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COMBATING TERRORISM AND UPHOLDING HUMAN RIGHTS IN KENYA

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1. INTRODUCTION

Despite the entrenchment of a Bill of Rights in the Kenyan Constitution, limited information, compounded by ineffective approaches and policy gaps, inhibits the policing of terrorism in Kenya. This, in turn, has hampered the advancement of a rights-based approach to the policing of terrorism and other serious violent crimes in the country. Although such a situation gives rise to challenges and dilemmas, it also provides an opportunity to determine how best to overcome these challenges and dilemmas. This Policy Brief therefore presents some of the findings relating to the weak links that have contributed to the difficulties in the policing of terrorism and other serious violent crimes in Kenya against the backdrop of a human rights focus. Such a presentation is based on the more detailed findings set out in the Research Paper of the same name, which can be found at www.apcof.org.za.

2. CONTEXT AND SCOPE

With no linear development of policing in which communities remain engaged in the various processes, the underlying and root causes of terrorism remain varied. For instance, the 2011 World Development Report indicated that military action in Somalia, external support for domestic rebels, cross-border conflict spillovers, international terrorism and criminal networks, price shocks and the impacts of climate change had all contributed to the upsurge in terrorism in the country, and that this had been further driven by 'internal stresses' such as low income levels, youth unemployment, corruption and human rights abuses.¹ In Kenya, specifically, ineffective leadership at all levels of society, weak citizen-centred

¹ World Bank (2011) World Development Report 2011: Conflict, Security, and Development. Washington DC: International Bank for Reconstruction and Development/World Bank, p. 7.

governance institutions – including those that structure policing – and poor public-participation strategies are also contributory factors. Coupled with these, limited efforts have been made to improve the welfare of society generally and, in particular, the capacity of law enforcement agencies to counter terrorism. This has consequently affected the operational preparedness of law enforcement agencies, resulting in constrained rights-centred policing on the part of law enforcement officers and with regard to the victims of terror.

3. IMPLICATIONS AND RECOMMENDATIONS

To intensify the struggle against terrorism while still respecting human rights values and principles, the following actions are recommended:

1. At the international level, Kenya needs to ratify the Arms Trade Treaty. This would prevent the diversion of arms and eradicate the illicit trade in conventional arms. It would also promote transparency and responsible action concerning the control of arms.
2. At the regional level, the African Centre for the Study and Research on Terrorism needs to be strengthened so that it can serve as a centre of information, studies and analyses on terrorism and terrorist groups, as well as for the promotion of counter-terrorism capacities in highly affected counties. The Centre should furthermore be financed effectively so as to allow it to focus on its mandate, including the training of law enforcement officials regarding the war against terrorism, with such training being informed by primary information gathered on the changing nature of terror-related activities. The Centre should also form effective partnerships with government and non-government policing and security think tanks and institutions.
3. Locally, the following would strengthen rights-based policing in the era of terror:
 - 3.1 Adherence to the rule of law by all law enforcement officers should remain the significant entry point to rights-based policing. Both the Kenyan Constitution and policing laws recognise rights-based policing values, principles and procedures. Adherence to these would serve Kenyans well. Furthermore, such values, principles and procedures should apply during any deployment of the Kenya Defence Forces.
 - 3.2 Equipping law enforcement officers with modern equipment and technology to fight terrorism would add value. This should include providing the necessary policing records, registers, machines and documents, including laws, policies and procedures. Such a step would ensure that proper records are available for informed analysis of interventions, with officers who fail to complete these records being held to account.
 - 3.3 Addressing the rights and welfare issues of deployed law enforcement officers would motivate them to fight terrorism.
 - 3.4 Closing the avenues for corruption and eliminating flawed management systems, especially along the porous borders, would curb illegal migrants, who could also pose a security risk.
 - 3.5 Training law enforcement officers in counter-terrorism using multisectoral and multidisciplinary approaches would change attitudes, strengthen skills and enhance knowledge, thereby assisting in the fight against terrorism and other emerging crimes.
 - 3.6 Training manuals should be developed and an awareness of rights and the policing of terrorism among law enforcement officers, public servants and citizens should be enhanced in order to arrive at informed participatory approaches to the war against terror and other

emerging and related crimes. This should result in community-policing approaches being activated and enhanced, with communities playing an effective role.

- 3.7 Strengthened policing oversight bodies, with an appreciation of their mandate and with no external interference, would ensure accountability on the part of law enforcement officers. Also, expanding the mandates of these oversight mechanisms should be encouraged so that all law enforcement agencies are covered.
- 3.8 Overall, government should address the underlying socio-economic conditions and structures that give rise to terrorism. This should involve individuals, groups or society at large, with actors rather than their behaviour being addressed, and should include the effective creation of citizen-centred governance institutions and responsive leadership at all levels of society.

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