

ROLE OF THE CRIMINAL JUSTICE SYSTEM IN CONTRIBUTING TO YOUTH RADICALIZATION IN MOMBASA AND KWALE COUNTIES

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The criminal justice system is at the centre of curtailing radicalization and terrorism. Despite many youths having been arrested, prosecuted or even eliminated, youth radicalization seems to be on the rise which points to the fact that the very criminal justice system contributes to youth radicalization. Anchored on the social identity theory, the criminal justice theory and the psychoanalysis theory, the study investigated the contribution of the criminal justice system to the emergence of radicalization among the youth. A descriptive survey design was adopted. The target population was 320. Stratified simple random sampling was used to select respondents. A sample size of 96 was derived representing 30% of the target population. Both primary and secondary data were used. Validity and reliability of data was tested using Cronbach's alpha. Data was analyzed and presented using descriptive statistics; percentages, frequencies, means and standard deviations. The research found that police show low level of professionalism while dealing with the problem of radicalization in the study area: suspects are profiled and either arrested and charged in court or arrested and never to be seen again (forced disappearances). That the police do not engage the community when dealing with the problem of radicalization. The study also found out that the legal framework on radicalization and terrorism is a bit weak. The study concludes that the Criminal Justice System is part of the problem of radicalization in the study area. Therefore, there is need for the CJS to change its tactics in solving the problem. There is need to change the hard tactics which are mainly militaristic. The law has to be enforced and those who commit criminal acts must face the full force of the law

Key words: *criminal justice system, radicalization, extremism*

1. INTRODUCTION

Radicalisation is a phenomenon that is dynamic and constantly evolving. The process includes the acceptance of a radical philosophy by individuals or groups that can lead to greater willingness to condone or use violence to obtain economic, social or political benefits. According to Odhiambo *et al* [1] in their article "Domestic Radicalisation in Kenya"

"Violent Extremist Organizations (VEO) like Al-Shabaab terror group cannot sustain themselves without young recruits. Radical groups are astute observes of the challenges facing young people in Kenya, and they tailor their recruitment strategies to exploit youth vulnerabilities".

Radicalisation is special to each individual and has a propensity to combine the typical cognitive and behavioral characteristics, systemic grievances and structural grievances politized through a common ideology or a rallying cause that promotes the decomposition process a term that describes a person being increasingly restricted with regard to key political ideas and values. This inevitably generates a sense of danger and leads to immediate violence as a necessary and legitimate action [2].

Moreover, it is important to differentiate between radicalization through violence and non-violence. Some researchers have described the internalization of a community of

beliefs into a militant mentality that accepts violent means as the primary principle of one's conviction [3]. It is a personal mechanism through which people follow radical political and social aspirations and religions and in which the accomplishment of clear purposes excuses the indiscriminate use of violence [4]. Therefore, the notion of radicalisation is the master sign of the late war on terror and offers a new angle for Muslims to look at [5]. In most cases, radicalization explodes into violent extremism. Rarely would a radicalized youth keep his new found radicalised ideologies within himself.

Hicks *et al* [6], on the other hand, considers radicalization as politically subversive, innovative and extremist without being inherently illegal, criminal or a social danger. However, violent radicalisation, often encouraged through hiring and training, is conceived as a social and psychological mechanism by which a person is gradually committed to politically-motivated violence against civilians. He argues that radicalisation takes place when the individual develops political or religious agendas and institutions that contravene educational or mainstream standards [7].

Atran [8], has reported that in the past terrorist trends originated from foreign radical Islamists. This has since shifted towards homegrown terrorists who are recruited and

radicalized within countries through organized recruitment and financing by external forces. These emerging trends have continued to raise unprecedented challenges for both developed and developing countries serving as a motivation for this study. Radicalization has become homegrown and is now entrenched even in the rural society.

According to Lynch [9], increased emphasis on the criminal justice system and strategy as embraced by British authorities can lead to stigmatization and alienation of communities leading to a damaged social fabric. The Public Safety Canada [10], supported this view by reporting that not working with or through populations can ultimately undermine counter-radicalization approaches. There is need for the criminal justice system to engage with communities and champion for support in areas of health, education, social and economic empowerment. This study is relevant since it points out that application of criminal justice system can lead to increased radicalization; the main problem is that such a strategy fails to look into root causes of the same.

In East Africa, the political, socio-economic and individual factors that drive radicalization are varied thus making it difficult for counter radicalization to arrive at a universally applicable approach.

Therefore, according to Odhiambo [11], in his article "Use of Track One & a Half Actors as Counter-Radicalisation & De-radicalisation in Kenya" recommended that:

Collaboration and partnerships between law enforcement and the private sector are important force multipliers for dealing with the issue of soft targets.

The Somali question continues to haunt East African countries in the sense that the future of Al-Shabaab depends on its ability to recruit new members along the East African coast and in urban centres. It has been observed that the Al-Shabaab religious and political ideology attracts the youth and provide them with a sense of identity, purpose and community [12]. This study tend to narrow the problem of youth radicalization to be religious in nature which is not the case.

Hicks *et al* [13], have observed that in most societies, understanding the motivation of youth towards radicalization has adopted a court systems and processes. This approach assumes that the legal system can effectively deal with crimes associated with terrorism and extremism and that terrorism can be prevented by criminal intelligence which is a judicial system. In every human settlement, rules of engagement are normally developed to govern the daily co-existence of the inhabitants. These rules are

transformed into laws at certain levels where citizens cede their rights to the state actors and agree to be governed by their elected leaders. In many countries, the Criminal Justice system is a set of law enforcement mechanism that is meant to uphold human rights and to ensure that members of the public adhere to the laws. When there is infringement on human rights then due process should follow. This study is relevant since it touches on issues of law enforcement in the context of youth radicalization.

1.1. Statement of the Problem

The judicial arm of government and other law enforcement state agencies have taken significant steps towards improving coordination between civil society and security agencies in combating all forms of human rights violations. However, violence against the youth including extrajudicial killings and forced disappearances, delayed court processes, ethnic and religious profiling remain widespread, underreported and insufficiently addressed in the context of fight against terrorism [14].

This approach has led to increased youth radicalization in Kenya but more specifically in the coastal counties of Kwale and Mombasa. The form of radicalization embraced by the youth in these two counties is highly associated with issues that are religious and socio-

economic in nature [15]. He further argues that this counter radicalization approaches grounded in the criminal justice system have not prevented violent extremism. As a matter of fact, Bhui [16] explains that deliberate targeting and/or profiling of Muslim communities the police and the criminal justice system by viewing them not as victims but as proponents of terrorism, have encouraged membership to radicalized groups. The inference that can be made from this body of research, is that the intervening processes linking the criminal justice system such as law enforcement, court systems and processes are yet to limit youth radicalization. Concerns raised regarding the emerging cases of radicalization among youthful communities in urban areas in Kenya cannot be underestimated.

Although the criminal justice system is mandated to apply legal measures towards deterrence and correction from criminal offences, there realization is that this is not always the case at least as far as countering radicalization and terrorism is concerned. In most cases, attempts by the criminal justice system to curb radicalization have been unsuccessful, sometimes even the criminal justice officers themselves falling victims [17]. However, while existing research have identified gaps within the criminal justice system in addressing

radicalization, violent extremism and terrorism [18]., Haki Africa [19], Wilner [20] Botha [21], there is dearth of research inquiry as to how practices in the criminal justice systems may contribute to youth radicalization. The study hypothesized that certain practices within the criminal justice system including, discrimination in law enforcement by the police, arbitrary killings and execution, forced disappearances, delayed trials, failures to follow due process in trial, biased court processes and harsh prison conditions precipitate radicalization among the muslim youth especially in Mombasa and Kwale counties where incidents of youth radicalization have been rampant. In answering to this hypothesis, the study sought to investigate the nature of contribution that the criminal justice system has on youth radicalization. Further, it sought to establish whether or not upholding the criminal justice system by state and non-state actors can effectively work as a counter-radicalization measure among the youth who perceive themselves as disadvantaged by the society.

1.2. Objective

The objective of the study was to investigate the role of the criminal justice system in contributing to youth radicalization in Mombasa and Kwale counties.

1.3. Research Question

What role does the Criminal Justice System play in contributing to youth radicalization in Mombasa and Kwale Counties?

1.4. Justification of the study

1.4.1. Academic Justification

In spite of the growing complexity and diversity in understanding radicalization, there is evidence that very few empirical studies have examined the nature, extent, and impact of youth radicalization in Kenya. The study therefore, attempted to fill the gaps in the academic knowledge that are emerging as a result of the nature, extent, and impact of youth radicalization in the two counties.

1.4.2. Policy Justification

The study findings would inform various government agencies including the criminal justice system such as the police, the court system, the prisons and remand homes on formulation of strategic policies when it comes to handling youths and taming radicalization. Findings will further inform policy makers, international agencies and the government of Kenya to reinforce programs of social inclusion and cohesion with the overall recognition of the inherent dignity and equal inalienable rights of all members of

the human family as the foundation of freedom, justice and peace in the world.

1.4.3. Philosophical Justification

The present study was underpinned by the positivist philosophical approach for some salient reasons. The significant extent correlational and this aligns with the positivist approach since positivist approach correlates the findings to what is happening in the real world. This study therefore contributes to the philosophy of localization of peace, conflict and security.

2. GLOBAL RADICALIZATION AND VIOLENT EXTREMISM

An International Expert Roundtable on Prison Radicalization held in Amman, Jordan, between 2 and 3 December 2015 defines radicalization as a complex process by which violent extremism is gradually embraced and encouraged by an individual. Ideological, political, religious, social, economic or personal motives may be the reasons behind this process. Violent extremism is also described as encouraging, endorsing or performing actions that can lead to terrorism and are aimed at defending an ideology that promotes racial, national, ethnic or religious superiority and rejects the core principles and values of democracy. Research has shown that

in Europe motivation for both in and out prison is the feeling of alienation from society, loss of specific identity, Syrian events, mental illness, and social maladaptation [22].

Krieger & Meierrieks [23] says that attempts have been made to highlight the factors that incite terror following the September 11, 2001, U.S. attack. The United States of America. The then President Bush (2002) [24] argued that the circle of disrespect, failure and fear is vicious. Poverty and injustice can lead to depression and hopelessness. Failed states may become terror havens. The author notes that some scientists say that terrorism is rooted in economic poverty, i.e. poverty and injustice in the world. The definition of “relative deprivation” is put forward by Gurr [25] where violence is created when there is a disparity between what people believe they deserve and what they actually obtain through the economic (distributive) method. The report does not mention, however, how structural economic conditions can be changed to minimize radicalization, a concern of the current study. Poor structural economic conditions generate discontent that in turn makes violence more possible.

The UNESCO Handbook for journalist, “Terrorism and the media” [26] provides for a framework for coverage that is responsible, proportionate and free of stigmatization and sensationalism.

The handbook is a guide to the journalist so that they do not become agents of the terrorists by sending to the media images of terrorist scenes whose effect would be to instill fear amongst the viewers. The Handbook realizes that terrorists' main intention in their actions is not solely for the victims but to spread fear worldwide. The book provides for basic issues in covering terrorism. Moez Chakchouk, UNESCO Assistant Director General for communication and information observes in the foreword to the handbook that many of the violent attacks we see playing out today are least partly conceived with media coverage in mind, targeting not just the actual victims but millions of shocked and shaken spectators across the globe. To enhance this Odhiambo *et al* [27] in their article "Al-Shabaab Terrorists Propaganda & the Kenya government Response." Wrote that:

Any analysis into the strategy used to diffuse Al-Shabaab's ideological content must arise from the fact that the propaganda is multidirectional. Al-Shabaab's future depends not only on its aptitude to support an operative nucleus capable of realizing ostentatious assaults, and its ability to obtain funding and secure recruits. Eroding and neutralizing this image of a mighty fortress must be the ultimate goal of any action designed to offset Al-Shabaab's propaganda campaign.

Arin *et al* [28] observes that despite the fact that some countries such as the U.S and Israel have announced a policy of strict non-negotiation with terrorists' demands, it is well known that ransom is quite often paid to terrorists. Ransom has been paid by European Governments for hostages taken in Yemen and also to pirates who hijacked vessels off the Somali Coast. The non-negotiation policy is based on the argument that when terrorists learn that they can accomplish their goals by violence they might be encouraged to perpetuate their behavior. The study notes that the cost of terror include reductions in GDP, higher stock market volatility, lower share prices and lower life satisfaction.

According to Renard [29] in Tunisia, Tunisian authorities and the mainstream population view foreign fighters as a possible danger to safety with unparalleled lethality and the ability to cause mass destruction. Attacks at the Tunisian Bardao National Museum took place in March 2015 and mass shootings were carried out on a beach in Sousse in June 2015. As their foreign experience has gained them a degree of prestige among prison inmates and street reputation within some circles in their communities, returnees may also be efficient recruiters. The response of Tunisia to foreign fighter returnees has almost entirely concentrated on punitive measures.

95% of the returnees were either immediately detained upon arrival or put under surveillance. In 2016, a shift in the policy direction needed to tackle the issue was announced by Tunisia's National Countering Terrorism Strategy. The strategy stipulates that a multidimensional approach to the battle against extremists and terrorism is necessary for the main axis, prevention, security, judicial proceedings and retaliation. In Indonesia, in order to resolve the danger posed by terrorists and returnees, he had to work with other countries. On 10 August 2016, Indonesia hosted an international meeting on Counter-Terrorism (IMCT) in Bali. There were more than 300 attendees from 21 countries. Indonesia has formed several alliances with neighboring countries to counter terrorism (Renard, 2019)

Kruglanski *et al* [30] also states that radicalization is a phenomenon that is unfolding over time. It needs the existence of three ingredients, namely the arousal of the objective of significance, that is, the activation of the search for significance, secondly, the recognition of terrorism/violence as the required means of significance, and thirdly, the change of commitment to the objective of significance and away from other motivational considerations that result in the supremacy of that objective and the relative devaluation of that objective. Pursuit of violence

and extremism is seen by the person as an opportunity to gain significance, a place in history and the reputation of a hero or martyr in the eyes of a group. The direction of radicalization according to Kruglanski *et al* starts with the excitement of a quest for meaning that motivates the search for or attention to means of significance.

2.1. Criminal Justice System and Radicalization

2.1.1. Court Systems, Processes and Youth Radicalization

The legal structure of Kenya is based on its civil law, common law in English, customary law, and Islamic law. It has developed from the legacy of the tradition of English common law to a new framework that adapts to evolving social, economic and political patterns. The Courts adhere to the principle of *stare decisis* and, like all countries of common law, the judicial system in its trials is adversarial. A defendant is legally presumed innocent unless proven guilty. However, in fact, the burden of evidence is always placed on the prosecutor. The Customary Criminal Justice system initially existed in Kenya. It is enforced by elected representatives and elder councils in remote communities that are not easily accessible to the police or official courts. The Colonial Parliament passed legislation after

Britain proclaimed Kenya a Crown Colony, which in effect formed the basis of Kenya's criminal laws [31]. In 1921, when Kenya was annexed and proclaimed a Crown Colony by Britain, the Kikuyu, the Kamba and the Maasai introduced stiff opposition to British rule and supremacy. The Mau-Mau uprisings in the 1950s culminated in this war against British colonialism and contributed to the independence of Kenya from Britain in 1963 [32].

The government made many attempts to strengthen the administration of the Criminal Justice System after Independence in 1963. These attempts were made in the different ministries, ministries and agencies participating in the Justice Administration. As a central player, the Judiciary has undergone certain reforms to boost the capacity for fair and effective administration of justice [33].

There have also been several reform steps to eliminate corruption in the judiciary and improve the administration of justice in the justice system. These changes include updating the terms and conditions of service for judicial officers, constructing additional court facilities, reconstruction of the rules committee, decommissioning prisons by setting up prisons and detention homes courts for magistrates, launching the website Kenya law papers, and the introduction

of strategic planning to direct the activities of judicial officers. After the Kenya Constitution was promulgated in 2010, the clamor for reform became clearer. In the area of criminal justice, the Constitution brought much needed changes [34], [35]. As far as the judicial changes are concerned, they are not part of the radicalisation and extremism aspects. This void is to be discussed and filled in this review.

Some highlights include Article 2(5), where the general rules of international law are enshrined in Kenyan law, and Article (6), in which it is claimed that any agreement or convention ratified by Kenya is protected under Kenyan law. Articles 48-50 of the Constitution, which define the right of access to justice, presumption of innocence, and the right to fair listening, also cover other primary provisions affecting the Criminal Justice System. Article 48 states that the State shall guarantee all citizens access to justice and shall be fair and shall not hinder access to justice if any fee is required. Article 49 lays down the rights of the persons arrested and can be summarized as requiring the persons arrested to be told of the reasons for their arrest; their right to remain silent and the implications of not being silent; to be permitted to speak with a legal representative or other person whose help is sought by the arrested person; to be kept separately from those

serving jail sentences; to be brought before the Court as soon as reasonably possible and not later than 24 hours after their arrest or the next day of the Court if they are arrested outside the usual days of the Court; Be told by the Court of the first appearance of the reasons for continued detention or release; and be released on bond or bail on fair terms awaiting trial unless there are valid reasons for continued detention.

A renewed movement to fight for the self-determination of citizens in the coastal region emerged in the counties of Mombasa and Kwale in 2008 when the MRC regained traction, calling for secession from Kenya. Among the 32 classes that were prohibited by the Ministry of Internal Security in Gazette Notice 125855 was the MRC [36]. This was published in the Prevention of Organized Crime Act on 18 October 2010, before the organisation was unbanned on 25 July 2012, after the Mombasa High Court found the prohibition unconstitutional [37]. In any case, the court procedure does not capture coastal people's grievances, which is a problem for the current study.

The MRC focuses on land grievances and the fact that the local economy, which is primarily based on tourism, is dominated by outsiders or citizens from the rest of Kenya. While most of its members are Muslim, it was clearly seen by

the respondents interviewed that the MRC has a somewhat different agenda from al-Shabaab. Despite the fact that the two groups are contesting different regions, driven by different backgrounds (the MRC focuses on land issues and is a secessionist movement, while al-Shabaab emphasizes Islamist extremism), the question is if they tap into the same tensions and grievances that often manifest in protests after reports that prominent radical Muslim clerics are being assassinated [38].

Nevertheless, despite growing evidence of the gradual radicalisation of a number of local Muslim community members and evidence that Saleh Ali Saleh Nabhan (who was closely linked to both al-Shabaab and al-Qaeda) was directly involved in the attacks in Mombasa in 2002, the dominant opinion, including that of Kenyan investigators, remained that the attacks in 1998 and 2002 were orchestrated from abroad. Instead of understanding radicalization from a perspective of the conditions conducive to it or root causes that almost exclusively focus on external circumstances, this analysis while recognising these external circumstances, will also refer to the process of political socialisation that introduces individuals to the radicalization process [39].

From this review, it is clear that court systems and processes have not been tailored towards issues

of radicalization and terrorism. The reviewed studies thinly focuses on this issue of court systems and how lack of justice itself can lead to radicalization. The court systems and processes are linked to correlation institution too, the following section focuses on this area.

3. CONCEPTUAL FRAMEWORK

Wasike and Odhiambo [40] discuss the role of theories in guiding the thrust of academic studies. They emphasise the importance of theories in offering compelling and incisive causal explanations with calculated precision. They asserts that theories play the role of predicting, prescribing and evaluating socio-political phenomena hence they cannot be ignored.

3.1. Social Identity Theory (SIT)

The theory introduces the concept of social identity as a way of explaining intergroup behavior. This theory predicts certain intergroup behavior on the basis of perceived intergroup status differences. It posits that an organization can change individual behavior if it can modify self-identity or part of their self-concept that derives from knowledge of and emotional attachment to the group

The individual's choice of behavior is largely dictated by the

perceived intergroup relationship (status) as well as the perceived stability and legitimacy of the intergroup status hierarchy. The social identity theory, therefore, provides key theoretical foundations for the possibility of youth radicalization, focusing on the recognition of existing youth groups as strategic motivators in instilling radical behavior changes. All human beings desire a sense of belonging and identity. Due to extensive marginalization and the challenge of unemployment and marginalization that most youths in Mombasa and Kwale counties go through, many find it irresistible to join radical groups. The presence of al-Shabaab group in the coast and the neighboring Somalia give many of the youth a ready alternative for personal belonging and identity.

3.2. Criminal Justice Theory (CJT)

The criminal justice theory explains the official responses that the criminal justice agents have on behavior that is labelled criminal [41]. The behavior in this case includes all forms of actual behavioral phenomenon such as decisions and actions or non-behavioral phenomena including attitudes, philosophical orientation, or policies.

Within the interpretation of CJT, the justice system embeds on three broad streams of operations that entangle both individual and

organizational schema. The first, encompasses the individual behavior of criminal justice agents; the police and other law enforcement officials, court-room officials, correctional officers and other personnel involved in the response to criminal behavior. The second focuses on the organizational behavior of criminal justice organizations such as police departments, courts and correctional organizations. The third concerns the characteristics of the overall justice system together with its components. Such characteristics may include actions of the police and justice systems that defy the concept of justice such as police killings, incarcerations and 'get tough' sentencing [42]. As Gottfredson and Gottfredson [43] explain, the criminal justice entails a series of critical decision making, criminal diagnosis, classification and prediction by criminal justice agents.

3.3. The Psychoanalysis Theory

Understanding the theory of psychoanalysis began with research into various case studies of patients with neurotic conditions, including, though not limited to, obsessive-compulsive disorders and other documented phobic conditions. Patients with hysterical symptoms have been reported to complain of shortness of breath, paralysis,

and limb contractures for which no physical symptoms are known. Freud and his early co-worker and mentor, Josef Breuer, an Austrian physician, noticed in the course of interviews that many of their patients were unaware of how or when their symptoms progressed and even seemed oblivious to the immense discomfort caused by the symptoms. It was noted that the thoughts associated with the symptoms were locked from the conscious level of the minds of the individuals and thus ignored by normal curiosity [44].

Freud [45] believed that the specific drive for these neurotic symptoms lay in the desire of the patient to continually block deeply distressing events from his unconscious memory that were incompatible with the societal moral standards of the individual and therefore contrary to them. These events were considered to have been sexual or violent in nature, and further exploration convinced Freud that even earlier troubling sexual experiences had been had by his patients where the memories were dormant until a more recent sexual or violent encounter awakened them. Freud further argued that previous experiences had an impact on the behavior of people under study. Freud has therefore formulated the theory of psychoanalysis to show

that personality is shaped by such experiences as are many other traumatic or frustrating instances that have already been presented during a person’s childhood and have been expressed in terms of behavior [46].

Freud [47] believed that his patients were inspired to suppress such dreams about them that were both thrilling and repellent. Freud defined various psychological devices as protection mechanisms, formed to protect one from oneself, by which people tried to make fantasies bearable, such as obsessive compulsive behavior where people embrace persistent unwanted ideas or repeated overwhelming impulses to perform certain actions, such as incessant hand washing, defense maneuvers are called isolation and displacement. They consist of separating a fantasy from recognized emotions (isolating) and then adding the emotion to another, previously trivial idea. Freud also pointed out that in interpersonal contacts, individuals who rely on isolation and displacement are otherwise distinguished by nonpathological personality traits such as perfectionism, indecisiveness, and formality. The illusions for Freud were the mental representations of basic motivations or drives in the unconscious mind to achieve anything like sex, hostility and self-preservation [48].

The criminal justice theory involves the actions of those tasked with the duties of preventing, investigating, determining crimes as well as reforming those who would have been found to have committed crimes. The theory does not deal with the reasons as to why people become radicalized and engage in crime. In the researcher’s view the theory is more of reactionary than pro-active. It deals with the problem after the crime has occurred. Once a crime is committed then the criminal justice system machinery comes into full force. The offender is arrested, prosecuted and imprisoned. The expectation is that all the above processes will be done within the law.

3.4. Conceptual Framework Model

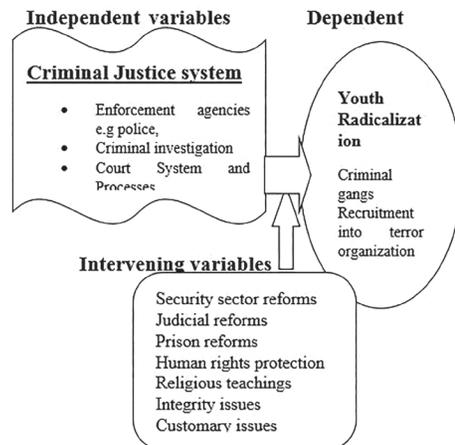


Fig. 1. Conceptual Model indicating the interaction of independent, dependent and intervening variables.

Source: Researcher, 2021

4. RESEARCH METHODOLOGY

4.1. Research Design

Descriptive research design was used to examine the nature, extent, and impact of youth radicalization in Mombasa and Kwale Counties.

4.2. Study Area

Mombasa County is located in the South Eastern part of the Coast region. It is one of the smallest counties and covers an area of 229.9 Kms². It borders Kilifi County to the North, Kwale County to the South and South

West and the Indian Ocean to the East. The entire County basically lies within the Coastal strip and experiences hot tropical climate influenced by the monsoon winds. According to the 2019 Kenya Population Census, Mombasa County's population is 1,208,333 people.

Kwale County has a very big potential in the blue economy. There are several tourist hotels and cottages in Kwale County. The impact of youth radicalization and violent extremism has badly affected the tourism industry in the County. Sandy Beaches, marine parks and

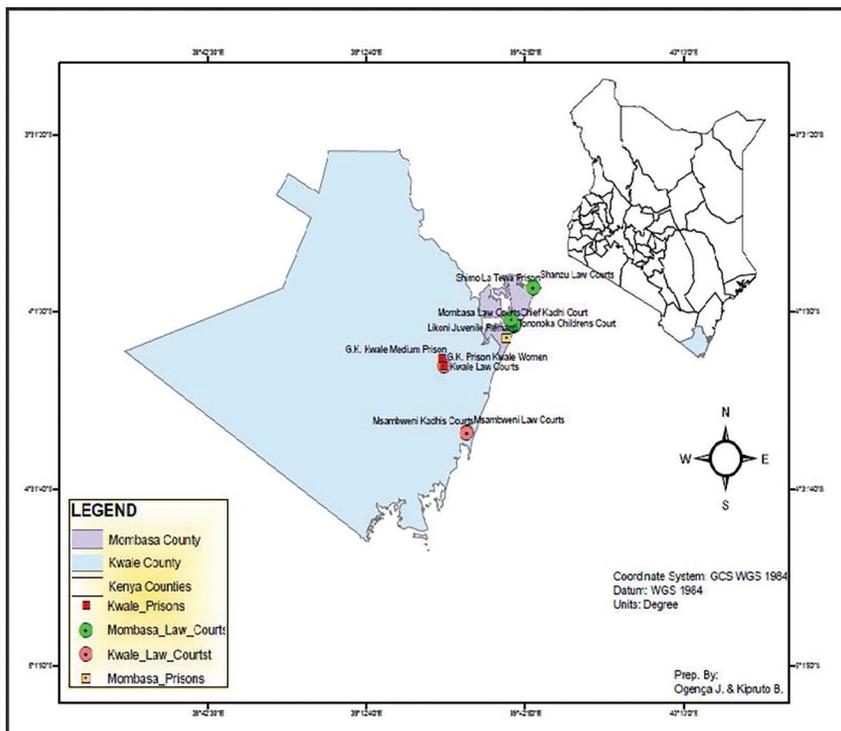


Fig. 2. Study Area
Source: Researchers, 2021

Wildlife are major tourist attractions. The Shimba Hills National Reserve, Mwaluganje animal sanctuary, Kigite /Mpunguti Marine Park, Shimon caves, Kongo Mosque and the long Sandy beaches are the main tourist attracting points. The Hotels in Kwale range from normal standard ones to five-star level.

Kwale has the highest Al-Shabaab recruitment rates. There are several returnees who came back to Kenya after fighting on the side of Al-Shabaab in Somalia. It is a county that has been home to so many conflicts since 1992, 1997 election clashes, 2002 Kaya Bombo violence, the Mlungunipa 1 and Mlungunipa 2 skirmishes. Figure 2 shows the Map of the study area.

4.3. Sampling Strategy and Sample size Determination

The first stage of sample selection involved the identification of relevant organizations and institutions in Mombasa and Kwale counties that formed a good respondent's base for the study. Purposive sampling was used, where a list of institutions and organizations whose work falls within the study's core thematic areas of criminal justice system and youth radicalization was created. The target population was drawn from religious organizations, the judiciary, the correctional institutions, non-governmental organizations, the Independent Oversight and Policing

Authority (IPOA) and the Police Service.

Stratified random sampling was used to select the actual respondents to participate in the study. The sample frame included a list of individuals particularly opinion leaders affiliated or working with selected organizations, which formed the strata.

4.4. Data Collection Methods

Primary data was collected through semi-structured questionnaires and face to face interviews. Document reviews and interviews, focused group discussions (FGDs) discussion was applied to corroborate the findings. Secondary data was collected from archival records, journals, articles, policy documents, Acts of Parliament, official reports, academic books, Court pleadings and judgments, the internet, and any other relevant literature.

5. DATA ANALYSIS AND PRESENTATION

Data was analyzed using descriptive statistics, where relationship between the independent variable and the dependent variable were determined. The data collected was refined, coded and entered into the computer system. The presentation of data in the form of descriptions of the mean, mode, standard deviation, frequencies, and

percentages. The Statistical Package for Social Sciences (SPSS version 27) and R was used for analysis.

6. RESULTS AND DISCUSSIONS

6.1. The police and youth radicalization in Mombasa and Kwale Counties

The study used the parameters where: 5=Strongly Agree (SA), 4=Agree (A), 3 = Neither agree nor disagree (N), 2= Disagree(D) and 1=Strongly Disagree (SD). A summary of the findings is as shown in Figure 3.

The study findings are as shown in figure 3. 115 (92%) of the respondents agreed that the police torture suspects of terrorism, while 103(82%) disagreed that police were professional in conducting investigations. On the other hand, 122(97%) of the respondents agreed that there were incidents of arbitrary

arrest and forced disappearances instigated by law enforcement agencies, while 103(82%) disagreed that the police have involved the community in addressing issues of radicalization and countering radicalization. Overall, it is evident from data that the police are seen as mere intruders whose purpose is to conduct deliberate arrest targeting the youth under the guise of radicalization. Thus, police legitimacy among the general public and the youth in particular, is very low, which in turn creates a wide distance between the communities and the

police. In that sense, the police fail to be seen as law enforcement officers and are rather perceived as agents of victimization and injustice. This obtaining suspicion generally make it next to impossible for the police to rely on the community in combining radicalization. On the other hand, the community's suspicion on the police leads to

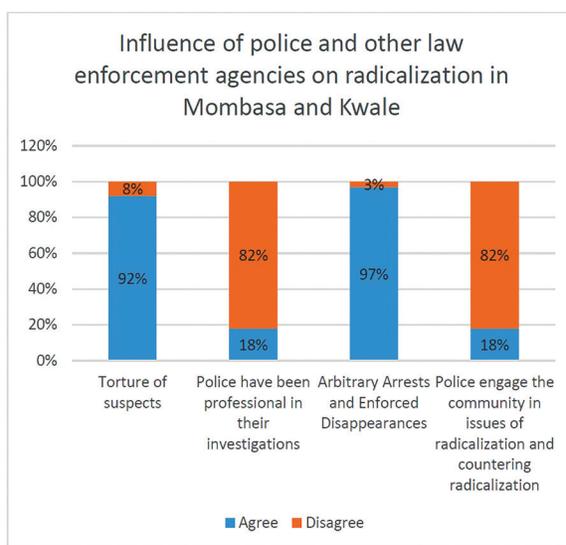


Fig. 3. Influence of police and other law enforcement agencies on youth radicalization

Source: Field Data, 2020

retention of crucial information that can help the police.

This observation is confirmed by statements from interviews in which community members were critical of the conduct of police in the manner they approach counter-radicalization and de-radicalization programs in the region. One respondent opined that:

The police are always targeting us. In many instances, police would find you walking in groups or come to your house at night and they just take you away, sometimes detaining you longer than 24 hours before taking you to court. In most cases if you resist or question the cause of your arrest, the only answer you get is beatings and torture without getting any explanation....Some people are also taken to remand where they are detained for some time without cause and if they do not get evidence to present before court they release them. This has made most people to live in fear and mistrust of the police (Interview with a young male respondent at Mvita in Mombasa County on 26th November, 2019).

The foregoing statement illustrates that radicalization in Mombasa and Kwale counties is partly fueled by actions of law enforcement agencies (police) who fail to diligently undertake their duties within the confines of the

law. It is noteworthy, however, to underscore that radicalization is a new area in criminal justice and one that many jurisdictions, including Kenya, are still grappling with, especially in defining acceptable counter measures which enhance both legal rights and psychosocial wellbeing of the actual or suspected victims. It is quite difficult for the police to clearly point out those who are likely to cause violence due to radicalization. In the process of their investigations, excessive force is always used.

6.1.1. Police Professionalism and Radicalization

As observed in Kwale and Mombasa, 103(82%) of the respondents indicated that the police show low levels of professionalism while conducting investigations. The lack of police professionalism manifests in the shoddily done investigations which fail to collect sufficient evidence to successfully conclude a criminal case. Lack of objective investigations results in religious and ethnic profiling of suspects, and the exercise of strict secrecy in conducting investigations with less involvement of the communities. Further, arbitrary raids on homes and arrests which fall out of the laid down due process in law,

and criminal procedure, indicate lack of professional criminal investigation on the part of the police. This concurs with the findings of Odhiambo [49] on his article titled: “Character Development Challenges and Opportunities Influencing Anglo-Kenyan Diplomatic Relations” where he said that military professionalism has three characteristic: expertise, social responsibility and corporateness. Africa as a continent has faced numerous *coup d'état* because of lack of military professionalism, ethnic and tribal biases in recruitment and promotion. Politicization of the military and militarization of politics and legacy of colonialism was perfected by Africans who became military heads as their countries got their independence.

‘Terrorist profiling’ is however a limited approach in effectively countering radicalization. As Hudson [50] contends,

The diversity of terrorist groups, each with members of a widely divergent national and socio-cultural backgrounds, contexts and goals, underscores the hazards of making generalizations and developing a profile of members of individual groups or of terrorists in general.

This is corroborated by Onkware *et al* [51] in their article “Counter-Terrorism Strategies by

Kenya against Somalia Terrorism”. They state that:

All Kenya entry points should be computerized to monitor visitors who may feature on global watch lists on organised crime like terrorism.

Apart from pursuing criminal investigations from the narrow lenses of religious profiling and disregard for due process, the police are accused of carrying out intrusive searches that are insensitive to gender sensibilities, and the right to privacy of those targeted for the search. A female resident of Old Town in Mombasa, complained that

Those policemen do not care, at all...we the Muslim women are embarrassed and harassed in the searches and body checks they subject us to. You cannot imagine, a male Christian policeman touching all over your body and getting into your robe..... and worse, he is like your son. We are not free to walk in the streets, they imagine we are hiding weapons in our dresses, we do not feel comfortable and safe under the police (Interview with a community member in Mombasa County, on 24th November, 2020).

The sentiments represent the difficult position the police find themselves in when investigating cases related to radicalization and extreme violence.

6.2. The Judiciary and Youth Radicalization in Mombasa and Kwale Counties

6.2.1. Judicial Processes and Court Handling of Suspects of Radicalization and Terrorism

According to figure 4, 93(74%) of the respondents disagreed that judicial officers presume innocence for suspects of radicalization and terrorism until proven guilty, while 80% indicated that legal framing of radicalization and terrorism is not clear. On the other hand, 84(67%) of the respondents indicated that the judiciary lacks the capacity to address cases of radicalization and terrorism, while 97(77%) disagreed that court processes and cases are expedited by the judicial system. Finally, 86(69%) of the respondents indicated that suspects of terrorism and radicalization are not treated properly by the judicial system.

6.2.2. The Legal framing of radicalization and Terrorism

The findings of this study indicate that 107(80%) of the respondents perceive legal framing of terrorism and radicalization as unclear. It is thus possible, that many cases of radicalization among the young people, which either end up in the courts, prisons, or killings and enforced

disappearances, could be preventable, were the legal framework addressing radicalization and terrorism clear enough, by specifically prescribing special treatment for cases of radicalization and terrorism. OSCE and ODHIR [52] contend that prevention of terrorism should be anchored on ascriptive

national legislative frameworks setting out respective criminalization for basic or preparatory offences. Thus, Kenya's legislative framework of countering terrorism should capture the whole process of terrorism, while picking out, certain behavioral tendencies, likely to constitute

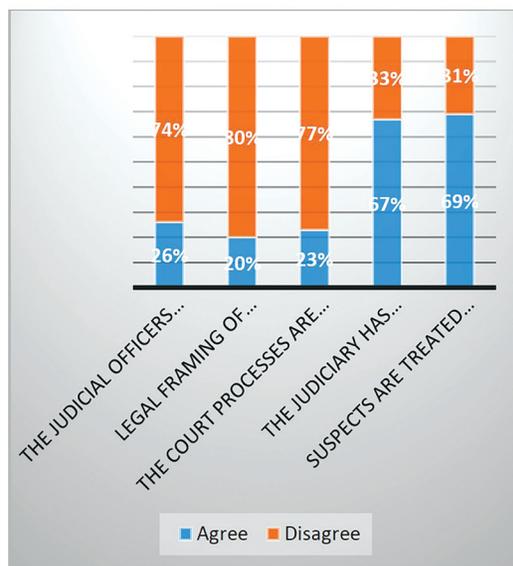


Fig. 4. Judicial processes and handling of suspects of radicalization and terrorism

Source: Field data, 2020

a criminal offence, to warrant the intervention of the criminal justice system.

Odhiambo [53] in his article “Religious Fundamentalism and Terrorism” states that, the study of terrorism is multidisciplinary, which includes fields like Religion, sociology, criminology, political science amongst others. There are diverse reasons and motivations for terrorist activities. Some can be attributed on the socio-political exigency that fosters authoritarianism, however religion fans the ember and gives it legitimacy. Religion which occupies a central position in human life becomes a medium of translating this socio-political conflict into a moral one.

A judicial officer in Msambweni, Kwale, noted that in cases where the court find no sufficient evidence linking a suspect to terrorist acts or terrorist groups, courts have rendered justice, by acquitting them. However, not in all cases do suspects walk back free to their communities. A resident of Msambweni complained that:

It is unbearable to watch your son being put in remand for an endless period of time before actual hearing even begins. First, the prosecutors start by asking for more time to conduct investigations, then they continue citing new developments in the case, they tire the court process with every trick in the book! At the same time, we continue receiving threats from the police maybe, to go slow on the case...you wonder why the case was filed in the first place.....

they will conduct investigations for six years maybe, before they finally give flimsy evidence to the court. Even if the court dismisses the case, who compensates us for the six years of pain? Six good years of injustice... of deliberate persecution. (Interview with a respondent at Mwabungo, Kwale on 9th January, 2020).

The study found out that the residents do not differentiate delays caused by the prosecution which cause adjournment of cases and adjournments caused by absence of judicial officers.

6.3. Influence of Prisons and Correctional Facilities on Youth Radicalization

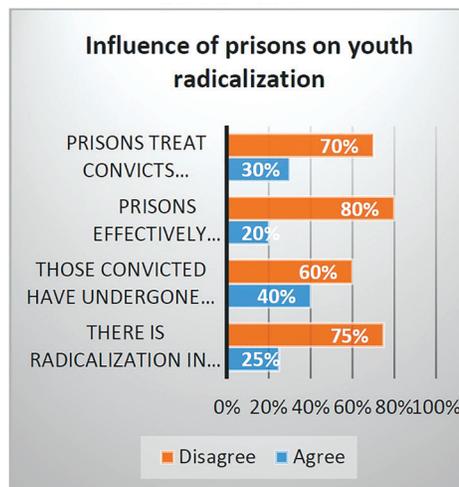


Fig. 5. How prisons in Mombasa and Kwale have handled the cases of radicalization in prison
Source: Field Data, 2020

According to the findings in figure 5, 43(30%) of the respondents agree that prisons provide proper

treatment to persons convicted with terror and radicalization charges, while 27(20%) agree that prisons effectively carry out de-radicalization. On the other hand, 32(25%) of the respondents agree that there is radicalization in prisons, while 60(40%) agree that prisons serve as centers for transformation and reform. Realities in Kenyan prisons which create conditions for incomplete or no reform and transformation, ineffective de-radicalization, and sustain conducive environment for further radicalization.

Respondents were asked on whether the prisons in Kwale/Mombasa have a proper system of dealing with the remandees or convicts who are facing terrorism/radicalization offence and their response was as shown in Figure 6.

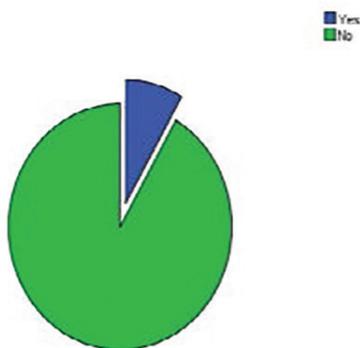


Fig. 6. Opinion on whether the Mombasa/Kwale prisons have proper system of dealing with remandees facing terrorism/radicalization offences
Source: Field data, 2020

6.3.1. Prison as Centers of Radicalization

The Kenyan prisons in which radicalization and terrorism convicts are consigned. Shimo La Tewa Prison in Mombasa and Kamiti Maximum Prison in Nairobi have the largest number of persons convicted of terror offences, radicalization activities and violent take-overs of mosques in Mombasa [54], Ndungu [55]. The number, as of 2016, was estimated to be around 240, with Shimo La Tewa Prison holding the bulk of them, about 160. However, Shimo La Tewa Prison has been noted to serve as a space for recruitment of other inmates into terrorism prompting the president to announce new plans for the correctional sector in dealing with terror-related offenders. The president announced plans to establish new prisons, specially designed for terror and radicalization related convicts. The president alluded to a plan to separate prisoners, so as to stop radicalization from spreading to otherwise moderate prisoners, who currently are being exposed to radicalized prisoners. This came in the wake of three prisoners petitioning parliament in 2015, to separate inmates linked to terrorism offences, citing the reality that prisons were turning into fertile grounds for radicalization and recruitment [56].

7. SUMMARY AND CONCLUSIONS

The research found out that 82% of the respondents indicated that police show low level of professionalism while dealing with the problem of radicalization in the study area: suspects are profiled and either arrested and charged in court or arrested and never to be seen again (forced disappearances). 97% of the respondents stated that cases of arbitrary arrests and forced disappearances are prevalent. The ATPU has been blamed for the arbitrary arrests, torture and forced disappearances. That the police do not engage the community when dealing with the problem of radicalization. A large proportion of the respondents reached during the study (82% o) declined that the police engage the local communities relating to the issue of radicalization. The study also found out that the legal framework on radicalization and terrorism is a bit weak. There was no existing policy on prevention of radicalization until the idea of having county action plans for countering violent extremism was formalized. The study concludes that the Criminal Justice System is part of the problem of radicalization in the study area.

8. RECOMMENDATION

There is need for the CJS to change its tactics in solving the problem. There is need to change

the hard tactics which are mainly militaristic. The law on prevention of terrorism is in place and must be enforced. The law has to be enforced and those who commit criminal acts must face the full force of the law. However, while enforcing the law, the state actors should at the same time respect the rights of the suspects as enshrined in the constitution.

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