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# The Impact of Counter Terrorism Policies and Laws on Civil Society Organisations in Kenya

Awuor PONGE

*Department of Sociology, Gender and Development Studies, Kenyatta University, Kenya*

**Abstract:-** The Civil Society Organisations (CSOs) have played a major role in protecting the human rights and civil liberties of those impacted on by the anti-terrorism legislation in Kenya. The CSOs have played the role of advocates asking the Government to uphold the rule of law and respect the rights to life. They have played the role of partnering with the development actors to sensitise the local communities on the dangers of being recruited into terrorist rings; they have also stood out as the voice of the voiceless. The CSOs have partnered with the academia on various occasions to conduct research and disseminate the findings with a view to establishing the evidence base to inform decision-making with regard to handling the delicate issue of Countering Violent Extremism (CVE). The law has been used as one of the primary tools to counter violent extremism in many states across the world, however, the restraining power of the law and public pressure has led to a continued revision in criminal law measures as well as policy approaches. In Kenya, in the wake of rising cases of public insecurity heightened by cases of radicalisation and violent extremism, the Government has had to come up with legislation to address this. However, the Government has in certain instances been accused by the CSOs of going overboard in exercising the mandate of regulating security. In response, the Government has had to stamp its authority by coming up with legislation that also impacts on the role and mandate of the CSOs as they try to navigate the delicate terrain that is CVE. Some of the impacts of the laws and policies on countering violent extremism in Kenya include: abuse of human rights, curtailing of civil liberties, limited political space on religious grounds, infringing on the rights of minorities or socially/politically marginalized groups; threats to community cohesion, safety, and security; deregistration for tax evasion; harassment and intimidation of Muslim NGOs; and revoking licenses of Remittance Companies. This study makes the following recommendations for the CSOs work in CVE: work with the Government in ensuring the tightening of border controls; working with the local communities through community policing; investing in data and intelligence; using strategic positioning as a launching pad; cooperation with the united states security initiatives; sharing of CVE lessons and impact stories between all relevant actors; provide education and vocational training; economic empowerment and establishing income generating activities; offer amnesty and legal framework for rehabilitation.

**Key Words:** Civil Society; Countering Violent Extremism; Legislation; Policies; Kenya.

## I. INTRODUCTION

In this paper, Civil Society is defined broadly, as encompassing both organizations (social movements, NGOs, unions, religious organizations, voluntary associations,

etc.) and communities. And for the concept terrorism, in a generic sense, unlike random acts of violence, it is defined as the premeditated use of violence to achieve certain objectives

According to Rosenau (2005), a conducive environment for terrorist recruitment is fueled by three main conditions namely: “a lack of state capacity, particularly in the areas of police, intelligence, and law enforcement; a ‘mobilizing belief,’ such as Salafist/Jihadist extremism; and ‘appropriate agitators’ who can propagate these ideas and create an effective terrorist force” (Rosenau, 2005:5). The reasons young people have cited behind their recruitment into terrorist groups like Al-Shabaab include: marginalization, government repression and human rights violations in Coast and Northern Kenya, the presence of Kenyan military in Somalia; promises of employment opportunities by Al-Shabaab and the sense of belonging, social and peer support by the group amongst other reasons (Ramadhan, 2018).

The Kenyan Government defines *terrorism* as “anti-state violent activities undertaken by non-state entities which are motivated by religious goals” (Mogire & Agade, 2011). This definition neglects terrorism based on political, ideological, and criminal rationales and thus, places an unfair target on the minority religion in Kenya [Islam]. Legal responses are one of the major forms of government responses in countering terrorism in the country (Ramadhan, 2018).

Counterterrorism functions in Kenya have been divided among the three branches of the National Police Service – the Kenya Police's paramilitary General Service Unit, the Directorate of Criminal Investigations (including the investigative Anti-Terrorism Police Unit, the Bomb Disposal Unit, and the Cyber Forensics Investigative Unit), and the Administration Police, including the Rural Border Patrol Unit (Refworld, 2018).

The Civil Society Organisations (CSOs) have played a major role in protecting the human rights and civil liberties of those impacted on by the anti-terrorism legislation in Kenya. This study looks at the role of the CSOs vis-à-vis the regulating environment and how this interaction impacts on the role and mandate of the CSOs.

## II. CONTEXT

Kenya launched its National Strategy to Combat Violent Extremism in September 2016. President Uhuru Kenyatta vowed that the plan would pool resources from government,

civil society, and the private sector in support of counterterrorism efforts, and would emphasize de-radicalization over military tactics. The effort is headed by Kenya National Counter Terrorism Center (NCTC). In its counter-terrorism efforts, the Kenyan Government has come up with laws that place restrictions on the media, for instance, that arguably violate the freedom of expression. In addition, the laws strictly limit the number of refugees permitted to reside in Kenya, which critics argue also violates constitutional provisions.

In Kenya, State reaction to terrorism has had an unwritten law of targeting the Muslim community, whether consciously or unconsciously. But why is this case? Muslims make up about a tenth of Kenya's population, and they reside primarily in the North-Eastern region and along the Coast of Kenya. These communities lag in development, due to limited public and private investment, giving rise to local tension and instability (Bremmer, 2015). The alienation of Muslims in Kenya, in what was previously known as the Northern Frontier District (later North-Eastern Province), has continued since Independence. With the emergence of multipartyism in Kenya after the repeal of the notorious Section 2A of the Constitution that made Kenya a de jure one party state, the Muslims continued to remain a minority even in the political party politics. As Muslims continued to remain irrelevant, there was no need to place an importance on religion (Aronson, 2013). In 1992, the Islamic Party of Kenya (IPK) was established to give voice to the voiceless Muslims in Kenya. However, as this was accused by the then President of Kenya, Daniel arap Moi, as "promoting Islamic fundamentalism" (Prestholdt, 2011:7). This according to Aronson (2013) was the first time that the issue of Islam as a threat to Kenya became relevant in the national political arena. The subsequent reaction created what is arguably the *extremist* Muslim community that remains part of current anti-terrorism policies. The Somali Islamist militant group Al-Shabaab, while seeking some goals specific to Somalia, operates to some extent in Kenya with an increasing amount of support from Al-Hijra – a Kenyan Islamist fundamentalist group previously known as the Muslim Youth Center in Mombasa (Aronson, 2013:29).

Since the aftermath of the September 11 terrorist attacks on the Twin Towers of the World Trade Centre in New York, Kenya has been a major player and partner in the Global War on Terror (GWOT) in the aftermath of September 11, 2001. Having historically been an ally of the United States, the country's importance was only reiterated following several major incidents in the last two decades. In 1998, the American embassies in Nairobi and Dar es Salaam (Tanzania) were attacked, taking the lives of hundreds and marking a shift in U.S. foreign policy. (Aronson, 2013).

The notorious Al-Shabaab group began attacking Kenya in 2007. Their first major attack was in 2008, which prompted the Government of Kenya to respond with equal force if not greater. It was not until 2011 that the Government of Kenya decided to enter into Somalia, so as to create a 'buffer-zone'

with a view to contain the Al-Shabaab and prevent them from entering Kenya. They would soon receive support from the African Union Mission in Somalia and soon they captured the Al-Shabaab business and operations stronghold of Kismayu, throwing them into disarray and forcing them to go back to the drawing board.

*"Al-Shabab translates to 'the youth' in Arabic, a fitting name for an organization that feeds off limited opportunities for young people in the region. According to BBC News, roughly a quarter of al-Shabab's 7,000 – 9,000 forces are Kenyan. Many of them were attracted to al-Shabab's high salaries for new recruits, which are reportedly more than \$1,000. Meanwhile, the average monthly wage in Kenya is \$76 (\$912 annual). Some 70% of working-class youth are currently unemployed. (Bremmer, 2015).*

To understand why Kenya has become such an easy prey to Al-Shabaab attacks, it may be good to briefly explain the Kenyan context that makes them easy to penetrate.

*Corruption in Kenya and ease of corrupting the Police Officers:* Because of poverty and corruption in Kenya, it is very easy to give bribes to the police who are lowly paid, so armed aliens, mostly from Somalia, can penetrate Kenyan soil, with arms. It is these arms that they later use to cause mayhem to innocent Kenyans.

*Presence of the Dadaab Refugee Camp:* It is also easy for the terrorists to recruit in Kenya and launch their operations, because Garissa County, which houses one of the biggest Refugee Camps in Africa, if not in the World, has over 300,000 Somalis. It is therefore very easy to recruit from the refugee camp as well because of the hardships and the living conditions in the camps.

*Potential Benefits in attacking Kenya:* The terrorists bask in the glory of media coverage of their heinous acts. Kenya has enjoyed free press at least since the promulgation of the Constitution in 2010, which also came with the Bill of Rights. It is therefore easy for the free press to report on the terrorist deaths uncensored, and this is what makes the terrorists feel that they are having a great impact by inflicting fear and harm. With these media coverages, they can use this for their propaganda campaigns as well as seek for resources from sympathisers to their cause, seeing that they are neutralising the perceived enemy, which in this case is the State Security machinery.

*Poor budgeting and resourcing for the Kenyan Military:* A legislation was passed in Kenya way back in 2011 with a view to reforming the Police Service as well as security sector in Kenya. These reforms targeted the police, intelligence and the defense forces. These reforms saw the creation of the Anti-Terror Police Units. The budget for this Unit has been low over time making them unable to operate effectively. Also given the low pay of the Police Officers, it is easy to corrupt them, as earlier mentioned.

*Kenya's International Visibility:* Kenya has high international visibility and its relatively free and independent media widely publicises terrorist attacks. Another factor is that Kenya has developed a lucrative tourist sector, which provides soft targets. Kenya has become a prime location for al-Shabab radicalization and recruitment. Kenyan youth face economic, religious, and social coercion to convince them they have no alternative to joining extremist organizations. Some youth convert to Islam for the promise of economic benefits or even just food. Christians who convert to Islam are often more at risk of radicalization due to social isolation.

#### *Major Extremist and Terrorist Incidents*

Some of the major extremist and terrorist incidents in Kenya include:

- August 7, 1998 – US Embassy in Nairobi – 212 dead
- November 22, 2002 – Paradise Hotel, Mombasa – 13 dead
- August 15, 2008 – Nagwanga, Turkana – 71 dead
- October 21, 2010 – Mandera East – 30 dead
- November 16, 2011 – Dujis, Garissa – 12 dead
- July 1, 2012 – Dujis, Garissa – 17 dead
- November 18, 2012 – Eastleigh Nairobi – 10 dead
- April 2, 2015 – Garissa University – 148 dead
- January 15, 2016 – El Ade, Somalia – 180 dead
- January 15, 2019 – DusitD2 Hotel, Nairobi – 21 dead.

### III. METHODOLOGY

This study involved a comprehensive review of the literature on countering violent extremism in Kenya. This was tethered on the role of the Civil Society Organisations (CSOs) in addressing issues of countering violent extremism. In the context of CSO's work, they have had to engage with Government forces. This study therefore had to look at some of the legislation and policies that have been put in place, specifically to address the issues of CVE and then critically analyse how these policies have impacted on the CSOs.

This comprehensive critical review of the literature constituted an original and valuable work of research in and of itself (Par et *al.*, 2015) and had the overarching purpose of synthesising the secondary literature on legislation, civil society as well as on CVE, without collecting or analyzing any primary data. There was a deliberate and purposeful screening for inclusion to determine the relevance of the literature to the topic of study; providing a basis for including or excluding certain studies with a view to ensuring enhanced objectivity and avoiding biases or mistakes (Par e & Kitsiou, 2017). The screening followed the same pattern for determination of relevant secondary literature to the topic of study. This was then followed by the extraction of data and final analysis and synthesis of the data.

This review of the literature, being an integrative one, meant that it had the purpose of assessing, critiquing, and synthesising the literature on the topic of study with the lens

of enabling new theoretical knowledge and frameworks as well as innovative perspectives to emerge from the study (Torraco, 2005; Snyder, 2019).

### IV. RESULTS AND DISCUSSIONS

In this section, we discuss the results of the findings and results of this study. It highlights the key legislation that has been formulated to respond to rising cases of public insecurity and with special emphasis on containing violent extremism as well as the role of the CSOs. It shows what has informed the Government decisions to come up with certain legislation and in the events of legal lacunae in any legislation, what prompts the revision of the legislation. It discusses in detail the legislation that aims to ensure that publicly owned venues and resources do not provide a platform for dissemination of extremist views. It discusses the organization and administration of the National Intelligence Service, the establishment of oversight bodies as well as the conditions that have been set for the limitation of rights and fundamental freedoms. It is divided into three sections dealing with the cases of legislation and response to CVE in Kenya; the role of the civil society in promoting or opposing anti-terrorism legislation; and the last section on the impacts of the laws and policies on countering violent extremism.

#### *4.1 The Law and CVE in Kenya*

The law has been used as one of the primary tools to counter violent extremism in many states across the world, however, the restraining power of the law and public pressure has led to a continued revision in criminal law measures as well as policy approaches (Ramadhan, 2018; Sylla & Simons, 2018). Governments had become adept at courting certain groups as co-adjutants in their security agenda while subjecting others to increasing surveillance, control and prohibition (Howell & Lind, 2016). Some of the laws and policies that have been enacted or revised for purposes of countering violent extremism in Kenya will be briefly highlighted below.

*Preservation of Public Security Act No. 2 of 1960, Chapter 57:* The Preservation of Public Security Act (Kenya, 2012a) was assented to by the President on 8th January 1960 and the date of commencement was 11th January 1960. It was An Act of Parliament to make provision for the preservation of public security. This was generally a tool that was used by the Government to curtail the movement and operations of any elements that were deemed subversive by the administration. It was however revised in 2012 in response to terrorist acts (Kenya, 2012a).

In this Act, "the preservation of public security" includes: the defense of the territory and people of Kenya; the securing of the fundamental rights and freedoms of the individual; the securing of the safety of persons and property; the prevention and suppression of rebellion, mutiny, violence, intimidation, disorder and crime, and unlawful attempts and conspiracies to overthrow the Government or the Constitution; the

maintenance of the administration of justice; the provision of a sufficiency of the supplies and services essential to the life and well-being of the community, their equitable distribution and availability at fair prices; and the provision of administrative and remedial measures during periods of actual or apprehensible national danger or calamity, or inconsequence of any disaster or destruction arising from natural causes (Kenya, 2012a).

The Act under Section 4 talks about Special public security regulations, where an order under section 29 of the Constitution, empowers the President, to make regulations for the preservation of public security (Kenya, 2012a). It also addresses under Section 7, miscellaneous provisions relating to subsidiary legislation; which include: Subsidiary legislation which may be made to apply to Kenya generally or to any part thereof, to any ship or aircraft in or over Kenya, to any Kenyan ship or aircraft wherever it may be, and to any person on board any such ship or aircraft; and also that regulations made under this Act may authorize the search of persons and the entering and search of any premises, vessel, vehicle or aircraft. These are some of the Clauses that have been abused the State agencies in the fight against terrorism in Kenya.

*Prevention of Terrorism Act No. 30 of 2012:* Prevention of Terrorism Act (Kenya, 2012b) was assented to on 12th October, 2012 and date of commencement was 24th October, 2012. It was prompted by the need to track communication between terrorists and their sympathisers with a view to curb their networking. This was to track any form of communication whether through postal services or mobile telephony, as well as track the financial flows of such suspected persons through financial institutions.

This is an Act of Parliament to provide measures for the detection and prevention of terrorist activities; to amend the Extradition (Commonwealth Countries) Act and the Extradition (Contiguous and Foreign Countries) Act; and for connected purposes (Kenya, 2012b). The Act clearly specifies what a “terrorist act”, means. It specifies that the terrorists acts are carried out with the aim of: intimidating or causing fear amongst members of the public or a section of the public; or intimidating or compelling the Government or international organization to do, or refrain from any act; or destabilizing the religious, political, Constitutional, economic or social institutions of a country, or an international organization (Kenya, 2012b).

The Act also specifies what “terrorist group” and “terrorist property” means. It also lays responsibility on any person who fails to prevent entry of weapons into any premises, institution or public place. The Act also seeks to prevent acts of radicalisation as well as incitement to carry out a terrorist act. It also limits the freedom of the Press through prohibition from broadcasting anything without authorization from the National Police Service, especially broadcasts which undermines investigations or security operations relating to terrorism. The Act establishes the National Counter-Terrorism

Centre, as well as outlining their responsibility. It also places heavy responsibility and stiffer penalties for any person who fails to disclose information relating to terrorist acts.

*The Prevention of Terrorism (Amendment) Bill, 2018:* The Prevention of Terrorism (Amendment) Bill, 2018 (Kenya, 2018) was introduced on 19 July 2018 in response to rising cases of radicalisation and the recruitment of young school-going children into terrorist rings. This was mainly suspected of teachers in Madrassas in Muslim-dominated areas. The Bill (Kenya, 2018), outlines the roles of the County Education Board which includes to formulate, in collaboration with the relevant State agencies, and oversee the implementation of county specific programs to counter radicalization; and also, to ensure that publicly owned venues and resources do not provide a platform for dissemination of extremist views. It also outlines the roles of the “institution administrator” who in the Act is a person charged with the day to day management of an early childhood education institution, a school of basic education, college or university. Their duties would include: implement appropriate measures to ensure students are not drawn into radicalization; keep an up to date record of all students; ensure that all staff in the institution are well trained to recognize vulnerable students likely to be drawn into radicalization; implement appropriate intervention measures, including activities to reduce the risk of students being drawn into radicalization (Kenya, 2018).

The Bill finally outlines the Duties of parents and guardians. Parents and guardians of students have a responsibility to: monitor the activities of the students after school hours and on weekends; and to immediately report to the Inspector General of Police, the County Education Board and the school administrator a case of a missing student where there is reason to believe that such student is likely to be involved in terrorist acts or to have been radicalized (Kenya, 2018).

*The National Intelligence Service Act No. 28 of 2012:* The National Intelligence Service Act No. 28 of 2012 (Kenya, 2012c) was assented to on 27th August, 2012 and it commenced on 5th October, 2012. It is an Act of Parliament to provide for the functions, organization and administration of the National Intelligence Service pursuant to 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 for connected purposes. It set the conditions for the limitation of rights and fundamental freedoms. Its main concern was with Rights and fundamental freedoms, and the conditions for limitation of rights and fundamental freedoms. Some of the rights and fundamental freedoms that were limited by this Act include: freedom of expression; political rights; freedom of movement and residence; the right to privacy; the right to access information; freedom of association; the right to assembly, demonstrate, picket and petition; the right to labour relations and the economic and social rights (Kenya, 2012c).

It defines “activities of foreign interference” as activities relating to the Republic that are carried out by or on behalf of, or directed or financed by or undertaken in collaboration with a foreign power. It also outlines the powers and functions of the Director-General of the National Intelligence Service. The Act also outlines the formation of oversight bodies like: The National Intelligence Service Council; Parliamentary Oversight; and the Intelligence Service Complaints Board (Kenya, 2012c).

*Security Laws (Amendment) Act No. 19 of 2014:* The Security Laws (Amendment) Act No. 19 of 2014 is an Act of Parliament to amend the laws relating to security. The date of assent was 19th December 2014 and it commenced on 22nd December 2014. It sought to make stricter penalties for those charged with security related offences and limit freedom of the press (Kenya, 2014). The Kenyan lawmakers passed the Security Laws (Amendment) Act No. 19 of 2014, which empowers security forces and inhibits the freedom of the media and other sources of independent scrutiny. This legislation also allows Kenyan police to hold terror suspects for nearly a year, and gives authorities the power to monitor and tap phones (Kenya Counter Terrorism Project, 2018). It also amended the Penal Code to include prohibited publications and broadcasts, which effectively limited the freedom of expression and the freedom of the media under Articles 33 and 34 of the Constitution, as specified under this section for the purposes of limiting the publication or distribution of material likely to cause public alarm, incitement to violence or disturb public peace (Kenya, 2014).

*The Public Order (Amendment) Bill, 2019:* This is a Bill for An Act of Parliament to amend the Public Order Act. It was introduced to the National Assembly on 15th March 2019. It has not been effected into law. It was introduced so as to shift blame for any terrorist acts to the organisers of events, who are supposed to compensate any loss of property during such events. Its main purpose was to introduce the provision providing for penalties for a person who while at a public meeting or public procession causes grievous harm, damage to property or loss of earnings. The principal object for this Bill is to amend the Public Order Act to make provision for organizers of public meetings or public procession leading to loss of property, life or earnings to take responsibility for the loss and compensate the affected persons (Kenya, 2019).

#### 4.2 Role of the Civil Society in promoting or opposing Anti-Terrorism Legislation

This section addresses some of the roles that the CSOs have played in promoting or opposing anti-terrorism legislation in Kenya.

*Protecting Human Rights and Civil Liberties:* The Civil Society Organisations (CSOs) have played a major role in protecting the human rights and civil liberties of those impacted on by the anti-terrorism legislation in Kenya. In a study conducted in three countries namely Afghanistan, Kenya and India, Howell and Lind (2016) observed a concern

that the initial reluctance or indifference of many civil society organisations to respond or intervene when certain groups in society were branded as suspect, such as Muslim charities or international non-government organizations [NGOs] operating in the Middle East and other conflict areas. Such responses were viewed as a failure to exercise the behaviours of civil society normally expected in liberal democracies, such as supporting minorities and reining in the excesses of an over-reaching government (Howell & Lind, 2016:2-3).

*Advocates for the Rule of Law:* The CSOs have played the role of advocates asking the Government to uphold the rule of law and respect the rights to life. This has been in response to the Government agencies engaging in extra-judicial executions, which have been so rampant in Muslim dominated areas in Nairobi, Mombasa and even North-Eastern regions.

*Civic Education and Sensitisation of the Local Communities:* The Civil Society organisations have also played the role of partnering with the development actors to sensitise the local communities on the dangers of being recruited into terrorist rings like Al-Qaeda and Al-Shabaab. These they do through implementing sensitisation programmes, usually funded by the donor community and other development actors.

*Facilitating Legal Representation for the Victims:* The Civil Society Organisations have also stood out as the voice of the voiceless. In this case, they have even been at the forefront in facilitating legal representation for those arrested on grounds of engaging in terrorist activities, when everybody fears to associate with them.

*Facilitating Debate on Countering Violent Extremism:* Kenya Human Rights Commission (KHRC) together with the Muslim Human Rights Forum, are among some of the human rights organisations which have organised conferences and roundtable discussions of their own on the tightening links between counter-terrorism, civil society and aid (Howell & Lind, 2016). The Muslim Human Rights Forum is a conglomeration of Muslim CSOs fighting for inclusion and social justice as well as human rights. The KHRC specifically concerns with the following key area: transformative justice; economic and social justice, political pluralism and diversity and institutional support and development.

*Putting Government on Checks against abuse of Human Rights:* Some Muslim organisations and human rights lawyers have been speaking out against new government controls of civil society and abuse of human rights. Prominent among these has been Muslims for Human Rights (MUHURI). Their main areas of concern have been: Constitutionalism and Rule of Law in Political, Economic and social Processes; Human Rights and Gender Parity in National Policies; Citizens’ Participation in Good Governance and Social Accountability; and Community Access, Use and Benefits of Land and Natural Resources.

*Partnering with Academia to Research on CVE:* The CSOs have partnered with the academia on various occasions to

conduct research and disseminate the findings with a view to establishing the evidence base to inform decision-making with regard to handling the delicate issue of CVE. On 9 December 2016, beneficiaries of the Ryoichi Sasakawa Fellowship Fund (SYLFF) of the Tokyo Foundation for Policy Research brought together distinguished Scholars to discuss the topic of CVE by disseminating the findings of their research work. The topics that were discussed included: Political and Economic Perspectives to Radicalization; Violence and Radicalization in the East of Democratic Republic of Congo; Historical Injustices and Violent Extremism: A Case Study of Uganda; and Media, Terrorism and Youth Radicalization (Mwende *et al.*, 2017). The Scholars were drawn from Universities in Kenya, Uganda, DRC Congo and South Africa.

#### 4.3 Impacts of the Laws and Policies on Countering Violent Extremism

Despite the role that CSOs play in countering violent extremism, the laws that have been put in place in the country have had an impact in their operations in one way or the other. In this section, some of these impacts are discussed.

*Human Rights:* The greatest impacts on human rights have been on freedom of the media. Media houses have been threatened with withdrawal of operating licenses for covering terrorist activities or effects of terror. Some media houses have even been shut down for a few days for showing the World pictures from a terrorist site. There is also the curtailment of the rights of refugees to live in a safe country away from their home. The Somali refugees in Dadaab Camp were singled out as the greatest recruits for the Al-Shabaab, and therefore the Government moved in to close the camp and return the refugees to their motherland, which was still not safe, and against international conventions. The Kenyan Anti-Terrorism Police Unit (ATPU) has allegedly been responsible for extrajudicial executions, disappearances, and mistreatment of individuals arrested on terrorism charges (Kenya Counter Terrorism Project, 2018).

*Civil liberties:* In most cases, the State reaction has been the premise of reactionary tactics to combat terrorism – by pursuing terrorists and sometimes victimising a community – instead of preventive measures. In the process, the civil liberties of whole communities are curtailed and trampled upon by state machinery. Section 36A of the Prevention of Terrorism Act specifies the condition for the interception of communication by the National Security Organs. It says that (1) The National Security Organs may intercept communication for the purposes of detecting, deterring and disrupting terrorism in accordance with procedures to be prescribed by the Cabinet Secretary (Kenya, 2012b). This section can easily be abused to trample on civil liberties of Kenyans.

*Political space:* Denied registration of a political party on religious grounds, when Islamic Party of Kenya (IPK) was denied registration. But with the recent registration of the

Communist Party of Kenya (CPK), a door may be opened for ideology-based political parties.

*The rights of minorities or socially/politically marginalized groups:* The minorities, especially from the Muslim communities living in the urban areas have been the greatest targets of anti-terrorism crackdown by the Government agencies. Whenever there is a crackdown on terrorists, it is usually the Muslim dominated areas that are targeted. This has been the case in Nairobi's Eastleigh Estate, which is home to a majority of Somalis and also Old Town, Mombasa.

*Community cohesion, safety, and security:* Divide and rule tactics by the Government, setting community against community and moderate against radical Muslims. Some of the other issues that have been raised with regard to the anti-terrorism legislation in Kenya include the following:

*Deregistration for Tax Evasion:* The Kenya Human Rights Commission has been deregistered allegedly for failing to pay taxes and illegal bank accounts. The Chief Executive Officer of the NGO Coordination Board, Fazul Mohamed, said that KHRC's registration had been cancelled because it had flouted the law. The NGO Coordination Board has accused the human rights lobby of running four illegal bank accounts at NIC Bank and Commercial Bank of Africa. A letter to the KHRC said in part:

*"Your organisation has failed or declined or refused to pay statutory taxes to the Kenya Revenue Authority amounting to Sh100 million, as provided under schedule 10 of the Income Tax Act."* (Muthoni, 2017).

If the Government wants to ban the activities of a human rights organisation, it was simply to maliciously accuse it of tax evasion, money laundering, and misappropriation, embezzlement and diversion of donor funds, and that was it. They would use the NGO Coordination Board as well as the Central Bank.

The NGO Coordination Board also froze the bank account of Key Empowerment Foundation Kenya, an NGO associated with an opposition figure in Kenya, and fierce critic of the Government, Raila Odinga's daughter Rosemary Odinga, after it allegedly received KES. 530 million (about US\$ 5.3 Million), illegally from a US-based Open Society Foundations (Mueni, 2017; Muthoni, 2017). The NGO Coordination Board wrote a letter to the Central Bank of Kenya Governor Dr. Patrick Njoroge and the Director of the Financial Reporting Centre (FRC) asking them to identify and discredit accounts held under the name of Rosemary's NGO saying they *suspect* (emphasis mine) the funding is illegal. The Board said they had discovered that the foundation was associated with dishonest political activities and unlawful leadership change tactics and realised that it had opened and were operating several illegal and unauthorized bank accounts. The Board further accuses the organization of using the foundation's bank accounts as a cover up strategy for money laundering

and diversion of donor aid, contrary to the provisions of enabling regulations and has asked the FRC to probe it (Mueni, 2017).

*Harassment and Intimidation of Muslim NGOs:* In 2015, soon after the Garissa University attack, MUHURI was placed on 'terror suspect list' after Garissa attacks because of its work exposing abuses by security forces. MUHURI accused the government of using anti-terror measures to crack down on its work, suggesting it has been targeted for exposing abuses by the security services. The list included Al Qaida, Boko Haram and Islamic state - alongside the NGOs and several money-transfer organisations, *Hawalas*, which predominantly serve the Somali community. The Government also arbitrarily freezes accounts of people suspected to be funding terrorist activities.

*Revoking Licenses of Remittance Companies:* Kenya is a member of the Eastern and Southern Africa Anti-Money Laundering Group, a Financial Action Task Force-style regional body. In attempt to counter the financing of terrorism, in July 2018, the Government of Kenya appointed the Director General of its financial intelligence unit, the Financial Reporting Center (FRC). However, this agency has been crippled with challenges of financing and human resource capacity. The FRC lacks an electronic reporting system for analyzing suspicious transactions. Because of this, the use of unregulated informal financial mechanisms, including *hawalas*, continued (Refworld. (2018).

Following the Garissa University shootings that left 148 people dead on 2 April 2015, Kenya ordered the closure of 13 remittance companies specialising in money transfers to Somalia. The closures were a response to allegations that the firms have links with Al-Shabaab (The Guardian Online, 2015). Several NGOs cautioned that revoking the licenses of remittance companies over fears they are linked to al-Shabaab would hit a vital lifeline for ordinary citizens in Somalia. The NGOs raised concerns about the disruption of a vital humanitarian lifeline. The shutdowns will make it harder for ordinary Somalis to pay for food, water, healthcare and education, according to a statement issued by 15 NGOs (The Guardian Online, 2015).

## V. CONCLUSIONS AND RECOMMENDATIONS

This study does appreciate the good work that the CSOs continue to do in countering violent extremism in Kenya. It does acknowledge the need for partnership with other key stakeholders in addressing CVE. Despite the working partnerships, there have been some bottlenecks identified, especially in the interaction of the CSOs with the regulating legislation as well as legal environment for CVE in Kenya. The study therefore concludes that the CSOs continue to play a major role and is an integral partner in Government efforts in addressing the same. So rather than being curtailed by the legal regime, there is need for collaboration that will ensure effectiveness in efforts to address CVE in Kenya. Based on this conclusion, the study makes some recommendations

which will ensure this smooth working relationship between the CSOs and the Government. These include:

*Tightening border controls:* Kenya must attempt to tighten her border control mechanisms. The borders, especially with Somalia are very porous and make it easy for infiltration of alien, even with arms. The border security must be well remunerated to escape the attempts of bribery by rich individuals who want to enter the country with weapons to cause damage.

*Working with the local communities through community policing:* The Government needs to build links with the communities and to face the threat and danger of terrorism together. This can be done through working with trusted community leaders to surveil their residential areas and report any suspicious activities. The Government should conduct research to understand the changing faces of terrorism, in order to design proper counter-terrorism policies that will stand the test of time.

*Investing in data and intelligence:* In agreement with a suggestion by Ondieki (2019), the Government of Kenya needs to invest in collection of intelligence information and police-community relations. Include communities in the most affected areas as spies and interpreters of any terror messages. This will be easy if the police improve its relations with the community. The recent biometric registration of Kenyans through the Huduma Namba may be a step in the right direction in terms of data surveillance. There is also need to conduct national and local level assessments on the risks and drivers of violent extremism. In agreement with (Kimari, 2018), this study recommends that CVE programmes need to respond to the factors that drive and motivate recruits into violent extremism in the different counties.

*Using strategic positioning as a launching pad:* Because of its strategic positioning as host to the United Nations Office in Nairobi (UNON), Kenya serves as the coordination hub against transnational threats. It is used by the international community as a launching pad for any operations against the terrorist elements in the neighbouring countries. And according to Refworld (2018), in December, Kenya co-sponsored UN Security Council Resolution 2396 on returning and relocating foreign terrorist fighters. In all his international assignments, the President of Kenya always places at the top of his agenda, the fight against terrorism and countering radicalisation.

*Cooperation with the United States Security Initiatives:* Kenya has been a key stakeholder in an initiative by the United States Government dubbed Security Governance Initiative (SGI). Actually, the objectives of this initiative are in sync with Kenya's Security Strategic objectives which include inter alia: administration of justice, border security and countering violent extremism (CVE).

*Sharing of CVE lessons and impact stories between all relevant factors:* CVE programmes must be continuously assessed to guide future programmes. This requires measuring their impact as well as studies on the public perception of the



programmes and their implementation (Kimari, 2018). This will involve an evaluation of the past CVE programmes to ascertain what worked and what did not work, where and why; and for whom. This will lead to redesigning what did not work while being able to replicate what worked in similar contexts, without re-inventing the wheel.

*Provide education and vocational training:* Provide education as well as vocational training to the marginalized communities, the vulnerable citizens and other minority groups vulnerable to violent extremism.

*Economic Empowerment and Establishing Income Generating Activities*

Poverty has been one of the major reasons for ease of recruitment into Violent Extremism. Empowering the youth economically, by initiating for them income-generating activities or provision of soft-loans, would ensure that the youth are engaged and do not involve themselves in terrorist activities.

*Amnesty and Legal Framework for Rehabilitation:* Come up with a legal framework that will ensure no victimisation for terrorists who have voluntarily surrendered, and to ensure that they are effectively rehabilitated back to the community.

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## AUTHOR

Awuor Ponge is an Associate Research Fellow in-charge of Research, Policy and Evaluation at the African Policy Centre (APC). He is a Doctoral Candidate and Adjunct Faculty at Kenyatta University’s Department of Sociology, Gender and Development Studies, pursuing a PhD in Gender and Development Studies. He is a Double-Masters Degree holder in Development Studies from the Institute for Development Studies (IDS) of the University of Nairobi on Sasakawa Young Leaders Fellowship Fund (SYLFF) Scholarship; and in Education, Gender and International Development (MA – EGID) from the Institute of Education (IOE) of the University of London on a Commonwealth Scholarship. Previously, Ponge graduated with a Summa Cum Laude Bachelor of Arts (BA) Degree in Literature and Philosophy from the University of Nairobi.