

8 SOCIO-LEGAL IMPLICATIONS OF THE LAWS TO COMBAT RELIGIOUS EXTREMISM IN KENYA

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INTRODUCTION

In November 2014, the police said that they had arrested 251 youth associated with Al-Shabaab, who were camping in the Musa and Sakina mosques and receiving military training. They also said that one man was shot dead at the Musa mosque, when he tried to throw a grenade at officers. This incident came in response to the aftermath of a series of terror attacks in Kenya, wherein the security forces were trying to break up the militant network – mainly in the Kenya's coastal region, which is home to most of its Muslims – saying many of the recruits were inspired by the Somali Islamist group Al-Shabaab.²

The incident described above is an example attributed to violent radicalisation and violent Islamic extremism in Kenya. Specifically, they are examples of the so-called “homegrown extremists or terrorists”,³ in which Muslim youth are radicalised or are victims of radicalisation, or youth who act as agents to threaten or use violence for purported religious reasons inclined along ideologies of extremist networks, such as the Al-Shabaab. Nevertheless, in terrorist incidents as such, the clarification of the offence as terrorism, the evidence, the associated arrests and detention did complicate the case trials.⁴ Further, members of the Muslim community perceived the law and the role of the law enforcement officials as directing force against a Muslim community rather than against a select few individuals. The mosque arrests and closures, in particular were seen to threaten the use of public spaces by Muslims as a group. As a consequence, the impact was felt at the community level, such that authorities risked producing a mismatch in their target of violent extremism, instead prompting the construction of Muslim communities as suspect communities.

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 - 2 Akwiri J. 2014. “Kenyan police shoot dead man and make arrests in mosque raids”, *Reuters*, 17 November.
 - 3 There is usually confusion in the use of the word homegrown extremists or terrorists due to the transnational link associated to terrorist movements.
 - 4 Oketch W. 2016. “Court adjourns trial of 27 people arrested at Masjid Musa”, *Standard Digital*, 11 January 2016.

Kenya has in recent years developed legislation to curb violent extremism and its outcome – terrorism. Despite its effectiveness in preventing terrorist acts,⁵ its implementation has been subject to controversy and great resentment with regard to human rights, the powers of the law enforcement officials and the marginalisation of the Muslim communities. Few studies based on empirical research have focused on counterterrorism legislation, which makes rigorous evaluation of the existing legislation difficult. This chapter aims to evaluate various sections of the recent Kenyan counterterrorism legislation, the Prevention of Terrorism Act, 2012 and its amendments under the Security Laws (Amendment) Act, 2014. This chapter focuses on areas of the law that have implications for curtailing human rights: definition and facilitation of terrorist acts, radicalisation, interception of communication, trial of terror suspects, publication of offending materials, prohibitions on broadcasting and the Amendments to the National Intelligence Services Act. The focus on these areas is too narrow in scope for thorough rigorous evaluation. Apart from critiquing these various aspects of the laws, the chapter examines responses by communities victimised under the consequent law. However, this initial step in the direction of evaluating legal responses to counter religious extremism discusses various loopholes in the law and its implementation.

Following the introduction, the chapter is structured as follows: The first section describes the background of the study, which includes the context for the evolution of the Prevention of Terrorism Act, 2012 and the Security Laws (Amendment) Act, 2014. The second section comprises analysis and evaluation of selected clauses of the Acts. The third section summarises the implications of the implementation of the Acts on particular communities, particularly Somali ethnic communities and other Muslim communities in the coastal region of Kenya. The final section concludes with recommendations concerning necessary areas of interventions, as well the need to strengthen the practicality of the law and future research.

This chapter is based on a larger ethnographic study conducted by the author in Kenya on the youth radicalisation processes of Al-Shabaab in the coastal region of Kenya. Four counties were selected for the study: Mombasa, Kwale, Kilifi and Lamu. These counties were identified as hotspots for youth radicalisation.⁶ The study was composed of in-depth interviews with youth labelled as radicals, youth suspected, accused, convicted for radical activities, family members of accused youth, law enforcement officials, NGO personnel, religious leaders and community members. The study included interviews from 249 interviewees. The study was further strengthened with case materials and observations on terror suspect trials and other relevant materials. All interviews remained anonymous due to the nature of the study, which was directly tied to security related to the coastal region of Kenya. Interviewees feared being labelled as radicals or radical sympathisers associated with the Al-Shabaab or as opposition to law enforcement

5 Mwazighe CL. 2012. *Legal responses to terrorism: case study of the Republic of Kenya*, MA Thesis, California: Naval Postgraduate School.

6 Kenya Community Support Centre, Report 2012.

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or law enforcement proponents or as activists for particular communities. Names, places and designations of the interviewees have not been used for the purposes of anonymity.

SUSPECT COMMUNITIES AND THE EVOLUTION OF THE COUNTERTERRORISM DISCOURSE IN KENYA

The Global War on Terror (GWOT) brought in tremendous shifts in the discourse on counterterrorism measures specifically on counterterrorism legislation, leading into changes in the socially constructed suspect communities across the world. The impact of GWOT in CT legislation and strategies have focused on particular notions of “at risk communities” or “suspect communities” such as the minority Muslim immigrant communities in the U.S. and its Western allies.⁷ Within this purview of terrorism, it is interesting to understand the notion of risk society in order to comprehend the concept of suspect communities. As expressed by Ulrich Beck in his influential work on world risk society, risk is identified as a modern concept that presumes decision-making and calculating the incalculable in an attempt to predict the future.⁸ The notion of present-day terrorism is viewed through the perspective of risk. In this regard, terrorism is described as an uncontrollable risk because of its networked structure, the never-ending danger and the socially difficult way of framing its source.⁹ Hence, risk is perceived more as the intention to do harm so as to undermine the relationship between people, foreigners and governments.¹⁰ Therefore, in this case, intention undermines the logic of legal responsibility of states to their citizens by judging suspected people on the basis of intention rather than evidence,¹¹ and thereby justifies the practice of pre-emptive interventions with more restrictive and invasive instruments to monitor population, and to create a way to tame dangers detrimental to the entire country.¹² The impetus of GWOT raised the crucial element of risk and how the world could prevent possible terror attacks in future. This drove countries to formulate policies and strategies based on

7 See, e.g., Breen-Smyth M. 2013. “Theorising the ‘Suspect Community’: Counter terrorism, security practices and the public imagination”, *Critical Studies on Terrorism* 7(2):273-240; Cherney A and Murphy K. 2016. “Being a ‘suspect community’ in a post 9/11 world. The impact of the war on terror on Muslim communities in Australia”, *Australian and New Zealand Journal of Criminology* 49(4):480-496.

8 Ulrich B. 2002. “The Terrorist Threat: World Risk Society Revisited”, *Theory, Culture and Society* 19(4):39-55.

9 Aradau C and Van Munster R. 2007 “Governing Terrorism Through Risk: Taking Precautions, (Un)Knowing the Future”, *European Journal of International Relations* 13(1):1-42; Beck U. 2006. “Living in the World Risk Society”, *Economy and Society* 35(3):329-349.

10 Ulrich, “The Terrorist Threat: World Risk Society Revisited”.

11 Kessler O and Werner W. 2008. “Extrajudicial Killing as Risk Management”, *Security Dialogue* 39(2):289-308.

12 Mythen G and Walklate S. 2007. “Communicating the Terrorist Risk: Harnessing a Culture of Fear?”, *Crime, Media, Culture: An International Journal* 2(2):123-142.

pre-emptive assumptions.¹³ Pre-emption is the use of force against a potential threat and, hence, the idea of taking action before a threat could materialise became the logic by which states fought the war on terror, thereby focus on particular group that deemed as “risk” to the wider society. Usually, this formation of suspects is a process which relies on political decisions regarding what is “suspicious” and the opportunity cost of defining “suspicious” is deliberate; thus, a choice is made as per political decisions.¹⁴

In this regard, the term “suspect communities” has been associated with Muslim communities, receiving increased attention as risk societies in the context of GWOT. The notion of “suspect community” first appeared in the work of Paddy Hillyards on the growth of the secret state and the effects of the Prevention of Terrorism Acts on the Irish community.¹⁵ Here, the concept of suspect community was explained as the process of identifying a threat, exemplified and legitimised as per the state’s dictates.¹⁶ Therefore, a suspect community is defined as a policy framework in which a particular community is viewed and treated very differently from the rest of the population with regard to policy, law and practice. Such a policy framework can have detrimental effects, resulting in intrusive, heavy-handed policies and policing techniques that stigmatise the entire community.¹⁷ Moving from a legal to a broader social explanation, Christina Pentazis and Simeon Pemberton define the concept of a suspect community as a “sociological study of people’s experience of the law rather than enquiry into the application and misapplication of legal rules”.¹⁸ Hence, in an attempt to prevent political violence such as terrorism, the state can label an individual as suspect (despite not committing the act) based on his or her affiliations to a particular suspect community. This can have long-term implications on the psychological well-being of the individual, and that of his or her family and friends. This specification of labelling suspect individuals and behaviours, while

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- 13 Reisman M and Armstrong A. 2006. “The Past and Future of the Claim of Pre-emptive Self Defense”. Faculty Scholarship Series. Paper 957. Online at: http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1998&context=fss_papers
 - 14 South Asian American Learning Together (SAALT). 2014. “Under suspicion, under attack: Xenophobia, Political rhetoric and hate violence against South Asian Muslim, Sikh, Hindu, Middle Eastern and Arab Communities in the United States”. Online at: http://saalt.org/wp-content/uploads/2014/09/SAALT_report_full_links.pdf
 - 15 Hillyard P. 1993, *Suspect Community: People’s experiences of the Prevention of Terrorism Acts in Britain*. Pluto Press, London.
 - 16 Hickman MJ, Thomas L, Nickels HC and Silvestri S. 2012. “Social Cohesion and the notion of ‘Suspect Communities’: A Study of the experiences and impact of being ‘suspect’ for Irish communities and Muslim communities in Britain”, *Critical Studies on Terrorism* 5(1):89-106.
 - 17 Vermeulen F. 2014. “Suspect Communities – Targeting Violent Extremism at the Local Level: Policies of engagement in Amsterdam, Berlin, and London”, *Terrorism and Political Violence* 26(2):286-306.
 - 18 Pantazis C and Pemberton S. 2009. “From the ‘Old’ to the ‘New’ Suspect Community: Examining the Impacts of recent UK Counter-Terrorist Legislation”, *The British Journal of Criminology* 49(5):648.

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initiated by relevant state authorities, has the potential to gradually expand and be reproduced by a range of actors including the media, the general public, and members of the community under suspicion.¹⁹ These CT instruments may be in the form of hard measures that involve the state's coercive power or soft measures that involve focusing on preventive community initiatives.²⁰

In the context of Kenya's fight against terrorism, Muslim communities have been viewed in the following ways: as allies in the struggle against terrorism,²¹ as victims needing protection against potential backlash, as communities "at risk" of being vulnerable to violent radicalisation and extremism,²² and as communities that harbour extremists and terrorists.²³ Kenya has been grappling with Islamist extremism and its outcome of terrorism since the 1980s, giving rise to different contexts of suspect communities. Kenya has been a target of terrorist attacks as it is a battlefield for global terrorism due to its association with Western allies. This includes terrorist activities such as the attack by the Palestine Liberation Organization (PLO) on the Jewish-owned Norfolk Hotel in Nairobi in 1980. This was followed by other attacks such as the bombings at the United States Embassy in Nairobi in 1998, the Kikambala Hotel bombing in Mombasa in 2002,²⁴ the Westgate attack in 2013, the Mpeketoni attacks in 2014, and the terror attacks in Mandera and the Garissa University attack in 2015.²⁵ The context of "Kenya at risk due to terrorism", along with the impetus derived from joining its Western allies, mainly the U.S. on the GWOT, generated a host of reactions that culminated in stringent government-led counterterrorism laws and policies.²⁶ This CT legislation and its implementation had an unintended impact on the formation of suspect communities in Kenya, mainly of Muslim origin.

Prior to 2011, most of the attacks were affiliated with Al-Qaeda, and their suspects were mainly of Arab and Asian origins. The surveillance measures centred on racial

19 Hickman et al., "Social Cohesion and the notion of 'Suspect Communities'".

20 Ragazzi F. 2016. "Suspect community or suspect category? The impact of counter-terrorism as 'policed multiculturalism'", *Journal of Ethnic and Migration Studies* 42(5):724-741.

21 Agnon SY. 2016. "Muslim Community and Somalia People Joins Kenyans in Condemning Terrorism", *Strategic Intelligence News*, 20 January; Goldman D. 2016. "Muslims in Kenya Waging Fatwas against Al-Shabaab Terrorists", *Strategic Intelligence News*, 9 January.

22 Mukinda F. 2014. "Masterminds target youth to execute terror attacks", *Daily Nation*, 3 March.

23 Honan E. 2015. "Kenyatta says campus attackers 'embedded' in Kenya's Muslim community", *Reuters*, 4 April.

24 Nzes F. 2012. "Terrorists attacks in Kenya reveal domestic radicalization", *Combating Terrorism Center* 5(12), October. Online at: <https://www.ctc.usma.edu/posts/terrorist-attacks-in-kenya-reveal-domestic-radicalization>

25 Burbidge D. 2015. "The Kenyan State's Fear of Somalia Identity", *Conflict Trends-ACCORD*, 23 October.

26 Aronson SL. 2013. "Kenya and the Global War on Terror: Neglecting History and Geopolitics in Approaches to Counterterrorism", *African Journal of Criminology and Justice Studies* 7(1):24-34.

profiling of the ethnic Arab populations in Nairobi and Mombasa with arrests at airports, detention, and stop-and-search measures. This racial profiling was in line with the West's notion of terror threats that put the emphasis on Muslims of Arab and Asian origins.²⁷ Sharing of intelligence, surveillance, trainings, and funding were aimed along these trends of ethnic and racial profiling as part of the collective efforts in countering terrorism under the GWOT.²⁸ Since 2012, the perpetrators of terror attacks have been affiliated to the Al-Shabaab. The attacks in Kenya were in retaliation for Operation Linda Nchi, carried out by the Kenyan Defence Forces (KDF) in Somalia to fight the extremist group Al-Shabaab.²⁹ A host of incidences, such as kidnappings by Al-Shabaab in Kenya and cross-border attacks, culminated in a context where the KDF had to intervene.³⁰ Surveillance measures focused on the Somali ethnic groups, as the majority of the perpetrators were envisaged as Somalis or Kenyan Somalis.³¹ As domestic terrorist cases increased, surveillance measures focused on Muslim youth mainly from the marginalised regions of the country.³²

This justification gave momentum to various CT strategies that were designed on the basis of profiles of Muslim-concentrated areas, sometimes synonymously referred to as hotspots for Al-Shabaab radicalisation. These hotspots were identified as per various characteristics: a high number of radical movements or incidents, a high number of radicals, the presence of a radical leader, the presence of a mosque suspected of radical preaching or radical leadership, a madrasa suspected of preaching radical views, a high Muslim concentration, or communities dominated by particular ethnic communities. While the radicals were individuals within these predominantly Muslim communities, entire communities became suspect as victims of risk, as vulnerable to violent extremism or as aiding perpetrators.³³ Most often, by focusing on the community level at large, the authorities risk producing policies meant for specific individuals of violent extremism that are then used to cover overall implementation. In the process, such a focus results in the construction of suspect communities. Recent terror events have led the country to adopt pre-emptive actions on the logic of risk management in CT polices, showing a shift from threats to risk. These preventive actions focus on "bad people or the vulnerable", leading the government to develop legislation in

27 Rabasa A. 2009. *Radical Islam in East Africa*. Santa Monica, CA: RAND Corporation. Online at: http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG782.pdf

28 Prestholdt J. 2011. "Kenya, the United States, and Counterterrorism", *Africa Today* 57(4): 2-27; Vittori J, Bremer K and Vittori P. 2009. "Islam in Kenya and Tanzania: Ally or Threat in the War on Terror?" *Studies in Conflict and Terrorism* 32(12):1075-1099.

29 Odhiambo EOS, Onkware K and Leshan MT. 2015. "Domestic Radicalization in Kenya", *Global Journal of Interdisciplinary Social Sciences* 4(3):48-56.

30 Nzes, "Terrorists attacks in Kenya reveal domestic radicalization".

31 McConnell T. 2011. "Kenya: Where all Somalis are suspects?", *Public Radio International*, 4 November.

32 Anzalone C. 2012, "Kenya's Muslim Youth Center and Al-Shabaab's East African Recruitment", *Combating Terrorism Center Sentinel* 5(1), October.

33 Field notes, 17 February 2016.

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line with bio-politics in order to better monitor citizens and have more controllable and manageable approaches.

EVOLUTION OF THE PREVENTION OF TERRORISM ACT, 2012 AND THE SECURITY LAWS (AMENDMENT) ACT, 2014

Kenya is among the countries around the world affected by terrorism. Different types of extremist waves prevailed in Kenya during the pre-independence and the post-independence eras. The seriousness of the contemporary wave of religious extremism in Kenya centres on the Islamist extremism wave, as evidenced in the 1998 United States embassy bombing in Nairobi. Since then, further terrorist attacks have occurred under the banner of religious extremism. Further, youth radicalisation and recruitment from Kenya have been serious concerns associated with this transnational terrorist network.³⁴

The frequent terror attacks necessitated laws that could curb and prevent future attacks, hence the introduction of the terrorism bill in 2003. Apart from laws evolving as counterresponses to these extremist attacks, Kenya's counterterrorism efforts needed to be viewed from two perspectives which have implications on religion: firstly, the U.S.-led Global War on Terror (GWOT) and its implications in Kenyan counterterrorism efforts, and secondly, the geographical positioning of Kenya and demographic factors. Kenya's alignment with the GWOT had its implications in Kenya, as it brought in the religious and ethnic profiling into the Kenyan counterterrorist efforts.³⁵ The GWOT, as a consequence of the September 11 attack in the U.S. and its aftermath focused on two dynamics in the international conduct towards terrorism: first, the anxious and almost certain expectations of another attack, and secondly, the constant stream of counterterrorism laws on the continent.³⁶ In Kenya, the influence of GWOT was evident in CT legislation and practices, the main outcome being the initiative toward legislation on preventing terrorism.³⁷ In 2003, the Suppression of Terrorism Bill, quickly drafted and published in reaction to September 11, had a hostile public reaction. The delay in and resentment of the enactment of this counterterrorism legislation was evident in two respects. First, enacting the legislation attracted opposition from Muslim leaders and human rights activists, as the law might restrict fundamental rights. Second, Muslims felt that the legislation was an American-led attempt to target Muslims and that the government had joined hands with the U.S. not as part of a war on terrorism, but as war on Islam. Resentment of the initial 2003 terrorism bill was

34 Badurdeen FA. 2012. "Youth Radicalization in the Coast Province of Kenya", *Africa Peace and Conflict Journal* 5(1):53-64.

35 See Aronson SL. 2013. "Kenya and the Global War on Terror: Neglecting History and Geopolitics in Approaches to Counterterrorism", *African Journal for Criminology and Justice Studies* 7(1):24-34.

36 Whitaker BE. 2007. "Exporting the Patriot Act: Democracy and the War on Terror in the Third World", *Third World Quarterly* 28(5):1017-1037.

37 Prestholdt J. 2011. "Kenya, the United States and Counterterrorism", *Africa Today* 57(4):3-27.

evident when Islamic leaders and groups demonstrated in Nairobi and Mombasa. The bill was dismissed as it was seen as a draconian legislation drafted with the institution to oppress the Muslim minority.³⁸ As a consequence of various resent movements, the bill was subjected to wide scrutiny and eventually rejected in 2005.

Amidst efforts to pass the bill, in 2006 the government tabled a new version of the Terrorism Bill, renamed the Anti-Terrorism Bill, but with few changes in terms of shaping the terrorism legislation discourse.³⁹ Similar criticisms echoed in this bill, as it was seen as anti-Muslim, U.S. led legislation that violated the fundamental rights of minority Muslim communities. In spite of opposition to the new bill, the frequency of terrorist attacks and public outcry put pressure on Parliament to give consideration to such law. The Inter-Religious Council of Kenya issued a statement calling for the enactment of counterterrorism law. The need for such a law was heavily emphasised due to repeated terror attacks in the country. The legislation was passed in July 2012 as the Prevention of Terrorism Bill, 2012 amidst various criticisms. On 12 October 2012, President Kibaki assented to the Prevention of Terrorism Bill, 2012.⁴⁰ The enacted law focused on terrorism offences, prescribing punishment of terrorist acts on prevention. The law combined two counterterrorism measures that aimed to disrupt and avert incidents of terror before they occur. In spite of its relevance, the law was criticised for vague definitions of terrorism, ill-defined offences with an enlarged scope and shifting the balance between security and human rights. A major aspect that came under criticism was the extended and undefined periods of detention of terror suspects as the law, insofar as the law revived the detention-without-trial provisions. Following further terror attacks in the country by Al-Shabaab that were intended as retaliation attacks in response to Kenya's involvement in the African Union Peacekeeping Mission in Somalia, the government responded with a heavy-handed counterterrorism approach, Operation Uslama Watch being one of them. Under this campaign, more than 350 refugees were deported and others rounded up and arrested, some put in camps under the premise of emergency security challenges.

Another outcome of the government's heavy-handed counterterrorism strategies was the signing of Security Laws (Amendment) Act, 2014 by President Uhuru Kenyatta in December of that year. The act gave immense powers to restrict basic rights in the interest of national security. The Act entailed controversial clauses, such as authorising monitoring and intercepting communications, detaining terrorist suspects without charge for up to one year and restricting media reporting on terrorism among other measures. The Act also made amendments to the Penal Code, Evidence Act, Prevention of Terrorism Act, Criminal Procedure Code, and National Service Act.

38 Bakano O. 2010. *The impact of International Terrorism on Counter-terrorism legislation (the Kenya Suppression of Terrorism Bill 2003)*, MA Thesis, University of Nairobi.

39 Mazrui AM. 2016. *Cultural Politics of Translation: East Africa in a Global Context*. New York and London: Routledge Publications.

40 "Kibaki signs historic Anti-terrorism Bill", *Standard*, 14 October 2012.

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EVALUATING PARTICULAR CLAUSES UNDER THE PREVENTION OF TERRORISM ACT, 2012 AND THE SECURITY (AMENDMENT) ACT, 2014

A major critique of the recent terrorism legislation has been its broad definition of terrorism. For, extreme broad definitions of terrorist acts in the Prevention of Terrorism Act, 2012 (POTA), complicates the cases on terrorism. The POTA contains a broad range of incidents which would constitute a terrorist act. The POTA does not define terrorism, but it designates a range of incidents described as “terrorist acts.” The POTA defines a “terrorist act” as 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 results in serious damage to property.⁴¹ 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 amongst members of the public or compel the government or an international organisation to do or refrain from doing an act. It may also be intended to destabilise the religious, political, constitutional, economic or social institutions of a country or an international organisation.⁴² Overall the Act creates a broad definition of terrorism, while expanding the state’s investigative and procedural powers. The broad definition of terrorism expands the state’s investigation and procedural powers. Further, the broad definition lays common penal code crimes open to be described as terrorism, including actions such as the use of violence against a person or serious damage to property during the course of a lawful protest or demonstrations. A further limitation on the definition is the potential conflation of threat with action and how to determine the point at which a threat amounts to terrorism.⁴³

Together, the two pieces of legislation (the POTA 2012 and the Security Laws (Amendment) Act, 2014) fail to define the sorts of extreme belief systems that might be included within the definition of radicalisation. Section 12D of the POTA 2012 reads as follows: “A person who adopts or promotes an extreme belief system for the purpose of facilitating ideologically based violence to advance political, religious or social change commits an offence and is liable on conviction, to imprisonment for a term not exceeding thirty years.” This provision criminalised anyone who adopted or promoted an extreme belief system for the purpose of facilitating ideologically based violence to advance political, religious or social change.⁴⁴ The human rights

41 Prevention of Terrorism Act No. 30 of 2012.

42 Prevention of Terrorism Act No. 30 of 2012.

43 Nyaundi M. 2014. *How does the implementation of counter terrorism measures impact on human rights in Kenya and Uganda?*, PhD Diss, University of Cape Town.

44 Maingi C. 2014. “Not so fast Kenyan Government! Return the Security Laws Amendment Act 2014 to the Parliament: The unconstitutionality of Security Laws”. Online at: https://www.academia.edu/11502831/Not_so_fast_Kenyan_Government_Return_the_Security_Laws_Amendment_Act_2014_to_the_parliament_The_unconstitutionality_of_the_Security_Law

organisation Article 19,⁴⁵ expresses this provision as excessively broad in violation of the legality requirement under international law. For, the provision fails to define “an extreme belief system”. Further, it is unclear whether the expressed extremist system is understood as being religious, political or social in nature. Such a provision has the potential to be used to silence political speech in violation of international standards on freedom of expression.⁴⁶

Various criticisms have been levelled concerning the trial of terrorists, as the legislation lays emphasis on national security at the expense of human rights. Under the POTA, a whole array of powers were bestowed upon the executive. These powers have the potential to be used against any organisation deemed to fit the definition of “terrorism”. According to the POTA, if the Inspector General of the National Police Service believes on reasonable grounds that an entity has committed or is prepared to commit a terrorist act can recommend the revocation of the order of investigation to the cabinet secretary responsible for matters relating to internal security on the specified entity. The judiciary does have the power to act as a check on the executive by providing an opportunity to the accused to petition the courts. Nevertheless, the provision creates ample space for abuse by the executive. Other provisions of the law contravene the rights the right for a fair trial, which is guaranteed in the Constitution of Kenya, 2010. This Constitution guarantees the right to both criminal and civil proceedings, including administrative actions. The Constitution of Kenya provides the accused person the right to be tried unless the conduct of the accused person would hinder the trial process. According to POTA 2012: “The Court may, on the application of the Cabinet Secretary, consider any evidence or information adduced by him before the Court in the absence of the applicant or the counsel representing the applicant where the disclosure of that information would be prejudicial to national security or endanger the safety of any person.” Therefore, Section 2(1) of the POTA deny the accused the right to adequately respond to the allegations made against them. This can even prejudice the other rights of the accused, such as freedom of association associated to this specified entity. Further, it is unclear how the right to fair trial is to be balanced between individual and community interest, especially in cases which involves national security and counterterrorism efforts.

Legislative measures have strengthened lawful interceptions of communication in the purview of prevention terrorist acts. However, their impact on surveillance can be manifold. Surveillance measures have been strengthened under the POTA 2012 and the Security Laws (Amendment) Act, 2014. The Security Laws (Amendment) Act, 2014 amends the POTA 2012 by introducing a new provision to Section 36A, wherein the national security organs may intercept communication for the purposes of detecting, deterring and disrupting terrorism in accordance with procedures prescribed by the cabinet secretary responsible for internal affairs. These broad

⁴⁵ See www.article19.org

⁴⁶ Article 19. 2014. “Kenya: Concerns with Security Amendment Laws (Amendment) Bill”, *Article 19.org*, 17 December.

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surveillance powers restrict privacy rights of the individual. The Act fails to set out what these powers are and how they are to be exercised. Henceforth, the power exercised is left to the discretion of the Cabinet Secretary, responsible for Internal Affairs. There is also secrecy on whether the procedure breaches constitutional and international standards on the right to privacy.⁴⁷

The Security Laws (Amendment) Act, 2014 amended POTA with new, proposed Section 30F (1 and 2) on broadcasting of any information, which may undermine investigations or security operations relating to terrorism without authorisation of the National Police Service.⁴⁸ Section 30F(2) further criminalises anyone who publishes or broadcasts photographs of victims of a terrorist attack without the consent of the National Police Service and that of the victim. Both offences are punishable by a term of imprisonment not exceeding three years or a fine not exceeding 5 million shillings (i.e. over USD 50,000), or both. This proposed amendment constitutes an unjustified interference in journalistic activity, and observers have noted that section is likely to be used by government officials to prevent any criticism of the way in which the authorities handle terrorist attacks.⁴⁹ The new provision is viewed as criminalising legitimate reporting activities in a way that would inevitably have a chilling effect of the freedom of expression and would unduly interfere with the public's right to receive information about matters of public interest. Section 30F(3) does provide that journalist and others may still publish or broadcast "factual information of a general nature to the public", but it is highly unclear how this provision would operate, since, as a general rule, failure to seek authorisation from the police would potentially lead to those reporting on terrorist investigations being taken to jail. In any event, it is clear that only inoffensive information can be published or broadcasted without fear of censorship.

Section 75 inserts a Section 30A in the POTA dealing with publication of offending material. This section criminalises anyone "who publishes or utters a statement that is likely to be understood as directly or indirectly encouraging or inducing another person to commit or prepare to commit an act of terrorism". Section 30A(3) further specifies that it is irrelevant whether any person is in fact encouraged or induced to commit or prepare to commit an act of terrorism. The provision has been critiqued as it is unduly broad in breach of international standards of publishing and broadcasting, including those articulated by the UN Special Rapporteur on

47 Article 19, "Kenya: Concerns with Security Amendment Laws (Amendment) Bill".

48 Security Laws (Amendment) Act, 2014, sec 30F. "(1) Any person who, without authorization from the National Police Service, broadcasts any information which undermines investigations or security operations relating to terrorism commits an offence and is liable on conviction to a term of imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings, or both. (2) A person who publishes or broadcasts photographs of victims of a terrorist attack without the consent of the National Police Service and of the victim commits an offence and is liable on conviction to a term of imprisonment for a period not exceed three years or to a fine of five million shillings, or both."

49 Article 19, "Kenya: Concerns with Security Amendment Laws (Amendment) Bill".

the promotion and protection of human rights and fundamental freedoms while countering terrorism.⁵⁰

In particular, the provision fails to include an element of intent on the part of the maker of the statement. All that is required is that the statement may be wrongly interpreted as indirectly inciting to acts of terrorism. Furthermore, the provision fails to require a causal link between the expression at issue and the acts committed. There is no requirement that there must be an actual risk that such an offence may be committed as consequence. This provision could criminalise legitimate expression, such as artists writing poems or songs about political matters.

Another change in the Security Laws (Amendment) Act, 2014 is Section 66 which amends the National Intelligence Services Act⁵¹ by introducing a new Part V on covert operations. In particular, it introduces a new Section 42, which gives the director-general of the National Intelligence Service broad powers to authorise covert operations where he has reasonable grounds to believe that such operation is necessary to enable the National Intelligence Service to investigate or deal with any threat to national security or the performance of any of its functions. Among other things, the written authorisation issued by the director general may authorise under Section 42, for any member of the National Intelligence Service to “obtain any information, material, record, document or thing and for that purpose: (i) enter any place or obtain access to anything; (ii) Search for or remove or return, examine, take extracts from, make copies of or record in any manner the information, material, record, documents or thing; (iii) monitor communication; (iv) install, maintain or remove anything; or (iv) take all necessary action, within the law, to preserve national security”. Such measures must be specific and are valid for 180 days. In making the decision, the director-general of the National Intelligence Service is only subject to guidelines approved in Council.

Such a provision poses some serious issues, because in Section 42(3)(c) doing anything considered necessary to preserve national security is ambiguous since we do not know definition of “anything” in this regard. That “anything” can be disastrous and can lead to gross violation of human rights. This new Section 42 of the National Intelligence Services Act would effectively strengthen the role of the director-general of the National Intelligence Service to order mass surveillance of online communications in the interest of national security. There is no provision wherein these powers are constrained and the director-general is only subject to

50 In UN General Resolution 2005/80, the Commission on Human Rights created a mandate of a special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

51 The National Intelligence Service (NIS) Kenya, previously known as the National Security Intelligence Service (NSIS) is both the national and foreign intelligence agency of Kenya. The institution is in force under the National Intelligence Service Act, 2012, which provides for the functions, organisation and administration of the National Intelligence Service with regard to the provisions Article 239(6) of the Constitution, “to give effect to Article 242(2) and other relevant provisions of the Constitution; to provide for the establishment of oversight bodies and the connected purposes”.

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non-binding guidelines approved by the executive rather than Parliament. Critics view that these deeply intrusive measures are authorised by the executive rather than the courts. According to the human rights organisation Article 19, there are no stringent safeguards against indiscriminate surveillance: “In the absence of any procedural safeguards, the authorities are effectively granted an unfettered power in breach of the legality requirement under international law.” Hence, Article 19 has proposed that the provision should be subject to close scrutiny by Parliament.⁵²

COMMUNITY PERCEPTIONS ON THE LAWS TO COMBAT EXTREMISM

Firstly, some Muslims viewed the implementation of strategies to counter terrorism, such as the Prevention of Terrorism Bill, 2012, as discriminatory.⁵³ This approach to counterterrorism was further strengthened with the Security Laws (Amendment) Act, 2014, revealing a shift of balance between security and human rights, as the Act emphasises security concerns over other rights.⁵⁴ An interviewee for the present research highlighted various factors that viewed the evolution of the POTA as discriminatory towards the Muslims, saying “The bill had no support from the majority of the Muslims except for the few that were in support with the government, who the government viewed and termed as moderate Muslims. Next the bill evolved as a result of the U.S. War on Terror after the September 2001 terrorist attack, and Kenya followed the U.S. strategies to pledge her support towards preventing terrorism.”⁵⁵

The enforcement of the parts of the legislation which focus on stringent surveillance measures, such as mosque closures and arrests immediately after the Westgate Mall and Garissa University College terrorist attacks, did have consequences. These actions were intended to prevent radicalisation, extremism and terrorist acts. However, the unintended impact of such enforcement in a fast pace manner, was viewed as a way of marginalising the already marginalised Muslim community in Kenya. Further, these stringent surveillance efforts facilitate the widening of the gaps in the state-citizen relationship.

Stringent legislation which defines radicalisation without an appropriate definition of “extreme beliefs” could result in classifying communities as suspect and prevent dissent movements by young people. Many young people fear discussing particular terms associated with the radical discourse, even for the preventative purpose of countering violent extremist narratives. For example, discussion of sensitive words, such as *jihad*, *hijrah* or *sharia*, can have consequences in particular places, such as mosques which are under surveillance.⁵⁶ Some interviewees highlighted the fact

52 Article 19, “Kenya: Concerns with Security Amendment Laws (Amendment) Bill”.

53 Interview, 22 March 2016.

54 Maingi, “Not so fast Kenyan Government! Return the Security Laws Amendment Act 2014 to the Parliament”.

55 Interview, 3 May 2016.

56 Interview, 3 May 2016.

that stringent legislations on surveillance, which often viewed as targeting Muslim youth brings in the notion of Muslims being “suspect communities”, as this has the potential to make youth feel they are being discriminated against and suspect just because they are Muslims,⁵⁷ in effect, “you wear the Muslim garb, look like a Muslim with beard, going to the mosque, browses the internet on Islam and discusses on Islam with friends, you have a high possibility to be classified as a radical with extreme views subscribing to a particular ideology.”⁵⁸ Another youth reiterated this feeling that he was targeted for being a Muslim, “If they see a Muslim youth who always went to the Mosque, wears the garb ... may talk about religion or have conservative views, he is a radical, extremist or terrorist ... whatever they may name him.” In Kenya, Muslims are highly susceptible to being labelled as a radical, especially if association with radical religious preacher is involved. As one interviewee put it, “You fall on the radar of the police when you talk on issues relevant to the religion. Sometimes the words or the names used, like Aboud Rogo and his speeches, which we discuss as issues of concern, or debate on the implication of the speeches can classify you as a radical. You may have discussed it in terms of countering the radical discourse, not necessarily on radicalizing youth.”⁵⁹ It has been well ascertained in a study conducted in Mombasa that viewing particular terms and jargon must focus not merely on the word used (e.g. *jihad*), but on the context and the connotation in which it was used.⁶⁰ Understanding these contextual and connotative distinctions necessitates knowledge of the religion and its associated terms by law enforcement surveillance officials, whether they are monitoring online platforms or offline youth gatherings.

The Security Laws (Amendment) Act, 2014 gave the government expansive powers to restrict basic rights in the interest of national security. Within this backdrop, some youth viewed the counterterrorism legislation unfavourably for expanding the scope of surveillance. In specific locations known as high-risk areas, Muslim youth were always under scrutiny. “Muslim youth are always a target” or “Muslim youth are harassed” were two statements that were often made. Discussion centred on how youth were treated by law enforcement officials and how “not only are they under constant eyes of the police, they get harassed, they get arrested.”⁶¹ Another respondent explained, “The police need to do their work properly, with the correct information, not incomplete or incorrect information. It is often what happens next. You take the youth, interrogate him, you find nothing then you ask him to go back. What will happen to him next? The police start to monitor him. He starts to live in fear. Sometimes they are detained for a very long time, and in the process,

57 Badurdeen FA. 2018. “Muslim Youth and Counter Terrorism in Kenya”, in Grasso M and Bessant J (eds). *Governing Youth Politics in the Age of Surveillance*. London: Routledge.

58 Interview, 12 June 2016.

59 Interview, 2 January 2017.

60 Human Rights Agenda (HURIA). (2018 forthcoming). *Countering Violent Extremism Lexicon*. Mombasa, Kenya: HURIA.

61 Interview, 13 June 2016.

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they suffer.”⁶² The respondent attested that youth were treated harshly because of insufficient intelligence information. This was confirmed by another youth, who said of the police that “they are harsh, they need to have good intelligence information, and they should give an opportunity for youth to talk”.⁶³

These interviews suggested that being at risk as a constantly targeted community had vast repercussions, as the youth came to view the police unfavourably, with considerable ramifications for building community trust with the police. The terms “individual profiling” and “individuals at risk” are two statements that can be highlighted in determining how communities view police action towards Muslim youth. Data reveal that the perception and attitude towards the police showed anger toward the way the police dealt with the issue. These were grievances associated with the context of profiling, in which various individuals were arrested as a result of counterterrorism initiatives which focused mainly on individuals of a particular religion and age group. The law enforcement officials claimed that not all were targeted on religion but on the followers of a particular ideology. The focus was on a version of political Islam, a manipulated version of the religion pushed by the extremists such as Al-Shabaab.⁶⁴ As indicated by a law enforcement official, “We arrest them based on information. It is a long time of surveillance done on each of them, as we monitor for long periods of time. That is the only way we could deter them from carrying out an act.”⁶⁵ It can also be argued that authorities do not have sufficient resources and time when they are working on important cases, and thus they need to give priority to national security. As emphasised by a law enforcement official, “In some cases it is a matter of urgency. There need to be proactive decisions made. It is a matter of national security. If there is a blast, the blame is again on the security personnel. What would the community say? Negligence by the police?”⁶⁶ Not all in the Muslim communities considered police involvement to be negative. Some highlighted the positive ways in which the police have played a proactive role and on how terrorist incidences have been reduced in Mombasa. As one respondent put it, “We have to appreciate their (police) work; their work has yielded positive results. It is their work that has reduced attacks.”⁶⁷ Although there are positive evaluations among the community of the police work related to counterterrorism that has been greatly facilitated by the counter terrorism legislation, this should not negate the underlying strains and grievances as a result of harassment of Muslim youth and the designation of communities as at-risk societies.

Associated with this negative attitude towards the intelligence services in Kenya’s Muslim communities was a lack of trust in the judiciary when it comes to handling terrorism cases. Issues highlighted in this regard were the components of evidence,

62 Interview, 12 June 2016.

63 Interview, 3 March 2017.

64 Field notes, 12 June 2016.

65 Interview, 2 June 2016.

66 Interview, 4 June 2016.

67 Interview, 22 February 2016.

provision of bail, slowness in handling terrorism cases and the aspect of independent decision-making in judgments. As a respondent maintained, "There is usually a blame game in evidence, as evidence is not appropriate or [they] need more time to gather information, thereby keeping the suspect without proper evidence, detained without trial and no action is take. If there was proper evidence we would not see cases thrown out due to the lack of evidence."⁶⁸ Another respondent complained of the unfairness in terrorist cases, stating, "There is unfairness in how judiciary handles cases without a proper hearing for the suspect. There is a need to listen to the accused."⁶⁹ Furthermore, this respondent noted, "The controversies surrounding the issue of bail and bond needs to be addressed. Suspects disappear after bail."⁷⁰

Another grave concern highlighted by many respondents was the occurrence of the mosque raids and mosque closures as a consequence of counterterrorism strategies. Extremists condemned these as attacks against the Islamic religion, as often promoted in their extremist discussions and magazines.⁷¹ Others characterised these as acts that could bring more hatred and anger among Muslim youth towards the police and the state, with radicalisers and recruiters capitalising on such events in ways that could be detrimental and have the potential to radicalise or re-radicalise individuals and communities.⁷² As described by one respondent, "Police entered the mosque. It was this that made them [the Muslims] angry."⁷³ This was further confirmed by another respondent, who reported, "Youth were disgruntled in such endeavours by the police. They felt as if they were condemned or looked down upon, especially their religion."⁷⁴ Another respondent highlighted this as an act that could lead to retaliatory counterincidents in Mombasa, maintaining, "These incidents have the potential to create hatred and make youth rally for the cause of protecting their religion, often using a tough approach or by joining a group that could strengthen their support in line with protecting the religion."⁷⁵ Another noted that the youth's efforts in retaliating were seen as an extremist stance, rather than a defence of their religion, observing, "When youth retaliated on that the police just beat them. The police only found a few *pangas* (knives) in the Mosque. They arrested many youth with the incident."⁷⁶ Not all viewed these incidents negatively, some expressed the importance of safeguarding sacred places and how such efforts were mandatory to prevent radicalisation. As one respondent stated, "I see it as a way forward to clean up the community public spaces. Sometimes surveillance is needed in mosques and other places to prevent radicalization or we may see these

⁶⁸ Interview, 21 March 2016

⁶⁹ Interview, 3 March 2016.

⁷⁰ Interview, 2 February 2016.

⁷¹ Interview, 27 February 2016.

⁷² Field observation, 12 June 2016.

⁷³ Interview, 24 May 2016.

⁷⁴ Interview, 7 February 2016.

⁷⁵ Interview, 2 June 2016.

⁷⁶ Interview, 24 May 2016.

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places being exploited for the wrong reasons. In fact, close scrutiny is needed after what is happening in the coast. Extremist leaders are taking control of mosques, which may not be something any Muslim would want.”⁷⁷

Hence, the anti-terror legislation has had unintended impacts in the form of discrimination against particular Muslim communities through means of individual and community profiling, judicial procedures, hard counterterrorism strategies of mosque closures, associated extrajudicial killings have been controversial and disfavoured by few communities of Muslims – a context often exploited by terrorist recruits. This can be linked to negative personal experiences with the police and authorities under the individual and socio-psychological explanations facilitating radicalisation. Increased surveillance, detention and harassment of the minority ethnic Somali communities in Somali dominant areas and Muslim dominant areas in the Coast⁷⁸ were outcomes of government counterterrorism measures facilitating re-radicalisation. For radical entrepreneurs, such grievances against law enforcement officials become a useful theme to radicalise and recruit new members by highlighting the government as treating Islam or the Muslims in an unjust manner. Al-Shabaab recruiters use these contexts of strife between community and the police to mobilise individuals and communities for their cause. Such acts garner support from potential sympathetic groups.⁷⁹

The citizenship-security nexus is vital to understand how the state institutes social, political and civil rights, as well as designing techniques to craft the membership of a political community in regulating policies on citizenship, such as citizenship education and the naturalisation of immigrants.⁸⁰ For instance, how strongly do the Kenyan Somalis feel themselves to be Kenyans? Are they marginalised in terms of racial profiling in security efforts? Are they discriminated against by being targeted in counterterrorism approaches because of their close affinity to Somalia? While citizenship is the state of being a member of a particular country with rights by virtue of being a citizen, it becomes problematic when an individual or group's sense of citizenship is brought into question by heavy-handed, counterterrorism responses, such as those that have developed under recent Kenyan legislation.⁸¹ Hence, the breaking down of the state-citizen relationship is detrimental, and resulting frustrations can cause communities to detest the state apparatus and to join

77 Interview, 8 May 2016.

78 Somali Muslim communities usually become victims due to their ethnicity and religion. Initially, it was assumed most radicalised and recruited youth hailed from this community. Other communities considered susceptible for radicalisation and recruitment are the North Eastern and Coastal populations in the peripheral marginal regions, most of whom are Muslims or the recently converted.

79 Della Porta D (ed). 2009. *Democracy in Social Movements*. Basingstoke: Palgrave Macmillan.

80 Guillaume X and Huysmans J (ed). 2013. *Citizenship and Security: The Constitution of Political Being*. PRIO New Security Studies. Abingdon: Routledge.

81 See MacDonald MN, Hunter D and O'Regan JP. 2013. "Citizenship, community, and counter-terrorism: UK security discourse, 2001–2011", *Journal of Language and Politics* 12(3):445-473.

alternate avenues of resistance. This is a context often manipulated by radicalisers, who provide an alternative avenue to direct anger to counter state practices along with means of retaliating against the practices of the state.⁸²

CONCLUSION

Counterterrorism methods and strategies based on legislation, such as the POTA 2012 and the Security Laws (Amendment) Act, 2014 do play a prominent role in preventing and eradication violent religious extremism in Kenya. However, there is a need for caution, so as not to violate the rule of law on which human rights based. Therefore, this chapter highlights the need for a balanced approach between the right to security and the human rights of those who come under surveillance and scrutiny. Careless uses of the law are likely to result in more violence. As proposed by Tom Farer, an American legal scholar, “once the frame of order is broken, we can reasonably anticipate increasingly normless violence, pitiless blows followed by monstrous retaliation in a descending spiral of hardly imaginable depths.”⁸³ In Kenyan counterterrorism context, the concern is that stringent policies may create a vicious circle of violent religious radicalisation and re-radicalisation in already marginalised communities.

The existing practice of appointing judges and lawyers without any orientation or training is of no value in cases enabling them to dispense justice under the POTA. There is a great need for orientation and training programmes to familiarise them with POTA provisions and their amendments and the socio-political implications of these laws in affected communities. Extensive training on the POTA should be organised periodically, for all ranks of police officers and lawyers. Most often, the government employs new lawyers with less experience on the Act to work on cases related to terrorism. There is a need for lawyers and law enforcement officials to understand the milieu in which the act operates.⁸⁴ There is also a need to carry out orientation and training for police officers and prosecutors responsible for investigating cases of terrorism on the socio-political implications in affected communities. A major grievance highlighted among particular communities in Kwale in the coast region was the lack of investigation into extrajudicial killings, arrests and detentions carried out by the law enforcement officials.⁸⁵ Grievances and attributed grievances over the loss of these persons can be craftily exploited by extremists, who then garner support from the community for their cause of revenge on the government.⁸⁶

82 Badurdeen FA. 2018. “Muslim Youth and Counter Terrorism in Kenya”, in Grasso and Bessant (eds). *Governing Youth Politics in the Age of Surveillance*.

83 Farer TJ. 2002. “Beyond the Charter frame: Unilateralism or condominium”, *American Journal of International Law* 96(2):386.

84 Interview, 23 June 2016.

85 Interview, 17 January 2017.

86 Those suffering attributed grievances as a consequence of the loss or death of a person would include widows, loss of fathers, and in some cases orphans. These families would

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Further, there is a need for protection for justice system participants. Terrorism cases rely on witness statements the procurement of which is dependent on the security of the witnesses; thus, their protection is of utmost importance. As one respondent observed, "If the witness is not well protected, how will he or she feel secure in the community? Most of the time, the witness will have to go back to the community and live with the same neighbours."⁸⁷ These neighbours are often the very individuals on whom they provided information. Further, witnesses who were vital in the case should not be treated as suspects, for as one respondent noted, "Once they feel they are viewed as suspects, they would not provide information to the police. They may withhold information that are useful for the police and the investigation."⁸⁸ Overall, the investigation and trial procedures under the POTA need to be reviewed to ensure the greatest possible security for the witnesses as well as for judges, prosecutors and investigators. There is a need for the government to appoint a commission to study all aspects of security for witnesses in trials of POTA cases and develop measures to ensure maximum security for them.

Like many other countries with counterterrorism legislation, Kenyan counterterrorism legislation struggles to balance national security interests with safeguarding human rights at the individual and community levels. Quite often, the national security interest takes precedence due to the nature of the terrorist threat. However, the human rights of individuals that are at stake include the right to life, as against extrajudicial or targeted killings; liberty from arbitrary detention; freedoms of speech and association; the right to privacy; and ethnic and racial profiling of individuals.⁸⁹

In weighing which is more important, a sound empirical base has been lacking, and this has affected cases on terrorism. Difficulties in gathering timely information on particular cases have led law enforcement professionals to make hasty decisions based on "national security interests". In some instances, there is a need to take proactive measures to detect potential terrorists, to prevent terrorist acts and to apprehend terrorist suspects. For example, immediately after the Westgate Mall terrorist attack in 2013 and the Garissa University College attack in 2015, the Kenyan government had to take immediate measures to countering the terrorist threat. The magnitude of the impact pressurised the government to bring the perpetrators accountable. Immense pressure from the public, where the public pointed fingers at the law enforcement officials on issues regarding breach of security, prompted

exhibit severe poverty, livelihood constraints due to the loss of the breadwinner and psychosocial issues. These families can be easily exploited by Al-Shabaab recruiters, who recruit women or the children pegged on their grievances as a consequence of counter-terrorism measures highlighting the police as the "evil forces", hence create the send of avenging the police for their plight. Field discussions, 17 January 2017.

87 Interview, 22 January 2017.

88 Interview, 17 January 2017.

89 Peace Brigade International. 2012. "An assessment of the feasibility and effectiveness of protective accompaniment in Kenya: External Report". Online at: https://peacebrigades.org.uk/fileadmin/user_files/international/files/special_report/PBI_Kenya_report.pdf

law enforcement officials to conduct investigations in ways that infringed on the rights of individuals. Measures also infringed on collective rights on the freedom of religion when mosques were closed upon suspected of radical preaching. Many young people were arrested mainly due to their association with particular clerics or mosques. Herein, the violation of individual human rights or community rights has repercussions in the form of backlash by those communities resulting in a deteriorating citizen-state relationship. However, from another angle, failure to counter terrorism may lead to the most fundamental rights of security, safety and the right to life being breached. Overall, there is a need for reflections on the prevailing enforcement of the legislation, to prevent further marginalisation of individuals and communities that are at the brink of joining the Al-Shabaab. Otherwise, these individuals and communities may lose trust in the government apparatus and pay heed to the Al-Shabaab narrative of the state as a perpetrator discriminating against the Muslim populace.