

The background of the top two-thirds of the cover is a dramatic, high-contrast photograph of dark, heavy clouds, suggesting a storm or a turbulent atmosphere. The clouds are layered and textured, with some lighter patches where light breaks through.

# Confronting Violent Extremism in Kenya

**Debates, Ideas and Challenges**

**Edited by Mutuma Ruteere and Patrick Mutahi**



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# 1

Mutuma Ruteere and Patrick Mutahi

## Introduction

In the last 20 years, terrorism or violent extremism have become security realities, and national social challenges with increasing numbers of young people being recruited to Al-Shabaab and other terrorist group. In many parts of the country -- but more so in the coastal and northeastern regions -- violent extremism has also become a social problem for communities and families that have seen their young men and women embrace the extremist ideologies of groups like Al-Shabaab and even sign up as active members. For governments in East Africa and the Horn, terrorism is now a regional security question and a foreign policy priority.

In Kenya, the major challenge of terrorism has been the Somalia-based terrorist group Al-Shabaab, which has routinely launched attacks in both border regions and urban areas such as Nairobi. These have ranged from the deadly attack on the Westgate Mall in Nairobi in 2013 which killed over 70 people, to the April 2015 Garissa University College attack that left 148 dead. Many other attacks have targeted civilians in places like Mombasa, Lamu and Mandera. Data from the Centre for Human Rights and Policy for instance indicates that there were 49 attacks recorded between January and November 2017, resulting in 108 deaths.

Al-Shabaab has also established local networks in Kenya for the recruitment of young people into the group. Over the years, the Kenyan government has implemented a range of legal and policy measures aimed at countering and preventing the recruitment as well as disrupting the operations of Al-Shabaab and other similar organisations.

The magnitude of the threat, the patterns and trends of recruitment and the consequences of State policy responses have all been the subject of ongoing policy and scholarly inquiry in Kenya and globally. These inquiries and critiques are scattered in different platforms and publications and there is very little in the form of an attempt to bring all of these together. The papers in this collection are one of the first attempts at presenting a complex examination of the evolving nature of the problem of violent extremism in Kenya as well as the various counter and preventive measures.

The collection brings together critical analyses on a range of issues touching on violent extremism by a multidisciplinary team of scholars and scholar-practitioners with an intimate and long-standing interest on the subject in Kenya, the region and globally. They cover the breadth as well as depth of the complex problem of violent extremism in a manner and language that speaks to both scholars and policy makers. The contributions are concerned with a number of problems related to terrorism in Kenya: the regional nature and dimensions of the problem; legal and judicial developments to counter the threat of terrorism; patterns and trends in the recruitment into Al-Shabaab and other violent extremist groups; State and society interactions, contestations and confrontations in countering violent extremism; location of women in the terrorism discourse; new technologies and how they shape violent extremism; and the questions of rehabilitation and reintegration of ex-combatants and returnees from Al-Shabaab.

The aim of this collection is to provoke and stimulate the ongoing scholarly and policy conversations on what the spectre of violent extremism means for Kenya's future and fortunes as a fledgling democracy. The studies provide new knowledge, data and perspectives on the nature, magnitude and dimensions of the problem of violent extremism in Kenya. The studies are nuanced but have not shied away from recognising difficulties, highlighting policy and knowledge gaps and making policy recommendations where possible.

## Summary of the Book

Paul Goldsmith's paper frames the regional nature of violent extremism in Kenya and locates it within what he terms as "Islamic revivalism" in the region as well as the problem of governance. The chapter provides a rich and illuminating background on movements that pioneered terror tactics, such as the Popular Front for the Liberation of Palestine and how their legacy is reproduced in organisations such as Al-Qaeda, the Somalia-based Al Harakat Al Ittihad Al Islamiya and Al-Shabaab. These groups have developed an eclectic blend of nationalist, religious and even some Marxist critiques of domestic and international politics. Kenya's troubled record in the integration and also marginalisation of its Somali and coastal Muslim citizens provide these groups with the ideal crucible for experimentation and growth of extremist politics. These grievances in the coastal region as well as north-eastern, are easily translated through the language of religion and the idioms of global Islamic resistance. Wahhabism, a Saudi Arabian austere brand of Islam that began spreading into Kenya from the 1908s and more intensely in the 1990s, has provided some of the emerging Islamic ideologues in Kenya with the aim of internationalising and radicalising local populations.

Goldsmith concludes that how Kenya responds to these "new" religious radicals will significantly shape its future and the State's relationship with the coastal and Muslim populations. Whereas the Kenyan and even Somali extremists lack the capabilities of their Middle East counterparts, they are likely to continue to pose serious political and security threats to the future of the country if the politics of local grievances do not receive the attention they deserve. Moreover, Kenya's military involvement in Somalia continues to provide the propaganda narratives to terrorists for recruitment and mobilisation of extremists in Somalia and in Kenya. Rebuilding community relations will have to be done by non-State actors after the military engagement ends.

Ken Nyaundi traces and critiques Kenya's legal and judicial responses to violent extremism from 2003 when the first attempt was made to enact anti-terrorism legislation. That Bill, the Suppression of Terrorism Bill, 2003, failed to see the light of day after protests by Muslim groups and human rights activists. In 2006, a new attempt was made at enacting new legislation renamed Anti-Terrorism Bill, but this too was shot down following opposition from advocacy groups as well as Muslim politicians. However, by 2012, the increased frequency of terrorist attacks by Al-Shabaab as well as a realisation that the lacuna in law was giving the State a free

hand in its anti-terrorism activities, weakened resistance to such legislation and finally the Prevention of Terrorism Act was signed into law in October 2012.

The Act has been criticised for elevating security over rights, providing for the opportunity for longer periods of detention than in other cases, fixation on punishment rather than prevention, ambiguous definition of terrorism, mandatory sentences for terrorism and enhanced police powers of arrests that are easily abused, among others.

Irregular arrests and unconstitutional detentions of terrorism suspects are common. Once arrested, suspects have no access to family or counsel. Foreign suspects are subjected to deportation without recourse to legal procedures. Deportation and secret renditions mean that suspects cannot challenge their treatment in Kenyan courts. Nyaundi, however, notes that Kenyan ant-terrorism legislation is to be lauded for “certain imaginative accommodations, which permit the State to provide security within the confines of the rule of law and a respect for human rights”. These include provisions on search and seizure, interception of communications and arrest of suspects.

Nerida Nthamburi’s chapter looks at the place and roles played by women in violent extremism in Kenya where they are both perpetrators and victims of violence as well as key actors in counter and preventive interventions. Whereas there are many references in international and Kenyan policy documents and pronouncements, the precise roles that women can play in countering violent extremism remain poorly defined and explained. Partly, this has to do with the fact that not enough is known with regard to whether the paths to radicalisation and recruitment are similar for men and women. Nthamburi calls for better and deliberate integration of women in countering violent extremism by particularly ensuring that State directed, and State-led policy interventions are gendered. The lessons of some of the good and useful gendered CVE projects have been lost precisely because they were not anchored in policy and were one-off interventions with limited scalability.

Fathima Azmiya Badurdeen’s chapter is concerned with the online recruitment of women, an issue that is of increasing interest to security actors as well as those interested in the subject but one that has not been sufficiently studied. Online technologies are not the cause but rather have served as facilitators of radicalisation. Al-Shabaab’s online recruitment strategies are cleverly camouflaged to mainly bait the young through job offers and promises of academic scholarship opportunities. However, like in the cases of other terrorist groups, the lure of romance and the motivations of revenge are also drivers for recruitment. Young people looking for religious information also often unwittingly find themselves lured by Al-Shabaab’s online recruiters. Badurdeen notes that this online front means that State surveillance and monitoring is inescapable and important. The challenge is to ensure that such surveillance is consistent with privacy rights and that due process is followed to protect rights while securing national security.

Two chapters focus their attention on the question of what to do with those who had been recruited and have returned -- one by Samar Al Bulushi and Mohammed Daghar and the other by Steve Ouma Akoth. The chapter by Al Bulushi and Daghar grapples with the meaning, official

and community understandings of “rehabilitation” and the policy ambiguities that have plagued the agenda of rehabilitation of returned ex-combatants in Kenya. Drawing from primary data from the Kenyan Coast, the chapter underlines how the lack of policy clarity on who for instance is categorised as “extremist” has left many youths uncertain as to whether this would not lead to even more arrests and detentions of young Muslims.

The chapter is rich in its theoretical engagement with the questions of extremism and offers an invaluable critique of the silences that such terminologies impose on what should also be a political discussion of power and marginalisation. Al Bulushi and Daghar are critical of the discourses and programmes on countering violent extremism that they see as complicit in strengthening the stigmatisation and labelling of young Muslims as a “problem” category and providing a justification for their enhanced surveillance. Civil society discourses are complicit in this erasure of the politics of recruitment into violent extremism and in treating those who join as specimens for psychological assessment rather than political actors. They use their analysis and critique to caution that rehabilitation programmes should avoid the temptation of prolonged detention of those identified for rehabilitation and underscore the need to provide assistance to such youths within a rule of law framework.

The other chapter on returnees is by Akoth, who is concerned with the domestic challenge of how to deal with those that the State has labelled as “terrorists” and “violent extremists” particularly after they have returned. He traces Kenya’s efforts to balance the “hard” and “soft” measures in dealing with the Al-Shaabab problem and notes that with regard to “returnees” or “reporters” the State is confronted not just with a security problem but has to deal with the ideological dimensions that violent extremism presents. Akoth’s chapter examines the amnesty extended to ex-militants by the Kenya government in 2015 and also the programme for rehabilitation led by the State and the International Organisation for Migration (IOM) in Kwale to draw lessons for future national and county level interventions.

The community expectations were about restoration and repair of relationships whereas the state was still interested in continued policing and surveillance of the community and the returnees. The State and IOM model of rehabilitation largely failed and is a cautionary tale on how complex and challenging rehabilitation and reintegration measures are and consequently the need to confront these complexities as part of the implementation.

Kamau Wairuri’s chapter is a critical examination of the April 2014 “Operation Usalama Watch” which largely focused on Nairobi’s Eastleigh area ostensibly to clear the neighbourhood of Al-Shabaab. Those suspected of links with the terrorist group and those without documents were all rounded up and placed in a stadium for screening and deportation to Somalia. The operation received widespread criticism from human rights groups for its mass profiling of those arrested and the failure to follow due process in deportations and repatriations of those with refugee status.



Wairuri suggests that the Eastleigh operation, which targetted ethnic Somalis, needs to be understood against the backdrop of the historically troubled question of Somali citizenship in Kenya. The Somali have been treated in official discourse and policies as “dangerous” to the nation-state and their loyalties suspect. Wairuri, however, suggests that to treat the Somali as helpless victims without agency is to miss the point of how they have succeeded in “surviving” that stigma, an agency and ingenuity that was clearly evident in how they also “survived” the 2014 Operation. The State security actors are both agents of law and lawlessness and are every step of the way confronted and even outwitted by the resources that populations in conditions of precarity can mobilise to survive State measures.

Patrick Mutahi and Nathaniel Kabala are concerned with the pathways that lead individuals to radicalisation and to join violent extremist movements. Their chapter expands on the understanding of the complexities of recruitment into groups such as Al-Shabaab, drawing from field research at the Kenyan Coast. Their study establishes that no one single factor is sufficient in explaining why young people get recruited into Al-Shabaab and similar organisations. Some cite government repression, grievances over corruption and discrimination in accessing services, while others identify Kenya’s military operation in Somalia as a source of discontent. Others point to the power of peer social networks in luring the young. The opportunity for jobs on offer by Al-Shabaab is also an attraction as is the sense of purpose that comes with membership to such a group. Their insights and conclusion offer lessons to policy actors to recognise and take into account these complexities while designing and implementing prevention or rehabilitation and reintegration programmes.

## Emerging Questions and Themes

First is the incompleteness of research and data. This collection is one of the few to draw from research on the subject of terrorism and violent extremism in Kenya. Indeed, its conceptualisation was partly driven by the recognition of the limited research and knowledge on the subject in Kenya and the region and the scholarly and policy demand for authoritative research from within the country and the region. Path-breaking as they are, the chapters in the book still point us to the many gaps that remain in understanding of the trends, nature and patterns of recruitment, ideological and religious drivers and motivations and on policy effectiveness. There is still much more to be done by researchers and those working on policy to ensure that interventions and discourses are informed and guided by up-to-date data and knowledge.

Secondly, terrorism is not just a national problem but one that is implicated in regional politics and conflicts as well as globalist ideologies of politicised Islamic teachings. That understanding is important in reviewing the fortunes and implications of Kenya’s military engagement in Somalia as well as policies on how to rehabilitate and reintegrate ex-militants and returnees from Al-Shabaab.

Third is to recognise and learn to live with the complexity of the challenge that violent extremism poses. There are no simple explanations on why young people join these groups. Each of the particular situations requires their own contextual understanding. That is not to say there are no broad insights but rather to underscore the need for nuanced and localised interventions.

Fourth is that tensions and dilemmas continue to confront State security measures and interventions in deterring and preventing terrorism and the kind of violent extremism posed by groups like Al-Shabaab. In spite of the many allegations and cases of serious violations of human rights and incursions into the rule of law in responding to terrorism, the Kenyan State continues to be restrained in some cases by the Constitution and also by public pressure. That restraining power has led to a continued revision in criminal law measures as well as policy approaches. In other words, the State's counter-terrorism measures have avoided being lawless, even when they encroach into the rule of law.

Fifth is the gaps and shortcomings in engendering the scholarly and policy discourse on terrorism and violent extremism. There is now increased interest in the role and place of women in violent extremist movements globally and in Kenya. However, not enough is known with regard to how women get recruited into groups such as Al-Shabaab and what roles they play and can play in deterring recruitment into such groups.

Sixth is the need to critically study and critique the countering violent extremism discourse and programmes to ensure that they do not further stigmatise and penalise young people and/or whole communities. In addition, there is need to also ensure that this critique does not gloss over the uncomfortable and difficult issues underlying the problem of terrorism.





# 2

Paul Goldsmith

## Comparative Perspectives on Islamic Radicalism in Kenya and the Horn of Africa

## Introduction

Islamist terrorism and the attendant problem of radicalisation have become a self-perpetuating phenomenon. By amplifying the fear of insecurity, non-State actors and networked insurgents have used difficult-to-predict attacks on civilians and culturally-symbolic targets to redefine traditional perceptions of threat. These unpredictable methods and strategies allow the new 'enemy' to punch far above their weight and make a pervasive sense of angst and insecurity the new normal. The role of religious ideology distracts from the fact that the agenda of Muslim resistance has in many ways remained unchanged. The fight to liberate their once flourishing societies from external control and to expunge foreign influences that they feel have corrupted their way of life is a constant, but the radicals' motivations have, in contrast, shifted over time. The highly fluid and mutable quality of modern insurgencies and the use of terrorism to provoke counter-productive responses are the defining features of what contemporary analysts refer to as Fourth Generation Warfare (4GW), but the objectives are the same.

The shock value and complex scenarios generated by terror tactics demand responses; it is difficult for State leaders to bide their time or to passively wait for an event they know will happen without knowing when or where. The failure of conventional counter-insurgency (COIN) thinking to acknowledge the dynamics of new conflicts is tantamount to flying blind. The factors that have drawn Kenya into the Horn of Africa's theatre of Islamist resistance reinforce this point. Kenya's minority Muslim community was not, until relatively recently, receptive to radical Islamist ideology or movements. Even now, only a very small minority of the country's Muslim youth are vulnerable to recruitment by the agents of Al-Shabaab or other radical networks. But the community's relationship with the State has become more adversarial with attendant ramifications for development and securitisation policies<sup>1</sup>. Attacks like the 1998 U.S. embassy bombings and the Kikambala attack in 2002 ambushed the country in more ways than one. Once set in motion, the war generated short-term and politically-motivated decisions adverse to long-term interests and strategy. Insofar as the securitisation policies enacted by the Kenya government reinforce the country's pre-existing power relations during a time of national renewal and reform, the domestication of the terrorism problem has proved a convenient prop for advancing other domestic agendas, including the exploitation of commercial opportunities on the country's periphery.

This chapter assesses the influence of Islamic revivalism in Africa and the relationship between the religious factor and extremism in the Kenyan context, including the contribution of Kenyan governance and media feedback to radicalisation.

<sup>1</sup>Allouche, Jeremy and Jeremy Lind (2013). *A New Deal? Development and Security in a Changing World*. Institute of Development Studies. <http://www.ids.ac.uk/publication/a-new-deal-development-and-security-in-a-changing-world1>.

The first section of the paper examines the progression of the narrative of Muslim resistance and how it became embedded within Kenya and the Horn region. The analysis explores Kai Kresse's<sup>2</sup> linkage between the status of Kenya's Muslims and the instrumentalisation of disorder, noting that the retrogressive influence of the State in areas like the Coast also motivated the Muslim community to enhance its marginal position within Kenya through participation in the knowledge economy. The chapter concludes by discussing how problems associated with the KDF occupation of Jubaland underscore that a negotiated settlement is more likely than outright victory, with the cautionary view that the current stasis can potentially lead to more sophisticated variations on insurgency and terrorism in the future if the current security regime is not reformed.

## Locating Radical Islamism in the Regional Context

The modern trajectory of Islamic extremism began with the Marxist-inspired hijackings and attacks epitomised by the Popular Front for the Liberation of Palestine (PFLP) assault on Israeli athletes at the 1976 Olympics. The Muslim radicals of this era networked with other politically-radical organisations like the Irish Republican Army, Colombia's FARC, and the Japanese Red Army. The PLFP, regarded as the most extreme faction operating under the Palestinian Liberation Organisation umbrella, cooperated with other like-minded organisations committed to advancing common anti-imperialist objectives with other movements across Asia and Latin America. These organisations shared their anti-imperialist ideological DNA and ties with foreign governments, making them active participants in the final phase of superpower competition.

A far-left response to the PLO's more moderate Al-Fatah, the PFLP blended secular Arab nationalism with Marxist-Leninism. They preceded today's Islamist radicals by advocating the complete rebuilding of Arab society. The PLFP pioneered the employment of terrorist methods, including suicide attacks during the Al-Aqsa Intifada of 2000, but unlike their contemporary Islamist jihadi counterparts, they were open to participation in political structures. The conflict evolved and the PLFP, which was facing decline after the Oslo Accords of 2005, rejected suicide-based methods in 2005; the Islamic Brotherhood, one of the primary forces behind the Islamist movement, did the same in 2010.

Radical movements can and do moderate their strategies over time, but this does not always signal a resolution of the root causes motivating them.<sup>3</sup> New sources and more variegated forms of radical resistance and extremist violence can and have arisen in their place.<sup>4</sup> In any event, the moderation of the older radical groups coincided with a tipping point in regard to the theological legitimacy of jihad being extended to justify the spike in suicide bombings across a number of new and older war zones between 2006 and 2007.<sup>5</sup>

<sup>2</sup>Kresse, Kai (2009). Muslim politics in postcolonial Kenya: negotiating knowledge on the double-periphery. *Journal of the Royal Anthropological Institute*, S76-S94.

<sup>3</sup>Ashour, Omar (2007). 'Lions Tamed? An Inquiry into the Causes of De-Radicalization of Armed Islamist Movements: The Case of the Egyptian Islamic Group'. *The Middle East Journal*, 61/4: 596: 625.

<sup>4</sup>Pargeter, Alison (2009). 'Localism and radicalization in North Africa: local factors and the development of political Islam in Morocco, Tunisia and Libya', *International Affairs*, 85/5: 1031-1044.

<sup>5</sup>Rashid, Ahmed (2008). 'Jihadi Suicide Bombers: The New Wave'. *The New York Review of Books*, Vol. LV, No. 10.

The organisations that embraced terrorist methods during the era of super-power competition may have receded from view, but their legacy provided a platform for a new generation of tactically sophisticated insurgents. The decline of the PLFP and other Marxist-inspired movements in the Islamic world was symptomatic of a larger bifurcation separating secular from Islamist politics across the Islamic world from Morocco to Malaysia during the decade preceding the Iranian revolution of 1978.<sup>6</sup> The war in Afghanistan catalysed the growth of radical Islamist movements already present in a band running from North Africa to Central Asia, some of which -- like the Deobandi School of Islam -- date back generations.<sup>7</sup> Where the Marxist movements relied on State sponsors, their Islamist successors tapped into black markets and private networks for funding, complicating the difficulties governments and international bodies experience in controlling them. New insurgencies cropped up in new eastern Asia hotspots like Indonesia, Malaysia and Mindano in the Philippines where such antecedents were absent.<sup>8</sup> The major exception until recently was Africa south of the Sahara.

West Africa's Sahel band hosted a number of Islamic revivalist and reformist movements over the centuries that culminated in the movement of Usman dan Fodio. In terms of impact as documented by Nyang, it still ranks as one of "the most powerful jihadist movements in Muslim history."<sup>9</sup> The Mahdi's jihad in Sudan was a disaster in contrast, presiding over fourteen years of famine, disease and death before the Mahdist State was defeated in 1899.<sup>10</sup> The long interval between events did allow these examples to serve as precedents for the installation of an Islamist government in Sudan under Jaafar Numeiri. While the Muslim militancy of the late 19th century on the coast of East Africa reflected similar anti-imperialist motives, the strident Swahili nationalism documented by Yvslaker and dramatised by the poetry of Muyaka overshadowed the religious factor featuring in the precolonial Muslim militancy arising across the larger Sahel band.<sup>11</sup> East African Islam was spread through trade and Sufi spirituality and not through invasion or the zealous imperative contributing to the spread Islam in West Africa.<sup>12</sup> In many instances, the opposite attitude prevailed; Allen reported Swahili Muslim traders did not encourage conversion because it would raise their clients to a State of equality with attendant mutual obligations due to the religion's codification of mercantile exchange.<sup>13</sup>

The Somali, like the Swahili, generally resisted the regimental influence of Arabian Islam. They developed deep traditions of their own that also isolated them from developments elsewhere in the Muslim world.

<sup>6</sup>Hunter, Shireen T. (1988). *The Politics of Islamic Revivalism: Diversity and Unity*. Bloomington and Indianapolis: Indiana University Press.

<sup>7</sup>Hiro, Dilip (1988). *War Without End: The Rise of Islamist Terrorism and the Global Response*. London and New York: Routledge. Rashid, Ahmed (2002). *Jihad: The Rise of Militant Islam in Central Asia*. New Haven: Yale University Press.

<sup>8</sup>von der Mehden, Fred R. (1988). "Malaysia and Indonesia," in Hunter, Shireen T. (ed.) *The Politics of Islamic Revivalism: Diversity and Unity*. Bloomington and Indianapolis: Indiana University Press.

<sup>9</sup>Nyang, Sulayman (1988). 'West Africa', in Hunter, Shireen T. (ed.) *The Politics of Islamic Revivalism: Diversity and Unity*. Bloomington and Indianapolis: Indiana University Press, page 206.

<sup>10</sup>Deng, Francis M. (1995). *War of Visions: Conflict of Identities in the Sudan*. Washington D.C.: The Brookings Institute

<sup>11</sup>Yvslaker, M. (1982). *Lamu in the 19th Century*. Boston: Boston University Press. Abdul Azziz, Mohammed (1979). *Muyaka: 19th Century Swahili Popular Poetry*. Mombasa: Kenya Literature Bureau.

<sup>12</sup>Trimingham, Spencer J. (2001). *The Sufi Orders in Islam*. London: Oxford University Press.

<sup>13</sup>Allen, James deVere (2001). *Swahili Origins*. London: James Currey Press. Ibrahim, Mahmood (1990). *Merchant Capital and Islam*. Austin: University of Texas Press.

According to Trimingham, the religious isolationism and obscurantism he observed in important centres like Lamu and Zanzibar were contributing to their economic isolation and decline.<sup>14</sup> After the *laissez faire* isolation of the colonial era, the policies of the newly independent Kenya effectively translated into social exclusion for the country's indigenous minorities. Inhabitants of the Coast and northern Kenya were treated as second-class citizens and this aggravated economic inequalities and reinforced their sense of powerlessness.<sup>15</sup>

The influence of Al-Qaeda returnees from Afghanistan began to seed the growth of a new Islamist radicalism in previously sedate areas of Africa. The West African Sahel region became an important battleground in the new war against terrorism during the late 1990s.<sup>16</sup> The Islamist revival was underway in Somalia before Siad Barre's exit in 1991; the Al Harakat Al Ittihad movement became the most militarised source of radical Islamism following State collapse, but not the most influential in religious terms.<sup>17</sup> The misrule of the warlords across the now balkanised areas of Somalia culminated in the rise of the Islamic Courts Union in 2006. Developments in Somalia paralleled Kenya's transition from the passive victim of the 1997 U.S. embassy attacks in Nairobi and Dar-es-Salaam into an active partner in the U.S government's 'Long War on Terror'.<sup>18</sup> The Kenya theatre came to be regarded to be an important test case of counterinsurgency strategies and countering violence extremism (CVE) in what military experts refer to as the grey zone — "an environment of adversarial competition with a military dimension, but short of armed conflict."<sup>19</sup>

The Kenya Defence Forces (KDF) antagonistic and quasi-symbiotic relationship with Somalia exemplifies the murkiness implied by this designation. The military occupation of 'Jubaland', the southern Somalia buffer zone, after crossing the border on 16 October 2011 has complicated the already fuzzy-edged quality of Kenya's CVE problem. The decision to launch Operation *Linda Nchi* ('Protect the Country') was an unexpected and many important government officials, including Kenya's Prime Minister and the Somali government in Mogadishu, were kept out the loop. This was a deviation from its traditional foreign policy for a country that benefits from its position as the region's logistical and diplomatic hub. The gambit was based on the calculation that Western donors supporting AMISOM would take over the U.S\$ 180 million per month costs; it succeeded after a period of wavering even though the Americans and European allies were also not consulted over the initial decision.

<sup>14</sup>Trimingham, Spencer J. (1964). *Islam in East Africa*. Oxford: Clarendon Press.

<sup>15</sup>Goldsmith, Paul (1999). *Participation and the Dynamics of Social Exclusion and Poverty*. Concept Document for the World Development Report 2000: International Bank for Reconstruction and Development, Africa Region Consultation, Dakar Senegal.

<sup>16</sup>Keenan, Jeremy (2009). *The Dark Sahara: America's War on Terror in Africa*. London: Pluto Press.

<sup>17</sup>International Crisis Group (2005). *SOMALIA'S ISLAMISTS*. Africa Report N°100, 12 December 2005.

<sup>18</sup>Al Qaida's (Mis)Adventures In The Horn Of Africa: Kenya Eritrea, Sudan, Ethiopia, Somalia, Djibouti. (2007). Harmony Project, Combating Terrorism Center at West Point.

<sup>19</sup>Bolduc, Donald C., Richard V. Puglisi, and Randall Kaailau (2016). *The Gray Zone in Africa*. <http://smallwarsjournal.com/jrnl/art/the-gray-zone-in-africa>.



The move enjoyed popular domestic support and the press cooperated by not reporting on the KDF casualties suffered *en route*.<sup>20</sup>

The government still withholds information on the rising body count six years into the occupation. One expert of Kenyan politics claimed the invasion was “spurred less by the threat of Al-Shabaab and more by domestic military and political dynamics:” these dynamics included countering the government’s poor record on security during the run-up to the next elections, and the desire of the top brass to test their well-equipped but untested army.<sup>21</sup> After the two battalions crossing the border became bogged down in mud, stretching the operation’s supply lines, another commenter on military affairs opined that “Kenya decided to launch the most expensive and militarily ineffective option available without regard for weather conditions, cost or accepted counter-insurgency doctrine.”<sup>22</sup>

Such critiques did not factor for the expectation that the influential Ogaden clans straddling the border would embrace the invasion. Despite the rocky start, after being ‘rehatted’ as part of the AMISOM coalition, the KDF and its clan militia allies eventually succeeded in capturing the port in Kismayu, severing a major conduit for Al-Shabaab finance and supplies. The initial success of the military campaign on Somalia soil, however, came to be offset by the Kenyan security sector’s inability to quell the insurgents’ threat to avenge the blood spilt in Somalia on Kenyan ground. The invasion initially provoked a series of relatively minor reprisals attributed to the insurgents’ Al-Hijra Kenya affiliate.<sup>23</sup> After a period of relative inertia and internal reorganisation, Al-Shabaab launched several high profile operations inside Kenya, including the Westgate Mall attack in September 2013, a series of raids in Lamu in June and July 2014, and the attack on Garissa University that claimed the lives of 148 students in April 2015. These operations and a series of successful attacks on KDF camps on both sides of the border backed up assessments that Al-Shabaab’s strategy was predicated on Kenya’s internal vulnerabilities, including a combination of corrupt governance, economically important soft targets like the tourist industry and the presence of terrorist cells inside the country.<sup>24</sup>

Al-Shaabaab began as a small terrorist group with around sixty armed combatants but subsequently emerged out of a diverse ensemble of Islamist groups to become a dominant force after the Ethiopian occupation that dispersed the ICU.<sup>25</sup>

<sup>20</sup>Kenya’s Intervention in Somalia, by David Throup. Center for Strategic & International Studies. 12 February 2012. <https://www.csis.org/analysis/kenya-s-intervention-somalia>. <sup>21</sup>‘Why Kenya Invaded Somalia: the Opening of an Aggressive New Chapter’, by Daniel Branch, Foreign Affairs, 11 November 2017. <https://www.foreignaffairs.com/articles/africa/2011-11-15/why-kenya-invaded-somalia>.

<sup>22</sup><http://www.businessdailyafrica.com/Opinion+++Analysis/There+is+a+better++cost+effective+way+to+++fight+Al+Shabaab/-/539548/1261116/-/ins9om/-/index.html>.

<sup>23</sup>Nzes, Frederick (2014). Al-Hijra: Al-Shabab’s Affiliate In Kenya. West Point: Combatting Terrorism Center. <https://ctc.usma.edu/posts/al-hijra-al-shababs-affiliate-in-kenya>.

<sup>24</sup>Cannon, Brendan J. and Dominic Ruto Pkalya (2017). ‘Why Al Shabaab Attacks Kenya: Questioning the Narrative Paradigm’. Terrorism and Violence: 1-17.

<sup>25</sup>Ali, Abdisaid M. (2008). The Al-Shabaab Al-Mujahidiin – A Profile of the First Somali Terrorist Organisation. Berlin: Institut für Strategie-Politik-Sicherheits-und Wirtschaftsberatung.

Where Al Ittihad's failure to transcend Somalia's clan dynamics contributed to its demise, Al Harakat Al Shabaab's commitment to Islamist solidarity helped it transcend clan identity while adopting a pragmatic stance on Islamic theology,<sup>26</sup> allowing it to avoid the dogmatic doctrinal debates that are now fueling internal splits within the leadership of the ISIS self-proclaimed caliphate.<sup>27</sup> It has defied predictions of its defeat, the decapitation of its leadership,<sup>28</sup> and loss of Mogadishu and the swaths of territory it once controlled in southern Somalia. It continues to undertake violent operations across a wide arc from northern Somalia to the capitals of Kenya and Uganda.<sup>29</sup> The scope of attacks launched across Kenya-Somalia border zones, in Mogadishu and Puntland validate Bryden's recent assessment that the claims that AMISOM military operations have seriously degraded the organisation's capacity are vastly overstated.<sup>30</sup>

Al-Shabaab continues to attract recruits from East Africa, Ethiopia and beyond.<sup>31</sup> The loss of ground in Somalia following the deployment of AMISOM actually worked to increase the movement's regional presence. As Bryden noted following claims that the organisation had been degraded, "Al-Shabaab is now well on its way to becoming a truly transnational organisation, merging with its Kenyan affiliate, Al-Hijra, and attracting a growing number of followers and recruits from across East Africa."<sup>32</sup> His assessment dovetails with other analyses of Al-Shabaab's larger transformation from a religious vehicle for Somali nationalism into a transnational jihadist movement affiliated to Al-Qaeda.<sup>33</sup>

Observers claim the security situation has seen little change over the past three years since the AMISOM mission expelled the insurgents from Somalia's capital and major towns. This allows the regional governments participating in the multi-State coalition to claim success even though Al-Shabaab has launched a series of deadly attacks in Somalia and Kenya during the same period. Small squads of terrorists continue to elude Kenya's security forces in Lamu and Mandera. ACLED<sup>34</sup> now ranks it above Boko Haram as Africa's most deadly terrorist group. A combination of fear, improved treatment of rural communities and taxation of commerce has allowed it to exert control over large areas of southern and central Somalia despite its modest force of six to nine thousand armed combatants.

<sup>26</sup>Anderson, David and Jacob McKnight (2015). 'Understanding al-Shabaab: clan, Islam and insurgency in Kenya'. The Journal of Eastern African Studies, Vol. 9, Issue 3.

<sup>27</sup>An example is a new definition of Takfir excommunication that could be used to condemn some of the movement's top leaders. <https://www.longwarjournal.org/archives/2017/09/islamic-state-radio-tries-to-quell-controversy-over-takfir.php> <sup>28</sup>The list of includes Aden Hashi 'Ayro', Ahmed Godana, Mohammed Faizul, Saleh Nabahan, and other major figures like Omar Hammam who were assassinated by the Amniyat internal security unit, while other key supporters like Dahir Aweis and Muktar Robow have defected to the government.

<sup>29</sup>Hansen, Stig Jarle (2013). *Al-Shabaab in Somalia: The History and Ideology of a Militant Islamist Group 2005-2012*. London: Hurst and Company.

<sup>30</sup>Bryden, Matt (2015). *The Decline And Fall Of Al-Shabaab? Think Again*. Sahan. <https://somalianews.files.wordpress.com/2015/05/bryden-decline-and-fall-of-al-shabaab22v2015.pdf>.

<sup>31</sup>Le Sage, Andrew (2014). *The Rising Terrorist Threat in Tanzania: Domestic Islamist Militancy and Regional Threats*. Washington: Institute for National Strategic Studies, The National Defense University. Hansen op. cit., pages 132-137.

<sup>32</sup>Bryden op cit, page 4.

<sup>33</sup>Agbiboa, Daniel. (2015). 'Shifting the Battleground: The Transformation of Al-Shabab and the Growing Influence of Al-Qaeda in East Africa and the Horn'. *South African Journal of Political Studies*, Vol. 42, issue 2: 177-194.

<sup>34</sup>Armed Conflict Location & Event Dataset (acleddata.com).

It is now expanding into Puntland, whose long coastline will compensate for its lost access to ports in the south and to link up with Al-Qaeda allies in Yemen.

The policies enacted in the wake of George Bush's "either with us or against us" declaration continue to exemplify the same strategic thinking that liberal critics have long opposed and conservative analysts in Washington now criticise as the same failed 'forever war' policies that prominent military leaders and civilian counterparts continue to support even as they unravel.<sup>35</sup> The backers now include President Donald Trump, even though he campaigned against the foreign policy interventions of his predecessors.<sup>36</sup> Al-Shabaab illustrates how many of the interventions launched in the name of COIN and CVE have aggravated more than contained the problem despite State-based security forces highly-developed institutional intelligence and the myriad well-informed analyses providing insight into the conundrum.

Endemic corruption negates international efforts to combat terrorism in a range of frontline countries like Kenya, where the problem is directly linked to the national security prerogatives that insulate the government from criticism on issues linked to corruption and mismanagement.<sup>37</sup> The impunity enjoyed by the security sector is directly implicated in the nine-fold increase in domestic terrorist events during the four years after the 2011 KDF invasion while efforts to neutralise the threat have effectively domesticated what was formerly an external problem as evidenced by the influence of homegrown religious radicalisation and recruitment networks.<sup>38</sup> The Kenya government's approach nevertheless remains static, except for the addition of donor-supported CVE and rehabilitation interventions that, while effective,<sup>39</sup> are unlikely to alter the fundamentals of the conflict or resolve underlying issues contributing to Kenyan Muslims' deep-seated discontent.

The country is paying a high price in the form of economic costs, erosion of its status as the region's infrastructural fulcrum and the declining legitimacy of the State among the population susceptible to Islamic and other domestic forces of radicalisation. Terrorist events have lost their shock effect in Kenya, as have the steady stream of revelations about security sector corruption, including the UN report revealing active collaboration between the Kenya Defense Force (KDF) officers and Al-Shabaab business agents in the illicit export of charcoal and sugar imports into Kenya via the port in Kisumu.<sup>40</sup> For a large sample of Kenyans surveyed in a 2016 constitutional audit, the security problem ranks lower in importance than its root causes like corruption and

<sup>35</sup>Dobbins, James (2016). Book Review, Blood Year: The Unraveling of Western Counterterrorism, *PRISM* Volume 6, No 3. <sup>36</sup>Devolving decision-making and fiscal control to the same generals responsible for Afghanistan becoming the United States' longest foreign war is the latest example of obsolete policies detailed by Ahmed Rashid (2017).

<sup>37</sup>Chayes, Sarah (2015). *Thieves of State: Why Corruption Threatens Global Security*. New Jersey: W.W. Norton and Company.

<sup>38</sup>Anelli Botha, "Radicalisation in Kenya: Recruitment to al-Shabaab and the Mombasa Republican Council," <https://issafrica.org/research/papers/radicalisation-in-kenya-recruitment-to-al-shabaab-and-the-mombasa-republican-council>.

<sup>39</sup>Savage, Sara, Anjum Khan, and Jose Liht (2014). "Preventing Violent Extremism in Kenya through Value Complexity: Assessment of Being Kenyan Being Muslim". *Journal of Strategic Security* 7,3: 1-26.

<sup>40</sup>"Terrorism: Sugar and charcoal barons sleeping with enemy". *The Daily Nation* 12-6-20114. A politician in Garissa alleged some of the Al-Shabaab attacks in Kenya were timed to divert attention from the smuggling networks flourishing since the military occupation. So lucrative are the illicit gains from the estimated \$800,000 (Sh80 million) import taxes on sugar that branches of the Kenyan security forces compete against one another for bribes.



high youth unemployment although respondents gave the government's performance on security low marks.<sup>41</sup>

In January of 2017, a Horn of Africa analyst based in London told me that "if the region's governments really wanted to, they could crush Al-Shabaab within three months." A representative of a humanitarian agency working on the ground recently described the situation in similar but inverted terms: "It seems as if all actors are comfortable with the status quo".<sup>42</sup> The litany of missteps, scandals and lost opportunities that Andrew Franklin details in a 2017 article appearing in a Kenyan online journal inferred that many of the State-based stakeholders in Kenya are also at ease with the current state of affairs.<sup>43</sup> All of these issues conflict with the presumed role of Islamist extremism as a primary independent variable responsible for the region's terrorism and radicalisation problems.

## The Evolution of Religious Radicalism in Kenya

Political radicalism is a well-established tradition in post-independence Kenya. Since 1963, the government's neo-colonial defence of capitalism, its chronic human rights violations, opposition to multi-party democracy and constitutional reform, social exclusion of minorities and electoral malfeasance have all been met with political opposition and violent conflict.<sup>44</sup> Reforming Kenya's central State has always been a difficult proposition. The nation's periodic eruptions of radical opposition and history of political violence have contributed in different ways to governance ever since the Mau Mau rebellion accelerated the momentum for political independence in 1963.

The rise of Islamist extremism and the harsh methods used to curb it is the latest manifestation of this syndrome. It reflects longstanding problems of governance responsible for the nation's legacy of historical injustices and post-independence conflicts. The colonial administration governed the two regions of the country predominantly inhabited by Muslims (Northeastern Province and the Coast Province) as separate entities. The Northern Frontier District was cut off from Kenya colony by administrative fiat and the Coast was governed as a protectorate formerly under the control of the Sultan of Zanzibar. In both cases, local communities explored alternatives to unification with independent Kenya, and only reluctantly became citizens of the newly-independent Kenya subject to direct rule by a national government for the first time.<sup>45</sup>

<sup>41</sup>Social And Economic Audit Of The Kenya 2010 Constitution: Data management processes and select findings. Office of the Auditor General, *Presentation to Working Group 6th January 2016*.

<sup>42</sup>South and Central Somalia: Security Situation, Al-Shabaab Presence, and Target Groups. Copenhagen: Danish Refugee Council Report, March 2017.

<sup>43</sup><https://www.theelephant.info/the-hustle/2017/06/01/national-insecurity-kenyas-forever-war-on-terror/>

<sup>44</sup>The Shifta war, the Mwakenya movement, the 1982 Air Force coup attempt, formation of the Kenya Patriotic Front, the pastoralist militancy of the 1990s, the Kaya Bombo violence of 1997, the Mt

<sup>45</sup>Schlee, Gunter (1989). *Identities on the Move: Clanship and Pastoralism in Northern Kenya*. Nairobi: Gideon S. Were Press. Banner, James (2008). *Lowering the Sultan's Flag: Sovereignty and Decolonization in Coastal Kenya*. *Comparative Studies in Society and History* 50 (4): 831–861.

The secession option was repressed but resurfaces at different times and in different circumstances, the latest being as part of the opposition's discourse provoked by the political crisis that characterised the 2017 national elections.<sup>46</sup>

The global narrative of Islamic discontent has now penetrated even historically-isolated and spatially-remote Muslim societies like the Maldives, where an Islamist government deposed the elected president in 2015. Kenya Muslims occupy a similar niche but are more constrained than such small Islamic societies like the Maldives or the Comoros due to their status as a minority in a predominantly Christian nation.

Their minority status contributes to Muslim grievances while inhibiting their political efforts to seek equal treatment. The transnational dimension of Islamist extremism, on the other hand, differentiates it from other manifestations of radicalism confined to the domestic political arena.

Kresse described Kenya's coastal Muslims' marginal position within the Islamic world and marginal status within the Kenya polity as the "double periphery."<sup>47</sup> The term refers to the combination of their excluded status in post-independence Kenya and the vitiation of the community's traditional linkages with the Muslim societies of the Gulf and western Indian Ocean. Like Trimingham, Kresse focuses on how reliance on its internal Islamic traditions following colonisation contributed to the reversal of Muslims' former position as elite cosmopolitan urbanites to second-class citizens. His argument traces the entropy overtaking Muslim's knowledge economy and how the community spurned the warning of progressive colonial era leaders who claimed the inertia would result in the marginalisation of the community — a problem that also shapes coastal Muslims normative relations with other Kenyans.

The economic and educational stagnation of the colonial period conditioned the complacent leadership that prevailed after the brief period of mobilisation for coastal self-determination during the run-up to Kenya's independence. In Tanganyika, Muslims were at the forefront of the movement for independence and played a pivotal role in organising the broad coalition supporting Julius Nyerere as the nation's champion in the push for freedom. Nyerere failed to properly acknowledge the decades of work undertaken by Abdul Rahman Sykes and his colleagues but their position as committed Tanzanian African National Union nationalists ensured their equitable treatment under the new government.<sup>48</sup> In Kenya, however, the Coast and northern Kenya's quest for autonomy conditioned the African majority's view of the nation's indigenous Muslim communities as Kenyan citizens by virtue of circumstance and not by choice.

<sup>46</sup>An op-ed by economist David Ndii launched the debate that gained momentum in the press and on social media following the apparent rigging of the 2017 Presidential polls. <http://www.nation.co.ke/oped/opinion/Kenya-is-a-cruel-marriage--it-s-time-we-talk-divorce/440808-3134132-154vra2/index.html>

<sup>47</sup>Kresse, Kai (2009). Muslim politics in postcolonial Kenya: negotiating knowledge on the double-periphery. *Journal of the Royal Anthropological Institute*, S76-S94.

<sup>48</sup>Said, Mohammed (1998). *The Life and Times of Abdul Wahid Sykes (1924-1968): The Untold Story of the Muslim Struggle Against British Colonialism*. London: the Minerva Press.

Ahmed Idha Salim's documentation of historical events leading up the 10-mile Coastal strip unification with independent Kenya ends on an optimistic note, with the author citing how leaders behind the quest for coastal autonomy became reconciled to forging a new relationship with the upcountry African majority: "The realisation is prevalent that they as indigenous coastal people and as Kenyans will have to travel in the same ship as the rest of Kenyans towards whatever destiny Kenya is heading for."<sup>49</sup> But the shared journey proved difficult under the government of Jomo Kenyatta.

Many of the powers enjoyed by the regional assembly, including land, education and regional revenue, were transferred to the central government and the Provincial Administration was elevated over the assembly by presidential fiat.<sup>50</sup>

The nationalist Swahili poet, Abdilatif Abdalla, was detained for criticising the government, and then saw his sentence doubled while serving his term.<sup>51</sup> During the following decades, the hegemony of the State dampened coastal aspirations as the local economic elite negotiated their position with the nation's shifting patronage networks. Those who could obtain a passport sought employment in Saudi Arabia and the Gulf. The once productive agricultural sector stagnated with the collapse of State controlled processing and marketing facilities, the State's neglect of the artisanal fishery and chronic insecurity north of the Tana River conforming to the same pattern.<sup>52</sup> President Jomo Kenyatta's inner circle enjoyed exclusive access to beachfront plots.<sup>53</sup> The rush to grab public land during the 1990s eventually extended to the acquisition of unique historical properties and sacred sites like the 16th century Congo Mosque in Diani.<sup>54</sup>

The upcountry Kenyan presence at the Coast increased through the preferential access to State settlement schemes and through private land sales; their domination of the civil service. The police further abetted the State's prejudicial control of coastal land.<sup>55</sup> A comprehensive study of land on the Coast found that where 82 per cent of upcountry settlers had title deeds to their land, only 38 per of indigenous coastals had official documentation.<sup>56</sup>

<sup>49</sup>Salim, Ahmed Idha (1972). *The Swahili-Speaking Peoples of Kenya's Coast, 1895-1965*. Nairobi: East African Publishing House, page 246.

<sup>50</sup>Stren, Richard 1970. "Factional Politics and Central Control in Mombasa, 1960-1969." *Canadian Journal of African Studies*, vol. 4, no. 1: 33-56. <sup>51</sup>Kresse, Kai (2016). "Kenya: Twendapi: Rereading Abdal Latif Abdalla's Pamphlet fifty years after Independence". *The Journal of the International African Institute*, Volume 86, Number 1: 1-32.

<sup>52</sup>Goldsmith, Paul (2013). "Constitutional Reform and Minority Exclusion: The Case of the Bajuni and Lamu County", in *Seeking Empowering Paradigms: Exploring Indigenous Peoples and Minority Rights in Africa*. Africa Institute of South Africa.

<sup>53</sup>Yahya, Saad S. (2010). *Who Owns The Kenya Coast? The Climaxing Of Land Conflicts On The Indian Ocean Seaboard*. Unpublished paper.

<sup>54</sup>Abungu, G.H.O. (1995). *Places of Power: Sacred sites, sensitive areas and the invisible commercial interest*. Paper presented at WHC/ ICOMOS Conference on Cultural Heritage in Africa. Harar.

<sup>55</sup>Mghangha, Mwandawiro (2010). *Usipoziba Ufa Utajenga Ukuta: Land, elections, and conflicts in Kenya's Coast Province*. Nairobi: Heinrich Böll Stiftung. Kanyingi, Karute (2000). *Redistribution from Above: The Politics of Land Rights and Squatting in Coastal Kenya*. Report no. 115, NAI Research Reports.

<sup>56</sup>Development Policy Management Forum (2011). *Land Ownership And The Associated Implications In The Coast Province*. Nairobi: The Ford Foundation.

Biased allocation of plots contributed to problems on State schemes where civil servants were known to displace local owners by requiring unrealistic on-farm development before formalising legal ownership.<sup>57</sup> Tenure issues, problems of management and land speculation driving the acquisition of plots, all combined to constrain the indigenous agriculture sector at the Coast.<sup>58</sup> Five decades after independence, only the famine-prone pastoralist areas were poorer than the six ecologically-benign and once prosperous coastal districts.<sup>59</sup>

The apparent acquiescence of coastal inhabitants in the face of these developments supported the folk model that contrasted the imputed indolence of coastal people with the industrious temperament of their upcountry counterparts settling at the Coast.

The litany of accumulating grievances also underscored the supine quality of the Muslim religious establishment. O'Brien, writing at a time when the terrorism issue was an emergent phenomenon, had attributed the complacency of religious leadership to the tradition of "Sunni passivity."<sup>60</sup>

If the problem was most acute at the Coast, the *de facto* status as second-class citizens extended to the weak position of the large concentration of Somali, Borana and Gabra Muslims in northern Kenya. The emergency laws passed to combat the Shifta insurgency remained in effect for Lamu, Tana River and northeastern Kenya long after the emergency had passed.<sup>61</sup> Episodic eruptions of banditry triggered government pogroms against the Somali population while curtailing economic growth across the region north of the Tana River. Cattle raiding and clan conflicts expanded in the rangelands during the 1980s and were aggravated by the collapse of the Somali State during the 1990s.<sup>62</sup> The patrimonial politics of the Moi era and incitement by grassroots leaders contributed to the surge in cattle raiding and resource conflicts that stymied effective action addressing the problems of rangelands within the political arena.<sup>63</sup>

According to Kresse, the Muslims position on the double periphery "has led to a kind of 'dialectic' in the social formation of Muslim identity – the negation of their negation, leading to a positive re-assertion of themselves as Muslims," a process that he describes as both a double-challenge and a double-burden "that may also have positive effects."<sup>64</sup>

<sup>57</sup>Indigenous allottees on Lamu settlement schemes are often told they must develop the land within six months or the plot will be re-allocated. This discourages locals from applying for plots in the first place; many plots have been confiscated even when the owners work the land.

<sup>58</sup>Indigenous allottees on Lamu settlement schemes are often told they must develop the land within six months or the plot will be re-allocated. This discourages locals from applying for plots in the first place; many plots have been confiscated even when they do work the land.

<sup>59</sup>Hoorweg, Jan (2000). *The Experience With Land Settlements*. Kenya Coast Handbook: Culture, resources, and development in the East African littoral. Eds. Jan Hoorweg, Dick Foeken, and R.A. Obudho.

<sup>60</sup>O'Brien, Donal Cruse B. (1995). "Coping With the Christians: The Muslim Predicament in Kenya," in *Religion and Politics in East Africa*, eds. Holger Berne Hansen and Michael Twaddle, London: James Currey.

<sup>61</sup>M'Inoti, Kathurima (1992). "Beyond The 'Emergency' in the North Eastern Province". *The Nairobi Law Monthly*, no. 47, Feb/March.

<sup>62</sup>Osamba, Joshua O. (2000). "The Sociology of Insecurity: Cattle Rustling and Banditry in North-Western Kenya". *Africa Journal in Conflict Resolution* - No. 2/2000.

<sup>63</sup>Umar, Abdi (1997). *Resource Utilisation, Conflict And Insecurity In Pastoral Areas of Kenya*. Paper presented at the USAID Seminar on Conflict Resolution in the Horn of Africa, March 27-29, Nairobi.

<sup>64</sup>Kresse op cit, page 589.

The malaise O'Brien associated with the region's traditional Shafii Islam and its contrast with the Swahili Coast's long history of self-defense and autonomy are emblematic of the dualities Kresse refers to. Coastal city-states opposed the Portuguese intrusion and the Sultanate of Pate rose in rebellion on seven separate occasions during their 200-year occupation. The Lamu region was the centre of militant resistance to both Omani Arab and European domination during the 19th century, and pockets of resistance persisted in the coastal hinterland into the 1920s.<sup>65</sup>

The conservatism of Kenya's Muslim scholars and Imams neutralised both internal reformers and external religious influences until a new era of activism beginning in the mid 1980s initiated the dialectical process of Islamic revival. The transition from the quietist leadership observed by O'Brien to the more activist new *ulama* documented in Mohammed Bakari's 1995 volume and the emergence of radical Islamist preachers of the new millennium proceeded on two tracks.<sup>66</sup>

The homegrown revivalism was marked by the activities of organisations like the Council of Imam and Preachers in Mombasa and the Nairobi-based Supreme Council of Kenyan Muslims (SUPKEM). The Muslim Consultative Council paralleled their participation in civil society advocacy and opposition to the one-party State.<sup>67</sup> The second track followed a separate and independent pathway initially established by Saudi patronage that rigorously avoided any association with internal politics.

The origins of Kenya's revivalist movement dates back to the efforts of Chief Kadhi Kassim Mazrui to modernise traditional Islamic practices during the 1930s, but it took decades to take root. After independence, a new generation of scholars and Imams who studied abroad began advocating reformist ideologies that, in the beginning, included opposition to Western education. Many of them were sponsored by the Saudis, who also began supporting mosques and madrassas in Kenya as part of their foreign policy of 'strengthening the capabilities of the Arab and Islamic World'.<sup>68</sup> The new religious scholars opposed superstitions, like belief in the power of amulets, quasi-religious divination and magic, and other influences tolerated by the Sharifite establishment. Their influence derived from the role of the Ryadha Mosque College, an institution of Islamic scholarship and teaching established by Habib Saleh during the early years of the 20th century.<sup>69</sup>

The Ryadha School of Islamic spiritualism shared much in common with Somali tradition of Sufi Islam (Lewis 1998);<sup>70</sup> and both acted to counter the spread of the more austere rules-based

<sup>65</sup>Ylvislaker, M. (1982). *Lamu in the 19th Century*. Boston: Boston University Press; Salim, Ahmed Idha (1972). *The Swahili-Speaking Peoples of Kenya's Coast, 1895-1965*. Nairobi: East African Publishing House.

<sup>66</sup>Bakari, Mohamed (1995). *Islam in Kenya: proceedings of the National Seminar on Contemporary Islam in Kenya*. Mombasa: Mewa Publications. <sup>67</sup>Prior to these developments, the position of the Chief Kadhi as a constitutional office was the most important argument Kenya's Muslim leaders rallied around; the position was vigorously contested by Christian opponents during the process of constitutional reform that commenced in 2002 on the grounds that it violated the principle of secularity. For Muslims, however, the State-controlled office itself was not the major concern. Rather, the debate was in effect a proxy battle for larger issues on the legal reform agenda such as coastal land tenure security, citizenship rights and recognition of historical grievances.

<sup>68</sup>Altoraifi, Adel (2012). *Understanding The Role Of State Identity In Foreign Policy Decision-Making: The Rise And Demise Of Saudi-Iranian Rapprochement (1997-2009)*. Ph.D. Thesis, Department Of International Relations Of The London School Of Economics, London.

<sup>69</sup>Saleh was a Jamil al Lail Sharif born in the Comoros who settled in Lamu, where he extended Islamic education to the masses. This resulted in a religious revolution overturning the rigid social stratifications that limited access to Islamic education to the ruling elite.

<sup>70</sup>Lewis, I.M. (1998). *Saints and Somalis: Popular Islam in a Clan Based Society*. New Jersey: Red Sea Press.

Wahhabi regime across the region. For decades, most of the new religious intelligentsia were influenced by but not overtly committed to Wahhabism.

The discrimination experienced by African Muslims, including the Afro-Arab Swahili working in Saudia and the Gulf, reinforced strong anti-Arab sentiments dating back to the precolonial period. The Saudis' promotion of the Wahhabi doctrine remained correspondingly low key and non-intrusive. The contest between traditionalists and modernisers remained couched in battles over local issues like the debate over the role of the Al Habshi version of the Maulidi celebration commemorating the Prophet's birthday. Opposition to the Maulidi pitted Kenya's long-serving Chief Kadhi, Abdalla Farsi and his followers, against the traditionally independent Lamu Sharifs and their Ryadha Mosque College network.<sup>71</sup> The focus began to shift after the Saudis adopted a more direct role in managing the funding of religious institutions and charities during the early 1980s, including support for religious organisations committed to spreading Wahhabi ideology. This was not popular among the Imams and other religious intermediaries who were sidelined in the process.

East African Muslims are a multicultural community but sectarian differences rarely served as a source of friction. Bohra, Ismaili, Ithna, Asheri and other Asian Shia Muslims lived among the Sunni majority in coastal towns and even intermarried occasionally. This is why the Shia factor was a non-issue when Iran, and not Saudi Arabia, emerged as a popular exemplar of Islamist awakening at the coast following the Islamic revolution of 1978. Pictures of Ayatollah Qomeini were displayed in shops and homes. The Iranian government sponsored delegations who returned extolling the sincerity and hospitality of Iranian Muslims compared to the arrogance of their Arab co-religionists. The Iranians engaged the services of Abdullahi Nassiri, former leader of the Coast People's Party, and published Swahili language materials promoting Iran-inspired reform but avoiding an overtly Shia stance. Iran's Islamist advocacy was well-received in most quarters, although the idea of even pro-Qomeini Muslims converting to Shiism was a non-starter.

Iranian pan-Islamic activism in turn contributed to Saudi Arabia's adoption of a more proactive role in Kenya's Muslim affairs. Infatuation with the Islamic revolution declined as the Iranian government began to show its authoritarian nature, and the Saudis bolstered their image by increasing their support for madrassahs and organisations in Kenya over the course of the 1980s. This was part of an aggressive campaign that saw the kingdom spend over \$4 billion per year on mosques, madrassas, preachers, students and textbooks to spread the Wahhabi creed abroad. Private sources in the kingdom supporting the Mujahedeen interpreted their victory in Afghanistan as divine approval for their interpretation of jihad, and extended their funding for Wahhabi movements to virtually every corner and niche of the Islamic world.<sup>72</sup>

<sup>71</sup>El Zein, Abdul Hamid (1974). *Sacred Meadows: A Structural Analysis of Religious Symbolism in an East African Town*. Evanston: Northwestern University Press. <sup>72</sup>Choksy, Coral B. and Jamsheed Choksy (2015). "The Saudi Connection: Wahhabism and Global Jihad". *World Affairs*, May/June.

<sup>72</sup> Choksy, Coral B. and Jamsheed Choksy (2015). *The Saudi Connection: Wahhabism and Global Jihad*. *World Affairs*, May/June.

But if the Saudis had become more active purveyors of Wahhabi ideology, the Somali Diaspora -- including businessmen based in the Arabian Peninsula -- played the more critical role in activating the growth of Wahhabism in Kenya and across the region.

The large number of refugees pouring into Kenya during the 1990s triggered a social realignment among Kenyan Somalis that highlighted two trends; the revival of clan loyalties and divisions and increasing identification with the Islamist movement among Somalis wary of intensifying ethnic polarities.<sup>73</sup> The mismanagement of local mosques by unelected committees allowed activists to force the switch of traditional Shafii mosques and Quran schools to Wahhabi leadership. Even local believers who disliked the new conservatism like opposition to the consumption of *miraa* (or khat) supported the improved institutional management and revitalisation of the *madrassa* curriculum. Wahhabi businessmen encouraged strict observation of religious practice by funding young acolytes to start new businesses. Their capital contributed to the remarkable transformation of Eastleigh into a regional economic hub and the expansion of important trade networks inside Somalia.<sup>74</sup>

The gradual spread of Wahhabi influence provided cover for the activities of proponents of the more extreme Salafi movement before the U.S. embassy bombings of 1998 accelerated the convergence of the local Wahhabi movement and the radical global Islamist narrative across the Horn of Africa region. But even after the Kikambala attacks of 2001, perpetuated by key members of the same cell that coordinated the U.S. embassy bombings, analysts tended to dismiss the categorisation of eastern Africa and the larger Sahel region as a potential terrorist hot zone. The potential for radicalisation was presumably greater in Muslim areas experiencing economic marginalisation and political decline. As one military analyst observed:

*They generally belong to the losers of the social and political change that Africa has gone through over the past ten years, especially the case in the coastal states of West and East Africa. In West Africa, democratization has removed Muslim leaders and their followers from power, while in East Africa the social advancement of the Muslim minority has trailed that of the region's already low average.*<sup>75</sup>

The author followed up this assessment by remarking that it is “unlikely that extremist Muslims in Sub-Saharan Africa will become an important and integral part of al-Qaeda’s network.”<sup>76</sup> Oded downplays the rise of radical Islam in Kenya and concludes his book, *Islam and Politics in Kenya*, by stating; “Even in countries where Muslims are the majority, sub-Saharan Africa does not seem to be fertile ground for Muslim militants to cultivate Islamic extremism.”<sup>77</sup>

<sup>73</sup>Goldsmith, Paul (1997). “The Somali Impact on Kenya 1990-93: The View from Outside the Camps”, in *Mending the Rip in the Sky: Somali Options for the Twenty-First Century*. The Red Sea Press, New Jersey.

<sup>74</sup>Carrier, Neal (2016). *Little Mogadishu: Eastleigh, Nairobi’s Global Somali Hub*. London: Hurst & Company.

<sup>75</sup>Terdman, Moshe (2007). “Factors Facilitating The Rise Of Radical Islamism And Terrorism In Sub-Saharan Africa. The Project For The Research Of Islamist Movements (Prism)”: *African Occasional Papers*, Vol. 1, No. 1, page 2.

<sup>76</sup>*ibid*; page 3.

<sup>77</sup>Oded, Arye (2002). *Islam & Politics in Kenya*. Denver: Lynne Rienner Publishers, page 189.



More recently, a study examining the prospects for radical extremism taking root in Kenya arrived at similar conclusions.<sup>78</sup> The appeal of religious extremism does of course contribute to the security conundrum. The larger Islamic ecology provides a niche for radical jihadists and their advocates to operate. Over the past decade, agents of radical jihadist penetrated several of Mombasa mosques, providing platforms for radical preachers like Aboud Rogo and Ahmed Sharif Makaburi. They operated openly in the public sphere, attracting a small but dedicated following that gravitated to the six radical mosques in Mombasa town and its suburbs.

They also faced wide opposition across the Coast: Rogo, who was known to have contacts with Al-Qaeda, was ejected from the Mlango wa Papa mosque in Old Town after a Somali woman brazenly entered the exclusively male area of the mosque to accuse him of recruiting ‘the children of pious parents’ for Al-Shabaab. Both clerics ended up among the ranks of the over 500 disappeared individuals and victims of extra-judicial killings (Muhuri 2013).<sup>79</sup> Despite elimination of radical clerics and their primary financier, the violence at the Coast worsened as criminals and drug cartels used the terrorism problem as a smokescreen for their activities.

## Security Forces and Radicalisation

The extremist religious ideologies’ shallow roots in eastern Africa and the Horn have proved to be of less importance than the consequences of State security agencies over time. As Keenan reports in detail for the Western Sahel, much of the radical extremism across the Sahara was the product of intricate stratagems involving intelligence agencies, black market entrepreneurs and their State-based accomplices.<sup>81</sup> In Kenya, a different mix of external actors set the radicalisation process in motion by drawing the State into the game through Al-Qaeda’s attacks on American and Israeli targets on Kenya soil. For the sleeper cell managed by Fazul Mohammed, Kenya provided an opportunistic entry point to wage jihad against the ‘distant enemy’ prioritised by Osama bin Laden after the Soviet exit from Afghanistan. The U.S. embassy bombing instigated a new security policy cycle that over the past decade saw the behaviour of Kenyan security agencies become the catalyst for a new generation of homegrown radical Islamists.

Kenya’s state of intelligence and vigilance during the run-up to the attack was superior to the Americans’, who failed to respond to a series of Kenyan tips about the activities of Al-Qaeda sleepers. A curious juxtaposition of methods occurred following the bombing: Indiscriminate enforcement of collective responsibility became the default in place of proactive responses to the consistently reliable information provided by Kenya’s Department of Security Intelligence.

<sup>78</sup>Bradbury, Mark and Michael Kleinmann (2010). *Winning Hearts and Minds: Examining the relationship Between Aid and Security in Kenya*. Boston: Tufts University, Feinstein International Center.

<sup>79</sup>Muhuri: Muslims for Human Rights (2013). *We’re Tired of Taking You to the Court: Human Rights Abuses by Kenya’s Anti-Terrorism Police Unit*. Nairobi: Open Society Foundations.

<sup>80</sup>Keenan, Jeremy (2007). “The Banana Theory of Terrorism: Alternative Truths and the Collapse of the ‘Second’ (Saharan) Front on the War on Terror”. *Journal of Contemporary African Studies*, 25, 1.

<sup>81</sup>Ruteere, Mutuma (2009). *Dilemmas of Crime, Human Rights and the Politics of Mungiki Violence in Kenya*. <https://ssrn.com/abstract=1462685>



The heavy-handed crackdown against the Muslim community alarmed State Department staff based in the U.S. embassy in Nairobi, who have been reluctant to criticise the excesses committed by State security forces ever since.

Muslims are not the only Kenyan community to experience the violence of the State. The human rights abuses experienced by the Mungiki youth of the Gikuyu community in 2007 reported by Ruteere in 2009 appeared exceptionally severe.<sup>82</sup> But the operation was a one-time event that cannot be compared to the sustained victimisation of innocent civilians due to the intensifying regime of anti-terrorist interventions. The political economy of collateral damage in Kenya and Somalia has fed the narrative of local Muslim oppression while incurring economic costs beyond the depressed tourist industry. The mass incarcerations and extortion of residents in Eastleigh during the post- Westgate Mall attack paramilitary operations, for example, resulted in the shift of capital and the exodus of business people from the commercial hub to Uganda.<sup>83</sup>

The most distinctive feature of the Westgate Mall tragedy was the scandalous behaviour of the security forces responding to the attack on the five-storey complex. During the confusion, exacerbated by inaccurate media reportage and misleading government statements, Kenyan undercover and paramilitary units engaged in a shoot-out, resulting in two deaths from friendly fire.

Shops were looted, safes broken and CCTV cameras captured members of the GSU paramilitary unit filling shopping bags with mobile phones and other valuables. The four attackers—initial reports claimed the numbers to be much higher—rested in a loading bay where they prayed and relaxed before exiting through the same gate the first contingent of police used to enter shortly before. The press crews were confined to a special area while government sources fed the media with an alternative version of events as the mall burned for the next five days. After the CCTV footage was leaked a week later Parliament rushed to pass a draconian new media law.

Westgate established a normative framework for the incompetence and venality characterising the security sector's behavior during the two other major incidents in Mpeketoni ten months later and the Garissa University attack in April 2016. The political dimension of these events has consistently taken precedence over the provision of security. Despite the sordid details of the State's failure to respond to strong intelligence warning of the Lamu County raids, the President proclaimed that Al-Shabaab was not responsible for the bloodshed and that it was actually perpetuated by local politicians. The Lamu Governor was charged with being an accomplice to the terrorists and a number of innocent civilians were arrested only to be released by the courts after an extended period in detention. Al-Shabaab's small band of warriors continued to raid several other targets, including a police post and a wildlife conservancy over the next several weeks, gathering material for three impressive propaganda videos that were released six months after the shock and resentment generated by the attack had dissipated.

<sup>82</sup>Carrier op cit.

<sup>83</sup>Human Rights Watch (2015). *Insult to Injury: The 2014 Lamu and Tana River Attacks and Kenya's Abusive Response*, pages 2-3. <https://www.hrw.org/report/2015/06/15/insult-injury/2014-lamu-and-tana-river-attacks-and-kenyas-abusive-response>

A Human Rights Watch report on the Lamu County attacks compiled with the assistance of the Kenya National Human Rights Commission summed the government's response in terms of capturing the trajectory of developments:

*A year later, there have been no successful prosecutions for the 2014 attacks on the coast, with the state dropping most of the cases for lack of evidence. Instead, starting in July 2014, security forces arbitrarily detained residents of the two counties and subjected them to cruel, inhuman or degrading treatment, including rounding up men and boys, searching and ransacking homes and businesses, and beating male residents. Members of the security forces also stole money and valuables from residents... Improving security forces' ability to respond both lawfully and efficiently to protect communities most affected by attacks should be a central priority of Kenyan authorities. Thus far, rather than increase the quality and capacity of Kenya's security forces, authorities have proposed amending laws to expand police powers, remove checks and balances, and weaken accountability mechanisms within the security sector.<sup>84</sup>*

The pattern of Al-Shabaab attacks in Kenya and on KDF bases in Somalia conforms to the findings of the HRW report and similar investigations by the Independent Police Oversight Authority. The consistent inability to respond to intelligence preceding these and subsequent events represents a hard-to-explain lacuna in Kenya's contribution to regional efforts to contain Al-Shabaab. This was borne out by attacks on the Baure Camp in Boni Forest and the psychologically-damaging sack of the Al-Adde base in Somalia in January of 2016, where over 100 KDF soldiers died. More recently, over 50 KDF soldiers died in the January 2017 attack on another large base in Kulbiyow in the southern Juba region.<sup>85</sup>

As was the case at Westgate and for numerous other incidents of violence, including criminal incidents incorrectly attributed to Al-Shabaab, the national and international media have helped maintain perceptions placing most of the blame on Kenya's Muslim communities. A two-day "town meeting" in Mombasa broadcast nationally blatantly harped on the theme 'you are hosting the enemy within your midst and not doing enough to help the police'. The meeting brought together coastal stakeholders and victims of violence where the coastal community was effectively subjected to a kangaroo-court--style proceedings. The sound system in the hall blared out Christian music before the televised forum went live. When a local activist from Shungwaya Welfare Group attempted to present an alternative explanation of the situation in Lamu the microphone was taken away. The event was also used to raise money for a small evangelical church in Likoni reportedly attacked by terrorists that was given days of high-profile media coverage, even though Al-Shabaab disassociated itself from the attack.

<sup>84</sup><http://www.dw.com/en/al-shabaab-attacks-kenya-military-base-dozens-killed/a-37311441>;  
<https://www.theguardian.com/world/2017/jan/27/al-shabaab-claims-to-have-killed-dozens-of-kenyan-troops-in-somalia>.

<sup>85</sup>Mazrui, Alamin (1998). *Kayas of Deprivation, Kayas of Blood: Violence, Ethnicity and the State in Coastal Kenya*. Nairobi: Kenya Human Rights Commission.

The event was consistent with the traditional folk narrative characterising coastal peoples as inert and hedonistic second-class citizens requiring guidance from above. This perception has influenced the media's coverage of coastal issues for years and also reflects the muted civil society response to the brutal retribution meted out by paramilitary forces in following the 1997 Kaya Bombo violence and its links to the Kenya African National Union (KANU) government.<sup>86</sup>

The same combination of distortion, speculation and reliance on statements by high-ranking officials also misrepresented the Mombasa Republican Council when it came on the scene in 2011. The secession movement was based on legal advocacy and despite the leadership's deliberate avoidance of political violence, the provincial administration and the press repeatedly portrayed the MRC as a violent ethnic gang with links to Al-Shabaab.<sup>87</sup> A review of the press coverage during 2013 found systematic bias in reportage on the MRC that included uncritical repetition of State officials' claims, failure to report on the historical issues raised by the MRC, strong bias associating the group with violence despite the lack of supporting empirical evidence, and the tendency to under-report the use of violence use by State agents.<sup>88</sup>

The role of narratives as a substitute for factual reportage helps the government to distort coastal opposition to the State's hegemonic *modus* in a manner reinforcing security agency impunity while justifying the Executive's attempts to reinstate powers removed by the 2010 Constitution, such as the *de facto* restoration of the former provincial administration. The authority invested in new County Commissioners in areas susceptible to terrorist operations, contrary to the constitutionally mandated process of devolution, undermines the authority of the county governments while eroding the Coast Muslim population's faith in the structural reforms that Kfir identified as prerequisite for effective COIN operations.<sup>89</sup> The polarising influence of State securitisation policies extends to the suppression of Muslim civil society organisations.<sup>90</sup>

## Relationship Between State Violence and Religious Extremism

One reason enabling the series of mass arrests is the murky overlap dividing Salafi Islamist reformers and their more radical counterparts advocating violent extremism. This is hard to discern from outside the Muslim community. More precise categorisation of organisational DNA differentiating Islamist movements can help pinpoint radical individuals and groups who are beyond the scope of rehabilitation or preventative measures. According to Hamid and Dar's analysis, where mainstream Islamists and proponents of jihadi ideology are amenable to moderation and abandoning the use of violence, this is more difficult if not impossible for those committed to Salafi-Jihadi theology.<sup>90</sup>

<sup>86</sup>"Mombasa Republican Council Has Links With Al Shabab, Says Coast PC." Maureen Mudi And Brian Otieno, *Nairobi Star* (Nairobi), 7 May 2011. Goldsmith, Paul (2011). *The Mombasa Republican Council Conflict Assessment: Threats and Opportunities for Engagement*. Nairobi: PACT Kenya.

<sup>87</sup>Kaulu, Phillip Mbaji (2013). *Political Conflict Coverage: A Case Study Of The Print Media Coverage Of The Mombasa Republican Council (Mrc)*. Research Project Report submitted for the Award Of The Degree Of Master of Arts in Communication Studies, The University Of Nairobi.

<sup>88</sup>Kfir, Isaac (2007). "Islamic Radicalism in East Africa: Is There a Cause for Concern?" *Studies in Conflict and Terrorism*, 39/9: 829-855.

<sup>89</sup>*Kenya's Coast: Devolution Disappointed*. Crisis Group Africa Briefing No.121, Nairobi/Brussels, 13 July 2016.

<sup>90</sup>Hamid, and Rashid Dar (2016). *Islamism, Salafism, and Jihadism: A Primer*. Brookings Institute. <https://www.brookings.edu/blog/markaz/2016/07/15/islamism-salafism-and-jihadism-a-primer/>

Ashour also underscores the utility of similar distinctions and organisational typologies for the implementation of effective de-radicalisation initiatives.<sup>91</sup>

Assessed against this framework, Kenya does not have a significant religious radicalisation problem. Wahhabi activists are actually more apt than the traditionalists to speak out against the jihadists. The closure of the minority of radical mosques and madrassas complicated surveillance and the collection of intelligence by forcing the real radicals to go underground. Recruiting agents operating in Kenya now operate independently, relying on peer-to-peer contacts and the Internet; one of the most effective agents operating in Eastleigh avoided detection by posing as a born-again Christian.

Kresse invokes the work of Chabal and Daloz on the instrumental uses of disorder to elucidate how the State elite have cultivated coastal restlessness to pursue their personal objectives.<sup>92</sup> The protected position of the drug cartels, for example, feeds the belief that the growing drug problem was another method of disorder used by State-based interests to reap profits while weakening the fabric of the coastal society. The hypothesis also explains the government's exploitation of the security and radicalisation problems to muster public support for policies undermining the new constitutional dispensation — while covering up the ineptness of its security interventions. After the El-Adde attack, the government used the media law passed after Westgate prohibiting the distribution of images or information likely to cause public fear, alarm or undermine security operations. This prompted a leading opposition politician to declare, "the real target of this law is to reintroduce the police state and political hegemony for the remnants of KANU who are keen to reintroduce what Kenyans fought hard to defeat."<sup>93</sup>

Kresse also highlights the obverse aspect of the Muslims' dilemma, remarking that "the post-colonial conditions of political disorder in Kenya also enhanced the possibilities for Islamic reform."<sup>94</sup> The marginalised condition of Kenya's Muslims is indeed an incentive to seek a way out of the predicament. The vast majority of Kenya's Muslims are seeking to do this through improved religious education, the discussions and debates taking place on local airwaves and the Internet, and in the new universities established to promote the community's knowledge economy.

The estimated 500 Kenyans who have joined Al-Shabaab, according to the Jamestown Foundation, represent the appeal of the radical alternative. While the numbers of radicalised individuals that have not acted on their extremist beliefs are considerably higher, their combined numbers still represents a tiny percentage of Kenya's Muslim population.

<sup>91</sup>Ashour, Omar (2007). "Lions Tamed? An Inquiry into the Causes of De-Radicalization of Armed Islamist Movements: The Case of the Egyptian Islamic Group". *The Middle East Journal*, 61/4: 596: 625.

These analysts distinguish among mainstream Islamists like the Muslim Brotherhood who participate in political processes, *Jihadism*, which refers to individuals' recognition of the obligation to defend the religion in specific circumstances, and *Salafi-Jihadism*, which glorifies the military exploits of the *Salaf* (the early generations of Muslims), condones suicide bombing, and justifies violence against other Muslims, including non-combatants, by recourse to *takfir* excommunication of fellow Muslims.

<sup>92</sup>Chabal, Patrick and Jean Pascal Daloz (1999). *Africa Works: Disorder as Political Instrument*. Bloomington: Indiana University Press.

<sup>93</sup> "Why big nation Kenya is losing a small war," by Ian Ramas, *The Nairobi Law Monthly*, January 2015.

According to a recently-published UN survey, 71 per cent of the over 500 former members of African militant organisations surveyed claimed that government actions including arrests and the killings of a family members and friend made them cross the line.<sup>95</sup>

From the evolutionary perspective informing this analysis, the significance of the small although strategically influential agents of homegrown Salafi Jihadism in Kenya must be assessed against the impact of State interventions encouraging individuals to undergo the transition from radicalisation to active participation. Support for religious violence is not a systemic feature of Kenya's Islamic revivalism. The BRAVE manual and related civil society contributions reflect the position of the vast majority of Kenya's Muslims. It is difficult to explain why the government continues to be slow to implementing the kind of holistic and inclusive approaches like the one outlined in the UN counterinsurgency strategy document for Africa.<sup>96</sup> Mutahi has mapped out an integrated overview of policy options specifically tailored to the situation in Kenya,<sup>97</sup> but instead of fostering cooperation with civil society organisations the government's suspicion of civil society and its commitment to go it alone conforms with problems of securitisation policies elsewhere.<sup>98</sup>

Kenya's Muslims and their leaders are correspondingly frustrated by the lack of consultation on the security problem following a series of incidents, including the killings of tourists in Mombasa's Old Town and the assassination of moderate clerics. Mombasa leaders called for a public baraza that was held in Old Town after a driveby shooting of a bank guard precipitated another police swoop. The event coincided with the 2015 Charlie Hebdo attack in Paris that precipitated a two-country dragnet leading to the arrest of ten suspects. The Mombasa incident was witnessed by a number of bystanders who identified the attacker as a well-known criminal who associated himself with Al-Shabaab to burnish his social bandit credentials. The Kenya police response resulted in the assault and incarceration of hundreds of civilians living in the Bondeni neighbourhood where the attack occurred. At the meeting, Mombasa Senator Hassan Omar, Member of Parliament Abdulswamad Nassir, and two civic leaders delivered eloquent synopses of the issues and briefed County Commissioner Nelson Marwa on the need for mutual consultation and coordination with local leaders in order to deal with the problem.

<sup>94</sup>Kresse op cit, page 591.

<sup>95</sup>UNDP (2017). Journey To Extremism In Africa: Drivers , Incentives, and The Tipping Point For Recruitment. New York: United Nations Development Program Regional Bureau For Africa.  
<http://journey-to-extremism.undp.org/content/downloads/UNDP-JourneyToExtremism-report-2017-english.pdf>

<sup>96</sup>Rosand, Eric, Alistair Millar, and Jason Ipe (2007). Implementing the UN Global Counter-Terrorism Strategy in East Africa. Center on Global Counterterrorism Cooperation; Gompert, David C. and John Gordon IV. (2008). War by Other Means: Building Complete And Balanced Capabilities For Counterinsurgency. Rand, National Defense Research Institute.

<sup>97</sup>Mutahi, Patrick (2016). Preventing Violent Extremism in Kenya: Policy Options. Nairobi: Policy Brief No. 1, the Centre for Human Rights and Policy Studies.

<sup>98</sup>Howell and Lind, Counter-Terrorism, Aid and Civil Society (2009); Jude Howell and Jeremy Lind, (eds) Civil Society Under Strain: Counter-terrorism Policy, Civil Society and Aid Post-9/11 (Kumarian Press, 2010); Howell, Jude, Armine Ishkanian, Ebenezer Obadare, Hakan Seckinelgin, and Marlies Glasius (2007). The Backlash against Civil Society in the wake of the Long War on Terror. Centre for Civil Society (LSE), Civil Society Working Papers No. 26.

As usual, after four days in the cells, most of those arrested were released after a local leader reportedly bought their freedom.

A week later Marwa released a statement berating the police for treating Mombasa Muslims as their personal ATMs. Nothing changed. Rather, the security situation worsened, forcing citizens to mount a vigilante campaign against the young criminals in their midst.

## Conclusion

There are specific factors that can sustain violent insurgency; the role of social media and free-scale networks, for example, are examples of the factors differentiating today's religious extremism from radical movements of the past. Like the State pathologies dissected by Chabal and Daloz, radical extremists' tactics are also designed to sow disorder to advance their goals; many terrorist driven insurgencies are less about military ascendancy than long-term impacts that over time weaken the opponent by exacerbating the internal crises accompanying poor governance. State responses can contain or cripple movements based on violent extremism, *albeit* at the risk of generating more potent blowback and fostering their renewal or mutation into more potent political insurgencies in the future. This emphasises the importance of feedback and public perceptions in the presence of States' inability to adapt their COIN and CVE strategies to the fluid dynamics of contemporary radicals.

Prominent critics like Olivier Roy have argued for decades that political Islam is a failed strategy.<sup>99</sup> The territorial collapse of ISIS is the latest example, yet the violence it spawns continues to disrupt and provoke feedback that reinforces both the unraveling of counterinsurgency strategies and the collinear matrix of non-religious variables driving radicalisation underscored in Oliver's debunking of Islamist movements. The collective political leadership of the Western world and governments in the colour-coded zones of extremist violence have failed to contain or reverse the directionality of 21st century wars despite governments' overwhelming superiority in terms of weapon systems, technology and financial resources. Others argue that despite the Jihadists' failures, in reality, things are getting worse.

Authorities cited by Robin Wright, one of the first observers to address the rise of Islamist radicalism triggered by the Iranian revolution identify a matrix of ominous trends. The number of jihadis is growing exponentially with each mobilisation, halving the time required to "swarm" a given arena. Where the 1970s and 80s witnessed numerous and lethal attacks, each successive generation of jihadis is more extreme in its ambitions and diverse in the origin of its recruits, although this makes the actors less cohesive and more unpredictable.<sup>100</sup>

The events of the past several decades confirm that the wars of the 21st century are fundamentally different from the conventional and guerilla warfare that preceded them, leading military analyst William Lind to coin the term "fourth generation warfare (4GW)" in 1987 to identify the hybrid systems approach of non-State combatants.<sup>101</sup>

<sup>99</sup>Roy, Olivier (2017) *Jihad and Death: The Global Appeal of The Islamic State*. Oxford University Press; Roy, Olivier (1994). *The Failure of Political Islam*. Cambridge: Harvard University Press.

<sup>100</sup>Robin Wright, How Different—and Dangerous—Is Terrorism Today? *The New Yorker*, June 5, 2017. <http://www.newyorker.com/news/news-desk/how-different-and-dangerous-is-terrorism-today>. June 5, 2017.

<sup>101</sup>The size of armies (e.g. during the era of Greek, Persian and Roman warfare), new weapons and technology (the post-medieval to World War One era), and the mobility and improved supply lines enabling Nazi blitzkrieg tactics define the previous three generations. Lind, William S. et. al. (1989). *The Changing Face of War: Into the Fourth Generation*. Article Published in *The Marine Corps Gazette*, 10/89: 22-26.

Fourth generation warfare relies on unconventional strategies and methods, including terrorism, that are designed to provoke counter-productive interventions and exploit the superior strength of their opponents to work against them; non-State combatants are also quick to tweak new technologies to their advantage.<sup>102</sup> The unrelenting spread of open source 4GW innovations and tactics designate today's Islamist insurgents as the most comprehensive practitioners of asymmetric warfare since Sun Tzu identified its strategic advantages. Rigid hierarchical organisations like the modern nation-state will be hard-pressed to cope with the unpredictable tactics of contemporary tech-savvy radicals.<sup>103</sup>

The difficulty of the task qualifies the modest territorial gains achieved by the AMISOM mission with support from the Somali National Army. It may be indicative of the slow but steady progress toward containing Al-Shabaab's military threat; a concerted surge could scatter the terrorists although this would not be a final solution. The capacity of Africa's religious radicals is comparatively undeveloped compared to their cohorts operating in the hot zones of the Middle East and Central Asia.

Nigeria's Muslim political leadership and the behaviour of the military have created an enabling environment for Boko Haram, a movement Comolli portrays as a dangerous but often less than coherent entity.<sup>104</sup> Al-Shabaab is a more focused, resilient, but still relatively modest opponent by the standards of other contemporary insurgencies. Its strength lies in its track record of adaptive responses to internal and external setbacks, and a pragmatic approach to jihadi ideology. Al-Shabaab outreach methods eschew the bling of ISIS propaganda materials in favour of a sophisticated combination of radical Islamist critique, Quranic verse and polished Swahili language media that Hansen describes as utilising "symbolic language surprisingly familiar to a reader of the Kenyan historical narrative."<sup>105</sup>

Acknowledgement of the historical trajectory fueling radicalisation in a country like Kenya should facilitate the task of CVE and make the management of COIN strategies compared to countries of the West hosting Muslim immigrants of different origins.

Developments in Kenya's grey zone, however, run counter to this thesis. Kenya has tended to neglect the easy to implement 'soft' methods that help legitimise military operations, while government statements indirectly spurn the consensus view that the Horn's terrorism problem is "inextricably bound up with other sources of conflict, border disputes, historic grievances, and broad regional involvement."<sup>106</sup>

<sup>102</sup>Matlak, Regis W. (2014). *The Nightmare Years to Come? INSS Strategic Monograph*, National Defense University Press Washington, D.C.; Ronfeldt, David and John Arquilla (2001). *Networks and Networks: The Future of Terror, Crime, and Militancy*. Washington DC: RAND; Weitz, Richard (2017). *The Impossible Quest for Absolute Security*. Yale Online, July 11, 2017. <https://www.hudson.org/research/13756-the-impossible-quest-for-absolute-security>; Williams, Phil (2008). *From the New Middle ages to a New Dark age: the Decline of the State and U.S. Strategy*. Strategic Studies Institute;

<sup>103</sup>Robb, John (2007). *Brave New World: the Next Stage of Terrorism and the End of Globalization*. New Jersey: John Wiley and Sons; van Creveld, Martin (2015). *A History of Strategy: From Sun Tzu to William S. Lind*. Kouvola, Finland, Castalia House.

<sup>104</sup>Comolli, Virginia (2015). *Boko Haram: Nigeria's Islamist Insurgency*. London: Hurst & Company.

<sup>105</sup>Hansen op cit, page 130.

<sup>106</sup>Lyman, Princeton N (2016), "The War on Terrorism in Africa," in Harbeson, John and Donald Rothschild (2016). *Africa in World Politics: Constructing Political and Economic Order*. Colorado: Westview Press, page 7



Regardless, the current stasis should not distract from the longer-term implications of the terrorism problem, including the deployment of rapidly evolving technologies that can be used to attack soft targets and disrupt vital infrastructure. Kenya's response to terrorist attacks on its soil has made it a case study of how the dark side of African governance and States' criminal proclivities play into the strategies of the new insurgents of the 4GW era.<sup>107</sup> Where Western governments have sought to develop COIN and CVE strategies that minimise the erosion of democratic principles, according to one critic, Kenya has used terrorism as a tool "to scapegoat particular communities in order to distract attention from its own actions and to try to roll back the freedoms guaranteed in the 2010 Constitution."<sup>108</sup>

The former Senator for Mombasa raised a related point when he declared that Kenya's tribalism is the real threat.<sup>109</sup> During the security meeting mentioned above, he stressed the importance of reviving discussion on the proposed County Policing Act. Legalising some form of community policing was a key issue behind the push for devolution; implementing the Act would introduce an element of checks and balances within Kenya's beleaguered security sector. But the proposal was rejected over fears that it would legalise ethnic militarisation. The calls for self-determination and ethnic radicalisation that resurfaced during the 2017 electoral-political crisis suggest there are greater long-term threats to Kenya's national security than religious extremism.

The case for devolving some security agencies' policing functions is nevertheless supported by the fact that many of the adaptive responses to Kenya's reoccurring security crises have been forged on the ground. The most prominent example is the Wajir Peace Committee, formed by local women fed up with the chronic banditry of the 1990s. It later became the template for a regional peace initiative for Kenya's rangelands.<sup>110</sup> The model subsequently provided the basis for the development of IGAD's CEWARN conflict early warning system, which is in the process of being expanded to include indicators of terrorist activities.<sup>111</sup>

In the meantime, the AMISOM intervention has created as many problems as it has solved, but more so for Kenya than its regional partners. The KDF are mired in a double periphery of their own making that has seen the occupation become a 'negation of its own negative motives' to paraphrase Kresse, reducing the invasion to a convenient source of weapons, ammunition and propaganda materials for Al-Shabaab.<sup>112</sup>

<sup>107</sup> Bayart, Jean Francois, Beatrice Hibou, and Stephen Ellis (1999). *The Criminalisation of the State in Africa*. London: James Currey.

<sup>108</sup> "The Guns of October: How the Somalia Invasion Changed Kenya, Patrick Gathara", *The Elephant*, May 12, 2017. <https://www.theelephant.info/dispatches/2017/05/12/the-guns-of-october-how-the-invasion-of-somalia-changed-kenya/>. John Harrington & Ambreena Manji (2015) arrive at a similar conclusion after analyzing the conduct and High Court decision determining the winners of Kenya's 2013 elections, and the Executive is using the crisis of the 2017 national polls to roll back the constitutional principles governing the electoral process.

<sup>109</sup> Omar, Hassan Omar (2011). "The threat of tribalism is greater than the threat of terrorism," *The Standard on Sunday* 24-7-2011.

<sup>110</sup> Menkhaus, Ken (2008). "The rise of a mediated state in northern Kenya: the Wajir story and its implications for state-building". *Afrika Focus*, vol. 11, no 2: 23-38.

<sup>111</sup> *The CEWARN Compendium: The Development of a Conflict Early Warning System*. Addis Ababa: IGAD, forthcoming.

<sup>112</sup> The soldiers fleeing the El Adde attack found the Somali National Army Camp next door abandoned because the occupants were tipped off before hand. It was not the first time KDF's ostensible allies prioritised their own interests.

As is the case for other wars across the Horn region, Somalia's internal conflicts reveal the transactional dynamics behind the region's militarised power struggles.<sup>113</sup> Al-Shabaab is a Salafi Jihadist organisation that doubles as a vehicle for Somali nationalism; it may not endure as the transnational terrorist organisation analysts cited earlier in this chapter claim it to be. Somalia can be inhospitable terrain for international jihadists as the Al-Qaeda contingent based in Ras Kamboni found out; purges by Al-Shabaab's Amniyat internal security unit continue to eliminate some of its most accomplished non-Somali leaders.<sup>114</sup>

Instead of talking about elimination, the AMISOM coalition may be better off exploiting the insurgents' internal frailties with a view to expediting future negotiations with their fellow Somalis. At this point in time this option appears more likely to succeed than any military solution. Back in Kenya, negotiating the challenges generated by the Islamisation of terrorism was never going to be easy, and now Kenya is another potential case study for how civil society and other actors will have to clean up the mess created by the failing military strategy.

<sup>113</sup>DeWaal, Alex (2016). *The Real Politics of the Horn of Africa*. New Jersey: Wiley.

<sup>114</sup><https://jamestown.org/program/resisting-purge-foreign-fighters-maalam-salmans-struggle-survival-al-shabaab/>; *Implications of strengthening Al Qaeda and Shaabab internal cohesion*.

<https://www.hudson.org/research/12788-how-al-qaeda-survived-the-islamic-state-challenge>; Scahill, Jeremy. The Purge: How Somalia's Al Shabbab Turned Against its Own Foreign Fighters. The Intercept, July 15, 2015. <https://theintercept.com/2015/05/19/somalia-al-shabaab-foreign-fighter-cia/>

# Bibliography

Abdul Azziz, M. (1979) *Muyaka: 19th Century Swahili Popular Poetry*, Mombasa: Kenya Literature Bureau.

Abungu, G.H.O. (1995) "Places of Power: Sacred sites, sensitive areas and the invisible commercial interest," Paper presented at WHC/ICOMOS Conference on Cultural Heritage in Africa. Harar.

Adel, A. (2012). 'Understanding The Role Of State Identity In Foreign Policy Decision-Making: The Rise And Demise Of Saudi–Iranian Rapprochement (1997–2009)' Ph.D. Thesis, Department Of International Relations Of The London School Of Economics, London.

Adraoui, M.A. (2017) 'Borders and sovereignty in Islamist and jihadist thought: past and present', *International Affairs* 93 (4): 917–935.

Agbiboa, D. (2015) 'Shifting the Battleground: The Transformation of Al-Shabab and the Growing Influence of Al-Qaeda in East Africa and the Horn', *South African Journal of Political Studies* 42(2): 177-194.

Ali, A.M. (2008) *The Al-Shabaab Al-Mujahidin – A Profile of the First Somali Terrorist Organisation*. Berlin: Institut für Strategie-Politik-Sicherheits-und Wirtschaftberatung.

Allen, J. (2001) *Swahili Origins*, London: James Currey Press.

Allouche, J. and Lind, J. (2013) 'A New Deal? Development and Security in a Changing World'. Institute of Development Studies, <http://www.ids.ac.uk/publication/a-new-deal-development-and-security-in-a-changing-world> (Accessed on August 25 2017)

Anderson, D. and McKnight, J. (2015) 'Understanding al-Shabaab: clan, Islam and insurgency in Kenya', *The Journal of Eastern African Studies* 9(3)

Ashour, O. (2007) "'Lions Tamed? An Inquiry into the Causes of De-Radicalization of Armed Islamist Movements: The Case of the Egyptian Islamic Group', *The Middle East Journal*, 61(4): 596: 625.

Bakari, M (1995). *Islam in Kenya: proceedings of the National Seminar on Contemporary Islam in Kenya*, Mombasa: Mewa Publications.

Bayart, J.F., Ellis, S. and Hibou, B. (2009) *Criminalization of the State in Africa*, Bloomington: Indiana University Press.

Bolduc, D. C., Puglisi, R.V. and Kaailau, R. (2016) "The Gray Zone in Africa". <http://smallwarsjournal.com/jrnl/art/the-gray-zone-in-africa> (Accessed on August 29 2018)

Bradbury, M. and Kleinmann, M. (2010). *Winning Hearts and Minds: Examining the relationship Between Aid and Security in Kenya*, Boston: Tufts University, Feinstein International Center.

Brennan, J. (2008) 'Lowering the Sultan's Flag: Sovereignty and Decolonization in Coastal Kenya' *Comparative Studies in Society and History* 50 (4): 831–861.

Bryden, M. (2015) 'The Decline And Fall Of Al-Shabaab? Think Again'. Sahan. <https://somalianews.files.wordpress.com/2015/05/bryden-decline-and-fall-of-al-shabaan22v2015.pdf>. (Accessed on August 29 2018)

Carrier, N. (2016) *Little Mogadishu: Eastleigh, Nairobi's Global Somali Hub*, London: Hurst & Company.

Chayes, S. (2015) *Thieves of State: Why Corruption Threatens Global Security*, New Jersey: W.W. Norton and Company.

Choksy, C. B. and Choksy, J. (2015) 'The Saudi Connection: Wahhabism and Global Jihad', *World Affairs* May/June.

Clapham, C. (1998) *African Guerillas*, Oxford: James Currie Press.

Comolli, V. (2015) *Boko Haram: Nigeria's Islamist Insurgency*, London: Hurst & Company.

Deng, F. M. (1995) *War of Visions: Conflict of Identities in the Sudan*, Washington D.C.: The Brookings Institute.

Development Policy Management Forum (2011) *Land Ownership And The Associated Implications In The Coast Province*, Nairobi: The Ford Foundation.

DeWaal, A. (2016) *The Real Politics of the Horn of Africa*, New Jersey: Wiley.

Dobbins, J. (2016) 'Book Review, *Blood Year: The Unraveling of Western Counterterrorism*', *PRISM* Volume 6, No 3.

El Zein, A.H. (1974) *Sacred Meadows: A Structural Analysis of Religious Symbolism in an East African Town*, Evanston: Northwestern University Press.

Ghai, Y. (2007) "Devolution: Restructuring the Kenyan State," Lecture Presented at the African Research and Resource Forum KICC  
Nairobi, 23 November 2007; Republished in the *Journal of Eastern African Studies* 2008.

Goldsmith, P. (1997) 'The Somali Impact on Kenya 1990-93: The View from Outside the Camps', in *Mending the Rip in the Sky: Somali Options for the Twenty-First Century*. New Jersey: The Red Sea Press.

Goldsmith, P. (1999) "Participation and the Dynamics of Social Exclusion and Poverty," Concept Document for the World Development Report 2000: International Bank for Reconstruction and Development, Africa Region Consultation, Dakar Senegal.

Goldsmith, P. (2013). 'Constitutional Reform and Minority Exclusion: The Case of the Bajuni and Lamu County', in *Seeking Empowering Paradigms: Exploring Indigenous Peoples and Minority Rights in Africa*. Africa Institute of South Africa.

Goldsmith, P. (2014) 'Securitization Without Security: The Contradictory Case of Combatting Terrorism on the Coast of Kenya', Policy Paper published by the Norwegian Peace-Building Resource Centre.

Goldsmith, P. (2015) *Quiet No more: Citizenship and Religious Noise on the Kenya Coast Muslims*. Chimurenga Chronic, South Africa, July 2015. <http://chimurengachronic.co.za/quiet-no-more/> (accessed on August 29 2017)

Gompert, D C. and Gordon IV, J. (2008) 'War by Other Means: Building Complete And Balanced Capabilities For Counterinsurgency,' Rand, National Defense Research Institute.

Hansen, S.J. (2013) *Al-Shabaab in Somalia: The History and Ideology of a Militant Islamist Group 2005-2012*. London: Hurst and Company.

Harmony Project (2007) 'Al Qaida's (Mis)Adventures In The Horn Of Africa: Kenya Eritrea, Sudan, Ethiopia, Somalia, Djibouti', Combating Terrorism Center at West Point.

Harrington, J. and Manji, A. (2015) 'Restoring Leviathan? The Kenyan Supreme Court, constitutional transformation, and the presidential election of 2013', *Journal of Eastern African Studies*, 9(2): 175-192.

Hiro, D. (1988) *War Without End: The Rise of Islamist Terrorism and the Global Response*. London and New York: Routledge.

Hoorweg, J. (2000). 'The Experience With Land Settlements', in Hoorweg, J. Foeken, D. and Obudho. R.A. (eds.) *Kenya Coast Handbook: Culture, resources, and development in the East African littoral*.

Howell, J. and Lind, J. (2009) 'The global 'War on Terror' regime and development policy and practice post-9/11', *Third World Quarterly* 30 (7).

Howell, J., Ishkanian, A., Obadare, E., Seckinelgin, H. and Glasius, M. (2007) 'The Backlash against Civil Society in the wake of the Long War on Terror', Centre for Civil Society (LSE), Civil Society Working Papers No. 26.

Human Rights Watch (2015). 'Insult to Injury: The 2014 Lamu and Tana River Attacks and Kenya's Abusive Response', <https://www.hrw.org/report/2015/06/15/insult-injury/2014-lamu-and-tana-river-attacks-and-kenyas-abusive-response> (accessed on August 29 2017)

Hunter, S.T. (1988) *The Politics of Islamic Revivalism: Diversity and Unity*, Bloomington and Indianapolis: Indiana University Press.

Ibrahim, M. (1990) *Merchant Capital and Islam*, Austin: University of Texas Press.

International Crisis Group (2005) 'Somalia's Islamists', Africa Report N°100, 12 December 2005.

International Crisis Group (2016) 'Kenya's Coast: Devolution Disappointed', Crisis Group Africa Briefing No.121, Nairobi/Brussels, 13 July 2016.

Kanyinga, K. (2000) 'Redistribution from Above: The Politics of Land Rights and Squatting in Coastal Kenya', Report no. 115, NAI Research Reports.

Keenan, J. (2007) 'The Banana Theory of Terrorism: Alternative Truths and the Collapse of the 'Second' (Saharan) Front on the War on Terror', *Journal of Contemporary African Studies* 25 (1).

Keenan, J. (2009) *The Dark Sahara: America's War on Terror in Africa*, The Pluto Press.

Kfir, I. (2007) 'Islamic Radicalism in East Africa: Is There a Cause for Concern?' *Studies in Conflict and Terrorism*, 39/9: 829-855.

Kilcullen, D. (2016) *Blood Year: The Unravelling of Western Counterterrorism*, Oxford University Press.

Kresse, K. (2009) 'Muslim politics in postcolonial Kenya: negotiating knowledge on the double-periphery', *Journal of the Royal Anthropological Institute*.

Kresse, K. (2016) 'Kenya: Twendapi: Rereading Abdilatif Abdalla's Pamphlet fifty years after Independence', *Africa: The Journal of the International African Institute*, Volume 86, Number 1: 1-32.

Le Sage, A. (2001) 'Prospects for Al Ittihad and Islamist Radicalism in Somalia', *Review of African Political Economy* 27(89).

Le Sage, A. (2014) *The Rising Terrorist Threat in Tanzania: Domestic Islamist Militancy and Regional Threats*. Washington: Institute for National Strategic Studies, The National Defense University.

Lewis, I.M. (1998) *Saints and Somalis: Popular Islam in a Clan Based Society*, New Jersey: Red Sea Press.

Lewis, W. (1996) *Islamic radicalism in North Africa: force works, for now*, Washington: Institute for National Strategic Studies.

Lind, W. S. et. al. (1989) 'The Changing Face of War: Into the Fourth Generation', *The Marine Corps Gazette*, 10(89): 22-26.

Love, R. (2009) 'Economic Drivers of Conflict and Cooperation in the Horn of Africa: A Regional Perspective and Overview', *Chatham House Africa Programme Paper AFP BP 2009/01*.

Lyman, P.N. (2016), 'The War on Terrorism in Africa', in Harbeson, J. and Rothschild, D. (eds. ) *Africa in World Politics: Constructing Political and Economic Order*, Colorado: Westview Press.

Matlak, R. W. (2014) *The Nightmare Years to Come? INSS Strategic Monograph*, National Defense University Press Washington, D.C.

Mazrui, A. (1998) *Kayas of Deprivation, Kayas of Blood: Violence, Ethnicity and the State in Coastal Kenya*, Nairobi: Kenya Human Rights Commission.

McGinnis, M. D. (2001) "Reciprocal Destabilization: A Two-Level Security Dilemma Involving Rebellions, Refugees, and Regional Conflict," paper prepared for presentation at the Annual Meeting of the International Studies Association, February 21-24, 2001, Chicago, Illinois.

Menkhaus, K. (2008) 'The rise of a mediated state in northern Kenya: the Wajir story and its implications for state-building', *Afrika Focus*, 11(2): 23-38.

Mghangha, M. (2010) *Usipoziba Ufa Utajenga Ukuta: Land, elections, and conflicts in Kenya's Coast Province*, Nairobi: Heinrich Böll Stiftung.

Mwakimako, H. (2010) 'Risk Assessment: Violent Religious Extremism and the Muslim Population in Kenya', Nairobi: United States Agency for International Development.

Mwakimako, H. (2011) 'The historical development of Muslim courts: the Kadhi, Mudir, and Liwali courts and the Civil Procedure Code and Criminal Procedure Ordinance, c. 1963', *Journal of Eastern African Studies*, 5(2): 329-343.

Nyang, S. (1988) 'West Africa', in Hunter, S.T. (ed.) *The Politics of Islamic Revivalism: Diversity and Unity* Bloomington and Indianapolis: Indiana University Press.

O'Brien, D.C.B. (1995) 'Coping With the Christians: The Muslim Predicament in Kenya', in Hansen, H.B. and Twaddle, M. (eds.) *Religion and Politics in East Africa*, London: James Currey.

Oded, A. (2002) *Islam & Politics in Kenya*, Denver: Lynne Rienner Publishers.

Pargeter, A. (2009) 'Localism and radicalization in North Africa: local factors and the development of political Islam in Morocco, Tunisia and Libya', *International Affairs*, 85(5): 1031-1044.



Rashid, A. (2002) *Jihad: The Rise of Militant Islam in Central Asia*, New Haven: Yale University Press.

Rashid, A. (2008) "Jihadi Suicide Bombers: The New Wave". *The New York Review of Books*, Vol. LV, No. 10.

Rashid, A. (2017) "Afghanistan: It's Too Late". *The New York Review of Books*, 18 June.

Rashid, A. (2017) *Taliban: Islam, Oil, and Fundamentalism in Central Asia*, New Haven: Yale University Press.

Ronfeldt, D. and Arquilla, J. (2001). *Networks and Netwars: The Future of Terror, Crime, and Militancy*, Washington DC: RAND.

Roy, O. (1994) *The Failure of Political Islam*, Cambridge: Harvard University Press.

Roy, O. (2017) *Jihad and Death: The Global Appeal of The Islamic State*, Oxford University Press, 2017.

Ruteere, M. (2009) *Dilemmas of Crime, Human Rights and the Politics of Mungiki Violence in Kenya*, Nairobi: Kenya Human Rights Institute,

Said, M. (1998) *The Life and Times of Abdul Wahid Sykes (1924-1968): The Untold Story of the Muslim Struggle Against British Colonialism*, London: the Minerva Press.

Salim, A.I. (1972). *The Swahili-Speaking Peoples of Kenya's Coast, 1895-1965*, Nairobi: East African Publishing House.

Savage, S., Khan, A. and Liht, J. (2014) 'Preventing Violent Extremism in Kenya through Value Complexity: Assessment of Being Kenyan Being Muslim', *Journal of Strategic Security* 7(3): 1-26.

Scahill, J. (2015) 'The Purge: How Somalia's Al Shabbab Turned Against its Own Foreign Fighters', *The Intercept*, July 15. <https://theintercept.com/2015/05/19/somalia-al-shabaab-foreign-fighter-cia/> (Accessed on September 6 2017)

Stren, R. (1970) 'Factional Politics and Central Control in Mombasa, 1960-1969', *Canadian Journal of African Studies* 4(1): 33-56.

Terdman, M. (2007) 'Factors Facilitating The Rise Of Radical Islamism And Terrorism In Sub-Saharan Africa', *The Project For The Research Of Islamist Movements (Prism): African Occasional Papers*, 1(1).

Trimingham, S.J. (1964) *Islam in East Africa*, Oxford: Clarendon Press.

Trimingham, S.J. (2001) *The Sufi Orders in Islam*, London: Oxford University Press.

Umar, A. (1997) "Resource Utilisation, Conflict And Insecurity In Pastoral Areas of Kenya," Paper presented at the USAID Seminar on Conflict Resolution in the Horn of Africa, 27-29 March, Nairobi.

UNDP (2017) *Journey To Extremism In Africa: Drivers , Incentives, and The Tipping Point For Recruitment*. New York: United Nations Development Program Regional Bureau For Africa.

van Creveld, M. (2015) 'A History of Strategy: From Sun Tzu to William S. Lind', Kouvola, Finland, Castalia House.

von der Mehden, F. R. (1988) "Malaysia and Indonesia," in Hunter, S.T. (ed.) *The Politics of Islamic Revivalism: Diversity and Unity*. Bloomington and Indianapolis: Indiana University Press.

Weitz, R. (2017) "The Impossible Quest for Absolute Security". Yale Online, July 11, 2017. <https://www.hudson.org/research/13756-the-impossible-quest-for-absolute-security> (accessed on September 9 2017)

Williams, P. (2008) *From the New Middle ages to a New Dark age: the Decline of the State and U.S. Strategy*. Strategic Studies Institute.

Wright, R. (2017) "How Different—and Dangerous—Is Terrorism Today?" *The New Yorker*, 5 June.

Yahya, S. S. (2010). 'Who Owns The Kenya Coast? The Climaxing Of Land Conflicts On The Indian Ocean Seaboard', (Unpublished).

Ylvislaker, M. (1982) *Lamu in the 19th Century*, Boston: Boston University Press.

Zuhur, S. (2005) *A Hundred Osamas: Islamist Threats and the Future of Counterinsurgency*, <http://www.StrategicStudiesInstitute.army.mil/> (accessed on September 9 2017).



# 3

Ken Nyaundi

## Kenya: Fighting Terrorism Within and Without the Law

# Introduction

**T**errorism, often defined as the unlawful use of violence and intimidation, especially against civilians, in pursuit of political aims, has the inherent proclivity to create mass public anxiety which no State can ignore. Consequently, States employ various methods in attempts to stem or stifle acts of terrorism. A popular and acceptable measure is counter-terrorism legislation. Counter-terrorism legislation is, on the face of it, acceptable as the most democratic and legal method of dealing with a crime which does not recognise the law. Further, the use of legislation is preferred as a technique which does not violate the fundamental human rights of suspects. But is this true? Separately, does counter-terrorism legislation enhance security? The fundamental issue, however, is the contrast between security and liberty.

## a. The Dichotomy Between Security and Liberty

Terrorism poses a severe threat to societal norms, rules and institutions largely because it threatens the rule of law and operates outside the laws of war. In essence, 'terrorism is the anti-thesis to democracy'. It is the most flagrant form of defiance of the rule of law. Terrorists have no regard for human rights. As a matter of fact, they deem democratic States, where human rights are respected, as soft targets because in those States, their rights are upheld. They know that even if arrested they will be eligible to due process and may even be discharged.

Terrorism challenges governments' monopoly of armed force within the State and attempts to replace the laws of the State with the lawlessness of the terrorists.

## b. Pervasiveness of Legislation

The events of 11 September 2001, in New York, U.S.A, catapulted the minds of world leaders into a state of dystopia. Consequently, two dynamics are evident in international conduct towards terrorism: First, the anxious and almost certain expectation of another attack and, secondly, the constant stream of anti-terrorism laws in all continents.

Today, most States have passed legislation to address pre- and post-attack concerns – for good reason -- because 'the threat of terrorism to life and liberty cannot be addressed simply by *ex post facto* rectification for the sake of justice.'<sup>1</sup> It is becoming clear, however, that certain elements of anti-terrorism legislation impose burdens on fundamental freedoms without much evidence of its effectiveness. Some authors feel that the threat posed by terrorism may be countered by means other than a severe and exaggerated legislative response.<sup>2</sup>

<sup>1</sup>Chesney R M, 'The sleeper scenario: Terrorism-support laws and the demands of prevention', (2005) 42 *Harv J on Legis* 1

<sup>2</sup>Williams G., 'A Decade of Australian Anti-Terror laws', (2011) 35 *Melbourne University Law Review* 1136.

### c. Kenya's Geographical Location and its Implications

Kenya is regarded as a weak flank in the global fight against terrorism. With the failed Muslim State of Somalia to the east and South Sudan and Ethiopia to the north, Kenya's porous borders are completed by the vast Indian Ocean, which forms most of the eastern border, opening the country to the Asian subcontinent. Owing to the influence of Arab traders who first visited the coastal areas of the country in the 16th century, mainly Muslims inhabit the coastal strip. The north of the country, occupied by Kenyan Somalis, is also largely Muslim. Awareness of this demographic is essential to understanding the role of religion in Kenya's anti-terrorist efforts.

The weakness in Kenya's anti-terrorism struggle manifests on three levels: A long-absent regulatory legal framework, a reckless and abusive police force and a compliant Judiciary.

## Fighting Terrorism in the Absence of an Anti-Terrorism Law

Of the three East African countries, Kenya attracts the highest concern with regard to terrorism. The country has had the highest number of terrorism incidents and is considered the most vulnerable to attack. In spite of this, it took Kenya more than ten years to enact anti-terrorism legislation. There may be two reasons for this.

First, attempts to enact the legislation attracted objections from human rights activists and Muslim leaders concerned that the law might be abused to restrict fundamental rights, especially freedom of assembly, religion, speech and association.

Secondly, there was spirited propaganda to the effect that the legislation would be an American-sponsored attempt to target Muslims. These claims slowed down the law-making process by sowing suspicion among the public and diverting attention from the urgent need for enactment.

The contrived delay in the enactment of the statute did not improve relations between the government and the Muslim community. Each side felt that it had legitimate grievances against the other. While the government complained of a lack of co-operation from the community, the group had a raft of grievances, ranging from unfair profiling of Muslims to targeting of Muslim youths for arrest whenever an act of terrorism was being investigated. Islamic groups have demonstrated often in Mombasa and Nairobi, denouncing in equal measure the British, American and Kenyan governments' policies towards Muslims.<sup>3</sup>

At the international level, Kenya has ratified several human rights instruments as well as 12 of the 14 sectoral anti-terrorism treaties.<sup>4</sup>

<sup>3</sup>*Daily Nation*, Friday 4 July 2003; *Sunday Nation*, August 31, 2003. See also 'Kenya's Terror Bill Rejected', available at <http://news.bbc.co.uk/2/hi/africa/3069211.stm> accessed on November 7, 2005 and also The Friday Bulletin, *The Muslim News Update*, 2 July 2004. See also Abdulghafur H S Elbusaidy, 'Islam in Kenya' in Hussein Solomon *Islam in the 21st Century: Perspectives and Challenges*, Centre for International Political Studies (2005) 34 Pretoria.

<sup>4</sup>See Goredema C, 'African Commitments to Combating Organized Crime and Terrorism'. Available at [www.iss.co.za/pubs/Other/ahsi/Goredema\\_Botha/pt2chap9.pdf](http://www.iss.co.za/pubs/Other/ahsi/Goredema_Botha/pt2chap9.pdf). Accessed on November 5, 2010.

The language of the conventions is explicit on the obligation of States to observe human rights in their counter-terrorism efforts. Moreover, Kenya's Constitution<sup>5</sup> has elaborate provisions for protection of fundamental rights and freedoms defining the boundary between individual licence and government tyranny.

Both in the domestic and international arena, it is recognised that 'the anti-terrorism fight is aimed at protecting basic human rights and democracy, not to undermine them'<sup>6</sup> and that 'measures to counter terrorism must be in strict compliance with international law, including international human rights standards'.<sup>7</sup> In the same vein, an *ad hoc* committee of the UN General Assembly has released a report that spells out the need to include human rights observance in all counter-terrorism efforts.<sup>8</sup>

In the long absence of an appropriate legislative framework, Kenya was forced to adopt certain measures to secure the population against terrorism. In February 2003, an Anti-Terrorism Police Unit (ATPU), made up of representatives from all security agencies, was established through an administrative action.<sup>9</sup> The ATPU is a division within the police department. Further, in 2004, the National Counter-Terrorism Centre was launched.<sup>10</sup> These units depend on the National Security Intelligence Service for the information necessary for their operations.

The ATPU has been roundly condemned for its frequent violations of fundamental rights. Even so, the courts have been slow to step in and pronounce ATPU's operations illegal. Complaints against the unit range from *incommunicado* detention of suspects to torture and rendition of Kenyans as well as resident foreigners without due process.<sup>11</sup> It is said to operate outside official police guidelines; it arrests and detains suspects without observing police regulations, and detains them in various police stations – and moves them to other stations – all without entries in the official record known as the Occurrence Book.<sup>12</sup>

We now move to discuss the long drive to enactment of Kenya's anti-terrorism legislation.

## The Prevention of Terrorism Act

### a. The history

The journey to the enactment of the Prevention of Terrorism Act started with the publication of the Suppression of Terrorism Bill, 2003. This Bill, quickly drafted and published in reaction

<sup>5</sup>Chapter IV of Kenya's Constitution, 2010.

<sup>6</sup>ICJ report quoted in a press release by the Council of Europe Secretary General when calling for prudence in adoption of anti-terrorism laws, 14 November 2001.

<sup>7</sup>Res 2001/37 of April 23, 2001, Preambular Par 20; See also Res 2000/30, 1997/27 and 1998/47 of the Commission on Human Rights, available at <http://www.unhcr.ch/html/menu2/2/chr.htm>. Accessed on 2 June 2008.

<sup>8</sup>See Report of the *Ad Hoc* committee established by General Assembly Res 51/210 of December 1996 (UN DOC A/52/37 (1997) Annex Par 74 and 83).

<sup>9</sup>'Anti-Terrorism Centre Launched in Nairobi' *The East African Standard* (Nairobi), January 28, 2004.

<sup>10</sup>*Ibid.*

<sup>11</sup>See 'Muslims Decry Extra-Judicial Killings', <http://www.ciibroadcasting.com/2012/04/17/muslims-decry-extra-judicial-killings-2/>. Accessed on 2 July 2009.

<sup>12</sup>*Ibid.*



to September 11, had a tepid public reception and hostile debate. Muslims were particularly irked by what they saw as an American-led attempt to force through legislation unfriendly to Muslim interests. They felt that the government had joined in the war on Islam, not on terrorism.<sup>13</sup> Muslim leaders dismissed the Bill as a draconian document drafted with the intention of oppressing the Muslim minority.<sup>14</sup> As a result, there were protests and mass demonstrations against the Bill. The Bill was subjected to intense public debate and scrutiny and was eventually rejected in 2005.

Although 85 per cent of Kenyans are Christian, there is a vocal and assertive Muslim population. Several Muslim and non-Muslim NGOs, for example Muslims for Human Rights (MUHURI), the Kenya Human Rights Commission and the International Commission for Jurists Kenya Chapter maintained that the threat of terrorism may be met and dealt with by amending the penal code and the Criminal Procedure Act. The Muslim Forum for Human Rights, a Nairobi-based organisation, was quite vocal in this regard.<sup>15</sup>

In 2006, the government tabled in Parliament a new version of the Suppression of Terrorism Bill, renamed the Anti-Terrorism Bill. However, this was also severely condemned and shot down at parliamentary committee level. The criticism echoed that against the previous Bill: That it had an anti-Muslim slant; that its enactment would lead to legalising violations of fundamental rights; and that it embodied a global conflict between Islam and the West.<sup>16</sup>

As the opposition to the enactment of the legislation grew, so did the frequency of terrorist attacks. The public became restless.<sup>17</sup> The streets of Nairobi began to experience anti-Muslim protests. To contain these and bring to an end the budding religious conflict, the Inter-religious Council of Kenya -- comprising Christians, Muslims and Hindus -- issued a joint statement calling for enactment of an anti-terrorism law.<sup>18</sup> It was thought that a definite anti-terrorism law would close the gaps in the law and end the country's distress.<sup>19</sup> Public support grew, putting pressure on Parliament to give serious consideration to such a law.

<sup>13</sup>*The Daily Nation*, 7 September 2003. In a meeting held on September 6 in the Ugandan capital, Kampala, Islamic leaders from across East Africa said the war on terrorism was unfair to Muslims. Kenyan clerics said the Muslim community in Kenya had become the target of a proposed law drafted to fight terrorism. See also Kyama R., 'The Threat of Terrorism to Kenya' in Global Terrorism Analysis. Available at <http://www.jamestown.org/terrorism/news/article.php?articleid=2370154>. Accessed on June 4, 2015.

<sup>14</sup>During the parliamentary debate on the Bill, Billow Kerrow, an opposition parliamentarian, was quoted as saying: "It is a Bill that uses shock and awe tactics on its citizens while purporting to fight terrorism. In my view our government has gone out of its way to harass citizens ... by arresting, detaining, beating and violating their rights". *Daily Nation*, 7 December 2003

<sup>15</sup>Lind J. & Howell J., 'Counter-terrorism and the politics of aid: Civil society responses in Kenya', *Development and Change* (2010) 41(2) 335–53.

<sup>16</sup>*Ibid.*

<sup>17</sup>'Are Christian-Muslim relations under attack across East Africa?' *The East African*, 5 April 2012.

<sup>18</sup>The Association of Muslim Organisations in Kenya offered the initial muted support, which was quickly echoed by other Muslim organisations, such as MUHURI, SUPKEM, and the Empowered Muslim Youth Initiatives.

<sup>19</sup>The gravity of the situation in the country was seen when, on the morning of Sunday 30 September 2012, terrorists threw hand grenades into St Polycarp Anglican Church in Juja Road Estate, Nairobi, killing a nine-year-old child and injuring several others. See *The Star* 'Boy, 9, killed in church grenade attack' *The Star.co.ke*. 30 September 2012. Available at <http://www.the-star.co.ke/news/article-168/boy-9-killed-church-grenade-attack>. Accessed on 20 April 2013.



In July 2012, the Attorney General published the Prevention of Terrorism Bill, 2012. The issues under consideration were well-known and this time, with the attacks putting pressure on Parliament, were soon thrashed out. The debate was brief and positive and the Bill was passed. On October 12, 2012, President Mwai Kibaki assented to the Bill, making it law. It had thus taken Kenya ten years to enact a law that Uganda, for example, passed within months of publication of a Bill.

In December 2014, a special sitting was held in Parliament to deliberate on the Security Laws (Amendment) Bill, which sought to amend provisions of various laws related to security -- including the Prevention of terrorism Act (POTA). On 19 December 2014, the Bill was signed into law through a process that was criticised as too hasty<sup>20</sup> and in violation of public participation since it was not made accessible following its publication.<sup>21</sup> Moreover, numerous sections of the Bill were criticised as being in contravention of the constitutional protection of freedoms and human rights. Subsequently, the High Court declared eight sections of the Security Amendment Laws unconstitutional. These included proposed amendments to the POTA as will be discussed herein.

## b. Key Features of the Prevention of Terrorism Act

In many respects, this legislation has an unprecedented reach. It creates a number of ill-defined offences, with an enlarged scope, extending the reach of criminal law into new areas and establishing stricter sanctions for ordinary offences.

The main problems with the Prevention of Terrorism Act lie in the definition of terrorism, the proscription of organisations, the investigation of terrorism offences and the treatment of property seizure and forfeiture.

In a shift of the balance between security and human rights, the Act elevates security concerns over all other rights. The recourse to extended and undefined periods of detention of terror suspects revives the repealed detention-without-trial provisions.<sup>22</sup> This threatens the gains the country has made in human rights protection and marks a drastic retrogression from a free society. The fear that the Act may be used to silence alternative political thought, and to limit freedom of association and expression, is not entirely without foundation.

It is observed that the Act is a move away from ordinary criminal law in the handling of terrorism offences; from a fixation with punishment of terrorist acts to prevention. It gives the Judiciary a role in the investigation and prevention of crime, quite unlike its function in conventional judicial responsibility.

<sup>20</sup>Human Rights Watch (2015) 'Kenya: Security Bill tramples basic rights. Lawmakers should reject amendments', 13 December 2015; FIDH (2014), 'Kenya: The Security Laws (Amendment) Act must be repealed', December 19, 2014.

<sup>21</sup>Kenya National Commission on Human Rights (2014), *Advisory on The Security Laws (Amendment) Bill, 2014*.

<sup>22</sup>Conboy K., 'Detention without trial in Kenya' 8 (2), *Georgia Journal of International and Comparative Law* 441-461.

The text of the Act combines two counter-terrorism measures: It seeks, first, to criminalise the offence of terrorism and, secondly, to prevent, disrupt and avert incidents of terrorism before they occur.

On the first level, the Act aims at preventing terrorist acts by prescribing heavy penalties for such crimes. Further, it creates new offences and provides for added police powers to aid in the collection of evidence, as well as for special offences and mutual legal assistance.

On the second level, the Act provides a framework for the control of terrorism that enables the detection of movement of explosives, exposure of terrorist organisations and prevention of their recruitment of new members. One would say that in this control or management context, the Act aims at future law enforcement, rather than crimes that have already taken place. This is in line with the current global shift away from reactive to more proactive methods of counter terrorism.<sup>23</sup> The idea is to institute a system of intelligence gathering that may be used to pre-empt an attack in its planning stage. Given the large number of fatalities in any terrorist incident, pre-emption is the best defence strategy.<sup>24</sup> Pre-emption relies heavily on security intelligence, which is the basis of all executive action and, accordingly, the powers conferred on security forces to obtain it are wide and extensive.<sup>25</sup> However, the problem with intelligence obtained in this manner is that it is often portrayed as unquestionable and infallible.

Under the Act, intelligence is the basis on which a Cabinet Secretary acts to deprive an entity of its legal status;<sup>26</sup> the foundation on which a police officer may apply for a warrant to enter and search premises<sup>27</sup> or arrest a person without a warrant.<sup>28</sup> Such intelligence may sometimes be patchy, fragmented and uncertain.

The difficulty with placing blind faith in intelligence is increased, not reduced, by the fact that the Executive is often an interested party in the decision based on the intelligence and will choose to rely on it even when better judgment suggests otherwise. Intelligence is often a matter of presentation and interpretation of facts. A dispassionate construction of facts and the conclusion drawn from them is not possible when there is an interest in the result. Punitive decisions taken on intelligence without the benefit of hearing the other side of the story will time and again be found to bear negatively on the fundamental rights and freedoms of the individual.

<sup>23</sup>Crelsten, R.D., & Schmid, A., *Western Responses to Terrorism* (1993) 310. The authors examine and dismiss 'reactive counter-terrorism policy' as short-sighted, incident-driven and focused on past events. See also Bassiouni *Legal Responses to International Terrorism: US Procedural Aspects* (1988) xlii.

<sup>24</sup> See Livingstone, N.C., *Proactive Responses to Terrorism: Reprisals, Pre-emption and Retribution in International Law* (1990). Livingstone argues that legal means do not deter terrorists from acting. Bassiouni seems to support this view, being of the opinion that legal deterrence is ineffective, especially with regard to ideologically motivated terrorism. *Ibid*.

<sup>25</sup>Ss. 34 & 36.

<sup>26</sup>S 3 (1).

<sup>27</sup>S 34 (1).

<sup>28</sup>S 31.

### c. Definition

The Act does not define terrorism, but designates a range of incidents described as ‘terrorist acts’. Under the Act, a ‘terrorist act’ means an act or threat ranging from the use of violence, endangering the life of a person or creating a serious risk of health to the public or safety of the public or a section of it, or which results in serious damage to property. It also includes the release of any dangerous or hazardous, toxic or radioactive substances into the environment or the interference with an electronic system resulting in disruption of communication, financial, transport or essential services. The act or threat must be designed to intimidate or cause fear among the public or compel the government or an international organisation to do or refrain from doing any act. It may also be intended to destabilise the religious, political, constitutional, economic or social institutions of a country or an international organisation. Overall, the Act creates a broad ‘definition’ of terrorism, while expanding the State’s investigative and procedural powers.

It will be noted that the definition excludes a protest, demonstration or stoppage of work so long as these do not result in either violence or serious damage to property, or in any way endanger the life of a person.

This prolix characterisation of ‘terrorist acts’ is a testament to the difficulties associated with defining an occurrence with such multifarious features. An attempt to define ‘terrorist acts’ in the widest possible terms produces a result that is so broad and vague as to be useless.

As is evident, the long and wordy definition under the Act lays common penal code crimes open to being described as terrorism. For example, an act is a terrorist act if it involves the use of violence against a person, or results in serious damage to property, even if it is committed in the course of a lawful protest or demonstration.<sup>29</sup> This would inevitably include protests and riots, which may occur during workers’ strikes and union protests. Further, these crimes are covered under sections 220 and 339 respectively of Kenya’s Penal Code. Similarly, the use of firearms or explosives to create a serious risk to the health or safety of the public<sup>30</sup> is also covered under sections 340 and 235 of the Penal Code.

The Act perhaps demonstrates that ‘little more than an ambiguous threshold exists to differentiate terrorism from other violent crimes.’<sup>31</sup>

Of equal concern is the conflation of a threat and an actual action as constituting terrorism. At what level does a threat amount to terrorism? Is a person a threat merely by making a ‘threat’ or is some kind of paradigmatic threat required in order to meet the level of terrorism? Does the wording of the statute permit the State to base a prosecution on a prediction of dangerousness or does it need the threat to be translated into some kind of action? It does appear, though not entirely clearly, that the Act intends to treat a threat as an inchoate crime – similar to, but perhaps more embryonic than, an attempt.

<sup>29</sup>S 2 (a)

<sup>30</sup>*Ibid.*

<sup>31</sup>Scalabrino, M., ‘Fighting against international terrorism: The Latin American response’ in *Enforcing International Law Norms against Terrorism*, Andrea Bianchi (ed), Oxford, Hart (2004) 163, 165.

The uncertainty in the wording may be misconstrued to permit the State to prosecute on the basis of a predicted likelihood, not an actual occurrence. A mere suspicion, to commit a crime either as a threat or intimidation may amount to the offence of terrorism. This raises a concern that prosecutions may violate the fundamental right to freedom of speech. There certainly is a challenge in differentiating a religious or political outburst, made in the exercise of free speech, from a true threat to commit an act of terrorism.

In the absence of settled, unambiguous thresholds, the inclusion of ‘a threat’ within the definition can serve propagandist or geopolitical purposes.<sup>32</sup> Perhaps, a threat to commit an act of terrorism could constitute a separate offence with a lesser penalty.

The fact that Kenya defines ‘terrorist acts’ marks a departure from the practice in international conventions, in which the tendency has been to define ‘terrorists’ and not terrorism or ‘terrorist acts’. The reference to ‘terrorist acts’ is considered a near-objective description because it seeks to explain the defining elements of such acts, therefore seeking to establish a structured, normative standard for concluding that someone is a terrorist.

Defining terrorist acts has the benefit of keeping the focus on specific types of action and making it easier to draw a distinction between the outlawed acts and other forms of armed resistance.

This notwithstanding, it is apparent that under the Act, the definition of a ‘terrorist act’ is wide enough to include conduct that does not fall within popular perceptions of terrorism. While it excludes protests, demonstrations or stoppages of work, this is so only when these do not involve the use of violence, endanger the life of a person, create a serious risk to health or result in serious damage to property.<sup>33</sup> An observation may be made here: Protests or demonstrations are by nature uncontrolled mass activities. Any resulting injury or damage to property does not amount to a terrorist activity. In making such a limited exception, the definition in effect bans protests, workers’ demonstrations and all forms of advocacy.

#### d. Proscription Regime

Part II of the Act gives the Inspector General (IG) of the National Police Service authority to advise the Cabinet Secretary<sup>34</sup> to declare an entity a ‘specified entity.’ In making this recommendation, the IG acts on ‘reasonable grounds to believe that an entity has committed or attempted to commit or participated in or facilitated the commission of a terrorist act’<sup>35</sup> or that an entity is ‘acting on behalf of, at the direction of or in association with a specified entity.’<sup>36</sup>

<sup>32</sup> Raimo, T., ‘Winning at the expense of law: The ramifications of expanding counter-terrorism law enforcement jurisdiction overseas’ (1999) 14 *Am Univ Int LR* 1482–1485, 1483.

<sup>33</sup> S 2 (b).

<sup>34</sup> S 3 (1).

<sup>35</sup> S 3 (1) (a).

<sup>36</sup> S 3 (1) (b).

Upon being satisfied that there are reasonable grounds to support the recommendation of the IG, the Cabinet Secretary is empowered to gazette the entity<sup>37</sup> as a specified entity, whereupon that body is treated, in law, as a terrorist group.<sup>38</sup>

Once a declaration has been made, a range of offences apply to persons who are linked to that entity, including; dealing in property owned or controlled by terrorist groups;<sup>39</sup> soliciting for and supporting terrorist groups or committing terrorist acts;<sup>40</sup> providing weapons to terrorist groups; recruitment of members of a terrorist group;<sup>41</sup> training and directing of terrorist groups<sup>42</sup> and persons<sup>43</sup> and arranging meetings in support of terrorist groups.<sup>44</sup>

The proscription regime has been used successfully elsewhere with varying reactions.<sup>45</sup> Critics point out that Executive proscription threatens the rule of law, violating its core requirements, such as the principle of individual responsibility, and eroding the role of the courts in judging criminal responsibility.<sup>46</sup> It is also said that proscription offends fundamental freedoms, such as the freedoms of association and expression.<sup>47</sup> This view may not pass unchallenged. Today's vicious and indiscriminate form of terrorism has no precedent. Containing it needs all available methods, including banning entities reasonably suspected of involvement in terrorism. Proscription enables the Executive to forestall terrorist activities and curtailing actual and potential sources of support.

Given the breadth of the proscription regime, it is slightly comforting that the rule contains certain measures intended to act as safeguards against its abuse. Before recommending proscription, for example, the IG is required to afford the entity a hearing to demonstrate why it should not be declared a specified entity.<sup>48</sup>

Also, once a declaration has been made, the Cabinet Secretary is required to inform the entity of the decision and provide it with the reasons for that action within seven days.<sup>49</sup>

<sup>37</sup>Under S 2 (1) of the Act, an 'entity' is defined as a person, group of persons, trust, partnership, fund or an incorporated association or organisation.

<sup>38</sup>Under S 2(1) 'terrorist group' means (a) an entity that has as one of its activities and purposes, the committing of, or the facilitation of the commission of a terrorist act; or (b) a specified entity.

<sup>39</sup>S 8.

<sup>40</sup>S 9.

<sup>41</sup>S 11.

<sup>42</sup>S 13.

<sup>43</sup>S 14.

<sup>44</sup>S 25.

<sup>45</sup>Golder B. & Williams G., 'Balancing national security and human rights: Assessing the legal response of Common Law Nations to the threat of terrorism' *Journal of Comparative Policy Analysis* 8 (2006) 43

<sup>46</sup>Hogg R., 'Executive proscription of terrorist organizations in Australia: Exploring the shifting border between crime and politics' in Gani M. & Mathew P. (eds.) *Fresh Perspectives on the 'War on Terror'* (2008) 297.

<sup>47</sup>*Ibid.* Some invoke Justice Dixon's warning in the case of *Australian Communist Party v Commonwealth* (1951) 83 CLR 1 [178] in which the High Court struck down the most famous attempt by an Australian government to ban a political organisation: 'History and not only ancient history, shows that in countries where democratic institutions have been unconstitutionally superseded, it has been done not seldom by those holding the Executive power.'

<sup>48</sup>S 3 (2)

<sup>49</sup>S 3 (4)

Most importantly, the entity may apply to the High Court to have the declaration lifted.<sup>50</sup>

In this way, the Act guards against Executive misuse of proscription.

There is a problem, however, with the conduct of a court hearing to review a proscription order. If a Cabinet Secretary requests, the court may receive certain evidence in the absence of the applicant, 'if it is considered that disclosure of that information would be prejudicial to national security or endanger the safety of any person.'<sup>51</sup>

While safeguarding national security is important, a decision to withhold information that has been used to proscribe an entity should be used sparingly. This is because the provision raises two concerns; first, fair trial and, secondly, effective remedy interests. If a court is seized of information not in the knowledge of the applicant, how are they to respond to it? It is a fundamental right to know the case against you and this is 'indisputably part of customary international law'.<sup>52</sup>

The proscription of an entity has far-reaching implications. Quite significantly, if an entity is proscribed based on information not known to it, justice may not be seen to have been done, thus undermining public confidence in the fairness of the legal system. Two additional fears may be raised. First, if an entity has been banned for the commission of a terrorist act, a court may defer to the Executive, making negative inferences on information not made available to the entity. Secondly, there are similar provisions in the National Security Intelligence Service Act, whereby legal decisions are based on intelligence not available to the public.<sup>53</sup> The Act, therefore, appears to expand the culture of secrecy in making critical decisions that may have negative consequences in the human rights realm.

On the other hand, terrorism has brought home to many the importance of national security. Nonetheless, it is essential that courts' discretion and flexibility in decision-making are not interfered with by the introduction of secret evidence unknown to the affected applicant.

In theory, a court may still rule against the Executive, even in the face of information undisclosed to the applicant, but this will be difficult since that information will remain uncontested. Even accepting that there may be situations where it is legitimate for a court to receive confidential information, there should be a mechanism permitting special advocates representing the applicant to attend court and interrogate the material on their behalf.<sup>54</sup>

<sup>50</sup>S 3 (7): (7) A specified entity, which is aggrieved by the decision of the Inspector-General under subsection (6), may apply to the High Court for a review of that decision within a period of sixty days from the date of receipt of the decision.

<sup>51</sup>S 3 (9).

<sup>52</sup>*Hamdan v Rumsfeld*, 126 S.Ct 2749 (2006).

<sup>53</sup>S 22 (8) of the National Security Intelligence Services Act no. 11 of 1998.

<sup>54</sup>A special advocate is a specially appointed, security-cleared lawyer who acts in the interests of a party to proceedings when that party, and the legal representative, have been excluded from attending closed hearings or accessing certain evidence. A special advocate's relationship with the relevant party is different from the relationship between the ordinary lawyer and his or her client. The special advocate is not responsible to the relevant party. He is able to access excluded materials and make submissions in the party's interest but cannot communicate with the relevant party about the material. Special advocates have been used in the United Kingdom and Canada in proceedings where a party to proceedings (and their legal representative, if they have one) have been excluded from attending hearings or viewing material relevant to proceedings. While the special advocate procedures are not ideal, they may provide a substantial measure of procedural justice not otherwise available when a party represents themselves or are not present during proceedings.

This is the only way a court may balance the competing interests of national security and fundamental rights.

A critical weakness in the use of special advocates is that they may not, in the course of duty, take instructions from the client and are therefore unprepared to challenge the legitimacy or factual nature of the undisclosed materials.

## e. Terrorist offences

A number of observations may be made regarding Part III of the Act, which creates a range of offences for conduct preparatory to a terrorist act, and sets down penalties. First, in many instances the Act provides for mandatory sentences, negating judicial discretion.<sup>55</sup>

A number of examples strengthen this observation. In seeking to deter and punish terrorist acts, the Act provides for a term not exceeding 30 years imprisonment for an act of terrorism<sup>56</sup> and increases this sentence to life imprisonment if the act results in the death of another person.<sup>57</sup>

The Act outlaws fundraising and any other support for terrorist acts<sup>58</sup> and the use or possession of terrorist property.<sup>59</sup> The latter is defined as ‘proceeds from the commission of a terrorist act, money or other property which has been, is being, or is intended to be used to commit a terrorist act, or money or other property which has been, is being, or is intended to be used by a terrorist group.’<sup>60</sup>

The restrictive words in this section seek to absolve innocent donors, because guilt is attributed when a person makes a contribution ‘intending, knowing or having reasonable grounds to believe that such property, funds or service shall be used for the commission of an act of terrorism.’<sup>61</sup>

The prohibition against collection or donation of property extends the reach of the criminal law in three significant ways. First, it allows prosecution of persons who facilitate acts of terrorism but are not themselves actively engaged. This includes persons who aid proscribed organisations. Secondly, it permits prosecution if the Executive can show that the contribution specified in the charge was directed to a terrorist organisation; the donor then has to show that they had no reasonable grounds for believing that such contribution could be used to advance terrorist activities.

<sup>55</sup>Ss 4–10.

<sup>56</sup>S 4 (1).

<sup>57</sup>S 4(2): Where a person carries out a terrorist act, which results in the death of another person, such person is liable, on conviction, to imprisonment for life.

<sup>58</sup>S 5.

<sup>59</sup>S 6.

<sup>60</sup>S 2.

<sup>61</sup>S 5. This accords with criminal law requirements of *mens rea*. See Codification of Criminal Law: General Principles; The Mental Elements in Crime (1970) 41–47.

Thirdly, the section potentially criminalises contributions to all organisations, be they harmless youth groups or religious charities.<sup>62</sup>

The wording of Section 5 is clear.<sup>63</sup> Not only money, but also aid in the shape of ‘property’<sup>64</sup> or a ‘service’, are prohibited.<sup>65</sup> This covers all manner of help other than money and may include provision of a car or driving a terrorist to their target. In essence, the section establishes the offence of being an accessory through the provision of such aid.

It is self-evident that the law should prohibit gifts intended to aid terrorism. The difficulty is that it is not always possible for a donor to know beforehand how the resources will be used. Without such knowledge the *mens rea* is absent and a conviction may be a violation of the accused’s freedom. It should be remembered that ‘before a conviction there must be knowledge that a crime of the type in question was intended’.<sup>66</sup>

There is another difficulty inherent in this section. When a contribution is made in money, how is the donor to know, or the prosecutor to prove, that part of the money that went into an account was used for terrorism, while the rest was for a legitimate cause?

Further, Section 5 may be covered by an amendment to the penal code, specifically to the section prohibiting management of prohibited organisations.<sup>67</sup> This would serve the same purpose but remove the infamy associated with terrorism from this ordinary crime.

In order to introduce a ban on any financial arrangements that may aid terrorists, the Act forbids involvement in an arrangement to facilitate the retention or control by or on behalf of another person of any terrorist property.<sup>68</sup>

Section 8 of the Act criminalises dealing in property owned or controlled by terrorist groups.<sup>69</sup> A person may exonerate themselves of this offence on evidence that they took all reasonable steps to satisfy themselves that the property was not owned or controlled by or on behalf of a terrorist group.<sup>70</sup>

<sup>62</sup>Supra n 5.

<sup>63</sup>A person who, directly or indirectly, collects or provides or invites a person to provide or make available any property, finance or a service intending, knowing or having reasonable grounds to believe that such property, finance or service shall be used (a) for the commission of, or facilitating the commission of a terrorist act; or (b) to benefit any person or terrorist group involved in the commission of a terrorist act, commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

<sup>64</sup>The Act defines “property” as assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets and includes funds;

<sup>65</sup>Unfortunately no definition is given of a “service”.

<sup>66</sup>*R v Bainbridge* (1960) 1 QB 129 at 134, per Parker LCJ. Goddard LC stated in *Johnson v Youden*: “Before a person can be convicted of aiding and abetting the commission of an offence, he must at least know the essential matters which constitute that offence.” [1950] 1 KB 544 at 546.

<sup>67</sup>Chapter IX Penal Code.

<sup>68</sup>S 7.

<sup>69</sup>‘Terrorist property’ means (a) proceeds from the commission of a terrorist act, money or other property which has been, is being, or is intended to be used to commit a terrorist act; (b) money or other property which has been, is being, or is intended to be used by a terrorist group; or (c) any property belonging to a specified entity.

<sup>70</sup>S 8(2).



Soliciting support for and giving support to terrorists is prohibited and subject to a possible prison term of 20 years.<sup>71</sup>

Similarly, harbouring of terrorists,<sup>72</sup> including concealing the presence of a person who is a member of a terrorist group or has committed a terrorist act, is an offence. But how is a person to know that someone has committed a terrorist offence or is a member of a terrorist group? This provision places at risk family members of terror suspects who may not know of the activities of their kin.

In an attempt to cast the net broadly, the Act prohibits a range of activities related to the commission of terrorist acts: Provision of weapons to terrorist groups;<sup>73</sup> direction of the commission of a terrorist act;<sup>74</sup> recruitment of members for a terrorist group;<sup>75</sup> and training and direction of terrorist groups and persons.<sup>76</sup> The criminalisation of these activities is intended to isolate terrorists and deny them any assistance.

The Security Laws (Amendment) Act (SLAA) 2014, sought to introduce new terrorism offences by inserting Section 30A to the POTA, which criminalised the ‘publication of offending material’ -- here referring to statements likely to be understood as directly or indirectly encouraging or inducing another person to commit or prepare to commit an act of terrorism. It also sought to insert Section 30F of the POTA, which creates the offense of “Prohibition from broadcasting” imposing liability on any person who, without authorisation from the National Police Service, broadcasts any information that undermines investigations or security operations relating to terrorism. However, these sections were declared unconstitutional by the High Court.<sup>77</sup>

## f. Disclosure of Information

The Act criminalises various acts dealing with information about terrorism investigations. Under Section 19, it is an offence to disclose ‘anything’, which is likely to prejudice an investigation or to interfere with material relevant to an investigation. The charge is based on ‘knowing or having reasonable cause to suspect’ that an officer is conducting an investigation under the Act. This is reinforced by Section 41(1), which imposes a duty to disclose information relating to terrorist acts. Under this section,<sup>78</sup> a person who has any information relevant to preventing a terrorist act or securing the arrest or prosecution of a person who has committed such an offence must disclose it to police.

<sup>72</sup>S 10.

<sup>73</sup>S 11.

<sup>74</sup>S 12.

<sup>75</sup>S 13.

<sup>76</sup>S 14.

<sup>77</sup>Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya and 10 others [2015] eKLR

<sup>78</sup>S 41.

The guilt of an accused under Section 19 is dependent on their ‘knowing or having reasonable cause to suspect.’ There is a more general formulation in Section 41 where a blanket phraseology is used.<sup>79</sup>

The *mens rea* in both sections is less specific than if the words ‘knows or believes’ had been used.

Under the Act, the duty to disclose information does not provide any avenue for the accused to evaluate the significance of the information. How is one to know that some information is relevant in preventing a terrorist act?<sup>80</sup> Or, indeed, securing an arrest? Isn’t that the domain of police work? Under the provisions related to handling of information, a person may be guilty by inertia – either by not volunteering information or not knowing that the information is relevant.

Offences relating to handling of information are, to some extent vague, particularly because there is no limitation or exception where the presumption of knowing is based on a close personal relationship, for example, wife and husband, or children and parents. It is commendable that Section 41(2) establishes an exception to privileged communication protected under any written law. This would cover the client–advocate relationship, or any relationship establishing levels of confidentiality. Another concern is the fact that the information provisions appear to raise the possibility of self-incrimination. Does the privilege against self-incrimination provide a safeguard for silence as a defence?

There is a general principle that where a statute imposes a duty to disclose, it inherently grants immunity from prosecution,<sup>81</sup> but if Parliament wanted to remove the possibility of self-incrimination it should have made specific exceptions to sections 19, 41 and 42.

It appears that the purpose of the handling of information provisions is to compel persons to volunteer information. Nevertheless, they threaten self-incrimination and prosecution of persons who may not reasonably suspect that they possess information that could be used in a terrorism prosecution.

In its ruling, the High Court considered that sections 30A and 30F inserted to the Act by the SLAA violated the rights to freedom of expression and of the media under articles 33 and 34 of the Constitution. The judges stated that the laws were too vague and imprecise, noting that “a law that limits a fundamental right and freedom must not be so vague and broad, and lacking in precision, as to leave a person who is required to abide by it in doubt as to what is intended to be prohibited, and what is permissible.”<sup>82</sup>

<sup>79</sup>A person who, knowing or having reasonable cause to suspect that an officer is conducting an investigation under this Act, (a) discloses to another person anything which is likely to prejudice the investigation; or (b) interferes with material which is relevant to the investigation, commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

<sup>80</sup>S 19(b) criminalises interference with material ‘which is relevant to an investigation’.

<sup>81</sup>Herbert, B., ‘Immunity from prosecution versus privilege against self-incrimination’ 28 (1953) *Tulane LR* 1–21.

<sup>82</sup>*Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya and 10 others* [2015] eKLR: para 275; 279.

There is genuine concern that legal provisions compelling disclosure of information may create an ‘informer’ society and weaken personal loyalties within families or social groups. The provisions also impact on the work of journalists who interview terrorism suspects and their sympathisers because they may face prosecution on the strength of information received in the course of their work.

### **g. Powers of Arrest**

A police officer suspecting on ‘reasonable grounds’ that someone has committed or is committing an offence under the Act may arrest them.<sup>83</sup> This enables the police to arrest and interrogate suspects to obtain evidence on a past or on-going criminal activity. The power of arrest under this section covers general suspicion and is not linked to any specific offence. The arrest is effected as a first step, to aid investigations.

In essence, the Act establishes the possibility of arrest without a warrant, permitting questioning without suspicion on any specific offence, thereby encouraging open arrests and long periods of detention unconnected with particular incidents. Use of this provision may extend to oppressive practices by the police and may be open to blackmail.<sup>84</sup> People fearing arrest may also be reluctant to volunteer information to the police. This is contrary to the spirit of the Act and unhelpful to police investigations.

Under Section 31, the only reason for arrest is ‘suspicion of commission of an offence’. Unlike Section 32, Section 31 permits indefinite periods of detention because it is silent on the duration a suspect may be held before being produced in court.<sup>85</sup> The practical effect of this section is that the police may detain a person who is suspected of committing a terrorist offence for a period longer than 24 hours but must release a known member of a terrorist organisation within 24 hours of arrest.<sup>86</sup> In essence, this open provision may be used to arrest persons for other minor offences unrelated to terrorism. Further, persons may be arrested not only on grounds of personal involvement in terrorism but on mere association with suspects.

The principal purpose to be served by Section 31 is the gathering of intelligence that may deter terrorism. Perhaps while terrorism remains a substantial threat, this provision may be excused. It will, however, be seen that this provision poses a legal challenge in the judicial determination of ‘reasonable grounds’, which may warrant an arrest.

<sup>83</sup>S 31.

<sup>84</sup>See ‘Police Raids Alienate Kenya’s Largest Ethnic Minority’ available at <http://www.voanews.com/content/violent-eastleigh-police-raids-alienating-kenyas-ethnic-somali-minority/1551714.html>. Accessed on 3 January 2013.

<sup>85</sup>32(1) ‘A person arrested under section 24 (referred to as the suspect) shall not be held for more than twenty four hours after his arrest...’

<sup>86</sup>Ibid.

<sup>87</sup>S 21(2) If a person forcibly resists the endeavor to arrest him, or attempts to evade the arrest, the police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section shall justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender.

At a minimum, there must be a requirement for ‘sufficient reason’ to influence a reasonable person to believe that an offence has been committed.

What the section requires, however, is ‘reasonable grounds’. This is a low threshold, which endangers the liberty and freedom of individuals.

The Criminal Procedure Act<sup>87</sup> provides that an arrest may be effected using such force as is necessary in the circumstances. The Prevention of Terrorism Act does not provide any guidelines regarding arrests. Presumably, the provisions in the Criminal Procedure Act apply even in terrorism investigations. Unfortunately, there have been complaints from suspects and their families alleging excessive use of force in either arresting or obtaining information from them. Excessive force, including, apparently, ‘shoot to kill’ orders against terrorism suspects threatens the rule of law and the right of suspects to a trial and due process.<sup>88</sup> In the absence of a legal provision, strict rules should be provided for police arrest procedures.

#### **h. Detention Following Arrest**

Whereas there is no fixed period of detention for a person arrested for purposes of terrorism investigations,<sup>89</sup> a person arrested for being a member of a terrorist group may be held for only 24 hours after the arrest unless the suspect is produced in court and an order is made for continued detention, or when it is not practicable to produce the suspect in court within that period.<sup>90</sup>

The period for detention of a member of a terrorist group has been radically reduced and ring-fenced with various conditions, making it difficult to hold persons without the risk of a court challenge. The provisions regarding a suspect’s right to be released demonstrate the balancing that was done during the drafting and parliamentary debate on the Act, and manifest a curious attention to detail on the process of obtaining an order allowing the holding of a suspect outside the 24-hour period.<sup>91</sup>

A police officer who wishes to hold a suspect beyond the permissible period must apply to court for an order and must disclose the nature of the offence; the general nature of the evidence against the suspect; the extent of inquiries made and the reasons for the continued holding of the suspect.<sup>92</sup>

<sup>88</sup>In April 2007, over 50 armed Anti-Terrorism Police and General Service Unit Officers raided houses in Mombasa taking suspected terrorists from their beds and arresting them without warrants. The houses were ransacked while the unit’s officers shot without provocation, beat up suspects and took money and jewellery. After the raid, almost all the arrested persons were released without charge, showing that the force used in the arrest was probably not merited. See, ‘Stamping Out Rights: The Impact of Anti-terrorism Laws on Policing’ By Commonwealth Human Rights Initiative, CHRI Report, 2007.

<sup>89</sup>S 31.

<sup>90</sup>S 32.

<sup>91</sup>S 33.

<sup>92</sup>S 33 (1).

The High Court maintained constitutionality of Section 15 of the SLAA inserting Section 36A of the CPC, which allowed police officers to detain suspects for longer than 24 hours where deemed necessary, provided the arrested person is produced in court, application is made for extension of time and due process is followed considering the right of the accused to object to the application and to be heard.

In a further deliberate effort to protect the rights of suspects, the Act lays down matters a court should consider in the exercise of its discretion to release a suspect being held for terrorism investigations.<sup>93</sup> Considering this right of the accused to bail and bond, under Article 49 (1) (h) of the Constitution, the High Court also declared that Section 20 of the SLAA -- which amended Section 364A of the Criminal Procedure Code (CPC) -- was unconstitutional for purporting to allow, in cases under POTA and select statutes, the stay of a bail order granted by a subordinate court, where the Director of Public Prosecution (DPP) has indicated an intention to apply for review of the order, for a further period of (14) days pending the filing of the application for revision.

The High Court also sought to protect the rights of suspects by declaring as unconstitutional Section 16 of the SLAA and Section 42A of the CPC. These provisions allowed the prosecution, in proceedings under the Prevention of Terrorism Act,<sup>94</sup> to withhold certain prosecution evidence until “immediately” before the hearing of a criminal trial. This was allowed if the evidence risks facilitating the commission of other offences or if it is not in the public interest to disclose such evidence or when there are grounds to believe that disclosure of the evidence could lead to attempts to persuade a witness to retract his original statement or not appear in court. The court ruled that this was in violation of the right of an accused person to be informed in advance of the evidence the prosecution intends to rely on as provided under Article 50(2) (j) of the Constitution.<sup>95</sup>

## i. Power to Gather Information

The Act gives police powers of search and interrogation for purposes of investigating an offence.<sup>96</sup> These powers are put into operation through an *ex parte* application to a magistrate, who may grant an order for the gathering of information if he is satisfied that there are reasonable grounds for believing that an offence has been or is likely to be committed; that it is necessary to obtain information about the offence or the whereabouts of a suspect; and that the person to whom the order is directed has material information relating to an offence. In making the order, the court may require the examination of a person or of any information relevant to an investigation.

<sup>93</sup>Ibid.

<sup>94</sup>As well as the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organised Crime and Anti-Money Laundering Act and the Counter-Trafficking in Persons Act (“the Select statutes”).<sup>95</sup>Kenya Law Reform Commission (2015) ‘Security Law Amendment Act Ruling’, <http://www.klrc.go.ke/index.php/media-center/523-security-law-amendment-act-ruling> (Accessed on February 22, 2018)

<sup>96</sup>S 34.

While a person under investigation may refuse to answer a question or produce any document unless a court makes a compelling order, a court may issue the order notwithstanding that an answer to a question may incriminate that person. This is contrary to Article 49(1) (b) of the Constitution, which grants a suspect the right to remain silent. There is fear, also, that magistrates may be turned into processing chambers, issuing orders at the behest of the police without sufficient scrutiny. It might, perhaps, be better if this power were vested in the High Court, where proper examination and inquiry is possible. Further, a court's discretion to order a waiver of the right to silence is so extensive as to override information protected by law. In making an order requiring examination, a court is given no guidance on how that is to be conducted. The Act is also silent on the conducting of personal searches.

In sum, all privileged and special procedure materials and confidential information are exposed upon issue of a court order. Section 34(1) does not specify the rank of police officer that may apply for an *ex parte* order. Any officer of any rank may apply. This lowers the standard of protection. In Uganda, for example, only an officer above the rank of inspector may, on oath, apply for such an order.

Section 69 of the SLAA introduced Section 36A of the Act, which permits national security organs to intercept communication for the purposes of detecting, deterring and disrupting terrorism in accordance with procedures to be prescribed by the Cabinet Secretary. This, read together with Section 56 of the SLAA, amends the National Intelligence Service (NIS) Act by empowering the Director-General of the NIS to give instructions during 'special operations'<sup>97</sup> authorising NIS officers to obtain any information, material, record, document or thing for preservation of national security. The High Court, ruling on the constitutionality of these provisions, found these two sections to be justifiable limits on the right to privacy as they are necessary for detection, disruption and prevention of terrorism, also adding that there are no less restrictive ways of achieving that purpose considering the nature of terrorism and the manner and sophistication of modern communication.<sup>98</sup>

## 4. Significant Features in Kenya's Act

First, the definition of 'terrorist acts' is broad, greatly extending the scope of terrorism beyond actual violent acts intended to cause death or serious bodily harm or destruction of property. This has opened the legislation to the possibility of abuse, making it available as a tool to be used against civil dissenters as well as political protesters.

<sup>97</sup>"special operations" means measures, efforts and activities aimed at neutralising threats against national security. See Section 69, Security Laws (Amendment) Act 2014.

<sup>98</sup>Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya and 10 others [2015] eKLR: para 308.

<sup>99</sup>Kimathi A. et al, Horn of Terror (2008).

<sup>100</sup>Ibid.

<sup>101</sup>S 3.

<sup>102</sup>S 3 (4).

<sup>103</sup>Ss 3 (1) & 3(2).

A remarkable inclusion in Kenya's Act, which is completely absent from the Ugandan Act, is the central role of the Judiciary in terrorism investigations, requiring the police to obtain a warrant to detain suspects longer than the 24-hours permitted under the law and allowing proscribed groups the opportunity to challenge the ministerial action in court.

This permits instant redress and, in the event of Executive wrongdoing, an avenue for challenging the legitimacy of the action.

These safeguards are born of Kenya's experience in dealing with terrorism without specific legislation, for example, extraditing suspects to Ethiopia and the United States without due process.<sup>99</sup> The suspects were reportedly ill-treated and tortured and were not granted fair trials.

<sup>100</sup>

An important and disturbing element of the Kenyan Act is the way it expands Executive decision-making without concomitant checks and balances.<sup>101</sup>

A number of provisions in the Act are put into operation by the exercise of discretionary power that is not subject to scrutiny. For example, the power to proscribe an entity may be used and remain functional for a period of seven days before the entity must be informed of the decision.<sup>102</sup>

However, the Kenyan Act, although requiring only 'reasonable grounds' for proscription, sets down criteria for the exercise of discretion and allows organisations to oppose the intended proscription.<sup>103</sup> However, neither the criteria nor the opportunity to be heard are judicial constraints, since both rely on Executive decisions. The period in which the proscription may operate before the entity must be informed would at first instance appear to give the Executive a head-start in judicial petitions to review the decision and certainly violates the right to freedom of expression or association of innocent persons who hold any connection with the proscribed organisation. This may jeopardise any business or other legal connection the entity may have with other innocent organisations, which may also be prosecuted for associating with a specified entity.<sup>104</sup>

Notably, the Act provides for a judicial review of the Cabinet Secretary's decision.<sup>105</sup> This review, however, is restricted, because the court may receive certain information in the absence of counsel for the proscribed organisation.<sup>106</sup> Though there is no way to test the legitimacy of such information, the court may act on it. As a safeguard, it should be made mandatory that – unless a situation is extremely urgent – a judicial officer should approve all applications for the proscription of an organisation.

<sup>104</sup>Ss 8 & 13.

<sup>105</sup>S 3(7).

<sup>106</sup>S 3(9).

To strengthen this protection, and to provide a full audit of the exercise of this discretion, the Act ought to go beyond a provision for judicial review to a merits review so that a court may test the grounds upon which a decision to proscribe was made.

## 5. Before and Beyond the Law

For a long time, Kenya did not have anti-terrorism legislation. In frustration, the Executive relied on administrative law to secure the country. *However, because of the government's questionable legal mandate, its anti-terrorist activities have had significant effects on civil liberties. (This requires a further elaboration)*

Before the passing of the Act, the Executive dealt with terrorism through, *inter alia*, detention without charge; entry and search of premises without a warrant, and deportation of citizens and foreigners without extradition proceedings.<sup>107</sup> Then and now the government's activities jeopardised the normal functioning of a democracy.

Dicey writes that public officials may, in a time of emergency, act outside the law.<sup>108</sup> For their protection, Parliament may, after the fact, indemnify them through legislation. The indemnity does not legalise their actions but serves to afford them a shield against liability. Dicey's proposition permits the exercise of extra-legal power, allowing actions that may violate the law and the constitution. He considers that it may, at times, be justified to do this to save the State and the law itself from utter collapse.<sup>109</sup> This is not to say that Dicey preferred power uncontrolled by law, but to recognise his acknowledgement of extreme steps that may be necessary to control emergency situations.

Dicey distinguishes two legal responses to a situation of emergency. The first is an 'after the fact' reaction in which a State official may take certain justifiable action out of necessity and the second, in a situation of a clear legal mandate. Dicey prefers the second option but admits that the first is also available.<sup>110</sup> It appears that Dicey's standard for dealing with emergencies seeks to preserve the rule of law.<sup>111</sup>

There is a strong proposition that if a government needs to assume extraordinary powers to meet the violent threat of terrorism it must seek the mandate of the legislature, which may supply the instruments, by way of a statute, with accompanying restraints to check the misuse of those powers. Unfortunately, the government proceeded without legal authority, raising questions about its conduct regarding torture, involuntary detentions and due process.

<sup>107</sup>S 101.

<sup>108</sup>Supra n 1.

<sup>109</sup>Ibid at 64.

<sup>110</sup>Ibid at 111.

<sup>111</sup>See, Ferejohn J & Pasquino P., 'The Law of the exception: A typology of emergency powers' (2004) *International Journal of Constitutional Law* 210, 237-9



Concern about arbitrary arrest and detention is heightened by the fact that once terrorism suspects are placed in custody, they are not allowed access to either family or counsel, thus violating a constitutional right that should be available to all suspects. The situation is worse for foreign suspects, who are subject to arrest, detention and deportation without recourse to legal procedures. Immigration and all other authorised officers exercise immense powers over persons who may be *bona fide* asylum seekers, but who are treated like criminals by a system that does not recognise its international law obligations.

The case of *Farah Abdullahahi v The Republic* illustrates the situation that confronts persons suspected of terrorist involvement. Farah, born in Kenya but a citizen of Sweden, had visited relatives in Baidoa, Somalia. He had entered Somalia through Kenya. While in Somalia he realised that his visa to re-enter Kenya was about to expire. He chartered a plane, flew to the Kenyan border town of Daadab and renewed his visa. He then chose to continue on to Nairobi. On landing at Wilson airport in Nairobi he was arrested and detained for four days, ostensibly because he had entered Kenya without a visa. On being shown the valid visa, which had been issued at the border, the immigration officers declared the visa invalid and proceeded to cancel it. After being held for six days, Farah was deported to Somalia without any extradition proceedings. The ATPU forced him into a Somalia-bound plane and directed the pilot to offload him in Somalia regardless of the fact that Farah was being sought by the Somalia Federal Transitional Government and, being of a rival clan from the ruling party<sup>112</sup> was a likely candidate for torture in Mogadishu. From the foregoing, it is clear that the government of Kenya is party to ill-treatment of foreigners, even those who are in the country legally. Those who have no valid visa face even worse treatment.

Perhaps the worst aspect of Kenya's troubled anti-terrorism programme is the manner in which the government has dealt with foreign terrorism suspects and, in some cases, Kenyan citizens. Because the State has not been able to obtain a conviction in any of the terrorism-related prosecutions, the government has resorted to sending terrorism suspects out of the country, blatantly contravening both Kenyan and international law. It seems the government's policy is to use deportation as a means of bypassing extradition proceedings. Once arrested, detainees are given no opportunity to challenge their transfers to other countries and suits brought in court have been rendered nugatory by the government's demonstration that the subjects are out of the courts' jurisdiction. The usual procedure is to arrest a suspect, detain them in a secret location and forcibly remove them from the country without bringing them before a judicial authority, thereby deliberately circumventing the rule of law and undermining the principles of justice.<sup>113</sup>

<sup>112</sup>This is a matter in which I was personally involved as counsel for Farah.

<sup>113</sup>Supra n 100.

With regard to events such as arrest and rendition, there is a well-founded complaint of discriminatory practices directed at the vulnerable Muslim minority. The practice, associated with the profiling of terrorists in the international field, is to take precipitate action against a Muslim, not necessarily for what he has done but for the company he keeps.

This practice, starting with the 1998 American embassy bombing in Nairobi, gained notoriety with the deportation of hundreds of foreigners and Kenyan Somalis to Somalia or Ethiopia in the early part of 2007. These transfers came to be known as extraordinary renditions – the transfer of an individual to a foreign State, with the direct involvement of the Kenyan government, without due process and with no regard to whether the person would be subjected to torture or cruel, inhuman or degrading treatment.<sup>114</sup>

International human rights bodies have recorded a series of cases arising out of the Kenyan government's illegal deportations. Amnesty International reports that 'in 2007, at least 140 people (nationals of 17 different countries, including Kenya) were arrested by Kenyan authorities between December 2006 and February 2007 as they tried to enter Kenya from Somalia.'<sup>115</sup> They were detained in several places in Nairobi, including the Jomo Kenyatta International Airport. Most of the detainees were held for weeks without charge and some were reportedly tortured or otherwise ill-treated. Some were allegedly beaten by the police and forced to undress before being photographed. They were not allowed any contact with relatives. They were not allowed to claim asylum and were denied access to the UNHCR.<sup>116</sup>

In January and February 2007, at least 85 detainees were removed to Somalia and then to Ethiopia. By the end of 2007, more than 40 persons were still held incommunicado in Ethiopia.<sup>117</sup> Amnesty International's report is corroborated by Human Rights Watch, whose own findings indicate that between December 2006 and March 2007, 150 persons from 18 different countries were arrested at the Liboi and Kiunga border crossing points between Kenya and Somalia. The Kenyan authorities then transferred these individuals to Nairobi where they were detained in prisons and other detention facilities for periods that exceeded the length of time permitted for pre-trial detention under Kenyan law.

<sup>114</sup>The Torture Convention prohibits the transfer of a person to a State where '[t]here are substantial grounds for believing that he would be in danger of being subjected to torture'. For the purpose of determining whether there are such grounds, article 3(1) of the convention requires the competent authorities to take to account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

<sup>115</sup>Amnesty International Report, 'Rendition in the Horn of Africa', available at <http://www.amnesty.org/en/news-and-updates/feature-stories/rendition-in-the-horn-of-africa-20070615>. Accessed on January 4, 2010.

<sup>116</sup>Kenya: *Amnesty International Report*, 2008, available at <http://therereport.amnesty.org/eng/regions/Africa/Kenya>. Accessed on 3 May 2008.

<sup>117</sup>*Ibid.* A more worrisome report relates to Abdi Mohamed Abdillahi. Abdi, a Kenyan of Somali heritage whose family is in Kenya, was arrested at Liboi in north-eastern Kenya on the Somali border in early January 2007 after fleeing from Mogadishu. He was detained at Garissa police station and later at various police stations in Nairobi. His family said that in mid-January, when they visited him at Karen police station, the police assured them that he would be released. On January 20, he was transferred by the Kenyan police and put on a chartered plane to Somalia. He was reportedly held in Mogadishu before his transfer in February 2007 to Ethiopia, where he is still detained.

While in detention, several foreign nationals, who were denied access to their consular representatives, were interrogated by American and /or other national intelligence services. At least 85 people were secretly deported to Somalia in what appears to be a joint rendition operation of those individuals of interest to the Somali, Ethiopian or US governments.<sup>118</sup> The report concludes that the Kenyan, Somali and US governments co-operated in a secret programme that involved arbitrary detention, expulsion and apparent enforced disappearance of dozens of individuals who fled the fighting between the Union of Islamic Courts and the joint forces of the Transitional Federal Government of Somalia and Ethiopia from December 2006 to January 2007. While Kenya has secretly expelled people, the Ethiopians have caused dozens to 'disappear' and US security agents have routinely interrogated people held incommunicado.<sup>119</sup>

<sup>118</sup>Human Rights Watch Report: 'People fleeing Somalia war secretly detained – Kenya, US and Ethiopia co-operate in secret detentions and renditions. Available at <http://www.hrw.org/English/does/2007/03/30/kenya15624.htm>.

<sup>119</sup>Gagnon G., Deputy Africa Director of Human Rights Watch, *supra* n 14. Human Rights watch obtained flight manifests for three flights from Kenya to Mogadishu and Baidoa, Somalia in January and February 2007. Each manifest listed names of several Kenyan police officers that accompanied the detainees.

## Conclusion

Unlike other States, Kenya had sufficient time to consider, examine and debate its anti-terrorism legislation. With this luxury of time, Kenya was, in some instances, able to craft a statute that complies with international human rights law.

In a limited scope, Kenya's Act manifests certain imaginative accommodations, which permit the State to provide security within the confines of the rule of law and a respect for human rights. For example, the design of the search and seizure provisions, the interception of communications and arrest of suspects reflect a more circumspect and judicious approach, perhaps borrowing from the experience of other States and frequent comments from civil society and human rights activists. Through such measures it may be said that the Kenyan model preserves the function of constitutionality while recognising the difference between the exception and the norm.

This has been achieved, not by permitting official lawlessness, but through general privative clauses – which exclude judicial review of certain actions -- and other substantive clauses, which do not sanction judicial review in general, except on particular grounds; for example, on the test of reasonableness. In this way, the Kenyan Act provides sufficient legal opportunity to adapt to the different situations to which it may need to apply.

## Bibliography

Amnesty International (2007) 'Rendition in the Horn of Africa', <http://www.amnesty.org/en/news-and-updates/feature-stories/rendition-in-the-horn-of-africa-20070615> (Accessed on January 4 2010).

Amnesty International (2008) 'Amnesty International Report 2008 – Kenya', <http://therereport.amnesty.org/eng/regions/Africa/Kenya> (Accessed on May 3 2008)

Bassiouni Legal Responses to International Terrorism: US Procedural Aspects (1988) xlii.

BBC News (2003) 'Kenya's Terror Bill Rejected', BBC <http://news.bbc.co.uk/2/hi/africa/3069211.stm>. (Accessed on November 7 2005).

Chesney, R. M. (2005) 'The sleeper scenario: Terrorism-support laws and the demands of prevention' (2005) 42 Harv J on Legis 1.

CII Radio (2012) 'Muslims Decry Extra-Judicial Killings', <http://www.ciibroadcasting.com/2012/04/17/muslims-decry-extra-judicial-killings-2/> (Accessed on 2 July 2015).

Conboy, K. (1978) 'Detention without trial in Kenya' Georgia Journal of International and Comparative Law 8 (2): 441-461.

Constitution of Kenya, 2010.

Crelsten, R.D. and Schmidt, A. (1993) Western Responses to Terrorism, New York: Routledge publishers

Daily Nation Friday July 4, 2003;

Elbusaidy, A.H.S. (2005) 'Islam in Kenya' in Solomon, H. (ed.) Islam in the 21st Century: Perspectives and Challenges, Pretoria: Centre for International Political Studies.

Ferejohn, J. and Pasquino, P. (2004) 'The Law of the exception: A typology of emergency powers', International Journal of Constitutional Law 210: 237-9.

Gogineni, R. (2012) "Police Raids Alienate Kenya's Largest Ethnic Minority," Voice of America <https://www.voanews.com/a/violent-eastleigh-police-raids-alienating-kenyas-ethnic-somali-minority/1551714.html> (Accessed on January 8 2018)

Golder, B. and Williams, G. (2006) 'Balancing national security and human rights: Assessing the legal response of Common Law Nations to the threat of terrorism' Journal of Comparative Policy Analysis 8: 43.

Goredema C. (2004) 'African Commitments to Combating Organized Crime and Terrorism', [www.iss.co.za/pubs/Other/ahsi/Goredema\\_Botha/pt2chap9.pdf](http://www.iss.co.za/pubs/Other/ahsi/Goredema_Botha/pt2chap9.pdf). (Accessed on November 5, 2010)

Herbert, B. (1953) 'Immunity from prosecution versus privilege against self-incrimination' Tulane LR 28: 1–21.

Hogg, R. (2008) 'Executive proscription of terrorist organizations in Australia: Exploring the shifting border between crime and politics' in Gani, M. and Mathew, P. (eds.) *Fresh Perspectives on the 'War on Terror'*, Canberra: Australian National University E Press

Kimathi, A., and Butt, A. (eds.) (2008) *Horn of terror*. Nairobi: Counter-terrorism Monitoring Project of the Muslim Human Rights Forum.

Kyama R., The Threat of Terrorism to Kenya in *Global Terrorism Analysis*, cited in Nyaundi, K. (2014) "How does the Implementation of Counter Terrorism Measures Impact on Human Rights in Kenya and Uganda?" Thesis Presented for the degree of Doctor of Philosophy in the Department of Public Law, Faculty of Law University of Cape Town.

Lind, J. & Howell, J. (2010) 'Counter-terrorism and the politics of aid: Civil society responses in Kenya' *Development and Change* 41(2): 335–353.

Livingstone, N.C. (1990) 'Proactive Responses to Terrorism: Reprisals, Pre-emption. and Retribution', in Kegley, Jr., C.W. (ed.) *International Terrorism: Characteristics, Causes, Controls*, New York: St. Martin's Press, Inc.

Masava, M. (2013) 'Anti-Terror Centre opened in Nairobi' *The Star* 02 March.

Raimo, T. (1999) 'Winning at the expense of law: The ramifications of expanding counter-terrorism law enforcement jurisdiction overseas' *Am Univ Int LR* 14.

Report of the Ad Hoc committee established by General Assembly Res 51/210 of December 1996 (UN DOC A/52/37 (1997) Annex Par 74 and 83).

Res 1998/47 of the Commission on Human Rights available at <http://www.unhchr.ch/html/menu2/2/chr.htm>. Accessed on 2 June 2008.

Res 2000/30, 1997/27

Res 2001/37 of 23 April 2001 Preambular Par 20;

Scalabrino, M. (2004) 'Fighting against international terrorism: The Latin American response' in Bianchi, A. (ed.) *Enforcing International Law Norms against Terrorism*, Oxford: Hart Publishing.

*Sunday Nation* August 31, 2003.

*The Daily Nation* 7 September 2003.

*The East African* 'Are Christian-Muslim relations under attack across East Africa?' *The East African* 5 April 2012.

*The Friday Bulletin*, *The Muslim News Update*, 2 July 2004.

The Star (2012) “Boy, 9, killed in church grenade attack,” The Star <http://www.the-star.co.ke/news/article-168/boy-9-killed-church-grenade-attack> (Accessed on April 20 2013)

Williams, G. (2011) ‘A Decade of Australian Anti-Terror laws’ Melbourne University Law Review 35.



# 4

Nerida Nthamburi

## Countering Violent Extremism: A Gender Perspective

The complex dynamic of the contemporary threat  
“underscores that we cannot cast women in any one role  
– they are perpetrators, supporters, victims.”

**Lakshmi Puri, Assistant Secretary-General (ASG) of UN  
Women, 2017**



## Introduction

Female violent extremists and terrorists are not a new phenomenon. History is replete with reports of women in violent extremist groups across the globe in the 1960s and 1970s in Europe, the Americas and the Middle East. Women have also been actively recruited by right-wing groups in Europe and the United States, including the Ku Klux Klan. In the 1990s and 2000s, the role of women in Islamist and jihadi terrorist organisations throughout the world was increasingly being acknowledged.<sup>1</sup> Internationally, there has been a growing realisation that long-term solutions for countering terrorism and violent extremism must involve a broader cross-section of society and also address issues such as gender inequality and human rights. There has been a gradual acknowledgment by States that violence against women perpetuated through extremist violence is a reflection of deeper systemic structures that perpetuate discrimination and violence against women. Not only does violent extremism threaten the peace and stability of communities, reports of extremist and terrorist groups have illustrated the disproportionate effect of sexual and gender-based violence against women and girls.

In 2013, the UN Security Council recognised the need to increase attention to women, peace and security issues when dealing with terrorism.<sup>2</sup> It adopted the UNSCR 2178 in 2014, which for the first time recognised the need to empower women as a mitigating factor to the spread of violent extremism and radicalisation. In October 2015, the UN Security Council unanimously adopted Resolution 2242 (2015), which situates the ‘women, peace and security agenda’ as a central component in efforts addressing violent extremism.

The resolution was adopted on the premise that gender inequality often buttresses violent extremism. Consequently, ensuring equality between men and women is crucial to preventing terrorism and extremism. The resolution, therefore, recommends that counter-extremism measures ought to take into account gender perspectives, especially through defining the role of women and girls in these counter-measures to ensure more nuanced and beneficial results.

Various counter-terrorism actors have also acknowledged that it is important for effective CVE efforts to take into account the multifaceted roles of women in violent extremism: They can be “enablers and actors of violent extremism” or “preventers of fundamentalism and extremism” or “crucial partners in CVE efforts”.<sup>3</sup> The Global Center on Cooperative Security has pointed out that the diversity of the roles of women in violent extremism should be reflected in the development of effective policies and programmes.<sup>4</sup>

<sup>1</sup>Mia Bloom, *Bombshell: The Many Faces of Women Terrorists*, London, Hurst, 2011.

<sup>2</sup>UNSCR 2122 and 2129

<sup>3</sup>Naureen Chowdhury Fink et al., *A Man's world? Exploring the Roles of Women in Countering Terrorism and Violent Extremism*, The Global Center on Cooperative Security, 2016, 5.

<sup>4</sup>*Ibid.*

In Kenya, in addition to women and girls being victims of extremist violence, there have been reports and anecdotal evidence of the increasingly visible role of women in extremist groups. There have also been discussions on the need for greater engagement with women in countering violent extremism more than ever before.<sup>5</sup>

With the understanding that integrating a gender perspective in CVE processes is a crucial step in counter-terrorism measures, this paper is based on the premise that a successful CVE strategy should explicitly involve parts of communities that have been historically disregarded in conventional approaches, especially women. The paper concludes with some reflections on integrating gender into CVE processes.

## Perspectives on Women in Terrorism and Violent Extremism

Since 2008, hundreds of Kenyans have travelled to Somalia to join the Al-Shabaab extremist group while Kenya has witnessed a surge in jihadist activity and extremist violence since 2011 and an increase in the recruitment and radicalisation of Kenyan youth.<sup>6</sup>

Faith<sup>7</sup> was 16 when she was abducted en route to Malindi to search of employment by suspected Al-Shabaab militants. She subsequently spent three years with her captors “in a forest”, believed to be Boni forest, in Kenya’s northern region bordering Somalia and believed by both Kenyan and US counterterrorism officials to be a hide-out for Al-Shabaab terrorists.<sup>8</sup> Raped and forced to work for her captors, Faith spent three years in the forest, became pregnant and gave birth before escaping and finding her way to Mombasa.<sup>9</sup> Since 2014, there have also been media reports of Kenyan security forces detaining young women suspected to be trying to leave the country with the intention of joining extremist groups in Somalia.<sup>10</sup> In 2013, Al-Shabaab terrorists attacked a shopping mall in Nairobi, killing 67 people. One of the alleged participants in the attack was a British female fighter suspected to have joined Al-Shabaab.<sup>11</sup>

Clearly, these are not isolated incidents. Researchers, journalists and practitioners have highlighted instances of women being seized and trafficked by extremist groups on the one hand, and on the other, women increasingly being recruited as militants or community mobilisers for these groups.<sup>12</sup> In Kenya, observers have noted that women play a key role in extremist groups as “both recruiters and reconnaissance agents, operating in predominantly female environments: Homes, schools and markets”.<sup>13</sup>

<sup>5</sup>IGAD Security Sector Program (ISSP) and Sahan Foundation, *Al-Shabaab as a Transnational Security Threat*, March, 2016, p.31

<sup>6</sup>Olga Bolgorad, *Kenyans on High Alert as Threat From Al-Shabaab Rises*, The Global Observatory, International Peace Institute, 2 March 2016.

<sup>7</sup>\*Not her real name.

<sup>8</sup>‘How Boni Forest became the warzone it is today’, *The Daily Nation*, 19 July 2017 <http://www.nation.co.ke/news/Boni-Forest-the-inside-story/1056-4022288-2kjq4z/index.html> Accessed on 20 July 2017

<sup>9</sup>‘Women trafficked from Kenya to ‘breed next generation of Al Shabaab fighters’, *The Star*, May 25 2017.

<sup>10</sup>‘TZ girl arrested en route to join Shabaab militants’, *The Citizen*, March 31 2016, Available via <http://www.thecitizen.co.tz/News/TZ-girl-arrested-en-route-to-join-Shabaab-militants-/1840340-2671154-ofqml3/index.html> Accessed on 20 July 2017

<sup>11</sup>‘The radicalization of Samantha Lethwaite, the Aylesbury schoolgirl who became the white widow’ *The Guardian*, 27 June 2014.

<sup>12</sup>‘Women taking a more Aggressive Role in Terrorism’, <http://kw.awcfs.org/article/women-taking-a-more-aggressive-role-in-terrorism/> Accessed on 5 July 2017

<sup>13</sup>‘Women Militants Go Unnoticed’, The Nordic Africa Institute. Available at <http://nai.uu.se/news/articles/2017/03/10/110150/index.xml>. Accessed on 20 July 2017.

Examining Kenya's counterterrorism efforts and legal systems, the issue of gender mainstreaming in countering extremism remains a peripheral issue rather than a central concern. For example, Kenya's National CVE strategy, which was drafted with the intention of setting out a more comprehensive and inclusive response to violent extremism, fails to take gender dynamics into consideration and makes no explicit mention of the role of women even while purposing to strengthen communities' efforts to resist radicalisation and extremism.<sup>14</sup>

## Constructing a Paradigm of Extremist Violence: Different Roles for Different Folks?

An argument can be made that extremist violence not only creates and reflects hierarchies of dominance, it is also reinforced by gender constructions within societies.<sup>15</sup> Women, already marginalised and discriminated against, are also disproportionately affected by terrorism-related sexual and gender-based violence, including -- but not limited to -- rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilisation and forced marriage, all used as deliberate tactics by extremist groups.<sup>16</sup>

The 2009 Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms notes the duality of vulnerabilities faced by women -- often caught between being the target of terrorist groups on the one hand and the State's counter-terrorism measures on the other. Sometimes, these counter-terrorism measures may fail to prevent, investigate, prosecute or punish these acts but end perpetrating new human rights violations with impunity.<sup>17</sup> The report notes that "these violations are amplified through war rhetoric and increased militarisation in countering terrorism, both of which marginalise those who challenge or fall outside the boundaries of predetermined gender roles and involve situations of armed conflict and humanitarian crisis in which gender-based violence and gendered economic, social and cultural rights violations abound."<sup>18</sup>

<sup>14</sup>Kenya launched its National Strategy to Counter Violent Extremism in September 2016. This is implemented by the National Counter-Terrorism Centre (NCTC). Following this, a number of local governments (counties) have launched their own CVE strategies that are specific to their contexts. As of October 2017, Kilifi, Kwale and Mombasa Counties had launched their strategies.

<sup>15</sup>Although, not much research has been carried out on the relationship between gender inequality and violent extremism and terrorism, researchers such as Mary Caprioli and Valerie Hudson have argued that there is a correlation between gender inequality and violent conflict within communities. Mary Caprioli, 'Primed for Violence: The role of gender inequality in predicting internal conflict', *International Studies Quarterly*, 49 (2005): 161-178. Valerie M. Hudson, Bonnie Ballif-Spanvill, Mary Caprioli and Chad Emmett, *Sex and World Peace*, New York, Columbia Press, 2012.

On the other hand, it has also been argued that violent extremist groups take advantage of existing structural inequalities to recruit women and girls. These inequalities, Butale notes, affect primarily women and include poverty, gender-based discrimination and gender-based violence reinforced by customary or religious norms. Cheludo Butale, 'The Nexus between Gender Inequality and Violent Extremism in Sub-Saharan Africa', IAPSS, 30 March 2017. Available at <http://www.iapss.org/wp/2017/03/30/the-nexus-between-gender-inequality-and-violent-extremism-in-sub-saharan-africa/>. See also Raghavan and Balasubramanian, who examine how gender inequality is used to popularise violent extremist ideology in communities: S. V. Raghavan and V. Balasubramanian 'Evolving Role of Women in Terror Groups: Progression or Regression?', *Journal of International Women's Studies*, 15 (July 2014): 197-211.

<sup>16</sup>See Kerry Crawford, Ed., 'Conflict and Extremist-Related Sexual Violence: An International Security Threat', USIP PeaceBrief, No. 187, July 2015.

<sup>17</sup>UN General Assembly, *Protection of human rights and fundamental freedoms while countering terrorism : Note by the Secretary-General*, 3 August 2009, A/64/211. See also the UN Secretary General's Report on Conflict Related Sexual Violence in which he highlights the use of sexual violence as integrally linked with the objectives, ideology and funding of violent extremist groups. S/2015/203.

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

With rising reports of gender-based violence (GBV) being committed by violent extremists in 2017, the US media coined a phrase -- ‘the industry of rape’ -- to describe sexual, gender-based violence committed by terrorist groups<sup>19</sup> against women, both to inflict terror and as a way of targeting communities viewed to be hostile.

## The Evolving Role of Women

Women’s involvement in violent extremism in Kenya is multifaceted. Women are both ‘perpetrators of violence’ and ‘victims of violence’. The evolving roles of women in terrorism and counter-terrorism, including as perpetrators, propagandists, supporters and preventers, is testament to this.

This trend is in line with what other regions are experiencing. For example in the Middle East, the self-described jihadi extremist group, the Islamic State of Iraq and Syria (ISIS), is well-known for its highly-publicised and systemic abuses against women, including using sexual violence against women and girls on the basis of their ethnicity, as well as its recruitment of young women from around the world, both as ‘fighters’ and as ‘brides’ for its rank and file.<sup>20</sup> In western Africa, the Nigeria-based militant Islamist group, Boko Haram, has not only targeted mainly women and children in its attacks but increasingly used female suicide bombers in various campaigns.<sup>21</sup>

## Women as “Victims” of Terrorism and Violent Extremism

Reports of violent extremists and terrorists targeting communities and women through gender-based violence, including abductions, abound.<sup>22</sup> This extremist violence is part of a cycle of violence that makes women -- especially those who hail from marginalised and underserved communities -- more “vulnerable to economic deprivation as widows, orphans, mothers of victims, internally displaced persons and refugees.”<sup>23</sup> Extremist groups like Al-Shabaab and Boko Haram use gender-based violence because it disrupts and further destabilises families and communities and stigmatises women.<sup>24</sup> The abduction of 270 girls from their secondary school in Chibok by Boko Haram in April 2014 shocked the world, not only because of the scale of the attack but because of the devastating consequences of the abductions on the community.

<sup>19</sup>‘ISIS’ Industry of Rape’, *The New York Times*, <https://www.nytimes.com/interactive/2016/03/17/world/middleeast/live-chat-isis-pregnancy.html?action=click&contentCollection=Middle%20East&module=RelatedCoverage&region=EndOfArticle&pgtype=article>. Accessed on 7 July 2017.

<sup>20</sup>*The Islamic State of Sexual Violence*, *Foreign Policy*, 16 September 2014. Available at <http://foreignpolicy.com/2014/09/16/the-islamic-state-of-sexual-violence>. Accessed on 4 August 2017.

<sup>21</sup>Omar S Mahmood, ‘Boko Haram in 2016: A Highly Adaptable Foe’, Institute of Security Studies, 7 February 2017. <https://issafrica.org/iss-today/boko-haram-in-2016-a-highly-adaptable-foe>. Accessed on 4 August 2017

<sup>22</sup>‘The Sex Slaves of Al Shabaab’, BBC News, May 25, 2017, <http://www.bbc.com/news/magazine-40022953> Accessed on 8 August 2017

<sup>23</sup>Kemi Okenyodo, “The Role of Women in Preventing, Mitigating and Responding to Violence and Violent Extremism in Nigeria”, A Man’s World? Exploring the Roles of Women in Countering Terrorism and Violent Extremism edited by Naureen Chowdhury Fink, et al, The Global Center on Cooperative Security, p. 100, 2016.

<sup>24</sup>Zainab Hawa Bangura & Melanne Vermeer, ‘Sexual violence is a tool of war, but we have weapons to end that’, *The Guardian*, 2 March 2016, Available at <https://www.theguardian.com/global-development/2016/mar/02/sexual-violence-is-a-tool-of-war-but-we-have-the-weapons-to-end-that>. Accessed on 11 October 2017.

There have been several media reports about the use of sexual violence to target communities by Al-Shabaab in Kenya, including reports of abductions, sexual violence and forced pregnancies.

## Women as Violent Extremists - “Perpetrators”

Feminist scholars have questioned “the continued dominance of a masculine paradigm” in counter-terrorism arenas with women taking a passive role -- as victims of violence -- as opposed to recognising agency choices women have in supporting violent extremists and the variety of roles that they may play, including as perpetrators.<sup>25</sup> Ní Aoláin, for example, argues that from an international perspective, “there is no systematic attempt to address the interface of gender and terrorism”. She goes on to note that only a “handful” of Security Council Resolutions on Women, Peace and Security make explicit mention of women, and when they do, they only stress the prohibitions against sexual violence in situations of violence and terrorism.<sup>26</sup> She calls for a recognition and critical examination of the systemic structural insecurities from a gender perspective within States and addressing issues of equality, autonomy and discrimination against women.

## Women as Key Actors in Countering Violent Extremism

Several countries have increased awareness of the role that women have in preventing, promoting and participating in terrorist acts. Couture cites Bangladesh and Morocco as two examples of States that integrated women in their counter-terrorism efforts through various means including gender empowerment policies, economic empowerment programmes for women and working with female preachers or spiritual guides in communities.

**Table 1: Relevant UN Security Council Resolutions on Gender and Counterterrorism**

| Resolution                            | Comments   |
|---------------------------------------|--|
| Security Council (SC) Resolution 1325 | This resolution affirms that women are disproportionately affected by violence during conflict, notes the need for women to play important roles in efforts to prevent and mitigate conflict and violence and rebuild the resilience of affected communities.          |
| SC Resolution 1820                    | This resolution condemns the use of sexual violence as a tool of war and highlights that sexual violence in conflict constitutes a war crime and demands parties to armed conflict to immediately take appropriate measures to protect civilians from sexual violence. |

<sup>25</sup>Fionnuala Ní Aoláin, ‘Counter-Terrorism Committee: Addressing the Role of Women in Countering Terrorism and Violent Extremism’, September 2015, Available at <https://www.justsecurity.org/25983/counter-terrorism-committee-addressing-role-women-countering-terrorism-violent-extremism/>. Accessed on 5 August 2017.

<sup>26</sup>*Ibid*

|                            |   |
|----------------------------|---|
| SC Resolution 2129 (2013)  | Reaffirms the SC's objective to "increase its attention to women, peace and security issues in all relevant thematic areas of work on its agenda, including in threats to international peace and security caused by terrorist acts.  |
| SC Resolution 2178 (2014)  | Member States are encouraged to develop strategies to counter the violent extremist narrative that can incite terrorist acts, address the conditions conducive to the spread of violent extremism, which can be conducive to terrorism, <b>including by empowering women.</b> (emphasis mine)                   |
| SC Resolution 2242 (2015), | The SC urges member States to conduct gender-sensitive research and collect data on the drivers of radicalisation for women and the impacts of counter-terrorism strategies on women's human rights and women's organisations in order to develop targeted and evidence-based policy and programming responses. |

She argues that integrating women in counter-terrorism efforts has been effective in these countries and instrumental in reducing the number of individuals being radicalised.<sup>27</sup> Kenya is subject to a number of international and regional commitments which require that women be involved at all stages of decision-making in peace-building and conflict resolution. Some of these are presented in the table below:

In summary, the UN SC resolutions call for recognition by member states of the role of women - both as key actors or perpetrators of violent extremism and as victims of both extremist and counter extremist strategies. It follows therefore that policymakers seeking to address the role of women in countering violent extremism must take an equally nuanced, multi-pronged approach to gender.

The AU has a comprehensive and progressive legal framework for counter-terrorism -- the Algiers Convention on the Prevention and Combating of Terrorism and its Protocol.<sup>28</sup> However, member states' reluctance to embrace the AU's counter-terrorism policy has been cited as a major flaw in its implementation.<sup>29</sup> Kenya, for instance, has yet to ratify the Protocol.

## Kenya's Counter-terrorism Strategy

Kenya is a signatory to over fourteen international and regional treaties and conventions on counter-terrorism, including the African Union Convention on the Prevention and Combating of Terrorism and its 2002 Protocol.

<sup>27</sup>Krista London Couture, *A Gendered Approach to Countering Violent Extremism: Lessons learned from women in peace-building and conflict prevention applied successfully in Bangladesh and Morocco*, Brookings Institute Policy Papers, July 2014. Available at [www.brookings.edu/wp-content/uploads/2016/06/Women-CVEFormatted-72914-Couture-FINAL2.pdf](http://www.brookings.edu/wp-content/uploads/2016/06/Women-CVEFormatted-72914-Couture-FINAL2.pdf). Accessed on 21 August 2017.

<sup>28</sup>Protocol to the OAU Convention on the Prevention and Combating of Terrorism, African Union, 2004.

<sup>29</sup>Simon Allison, *Good Talk, Not Enough Action: The AU's Counter-Terrorism Architecture, And Why It Matters*, Institute for Security Studies, Policy Brief No. 66, March 2015.

Since terrorist attacks committed in 2002 by Al-Qaida in Nairobi, Kenya has enacted several counter-terrorism legislation and policies, including the Prevention of Terrorism Act (2012), the Proceeds of Crime and Anti-Money Laundering Act (2009) and the Prevention of Organised Crime Act (2010). It has also established a National Counter-Terrorism Centre and an Anti-Terror Police Unit (ATPU). In 2016, Kenya adopted its National Action Plan (KNAP) for coordinated implementation of United Nations Security Council Resolutions 1325 and 1820.<sup>30</sup> This KNAP is based on a human rights framework and the four-pillars approach.<sup>31</sup> As mentioned in preceding chapters, 2016 also saw the launch of Kenya's first ever National Counter Violent Extremism Strategy.

Even with its legal and policy framework in place, Kenya initially struggled to craft a response to tackling violent extremism, especially since violent extremist groups have been quick to adjust their recruitment methods to adapt to such responses, such as the use of social media and using community networks.<sup>32</sup> A study carried out in Kenya revealed that women are increasingly being recruited by Al-Shabaab due to their influence in the private spheres and their perceived ability to aid in the recruitment of young people within communities. The report further notes that the recruitment of women by this group is strategic as women are less "likely to be profiled and targeted by security forces than their male counterparts".<sup>33</sup> Similarly, an IGAD reports notes that "patterns of radicalisation and recruitment by Al-Shabaab and its affiliates have also altered... and are placing a growing emphasis on recruitment of girls and young women".<sup>34</sup>

With the growing realisation that recognition that conventional security-based measures to prevent terrorism were inadequate and, in some cases, encouraged greater marginalisation of disaffected communities and violence, Kenya launched its National Strategy to Counter Violent Extremism (hereinafter referred to as the CVE strategy) in September 2016. This strategy is reflective of a different, comprehensive and inclusive approach to countering violent extremism, beyond the purely security-driven response previously adopted. Prior the launch of this strategy, Mahiri notes that Kenya predominantly employed conventional hard-power approaches that failed to tackle the problem.<sup>35</sup>

Kenya's CVE strategy prioritises socially-focused tactics that include the rehabilitation of returned fighters, constructing effective counter-narratives, developing community resilience and, especially, harnessing the power and influence of women and families in communities in combatting extremist ideologies.

<sup>30</sup>Government of Kenya, *The National Action Plan for the Implementation of United Nations Security Council Resolution 1325 and Related Resolutions*, 2016-2018.

<sup>31</sup>The United Global Counter-Terrorism Strategy adopted in September 2006 was the first ever comprehensive, collective and internationally approved framework to tackle terrorism and violent extremism. This strategy consists of four pillars: (i) addressing the spread of terrorism, (ii) preventing and combating terrorism, (iii) building states capacity to prevent and combat terrorism and (iv) strengthening the UN systems role, and, ensuring respect for human rights in counter-terrorism approaches. This four-pillars approach was expected to encourage member States to take similarly integrated approaches to countering terrorism on a national level.

<sup>32</sup>United National Development Programme, *Journey to Extremism in Africa*, 2017.

<sup>33</sup>Charles Villa-Vicencio et al., *'Community Perceptions of Violent Extremism In Kenya'*, Institute for Justice and Reconciliation, 2016.

<sup>34</sup>IGAD Security Sector Program (ISSP) and Sahan Foundation, *Al-Shabaab as a Transnational Security Threat*, March 2016.

<sup>35</sup>Mahiri, E., *Violent Extremism and Community Resilience*, Rift Valley Institute Meeting Report, July 2016.

In addition to the national CVE strategy, some county governments have developed county-specific CVE strategies that place greater emphasis on increased government collaboration with local communities and engendering CVE strategies. The Kilifi County Government in its strategy, for example, pledges to “work with stakeholders in civil society, faith-based organisations, women and youth organisations” in countering violent extremism.<sup>36</sup>

An increasing number of non-governmental organisations in Kenya are also working on CVE programmes, utilising a variety of approaches to counter extremist narratives through culture, religion, family support and economic incentives. The objective is to build community resilience to terrorism and counter terrorist recruitment strategies and especially through integrating gender perspectives into CVE approaches.<sup>37</sup>

The Kenya National Action Plan (KNAP) has therefore been developed in fulfillment of the country’s commitment to implement UNSCR 1325 and related resolutions. The plan, aptly titled ‘*Kuhusisha Wanawake ni Kudumisha Amani*’ (‘to involve women is to sustain peace’) takes into account the changing nature of insecurity and incorporates a human security approach whose focus is on the protection of individual citizens. The KNAP further recognises that security threats include social, economic and environmental factors, and notes that women’s vulnerability is exacerbated by unequal access to resources, services and opportunities.

## Women’s Evolving Roles in CVE in Kenya

The increasing attacks mounted by Al-Shabaab in Kenya have seen the government attempting to grapple with the constantly evolving threat. While the focus of the Kenyan government’s CVE strategies has been to address the recruitment of young men, the recruitment of women by violent extremists is rarely alluded to, with Mahiri arguing that “the role of women, families and communities in countering extreme violence is often overlooked and instead, the focus is usually placed on young men”.<sup>38</sup> Women remain largely invisible in the Kenyan CVE strategies save for some discussion of the violations of human rights during CT operations.<sup>39</sup>

Despite the active roles they have taken in violent extremist groups, perceptions of women as passive victims and meek actors are often reflected in the attitudes and practices of the security agencies, including the military and police, and limited their scope for participation in CVE processes.<sup>40</sup> It has been noted that “the invocation of women and their experiences is rare in fora addressing terrorism and counter-terrorism, no matter whether the discussion includes female terrorism, the mobilisation of women to support extremist violence or the effects and harms experienced by women as a result of counter-terrorism strategies”<sup>41</sup>

<sup>36</sup>Government of Kilifi County, *Action Plan for Countering Violent Extremism in Kilifi County*, 2017.

<sup>37</sup>Mahiri, *Supra*, note 35

<sup>38</sup>*Ibid.*

<sup>39</sup>See *A Report by REDRESS and REPRIEVE, Kenya and Counter-Terrorism: A Time for Change*, REDRESS, 2009. Also see *Human Rights Watch, ‘Deaths and Disappearances: Abuses in Counterterrorism Operations in Nairobi and in Northeastern Kenya’*, July 2016.

<sup>40</sup>Irene Ndung’u; Uyo Salifu, *The Role of Women in Violent Extremism in Kenya*, Institute for Security Studies, May 2017.

<sup>41</sup>*Supra*, note 28.



Understanding the varied roles of women is critical to developing more nuanced and targeted efforts to counter violent extremism (CVE) and prevent terrorism.

## Gendered Aspects of Recruitment

*“..., the wife of a former Al-Shabaab fighter, says [there] is an organised programme to breed the next generation of fighters.”<sup>42</sup>*

The drivers of radicalisation, those “push” factors that attract men and women to join extremist groups, have been studied in relation to terrorism for decades, yet adequate attention has not been given to the gendered dimensions of the radicalisation process.

It is up for debate whether the “push” factors are similar for men and women, with some researchers arguing that violent extremist groups use different strategies to recruit men and women. ISIS, for example, creates women-centric propaganda, selling women a different message from the one sold to men. “Men are marketed the chance to prove their faith by joining the fight; women are marketed the idea of sisterhood and the opportunity to marry a jihadi fighter, thus supporting the cause by raising the next generation of militants.”<sup>43</sup> In Kenya, CVE and counterterrorism actors have also noted that Al-Shabaab also recruits youth (both male and female) through trusted older women in communities. Hamasi notes that “women play a key role for Al-Shabaab as both recruiters and reconnaissance agents, operating in predominantly female environments: homes, schools, and markets as they are the natural entry point to these private spaces”.<sup>44</sup>

Other researchers suggest that similar grievances make both men and women susceptible to radicalisation. Among these grievances are feelings of oppression, powerlessness, frustration, and marginalisation. In addition, a perceived lack of options, including the political space to exercise their rights (including religious freedom), poverty and historical injustices or State discrimination against communities can push individuals toward radicalisation.<sup>45</sup>

Before launching the National CVE Strategy in 2016, the Kenyan government’s approach, as pointed in the previous section, was primarily security-focused.<sup>46</sup> One of the unintended consequences of this approach was the increased marginalisation and discrimination of communities in northern Kenya and the Coastal regions.

<sup>42</sup>*Supra* note 10.

<sup>43</sup>‘The American Women of ISIS’, Marie Claire, April 22, 2016, Available via <http://www.marieclaire.com/politics/a20011/western-women-who-join-isis/> Accessed on 20 July 2017.

<sup>44</sup>See The Nordic African Institute, ‘Women Militants Often go Unnoticed’, March 10, 2017, Available at <http://nai.uu.se/news/articles/2017/03/10/110150/index.xml>. Accessed on 25 July 2017.

<sup>45</sup>Jeannette Gaudry Haynie, ‘Women, Gender and Terrorism: Gendered Aspects of Radicalisation and Recruitment’, WIIS PolicyBrief, September 15, 2016. Available at <http://wiisglobal.org/wp-content/uploads/2016/07/2ND-WIIS-Policy-Brief-v3.pdf> Accessed on 15 August 2017.

<sup>46</sup>*Supra*, note 35

Human Rights Watch notes that following incidences of violent extremist attacks around the country, Kenyan security forces' responses include several widespread cases of abuse against whole communities, including extrajudicial killings, torture, detentions, extortion, deportations of both registered Somali refugees and other irregular migrants, and ethnic profiling, mainly of Somalis and Muslim communities.<sup>47</sup> Women as a subset of these targeted populations are therefore as vulnerable to counterterrorism actors as they are to violent extremists.<sup>48</sup>

A study examining the social, economic and political factors affecting vulnerability and resilience to violent extremism was conducted among communities in Nairobi and Mombasa that have been recruitment zones for Al-Shabaab. Researchers concluded that social and political contexts are key drivers of community vulnerability and recruitment.<sup>49</sup> The communities that are hotbeds of recruitment for Al-Shabaab also happen to comprise of marginalised communities in Northern and the Coastal regions of Kenya. The rate of poverty is significantly higher in these areas, thus arguably ramping up the vulnerability of individuals being lured to join violent extremist groups. Some of the push and pull factors noted by researchers in this region include economic and ideological factors.

Another study suggests that 'hundreds of thousands' of Kenyan youth, including young women, are vulnerable to the recruitment drives of Al-Shabaab and other regional militias with disenfranchised and unemployed youth in rural Kenya at risk to financial incentives and other 'pull' factors, and more educated and mobile youth of urban Kenya vulnerable to extremist messaging and ideology.<sup>50</sup> The increasing recruitment of women from among these communities has been observed, with respondents in Garissa noting that women are increasingly targeted for recruitment due to their influence in the private sphere and their ability to aid in further recruitment from communities, with young girls being recruited to be wives of extremist fighters<sup>51</sup>.

It is not therefore inconceivable that violent extremist groups would take advantage of both general societal and gender-specific grievances to recruit members. Kemi Okenyodo notes that "the feelings of discrimination and marginalisation as a result of gender inequality have been exploited by terrorist groups in order to entice them into extremism as a form of empowerment"<sup>52</sup>

<sup>47</sup>Human Rights Watch, *'Deaths and Disappearances: Abuses in Counterterrorism Operations in Nairobi and in North-eastern Kenya'*, July 2016.

<sup>48</sup>C. Villa-Vicencio, S. Buchanan-Clarke, A. Humphrey, *Community Perceptions of Violent Extremism in Kenya* (2014).

<sup>49</sup>International Alert, *'We Don't Trust Anyone Strengthening Relationships As The Key To Reducing Violent Extremism In Kenya'* September 2016.

<sup>50</sup>Melissa Finn, *et al*, "Youth Evaluations of CVE/PVE Programming in Kenya in Context", *Journal for Deradicalization*, Summer 2016, #7.

<sup>51</sup>C. Villa-Vicencio, *et al*, *Supra*, note 47, p.25.

<sup>52</sup>*Supra* Kemi Okenyodo, note 22.

While the women pledging their allegiance to Al-Shabaab and other violent extremist groups are not necessarily joining their male counterparts on the battlefield, their involvement in the terrorist group is paramount: They are also used to recruit new female members.<sup>53</sup> While researchers have noted that recruiters for violent extremist groups and terrorist groups in Kenya mainly target male youth between ages 15-30,<sup>54</sup> there are several media reports of Kenyan young women being arrested on their way to Somalia, where they claim they will be married off to fighters.<sup>55</sup> Ogenga notes that young Kenyan women, between ages 19-21, are increasingly being used both as agents “on the frontline” engaging in direct attacks and as wives of Al-Shabaab members (“jihadi brides”).<sup>56</sup>

## Towards Integration of Women in Countering Terrorism and Violent Extremism

Women’s contribution in CVE is often relegated to a passive role -- as that of ‘victims’ or ‘potential victims’ of extremist groups. However, it is clear that women play an active part in countering violent extremism, just as they play an active part in encouraging it.

Instead of relegating women to the stereotypical role of ‘victims’ of violent extremism, it is important that the standard of equal participation and full involvement of women in all aspects of peace-building and conflict resolution, be met.<sup>57</sup> Sahana Dharmapuri<sup>58</sup> argues that the full participation of women in CVE means:

- i) Employing a gender perspective in the analysis, design and implementation of policies and programmes;
- ii) Increasing women’s presence in leadership positions within their communities;
- iii) Consulting with both local women and men on how counter-terrorism and CVE programmes and policies are impacting them differently;
- iv) Using gender-sensitive indicators to monitor CVE programmes, or reporting incidents of sexual violence as a political and military tactic, not a cultural practice.

<sup>53</sup>The Sex Slaves of Al-Shabaab’, BBC News, May 25, 2017, <http://www.bbc.com/news/magazine-40022953> Accessed on 8 August 2017.

<sup>54</sup>Life and Peace Institute: *The Horn of Africa Bulletin*, ‘Radicalisation of children and youth in Kenya: A new challenge to child protection’, March 2016. <http://life-peace.org/hab/radicalization-of-children-and-youth-in-kenya-a-new-challenge-to-child-protection/> . Accessed on 24 July 2017.

<sup>55</sup>*Ibid.*

<sup>56</sup>The Wilson Center, “Countering Female Violent Extremism in Kenya: Government and Media Approaches”, The Wilson Center Africa Programme, 1 November 2016. Available on <https://www.wilsoncenter.org/event/countering-female-violent-extremism-kenya-government-and-media-approaches> Accessed on 8 August 2017.

<sup>57</sup>See UNSCR 1325

<sup>58</sup>Sahana Dharmapuri, “UNSCR 1325 and CVE: Using a Gender Perspective to Enhance Operational Effectiveness”, in Chowdhury Fink, *et al*, p.36

With the National CVE strategy in place, implementation processes ought to promote the role of women in the security arena and build partnerships with women in the community, including women's groups. Including women and girls also expands the reach of CVE programmes as they may have different forms of influence, including over other women and youth at risk of joining violent extremist groups. The gender mainstreaming of CVE has already started. For example, certain donor-supported CVE projects prioritise gender mainstreaming and women's participation to counter violent radicalisation and extremism, even in the absence of explicit policies integrating gender perspectives. A joint Kenyan government and UNDP project on strengthening the community's capacity against violent extremism is one example of a gendered approach, specifically focusing on community awareness and empowerment outreach towards women and the youth.<sup>59</sup> A key weakness of this approach, however, is that because these gendered projects are not rooted in policy, their longevity and implementation beyond the life-cycle of supporting partners is not guaranteed.

Nevertheless, the fact that these projects are currently being implemented creates an entry point for women's engagement. This includes creating opportunities for women's leadership, community participation through local women's organisations and especially for historically marginalised communities. It also promotes the role of Muslim women in CVE efforts and addresses some of the grievances that are exploited during radicalisation and recruitment processes by violent extremist groups. The key concern going forward for CVE actors is how to effectively integrate a gender analysis into CVE policy and practice.

## Women and Peace-building Processes

UN SC Resolution 1325 seeks to ensure women's inclusion in peace and conflict management processes and is the basis for member States to leverage strategic actions for equitable and sustainable interventions in peace-building processes through the involvement of women and girls. It has been argued that the gendered approach to peace-building, which is based on the assumption that an increase in women's empowerment and gender equality has a positive effect on peace-building and conflict resolution, can be applied to CVE with similar results.

Fred Strasser argues that "a comprehensive strategy to address extremist violence requires adapting the best thinking from the sphere of counter-terrorism with the world of peace-building."<sup>60</sup>

This means prioritising the improvement of the lives of women (and society in general) through gender empowerment programmes in political and religious spheres, implementing resilience programmes, socio-economic empowerment programmes and addressing the twin issues of equality and discrimination against women.

<sup>59</sup>Government of Kenya and UNDP, *"Strengthen Community's Capacity Against Radicalisation and Violent Extremism In Kenya"*, Project Document, January 2015.

<sup>60</sup>Fred Strasser, *'Women and Violent Extremism: A Growing Threat Demands Concerted Action'*, United States Institute of Peace (USIP), August 2015.

Female empowerment and gender equality indicators are valuable components of conflict resolution and peace-building.

Preventing and addressing the direct and indirect impacts of violent extremism and terrorism – on women and girls – such as abductions, sexual violence, forced pregnancies – has been cited as key to CVE.<sup>61</sup> Preventing these attacks, providing protection for women and girls who are most at risk, prosecuting perpetrators and developing assistance – including livelihood opportunities for women survivors – are essential. These efforts will not only provide critical improvements in security but also foster social cohesion and resilience in communities affected by violent extremism and terrorist violence. Addressing these impacts also enables women and girls to safely and productively engage in CVE activities.

Research on the contributions of Kenyan women to peace-building initiatives show that women have a powerful role to play in conflict resolution but gender discrimination and violence often hinder their participation.<sup>62</sup> Addressing these limitations should be part and parcel of a comprehensive CVE strategy. Karimi argues that “women’s contributions have historically been undervalued and underutilised” and that women’s equal and full participation as active agents in peace and security discourses and processes ought to be prioritised.<sup>63</sup> Drawing upon the perspectives of Kenyan citizens, Elisha Ratemo also argues that mitigating poverty, authoritarianism, discrimination and weak statehood should be the focus of counterterrorism efforts because they create the conditions for the rise of violent extremism.<sup>64</sup>

Encouraging local women leaders to lead CVE processes within their communities is an effective approach though it has been noted that support for women leaders in northern Kenya, most especially, is not always forthcoming.<sup>65</sup>

Increasingly, research and analyses of CVE processes globally show strong linkages between gender inequality, the status of women and violent conflict.<sup>66</sup>

<sup>61</sup>Global Counterterrorism Forum (GCTF), ‘Good Practices on Women and Countering Violent Extremism’, Available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewjSSo3hr4nXAhWEIcAKHbODCrYQFggsMAA&url=https%3A%2F%2Fwww.thegctf.org%2FPortals%2F1%2FDocuments%2FFramework%2520Documents%2FA%2FGCTF-Good-Practices-on-Women-and-CVE.pdf&usg=AOvVaw1ZOcPng3UIIND087I7jsEw2> Accessed on 3 August 2017.

<sup>62</sup>E. Njambi, *Women Level of Participation in Peace and Security in Northern Kenya*, IPSTC Occasional Paper Series 5, No. 4. Nairobi: IPSTC, 2014.

Also see D. Agbalajobi, “The Role of Women in Conflict Resolution and Peace Building” in Bowd, B and Chikwanha, A. ed., *Understanding Africa’s Contemporary Conflicts: Origins, Challenges and Peace Building*, ISS Monograph No. 173. pp. 233-255. Institute for Security Studies, 2010.

<sup>63</sup>Vicky Karimi, ‘Kenya’s National Action Plan: “To Involve Women Is To Sustain Peace”’ <http://blog.giwps.georgetown.edu/kenyas-national-action-plan-to-involve-women-is-to-sustain-peace/> August 2015. Accessed on 9 July 2017.

<sup>64</sup>Elisha Ratemo, ‘Counterterrorism in Africa: Countering Radicalisation in Kenya’, Doctoral Thesis, University of Nairobi, 2015.

<sup>65</sup>Supra, note 35 above.

<sup>66</sup>Chantal de Jonge Oudraat, “Preventing and Countering Violent Extremism: The Role of Women and Women’s Organisations.” in Chowdhury Fink *et al.*, (note 3 above), 18.

Various UN recommendations and Plans of Action prioritise the promotion of gender equality and women's participation in conflict resolution and CVE processes. Promotion of gender equality was also included as part of the recommendations in the UN's Preventing Violent Extremism Plan of Action. Kenya's *National Action Plan to Implement UNSCR Resolutions 1325 and Related Resolutions* prioritises the participation of women in countering violent extremism and the promotion of gender equality as a key facet of conflict resolution and peace-building. To more effectively counter the rising power of women in extremist and terrorist organisations, and address the vulnerabilities of women to both extremist violence and PVE measures, countering violent extremist strategies and practices need to integrate women fully into their efforts and encourage the inclusion of women in the field of CVE more generally. Promotion requires the deliberate gender mainstreaming and empowerment of women in all peace and security processes.

From a peacekeeping and conflict resolution perspective, research has shown that engendering such processes can be very effective in transforming conflict. Some researchers have pointed out that there is a direct causal link between integrating women in CVE process and the success of said processes. Couture cites Morocco and Bangladesh as two examples of States that have identified women as critical components of their counterterrorism strategies. She argues that as a result, these two countries have seen a significant decrease in terrorist incidences.<sup>67</sup> Alkarib has also argued that women's movements have been crucial in challenging violent extremism and addressing injustices in the Horn of Africa and that prioritising women's engagement in CVE is an effective approach.<sup>68</sup>

<sup>67</sup>Couture, K., *supra* note 25 above.

<sup>68</sup>Hala Al Karib, 'Horn of Africa: There are no quick fixes in 'countering violent extremism'', Open Democracy, July 11, 2015. Available at <https://www.opendemocracy.net/5050/hala-alkarib/horn-of-africa-countering-violent-extremism>. Accessed on 1 August 2017.

## Conclusion

Over the past two decades, violent extremism and terrorism-driven violence have continued to gain ground as one of the most complex and pressing problems facing contemporary societies. The constantly growing threat of terrorist attacks has led to governments prioritising the adoption of new policies and measures to address this evolving threat.

Noting that responses to violent extremism have in the past been heavily male-centric with women relatively absent from CVE discourses and policy development, the discussion on the importance of mainstreaming gender in CVE is paramount especially in the context of the increasing visibility of the toll violent extremism is having on women and girls in Kenya. Chowdhury notes that globally, “terrorist groups are exacting a heavy price from women and girls, from inflicting sexual violence, challenging basic human rights and impeding socio-economic development”.<sup>69</sup> The situation in Kenya is no different.

This paper has briefly looked at a range of issues related to the different roles that women can play in relation to violent extremism, including the gendered impact of CVE strategies, recognition of the gendered aspects of radicalisation and recruitment, the relationship between gender inequality and the use of violence by extremist groups, including the use of sexual and gender-based violence; and co-opting the UN Security Council’s Women, Peace and Security agenda in Kenya’s CVE strategies. That Kenya is increasingly attentive to these issues is clear from recent policies and challenges, including the KNAP and the CVE strategy. However, implementation of these policies and the lack of defined gender mainstreaming strategies within the policies still remains a concern.

The impact of women in previous peace-keeping and conflict resolution processes in Kenya is a reminder of the critical role that women play in the security arena.<sup>70</sup> The significant impact women have had in peace-building and conflict resolution processes can and should be replicated in the CVE arena. The government needs to reflect on existing CVE efforts and how women are included within policy and practice. Research from other jurisdictions grappling with violent extremism suggests that policies that integrate women to counter violent extremism are more effective than those that sideline them.<sup>71</sup> For example, it has been argued that women can be powerful agents of change and can play a crucial role in detecting early signs of radicalisation, intervening before individuals become violent, and delegitimising violent extremist narratives.<sup>72</sup>

To effectively mainstream gender, Kenya’s CVE strategy includes the requirement of complementing community-driven approaches to countering violent extremism among women. It also emphasises greater cooperation with moderate Islamic theologians, civil society groups -- including women’s groups -- and religious leaders to reach young women. The role and capacity

<sup>69</sup>*Supra*, note 3 above.

<sup>70</sup>For more information on Kenyan women’s role in peace-building and conflict resolution see The Graduate Institute of International and Development Studies, ‘Women in Peace & Transition Processes. Kenya (2008–2013)’, August 2016.

<sup>71</sup>Couture, *supra*, note 25 above.

<sup>72</sup>Chowdhury, *supra* note 3 above.

of women's organisations and women-led civil society bodies to prevent and counter violent extremism needs to be further explored, including adopting an intersectionality approach in dealing with CVE and the broader human (women's) rights movement. Embedding human rights principles in CVE strategies and more importantly implementing these principles, is a necessary component of ensuring the safety and security of women.

More emphasis should, therefore, be placed on the promotion of women's participation in CVE and empowerment, including in policymaking and law enforcement roles. Kenya is lagging behind in this respect. There is no publicly-available data on the number of women joining terrorist organisations from Kenya or the number of girls and young women targeted by extremists who face serious human violations and abuses.

Both the rising number of women and girls affected by violent extremism and CVE and the rising number of women being radicalised requires that Kenya place a greater focus on engaging women in CVE and integrating a gender dimension in CVE efforts.

Lastly, the status quo of women perceived only as 'victims' of extremist violence is changing. Women are both perpetrators and preventers of terrorism. While they are arguably disproportionately affected by the consequences of terrorism, in particular as targets for sexual and gender-based violence, they are also motivated for the same reasons as men to carry out violent and terrorist operations.<sup>73</sup> Integrating a gender approach to CVE means analysing how PVE/CT measures may have different, disproportionate or unanticipated impacts on women and girls as a result of their social and cultural roles. Chowdhury rightly points out that "the contradiction between assumptions of agency when women partake in prevention roles versus a rejection of agency when women are perpetrators poses a number of conceptual and practical challenges". Ignoring women's active participation and agency in terrorism, could, for example, result in "missing key intervention opportunities" that could hamper the effectiveness of CVE programmes.<sup>74</sup> A holistic approach to CVE must include women, who are on the frontline as community gatekeepers, peacemakers and perpetrators.

<sup>73</sup>United Nations Security Council Resolution 1325 addresses the disproportionate and unique impact of armed conflict and violence on women. Terrorism and violent extremism are not explicitly referred to in this resolution but subsequent Security Council Resolution 2242 address the substantive links between women's participation and sustainable peace and security, including in the countering of violent extremism and terrorism.

<sup>74</sup>Chowdhury, *supra* note 3 above.



## Bibliography

Bloom, M. (2011) *Bombshell: The Many Faces of Women Terrorists*, London: Hurst, 2011.

Bloom, M., Huckerb, J., Hoffman, B. and Lute, J.H. (2013) "Women, Terrorism and Counter-terrorism," Paper presented at the conference on 'Women, Terrorism and Counter-terrorism, the GIWPS and the McCain Institute, Georgetown University, Washington, DC, November 2013.

Bocha, G. (2017) "How Boni Forest became the warzone it is today," *The Daily Nation* July 19, <http://www.nation.co.ke/news/Boni-Forest-the-inside-story/1056-4022288-2kjq4z/index.html> (Accessed on July 20, 2017).

Brooks, J. (2014) 'Sexual Violence in ISIS's "Islamic State": An International Crime', <http://atha.se/blog/sexual-violence-isis%E2%80%99s-%E2%80%9Cislamic-state%E2%80%9D-international-crime> (Accessed on August 4 2017).

Couture, K. (2014) 'A Gendered Approach to Countering Violent Extremism: Lessons learned from women in peace-building and conflict prevention applied successfully in Bangladesh and Morocco', *Brookings Institute Policy Papers*.

Fink, N.C. et al. (2016) 'A Man's world? Exploring the Roles of Women in Countering Terrorism and Violent Extremism', *The Global Center on Cooperative Security*.

Finn, M. et al (2016) 'Youth Evaluations of CVE/PVE Programming in Kenya in Context', *Journal for Deradicalization* 7.

Forest, J.J.F. and Howard R.D. (Eds.) (2012), *Weapons of Mass Destruction and Terrorism*, 2nd edition, New York: McGraw-Hill,.

Forest, J.J.F. (2012) *The Terrorism Lectures*, Santa Ana: Nortia Press.

Global Center on Cooperative Security (2015) 'Countering Violent Extremism and Promoting Community Resilience in The Horn Of Africa: An Action Agenda', [http://www.globalcenter.org/wpcontent/uploads/2015/05/HOA\\_CVE/PVE\\_Action\\_Agenda\\_lo.pdf](http://www.globalcenter.org/wpcontent/uploads/2015/05/HOA_CVE/PVE_Action_Agenda_lo.pdf)

Government of Kenya, *The National Action Plan for the Implementation of United Nations Security Council Resolution 1325 and Related Resolutions*, 2016-2018.

Haynie, J.G. (2017) 'Women, Gender and Terrorism: Gendered Aspects of Radicalization and Recruitment', <http://wiisglobal.org/wp-content/uploads/2016/07/2ND-WIIS-Policy-Brief-v3.pdf> (Accessed on August 15, 2017).

Howard, R.D. and Hoffman, B. (Eds.) (2011), *Terrorism and Counterterrorism: Understanding the New Security Environment, Readings and Interpretations*, 4th ed, New York: McGraw-Hill,.

Human Rights Watch (2014) 'Kenya: Killings, Disappearances by Anti-Terror Police,' <https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police> (Accessed on August 21 2017)

Human Rights Watch (2016) 'Deaths and Disappearances: Abuses in Counterterrorism Operations in Nairobi and in Northeastern Kenya', Human Rights Watch.

International Alert (2016) 'We Don't Trust Anyone Strengthening Relationships As The Key To Reducing Violent Extremism In Kenya'

Karimi, V. (2015) "Kenya's National Action Plan: To Involve Women Is To Sustain Peace," <http://blog.giwps.georgetown.edu/kenyas-national-action-plan-to-involve-women-is-to-sustain-peace/> (Accessed on July 9 2017).

Life & Peace Institute (2016) 'Radicalisation of children and youth in Kenya: A new challenge to child protection', Life and Peace Institute: The Horn of Africa Bulletin, <http://life-peace.org/hab/radicalization-of-children-and-youth-in-kenya-a-new-challenge-to-child-protection/> (Accessed on July 24, 2017).

Mahmood, O.S. (2017) 'Boko Haram in 2016: A Highly Adaptable Foe', Institute of Security Studies.

Muyanga, P. (2016) "TZ girl arrested en route to join Shabaab militants," The Citizen, March 31 <http://www.thecitizen.co.tz/News/TZ-girl-arrested-en-route-to-join-Shabaab-militants-/1840340-2671154-ofqml3/index.html> (Accessed on July 20 2017).

Mwaura, W. (2015) "Women taking a more Aggressive Role in Terrorism," Kenyan Woman, <http://kw.awcfs.org/article/women-taking-a-more-aggressive-role-in-terrorism/> (Accessed on July 5, 2017).

National Counterterrorism Center (2015) "Regional Conference On Countering Violent Extremism Deepening Cooperation in Countering Violent Extremism Outcome Document" [www.counterterrorism.go.ke/library](http://www.counterterrorism.go.ke/library). (Accessed on July 25, 2017).

Okenyodo, K. (2016) 'The Role of Women in Preventing, Mitigating and Responding to Violence and Violent Extremism in Nigeria', in Fink, N.C. et al (ed.) *A Man's World? Exploring the Roles of Women in Countering Terrorism and Violent Extremism*, The Global Center on Cooperative Security,

Olonsakin, F. et al. (2012) *Women, Peace and Security: Translating Policy into Practice* (Contemporary Security Studies, New York: Routledge Books

Organisation for Security and Co-operation in Europe (2012) 'Women and Terrorist Radicalization Final Report', OSCE.

Patel, S. (2017) 'The Sultanate of Women: Exploring female roles in promoting and perpetuating violent extremism', The Australian Strategic Policy Institute.

Peritz, A. and Maller, T. (2014) 'The Islamic State of Sexual Violence', *Foreign Policy*, 16 September, <http://foreignpolicy.com/2014/09/16/the-islamic-state-of-sexual-violence> (Accessed on August 4 2017).

Ratemo, E. (2015) 'Counterterrorism in Africa: Countering Radicalisation in Kenya', Thesis submitted in partial fulfillment for award of Doctor of Philosophies, University of Nairobi.

Schmid, A.P (Ed.) (2011) *The Routledge Handbook of Terrorism Research*, New York: Routledge,

Storey, K. (2016) "The American Women of ISIS," *Marie Claire*, 22 April, <http://www.marieclaire.com/politics/a20011/western-women-who-join-isis/> (Accessed on July 20 2017).

Strasser, F. (2015) 'Women and Violent Extremism: A Growing Threat Demands Concerted Action', United States Institute of Peace (USIP).

Strømme, E.E.J. (2017) 'Jihadi Brides or Female Foreign Fighters? Women in Da'esh – from Recruitment to Sentencing', GPS Policy Brief, 1. Oslo: PRIO, 2017.

The Graduate Institute of International and Development Studies (2016) 'Women in Peace & Transition Processes. Kenya (2008–2013)',.

The Nordic African Institute (2017) 'Women Militants Often go Unnoticed', <http://nai.uu.se/news/articles/2017/03/10/110150/index.xml> (Accessed on July 25, 2017).

The Security Laws (Amendment) Act, 2014, Laws of Kenya,

The Wilson Center (2016), "Countering Female Violent Extremism in Kenya: Government and Media Approaches", The Wilson Center Africa Programme, November 1, 2016, <https://www.wilsoncenter.org/event/countering-female-violent-extremism-kenya-government-and-media-approaches> (Accessed on August 8 2017).

UN General Assembly (2010), 'The United Nations Global Counter-Terrorism Strategy Resolution / adopted by the General Assembly', A/RES/64/297, October 13, 2010.

UN Security Council (2017), 'Report of the Secretary-General on conflict-related sexual violence', (S/2017/249). April 15, 2017.

Villa-Vicencio, C., Buchanan-Clarke, S., Humphrey, A. et al. (2016) 'Community Perceptions of Violent Extremism In Kenya', Institute for Justice and Reconciliation

Williams, Z. (2014) 'The radicalisation of Samantha Lethwaite, the Aylesbury schoolgirl who became the white widow' The Guardian June 27, <https://www.theguardian.com/uk-news/2014/jun/27/what-radicalised-samantha-lewthwaite-77-london-bombings> (Accessed on August 4 2017).



# 5

Fathima Azmiya Badurdeen

## Online Radicalisation and Recruitment: Al-Shabaab Luring Strategies with New Technology

## Introduction

The use of the internet in radicalisation and recruitment into terrorist organisations has been debated, with no agreement on what constitutes online radicalisation and recruitment and how it happens.<sup>2</sup> However, there is consensus that the internet alone is not a cause of radicalisation and recruitment but a catalyst or a facilitator into extremism.<sup>3</sup>

For, online technology has only facilitated the radicalisation process in terms of access to materials or linkages with like-minded individuals. In this regard, the role of the internet in radicalisation and recruitment is well-described as a medium which ‘complements in-person communication’ and ‘not a substitute for in-person meetings’ with the ability to create more opportunities for radicalisation.<sup>4</sup> Hence, online radicalisation into violent extremism can be defined as the process by which an ‘individual is introduced to an ideological message and belief system which encourages movement from mainstream beliefs towards extreme views through the use of online media, including social networks such as Twitter, Instagram, Facebook and Youtube’.<sup>5</sup>

A consequence of radical interpretations of religion or holy text online by these terrorist organisations has the ability to facilitate extreme views by promoting, inciting, justifying or supporting violence to achieve change in the community.<sup>6</sup> Further, the use of the internet by extremists has evolved with the changing dynamics of the online environment. Like many other terrorist organisations, Al-Shabaab has used the potential of the online environment to aid its activities such as radicalisation and recruitment.<sup>7</sup>

This article investigates the online strategies of youth recruitment for Al-Shabaab from a Kenyan context through the two interconnecting sub-objectives: First, to explore existing online strategies used by Al-Shabaab for radicalising and recruiting youth; second, to determine factors on youth vulnerability to online recruitment and radicalisation for Al-Shabaab.

<sup>2</sup>See: Awan, A. N. (2007). “Radicalization on the Internet? The virtual propaganda of Jihadist media and its effects”. *The RUSI Journal*, 152(3): 76-81; Charvat, J. (2010). “Radicalization on the Internet”. *Defense against Terrorism Review*, 3(2): 75-85; Conway, M. (2016). “Determining the Role of the Internet in Violent Extremism and Terrorism: Six suggestions for progressing research”. *Studies in Conflict and Terrorism*, pp 1-22; Koehler, D. (2014). “The Radical Online: Individual radicalization processes and the role of the internet”. *Journal of Deradicalization*, 15(1): 116-134.

<sup>3</sup>Meleagrou-Hitchens, A. and Kaderbhai, N. (2017). “Research Perspectives on Online Radicalization: A Literature Review”, 2006-2016. Available at: <http://icsr.info/2017/05/icsr-vox-pol-paper-research-perspectives-online-radicalisation-literature-review-2006-2016/>

<sup>4</sup>Von Behr, I., Reding, A., Edwards, C., & Gribbon, L. (2013). “Radicalization in the digital era. The use of the internet in 15 cases of terrorism and extremism”. Brussels: RAND.

<sup>5</sup>Community Oriented Policing Services (COPS) (2014). *Online Radicalization to Violent Extremism: Awareness Brief*, Washington DC: U.S. Department of Justice.

<sup>6</sup>Alarid, M. (2016). “Recruitment and Radicalization: The Role of Social Media and New Technology” in H. Michelle and M. Miklancie (eds.). *Impunity: Countering Illicit Power in War and Transition*. Washington, DC: Center for Complex Operations, pp. 313-329.

<sup>7</sup>Menkahus, K. (2014). “Al-Shabaab and Social Media: A Double-Edged Sword”. *Browns Journal of World Affairs*, 20(12), 309-327.



The first section of the paper describes the background of the study which includes the context for the online strategies used by terrorist organisations with particular reference to Al-Shabaab. The second section looks at the online environment which facilitates Al-Shabaab propaganda aimed at youth recruitment and radicalisation. The third section examines the factors on youth vulnerability online, leading up to radicalisation and recruitment. The article concludes with recommendations on digital surveillance for policy and practice.

The article draws from a larger ethnographic study carried out in the Coast region of Kenya, comprising interviews with NGO personnel, accused terror suspects, community members, parents of terror suspects, law enforcement officials and observations of terrorism suspects' trials. This is supplemented with an analysis of the content of online materials through YouTube videos, websites, online magazines, Twitter and Facebook.

## Background

Al-Shabaab's use of the internet and its impact in the East African region, particularly in Kenya, has received less attention both in scholarly literature and broader analytical discourses, restricting most information available to media reports. Two major studies on Al-Shabaab's use of the internet are noteworthy: 'Al-Shabaab and Social Media: A double-edged sword' by Menkhaus (2014) and '#Westgate: A Case Study: How Al-Shabaab used Twitter during an ongoing Attack' by Mair (2016), which focused on the use of social media as a propaganda tool, aiding radicalisation and recruitment processes.

Studies on radicalisation and recruitment online are complicated and limited by the following: First, understanding the process of radicalisation and recruitment, as in which precedes the other. For example, is the person recruited online prior to becoming radicalised or is the person radicalised before he or she is recruited?<sup>8</sup> A complicated context in online recruitment processes in Kenya involves individuals who may be forced or may join unknowingly these networks. For instance, young people who get lured into job opportunities online, and are then lured by the recruiter into a series of meetings or chat forums and thereby become radicalised.<sup>9</sup> Second, the limitation is seeing the radicalisation or recruitment process as being completely confined to the online environment.

For, there is usually an offline dimension in many radicalisation or recruitment processes. This includes the presence of a physical contact person or groups apart from the online radicalisation processes.<sup>10</sup> Such context may differ from the lone wolves concept, which exists mainly in the

<sup>8</sup>There is often the debate of which comes first, radicalisation or recruitment into terrorist organisations. Often, the dynamics of which comes first – radicalisation or recruitment are complicated even in offline radicalisation processes. Some studies use these processes interchangeably. While both have varied meaning, this study intends to use both words together as either can be preceded by the other. As highlighted by some authors, there is usual assumption that radicalisation precedes recruitment. However, there have also been cases where recruitment comes first and is followed by radicalisation. See: Sageman, M. (2008). *Leaderless Jihad: Terror networks in the twenty-first century*. Philadelphia: University of Pennsylvania Press; Schmid, A. P. (2013). "Radicalization, De-radicalization, Counter-Radicalization: A conceptual discussion and literature review". The Hague: International Centre for Counter Terrorism.

<sup>9</sup>Field discussion, 12 September 2016

<sup>10</sup>Interview, 2 May 2017



west, where youth are radicalised or recruited exclusively online.<sup>11</sup> At present, the context of lone wolves or the self-radicalised online had been considered as rare in the Kenyan context due to lack of reported cases.<sup>12</sup> Principally, this analysis seeks to explain the internet and social media as an aiding tool for radicalisation and recruitment into Al-Shabaab. It does not, however, assess the extent in which these radicalised or recruited individuals engage in violent acts using the online environment.

## Online Radicalisation and Recruitment into Terrorist Organisations

More than ever before, the lives of young people are lived online. As access to the internet spreads, more people have the ability to use, and with the internet enabled devices such as phones, people spend more time only with the proliferation of social media sites, entertaining, consuming information and creating virtual communities. Terrorist organisations are also exploiting these easily available communication platforms to reach a broad cross section of communities to recruit, groom and facilitate radicalisation to violent extremism.<sup>13</sup>

The internet provides radical recruiters a fertile ground for recruitment and facilitates interaction with people who cannot be reached through conventional means.<sup>14</sup> The internet has offered terrorist groups such as Al-Qaeda three crucial advantages: Promoting their message, which allows for recruitment and fundraising; terrorism-related training and instruction; and information channels that are useful for planning and executing terrorist attacks.<sup>15</sup> Scholars such as Mahmood have also demonstrated that terrorist organisations use online social networks to identify potential recruits for recruitment, glorification and planning and information, target selection, training and fundraising.<sup>16</sup> Varied approaches are discussed with regard to online radicalisation and recruitment by terrorist organisations.

Hoffman, in his study on the online global Jihadist magazine, *Sawt al-Jihad*, explained a top-down approach on violent radicalisation and recruitment as dependent on effective communication which bonded supporters and attracted sympathisers to the organisation.<sup>17</sup> Sageman provided a bottom up approach using a social network analysis to explain the importance of personal relationships of friendship and kinship networks in ideology dissemination via the internet, where social networks take precedence and the internet was used as a tool to aid recruitment.<sup>18</sup>

<sup>11</sup>Simon, J. D. (2016). *Lone Wolf Terrorism: Understanding the growing threat*. New York: Prometheus Books.

<sup>12</sup>Interview with law enforcement officials, 30 September 2016. During the interview, it was expressed that reported cases of radicalized completely online had been unreported, but the respondent affirmed the possibilities of such cases in the future, mainly attributed to the high surveillance existing in the country.

<sup>13</sup>Alarid 2016 (as n.6 above)

<sup>14</sup>Weimann, G. (2014). *New Terrorism and New Media*. The Wilson Centre, Research Series 2: 1-6.

<sup>15</sup>See: Cohen, F. (2002). "Terrorism and Cyberspace". *Network Security*, 5(31): 17-19; Weimann, G. (2006). "Virtual Disputes: The use of the internet for terrorist debates". *Studies in Conflict and Terrorism*, 29(7): 623-639.

<sup>16</sup>Mahmoud, S. (2012). "Online Social Networks: The overt and covert communication channels for terrorists and beyond". Paper presented at IEEE Conference on Technologies for Homeland Security, November 13-15 2012.

<sup>17</sup>Hoffman, B. (2006). "The Use of the Internet by Islamic Extremists". Testimony presented to the United States House Permanent Select committee on Intelligence, May 4 2006. Available at: <https://www.investigativeproject.org/documents/testimony/254.pdf>

<sup>18</sup>Sageman, M. (2004). *Understanding Terror Networks*. Philadelphia: University of Pennsylvania Press.

Hence the internet has brought a new face into the process of radicalisation and recruitment, as it creates networks and acts as a 'virtual glue' to the members of the group.<sup>19</sup> The radicalisation process online may inevitably bring in changes in a person's adoption of a belief and their support for the organisation, yet it may not necessarily lead them to take actions on behalf of the group. There is usually an offline contact person or group which provides the motivation for the act.<sup>20</sup> Berger, in his study on the current ISIS recruitment strategy, brings in another dimension, where the author highlights that radicalisation and recruitment can both be exclusively done online.<sup>21</sup> Briggs also affirmed the need for offline contacts in the online radicalisation process. However, she affirmed that, in future, instances of individuals radicalising "entirely online" may increase.<sup>22</sup> Hughes and Vidino also posited on radicalisation and recruitment purely driven online as well as, in some cases, the process being enhanced through 'face-to-face relationships' concluding that 'online and offline dynamics complement one another'.<sup>23</sup>

With an increasing trend of online aided recruitment and radicalisation for Al-Shabaab in Kenya,<sup>24</sup> there is still a need to establish the ways in which the online environment is used by Al-Shabaab.<sup>25</sup> This trend could be attributed to the online recruitment strategies used by other terrorist organisations such as Al-Qaeda and ISIS. However, it should be noted that Al-Shabaab has used online aided recruitment strategies since 2007.<sup>26</sup> Here, the interesting context on online recruitment is to explore how it has adopted to the needs of a dynamic virtual community and attracting potential recruits from Kenya.<sup>27</sup>

A good example is Al-Shabaab's magazine, *Gaidi Mtaani*, which has evolved into a colourful glamourised youth oriented magazine, co-opting writings and images in a similar glamourised fashion like the *Daabiq* magazine of the ISIS.

Terrorist organisations use online platforms to evade the heavy presence of physical surveillance by law enforcement officials.<sup>28</sup> Terrorist attacks in the Westgate Mall, Garissa University and Mandera, among others in Kenya, necessitated the presence of heavy surveillance as a pre-

<sup>19</sup>Sageman, 2008 (as n.8 above) p.144.

<sup>20</sup>Neumann, P. (2013). "Options and Strategies for Countering Online Radicalization in the United States". *Studies in Conflict and Terrorism*, 36(6): 431-459.

<sup>21</sup>Berger, J. M. (2015). "Tailored Online Interventions: The Islamic State's Recruitment Strategy", *CTC Sentinel*, 8(10): 19-23.

<sup>22</sup>Briggs, R. (2011). *Radicalisation: The role of the Internet*. London: Institute for Strategic Dialogue.

<sup>23</sup>Hughes, S. and Vidino, L. (2015:9). *ISIS in America: From retweets to Raqqa*. Washington, DC: George Washington University Program on Extremism.

<sup>24</sup>Data analysed in internal reports based on the number of cyber related terror cases reported. There is a rise from 40 per cent in 2015 to 55 per cent in 2017 to date (September 2017). Interview with Law Enforcement Official, September 20 2017.

<sup>25</sup>Research at inception, most data collected is on intelligence-led online countering terrorism approaches. There is a need for more nuanced understanding of the online radicalisation phenomenon (Interview, September 20 2017).

<sup>26</sup>Menkhaus, 2014 (as n.7 above).s

<sup>27</sup>Mabel, W. (2016). "Al-Shabaab has new recruiting locations in Kenya". Available at: <https://www.tuko.co.ke/118898-police-reveal-al-shabaabs-new-recruitment-locations-kenya.html>. Accessed on March 12 2017.

<sup>28</sup>O'Rourke, S. (2009). *Online Recruitment, Radicalization, and Reconnaissance: Challenge for Law Enforcement in Forest*, J.J.F. Influence Warfare: How terrorists and governments fight to shape perceptions in a war of ideas. Westport, CT: Greenwood Publishing.

emptive deterrence strategy. Among these were the presence of surveillance in public places, mosque premises and madrassas, which pushed people into more covert spaces.<sup>29</sup> Online platforms became a viable option to elude spaces ‘where you are constantly being watched’.<sup>30</sup> Further, online recruitment relies on the anonymity of the recruiter, which is the most important factor in online recruitment processes. As put forward by an interviewee, ‘anonymity fits well with recruiters who could disappear after a brief discussion if he or she finds the person on the other end is not trust-worthy or is an informer’.<sup>31</sup> However, it should be noted that online radicalisation and recruitment relies on the same motivational factors and needs of the young people as that of direct physical recruitment, but modified with the use of online technologies. These online platforms have the potential to become an accelerator for the recruitment of young people than direct physical recruitment in future. As posited by Lohrmann, social media accelerates evolution and transformation of terrorism processes and practices.<sup>32</sup>

Online characteristics of Al-Shabaab networks as a predator to lure young people cater to their vulnerability based on the particular needs that they deem a perfect fit for online radicalisation of youth and their recruitment into Al-Shabaab. Despite similarities of Al-Shabaab terrorist networks in co-opting global trends of internet and social media platforms like ISIS does, there are differences. Al-Shabaab relies mainly on deceptive strategies, where the youth are most often ‘unknowingly’ recruited as explained in the preceeding sections. Young people are lured into Al-Shabaab through job offers or education scholarships.<sup>33</sup>

Hence, this is distinctly different from other recruitment strategies where most recruits have some form of need, mainly the aspect of recognition, status, romance or revenge as motivation factors later turned into ideology-driven recruitment.

Nevertheless, similarities exist with other terrorist organisations such as ISIS, as some youth are driven into Al-Shabaab through motivations such as revenge, recognition, employment and romance.<sup>34</sup> The need for surveillance on social media and other online platforms has been well-expressed due to the growth of online recruitment. This necessitates countering through the online technology itself.<sup>35</sup> Tackling extremist content on the internet is vital in countering the terrorist narrative/s which facilitates recruitment and radicalisation and even inciting terrorism. As expressed by an interviewee on the difficulties in tackling extremist content:

*There is considerable effort going into removing extremist material from the internet, and it is not an easy job as individuals update materials such as images, messages, videos [extremist/al-*

<sup>29</sup>Interview with law enforcement official, 21 September 2016

<sup>30</sup>Interview with NGO personnel, 3 March 2016

<sup>31</sup>Interview with law enforcement official, 21 September 2016

<sup>32</sup>Lohrmann, D. (2016). “How Terrorists’ use of social media points to the future”. Available at: <http://www.govtech.com/blogs/lohmann-on-cybersecurity/how-terrorists-use-of-social-media-points-to-the-future.html>. Accessed on March 12 2017.

<sup>33</sup>West, S. (2016). “Al-Shabaab recruitment from Kenyan universities alarms officials”. *Terrorism Monitor*, 14(1). Available at: <https://jamestown.org/program/al-shabaab-recruitment-from-kenyan-universities-alarms-officials/>

<sup>34</sup>Bouzar, D. & Flynn, C. R. (2017). ISIS Recruiting: It’s not (just) ideological. Available: <https://www.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/resources/docs/FPRI-ISIS%20Recruiting%20Its%20Not%20Just%20Ideological.pdf>

<sup>35</sup>Macnair, L. & Richard, F. (2017). “Voices against Extremism: A case study of a community-based CVE counter-narrative campaign”. *Journal for Deradicalization*, 10(1), 147-174.

*Shabaab materials] on a daily basis. Co-operation is needed from the public as well to stop such extremist blogs and links. Further, dealing with the privacy context complicates the process.<sup>36</sup>*

Efforts by the Kenyan government to respond to online radicalisation and recruitment by Al-Shabaab had centered on three categories of interventions. First is the hard approach, which refers to interventions which are intrusive, whereby internet content is restricted for security purposes, with the intention that restricting extreme materials will eventually lead to fewer people accessing materials and being radicalised.<sup>37</sup> Since 2014, stringent surveillance measures online has led to the closure on some sites, removing of content (instructing host websites to remove content) and filtering (controlling information flows between computers connected via the internet). However, these stringent online measures had succumbed to criticism with their tendency to violate online privacy rights.<sup>38</sup> Proponents of these hard approaches are of the view that online freedom provides a safe haven for extremists to promote their messages, thus justifying the need for stringent measures.<sup>39</sup>

Second, the soft approach refers to measures focused on building counter-narratives against extremist content and empowering online actors to be vigilant and engaging in surveillance measures.<sup>40</sup> In Kenya, civil society organisations, such as the Building Resilience Against Violent Extremism (BRAVE), and the Council of Imams and Preachers of Kenya (CIPK), are engaged in designing counter narratives against Al-Shabaab propaganda.

The third approach is the intelligence-led approach integrating both hard and soft tactics focused on intelligence gathering and monitoring.<sup>41</sup> Intelligence-led approaches have been in practice on a case-by-case basis. In February 2016, Hassanein Ahmed Bastiy was arrested while allegedly on his way to Libya to join the terror group ISIS.

A biochemistry student at the University of Nairobi, Bastiy had been lured online on the promise of a job as a phlebotomist with a starting salary of Ksh200,000, which would in the future be raised to Ksh1 million. He was notified in October 2015 that his job application was successful, and he was ready to take up the offer. Bastiy bought his ticket to Sudan – transit route to the war torn country - using part of his university fees given by his parents.<sup>42</sup> Such cases require careful analysis of internet communication, a network analysis on the source of the contacts and linked networks and the platforms used for persecution.<sup>43</sup>

<sup>36</sup>Interview with law enforcement official, 20 September 2017

<sup>37</sup>Neumann, P. and Stevens, T. (2011). *Countering Online Radicalisation: A strategy for action*. London: International Centre for Study of Radicalization.

<sup>38</sup>Siserman, C. (2013). "A Global perspective on the protection of privacy and related human rights in countering the use of internet for terrorist purposes". *Masaryk University Journal of Law and Technology*, 7(2): 401-421.

<sup>39</sup>Committee on Homeland Security House Representatives (CHSHR) (2007). *Using the Web as a Weapon: The internet as a tool for violent radicalization and homegrown Terrorism*. CHSHR Sub committee on Intelligence, Information Sharing and Terrorism Risk Assessment

<sup>40</sup>Ali, S. (2008). "Fighting Online Extremism: Tackling old challenges in the internet age": RSIS Commentaries.

<sup>41</sup>Newmann & Stevens (as n.37 above)

<sup>42</sup>Ombati, C. (2016). "University of Nairobi student arrested on his way to Libya to join ISIS terror group". Standard Digital, February 18 2016. Available at: <https://www.standardmedia.co.ke/article/2000192170/university-of-nairobi-student-arrested-on-his-way-to-libya-to-join-isis-terror-group>

<sup>43</sup>Interview with law enforcement official, 21 September 2016.

Similarly, on the case of terrorism suspects, Ms Khadija Abubakar Abdulkadir, Ms Maryam Said Aboud and Ms Ummulkhayr Sadri Abdulla, their cases were strengthened with new cyber intelligence reports which revealed that they had contacts in Canada, Qatar, Sri Lanka, Rwanda, Tanzania, Sudan, UAE, Turkey, the UK and the US. Reportedly, the recovered information from their laptops pointed to the fact that the contacts were used to recruit members for Al-Shabaab abroad. Evidence recovered from their laptops revealed that the accused had contacts with Al-Shabaab-linked Shwaid Mubarak. Pictures retrieved from their laptops contained materials promoting Jihadism and the killing of non-believers, which were alleged to be used for recruitment purposes.<sup>44</sup> During the trial, the defence challenged several aspects of the prosecution, which included arguments related to constitutional rights based on pretrial detentions to avail time to gather evidence. Further discussions centered on the unclear nature of data gathered for the trial which included access to personal laptops and mobile phones. Amidst the invoked arguments, the three suspects together with another, Halima Adan Ali, were convicted of being members of a terrorist group and aiding activities related to terrorism.<sup>45</sup>

The case brought forth arguments on the perspective of upholding privacy rights amidst a known situation for national security if the accused were planning or was intending to join a terrorist group which directly threatened Kenya. The revelations from this case exposed the sheer capacity of the state to collect personal data considered vital to the investigations<sup>46</sup> while questioning the context of rights involved in the investigation process.

Despite these efforts on monitoring and regulating the online environment, there is still need for a careful analysis of how these online platforms are used by extremists and the causes of vulnerability of young people online. For, not all those who are recruited were aware of the extremist sites nor have they been visiting these sites knowingly and with the intention of being recruited.<sup>47</sup>

## Al-Shabaab and the Use of Online Media

Like many other terrorist organisations such as ISIS, Al-Qaeda in the Arabian Peninsula (AQAP), Al-Shabaab too has utilised online mechanisms, mainly social media, for radicalisation and recruitment of people from many parts of the world. This section describes particular aspects on how the internet is used for Al-Shabaab radicalisation and recruitment in Kenya. In particular, the focus will be on the synchronous manner in which various activities complement each other, to explain a complex process than the specific individual activity: radicalisation and recruitment.

<sup>44</sup>Rachel, B. (2015). Cyber Crime Reports Link Four Kenyan Women To International Terrorists <http://intelligencebriefs.com/cyber-crime-reports-link-four-kenyan-women-to-international-terrorists/> (Accessed on January 12 2017)

<sup>45</sup>Agnon, S. Y. (2016). "Four Shabaab 'Brides' charged over terror attack plot". Available at: <http://intelligencebriefs.com/four-shebaab-brides-charged-over-terror-attack-plot/> (accessed on June 2 2017).

<sup>46</sup>Rachel (as n.44 above)

<sup>47</sup>Field discussion, 12 May 2016)

The core to radicalisation and recruitment into terrorist organisations is the ability of these organisations to use the internet and social media platforms for propaganda. All other aspects of online strategies of the terrorist networks are dependent on this propaganda,<sup>48</sup> which gives meaning and purpose to the activities.<sup>49</sup> Like many other terrorist organisations, Al-Shabaab uses the internet for propaganda, mainly aided through its social media platforms.<sup>50</sup> Media platforms enhance the perpetual distribution of video, audio and static content ‘on an unprecedented scale, enabling the establishment and reinforcement of a master narrative’ which provides ‘context, meaning and purpose’ to the violent act undertaken by the terrorist group.<sup>51</sup> The tweets associated with the Al-Shabaab attack at the Westgate Mall in Nairobi by the Harakath al-Shabaab al-Mujahideen (@HSM or @HSMPress\_) provided meaning and justification for the terrorist act pegged onto a master narrative of grievances and oppression.

Focusing on a master narrative of a dichotomy between Muslims and non-Muslims, a clear war between the two groups was highlighted where narratives were framed on Muslim civilians being unfairly and disproportionately targeted in tandem with the strength and the tactics of the West. The tweets referred to the massacres of Muslims in Somalia by an invasion of nonbelievers or Christians (African Mission to Somalia, Kenya Defense Forces, and Kenyan government).<sup>52</sup>

*‘AMISOM used missiles on Muslim civilians in order to force an entry into Somalia. They shelled villages to extinction, imposed curfews.’ @HSM\_SUPERSTARS<sup>53</sup>*

Al-Shabaab tweets such as the one above facilitated the establishment of their claim of justifying their attack on the Westgate Mall. According to their tweets, the killing of civilians in the Westgate Mall was acceptable in response to the killing of Muslim civilians in Somalia. Further, Al-Shabaab tweeted that the entire responsibility for the Westgate Mall attack was on the Kenyan government:

*‘It’s the laws of Retribution! There are no acceptable legal remedies for #Kenyan atrocities against the innocent Muslims of #Somalia #Westgate’ @HSM\_PROffice<sup>54</sup>*

*‘The Kenyan government should take the full responsibility of #WestGateAttack & we declare our operation a justifiable one.#JihadDispatches’ @HSM\_official1<sup>55</sup>*

<sup>48</sup>Fernandez, A. M. (2016). “ISIS Online: Countering Terrorist Radicalization and Recruitment in the Internet and Social Media.” Written testimony submitted to the Senate Committee on Homeland Security and Governmental Affairs, July 6 2016. Available:

[https://www.hsgac.senate.gov/download/fernandez-testimony\\_psi-2016-07-05](https://www.hsgac.senate.gov/download/fernandez-testimony_psi-2016-07-05)

<sup>49</sup>Wiktorowicz, Q. & Amanullah, S. (2015). “How Tech Can Fight Extremism,” CNN News, Feb. 17, 2015, [www.cnn.com/2015/02/16/opinion/wiktorowicz-tech-fighting-extremism/](http://www.cnn.com/2015/02/16/opinion/wiktorowicz-tech-fighting-extremism/)

<sup>50</sup>Menkhaus, 2014 (as n.7 above).

<sup>51</sup>West, L. J. (2016). “#jihad: Understanding social media as a weapon”. *Security Challenges*, 12(2), 9-26.

<sup>52</sup>Mair, D. (2016). “#Westgate: A Case Study: How al-Shabaab used Twitter during an ongoing attack”. *Studies in Conflict and Terrorism*, 40(1): 24:43.

<sup>53</sup>Tweet reused from the analysis in Mair, D. (2015). Conforming to al Qaeda’s single narrative – an analysis of al-Shabaab’s tweets during the Westgate terrorist attack in Ogun, M.N. *Terrorist Use of Cyberspace and Cyber Terrorism: New challenges and responses*. Amsterdam: IOS Press.

<sup>54</sup>Mair (as n.53 above)

<sup>55</sup>Mair (as n.53 above)

The tweets revealed the potential of the messages to reach across in a timely manner when the attack was carried out. Hence propaganda gets across in real time, and across varied individuals apart from their recruiting base.<sup>56</sup> In this case, in an effort to prevent the platform from being used as a propaganda medium for al-Shabaab, Twitter suspended many of the HSM accounts almost instantly.<sup>57</sup> However, immediately after the accounts were shut down, the followers opened up other accounts with the #HSM tags. It is unclear how such propaganda could lead to radicalisation and recruitment; nevertheless, it showed the potential of attracting and awakening desire for their cause among their members and sympathisers.

The continued production of eye-catching, religiously-manipulated violent videos by Al-Shabaab's propaganda wing, Al-Khataib, is not new, but its recurring uploading of these videos into online platforms with the use of new social media platforms raises concern with its ability to reach a wider audience. A widely-circulated video upload of Harakat al-Shabaab al-Mujahidin was the 'The Westgate Siege – Retributive Justice', with its reference made in various other sites (Facebook link, justpaste and Twitter).

Uploads of the video were in justpaste and Youtube, which was later removed by surveillance authorities.<sup>58</sup> The video was released after a double bombing incident in Mogadishu, Somalia in February 2015. The video used the incident of the Westgate Mall attack which killed over 60 people and lasted four days, presented by an English announcer and linked with justifications for the attack using clips of Prof Anderson's presentation (an Oxford professor who had worked on documenting British atrocities during Kenyan struggle for independence published in *Histories of the Hanged*). The compilation used Kenya as a case study to bring out the plight of Muslims being discriminated against by the present government, in similarity with the past when the British Empire handed over the predominantly Muslim Northern Frontier District to the Kikuyu-dominated government under Kenya's first President Jomo Kenyatta.<sup>59</sup>

Apart from credibility by using clippings of a famous researcher, the images and discussions were tailored to attract an audience from Kenya and abroad. The video ended with the call for attacks in malls in the west with reference to the Westgate Mall attack style: "If just a handful of mujahedeen fighters could bring Kenya to a complete standstill for nearly a week then imagine what a dedicated mujahedeen in the West could do to the American or Jewish-owned shopping centres across the world?" ...He goes on to name several western malls, before encouraging viewers to "hurry up, hasten towards heaven and do not hesitate".<sup>60</sup>

<sup>56</sup>Alarid, 2016 (as n.2 above)

<sup>57</sup>Oginga, B. (2013). Al Shabaab twitter account shut down after Kenyan attack. Standard Media, September 22 2013

<sup>58</sup> Field Discussion with Law enforcement officials.

<sup>59</sup>Kiser, M. (2015). Al-Shabaab's recruitment video: The Westgate Siege – Retributive Justice, some observations. Available at: <https://margotkiser.com/2015/02/26/al-shabaabs-recruitment-video-the-westgate-siege-retributive-justice-some-observations/>

<sup>60</sup>Kittock, P. (2015). Al-Shabaab calls for attacks in the West. Available at: <https://counterjihadreport.com/tag/the-westgate-siege-retributive-justice-video/>



Similarly, the video message series ‘And Rouse the Believers#1’ to ‘And Rouse the Believers#5’ were a series of uploaded videos by Al-Shabaab used for convincing believers to join them. The discussions on these videos were further continued through other social media platforms such as Twitter and Facebook. The content of the video was molded for a Kenyan audience. Naming the series, ‘And Rouse the Believers’ had a significant connotation as it was based on the Quranic verse (8:65) of Surah Anfal ‘termed the spoils of war’ during the times of Prophet Muhamed. Previously, this verse had been well-articulated by Abu Yahya al-Libi, an Al-Qaeda affiliate, in his sermon, ‘To the army of difficulty in Somalia – 25 March 2007,’ where he made a request to the Mujahideen to join the fight in Somalia to protect their brothers (Muslims).<sup>61</sup>

Other YouTube videos such as ‘Mawaidha, Jihad na Izza, Wanafiq’ comprise messages aimed at luring individuals mainly based on the ideology of Jihad,<sup>62</sup> emphasising the need for war and joining the Muslim brothers in the Somali warfront and killing infidels (Kaffirs).

These videos mimic the adventure of the journey of Jihadists, sometimes accompanied by stories of the death of martyrs and glamourised with poetry and songs obviously targeted to young Kenyan and Westerners alike, even to the extent of incorporating rap music: ‘[M]ortar by mortar, shell by shell, only going to stop when they go to hell’.<sup>63</sup>

The videos often include background music with lyrics translated into Swahili or English. More recent videos feature English-speaking jihadists, although majority of centre on Swahili and some in Arabic. The videos focus on the images of martyrs and military combat, highlighting the plight of the Somali Muslims and the dire need for young Muslims to join them to defeat their enemies.

To lure members into Al-Shabaab, the organisation has invested in the online magazine ‘*Gaidi Mtaani*’ meaning ‘Terrorism Street’ or ‘Terrorist in the neighbourhood’. Open source publications such as cyber magazines have been a communication medium for many terrorist organisations. For example, Al-Qaeda used *Inspire* as its propagation, recruitment and training manual. ISIS used Dabiq to reach a wider audience around the world, with its latest propaganda on the Islamic State.<sup>64</sup> *Gaidi Mtaani* is a platform used by Al-Shabaab in promoting messages, recruiting members and as a training manual.<sup>65</sup> The *Gaidi Mtaani* magazine is now in its ninth issue. The evolution of the Swahili magazine (targeting East Africa) in *Gaidi Mtaani 1*, to a well-written Swahili-English magazine, reveals its outreach to a broader community beyond Kenya. Each issue had a focused theme, for example the recent *Gaidi Mtaani* Issue Nine promoted ‘Jihad

<sup>61</sup>Intelcenter (2009). Intelcenter words of AbuYahya al-Libi. Alexandria: Intelcenter.

<sup>62</sup>Physical Jihad refers to a struggle or fight against the enemies of Islam. In this study, the context for the word takes the approach where Jihad is viewed with regard to the saving of the religion and the Muslims, namely the Somali community, the Muslims in marginalised regions in Kenya and the Muslims in the world.

<sup>63</sup>The phrase was cited from Counter Extremism Project, 2017. Available at: <https://www.counterextremism.com/threat/al-shabab>

<sup>64</sup>Lorenzo-Dus, N., Walker, L. & Kinzel, A. (2017). “The Role of Discourse Analysis in Terrorism Studies” in Conway, M., Jarvis, L., Lehane, O., Macdonalds, S. & Nouri, L. (Ed.). *Terrorist’s Use of the Internet: Assessment and Response*. The Hague: IOS Press, pp. 158-169.

<sup>65</sup>*Gaidi Mtaani*, Issue No.2



over Democracy’ had discussions on the presidential elections in Kenya. The magazines brought in the latest topics and related Al-Shabaab network with other Jihadist networks elsewhere.

Al-Shabaab videos, tweets and messages reveal that an effective narrative is a requisite for radicalisation and recruitment. For Al-Shabaab, the advantage has been the use of the KDF intervention into Somalia in October 2011. Ever since, this incident had been encapsulated into a master narrative, where the organisation termed the intervention as an invasion of Christians into the Muslim land (Somalia). Since then, Al-Shabaab has been consistent in using messages ‘termed as an invasion’ pegging into the wider Jihadist narrative ‘West or crusaders invasions into Muslim lands to destroy the Muslims’.<sup>66</sup> Platforms such as Facebook, Twitter and YouTube messages and comments have eased the job of breaking down the master narrative into different narratives and diversified their pitch thereby appealing to various communities.

The video message from Harakat al-Shabab al-Mujahidin’s Shaykh Ali Mahmud Rage’s ‘An analysis of Events, Part 1-2: Message to the Muslims in Kenya’ focused exclusively on Kenyans.

Further, propaganda messages aimed at radicalising, recruiting or motivating them to carry out violent acts necessitated ‘moral support usually derived by learning about martyrs (people who had sacrificed their lives for the cause of Jihad)’<sup>67</sup>. Most propaganda messages in the YouTube videos or in *Gaidi Mtaani* contain overt and subtle references to individual jihadist action, and in some cases provide justifications for such actions. The issue 8 of *Gaidi Mtaani* carried the story of Fazul Abdullah (glorified as a warrior) known for his involvement in the American embassy bombings in Nairobi and the Mombasa terrorist attack in 2002.

Acknowledging these heroic acts and their efforts becomes further promoted when they are shared, discussed and ‘liked’. Famously known as ‘liking Jihad’ is an indicator of how many have viewed the message or video, their affinity or their interest.<sup>68</sup> Most often viewers are members or sympathisers. In some cases, the Jihadists ‘reach these individuals through the same link to promote their messages, or lure them to other platforms for discussions to further radicalise them [viewers]’.<sup>69</sup>

Various efforts have been made by law enforcement authorities in combating online propaganda and radicalisation efforts. This includes digital surveillance measures of monitoring and shutting down extremist websites and disabling links and using due process to prosecute cyber-related cases. However, terrorist organisations are adaptive by nature as they find solutions to their exposure in unencrypted communications.<sup>70</sup> Hence efforts of high surveillance on unencrypted communications drive extremists to navigate the online environment in utilising encrypted platforms such as Kik, Surespot, justpaste or Telegram.<sup>71</sup>

<sup>66</sup>Mair (as n.53 above).

<sup>67</sup>Interview with religious leader, September 30 2016.

<sup>68</sup>Alarid 2016 (as n.6 above)

<sup>69</sup>Interview with NGO personnel, 12 May 2017.

<sup>70</sup>West (as n.51 above)

<sup>71</sup>Interview 21 September 2017

## Young People and Vulnerability Online

The individuals vulnerable to radicalisation and recruitment into Al-Shabaab are mainly young people who have exposure to an online media environment. With varied reasons, they thread in this environment looking for particular needs which they feel that the online environment could offer. Extremists exploit the needs of these young people online. Similarly, as in offline dynamics of recruitment, young people fall victims online due to their needs such as employment, the need for religious knowledge, the need to be heard or recognised or to belong to a network or group.<sup>72</sup> There were two ways in which young people could enter into extremist sites, networks or links. First, young people access extremist links or sites willingly, usually driven by ideology of Al-Shabaab or a passion to the cause of defending the Muslim Ummah<sup>73</sup> or even because of their group needs, desire to be in an extremist group or being part of a group chat forum.<sup>74</sup>

Most often, the people who access the group willingly include members of the group, sympathisers of the cause, individuals driven by curiosity to learn about Al-Shabaab, or individuals driven by the desire for revenge, or want to belong to a wider group or extremist network. Some are also lone wolves.<sup>75</sup>

Second, some young people are lured into these online extremist networks unknowingly. Discussions reveal youth who had experiences of being in extremist links online or had any of their close friends being linked or threading into these radical links unknowingly. This ‘unknowingly’ aspect in recruitment has been common among respondents, who emphasised that they never had any idea of ‘how a particular advert could take them to Al-Shabaab discussion’.<sup>76</sup> Sauda explained how young people are lured into extremist sites: ‘There are many other bad things [pornographic sites etc.] that you could end up in, radical links are same as any of these links’<sup>77</sup>. This was re-iterated by Hussein who said ‘young people get attracted to online messages and follow particular links which they never think they would end up in’.<sup>78</sup>

Similarly, Halima revealed that the online media is rich with information and this attracts young people to check for this information: ‘Today, young people look into everything on their phones [online] for information and guidance. They even follow advice online’.<sup>79</sup> This lack of reliance on direct contact, which was formerly by elders on advice and guidance have now ‘pushed young people to accept things which are beyond their [elders] generation to an unknown new generation’.<sup>80</sup> The social media fits exactly into these spaces of generational gap, as the unknown new generation is well received through online media platforms.

<sup>72</sup>Koehler (as n.1 above)

<sup>73</sup>Ummah refers to a community of Muslims bound together by religion

<sup>74</sup>Field discussion with youth leaders, Kwale.

<sup>75</sup>Lone wolves refers to individuals who were self-radicalised.

<sup>76</sup>FGD, Youth, Kwale

<sup>77</sup>Interview with Women Leader, May 20 2017, Mombasa

<sup>78</sup>Interview with Youth, October 24 2016, Mombasa

<sup>79</sup>Interview, Community Leader, Kilifi

<sup>80</sup>Interview M21, Mombasa

## Lured through Job Opportunities

Like many other parts of Kenya, the Coast region is grappling with the problem of unemployment of young people. The rate of unemployment in the second largest city in Kenya and the major city in the Coast has been estimated to be 44 per cent.<sup>81</sup> For disgruntled jobless youth, the internet and social media platforms provide a platform for job adverts to be circulated. Omar pointed out that young people are constantly in search of jobs and online adverts have made it easier to find relevant jobs:

*Young people are desperately looking forward for job opportunities in the Coast. They are so desperate they will do anything to hunt for jobs. Hunting online has been the main trend these days... friends send you links or you see links on job opportunities and just try your luck .*<sup>82</sup>

Al-Shabaab recruiters use the need for jobs by posting relevant adverts online to attract potential recruits. Four trends have been visible on the aspect of being lured through job opportunities. First, the free floating of job adverts through social media. As young people are desperately on the lookout for jobs or for better job opportunities, recruiters feed into this need by luring young people with jobs with better salaries, and the option of working in a different country (usually a middle eastern country):

*Most of the vacancies that are advertised come from the Middle Eastern countries, knowing that young Muslims are dreaming to go to these countries for jobs. Some salaries are beyond what we can imagine. Young people fall prey as some feel it's a lifetime opportunity.*<sup>83</sup>

The next stream of job opportunities are vacancies from the hotel trade, as the coastal region is filled with the high potential of the tourism sector. Osman explained that these jobs are from the hotel industry locally. These types of jobs are for waiters and waitresses or assistant level of vacancies. The adverts attract Form Four leavers and sometimes even school drop outs.<sup>84</sup>

The other type of job opportunities came from a KDF (Kenya Defence Force) seeming link asking for recruiting soldiers as there is a need to fill in a few new recruits. A participant highlighted that 'many young men are dreaming of jobs as soldiers and this makes youth apply for such vacancies'.<sup>85</sup> Two aspects need to be understood from this online job adverts: On one end, this reveals the innate potential of getting a data base of recruits that now could be groomed to possible recruits. However, it is important to highlight, not all those who fall in the recruiters database end up as recruits. Then this trend traps into the need of a desperate group of young people looking for jobs.

<sup>81</sup>The statistics available from the Kuza project was used in this study. The Kuza project's definition of unemployment included those earning less than ksh 10,000 (USD 100) per month. There is concern of how the Coast region of Kenya will harness its potential if the labour market is unable to absorb rapidly increasing numbers of young people. See: Waddilove, H. (2017). "Big Barrier: Youth unemployment at the Coast". Report available at: <http://riftvalley.net/publication/big-barrier-youth-unemployment-coast#.WeO3B1uCiIU>

<sup>82</sup>Interview M27, Mombasa

<sup>83</sup>Interview with Women Leader, Kwale

<sup>84</sup>Interview M24, Mombasa

<sup>85</sup>Interview, NGO member, Kilifi

Prospects of jobs or means of an extra income through chats and messages in the disguise of friends was evident as in the case of Abdullah:

*A new friend who comes in the friend request, and you accept him into your Facebook page. He engages with you for long periods of time through Facebook chats. He says he is a foreigner [Nigerian], talks about his country, then he would ask about Kenya. After a few discussions, he talks about poverty he has read about in Kwale. Next he did ask, “how do you survive there, with such a job [I told him I was working at an assistant level in my office]”. He willingly said he would like to help. He said he will get me a good job in Dubai as he has many friends. He also asked whether I like to travel. As I was interested he said he will find a job. After few more discussions, I found that rather than talking about the job, he was more interested in talking about religion. Initially, I thought it’s normal as we were both Muslims.*

*Later the discussions were more serious on how Muslims should defend other Muslims and then he started justifying Al-Shabaab and how as a single group is keeping up to the war against the Kenyans and the West to save their Islamic land. At this point I knew I had to move away, I was scared and I blocked him.<sup>86</sup>*

Similarly, Ramadhan explained how he was lured through an online job link to a discussion on religion. ‘Initially it’s a nice discussion then it becomes a bit confusing, with constant new information on how Muslims are treated all over the world’.<sup>87</sup> The two narratives point out that recruits use the context of jobs or employment to lure young people into trusting them and being dependent on them. Once the youth feels the friend or the stranger could be trusted, they start to open up. During this period, religion and other discussions which centre on extremism are put in bits so that the recruiter finds a way to check the affinity of the young person or sees whether he avails himself to such form of radical thinking.

Others highlighted that the lure of extra money makes young people join these groups:

*Some do also get influenced for a bit of extra money, as they (recruiters) may motivate the young person with the lure of money for his obedience and his ability to carry out small tasks such as uploading videos or messages.<sup>88</sup>*

Law enforcement authorities are grappling with the context of online job advert scams and most of the crimes fall within the purview of cybercrimes. Yet, the monitoring of these job advert scams has not been easy, as scams are usually revealed when information is provided by the public to the police. Very few report on these online job adverts. If these adverts are monitored, the recruiters use another site to re-advertise. Most often, this necessitates community awareness.<sup>89</sup>

<sup>86</sup>Interview with youth M45, Kilifi

<sup>87</sup>Interview with youth M30, Kwale

<sup>88</sup>Interview with youth leader M24, Mombasa

<sup>89</sup>Interview with NGO personnel, 13 September 2016.

## Need for Religious Guidance

Religion learning sites or YouTube videos on religion are among the media used to lure young people online. Many young Muslims are in search of Islamic knowledge which they may or may not get from their families or the schools they attend. The internet becomes the most readily available space to learn religion due to the wide array of information being spread through religious scholars. There are three reasons why young people are in need of religious knowledge.

First, it is the need for the real Islamic knowledge as taught by the Quran and the Sunnah<sup>90</sup> of the Prophet Muhamed (Sal):

*Many young people are looking forward for the real Islamic knowledge which may not be available in the households. Households, may practice, but may not be practicing it in the real sense according to the Quran and Sunnah. Hence the young person is looking forward for this knowledge from elsewhere and the internet becomes the most readily available place.*<sup>91</sup>

Second, most young people have ‘no time for religious education such as through madrassas or through religious teachers, as secular education does not provide this knowledge’.<sup>92</sup> Again, the internet becomes the most accessible for young people who have no time for religious education outside the secular education system and need accessible information. Third, youth need religious guidance on their present state of their lives:

*Youth increasingly turn to the internet to find religious answers to contemporary issues in their lives. The online sheikhs become a good guide to these young people who feel they need religious guidance in their lives.*<sup>93</sup>

In almost all these instances of seeking for religious guidance, young people are lured through various links to religious sites or videos. Most often, ‘they end in contexts they have not envisioned themselves in’.<sup>94</sup> A young person responded that it was his friend who gave him a few online video links to understand Islam. The links finally led him to Aboud Rogo’s videos<sup>95</sup>. Most often the video links or sites are provided by trusted friends. This trust makes young people sometimes ‘accept what friends would ask them to do, sometimes resulting in drastic consequences [son accused on terror charges being in possession of online downloads of extremist videos]’.<sup>96</sup>

Young people were also being lured into online networks due to the attractiveness of Al-Shabaab’s ideology. While the Al-Shabaab ideology is complex, with varied dimensions,

<sup>90</sup>Sunnah refers to the verbally transmitted records of teachings, deeds and sayings of Prophet Muhammad (sal), the last prophet of Islam and various reports about Muhammad’s companions.

<sup>91</sup>Interview, M22, Mombasa

<sup>92</sup>Interview, Women Leader, Mombasa

<sup>93</sup>Interview, NGO member, Mombasa

<sup>94</sup>Interview, Community Leader, Mombasa

<sup>95</sup>Interview, M20, Mombasa

<sup>96</sup>Interview with father of accused, Mombasa

respondents highlighted ‘the defender of Islam or religion’ as a main motivating factor for young Muslims. Most other tenets of the ideology such as Hijrah<sup>97</sup>, Shahid<sup>98</sup> or Jihad were linked to this fact.<sup>99</sup>

It is unclear from the narratives how young people get lured because of the ideology, but the process usually starts with being introduced by a friend or a trusted person like a madrassa teacher after being initially indoctrinated.<sup>100</sup> Narratives did not clearly spell out young people lured online with regard to ideology on their own (lone wolves) but few expressed the potential of young people to venture on their own through online platforms.<sup>101</sup>

Yet no case has been reported where young people have been indoctrinated on their own through a particular website or online link. Similarly, narratives pointed out that young people who go through many of these extremist materials and sites are in desperate need of direction and guidance in their lives.

Ideologies have the ability to fill in these gaps by giving them a purpose in life. This purpose gives them a reason to be recognised, and a role in life. Usually, this stage of indoctrination is where his or her world view changes, and he remains isolated from the rest of the family and friends.<sup>102</sup>

Curiosity is another reason why young people end up in these online links. With the spread of content related to radicalisation and recruitment, young people are becoming curious to understand the context of radicalisation, extremism, Al-Shabaab and terrorism.

This includes being curious to know issues when they see propaganda materials such as an image on their own or their friends’ Facebook page. This thirst to know what the image or some text means can lead them to other extremist sites.<sup>103</sup>

Curiosity can also lead to further discussion on the topic, which could start from an online discussion or image. As expressed by Osman, young people are curious to know issues which happen around them:

*You need to know what’s happening among the Muslims in Kenya, why is Makhburi considered a radical? Who are these Jihadist groups? What is this wave of Al-Shabaab extremism? This makes them search for answers mainly online, as you can’t discuss in the open due to the prevailing security environment. Sometimes treading into these links can lead you into their [al-Shabaab] networks.*<sup>104</sup>

<sup>97</sup>Hijra means migration in relation to the Muslim era. In this study migration is viewed in line with the support in strengthening the al-Shabaab or ISIS ‘vision for a caliphate’ or defending the utopian Islamic state or Muslim community.

<sup>98</sup>Shahid refers to a Muslim martyr in Arabic.

<sup>99</sup>Interview, Youth M14, Mombasa

<sup>100</sup>Field discussions, FGD Religious Leaders, March 2016

<sup>101</sup>Interview, Youth M27, Mombasa

<sup>102</sup>Interview, NGO member, Kwale

<sup>103</sup>Interview Community Leader, 17 May 2017, Kwale

<sup>104</sup>Interview Youth, 23 October 2016, Mombasa

Substantial emphasis has been placed on understanding the role of ideological indoctrination as a means of online recruitment.

At the same time, ideology needs to be dealt with with utmost care, as de-radicalising ideology driven youth online has not been easy.<sup>105</sup> Ideology driven usually means a fixed mind set of the young person. The individual usually goes online to strengthen his preconceived notion of the ideology, who most often had been indoctrinated prior to his online urge, and is looking forward to strengthen himself in this network.<sup>106</sup> As expressed by Venhaus:<sup>107</sup>

*Once a young man has “crossed the threshold” and begun the indoctrination process, his information environment changes dramatically. He is isolated and indoctrinated and his worldview altered to a point of cultlike zealotry that makes him psychologically unlike his pre-indoctrination state. Once a potential recruit has entered the pipeline, he is no longer an appropriate target for counter-radicalization through positive influence, because he is unlikely even to hear an opposing message, and the chance that he will be free to respond to it or interpret it objectively is minuscule.*

Countering radical narratives online is much more than deconstructing the narrative as per the Quran and the Sunnah. It needs much more on how to tailor make it to the needs of the present day needs of youth and their aspirations.

This is often missing in the countering of narratives online and usually the radical recruiters are better placed in constructing narratives which are tailor-made for young people in their present context. Programming projects on counter radicalisation entails youth-led initiatives to carry out online discussions on ideology and the ways to counter youth recruitment online through programmes using social media platforms. This also entails deglamourising messages, particular narratives and images. Programmes should move away from band-aid solutions of mere explanations of Quran verses and accompanying hadiths to how counter narratives fit with the present context of the young people.

Providing online platforms for religious education by known moderate clerics can be a solution for young people who are seeking religious knowledge.

There are many available websites and networks, but young people need to be aware of particular recommended websites and religious knowledge dissemination networks for knowledge consumption.

<sup>105</sup>Venhaus, J. (2010). *Why Youth Join Al-Qaeda. Special Report*. Washington DC: United States Institute of Peace.

<sup>106</sup>Field Discussion, Interfaith Summit, March 2016, Mombasa

<sup>107</sup>Venhaus (as n.106 above, p.9)

## Need for Revenge

Individual revenge can be vented into group revenge, 'building into the bigger ideology of revenge seeking on the Kenyan state in line with Muslims being discriminated in Kenya'.<sup>108</sup> A revenge seeker is mostly attracted to the Al-Shabaab message on venting anger on the Kenyan state and the officials (police and the soldiers). Therefore, Al-Shabaab's propaganda online helps fuel their anger in which the revenge seeker sees the Kenyan state as the main problem in the Muslim communities in Kenya and in Somalia. The idea of revenge can also be generated through online chats and messages. After accepting a friend request from a person from Egypt, Hashim was constantly in chats with the person.

*He said he was a foreigner [Egyptian], interested to know about Kenya. Initially, he [the friend] will talk hours on how he has known Kenya for its beautiful landscape, safaris. He was a very understanding person and I liked talking to him. After a few chats [four], he starts to talk about the Muslims in Kenya, how they live desperate lives, constantly being discriminated. I was at one point trying to understand how a foreigner could know details of Kenya in this manner. Slowly his tone changed into anger on how Muslims were treated, initially I thought it was normal. Later he placed all anger on the state and the Western powers and said it is my duty to protect and defend the Muslims...he said with such vigour with statements, I knew the discussion was scary. It took me time to stop discussing as I could not break the friendship at once. But slowly, I broke the friendship.<sup>109</sup>*

With social interactions online, the internet can be used as a platform to vent anger if the revenge seeker is victimised in the society. In July 2017, a Facebook message went viral, where a girl swore she would revenge against the police after her boyfriend was shot dead by the police in old town, Mombasa.

The boyfriend was a known gangster who had threatened the community.<sup>110</sup> Venting of anger online assists individuals with similar anger to come together in online platforms for revenge-seeking missions. Usually, revenge seekers perceive themselves as victims in society, wherein their victimhood is mainly due to the unfair nature of the community or state. He or she may be angry due to particular trigger factors such as the death of a loved one such as a partner, spouse or a father killed as a consequence of extrajudicial killings. Occasionally, such anger amplifies with time and he or she could find potential groups online for comfort.<sup>111</sup>

These comfort-seeking groups could consequently change him or her into a potential recruit driven by the [extremist group's] ideology.<sup>112</sup> Such levels of anger can be easily exploited by radical recruiters online. They incorporate them into groups so that they can find solace in the group.

<sup>108</sup>Field Discussions, Interfaith Summit, Mombasa

<sup>109</sup>Interview, Youth, July 23 2016 Kwale

<sup>110</sup>Interview, May 12 2017

<sup>111</sup>FGD, Women Group, Kwale July 24 2016 Kwale

<sup>112</sup>Field Discussions, Youth Leader Forum, Mombasa



## Conclusion

The chapter has emphasised the ongoing trend of online recruitment of youth into Al-Shabaab networks, highlighting how the extremist network utilises the online environment and particular vulnerabilities of young people to be driven into these networks. With the increasing trend of mobile and internet usage among young people in mind, it is important to not just focus on their usage as the root of radicalisation but to view it as a means through which extremist ideas can easily be spread to vulnerable young people. In recognising the role that individual choice has in the matter, such as violent radical ideas or extremism, we must also collectively be concerned for, and provide guidance to, young people who are developing their own critical thinking, independence and perspectives on major events and issues. For, it is important to be aware that vulnerable people may have online conversations with others that seek to radicalise them and who aim to take them into the less open online space to discuss issues such as how to prepare for and travel to Somalia, Syria or Libya and how to carry out attacks on hard and soft targets in Kenya.

The chapter provides the context which necessitates online intervention in terms of preventing and countering extremist online content, links and networks. However, monitoring regulations can often contradict privacy laws needed in a democratic space or country.<sup>113</sup> There is need to balance surveillance in the digital space and privacy rights, as part of the efforts in countering online radicalisation and recruitment.<sup>114</sup> Achieving this balance requires that policy makers and legislators weigh the interest of one right against the other to ensure least derogation of rights.

Hence, to balance national security concerns versus privacy rights, the policy maker or legislator has to utilise empirical evidence to justify the threat of an individual against national security.<sup>115</sup> Further, the procedure need to follow the due process as set out in the law of the land.

The need for further research on online recruitment strategies is clearly evident in terms of understanding the lexicons used in promoting extremism, the online leadership dynamics such as the emerging online sheikhs and their characteristics, online recruiters as friends, the online recruitment processes for Al-Shabaab which usually relies on a physical contact and a discourse analysis of the radical narratives. Further, research should focus on the area of lawful interceptions and surveillance on internet platform to mitigate online radicalisation and recruitment, which often comes under frequent reviews and critiques.<sup>116</sup> These areas need to be studied for the designing of effective implementation measures to counter specific online strategies.

<sup>113</sup>Cohen, J. (2016). The next generation of government CVE strategies at home: Expanding opportunities for intervention. *The ANNALS of the American Academy of Political and Social Science*, 668(1), 118-128.

<sup>114</sup>See: Badurdeen, F. A. (2016). "Digital Surveillance in Countering Cyber Terrorism in Kenya: Ethical dilemmas and moral panics". Paper presented at the CODESRIA workshop 'The African State and the Public Cyber-security Service' in Dakar, Senegal on November 26 2016; Badurdeen, F. A. (2017). "Digital Surveillance and Privacy Concerns in the Counter Terrorism Discourse in Kenya: Policy Implications". Paper presented at the CPR-South 2017, in Yangon, Myanmar on August 31 2017.

<sup>115</sup>Golder, B. & William, G. (2006). "Balancing national security and human rights: Assessing the legal response of common law nations to the threat of terrorism". *Journal of Comparative Policy Analysis*, 8(1): 43-62.

<sup>116</sup>Branch, P. (2014). "Metadata and the law: what your smart phone really says about you". Available at:

<http://theconversation.com/metadata-and-the-law-what-your-smartphone-really-says-about-you-23827> (accessed on July 23 2017)

Finally, as expressed by some of the respondents, there is a need for opening up channels of online communications for young people (to flush out their anger and grievances) to dissent against atrocities on them and their communities while also encouraging political discourse and participation. Online platforms could be facilitated to support these dissent waves, so that affected youth need not look into other online extremist groups for support.<sup>117</sup> Innovative initiatives online adopting many social media platforms can help young people to release their anger, engage more in creative discussions and form groups that would facilitate young people to engage in deliberative democratic practice.

<sup>117</sup>Badurdeen, F. A. (2018). Surveillance of Muslim Youth and Counter Terrorism in Kenya, in Grasso, M. & Bessant, J. *Governing Youth Politics in the Age of Surveillance*. London: Routledge Publications.

## Bibliography

- Agnon, S. Y. (2016) "Four Shabaab 'Brides' charged over terror attack plot," *Intelligence Briefs*, <http://intelligencebriefs.com/four-shebaab-brides-charged-over-terror-attack-plot/> (Accessed on June 2 2017).
- Alarid, M. (2016) 'Recruitment and Radicalization: The Role of Social Media and New Technology' in Michelle, H. and Miklancie, M. (eds.). *Impunity: Countering Illicit Power in War and Transition*, Washington, DC: Center for Complex Operations: 313-329.
- Ali, S. (2008) *Fighting Online Extremism: Tackling old challenges in the internet age*. Singapore: S. Rajaratnam School for International Studies.
- Awan, A. N. (2007). 'Radicalization on the Internet? The virtual propaganda of Jihadist media and its effects'. *The RUSI Journal* 152(3): 76-81.
- Badurdeen, F. A. (2016) "Digital Surveillance in Countering Cyber Terrorism in Kenya: Ethical dilemmas and moral panics," Paper presented at the CODESRIA workshop 'The African State and the Public Cyber-security Service' in Dakar, Senegal on November 26 2016.
- Badurdeen, F. A. (2017) "Digital Surveillance and Privacy Concerns in the Counter Terrorism Discourse in Kenya: Policy Implications," Paper presented at the CPR-South 2017, in Yangon, Myanmar on August 31 2017, (Accessed on June 18 2017) [http://www.cprsouth.org/wp-content/uploads/2017/09/Fathima-Azmiya-Badurdeen\\_paper.pdf](http://www.cprsouth.org/wp-content/uploads/2017/09/Fathima-Azmiya-Badurdeen_paper.pdf)
- Badurdeen, F. A. (2018) 'Surveillance of Muslim Youth and Counter Terrorism in Kenya', in Grasso, M. and Bessant, J. *Governing Youth Politics in the Age of Surveillance*, Abingdon, Oxon: Routledge Publications: 96-112.
- Berger, J. M. (2015) 'Tailored Online Interventions: The Islamic State's Recruitment Strategy', *CTC Sentinel* 8(10): 19-23.
- Branch, P. (2014) "Metadata and the law: what your smart phone really says about you," *The Conversation*, <http://theconversation.com/metadata-and-the-law-what-your-smartphone-really-says-about-you-23827> (Accessed on July 23 2017)
- Briggs, R. (2011) *Radicalisation: The role of the Internet*, London: Institute for Strategic Dialogue.
- Bouzar, D. and Flynn, C. R. (2017) 'ISIS Recruiting: It's not (just) ideological', *Foreign Policy Research Institute*, <https://www.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/resources/docs/FPRI-ISIS%20Recruiting%20Its%20Not%20Just%20Ideological.pdf> (Accessed on July 23 2017)

Charvat, J. (2010) 'Radicalization on the Internet', *Defense against Terrorism Review* 3(2): 75-85.

Cohen, F. (2002) 'Terrorism and Cyberspace' *Network Security* 5(31): 17-19.

Cohen, J. (2016) 'The next generation of government CVE strategies at home: Expanding opportunities for intervention', *The ANNALS of the American Academy of Political and Social Science* 668(1): 118-128.

Conway, M. (2016) 'Determining the Role of the Internet in Violent Extremism and Terrorism: Six suggestions for progressing research', *Studies in Conflict and Terrorism*: 1-22

Community Oriented Policing Services (COPS) (2014) *Online Radicalization to Violent Extremism: Awareness Brief*, Washington DC: U.S. Department of Justice.

Fernandez, A. M. (2016) "ISIS Online: Countering Terrorist Radicalization and Recruitment in the Internet and Social Media". Written testimony submitted to the Senate Committee on Homeland Security and Governmental Affairs, July 6, 2016, [https://www.hsgac.senate.gov/download/fernandez-testimony\\_psi-2016-07-05](https://www.hsgac.senate.gov/download/fernandez-testimony_psi-2016-07-05) (Accessed on July 23 2017).

Golder, B. and William, G. (2006) 'Balancing national security and human rights: Assessing the legal response of common law nations to the threat of terrorism', *Journal of Comparative Policy Analysis*, 8(1): 43-62.

Hoffman, B. (2006) "The Use of the Internet by Islamic Extremists". Testimony presented to the United States House Permanent Select committee on Intelligence, 4 May 2006, <https://www.investigativeproject.org/documents/testimony/254.pdf> (Accessed on July 23 2017).

Hughes, S. and Vidino, L. (2015) *ISIS in America: From retweets to Raqqa*. Washington, DC: George Washington University Program on Extremism.

Intelcenter (2009) *Intelcenter words of AbuYahya al-Libi*. Alexandria: Intelcenter.

Kiser, M. (2015) "Al-Shabaab's recruitment video: The Westgate Siege – Retributive Justice, some observations" <https://margotkiser.com/2015/02/26/al-shabaabs-recruitment-video-the-westgate-siege-retributive-justice-some-observations/> (Accessed on July 23 2017).

Kittock, P. (2015) "Al-Shabaab calls for attacks in the West,"

<https://counterjihadreport.com/tag/the-westgate-siege-retributive-justice-video/> (Accessed on July 23 2017).

Koehler, D. (2014) 'The Radical Online: Individual radicalization processes and the role of the internet', *Journal of Deradicalization* 15(1): 116-134.

Lohermann, D. (2016) "How Terrorists' use of social media points to the future," <http://www.govtech.com/blogs/lohrmann-on-cybersecurity/how-terrorists-use-of-social-media-points-to-the-future.html> (Accessed on March 12 2017).

Lorenzo-Dus, N., Walker, L. and Kinzel, A. (2017) 'The Role of Discourse Analysis in Terrorism Studies', in Conway, M., Jarvis, L., Lehane, O., Macdonalds, S. & Nouri, L. (eds.). *Terrorist's Use of the Internet: Assessment and Response*, The Hague: IOS Press: 158-169.

Mabel, W. (2016) "Al-Shabaab has new recruiting locations in Kenya," Tuko News, <https://www.tuko.co.ke/118898-police-reveal-al-shabaabs-new-recruitment-locations-kenya.html> (Accessed on March 12 2017).

Macnair, L. and Richard, F. (2017) 'Voices against Extremism: A case study of a community-based CVE counter-narrative campaign', *Journal for Deradicalization*, 10(1): 147-174.

Mahmoud, S. (2012) "Online Social Networks: The overt and covert communication channels for terrorists and beyond," Paper presented at IEEE Conference on Technologies for Homeland Security, November 13-15 2012.

Mair, D. (2015) 'Conforming to al Qaeda's single narrative – an analysis of al-Shabaab's tweets during the Westgate terrorist attack', in Ogun, M.N. *Terrorist Use of Cyberspace and Cyber Terrorism: New challenges and responses*, Amsterdam: IOS Press.

Mair, D. (2016) '#Westgate: A Case Study: How Al-Shabaab used Twitter during an ongoing attack', *Studies in Conflict and Terrorism*, 40(1): 24:43.

Meleagrou-Hitchens, A. and Kaderbhai, N. (2017) 'Research Perspectives on Online Radicalization: A Literature Review, 2006-2016', <http://icsr.info/2017/05/icsr-vox-pol-paper-research-perspectives-online-radicalisation-literature-review-2006-2016/> (Accessed on March 26 2017)

Menkahus, K. (2014) 'Al-Shabaab and Social Media: A Double-Edged Sword', *Browns Journal of World Affairs*, 20(12): 309-327.

Neumann, P. and Stevens, T. (2011) *Countering Online Radicalisation: A strategy for action*. London: International Centre for Study of Radicalization.

Neumann, P. (2013) 'Options and Strategies for Countering Online Radicalization in the United States', *Studies in Conflict and Terrorism* 36(6): 431-459.

Oginga, B. (2013) "Al Shabaab twitter account shut down after Kenyan attack," Standard Media, <https://www.standardmedia.co.ke/article/2000094048/al-shabaab-twitter-account-shut-down-after-kenyan-attack> (Accessed on March 10 2017)

Ombati, C. (2016) "University of Nairobi student arrested on his way to Libya to join ISIS terror group," Standard Digital, <https://www.standardmedia.co.ke/article/2000192170/university-of-nairobi-student-arrested-on-his-way-to-libya-to-join-isis-terror-group> (Accessed on March 10 2017)

O'Rourke, S. (2009) 'Online Recruitment, Radicalization, and Reconnaissance: Challenge for Law Enforcement' in Forest, J.J.F. (ed.) *Influence Warfare: How terrorists and governments fight to shape perceptions in a war of ideas*. Westport, CT: Greenwood Publishing.

Rachel, B. (2015) "Cyber Crime Reports Link Four Kenyan Women To International Terrorists," Intelligence Briefs, <http://intelligencebriefs.com/cyber-crime-reports-link-four-kenyan-women-to-international-terrorists/> (Accessed on January 12 2017).

Sageman, M. (2004) *Understanding Terror Networks*, Philadelphia: University of Pennsylvania Press.

Sageman, M. (2008) *Leaderless Jihad: Terror networks in the twenty-first century*, Philadelphia: University of Pennsylvania Press.

Sardarnia, K. and Safizadeh, R. (2017) 'The Internet and its potential for networking and identity seeking: A Study on ISIS', *Terrorism and Political Violence* 1: 1-18.

Schmid, A. P. (2013) *Radicalization, De-radicalization, Counter-Radicalization: A conceptual discussion and literature review*, The Hague: International Centre for Counter Terrorism.

Simon, J. D. (2016) *Lone Wolf Terrorism: Understanding the growing threat*, New York: Prometheus Books.

Siserman, C. (2013) 'A Global perspective on the protection of privacy and related human rights in countering the use of internet for terrorist purposes', *Masaryk University Journal of Law and Technology* 7(2): 401-421.

Venhaus, J. (2010) *Why Youth Join Al-Qaeda*. Special Report, Washington DC: United States Institute of Peace.

Von Behr, I., Reding, A., Edwards, C., and Gribbon, L. (2013). *Radicalization in the digital era. The use of the internet in 15 cases of terrorism and extremism*. Brussels: RAND.

Waddilove, H. (2017) 'Big Barrier: Youth unemployment at the Coast', Rift valley Institute, <http://riftvalley.net/publication/big-barrier-youth-unemployment-coast#.WeO3B1uCzIU> (Accessed on February 12 2018).

Weimann, G. (2006) 'Virtual Disputes: The use of the internet for terrorist debates', *Studies in Conflict and Terrorism* 29(7): 623-639.

Weimann, G. (2014) *New Terrorism and New Media*, Washington, DC: Commons Lab of the Woodrow Wilson International Center for Scholars.

West, L. J. (2016) ‘#jihad: Understanding social media as a weapon’, *Security Challenges* 12(2), 9-26.

West, S. (2016) ‘Al-Shabaab recruitment from Kenyan universities alarms officials’, *Terrorism Monitor* 14(1), <https://jamestown.org/program/al-shabaab-recruitment-from-kenyan-universities-alarms-officials/> (Accessed on January 12 2017).

Wiktorowicz, Q. & Amanullah, S. (2015). “How Tech Can Fight Extremism,” *CNN News*, February 17 2015, [www.cnn.com/2015/02/16/opinion/wiktorowicz-tech-fighting-extremism/](http://www.cnn.com/2015/02/16/opinion/wiktorowicz-tech-fighting-extremism/) (Accessed on January 12 2017).



# 6

Patrick Mutahi and Nathaniel Kabala

Countering Violent

Extremism:

Lessons from Lamu,

Kenya



# Introduction

Countering Violent Extremism (CVE) has come to be regarded by State and non-State actors as a better and more comprehensive approach in addressing terrorism and extremist violence. Seen in a holistic manner, CVE includes prevention, intervention and rehabilitation efforts to provide a non-coercive pathway toward preventing recruitment and radicalisation to extreme violence.<sup>1</sup> It has been promoted as a better approach since it seeks to win the hearts and minds of people rather than engaging in counterterrorism, which involves military and hard policing tactics, which have sometimes led to negative reactions especially when security agencies commit human rights atrocities.<sup>2</sup> Globally, the United Nations has set out a Plan of Action for Preventing Violent Extremism that provides a framework for global action by member states.<sup>3</sup>

In trying to counter violent extremism, scholars, policy makers and practitioners have sought to understand the eco-system, the push and pull and environmental factors that lead individuals to violent extremism. These are seen as crucial and relevant to the development of sound policies and programmes that specifically speak to these factors.

Available research supports different and even competing perspectives of why and how people end up joining extremist groups. Some scholars have argued that perceptions of injustice might explain the pathway towards radicalisation. At this phase, individuals seek opportunities to redress these injustices, sometimes through violent means.<sup>4</sup> Others<sup>5</sup> talk about perceptions of injustice or moral outrage as factors driving youth to extremism while Boru, Porter and Kebbell (2010)<sup>6</sup> analyse resentment towards foreign policies. Marginalisation is a key theme discussed in most of the literature touching on Kenya as well as influence of social networks.<sup>7</sup>

<sup>1</sup>George S, 'Approaches for Countering Violent Extremism at Home and Abroad,' *The Annals of the American Academy of Political and Social Science*, Vol 668, Issue 1, pp.94–101.

<sup>2</sup>See among others Aldrich, Daniel P, 'First Steps Towards Hearts and Minds? USAID's Countering Violent Extremism Policies in Africa,' *Terrorism and Political Violence*, 1 January, 2014, p.1-24; Aly, A; Balbi, A; Jacques, C, 'Rethinking countering violent extremism: implementing the role of civil society,' *Journal of Policing, Intelligence and Counter Terrorism*, January 2, 2015, Vol.10(1), p.3-13.

<sup>3</sup>United Nations, 'Plan of Action for Preventing Violent Extremism,' [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/674](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/674) (Site accessed on 24 September, 2017).

<sup>4</sup>National Academies of Sciences, Engineering and Medicine. (2017) 'Countering Violent Extremism Through Public Health Practice: Proceedings of a Workshop', Washington DC: National Academies Press

<sup>5</sup>Botha, A. (2014) 'Political Socialisation and Terrorist Radicalisation among Individuals who Joined Al-Shabaab in Kenya,' *Studies in Conflict & Terrorism* 37.11: 895–919; Azzam, M (2007). 'Radicalisation of Muslim communities in Europe.' *Brown J World Aff* 13:123–138; Sageman, M (2008). 'A strategy for fighting international Islamic terrorists.' *Annals Am Acad Polit Sci* 618:223–231; Savage S, Khan A, Liht J (2014). 'Preventing violent extremism through value complexity: Being Kenyan being Muslim.' *J Strateg Secur* 7(3):1–26.

<sup>6</sup>Boru Halakhe, A. (2014) 'To Prevent More Mpeketonis Kenya Must Define Somalia Exit Plan', *African Arguments*, blog, June 19, <http://africanarguments.org/2014/06/19/to-preventmore-mpeketonis-kenya-must-define-somalia-exit-plan-by-abdullahi-boru-halakhe/>; Rawlence, B. (2014). 'Kenya: KDF Must Review Somalia Strategy to Tackle Al Shabaab,' *African Arguments*, blog, December 4, <http://africanarguments.org/2014/12/04/kenya-kdfmust-review-somalia-strategy-to-tackle-al-shabaab-by-ben-rawlence/#comment-53351> ; See also Porter L, Kebbell MR (2010) 'Radicalisation in Australia: Examining Australia's convicted terrorists.' *Psychiatry Psychol Law* 18:212–231

<sup>7</sup>Anderson, D. and McKnight, J. (2014) 'Kenya at War: Al-Shabaab and its Enemies in Eastern Africa', *African Affairs* 114.454: 1–27; Sageman M (2008). 'A strategy for fighting international Islamic terrorists,' *Annals Am Acad Polit Sci* 618:223–231; ICG (2014). 'Kenya: Al-Shabaab – Closer to Home,' *Africa Briefing* 102, Nairobi/Brussels: ICG (2012) 'Kenyan Somali Islamist Radicalisation', *Africa Briefing* 85, Nairobi/Brussels: International Crisis Group

While there is no clear “profile” of persons targeted for recruitment and no linear path of joining VE groups, many CVE programmes continue to monitor for signs of potential radicalisation in order to allow for an intervention before mobilisation takes place.<sup>8</sup> Others are still stuck in the “conveyor belt” theory of radicalisation, which presumes that there is a clear and direct line from holding certain religious and political beliefs to embracing the use of ideological violence.<sup>9</sup> Such a perspective assumes that the researcher and policy actor has adequate knowledge of the pathways to extremism. However, oversimplifying the problem of extremism to singular pathways ignores the dynamic interactions among various conditions, such as environmental factors, role of security agencies, role of personal grievances, peer and family influence.

In reality, there appears to be no single path that individuals follow in joining extremist groups like Al-Shabaab. Some of the push and pull factors that have been identified have failed to fully explain why some people will become violent extremists while others with similar backgrounds and in similar situations do not. There is, therefore, need for more research to understand why some people become violent extremists and how this phenomenon can best be addressed.

From the foregoing, this paper discusses violent extremism as a complex issue that requires multi-disciplinary approaches to understand and design an intervention which includes different stakeholders.

Many counter-violent extremism interventions have not succeeded partly because they have not sufficiently examined the interaction of push and pull factors with other factors. This limited focus has meant that interventions have acted on a limited understanding of the complexity of violent extremism. This paper seeks to elaborate on the complex interaction of factors that should inform a better understanding of violent extremism through a study of the phenomenon.

Using Lamu as a case study, it posits that since there is no single path to violent extremism, programmes and initiatives that aim at preventing individuals from joining extremist groups and those aimed at rehabilitating them should also be multi-faceted. In addition, they need to be adaptive to the complex context, be able to regenerate and circumvent redundant features, discard unnecessary features and experimenting, and develop new features to ensure they thrive.<sup>10</sup>

<sup>8</sup> Abbas Barzegar, Shawn Powers, Nagham El Karhili, ‘Civic Approaches to Confronting Violent Extremism: Sector Recommendations and Best Practices,’ September 2016, <http://tcv.gsu.edu/files/2016/09/Civic-Approaches-Sept-8-2016-Digital-Release.pdf> (accessed on July 6,

<sup>9</sup>ibid

<sup>10</sup>Davies, Lynn. ‘Wicked Problems: How Complexity Science Helps Direct Education Responses to Preventing Violent Extremism’, *Journal of Strategic Security* 9, no. 4 (2016): pp32-52.

## Violent Extremism in Lamu County

Bordering the Republic of Somalia in the north-east, Lamu was for long seen as a possible entry point and even staging ground for Al-Shabaab activities targeting both locals and foreigners. On 11 September 2011, a British man was killed and his wife kidnapped from a resort north of Lamu, near the border of Kenya and Somalia. Three weeks later, Marie Dedieu, a French national, who had been living in Manda Island in her own house, was abducted by 10 suspected Al-Shabaab operatives who took her to Somalia where she later died.<sup>11</sup> Two weeks later, on 13 October 2011, two Spanish aid workers were kidnapped from Dadaab refugee camp in the neighbouring Garissa County and their driver fatally shot by suspected Al-Shabaab.<sup>12</sup> These abductions set off an unprecedented security operation in Somalia by the Kenya military, seeking to protect Kenya's borders and hunt down the kidnappers.

After the Kenya Defence Forces entered Somalia in 2011, Al-Shabaab threatened to retaliate against their presence there. Al-Shabaab claimed responsibility for the June 2014 massacre in Mpeketoni, 50km south of Lamu town, which left 60 dead, as well as other raids conducted on 5 July of the same year in Hindi (mainland Lamu), and Gamba in nearby Tana River County.<sup>13</sup> The attacks largely targeted members of the Kikuyu community living in the area and other non-Muslims. Most members of the Kikuyu community were settled in the area by the government in the late 1960s and were given title deeds, which most of the locals do not have. Al-Shabaab claimed that it was retaliating for the death of Muslim clerics who had been killed by unknown assailants in the nearby Mombasa County, and also described Mpeketoni as a town inhabited by 'Christians' who had displaced the 'original' Muslim inhabitants of the region.<sup>14</sup> In 2015, after an Al-Shabaab attack on a military base in Baure, Lamu County, the government launched a security operation in the Boni Forest where it said that Al-Shabaab had camped.<sup>15</sup>

The Mpeketoni attacks brought to the fore a new dynamic of local recruitment and mobilisation of Al-Shabaab fighters in the county. Survivors and witnesses interviewed by the media described the attackers as being a mix of Somalis, Arabs, English-speaking and local (Mijikenda) people.<sup>16</sup> This pointed towards recruitment and radicalisation being active in Lamu specifically and Kenya generally.<sup>17</sup>

<sup>11</sup>Xan Rice and Kim Willsher, 'French woman kidnapped by Somali militants dies', <http://www.guardian.co.uk/world/2011/oct/19/french-woman-kidnapped-somalia-dies> (Accessed on 2 September 2017)

<sup>12</sup>Xan Rice, 'Two aid workers kidnapped from Kenyan refugee camp', 13 October 2011, <https://www.theguardian.com/world/2011/oct/13/aid-workers-kidnapped-kenyan-camp> (Accessed on 2 September 2017)

<sup>13</sup>Odhiambbo, E. Onkware, K & Leshan, M (2015), 'Domestic radicalisation in Kenya', G.J.I.S.S 4(3) pp48-56

<sup>14</sup>Mwakimako, H & Willis, J., 'Islam, politics and Violence on the Kenya Coast', (2014) Nairobi: IFRA.

<sup>15</sup>Onsarigo, C. (2015). 'GSU, KDF Deployed to Boni Forest to Flush out Al-Shabaab', from [http://www.the-star.co.ke/news/2015/09/07/gsu-kdf-deployed-to-boni-forest-to-flush-out-al-shabaab\\_c1200130](http://www.the-star.co.ke/news/2015/09/07/gsu-kdf-deployed-to-boni-forest-to-flush-out-al-shabaab_c1200130) (accessed on 30 June 2017)

<sup>16</sup>'Kenya is a war zone, warns Al-Shabaab after Somali Islamists massacre 48', <https://www.theguardian.com/world/2014/jun/16/kenya-war-zone-alshabaab-islamist-militants-massacre> (accessed on June 30, 2017)

<sup>17</sup>Vittori, J. Bremer, K. and Vittori, P. (2009), 'Islam in Tanzania and Kenya: Ally or threat to War on Terror?', *Studies in Conflict and Terrorism* 322(1): 1075-1099.

In Lamu County, Al-Shabaab has exploited grievances about marginalisation and historical injustices, questions of land ownership and youth unemployment to radicalise and recruit the youth into its ranks.<sup>18</sup> Like other Coastal counties, most of the indigenous people in Lamu do not have title deeds. After Kenya attained independence, President Jomo Kenyatta's government settled Kikuyu people from upcountry in the Lake Kenyatta settlement scheme in the Mpeketoni area of the Mainland Lamu. Most of these people were given title deeds.<sup>19</sup> Some became absentee landlords. These factors have left the local population of the Swahili, Arabs, Korei, Boni and Orma feeling aggrieved that they had been denied a vital factor of production. These historical injustices and land concerns have been identified by the 1999 Commission of Inquiry into the Land Law System in Kenya (called the "Njonjo Commission") and the Truth Justice and Reconciliation Commission but have not been addressed.<sup>20</sup> They have over the years become part of the local historical narratives and have been used by Al-Shabaab to justify attacks on non-locals and Christians in the county who are seen as "occupying Muslims land".<sup>21</sup>

However, these are not the only factors that make the county vulnerable to recruitment and radicalisation. Field research in Lamu indicates that economic opportunities promised by Al-Shabaab have been one of the major drivers of recruitment in the county. This is fuelled by the high unemployment of young people in the county driven by low academic attainment,<sup>22</sup> and a drop in tourism orchestrated by continued attacks by extremist groups in different parts of the county, imposition of curfews by the government and travel warnings against the county by foreign States.<sup>23</sup> The Commission on Revenue Allocation ranks Lamu as one of the most marginalised counties in Kenya, with a poverty level of 31.6 per cent.<sup>24</sup> The county is characterised by low levels of education, poor infrastructure, food insecurity, low access to health facilities and poor access to water among other historical injustices.<sup>25</sup> Al-Shabaab has taken these factors and used them to recruit and mobilise Lamu youth into its ranks.<sup>26</sup> These views dovetail with the findings of recent research by Botha (2014a, 2014b) and ICG (2014), as well as Anderson and McKnight (2014). They argue that Al-Shabaab is likely to exploit the deeply rooted disaffection among the people of the Kenya Coast and north-eastern in gaining recruits to its banner. Al-Shabaab is likely to continue to exploit these grievances unless they are addressed.

<sup>18</sup>Villa-Vicencio, C, Buchanan-Clarke, S and Humphrey, A. (2016), 'Community Perceptions of Violent Extremism in Kenya', Cape Town Institute for Peace and Reconciliation.

<sup>19</sup>David Anderson, 'Why Mpeketoni matters: Al-Shabaab and violence in Kenya,' <https://www.files.ethz.ch/isn/183993/cc2dacde481e24ca3ca5eaf60e974ee9.pdf> (accessed on 2 July 2017);

Kamakia, Antony Munene, 'The Analogy of Land Disputes, Resettlement Schemes, and Strategic Reforms in Kenya (September 10, 2015)', Available at <https://ssrn.com/abstract=2658159> or <http://dx.doi.org/10.2139/ssrn.2658159> (accessed on 2 July 2017)

<sup>20</sup>See Government of Kenya, *Truth, Justice and Reconciliation Commission report, 2003*, Government Press.

<sup>21</sup>Boru Halakhe, A. (2014) 'To Prevent More Mpeketoni Kenya Must Define Somalia Exit Plan', African Arguments, blog, 19 June, <http://africanarguments.org/2014/06/19/to-preventmore-mpeketoni-kenya-must-define-somalia-exit-plan-by-abdullahi-boru-halakhe/>.

<sup>22</sup>County Assembly of Lamu Strategic Plan (2014-2018)

<sup>23</sup>Razoah Vitisia, 'Travel advisories and their impact on Tourism-Case study of Kenya (2000-2014)' Unpublished Masters Thesis, 2015, 43

<sup>24</sup><http://www.crakenya.org/county/lamu/> (Accessed on 30 June 2017).

<sup>25</sup>Commission on Revenue Allocation (2012): *Survey report on Marginalised areas/counties in Kenya*. Nairobi: Commission on Revenue Allocation.

<sup>26</sup>Botha, A. (2014), 'Political Socialisation and Terrorist Radicalisation among Individuals who Joined Al-Shabaab in Kenya', *Studies in Conflict & Terrorism* 37.11: 895–919; Botha, A. (2014) 'Radicalisation in Kenya Recruitment to Al-Shabaab and the Mombasa Republican Council', ISS Paper 265, Institute for Security Services;

Apart from the socio-economic concerns and grievances, Lamu residents, like other Muslims in Kenya, complain about the difficulties they encounter in acquiring identity cards and passports. They have to undergo vetting, which is not normally required of other communities in the country. Lack of IDs in particular poses additional problems since one cannot open a bank account or secure formal employment without one. Lack of employment and viable livelihood opportunities also drive some to VE groups who offer jobs in Somalia or as local recruiters.<sup>27</sup> For those without IDs, their movements are also restricted and they risk arrest, extortion and harassment by security agencies who routinely accuse them of being non-citizens.<sup>28</sup> Detentions, beatings and disappearances at the hands of security agencies have been cited by researchers and policy makers as a common driver to VE.<sup>29</sup>

Social and peer facilitated introductions to extremist groups have also been established in field research as ways in which people get recruited. Here, people are introduced and recruited by their peers or relatives who are already members of the extremist groups. Weak interventions by groups working to counter violent extremism have been identified as among the factors exacerbating violent extremist group activities in the area. Due to lack of adequate capacity, most of the actors working on countering violent extremism have failed to reach out to groups in the communities most at risk of joining Al-Shabaab and other violent extremist groups.<sup>30</sup>

Lastly, Lamu County, like other Coastal areas, faces the problem of extremist religious leaders. It has been noted that Kenya's path to violent extremism began when Wahabism took root in the country. Wahabism is an orientation of Salafism that informs much of the core theological outlook of jihadi groups such as Al-Qaeda and Al-Shabaab.<sup>31</sup> This goes back to the 1990s when Saudi-funded charitable organisations such as al-Haramain and the Young Muslim Association started madrassas in northern Kenya and the Coast, with most of the graduates receiving scholarships to study in Saudi Arabia and Pakistan.<sup>32</sup> Once they returned to Kenya, they set up other madrassas and charities teaching religious extremism. In the early 1990s, Kenyan Somalis were involved in the Somali Islamist group al-Ittihaad al-Islami (AIAI), raising funds for the AIAI. In 2006 and 2007, Kenyan Somali youth fought along the Islamic Court Union against Ethiopian forces.<sup>33</sup> Some of these fighters came back to Kenya and are suspected of involvement in recruitment of Kenyans to Al-Shabaab.

<sup>27</sup>Interviews with youth in Lamu

<sup>28</sup>Interviews with youth in Lamu

<sup>29</sup>See Anderson, D. and McKnight, J. (2014), 'Kenya at War: Al-Shabaab and its Enemies in Eastern Africa', *African Affairs* 114.454: 1–27; ICG (2014) 'Kenya: Al-Shabaab – Closer to Home', Africa Briefing 102, Nairobi/Brussels.

<sup>30</sup>Notes from Field research conducted by authors.

<sup>31</sup>ICG (2014) 'Kenya: Al-Shabaab – Closer to Home', Africa Briefing 102, Nairobi/Brussels page 8.

<sup>32</sup>ICG (2014) 'Kenya: Al-Shabaab – Closer to Home', Africa Briefing 102, Nairobi/Brussels.

<sup>33</sup>ICG (2014) 'Kenya: Al-Shabaab – Closer to Home', Africa Briefing 102, Nairobi/Brussels.

According to the chairman of Kenya Muslims National Advisory Council, the recruitment of Kenyans into Al-Shabaab started in 2005 and mostly targeted Mombasa, Kwale, Lamu, Nairobi and Isiolo. The recruitment was being carried out in mosques but has since stopped due to the campaigns by the government against Al-Shabaab. However, it is suspected to be going on in private houses and is also targeting non-Muslim youth.<sup>34</sup>

A UN Monitoring Group report on Somalia and Eritrea released in 2011 actually pinpoints the Muslim Youth Centre (MYC) at Pumwani Riyadh Mosque as being involved in recruitment for Al-Shabaab in Kenya, including facilitating travel to Somalia for individuals to train and fight.<sup>35</sup> While officials from the centre denied the claims, one of its officials, also named in the UN report, was picked to head its terrorist activities in Kenya.<sup>36</sup>

The problem of Kenyans recruited to Al-Shabaab was highlighted by the National Assembly Joint Committee to investigate and report on all matters surrounding the 2013 Westgate attack. In its report, the committee notes that:

*“Certain segments of Kenya’s Muslim youth are becoming more and more at a risk of radicalization and recruitment into extremist groups for various reasons. This is visible because it is not Somali nationals behind most of the terrorist incidents outside Somalia’s borders but Kenyan nationals. Though Somalia provides a safe haven, training camps and opportunities for extremists to fight the ‘enemies of Islam’, al-Qaeda and al-Shabaab have executed attacks in the region by relying on Kenyan youth assistance and support. The Government should therefore strive for strategies that address the youth radicalization.”*<sup>37</sup>

Thus, factors that lead individuals to join extremist groups are complex and varied, ranging from human rights violations, marginalisation, feeling of exclusion and religious ideology.

## At Risk Groups and Pathways to Joining VE

In order to understand VE complexity, it is important to understand that there is no singular vulnerability profile to terrorism or violent extremism. Existing literature emphasises the importance of clearly identifying at-risk groups and avoiding generic ‘labelling’ of target populations (such as ‘youth’).<sup>38</sup>

<sup>34</sup>‘Youths were duped into killing fields’, *Standard*, November 9, 2011; *Kenyan Somali Islamist Radicalisation*, Crisis Group, Africa Briefing N°85, Nairobi/Brussels, 25 January 2012. The UN Monitoring Group report on Somalia and Eritrea released in 2011 said non-Somali Kenyan nationals now constitute the largest and most organised non-Somali entity within Al-Shabaab

<sup>35</sup>Full report can be downloaded from [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2011/433](http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/433)

<sup>36</sup>Cyrus Ombati, ‘Kenyan takes charge of local Al-Shabaab wing’, *Standard*, 17 January 2012.

<sup>37</sup>Government of Kenya, *Report of the joint Committee on Administration and National Security; and Defence and Foreign Relations on the Inquiry into the Westgate terrorist attack and other terror attacks in Mandera in North Eastern and Kilifi in the Coastal Region*, December 2013 pg 16.

Thus, it is extremely important to be sensitive to the risk of stigmatising groups and to be as contextually informed as possible in defining at-risk populations. Also notably, the pathways and trajectories of violent extremism are as varied as the violent extremists themselves. The chances of an individual being recruited into violent extremism depend on a multiplicity of individual factors, group dynamics, social structures and the environmental conditions in which terrorism occurs.

Some have argued that joining VE groups is a rational choice, which an individual makes on the basis of a cost/benefit analysis.<sup>39</sup> The benefits of participation are weighed against the costs. If the benefits are greater than the costs, then the individual decides to participate. For example, if an at-risk individual is seeking economic benefits, joining VE groups would be assumed to be attractive if it is about a job or opportunity to better his livelihood. This thinking, however, ignores the fact that joining VE groups is not a simple rational costs-benefits calculation. To embrace violent extremism, individuals have to become exposed to supportive moral contexts and they have to come into regular contact with these settings. Furthermore, there is personal agency whereby the individuals have to be sensitive to, and accept the influence of, the extremists and their message. This process of an individual evolving in their thinking to embrace extremist ideas is a complex and evolutionary one.<sup>40</sup> A male youth interviewee in Lamu echoed this by saying:

*If it were not for my religious education and understanding, I would have joined Al-Shabaab. I have been arrested and harassed by security forces twice, and this made me imagine joining Al-Shabaab, but my religious understanding is that they are not fighting anything justified in Islam. Nowadays, I do not travel outside Lamu Island because of fear of harassment by security agencies on the mainland.*

Data from the field research points out that pathways to radicalisation and decisions to join extremist groups are informed by a mixture of factors. Some of the respondents blamed government repression, corruption, unemployment, inequality, discrimination by the government and Kenya's military interventions in Somalia as having pushed some of the individuals to join Al-Shabaab in Somalia.<sup>41</sup> Others said the presence of extremist preachers while for some, friends, social networks and the services provided by extremist groups had pulled individuals into violent extremism. These groups have offered a sense of purpose (generated through acting in accordance with perceived ideological tenets), adventure, belonging, acceptance and status.<sup>42</sup>

<sup>38</sup>Ellis, B. H., & Abdi, S. (2017), 'Building community resilience to violent extremism through genuine partnerships', *American Psychologist*, 72(3), 289-300; Shandon Harris-Hogan & Kate Barrelle (2015), 'Assisting Practitioners to Understand Countering Violent Extremism', *Behavioral Sciences of Terrorism and Political Aggression* Volume 8, 2016; Jytte Klausen, Selene Campion, Nathan Needle, Giang Nguyen & Rosanne Libretti (2015). 'Toward a Behavioral Model of "Homegrown" Radicalization Trajectories', *Studies in Conflict & Terrorism* Volume 39, 2016.

<sup>39</sup>Mandeep K. Dhami and Jennifer Murray, 'Male Youth Perceptions of Violent Extremism: Towards a Test of Rational Choice Theory', January 2016, Volume 19; Wiktorowicz, Quintan, and Karl Kaltenthaler, 'The rationality of radical Islam', *Political Science Quarterly*, vol. 131, no. 2, 2016, p. 421.

<sup>40</sup>ARTIS, 'Theoretical Frames on Pathways to Violent Radicalization: Understanding the Evolution of Ideas and Behaviors, How They Interact, How They Describe Pathways to Violence in Marginalized Diaspora', (2009).

<sup>41</sup>Interviews with respondents on various dates in Lamu, 2016-17.

<sup>42</sup>ibid



For example, some of the key informants in Lamu pointed out that when tourism went down due to travel advisories imposed by Western countries against the island, many people working in the hotel and fishing industries lost their jobs. Many of those affected were beach boys and dhow operators who used to take tourists for deep ocean fishing, sunrise/sunset watch and to other islands within the Lamu archipelago.

They suddenly became unemployed, idle and without an income. This was said to have driven some from this group to join VE groups like Al-Shabaab on the promise of better income opportunities in Somalia.<sup>43</sup> It is notable that Lamu has extremist religious leaders and individuals who have access to VE social networks and literature, which they use to enlist and convert individuals. Added to this is the presence of ungoverned spaces and porous border areas with Somalia, especially in Kiunga area, which has facilitated movement of individuals in and out of Somalia.<sup>44</sup>

Idle and unemployed youth facing constant police harassment like these former workers of the hospitality industry could thus be considered vulnerable and “ripe” for recruitment by extremist groups with the promise of income. However, in order to understand how unemployment could lead to youth joining Al-Shabaab, one has to look beyond Lamu. As is similar to the general nature of urban migration, people living in small towns largely move to big ones looking for employment and better income opportunities.<sup>45</sup> This is the same case with Lamu. Due to the limited income-generating opportunities in the Island, youth have tended to move to Mombasa looking for better opportunities.<sup>46</sup> Relatives and friends invite some of them, while others go alone to try their luck. In the process, some of the Lamu residents end up living in Mombasa’s Majengo informal settlements, which have been pointed out as one of the places where Al-Shabaab agents and recruiters are most active.<sup>47</sup> This becomes the point of exposure and contact with Al-Shabaab recruiters and sympathisers. Nevertheless, it is also notable that this does not happen to all people. Some of those who live in Majengo do not make contact with Al-Shabaab recruiters and hence do not fall into any pathway to radicalisation.

For those who do, there are different trajectories into recruitment. While living in Majengo, some of the youth come into contact with neighbours or peers who are already radicalised/members of Al-Shabaab. Without being directly recruited to join Al-Shabaab, they are promised jobs in areas like Hindi and Kiunga, which border Somalia, and once there, are promised other jobs in Somalia. It is when they land in Somalia that they realise that they have fallen into the hands of Al-Shabaab. In other instances, while some of the youth are living in Majengo, they could be arrested by anti-terrorism police officers, taken to court and remanded at Shimo la Tewa Prison.

<sup>43</sup>Interviews with youth in Lamu, September 2016.

<sup>44</sup>ibid

<sup>45</sup>Stone, P. A. (2005), *Development and Planning Economy: Environmental and Resource Issue*, New York: E. & F. N. Spon.

<sup>46</sup>Interviews with Lamu residents, November 14-23, 2016.

<sup>47</sup>ICG (2014), *Kenya: Al-Shabaab – Closer to Home*, Africa Briefing 102, Nairobi/Brussels: International Crisis Group.



In the prison, they are jailed together with other terrorism suspects who are already radicalised. Once released, some of the youth out of anger, seek revenge and connect with other agents of Al-Shabaab in order to carry out attacks inside the country or leave for Somalia. Prison exposes them to extremist views, leading them to be members of or sympathetic to the extremist group.

*I am aware of people in prison in Mombasa who never leave prison. They are there to recruit for Al-Shabaab, and once they recruit, they link you with people outside. They recruit by offering to pay your bails, and then link you up with agents outside prison.*<sup>48</sup>

Still, some of the key informants and opinion leaders in Lamu have tried to connect VE groups with criminal gangs and drug addicts operating in the Island. In Wiyoni, there is a criminal gang of around 50 members aged between 18-30 years. The group operates at a place not far from where mnazi (local alcohol) is sold, and mostly attacks those going home from the drinking dens and any other person that crosses their way. Machetes and knives are their weapons of choice. Another gang of 13-16 years olds is mostly found in Kashmir, Bombay, Kandahar and Wiyoni areas of Lamu Island. The criminal gang also uses machetes and knives as weapons of choice to attack women, tourists and guests in the island. According to key informants and FGD respondents, members of these criminal gangs are vulnerable due to lack of income-generating opportunities and can be lured with the promise of money to join extremist groups. However, there is still no data to support this direct connection.

Some of the criminal gang members are also drug traffickers and addicts at the same. According to a senior security officer, the most notorious drug dens are Majengo Village in Mokowe, Witu Town, Kashmir Village in Lamu Town, Kizingitini, Faza, Tchundwa and Mbwajumwal. Majority of the addicts and dealers are men between the ages of 15-40 and there have been few cases of women being arrested as drug peddlers/traffickers. The drug addicts in Lamu Island are unemployed youth, most of who are school drop-outs and idle around the island. Some of the addicts according to key informants, have also joined criminal gangs, increasing their vulnerability, largely due to lack of income, job opportunities and drug addiction.

Nevertheless, there is no data and it is difficult to make this direct connection and conclusion. Their vulnerability to VE is of general conjecture, based only on the key push factors like unemployment, idleness and poverty. It is worth noting that the drug issue is mostly seen as a criminal matter. According to police, drugs have become a security threat in the island since most consumers are young people, mostly men.

According to a security agent interviewed, the local community fears these gangs and rarely report them to police unless an incident occurs. In addition, people fear these gangs could make linkages with and/or join extremist groups.<sup>49</sup>

<sup>48</sup>Interview with Lamu resident, 18 September 2016.

<sup>49</sup>Interview with police officer in Lamu Island, 19 September 2016.

However, data from our field research indicates that these groups use violence to get money and would take a longer process of conversion into extremist ideologies so as to undertake violence for terrorism purposes.

Respondents also blamed the growth of gangs on poor parenting and fathers abdicating their responsibilities and roles in the family, leaving mothers to be heads of their families. It becomes challenging for mothers to handle them when the teenagers reach adolescence, and some even drop out of school.<sup>50</sup> Due to lack of a father figure to provide guidance, the boys try to find an identity for themselves, and joining criminal gangs becomes one way of attaining it. The danger is that lack of proper guidance and identity can also be exploited by extremist groups to lure the young men.

<sup>50</sup>Women FGD interview in Lamu Island, 21 September 2016.

## Conclusion

Using the case of Lamu, this paper has argued that the process of joining VE groups is a complex one that involves particular structural motivators, individual incentives as well as push and pull factors, including police harassment, discrimination, marginalisation, youth unemployment and unresolved historical grievances among others. What works for one person may not work for another since motivating factors and pathways to recruitment are diverse, difficult to identify and highly context-specific.

Therefore, actors should take considerable care not to make straight and causal assumptions on how individuals become extremists. As the field data shows, unemployment did not necessarily lead individuals to join VE groups and a correlation between the two is insufficient to demonstrate that the former acted singularly in driving the latter. While to an extent unemployment may drive some individuals to become involved in VE so that they can get better income and livelihood opportunities, solving the problem of unemployment alone points towards a linear understanding of VE, hence a linear approach, and does not necessarily lead to reduction in recruitment to Al-Shabaab.

Likewise, being a member of a criminal group in Lamu does not necessarily translate to one being a member of VE group or likely to join one. Thus, policy makers and other actors should be aware that efforts to address unemployment or criminality will not necessarily and on their own, serve to reduce VE. Thus, efforts should be made to collect contextual evidence to test a mix of various potential causal routes prior to designing a programme, including among others, the lure of extremist ideologies and attraction of radical narratives and preachers.

# Bibliography

Barzegar, A., Powers, S. and El Karhili, N. (2016) 'Civic Approaches to Confronting Violent Extremism: Sector Recommendations and Best Practices', <http://tcv.gsu.edu/files/2016/09/Civic-Approaches-Sept-8-2016-Digital-Release.pdf> (accessed on July 6 2017).

Botha, A. (2013), 'Assessing Vulnerability of Kenyan Youth to Radicalization and Extremism', Johannesburg: Institute for Security Studies.

Cachalia, R.C., Salifu, U. and Ndung'u, I. (2016) 'The dynamics of youth radicalisation in Africa - reviewing the current evidence', Institute for Security Studies, Issue 296.

Commission on Revenue Allocation (2012) Survey report on Marginalised areas/counties in Kenya, Nairobi: Commission on Revenue Allocation.

Davies, L. (2016), 'Wicked Problems: How Complexity Science Helps Direct Education Responses to Preventing Violent Extremism', *Journal of Strategic Security* 9(4)

Dhami, M.D and Murray, J. (2016) 'Male Youth Perceptions of Violent Extremism: Towards a Test of Rational Choice Theory', *Spanish Journal of Psychology* 19.

Durning, S. J. and Cleland, J. (2015) *Researching Medical Education*. Oxford: Wiley.

Ellis, B. H. and Abdi, S. (2017) 'Building community resilience to violent extremism through genuine partnerships', *American Psychologist* 72(3): 289-300.

Gichuru, J., 'Youth Radicalisation and Terrorism: The case of the Coast Region of Kenya', Nairobi, International Peace Support Training Centre, 2015.

Harris-Hogan, S. and Barrelle, K. 'Assisting Practitioners to Understand Countering Violent Extremism. *Behavioral Sciences of Terrorism and Political Aggression* 8.

International Crisis Group (2016) 'Kenya's Coast: Devolution Disappointed', Nairobi, Crisis Group Africa.

International Crisis Group, 'Kenya: Al-Shabaab – Closer to Home', Africa Briefing 102, Nairobi/Brussels: International Crisis Group 2014.

Jenal, M. and Cunningham, S. (2013) 'Gaining systemic insight to strengthen economic development initiatives Drawing on systems thinking and complexity theories to improve developmental impact', Mesopartner Working paper 16 Version 2 November 2013, [https://marcusjenal.files.wordpress.com/2014/03/mp\\_wp\\_16\\_gaining-systemic-insight.pdf](https://marcusjenal.files.wordpress.com/2014/03/mp_wp_16_gaining-systemic-insight.pdf) Accessed on July 6 2017).

Kanyinga, K. (1997) "Agrarian Reforms and Squatters in Coastal Kenya - Politics of Land Rights and Social Domination," Paper presented at the Nordic African Institute research programme on structural adjustment, final evaluation workshop 1997.

Klausen, J., Campion, S., Needle, N., Nguyen, G. and Libretti, G. (2016) 'Toward a Behavioral Model of "Homegrown" Radicalization Trajectories' *Studies in Conflict & Terrorism* 39.

Ilen J. de V. (1993), *Swahili origins: Swahili culture & the Shungwaya phenomenon*, London: Currey.

Marsys, A. (2016) *Disaster Forensics: Understanding root Cause and Complex Causality*, Geneva: Springer.

Mazrui, A., Dikirr, P., Ostergad, R., Toler, M. & Macharia, P. (2012) , *Africa's Islamic Experience: History, Culture and Politics*, New Delhi, Sterling Publishers.

Mghanga, M. (2010) *Usipoziba Ufa Utajenga Ukuta: Land Elections and Conflicts in Kenya's Coast Province*, Nairobi: Heinrich Boll Stiftung .

Mwakimako, H and Willis, J. (2014) *Islam, Politics and Violence on the Kenya Coast*, Nairobi: IFRA.

Mwaruvie, J. M. (2011) 'The Ten Miles Coastal Strip: An Examination of the Intricate Nature of Land Question at Kenya Coast', *International Journal of Humanities and Social Science* 1(20).

National Academies of Sciences, Engineering and Medicine (2017) 'Countering Violent Extremism through Public Health Practice: Proceedings of a Workshop', Washington DC: National Academies Press.

National Museums of Kenya (2001) *Lamu Old Town Application for Nomination to World Heritage List*, <http://whc.unesco.org/uploads/nominations/1055.pdf> (accessed on July 16 2017).

Ndzovu, H. (2009) *Muslims and Party Politics and Electoral Campaigns in Kenya*, Evanston: Northwestern University.

Odhiambo, E., Onkware, K. and Leshan, M. (2015) 'Domestic radicalisation in Kenya', *G.J.I.S.S* 4(3).

Pargeter, A. (2006) 'North African Immigrants in Europe and Political Violence', *Studies in Conflict & Terrorism* 29: 731-747.

Villa-Vicencio, C, Buchanan-Clarke, S and Humphrey, A. (2016) *Community Perceptions of Violent Extremism in Kenya*, Cape Town: Institute for Peace and Reconciliation.

Vittori, J., Bremer, K. and Vittori, P. (2009) 'Islam in Tanzania and Kenya: Ally or threat to War on Terror?' *Studies in Conflict and Terrorism* 322(1)

Walby, S. "Complexity theory, globalization and Diversity," School of Sociology and Social Policy University of Leeds, Paper presented to conference of the British Sociological Association, University of York, April 2003.

Wiktorowicz, Q. and Kaltenthaler, K. (2016) 'The rationality of radical Islam', *Political Science Quarterly* 131(2): 421.



# 7

Kamau Wairuri

## “Operation Sanitize Eastleigh”: Rethinking Interventions to Counter Violent Extremism



## Introduction

In response to a series of terrorist attacks in the country, the Kenyan government launched a multi-agency security operation dubbed ‘Operation Usalama Watch’ on 5 April 2014, largely focused on Mombasa town and Nairobi’s Eastleigh area, ostensibly to flush out Al-Shabaab adherents to deter terrorism. Both areas were suspected to be harbouring terrorists. Eastleigh, with a high number of Somalis, including immigrants from Somalia, was seen as the source of the rising terrorist threat.

Orwa Ojode, a former assistant minister for Internal Security, had commented that the head of Al-Shabaab was in Eastleigh (Opiyo & Githinji, 2011). The focus of this paper is on the execution of the operation in Eastleigh, where over 6,000 security officers, both police and military, were deployed and conducted the operation (Wabala, 2014). The security officers set up roadblocks and began sweeps, rounding up and arresting thousands of Somalis (Balakian, 2016). Those who were rounded up were taken to various police stations across Nairobi for detention and screening, with Kasarani Sports Stadium, specially, designated as a police station for this purpose, handling the bulk of those arrested.

The security operation, which was imagined as a “cleaning exercise,” to get rid of Al-Shabaab adherents from within Kenya’s territory, came to be termed as ‘*Operation Sanitisation of Eastleigh*’. There is hardly any evidence of those who were arrested during this counter-terror operation being charged with terrorism-related offences.

Though Kenya has faced many terrorist attacks dating back to the 1970s, (Laing, 2013), it is the Al-Shabaab terrorist attacks that have posed the greatest challenge to the country and precipitated Kenya’s military incursion into Somalia – *Operation Linda Nchi* – principally to fight against the terrorist group that had started abducting tourists from Kenya’s coastal region (See for instance, BBC News, 2011). Even after the intervention by the KDF, however, Al-Shabaab continued to carry out a series of attacks in Kenya with more than 370 people killed in over 100 attacks between 2011 and 2014 (Wafula, 2014). Most of the attackers were Somali and Muslim young men, including some Kenyan Somalis, as a result of which the terrorist threat came to be imagined as such.<sup>1</sup>

<sup>1</sup> Al-Shabaab is noted to have started recruiting Kenyans from 2006 after the fall of the Islamic Courts Union in the wake of the Ethiopian incursion. The Muslim Youth Centre (MYC) at Pumwani Riyadha Mosque in Nairobi, near Eastleigh, was identified as the main recruitment and training centre for would-be Al-Shabaab fighters at that time (See, The United Nations (UN) Monitoring Group on Somalia 2010 report; also, ICG (2014) Kenya: Al-Shabaab – Closer to Home, Africa Briefing 102, Nairobi/Brussels: International Crisis Group

The first part of the government's strategy was to address what was seen as risks posed by the large number of Somali migrants and refugees in the country. The government ordered all refugees to return to refugee camps in March 2014, citing 'security challenges' (Mohamed, 2014).<sup>2</sup> Public discourse, such as Ojode's comments cited above, had consistently framed a view of Eastleigh as a hub for terrorists and the view that Somalis were harbouring terrorists among them. It matters that the government had adopted as responsabilisation strategy, through the 'Nyumba Kumi Initiative' – a citizen-based surveillance strategy (Kenyatta, 2014a). President Kenyatta appeared in adverts reminding people that security was everyone's responsibility (Kenyatta, 2014b), the idea being that citizens knew the sources of threats in their communities and had a duty to report them to the police. The corollary was that failing to report meant one was complicit. The 'failure' of the Somalis to report to expose the terrorists within their community meant that they were, at best, complicit ('sympathisers of terror') and, at worst, terrorists.

Under pressure to 'do something' to contain the rising threat, the government adopted a more visible and dramatic approach to demonstrate willingness and capacity to guarantee citizens of their security. Notably, this fit within the framework of the so-called 'Global War on Terror' declared by US President George Bush in the wake of the 9/11 attacks (Mogire & Mkutu, 2011). Facing declining legitimacy, a dramatic security operation presented the State with an opportunity to perform 'Stateness'; act like a State in front a captive audience of the citizenry and remind them that it still existed (Steinberg, 2011). A local Somali politician lamented that the use of the term sanitisation made it sound "... as if they are removing cockroaches".<sup>3</sup> The gist of his statement was that the Somalis had been dehumanised. This idea of dehumanisation and the efforts to separate the 'good and loyal Kenyans' from the 'the terrorists' are at the centre of this paper.

Based on an analysis of secondary literature, the purpose of this paper is to provide an analytical critique of this approach by the Kenyan state by showing that it is both ineffective and counter-productive. Towards this end, the paper critiques two assumptions inherent in such approaches: The vulnerability of the 'the weak' in the face of state power and the existence of the state as a singular ontological reality. The paper examines the agency of both the weak, the targets of State power, and state agents, who are the bearers of state power. The vulnerable groups of citizens exercise their agency through every day acts of resistance while state agents do so through exercise of discretion. As such, the chapter examines the empirical dimensions of citizenship and state power using the encounters between the Somalis and the Kenyan police during 'Operation Sanitise Eastleigh'. Both challenge the image of the state as a unitary and all-powerful actor with the ability to guarantee security for its citizens. Thus, the chapter cautions against totalising views of populations and security agencies in the management of terrorist threats instead calling for more targeted approaches in identifying and responding to terrorist threats.

<sup>2</sup>Department of Refugee Affairs, Press Statement, 13 December 2012. This followed a similar intention by the Department of Refugee Affairs (DRA) in 2012, to implement a forced encampment policy, stating that "due to this unbearable and uncontrollable threat to national security, the government has decided to put in place a structure[d] encampment policy. "This was later cited by the government as a first step towards the repatriation of all urban refugees 'after the necessary arrangements are put in place.'

<sup>3</sup>Personal Communication, 2014

The chapter is divided into three main sections. The first explores the extant literature with a view to arriving at a framework upon which the analysis contained in the rest of the chapter rests. The second focuses on the question of citizenship for the Somalis in Kenya, tracing the history of their precaritisation and examining their exercise of agency during ‘Operation Sanitisation of Eastleigh’. The third section examines the disconnect between ‘State as an idea’ and ‘State practice’ to challenge the unitary theory of State power. The fourth concludes with a summary of the main arguments advanced and a call for more nuanced approaches to the design of interventions for countering violent extremism.

## Rethinking Citizenship and the Unitary Theory of the State

This paper relies on the work of Giorgio Agamben and Judith Butler relating to citizenship (belonging) and sovereignty (state power). In a 1998 book by the same title, Agamben examined the figure of *Homo Sacer* or a bare life. Per Agamben, *Homo Sacer* represents a life that is devoid of political existence (Agamben, 1998). In other words, *homo sacer* is what remains of a body when the political rights are taken away; essentially a de-humanised and de-politicised body that exists beneath the protection of the law. He argues that such a body can be excluded from the society through killing, incarceration or forceful removal with impunity. *Homo sacer* is a body which is, in a word, killable. The power to exclude the homo sacer from the community is held by the all-powerful sovereign who operates outside the law. While the homo sacer is not protected by the law, the sovereign (the state) is not constrained by it (Agamben, 2005). The Agambenian framework presents a useful starting point for the explorations of how States govern marginal populations but it suffers from two significant limitations that require that it is augmented or revised by the works of other scholars if it is to help in understanding of how power operates.

The first critique to the Agambenian framework emanates from the work of Judith Butler, who has convincingly argued that even vulnerable groups are able to exercise political agency and pose a formidable critique to State power, through what she describes as “embodied acts of resistance” (Butler, 2014). She argues that vulnerable groups are not completely removed from the political community as Agamben would suggest but are instead purposive political actors. Following Hannah Arendt on the idea of concerted action, Butler posits that vulnerable populations exercise political action because of, rather than despite, their precarious situation. She shows how the gathering of what she calls the ‘ungrievable bodies’ in the public spaces amounts to the employment of their vulnerability as a political resource to critique State power through embodied resistance (Butler, 2009, 2014). Butler’s insight follows examinations of the political actions of the vulnerable groups in response to the State variously termed as ‘weapons of the weak’ (Scott, 1985) or ‘whispering truth to power’ (Thomson, 2011) that have emphasised the ability of the ‘weak’ to exercise political agency, highlighting the relational and contingent nature of power.

The second critique relates to Agamben’s idea of sovereignty that imagines the power of the State as unitary; that is, residing in one place. This conjures up the imagery of the State not only as powerful, but also a singular ontological reality.

However, as Foucault convincingly argued, the State does not have an essence but is rather the mobile effect of multiple governmentalities (Foucault, 2008). Scholarship on the plural nature of policing in Africa challenges the idea that the State has a monopoly over the instruments of violence (Baker, 2004). Additionally, literature highlighting the exercise of discretion by police officers shows that the police do not enforce a single hegemonic order but rather their own conception of order, giving credence to Foucault's view over Agamben's (Manning, 1978; Ruteere, 2011).

Agamben's idea of the State is effectively critiqued and shown to be a misleading – if popular – starting point for the design of interventions to counter violent extremism. The chapter demonstrates the disjointedness of the State, critiquing its representation as a unitary source of power. The section that follows explores the contestation of citizens through an exploration of the politics of identification and belonging as highlighted in narratives captured in reports about Operation Sanitisation of Eastleigh.

## The Politics of Identity and Belonging

This chapter relies on revised ideas of citizenship and sovereignty. Citizenship is conceptualised as going beyond its legalistic and traditional conception to include its empirical dimensions that capture the politics of belonging, including the construction of precarity. This approach helps us develop a much richer and fine-grained view of the question of citizenship and how it is demonstrated and contested at the street level. Additionally, this expanded view of citizenship adopts Butler's insight that even the most vulnerable groups are purposive political actors.

Citizenship is often thought of, in the traditional legalistic sense, as belonging to a nation-state as prescribed by the law and, therefore, having access to a bundle of rights (Sieder, 2001). At the level of State practice, the idea of citizenship is often reduced to the possession of official State documents, for example National Identity Cards or Passports, that certify an individual as belonging to the State. However, this view of citizenship is both limited and limiting because it obscures the politics behind the 'acquisition' and 'maintenance' of citizenship.

No doubt, the possession of a national ID is an important marker of citizenship in Kenya; it enables one to access government services such as national health insurance, employment and even enter buildings. The pain of those unable to get the document, such as Somali youth in Garissa who feel 'stateless' (Hajir, 2015) and the feeling of being 'born again' among those who finally get it (Govil, 2017), underscore this point. However, this also reveals the politics of citizenship. For one, groups such as the Somali have difficulty in accessing the national ID and are often required to prove their loyalty to the Kenyan State (Abukar, 2014). Secondly, when the ID becomes a tool for policing the population - separating the good citizens from the bad and disloyal ones – as was the case in Operation Sanitisation of Eastleigh, the possession of the identity documents issued by the State is not always adequate to signify citizenship because the

documents can be termed as ‘fake’ or illegally and corruptly acquired, doubting the Kenyan-ness of the holder (Amnesty International, 2014; Ole Lenku, 2014).<sup>4</sup>

In other words, citizenship is political and is continually negotiated. Understanding the dynamics of the citizenship (belonging) of the Somalis in Kenya, an examination of their historical engagement with the Kenyan State is necessary.

Butler observes that the way states organise life and manage populations generates differentiated valuation of life so that some lives are rendered more precarious; that is, insecure, unequal and destitute (Butler, 2009). She relies on the political notion of “precarity”, the way that “precariousness is amplified and made more acute” by political choices, to locate the role of politics in the marginalisation of populations. The marginalisation of the Somalis, dating back to the colonial period, has been the result of political choices. Kenya’s Somali region, formerly North Eastern Province, was part of the Northern Frontier District (NFD) created by the British colonialists as a buffer between their colony to the south and Ethiopia and Italy (in Somalia) where movement within and without was highly restricted (Carrier & Kochore, 2014). This marginalisation was exacerbated in the post-colonial era by the *shifita war*, the irredentist Somali movement anchored in the Greater Somalia project that sought to annex the Somali populated regions in Kenya and Ethiopia (Mayoyo, 2013). The newly-independent Kenyan State responded to the shifita threat strongly and ruthlessly (Njeri, 2015). Kenyan Somali representatives at the Lancaster talks indicated their willingness to join the greater Somalia as did the predominant majority of the Somalis (Lind, *et al*, 2017). The loyalty of the Somali people to the Kenyan project had, therefore, come into question and they were also seen as a source of insecurity in the country. Speaking to Parliament in 1965, politician G. G. Kariuki said:

*‘I do not agree that it is possible to know who are the loyal Somalis and who are the Somalis who are not loyal. The main idea here is that I want them to be put in a village and then we can easily know who are the loyal Somalis and who are not loyal Somalis’.* (Kenya National Assembly, 1965)

The underlying idea in Kariuki’s statement was that Somalis were not only dangerous, they were also dangerously indistinguishable (Balakian, 2016). The Kenyan government effectively instituted a state of emergency in the Somali region that lasted for close to 30 years from 1966 with the constitutional rights of the Somalis suspended and their movement curtailed.<sup>5</sup> The government continued to respond ruthlessly to any challenges or threats from the Somali community (Njeri, 2015). It was in this context that the Garissa massacre of 1980 and the infamous Wagalla massacre, in which about 3,000 and 5,000 people, respectively, are estimated to have been killed, occurred (Thompson, 2015).<sup>6</sup>

<sup>4</sup>In the context of ‘Operation Usalama Watch’, the then Cabinet Secretary for Interior, confirmed what had been an ‘open secret’, that some people had acquired their citizenship papers illegally through corrupting the system.

<sup>5</sup>Emergency law was captured in the “North Eastern Province and Contiguous Districts Regulations, 1966” and the “Indemnity Act, 1970, which indemnified security personnel from accountability for human rights violations committed in the region. I’m thankful to Mikewa Ogada for this point.

<sup>6</sup> See also, The Truth, Justice and Reconciliation Commission Report (Volume IIA) (2013).

Decades later, the predominantly Somali regions – such as Garissa and Mandera counties and Eastleigh in Nairobi – continue to be imagined as places of ‘otherness’ in the imagination of many Kenyans (Balakian, 2016). Operation Sanitisation of Eastleigh fits within this context; rather than being a novel approach, it was emblematic of the historical engagement of the Kenyan State with the Somali people – and by extension with other marginal populations. As the Al-Shabaab attacks escalated, with the attackers identified as Somali young men, the identity of the Somali was effectively conflated with terrorism. Refusal by other Kenyans to share public transport with Somalis for fear of attacks indicated the effectiveness of the conflation of the identities and the branding of those who attempted to question the operation, such as the human rights groups or elite Somalis, as ‘sympathisers of terror’ (*Daily Nation*, 2015; Shiundu, 2015). The foregoing underscores the point that citizenship, belonging to a political community, goes beyond formal State recognition to the acceptance by other members of the community. That is, citizenship is a dynamic process that is contested and constantly renegotiated in everyday life (Sieder, 2001; Buur, 2007).

Much of the human rights literature critiquing the operation and other similar State endeavors presented the targets as powerless victims. However, the targets of State power remain purposive political actors. During ‘Operation Sanitisation of Eastleigh’ Somalis ‘survived’ by exercising their agency through every day acts of resistance. The chapter explores the ‘survival’ techniques they employed, as documented in the extant literature. In particular, the focus is on how ordinary Somalis avoided producing the registration documents, either because they did not have them or because they knew that producing the documents would lead to further complications. Previous studies have noted how police officers confiscate IDs, terming them as ‘fake’, as a strategy for demanding bribes. Since the payment of bribes to secure freedom has already been elaborately documented elsewhere (See for instance, Schiffrin & Fannin, 2016), the focus here is on other acts of agency including relying on other markers of citizenship and generating counter-narratives to challenge those advanced by the State.

Balakian (2016) presents an illuminating case of Moha, a young Somali refugee who avoided being asked to produce a Kenyan ID by being immediately helpful to the police when they entered their housing block and speaking in fluent Swahili. He showed the police his student ID, an acceptable form of identification for those under 18, and speaking in fluent Swahili allowed him to get off as a Kenyan, even though he fit the category of who the police were looking for. The police confirmed his ‘Kenyan-ness’: “*Wewe ni Mkenya, simama pande hii*,” [You’re a Kenyan, stand on this side] separating him from the rest (Balakian, 2016), as they continued to verify the status of the rest of residents of the housing block. Balakian (2016) also presents the case of a mother who pretended to be her own child’s sister, faking adolescence in order to escape the requirement of holding the national ID required of an adult. These cases show how the very people that the police were looking for got away by using resources that were immediately available to them. They operated in the ambiguous spaces of citizenship by relying on alternative markers of citizenship to avoid disclosing their true ‘legal’ status – and the police accepted them.

The police would accept fluency in Kiswahili, Kenya's lingua franca, as a marker of citizenship since they expected that the non-Kenyan Somalis they were looking for would be unable to speak it. The need to produce a Kenyan national ID is also eliminated by performing one's under-age status, whether by presenting a student ID or pretending to be an adolescent. This challenges the massive security operation targeted at populations because they miss the nuances and ambiguities of identity, even when they are motivated and informed by those same identities. Being under-age eliminates the need to demonstrate citizenship through State-provided documentation and forestalls the possibility of extortion by the State agents.

The Somali also presented a critique of the narratives generated by the State to justify the operation through their social media accounts and engagement with the traditional media, criticising the actions of the State and bringing attention to the injustices committed against them. Of note, religious leaders and politicians held press conferences protesting the brutality of the police during the operation (*Daily Nation*, 2014). Nonetheless, one of the most potent counter-narratives was contained in a feature article carried by the *Standard* newspaper headlined: *"Somalis: Kenya is our home too and we are not a security threat"* (Some, 2014). The article presented the story of Hussein Guleid, a Somali businessman based in Eastleigh who noted that his father was a police officer in the Kenya Police, serving the very State that was now victimising him and his people. He is quoted as saying

*"I am a Kenyan through and through. I was born here and I do not know anywhere else to call home. But when such things happen, they make me feel like an alien. Does Kenya want us, does Kenya appreciate us?"* (Some, 2014)

Additionally, the exposure of the plight of the Somali people by the media, especially women and children, presented an embodied critique of the State and how it employs its power (Ref). Social media accounts and media reports provided the basis for politicians, the Somali community and human rights groups to castigate the State for ethnic profiling in blatant disregard for national and international law and violation of human rights (Aling'o Peter, 2014; Obala & Kithi, 2014).

The focus of this section has been to trace the historical roots of Somali precarity in Kenya and highlight, albeit briefly, how they exercised their agency in their encounters with the State during the security operation. This challenges the projection, especially in the human rights literature, of Somalis as agency-less victims of State power. Similarly, it highlights the nuanced and complex nature of political existence that complicates policing that is inspired by profiling of populations. The design of interventions such as 'Operation Sanitisation of Eastleigh' fail to grasp the nuances and complexities of how street level interactions between the police and the people can generate unintended outcomes.

## Cutting Off the King's Head: Contradictions of the State

The State continues to be imagined in the Weberian sense as a public authority with a monopoly over the legitimate means of coercion and, therefore, as the custodian of the security of its citizens. Consequently, the State is preoccupied with demonstrating its symbolic and material superiority through the discourses it generates and through its forceful actions, especially when responding to security threats. For Kenya, one approach was to invest in surveillance technology to help security agencies track and apprehend terrorists and other criminals (Donovan, *et al*, 2015). 'Operation Sanitisation of Eastleigh' was another approach, meant to demonstrate the symbolic and material capacity of the state to reassure its citizens that it was in control. Notably, the state adopted a multi-agency approach to deal with the threat, an approach usually reserved for the most intractable security challenges. In a sense, a multi-agency approach is a way for the state to demonstrate one-ness in the face of a threat judged too significant to be handled by a single agency. Such massive security operations, however, expose the inherent contradictions in the state, challenging the view of the state as a singular and all-powerful actor. Contra-Agamben, state power does not reside in one place but is rather disbursed among 'street level bureaucrats.' The actions of the police officers that went contrary to political discourse serve to underscore this point. Similarly, the inexactness of the State's approach and its failure to arrest 'actual' or 'real' terrorists critiqued the presumed power of the State, because terrorist attacks continued even after the operation.

The actions of the police, as variously documented, demonstrated the exercise of police discretion and the variance of their actions from the discourses emanating from the state. Though the state had indicated that security officers would not target Somalis and that the police were merely enforcing the law, evidence of police behaviour from various reports painted a different picture (Amnesty International, 2014; IPOA, 2014). The operation was termed as the most dreadful exercise of ethnic profiling of the Somali community (Kerrow, 2014).

The police demanded bribes from many of those they arrested as the operation morphed into a money minting opportunity for the police (IPOA, 2014; Rajab, 2014). The corollary here is that even 'terrorists', if there were any, might have been able to buy their freedom, making nonsense of the entire operation. The linkage between terrorism and corruption have been discussed elsewhere (Cannon & Ruto Pkalya, 2017). This also highlighted the extent of police discretion – and therefore, police power. To use Agamben's term, the power of exception – the ability to decide who is arrested and who is let go and how this happens – lay not in some imaginary singular public authority out there, but in the hands of the police in the most punctual way. That is, here and now. Per Butler, the police operated as 'petty sovereigns' determining not only who was a 'terrorist' and who wasn't, but also how one could cross over between the two categories – including through bribery. As Millar (2016) observes *"... if a police (officer) decides you are not a Kenyan he decides."* Evidence of this tremendous power residing in police officers and the extent of discretion they exercise serves to show that they are more than tools of the State but individual agentic actors as well (Cf. Ruteere, 2011). This effectively challenges the unitary theory of power that is often assumed in analysis and that States like to project.



This shows that the designs of interventions to counter-violent extremism that rest on the view of the State as a singular actor are misleading. The agency of officers should not be ignored.

The symbolic unity of the state was also challenged by the resistance of Somali members of the political regime against the operation. This went contrary to the imagery of 'collective responsibility', where the State is normatively imagined to act and speak as one. Politicians from the Somali community called a press conference at Parliament Buildings and also held a political rally in Eastleigh where they condemned the acts of the State and threatened to quit the ruling Jubilee Alliance if the operation was not halted (Achuka, 2014). The symbolism of leaders criticising the acts of the State from within important artefacts of the State, such as Parliament Buildings, is potent. Further, the Somali leaders who condemned the operation included the high-ranking Aden Duale, the leader of the Majority in the National Assembly. Duale came under an onslaught by fellow members of the ruling Jubilee Alliance for putting the President and Deputy President in an awkward position by coming in the way of the government's crackdown on terrorism (Obonyo, 2014). While it may be argued that this was a public relations gimmick meant to gain political mileage, especially since the threatened resignations were not forthcoming, it matters that a senior leader who is entrusted with the legislative agenda of the political regime would publicly critique the actions of the government. Later, the leaders met the President, who assured them that their community would not be victimised (Mosoku, 2014). Even though the operation continued, evidently the President considered the political support of the Somalis important for his regime and at least attempted to separate himself and the government from the 'illegal' aspects of the operation and asked the leaders to support the fight against terrorism. For the Somali leaders, this was an important attempt to nuance the discourse and challenge the conflation of Somali identity with terrorism.

Additionally, the effectiveness of the operation was brought into question by its lack of precision and its failure to stop the wave of terrorist attacks. The popular Kenyan saying that '*serikali iko na mkono mrefu*' (Literally: The government, often conflated with the State, has a long arm) suggests that the State should be able to identify the real sources of threat from within the society and extract them. Investments in technology for gathering intelligence would heighten such expectations. Security operations should, after all, be based on clear intelligence as Aling'o (2014) contends. However, targeting an entire community and neighborhood, in a haphazard manner, betrayed a lack of such capacity. Herein lies the contradiction; as the State engaged in a forceful operation to demonstrate its strength, it exposed its inability to respond effectively to challenges posed to it by terrorists or violent extremists. The State opened itself up to criticism by engaging in a public relations exercise rather than genuinely seeking to improve the security of its citizens (Omondi, 2014). The alternative logic that points to the use of intimidation against communities as a way of making the community reveal the 'thieves', 'militias' or 'terrorists' among them leads to the same conclusion; it raises doubts about what the State knows, and what it can know, challenging the view of the state as all-knowing. But the even more potent critique emanates from the fact that the terrorist attacks continued and escalated. The Mpeketoni, Tana River and Garissa University attacks, in which more than 200 people were killed, were graphic reminders of the continued existence of the terrorist threat (Lind *et al.*, 2017).

The dramatic and forceful nature of the operation had not defeated terrorism (Aling'o Peter, 2014). Little wonder, then, that an Afro-barometer study found that Kenyans disapproved of the government's approach (Buchanan-Clarke & Lekalake, 2015).

This calls for rethinking of the current approaches to countering violent extremism by taking Foucault's call to cut off the king's head seriously and pay attention to the nuances of State practice; policing at the street level (Foucault, 2001). State-level interventions founded on the assumption of unitary hegemonic power enforced uniformly by security agents miss the nuanced ways in which the police interact with the community and are, therefore, unlikely to succeed in their objectives. More realistic interventions must factor in the actions, omissions and transgressions of the 'petty sovereigns'. The power of 'petty sovereigns' to 'deem' someone dangerous or not and an identity document as 'real' or 'fake', and a marker of citizenship as adequate or not, requires to be taken seriously in the design of interventions aimed at countering violent extremism.

## Conclusion

The purpose of this analysis has been to challenge the current approaches to countering violent extremism through a critique of their underlying assumptions regarding the weakness of the citizenry and the power of the state. The chapter shows that even precaritised populations can act politically, complicating state efforts and that basing interventions on the unitary theory of the State is misguided. Effective interventions require a more nuanced approach to the State and communities, considering the complexity of this phenomenon, rather than making continued efforts to simplify, or even perhaps, oversimplify.

Interventions must contend with the ambiguities of the police being both agents of the law and lawlessness, the inadequacy of State-issued identity documents as markers of citizenship, the ability of the vulnerable to challenge State power and the limited power of the State in addressing violent extremism. The need to focus on engaging communities and other stakeholders in the design of interventions and partnerships in their implementation cannot be overemphasised, because power and knowledge do not reside in one place. Rethinking current approaches to violent extremism is necessary for progress.

# Bibliography

- Abukar, H. M. (2014) "Kenya's Somalis: Caught Between Power and Profiling". Retrieved on December 2, 2017, from <http://africanarguments.org/2014/06/23/kenyas-somalis-caught-between-power-and-profiling-by-hassan-m-abukar/>
- Achuka, V. (2014) "Duale threatens to ditch Jubilee over crackdown". Daily Nation April 4.
- Agamben, G. (1998) *Homo Sacer*, Stanford, California: Stanford University Press.
- Agamben, G. (2005) *State of Exception*, Chicago & London: The University of Chicago Press.
- Aling'o, P. (2014) 'Kenya's current probe on terror: why Operation Usalama Watch won't cut it' - ISS Africa, <https://issafrica.org/iss-today/kenyas-current-probe-on-terror-why-operation-usalama-watch-wont-cut-it>. (Accessed on December 2 2017)
- Amnesty International (2014) *Somalis Are Scapegoats in Kenya's Terror*, Amnesty international.
- Baker, B. (2004) 'Protection from crime: What is on offer for Africans?' *Journal of Contemporary African Studies*, <https://doi.org/10.1080/0258900042000230005>
- Balakian, S. (2016) 'Money Is Your Government; : Refugees, Mobility, and Unstable Documents in Kenya's Operation Usalama Watch', *African Studies Review* 59(2): 87–111.
- BBC News. (2011) "Kenyans hunt for kidnappers of Spanish MSF aid workers" BBC, <http://www.bbc.co.uk/news/world-africa-15301847> (Accessed on December 2 2017)
- Buchanan-Clarke, S., & Lekalake, R. (2015) 'Is Kenya's anti-terrorist crackdown exacerbating drivers of violent extremism ?' *Afrobarometer* 37: 1–10.
- Butler, J. (2009) 'Performativity, Precarity and Sexual Politics', *Aibr* 4(3): 13.
- Butler, J. (2014) *Rethinking Vulnerability and Resistance*.
- Cannon, B. J. and Ruto, P. D. (2017) 'Why al-Shabaab Attacks Kenya: Questioning the Narrative Paradigm', *Terrorism and Political Violence*, 0(0): 1–17.
- Carrier, N. and Kochore, H. H. (2014) "Navigating ethnicity and electoral politics in northern Kenya: the case of the 2013 election". *Journal of Eastern African Studies*, 8, 1753–1055. <https://doi.org/10.1080/17531055.2013.871181>
- Daily Nation (2014) "Muslims accuse police of terror". Daily Nation 15 April.
- Daily Nation (2015) "Muhuri, "Haki accounts to remain frozen". Daily Nation 2 June.

- Donovan, K. P., Frowd, P. M. A. and Martin, A. K. (2015) 'Surveillance in Africa: Politics, Histories, Techniques', <http://doi.org/10.1017.asr.2016.35>.
- Foucault, M. (2008) "The Birth of Biopolitics," Lectures at the College De France, 1978-79, New York: Palgrave Macmillan.
- Foucault, M. (2001) "Truth and Power". In *Power (The Essential Works of Foucault, 1954-1984, Vol. 3)*.
- Govil, R. (2017) "'I feel like I am born again': citizenship brings hope to stateless minority in Kenya" <http://www.unhcr.org/uk/news/latest/2017/11/59f9a6c94/feel-born-citizenship-brings-hope-stateless-minority-kenya.html> (Accessed on December 2 2017)
- Hajir, A. (2015). "GARISSA: Youth narrate agony of life without IDs" - Daily Nation. <http://mobile.nation.co.ke/counties/Garissa-youth-lament-no-IDs/-/1950480/2621426/-/format/xhtml/-/csqk25z/-/index.html> (Accessed on December 2 2017).
- IPOA. (2014) Monitoring Report on Operation Sanitization Eastleigh Publically Known As 'Usalama Watch '. Nairobi.
- Kenya National Assembly. (1965) Kenya National Assembly Official Record (Hansard) Jun 1 - 30 Jul 1965. Nairobi: Kenya National Assembly.
- Kenyatta, U. (2014a) "State of the Nation Address at Parliament" by HE President Uhuru Kenyatta, Nairobi: The Presidency.
- Kenyatta, U. (2014b) "Ulinzi Unaanza na Mimi, Ulinzi Unaanza na Wewe," YouTube.
- Kerrow, B. (2014) "Is Operation Usalama Watch a Somali Gulag?" The Standard.
- Laing, A. (2013). "Nairobi assault: Kenyan terrorist attacks since 1980," The Telegraph 21 September.
- Lind, J., Mutahi, P. and Oosterom, M. (2017) 'Killing a mosquito with a hammer: Al-Shabaab violence and State security responses in Kenya', *Peacebuilding* 7259: 1–18. <https://doi.org/10.1080/21647259.2016.1277010>
- Manning, P. K. (1978) 'The Police: mandate, strategies and appearances', Newburn, T. (Ed.), *Policing: Key Readings*, Cullompton: Willan Publishing.
- Mayoyo, P. (2013) "Shifta war 'marked the start of brutal killings". Daily Nation 22 May.
- Millar, S. (2016) "Dramatized and Structural Violence within the Axis of Citizenship : An Ethnographic Exploration into Eastleigh , Nairobi ," Thesis submitted in fulfilment of degree of Masters of Arts in the School of Social Sciences and Humanities, University of Tampere

Mogire, E. and Agade, K. M. (2011) 'Counter-terrorism in Kenya', *Journal of Contemporary African Studies*, <https://doi.org/10.1080/02589001.2011.600849>.

Mohamed, A. (2014) "Lenku orders refugees back to their camps", *The Star* 27 March.

Mosoku, G. (2014) "President Uhuru Kenyatta meets North Eastern MPs, Aden Duale pledges to support fight against terrorism", *The Standard* 16 April.

Njeri, M. wa. (2015) "Kenya That was Never Kenyan: The Shifta War & The North Eastern Kenya," *Medium* 13 April.

Obala, R. and Kithi, N. (2014) "Police operation illegal, inhumane, claims civil society". *The Standard* 13 April.

Obonyo, O. (2014) "Could Aden Duale's stand to 'defend his people' cost him politically? *The Standard* 13 April.

Ole Lenku, J. (2014) "Interview: Interior CS Joseph Ole Lenku Speaks on Operation Usalama Watch Kenya," *Nation TV*.

Omondi, S. (2014). 'Operation Usalama Watch: Too Little, too late?' <http://www.knchr.org/OperationUsalamaWatchToolittletoolate.aspx> (Accessed on 17 December 2017).

Opiyo, P., & Githinji, P. (2011) "Minister Says Eastleigh the next Target in the Hunt for Al-Shabaab Militants," *Standard* 20 October.

Rajab, R. (2014). "Eastleigh parents pay bribes to release kids arrested on terror charges", *The Star* 16 July.

Ruteere, M. (2011) 'More than political tools: The police and post-election violence in Kenya', *African Security Review*. <https://doi.org/10.1080/10246029.2011.630805>

Schiffrin, N. and Fannin, Z. (2016) "Police officers treat this Nairobi neighborhood like an 'ATM machine,' residents say," *PRI's World*.

Shiundu, A. (2015 "Give us list of Al-Shabaab sympathisers or quit, Kenyan MPs tell Aden Duale",. *The Standard* April 6).

Some, K. (2014). "Somalis: Kenya is our home too and we are not a security threat" *The Standard* 27 April.

Steinberg, J. (2011) 'Crime prevention goes abroad: Policy transfer and policing in post-apartheid South Africa', *Theoretical Criminology* 15(4): 349–364, <https://doi.org/10.1177/1362480611406168>

Wabala, D. (2014). "6,100 police and soldiers crack down on Eastleigh", The Star 5 April.

Wafula, P. (2014). "Kenya has experienced 100 terror related attacks in three years", The Standard 18 August.

# 8

Samar Al-Bulushi & Mohammed Daghar

## Rehabilitation or Indefinite Detention? A Critical Examination of an Emerging Approach to 'CVE'



## Introduction

In recent years, the Kenyan government has issued public pronouncements about the need to rehabilitate ex-combatant youth, promising amnesty to those who participate. Much like governments elsewhere that are grappling with the reality that some of their citizens have joined terrorist organisations, Kenya is faced with the need to address challenges posed by the demobilisation and re-integration of young people who were once affiliated with Al-Shabaab in neighbouring Somalia. To date, however, the government has not outlined a legal framework that would guide rehabilitation efforts. Without a law or policy in place, there remains a troubling lack of clarity about what rehabilitation entails in practice. While some rehabilitation programmes have been set up at the Kenyan Coast, questions remain about the procedures guiding such programmes. Are they voluntary or involuntary in nature? On what basis are determinations made about whether a person has been ‘rehabilitated?’ Which entities or State institutions are qualified to run such programmes, and what laws govern their implementation and oversight?

As others have indicated in relation to the question of disarmament, demobilisation and re-integration for violent extremists, there are a number of legal, operational and strategic concerns that require attention.<sup>1</sup> Most pointedly, as the authors of this paper contend, efforts to address youth violence must be considered in relation to the broader political dynamics of the ongoing ‘War on Terrorism.’ The fact that military hostilities are ongoing raises questions about the contexts in which decisions are made about how to handle ex-combatants, not to mention the laws governing these decisions.

While the Kenyan government prescribes rehabilitation as a corrective for so-called ‘violent extremism’, this paper adopts a more critical perspective. Despite the language of care implied in the term, we argue that rehabilitation programmes designed in the context of the ‘War on Terrorism’ may ultimately function as a cover for indefinite detention, enabling access to former combatants for the purpose of extracting intelligence.<sup>2</sup>

<sup>1</sup>V Felbab-Brown, 2015. ‘DDR – A Bridge Not Too Far: A Field Report from Somalia’, In *UN DDR in an Era of Violent Extremism*, United Nations University. See also O’Neill 2015, Cockayne and O’Neill 2015.

<sup>2</sup>Cockayne and O’Neil acknowledge this risk, stating, “DDR camps can be inadvertently transformed into indefinite detention facilities – at least for some, as local authorities might be willing to release some participants after the completion of the DDR programming and not others, if they continue to judge them a security threat.” See J Cockayne and S O’Neil, eds, *UN DDR in an Era of Violent Extremism: Is It Fit for Purpose?* 2015: 54.

First, we scrutinise the discourse of ‘violent extremism’ to shed light on what it obscures, namely, the forms of structural violence (e.g., policing and detention) that contribute to psychosocial vulnerabilities among young men. In other words, it is irresponsible to place young Muslim men in the ‘problem’ category and government actors in the ‘solution’ category, when the reality is that government policies often shape the decisions of young people to join armed groups. Next, we consider the steps taken thus far to rehabilitate young people in Kenya. In doing so, we demonstrate that little information or documentation exists on the nature and outcome of these efforts. This is worrying. If the government is genuinely committed to rehabilitation and re-integration, a thorough accounting of lessons learned will be necessary.

Finally, we revisit the history of similar programmes designed by the British colonial government to counteract the anti-colonial Mau Mau struggle in the 1950s and 1960s. The primary motivation for looking back at this history is to insist on the importance of situating rehabilitation policies within the broader dynamics of the ‘War on Terrorism’. During the colonial era, as we illustrate, rehabilitation camps effectively became detention camps, where inmates were interrogated and tortured. As contemporary experts have indicated, the current context is also one in which the lines between rehabilitation and more coercive counter-insurgency strategies can become blurred. Just as counter-insurgency strategies dominated the British approach to rehabilitation, there are risks that contemporary rehabilitation programmes will be over-run by the needs of military strategy, such that lines become blurred between voluntary and involuntary participation. In light of these risks, we argue that rehabilitation programmes designed in the context of the ‘War on Terrorism’ may ultimately exacerbate the very conditions that they claim to address; alienation, social breakdown and more violence. While Kenyan officials are understandably eager to address the social and political challenges presented by ex-combatants, this should not distract from the need to learn from historical precedent and to ask difficult questions.

## A Note on Methodology

This study relied primarily on key informant interviews with a range of actors operating in the security, county government and non-profit sectors in Mombasa County. It also draws from semi-structured interviews conducted with young Muslim men living in Mombasa. Finally, it has benefited from media monitoring and a review of scholarly and policy literature on the topic.

## The National Strategy to Counter Violent Extremism

In the aftermath of the Garissa University attack in April 2015, the Kenyan State announced that it would promote rehabilitation programmes for so-called extremist youth, promising amnesty to those who participate.<sup>3</sup> Since that time, however, the national government has failed to outline and implement a legal framework that would guide rehabilitation efforts.

<sup>3</sup>Kenya Announces Amnesty and Reintegration to Youth who Denounce Al-Shabaab’, <http://www.standardmedia.co.ke/article/2000158358/kenya-announces-amnesty-and-reintegration-to-youth-who-denounce-al-shabaab>

While the National Strategy to Counter Violent Extremism makes numerous references to the need for rehabilitation and re-integration support for individuals “who disengage from violent extremism,” there remains a lack of clarity on who qualifies as an extremist, as well as what rehabilitation entails in practice.<sup>4</sup>

The national strategy defines rehabilitation as a process “that aims to ensure that disengaged and de-radicalised violent extremists and terrorists, particularly returnees from Al-Shabaab and like groups, are given the counseling, critical reasoning tools and knowledge to shift their mind-sets and enable them to be peaceful and law-abiding citizens.” Psychosocial and mental health support is integral to the process, together with reconciliation efforts with affected family members, social networks and communities. The reintegration component of the CVE strategy refers to actions “that support the social, ideological, psychological and economic wellbeing of rehabilitated individuals.”<sup>5</sup>

The fact that the Kenyan government has expressed the need to rehabilitate extremists suggests that there are a sizeable number of individuals who at one time pledged allegiance to, or engaged in combat with, terrorist organisations. While no official data is available on the number of recruits, national newspapers and other entities have made reference to government claims about the number of youth who have surrendered. In February 2016 for example, the government indicated that as many as 1,500 former members of Al-Shabaab had turned themselves in.<sup>6</sup> According to these reports, the majority of those who surrendered came from Kilifi, Kwale, Mombasa and Lamu counties, as well as Nairobi and the central Kenya region.<sup>7</sup>

Yet the government often makes reference to so-called ‘returnees’ without clarifying what is meant by this term.<sup>8</sup> In a joint assessment conducted by the International Organisation for Migration (IOM), the government of Kenya, and the Supreme Council for Kenyan Muslims (SUPKEM), the term was used interchangeably to refer to those returning from combat in Somalia, and to those who had joined a secessionist group inside Kenya.<sup>9</sup> For those who traveled to Somalia to join Al-Shabaab, there can be various forms of return: Some may present themselves to authorities with hopes of receiving amnesty while others may return quietly, unsure of the consequences of submitting themselves to the authorities. It remains unclear what policies and indicators are used to determine whether an individual was in fact at one point an active armed combatant, as well as what criteria would be used to determine qualifications for amnesty. Does classification as an ‘extremist’ require possession of a weapon?

<sup>4</sup>See “National Strategy to Counter Violent Extremism,” 2016.

<sup>5</sup>Ibid.

<sup>6</sup>‘1,500 Kenyan youths recruited by Al-Shabaab have surrendered, declares State’, <https://www.standardmedia.co.ke/article/2000192627/1-500-kenyan-youths-recruited-by-al-shabaab-have-surrendered-declares-state>

<sup>7</sup>See, for example, <http://intelligencebriefs.com/1500-kenyans-radicalized-into-al-shabaab-surrendered-as-first-batch-complete-de-radicalization-rehabilitation-program>. See also Rift Valley Institute, “Violent Extremism and Community Resilience,” 2016.

<sup>8</sup>For example, specificity is needed on whether the individuals was captured and returned, voluntarily returned and requested assistance, or returned quietly without informing the State.

<sup>9</sup>International Organisation of Migration *Socioeconomic and Demographic Survey of Kenyan Returnees* 2015.

Adherence to a particular ideology? Membership in a specific organisation? Or simply a passing interest in certain ideas and organisations?<sup>10</sup>

As we learned during the course of our research, this lack of clarity is the source of profound unease for young Muslim men living at the Kenya Coast.<sup>11</sup> Many worry that these programmes might be used to legitimise the indefinite detention of anyone suspected of involvement with a terrorist group. Worse yet, some fear that these programmes are designed to lure them in, only to then be interrogated, tortured or killed by government authorities.<sup>12</sup> In the aftermath of Al-Shabaab attacks like Westgate (2013) and Garissa (2014), dozens of Kenyan citizens have disappeared or have been killed at the hands of Kenya's police in what one local rights organisation characterises as an epidemic of extrajudicial killings.<sup>13</sup> For those lucky enough to return to their families, they worry that the mere record of their arrest could be used as a basis to incriminate them as suspects.

## Interrogating the Discourse of 'Violent Extremism'

Since the launch of the US-led 'War on Terrorism', pathologies of specifically Muslim male youth criminality have rendered them hyper-visible in the political imagination. Discourses about violent extremism are highly gendered — not only in their primary interest in young men, but also in assuming that young men's lives are governed predominantly by economic or political interests that take shape in the public sphere. As such, young Muslim men become homogenised figures who are interested only in *jihad* and politics; their private lives, rendered inconsequential, are abstracted from their social, political and religious commitments, and from broader historical processes. This paper pushes back against mainstream representations that reproduce one-dimensional narratives about young Muslim men, and that reduce what are often multiple and conflicting social identities to singular logics of gender, race, religion or class. Instead, it raises for consideration the intersectional life experiences that shape one's place in the world.<sup>14</sup> More specifically, it asks what happens to young men who find themselves caught between seemingly benign social initiatives intended to promote their well-being and the more coercive, unpredictable and psychologically destabilising realm of policing and counter-insurgency.

<sup>10</sup>For further discussion on the need for a clear policy and legal framework, see M Ruteere and A Boru 'Supreme Council of Kenya Muslims Baseline Assessment of the Support Frameworks Necessary for the Institutionalization of State Amnesty for Surrendered Ex-Militant Individuals, 2016.

<sup>11</sup> A study conducted in 2016 found that similar concerns were expressed by respondents in Kwale, Kilifi, Mombasa and Lamu counties. See H Boga, H Mwakimako, and H Shauri, "Working with the National

Government and Coastal Counties to counter violent extremism in the Coast Region of Kenya," Report of a Survey Project done under the BRICS East Africa Project, Development Alternatives Initiative (DAI) Europe, March 2016

<sup>12</sup>The study conducted by Boga, Mwakimako and Shauri (n 11 above) reports similar concerns about the risk of torture, arbitrary arrest, or disappearance at the hands of the police.

<sup>13</sup>See Haki Africa, 'What do we tell the Families: Killings and Disappearances in the Coastal Region of Kenya, 2012-2016', December 2016.

<sup>14</sup>An intersectional approach considers the various ways that race, gender and religion interact to shape the lives of young Muslim men in Kenya today.

In fact, although one impetus for rehabilitation programmes is to challenge the violent ideologies of terrorist organisations, rehabilitation and psychosocial support may also be needed for young men who have been exposed to the violence of the State.

In the Kenyan context, the police have conducted mass raids in Nairobi and Mombasa. In addition to the raid of Masjid Musa in February 2014, more than 1,000 people were arrested and detained in Nairobi's Kasarani stadium as part of 'Operation Sanitise Eastleigh.' And in November 2014, more than 250 young people were arrested in a sweep of the Majengo neighbourhood of Mombasa. While lawyers, rights activists and politicians have worked to ensure that the rights of these individuals are protected, few have inquired into the long-term consequences of these arrests.

Drawing on semi-structured interviews with young men in Mombasa, our research indicates that young men suffer from paranoia and post-traumatic stress. On the one hand, they have not been provided with mental health counseling in order to process what they experienced in the context of the arrest and detention. At the same time, they must contend with the likelihood that their actions continue to be closely monitored, as well as with pressure from Kenyan intelligence service to work for the government as informants. Societal stigma is another challenge: Young men who have been arrested have struggled to find work and to marry.

In other contexts like the United States and Denmark, scholars have traced the psychosocial dimensions of life under surveillance and suspicion.<sup>15</sup> Further still, they have documented the mental health impact of indefinite detention.<sup>16</sup> The lack of data on Kenyan citizens who have been arrested, interrogated and indefinitely detained leaves a gaping hole in our understanding of the social and mental health effects of these practices on the Muslim minority population. In the aftermath of the police raid of Masjid Musa, for example, some of the young people who were arrested were held in Mombasa's Shimo la Tewa prison for up to one month. According to one respondent who we will call 'Ziad,' he and his peers suffered from post-traumatic stress related to their arrest and subsequent detention. In addition to the violence at the hands of the police, some lost their jobs, others were expelled from school while others found that they were ostracised from their communities. Another respondent, 'Abdul,' shared his sense of unease at the knowledge that his actions continue to be closely monitored by the government.<sup>17</sup> There are various ways in which these young men learn that they are targeted by surveillance: In Ziad's case, he receives prank phone calls from intelligence actors, usually after he has made contact with someone new.

One of the painful paradoxes of the 'War on Terrorism' is that communities most in need of collective thinking and support are rupturing in the context of surveillance and criminalisation.<sup>18</sup>

<sup>15</sup>S Maira, *Missing: Youth, Citizenship and Empire after 9/11* (2013). See also M Rytter and MH Pedersen, 'A Decade of Suspicion: Islam and Muslims in Denmark after 9/11', *Ethnic and Racial Studies* 37(13), 2014.

<sup>16</sup>NK Aggarwal, *Mental Health in the War on Terror: Culture, Science, and Statecraft* (2015).

<sup>17</sup>Pseudonyms are used for both Ziad and Abdul.

<sup>18</sup>Maira (n 12 above).

While CVE programmes emphasise the importance of pro-social behaviours, they fail to contend with the impact of surveillance on social relationships. For young men like ‘Ziad’ and ‘Abdul’, who experienced the destabilising effects of arrest and imprisonment, the most obvious ‘pro-social’ behaviour would be to reach out to friends or mentors. And yet they were forced to calculate who they could and could not afford to be seen with after their release from prison. ‘Ziad’ feared that his own arrest could negatively affect his friends if they were seen with him upon his release. And while he wanted to find a space for discussion and mutual support, he was again confronted with the risks of such an endeavor, as any such gathering could be viewed with suspicion by the authorities. He believed that even a formal rehabilitation programme staffed with the appropriate psychosocial and spiritual support would come with the risk that staff would be called upon to report to the police or intelligence actors. Our research indicates that experiences of surveillance and criminalisation contribute to such high levels of anxiety that some young people have fled to Somalia not to join Al-Shabaab, but with hopes of regaining the semblance of a normal life. This is a troubling reality in need of further scrutiny.

We are therefore interested in problematising the traditional frame of ‘countering violent extremism’ by asking what it obscures: Namely, the continuing role of State actors in destabilising the lives of young people and their support networks in Kenya today. The production of suspicion towards young Muslim men -- even in the context of seemingly benign CVE programming -- works to erode trust precisely at times when these individuals need to rely on people in their communities and social networks to process their experiences. Faith-based groups, community and rights organisations who might otherwise be well-placed to offer support are themselves paranoid that engagement of this kind “could expose them to charges by the State that they are providing ‘material support’ to terrorists because of the expansive nature of the Prevention of Terrorist Act (POTA) 2012.”<sup>19</sup>

In late 2014, when a young man on a police-issued ‘Most Wanted List’ approached a Mombasa-based rights organisation hoping to clear his name, the organisation felt compelled to escort him to the police out of fear that it might be accused of shielding a terrorism suspect; and yet no procedures were in place to guide this process in such a way as to ensure that the individual’s rights would be protected once in police custody. While the decision of the young man to approach the rights organisation may have been voluntary, it is not necessarily clear whether he viewed the decision to approach the police as voluntary. We, therefore, aim to look beyond abstract notions of peace and the rule of law to the more complex realms of how individuals and their relevant support networks navigate the unpredictable, ever-shifting realm of security laws and policing.

It is by now widely recognised that the rise in violent incidents in Kenya is closely related to the ongoing military activities of Kenyan troops in Somalia.<sup>20</sup> The most prominent incidents include Westgate (2013), Mandera (2014) and Garissa (2015).

<sup>19</sup>Ruteere and Boru (n 9 above).

<sup>20</sup>Lind, P Mutahi, and M Oosterum, *Tangled Ties: Al-Shabaab and Political Volatility in Kenya*. 2015. See also DM Anderson, and J McKnight ‘Kenya at War: Al-Shabaab and Its Enemies in Eastern Africa’, 114 *African Affairs* 454. 2014.

These attacks have raised questions and concerns about the spillover effects of the war against Al-Shabaab, and about the recruitment of Kenyan citizens onto the ‘wrong side’ of this war. The discourse of violent extremism suggests that those young people who have expressed interest in, or sympathy for, Al-Shabaab have either been indoctrinated or lost their way. Civil society workshops about countering violent extremism generally foreclose discussion and debate about the social and political questions at the heart of decisions to join non-State armed groups. Moreover, they suggest that the problem lies primarily with actors in one’s immediate social world (neighbours, family members, places of worship, etc.), which not only engenders suspicion and mistrust, but also detracts from the broader issues at play, including the various political and economic interests that sustain war and instability. Some have noted the counter-productive dimensions of security policies, arguing that surveillance, marginalisation, and discrimination contribute to ‘radicalisation.’ But again, without a clear understanding of what ‘radicalisation’ is, this language effectively obfuscates complex social issues that are in need of study and analysis.

## What Does ‘Rehabilitation’ Look Like in Practice?

Little information or documentation exists on the nature and outcome of rehabilitation programmes in Kenya. While some programmes have been set up at the Kenya Coast, the absence of a national policy on rehabilitation suggests that decisions are made on an arbitrary basis. A 2016 study published by Development Alternatives Initiatives (DAI) Europe characterizes the programs that have been introduced as ‘secretive’ and as lacking transparency<sup>21</sup> This is troubling. If the government is genuinely committed to re-integrating former combatants into Kenyan society, it will need to enact relevant legislation to this effect, and to create opportunities for independent assessments of previously conducted programmes. The authors draw on studies about rehabilitation programmes in Somalia to highlight challenges that are likely to arise in the Kenyan context.

In 2015, the National Counter-Terrorism Centre signed a Memorandum of Understanding with the International Organisation of Migration (IOM) to work on the question of rehabilitation. Since that time, the IOM has been the only known entity to officially conduct rehabilitation efforts. It spearheaded a programme in Kwale County in 2016, which produced 48 graduates.<sup>22</sup> Opinions vary widely on the success of this programme. While the IOM marked it with a 70% success score, one respondent suggested that the project was flawed from its inception, both in its approach, and in the methods deployed. While the IOM conducted its own monitoring and evaluation of the program, it was not made available to the authors despite repeated requests. Without access to the baseline upon which success or failure is measured, the short and long-term impacts of the Kwale programme remain unclear.

<sup>21</sup>Boga, Mwakimako and Shauri (n 11 above).

<sup>22</sup>H Shauri and S Wanjala, “Radicalization and Violent Extremism at the Coast of Kenya: ‘Powerful Voices of Coexistence, Are They Being Heard?’” In *Meeting of Cultures at the Kenyan Coast*, eds. K Njogu and I Cage, 2017.

According to the IOM, one beneficiary was killed in an unrelated incident, while two participants were allegedly killed by police officers who suspected them of spying for Al-Shabaab. Another participant was killed in what was believed to be retribution for having ‘sold out’ to the police.<sup>23</sup>

Since then, the IOM introduced what it called the “Program for Human Security and Stabilisation” in the coastal counties of Kilifi, Kwale, and Mombasa. It is worth noting that this program does not describe itself as a rehabilitation program. Its aim, according to the IOM, is to “support the empowerment of the Kenyan government, communities and individuals to take positive steps toward economic stability by leveraging IOM’s deep-seated expertise in the implementation of projects related to multi-sectoral income generation.”<sup>24</sup> However, the IOM makes explicit reference to providing ‘reinsertion kits’ and to health and psychosocial counseling for vulnerable individuals. The IOM reported that 400 individuals participated in this program.

Based on the interviews conducted, we learned that participants were divided into different categories such as “youth at risk” and “vulnerable youth.”<sup>25</sup> As our respondents indicated, these terms lack specificity with respect to whether the participant joined the program voluntarily, or was coerced or required to participate in order to avoid punishment. Mombasa county government officials raised concerns with the IOM early on about the lack of a clear policy guiding the program, as well as about the involvement of the National Police Service and the National Intelligence Service. As one official articulated, “How do we know that the youth will be protected when the police have their own priorities?” The lack of a clear policy is compounded by the absence of public awareness campaigns, which as others have indicated, are crucial to allay fears among potential participants about the objectives of the program.<sup>26</sup>

In Somalia, the government has worked closely with the African Union Peacekeeping Mission for Somalia (AMISOM) to enact the “National Programme for Disengaging Fighters.” Officials from the Somali National Intelligence and Security Agency (NISA) are tasked with assessing and categorising former combatants. Those identified as ‘high risk’ are transferred to the criminal justice system, whereas those categorised as ‘low risk’ are placed in rehabilitation or de-radicalisation programme.<sup>27</sup> But as Vanda Felbab-Brown indicates, the bases upon which such designations are made remain unclear and the process is entirely opaque. The very involvement of intelligence actors raises questions about the supposed voluntary nature of the rehabilitation programmes, and about the safety of the participants.<sup>28</sup>

<sup>23</sup>Experts have noted that some participants in rehabilitation programmes in Somalia expressed fears about being targeted by Al-Shabaab upon release. See Felbab Brown 2015.

<sup>24</sup>In Mombasa, the program included four socio-economic and empowerment projects: one in Majengo with a communication centre, barber and salon; one in Buxton village with a music studio and bakery; one in Jitoni village with a youth resource centre comprising tailoring, photocopy and salon; and one at Tononoka social hall with a garbage collection initiative.

<sup>25</sup>For more information, see <http://kenya.iom.int/project/mombasa>

<sup>26</sup>Ruteere and Boru (n 9 above).

<sup>27</sup>Felbab-Brown (n 2 above). See also J Richards, ‘Demobilising and Disengaging Violent Extremists: Towards a New UN Framework’, 6 *Stability: International Journal of Security and Development* (2017).

<sup>28</sup>Felbab-Brown (n 2 above).



In 2014, for example, the Special Representative of the UN Secretary General (SRSG) for Children and Armed Conflict issued a statement outlining concerns about one facility that was ostensibly operating for the purposes of rehabilitating former members of Al-Shabaab.

In her press statement, SRSG Leila Zerroughi expressed concern that the process and criteria used to place over 50 children in this facility was entirely opaque. As a United Nations University report documented the following year.

*“Some children at Serendi reportedly complained of being held against their will and deprived of contact with family even though they denied being members of Al-Shabaab.*

*No database as to where the children came from and how, or if, they were released was presented, furthering suspicions that some children might be from Kenya since they spoke Swahili.”<sup>29</sup>*

The SRSG’s findings raised important questions about due process and the bases upon which young people are placed in so-called rehabilitation facilities. Noting the presence and involvement of intelligence actors, experts have acknowledged that some of these facilities look more like detention centres than they do demobilisation programmes.<sup>30</sup> As scholars elsewhere have illustrated, even the most benign sounding policies and programmes are at risk of creating and perpetuating inequalities of power and knowledge between the donors/experts and the intended beneficiaries.<sup>31</sup> This is especially pronounced in relation to efforts to govern the lives of socially undesired actors (e.g. immigrants, delinquent youth), which inevitably produces tensions between discourses and practices of compassion on the one hand, and repression on the other.<sup>32</sup>

## Learning from History

In this section, we revisit the history of British colonial government attempts to ‘rehabilitate’ members of the Land and Freedom Army (popularly referred to as Mau Mau). Our purpose is not to compare Al-Shabaab with the Land and Freedom Army. Rather, by illustrating how the British approach was situated within a broader counter-insurgency strategy, we may better understand the risks that come with contemporary efforts to rehabilitate and reintegrate ex-combatants.

The notion of rehabilitation is rooted in a long history of counter-insurgency tactics and ideologies of rule.<sup>33</sup> In the 1940s, the British developed re-education programmes for Greek communists on the island of Makronisos.

<sup>29</sup>Cockayne and O’Neill 2015.

<sup>30</sup>S O’Neil, “Disengaging Children in Violent Extremist Contexts” United Nations University Centre for Policy Research. 2015.

<sup>31</sup>D Fassin, “Compassion and Repression : The Moral Economy of Immigration Policies in France.” 20 *Cultural Anthropology* 2005 (3). See also EC James “Witchcraft, Bureaucraft, and the Social Life of (US)aid in Haiti.” 27 *Cultural Anthropology* 2012.

<sup>32</sup>D Fassin, “The Biopolitics of Otherness. Undocumented Immigrants and Racial Discrimination in the French Public Debate” 17 *Anthropology Today* 2001. See also M Ruteere “Dilemmas of Crime, Human Rights and the Politics of Mungiki Violence in Kenya,” 2008

<sup>33</sup>L Khalili, *Time in the Shadows: Confinement in Counterinsurgencies* (2012).

Drawing on their experience in Greece, they deployed a similar strategy against nationalists in Malaya beginning in 1949. At the Taiping Rehabilitation Centre, detainees were classified as ‘black’ (irredeemable) or ‘grey’ (open to re-education).<sup>34</sup> It was the Malaya model that British officials in Kenya sought to replicate in the face of growing anti-colonial resistance – first through the introduction of emergency measures and later through a programme of psychological and civic reform.<sup>35</sup>

For the colonial State, ‘rehabilitation’ would address a number of governing anxieties about this deepening political resistance. First, it would provide a benevolent cover for the growing number of detainees in British custody.

As the British sought to maintain their image as promoting and protecting the interests of Africans, a civilising mission that medicalised ‘Mau Mau’ as a disease requiring treatment was essential for the colonial administration’s efforts to win hearts and minds. Second, the removal of resistance fighters to ‘safe villages’ would help to contain the effects of the movement, which colonial authorities characterised as a threat to law and order.<sup>36</sup> And third, rehabilitation would function not simply as psychological treatment, but as a liberal project of societal reconstruction. Even as it demonised and criminalised the movement, liberal thought “provided a social solution”.<sup>37</sup>

Under the leadership of Tom Askwith, the programme for Mau Mau psychological and civic reform was launched in October 1953 with the objective of transforming the Kikuyu into governable citizens. As the insurgency expanded and the numbers of detainees grew, however, the colonial government was increasingly preoccupied with intelligence gathering. Historian Daniel Branch writes that these programmes “ultimately represented an attempt by the colonial government to open the mouths of the Kikuyu by enabling them to provide information about Mau Mau.”<sup>38</sup> Thus, ‘rehabilitation’ sanctioned torture in the effort to extract intelligence and ‘encourage’ confessions:

*A method evolved whereby “interrogation teams”-- comprised of settlers, Kikuyu headmen, and occasionally ex-Mau Mau -- focused their efforts on individual detainees. In theory, making a clean breast of Man Mau deeds was the objective, followed by “traditional cleansing” to remove a detainee’s impurities. In reality, a confession of Mau Mau affiliation did not ensure a suspect’s release from interrogation. Gathering intelligence preoccupied the teams, and they would employ any means necessary to extract it.*<sup>39</sup>

<sup>34</sup>K Luongo, “If You Can’t Beat Them, Join Them: Government Cleansings of Witches and Mau Mau in 1950s Kenya” 33 *History in Africa*, 2006.

<sup>35</sup>C Elkins, *Imperial Reckoning: The Untold Story of Britain’s Gulag in Kenya* (2005) 101-104

<sup>36</sup>Luongo (n 29 above).

<sup>37</sup>C Elkins, “Detention, Rehabilitation and the Destruction of Kikuyu Society,” in E Odhiambo and J Lonsdale *Mau Mau and Nationhood: Arms, Authority and Narration* (2003) 193.

<sup>38</sup>D Branch, *Defeating Mau Mau, Creating Kenya: Counterinsurgency, Civil War and Decolonization*. (2009) 46.

<sup>39</sup>C Elkins “The Struggle for Mau Mau Rehabilitation in Late Colonial Kenya” 33 *The International Journal of African Historical Studies* 24, 2000.

The fact that security experts today champion the utility of colonial-era rehabilitation tactics demands a closer look at this history. In *Terrorist Rehabilitation: A New Frontier in Counter-Terrorism* (2015), for example, Rohan Gunaratna invokes what he describes as the British “humane” approach in Malaya and Kenya as a potential model because of the emphasis on moral and civic re-education.<sup>40</sup>

“In the life of an insurgent,” he writes, “the most important opportunity government has is to transform him or her is when in custody.”<sup>41</sup> But as we learned from the tactics deployed against the Land and Freedom Army, the objective was not simply to quarantine suspected sympathisers or active fighters from the general population; it was also to extract information. Recent reports from both Kenya and Somalia reveal a similar interest in intelligence gathering.

In May 2015, *The Washington Post* revealed that demobilised combatants had been forced to work as informants for Somalia’s National Intelligence and Security Agency.<sup>42</sup> The informants, many of them children, were held for years in the custody of intelligence agency and were compelled to both collect intelligence and identify suspects. According to *The Washington Post*, Somalia’s intelligence agency maintains these practices despite the existence of a 2014 agreement to release children to UNICEF within 72 hours of their escaping Al-Shabaab or being apprehended by authorities.

A report jointly published by the International Organisation of Migration and the Supreme Council for Kenyan Muslims suggests that Kenyan authorities could similarly be tempted to prioritise intelligence needs over protection concerns. Among the stated objectives for rehabilitation efforts in Kenya is the following:

*Develop a more comprehensive profile of returnees within the context of reintegration programming as a means of gaining a better understanding of the factors driving radicalization and recruitment into armed groups in order to counter violent extremism. Once returnees are participating in a reintegration programme they are potentially an excellent source of information on the dynamics of radicalization, recruitment, and violent extremism in the country.*<sup>43</sup>

This passage points to the risk that rehabilitation programmes may become subsumed by the demands of intelligence gathering.

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<sup>41</sup>R Gunaratna and MB Ali *Terrorist Rehabilitation: A New Frontier in Counter-Terrorism* (2015) 3.

<sup>42</sup> “Exclusive: US-funded Somali intelligence agency has been using kids as spies,”

[https://www.washingtonpost.com/world/africa/exclusive-us-funded-somali-intelligence-agency-has-been-using-kids-as-spies/2016/05/06/974c9144-0ce3-11e6-a6b6-2e6de3695b0e\\_story.html?utm\\_term=.38b4bc178688](https://www.washingtonpost.com/world/africa/exclusive-us-funded-somali-intelligence-agency-has-been-using-kids-as-spies/2016/05/06/974c9144-0ce3-11e6-a6b6-2e6de3695b0e_story.html?utm_term=.38b4bc178688).

<sup>43</sup>International Organisation of Migration (n 9 above).

A recent publication by United Nations University entitled, *UN DDR in an Era of Violent Extremism*, openly acknowledges the risks of indefinite detention, observing that individuals who voluntarily subject themselves to a rehabilitation programme may be held indefinitely if they are determined to be a “security threat”.<sup>44</sup> In light of this risk, the authors propose “a detention and internment framework for application in DDVE contexts.”<sup>45</sup> Yet this approach overlooks the complex political, economic and social dynamics of ongoing war. In contrast to other DDR programmes, where violent conflict has typically come to an end, Somalia continues to be the sight of military operations that often spill over into Kenya. It is therefore inevitable that former combatants admitted to a rehabilitation programme will either be viewed with suspicion, or as the source of valuable information. As such, the risks of abuse are high.

The use of indefinite detention -- often in undisclosed black sites -- has been a hallmark practice of the ‘War on Terrorism’.<sup>46</sup> Detention refers to the practice of incarceration by States to contain people who have not necessarily been charged with any crimes.

<sup>47</sup> Scholars have observed that the management of detention facilities has deliberately been sub-contracted for the purpose of evading visibility and accountability.<sup>48</sup> This is confirmed by the UN University’s study of rehabilitation facilities in Somalia, which are managed by various private firms or security entities, none of whom have been held legally-accountable for documented abuses.<sup>49</sup> With this in mind, it is imperative that Kenyans scrutinise the process by which certain actors and entities are endowed with the responsibility of managing rehabilitation programmes.

<sup>44</sup> J Cockayne and S O’Neil, ‘UN DDR in an Era of Violent Extremism’, 2015. DDR is the term used for disarmament, demobilisation and re-integration.

<sup>45</sup> DDVE is a new term that refers to disarmament and demobilisation of violent extremists.

<sup>46</sup> D Gregory, ‘The Black Flag: Guantánamo Bay and the Space of Exception,’ 88 *Human Geography* 405, 2006. See also F Johns, ‘Guantánamo Bay and the Annihilation of the Exception, 16 *European Journal of International Law* 613, 2005.

<sup>47</sup> L Martin & M Mitchelson, ‘Geographies of detention and imprisonment: Interrogating spatial practices of confinement, discipline, law, and state power’, 3 *Geography Compass*, 2009.

<sup>48</sup> D Li, ‘From Exception to Empire: Sovereignty, Carceral Circulation, and the ‘Global War on Terror’, In *Ethnographies of U.S. Empire* 2018.

## Conclusion

Regardless of whether they were ever directly involved with a terrorist organisation, young people who have been publicly accused of association with terrorism are forced to contend with months and even years of societal stigmatisation. Rehabilitation programmes have the potential to offer much-needed psychosocial support to young people if they are designed in accordance with clear laws and policies. However, State discourses of threat could also be used to rationalise violent and coercive tactics. In February 2016, for example, President Uhuru Kenyatta announced his government's intention to establish a new correctional facility for 'extremists' in order to prevent these inmates "from spreading their venom to vulnerable Kenyans."<sup>50</sup> This pronouncement left many questions unanswered, such as why separate facilities are needed, as well how the proposed correctional facilities would differ from rehabilitation programmes.

As this paper illustrates, further research is needed to understand the potential risks and benefits of rehabilitation in the Kenyan context. More broadly, however, we have sought to highlight the legal and political dilemmas that come with attempting to demobilise ex-combatants in the context of ongoing military operations, as counter-insurgency strategies may ultimately privilege coercion and violence over healing and re-integration.

<sup>49</sup>International Organisation of Migration (n 9 above).

<sup>50</sup>See <http://www.businessdailyafrica.com/Uhuru-to-fight-extremism-with-separate-prisons/539546-3080006-10w0kvu/index.html>

# Bibliography

Aggarwal, N. K. (2015) *Mental Health in the War on Terror: Culture, Science, and Statecraft*, New York: Columbia University Press.

Anderson, D. M. and McKnight, J. (2014) 'Kenya at War: Al-Shabaab and Its Enemies in Eastern Africa', *African Affairs* 114(454): 1–27.

Berman, B. J. (1991) 'Nationalism, Ethnicity, and Modernity: The Paradox of Mau Mau', *Canadian Journal of African Studies* 25(2): 181–206.

Branch, D. (2009) *Defeating Mau Mau, Creating Kenya: Counterinsurgency, Civil War and Decolonization*, New York: Cambridge University Press.

Cockayne, J. and O'Neil, S. eds. (2015) *UN DDR in an Era of Violent Extremism: Is It Fit for Purpose?* United Nations University.

Elkins, C. (2000) 'The Struggle for Mau Mau Rehabilitation in Late Colonial Kenya', *The International Journal of African Historical Studies* 33(1): 25–57.

\_\_\_\_\_. (2003) 'Detention, Rehabilitation, and the Destruction of Kikuyu Society,' in

Odhiambo, E. and Lonsdale, J. (eds.) *Mau Mau and Nationhood: Arms, Authority and Narration*, Oxford: James Curry.

\_\_\_\_\_. (2005) *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya*. New York: Henry Holt & Co.

Fassin, D. (2001) 'The Biopolitics of Otherness. Undocumented Immigrants and Racial Discrimination in the French Public Debate', *Anthropology Today* 17(1): 3–7.

———. (2005) 'Compassion and Repression: The Moral Economy of Immigration Policies in France', *Cultural Anthropology* 20(3): 362–87.

Felbab-Brown, V. (2015) 'DDR – A Bridge Not Too Far: A Field Report from Somalia', In Cockayne, J. and O'Neil, S. (eds.) *UN DDR in an Era of Violent Extremism: Is It Fit for Purpose?* United Nations University.

Gregory, D. (2006) 'The Black Flag: Guantánamo Bay and the Space of Exception', *Human Geography* 88(4): 405–27.

Gunaratna, R. and Bin Ali, M. (2015) *Terrorist Rehabilitation: A New Frontier in Counter-Terrorism*, London: Imperial College Press.

Haki Africa (2016) 'What Do We Tell the Families? Killings and Disappearances in the Coastal Region of Kenya 2014-2016', Haki Africa.

IOM (2015) Socioeconomic and Demographic Survey of Kenyan Returnees.

James, E.C. (2012) 'Witchcraft, Bureaucraft, and the Social Life of (US)aid in Haiti' *Cultural Anthropology* 27(1): 50–75.

Johns, F. (2005) 'Guantánamo Bay and the Annihilation of the Exception' *European Journal of International Law* 16(4): 613–35.

Khalili, L. (2012) *Time in the Shadows: Confinement in Counterinsurgencies*. Stanford, California: Stanford University Press.

Li, D. (2018) "From Exception to Empire: Sovereignty, Carceral Circulation, and the 'Global War on Terror.'" In *Ethnographies of U.S. Empire*, eds. Carol McGranahan and John Collins. Duke University Press.

Lind, J., Mutahi, P. and Oosterum, M (2015) 'Tangled Ties: Al-Shabaab and Political Volatility in Kenya', Evidence Report No. 130, Institute of Development Studies.

Luongo, K. (2006) 'If You Can't Beat Them, Join Them: Government Cleansings of Witches and Mau Mau in 1950s Kenya' *History in Africa* 33: 451–71.

Maira, S. (2009) *Missing: Youth, Citizenship, and Empire after 9/11*. Durham, NC: Duke University Press.

Martin, L. L. and Mitchelson, M.L. (2009) 'Geographies of Detention and Imprisonment: Interrogating Spatial Practices of Confinement, Discipline, Law, and State Power', *Geography Compass* 3(1): 459–77.

O'Neil, S. (2015) 'Disengaging Children in Violent Extremist Contexts', United Nations University Centre for Policy Research.

Richards, J. (2017) 'Demobilising and Disengaging Violent Extremists: Towards a New UN Framework', *Stability: International Journal of Security and Development* 6(1).

Ruteere, M. (2008) *Dilemmas of Crime: Human Rights and the Politics of Mungiki Violence in Kenya*, Nairobi: Kenya Human Rights Institute.

Rytter, M. and Pedersen, M.H. (2014) 'A Decade of Suspicion: Islam and Muslims in Denmark after 9/11', *Ethnic and Racial Studies* 37(13): 2303–21.

Sahle, E. N. (2012) 'Fanon and Geographies of Political Violence in the Context of Democracy in Kenya', *The Black Scholar* 42(3–4): 45–57.

Shauri, H. and Wanjala, S. (2017) "Radicalization and Violent Extremism at the Coast of Kenya: 'Powerful Voices of Coexistence, Are They Being Heard?'" In *Meeting of Cultures at the Kenyan Coast*, eds. Kimani Njogu and Irene Cage. Twaweza Communications.

Supreme Council of Kenya Muslims (2016) 'Baseline Assessment of the Support Frameworks Necessary for the Institutionalization of State Amnesty for Surrendered Ex- Militant Individuals', (unpublished)





# 9

Steve Ouma Akoth

## Returnees and Justice: Alternative Justice System as a Mechanism for Amnesty in Kwale County of Kenya

*The question of how Kenya and indeed other democracies should respond to the contemporary problem of radicalization, violent extremism and terrorism that is 'homegrown' remains widely open. Unable to frame the response in the famous mantra of 'us' vs 'them', the international community and affected states like Kenya have recently attempted to make a shift or make a balance between that which is framed as militaristic and social engineering approaches. This shift has however been complicated, most recently with the 'returnees' of some of those who had allegedly left for combat. This paper attempts to open discussions on how best we can expand the meanings of returnees. I conclude that the challenge of 'the returnees question' is not just that it is poorly conceptualized and lacking in legal and/or policy clarity but that even the idea of re-integration has failed to anchor itself on local memory to more effectively serve justice. I argue that a framework that re-conceptualizes the idea of re-integration in a more expanded context of Alternative Justice Systems as attempted in Kwale stands more chances of success. At any rate, it is in this balance between local and national memory that the county can respond adequately to the returnees question.*

## Introduction

The question of returnees is unresolved not just in Kenya but in the global debate on state and citizenship. Largely, though, the term and category of 'returnees' is much more about how states define citizenship and its boundaries. When used by the state, the category is legally problematic as it expresses meanings of not only physical return but the quest to be re-integrated to the acceptable status of citizenship. Thus when the government of Kenya and its security apparatus started referring to those who are said to have returned from Somalia or other foreign terrorist training and/or deployment with groups such as Al-Shabaab and Al-Qaida<sup>2</sup> cells as returnees, they were posing a question: Are these patriotic citizens or enemies of the state? This is the reason behind the numerous debates and caution that characterise the relationship between the state and those suspected to have been in combat or sympathised with Al-Shabaab or terrorist groups.

This 'fear' and its associated caution are not just a matter of recent response to Al-Shabaab and what is now referred to as 'homegrown' terrorists<sup>3</sup> and radicalisation. If one was to discuss the phenomenon of violent extremism, radicalisation and terrorism that is homegrown, what unfolds are deeply seated questions of patriotism and citizenship in Kenya. What I mean here is that the very phenomenon of 'othering' and destruction of a fellow human being is an affront

<sup>2</sup>Al-Qaida is a Sunni Islamist militant organisation founded by Osama bin Laden in 1988 in response to the Soviet occupation of Afghanistan. Working with its main partner, the Egyptian Islamic Jihad organisation, it carried out massive bomb attacks on US embassies in Nairobi and Dar-es-Salaam in 1998.

<sup>3</sup>The normative understanding of terror and terrorism is by no means uniform. The commonly used meaning in Kenya's legal system is in the Terrorism Act, 2012.

not only of the self and the inherent connected nature of human society, it also poses questions about our collective belonging to the nation state of Kenya.

The question of patriotism and the intent of the state to legislate and coerce government officials and citizens into being patriotic speak to the core subject that must be reviewed in the debate of the state response to terrorism in Kenya.

After the enactment of the new Constitution in 2010, this question was re-framed in a way that obligates us to work in the context of our diversities. Indeed, in its preamble, the Constitution states in part:

*...Proud of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign nation:*

This embrace of diversity and the subsequent commitment to form a plural society is perhaps the clearest vision of how the country should constitute its citizenship. It is also in such context that our response to the contemporary questions of violent extremism, radicalisation and terrorism ought to be guided. This is not to negate the uncertainty and ambiguity of meaning that characterise these terms. Rather, it is a pointer to how we should resolve ambiguous situations such as those presented by the returnees question. Indeed my central question is not quite that of citizenship but rather that of what forms of justice we should embrace in a situation where a former combatant (where proven or self claimed) returns to seek pardon.

## Balancing ‘Soft’ and ‘Hard’ Approaches

In this context, where citizenship and patriotism are put to question, the government of Kenya has responded in a manner that could point out to either its conflicted nature or layers of dilemmas. A shift was required from the emphatically militaristic interventions also called ‘hard approach’, to those that engaged social and psychological questions, also known as ‘soft approach’. However, what is called the soft approach did not start off from a point of mutual trust. At first, the state acted in phobia, seen in legal reforms of the security sector that took place between 2008 and 2014. While some of the reforms, such as the amendment of the National Police Service Act, were meant to align the statutes to the CoK 2010, there are numerous legal changes that were essentially focused on making the terms of citizenship stricter. By this, I mean that the state was seen to define dissent as an affront to citizenship. In so doing, it went ahead to limit the place and citizenship claims for all those who were perceived or known to be sympathisers, collaborators or members of terrorist groups.

With this brutal law to support its often illegal actions, the state went all out to deploy the police and make use of the Judiciary and other extra-legal mechanisms to silence, punish or deter terrorism and extremism in Kenya. Long before the 2015 debate on the opportunity costs for Kenya’s combative war on terror, it became apparent that these methods were not yielding much. This is when a movement for the so-called ‘soft approach’<sup>4</sup> to combat terrorism unfolded.

<sup>4</sup>The National Counter Terrorism Centre (NCTC) is Kenya’s lead coordination agency on CVE and Counter-Terrorism soft approaches. It is guided by a comprehensive CVE strategy that was officially launched on 7 September 2016 by President Uhuru Kenyatta.

The approach appreciated that terrorists and those who get to be radicalised are armed not only with lethal weapons of combat, such as hand grenades, rocket-propelled grenades (RPGs) and bombs, but also with another invisible weapon, ideology. As an invisible yet lethal weapon, ideology could not be defeated through state coercion or propaganda in the name of a counter-narrative. It was apparent that the more the state deployed *coercive strategies*, the more it lost the war. This lesson was learnt by the government of Uganda in its war against the rebels of Northern Uganda between 1986 and 1994, where the state deployed both hard and soft approaches to war. This yielded results as it ultimately starved off the rebels from recruitment sites and supplies. Soon, the state and the residents of Gulu and Kitgum had to deal with not just the diminishing influence of the rebels, but also an influx of former combatants and their sympathizers.

Various soft approaches were deployed towards this end, the most commonly known being peace pacts: A peace pact was signed with UPDA in June 1988, followed by the July 1990 Addis Ababa Peace Accord with UPDM and commencement of peace negotiations with LRA. While these had mixed results, it is significant that it was after the year 2000 that President Museveni assented to the Amnesty Act, 2000. With an Amnesty Commission to oversee the implementation of the Act, numerous actions intended by the Act were implemented. These include: amnesty promotion; promotion of dialogue; receiving and granting amnesty to reporters; disarmament and decommissioning of weapons, and; demobilization, reintegration and resettlement. The Amnesty Commission worked with the Demobilization and Resettlement Team (DRT) officers operating at regional level as well as with the UPDF, Police, Director of Public Prosecutions, NGOs and donor agencies.

The Uganda Amnesty Act commenced on 21 January 2000 with an initial operation period of 6 months but came to formal closure in May 2012 after numerous extensions. While critiques<sup>5</sup> have faulted legal frameworks that offer blanket amnesty because of its constitutional ambiguity<sup>6</sup> and its possible affront on international human rights law, these efforts in Uganda could form important learning points for stakeholders in Kenya because, among other things, the Act offered important guidance for interventions. It clarified important questions such as on the question of who is a returnee and the related question of what an amnesty entails. It is noteworthy that the Ugandan authorities did not use the word 'returnee', rather the category used is that of 'a reporter': Amnesty is a pardon, forgiveness, exemption or discharge from criminal or any other form of punishment by the state. A person seeking to be granted amnesty is referred to as a reporter.

<sup>5</sup>One scholar who has consistently written on this matter is Kirsty McNamara. See Kirsty McNamara, 2013. *Seeking Justice in Uganda's Courts: Amnesty and the Case of Thomas Kweyelo*, WASH. U.GLOBALSTUD. L.REV.653.

<sup>6</sup>The Uganda Amnesty Act was contested in details in the case of Thomas Kweyelo alias Latoni v.Uganda [2011] UGCC at 12-18. The prosecutor in this case, Patricia Muteesi, argued that the Amnesty Act is unconstitutional. The Court clarified that the act does not purport to grant amnesty to Ugandan Government officials or military members, but instead it only applies to the LRA rebels who were engaged in conflict at the time.

## The Returnee Question in Kenya

While the circumstances of Kenya and Uganda are largely different, they seem to converge on this question of category of confirmed or presumed former combatants that are referred to as ‘reporters’ in Uganda and ‘returnees’ in Kenya. The two descriptive categories of ‘reporters’ and ‘returnees’, are not mere distinctions of English grammar; rather they are expression of state’s method of seeing and juridical categorisation of the persons in question. In the state method of seeing, a reporter is more of someone who is repentant and has willingly surrendered and presented themselves to the authorities. The returnee, on the other hand, does not connote this sense of presenting oneself. Here, then, one gets to encounter the juridical meanings as well. That is, while the ‘reporter’ is a category of individuals who seem to accept responsibility for their actions and thus seek state pardon; this is different from the returnee, who merely moves from physical location of combat back to the societal idea of order. In reality, as the case of Kwale attests, to return in the context of violent extremism and terrorism combat is much more than physical movement. Rather, it is an ideological question as much as it is a matter of physical combat which much be resolved with attention to both physical as well as virtual networks.

Unlike Uganda that had a clear and time-bound amnesty programme supported by legislation and policy, the so-called amnesty programme in Kenya was issued in 2015 for youths who had denounced extremism to benefit from a government-sponsored disengagement, demobilisation and re-integration programme. However, this programme was anchored on nothing more than a press conference statement issued by the then Minister for Interior Security and Coordination, Joseph ole Lenku. The problem, however, was not just that a mere press statement would ordinarily have little effect, but most important, it points to the attitude and understanding that the government of Kenya tends to have on former combatants alleged or proved to be part of VE or terrorists networks. The mode suggested by Lenku is not different from the one that has been attempted by the state in responding to gang-led cattle rustlers in Kenya. Unable to penetrate the networks of these cattle rustlers through force or intelligence, the government has often turned to voluntary disarmament in exchange for amnesty. In this kind of programme, the government declares some sort of blanket amnesty without use of law or policy to persons who surrender guns. The method has not demonstrated any semblance of consistent implementation and, unsurprisingly, it has registered little success. In their attempt to illustrate what separates the criminal gangs from violent extremists in the coastal region, Scofield’s Associates argue that:

*...Field data indicated some narrow distinction between the gang groups and violent extremist groups at the coast. They were of the opinion that the gang groups focused on theft and were uncoordinated, while terrorists or violent extremists are highly coordinated with an ideology that is internationalized<sup>7</sup>.*

<sup>7</sup>Scofield’s Associates, *Baseline Evaluation for Inuka Project*, UN Crescent, Gigiri, March 2017.



In reality, equating VE and terrorism to cattle rustling and its associated manifestations of insecurity limits the appropriateness and effectiveness of these responses. The VE question is often associated with radicalisation<sup>8</sup> that is much more of an ideological rather than mere aggressive defiance and destruction of property, as is the case with the so-called cattle rustling. But that was not the only limitation to the Kenyan amnesty programme.

Another perhaps less-discussed shortfall is the current context of the Kenyan Executive's affront on judicial authority and decisions. It is this matter of security, more so on the cases of terrorism and radicalisation, that the Executive and Judiciary have had open conflict. The Executive has proposed to the Judiciary not to grant bail to terrorism suspects. As Zebedee Ongoyaa notes:

*... these declarations directed at the decisional powers of the judiciary bring to the fore the theoretical considerations of the independence of the judiciary and separation of power vis a vis the practical notions of interdependence between the various organs of the state in Kenya.*<sup>9</sup>

Curiously left out of this conflict is the office of Director of Public Prosecutions, whose powers are defined in Article 157 of the Constitution of Kenya, 2010. The near-blanket declaration of amnesty by Lenku created room for open conflict with the provisions of Article 157(10) of CoK which states that:

*The Director of Public Processions shall not require the consent of any person or authority for the commencement of criminal proceedings in the exercise of his or her powers or functions, and shall not be under the direction or control of any person or authority.*

This context and the paralysis that goes with it create a dilemma on the best mechanism to respond to the so-called returnees. Even then, the mapping and complete register of returnees in Kenya is incomplete. But it is in Kwale that a large number of individuals classified as returnees, have been noted, thus, presenting a challenge of re-integration.

## The Dilemma of Returnees and the Re-Integration Programme in Kwale

Our informant told us that Abdul Mwinyi<sup>10</sup>, a young man in his mid-20s and known to have been part of the *Answari* movement, 'reappeared one day' after about two years of absence. Prior to his 'disappearance', he had been an active member of a "local NGO in Kwale". Mwinyi was said to have returned from Somalia, where he had been an active member of Al-Shabaab. By his own admission, he was one of several returnees from Somalia who desired to be 're-integrated' into the society. Their major concern, though, was the threat to their lives posed by the security apparatus, their former allies in Al-Shabaab and local terrorist sympathisers. The call for re-integration by individuals who had been categorised as Al-Shabaab recruits caused much consternation.

<sup>8</sup>A process of developing increasingly extreme views or behaviour which sometimes leads to engagement in terrorism.

<sup>9</sup>The Legal and Policy Dilemma in the Fight against Terrorism: The Bail Question in Terrorism Cases in Kenya

<sup>10</sup>This is a pseudonym

With no legal framework for amnesty available, the government and its security apparatus decided that the first order of action would be to understand the Somali angle in some detail. Who had travelled to Somalia, for what purpose and in whose company? Exactly where in Somalia had they served, what were their activities and training if any, and for how long had they stayed there? Most importantly, why had they returned, if not to commit new acts of terrorism or to recruit new foot soldiers? These are valid concerns, and in themselves would reasonably be expected to form part of any broad attempt to understand and deal with the returnees. However, any lingering feelings of goodwill were swamped by the heavy-handed mode of thought consistent with security-led pacification initiatives that often provide a canopy for state repression.

It is at this stage that the state, through its various agencies, turned to the International Organisation on Migration (IoM) to assist in the research, profiling and resettlement of the returnees. It, however, seems that the first problem in the process of IoM engagement emerged when details of those who were to be engaged as liaison officers were made public. Rather than engage the leadership of the Kenya Muslim Youth Alliance in a structured manner, the proposal from IoM had a single slot for liaison officer assigned to one Kenya Muslim Youth Alliance officer. The leadership of Kenya Muslim Youth Alliance is said to have declined the assignment on the basis that taking it up would undermine the collegial trust between members of the Kenya Muslim Youth Alliance. At this point, the IoM decided to proceed with the task of profiling and re-integration of the returnees without the participation of the local clerics or leadership of the Kenya Muslim Youth Alliance. At this stage, the number of those who presented themselves as returnees in Kwale had reached 80.

The programme of re-integration was supported by a political amnesty issued by Lenku. The programme involved providing the returnees with farm implements like spades and hoes or motorcycles, which they would use to start business ventures. A major provision of this amnesty and re-integration discourse and its practice seems to have been the perpetuation of state security (based on the national interest model) and to pacify the local population as well as deflect attention from disturbing issues below the surface. As sociologist Heidi Rimke (2011: 208) suggests in her critique of the state security model, one cannot deal with the question of insecurity away from its root causes of disenchantment with class domination, inequalities and conflicts. Equally, the so-called rehabilitation and re-integration effort fell short in engaging the returnees as a homogeneous group.

In reality, the returnees comprised at least two major groups of youth who should have been engaged as distinct actors. These are: Socially marginalised youth who had been by-passed by the education system and were unemployed, deviants, beggars, peddlers and informal sector apprentices and (2) the school leavers from high schools, colleges and universities.



There has been a lot of research focusing on this second group, which for long has been associated with leftist political movements and Marxist ideology. The government has long ‘played ball’ with this group with a dual strategy of repression<sup>11</sup> and corruption.<sup>12</sup> It is for this reason that scholars like Atieno Odhiambo and David Cohen (2004:4) have attributed Kenya’s political culture to a ‘genealogy of assassinations and martyrdoms’. More recently, Kenyan scholar Grace Musila (2015: 35) has suggested that questions of past historical injustices in Kenya speak to “... the centrality of association in Kenya’s historiography and its links to a culture of state violence....”

Without paying attention to these historical and social contexts, the IoM and some of the local civil servants focused on working solely with those who met their criteria of returnees. Yet after their ‘return’, the 80 or so young people had mingled and lived with their peers and members of their communities without bearing the tag of ‘returnee’. Some had even formed the Amani Youth Group, whose members owned motorbikes and other small business enterprises. The Amani Youth Group, for instance, was fractured when some of its members were isolated for support under the returnees programme while others were left out. There developed deep mistrust and suspicion among the returnees and soon the first chairman of the group was killed. Shortly thereafter, his replacement, Omar Gwanzi<sup>13</sup> was also killed.

Both the police and the returnees treated each as the “radical other”, to be feared and eliminated on sight. The turmoil escalated as government officers took to trading blame for the unfolding mess. What the national government and its collaborators ignored was the fact discussed in much details by scholars such as Boraine (2006), that conflict-stricken communities such like the one in Kwale, often grapple with multiple realities characterised both by the desire for justice and a heart-felt cry for modalities to re-build broken relationships and establish a new social order.

A section of returnees calling itself ‘*Familia ya Yakobo*’<sup>14</sup> soon branded those in the IoM programme as traitors and vowed to track and kill all of them. Thereafter, another young man was killed on his way from the mosque over claims that he had visited the police station and was possibly an informer. All the while, the widespread belief among most residents of Kwale was that these deaths, including the earlier ones of two successive chairmen of the returnees group, was the work of the state. Ultimately, the amnesty and re-integration programme collapsed as the two principal actors – the state and the returnees - retreated to their respective spaces of safety. In that way, the myriad social, political, economic and legal uncertainties and undercurrents that had fuelled the radicalisation in the first place, and had led to the failure of the re-integration programme, were ignored, perhaps to ignite another day.

<sup>11</sup>See execution of student and youth leaders in Kenya, e.g. Tito Adungosi and Muruli.

<sup>12</sup>See the emergence of informal repression in Kenya.

<sup>13</sup>This is a pseudonym.

<sup>14</sup>This was said to be a group of 12 members who were informal leaders of all the returnees.

## Returnees: Beyond National Security and State Interests

When we subsequently met with some women whose relatives were either considered as returnees or had themselves heard of the returnee programme in a follow-up meeting, they raised two questions that pointed to limitations of the common approach that had been taken in identifying, categorising and responding to the returnees. One of them, Mama Aisha, said after a long silence:

*Waona sisi, sio kuwa kuna kosa tumefanya. Bali ni mambo ya haki zetu. Tunadhulumiwa na kutengwa huku tumevunjiwa haki. Tunachotaka ni mpango ambao utatushirikisha na kuendeleza utengamano. Tunachodai ni kuwa jinsi tu vijana waliorudi kutoka Somalia wamekubalika na kupewa viwezeshi, sisi pia tupewe. Na ya muhimu, ifahamike kuwa tumevunjiwa haki. Nakuwa, nchi hii inayo serikali na hapa kwetu tunao wazee na viongozi wa miskiti. Mbona hatuwaoni? Mbona haki zetu hazifwatwi? Sisi hata kama hatujaenda Somalia, tuko kama wakimbizi hapa Kenya. Bwana zetu wameenda au wengine wameuawa, biashara zimefungwa na huku wanapozungumzia waliorudi hatuhushwi wala hatufaidiwi.*

*[You see, it's not like we have committed any crime. It is simply a matter of our human rights. We are profiled and persecuted, yet we are the wronged. All we want are concrete plans to include us in any initiatives aimed at re-integration. Just like the youth returnees from Somalia have been accepted and enabled to start new business ventures, we too should be afforded similar facilitation. Most importantly, it should be acknowledged that our rights have been infringed. For surely we have a government in this country, and we also have religious leaders and elders, yet where are they when our rights are being trampled upon? Why is there nobody to help us defend our rights? Even if we did not go to Somalia as terrorism recruits, we are as internal refugees in Kenya. Our husbands went away, others have been killed and all our businesses have been shut, yet whenever the issue of returnees is discussed, we do not get even a mention, leave alone any consideration.]*

In these claims and lamentations, this woman raised questions not just about the returnee re-integration programme, but also broached a fine conceptual inquiry on the question of who constitutes a returnee. She seems to suggest that the neglect and marginalisation of women who find themselves as victims of radicalisation and violent extremism stigmatises them. This sort of 'virtual banishment', where the women are physically in the community but absent in the community's every-day programmes, is a significant mode of thought in getting a deeper understanding on who is a returnee. As such, Mama Aisha and the affected womenfolk were asking not to be treated as mere victims who should stay at home and take care of reproductive roles. Rather, as Cheryl Hendricks (2015) convincingly argues, the security and indeed the returnee questions ought to be framed as matters of emancipation centred on individuals with the ability to exercise choice and live in dignity and linked to many situated and gendered complexities. What we are confronted with in Kwale is not just a question of security or rights but that of an arrogant institutionalization of power asymmetries.

In this way, Mama Aisha helps us to reflect on this subject beyond the question of national security interest that is evident in the returnee programme in Kwale. If we were to refer to the returnee as a post-violent-extremism moment or situation, what emerges is the need for an engagement that asserts the rights to representation, participation, protection and empowerment and to live in dignity (Rimke 2011:373). More so, these rights should not be isolated entitlements allowed to men who are regarded as former combatants, for that would reduce these into masculine spaces that treat women as mere victims that need protection. In fact, this discourse that advances women's physical security at the expense of their inclusion in peacekeeping and peace-building processes have long been disputed by feminists (Rimke 2011:368). For far too long, such approaches have been used to instrumentalise women in Kwale and the coastal parts of Kenya.

## Responding to Violent Extremism through Alternative Justice Systems

There is no doubt that there has been a history of insecurity in Kwale. But rather than view insecurity as a historical question that is weaved in the exclusionary modes of production, consumption and governance, the returnee programme and its accompanying security operations attempts to deflect attention from the central questions of social, political, economic and legal order that have created individual and collective uncertainties. It does not mean that the state is not aware of these uncertainties.

Rather, the national optics and its use of the binary of security versus insecurity as the framing of knowing, obscures local framings.

These transformative ideas in the new Constitution go hand in hand with a new treatment of space that celebrates *local memory*. This has been described in the Constitution of Kenya as the Alternative Justice System (AJS). Yet, this does not mean the reintroduction of the broader African nationalist ideologies that forcibly argued for cultural restoration, including gender and age hierarchies. Rather, AJS presents itself as an indigenous appropriation of access to justice. Through a radical refutation of dominance of technicalities and colonial jurisprudence, the AJS provides space for new sociability that is contradictory to the adversarial norms that have characterised the post-colonial Judiciary in Kenya.

At stake in the question of returnees is the relationship between *national memory* and *local memory*. At the national level, the state treats the returnees as dissidents and security threats that need to be 'crushed' or provided with economic opportunity through local entrepreneurship. At the local level, however, the returnees are individuals known by their friends and local community and institutions. The locals, including those who have been harmed by those returnees, have particular memories and they want to hear more - they want to get an opportunity to pose questions to the returnees and to know the truth. This idea of local memory can be engaged through AJS structures and institutions, which, while working with the court user committees, are able to use local normative content and infrastructure to open dialogue with the returnees.

AJS is grounded in the Constitution of Kenya as a democratic innovation which, if deployed appropriately, has potential to reframe the imaginations and consciousness of the young and the marginalised in Kenya.

As Achille Mbembe has argued, at stake here is the status of citizenship. The youth want to dismantle the form of citizenship in the post-colonial society which is based on repressive traditions (often gerontocracy) and an authoritarian model of governance. Violent extremism is, in some respects, a cold rejection of modalities of membership in the nation; what we are seeing is an effort by these youth to redefine their spaces of legal citizenship through actions that essentially question the state's authority to define citizenship. A remedy to this situation must be negotiation and restoration, which requires a model of AJS as a framework of amnesty for returnees.

In the framing of equality as well as recognition of difference, we have two things in mind. First is the question of justice, which is what is constituted from the idea of equality and second, is recognition of difference as the basis for attaining justice. If we were to frame our response to the returnee question as a quest for justice whose outcome is equality, then one has to situate a meaning of justice. It is here that AJS presents itself as an opportune space for restoring the soul of the society. While this framework of Alternative Justice Systems has always been an invisible part of our governance institutions, it fully came to promise after the enactment of the Constitution of Kenya in 2010, which provided for plural modes of accessing justice and a new reading of the Judiciary as an institution of justice.

## Conclusion

The Kwale situation returns us to the rather limiting binary of restorative versus retributive justice. What was central to most residents of Kwale who I have spoken to as well as the authorities from the anti-terrorism agencies, was the desire to repair damaged relationships among the community members rather than apprehending the offenders (now commonly referred to as returnees). While the community members and the state authorities agreed on this quest for repair of damaged relationships, they differed on the rationale posed to justify restorative justice.

The community in Kwale is largely apprehensive and opposed to being policed by the state. Thus, the various instruments of state policing and instruments of coercion such as police, prisons and courts of law are treated with suspicion and mistrust and are largely rejected as a result. These institutions are treated in the public parlance in Kwale as part of injustice and violators of individual rights. They are also seen as being divisive and largely antagonising. One can say that there is a strong *anti-security* movement in Kwale.

As opposed to the state-led model of re-integration, the community in Kwale expected the offenders to reach out to community members and seek solutions that would promote healing, reconciliation and reassurance that the past would not recur.

The returnees seem to desire an integrated model and activities which do not stigmatize them. In any case, to most members of the Kwale community, these are not 'returnees', but rather heroes of war (veterans), who are regarded as principle actors in building a safer environment in Kwale.

# Bibliography

(2009) Concerning Somalia and Eritrea.

Boraine, A. (2006) 'Transitional Justice: A Holistic Interpretation', *Journal of International Affairs* 60.

Cohen, D.W. and Odhiambo, E.S.E.A. (1989), *Siaya: the historical anthropology of an African landscape*, Athens, Ohio: Ohio University Press and London: J. Currey.

Hendricks, C. (2015), 'Women, peace and security in Africa Conceptual and implementation challenges and shifts', *African Security Review* 24(4)

Musila, G. (2015) *A Death Retold in Truth and Rumour: Kenya, Britain and the Julie Ward Murder*, Suffolk: James Currey,

Rimke, H. (2011), 'The pathological approach to crime: Individually based theories', In Kramar, K. (Ed.), *Criminology: Critical Canadian Perspectives*, Toronto. University of Toronto Press: 28-92.

Scofield and Associates (2017), *Baseline Evaluation for Inuka Project*, UN Crescent, Gigiri, March 2017.

The Republic of Kenya, 2010. *The Constitution of Kenya*.

The Republic of Kenya, 2010. *Truth, Justice and Reconciliation Commission (TJRC) Report*.

The Republic of Kenya, 2012 *The (Kenya) Terrorism Act, 2012*.

The Republic of Uganda, 2000. *The Uganda Amnesty Act, 2000*.

United Nations (2014), *Security Council Committee Resolutions 751(1992) and 1907*.







This pioneering collection brings together critical analyses on a range of issues touching on violent extremism by a multidisciplinary team of scholars and scholar-practitioners with an intimate and long-standing interest on the subject in Kenya, the region and globally. They cover the breadth as well as depth of the complex problem of violent extremism in a manner and language that speaks to both scholars and policy makers. The contributions are concerned with a number of problems related to terrorism in Kenya: the regional nature and dimensions of the problem; legal and judicial developments to counter the threat of terrorism; patterns and trends in the recruitment into Al-Shabaab and other violent extremist groups; State and society interactions, contestations and confrontations in countering violent extremism; location of women in the terrorism discourse; new technologies and how they shape violent extremism; and the questions of rehabilitation and reintegration of ex-combatants and returnees from Al-Shabaab.

The aim of the papers in this collection is to provoke and stimulate the ongoing scholarly and policy conversations on what the spectre of violent extremism means for Kenya's future and fortunes as a fledgling democracy. The studies provide new knowledge, data and perspectives on the nature, magnitude and dimensions of the problem of violent extremism in Kenya. The studies are nuanced but have not shied away from recognising difficulties, highlighting policy and knowledge gaps and making policy recommendations where possible.

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