

VIOLENT EXTREMISM-RELATED JUSTICE IN COASTAL KENYA: AN OPPORTUNITY TO TURN CITIZEN MOTIVATION INTO ENGAGEMENT

POLICY BRIEF - SEPTEMBER 2018

Over the past few years, Kenya has broadened its response to violent extremism (VE) beyond just a securitized/military approach to incorporate local-level preventative initiatives as well. Accompanying this shift, the body of research to understand push and pull factors, drivers, and dynamics of VE has also grown. A 2018 study conducted by Search for Common Ground (Search), in collaboration with the firm Images and Imaginations, examined two aspects of the judiciary that play a critical role in addressing VE risk factors and preventing VE incidences: judicial actors and judicial processes.¹ This study focused primarily on local level justice actors that are involved in VE related cases: magistrates, court user committees (CUCs), and probation officers.² After examining knowledge, attitudes and behavior around the judiciary, the research then looked at current and potential opportunities for engagement of young people, who are often overlooked in peace and security efforts within these at-risk communities.

The findings from this research highlight the need to leverage youth and community desire to participate in local P/CVE processes and turn this interest into constructive action. The findings also identify areas of vulnerability and injustice in the criminal justice system that require the attention of the GoK and civil society. Key findings and analysis of their implications are outlined by theme below.

KENYAN P/CVE RESPONSE

Due to the increase in violent extremist (VE) activity in coastal Kenya, in 2016, the Government of Kenya (GoK) developed a National Strategy on Countering Violent Extremism (CVE). The strategy addresses the need for a balanced response to VE that incorporates preventative initiatives as well as approaches that seek to tackle the root causes of VE drivers. In 2017, county P/CVE action plans were created in four coastal counties: Lamu, Kilifi, Mombasa and Kwale. Their development brought together stakeholders from the government, police and security forces, civil society, religious institutions, universities, and the community to collectively discuss and plan P/CVE strategies. These action plans serve to inform local level responses to VE and encourage community ownership, understanding, and support of P/CVE efforts.

LEGAL AWARENESS

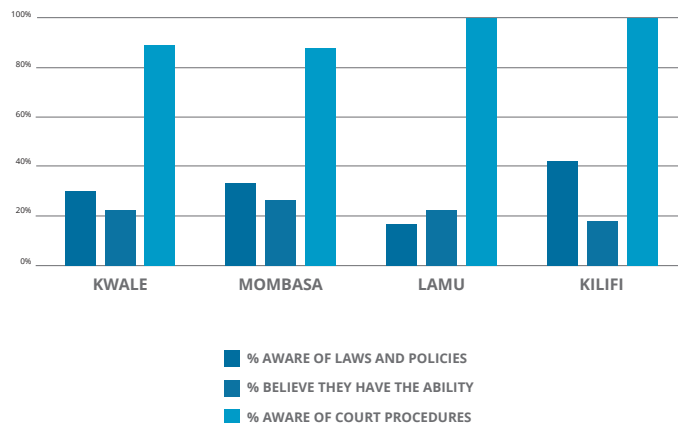
Despite the existence of collaborative, county level CVE action plans in all four counties, the study found consistently low levels of awareness of policies, procedures and laws related to P/CVE, as well as of the action plans themselves. Communities reported low awareness of court procedures related to terrorism charges, with only 20% of respondents reporting any awareness. Further only 17% of respondents across all counties knew about the County Action Plans despite their central role in the GoK's approach to VE. Follow up conversations with criminal justice actors highlighted the need for increased capacity building of court magistrates on the legal processes for VE and terrorism charges. This suggests that the magistrates' own gaps in knowledge may contribute to the low levels of awareness, and ultimately to the poor judicial resolution of VE cases.

¹ All research in this brief, unless otherwise noted, is based off of a February 2018 baseline report conducted in Mombasa, Kwale, Kilifi and Lamu Coastal counties. The full report is available on request.

² Court User Committees are committees made up of police, security, magistrates, civil society organizations and committee leaders and are used as a way to address complaints and share information.

Youth are a key demographic for analysis and engagement given their particular vulnerability to VE-related laws and judicial processes. The research found that youth had a higher awareness of laws, policies, and court procedures in place to address VE than the disaggregated figures noted above. On average approximately 30% of all youth respondents were aware of VE laws and policies while only 21% of youth respondents reported awareness of VE court procedures. Yet over half of all youth reported having participated in informal legal information sessions, indicating relatively limited gains in awareness through these efforts. Despite the low awareness, the majority of youth still felt that they had the ability to contribute to peace and security initiatives in their communities. This provides an opportunity for the GoK and civil society to capitalize on the willingness and capabilities of youth to positively pursue peace and security.

Youth Awareness vs Ability to Contribute to Peace and Security



LEGAL GAPS

The study highlighted critical gaps in the protection of human rights. Of particular concern to the communities was police treatment of VE suspects. Police abuse was identified as an impediment to accessing justice by 35% of respondents from across the four counties.³ Police abuse was defined as extrajudicial killings, disappearances, severe treatment of VE suspects without due process, delayed judicial proceedings, and alleged torture of suspects.

The research also highlighted the fact that the National CVE Strategy lacks strong guidance on human rights protections to inform P/CVE work, leaving communities without recourse to address police abuses. Specifically, despite covering broad topics within its scope, the National CVE strategy does not include a cross-cutting human rights pillar or other human rights framework.⁴ These two factors - observed police abuse and the absence of stated human rights protection guidance - contribute to distrust of the government's ability to address VE fairly.⁵ Overall, 45% of study respondents, and the majority of youth surveyed (54%), expressed little or no trust in the government to fairly address VE.

Another issue brought forth was the weak legal framework for Al Shabaab/Somalia returnees. Kenya currently lacks a framework or policy for the reintegration of returnees, and the process is managed by the military. This was of particular concern in Kwale and Kilifi. According to respondents, returnees are often subject to torture, forced disappearances, and extrajudicial killings since there are no policies in place to guide their rehabilitation and protect their human rights. Without protections or fora for discussion, returnees' experiences are often not seen or heard and they find themselves with no opportunities to address their issues. Returnees are not even able to seek assistance from organizations dealing with VE because there is no policy to guide that assistance and no donor support. Clarifying the treatment of returnees would increase trust among the community in the government's ability to fairly address VE in Kenya.

VULNERABILITY AND INABILITY TO SEEK JUSTICE

Previous research defined individuals that are most vulnerable to recruitment into VE groups as primarily youth - drug users, school dropouts and un/underemployed youth in particular, as well as those who have a difficult homelife or family/friends who were victims of extrajudicial killings/disappearances.⁶ Although this definition of vulnerability highlights those individuals who are most at risk of recruitment into VE, it is not a comprehensive understanding of vulnerability as defined by communities. For these communities, vulnerability also refers to a person's susceptibility to be targeted by police abuse and their subsequent inability to access justice. This study identified issues such as delayed judicial proceedings and suspension of due process as key gaps in the judicial sector, in all four counties, that prevent individuals from gaining access to justice. Abuses such as disappearances and extrajudicial killings also take away an individual's ability to seek justice, thus contributing to vulnerability. This broader definition of vulnerability confirms the idea that hard security approaches, which prioritize security over due process, can actually create more marginalization and, therefore, more potential for grievances that recruiters can exploit.

³ Additional barriers to justice identified by the community included: corruption - 30%, land - 1.5%, and inefficient judiciary - 3.22

⁴ Kenya. (2015). National Strategy to Counter Violent Extremism. National Counter-Terrorism Centre. Not currently available online. Also: Fransen, R et al. (2017). National Action Plans on Preventing Violent Extremism: A Gendered Content Analysis. <http://www.icanpeacework.org/2017/09/19/gendered-analysis-national-action-plans-preventing-violent-extremism/>

⁵ Search for Common Ground (2017). November Conflict Scan.

⁶ Search for Common Ground (2017). Meet Me at the Maskani.

OPPORTUNITIES FOR PEACE

On the positive side, 97% of community members who participated in the study expressed a willingness to engage more with government, criminal justice actors, and peace and security initiatives despite the noted gaps in awareness, low levels of trust, and perceptions of human rights abuses.

The following recommendations are formulated to the GoK, local actors, and the international community for consideration for inclusion in all efforts to address violent extremism and pursue peace in coastal Kenya.

1. **Increase awareness of VE policies and laws through joint community-judicial sector peace and security initiatives and strengthened judicial community engagement programs.**

Across the region, awareness of court procedures and laws addressing VE was low, but interest to engage with criminal justice actors and the GoK was high. Programming designed and implemented by both justice actors and the community can provide an opportunity for people to better understand the policies and laws impacting them. This would also allow the community to access justice actors to communicate concerns and complaints. Already existing initiatives, like the CUCs, Nyumba Kumi, and community dialogues, can be strengthened and leveraged to inform the community on court procedures and policies. Joint programming between justice sector actors and the community can increase trust and awareness among the community and offer an opportunity for two-way communication.

3. **Strengthen human rights protections within P/CVE frameworks in order to rebuild trust with the community.**

The initial securitized response to VE in Kenya has instilled a priority for hard security approaches that often result in harsh tactics towards VE suspects, resulting in community mistrust of those security forces expected to protect them. These issues can also discourage community members from coming forward to provide information. Creating stronger, VE-specific legal frameworks to protect human rights and address issues of police treatment can begin to repair the relationship between the community and criminal justice actors. Strengthening police oversight bodies like the Independent Police Oversight Authority and Kenya National Commission on Human Rights would also contribute to building confidence in the accountability of police in VE-related actions.

2. **Increase key judicial actors' knowledge of VE laws, policies, and court procedures in order to improve the quality of justice services.**

While communities have communicated an expectation of the judiciary to educate the public, judicial actors in coastal Kenya themselves have shared that they are unsure of the legal processes and sentencing guidelines for VE. This has contributed to delays in court cases and suspects being tried without due process. Including judicial actors in County CVE Action Plan development and implementing VE trainings for the judicial sector on laws and policies related to VE trials can assist them in increasing their knowledge and provide opportunities to engage further with communities.

4. **Develop a solid policy and legal framework to facilitate the rehabilitation and reintegration of Kenyan returnees from Somalia.**

A key concern to be addressed is the lack of a policy and framework to rehabilitate and reintegrate returnees coming back from fighting with Al-Shabaab in Somalia. This policy and legal framework should be developed with input from communities, local justice actors like the magistrates, CUCs and probations offices, as well as local CSOs and NGOs, in a similar way that the County CVE Action Plans were developed with all stakeholders. Including the perspectives of communities and key stakeholders in such a framework will help to develop a response that integrates the needs, concerns, and fears of the communities where the returnees are from and are returning to, and will build a sense of community ownership and awareness for the policy and framework.