

Human rights abuses of Muslim minority in Mombasa, Kenya

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Abstract: Despite Constitutional guarantees, human rights of Muslim minorities in Kenya are being infringed upon by government security agents. This study examines the actual forms human rights violations have taken place against Muslim minorities in Kenya, in particular Muslims in Mombasa city after 9/11. It further examines the reasons why Muslims in Kenya and Mombasa in particular become the victims of these human rights violations. This study is based upon documentary sources, a series of unstructured interviews with community leaders, defense lawyers, human rights activists and members of human rights organizations. The study found human rights abuses against the Muslim communities in Mombasa after 9/11 being unprecedented. It has taken such forms as, extra-judicial executions of Muslim clerics and activists, forceful disappearances of Muslim terror suspects, arbitrary arrests, raids conducted particularly of Muslim homes, and closing down of mosques in Mombasa by police. Muslim Kenyans are suffering in the hands of the special police unit known as Anti-Terrorist Police Unit (ATPU). Since its creation in 2003, this counter-terrorism branch reportedly committed gross human rights abuses that violated international, regional and domestic laws.

Keywords: Human rights violations, Mombassa, Kenya, Muslim minority, extra-judicial killings.

Introduction

Human rights laws deter people from committing certain acts against fellow human beings, whether in response to an increase in crime or terrorist threats. Conde (1992: 2) defines basic human right as “as rights which are generally considered necessary to give absolute precedence in both national and international law and policy”. These fundamental rights are regarded as universal and unquestionable and are considered the birthright of every individual, irrespective of race, religion or ideology. As Ignatief (2008: 1137) puts it, these

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are the “rights we have as human beings and are therefore the ones we cannot lose”.

Despite some differences in definitions, scholars, practitioners, and policy makers agree that there are basic fundamental rights which should be safeguarded through international, regional and national treaties. Article 3 of the United Nation’s High Commission for Human Rights affirms the right to life, liberty and security of a person, freedom from torture and cruelty, inhumane or degrading treatment.

Kenyan citizens, like others, are thus entitled to all the rights enumerated in various documents. It is the fundamental duty of the state to observe, protect, promote and fulfil the fundamental rights of Muslim minorities in Kenya as conferred by the Constitution by putting in place measures and policies to safeguard these fundamental rights from further abuse. This study examines the human rights concerns adversely affecting Muslim minorities in Kenya with specific focus on Muslims in Mombasa city. It also investigates the actual forms these human rights violations have taken place against Muslim minorities in Kenya after 9/11. It further examines the reasons why Muslims in Kenya and Mombasa in particular become the victims of these human rights violations. Apart from the documentary sources used in this research, a series of unstructured interviews were also conducted with participants ranging from Muslim community leaders, defense lawyers, human rights activists and members of human rights organizations who were identified through snowball sampling.

Human rights abuses perpetrated against the Muslim communities in Mombasa after 9/11 were unprecedented. Under the guise of national security, the government has resorted to extra-judicial executions of Muslim clerics and activists, forceful disappearances of Muslim terror suspects, arbitrary arrests, singling out Muslim homes for raids, and closing down of mosques in Mombasa by police. Areas inhabited by Muslims were arbitrarily declared “crime scenes” (*Daily Nation*, November 17, 2014; *Standard Newspaper*, November 19, 2014). These threats faced by Muslim Kenyans were aggravated by the special police unit known as Anti-Terrorist Police Unit (ATPU). Since its creation in 2003, this counter-terrorism branch reportedly committed gross human rights abuses that violated international, regional and domestic laws. Mombasa has been labeled the hotbed of extremism and radicalization of Muslim youths.

As reported by one of the interviewees, the majority of victims were from Mombasa: “... A number of brothers were taken to Somalia (illegal extradition),

99% of these brothers were coming from coast, Mombasa” (R8: DU16). Prestholdt (2011) corroborates similar practises when examining the experiences of victims of Kenya-American counter-terrorism strategies. He suggests that Muslim minorities in Kenya in general and in Mombasa City in particular had become victims of human rights violations since 9/11. Another interviewee confirmed that the Muslim community in Mombasa suffered the majority of casualties in most of the recorded human rights violations in Kenya. A third interviewee stated that: “The incidences of violating the privacy of the people happens in Mombasa. Police broke into people’s home all in the name of looking for terrorist suspects (RI: DU4). The interviews conducted and the documents analyzed show the following forms of human rights violations in Kenya:

- i. Arbitrary arrests
- ii. Extra-judicial killings
- iii. Illegal extradition outside Kenya
- iv. Forceful disappearances
- v. Torture

Arbitrary arrest

Arbitrary arrests, detentions and interrogation represent significant cornerstones of human rights violations after 9/11; suspects are arrested and authorities are in dire need of information in order to deter future attacks. The arbitrary arrests and detentions of suspects in Kenya are more political than legal. There are political pressures on executive officials to crackdown on Muslims in an attempt to save their jobs, while the decision makers, human rights organizations and civil fraternity in general who advocate the rule of law are labeled as sympathizers of terrorists. The executive authorities faces immense pressure to detain or sometimes kill suspect even when intelligence brings incomplete and insufficient evidence (Barak, 2002: 28). The most highly compromised human rights violations after 9/11 took place under the guise of fighting terrorism.

Prestholdt (2011) asserts that the rights of Kenyan Muslim minorities were violated through aggressive and violent counter-terrorism measures adopted by the authorities. Thousands of Kenyan Muslims were harassed and illegally held in secret detention centers for weeks under the pretext of safeguarding national security. Furthermore, Kenyan security forces were known to be trained and

funded directly by the U. S. government. Aronson (2013) points out that, after 9/11, counter-terrorism acts around the globe, sanctioned varying degrees of detention without putting in place effective monitoring instruments. Table 4.1 summarizes the abuses from 2007-2014.

Table 1.1: Arbitrary arrests by security agents under the guise of fighting terrorism, 2007-2014

Date of Incident	Type of Human Rights Abuse	Victims	Place of Incident	Number of Victims
2 nd February 2014	Arbitrary arrests and detentions	Muslims in Mombasa	Mombasa (Inside <i>Masjid</i> / Mosque Musa)	70
December 2013 (over the course of 3 days)	Arbitrary arrests and detentions	Somali ethnics	Mombasa	300
Early February 2013	Arbitrary arrests and detentions	Muslims	Mombasa	30
22 nd October, 2013	Arbitrary arrests and detentions	Ethnic Somalis (refugees and non-refugees)	Mombasa	120
June 2013	Arbitrary arrests and detentions	Muslims in Mombasa	Mombasa	UNKNOWN
June 2013	Arbitrary arrests and detentions	Muslims in Mombasa	Mombasa	UNKNOWN
January 2007	Arbitrary arrests and detentions	Muslims in Mombasa and other parts of Kenya	Mombasa and other parts of Kenya.	Over 100

Source: US Department of State (2013). Diplomacy in Action, <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226844.htm>. Accessed on 30th November 2014. Amnesty International Annual Report (2013). The State of the World's Human Rights, http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf. Accessed on 30th November 2014

These arbitrary and indiscriminate arrests were intensified under the pretext of searching for suspected terrorists after a terror attack had allegedly taken place. In the course of carrying out security raids and crackdowns, Muslims were profiled and targeted. As a result, Muslims in general were treated as potential suspects which, in turn, led to the entire Muslim community being singled-out and becoming stigmatized. One interviewee pointed out that whenever there was a terrorist attack, Muslims were outrightly blamed as the first suspect, and they were arrested arbitrarily and declared guilty even before they were put on trial. In January 2007, over 100 people were arbitrarily arrested and extradited to Ethiopia. One of these individuals, Mohamed Abdulmalik, a resident of Mombasa, was sent to Guantanamo (Abdallah, 2009: 12). On March 31, 2007, several armed policemen cordoned off the entire residential area of Kongowea, Mombasa, breaking into the houses and humiliating innocent people including women and children. Lastly, they arrested two people for questioning and released them after six hours without charges (Kimathi & Butt, 2008: 31-32).

From 24 to 25 April, 2007, the Kenyan Anti-Terrorism Police Unit (ATPU) raided a house in Guraya, Mombasa, at 3 a.m. and arrested 11 persons including an ailing 80 year old man and a 14 year old boy, under the guise of searching for terror suspects (Kimathi & Butt, 2008: 31-32). The police officers took away the cash and valuables found in the house. Ten of the 11 victims were released the following day without charge. The remaining victim, an Islamic school teacher, from Comoros Island was deported back to his country despite obtaining a court order barring the state from doing so (Kimathi & Butt, 2008: 31-32).

On February 12, 2008, between 4.00 a.m. and 5.30 a.m., heavily armed policemen raided houses of Tudor, Nyali, Barsheba and Sparkiin the residential areas of Mombasa. The residents were forced to lie down while their premises were ransacked. Several individuals were arrested including four sisters aged between 15 and 17 years (Kimathi & Butt, 2008: 31-32).

According to Prestholdt (2011), arbitrary arrests and the general counter-terrorism measures in Kenya contravene and violate domestic and international human rights laws. The counter-terrorism operations are designed in such a way as to exclusively target coastal Muslim communities comprising of Arabs, Swahili, Asians, and Somalis which facilitate the discriminatory policies of the government of Kenya against perceived “foreigners”. These arbitrary arrests of Muslims in Kenya not only violate the Kenyan Constitution but also international human rights laws which guarantee freedom and security of the person, rights of the arrested person, fair hearing and rights of persons detained, held in custody or

imprisoned. Article 9 of the UNDHR states that “no one shall be subjected to arbitrary arrest, detention or exile”. As stated by one of the interviewees, there are a lot of cases where people are arrested arbitrarily and then released. In his opinion, this tactic was chosen deliberately in order to instill fear in the Kenyan Muslims and pass the message on to other members of their community that they were not safe in Kenya and that anyone could be arrested at any time (R4: DU2).

It is worthy to point out that arbitrary arrests take different forms; Firstly, arresting Muslims indiscriminately, especially when there is a terror attack, and stopping, searching and arresting any person with Islamic appearance. Secondly, carrying raids in Muslim homes where security offices use force and break in into the Muslim homes under the guise of looking for terrorists, hence tempering with the rights to privacy as conferred in Section 29 of the Constitution of Kenya.

The Anti-Terrorism Police Unit (ATPU) carries out its security operations in course of which the privacy of the people is violated. They break into the Muslim homes in the middle of the night, women are dragged out of their beds undressed, while Children are frightened and humiliated; and all these violations are done in the name of counter-terrorism (Kimathi& Butt, 2008: 31-32-35). The arbitrary arrests and the violations of rights to privacy is not only prohibited by the Kenyan Constitution but also guaranteed and affirmed by international law which is considered part and parcel of Kenyan law.

Illegal extradition

The word “extradition” is derived from two Latin words *ex* and *traditum*, which basically means surrender of accused or convicted persons, criminals or fugitives. However, in law lexicon, “extradition” is defined as the surrender of an accused or convicted person to the state where he is accused of, or convicted of committing a crime (Agarwal, 1999: 231). Extradition process involves two states: one, the territorial state, i.e., the state where the accused or convict is found; and two, the requesting state, i.e., the state where the crime is committed, and the state that requests for the extradition of the accused (Agarwal, 1999: 231).

Extradition of terror suspects outside Kenya’s jurisdiction without due legal process of the law has become one of the hallmarks of its “fight against terrorism” and is spearheaded by the Anti-Terrorism Police Unit (ATPU). The perpetrators of this legal malpractice exercise this kind of extradition in order to by-pass the stringent extradition procedures set out in international and regional treaties as ratified by the Kenyan Government. Article 3 of the United Nation’s Convention against Torture (CAT) provides that “no state shall expel, return, or

extradite a person to another state where there are substantial grounds for believing he or she would be in danger of being subjected to torture.”

Therefore, expulsion of a person to a country which practices torture constitutes a violation of the non-refoulement principle (Siviede, 2007: 17). Despite this explicit prohibition many cases of illegal extradition have been recorded after 9/11 even to countries where human rights violations are practised systematically (Siviede, 2007: 17). These illegal extraditions can be classified into three categories as follows:

Extradition to Kampala, Uganda. In September 2010, 13 Kenyan Muslims were taken into custody and forcefully transferred to the Ugandan capital of Kampala to face terrorism charges without due extradition procedures. This incident occurred in the aftermath of the twin bomb attacks in Kampala on 11 July 2010 which killed 80 soccer fans watching the World Cup finals on television. The suspects were secretly extradited from Kenya without being presented to any Kenyan court of law. When Al Amin Kimathi, the Executive Director of the Muslim Human Rights Forum (MHRF), visited Kampala to monitor the trial, he too was arrested, interrogated, detained (for one year) and charged on allegations related to murder and terrorism. The forced transfer of suspects and later the arrest of a concerned human rights activist were both widely condemned by human rights bodies, the Supreme Council of Kenyan Muslims (SUPKEM), Kenyan government officials, and several civil society organizations. Kenya's Minister of Justice issued the following statement to condemn the extradition fiasco: “Our laws do not permit extra-judicial renditions. Arrested people have the right to be presented to a Kenyan court and only the court can allow such extraditions” (*Standard*, 2010). The Kenya court ruled as follows: “[...] the arrest, detention and removal of the subject from Kenya to Uganda was illegal and transgressed his fundamental rights and liberties. These rights and liberties cannot be given up for expedience's sake” (*Daily Nation*, 2012). Despite the court determination of the illegality of the extradition of suspects and strong condemnation of such practise, Muslim detainees are still being held in foreign prisons, denied access to a fair trial through legal representation, subjected to torture and interrogation by foreign security agents, in the name of counter-terrorism.

Extradition to Ethiopia. In 2006, during the war between Ethiopian forces and the Islamic Court Union (ICU), a number of young Kenyan Muslim men were arbitrarily arrested in Somalia and forcefully transferred to Ethiopia by the Kenyan authorities on allegations of terrorism. Kenyan civilians caught up in the war often tried to cross over the border into Kenya but were prevented entry and

transferred back to Ethiopia. Furthermore, the Kenyan authorities denied the extradited victims' status as Kenyan citizens. Only after the direct intervention of their family members and human rights bodies which succeeded in providing evidence for their rightful status as Kenyan citizens, were the young men allowed to return to Kenya two years later. Despite the gross human rights violations committed against these individuals, no compensation was subsequently awarded. The detainees were held in secret detention centers for weeks which went against the 24-hour minimum detention period without charges, and they were allegedly interrogated by foreign security agents, tortured, and denied access to medical care (Prestholdt, 2011:16-17).

Extradition to Guantanamo. Extradition of terror suspects outside Kenyan jurisdiction without following the due legal process of the law is usually done swiftly, silently and covertly by the assigned members of the Anti-Terrorist Police Unit (ATPU) (Al-Jazeera, 2014). The motive behind this legal misconduct is to avoid legal challenges and procedures which are normally undertaken by the victims' relatives in order to reverse and halt these illegal extraditions. In 2007, a Kenyan national and Muslim resident of Mombasa, Mohamed Abdulmalik, was abducted and detained in various police stations and accused of involvement in the 2002 Paradise Hotel bombing. The suspect was not informed of the reason for his forcible detention, denied the chance for a fair trial through legal representation, and was also denied communication with his immediate family. Despite thorough interrogation, he was not presented to a court of law since no tangible evidence against him could be produced (Aronson, 2013). Despite the lack of evidence linking him to terrorism activities, he was handed over to the US security agency which transferred him to Guantanamo Bay in Cuba (*Daily Nation*, September 2, 2012; *Standard*, September 2, 2012; Prestholdt, 2011: 18).

Table 1.2: Victims of illegal extradition (out of Kenya Jurisdiction)

Date of Incident	Type of Human Right Abuse	Victims	Destination of Extradition	No. of Victims
2006	Illegal extradition	Muslims	Kenya to Ethiopia	300
February 2007	Illegal extradition	Mohamed Abdulmalik	Kenya to Guantanamo	1
September 2010	Illegal		Kenya to	13

Date of Incident	Type of Human Right Abuse	Victims	Destination of Extradition	No. of Victims
	extradition		Uganda	
January 2007	Illegal extradition	Muslim (from different nationalities)	Kenya to Ethiopia	Over 100
20 January 2007	Illegal extradition	Aden Sheikh Abdullah	Kenyan rendered to Mogadishu	1
20 January 2007	Illegal extradition	SaidiShifa	rendered to Mogadishu	1
20 January 2007	Illegal extradition	Salam Ngama	Kenya rendered to Mogadishu	1
27 January 2007	Illegal extradition	Said Hamisi Mohamed	Kenya rendered to Mogadishu	1
27 January 2007	Illegal extradition	Swaleh Ali Tunza	Kenyan rendered to Mogadishu	1
27 January 2007	Illegal extradition	Hassan ShabanMwazume	Kenyan rendered to Mogadishu	1
27 January 2007	Illegal extradition	Hussein Ali Said	Kenyan rendered to Mogadishu	1
27 January 2007	Illegal extradition	Tsuma Solomon Adam Ayila	Kenyan rendered to Mogadishu	1
27 January 2007	Illegal extradition	AbdiMuhammedAbdillahi	Kenyan rendered to Mogadishu	1
27 January 2007	Illegal extradition	Salim Awadh Salim	Kenyan rendered to Mogadishu	1

Date of Incident	Type of Human Right Abuse	Victims	Destination of Extradition	No. of Victims
27 January 2007	Illegal extradition	Abdulrashid Mohamed	Kenyan rendered to Mogadishu	1
10 February 2007	Illegal extradition	Kasim Musa Mwarusi	rendered to Baidoa	1
10 February 2007	Illegal extradition	Ali Musa Mwarusi[M]	rendered to Baidoa	1
10 February 2007	Illegal extradition	AbdallahHalifanTondwe	rendered to Baidoa	1
10 February 2007	Illegal extradition	NasruTuko	rendered to Baidoa	1
10 February 2007	Illegal extradition	Mohammed Said Mohamed	rendered to Mogadishu	1
10 February 2007	Illegal extradition	Mohamed	Rendered to Baidoa	1
July 2010	Illegal extradition	IdrissMagondu	Rendered to Kampala, Uganda	1
July 2010	Illegal extradition	Hussein Hassan Agade	Rendered to Kampala, Uganda	1
July 2010	Illegal extradition	Mohamed Abdow	Rendered to Kampala, Uganda	1
July 2010	Illegal extradition	Muhammad Hamid	Rendered to Kampala, Uganda	1
July 2010	Illegal extradition	Habib Suleiman Njoroge	Rendered to Kampala, Uganda	1

Date of Incident	Type of Human Right Abuse	Victims	Destination of Extradition	No. of Victims
July 2010	Illegal extradition	YahyaMbuthia Suleiman	Rendered to Kampala, Uganda	1
July 2010	Illegal extradition	Omar Awadh Omar	Rendered to Kampala, Uganda	1
July 2010	Illegal extradition	Ismail Abubakar	Rendered to Kampala, Uganda	1
July 2010	Illegal extradition	Al-Amin Kimathi	Rendered to Kampala, Uganda	1
July 2010	Illegal extradition	Hassan Abdu Issack	Rendered to Kampala, Uganda	1
July 2010	Illegal extradition	AbdulAziz Ali	Rendered to Kampala, Uganda	1
July 2010	Illegal extradition	AbdullahiMohamud Abdu	Rendered to Kampala, Uganda	1
July 2010	Illegal extradition	HusseinAdowAbdi	Rendered to Kampala, Uganda	1

Source: Kimathi& Butt (2007).Horn of Terror Report, Nairobi Scan House Press Limited.31-35. Prestholdt, J. S. (2011). “Kenya, the United States and Counter-terrorism”, *Africa Today* Indiana University, 57(4), 3-27.Kadida Jillo, (2010, September 30th) “*Court rules Uganda renditions illegal*”, Daily Nation, <http://www.nation.co.ke/News/>. Accessed on 25th October 2010.

Forceful disappearance of victims

In international human rights terminology, “forceful disappearance” is defined as “the taking of a person into custody by or with the approval of the authorities who

hold the victim secretly and incommunicado who denied that the victim is being held” (Conde, 1999: 36). A number of Muslim youths were reported to have “disappeared” after being arrested by people who identified themselves as police officers. Muslim community leaders and human rights organizations had blamed the police for these heinous acts.

More than 30 civil society groups demanded, on 6 September 2012, that the government thoroughly investigate all cases of killings and disappearances of Muslim terrorism suspects who had pending cases in courts. This demand was made immediately after the brutal shooting of a prominent religious leader, Sheikh Aboud Rogo in Mombasa on 27th August 2012 by people suspected to be security agents. “We note with concern the increase cases of forced disappearances and extra-judicial killings of Kenyans,” said Kenya’s Human Rights Commission Executive Director, Atsango Chesoni during a news conference at the Hilton Hotel in Nairobi, adding, “We demand that the mandate of the taskforce be extended to investigate the disappearances of other Kenyans” (*The Daily Nation*, September 9, 2012).

On 2nd February 2014, police officers stormed the Musa Majengo mosque in Mombasa. The police threw tear gas and the fighting erupted inside the mosque between the assembled Muslim youths and the police. As a result, nine Muslim youths were shot dead and one policeman in retaliation. In the wake of the event, several Muslim youths were arbitrarily arrested including minors, arraigned in the Mombasa court, charged on allegations of terrorism, robbery with violence, weapon possession and incitement (*The Standard Newspaper Digital*, February 12, 2014). One of the arrested youths by the name Salim Hemed disappeared and was not arraigned in court, his picture being featured on various leading Kenyan news media outlets (*The Standard Newspaper Digital*, February 12, 2014). Abdullah Ahmednasir, an advocate of Kenya’s Judicial Service Commission (JSC) and the publisher of the *Nairobi Law Monthly*, alleges that Samir Khan, and Sheikh Aboud Rogo, both are Muslim clerics and activists constitutes another case of a forceful disappearance and extra-judicial killing, respectively. In his opinion, Samir Khan died while in police custody. He says:

Muslim activists face grave danger by [the] police force... They are easily vilified as terrorist[s] who support either Al-Qaeda or Al-Shabab... Kenyan security forces target Muslim activists as they are [a] politically unrepresented minority (2012, April 21).

Table 1.3: Victims of forceful disappearance

Date of Incident	Type of Human Right Abuse	Victims	Site of Incident
2nd February 2014	Forceful Disappearance	Salim Hemed	MOMBASA
22 nd April 2013	Forceful Disappearance	Ali Musa Kipkoech	NAIROBI
22 nd April 2013	Forceful Disappearance	Abdallah Aziz	MOMBASA
6 th May 2013	Forceful Disappearance	Abdulaziz Muchiri	Last seen in Nairobi in 6 th May 2013
April 2013	Forceful Disappearance	Yassin Olunga	Last seen in Nairobi in April 2013
April 2013	Forceful Disappearance	Ali Musadiki	Last seen in Nairobi in April 2013
17 th June 2013	Forceful Disappearance	Stephen Mwanzia Osaka (alias Dudah Brown)	Last seen in Nairobi 17 th June 2013
17 th June 2013	Forceful Disappearance	Jeremiah Onyango Okumu (alias Dudah Black).	Last seen in Nairobi 17 th June 2013
23 rd May 2012	Forceful Disappearance	Sylvester (Musa) Opiyo Osodo	Mombasa
23 rd May 2012	Forceful Disappearance	Jacob. Musyoka	Mombasa
26 th June 2012	Forceful Disappearance	Omar Shwaib, and	Mombasa
26 th June 2012	Forceful Disappearance	SalimAbubakar,	Mombasa
June 2012	Forceful Disappearance	Osaka/Salim Abbas	Mombasa

Date of Incident	Type of Human Right Abuse	Victims	Site of Incident
June 2012	Forceful Disappearance	OnyangoOkumu Mohamed Jaffar.	Mombasa
14 th November 2012	Forceful Disappearance	BadruMramba	Mombasa

Source: Horowitz, J. (2013). *We're Tired of Taking you to the Court*, New York: Open Society Foundations, 32-42. *Human Rights Watch*, 2014, World Report. <http://www.hrw.org/news/2014/04/04/kenya-third-imam-killed-2-years>. Accessed on 04.04.2014.

Extra judicial killings

Extra judicial killing involves the unlawful and deliberate killing of an individual without following proper judicial procedures (Conde, 1999: 40). Article 26 (3) of the Kenyan Constitution provides for the protection of the 'right to life' and states that "A person shall not be deprived of life intentionally, except to the extent authorized by the Constitution or other written law."

After 9/11, the Kenyan Muslim community was forced to witness the murder of several Muslim activists and scholars suspected of involvement in terrorism. These suspects, whose names are contained in an ATPU terror watch list, had either disappeared without trace or had been executed with their mutilated bodies found later. According to an external examiner report on the murdered Samir Khan, a terror suspect and Muslim cleric from Mombasa who was killed in April 2012, the victim had been strangled to death and his private parts badly mutilated (*The Daily Nation*, April 14, 2012).

One of the primary challenges of these counter-terrorism activities in Kenya is the need to produce substantial evidence to the courts to prove that the arrested Muslim community leaders and activists have indeed been involved in terrorist activities. However, the majority of prosecutions against Muslim suspects accused of terrorist activities have not resulted in convictions (*The Standard Newspaper*, April 2, 2014). This failure and frustration have been affirmed by Nelson Marwa, the Mombasa county commissioner in charge of security in Mombasa (as of August 2015). He has since issued a shoot to kill order of all people suspected of terror activities on the basis that it was counter-productive to charge terror suspects in a court of law since it was too difficult to procure witnesses. He states:

Those are not people to be arrested because they are armed, they must be finished with on the spot. Why take them to court yet they have killed six people? What justice is there when you have killed? Who is going to be your witness in court? Will you resurrect the people you killed to be your witnesses? Let us be fair. When they are caught, deal with them on the spot (*The Standard Newspaper*, 26 March 2014).

The director of the Human Rights Watch Africa, Leslie Refflow, cautions against such extra-judicial killings arguing that such drastic and brutal measures are highly inappropriate and counter-productive. Moreover, they are not going to solve the problem at hand. He also advised the state authorities to do their own investigation and identify those behind these killings.

The Kenyan leading newspaper, *The Daily Nation* commented on these unlawful killings which were practised under the pretext that the regular judiciary process was not suited to support the efforts of the police in combating terrorism. It is reported that:

A member of Kenya's Anti-Terrorism Police Unit told the BBC that the unit was "gunning down" terrorism suspects. "The justice system in Kenya is not favorable to the work of the police, so we opt to eliminate them. We identify you, we gun you down in front of your family, and we begin with the leaders" (*The Daily Nation*, March 30).

One interviewee described the circumstances and motives behind the unlawful killings of Muslim terror suspects in Kenya after 9/11. He is certain that Kenyan police officers are responsible for these killings, arguing that since they are unable to gather substantial evidence which can secure a conviction of a terror suspect, the best option in their eyes is to kill the suspect. Furthermore, a dead suspect is a silent suspect and cannot sue the police later over wrongful detention and other abuses. He argued further that the Kenyan Muslims are justified in believing that the killings of the two sheikhs, Samir Khan (April 2012) and Aboud Rogo (27th August 2012) have been extra judicial killings perpetrated by the ATPU charged with combating terror in Kenya. He substantiates his claim by pointing at the way the two men have been killed, namely in a highly efficient and professional way. Such assassinations are not committed by common criminals which is in itself a strong indicator that these killings have been initiated by people in powerful positions with links to state authorities. In this respect,

AhmednasirAbdullahi, a senior counsel, an advocate, a member of Kenya Judicial Service Commission (JSC) and the publisher of the *Nairobi Law Monthly* states;

Samir Khan was killed by a special squad of the Kenyan police. In fact, he was strangled to death by Kenyan policemen. Rogo was shot dead in broad daylight. Both the deaths of Khan and Rogo bring to the fore the official but secret policy of the Kibaki regime to extra-judicially kill troublesome Muslim clerics anywhere in the country. It is a government policy that gives a firm notice to any Muslim leader that death ultimately awaits him. This clearly shows how rogue the security agents under this regime have become. It also shows the level of impunity and immunity they enjoy when they can kill Kenyan citizens at a place and time of their choice (Ahmed Nasir, 2012).

Another interviewee (Respondent 1) argued that unlawful killings are morally and legally wrong, and that it does not matter whether the individual is a Muslim or a non-Muslim. He is shocked every time he hears that someone has been killed in that way. He would expect the police to want to arrest and interrogate any suspect rather than shoot them dead on sight because suspects are more useful to them alive (R1: DU32).

Another interviewee maintained that the Kenyan police are killing people in the name of fighting terrorism. He cited the example of the murder of Omar Faraj on 28th October 2012 in Majengo, Mombasa, who was shot dead at close range by the ATPU, even though he did not resist arrest. He visited the home of Omar Faraj and collected the body and a post mortem was conducted, then they registered a complaint to the police oversight body to be referred to the Mombasa (Mvita) Member of Parliament who issued a response. He continued that if the ATPU gets hold of terror suspects, they simply “exterminate” them. He stated, “If they (Police-ATPU) find you (suspects) they will kill you, trust me, brother, they kill, they eliminate, and nothing can be done.” (R5: DU2, 14).

On a similar note, Al Jazeera World Television Network aired a full documentary entitled ‘Inside Kenya Death Squads’ on 7 December 2014, where for the first time in public four Kenya police squad members testified to their crimes and admitted their involvement in carrying out extra judicial killings targeting suspected Muslim clerics and activists in Mombasa. The officers’ identities remained concealed for the sake of their own security while speaking to an exclusive Al Jazeera investigative unit. The GSU Recce Company officer said:

Once they give us the information, they know what they have told us, it is ABCD; 'Mr. Jack' is involved in 'such and such' a kind of activity. Tomorrow he's no longer there. We have worked. Definitely the report that you gave us has been 'worked on'.

Source: Boazman, S (Producer), (Director).7th December .2014. 'Inside Kenya Death Squads' [Television Program]. Qatar: Al Jazeera World Television Network. All subsequent quotes are from this source.

Another victim of such killings, the Muslim cleric and activist AbubakarSharrif, known as "Makaburi" survived previous assassination attempts but was killed on broad daylight outside the Shanzu law courts in Mombasa on 1st of April 2014. Despite being in and out of courts under the allegations of supporting and funding terrorism in Mombasa, he was never convicted. The death squad officers interviewed by Al Jazeera admitted that indeed Abubakar Sharrif had been gunned down by police officers, an act sanctioned by very high ranking police officers and state officials sitting in Kenya's National Security Council. The interviewed officer stated, "Makaburi was killed by the police. That execution was planned in Nairobi by very top high ranking police officers and government officials." Another added, "The Government did it, yeah. This is the person who's bringing trouble here. Let us eliminate him and we have peace."

One of the police officers in the death squad explained the motives behind the rampant extra judicial-killings and assassinations, explaining that police officers often fail to produce substantial evidence to convict terror suspects and hence resort to killing and assassinating the suspects. "You take him to court, and then you find that the next day he has been bailed out," explained a National Security Intelligence Service (NSIS) officer who also said, "You arrest him another time, take him to court. Acquittal. So you just have the elimination method". The GSU Recce Company officer agreed by saying, "If the law cannot work, there's another option... eliminate him." Another police officer from the Anti-Terrorism Police Unit (ATPU) admitted that he has been involved in the assassination of hundreds of terror suspects every year. Another one admitted to having killed more than 50 suspects. He said, "Since I have been employed, I've killed over fifty. Definitely, I am proud because I have eliminated some problems." Police extrajudicial killings, according to the ATPU officer, resulted in hundreds of unlawful deaths every year. The officer states, "Day in, day out, you hear of eliminating suspects. We have the police itself. We have special units like GSU. So, not a total, but you can say about almost 500." Another officer from the

General Service Unit (GSU) Radiation Unit confessed, “It is many. It is many. I think with my colleagues, [I’ve killed] around eight. It is not even a subject to address.” Another officer from the same unit added that in case the police have killed a person accidentally or by mistaken identity, they plant false evidence in order to make the victim appear as a real criminal or terror suspect. The officer stated:

Okay, you never wanted to kill that person, but accidentally, you have done it. What are you going to do? The person is gone. You will not bring him back. Some do place some kind of evidence by placing some pistols, guns beside them once they have been killed.

Table 1.4: Extra judicial killings in Mombasa city, 2012-2014

Date of Incident	Type of Human Right Abuse	Victims	Site of Incident
28 th January 2014	Extra Judicial Killing	Ahmed Abdallah Bakhshueni	North Coast of Mombasa
1 st April 2014	Extra Judicial Killing	Sheikh Abubakar Sharrif-Muslim cleric and an activist	Mombasa (Outside Shanzu Law Court)
1 st April 2014	Extra Judicial Killing	Bahero - Muslim Youth activist	Mombasa (Outside Shanzu Law Court)
2 nd February 2014	Extra Judicial Killing	Nine Muslim youths	Mombasa
10 th June 2014	Extra Judicial Killing	Sheikh Mohammed Idris	Mombasa
11 th July 2014	Extra Judicial Killing	Shahid Bhutt (Mombasa businessman)	Mombasa
27 th June 2013	Extra Judicial Killing	Kassim Omollo	Mombasa
27 th June 2013	Extra Judicial Killing	Salim Mohammed Nyiro	Mombasa
3 rd October 2013	Extra Judicial Killing	Muslim cleric -Sheikh	Mombasa

Date of Incident	Type of Human Right Abuse		Victims	Site of Incident
	Killing		Ibrahim Omar Ismail	
3 rd October 2013	Extra Killing	Judicial	Gadaffi Mohammed (Shebe)	Mombasa
3 rd October 2013	Extra Killing	Judicial	Omar Aburumeisa	Mombasa
3 rd October 2013	Extra Killing	Judicial	IssaAbdallah	Mombasa
3 rd December 2013	Extra Killing	Judicial	Faiz Mohammed Rufai	Mombasa
6 th December 2013	Extra Killing	Judicial	Sheikh Suleiman Mwayuyu	Mombasa
13 th Nov 2013	Extra Killing	Judicial	Lenox David Swalleh	Nairobi
18 th May 2013	Extra Killing	Judicial	Hassan OmondiOwiti	Nairobi
18 th May 2014	Extra Killing	Judicial	ShekhaWanjiru	Nairobi
25 th Dec 2014	Extra Killing	Judicial	Sheikh Mohamed Ali Kheir	GARRISA (north- eastern part of Kenya)
April 2013	Extra Killing	Judicial	Shabaan Namusenda Makotse.	Mombasa
May 20, 2013	Extra Killing	Judicial	KhalifMwangi	Nairobi
26 th May 2013	Extra Killing	Judicial	Khalid Ahmed	Mombasa
June 17, 2013	Extra Killing	Judicial	Ibrahim Ramadhan Mwasi	Nairobi
13 th April 2012	Extra Killing	Judicial	Samir Khan	Mombasa
28 th October 2012	Extra	Judicial	Omar Faraj	Mombasa

Date of Incident	Type of Human Right Abuse	Victims	Site of Incident
	Killing		
28 th October 2012	Extra Judicial Killing	Titus Nabiswa	Mombasa
December 2007/2008 Post-Election Violence (PEV)	Extra Judicial Killing	1300 Killed	Across the country
27 th August 2012	Extra Judicial Killing	Sheikh AboudRogo	Mombasa

Source: Horowitz (2013). *We're Tired of taking you to the Court*, New York: Open Society Foundations, 12. Human Rights Watch Report, 2014 <https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police>. Accessed 09.-7.2015); Kimathi, A. and Butt, A. (2008). *Horn of Terror Report*, Nairobi: Scan house Press Ltd. 31-35.

Torture

In international human rights terminology, “torture” is defined as “the purposeful infliction or threat of infliction of severe pain or suffering of a detainee by public officials or by others with the official complicity or collusion” (Conde, 1999: 36). International human rights law explicitly prohibits torture, cruelty, degrading and inhumane treatment, to the extent that no exception can be justified, defended, warranted or tolerated. In a nutshell, torture is totally prohibited by all international treaties, charters, conventions, declarations etc. without exception be it in emergency situations, extreme security challenges like terrorism and many others (Greer, 2015: 105-102). Likewise, Article 29 of the new Constitution (2010) clearly states that “Every person has the right to freedom and security of the person...” In addition, Article 21 (1) and (4) of the Constitution of Kenya (2010) clearly stipulates that the state has a fundamental duty to promote, respect, observe and protect the fundamental rights and liberties in the bills of rights as conferred in the Constitution.

On the state and status of torture in Kenya, the United Nation’ report (2013) on Convention Against Torture (CAT), outlines the summary of the salient features of the practice of torture by state security officials as follows;

- i. Enforced Disappearances: when individuals accused of committing crime are arrested under the guise of fighting crime and eventually disappear without trace.
- ii. Suspects held incommunicado in undesignated detention facilities, denied access to communicate with relatives and lawyers, aimed at coercing suspects to giving confessions.
- iii. Abduction and ransom seeking are types of torture prevalent in Kenya today when a person is suspected of having money, him or his relatives get arbitrarily arrested and locked up in a police station, released after the relatives are intimidated to pay the bribes.
- iv. Extra judicial killings where due to inadequate and intangible evidence to prosecute, the suspects are eliminated to avoid following the due legal court process.
- v. Organized crimes where crimes are intended to terrorize law abiding citizens, and they are perpetrated in collaboration with police and criminal gangs.

The UN CAT (2013) further substantiate that over 60% of Kenyan citizens believe that practice of torture, physically, and psychologically still thrive and persist and has become a common phenomenon in the country with forceful disappearances cases leading, followed by holding suspects in secret at undesignated detention facilities (suspects held incommunicado).

Torture against terror suspects in Kenya after 9/11 has become one of the salient features of the fight against terrorism. Torture is used as an interrogation technique in order to compel the suspect to give information which can be possibly used against him in the court of law. This is against the Kenyan Constitution; Section 49 (1) clarifies the rights of the arrested person stating that a suspect must “not to be compelled to make any confession admission that could be used in evidence against the person.” Also, the right to freedom from torture is affirmed by UDHR and ICCPR respectively. The Universal Declaration of Human Rights (UDHR) states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Meanwhile the International Covenant on Civil and Political Rights (ICCPR) states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one

shall be subjected without his free consent to medical or scientific experimentation.”

Therefore, Kenya has a constitutional obligation to abide by the international law. In this respect, the Constitution of Kenya (2010) Article 1 (5) states, “The general rules of international law shall form part of the law of Kenya.” Correspondingly, the Convention under Article 2, clearly stipulates the obligations of state parties in taking effective administrative, legislative and judicial measures in order to deter acts of torture in any territory under its jurisdiction. Hence, torture cannot be justified under any circumstance whether there exist political instability, threat of war or any other emergency (Article 2 Para 2). Also, there is no excuse for torturing whatsoever under the pretext of obeying an order from a superior officer (Article 2 Para 2). All states are obliged to make these offences punishable by imposing appropriate penalties according to the law (Article 4 Para 2).

Equally, the report by Kimathi and Butt (2008) also documents and corroborates cases of torture committed on several victims, and more specifically after the fall of the Islamic Court Union (ICU) in the Republic of Somalia where hundreds of people were arrested while trying to cross the border into Kenya. In 2006, several Kenyan Muslim youths in Somalia during the war between the Ethiopian forces and the Islamic Court Union, attempted to cross the border back into Kenya. They were denied entry, arbitrarily arrested and forcefully transferred to Ethiopia by the Kenyan authorities on allegations of terrorism. Kimathi & Butt (2008:9-10) further argue that the detainees were held in secret detention centers for weeks, allegedly tortured, denied access to medical treatment, and interrogated by foreign security agents. The report supports these allegations of human rights violations by citing examples of individuals who shared their ordeals during their detentions in Kenya like Muhibitabo Clement Ibrahim, who was arrested and tortured on suspicion that he was a member of Al-Qaeda and an Islamic Court Union (ICU) fighter in Somalia. After being subjected to all kinds of humiliation in Kenya, he was illegally deported to Somalia yet there was no court order which sanctioned his removal. Another victim cited by Kimathi & Butt (2008: 19-20) is Aden Sheikh Abdullahi (Kenyan), who was arrested on January 2, 2007 at the Kenya - Somali border, driven to Nairobi for interrogation and later forcefully rendered to Mogadishu, Somalia and Ethiopia. All were done without due legal process of the law. He narrated his ordeal by stating that while they were with other victims, their legs and hands were tied together, blindfolded and some victims fainted due to suffocation.

Table 1.5: Torture allegations on terror suspects

Victims	Type of Human Right Abuse	Date	Torture claims
Osman Abdi Dakane	Torture	12 th June 2015	Kept in water filled cells (water boarding) while blindfolded and hands tied.
Rashid Charles	Torture	12 th June 2015	Kept in water filled cells (water boarding) while blindfolded hands tied.
Mohamed Abdi Abikar	Torture	12 th June 2015	Verbal, physical and psychological torture, denied sleep for 10 days
Hassan Aden Hassan	Torture	12 th June 2015	Kept in water filled cells (water boarding) while blindfolded and hands tied.
Mohammed Abdulmalik	Torture	February 2007	Physically abused (beaten)
Ibrahim	Torture	June 2011	Physically abused. Kicked by security officers Consequently he urinated blood
Khubaib Aboud Rogo	Torture	13 th November 2012	Physically abused. Kicked and beaten. Stepping on us and beating us very hard. I was beaten with the back of a gun and kicked.
Badru Mramba	Torture	14 th November 2012	Physically abused. Hooded, handcuffed behind their backs
Mohammad	Torture	14 th November 2012	Physically abused. Hooded, handcuffed behind his backs, assaulted by security Officers on his back with a plastic pipe and pliers used to squeeze his genitals.

Victims	Type of Human Right Abuse	Date	Torture claims
Khalid	Torture	14 th November 2012	Physically abused. Hooded, handcuffed behind his back, assaulted by security officers on his back with a plastic pipe and pliers used to squeeze his genitals.
Yahiya	Torture	14 th November 2012	Hooded, handcuffed behind his back, Anti-Terrorist Police Unit (ATPU) threw tear gas inside his house.
Issa	Torture	14 th November 2012	Hooded, handcuffed behind his back, security officer squeezed his genitals, another hit him on both sides of his head, and another smashed his joints with sticks.
Ahmed	Torture	14 th November 2012	Physically abused. Hooded, handcuffed behind his back, assaulted by security officers on his back with a plastic pipe and pliers used to squeeze his genitals.
Abdulaziz Muchiri	Torture	6 th May 2013	Physically abused. ATPU officers kicked and beat the suspect with gun butts, dragged him on the ground to a waiting car. As a result his body swollen, and his clothes were stained with blood
Ali Kipkoech Musa	Torture	6 th May 2013	Physically abused: ATPU officers kicked and assaulted with gun butts, dragged him on the ground to a waiting car.

Victims	Type of Human Right Abuse	Date	Torture claims
			Consequently, body was swollen, and his clothes were stained with blood, face, and back were bruised and he could not walk.
Shabaan Mwenda	Torture	June 2013	Physically abused: blindfolded tortured in the car using sharp objects
Swaleh Abdullah Said	Torture	9 th October 2013	His face covered with a jacket, wrestled to the floor, and thrown into a waiting car. Handcuffed and beaten.
Rumeisa Aboud Rogo	Torture	13 th November 2013	Handcuffed, sleepless night and threatened with death.
Swaleh Abdul Majid	Torture	13 th November 2013	Assaulted with gun butts. Beaten his body and mouth punched causing him to bleed.
Sahal Diriyeh Hussein	Torture	12 th June 2015	Kept in water filled cells (water boarding) while blindfolded and hands tied.
Idris Magondu	Torture	27 th July 2010	Held in a stinking lice-filled cell with 15 to 30 other prisoners. The cells had no bedding and few blankets. Exposed to twenty-four hour lighting, an open toilet in the cell, insufficient food, and access to only dirty toilet water to drink on occasion
Habib Suleiman Njoroge	Torture	27 th July 2010	ATPU official placed a gun on his neck and slapped him hard on the face

Victims	Type of Human Right Abuse	Date	Torture claims
Mohammed Hamid Suleiman	Torture	27 th July 2010	Severely beaten in the presence of senior police officers, and threatened be handed over to Uganda to be tortured, shot, and killed.
Omar Awadh Omar	Torture	27 th July 2010	“Taken out at 9:00 p.m. or 10:00 p.m. at night and would not come back until 2:00 a.m. or 3:00 a.m. in the morning when he would be bleeding and had deep cuts on limbs from the torture endured. repetitive beatings on the joints, such as knees, elbows, ankles, and wrists during several sessions over many days while handcuffed in stressed positions”
Isa Ahmed Luyima	Torture	27 th July 2010	Solitary confinement
Hassan Haruna Luyima	Torture	27 th July 2010	Solitary confinement
Batematyo Abubakar	Torture	27 th July 2010	Solitary confinement
Yahya Suleiman Mbuthia:	Torture	27 th July 2010	Repeatedly assaulted, punched in the stomach, mouth squeezed, blindfolded almost suffocated with a dirty hood.
Nyamandondo	Torture	27 th July 2010	Repetitive beatings on the joints, like knees, elbows, ankles, and wrists on different occasions, handcuffed in stressed positions.

Victims	Type of Human Right Abuse	Date	Torture claims
Hussein Hassan Agade	Torture	27 th July 2010	Kicked in the abdomen, grabbed hard by the neck, and threatened by the officers to be sent to Guantánamo Bay.
Aden Sheikh Abdullahi	Torture	2 nd January 2007	Physical torture. Hands and legs tied together, blindfolded consequently fall unconscious caused by suffocation.

Horowitz, J. (2013). *We're Tired of Taking you to the Court*, New York: Open Society Foundations, 33-38. (Human Rights Watch Report, 2014 <https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police>; Kimathi, A. and Butt, A. (2008). *Horn of Terror Report*, Nairobi: Scan house Press Ltd.31-35.

It can, therefore, be concluded that Muslims suspected of involvement in terrorism undergo torture in the process of arresting them. The police use excessive force in arresting the accused by assaulting them and subjecting them to other degrading treatments. However, suspects who are watched and followed by human rights organization are not abused and tortured as the police realize that the suspects have full legal support which they can sue if their rights are violated.

Conclusion

Muslim minorities in Kenya, particularly in Mombasa, suffer from human rights violations at the hand of state security agents and Anti-Terrorist Police Unit (ATPU) in particular after 9/11. These violations are alarming and cause a high level of anxiety within the Muslim community. The indicators of these rampant violations of human rights against the Muslims in Kenya can be outlined as consisting of extra-judicial killings, abductions, forceful disappearances of individuals suspected of involvement in terrorism, arbitrary arrests, extraditions of Muslim activists without due legal process of the law and torture.

However, the government's legitimate fight against crime and terrorism should not be used as an excuse to violate the citizens' fundamental human rights. Consequently, the Kenyan government needs to adopt different strategies, approaches and appropriate measures in countering terrorism. If counter-terrorism

procedures are not cautiously put into operation, such measures will surely backfire and further alienate the majority of decent, law-abiding and peaceful Muslims who call Kenya their home. More and more individuals may thus become vulnerable to groups agitating for violence and other extreme ideologies. As a result, this will do less in addressing substantial security challenges facing the country. People perceive these counter-terrorism campaigns as abusive, intrusive, brutal and highly discriminatory; hence, the government loses all credibility of being a representative of its citizens.

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