Shabaab recruits to Somalia. The United Nations Security Council identified him as a close associate of Rogo and a frequent traveller to Al Shabaab strongholds where he had very close relations with senior members of the terrorist group (United Nations Security Council 2012b). Like Rogo, Makaburi did not believe in moderation in Islam. During an interview with a BBC reporter, Makaburi bluntly stated that "there is no such thing as a moderate Muslim. The Prophet did not teach us moderation in Islam. Islam is Islam!" (Taylor 2013, para. 6). While he denied that he was closely associated with Al Shabaab, he defended the group's right to use force in defence of Islam. Indeed, Makaburi provided logistical support for new Al Shabaab recruits irrespective of their national origin. He would tell them about different islands off the Kenyan Coast where they could get accommodation before being transported by boat to Somalia. Some of the islands that were used as transit points for the recruits included Pate, Faza, Manda, Lamu and Kipungani (Taylor 2013; Beja 2014; Al Jazeera 2015).

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[56] The elections were postponed and held in March 2013.

Rogo's and Makaburi's fiery sermons and defiant attitude inspired other radicalization conduits who, like them, publicly advocated for the use of political violence in Kenya. Among them was Rogo's former student, Ahmed Iman Ali (aka Abu Zinira), who set up a radicalization base at the Pumwani Riyadha mosque in Majengo, Nairobi between 2007 and 2009 (Amble and Meleagrou-Hitchens 2014). According to the United Nations Security Council (2011), Ali deliberately targeted the mosque because he wanted to use revenue from a second-hand clothes market that it owned to finance terror-related activities in Kenya and Somalia. Part of the money was used to entice unemployed youth, mainly from the slums in Majengo, to join Al Shabaab. In order to have full control of the mosque's revenue, Ali instigated a youth rebellion against older members of the mosque's committee alleging that they had been bribed to give away part of the mosque's land to a powerful clique of Kenyan politicians (United Nations Security Council 2012). His allegations gained traction with the youth at the mosque and they quickly ousted the mosque's elders probably because they believed that they were colluding with leaders of a political system that was designed to marginalize them.

After gaining control of the mosque, Ali established the Muslim Youth Centre (MYC)[57] in 2008. Although the MYC was fronted as a counselling centre for wayward youth in Majengo as well as a platform through which disenfranchised youth could express their grievances, it soon emerged that Ali and other radicalization conduits were using it as an Al Shabaab recruitment agency (United Nations Security Council 2012). During several interviews in 2011 and 2012, the Somalia/Eritrea Monitoring Group confirmed that

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[57] The centre was also known as the Pumwani Muslim Youth.

hundreds of young Kenyans had joined Al Shabaab through the MYC between 2009 and 2011 (United Nations Security Council 2012, 183-185). Indeed, Kenyan citizens formed the bulk of Al Shabaab's foreign fighters with estimates placing them at about 25% of between 5000 and 7000 Al Shabaab fighters (Anderson and McKnight 2015; Cannon and Pkalya 2019; United Nations Security Council 2012).

The Somalia/Eritrea Monitoring Group also discovered that although the MYC was based in Nairobi, it had an extensive network of supporters and members across Kenya in areas such as Eldoret, Garissa and Mombasa. Reports on the profiles of foreign fighters in Al Shabaab corroborates this information showing that while the majority of Al Shabaab members were initially drawn from ethnic Kenyan Somalis, the group expanded its outreach to other parts of Kenya in 2009 making Kenyans the largest group of foreign fighters in Al Shabaab (Botha 2014, 2017; Anderson and Mcknight 2014; Finn et al. 2016; Williams 2014; Hansen 2013).

The MYC was not only a recruitment agency for Al Shabaab. It also conducted paramilitary training sessions for some of its potential recruits. One such session, that took place on October 20, 2009 at the Masjid Nuur mosque in Kawangware, Nairobi, focused on young children (International Crisis Group 2012; United Nations Security Council 2012). A source privy to radicalization patterns in Kenya's Coastal region said that it was not surprising that children were being trained by the terrorist group noting that several local Sheikhs from Mombasa had revealed that children, as young as 12, were being recruited into Al Shabaab (Interview with university academic A, October 20, 2017). Other radicalization activities that Ali facilitated as the leader of the MYC included the

distribution of extremist material written by Anwar al-Awlaki, a senior Al Qaeda recruiter who was ultimately killed in a US drone strike in 2011. The material appeared in a weekly newsletter, *Al Misbah*, which was available in Kiswahili and other local Kenyan languages so that it could appeal to a wider audience (International Crisis Group 2012; United Nations Security Council 2012).

Ali also gave inflammatory sermons that were similar to bin Laden's writings and speeches on alleged Western and Jewish aggression against Islam. He told his audience, at the Riyadha mosque, that their religion was under siege and that they had to violently defend it (Amble and Meleagrou-Hitchens 2014). In his view, Somalia was one of the key battlegrounds for the creation of an Islamic caliphate and he encouraged his followers to join Al Shabaab. Indeed, Ali demonstrated his loyalty to Al Shabaab in 2009 when he abruptly left the Riyadha mosque and took up a position in charge of the terrorist group's propaganda and media division. He was also designated as one of the group's commanders in charge of foreign fighters from East Africa (United Nations Security Council 2012).

Even though he had moved from Kenya, Ali did not relent in his efforts to recruit and radicalize young Kenyans. From his base in Somalia, he posted several online videos and audio recordings urging Kenyans to join him in Somalia. Many of the messages in the recordings also advocated for terrorist attacks in Kenya. For instance, in an online recording that was uploaded on December 30, 2010, Ali is heard urging young people not to take part in Kenyan politics, instead, suggesting that it would be more productive if they "chonga" (peel), "fyeka" (slash) and "chinja" (cut the throats of) Kenyan infidels (Ali 2010a, 40:00). He also asked his followers to carry out bombings in Kenya similar to the

one that Al Shabaab had carried out in Kampala on July 11, 2010.[58] Another audio recording that was posted online on December 30, 2010, explicitly ordered members of the MYC to carry out terrorist attacks on institutions in Kenya. Towards the end of the recording, a man's voice can be heard assenting to the order saying, "strap the bombs on me and let me blow myself up in the parliament building of Kenya" (Ali December 2010b, 58:03).[59]

In a move that appeared to heed to Ali's call to engage in terrorist activities in Kenya, several MYC members who were based in Somalia started going back to Kenya from December 2010 (United Nations Security Council 2012). Their return coincided with an increase in attacks using an assortment of explosive devises and automatic weapons in some of Kenya's major cities and towns. Between 2010 and 2011, Al Shabaab was responsible for at least 40 attacks on Kenyan night clubs, Christian churches, police stations and bus stops (Global Terrorism Database 2018).

Figure 1 shows that the number of casualties (deaths and injuries) and frequency of attacks gradually increased from 2008 when Al Shabaab carried out its first attack in Kenya. The number of casualties increased over the years adding up to a total of 99 deaths and 433 injuries by the time Kenya passed an anti-terrorism law in October 2012. Details about the dates of the attacks, the number of deaths and injuries as well as the targets and types of the attacks can be found in appendix 1.

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[58] For a detailed account of the Kampala bombing see Rice, Xan. 2010. "Uganda Bomb Blast Kills at least 74," *The Guardian*, 13 July 2010. https://www.theguardian.com/world/2010/jul/12/uganda-kampala-bombs-explosions-attacks

[59] Other archived and more recent material of Ali's videos and recordings can be accessed on http://jihadology.net/category/individuals/ideologues/a%E1%B8%A5mad-iman-ali/

Figure 1: Frequency of Al Shabaab Attacks in Kenya: May 31, 2008 - November 5, 2012
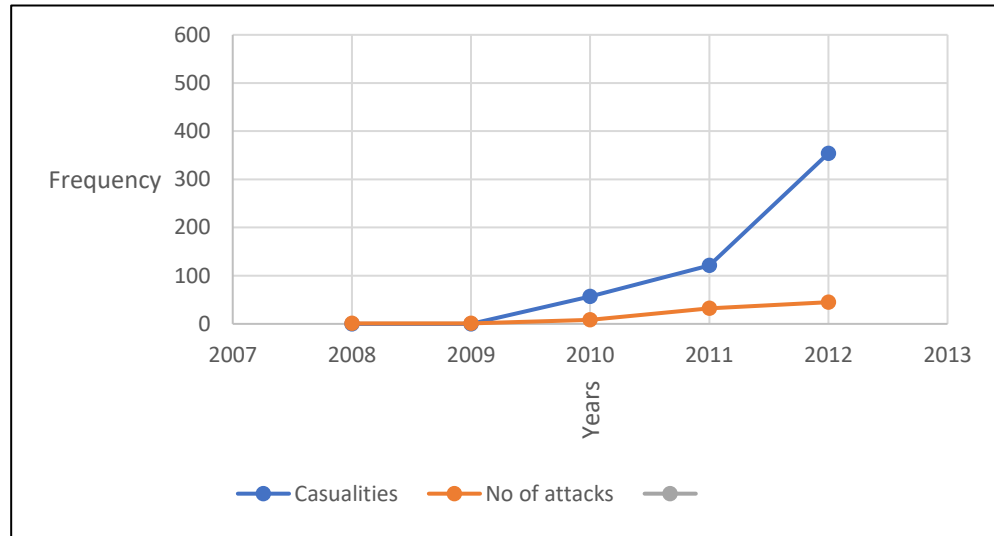
Generated from data obtained from the Global Terrorism Database (2018)

While data about the nationality of the perpetrators is not included in the GTD the ease with which the perpetrators of the attacks were able to mingle with individuals in the vicinity of the attacks implies that they were Kenyan citizens who did not draw attention to themselves and knew their way around the targeted venues. As the Director of the Boni Enclave Campaign,[60] Joseph Kanyiri, once observed:

> Kuna yule adui ambaye anatoka Somalia. Kuna adui
>
> mwingine ambaye ni wetu hapa nyumbani … Manake, kwa
>
> visa vile vimetokea ukiwa pale watu wamevamiwa hapa

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[60] The Boni Enclave Campaign is a military campaign designed to rid Boni forest, in Kenya, of Al Shabaab militants. More details about the presence of Al Shabaab in Boni forest are discussed later in this chapter.

lakini, haumuoni. Ameyeyuka amepotea. Na visa hivi vimekuwa ni watu watata, wanne wakizidi pengine ni waishirini. (There is an enemy from Somalia. There is also a home-grown enemy … Because, there are attacks that take place in your presence yet, you cannot identify the perpetrator. He or she has melted and vanished. Such cases involve three people, four people or at most 20 people) (NTV Kenya 2017, 0:55).

In efforts to apprehend the perpetrators of the attacks, Kenya's law enforcement agencies carried out raids in areas that were identified as hotspots for the MYC and Al Shabaab members including neighbourhoods that were located near the Riyadha mosque. It is, therefore, not surprising that after conducting interviews in the area in 2012, the International Crisis Group concluded that the MYC had gone underground because of the raids, possibly to madrasas and people's homes (International Crisis Group 2012). While this is one possibility, it is also likely that the MYC decided to expand its outreach and change its recruiting strategy by taking advantage of Kenya's fast-growing ICT infrastructure.[61] In essence, the MYC went online.

The MYC became more aggressive in its efforts to attract new recruits using online tools. It started producing an online magazine entitled *Gaidi Mtaani* (Terrorism Street) which targeted disaffected Kenyan youth. The magazine featured articles on Al Shabaab's

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[61] Internet access in Kenya grew rapidly from 2010 with the proliferation of internet cafes as well as the availability of personal internet plans through cell phone providers and fibre optic cable options (Internet Live Stats 2017).

strategies and gave detailed descriptions of the group's terrorist attacks in Kenya. The magazine also contained several articles that linked Al Shabaab's goals and activities with those of other terrorist groups around the world. The propaganda in the magazine was carefully framed within the context of perceived and real youth marginalization at the hands of the Kenyan state as well as selected passages from the Koran that were used to justify and promote the use of political violence.

The magazine's first edition, for instance, had a subtitle "Operation Linda Uislamu" (Operation Defend Islam) and featured a cover of a man holding two grenades behind his back. The magazine cover also had a quotation from the ninth chapter of the Koran which states "na piganeni na washirikina wote kama wao wanavyo pigana nanyi nyote. Na jueni kuwa Mwenyezi Mungu yu pamajo na wachamngu (*sic*)" (And fight against the disbelievers collectively as they fight against you collectively. And know that Allah is with the righteous who fear Him) (At-Taubah:36 as quoted in *Gaidi Mtaani* 2012a, cover page).

Al Shabaab published another special issue of the magazine that was partly dedicated to the plight of Kenyan Muslims in Mombasa. The fifth issue entitled "Waislamu wa Bangui na Mombasa: Kisa cha Msiba" (Muslims in Bangui and Mombasa: The Tragedy) (Gaidi Mtaani 2012b) contained alleged images of police operations in mosques in Mombasa as well as graphic pictures of dead children, among others, that the magazine claimed were Muslim faithfuls. Excerpts from the magazine stated:

> Leo tutazungumzia [kuhusu] msalaba dhidi ya Waislamu
> katika bara Afrika na kichwa cha vita hivi ni mauaji ya
> kimbari yanayowakumba Waislamu ya Jamhuri ya Afrika ya

Kati, pamoja na vita vya msalaba dhidi ya Waislamu wa Kenya (Today, we shall talk about the plight of Muslims on the African continent and the theme of this war is the genocide of Muslims in the Central African Republic and the cross's [Christian's] war against Kenyan Muslims) (Gaidi Mtaani 2012b, 2).

The magazine went on to state:

Naawambia Waislamu wa Kenya: Unganeni muwe kitu kimoja dhidi ya hivi vita vya msalaba, na simameni imara kwa pamoja kama msimamo wa mtu mmoja (I tell you Kenyan Muslims: Unite and be united in this war against the cross [Christians] and stand firm together like the position of one person) (Gaidi Mtaani 2012b, 6).

The careful selection of images that showed the suffering of Muslims from all walks of life, including what appeared to be dead children, was meant to discredit any measures that Kenya's law enforcement agencies undertook to investigate terrorism incidences in Kenya. The information in *Gaidi Mtaani* alleged that the Kenyan state, which was predominantly governed by Christians, singled out Muslims for no reason other than their Islamic faith. The contents in the magazine also suggested that Kenya's government had sanctioned the use of indiscriminate violence against all Muslims including innocent children.

Even though the evidence in the magazine could not be substantiated, some of the practices of Kenya's law enforcement agencies appeared to confirm Al Shabaab's claims. For instance, on January 13, 2007, the Kenya National Commission on Human Rights (KNHCR) and Kenya Human Rights Network (KHRN) released a joint statement that condemned Kenya's police force's "arbitrary arrests, interrogation and incarceration of [mostly] Kenyan and non-Kenyan Muslims" (Jaji 2013, 365). They were especially critical of the detention of Hafsah Swaleh Ali, a four-year old Somali refugee, who stayed in jail for 25 days with her pregnant mother. In this case, Hafsah's mother was detained because the police were unable to locate her husband who was a terrorist suspect. In their statement, the KNHRC and KHRN noted that "relatives and friends of alleged suspects were detained because they had been declared guilty by association" (Jaji 2013, 365). Such cases, among others, [62] reinforced the perception that Kenya's government was unfairly targeting Muslims.

The MYC also used Twitter[63] to comment on terrorist attacks and post messages that praised the attackers suggesting to its audience that the rewards of being a mujahid (Muslim fighter) were like no other they would ever receive during their lives on earth. Other online tools for radicalization were its blogs[64] which were used to provide updates about Al Shabaab's activities in Kenya. On January 10, 2012, a few months before Kenya

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[62] For a comprehensive account of allegations against the Kenya police see Open Society Foundations. 2013. *We're Tired of Taking You to the Court: Human Rights Abuses by Kenya's Anti-terrorism Police Unit* https://www.justiceinitiative.org/publications/were-tired-taking-you-court-human-rights-abuses-kenyas-anti-terrorism-police-unit

[63] Its account was @MYC_Press

[64] Two of its blogs, themovingcaravan.wordpress.org and mycnjiawaukweli.blogspot.org have been blocked for violating the terms and conditions of the websites. Nevertheless, some of the material from these blogs is available on jihadology.net.

passed the *Prevention of Terrorism Act, 2012*, the MYC posted a message on one of its blogs pledging allegiance to Ali and revealing the extent of the group's support for Al Shabaab in addition to its intentions in Kenya. Part of the message stated:

> Some years back our beloved brothers in Al Shabaab called upon our Amir to take up his duty and help the mujahedeen in Somalia. Without hesitation or excuses like many of the other Sheikhs in Kenya our Amir left Majengo and MYC to begin fighting in Allah's cause. As a result, many of us in MYC and others in Kenya followed our dear Amir to the land of Somalia. We in MYC have no doubt that our Amir Sheikh Ahmad Iman Ali will continue the unfinished work of our brother Fazul[65] in Kenya and the region of East Africa. Kenya is legally a war zone and Ali leads us into jihad in Kenya without hesitation or fear (quoted in Roggio 2012 para. 5).

The MYC's decision to have a greater online presence was strategic and logical. In some instances, posting material online was an effective way of engaging with potential recruits turning them from consumers of terrorism propaganda to active participants in discussions about radicalization. Recruits were given a chance to explain how the propaganda material related to their personal circumstances. Some of the online platforms where material was posted, such as YouTube, allow viewers to interact with each other and

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[65] Fazul Mohammed was one of the core planners of the 1998 and 2002 bombings in Kenya.

contact the authors of the videos. For example, the uploaded YouTube videos of Rogo's sermons that form part of the analysis for this thesis had thousands of views as well as hundreds of comments that supported the contents of the videos. Neumann (2013) referred to this phenomenon as the emergence of virtual fighting communities where political violence is encouraged, normalized and celebrated. He went on to say that virtual fighting communities:

> Become like echo chambers in which all moderating influences are removed, and violent voices are amplified. As a result, people acquire a skewed sense of reality so that extremist attitudes and violence are no longer taboos (*sic*) but rather are seen as positive and desirable (Neumann 2013b, 436).

While some individuals who are radicalized online may decide to carry out lone-wolf attacks, others seek out ways in which they can become members of terrorist groups. Based on accounts from Kenyans who joined Al Shabaab (see Botha 2013, 2014, 2015 2017; Al Jazeera 2015, 2018), as well as Kenyans who managed to escape from the terrorist group (see Taylor 2013; Beja 2014) and Kenyans who are serving prison time for being members of Al Shabaab (see Speckhard and Shajkovci 2019), it appears that Al Shabaab's preferred method of recruitment was to have personal contact with potential recruits so that they could go through an induction period before they were formally admitted into the group.

Being part of a virtual fighting community was, in several cases, the first step towards joining Al Shabaab. This recruitment method differs from that of the IS, whereby, anyone who is a Muslim automatically becomes a member of the Caliphate (Weaver 2015). In the case of Al Shabaab, local Kenyan networks indoctrinated new recruits before they were sent to Somalia for further training. Once the recruits were fully trained, they were posted to various locations in East Africa where they were told to wait for instructions about their missions. Many of the trained Al Shabaab returnees then started carrying out terrorist attacks in Kenya in 2009 with attacks escalating exponentially from 2011 (Interview with Kenya Defence Forces personnel D November 15, 2017; Interview with Kenya Defence Forces personnel E November 20, 2017). Indeed, data from the GTD collaborates this information showing that there was a significant increase in Al Shabaab attacks in Kenya from 2011 (Appendix 1).

Most of the attacks in Kenya were small-scale. Attackers (I refer to those who carried out small-scale attacks as hit-and-run terrorists) would carry out small-scale attacks before escaping. The small-scale attacks included throwing grenades into: 1) matatus (small mini vans used for public transport) and churches; 2) waylaying long-distance buses so that they could kill non-Muslim passengers; and 3) raiding police stations so the attackers could steal firearms and ammunition before escaping (Appendix 1).

There were also major terrorist attacks that were carefully planned for a long time before being executed. Those who were selected to carry out major attacks in Kenya and

elsewhere, such as the Westgate attack [66] and the Garissa University attack, [67] were members of the most allegiant group in Al Shabaab known as the suicide (martyrdom) brigade. The suicide brigade is one of two elite units in Al Shabaab. The other is the Amniyat which is also known as Al Shabaab's secret or intelligence service. The Amniyat coordinates suicide missions, provides logistical and operational support to the group and, tracks down and assassinates anyone who betrays the terrorist group (Roggio 2016; Botha 2014). Even though Al Shabaab cannot function without Amniyat's logistical and operational support, it is the suicide missions that are venerated as the group's most important activity. (Channel 4 News 2013).

The importance that Al Shabaab places on suicide missions may explain why radicalization is critical to the group's recruitment and training strategies. The key goal of Al Shabaab fighters who are selected to carry out the group's major attacks is not to escape after carrying out an attack but, to die in the process. As Ali Dhere Al Shabaab's spokesperson pointed out during a ceremony for Al Shabaab's graduating class of 2013:

> To free ourselves, we have to follow our religion and that
>
> means preparing for jihad … look at what is happening in
>
> Kenya. Boys who were like you, had the same training as
>
> you. They sacrificed their lives for Allah and brought huge
>
> victory for Muslims. When we die and are martyred, we
>
> hope to be with Allah in paradise. We are hoping for

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[66] On September 21, 2013 Al Shabaab gunmen attacked the Westgate mall in Kenya killing 71 people and wounding approximately 200 others (Williams 2014).

[67] On April 2, 2014 Al Shabaab gunmen took over 700 students form Garissa University hostage killing 147 and injuring over 70 others (Cannon and Pkalya 2019).

beautiful women.[68] What are infidels hoping for? Nothing!

(Channel 4 2013, 1:14).

Hence, radicalization is an effective way of reinforcing the claim that dying as a mujahid is a great honour. It is important for Al Shabaab's members to internalize this belief because the group places suicide attacks above all other forms of violence. Al Shabaab's members must be committed to this form of violence more so, if they are required to go back to their countries of origin and wait for an indefinite period of time[69] before they receive instructions on how, where and when to carry out suicide missions. Indeed, Ali Dhere stated that only the best recruits were chosen to join Al Shabaab's suicide brigade (Channel 4, 2013). It is, therefore, probable that such recruits were not simply selected based on their physical abilities but also because they were psychologically prepared[70] to carry out their suicide missions to the end. Kenyan suicide attackers were part of all the major Al Shabaab terrorist attacks in Kenya including the Westgate Mall attack, the Garissa University attack and the Dusit hotel attack. Many of those who assisted in the planning of these attacks were also Kenyan citizens (Lacey-Bordeaux 2013; BBC 2019; Kiley 2019)

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[68] The debates about martyrs and the rewards that they will receive in paradise is controversial and beyond the scope of this study. However, there is evidence of references to beautiful women in paradise for martyrs and other Muslims in Islamic historical texts including the Koran and Hadith.

[69] Suicide attacks such as the 1998 US Embassy bombings in Kenya and Tanzania, the 2002 Kikambala hotel bombing in Mombasa, the 2013 Westgate mall bombing in Nairobi, the Garissa University attacks in 2014 and the Dusit hotel attack in Nairobi in 2019 often take years of planning.

[70] Several scholars have identified numerous psychological factors that may explain why seemingly unexceptional human beings are willing to carry out suicide attacks. They include alienation and the quest for emotional support among disenfranchised youth (Sageman 2004), the desire to liberate Muslim lands from foreign occupation (Pape 2005), the belief that Muslim martyrs will be rewarded in paradise (Hassan 2006) as well as feminism and the desire to prove that women can also be combatants (Bloom 2005).

Even though radicalization is a core component of Al Shabaab's recruitment strategy, the group often lured young Kenyans to Somalia with promises of regular income for their families (Interview with KDF personnel D November 15, 2017; Botha 2014). The high unemployment rate of young people in Kenya[71] provided an ample source of willing recruits for Al Shabaab. Indeed, a few current and former Al Shabaab fighters stated that it was the promises of money rather than Al Shabaab's ideology that first lured them to the group. For instance, each of the former Al Shabaab fighters interviewed during an *Al Jazeera* documentary on radicalized youth in Kenya claimed that they would not have joined Al Shabaab if they had not been promised money for them and their families (Al Jazeera 2018).

It is, however, important to note that the participants for the *Al Jazeera* interview were drawn from the poorest suburbs in Nairobi and were not representative of Al Shabaab's Kenyan recruits who include young people from middle-income families. Furthermore, the huge sums of money that Al Shabaab recruits were promised never materialized. Instead, new recruits were subjected to radicalization and indoctrination where their devotion to Al Shabaab's ideology was repeatedly tested. This explains why it is not unusual for recruits to risk their lives in attempts to escape especially if they do not believe in Al Shabaab's interpretation of Islam (Al Jazeera 2018; Kiley 2019).[72]

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[71] The International Labour Organization (ILO) estimates that youth unemployment in Kenya was between 18.26%- 19.61% between 2008 and 2018 (Statista 2019).

[72] A former Al Shabaab fighter revealed that the terrorist group asked new recruits to carry out dehumanizing acts, such as the decapitation of Al Shabaab's infidel prisoners, to prove their loyalty to the terrorist group's ideology (Kiley 2019).

Unlike *Al Jazeera's* documentary, Botha's (2014) extensive filed work provides a more nuanced analysis of the reasons why young Kenyans joined Al Shabaab. Participants in Botha's study included 95 Kenyans associated with Al Shabaab and 46 relatives of Kenyans who were associated with Al Shabaab[73] (Botha 2014). Most of those interviewed were born into Muslim families and only 9% of the respondents had converted to Islam. The findings of Botha's study showed that 73% of respondents "hated other religions" (Botha 2014, 8) and considered followers of other religions to be infidels who deserved to be killed. Furthermore, 87% of respondents stated that they joined Al Shabaab because of their Islamic beliefs (Botha 2014, 9). 1% joined Al Shabaab because of their sense of adventure, 4% for economic reasons and 2% for personal reasons. The remaining 6% joined Al Shabaab because of a combination of economic and religious reasons (Botha 2014, 9-14).

Overall, Botha's (2014) study showed that most of the Al Shabaab recruits from Kenya believed in and were attracted to the group's interpretation of Islam. It is also possible that Al Shabaab actively recruited Kenyan citizens because it would be easier for Kenyans to regain entry into Kenya and carry out Al Shabaab's bidding, either as members of the Amniyat, the suicide brigade or hit-and-run terrorists. Hence, Al Shabaab's Kenyan recruits were essentially trained to carry out terrorism activities against their own country. Considering this, the question that remains to be answered about Al Shabaab's recruitment

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[73] The 46 relatives were interviewed in cases where Al Shabaab members could not be located or were incarcerated (Botha 2014).

strategy in Kenya is why the group selected Kenya as one of its preferred targets in East Africa.

Why Al Shabaab Views Kenya as a Legitimate Target

When a reporter asked Ali Dhere[74] why Kenya was an Al Shabaab target, his response was similar to that of bin Laden's[75] when he was asked why Al Qaeda carried out the 1998 US Embassy bombing in Kenya. According to Ali Dhere, Al Shabaab was at odds with Kenya because its government supported the Western-backed transitional government in Somalia (Channel 4 News 2013). In other words, Al Shabaab identified Kenya as an enemy long before the country's incursion into Somalia in 2011.[76] This partly explains why Al Shabaab's attacks in Kenya began in 2008, shortly after the group was formed.

Kenya became a key player in Somalia's political affairs soon after Somalia descended into civil war. Somalia's civil war started in 1991 when a group of clan leaders who were excluded from the military government of Siad Barre ousted him from power. What followed was years of failed attempts to restore peace in the country. During the initial stages of the war, the United Nations Security Council passed a Resolution that mandated a US-led military force to use "all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia" (United Nations Security Council 1992, para. 27). Although, the interventions, which lasted from

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[74] Ali Dhere was Al Shabaab's spokesperson at the time.
[75] As explained in chapter two, bin Laden stated that US allies such as Kenya were legitimate terrorist targets.
[76] Many scholars argue that Kenya became a target of Al Shabaab terrorist attacks because its military invaded Somalia in 2011 (Anderson and McKnight 2014; Mwangi 2012; Lind, Mutahi and Oosterom 2017). While Al Shabaab has used the incursion to justify its post-2011 attacks in Kenya, the fact that there were attacks in Kenya prior to 2011 is an indication that there are other reasons that motivate Al Shabaab's attacks in Kenya.

1993 to 1995, made substantial humanitarian contributions in Somalia, they failed to restore peace in the country (Crocker 1995; Osman and Souaré 2007). When the UN forces pulled out in 1995, most parts of Somalia were politically unstable and insecure and competing warlords and clan conflicts prevented the establishment of a single government.

Even though the UN was no longer at the forefront of peace initiatives in Somalia, efforts to end conflict in the country continued.[77] The Intergovernmental Authority on Development (IGAD),[78] took up the mantle of brokering peace in Somalia. In 2002, IGAD formed a Technical Committee whose key role was to convene a new peace process for Somalia. Kenya was designated as the Chair of this Committee and proceeded to host the Eldoret Peace Conference whose ultimate objective was to arrive at a broad-based agreement on power-sharing and the creation of a functional government in Somalia (Elmi and Barise 2006). As the Chair of IGAD's Technical Committee on Somalia, Kenya successfully oversaw the establishment of Somalia's TFG when, in 2004, Somali delegates first selected 275 representatives as parliamentary members of the TFG and then elected Abdullahi Yusuf Ahmed as the president of Somalia (Mulugeta 2009). Through its role in the Somalia peace process, Kenya inevitably became a key player in Somalia's political affairs. After the election of president Ahmed, Kenya hosted the new TFG in Nairobi for almost a year when it was unable to move to Mogadishu due to insecurity (Mwangi 2010; Barnes and Hassan 2007).

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[77] Between 1991 and 2004 Somalia had 14 peace conferences. Out of these, five conferences resulted in peace agreements and the creation of new governments (Elimi and Barise 2006).
[78] IGAD is a regional organization that was established in 1986 to address environmental degradation in the Horn of Africa. The organization's mandate was broadened in 1996 to resolve conflicts in the region. Its member states are: Kenya, Uganda, Djibouti, South Sudan, Ethiopia, Eritrea, Sudan and Somalia (UNECA 2018).

One of the biggest security challenges, at the time, was a group of Islamist organizations that came together to form the UIC.[79] The UIC's initial objective was to uphold law and order in Mogadishu through neighbourhood sharia courts. However, as the neighbourhood sharia courts spread in Mogadishu, the UIC's political influence increased and it began to harbor political ambitions that threatened the authority of the TFG. Indeed, between 2005 and 2006, a turf-war ensued between the UIC and president Ahmed's TFG. By then, the TFG had moved from Nairobi to Baidoa, a town located in Somalia's Southwestern Bay region which is about 223 kilometres from Mogadishu. As the TFG settled in Baidoa there was a spate of assassinations and disappearances targeted at members of the UIC in Mogadishu. In retaliation, the UIC's military wing, made up of young militants who later came to be referred to as Al Shabaab, fought back killing security officers associated with the TFG as well as warlords who challenged the UIC's jurisdiction in Mogadishu (Barnes and Hassan 2007).[80]

The UIC's actions were explained in a press release on June 6, 2006, in which its chairman, Sheikh Sharif Sheikh Ahmed, accused the TFG and other Somali warlords of being behind the killings of UIC members in Mogadishu with the full support of the US government (Ahmed 2006). By that time, the UIC had succeeded in its purge and had gained full control of Mogadishu as well as parts of south-central Somalia (Barnes and Hassan 2007; IRIN 2006). In efforts to push back against the UIC's growing influence in Somalia, protect the TFG from UIC's militants (Al Shabaab) and forestall what it perceived

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[79] Although the UIC gained prominence in the mid-2000s, its origins date back to 1994 when Islamic clerics from the Abgal sub-clan of the Hawiye clan founded the first sharia court after the breakout of war in Somalia in 1991 (Barnes and Hassan 2007).

[80] In March 2006, a group of Somali warlords and businessmen formed the Alliance for Restoration of Peace and Counterterrorism as a buffer against the growing influence of the UIC (Menkhaus 2007).

as a threat to its territorial integrity, Ethiopia started sending small military contingents to Somalia in August 2006. This was followed by a full military onslaught, in December 2006, which dislodged the UIC from power. As this was happening, the US launched special counterterrorism operations against the UIC from its contingency operation location in Manda Bay, Lamu[81] (Bachmann and Hönke 2010).

Although Kenya did not participate in any of the military campaigns against the UIC, the collapse of the courts had two major implications on Kenya's security. First, as the UIC crumbled some of its members, including its chairman Sheikh Ahmed, sought refuge in Kenya. Kenya's government responded by setting up more patrols along the Kenya-Somalia border resulting in the arrest of about 100 alleged members of the UIC because Kenya perceived the UIC as an organization that supported and engaged in terrorism activities (Ombati 2007; Mogire 2011). The arrested UIC members were then handed over to Ethiopian and US officials for interrogation (Clarke 2007).

Second, the UIC's collapse did not result in the annihilation of the organization. On the contrary, the UIC's military wing, which now called itself Al Shabaab, regrouped and embarked on an aggressive recruitment campaign in Somalia and beyond (Wise 2011). To attract recruits, Al Shabaab presented itself as an organization that was fighting for the rights of Somali people and Muslims irrespective of where they resided in East Africa. In 2008, at around the time that the US listed Al Shabaab as a terrorist organization, the group stated that its key objective was to overthrow the TFG and establish an Islamic Emirate of Somalia that would include Somalia, the Northeastern part of Kenya, Somaliland, Puntland

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[81] Lamu is a tourist coastal town in Kenya.

and the Ogaden region of Ethiopia and Djibouti (Australia Government 2018; US Department of State 2018). To facilitate recruitment in other East African states, including Kenya, Al Shabaab either established or affiliated itself with groups that were sympathetic to its cause such as the MYC.

As Al Shabaab continued to gain territory in Somalia, Kenya did not relent in its support for the TFG. Not only did Kenya host the TFG in Nairobi for prolonged periods of time, it also supported military activities whose objectives were to weaken and dislodge Al Shabaab. In 2010, for instance, Kenya allowed Ethiopian troops to pass through Kenyan territory on their way to carry out a military incursion against Al Shabaab in Somalia. Kenya also attempted to work with several Somalia-based allies and militant groups that were fighting against Al Shabaab including groups from the Gedo region, the Ras Kamboni Movement, the Azania regional administration and the ASWJ (Gisesa 2012a; Interview with Kenyan official C, November 16, 2017; Menkhaus 2012).

In addition to this, between 2009 and 2011, Kenya Defence Forces trained about 4000 troops, made up of mainly young Kenyan Somalis and a few Somali refugees, to fight against Al Shabaab (Abdi 2015). The trained troops were part of a contingent under the command of Mohammed Abdi Mohammed (aka Gandhi). Gandhi was a former Defence Minister in the TFG who went on to become the first president of Jubaland which was then renamed Azania (Lindley 2011). Coincidentally, the troops were trained at a time when a few prominent politicians in Kenya were advocating for the creation of a buffer zone between Kenya and Somalia. On July 13, 2010, Farah Maalim, the Deputy Speaker of Kenya's National Assembly, at the time, wondered why the troops that the Kenyan

government had trained to fight against Al Shabaab were not deployed to secure and create a buffer zone between Kenya and Somalia. The Deputy Speaker of Kenya's National Assembly was adamant that Kenya should create a buffer zone in Jubaland (renamed Azania) even if other states, including the US, were opposed to this move (Republic of Kenya, Parliament. July 13, 2010, 33).

It is likely that Kenya became a proactive player in Somalia's political affairs in attempts to weaken the UIC and later Al Shabaab while simultaneously containing the group's activities in Somalia. However, Kenya's containment policy was not effective in preventing the spread of Al Shabaab's influence in Kenya. Al Shabaab perceived Kenya's involvement in Somalia's political affairs as an obstacle to its quest to establish an Islamic caliphate in Somalia as well as expand its control to other parts of East Africa. In retaliation, Al Shabaab aggressively recruited and radicalized Kenyan citizens who were willing to engage in terrorism activities in Kenya.

From Foreign Attackers to Domestic Terrorists

As Kenya struggled to contain Al Shabaab in Somalia, the group stepped up its recruitment and radicalization efforts in Kenya through the MYC as well as several radicalization conduits.[82] Nevertheless, Al Shabaab refrained from carrying out attacks in Kenya as it focused on fighting Ethiopian forces and AMISOM troops in Somalia. Furthermore, the

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[82] The radicalization conduits who were discussed earlier on in this chapter included Rogo, Makaburi and Ali.

terrorist group was preoccupied with extending its control in Somalia with the intention of controlling key resource-rich areas, such as the port of Kismayo.

In 2008, Al Shabaab intensified its attacks in Somalia when its leader, Ayro, was killed in a US airstrike. This led to a significant increase in the number of Somali refugees fleeing into Kenya. According to Human Rights Watch (2009) an increase in violence in Somalia in 2008 led to an influx of approximately 165 Somali asylum seekers who sought refuge in Kenya each day. The refugees were, however, not welcomed because Kenya had closed its borders to Somali refugees in 2006 when the UIC was dislodged from Mogadishu. Kenya's policy towards Somali refugees in 2008 was reminiscent of concerns that had been made in 2006 when some members of Kenya's parliament claimed that terrorists were getting into the country disguised as refugees. During a parliamentary discussion about the Refugee Bill on November 14, 2006, Herman Omamba told the House that:

> Some refugees have given Kenya a bad name since Kenya
>
> shares a border with Somalia on the east and eastern side
>
> where some terrorists are believed to originate. Some
>
> Western countries associate Kenya with terrorism (Republic
>
> of Kenya. Parliament. November 14, 2006, 3637).

Other members of parliament linked reports about the growing number of foreign fighters in Somalia to increased insecurity in Kenya and the rest of the East African region. On July 13, 2010 the Minister for Foreign Affairs, Moses Wetangula, informed parliament

that "extremist groups are expanding terrorist activities across this region" (Republic of Kenya. Parliament. July 13, 2010, 31). The Minister for Foreign Affairs went on to say:

> The conflict in Somalia is not a conflict among the Somalis but between the people of Somalia and the group of international terrorists. The IGAD member states resolved to commit themselves to give unwavering support and assistance to the TFG in the struggle against extremist groups in Somalia. … you may have heard or seen on television that the same grouping has issued similar threats against Kenya. And we want to send them, as a government, a clear warning that we will not sit back and wait for them to do any similar acts. We will be ready and available to repulse any threats to the security and tranquillity of this country. This government and the people of Kenya will neither fear to act or act in fear, in fighting against terrorism (Republic of Kenya, July 13, 2010, 32).

In this instance, the Minister for Foreign Affairs referred to Al Shabaab as a group of international or foreign terrorists rather than a Somalia-based terrorist group that was established and controlled by ethnic Somalis with a significant presence of Kenyan fighters. The Minister's statements about Al Shabaab reflected a long-standing view, among several cabinet ministers and members of parliament in Kenya, that terrorists were foreigners.

Soon after the 1998 US Embassy attack in Nairobi, Kenya's parliament erupted in debates about the presence of foreign terrorists in Kenya. In a heated exchange two months after the August 1998 bombing, several members of parliament including Mohammed Galgalo and Stephen Ndicho claimed that the perpetrators of the attack were foreigners who had illegally acquired documents to stay in the country. They cited corruption and laxity within the immigration department as the root causes of the attack. Others including, Ochilo Ayako, Martha Karua and Paul Muite argued that the proper implementation of existing immigration laws was the best strategy of securing Kenya from foreign terrorist attacks and other crimes (Republic of Kenya. Parliament. November 4, 1998, 2113-2115). Inherent in their views was the belief that the attacks were solely directed at Western interests and that Kenya was nothing more than a pawn in Al Qaeda's war against the West.

To this end, Kenya's government appeared to be content with major crackdowns in areas where foreigners lived in efforts to identify and deport anyone who did not have valid documents to stay in the country. When asked about the measures that the government had put in place to prevent attacks similar to the 1998 US Embassy bombing, an Assistant Minister in the Office of the President, Yusuf Haji, assured Kenya's parliament that the country's armed forces were on the alert and that law enforcement agencies had "arrested quite a number of illegal immigrants in the country" (Republic of Kenya. Parliament. October 2001, 2884). The Assistant Minister in the Office of the President also informed the House that foreigners who attempted to enter the country through "panya routes" (illegal means) were being arrested (Republic of Kenya. Parliament. October 2001, 2883). Essentially, the government's official position on terrorism in Kenya was that increasing

security checks at ports of entry, such as airports and other border check points, were adequate measures against future terrorist attacks.

Just as they did after the 1998 US Embassy bombing, Kenya's cabinet ministers and members of parliament blamed the 2002 Kikambala bombing on illegal aliens in Kenya. The dominant narrative was that terrorists were foreigners who had illegally entered the country so that they could plan and carry out attacks against Western interests in Kenya. Two days after the attack, Hamid Mubarak, the mayor of Kikambala, told the press that he did not think that "any Kenyan would have done this [the attack]" (Filkins 2002). A member of parliament, Najib Balala, who was once the mayor of Mombasa told the *New York Times* that Al Qaeda did not have a base in Mombasa and that the fanaticism that it relied on did not exist in the coastal city. He described the terrorists as "people who came into Kenya, twice now, to carry out that mission" (Lacey and Weiser 2002, para. 29). Adding to this John Sawe, Kenya's Ambassador to Israel at the time, told a reporter from the Australian Broadcasting Corporation (ABC) that there was no doubt in his mind that foreigners were behind the attack because terrorism was not a domestic problem in Kenya (Willacy 2002).

Sawe's, Balala's and Mubarak's statements reflected the official government position. During a parliamentary debate on terrorist suspects, the Assistant Minister for Internal Security, Peter Munya, told the House that the masterminds of the 2002 attacks in Mombasa were foreigners who had illegally entered the country. Giving an example, the Assistant Minister for Internal Security said that Abdulmalik Mohammed, one of the masterminds of the attack who was also implicated in the 1998 US Embassy bombing, was

a Somali national who had "crossed into Kenya through Kiunga"[83] (Republic of Kenya. Parliament. April 3, 2007, 286). He further stated that Mohammed was part of a group of fighters of the UIC, in Somalia, who had sneaked into Kenya when the group fought against the TFG. It should, however, be noted that despite the government's claims that Mohammed was a foreigner, a family in Mombasa claimed that he was their kin (Gisesa 2012b).[84]

The perception that foreigners and not Kenyans were responsible for terrorist attacks in the country, at the time, can be attributed to three key factors. First, it was widely believed that Wahhabism, the inspiration for Al Qaeda's and Al Shabaab's ideology, did not resonate with the predominantly Sunni population in Kenya (Forest 2011; Kresse 2009). Kresse (2009), for instance, noted that many Kenyan Muslims were highly critical of Wahhabi foreigners who they claimed lured those who were less educated and financially needy from the true faith. Moreover, Wahhabi doctrine, which rejects cultural influences and calls for a modern-day return to the ways of Mohammed and separation from non-Muslim societies, did not appeal to Kenyan Muslims. As Ndzovu (2015) explained, many African Muslims are reluctant to embrace Wahhabism because they feel

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[83] Kiunga is an area in Lamu, Kenya that is only 15 kilometres from the Somalia border.

[84] Abdulmalik Mohammed was arrested in February 2007 as he was making his way from Somalia into Kenya. He was transported to Nairobi before being handed over to US officials who detained him at Guantanamo Bay. Although Kenya's government denies that he is a Kenyan citizen, a family in Mombasa has stated that they are related to Mohammed. One of his sisters, Mwajuma Rajab Abdalla, stated that her brother was a Madrassa (Islamic) teacher in Mombasa as well as a cross-border trader who moved goods between Somalia and Kenya (Capital News 2008). While his family stated that Mohammed had no association with any terrorist groups, the Guantanamo Review Task Force claimed that Mohammed was a frequent attendee of Aboud Rogo's sermons at a mosque in Mombasa. The Task Force also alleged that Mohammed confessed to plotting and carrying out the 2002 Kikambala bombing in Mombasa alongside other terrorist suspects. At the time of writing this thesis, Mohammed was still a detainee at Guantanamo Bay. The full report on Mohammed's case is available at https://www.nytimes.com/interactive/projects/guantanamo/detainees/10026-abdul-malik

that some of their religious practices, which do not conform to the Wahhabi doctrine, are under attack from Arabs.

Muslim leaders in Kenya were also wary about the spread of Wahhabism. A senior official from the Supreme Council of Kenya Muslims (SUPKEM) stated that "Saudi-backed Wahhabis, trained in Sudan and Somalia, had taken over previously Sufi institutions instead of building their own mosques. He protested against this saying "we told them build your own, but they wanted to take our institutions and indoctrinate our members" (quoted in Amble and Meleagrou-Hitchens 2014, 526). In this instance, the biggest Muslim association in Kenya did not want Muslims to be perceived as a monolithic group that supported the Wahhabi jihadist agenda to commit violence. The SUPKEM leaders categorically stated that Wahhabism was not part of their identity as Muslims. It, therefore, seemed implausible, at the time, that Kenyan Muslims would engage in acts of terrorism.

Second, between 2000 and 2007, there were no indications that people in Kenya cared about bin Laden's anti-Western cause. A Pew poll in 2007 showed that Kenyans, irrespective of their religious affiliation, did not have strong opinions about the Israeli-Palestinian conflict (Pew Research Centre 2007). Furthermore, the US was quite popular in Kenya and most of the population was pro rather than anti-American. It is on this basis that political leaders believed that Kenyans were not eager to join or support Al Qaeda or any of its alleged affiliated cells in East Africa.

Third, the limitations of internet access in Kenya,[85] between 2001 and 2009, made it difficult for Al Qaeda to radicalize young people and recruit them into the terrorist group. Al Qaeda metamorphosed into an online terrorist group when its operations were disrupted in Afghanistan after the dislodgment of the Taliban regime in 2001. Hamid Mir, one of the few journalists to interview bin Laden, was privy to this transformation when he watched "every second Al Qaeda member carrying a laptop computer along with a Kalashnikov as they prepared to scatter into hiding and exile" (Coll and Glasser 2005, 1). Hence, because of the US-led War on Terror after 9/11, the internet became Al Qaeda's primary tool of recruitment and incitement. However, Kenya's nascent ICT infrastructure, at the time, inhibited radicalization through the internet.

Members of parliament as well as members of Kenya's cabinet were unconvinced, at least during the early 2000s, that Al Qaeda had any conduits of radicalization in Kenya or that the organization's intent was to attack and kill Kenyans. While the discovery of sleeper cells after the US Embassy and Kikambala bombings showed that radicalization was taking place in the country, they were dismissed as isolated cases, targeted at Western interests, that did not warrant extraordinary security measures. For instance, the Assistant Minister for East African and Regional Cooperation, Joe Nyaga, cautioned against the consequences of supporting the US-led War on Terror. The Assistant Minister for East African and Regional Cooperation told parliament that when dealing with terrorism, Kenya must be careful so "as not to be perceived to be an extension of Washington. The minute

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[85] Before 2001, less than 1% of Kenya's population had access to the internet. The number of internet users increased slowly between 2002 to 2009 when 10% of the population had access to the internet. By 2012, 32.1% of the population had access to the internet with the figure rising to 45% of the population by 2016 (Internet Live Stats 2017).

we are perceived as an extension of Washington, we will be attacked" (Republic of Kenya. Parliament. July 2004, 2581). Paul Muite, a prominent human rights lawyer and member of parliament at the time, expressed similar views urging his colleagues to "stand up to both the Americans and the British" (Gatheru 2003, para. 5) since Western interests had made Kenya an innocent victim of terrorism. In this regard, it was Western interests in Kenya that were the target of terrorist attacks in the country.

In other instances, the credibility of the terrorism threat level, in Kenya, was questioned as members of Kenya's parliament expressed scepticism about the War on Terror and the extraordinary measures that it entailed. On July 25, 2003, Amina Abdalla, a nominated member of parliament and a member of the Departmental Committee of Administration of Justice and Legal Affairs,[86] alleged that "it appears as if the president, vice president [and] the minister in charge of provincial administration and internal security are all out of the country and the Americans are issuing these serious threats of terrorism. I read economic sabotage in these threats of terrorism issued by the Americans" (Republic of Kenya. Parliament. June 25, 2003, 1619). Abdalla wondered why Israel was not accorded the same treatment despite having up to five terrorist attacks per day. Her views echoed those of several members of parliament including Noah Wekesa and Peter Munya who stated that the American and British governments were using travel advisories to cripple the country's economy and tourism industry (Gatheru 2003).

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[86] One of the key roles of Kenya's parliamentary Departmental Committee of Administration of Justice and Legal Affairs is to review proposed antiterrorism bills before they are tabled in parliament.

Another member of parliament, Fahim Twaha, urged fellow lawmakers not to give in to US demands on the War on Terror. Citing Kenya's history, he recalled how Kenya's first president, Jomo Kenyatta, was labelled a terrorist stating that "Kenyatta's only crime was to tell the British to give back the land and freedom that they had stolen from us, but the term terrorism was used to spoil his name and waste seven years of his life"[87] (Republic of Kenya. Parliament. June 25, 2003, 1634). He also gave an example of Nelson Mandela, South Africa's former president who was jailed for 27 years on accusations of being a terrorist. Twaha stated, "we should learn from these historical experiences and not be taken in by the foolish propaganda war being waged on us. We should not agree to be intimidated and harassed by the so-called superpowers" (Republic of Kenya. Parliament. June 25, 2003, 1634).

The perception that terrorism was a threat that emanated from outside Kenya appeared to shift slightly when cases of illegal weapons that could be used to carry out terrorist attacks were discovered in the country. On July 13, 2010, several members of parliament including John Ng'ong'o, Rachel Shebesh and Dansono Mungatana noted that the discovery of an assortment of weapons including 300 bomb detonators in Rongai, Nairobi and an arms cache in Narok was an indication that terrorist were residing in the country. Although no evidence was provided to prove that the weapons were part of a terrorist plot, the members of parliament were steadfast in their claims (Republic of Kenya. Parliament. July 13, 2010).

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[87] The British colonial administration imprisoned Kenyatta for his alleged role in the Mau Mau, a Kikuyu-based freedom fighters' group in Kenya.

However, it is also important to note that at this time, some members of parliament still believed that foreign terrorists who were able to gain entry into Kenya rather than Kenyan citizens posed the greatest security threat to the country. They were especially concerned about Somali refugees who had made their way into a suburb in Nairobi known as Eastleigh. The suburb is often referred to as little Mogadishu or Muqdisho Yarye in Somali because of the high number of Somali refugees who started moving to Eastleigh when Somalia's civil war began in 1991.[88] One member of parliament, Bonny Khalwale, claimed that the unprecedented increase in the number of Somalis from Somalia had left the country vulnerable to terrorist attacks (Republic of Kenya. Parliament. July 13, 2010, 36).[89] Even though Kenya's law enforcement agencies had arrested a number of Somali nationals and charged them with terror-related activities (Capital News, 2009), there was no evidence that Somali refugees were getting into Kenya with intentions of committing acts of terrorism.

The view that foreigners and not Kenyans were the perpetrators of terrorism attacks started changing after Kenyans of non-Somali lineage were implicated in terrorist attacks in Uganda. On July 11, 2010, Al Shabaab militants carried out the group's first major attacks outside Somalia killing 74 people and injuring 71 others in Uganda's capital Kampala (Kron and Ibrahim 2010). Two bombs were detonated when revelers at a popular restaurant and rugby field in Kampala were watching a world cup match between Netherlands and Spain. At face value, it appeared as though Uganda was attacked because

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[88] Despite the nickname little Mogadishu, Eastleigh is not homogenous and is also inhabited by Kenyans from other ethnic groups (Carrier 2016).
[89] As stated earlier in this chapter, there was an increase in Somali refugees who sought asylum in Kenya when the UIC and Ethiopian forces were engaged in battle in 2006 and when Al Shabaab started gaining territory in 2008.

its troops were part of the AMISOM peacekeeping mission in Somalia (Williams 2018). However, video footage that emerged soon after the attacks showed that Al Shabaab had changed tact and was planning to attack other states in East Africa, including those that did not have troops in Somalia such as Kenya. Part of the message in the video stated:

> "Jana vita vimekuwa Mogadishu. Leo vita viko Nairobi, Kampala na Bujumbura … hizi ni vita za kupambana na makafiri mpaka dini la Kiislamu isimame, alhamdulillah!" (Yesterday, we fought in Mogadishu. Today we shall fight in Nairobi, Kampala and Bujumbura.[90] This is a war against all infidels until Islam is established, praise be to Allah! (Al Shabaab 2010c, 10:12; Al Shabaab n.d).

The objective of the message in the video was to inform governments in East Africa that from that point forward, Al Shabaab was at war with non-believers in the entire region. While this may have appeared to be a major change in the group's strategic objective it is likely that Al Shabaab harboured intentions to retaliate against any state that supported the Western-backed TFG all along. Uganda's and Burundi's forces were part of AMISOM whose key objective was to ensure that Somalia was peaceful and stable enough for the TFG to govern effectively. As explained earlier in this chapter, Kenya which did not have troops in AMISOM at the time was at the forefront of providing the TFG with the support

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[90] Bujumbura is Burundi's capital city.

that it needed to set up a government in Somalia. For these reasons, Al Shabaab perceived Kenya, Uganda and Burundi as legitimate targets.

It is unclear whether officials in Kenya knew about the video footage. Nevertheless, the coalition government's reaction to the Kampala attacks showed that government leaders had become wary of the possibility of threats from domestic terrorists. During a parliamentary address on the new dimensions of international terrorism, the Prime Minister of Kenya at the time, Raila Odinga, said that "terrorism was no longer limited to liberation struggles [but that the new form of terrorism was] a weapon for economic competition, cultural conflicts, narcotics trafficking and to some, a trade" (Republic of Kenya. Parliament. December 22, 2010, 14). The Prime Minister acknowledged that "years ago, known acts of global terrorism involved bombing Western targets such as embassies, hotels, airlines, sporting events, military assets, et cetera. Today, the focus is on soft targets such as restaurants, music festivals, public transportation systems, schools, shopping malls and so on" (Republic of Kenya. Parliament. December 22, 2010, 14). The Prime Minister noted that "perpetrators of terrorist acts are no longer trained soldiers, but now include male and female children below the legal age for criminal responsibility" (Republic of Kenya, December 22, 2010, 14). Most importantly, the Prime Minister stated:

> The public must exercise utmost vigilance to help in the
> detection and prevention of acts of terrorism. The public
> must not provide safe refuge to terrorists. We must not
> glorify the perpetrators of acts of terrorism. We must not
> provide an environment suitable for the induction of our

children into terrorist networks. We must not preach the

ideology of religious or ethnic hate to our children. We must

not use religion; whether Christianity, Islam or Hinduism to

radicalize our youths. The fight against terrorism must,

therefore, start within our homes, mosques, churches,

temples and schools (Republic of Kenya. Parliament.

December 22, 2010, 15).

The Prime Minister urged parliament to "strengthen our state of legal preparedness and operational tools necessary to respond effectively to these new dimensions of international terrorism" (Republic of Kenya. Parliament. December 22, 2010, 15). He told his colleagues not to block efforts to pass an anti-terrorism law because of misconceptions that the law was targeting some Kenyan communities, stating:

This government has the responsibility to ensure that every

Kenyan, irrespective of their religion, is protected. We are

doing it as a matter of course. So, let our citizens not stop us

from coming up with proper legislation that will make us

more effective in fighting terrorism (Republic of Kenya.

Parliament. December 22, 2010, 19).

Following the Prime Minister's cue, members of Kenya's parliament gradually became receptive to the idea of enacting counterterrorism measures in Kenya. The first step in this direction was supporting the deployment of Kenya Defence Forces in Somalia under what came to be known as Operation Linda Nchi (Operation Defend the Nation). A few

months before Kenya's military went to Somalia, there were indications that the government was planning to launch an offensive against Al Shabaab. On May 10, 2011, Kenya's Minister for Provincial Administration and Internal Security, George Saitoti, told Kenya's parliament that there were terrorists in every part of the African continent. The Minister for Internal Security unequivocally stated: "We have terrorists along our borders who are threatening our country, including our own strategic installations. We will deal with this matter effectively. We are going to do everything possible to ensure that we provide security to every Kenyan" (Republic of Kenya. Parliament. May 10, 2011, 56).

Indeed, Kenya's incursion into Somalia on October 16, 2011 was framed as the right to self-defence under Article 51 of the UN Charter[91] (Republic of Kenya. Parliament. December 7, 2011, 21). The Minister for State Defence, Yusuf Haji, explained that Kenya Defence Forces went to Somalia to defend "the sovereignty and the territorial integrity of the Republic" (Republic of Kenya. Parliament. December 7, 2011, 21). In this sense, Kenya was literally fighting for its survival. When the Minister of Defence informed parliament that the Commission of the AU had made a formal request for Kenya's forces to join AMISOM, there was applause in the House indicating that Kenya's members of parliament were on board with the new direction that the country was taking in its counterterrorism policy. Several members of parliament also spoke up to praise and support Kenya Defence

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[91] Article 51 of the UN Charter states: Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security (United Nations, n.d).

Force's incursion into Somalia. Among them was Kiema Kilonzo who congratulated the armed forces for the good work that they had been doing in Somalia and Farah Maalim who described the force's actions in Somalia as one of the ways through which Kenya could protect its strategic interests (Republic of Kenya. Parliament. December 7, 2011, 21-25).

As Kenya's military engaged with Al Shabaab in Somalia, there was mounting evidence that Kenyan citizens were planning, supporting and carrying out terrorist attacks in Kenya. For instance, on October 28, 2011, a Kenyan court sentenced Elgivia Bwire Oliacha (aka Mohammed Seif, aka Seif Deen), who was until his arrest a medical intern and former student of Maseno University in Kenya, to life imprisonment[92] for taking part in two grenade attacks on Race Course road in Nairobi. Oliacha, who looked unperturbed and happy during his sentencing, admitted to committing the offenses. Law enforcement agencies also found an assortment of weapons in his apartment, including an AK 47 rifle, two pistols, two revolvers, one sub-machine gun, 13 hand grenades and 717 rounds of ammunition (Mkutu, Mogire and Alusa 2018; Associated Press in Nairobi 2011; Kenya Citizen TV 2011). During his trial, it emerged that Oliacha had converted to Islam in 2005 and proceeded to Somalia for training with Al Shabaab in 2007. Once he was trained, Oliacha was dispatched to Kenya where he recruited members for Al Shabaab and waited for instructions on where and how to carry out terrorist attacks (Elgivia Bwire Oliacha v Republic 2018).

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[92] Kenya's Court of Appeal reduced Oliacha's sentence to 15 years on February 9, 2018 (Elgivia Bwire Oliacha v Republic 2018).

Oliacha's case was not isolated as law enforcement agencies uncovered more cases of young Kenyans who had sneaked into Somalia, mainly through a town at the border of Somalia and Kenya called Liboi, before making their way back to Kenya to engage in terrorist activities (Interview with Kenya Defence Forces personnel D November 15, 2017). This information is substantiated in a leaked report from Kenya's National Intelligence Service (NIS) which gives details of about 30 Al Shabaab militants who were spotted spying on Kenyan security personnel between Abdi Sugow area and Deg Elema area in Liboi.[93] The report goes on to describe the gravity of the terrorist threat in Kenya stating, "in 2011, the threat of terrorism in the country rose up drastically largely from the threats we recorded and the attacks we began experiencing" (National Intelligence Service n.d, 1). The report contains Situation Reports (SITREPs) that provide specific details about 28 Al Shabaab terror plots that were uncovered in Kenya between 2011 and 2013. Several Kenyan citizens, who had spent time at Al Shabaab training camps in Somalia and found their way back to Kenya, were implicated in planning all the 28 terror plots that were listed in the report (National Intelligence Service n.d, 1-23; Appendix 4).

The most alarming aspect about Kenya's Al Shabaab recruits was that they included school-aged children who had ran away from school to join the terrorist group. In several cases, parents from Isiolo County recounted how they had sent their children to school only to receive phone calls from their children informing them that they were in Somalia and had joined Al Shabaab. In other instances, parents received phone calls from law enforcement officers informing them that their children had been arrested while trying

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[93] Town at the border of Kenya and Somalia.

to sneak into Somalia (Interview with KDF personnel D November 15, 2017; Yusuf 2015; Kenya Citizen TV 2015b).

Another trend in Al Shabaab's recruitment of young Kenyans was the increase of recruits from non-Muslim regions. No longer was Al Shabaab focusing on recruiting the stereotypical young, Muslim male from Kenya's Somali or Coastal communities. Instead, the terrorist group expanded its outreach to include young people from the Rift Valley, Central, Nyanza and Western parts of Kenya (Mkutu, Mogire and Alusa 2018). A government report on Al Shabaab recruitment in Kenya pointed out that Al Shabaab had targeted children from schools in these regions for recruitment. Among the schools cited in the report were Koseka secondary school, Birunda PAG primary school and St. Patrick's Bumula secondary school. While boys from the schools joined Al Shabaab as fighters,' girls were recruited as sex slaves[94] for Al Shabaab fighters (Mukinda 2015; Wabala 2015 Al Jazeera, 2018). Indeed, in October 2011, Kenya's Police Commissioner Mathew Iteere officially confirmed the extent of youth radicalization in Kenya and the threat that Kenya faced from home-grown terrorists. Addressing a press conference, the Police Commissioner stated, "we have credible information [that] we have got quite a number of young people [Kenyans] who had crossed to Somalia to fight alongside the Al Shabaab. These are Kenyans, not necessarily of Somali origin" (Kenya Citizen TV 2011b, 1:27).

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[94] The girls were told that they would be getting married to Al Shabaab fighters.

Table 1: Perpetrators of Terrorist Attacks in Kenya: January 1, 1975 – November 5, 2012

Perpetrators of Terrorist Attacks	Number of Attacks	Number of Deaths	Number of Injured
Al Qaeda	3	240	4000
Al Shabaab	87	99	433
Forum for the Restoration of Democracy-Kenya (FORD-Kenya)	2	1	0
God's Oppressed Army	2	0	0
Islamic Party of Kenya (IPK)	3	0	5
Kenya African National Union (KANU)	5	5	8
Kisii Activists	1	4	0
Maasai (Ethnic group in Kenya)	1	3	4
Maskini Liberation Front	3	27	100
Merille Militants	3	6	4
Mombasa Republican Council (MRC)	3	4	5
Mungiki Sect	4	8	2
Mwakenya Dissident Movement	2	4	0
Nandi (Sub-ethnic group of the Kalenjin ethnic group in Kenya)	4	0	32
National Development Party (NDP)	1	0	2
Oromo Liberation Front	2	143	1
Popular Front for the Liberation of Palestine (PFLP)	3	15	85
Sabaot Land Defence Force (SLDF)	4	19	11
Sabaot (Sub-ethnic group of the Kalenjin ethnic group in Kenya)	2	40	0
Sungu Sungu	1	5	0
Toposa and Dongiro (Sub-ethnic groups of the Karamajong ethnic group in East Africa)	2	89	0
United Somali Congress (USC)	1	1	2
Unknown/Other	109	320	378
Total	**248**	**1033**	**4972**

Compiled using data from the Global Terrorism Database (2018)[95]

By 2012, Kenya was the target of most Al Shabaab attacks outside Somalia. Data from the GTD (2019) estimated that 22.7% of Al Shabaab attacks took place in Kenya

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[95] This table was generated based on confirmed cases of terrorist attacks in Kenya that were recorded in the GTD. However, the table may not include all terrorism incidences in Kenya because the GTD only records confirmed and verifiable cases of terrorism incidences.

(START 2013). This made Al Shabaab the group with the highest number of terrorist attacks in Kenya between 1975 and 2012 as per Table 1 above. However, its affiliate Al Qaeda retained the position of the terrorist group with the highest number of fatalities and deaths because of the magnitude of the US Embassy bombing in 1998. Nevertheless, the frequency of the Al Shabaab attacks in Kenya compelled law enforcement authorities to become more vigilant.

Due to increased surveillance, law enforcement agencies in Kenya thwarted several attacks that were not revealed to the public (Interview with KDF personnel D November 15, 2017). Among the attacks that were foiled were multiple plots to attack Kenya's parliament buildings in Nairobi, a plot to attack an Ethiopian restaurant in Nairobi that was a popular eatery for TFG delegates from Somalia, a plot to attack a United Nations office in Nairobi and several plots "to assassinate top Kenyan politicians and security officials" (National Intelligence Service n.d, 25). All the attacks, which had been planned for several months, were set to take place towards the end of December 2011 and throughout 2012. The full details of the foiled attacks including the estimated month of each attack, the names of alleged/convicted perpetrators of the attacks and descriptions of the terrorist plots and targets are available in appendix 4.

Given these developments, the time was right for Kenya's government to act on terrorism. When the *Prevention of Terrorism Bill, 2012* was presented to parliament, it received overwhelming support. Several members of parliament enthusiastically listed the merits of the Bill and proclaimed their support for it. The Minister for Justice, National Cohesion and Constitutional Affairs, Eugene Wamalwa, described the Bill as a "very

positive development" (Republic of Kenya. Parliament. September 26, 2012, 43) noting that for the first time, Kenya had a mechanism that would enable law enforcement agencies to monitor and prevent the recruitment of young Kenyans into terrorist groups. Fred Kapondi, who had been the member of parliament for Mt. Elgon Constituency since 2007, said that the Bill was overdue and that it was time that Kenya joined the league of states that had passed anti-terrorism laws. The Assistant Minister for Defence, Joseph Nkaissery, asked parliament to pass the Bill because it was not possible to fight terrorism using conventional methods. Another member of parliament, Joseph Kiuna, lauded the Bill as bipartisan and warned that Kenya risked falling into anarchy if parliament did not take the Bill seriously. Kiuna urged all members of parliament to support the Bill as "principled and patriotic Kenyans" (Republic of Kenya. Parliament. September 26, 2012, 49).

The language that was used to debate the Bill denoted that Kenya's existence as a peaceful state depended on the passage of the anti-terrorism Bill. Hence, dissenting voices, like that of Aden Duale who raised concerns about the impact of the proposed law on civil liberties (Republic of Kenya. Parliament. September 26, 2012, 49-50), could not sway the majority who had securitized terrorism as an existential threat and were more than willing to enact extraordinary security measures to address the threat. The coalition government had achieved consensus about the terrorism threat in Kenya and the need for counterterrorism measures. It took less than two months, between its first and third readings, for Kenya's parliament to pass the *Prevention of Terrorism Bill, 2012* (Kenya Law 2012).

Conclusion

The rise of Al Shabaab in Somalia had significant implications for Kenya's counterterrorism policy. When the group emerged in 2007 it was welcomed in Somalia as a nationalistic organization that was striving to restore peace in the country and free Somalia of foreign interference, especially from Ethiopia. Within months of controlling parts of Southern Somalia, Al Shabaab had installed order with the establishment of much needed institutions and social services. Al Shabaab's success made it popular and young, mostly uneducated, Somali men joined the group to fight for its cause. However, the group's popularity in Somalia started waning when it became clear that Al Shabaab was intolerant of important Sufi traditions that had been practiced in Somalia for hundreds of years. From that point, the number of young Somalis who were willing to join the group declined and Al Shabaab opened its membership to foreign fighters who included young people from Kenya. The group's international outlook was also a result of change of leadership from Ayro to Godane. Godane declared that Al Shabaab was part of the global jihad network and sought to increase the number of foreign fighters within its ranks.

As a transnational terrorist group, Al Shabaab used radicalization conduits including Rogo, Makaburi and Ali to recruit young Kenyans who were trained to not only fight in Somalia but also carry out terrorist attacks in Kenya. By 2012, domestic terrorism in Kenya had increased to a level, whereby, Kenya's government acknowledged that it was a serious threat that could not be tackled using conventional methods. There were also worrying trends of young Kenyans, including school-aged children, falling prey to

radicalization conduits who facilitated their travel to Somalia for training before they were dispatched back to Kenya to engage in terrorist activities.

These developments marked a critical juncture in Kenya's counterterrorism policy. They drew attention to domestic radicalziaiton as a new variable that explains the change in Kenya's counterterrorism policy. Terrorist attacks in Kenya were not confined to American and Israeli installations. It became clear that Kenya, as a referent object, was under significant threat on three fronts as radicalization conduits encouraged their followers to attack Kenya's institutions, kill its citizens and assassinate its leaders. It was then that Kenya's president and prime minster as well as most of its cabinet ministers and members of parliament unified to enact counterterrorism measures that would protect the country from terrorists irrespective of whether they were home-grown or foreign nationals.

Chapter Five

From Autocracy to Democracy: The Impact of Kenya's 2010 Constitution on Counterterrorism Policy

Introduction

Chapter four determined that Kenya's approach to countering terrorism changed when there was growing evidence that Al Shabaab was recruiting and radicalizing Kenyan citizens who were then dispatched to engage in terrorism activities in Kenya. The shift from foreign attackers to Kenyan jihadists contributed to consensus among Kenya's president, prime minister, cabinet ministers and members of parliament that the methods that were designed to keep foreign terrorists out of the country would not be effective in stemming the activities of home-grown terrorists. Ultimately, Kenya's government enacted counterterrorism measures to protect the country from foreign and home-grown terrorists.

Even so, the consensual process that resulted in the enactment of counterterrorism measures in Kenya cannot be solely attributed to growing evidence of an increase in home-grown terrorists in the country. Other contextual factors also played a significant role in the country's counterterrorism making process. As McDonald (2008) pointed out, securitization does not automatically occur when a problem is designated as a security threat. "Those interested in the construction of security must pay attention to the social, political and historical contexts in which particular discourses of security, even those

defined narrowly in terms of the designation and articulation of [a] threat, become possible" (McDonald 2008, 573).

This chapter examines the effects that Kenya's transition from autocracy to democracy had on the country's counterterrorism policymaking process. It argues that when NARC became the first opposition party to win an election in Kenya in 2002, Kibaki's government was under considerable pressure to democratize the country after 40 years of KANU's despotic rule. Hence, during its first few years in power, Kibaki's government was preoccupied with the mechanizations of power-sharing. Furthermore, Kibaki's government, which had pledged to lead Kenya into a new era of national integration in the aftermath of ethnopolitical polarization that had plagued Kenya during the Moi era, was reluctant to enact laws that appeared to target a section of Kenya's population. The proposed anti-terrorism laws in 2003 and 2006 were, therefore, rejected primarily because they contained clauses that were deemed discriminatory towards Kenya's Muslim community.

In 2012, Kibaki's government garnered enough support for it to pass the *Prevention of Terrorism Bill*, *2012*. Many parliamentarians who had opposed attempts to pass anti-terrorism laws in 2003 and 2006 voted for the 2012 Bill even though it had clauses that were similar to previously rejected anti-terrorism Bills. This chapter argues that the promulgation of a new constitution in Kenya in 2010 instituted democratic changes that led to the securitization of terrorism and subsequent shift in Kenya's counterterrorism policy. The changes included reforms to Kenya's security agencies and institutions as well as the inclusion of a Bill of Rights in Kenya's constitution.

To clearly explain the significance of the democratic changes on Kenya's counterterrorism policy, this chapter begins with a vivid account of how KANU entrenched despotic rule using Kenya's security agencies and institutions over a period of 40 years. This is followed by discussions about attempts to pass the 2003 and 2006 anti-terrorism Bills amidst a growing rift within the NARC government. The rift in the NARC government spiralled into bitterly contested elections in 2007 and the ensuing violence in 2008. In the aftermath of the violence, Kibaki and Odinga, the two main presidential candidates in the 2007 elections, agreed to form a government of national unity and embarked on the development of a constitution that was based on democratic values and principles. The last two sections of this chapter expound on the impact of the 2010 constituent on Kenya's counterterrorism policy.

The Role of Security Agencies and Institutions in the Making of an Autocratic State

Jomo Kenyatta's Presidency

For almost 40 years, the office of the president in Kenya had absolute control over the country's security agencies and institutions including its intelligence agency and police force. As was the case during the colonial period, state agencies and institutions in post-colonial Kenya were used as tools to protect the interests of the president and his close allies. Presidential control of Kenya's state agencies and institutions began through a series of constitutional amendments when Jomo Kenyatta became the country's first president in 1964. That year, Kenyatta and those close to him introduced amendments that consolidated power in the office of the president and paved the way for Kenya to become an autocratic state. These amendments included Amendment No. 28 of 1964 which dismantled the

decentralized (majimbo) political system that would have allowed regions in Kenya to be more autonomous and to have control over key aspects of their economy and social services (Republic of Kenya 1964; Okoth-Ogendo 1972).

At the time, advocates for the centralization of power and a stronger presidency, such as Mwai Kibaki, argued that the decentralized system would have escalated political tensions over land and increased the likelihood of violence between ethnic groups fighting over regional boundaries (Okoth-Ogendo 1972). This view appeared to be valid as clashes over regional boundaries had already taken place between the Luhya and Kalenjin when Kitale District was transferred to the Rift Valley region in 1963. Other clashes between the Luhya and Luo over the boundary of Maseno Division, in 1963, resulted in several deaths and the destruction of property (Republic of Kenya. Parliament. October 8, 1965; Ogot 1967).

The creation of a centralized political system also received support because Kenya was grappling with the threat of irredentism from its Somali population as well as several communities residing at the Kenyan Coast. In the Northeastern region of Kenya, ethnic Somalis attempted to curve out the area and integrate it with Somalia during the Shifta war that took place between 1963 and 1968.[96] At the Kenyan Coast, the Mwambao United Front (MUF) became the first group in the region to demand for autonomy from Kenya in

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[96] It is important to note that throughout the colonial period, the people of NFD (Northern Frontier District) had no contact with the rest of Kenyans. Until 1960, other Kenyans needed a special permit to visit the NFD. During the 1962 Lancaster House conference, the British Colonial Secretary proposed a referendum to determine whether the people of NFD wanted to remain with Kenya or join Somalia. An overwhelming majority voted to join Somalia, but the British government decided not to let them go so close to Kenya's independence.

1963, on grounds that the inhabitants of the region were a distinct social group who should establish their own independent state or re-join Zanzibar (Brennan 2008; Presthold 2014; Patterson 2015). In view of the precarious status of Kenya's newly acquired independence, Kenyatta and his cabinet were convinced that stability in Kenya would be achieved if the country had a powerful unified government (Republic of Kenya 1964. Parliament. 3879-3992; Maxon 2016).

In 1964, Kenya's only opposition party, the Kenya African Democratic Union (KADU), was dissolved and its members including its chairman and Kenya's future president, Moi, joined KANU. The dissolution of KADU sealed the fate of decentralization in Kenya since it was KADU that was at the forefront of championing for greater autonomy for Kenya's regions. In addition to this, KADU's demise made Kenya a de facto one-party state. Jomo Kenyatta and his allies welcomed this development arguing that multiparty democracy was ethnically divisive and economically unviable. Indeed, even months before Kenya became independent in December 1963, KANU members had expressed reservations about working alongside other political parties such as KADU. On August 2, 1963, Tom Mboya, who went on to become Kenya's first post-colonial Minister for Justice and Constitutional Affairs stated that KANU was committed to "the building and unifying of Kenya into one nation … even if this was perceived as a threat to the opposition" (Republic of Kenya. Parliament. Aug 2, 1963, 1668-1669). Jomo Kenyatta made similar statements. First in 1963 when he stated that "[the] negative and destructive opposition can only do harm to democracy" (Hornsby 2012, 95) and later in 1964 when he described KADU as a "splinter club of conceited grasshopper politicians with nothing to contribute" (Hornsby 2012, 95). In his view, a one-party state was desirable and inevitable.

When KANU became the only political party in Kenya, Jomo Kenyatta embarked on constitutional amendments that would solidify his hold on power. On June 3, 1966, Kenya's parliament assented to constitutional amendments which made significant changes to the Preservation of Public Security Act. Part of the amendments made it lawful for the president to order for:

a) the detention of persons … b) the registration, restriction of movement (into, out of or within Kenya) c) the imposition of curfews … d) the censorship, control or prohibition of the communication of any information, or of any means of communicating or of recording ideas, or information, including any publication or document … e) the prevention of the dissemination of false reports … and, f) the control or prohibition of any procession, assembly, meeting, association or society (The Constitution of Kenya Amendment Act No. 3 Act 1966, Part III)

The amendment also made it lawful for the president to decide on "any matter, not being a matter specified in any of the foregoing paragraphs of this subsection for which provision is necessary or expedient for the preservation of public security" (The Constitution of Kenya Amendment Act No. 3 1966, Part III 2m).

Based on the provisions mentioned above, the president no longer needed parliamentary approval to exercise emergency powers and Jomo Kenyatta was at liberty to

order Kenya's security forces to detain anyone without trial at his own discretion. As Ghai (2002) observed, such actions demonstrated that Jomo Kenyatta and his close associates were unwilling to deconstruct the oppressive institutions of the colonial state and create an environment where professional and neutral security agencies and institutions could be established in Kenya. The ruling party KANU, under the leadership of Jomo Kenyatta, had backflipped on the promises that it had made in the run-up to independence. KANU's manifesto in 1961 had declared:

> The preservation of Public Security Ordinance (1959) and the Detained and Restricted Persons (Special Provisions) Ordinance (1959) are other legislation currently employed to detain Africans for eight years without trial. Not only are these leaders detained without trial, but they are also detained under conditions which are inhuman. The restriction of our leaders at Lodwar, Lokitaung, Marsabit, Hola, Manyani, suggests that, not only are they to suffer the deprivation of their liberty, but are deliberately confined to areas which are extremely hot, mosquito-ridden and deserted. KANU has pledged to remove all these undemocratic, unjust and arbitrary practices (quoted in wa Thiong'o 1989, 50).

However, instead of ending the repressive colonial detention laws as promised in its manifesto, KANU entrenched the repressive laws and failed to transform Kenya's law

enforcement agencies and institutions from oppressive protectors of the ruling elite to providers of security for all Kenyan citizens.

Until his death in August 1978, Kenyatta used Kenya's law enforcement agencies as a bulwark against political opposition. Those who dared to criticize the president or the ruling party KANU, as Martin Shikuku and Jean Seroney did in 1975, were promptly arrested and detained without trial (Kamau 2015). In these cases, Shikuku was detained for declaring, in parliament, that there were individuals trying to kill parliament as they had killed KANU. When Shikuku tried to explain what he meant, Seroney who was the Speaker of the House at the time, told him that he did not have to substantiate the obvious – a statement that led to Seroney's immediate arrest outside parliament. During an interview years later, Shikuku explained that he made the statement because the ruling party KANU had not had elections for over 10 years (Press 2006).

The case of Shikuku and Seroney was just one of many cases where Kenyatta's government used the amended Preservation of Public Security Act, 1966, to silence political dissent. Ngũgĩ wa Thiong'o, a political satirist and author of fictional works, was imprisoned in 1977 because of claims that excerpts from one of his books, *Ngaahika Ndeenda*, could be interpreted as the thoughts of someone who had ill intentions towards the Kenyatta regime (wa Thiong'o 1989). It was also alleged that a play that wa Thiong'o wrote and directed about how politicians and civil servants exploited peasants was a threat to Kenya's national security (Kaufman 1978; wa Thiong'o 1998). In total, the Kenyatta government imprisoned 26 political detainees without trial (Adar and Munyae 2001).

When Moi became president after Kenyatta's death in 1978, he announced that the surviving detainees had been freed during a speech commemorating the fifteenth anniversary of Kenya's independence on December 12, 1978. Moi, nevertheless, warned that Kenya's detention law remained in force and stated that "the government will not hesitate in taking immediate and firm action against anyone whose activities threaten our peace, unity and stability" (Kaufman 1978, para. 8). As time went by, it became clear that Moi, like his predecessor Jomo Kenyatta, believed that one of the roles of Kenya's security agencies was to muzzle political dissent, more so after the failed coup d'état in 1982. At midnight on August 1, 1982, a group of junior officers from the Kenya Air Force tried to overthrow the Moi government. Their coup lasted for about six hours before they were arrested and indicted on several capital offense charges (McGowan and Johnson 1984; Ross 1982).

Even though investigations revealed that only a few low-ranking officers were involved in planning and executing the coup, Moi took the opportunity to expand his powers and gain control of institutions that could be used to challenge his authority. The coup provided what Leonard (1991) described as "a piece of good luck for Moi" (Leonard 1991, 176). It gave him the justification that he needed to get rid of anyone who threatened him politically and replace them with loyalists. After the coup, Moi reorganized the command structures of the police and armed forces making sure that only individuals who were loyal to him were at the helm of the security agencies and institutions. Adar (2000),

N'diaye (2001) and Lynch (2011) concurred that the leadership changes made Kenya's security agencies and institutions beholden to the draconian wishes of the president.

The most feared of the security agencies were the GSU which was made up of highly trained paramilitary forces and the Special Branch[97] which was supposed to collect intelligence for the government. Both the GSU and the Special Branch were part of the Kenya police force and became infamous for acting as Moi's repressive law enforcement arm. They were primarily responsible for ensuring that laws such as the Public Order Act and the Preservation of Security Act, which gave Moi unilateral powers over Kenya's security matters, were implemented in accordance with the president's orders (Human Rights Watch 1993; Branch 2011).[98]

While the GSU brazenly carried out its operations, the Special Branch was secretive and engaged in the detention and torture of hundreds of Kenyans who were brave enough to challenge Moi's autocratic rule or criticize his government's policies.[99] They ranged from politicians such as Raila Odinga, Kenneth Matiba and Charles Rubia for allegedly sowing discord among Kenyans and threatening national security (KTN News 2018b) to university lecturers including Al Amin Mazrui, Willy Mutunga and Katama Mkangi who were accused of "plotting the downfall of the government and distributing seditious

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[97] The Special Branch changed its name to the Directorate of Security Intelligence and later to the National Security Intelligence Service. It is currently called the National Intelligence Service (NIS) (National Intelligence Service 2017).

[98]The GSU was used to clamp down on protests against Moi's oppressive policies. An example of this is the Saba Saba event held at Kamkunji grounds on July 7, 1990 in support of multiparty democracy in Kenya and the ensuing riots that took place when crowds were dispersed.

[99] Special Branch detainees were interrogated and tortured in rooms located in the basements of Nyayo House and Nyati House in Nairobi. For accounts from the survivors of torture see Nyabola. August 17, 2017. *Nyayo House: Unravelling the Architecture and Aesthetics of Torture* https://www.theelephant.info/features/2017/08/17/nyayo-house-unravelling-the-architecture-and-aesthetics-of-torture/.

literature" (Branch 2011, 153). Prominent lawyers and human rights activists were not spared with some of them such as Paul Muite and John Khaminwa being detained for advocating for Kenya to become a multiparty political system or representing those who had been detained (Branch 2011; Kuria 1991).

The professionalism of Kenya's security agencies and institutions was eroded when they were used to clamp down on political activists. Several reports and studies on Kenya's security agencies and institutions showed that many Kenyans perceived law enforcement agencies as tools of oppression rather than institutions that strove to promote law and order (Amnesty International 2013; Osse 2016). Hence, NARC inherited a state with unprofessional and dysfunctional security agencies and institutions when it won the elections in 2002. The new government also had to deal with the issue of ethnopolitical polarization and violence.[100]

New Beginnings, Old Challenges

Just over a year after 9/11, NARC won the general elections in Kenya on December 27, 2002. There were great expectations that the new government was just what Kenya needed to put 40 years of despotic rule behind it and strengthen its nascent democracy. During his inauguration speech on December 30, 2002, Kenya's newly elected president, Kibaki, told the country that the coalition's success, during the elections, proved that it was possible for Kenyans from diverse ethnic backgrounds, races and creeds to work together. Kibaki stated

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[100] An analysis of ethnopolitical violence in Kenya was done in chapter two.

that it marked the first time in Kenya's history that its leaders had come together as one indivisible entity to save the country (Kibaki 2002).

Given the country's history of divisive politics and state-sponsored political violence, NARC leaders were under pressure to transcend ethnically-based politics that had plunged the country into a cycle of ethnopolitical violence since 1992. Nevertheless, within weeks of NARC's election victory ethnic cleavages began to appear between key members of the party. Raila Odinga and his affiliates were unhappy that he had not been appointed as the prime minister of Kenya in line with the MOU on power-sharing that was negotiated during the formation of the NARC alliance (Nyong'o 2007).

Other members of the alliance, such as Charity Ngilu, were disgruntled about key government appointments which they felt were not done according to pre-election agreements. Moody Awori, one of the founding members of NARC and Kenya's former vice president, recalled that instead of appointing cabinet ministers from a list that was agreed upon during the campaign period, the president appointed some individuals who were not on the list and had not campaigned for NARC. Further rifts appeared in the alliance when heads of parastatals were announced as many of them were from the president's ethnic group (Awori 2017). This signalled that NARC was failing in its pledge to end the culture of public appointments based on ethnicity.

Although there were rifts within the alliance, there was a lot of goodwill from the electorate who were optimistic that NARC leaders were genuine about uniting the country. Ndegwa (2003) noted that the euphoria following NARC's victory was similar to the excitement witnessed when the country became independent in 1963. Kenyans were

hopeful that the new NARC government would improve their lives by entrenching democracy, revamping the economy, clamping down on corruption and ending ethnic factionalism and the political violence that emanated from it. Hence, despite their dissatisfaction about political appointments, the coalition's top brass, known as the Summit,[101] spent the better part of 2003 struggling to remain unified while attempting to resolve their differences. During a victory dinner that was hosted on February 19, 2003 for a section of NARC MPs from the Liberal Democratic Party (LDP), Raila Odinga reassured the attendees that the coalition was stronger than ever and that "those assuming the coalition will collapse are engaging in wishful thinking" (Daily Nation 2003, para.6).

Amid public pronouncements of unity some of the NARC leaders including Anyang Nyongo, Kalonzo Musyoka, Charity Ngilu and Raila Odinga, who were all part of the NARC cabinet, strategized on how to push for reforms that would ensure that the pre-election power-sharing agreement was honoured. They turned to the Constitution of Kenya Review Commission (CKRC) that the Moi government had established in 2001 to review Kenya's constitution and make recommendations for the creation of a new constitution (Constitution of Kenya Review Commission 2005). It was believed that the Commission's recommendations for a new constitution, known as the *Bomas Draft*, would partly reflect NARC's pre-election agreement, wherein, executive power that was vested in the president would be cut back through the creation of the position of a prime minister as well as the devolution of power to local authorities (Nyong'o 2007; Awori 2017). Hence, the enactment of a new constitution became the primary focus of cabinet ministers who were

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[101] The Summit members included Mwai Kibaki, Raila Odinga, Charity Ngilu, George Saitoti, Moody Awori, Kijana Wamalwa and Kalonzo Musyoka.

allied to Odinga and other policy issues such as antiterrorism legislation were not enthusiastically pursued.

Meanwhile, cabinet ministers who were close to president Kibaki, including the Minister for Justice and Constitutional Affairs, Kiraitu Murungi, and the Minister for Provincial Administration and National Security, Chris Murungaru, tried to garner support for the passage of the *Suppression of Terrorism Bill, 2003*. However, their efforts appeared to be attempts to reassure Kenya's development partners that the government supported the US-led War on Terror rather than a NARC-driven initiative to take a stance against terrorism in Kenya. Just before the Bill was tabled in parliament, Murungi held a press conference in which he reassured Western states, especially the US, that the government's efforts to draft anti-terrorism legislation demonstrated its commitment to the War on Terror. He also admitted that US officials had helped his office to draft the Bill (Lacey 2003; Maharaj 2003).

The divisions within the cabinet, scepticism about the terror threat in Kenya as discussed in chapter three, efforts to unify the country in the wake of ethnopolitical violence and opposition to the US's role in drafting Kenya's antiterrorism law meant that the Bill was dead in the water by the time it arrived in parliament. The parliamentary Departmental Committee of Administration of Justice and Legal Affairs that was chaired by Paul Muite and tasked with the role of reviewing the Bill also sealed its fate before its final reading in parliament. In addition to rejecting the Bill for disregarding fundamental rights and freedoms, the Committee criticized the Bill for "compromising the sacrifices made by our gallant freedom fighters in order to appease the exigencies of foreign powers,

who want to introduce modern-day colonialism through the back door" (Staff reporter 2003, para. 11). There was also concern that the Bill threatened to "tear apart the very fabric of one nation" (Staff reporter 2003, para. 2).

Concerns about the divisive nature of the Bill stemmed from the language that was used in some sections of the *Suppression of Terrorism Bill, 2003*. While it is important to note that terrorism is a form of political violence that has been used by groups and individuals from varying religious, ethnic and national backgrounds, the fact that most terrorist attacks in Kenya were carried out in the name of Islam drew attention to Kenya's Muslim community. Data from the GTD shows that Al Qaeda and Al Shabaab, which are self-professed Islamist groups, were responsible for 90 out of approximately 173 terrorism incidences that were reported in Kenya between 2001 and 2012. Furthermore, the attacks linked to the two groups resulted in the highest number of fatalities accounting for approximately 625 out of 1013 deaths and injuries reported during that period (Global Terrorism Database 2018; Appendix 1).

Based on Kenya's experience with Islamist groups, the presumption was that Kenyans who identified with the Islamic faith were more likely to carry out and support terrorism activities. The 2003 *Suppression of Terrorism Bill*, therefore, claimed that it was possible to identify terrorists based on the items of clothing that they were wearing. Part three, section 10 of the Bill stated:

> a person who, in a public place wears an item of clothing, or
>
> wears or carries or displays an article in such a way or in
>
> such circumstances as to arouse reasonable suspicion that he

is a member or supporter of a declared terrorist organization

is guilty of an offence (Republic of Kenya 2003 as quoted in

Kamau 2006, 136).

The absurdity of this claim elicited uproar from members of Kenya's Muslim community as well as a section of civil society (Bachmann and Hönke 2010; Kamau 2006; VOA 2009a; Mulama 2003).[102] Many Muslims felt that they were being unfairly vilified because a few individuals who identified as Muslims had carried out terrorist attacks in Kenya (Ndzovu 2015). As a result, Kenya's government withdrew the Bill and promised to address the issues that had been raised.

A similar fate awaited Kenya's *Anti-Terrorism Bill*, 2006 in the wake of political turmoil that had gripped the NARC government in 2005. Towards the end of that year, NARC had unravelled into two main factions identifiable through their support or opposition to a proposed new constitution known as the *Wako Draft*. The *Wako Draft*, named after Kenya's Attorney General at the time - Amos Wako, was a government-amended version of the CKRC's *Bomas Draft*. The biggest point of contention between the two drafts was the issue of executive power. While the Commission's *Bomas Draft* had proposed that executive power should be divided between the president and a new position of prime minister (Constitution of Kenya Review Commission 2005) the government's *Wako Draft* sought to consolidate executive power in the position of the president (Government of Kenya 2005).

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[102] The most vocal civil society groups were Amnesty International, People Against Torture and Release Political Prisoners (VOA 2009a).

Several cabinet ministers and assistant ministers, including Raila Odinga, Kalonzo Musyoka, Charity Ngilu, Fred Gumo, Anyang Nyongo, Ochillo Ayako, William Ole Ntimama, Linah Kilimo and Najib Balala, who were opposed to the *Wako Draft*, convened under the banner of the Orange Democratic Movement (ODM).[103] ODM successfully campaigned against the *Wako Draft* leading to its rejection during a plebiscite in November 2005. The win emboldened the group which had declared itself to be Kenya's third liberation force. They criticized Kibaki and ministers who were close to him for reneging on the promises made to Kenyans when NARC took over in 2002 (Namunane and Agutu 2005). Incensed by their disloyalty, Kibaki fired his entire Cabinet and only reappointed those who had supported the *Wako Draft* (Mugonyi 2005). From that point on, all members of ODM became de facto members of Kenya's opposition.

It is against this backdrop that the government introduced the *Anti-Terrorism Bill, 2006*. The first hurdle that the Bill had to go through was the Departmental Committee of Administration of Justice and Legal Affairs. The Committee's members who had rejected attempts to enact an antiterrorism bill in 2003 took the same position against the proposed legislation in 2006. Amina Abdalla, one of the Committee members, told journalists that the content and policy issues that led to the Committee's rejection of the *Suppression of Terrorism Bill* in 2003 had not been addressed in the new Bill. Other members of the Committee stated that they were opposed to the Bill because fighting terrorism was not a priority for a country like Kenya which had more serious security issues to deal with, such as armed robberies, car jackings and cattle rustling among other non-terrorism crimes.

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[103] The movement's members also included influential politicians who were not members of the NARC Cabinet at the time such as Uhuru Kenyatta, William Ruto and Mutula Kilonzo.

They were especially critical of suggestions that Kenya's Attorney General and Police Commissioner should share intelligence with foreign powers on issues related to terrorist crimes stating that such actions would be akin to colonialism. The Committee members vowed to campaign against the Bill if it was tabled in parliament without being amended (PANA 2006).

In addition to this, the failed 2005 constitutional referendum had repercussions on the Kenyan government's attempts to formulate policies. Not only was it difficult to get consensus on future policies among NARC politicians who had either supported or rejected the *Wako Draft*, failure to pass a new constitution meant that Kibaki was at liberty to rule using the old constitution which gave him unlimited powers as the president of Kenya. These included the power to appoint and dismiss the heads of Kenya's security agencies and institutions at will and the power to order the indefinite detention of anyone who was accused of treason (Makinda 2006; Khadiagala 2010).

Since previous regimes had abused these powers and used them to interfere with Kenya's security agencies and institutions for personal gain, there were fears that Kibaki would backtrack on his election promise to lead Kenya towards a new era of democracy and instead carry on with the imperial legacies of his predecessors. Kibaki's attempts to pass an altered version of the *Bomas Draft* and his refusal to honour aspects of the NARC MOU contributed to suspicions that he would not break away from Kenya's autocratic past (Awori 2017). This partly explains why some members of parliament were wary about supporting counterterrorism measures in an era where Kenya's president had the power to arbitrarily control the activities of Kenya's security agencies and institutions. There were

concerns that counterterrorism measures would be used to clamp down on political activists rather than protect the country against terrorism threats.

Indeed, some of the members of parliament who rejected the proposed laws in 2003, such as Koigi Wa Wamwere, Paul Muite, James Orengo and Wanyiri Kihoro, were former political detainees who were voted into Kenya's parliament during the historic 2002 elections (Amnesty International 1990, 1994,1999; Press 2006). Others who had been threatened and/or detained for criticizing Moi's regime such as Kiraitu Murungi, Raila Odinga and Anyang Nyong'o served as members of Kibaki's Cabinet during the time that the *Suppression of Terrorism Bill, 2003* was formulated and presented for debate.

In fact, Kiraitu Murungi, who served as the Minister of Justice and Constitutional Affairs between 2003 and 2005, was a partner in a law firm that had filed a law suit against Moi's government in February 1987 for torturing political activists. After filing the law suit Murungi's close friend and the lead lawyer in the case, Gibson Kamau Kuria, was detained without trial for 9 months before he and his family were able to flee from Kenya and acquire political asylum in the US (Harden 1988; Kuria and Vazquez, 1991; Branch 2011). Even though Murungi was not detained[104] Moi's government stationed policemen at the entrance of his law firm to intimidate clients who sought his services in a bid to cripple the firm economically (Press 2006). Once again, Moi had used Kenya's police force

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[104] During an interview in 2006 Kiraitu Murungi stated that he was not detained because he distributed copies of lawsuits that challenged the detention of Kuria and other political activists to local and international media houses. The key issues in the lawsuits were made public which drew attention to the autocratic practices and human rights abuses of the Moi government. In addition to this, political activists including lawyers and other professionals showed their support for political detainees by showing up to all their court appearances en masse. With the spotlight on it, Moi's government realized that detaining Murungi would have drawn more negative attention to it (Press 2006)

to try and silence dissent. Given the negative image of Kenya's security agencies and institutions, coupled with NARC's failure to pass a new constitution, Kibaki's government could not consolidate the consensus that was needed to pass the *Anti-Terrorism Bill* in 2006.

In addition to this, Kenya's members of parliament were reluctant to support the controversial Bill because it was proposed on the eve of an election year. Politicians who were running for elective offices did not want to alienate a section of the electorate by supporting the Bill. Indeed, Muslims who criticized the Bill warned leaders who held elective offices that they risked losing support from Kenyan Muslims if they enacted laws that were perceived to be discriminatory (VOA 2009b). This partly explains why Kibaki's government did not make any attempts to revive the Bill after it was rejected at the parliamentary committee level. Instead, in anticipation of the upcoming elections in December 2007, Kibaki tried to pacify the Muslim community once the Bill was withdrawn. In July 2007, Kibaki invited a delegation of Muslim leaders from SUPKEM to discuss issues that were of concern to Kenyan Muslims (Nation Reporter 2007). Soon after the meeting Sheikh Juma Ngao, SUPKEM's vice chairperson, stated that Kibaki had rejected the anti-terrorism Bill because he cared about Kenya's Muslim community (Jopson 2007; Mayoyo 2007). Through his statement Sheikh Ngao had endorsed Kibaki's bid for the presidency.

Members of the opposition, most notably ODM, also went to great lengths to distance themselves from the Bill and reassure Kenyan Muslims that they would protect their interests. In August 2007, Raila Odinga, the presidential candidate for ODM, signed

an MOU with the National Muslim Leaders Forum (NAMLEF) - an umbrella organization for several Muslim groups in Kenya.[105] Part of the MOU stated:

> This MOU is made in utmost good faith and trust between Hon. Raila Odinga and NAMLEF with the common objective of transforming our country Kenya into a proud, prosperous and just nation where all Kenyans live in harmony realizing their full potential without discrimination, subjugation or fear (Odinga and NAMLEF 2007, 1)

Through the MOU, NAMLEF pledged to do all that it could to get Odinga elected as Kenya's fourth president. The organization asserted that it would "support no other candidate for the presidency of the 2007 general elections … and mobilize the Muslim constituency countrywide to support Hon. Raila Odinga's candidature for presidency" (Odinga and NAMLEF 2007, 1). In return, the organization expected him to:

> Initiate within the first year [of his presidency if elected] deliberate policies and programs to redress historical, current and structural marginalization and injustices on Muslims in Kenya. This will include the entrenchment in the Kenyan constitution provisions that will outlaw the targeting and profiling of any Kenyan community (including Muslim) and subjecting them to human rights abuses, violations and

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[105] NAMLEF members included the Council of Imams and Preachers of Kenya (CIPK), the Muslim Educational and Welfare Association (MEWA) and the Kenya Association of Ulamaas and Imams (KAULI).

discrimination under any guise whatsoever, as has

specifically been witnessed by the Muslim community in the

past (Odinga and NAMLEF 2007, 2).

The agreement that Odinga signed with NAMLEF gave him a slight edge over

Kibaki among Muslim voters. An opinion poll that was conducted in November 2007

showed that 45% of Muslims who were interviewed would vote for Odinga compared to

43% who selected Kibaki as their preferred candidate (BBC News 2007). Even though

Odinga was ahead, the closeness of the opinion poll indicated that Muslims were not a

cohesive voting bloc and that the divisions among them made it impossible for any of the

presidential candidates to bank on their support.

Indeed, a section of the Muslim community was quite critical of the deal that

Odinga had made with NAMLEF. In November 2007, two branches of SUPKEM namely;

the National Youth Group and the Central Province branch publicly stated that they did not

support the MOU. During a press conference Hassan Omar, the Chairperson of the National

Youth Group and his colleague Mohammed Msallam claimed that "NAMLEF leaders are

laymen in Islam" (Wachira and Namunane 2007, para. 7). They went on to say that

NAMLEF had "no right whatsoever to speak on behalf of Muslims and [that] they are only

associated with two regions – Coast and Northeastern provinces (Wachira and Namunane

2007, para. 7).

Those who opposed the MOU did not highlight any faults in its contents. Rather,

they criticized and rejected the agreement because of the ethnic affiliations of its authors.

From that point on, several Muslim leaders became polarized along ethnic lines when faced

with the choice of electing leaders who could safeguard their interests. The focus of discussions on Kenya's counterterrorism policy ceased to be about the effects that counterterrorism measures could have on Kenya's Muslim community. Instead, Kibaki and Raila Odinga supporters, within the Muslim community and other communities, focused on how to get their favourite candidate elected. There were no meaningful discussions on how to secure Kenya from terrorist attacks or deliberations on the concerns that had been raised about counterterrorism measures. Political leaders made empty promises to the Muslim community and efforts to enact counterterrorism measures in Kenya were relegated to the backburner as the election date drew closer.

The cavalier approach that political leaders had towards counterterrorism policymaking can also be attributed to attempts to appease a section of Kenya's Christians. Efforts to woe Muslim voters, such as the MOU between Raila Odinga and NAMLEF, had a counteracting effect of putting-off non-Muslim voters. Among them were Christians who strongly condemned the MOU when they found out about its contents. Under a coalition of several churches known as the Evangelical Alliance of Kenya, some Christian leaders demanded the withdrawal of the MOU. Realizing that he may lose some support from Kenya's largest religious group Odinga stated that he had not signed any MOU with any Muslim group. He instead claimed that Muslim leaders "only came to me to register their complaints about constant harassment and discrimination against them" (Siele and Omondi 2007, para. 3). Odinga later admitted to the existence of the MOU but only after Christian leaders from his home area in Kisumu issued a statement in his defence that stated:

As Kenyans head towards the General Election, we as Nyanza leaders note with great concern the partisan involvement of a section of Kenya's religious leaders in the country's political issues… it is on this note that we express our disgust with our Nairobi-based evangelical brothers' attacks and unnecessary criticism of the agreement made between NAMLEF and Mr. Odinga (Munene 2007, para. 8-9).

The opposing views about the MOU became part of the widening schism between Kibaki and Odinga supporters. In addition to weighing in on the MOU religious leaders took sides on different policy agendas that Kibaki and Odinga proposed. Like the case of the MOU, statements about the presidential candidates' policies were usually made along ethnic lines. For instance, two catholic archbishops publicly disagreed on Odinga's proposal to make Kenya a majimbo (decentralized) state. While John Njue, the archbishop of Nairobi who hailed from Kibaki's region, vehemently criticized majimboism (decentralization), his counterpart from Kisumu, Zacchaeus Okoth, insisted that Njue's views did not represent the stance of the catholic church (Kilonzo 2014; Allen 2008).

The ethnically charged environment in which the 2007 campaigns took place culminated in a bitterly contested presidential election in December that year. While cases of violence were rare during the campaign period,[106] violence broke out in various parts of

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[106] It is however important to note that as far back as April 2007 some communities in parts of Kenya's Rift Valley, the epicentre of post-election violence in 2008, had been warned that they would not be welcome in the area after the 2007 elections. Some of them were advised to "go back to Central Kenya" (wa Mungai 2010, 219) which is traditionally considered to be a region for the Kikuyu.

the country when the election results were announced (Rice 2008; Mueller 2011). There was confusion over who had won amid allegations of rigging from members of political parties, civil society organizations and Kenyan citizens (Kanyinga, Long and Ndii 2010). Tensions escalated when both Kibaki and Odinga claimed that they had won the election and their supporters took to the streets, unleashing indiscriminate violence against anyone who was suspected of supporting the opposing side. Approximately 1100 people were killed and another 600, 000 became internally displaced (Waki Report 2008).

It took the intervention of the African Union Panel of Eminent Personalities comprising of Kofi Annan, the former UN Secretary General, Graça Machel, a humanitarian and former first lady of Mozambique and South Africa and Benjamin Mkapa, the former president of Tanzania, to negotiate a power sharing agreement between Kibaki and Odinga. In addition to demanding that Kibaki and Odinga supporters immediately cease violence, the panel created three commissions to make recommendations on changes that were needed to prevent the recurrence of political violence in Kenya. Upon completion of their work, the Truth, Justice and Reconciliation Commission, the Commission of Inquiry on Post-election Violence and the Independent Review Commission on Post-election Violence concurred that a cycle of abuse of power and impunity was at the heart of political violence in Kenya and that institutional reforms were needed to end the cycle. The commissions recommended, that a new constitution, developed from the *Bomas* and *Wako* drafts, should form the legal foundation of institutional reforms in Kenya (Waki Commission 2008; Junk 2016; International Coalition for the Responsibility to Protect n.d).

On December 11, 2008 Kenya's parliament passed the Constitution of Kenya Review Act, 2008 which established a committee of experts that was mandated to:

> Identify the issues which are contentious or not agreed upon in the existing draft constitutions; articulate the respective merits and demerits of proposed options for resolving the contentious issues; make recommendations to the Parliamentary Select Committee on the resolution of contentious issues in the context of the greater good of the people of Kenya; prepare a harmonized draft constitution for presentation to the National Assembly; … facilitate civic education in order to stimulate public discussion and awareness of constitutional issues; liaise with the Electoral Commission of Kenya to hold a referendum on the draft constitution (Constitution of Kenya Republic of Kenya 2008 part III[23]).

The Committee of Experts wrote a draft constitution and presented it to the Parliamentary Select Committee which reviewed the draft and agreed on key issues in January 2010. The draft was then presented to Kenya's parliament which approved it in April 2010 leading to the publication of the *Draft Constitution* in May 2010. On August 4, 2010, a referendum was held during which 67% of Kenyans voted for the *Draft Constitution* (Ndegwa et. al, 2012).

The 2010 Constitution and Reforms in Kenya's Security Agencies

The 2010 constitution placed democracy at heart of governance in Kenya. It marked a departure from 40 years of authoritarianism where Kenya's first and second presidents used the country's security agencies and institutions to consolidate power and eliminate anyone who challenged their despotic rule (Kramon and Posner 2011). Whereas, the historic election of NARC in 2002 symbolized the end of despotic rule in Kenya, the 2010 constitution provided a tangible change that laid the foundations for democratization in Kenya.

The 2010 constitution changed the nature of the presidency from a position that ruled through decrees to one that had to rule through consultations and consensus (Kanyinga, Long and Ndii 2010). By putting constraints on presidential powers, the 2010 constitution waylaid the president's capacity to use the country's security agencies and institutions for personal gain. Under the repealed constitution, Kenya's president solely appointed leaders of the country's security agencies and institutions including the police commissioner, the head of Kenya's intelligence agency and the head of the military.[107] This meant that holders of these offices served at the president's pleasure and could lose their positions if they did not act in accordance with the president's wishes. The 2010 constitution changed this with clauses that prevented the president from arbitrarily appointing and dismissing key holders of state offices. This gave the leaders of Kenya's security agencies and institutions autonomy in decision making which in turn reoriented

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[107] For instance, under the old constitution the Kenya Police Service was headed by the Commissioner of Police who was appointed by the president under the provisions of section 108 of the Constitution of Kenya. (The Kenya Police Service 2007, 5)

their focus from clamping down on political dissidents to investigating matters of national security.

Even though the 2010 constitution was hailed as the most important political development in Kenya's history since the country's independence in 1963 (Kramon and Posner 2011), it is important to note that it was a product of several years of political campaigns for reforms. Within law enforcement, political activists pushed for the overhaul of the Kenya police force which was subservient to the office of the president.[108] Among the changes that were implemented, prior to the promulgation of the new constitution in 2010, was the recreation of the Special Branch which was infamous for the detention and torture of political activists during Moi's presidency. The Special Branch was first created as the intelligence-gathering arm of the Criminal investigations Department (CID) charged with investigating Mau Mau activities and any other threats to the colonial government in Kenya in 1952 (Anderson 2017).[109] In 1998, it was renamed the National Security Intelligence Service (NSIS) before its name was changed to the National Intelligence Service (Boinett 2009).

The establishment of the NSIS led to much needed reforms in Kenya's intelligence-gathering agency. In December 1998, Kenya's parliament passed the National Security Intelligence Service Act, 1998 which came into operation on January 19, 1999. Soon after, the professionalization of the NSIS began under the leadership of Brigadier (Rtd) Wilson Boinett. The NSIS was separated from the Kenya police force and Boinett oversaw the

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[108] The office of the Attorney General and the judiciary were also targeted for reforms.
[109] Each police force in British colonies had a Special Branch. However, the way they were deployed varied from one colony to another.

relocation of about 170 Special Branch officers to the Kenya police force after they were deemed unfit to be intelligence officers (Boinett 2009).

The redeployment of intelligence officers was probably done because of concerns that had been raised about the conduct of Special Branch intelligence officers. During a parliamentary debate on the National Service Intelligence Bill Anyang Nyong'o, who was a member of Kenya's opposition at the time and a vocal critic of the Moi regime, stated:

> The title of this Bill, which will be an Act reads: National Security Intelligence Service. I hope it will indeed be a National Security Intelligence Service because the manner in which the security system has extracted information from innocent citizens like myself in the past has been in the least intelligent version. I do hope that this body will be divorced from the political wing of the government. I also hope that it will serve the Republic of Kenya professionally, intelligently and with competence. I hope that the archaic method of extracting information from citizens through torture and intimidation will definitely not be part of intelligence gathering anymore. I do hope that as the House puts a stamp of approval on this Bill which will become an Act, that stamp of approval will be a strong message to the Executive that from now on the intelligence wing of the government will be intelligent. I hope that it will be impartial

in serving both those who agree with the government and those who stand, as a matter of principle, in critic to the policies of that government (Republic of Kenya. Parliament. December 10,1998, 2844).

Other opposition members expressed similar sentiments and demanded that intelligence officers who were implicated in the suppression and torture of dissidents and other innocent Kenyans should be weeded out of the new intelligence body before it became operational (Republic of Kenya. Parliament. December 10, 1998, 2844).

The reforms that were started in the 1990s got a major boost when the 2010 constitution was promulgated on August 27, 2010. The 2010 constitution provided a framework for significant reforms in Kenya's security agencies and institutions. The key objective of the reforms was to infuse credibility and professionalism in the agencies and institutions. The 2010 constitution also identified national security as an important component of governance in Kenya. It established the National Security Council (NSC) as the country's topmost security organ, making it possible for the Chiefs of security agencies and institutions to have direct dialogue about security matters with the president.

The NSC

The NSC exercises a supervisory role over Kenya's national security organs namely; the National Intelligence Service, the Kenya Police Service and the Kenya Defence Forces. It is made up of the President, the Deputy President, the Secretary for Internal Security, the Secretary for Defence, the Secretary for Foreign Affairs, the Chief of the Kenya Defence

Forces, the Director General of the National Intelligence Service, the Attorney General and the Inspector General of the Kenya Police Service. Article 240 (6) of the *Constitution of Kenya* (2010) states that the NSC's key responsibilities are to:

> a) Integrate the domestic, foreign and military policies relating to national security in order to enable the national security organs to cooperate and function effectively; and; (b) Assess and appraise the objectives, commitments and risks to the Republic in respect of actual and potential national security capabilities. (The Constitution of Kenya 2010, article 240 [6]).

The provisions in the *Constitution of Kenya* (2010) as well as other parliamentary Acts make the NSC the most powerful security institution in Kenya. However, Kenya's constitution also has provisions that allow Kenya's parliament to scrutinize the NSC's functions and policies. Article 240 of the constitution states that the NSC should present an annual report to parliament on the status of security in Kenya. This gives Kenya's parliament oversight over the security policies that the NSC develops which is in line with efforts to promote accountable practices in Kenya's security agencies and institutions. Furthermore, Article 239 (3) of the *Constitution of Kenya* (2010) states:

> In performing their functions and exercising their powers, the national security organs and every member of the national security organs shall not (a) act in a partisan manner; (b) further any interest of a political party or cause;

or (c) prejudice a political interest or political cause that is

legitimate under this Constitution or an Act of Parliament

(The Constitution of Kenya 2010, Article 239 [3]).

These provisions not only compel office holders in security agencies and institutions to act with integrity, but also provide a basis through which any unsavoury behaviour, on the part of Kenya's security agencies and institutions, can be questioned and legally challenged. *The Constitution of Kenya* (2010) and other Acts of parliament also provide clear guidelines on the functions of each security organ in the NSC as well as the procedures that are to be followed when appointing and dismissing the office holders of the security organs.

National Intelligence Service

According to the National Intelligence Service Act, 2012, the National Intelligence Service's key function is to gather, analyse and share "security intelligence and counterintelligence to enhance national security in accordance with the Constitution" (National Intelligence Service Act 2012, part II section 5[1]). In addition to this, the National Intelligence Service advises the president and the government on how to address "any threat or potential threat to national security" (National Intelligence Service Act 2012, part II section 5[1c]) and makes "recommendations to the NSC on policies concerning security intelligence" (National Intelligence Service Act 2012, part II section 5[11]).

At the helm of the National Intelligence Service is the Director General who is appointed from top-ranking personnel from the Kenya Defence Forces. The Director

General oversees the operations and administration of the National Intelligence Service and is the principal advisor to the president and Cabinet on matters related to national security (National Intelligence Service Act 2012). Unlike its predecessor, the Special Branch, which operated under a presidential charter, the National Intelligence Service is subject to parliamentary oversight. It is not beholden to the wishes of the president and is mandated to operate within the limits prescribed in the 2010 constitution and National Intelligence Service Act, 2012. For instance, even though the president appoints the Director General of the National Intelligence Service, the appointment is subject to parliamentary approval. Furthermore, Article 238(b) of the 2010 constitution led to the creation of an Intelligence Service Complaints Commission that caters for:

> Any party that may be aggrieved by the actions of the Director General or any member of the Service. The Intelligence Service Complaints Commission, which is chaired by a person with qualifications of a High Court Judge, is mandated to inquire into complaints against the Service and has the powers of the High Court to summon witnesses, administer oaths, and order the production of any documents relevant to the investigation (National Intelligence Service 2014, para. 10).

To ensure accountability and transparency, the Intelligence Service Complaints Commission Board is made up of members who are appointed by the Cabinet Secretary for Internal Security upon recommendation from the Public Service Commission. The Public

Service Commission's nominees must comprise of a chairperson who qualifies to be a judge of the High Court and four other members who must include:

> 1) A person nominated by the Kenya National Human Rights Commission; 2) an advocate of not less than seven years standing; 3) a retired senior intelligence officer; and 4) a person who has at least seven years' experience in public service (National Intelligence Service 2014, para. 10).

To a large extent, the provisions in Kenya's 2010 constitution transformed the image of the National Intelligence Service from an agency whose key objective was to stifle political dissent to one that could detect and identify critical threats to Kenya's security. During a parliamentary session about the mandate of the National Intelligence Service, the Minister for Trade at that time, Moses Wetangula, reflected on changes in Kenya's intelligence gathering agency. The Minister for Trade stated:

> Previously, the intelligence service better known in those days as Special Branch was notorious for doing everything but gathering intelligence. They were part of the brute side of the police force … Times have changed. The intelligence service does not have to man, keep or own cells to incarcerate or torture people. They do not have the capacity to torment people. All they have is to gather intelligence and give early warning to the system, so that we are able to nib

in the bud any dangers to our country. Mr. Temporary

Deputy Speaker, Sir, you have seen what has been

happening of late. I am sure if the intelligence service

redoubled their efforts, these young extremists and intolerant

characters that have been tossing explosive devices in houses

of worship and social places could be tracked down, arrested

and stopped (Republic of Kenya. Parliament. August 22,

2012, para. 23).

The Minister for Trade's comments reflected the changing views that several members of parliament and cabinet ministers had about Kenya's intelligence agency. They believed that Kenya's intelligence service was critical to the country's social, political and economic stability. They fully supported the restructuring and expansion of the National Intelligence Service which had already began with the recruitment of more than 300 intelligence officers who were posted to each sub-county in Kenya. Furthermore, as a result of reforms that Brigadier (Rtd) Wilson Boinett started when he became the Head of intelligence in Kenya, many of the new recruits went through an additional year of training with British, American and Israeli intelligence experts (Shaffer 2019; Boinett 2009).

The professionalization of the National Intelligence Service played a significant role in Kenya's decision to send its military to Somalia in 2011. According to proceedings from the Kenya Hansard, Kenya's decision to send its military to Somalia was based on information obtained by the National Intelligence Service. A few members of parliament such as Bhoni Khalwale commended the National Intelligence Service for providing information that contributed to the Kenya Defence Forces' success in Somalia when the

incursion commenced in October 2011. Khalwale further stated that Kenya's national intelligence agency had demonstrated its competence and professionalism by unearthing and stopping several Al Shabaab terrorist plots in Kenya [110] (Republic of Kenya. Parliament. August 22, 2012). In this regard, the metamorphosis of Kenya's intelligence agency redirected the efforts of its officers from spying on political dissidents to collecting and analysing information that shaped Kenya's counterterrorism policy. In addition to this, securitization actors in Kenya comprising of members of parliament and cabinet ministers had a more positive outlook of the National Intelligence Service. They were, therefore, more receptive to the intelligence that the agency provided and used it to inform their decisions about Kenya's counterterrorism policy.

Kenya Defense Forces

The second security agency that the NSC oversees is the Kenya Defence Forces which is made up of the Kenya Army, the Kenya Airforce and the Kenya Navy. Its mandate, outlined in Article 241(3) of the *Constitution of Kenya* (2010) states that the Kenya Defence Forces:

> (a) Shall be responsible for the defence and protection of the
>
> sovereignty and territorial integrity of the Republic; (b) shall
>
> assist and co-operate with other authorities in situations of
>
> emergency or disaster and report to the National Assembly

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[110] Information about some of the terror plots uncovered by the National Intelligence Service is available in Appendix 4.

whenever deployed in such circumstances; and (c) may be

deployed to restore peace in any part of Kenya affected by

unrest or instability only with the approval of the National

Assembly (The Constitution of Kenya 2010 Article 241 [3]).

According to the Kenya Defence Forces Act, 2012 (Revised 2016) the Chief of the

Kenya Defence Forces is responsible for controlling and managing the force; complying

with any lawful direction issued by the Cabinet Secretary under the authority of the

President; formulating military policy and strategy in consultation with the Service

Commanders; providing the Cabinet Secretary and Defence Council with information

regarding the Defence Forces upon request; and, implementing the deployment of members

of the Defence Forces when authorized to do so by the National Intelligence Service in

accordance with all relevant Articles of the 2010 Constitution[111] and the Kenya Defence

Forces Act (Kenya Defence Forces Act 2012). Additionally, the president of Kenya is the

Commander-in-Chief of the Kenya Defence Forces.

As mentioned earlier, intelligence about the threat that Al Shabaab posed in Kenya

prompted the Kenya Defence Forces' decision to go to Somalia. However, it is not possible

to give comprehensive details about the intelligence that the NSC or Kenya Defence

Forces' received. Intelligence reports and the NSC's proceedings are not available in the

public domain due to provisions in Kenya's Official Secrets Act, 1970 (Revised 2016).

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[111] Articles 240(8) and 241[3](c) of the *Constitution of Kenya* (2010) contain the provisions governing the responsibilities of the Chief of the Kenya Defence Forces.

Despite this, a general understanding of the NSC's perceptions about terrorism can be inferred from statements that its members made in public.

Several months before the NSC was constituted, Kenya's Minister for Internal Security George Saitoti held a press conference where he told Kenyans that "we cannot run away from what is happening in our neighbouring countries and we have to face the fact that we have also been a victim of terrorist attacks" (Kenya Citizen TV 2009, 0:53). During another press conference on January 16, 2010, the Minister for Internal Security warned that there were elements sympathetic to Al Shabaab's cause in Kenya (KTN News 2010). Nine months later, the Minister for Internal Security announced that "[Kenya] had been provoked … its territorial boundary had been violated and that it had the right to deal effectively with the aggressors [Al Shabaab] wherever they are" (KTN News 2011a, 0:03). The last statement was a declaration of war against Al Shabaab in Somalia.

Kenya's incursion into Somalia, dubbed Operation Linda Nchi (Operation Defend the Nation), was a clear sign that Kibaki's government had securitized terrorism as an existential threat and was willing to use extraordinary security measures to address the threat. The decisiveness with which Kenya Defence Forces executed the military offensive in Somalia was an indication that Kenya's military had carefully planned the incursion. It also gives insights as to why the NSC securitized terrorism as an existential threat to Kenya and pushed for the enactment of counterterrorism laws.

One of the first objectives of the Kenya Defence Forces was to dislodge Al Shabaab from Hoosingo, a town that is in the Juba region of Somalia. Hoosingo was strategically important to Al Shabaab in two ways. First, the town acted as "a gateway for goods from

Kismayo using the Kismayo-Bagdad-Hoosingo-Amuma route and the Kismayo-Bagdad-Hoosingo-Degalema route" (Kenya Defence Forces 2014, 175). It was in Hoosingo where Al Shabaab militants collected revenue for the group through taxes that were levied on traders who were using the routes. Second, Al Shabaab used Hoosingo as a logistics and operational base. The terrain in Ghelef forest, located about 20 kilometres from Hoosingo, provided cover for Al Shabaab's operations against its enemies. Kenya Defence Forces in conjunction with the Ras Kamboni Brigade and Somalia's Transitional Federal Government Forces successfully executed the Battle of Hoosingo on April 4, 2012. It took slightly over six hours for Al Shabaab to be defeated in Hoosingo (Kenya Defence Forces 2014).

The next major offensive that Kenya Defence Forces launched against Al Shabaab was in Kismayo. Kismayo was an important financial hub for Al Shabaab and the group's last urban stronghold. It is through the port of Kismayo that Al Shabaab earned millions of dollars from Somalia's charcoal industry. According to estimates, Somalia exported approximately USD 500,000 worth of charcoal from Kismayo every month when the port was under the control of Al Shabaab (United Nations Security Council 2011c; Kenya Defence Forces 2014). Al Shabaab also collected millions of dollars' worth of taxes from businesses that were operating in Kismayo (Ploch 2010). The port was, therefore, integral to Al Shabaab's financial stability.

To defeat Al Shabaab in Kismayo, the Kenya Defence Forces launched Operation Sledge Hammer on September 25, 2012. The Chief of the Kenya Defence Forces at the

time, General (Rtd) Julius Karangi, explained that it was a mission designed to incapacitate Al Shabaab's operations in Somalia. The Chief of the Kenya Defence Forces stated:

> We have been hitting the tail and the body of the Al Shabaab.
> We now want to hit the head and the best weapon to do so is
> a hammer; a sledge hammer. You [Kenya Defence Forces]
> are the sledge hammer which is going to hit the head (Kenya
> Defence Forces 2014, 204).

As was the case in other towns, Kenya's military captured Kismayo from Al Shabaab. Kenya Defence Forces' successive dislodgment of Al Shabaab from towns in Somalia were the result of careful planning which required intricate knowledge about the terrain that Al Shabaab was operating in as well as intelligence about the threat that the military was up against. A military official who served in Somalia for three years provided insights on the intelligence that Kenya's military gathered on Al Shabaab. The official stated that the decision to go to Somalia was based on not less than two years of intelligence about Al Shabaab's objectives and capabilities. The official further revealed that Al Shabaab's objective is not limited to establishing an Islamic state in Somalia. The group is also using Somalia as a training ground for transnational terrorists from different parts of the world. After training, recruits are dispatched to different parts of the world, including Kenya, to wait for instructions on where and how to carry out terrorist attacks (Interview with KDF personnel D, November 15, 2017). This information was collaborated by another military official who pointed out that by the time Kenya decided to go into Somalia in

October 2011, Al Shabaab had set up a training camp in Doble, a town that is very close to the Kenyan border (Interview with KDF personnel E, November 20, 2017).

Kenya's position that terrorism was an existential threat was re-affirmed in a joint communique issued after a meeting held on October 18, 2011 between Sheikh Shariff, the president of the TFG at the time, and a Kenyan delegation which included two members of the NSC - Kenya's Minister for Foreign Affairs at the time Moses Wetangula and, Kenya's Defence Minister at the time Yusuf Haji. The communique revealed that Al Shabaab had relocated to Lower Juba after the TFG and AMISOM forces pushed them out of Mogadishu in August 2011. Al Shabaab's relocation to Juba posed a serious threat to "public safety and security within Kenya [creating] anxiety among the populations and negatively [impacting] Kenya's economy" (Republic of Kenya and Transitional Federal Government of Somalia 2011, para. 8). This statement echoed a pledge that Kenya's Foreign Affairs Minister had made about two weeks before the joint communique was issued. On October 2, 2011, the Minister for Foreign Affairs told reporters that "Kenya will defend its people and its visitors without any compromise and terror groups from Somalia will be pursued anywhere and everywhere." He further stated, "I seat in the National Security Council and we can say very loudly and clearly, enough is enough!" (KTN News 2011b, 0:10). These statements encapsulated the NSC's position that terrorism was an existential threat to Kenya and that the government would use extraordinary security measures to address the threat.

Kenya's military incursion into Somalia was the first extraordinary step that coalition government took to secure the country against terrorism. The next step was the

enactment of a counterterrorism law. During the drafting of the *Prevention of Terrorism Bill, 2012*, members of the NSC expressed their unwavering support for the Bill. Just before the Bill was presented to the Cabinet for approval, the Minister for Internal Security George Saitoti stated that "the passage of the *Prevention of Terrorism Bill* will greatly help the fight against terrorism" (K24 TV 2012, 1:14).

After Kenya's Cabinet approved the Bill, the government steadfastly presented a unified position that the passage of the Bill was a critical step in securing the country. During a parliamentary debate about the status of security in Kenya, the country's Prime Minister, Raila Odinga, informed parliament that when it came to matters of securing the state against terrorism "the government is reading from the same page" (K24 TV 2012, 1:03). The coalition government's unified voice in support of extraordinary security measures was a big contrast to the disarray witnessed in 2003 and 2006. The shift towards support for counterterrorism measures which resulted in the enactment of the *Prevention of Terrorism Act,* 2012 can be attributed to consensus building, among the president, prime minister, cabinet ministers and parliamentarians. The intelligence that Kenya's reformed security agencies provided convinced these securitization actors that terrorism was an existential threat to Kenya leading to the enactment of counterterrorism measures.

National Police Service

The last security agency under the supervision of the NSC is the National Police Service. The National Police Service Act, 2011 (Revised 2012) designates the Inspector General as the overall and independent commander of all its branches. These include the Anti-Terrorism Police Unit (ATPU) and the paramilitary General Service Unit (GSU) which are

responsible for the police services' counterterrorism functions. The Inspector General is responsible for, among other things, implementing policy decisions, coordinating all police operations and advising the government on policing matters and services (The National Police Service Act 2011).

The ATPU was established in February 2003 with funding from the United States East African Counter-Terrorism Initiative and Anti-Terrorism Assistance Program. The ATPU's main roles are to:

> Interdict terrorist activities within the country; investigate all terrorism related cases; lead other agencies at all scenes of terrorist related incidents; create profiles for suspected terrorists and keep an updated databank; share intelligence with other stakeholders; review and monitor security of vital installations and soft targets and sensitize the public about terrorism threats (Directorate of Criminal Investigations 2015, para. 2).

Working alongside the ATPU is the GSU whose roles include countering terrorism activities and insurgencies. Within the GSU is an elite force known as the Recce squad. The Recce squad comprises of GSU recruits who demonstrate exemplary skills during GSU training sessions. The exemplary recruits undergo further training in Kenya before being taken to Israel, the US and the UK for specialized counterterrorism training. Some of the skills that Recce squad recruits are trained in include detonating and handling

explosives, securing critical installations, sky marshalling and carrying out rescue operations (Nyamweya 2019). Because its members receive highly specialized training, the Recce squad is highly regarded and compared to other elite forces around the world such as the British Special Air Service, the US Delta Force and Israel's Sayeret Matkal. Consequently, the Recce squad's expertise is reserved for combat operations where other police units need the support of a specialized force. The Recce squad can also be deployed as an independent combat unit whenever a crisis arises such as the Dusit hotel attack in Nairobi on January 15, 2019 (Nyamweya 2019).

In line with efforts to professionalize Kenya's security agencies and institutions, Kenya's Police Service went through a series of reforms. The reforms began in 2009 when the National Task Force on Police Reforms made recommendations on how to "transform the Kenyan Police and Administration Forces into efficient, effective, professional and accountable security agencies that Kenyans trust for their safety and security" (Republic of Kenya 2009b, 3). The recommendations were later codified in the 2010 constitution and other laws that govern Kenya's police conduct. They included the National Police Service Act, 2011 (Revised 2012), the Independent Policing Oversight Authority Act, 2011 (Revised 2012) and the National Police Service Commission Act, 2012 (Revised 2014).

The reformed police service is mandated to carry out its duties with "the highest possible standards of competency and integrity and respect human rights and fundamental freedoms and dignity" (The Constitution of Kenya 2010, Article 244 [d]). To ensure that the police service operates in line with the new legal framework outlined in the *Constitution of Kenya* (2010), for the first time in Kenya's history, an Independent Policing Oversight Authority (IPOA) was created in November 2011. IPOA's key objective is to record and

investigate serious injuries and deaths that occur in police custody, carry out independent investigations of complaints against Kenya's police service and monitor police activities (IPOA 2019).

Working alongside IPOA is the National Police Service Commission (NPSC). The Commission's mandate is outlined in the 2010 Constitution as well as the National Police Service Commission Act, 2012. The key functions of the NPSC, as outlined in Article 246 of the 2010 constitution, are to recruit and appoint persons in the police service, determine promotions and transfers within the police service as well as determine "the removal of persons holding or acting in offices within the Kenya Police Service" (The Constitution of Kenya 2010, Article 246).

According to the Minister for State Provisional Administration and internal Security at the time, George Saitoti, transparency in the recruitment and retention of police officers was not only done to ensure fairness in the recruitment process, but also to transform the culture of Kenya's Police Service. The Internal Security Minister emphasized the importance of having a police service that respected democratic principles and human rights stating, "police officers have to learn to be friends of the citizens" (Republic of Kenya. Parliament. September 6, para. 233). The Internal Security Minister also assured members of parliament that the police training curriculum had been revised to "fundamentally ensure that aspects of human rights and democracy are embedded in the new curriculum" (Republic of Kenya. Parliament. September 6, 2011, para. 233).

All these reforms were a big step in the right direction but would have fallen short of the Kenyan government's pledge to undo KANU's autocratic legacy without reforming

other key institutions that worked closely with Kenya's Police Service. Among them was the office of the Attorney General. The provisions in the repealed constitution gave the Attorney General discretionary powers that were open to abuse. Indeed, Musila (2007) noted that Kenya's "history is replete with examples of prosecutions conducted for reasons other than public interest, thus amounting to political witch-hunts and in some cases to settle personal scores" (Musila 2007, 31).

The 2010 constitution abrogated the draconian provisions by separating the office of the Director of Public Prosecution from the office of the Attorney General. Under Article 157 of the *Constitution of Kenya* (2010), the Attorney General's role is limited to giving legal advice to the government and representing it in legal proceedings while the Director of Public Prosecution is designated as the only office that can launch prosecutions on behalf of the state. To prevent the abuse of prosecutorial powers, the Director of Public Prosecutions needs to obtain permission from the court to discontinue prosecution and is obliged to exercise its powers in the interest of the public and the administration of justice (The Constitution of Kenya 2010, Article 157). For the first time in Kenya's history, the safeguards in the new constitution prevented the president from having direct control over the Attorney General. Consequently, the president no longer had the power to direct the office of the Attorney General to open charges against political dissidents.

Although reforms in the police service and other security agencies and institutions had not been completed by the time the *Prevention of Terrorism Bill*, *2012* was tabled in parliament, they were perceived as the government's candid acknowledgement of the shortcomings in the way Kenya's security agencies and institutions operated. Furthermore,

efforts to address the shortcomings indicated that the reforms were not just rhetorical. They were genuine attempts to professionalize Kenya's security agencies and institutions. In fact, in early 2012, the Panel of Eminent African Personalities that helped to broker the power sharing agreement after the 2007 post-election violence and made recommendations for the overhaul of Kenya's agencies and institutions acknowledged that while a lot remained to be done, Kenya had made some important institutional reforms since 2008. During a press interview in Nairobi on October 11, 2012, Kofi Annan, the Chair of the Committee of Eminent Personalities stated:

> Kenya has been struggling to get a new constitution for twenty years. Now they have it; the people believe in it; it is one of the most progressive constitutions on the continent and the envy of many countries. What is important is to give it life – to believe in it, to implement it, and implement it faithfully" (Office of the AU Panel of Eminent African Personalities n.d.,163).

The perceived genuineness of the reforms coupled with constitutional provisions that limited presidential powers meant that Kenya's police service and other security agencies and institutions focused on their mandates instead of spending time and resources buttressing the office of the president. As a result, they were able to identify terrorism as an existential threat and pass on the information to securitization actors in Kenya. In addition to providing the framework for reforming Kenya's security agencies and

institutions, the 2010 constitution has several provisions that protect the democratic rights of all Kenyans including, a Bill of Rights.

Counterterrorism Policymaking and Democratic Rights in Kenya

As explained earlier, Kenya's government failed to garner support to enact counterterrorism measures in 2003 and 2006 because of concerns that the proposed laws would infringe on the democratic rights of Kenyans, particularly Muslims. The challenge for the government therefore, was to build consensus around the idea that a balance could be struck between national security and democracy. The promulgation of a new constitution in Kenya in 2010 provided the rationale that was used to waylay fears that enacting counterterrorism measures was akin to eroding the democratic gains that Kenya had made when NARC was elected in 2002. Indeed, Article 238(1) of Kenya's constitution defines national security as "the protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests" (The Constitution of Kenya 2010, Article 238[1]). Article 238(1)[b] goes on to state, "national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms" (The Constitution of Kenya 2010, Article 238(1)[b]).

Furthermore, the 2010 constitution has an entire chapter[112] that is dedicated to the Bill of Rights. Article 19(2) of the Bill of Rights states, "the purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals

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[112] Chapter four of *The Constitution of Kenya* (2010).

and communities and to promote social justice and the realisation of the potential of all human beings" (The Constitution of Kenya 2010, Article 19[2]).

Ideally, the Bill of Rights protects Kenyan citizens from "unwarranted interference from the state and [provides them with] a legal basis upon which to challenge government actions that violate [their rights]" (Kenya National Commission on Human Rights 2011, 3). Unlike Kenya's repealed constitution where all citizens' rights were subject to clawback clauses,[113] as determined by the executive, the 2010 constitution stipulates that the rights of citizens must be upheld and provides specific conditions for limiting the provisions in the Bill of Rights. Article 24 of *The Constitution of Kenya* (2010) provides that:

> A right or fundamental freedom in the Bill of Rights shall
> not be limited except by law, and then only to the extent that
> the limitation is reasonable and justifiable in an open and
> democratic society based on human dignity, equality and
> freedom, taking into account all relevant factors, including:
> (a) the nature of the right or fundamental freedom; (b) the
> importance of the purpose of the limitation; (c) the nature
> and extent of the limitation; (d) the need to ensure that the
> enjoyment of rights and fundamental freedoms by any
> individual does not prejudice the rights and fundamental
> freedoms of others; and (e) the relation between the

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[113] Clawback clauses refer to restrictions that are incorporated into human rights provisions which either weakens them or renders them null and void.

limitation and its purpose and whether there are less
restrictive means to achieve the purpose (The Constitution
of Kenya 2010, Article 24).

The limitations above are guided by what is referred to as the Oakes Test[114] which sets out the conditions under which rights and freedoms can be limited in a democratic state. Essentially, any limitation on the Bill of Rights in Kenya is considered unconstitutional and must undergo a process of inquiry, usually through the courts, to determine whether it is justified (Kenya National Commission on Human Rights 2011).

Within the context of counterterrorism policymaking in Kenya, the Bill of Rights took centre stage during parliamentary debates on the 2012 *Prevention of Terrorism Bill*. Several members of parliament perceived the Bill of Rights as the panacea that would enable Kenya to enact counterterrorism measures as it protected its nascent democracy. During his inaugural address as the Minister for Provincial Administration and Internal Security Katoo Ole Metito spoke extensively about the protection of human dignity and freedom that the Bill of Rights guaranteed to all residents in Kenya, including terrorist suspects. He noted that the provisions in the *Prevention of Terrorism Bill*, *2012* conformed to the requirements in the Bill of Rights (Republic of Kenya. Parliament September 26, 2012, 36-37).

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[114] The Oakes Test was developed as a legal test during the *R v Oakes* (1986) case when Canada's Supreme Court had to decide what factors warranted limitations on the Canadian Charter of Rights and Freedoms (Chapman 1986; Golder and Williams 2006). In addition to Kenya, many other states such Australia, South Africa and Israel have used the Oakes Test as a model to establish limitations on human rights (Australian Law Reform Commission 2015; Peterson 2017; Weinrib 2010).

For instance, part IV of the *Prevention of Terrorism Bill*, *2012* contained a section designated as "limitation of certain rights" which laid out the procedures that were to be followed before a terrorist suspect's rights were curbed. The section stated that "subject to Article 24 of the Constitution [the Bill of Rights], the rights and fundamental freedoms of a person or entity to whom this Act applies may be limited for the purposes, in the manner and to the extent set out in this section" (Prevention of Terrorism Act (Republic of Kenya) 2012, Part IV(35)[1]). Accordingly, limitations on a terrorist suspect's rights "shall apply for purposes of ensuring a) the investigations of a terrorist act; b) the prevention and detection of a terrorist act or; c) that the enjoyment of rights and fundamental freedoms by an individual does not prejudice the rights and fundamental freedoms of others (Prevention of Terrorism Act (Republic of Kenya) 2012, Part IV(35)[2]).

Given the provisions above, the Internal Security Minister argued that the proposed counterterrorism law contained "administrative and judicial mechanisms to ensure that [counterterrorism] powers are not exercised in a capricious manner and are subject to judicial oversight" (Republic of Kenya. Parliament. September 26, 2012, 36). The Internal Security Minister's observation suggested that the proposed anti-terrorism legislation would be applied in accordance with the Oakes Test. Consequently, law enforcement agencies would not have the authority to limit anyone's rights without fulfilling the requirements in the law.

The Internal Security Minister further noted that the main difference between the *Prevention of Terrorism Bill*, *2012*, the *Suppression of Terrorism Bill, 2003* and the *Anti-Terrorism* Bill, *2006* was that the 2012 Bill was being proposed at a time when Kenya had

undergone significant reforms in its criminal justice system. The reforms had led to what he described as "an advanced judicial system which will not shy away from addressing legitimate concerns that may be raised [about Kenya's counterterrorism law]" (Republic of Kenya. Parliament. September 26, 2012, 36). In this context, the Internal Security Minister was reassuring Kenya's lawmakers that despite the similarities in some of the provisions in the three anti-terrorism Bills, judicial oversight would prevent and redress any legal abuses that arose from the proposed 2012 anti-terrorism law. In the Internal Security Minister's view, it was unlikely that the law would be used to clamp down on political dissidents under Kenya's new democratic dispensation.

The Internal Security Minister's arguments resonated with several members of parliament. Gitobu Imanyara, a human rights lawyer who was arrested and detained in the 1990s for publishing critical articles about the Moi regime was among leaders who supported the *Prevention of Terrorism Bill, 2012*.[115] Speaking in parliament, Imanyara stated:

> Had this Bill come during the era of the old constitution, I
> would have opposed it. Fortunately, we are living under a
> new dispensation. The new constitution has extensive
> provisions for the guarantee and protection of human rights
> and fundamental freedoms of Kenyans. Had this Bill come
> during the old constitution, I would have agreed with our

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[115] On March 1, 1991, Gitobu Imanyara who was then the editor of *The Nairobi Law Monthly* was arrested in his office in Nairobi and taken to an undisclosed location. Imanyara spent more than two years in a maximum-security prison for publishing material that criticized the Moi government. The High Court awarded him Ksh. 15 million (USD 146, 462) for unlawful detention in 2013 (Amnesty International 1991; KTN News Kenya 2013).

Muslim brothers and sisters that this is a Bill we should have

opposed. But given the guarantees that are contained in the

new constitution, given the institutions that have been

created under that constitution … I see absolutely nothing

wrong in supporting this Bill (Republic of Kenya.

Parliament. September 26, 2012, 37).

Like Imanyara most members of parliament were optimistic that the proposed

counterterrorism law would comply with the human rights provisions in the 2010

constitution even when inconsistencies were highlighted in the Bill. A few members of

parliament pointed out that some sections of the *Prevention of Terrorism Bill, 2012* were

vague and too broad. For instance, Millie Odhiambo, an outspoken lawyer and human

rights activist, noted that the proposed law did not specify the conditions under which law

enforcement officers could conduct searches without acquiring a warrant (Republic of

Kenya. Parliament. September 26, 2012, 47). The concerns that she raised about the 2012

Bill were similar to concerns that had been raised about proposed anti-terrorism laws in

2003 and 2006. In 2006, for example, the UN Special Rapporteur on the Protection and

Promotion of Human Rights while Countering Terrorism wrote a letter urging the Kenyan

government to reconsider some of the sections in the *Anti-Terrorism Bill*, *2006*. Among

the concerns raised in the letter was the vagueness of the clause that enabled law

enforcement officers to search a terrorist suspect without a warrant (United Nations 2007,

22).

As discussed, some of the concerns that had been raised about proposed anti-terrorism laws in Kenya in 2003 and 2006 were not resolved in 2012. Nevertheless, members of parliament in Kenya assented to the *Prevention of Terrorism Bill*. Many of them, such as Millie Odhiambo, described the Bill as a very good law because of the provisions that guaranteed the protection of individual rights and freedoms in Kenya's constitution (Republic of Kenya. Parliament. September 26, 2012, 47). Others including the Minister for Justice, National Cohesion and Constitutional Affairs Eugene Wamalwa, the Minster for Energy Maalim Mohammed and the Minister for Defence Yusuf Haji praised the Bill for finally providing Kenya with the legal framework that was crucial to countering terrorism (Kenya parliament September 26, 2012, 36-52).

Ultimately, Kenya enacted counterterrorism measures because its president, prime minister, cabinet ministers and parliamentarians agreed that democratic changes in Kenya provided an environment in which counterterrorism measures and human rights could co-exist. This finding raises an important question about the effects of democracy on counterterrorism policymaking in Kenya and beyond.

Several studies have pointed out that Kenya did not enact counterterrorism measures in 2003 and 2006 because its leaders wanted to protect the country's emerging democracy (Whitaker, 2007; 2008; 2010; 2014; Lind and Howell, 2010; Mogire and Mkutu, 2011). While the arguments in these studies are probable, the findings of this study show that Kenya's leaders enacted counterterrorism measures because the country had instituted changes that introduced and reinforced democratic values. The changes were founded on Kenya's 2010 constitution. Therefore, democracy not only inhibits but also

facilitates the enactment of counterterrorism measures that may undermine democratic values.

Conclusion

Perceptions about Kenya's security agencies and institutions as well as their ability to influence security policy decisions had a profound impact on the securitization of terrorism as an existential threat and the enactment of security measures in Kenya. Prior to the promulgation of the *Constitution of Kenya* (2010) Kenya's security agencies and institutions were perceived as oppressive tools that were used to protect the despotic regimes of Kenyatta and Moi. Kenyatta and Moi instigated a series of constitutional amendments that usurped the independence and eroded the credibility of security agencies and institutions in Kenya. A consequence of this was that both Kenyatta's and Moi's legacies were permeated with cases of using security agencies and institutions to torture, arrest, intimidate and detain political activists or anyone who was perceived as a threat to their presidency.

Although NARC's election victory in 2002 was widely welcomed as a new start for Kenya, reality soon set in as Kibaki's government grappled with some of the same problems that had afflicted Kenya during KANU's 40-year autocratic rule. Among the problems was in-fighting among ministers in Kibaki's government which eventually split NARC into two major camps – one that supported Kibaki and another that was aligned to Raila Odinga. The rift between the two leaders not only weakened NARC's capacity to build consensus on issues of security policy, such as the *Suppression of Terrorism Bill, 2003* and the *Anti-Terrorism Bill, 2006*, but also led to bitterly contested elections in 2007.

Soon after the election results were announced, pro-Kibaki and pro-Odinga supporters went on the rampage – killing, maiming and destroying the property of anyone who was suspected of supporting the opposing side.

Violence was eventually quelled and Kibaki and Raila Odinga formed a government of national unity under the watchful eye of the AU Panel of Eminent Personalities. In addition to agreeing to share power, Kibaki and Raila Odinga pledged to institute reforms that would address the issues that had contributed to the cycle of post-election violence in Kenya among other vices. A new constitution that was founded on democratic ideals was fronted as the foundation for reforms. The new constitution which was promulgated in 2010 introduced substantive changes to Kenya's security agencies and institutions enabling them to carry out their mandates rather than focus on the whims of an autocratic president as had been the case in the past. As a result, the security agencies and institutions, most notably the National Intelligence Service, were able to present intelligence about the terrorist threat that supported the coalition government's assertion that terrorism was an existential threat to Kenya. Consequently, Kibaki, Raila Odinga and their Cabinet were able to successfully securitize terrorism as an existential threat and build consensus among members of parliament in support of enacting counterterrorism measures.

The 2010 constitution also included a Bill of Rights. Members of the coalition government viewed the Bill of Rights as a panacea that would enable them to act tough on terror and safeguard Kenya's emerging democracy. The confidence that Kenya's parliamentarians had in the guarantees that were outlined in the Bill of Rights made many

of them oblivious to the similarities between the 2012, 2006 and 2003 anti-terrorism bills. As a result, some of the issues that contributed to the rejection of anti-terrorism bills in 2003 and 2006 were ignored in 2012, leading to the enactment of the *Prevention of Terrorism Act*.

In retrospect, Kenya's law enforcement agencies have been criticized for violating human rights with many critics laying blame on the country's *Prevention of Terrorism Act, 2012*. While Kenya's anti-terrorism law, like many others around the world, does not epitomize democratic principles, it is not the cause of human rights violations in Kenya. The culture of impunity and disregard for the law, among several Kenyan law enforcement officers, is the main culprit of human rights violations in counterterrorism policing. Simply watering down Kenya's counterterrorism law will not stop human rights violations such as torture and the extra-judicial killing of terrorist suspects. Instead, law enforcement officers should be compelled to work within the law and those who do not should be held accountable for their actions.

It is also important to note that the consensus which led to the enactment of anti-terrorism legislation in 2012 disintegrated as it became clear that respect for fundamental rights and freedoms was not the guiding principle of counterterrorism measures in Kenya. In 2014, Kenya's government introduced new anti-terrorism provisions that gave greater powers to law enforcement agencies. They included a provision that banned the publishing or broadcasting of "insulting, threatening or inciting material and images of injured or dead people that could cause fear" (BBC 2014, para 9). While the new provisions were passed, albeit, amidst chaos in parliament, it was soon challenged at Kenya's Hight Court. Among

those who challenged the new provisions were Kenya's former Prime Minister Raila Odinga and the former Minister for Foreign Affairs, Moses Wetangula. Under a new opposition party known as the Coalition for the Restoration of Democracy (CORD), Odinga led his supporters to the High Court where a case against the new law was filed. Odinga and his supporters also pledged to take to the streets if the new law was not rescinded.

While CORD framed its opposition to the new law as a moral undertaking to protect Kenya's democratic principles, it is also likely that the decision to challenge the government was part of CORD's strategy to reinvent itself after losing the General Elections in 2013. Hence, the realpolitik that dominated counterterrorism discussions in Kenya in the aftermath of 9/11 re-emerged when the national accord and reconciliation agreement between Kibaki and Odinga came to an end in 2013.

Chapter Six

Kenya's Emerging Economic Interests: The Lamu Port South-Sudan Ethiopia Transport Project, Tourism and Oil Discovery

Introduction

So far, this thesis has discussed several factors that led to the unsecuritization and securitization of terrorism in Kenya. Chapter four focused on the rise of homegrown terrorists while chapter five explained how Kenya's transition from autocracy to democracy contributed to the securitization of terrorism as an existential threat. This chapter focuses on the last contextual factor that contributed to the enactment of counterterrorism measures in Kenya. The main argument in this chapter is that the success or failure of a securitization process depends on how securitization actors, especially those who hold elective positions, perceive the costs and benefits of enacting extraordinary security measures (Schultz 2001; Balzacq 2005; Balzacq, Léonard and Ruzicka 2016).

While it is difficult to give a precise figure for the cost of security measures, several studies indicate that states must allocate a substantive amount of government expenditure to counterterrorism activities (Mueller and Stewart 2014; Gold 2004; Dunne and Tian 2013; Dunne and Nikolaidou 2012; Zycher 2003). Hence, in Kenya's case, securitization actors were faced with the task of justifying the astronomical costs that the government was going to incur if it enacted counterterrorism measures. Even though funding for counterterrorism activities can be obtained from taxation revenue, new sources of government funding, such as the discovery of oil, incentivises states to spend more on

security (Castillo et al. 2001). Consequently, a change in a state's economic outlook will have an impact on the securitization of terrorism as an existential threat and the enactment of counterterrorism measures. This chapter investigates the effects that old economic interests and new economic developments in Kenya had on the securitization of terrorism in the country. The economic developments that will be discussed are the construction of the Lamu Port South Sudan Ethiopia Transport (LAPSSET) corridor project, tourism and the discovery of crude oil in Kenya.

Lamu Port South-Sudan Ethiopia Transport Project

In 2009, Kenya's government embarked on East Africa's largest infrastructure project known as the LAPSSET corridor project. Upon completion, LAPSSET will consist of interregional highways, ports, airports, crude oil pipelines, interregional standard gauge railway lines and fibre optic cables between Kenya, Ethiopia and South Sudan. On a grander scale, LAPSSET will open up a new gateway between East Africa and other parts of Africa with its railway lines set to be connected to West Africa's Doula-Lagos-Cotonou-Abidjan corridor. It is anticipated that the railway lines will facilitate trade between multiple East and West African states by giving businesses in these states access to a combined population of approximately 835 million people in the two regions (LAPSSET Corridor Development Authority 2017a and b).[116] LAPSSET, is also projected to be part of China's One-Belt One-Road (OBOR) initiative that will create approximately USD one trillion infrastructural links between Africa, Asia and Europe and enhance trade between

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[116] In 2015, the African Union endorsed the project as part of its Presidential Infrastructure Championship Initiative (PICI). The main objective of PICI is to promote infrastructural development in African states in a bid to facilitate economic growth and development in Africa (NEPAD n.d).

these regions. Kenya has been earmarked as the gateway to other African states for this project (Cai 2017).

In addition to the economic benefits that are to be accrued from interregional trade, the LAPSSET project is integral to Kenya's plans to become an industrialized middle-income state by 2030. A key component of the strategy of achieving middle-income status involves developing marginalized areas of the country that colonial and subsequent post-colonial governments had neglected as discussed in chapters three and four. According to the Commission on Revenue Allocation,[117] the ten most marginalized counties in Kenya, starting from the poorest, are Turkana, Marsabit, Mandera, Lamu, Wajir, Samburu, Isiolo, Tana River, West Pokot and Garrissa (Commission on Revenue Allocation 2012, 2018). These counties lag behind their counterparts in various socio-economic indicators such as infrastructure development, health, security and education. The LAPSSET project is set to roll back decades of neglect through the construction of a seamless infrastructure corridor consisting of highways and railway lines that either pass through the counties or provide connections to roads that lead to the counties.[118]

There are also plans to build major cities along the LAPSSET corridor in Garissa, Marsabit, Mandera, Lodwar, Moyale, Wajir and Maralal as well as three resort cities in

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[117] The Commission on Revenue Allocation (CRA), is an independent Commission set up under Article 215 of the *Constitution of Kenya* (2010). Its core mandate is to recommend the basis for equitable sharing of revenues raised nationally between the national and the county governments, and among the county governments (Commission on Revenue Allocation 2018).

[118] For instance, the LAPSSET corridor includes a 2000-kilometer mega highway. Construction of 505 kilometers between Isiolo and Moyale is complete and this has reduced travel time between Nairobi and Moyale to 10 hours down from 3 days. The construction of other sections of the corridor's road network including the 860-kilometer Lamu-Garissa-Isiolo-Lokichar section and the 738-kilometer Isiolo-Lokichar-Nakodok road are set to be complete by 2020 (LAPSSET Corridor Development Authority 2017a).

Lamu, Isiolo and Lake Turkana (LAPSSET Corridor Development Authority 2016, 2017a and b). The construction of cities in these counties is projected to create jobs among other economic opportunities for the counties' residents.

Based on the discussions above, Kenya's long-term economic interests are tied to the successful completion of the LAPSSET project. As Kenya's president, Uhuru Kenyatta, stated during the official opening ceremony of a section of the LAPSSET railway line,[119] "this railway is not just for us. It is for the many … generations that will come after we are gone" (Al Jazeera 2017b, 0:36). Uhuru Kenyatta made this statement to reassure Kenyans that the astronomical cost of the LAPSSET project, which was estimated at USD 24.5 billion (Kabugi 2017), was a necessary trade-off for Kenya's development and economic interests.

While Kenya had been the trade gateway for goods that were transported within East and Central Africa for several decades, it risked losing this strategic and economic advantage because its infrastructure was outdated and unreliable. The country's railway system had not been upgraded for close to a century and some of its railroads were impassable. As a result, goods within Kenya and other parts of East Africa had to be transported by road which was slower and quite costly (LAPSSET Corridor Development Authority 2016; Elliot 2016).[120] The LAPSSET corridor project gave Kenya an opportunity

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[119] The Nairobi-Mombasa railway.
[120] For instance, it is estimated that the LAPSSET project will facilitate the transportation of goods by train. A train can carry over 200 containers transporting them from the port of Mombasa to Nairobi at a reduced time of 8 hours compared to the 24 hours that each highway truck takes to get from the port of Mombasa to Nairobi (LAPSSET Corridor Development Authority 2016).

to retain its position as East Africa's preferred transportation hub, improve infrastructure within Kenya and attract investment in underdeveloped regions in the country (Kabugi 2017). Figure 2 below, outlines the areas earmarked for LAPSSET's infrastructural projects and the economic activities that will be enhanced through the project.

Figure 2: LAPSSET Areas of Development

(The Mipakani Project 2015)

Security Threats to the LAPSSET Corridor Project

Given the cost of its construction and its strategic importance, it was crucial for Kenya's government to successfully complete the LAPSSET project and ensure that it operated smoothly. A key component of ensuring LAPSSET's success was to address any threats that could stall the construction of the project or undermine its operations once it was complete. By the time the foundation stones for the LAPSSET project were laid in March 2012, Al Shabaab had carried out two deadly attacks in Lamu - a tourist town at the Kenyan Coast which was also the location of LAPSSET's flagship port. During the first attack, on September 11, 2011, a British man was shot dead and his wife was kidnapped when Al Shabaab militants invaded their beach hut at the Kiwayu Safari resort in the Lamu archipelago (Gettleman 2011; Jones 2011). The second attack was carried out on Manda island, which is also located in the Lamu archipelago. On October 1, 2011, a group of Al Shabaab militants kidnapped a Frenchwoman from her house (Rice and Willsher 2011).

The attacks in Lamu profoundly changed how the town was perceived and added to fears that Al Shabaab was a serious threat to Kenya's national interests. Lamu lost its reputation as a safe and serene tourist destination and several countries including the United States, Britain and Australia issued travel warnings against non-essential travel to the region. The travel warnings sparked an exodus from Lamu. Within days of the advisories, several tourists, in Lamu and other surrounding coastal areas in Kenya, checked out of their hotels and boarded planes back to their countries. Furthermore, hotels in Lamu received cancellations and had to lay off hundreds of staff as tourist numbers dwindled (ABC News 2011; Chonghaile 2011; BBC 2011).

The attacks not only threatened the recovery of Kenya's tourism sector which had slumped after the 2007 post-election violence but also raised questions about the viability of constructing a major infrastructural project that passed through areas that were vulnerable to Al Shabaab attacks. The kidnappings drew the world's attention to the proximity between Al Shabaab's areas of operation, in Somalia, and LAPSSET's proposed areas of infrastructural development along Kenya's Eastern border. Lamu, for instance, is only 129 kilometres from Kolbio in Somalia where Kenya Defence Forces uncovered an Al Shabaab hideout during a military operation in November 2013 (Kenya Defence Forces 2014; Barnett 2018).

Garissa, another county in Kenya that was selected as one of the locations for a major city under LAPSSET's city development plan, is close to several towns in Somalia where Al Shabaab had set up logistics and operational bases. The towns, which include Hoosingo, Kismayo, Fafadun, Afmadhow, Miido, Harbole, Biibi, Sooyac and Jana Cabdalla, are all between 212 kilometres and 438 kilometres from Garissa county. The proximity of Garissa to these towns may explain why Al Shabaab frequently carried out attacks in several parts of Garissa. It was in Liboi, in Garissa county, where Al Shabaab carried out its first-known terrorist attack in Kenya on May 31, 2008. Subsequently, Garissa county became the target of approximately 40 terrorist attacks out of 99 attacks that Al Shabaab carried out in Kenya between May 2008 and November 2012 when Kenya enacted the *Prevention of Terrorism Act*. Indeed, the extent of the threat that Garissa faced was revealed in a leaked Kenya National Intelligence Service report which showed that approximately two-thirds of the town was under Al Shabaab's control (Hidalgo 2014). Other counties along the LAPSSET corridor that Al Shabaab attacked included Mandera,

Nairobi, Marsabit and Wajir (Global Terrorism Database 2018). The map below shows the proximity between Al Shabaab's bases of operation in Somalia and Kenya's border between January 2011 and October 2012.

Figure 3: Areas of Al Shabaab Control and Retreat, January 2011 - October 2012
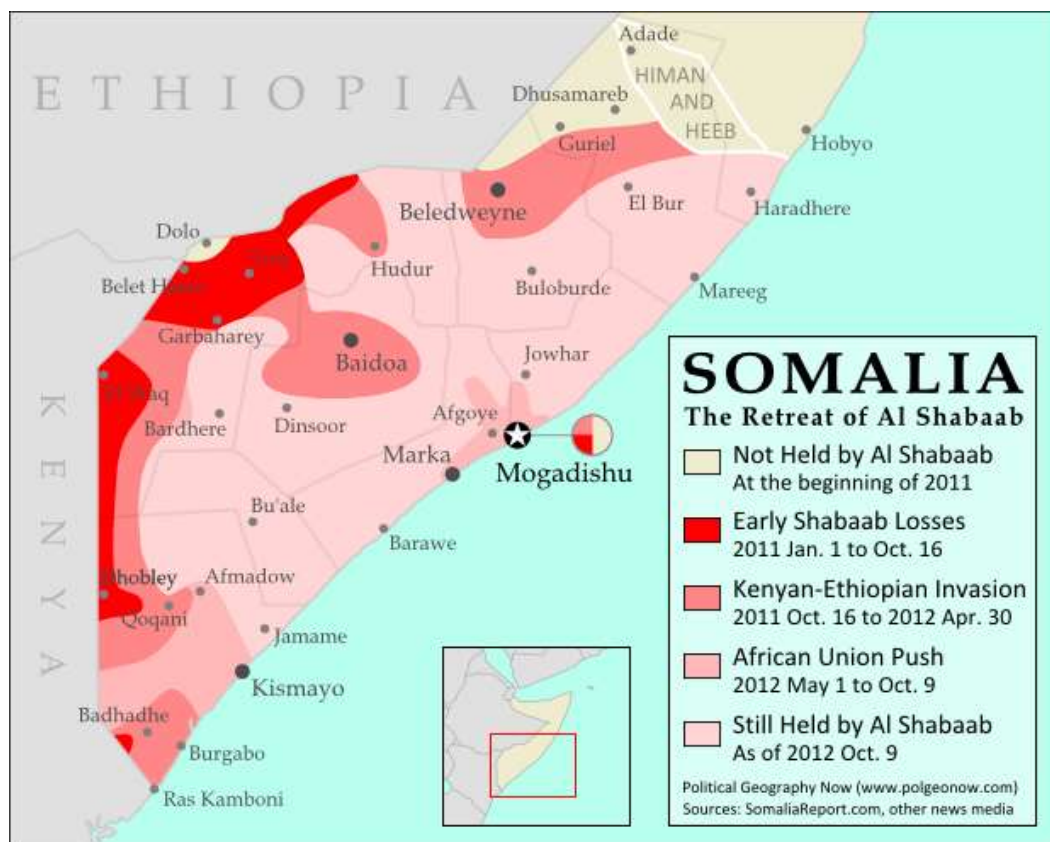
(Gaba 2012)

Given the proximity between Lamu and Al Shabaab strongholds in Somalia, it was only a matter of time before the terrorist group carried out attacks on the island as it did in

September and October 2011. In response to the attacks Kenya's president at the time, Kibaki, held three National Security Council meetings in October 2011 to discuss the status of insecurity in Kenya. The meetings were extraordinary. As the Minister for Tourism, Najib Balala, explained "these are not meetings that are held anytime. They were called because the economy is under threat and the country's borders need to be secured" (BBC 2011 para. 16).

The Minister for Tourism's statement reverberated the seriousness with which Kenya's government was treating the attacks possibly because they threatened the successful completion and operation of infrastructural projects along the LAPSSET corridor. While tourism had always been an important component of Kenya's economy, earning the country about 10 percent of its Gross Domestic Product (GDP), the projected economic benefits of LAPSSET were unlike any other economic venture that Kenya's government had undertaken since the country gained independence in 1963. Through LAPSSET, infrastructure that transverses over half of Kenya's landmass was either going to be upgraded or constructed bringing with it a plethora of economic opportunities in the areas marked out for development as shown in figure 1.

Considering the scale of infrastructural development, Kenya had to solicit for capital to partially fund the LAPSSET project. It was estimated that the full cost of the project would be equivalent to at least half of Kenya's GDP with an initial investment of USD 24.5 billion (Kabugi 2017). At the onset, some of Kenya's development partners including China, Japan, India, Qatar, Brazil, the EU and South Korea pledged to contribute towards the initial costs of the project. However, by the time LAPSSET was launched in

March 2012, these countries had either pulled out of the project or cut down on the amount pledged towards the cost of construction (Kabukuru 2016; Achuka 2016; Browne 2016).

There were several reasons why Kenya's development partners became cautious about the LAPSSET project. First, landowners whose land had been acquired to construct infrastructure were dissatisfied with the compensation packages that they had received from Kenya's government. Many felt short-changed and made demands for additional payments (Browne 2016). Second, environmental groups were concerned about the effects that the project would have on wildlife and plant species in the areas earmarked for development. For instance, environmental activists argued that a power plant that was being constructed in Lamu would emit smoke with hazardous material which could kill sea animals. They also stated that coal dust from the electric plant that was under construction in the area might cause serious health diseases among Lamu residents such as cancer (Human Rights Watch 2018; Kabukuru 2016; Laurence, Sloan, Weng and Sayer 2015).

As work to clear land for construction was going on, environmental activists and organized groups that represented the interests of landowners held protests in various parts of the country. In Lamu, a group known as Save Lamu persistently protested against the project and ultimately took Kenya's government to court in a bid to stop the construction of the coal-fired power plant in the county[121] (Brouwer, Hiemstra, van Vugt and Walters 2013; Bond 2019). Kenya's government also faced a legal battle from fishermen, in Lamu, after they sued the government for loss of livelihood because of the construction of the

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[121] According to environmentalists, the powerplant would increase greenhouse emissions by up to 700 percent (Bond 2019). The case was yet to be decided at the time of writing this thesis.

Lamu port. [122] The lawsuits and organized protests highlighted the controversies surrounding the LAPSSET project and probably made Kenya's development partners more cautious about investing billions of US dollars in the project.

Notwithstanding the disputes between Kenya's government on one hand and various stakeholders on the other hand, it was the perennial Al Shabaab attacks, in Kenya, that dampened confidence in the LAPSSET project. A study that looked at the impact of terrorism on FDI in Kenya showed that foreign investor confidence decreased whenever terrorism incidences occurred in the country (Kinyanjui 2014). It is, therefore, likely that potential investors were sceptical about Kenya's capacity to secure infrastructure along the LAPSSET corridor.

In addition to the pull out of investors, Kenya had to contend with the fact that neighbouring states that had agreed to transport their oil through the LAPSSET corridor were looking for alternative routes for their products. Uganda which, in 2009, had assured Kenya that it would transport its crude oil through the LAPSSET corridor started wavering in its commitment to the project and did not attend LAPSSET's ground-breaking ceremony in March 2012.[123] South Sudan and Ethiopia, though present during the ground-breaking ceremony, were both holding talks with Djibouti about the likelihood of jointly constructing an oil pipeline. In September 2012, just five months after the ground-breaking

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[122] Kenya's High Court ruled in favor of 4600 fishermen from Lamu county on May 2, 2018, ordering the government to pay them USD. 1.76 billion as compensation for loss of livelihood (SABC News 2018).
[123] After Tullow Oil discovered crude oil in Uganda in 2006, Kenya and Uganda came to an agreement that Uganda's oil would be transported through the LAPSSET corridor. However, Uganda changed its mind because of the persistent terrorism attacks in Kenya. At the time of writing this thesis Uganda had signed an agreement with Tanzania to construct a Uganda-Tanzania crude oil pipeline (East African Crude Oil Pipeline n.d; Vokes 2012).

ceremony in Kenya, the three countries signed an MOU to transport South Sudan's oil using a pipeline that would pass through Ethiopia and Djibouti to the Gulf of Aden (Le Billon and Savage 2016; Browne 2015; BBC 2012; Republic of Kenya. Parliament. May 23, 2012).[124]

Like LAPSSET's potential investors, Uganda and South Sudan were unsure about Kenya's ability to protect itself from Al Shabaab attacks. There were fears that Al Shabaab could sabotage LAPSSET's oil pipelines or attack the Lamu port once it became operational. If this were to happen both Uganda and South Sudan, which are landlocked, would not be able to export their oil. The seamless functioning of the LAPSSET oil pipeline was especially important to South Sudan. In January 2011, South Sudanese overwhelmingly voted for independence from Sudan. As an independent state, South Sudan considered Kenya, its long-term political ally, to be the preferred route for its oil exports as opposed to Sudan, its long-term nemesis (Brosché and Rothbart 2013; Brosché 2019; Deng 1995). It was also important for the LAPSSET oil pipeline to function without any major disruptions because oil was a critical resource that could contribute to South Sudan's economic development. Essentially, neither Uganda nor South Sudan wanted to fully commit to the LAPSSET project when it appeared as if Kenya was doing very little, if anything at all, about the Al Shabaab threat. As a result, Kenya stood to lose billions of dollars' worth of investment and revenue if it could not demonstrate that it was capable of securing LAPSSET's infrastructure from Al Shabaab attacks.

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[124] Four years later, on June 23, 2016, Ethiopia and Kenya signed an agreement to construct a product oil pipeline from Lamu port to Addis Ababa via Isiolo, Nakuru and Moyale. While Ethiopia will go ahead with plans to construct an oil pipeline with Djibouti the pipeline that will link Kenya and Ethiopia is still important because it will serve the Southern part of Ethiopia. The Ethiopia-Djibouti pipeline will transport oil to the Northern part of Ethiopia (LAPSSET Corridor Development Authority 2017).

In addition to serving as a route for its neighbours' oil exports, LAPSSET became a means through which Kenya could transport oil that was discovered in Turkana county in 2012. The oil discovery added another impetus for Kenya to go ahead with the LAPSSET project. Now that Kenya had struck oil, it could confidently construct an oil pipeline for its own use. Soon after the oil discovery in Turkana a consortium made up of the government of Kenya, Tullow Oil Kenya, Africa Oil Turkana Limited and Total Oil signed an agreement to construct an underground crude oil pipeline from Lokichar, in Turkana county, to the Lamu port (LAPSSET Corridor Development Authority 2017; Kazungu 2018).[125]

The discovery of oil, in Kenya, also provided compelling reasons that could be used to justify the need for counterterrorism measures. Kenya had to ensure that it had put in place adequate security measures to protect its oil installations and infrastructure from Al Shabaab attacks. According to Lee (2018) and Tichý (2019) oil producing countries are vulnerable to terrorist attacks because of the strategic and economic importance of oil infrastructure. Attacking workers in the oil industry as well as sabotaging oil pipelines, refineries, tankers or oil fields could have a devastating impact on a country's geopolitical interests.

Moreover, a country's oil infrastructure is more likely to be attacked when there are underlying grievances that can be used to entice local populations to join and support terrorist groups or carry out attacks on behalf of the groups (Lee 2018; Piazza 2016; Jones

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[125] The construction of the pipeline was ongoing at the time of writing this thesis. According to the LAPSSET Corridor Development Authority (2017), the construction of the pipeline will begin in 2022 after the completion of three berths at the Lamu port.

2012; Yetiv 2011). For instance, groups that used terrorism tactics in Aceh province in Indonesia (Piazza 2016; Lund 2018; Chalk 2001), the Niger Delta in Nigeria (Tella 2018) and Cabinda province in Angola (Bassil, Hamadi and Bteich 2018) claimed that the terrorist attacks were carried out to retaliate against governments that marginalized locals living in the resource-rich regions.[126]

As discussed in chapter three, home-grown terrorists were on the rise in Kenya. There was significant evidence that young Kenyans, from across the country, were going to Somalia to be trained as Al Shabaab operatives before crossing back into Kenya to carry out terrorism activities (Anderson and McKnight 2015). In many cases, Al Shabaab recruits from Kenya were crossing into Somalia via Lamu where recruiters provided them with a haven to recuperate before they embarked on the next phase of their journey. The presence of Al Shabaab operatives in Lamu and their intentions towards the LAPSSET project came to light when graffiti stating "Boko Haram ndio njia (Boko Haram is the way)" was sprayed across the walls of Lamu Fort[127] (Jorgic 2014 para. 28). Even though Boko Haram is not the main protagonist in the Niger Delta conflict, the connotation of the message was that locals, in Lamu, should be prepared to engage in acts of terrorism that were similar to those that were taking place in the Niger Delta.

As discussed earlier on in this chapter, the first known attack in Lamu happened in September 2011 which was about four months after Kenya's government released the

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[126] Aceh province in Indonesia has one of the largest natural gas reserves in the world as well as crude oil. The Niger Delta in Nigeria is the location of Nigeria's crude oil reserves and Cabinda province is the location of 70% of Angola's crude oil reserves.
[127] Lamu Fort is a two-storey fortress that was constructed in the early 1800s. It is an important historical building and part of Lamu's tourist attractions.

LAPSSET Corridor and New Lamu Port Feasibility Study and Master Plans Report[128] (Government of Kenya and Japan Port Consultants Limited 2011). From that point on Lamu, which had not been an Al Shabaab target since the group started carrying out attacks in Kenya in 2008, experienced several well-planned and coordinated terrorist attacks. While some analysts have argued that the attacks in Lamu were carried out to retaliate against Kenya's incursion into Somalia (Lind, Mutahi and Oosterom, 2017), the timing of the attacks and the discovery of what appeared to be an Al Shabaab village in Boni forest in Lamu county give further insights about Al Shabaab's intentions in Kenya and the reason why Kenya enacted counterterrorism measures.

First, several studies indicate that terrorists select their targets based on their economic significance (Ender and Sandler 2012; Hausken 2018). Since Al Shabaab attacks in Lamu began before Kenya's incursion into Somalia, it is more probable that Lamu became a target because its importance to the Kenyan economy increased once the county was identified as the location for LAPSSET's flagship port. As previously discussed, LAPSSET was Kenya's most important economic project since the country became independent in 1963. Furthermore, the areas earmarked for development along the LAPSSET corridor were vulnerable to Al Shabaab attacks. Consequently, it made sense for Kenya's government to enact extraordinary security measures to protect the LAPSSET project from Al Shabaab attacks.

Second, the LAPSSET project symbolized a new phase in Kenya's development strategy, whereby, regions which had been neglected in the past would be incorporated into

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[128] The report was released in May 2011.

the Kenyan economy. In this context, LAPSSET counteracted Al Shabaab's messages to potential recruits in Kenya. As discussed in chapter four, several young people from Isiolo, Garrissa, Marsabit, Lamu, Mandera, Wajir and many other regions in Kenya joined Al Shabaab because they believed that they came from regions or communities that were economically marginalized (Botha 2014). The Al Shabaab recruits were spurred on by radicalization conduits, such as Rogo, Makaburi and Ali, who coalesced them as a persecuted group of young Kenyans whose economic conditions emerged from decades of government neglect and marginalization. Terrorism, therefore, became a method through which radicalized young Kenyans retaliated against a state that they believed was responsible for their socio-economic problems. While LAPSSET is not a silver bullet for curbing radicalization in Kenya, it could address some of the economic grievances that terrorist groups, such as Al Shabaab, have used to lure recruits and justify terrorism attacks in Kenya.

Indeed, despite disagreements between Kenya's government and groups that protested against the LAPSSET project, communities that lived along the LAPSSET corridor were optimistic that the project would improve their livelihoods. As one of the masons in Lamu stated after Al Shabaab claimed responsibility for killing over 60 people in Mpeketoni,[129] "Our future hinges on getting our port … but if there is no peace here how can the Lamu port work out? I am very worried" (quoted in Jorgic 2014, para. 4). The high stakes placed on the Lamu port as the focal point of the LAPSSET project drew Al Shabaab's attention to Lamu county. It is likely that Al Shabaab made the decision to carry

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[129] Mpeketoni is a town in Lamu county.

out attacks in Lamu as a strategy to derail and eventually stop the construction of the port. Afterall, without the Lamu port Kenya would not be able to develop its marginalized counties or become a regional transportation hub as envisioned in the LAPSSET project development plan.

The creation of Al Shabaab camps, in Lamu's Boni forest, where the militants lived with their families further demonstrated Lamu's, and Kenya's, vulnerability to Al Shabaab attacks. The militants in the camps were members of Jaysh Al Ayman[130] (Army of the Faithful), a military wing in Al Shabaab, that was created to carry out attacks in Kenya (West 2018). Evidence about the group's origins and intentions were revealed during the trial of Malik Jones, a US citizen, who was sentenced to 35 years in prison for providing support to Al Shabaab as a member of Jaysh Al Ayman. Jones had travelled to Somalia in July 2011 where he was trained for three months before being assigned to Jaysh Al Ayman. As a member of Jaysh Al Ayman, Jones revealed that he fought alongside other members of the group against the Kenya Defence Forces in the battle of Afmadhow during the first year of Operation Linda Nchi[131] in late 2011 to early 2012 (United States Department of Justice 2018).

Additionally, Jones's confession as well as information obtained during investigations about Jaysh Al Ayman indicated that the group orchestrated and carried out several attacks in Lamu. They included an attack at a bar in Mpeketoni which killed over

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[130] There are several variations to the group's name including Jeysh Ayman, Jaysh Ayman Al-Shabaab, Jaysh la Imani and Jaysh Ayman Majmo Ayman (West 2018).
[131] The Kenya Defence Forces and Somalia's Transitional Government Forces launched an offensive to oust Al Shabaab from Afmadhow on May 30, 2012 and managed to take control of the town on May 31, 2012. An Al Shabaab fighter who was captured during the battle provided intelligence about the group's activities and strategies (Kenya Defence Forces 2014, 188-191).

40 people on June 16, 2014 and an attack at a trading centre in Hindi, on July 7, 2014, which killed over 29 people (United States Department of Justice 2018; United Nations Security Council 2016, 17-18; Al Jazeera 2014; Kenya Citizen TV 2015a). The Monitoring Group on Somalia and Eritrea also stated that members of the group took part in the 2013 Westgate mall attack in Nairobi and the attack at Garissa University in 2015 (United Nations Security Council 2016).

Germany's investigations into the role of German foreign fighters in Al Shabaab corroborates Jones's and the US Department of Justice's accounts of Jaysh Al Ayman's activities in Kenya. According to Germany's law enforcement agencies Andreas Müller (aka Abu Nusaybah), a German citizen who converted to Islam, travelled to Somalia and joined an Al Shabaab training camp in September 2011. In January 2012, Müller was assigned to a group that came to be known as Jaysh Al Ayman (Jokinen 2018; West 2018).

Although not much is known about Jaysh Al Ayman's leadership structure, Jokinen (2018) suggests that Sheik Ali Mohammed Rage (aka Ali Dhere), Al Shabaab's spokesperson and a member of the terrorist group's Shura Council, was the group's leader when Müller and Jones became members. It was Ali Dhere who issued several explicit statements between 2010 and 2011 urging Al Shabaab's followers and supporters to carry out attacks in Kenya (BBC 2015a).[132]

In addition to Jaysh Al Ayman, another Al Shabaab cell referred to as Saleh an-Nabhan set up camp in Boni forest. The cell is named after Saleh Ali Saleh Nabhan[133] who

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[132] Some of the statements included video recordings that featured Müller and Jones. Müller became so notorious that Kenya's government placed a USD 100,000 bounty on him (BBC 2015a).
[133] Saleh Ali Saleh Nabhan was the mastermind of the Kikambala hotel attack in Mombasa, Kenya in 2002.

was the leader of Al Qaeda in East Africa and a leader in Al Shabaab before he was killed in a US airstrike in Somalia on September 14, 2009 (United Nations Security Council 2012b). Saleh an-Nabhan was linked to several attacks including: 1) the July 2010 bombings in Kampala, Uganda, 2) the January 2016 attack at an AMISOM base in Kulbiyo near the Kenya-Somalia border and 3) the attack at the Dusit hotel in Nairobi in January 2019 (Mbaka 2019; Republic of Kenya. Parliament. March 12, 2019). Video footage that was released by Al Kataib, Al Shabaab's media wing, shows Al Shabaab militants driving a Kenya police car with an Al Shabaab flag mounted on it and several militants swimming in a river in Boni forest (Al Shabaab 2018). The narrator of the video states that Al Shabaab will continue its indiscriminate attacks in Kenya. He goes on to state that Osama bin Laden sanctioned attacks against civilians in enemy states because "ukafiri unahalalisha damu na wala sisi hatutofautishi baina ya raia na mwanajeshi katika kuhifadhi damu... mukitaka mwite raia na mukitaka mwite mwanajeshi" (Being a non-believer justifies blood [killing] and we will not distinguish between a soldier and a civilian in preserving blood [Muslim lives] ... it is okay to kill civilians and soldiers (Al Shabaab 2018). The chilling words in the video were a clear message that Al Shabaab had set up camp in Boni forest so that it could launch attacks against civilians in Kenya.

It is likely that Jaysh Al Ayman and Saleh an-Nabhan established settlements in the vast 1339 km^2 Boni forest[134] in 2011 when members of the groups started carrying out attacks in Kenya. However, it was not until September 11, 2015 that Kenya Defence Forces launched Operation Linda Boni (Operation Defend Boni) to rid the forest of Al Shabaab

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[134] The Boni forest is part of the Boni National Reserve. It extends from Lamu to Garissa county and is part of the Kenya-Somalia border.

militants.[135] This does not mean that Kenya's government was unaware of or unresponsive to the Al Shabaab threat in Lamu and other parts of the country before the operation was launched in 2015. On the contrary, parliamentary discussions, in 2011, which were elaborated on in chapter three and four indicate that members of Kenya's parliament were concerned about the presence of Al Shabaab members and supporters in the country and the threat that the group posed to Kenya's economic interests.

Concerns about LAPSSET's vulnerability to Al Shabaab attacks were raised when a motion to incorporate Kenya Defence Forces as part of AMISOM was tabled in parliament on December 7, 2011. Members of parliament, though supportive of Kenya's military incursion in Somalia, wanted to know how Kenya's government was going to protect the country's economy from homegrown terrorists. For instance, the member of parliament for Mathira constituency, Ephraim Maina, pointed out that the government had to secure Lamu from terrorist attacks because Kenya's economic interests hinged on the success of the Lamu port. Addressing Kenya's Minister for Defence at the time, Yusuf Haji, the member of parliament for Mathira constituency asked if the government could reassure Kenyans that "Al Shabaab is not within our midst" (Republic of Kenya. Parliamnet. December 7, 2011, 35) He further stated: "Can this government assure Kenyans that what we are doing in Somalia … we are fighting using jets and bombs but what have we done about the likely insurgents that may be within us?" (Republic of Kenya. Parliament. December 7, 2011, 35). Other members of parliament including Farah Maalim, William Ruto and the Minister for Foreign Affairs at the time, Moses Wetangula, concurred

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[135] The military operation was launched after Kenya Defence Forces who were investigating a lead that Al Shabaab militants were living in the forest stumbled upon their camp.

that Kenya's economic interests would only be achieved if the state also protected itself from homegrown terrorist attacks (Republic of Kenya. Parliament. December 7, 2011). The sentiments expressed in 2011 marked an important phase in Kenya's counterterrorism policymaking process, whereby, homeland security was identified as the anchor for Kenya's economic interests.

What followed was the tabling of the *Prevention of Terrorism Bill, 2012* as a strategy to improve security within Kenya and protect the country's new economic venture – the LAPSSET project. The proposed anti-terrorism law had several provisions that expanded the powers of Kenya's law enforcement agencies allowing them to use security measures such as mass surveillance and additional patrols. Accordingly, Kenya's defence budget was set to increase, and it was up to members of parliament to approve the proposed budgetary allocations. However, there was no guarantee that parliament would allocate a substantive amount of taxpayers' money to security agencies.

In fact, a few months before the *Prevention of Terrorism Bill* was first read in parliament, some parliamentarians objected to the allocation of vast resources to Kenya's security agencies at the expense of other socio-economic needs. On July 27, 2011, a parliamentary motion to adopt the Budget and Appropriations Committee's *Report on the Estimate of Revenue and Expenditure, 2011/2012* resulted in a heated debate about the merits of allocating Ksh. 2.7 billion (approximately USD 26 million) to the National Security Intelligence Service when only Ksh. 1 billion (approximately USD 9.8 million)

was allocated to the Strategic Grain Reserve. Several members of parliament[136] were unhappy that in the previous year the Strategic Grain Reserve had an allocation of Ksh. 2.4 (approximately USD 23 million) which amounted to a reduction of Ksh. 1.4 billion (approximately USD 13.6 million) for the 2011/2012 financial year. Those opposed to the budget argued that food security was more critical than the intelligence services. They were emphatic that "in the hierarchy of needs food is number one and security is number two" (Republic of Kenya. Parliament. July 27, 2011, 36). Their views were not swayed even after the Minister for Internal Security, George Saitoti, explained that the National Intelligence Service needed the money to enhance its intelligence gathering operations which were critical to preventing terrorist attacks and other security threats in Kenya.

Even though those who opposed the allocation of additional resources to security activities eventually agreed to the additional spending, the conundrum described above shows that contextual factors, which in this case was the allocation of limited resources to counterterrorism measures, have an impact on the securitization of a threat. In this regard, the Minister for Internal Security had to convince members of Kenya's parliament that the benefits of countering terrorism outweighed the costs of spending resources on extraordinary security measures. The projected economic benefits of the LAPSSET project provided one of the compelling reasons that was used to justify the economic costs of counterterrorism measures. The other was the discovery of oil in Kenya in 2012.

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[136] Members of parliament who challenged the allocation of more money to the National Intelligence Service included John Ng'ong'o the representative for Gwassi constituency, Justus Mugali the representative for Shinyalu constituency and Ekwee Ethuro, the representative for Turkana Central constituency (Republic of Kenya. Parliament. July 27, 2011).

The Discovery of Oil and Counterterrorism Measures

The discovery of oil, as a new source of revenue, provided additional impetus for Kenya's government to enact counterterrorism measures. In this instance, Kenya's decision was driven by its desire to protect its new precious resource. There was excitement when Tullow oil, a UK company that was carrying out oil explorations in Kenya, announced that it had struck commercially viable oil in Turkana. Soon after the announcement, the Minister for Energy, Kiraitu Murungi, stated that "the oil that was discovered in Uganda is much lower than what has been discovered in Kenya" (Opiyo and Wafula 2012, para. 7). The Minister for Energy went on to speculate that the oil deposits in Kenya were comparable to those in Libya, Iran and the United Arab Emirates (Opiyo and Wafula 2012). It was confirmed, a few years later, that the initial estimates of oil production were overstated, and that Kenya's oil reserves were just under one billion barrels[137] (Institute of Economic Affairs, 2018). Nevertheless, the excitement that the oil discovery had generated did not dissipate and provided another compelling reason that could be used to justify the enactment of counterterrorism measures.

Kenya's behaviour was similar to that of other oil producing states. According to Chun (2010), resource-rich states, irrespective of their anticipated levels of oil revenues, invest in higher levels of security because they want to protect their resources. Critical infrastructure in oil producing states are usually vulnerable to terrorist attacks and there were numerous cases that served as examples for Kenya. For instance, oil installations in

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[137] Kenya's reserves are meagre when compared to Uganda and Libya which have 6.5 billion and 48.4 billion barrels of oil respectively (Institute of Economic Affairs 2018).

Iraq have been the target of several terrorist attacks which frequently interrupt the production and exportation of oil from the country. In another case, Al Qaeda operatives bombed Saudi Arabia's Abqaiq oil field, on February 24, 2006, despite the high level of security at the oilfield (Tichý 2019; Masuda 2007; Al Rodhan 2006). Such attacks, and many more, served as stark reminders that states should never take the security of their oil facilities for granted.

Moreover, states with resources, that are within proximity to conflict zones, are more likely to resort to extraordinary security measures if other peacemaking strategies such as long-term diplomatic efforts fail to yield the desired results (Chun 2010). As discussed in chapter three, for several years, Kenya had provided support to the transitional government in Somalia hoping that its diplomatic efforts would stabilize the country and ultimately weaken Al Shabaab. Furthermore, Kenya had supported groups and states that engaged in military campaigns against the UIC and later on Al Shabaab.[138] However, peace was elusive. Al Shabaab not only continued to operate in Somalia but also established terrorist cells in Kenya. Since Al Shabaab had vowed to continue carrying out attacks in Kenya, it made sense for the country to boost its security as it prepared to become an oil producer.

There are also indications that Kenya's government expected to use the revenues that it would earn from oil to offset some of the costs of enacting counterterrorism measures. This expectation provided another compelling reason that was used to justify the

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[138] As discussed in chapter three, support was given to Ethiopian forces who passed through Kenya on their way to Somalia in 2010. The US also launched several attacks against Al Shabaab from its base in Manda Bay, Lamu.

enactment of counterterrorism measures. Two major changes in Kenya's spending patterns demonstrate this. First, Kenya's parliament approved a significant increase in the country's defence budget from USD 587 million in the 2011/2012 budget to USD 821 million in the 2012/2013 budget when it was announced that oil had been discovered in Kenya. Furthermore, an additional USD 156 million was reserved for the National Intelligence Service soon after oil was discovered in Turkana (McEvoy 2013, 3-4; Institute of Economic Affairs 2013, 7). This amount was in addition to funding from other sources including USD 1 billion from the US government in 2012[139] (Stimson Study Group 2018).

Second, Kenya's willingness to borrow at an unprecedented rate and get into massive debt showed that the government was confident that it would earn enough income, in part from oil, to pay off its debts. As discussed above, the oil discovery was hailed as a game changer for Kenya's economic fortunes. Oil, therefore, was not just a valuable resource that had be protected but also a source of revenue that could be used to offset the costs of securing the state. In Kenya's case, the discovery of oil in Turkana as well as the projected benefits of the LAPSSET project provided the rationale that the government needed to justify the sharp increase in defence spending. Although the details of Kenya's debt contracts have never been disclosed, over the years, successive governments have repeatedly stated that the LAPSSET project and oil discovery in Turkana will have a ripple effect on the economy (Kenya Citizen TV 2019). Hence, Kenya's president, prime

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[139] Kenya has been the highest recipient of counterterrorism funding from the US since 9/11 in sub-Saharan Africa. Between 2001 and 2017, Kenya received USD 9.2 billion in counterterrorism funding from the US government. Other top African states that also received funding during that time were Nigeria which received USD 6.1 billion and Somalia which received USD 3.6 billion during that time (Stimson Study Group, 2018).

minister, cabinet ministers and members of parliament agreed to enact counterterrorism measures in 2012 to protect Kenya's long-term economic interests.

Tourism and Counterterrorism Measures

In addition to securing its new economic ventures, Kenya enacted counterterrorism measures to protect its tourism industry. The tourism industry became an integral part of Kenya's economy when the country gained independence. At the time, the bulk of Kenya's foreign exchange was obtained from tea and coffee exports. However, when the commodity prices of tea and coffee started declining in the international market, Kenya turned to tourism as an alternative source of foreign exchange.

From 1963, the government embarked on policies that would transform Kenya into one of the most popular tourist destinations in Africa. Investors were encouraged to construct tourism infrastructure such as resorts and hotels that were designed for a variety of tourism experiences (The World Bank 2016). These include safari tours to different parks within the country, coastal tours where visitors spend time relaxing in the country's beach resorts and hotels and lastly, business and conference travel, whereby, the country hosts international conferences. Kenya's dedication to its tourism industry is also demonstrated through its *Wildlife Conservation and Management Act, 2012* (also known as the *Wildlife Policy Act*) which contains provisions that protect wildlife in the country. As a result of investments in the tourism industry, tourism became Kenya's third largest source of foreign exchange earnings and contributed to approximately 10 percent of the country's GDP between 1980 and 2015 (The World Bank 2016). Furthermore, the tourism

industry accounts for about 11 percent of Kenya's total formal workforce (Government of Kenya 2007).

In terms of its outlook, the government incorporated tourism into its national strategy for economic growth. In 2008, Mwai Kibaki launched *Vision 2030* which is a strategic plan with various development programs that will propel Kenya into a middle-income country by 2030. Tourism, was selected as one of six priority sectors that had the potential to significantly contribute to the growth of Kenya's GDP (Vision 2030 Delivery Secretariat n.d; Government of Kenya 2007).[140]

Despite Kenya's optimism about the economic potential of its tourism sector there were indications that none of the plans in *Vision 2030* would materialize if Kenya was perceived as an unsafe destination. Studies on the impact of terrorist attacks on Kenya's economy between 2010 and 2013 showed that there was a reduction of approximately 2508 visitors per year for every casualty in a terrorist attack (Buigut 2018; Buigut and Amendah 2016). This translated to direct losses of about USD 1.5 million per year in tourism revenue (Buigut 2018). To add to this, terrorist attacks could have a long-term negative impact on a country's image as a tourism destination depending on a government's counterterrorism policy. Tourism destinations often experience decline in visitor numbers after terrorist attacks but are likely to recover quickly once the crisis is overcome. However, destinations that repeatedly experience terrorism attacks with no clear guidelines on how the attacks will be prevented are unlikely to recover and the decline in the tourism sector may become

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[140] The other sectors are agriculture and livestock, wholesale and retail, trade, manufacturing, financial services, business process offshoring and IT-enabled services.

permanent (Alvarez and Campo 2014, 70). Given the increase in terrorist attacks in Kenya coupled with evidence of domestic radicalization Kenya's government was incentivized to enact counterterrorism measures to protect the country's tourism industry.

Conclusion

Kenya's decision to embark on the LAPSSET corridor project, the discovery of viable oil reserves in Turkana and efforts to protect its tourism industry played pivotal roles in the decision to enact counterterrorism measures in 2012. First, the LAPSSET project was the biggest economic venture that Kenya had undertaken since the country gained independence in 1963 and its success depended on the country's capacity to demonstrate that it could secure LAPSSET's infrastructure from terrorism threats. LAPSSET's vulnerability to terrorist attacks was laid bare upon the discovery of several Al Shabaab camps that were close to areas that had been earmarked for infrastructural development. Indeed, an increase in the number of Al Shabaab attacks in some of the areas along the LAPSETT corridor, such as Lamu, coincided with the public dissemination of the LAPSETT project plans. Kenya's government, therefore, securitized terrorism as an existential threat and enacted counterterrorism measures as part of its strategy to secure the LAPSSET project.

Second, the discovery of oil in 2012 reinforced the need for counterterrorism measures. Kenya's government was wary that Al Shabaab would target the country's oil installations and was determined to protect what it believed was an economic windfall for the country. The discovery of oil in Kenya also provided the justification that was needed to increase the country's defence budget. The president, prime minister, cabinet ministers

and members of parliament were confident that part of the funds for enacting counterterrorism measures would be recovered from Kenya's future oil revenues. These factors led to consensus that enacting counterterrorism measures was a public good that was worth its economic costs.

Third, the negative long-term consequences of terrorism attacks on Kenya's tourism industry were a wake-up call for Kenya's government. Kenya's position as one of the preferred tourism destinations in Africa was under significant threat from Al Shabaab attacks. Not only did the country experience losses in foreign exchange earnings as tourism numbers dwindled, other sectors in the tourism industry such as hotels were forced to either shut down or lay off workers. It, therefore, made economic sense for the government to protect Kenya's tourism industry be investing in counterterrorism measures.

Thesis Conclusion

Overview and Summary

This research had two main objectives. First, to find out why the Kenyan government failed to enact counterterrorism measures between 2001 and 2011 when it had good domestic and external reasons for doing so and second, to find out why the Kenyan government shifted its position in 2012 and enacted counterterrorism measures. While previous studies provided compelling arguments that explained aspects of Kenya's counterterrorism behaviour, they did not explain why those who had previously opposed anti-terrorism legislation supported the enactment of a similar law in 2012 even though their views about the importance of civil liberties and democracy had not changed. Similarly, previous studies which suggested that Kenya enacted anti-terrorism legislation in 2012 because of the negative impact that terrorism had on the country's security and economic interests did not explain why these factors did not lead to the enactment of counterterrorism measures in 2003 and 2006.

To narrow the gaps identified in previous studies and extend the findings of these studies, this research proposed a hypothesis that was founded on securitization theory. The hypothesis stated that Kenya's enactment of counterterrorism measures depended on consensus building among the country's executive (securitizing actors) and legislative (audience) arms of government. Although this research focused on the roles of the president, prime minister, cabinet ministers and members of Kenya's parliament, the role of functional actors, including Kenya's security agencies and institutions, development

partners and human rights groups, such as MUHURI and Amnesty International, were factored into the analysis.

However, it is important to note that human rights organizations in Kenya often expressed their views about counterterrorism measures through the media or in human rights reports, many of which were factored into the analysis of this thesis. Nevertheless, the effects of human rights groups' media briefings about Kenya's counterterrorism laws were not measurable because they never elicited any strong reactions in the masses or the political elite. There were a few incidences where a section of Kenyan Muslims carried out demonstrations against law enforcement agencies, but such incidences were sporadic and did not make direct references to Kenya's counterterrorism making process. Civil society in Kenya was, therefore, not considered to be a critical actor in the country's counterterrorism making process.

There is also a possibility that a section of civil society lobbied members of Kenya's parliament in attempts to influence their views about counterterrorism measures. This is because in a few instances, some members of civil society and members of parliament would team-up and publicly support court cases that were filed to challenge aspects of Kenya's counterterrorism measures. However, this was mostly done after the enactment of Kenya's anti-terrorism law in 2012 and was, therefore, not applicable to this research. Hence, like Lind and Howell (2010) this thesis argues that the visibility of civil society in Kenya's counterterrorism making process was not pronounced.

Findings

To test the validity of the hypothesis, this thesis proposed six contextual factors that contributed to the unsecuritization (lack of consensus) and the securitization (consensus) of terrorism as an existential threat. Within the context of unsecuritization, this thesis tested whether counterterrorism measures were rejected because of 1) the perception that foreigners, who were carrying out attacks against American and Israeli installations in Kenya, were the main perpetrators of terrorist attacks in the country; 2) the inability of Kenya's security agencies and institutions to securitize terrorism as an existential threat; and 3) the preoccupation of Kenya's securitizing actors (the president and cabinet ministers) with the machinations of power sharing.

The findings of this research showed that in 2003 and 2006 securitization actors were not convinced that terrorism was a serious threat in Kenya. This belief was founded on the fact that during that time, Kenya had experienced three major terrorist attacks that were directed at Israeli and American installations in the country. Furthermore, most of the perpetrators of the attacks were not Kenyan nationals. They were foreigners who, Kenya's government claimed, had entered the country illegally. Hence, the dominant narrative among members of parliament and a section of the country's cabinet ministers was that rather than enacting counterterrorism measures, Kenya would be able to protect itself from transnational terrorists if it secured its borders and flashed out any aliens who were suspected of harbouring ill motives against foreign installations in Kenya. True to form, Kenya's government focused its anti-terrorism activities on matters related to immigration and

border security control as it could not achieve consensus to pass anti-terrorism laws in 2003 and 2006.

Kenya's reaction to terrorism in 2003 and 2006 was not unique. It is not uncommon for governments to securitize terrorism as a threat that emanates from outsiders - that is, individuals who are born in other states. Several governments focus their counterterrorism efforts on either preventing suspicious individuals from entering the state or expelling such individuals from the state. The United States for instance, allocates fewer resources to countering domestic terrorism when compared to transnational terrorism (Rosand 2018). Despite the focus on transnational terrorism, the findings of this study indicate that solely focusing security efforts on threats that emanate from outside the state is not an effective counterterrorism strategy. Indeed, the belief that foreigners were the main cause of terrorism in Kenya inadvertently created a scenario, whereby, very little attention was paid to the dangers of homegrown terrorism leading to the radicalization of young people from several parts of Kenya.

Furthermore, the association of foreigners with terrorism, especially individuals from Muslim-majority states may make governments derogate from their international humanitarian law obligations. In Kenya's case, the government sealed its borders when desperate refugees were fleeing from Somalia in 2006 and 2008 even though Kenya is a signatory to the Refugee Convention. Similar approaches towards refugees and asylum seekers have been adopted in Belgium, the United States and Israel. The United States, for instance, instituted a travel ban on several Muslim-majority states in 2017 despite lack of evidence that nationals from the banned states posed a serious threat to US national security

interests. This worrying trend where some governments profile vulnerable individuals who need humanitarian assistance as terrorist will not secure states against terrorist attacks. On the contrary, it provides propaganda material that terrorist groups can use in their recruitment campaigns and, therefore, undermines counterterrorism efforts.

Lack of consensus to enact counterterrorism measures was also a result of infighting among leaders in the NARC government. NARC had come to power in 2002 after a group of 15 opposition parties formed a coalition whose key objective was to make sure that KANU, which had ruled Kenya since the country gained independence in 1963, did not win the 2002 elections. NARC's election victory was widely welcomed as a new beginning for Kenya. It appeared as if the country was on track to become a prosperous democracy. However, cracks started to appear in the coalition almost as soon as the NARC government was sworn in. A section of NARC's cabinet ministers and parliamentarians who were allied to Raila Odinga were dissatisfied with the makeup of individuals who had been appointed to the Cabinet and selected to head Kenya's parastatals. Odinga and his allies claimed that individuals from Kibaki's ethnic group were overrepresented on the list of appointees.

The fallout from the appointment of Cabinet and parastatal positions spilled over to other policy areas in the NARC government. When the government presented a draft constitution to Kenyans in 2005, Odinga and his allies campaigned against it resulting in its rejection during a referendum that was held that year. Likewise, Odinga and his allies opposed attempts to pass anti-terrorism laws in 2003 and 2006. In 2003, a section of NARC cabinet ministers and members of parliament claimed that they would not support a law

that threatened the democratic gains that Kenya had made in the preceding years. They were also critical of a section of the proposed law which stated that a terrorist could be identified from the type of clothing that they were wearing. This, they argued, was discriminatory towards Kenyan Muslims. Since the government could not garner support for the proposed anti-terrorism law, it was withdrawn. In 2006, Kenya's government proposed another anti-terrorism law. This time around, Kibaki's government stated that the new law had addressed the contentious issues in the 2003 anti-terrorism Bill. However, the government withdrew the 2006 Bill before it was debated in parliament.

The Kenyan government's quick withdrawal of the 2006 anti-terrorism Bill provides insights into the country's puzzling counterterrorism behaviour that had not been explored in previous studies. The 2006 anti-terrorism Bill was proposed on the eve of what would become one of the most contentious elections in Kenya's history. By the time the 2006 Bill was proposed, NARC had split into two factions led by Kibaki and Odinga. Since the two leaders were presidential candidates in the 2007 elections, they used the 2006 Bill as a pawn to attract Muslim votes. Kibaki met a few members of SUPKEM and told them that he did not support the Bill. The Muslim group that met with Kibaki went on to declare that he was their preferred presidential candidate because he cared about Muslims. Incidentally, the Muslim representatives who endorsed Kibaki's presidential bid hailed from his home-area in the central part of Kenya.

No sooner had Kibaki been endorsed by a group of Kenyan Muslims than an agreement that Odinga had made with the National Muslim Leaders Forum became public. Rather than owning up to the agreement, Odinga tried to downplay it because he was wary

of losing Christian votes after the Evangelical Alliance of Kenya criticized the MOU that he had signed with a section of Kenyan Muslims. However, in yet another twist of events, a group of Christians from Odinga's home area came out to support his right to enter into an MOU with Kenyan Muslims. In the end, Kenya's presidential candidates and the country's members of parliament could not have fruitful discussions about the terrorism threat that the country faced or the concerns that had been raised about Kenya's proposed anti-terrorism law. From that point on, discussions about policy issues, including the enactment of counterterrorism measures, were presented through an ethnic lens. It was, therefore, impossible for Kenya's government which was polarized along ethnic lines as it prepared for the 2007 elections, to achieve the consensus that was needed to pass the *Anti-Terrorism Bill* in 2006.

The link between ethnic polarization and policy choices provides an interesting approach to understanding counterterrorism policymaking in ethnically diverse states in Africa and beyond. While there are several studies about how ethnic identity affects preferences for public goods among voters in ethnically diverse states (Easterly and Levine 1997; Liebarman and McClendon 2012; Alesina, Gennaioli and Lovo 2019), there are no studies that investigate how the ethnic affiliation of key government officials influences their security policy choices. Factoring in the ethnic identities of members of the legislature and cabinet ministers who are involved in counterterrorism policymaking may provide greater insights about the securitization of terrorism and enactment of counterterrorism measures in other African states.

In 2012, Kenya enacted counterterrorism measures when its government garnered enough support to pass the *Prevention of Terrorism Act.* During the months leading up to the enactment of the law, securitizing actors in Kenya, most notably the country's prime minister, Odinga and several cabinet ministers including the Minister for Internal Security, George Saitoti, and the Minister for Foreign Affairs, Moses Wetangula, spoke with conviction about the gravity of the terrorism threat in Kenya and the necessity for enacting counterterrorism measures. These securitizing actors received overwhelming support from members of Kenya's parliament including individuals who were at the forefront of advocating for human rights and democracy during Moi's despotic rule. Adding to this, Kenya's police commissioner, Mathew Iteere, and the Chief of Kenya Defence Forces, Julius Karangi, publicly stated that terrorism was a serious threat in Kenya. The public proclamations about terrorism indicated that the country's securitization actors had securitized terrorism as an existential threat.

Three contextual factors led to the securitization of terrorism. First, Kenya's vulnerability to terrorism attacks increased when Al Shabaab, a terrorist group that emerged from the remnants of the UIC in Somalia, started recruiting young Kenyans who were trained and radicalized before being sent back to Kenya to engage in terrorism activities. At the helm of Al Shabaab's recruitment process were radicalization conduits who galvanized young Kenyans into rebelling and fighting against the Kenyan state.

Kenyan Al Shabaab fighters were sent back to Kenya as one of three types of fighters. The first type of fighters known as the suicide brigade were the most revered. They were tasked with carrying out large-scale attacks where they were expected to kill as

many people as they could before either being killed or taking their own lives. The second type of fighters known as the Amniyat gathered intelligence and offered logistical support to other fighters. The third type of fighters, who I refer to as hit-and-run terrorists, carried out small-scale attacks before escaping. Given the high number of small-scale attacks in Kenya between 2008 and 2012, hit-and run terrorists who went unnoticed before carrying out the attacks and seemed to disappear in the aftermath of the attacks were the main perpetrators of terrorism attacks in Kenya. This observation supports the argument that Al Shabaab attacks in Kenya were mainly carried out by Kenyans who blended into their surroundings and knew their way around their targets because they were born and raised in Kenya. The presence of homegrown terrorists contributed to the securitization of terrorism and the decision to enact counterterrorism measures.

Even though Kenya's government recognized radicalization as a serious security threat, its counterterrorism policy focused on military and policing strategies to counter transnational and homegrown terrorism. During debates about the proposed *Prevention of Terrorism* Bill in 2012, there were hardly any discussions about possible strategies that could be developed to prevent the radicalization of young Kenyans. Instead, many members of parliament advocated for stringent laws that make it easier for law enforcement officers to identify, detain and prosecute terrorist suspects. While law enforcement is an integral component of securing the state against terrorist attacks it must be accompanied with efforts to undo or address the factors that attract young people to terrorist groups. These factors, including perceptions of marginalization and discrimination among Kenyan Muslims, were discussed in chapter four. It would, therefore, be logical for Kenya's

government to counter terrorism in a manner that debases the widely disseminated Al Shabaab claim that the Kenyan state victimizes its Muslim population.

To the contrary, there is overwhelming evidence showing that some members of the Kenya Police Service have brutalized Kenyan Muslims, especially those of Somali descent and those who reside at the Kenyan Coast. Such actions not only contravene Kenya's laws but also provide propaganda material that Al Shabaab and other terrorist groups can use to recruit young people. Furthermore, the government's failure to rein in rouge law enforcement officers and prosecute them for torturing and killing terrorist suspects fuels resentment and drives more young Kenyans towards terrorist groups. This may partly explain why Kenya has not been able to stop the flow of young Kenyans to Al Shabaab and, consequently, the number of terrorist attacks in the country. Given Kenya's inability to secure itself form terrorist attacks despite enacting counterterrorism measures, a different approach that is grounded in the democratic laws that are enshrined in the 2010 constitution must become the mantra for counterterrorism policing in Kenya. It is also critical for Kenya's government to evaluate the countering violent extremism programs that have been implemented in various communities and use the findings to develop more effective ways of creating resilience in communities.

The second factor that led to the securitization of terrorism was the promulgation of a new constitution in Kenya in 2010. The 2010 constitution contained clauses that were used to implement reforms in Kenya's security agencies and institutions. The key objective of the reforms was to dismantle the culture of subservience to Kenya's president that been entrenched in the country's security agencies and institutions over a period of almost 40

years. Advocates of reforms in Kenya, were optimistic that the changes would infuse professionalism and accountability in the country's security agencies and institutions.

Indeed, through the reforms, agencies that were integral to Kenya's national security, such as the National Intelligence Service, shifted their attention from clamping down on political dissidents to investigating matters that were pertinent to Kenya's national security such as terrorism. The result was the production of intelligence about the terrorism threat that Kenya faced from homegrown terrorists who were members of Al Shabaab. Consequently, members of Kenya's parliament were convinced that terrorism was an existential threat because the executive's claims about terrorism were supported with evidence from Kenya's reformed security intelligence agency. It was on this basis that Kenya's government arrived at a consensus to enact counterterrorism measures. Kenya's parliament voted for the inclusion of Kenya's defence forces in AMISOM and passed the *Prevention of Terrorism Act* in 2012.

In addition to reforming Kenya's security agencies and institutions, Kenya's 2010 constitution includes a Bill of Rights which was lauded as the panacea that would enable Kenya to act tough on terror while safeguarding the individual rights and freedoms of its citizens. Indeed, the 2010 constitution mandates the country's security agencies and institutions to carry out their functions in line with the human rights provisions that are stipulated in Kenya's constitution. The guarantees to individual rights and freedoms was the dominant reason that the executive used to advocate for the passage of the *Prevention of Terrorism Bill, 2012*. Likewise, it was largely because of the guarantees to individual rights and freedoms in Kenya's 2010 constitution that members of parliament supported

the passage of the Bill in 2012. Hence, even though the proposed anti-terrorism law had provisions that were similar to those of previously rejected bills, there was consensus among Kenya's president, prime minister, cabinet ministers and members of parliament that guarantees in the constitution would not be abridged without due process.

Nevertheless, as time went by, it became clear that the democratic provisions in the 2010 constitution were not guiding counterterrorism practices as envisioned during the passage of the *Prevention of Terrorism Act* in 2012. This raises an important question that has dominated counterterrorism research for several years. Is it possible to secure a state against terrorist attacks while upholding democratic principles, more so in transitional democracies where institutions may still engage in undemocratic practices? While the balance between counterterrorism and democracy is not easy to achieve, a government's ability to uphold democratic principles as it clamps down on terrorist threats is the ultimate sign of successful counterterrorism. This is because one of the key objectives of terrorist groups such as Al Shabaab, Boko Haram and Al Qaeda is to undermine democratic rights and freedoms by carrying out attacks that may lead to counterterrorism measures that violate human rights such as torture and extrajudicial killings. It would, therefore, be foolhardy for states to fall into the terrorists' trap and counter terrorism through measures that destroy their democratic systems. As the former United Nations Secretary General, Kofi Annan, once observed:

> In the fight against terrorism we cannot compromise core
> [democratic] values … terrorism is in itself a direct attack on
> human rights and the rule of law. If we sacrifice them in our

response, we will be handing victory to the terrorists (Annan

2005, para 5).

Instead of playing into the hands of terrorists, states should make sure that counterterrorism measures do not erode the democratic principles that they are supposed to protect. This can be done by having regular and independent reviews of existing counterterrorism measures to assess their impact on democratic principles and revise them accordingly. Furthermore, transitional democracies, such as Kenya, should inculcate new attitudes and cultures, within their law enforcement agencies, that respect democratic principles. Civic education should also be incorporated into countering violent extremism programs that seek to build resilience to terrorism within communities. In this regard, young people should not simply be discouraged from engaging in terrorist activities but should also be provided with official avenues through which they can talk about and present their grievances. In response, states should proactively engage with young people to develop and implement realistic and sustainable solutions that address their grievances. If implemented, these measures could end the vicious cycle of violence, whereby, young people carry out terrorist activities to avenge real and perceived grievances and law enforcement officers carry out inhumane acts that aggrieve young people who are susceptible to radicalization.

Attempts to protect Kenya's established and emerging economic interests was the third contextual factor that led to the enactment of counterterrorism measures in 2012. Shortly after gaining independence in 1963, Kenya's government positioned the country as one of Africa's top tourism destinations. Laws were enacted to protect the country's

wildlife and investors were encouraged to expand the country's tourism infrastructure. Indeed, tourism became one of the top foreign exchange earners in Kenya and was also a source of employment for approximately 11 percent of Kenya's population. Furthermore, tourism was cited as one of the pillars of *Vision 2030* which outlines the short-term and long-term strategies that Kenya will embark on to become a middle-income economy by 2030. Tourism, therefore, is a fundamental resource that had to be protected from terrorist attacks.

In addition to tourism, Kenya began a grand infrastructural project that was designed to modernize the country's transportation system. The project, known as LAPSSET, was the biggest economic undertaking that Kenya had ever embarked on since it gained independence in 1963. In addition to creating a seamless link of roads and railway lines across Kenya, LAPSSET also included an oil pipeline for transporting oil from South Sudan to the Lamu Port. The discovery of oil in Kenya in early 2012 gave the government additional impetus to go ahead with the LAPSSET project even as investors pulled out of the project because of concerns that Kenya would not be able to protect its infrastructure from Al Shabaab attacks.

Indeed, the first attack in Lamu, in 2011, happened shortly after Kenya's government released plans detailing the magnitude and economic benefits of the LAPSSET project. Hence, Kenya did not simply send its military to Somalia because Al Shabaab kidnapped tourists and humanitarian agency workers from Kenya as has been suggested in previous studies. Afterall, these were not the first kidnappings that Al Shabaab had carried out in Kenya. It is more probable that the stakes for Kenya's security increased significantly

when the country finalized plans to construct the LAPSSET project. It, therefore, made economic sense for Kenya to undertake an expensive military expedition in Somalia to secure LAPSSET's infrastructure.

Additionally, Kenya's decision to send its military to Somalia was a last resort to dislodge Al Shabaab from Somalia. As discussed in chapter six, states, such as Kenya, often resort to military operations when other peacemaking efforts fail to yield the desired results. Kenya's peacemaking efforts in Somalia intensified in 2002 when Kenya was designated as the Chair of IGAD's Technical Committee whose key role was to come up with a plan that would enable Somalia to establish a government. After about two years of negotiations, Somalia's delegates formed the TFG government. Despite this, the TFG was unable to physically establish itself in Somalia and had to operate from Kenya. On its part, Kenya's government supported all efforts to rid Somalia of groups that threatened the secure relocation of the TFG to Somalia. Kenya allowed Ethiopian troops to pass through its territory on their way to dislodge the UIC whose military wing became the Al Shabaab. Kenya also permitted the US military to establish a base in Manda Bay, Lamu which was used to launch attacks against the UIC and Al Shabaab. Furthermore, Kenya supported militant groups in Somalia that were fighting against the UIC and Al Shabaab.

Consequently, Kenya's military incursion in Somalia in 2011 and its inclusion in AMISOM in 2012 were not impromptu decisions as some studies have suggested. The evidence in this thesis shows that Kenya's government was keenly watching political developments in Somalia especially because Kenya had been propping up the TFG for a period of about 10 years. As investigations in this thesis revealed, Kenya's decision to go

to Somalia was based on not less than two years of intelligence gathering about Al Shabaab's activities. Kenya's involvement in Somalia's political affairs also explains why Al Shabaab viewed the Kenyan state as a serious threat to its objectives. Kenya was a key player in Somalia's political affairs and its dedication to the successful establishment of the TFG was a big obstacle to Al Shabaab's quest to establish a government in Somalia. It was, therefore, only a matter of time before Kenya's military engaged in direct combat with Al Shabaab.

Based on the argument above, it is unlikely that Kenya's military withdrawal from Somalia, as suggested in other studies, will diminish Al Shabaab attacks in Kenya. To completely withdraw from Somalia's affairs and deflect Al Shabaab's wrath, Kenya would have to cease its support for the TFG and stop hosting approximately 263,000 Somali refugees (Human Rights Watch 2016) who reside in Kenya in addition to ending its military expedition in Somalia. The question then is, would such a withdrawal reduce the terrorism threat in Kenya and what would be the repercussions, not just for Kenya, but for the entire region in the Horn of Africa?

Concluding Remarks

This thesis has made contributions to literature on Kenya's counterterrorism policy and securitization theory. It has identified and expounded on new variables that explain Kenya's puzzling counterterrorism behaviour. These variables are 1) the preoccupation of Kenya's securitizing actors with the machinations of power-sharing; 2) the inability of Kenya's security agencies to securitize terrorism as an existential threat; 3) the rise in domestic radicalization; and 4) the enactment of a new constitution in 2010. This thesis has

also extended literature on Kenya's economic interests and its impact on the country's counterterrorism policy.

Within the context of securitization theory, this thesis has made two contributions. First, it has extended literature on how contextual factors can be used to understand securitization processes. Proponents of securitization theory including Butler (2019), Balzacq et al. (2016), McDonald (2008), Salter (2011), Ciută (2009), and Vuori (2008) have pointed out that contextual factors are insufficiently incorporated into the analysis of securitization processes resulting in quasi-mechanistic explanations of successful securitization. Through its analysis, this thesis has demonstrated that examining security problems in particular contexts, such as when a new constitution is promulgated, provides a better understanding of how securitization actors perceive security threats.

Second, this thesis addresses what Ruzicka (2019) described as the biased focus of securitization research on cases of successful securitization. Ruzicka (2019) noted that "there is no a priori to give preference to successful cases and … paying attention to unsuccessful cases of securitization may yield important insights for the process of securitization as well as desecuritization" (Ruzicka 2019, 365). By investigating Kenya's shifting counterterrorism policy from unsecuritization to securitization, this thesis provides steps that may be replicated in similar studies.

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Appendices

Appendix 1: Al Shabaab Attacks in Kenya May 31, 2008 – November 4, 2012

Date	Location	Deaths	Injuries	Target	Attack Type
1) 2008/05/31	Liboi	0	0	Police station/post	Armed assault
2) 2009/07/18	Mandera	0	0	NGO	Kidnapping
3) 2010/03/30	Liboi	0	3	Military	Explosion and armed assault
4) 2010/04/15	Liboi	0	0	Business	Armed assault
5) 2010/05/27	Wajir	0	5	Private citizens and property	Armed attack, infrastructure attack and kidnapping
6) 2010/07/20	Liboi	1	1	Police station/post	Armed assault
7) 2010/11/08	Kenya (Town or city not listed)	1	0	Private citizens	Armed assault
8) 2010/12/03	Nairobi	2	0	Police station/post, private citizens and property	Armed assault and explosion
9) 2010/12/03	Nairobi	1	0	Police station/post	Explosion
10) 2010/12/20	Nairobi	3	40	Private citizens and property	Explosion
11) 2011/03/27	Liboi	0	1	Police station/post	Armed assault
12) 2011/03/28	Kenya (Town or city not listed)	1	0	Police station/post	Armed assault
13) 2011/06/02	Mandera	4	10	Military	Explosion
14) 2011/07/27	Mandera	1	3	Police station/post	Explosion
15) 2011/09/11	Lamu	1	0	Private citizenx and property	Armed assault and kidnapping

Date	Location	Deaths	Injuries	Target	Attack Type
16) 2011/10/01	Lamu	1	0	Private citizens and property	Kidnapping
17) 2011/10/13	Dadaab	0	0	NGO	Kidnapping
18) 2011/10/24	Nairobi	2	13	Private citizen and property	Explosion
19) 2011/10/24	Nairobi	1	18	Private citizens and property	Explosion
20) 2011/10/27	Mandera	8	0	Government	Explosion
21) 2011/10/28	Garissa	3	0	Military	Explosion
22) 2011/10/31	Liboi	Unknown	Unknown	Military	Explosion
23) 2011/11/02	El Wak	0	0	Business, private citizens and property	Explosion
24) 2011/11/03	El Wak	1	Unknown	Government, private citizens and property	Unknown
25) 2011/11/05	Hagadera	0	0	Police station/post	Explosion
26) 2011/11/05	Garissa	2	2	Private citizens and property, religious institution	Explosion
27) 2011/11/05	Garissa	0	0	Private citizens and property	Explosion
28) 2011/11/05	Garissa	0	0	Military	Explosion
29) 2011/11/07	El Wak	2	0	Police station/post	Armed assault
30) 2011/11/07	Liboi	0	0	Government, educational institution	Armed assault
31) 2011/11/19	Dadaab	0	1	NGO	Kidnapping
32) 2011/11/22	Liboi	0	3	Police	Armed assault
33) 2011/11/24	Mandera	1	12	Military	Explosion
34) 2011/11/24	Garissa	2	1	Business	Explosion
35) 2011/11/24	Garissa	1	4	Business, private citizens and property	Explosion
36) 2011/11/25	Arabia	0	0	Police station/post, private citizens and property, Telecommunication	Explosion
37) 2011/12/11	Wajir	0	9	Military	Explosion
38) 2011/12/11	Mandera	1	3	Police station/post	Explosion

Date	Location	Deaths	Injuries	Target	Attack Type
39) 2011/12/15	Garissa	0	0	Police station/post	Explosion
40) 2011/12/15	Garissa	0	4	Business	Explosion
41) 2011/12/19	Dadaab	1	2	Police station/post	Explosion
42) 2011/12/19	Garissa	0	2	Private citizens and property	Armed assault
43) 2012/01/01	Garissa	3	14	Business	Armed assault
44) 2012/01/01	Garissa	2	14	Business	Armed assault
45) 2012/01/11	Gerille	6	6	Police station/post	Kidnapping, explosion
46) 2012/02/03	Garissa	3	1	Business	Armed assault
47) 2012/02/04	El Wak	1	0	Military	Armed assault
48) 2012/02/17	Fafi	1	1	Police station/post	Armed assault
49) 2012/02/28	Mandera	2	0	Military	Armed assault
50) 2012/02/28	Mandera	2	8	Police station/post	Armed assault
51) 2012/03/10	Nairobi	4	40	Transportation	Explosion
52) 2012/03/31	Mombasa	0	2	Business	Explosion
53) 2012/03/31	Mtwapa	2	30	Private citizens and property	Explosion
54) 2012/04/29	Nairobi	2	16	Religious institution	Explosion
55) 2012/05/15	Mombasa	1	3	Business	Armed assault
56) 2012/05/15	Dagahaley	1	3	Police station/post	Explosion
57) 2012/05/19	Ifo	1	1	Private citizens and property	Armed assault
58) 2012/05/20	Ifo	0	0	Police station/post	Explosion
59) 2012/05/21	Mandera	0	4	Military	Explosion
60) 2012/05/26	Ifo	0	5	NGO	Explosion
61) 2012/05/26	Wajir	0	3	Business	Explosion
62) 2012/05/28	Nairobi	1	37	Business	Explosion
63) 2012/05/29	Liboi	0	4	Police station/post	Armed assault
64) 2012/05/30	Wajir	1	3	Business	Explosion
65) 2012/06/23	Mandera	0	2	Police station/post	Explosion

| Date	Location	Deaths	Injuries	Target	Attack Type
66) 2012/06/24	Mombasa	3	12	Business	Armed assault
67) 2012/06/29	Ifo	1	3	NGO	Kidnapping
68) 2012/06/29	Arabia	0	0	Police station/post	Armed assault
69) 2012/07/01	Garissa	9	33	Religious institution	Armed assault
70) 2012/07/12	Mandera	0	2	Police station/post	Armed assault
71) 2012/07/16	Dadaab	1	1	Police station/post	Armed assault
72) 2012/07/18	Wajir	0	2	Business	Explosion
73) 2012/07/25	Dadaab	0	6	Police station/post	Explosion
74) 2012/07/29	Mandera	1	0	Business	Armed assault
75) 2012/08/01	Nairobi	3	5	Private citizens and property	Explosion
76) 2012/08/03	Nairobi	1	6	Unknown	Explosion
77) 2012/09/03	Garissa	2	0	Police station/post	Armed assault
78) 2012/09/30	Eastleigh	1	6	Religious institution	Explosion
79) 2012/10/01	Garissa	0	0	Police station/post	Armed assault
80) 2012/10/02	Garissa	0	0	Police station/post	Infrastructure attack
81) 2012/10/12	Eastleigh	0	0	Private citizens and property	Explosion
82) 2012/10/12	Nairobi	0	1	Police station/post	Explosion
83) 2012/10/15	Ifo	1	0	Private citizens and property	Assassination
84) 2012/10/16	Kulan	1	0	Business	Armed assault
85) 2012/10/17	Kenya (Town or city not listed)	0	10	Police station/post	Explosion
86) 2012/10/19	Garissa	0	1	Police station/post	Explosion
87) 2012/11/04	Garissa	1	11	Police station/post, religious institution	Explosion
Total		**99**	**433**		

Compiled using data from the Global Terrorism Database (2018)

Appendix 2: Al Shabaab's Organizational Structure
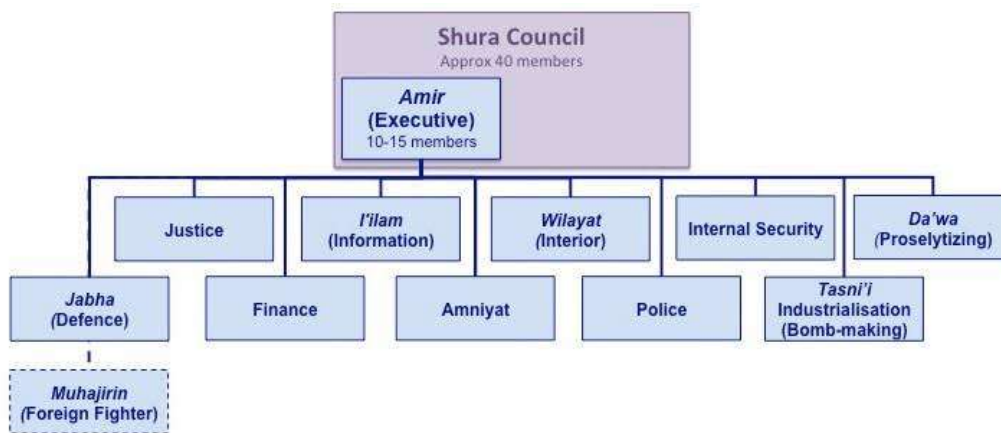
Starthink 2016

Appendix 3: Al Shabaab and the Al Qaeda Network
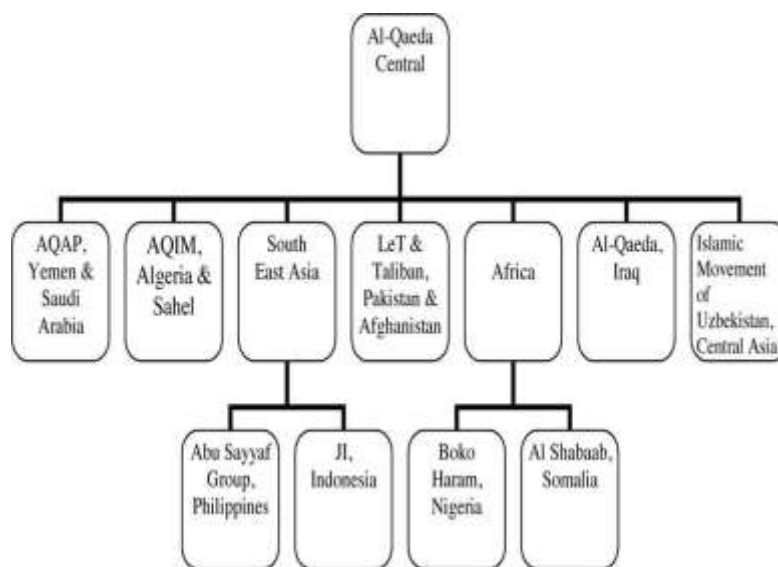
Aakrosh 2013

Appendix 4: Foiled Terrorist Attacks in Kenya: October 2011-September 2012

Plot/Date	Plot/Description	Key Actors	Action/Comment
Seyf Deen Plot/October 2011	Directed by Abdulkadir Mohamed Abdulkadir aka Ikrima. Elgiva Bwire Oliacha aka Seyf Deen. Dispatched to Kenya in July 2011 to train youth, lay down an infrastructure for a major attack and await instructions. Involved South African operatives. Seyf Deen provided grenades for the attacks at Kwa Mwaura Bar & OTC Station on 24th October 2011 in retaliation over KDF's entry into Somalia (which was not his brief).	Abdulkadir Mohamed Abdulkadir Aka Ikrima, a Kenyan in Al-Shabaab management. Elgiva Bwire Oliacha aka Seyf Deen, Omar Muchiri, Stephen Mwangi Macharia.	Seyf Deen arrested on 25th October 2011 and 13 grenades,1 AK 47 Rifle, 4 pistols, an SMG rifle and 717 rounds of assorted ammunition and training manuals recovered from his safe house. Sentenced to life imprisonment upon pleading guilty to all charges. Still engaged in attack planning in Naivasha Maximum Prison.

Plot/Date	Plot/Description	Key Actors	Action/Comment
JD Plot/December 2011	Sanctioned by Al Qaeda core in Pakistan & coordinated by Ikrima (Abdikadir Mohamed Abdikadir alias Ikrima, was a Kenyan Al Shabaab operative based in Somalia); Envisioned multiple attacks towards the end of December 2011 and early 2012 targeting Parliament Buildings, the UN Office in Nairobi (UNON), KDF Camps, an Ethiopian Restaurant in Nairobi mostly patronized by TFG delegates from Somalia. Assassination of top Kenyan political & security officials and disruption of the	Ikrima Fahmi Jamal Salim aka Jonathan Drake – Kenyan/cell leader Jermaine John Grant aka Peter Joseph aka Shawn – British/explosives Expert. Samantha Loise Lewthwaite (Fahmi's wife; using stolen identity of Natalie Faye Webb) – British/logistician Fuad Abubakar Manswab – Kenyan/logistician. Kassim Omollo – Kenyan/explosives expert.	An operation through the Police was mounted on 19th December 2011. Grant & Fuad arrested (Grant was jailed for being in the country illegally; Fuad jumped a Kshs. 20 million bond and fled to Somalia in 2013). Fahmi & Samantha escaped. Kassim Omolo killed in exchange with arresting team on 17th June 2013 and a Glock 19 Pistol (5 loaded magazines). Lens for AK-47 rifle, 2 hand grenades, bomb making materials

Plot/Date	Plot/Description	Key Actors	Action/Comment
	general election. Involved operatives trained by Harun Fazul and Saleh Nabhan. Financial and logistical support from a South African facilitation network. By December 2011, the planners had acquired safe houses in Nairobi & Mombasa, trained the executors, received explosives from Somalia and commenced assembly of and concealment of explosives.		(sulphuric acid, urea, Al wires, Sodium Carbonate, Glycerin, Nitric Acid) and 1 AK 47 - (54 magazines loaded with 143 rounds) recovered.
JJ Plot/September 2012	Sanctioned by top Al-Shabaab leadership in December 2011 for the purpose of	Mohamed Abdinassir – Kenyan/cell leader. Musharaf Abdalla Akhurunya.	Abdulmajid Yassin Mohamed aka Farouk and Omar Adan Abdi aka Salman arrested, on 13th September 2012.

Plot/Date	Plot/Description	Key Actors	Action/Comment
	avenging KDF's entry into Somalia. Initially focused on several government facilities (State House, Harambee House, the then Office of the Prime Minister, Parliament Buildings, Continental House, DOD Headquarters).	Abdalla aka Shukri – Kenyan/explosives expert.	Recoveries: Four (4) suicide vests with mobile phones attached thereto; One (1) IED attached to a mobile phone; Four (4) AK-47 rifles with 16 magazines; 480 rounds of ammunition; 12 hand grenades.
		Omar Adan Abdi aka Salman – Somali/Logistician.	
	Business Centers (Village Market, Yaya Centre)	Abdulmajid Yassin Mohamed aka Farouk – Kenyan/Suicide bomber.	Abdulmajid sentenced to 59 years in prison after admitting to offences.
	Hotels (Hilton Hotel, Nomad Hotel, Royal Palace Hotel).	Afrah Ahmed – Somali/Suicide bomber.	Musharaff arrested in Malindi in October 2012 while setting up a safe house; currently in Kamiti Maximum Prison still engaged in attack planning.
		ABDI aka MUSA – Somali/Suicide bomber.	
	Entertainment establishments (Florida 2000, Samba and Circles clubs).	Salahudin – Somali/Suicide bomber	

Plot/Date	Plot/Description	Key Actors	Action/Comment
	Senior political and security officials.		
	Plan recalibrated into a VBIED & firearm assault on parliament while in full session.		
	Substantial casing of parliament conducted from February 2012.		
	Explosives & other weapons amassed & stored in Kismayo between June & July 2012.		
	From July 2012 – Final target study conducted weapons, explosives and suicide bombers moved in from Somalia.		

Plot/Date	Plot/Description	Key Actors	Action/Comment
	12th Sept. 2012 – vehicle for transporting suicide bombers as well as for use as VBIED purchased. 13th Sept. 2012 evening – suicide bombers put on their vests, transferred weapons into the vehicle but returned to the house.		
Hakeem Al-Masri Plot/September 2012	Plot by foreign fighters (Al-Muhajirin) led by Egyptian explosives expert Hakeem Almasri to enter the country for attacks.	Hakeem Al-Masri	Plan foiled following the arrest of Hakeem's Kenyan guide. Hakeem arrested in Kenyan in June 2013 and jailed for illegal presence in the country.

Plot/Date	Plot/Description	Key Actors	Action/Comment
	Planned to enter together with other Al-Muhajirin using the cover of CARITAS, an international NGO.		
	Targeted key government facilities & critical national infrastructure.		

Extracted from Kenya's National Intelligence Service Report n.d, 24-27.

Appendix 5: Human Ethics Approval Letter

Murdoch
UNIVERSITY

Division of Research & Development
Research Ethics and Integrity Office

Monday, 21 August 2017

Chancellery Building
South Street
MURDOCH WA 6150
Telephone: (08) 9360 6677
Facsimile: (08) 9360 6686
human.ethics@murdoch.edu.au

Prof Samuel Makinda
Business and Governance
Murdoch University

www.murdoch.edu.au

Dear Samuel,

Project No.   2017/140
Project Title   Kenya's Changing Counterterrorism Policy

Thank you for addressing the conditions placed on the above application to the Murdoch University Human Research Ethics Committee. On behalf of the Committee, I am pleased to advise the application now has:
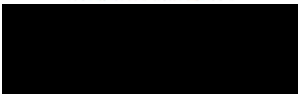
OUTRIGHT APPROVAL

Approval is granted on the understanding that research will be conducted according the standards of the *National Statement on Ethical Conduct in Human Research* **(2007)**, the *Australian Code for the Responsible Conduct of Research* **(2007)** and **Murdoch University policies** at all times. You must also abide by the **Human Research Ethics Committee's standard conditions of approval (see attached).** All reporting forms are available on the Research Ethics and Integrity web-site.

I wish you every success for your research.

Please quote your ethics project number in all correspondence.

Kind Regards,

Dr. Erich von Dietze
Manager
Research Ethics and Integrity

cc: Dr Rajat Ganguly; Mrs Doreen Alusa

Human Research Ethics Committee: Standard Conditions of Approval

a) The project must be conducted in accordance with the approved application, including any conditions and amendments that have been approved. You must comply with all of the conditions imposed by the HREC, and any subsequent conditions that the HREC may require.

b) You must report immediately anything, which might affect ethical acceptance of your project, including:
   - *Adverse effects on participants*
   - *Significant unforeseen events*
   - *Other matters that might affect continued ethical acceptability of the project.*

c) Proposed changes or amendments to the research must be applied for, using an Amendment Application form, and approved by the HREC before these may be implemented.

d) An Annual Report for the project must be provided by the due date specified each year (usually the anniversary of approval).

e) A Closure Report must be provided at the conclusion of the project (once all contact with participants has been completed).

f) If, for any reason, the project does not proceed or is discontinued, you must advise the committee in writing, using a Closure Report form.

g) If an extension is required beyond the end date of the approved project, an Extension Application should be made allowing sufficient time for its consideration by the committee. Extensions of approval cannot be granted retrospectively.

h) You must advise the HREC immediately, in writing, if any complaint is made about the conduct of the project.

i) Other Murdoch approvals (e.g. fieldwork approval) or approval form other institutions may also be necessary before the research can commence.

j) Any equipment used must meet current safety standards. Purpose built or modified equipment must be tested and certified by independent experts for compliance with safety standards.

k) Graduate research degree candidates must normally have their Program of Study approved prior to commencing the research. Exceptions to this must be approved by the HREC.

l) You must notify Research Ethics & Integrity of any changes in contact details including address, phone number and email address.

m) Researchers should be aware that the HREC may conduct random audits and / or require additional reports concerning the research project.

Failure to comply with the *National Statement on Ethical Conduct in Human Research* (2007) and with the conditions of approval may result in the suspension or withdrawal of approval for the project.

The HREC seeks to support researchers in achieving strong results and positive outcomes.

The HREC promotes a research culture in which ethics is considered and discussed at all stages of the research.

If you have any issues you wish to raise, please contact the Research Ethics Office in the first instance.

School of Business and Governance
South Street, Murdoch
Western Australia, 6150
Telephone: +61 8 9360 2705

<u>INFORMATION LETTER</u>

Kenya's Changing Counterterrorism Policy

Dear (participant's name),

My name is Doreen Alusa and I am a PhD student in the School of Business and Governance at Murdoch University, Western Australia. I am currently doing research on Kenya's changing counterterrorism policy. The research aims to identify the factors that have influenced the development of counterterrorism in Kenya. In order to conduct this research, I wish to request permission to interview you regarding your views and involvement as a stakeholder who has knowledge of the development of counterterrorism policies in Kenya.

It is anticipated that the time required for each interview will be between 60 to 90 minutes. The interviews will only be conducted with your signed consent and you can withdraw your consent at any time. If approval has previously been granted, your organization also has the right to withdraw its authorization of this study at any time.

I will request that the interview be digitally recorded. If you do not wish to be recorded, please inform me and I will make written notes instead. Any form of recording of the interview will be stored securely.

All information given during interviews will be treated as confidential and no names or other information that might identify you will be used in any publication arising from the research unless you waive your right to anonymity.

Feedback on the research project will be provided to you in the form of copies of any subsequent publications resulting from the research. Where appropriate, these can be provided personally or to your organization.

If you are willing to authorize this study, could you please complete the Consent Form. If you have any questions about this project, please feel free to contact me on +61 434 *** *** or via email at D.Alusa@murdoch.edu.au.

Sincerely,

Doreen Alusa

Murdoch UNIVERSITY

School of Business and Governance
South Street, Murdoch
Western Australia, 6150
Telephone: +61 8 9360 2705

<u>CONSENT FORM</u>

Kenya's Changing Counterterrorism Policy

1. I voluntarily agree to take part in this study.

2. I have read the Information Letter provided and been given a full explanation of the purpose of this study, the procedures involved and what is expected of me.

3. I understand that I will be asked to discuss:
    - The nature and history of terrorism in Kenya.
    - The factors that have influenced the development of counterterrorism policy in Kenya.
    - How different political actors have influenced Kenya's counterterrorism policy.

4. The researcher has answered all my questions and has explained possible problems that may arise as a result of my participation in this study.

5. I am happy for the interview to be audio recorded as part of this research. I understand that I do not have to answer particular questions if I do not want to and that I can withdraw at any time without needing to give a reason and without consequences to myself.

6. I understand that I will not be identified in any publication arising out of this study unless I waive my right to anonymity.

7. I understand that my name and identity will be stored separately from the data, and these are accessible only to the researcher.

8. I wish/ do not wish to receive a copy of the recording or transcript in order to give feedback or amend my responses.

9. I understand that all information provided by me is treated as confidential and will not be released by the researcher to a third party unless required to do so by law.

Name of participant: _____

Signature of participant: _____   Date: …..... /..…../…….

I confirm that I have provided the Information Letter concerning this study to the above participant; I have explained the purpose of the study and answered all questions asked of me.

Name of researcher: _____

Signature of researcher: _____   Date: …..... /..…../…….

Appendix 8: Field Work Semi-Structured Interview Questions

1. Briefly tell me about your background and experience within the context of terrorism and counterterrorism in Kenya.

2. What are your views about terrorism in Kenya?

   a. Is terrorism a significant threat to Kenya's security?
   b. How has the nature of the terrorism threat in Kenya changed?
   c. How have these changes affected the country's counterterrorism policy?

3. How has counterterrorism policy been developed in Kenya?
   a. Who are the key actors in counterterrorism policymaking in Kenya?
   b. What impact has each of the aforementioned actors had on counterterrorism policymaking in Kenya? For instance, why have these actors supported or opposed the development of counterterrorism legislation in Kenya?
   c. Of the aforementioned actors, who is the most important or influential actor in Kenya's counterterrorism policymaking process? What has been the role of this actor in the development of counterterrorism legislation (including attempts to pass the *Suppression of Terrorism Bill* in 2003 and *The Anti-Terrorism Bill* in 2006)?

4. What factors prevented the enactment of the *Suppression of Terrorism Bill* in 2003 and *The Anti-Terrorism Bill* in 2006?

5. Why were these factors less or more significant when Kenya enacted *The Prevention of Terrorism Act*, in 2012?

6. What other factors could have contributed to the enactment of *The Prevention of Terrorism Act*, in 2012?