



Counter-Terrorism
Centre of Excellence

EAPCCO CTCoE Issue Paper 3 / 2022

The Impact of the COVID-19 Pandemic on al-Shabaab *Modus operandi* and the Law Enforcement Response in Kenya and Somalia

Abstract

COVID-19 creates both challenges and opportunities for terrorist groups such as al-Shabaab. It also poses significant challenges for Eastern African criminal justice actors countering violent extremism and prosecuting terrorist offences. It can be difficult to determine the impact of COVID-19 with precision, as well as to differentiate its consequences from the region's overall fragile political and security context. However, a number of trends can be identified or anticipated. COVID-related restrictions on freedom of assembly and movement clearly impede investigative and judicial processes. The economic and public health burden of the pandemic creates or exacerbates vulnerabilities and community tensions, which al-Shabaab may seek to exploit. Globally, confinement and economic fragility caused by the pandemic has had a disproportionate and well-documented impact on women and children, including in the Eastern African context. The pandemic is also likely to have had a differentiated impact upon men, women and children associated with al Shabaab - although to what extent and exactly how, is unclear. The impact of COVID-19 on donor engagement and shifting global financial priorities has further impeded programs designed to bolster regional capacity to counter the influence, and prosecute crimes, of al-Shabaab. Simultaneously, there are encouraging signs of adaptation and resilience. Drawing on interviews with several terrorism prevention experts and criminal justice practitioners in both Kenya and Somalia, this paper highlights a number of areas which may warrant a more robust programmatic or policy response, or further research. As both COVID-19 and al-Shabaab are enduring and transnational in nature, sustained and flexible donor engagement as well as enhanced international cooperation is required to effectively counter both threats.

Ms. Susan Lamb,
Research Consultant

Ms. Tina Mykkanen,
P/CVE and CT Expert

With contributions from:

Dr. Isaiah Abilah Ochieng,
Head of Research Department, EAPCCO CTCoE

Mr. Wycliffe Burudi,
Deputy Head of Research Department, EAPCCO CTCoE

© Eastern Africa Police Chiefs Cooperation Organization Counterterrorism Centre of Excellence, 2022.

The designations employed and the presentation of material in this publication do not imply the expression of any opinion whatsoever on the part of the Eastern Africa Police Chiefs Cooperation Organization Counter-Terrorism Centre of Excellence (EAPCCO CTCoE) concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitations of its frontiers or boundaries. Mention of firm names and commercial products does not imply the endorsement of the EAPCCO CTCoE.

TABLE OF CONTENTS

1.	Introduction.....	1
1.1	Background	1
1.2	Al-Shabaab – a brief background.....	1
1.3	Al-Shabaab’s impact in Somalia and Kenya	2
1.4	Public health capabilities and incidence and impact of COVID-19 in Somalia and Kenya.....	3
2.	Legislative and other official responses to the COVID-19 pandemic	5
2.1	Impact of COVID-19 on law enforcement and judicial institutions in Somalia	6
2.2	Impact of COVID-19 on law enforcement and the judiciary in Kenya.....	6
3.	General challenges posed by COVID-19 to the terrorism prevention landscape.....	9
4.	Potential or emerging Al-Shabaab responses to the COVID-19 pandemic	11
4.1	Potential pandemic-related changes to al-Shabaab’s modus operandi	11
4.2	Vulnerability of land and maritime boundaries and changing transit patterns.....	12
4.3	The various impacts of increasing economic fragility due to COVID-19.....	12
4.4	Stemming terrorist financing and the diversion of resources by COVID-19.....	13
4.5	Erosion of State legitimacy	14
4.6	Exploitation of heavy-handed or inappropriate security or law enforcement responses.....	15
4.7	Increasing use of online platforms and accelerated dependence on digital technologies.....	16
4.8	Gendered impact, and consequences for children and youth	16
5.	Conclusions and implications: challenges, vulnerabilities and opportunities	18

1. INTRODUCTION

1.1 Background

With the financial support from the Government of the Federal Republic of Germany, since 2020 United Nations Office on Drugs and Crime (UNODC) has been implementing a project on supporting the Eastern African Police Chiefs Cooperation Organization (EAPCCO) and its regional Counter-Terrorism Centre of Excellence (CTCoE). The project benefits fourteen EAPCCO members¹ while supporting the EAPCCO CTCoE and assisting EAPCCO members in enhancing national and regional capacities to effectively prevent and counter violent extremism and terrorism, and related serious crime.

One of the objectives of the project is to produce evidence-based research and knowledge products, relevant for law enforcement and criminal justice practitioners in Eastern Africa. The CTCoE developed this paper with the support from UNODC as part of this objective.

The CTCoE has published issue papers on cooperation between law enforcement and prison authorities,² terrorism financing,³ engagement with victims of terrorism,⁴ and on links between transnational organized crime and terrorism.⁵ Upcoming issue papers include a deradicalization case-study and practical border security guidelines.

This issue paper assesses the impact of the COVID-19 pandemic and identifies likely changes in al-Shabaab's *modus operandi* in response to it. It also traces the implications of the pandemic and of these potential changes in *modus operandi* for law enforcement and judicial responses in Kenya and Somalia.

1.2 Al-Shabaab – a brief background

Harakat al-Shabab al-Mujahideen, known as al-Shabaab (listed; SOe.001), is a terrorist group based in Somalia. Ideologically founded on religious extremism, the group aims to establish a fundamentalist state in Somalia and, more broadly, across the Horn of Africa. Al-Shabaab is a hierarchical organization with political, military and media components, which produces video and propaganda content for international recruitment and dissemination. Beyond its overarching aim of creating a fundamentalist state, al-Shabaab is said to pursue a wide range of different, and often competing, agendas. It enforces a strict interpretation of Sharia law within the group as well as in territories under its influence or control.

Al-Shabaab has had a strong foothold in Somalia since 2006, when it surfaced as an insurgency opposed to the Ethiopian and US intervention installing a Transitional Federal Government in Somalia. The previous lack of effective governance in Somalia allowed al-Shabaab to control key territorial areas, including the capital Mogadishu and the commercial capital of the Jubaland state Kismayo. Following an African Union-led offensive in 2011, al-Shabaab was forced out of Mogadishu, and the group was removed from the port of Kismayo in 2012. Since the formation of a new, internationally backed government in 2012, al-Shabaab has lost effective control of its key territories. However, it still controls large parts of rural southern Somalia and carries out regular attacks, including suicide bombings in the capital.⁶ Its influence extends beyond Somali borders. Outside of Somalia, where it is a predominantly

1 The EAPCCO members are Burundi, Comoros, the DRC, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, Sudan, South Sudan, Tanzania, and Uganda.

2 EAPCCO CTCoE Issue Paper 1/2021 Cooperation between law enforcement and prison authorities in counterterrorism cases: unravelling expectations and proposals to strengthen cooperation: https://eapcco-ctcoe.org/wp-content/uploads/2021/08/UNODC_CTCoE_Issue_Paper.pdf

3 EAPCCO CTCoE Issue Paper 2/2021 Countering the financing of terrorism in Eastern Africa: https://eapcco-ctcoe.org/wp-content/uploads/2021/08/UNODC_CTCoE_Issue_Paper_2_2021.pdf

4 EAPCCO CTCoE Issue Paper 3/2021 Law Enforcement Engagement with Victims of Terrorism: https://eapcco-ctcoe.org/wp-content/uploads/2021/08/UNODC_CTCoE_Issue_Paper_3_2021.pdf

5 EAPCCO CTCoE Issue Paper 1/2022 Addressing the Links between Transnational Organized Crime and Terrorism in Eastern Africa: https://eapcco-ctcoe.org/wp-content/uploads/2021/08/UNODC_CTCoE_Issue_Paper_3_2021.pdf

6 See UNDP study, 'Social media in Africa: A double-edged sword for security and development', by Kate Cox et. al., at pp. 4-5 ("UNDP Social media in

overt, military, and governmental force, it is instead a covert, armed and anarchic force, and in Kenya, it has successfully exploited the social and economic exclusion of communities in Kenya to recruit Kenyans for its cause.

On 12 April 2010, pursuant to paragraph 8 of resolution 1844 (2008),⁷ al-Shabaab was listed on the United Nations Security Council (UNSC) Consolidated List⁸ as it has “engaged in acts that directly or indirectly threaten the peace, security, or stability of Somalia”. In 2021, al-Shabaab remained the most active terrorist group, conducting attacks primarily in Somalia, but also in neighboring countries, particularly Kenya.⁹

1.3 Al-Shabaab’s impact in Somalia and Kenya

The Global Terrorism Index (GTI) ranks Somalia, in terms of the number of attacks and deaths, as the seventh most terrorism-affected country in the world.¹⁰ The prevalence of the terrorist group in Somalia is linked to several factors, including high rates of youth unemployment, limited access to education, and unresolved historic and political grievances. The drivers and enablers of violent extremism in the region are multiple, complex, and context-specific, and defy easy analysis. However, they have religious, ideological, political, economic, and historical dimensions, including economic exclusion and vulnerability, thwarted or non-existent educational and vocational prospects, limited confidence or trust in government, and a low degree of confidence in the potential for democratic institutions to deliver progress or meaningful change.

In this context, narratives of radical upheaval and change, may continue to be attractive as long as underlying issues remain unaddressed.¹¹ According to the World Bank, nearly 70% of the Somali population live below the poverty line of USD 1.90 per day.¹² The COVID-19-induced economic crisis has further affected livelihoods, particularly of informal workers and youth - some of whom may in consequence be vulnerable to coercion or influence by terrorist and extremist groups.

In the East African context, Kenya is regarded as relatively stable and prosperous, despite suffering from high levels of unemployment, crime, and poverty - which are likely further exacerbated by the COVID-19 pandemic. The GTI ranks Kenya as the country twentieth-most affected by terrorism worldwide.¹³ Kenya’s main terrorist threat emanates from al-Shabaab, which it has been engaged in fighting against since 2011, as part of the African Union Mission in Somalia (AMISOM). Having intervened in the conflict in Somalia in 2011, following a series of cross-border raids by al-Shabaab, Kenya has suffered several reprisal attacks - including the 2013 Westgate shopping mall siege and the 2015 Garissa University College attack. Al-Shabaab has in turn proven itself to be a highly adaptable organization that has diversified itself from a predominantly overt, military, and governmental force in southern Somalia, into a covert, armed and anarchic force in Kenya. It has thereby successfully reinvented itself to exploit the social and economic exclusion of some communities in Kenya, while recruiting Kenyans into insurgency.¹⁴

Africa Study”). See also Christopher Hockey and Michael Jones, “The Limits of ‘Shabaab-CARE’: Militant Governance amid COVID-19”, *CTC Sentinel (Combating Terrorism Center at West Point)*, June 2020 (vol. 13, issue 6), at pp. 33-39 (“West Point Al-Shabaab and COVID-19 Study”).

7 United Nations Security Council. 20 November 2008. Resolution 1844 (2008). [S/RES/1844\(2008\)](https://www.un.org/SecurityCouncil/content/un-sc-consolidated-list#entities).

8 See United Nations Security Council Consolidated List <https://www.un.org/SecurityCouncil/content/un-sc-consolidated-list#entities>

9 *CTED*, Global survey of the implementation of Security Council resolution 1373 (2001) and other relevant resolutions by Member States, §56.

10 Global Terrorism Index 2021. <https://www.visionofhumanity.org/maps/global-terrorism-index/#/>

11 See UNDP study, *Journey to Extremism in Africa: Drivers, Incentives and the Tipping Point to Recruitment* (2017) (“UNDP Extremism in Africa Study”) (noting that where there is injustice, deprivation and desperation, violent extremist ideologies present themselves as a challenge to the *status quo* and a form of escape. The message is tailored by recruiters to suit different contexts and different types of individuals. Low levels of education and reliance on intermediaries to interpret religion allows largely imported ideologies to serve as a lightning conductor for the frustration and anger that is the consequence of socio-economic and political marginalization).

12 World Bank. (2018) Somalia - Country Partnership Framework for the Period FY19-FY22. [World Bank Document](https://www.worldbank.org/en/country/somalia/overview)

13 Global Terrorism Index 2021. <https://www.visionofhumanity.org/maps/global-terrorism-index/#/>

14 David Anderson and Jacob McKnight, “Understanding Al-Shabaab: Clan, Islam and Insurgency in Kenya”, *Journal of Eastern African Studies* 9(3) (2015), at pp. 536-557.

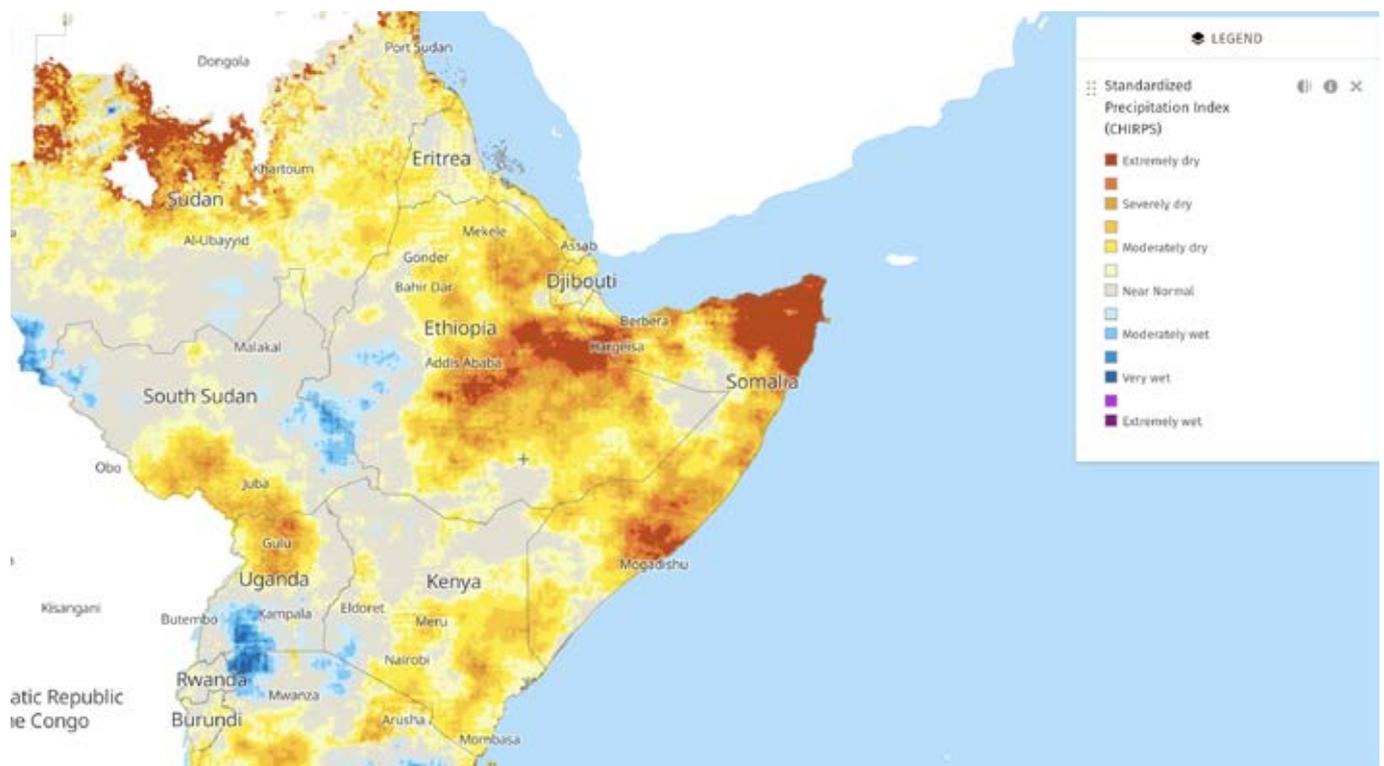
1.4 Public health capabilities and incidence and impact of COVID-19 in Somalia and Kenya

The reported incidence of COVID-19 in both Kenya and Somalia is relatively low by global comparisons. However, community transmission is well established, and it is assumed that many more people have undoubtedly been infected by the virus than official figures may suggest. The actual number of cases is likely understated due to limited testing capacity and a shortage of skilled health workers. Many areas, particularly those in Somalia under al-Shabaab control, are inaccessible. In these areas, some commentators in 2020 noted an

increase in burials and challenges in accurately reporting deaths.¹⁵

The economic impact of COVID-19 in the region is significant. In addition to its direct impact on livelihoods, remittances from the diaspora have dropped significantly and food prices have risen. The pandemic also co-exists with other existential threats. COVID-19-related border closures, along with e.g., locust invasions and extreme weather threatening food production may lead to surging prices. With lockdowns and curfews exposing vulnerable communities to dwindling livelihoods and greater risks of starvation, there is a risk of increasing levels of food insecurity in the Horn of Africa. The Famine Early Warning Systems Network estimates that COVID-19 may lead to a 25% increase of highly food insecure people in the region.¹⁶

Figure 1:
The Eastern Horn of Africa faces an prolonged and persistent agro-pastoral drought sequence



Source: Famine Early Warning systems Network, <https://fews.net/EADW> | Mapviewer - East Africa Drought Observatory - East Africa Drought Watch.html

15 See e.g. West Point Al-Shabaab and COVID-19 Study, at p. 33.

16 Famine Early Warning Systems Network. (2022) Scale of food assistance needs in East Africa continues to outpace the humanitarian response. <https://fews.net/east-africa>.

Member States in the Horn of Africa have some of the weakest healthcare systems in the world. Kenya has a relatively strong healthcare system compared to other countries in the region and ranks 84th out of 195 countries in the 2021 Global Health Security Index,¹⁷ but Somalia ranks the lowest at 195.¹⁸ Somalia's healthcare system has been described as extremely fragile, with most citizens dependent on informal providers for care. At the start of the pandemic, the country had fewer than 20 beds available in ICUs. International support has ensured that there are now almost 300 beds in isolation facilities, but this number is insufficient to deal with any significant escalation in COVID-19 cases. For al-Shabaab, a widespread COVID-19 outbreak in the areas it controls would present an entirely different challenge compared to that experienced during previous humanitarian emergencies in the country. While al-Shabaab is believed to have access to some basic medical facilities, it does not have the expertise or specialist equipment to respond adequately to large numbers of persons requiring specialist intervention or intensive care.¹⁹

Between 3 January 2020 and 7 March 2022, according to WHO, Kenya (population 53.77 million (2020 census)), confirmed 323,075 cases of COVID-19 and 5,641 deaths. As of 3 March 2022, a total of 16,786,825 vaccine doses had been administered.

Between these same dates in Somalia (population 53.77 million (2021)), there were 26,400 confirmed cases of COVID-19 and 1,359 deaths. As of 28 February 2022, a total of 1,838,348 vaccine doses have been administered.

Source: <https://covid19.who.int/region/afro/country/ke> and <https://covid19.who.int/region/emro/country/so>

Thus far, Africa represents a small proportion (4%) of the global pandemic morbidity burden. The World Health Organization (WHO) nonetheless warns that if left unchecked, COVID-19 could still result in significant morbidities and fatalities. Africa has been less affected by the pandemic than many other continents, despite its relatively fragile healthcare systems. Several hypotheses have been advanced to explain this, including a warmer climate that does not favor viral pathogen viability, fewer COVID-19 associated deaths because of a comparatively younger population, lower case numbers due to inadequate testing, population-wide immune priming due to previous exposure to other infectious diseases, and genetic factors. African countries' previous experience in managing other life-threatening infectious disease outbreaks such as Ebola, HIV, and malaria may also have played a role.²⁰ Many African governments, including Kenya and Somalia, also implemented a raft of stringent countermeasures and moved with commendable speed to implement countermeasures at early stages of COVID-19 detection within their borders to restrain widespread disease and its adverse effects. It is unclear to what extent these factors explain the incidence and spread of the disease to date, whether generally in Africa or specifically in Kenya and Somalia. However, it is also the case that sustained control measures may also be unsustainable and carry unbearably negative and inequitable impacts in resource-poor settings.²¹

17 Global Health Security Index. 2021 GHS Index Country Profile for Kenya. <https://www.ghsindex.org/country/kenya/>

18 Global Health Security Index. 2021 GHS Index Country Profile for Somalia. <https://www.ghsindex.org/country/somalia/>

19 West Point Al-Shabaab and COVID-19 Study, at p. 37.

20 Edwin Wangari et. al., Kenya's response to the COVID-19 pandemic: a balance between minimising morbidity and adverse economic impact (2021); available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7921885/>

21 Edwin Wangari et. al., Kenya's response to the COVID-19 pandemic: a balance between minimising morbidity and adverse economic impact (2021); available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7921885/>

2. LEGISLATIVE AND OTHER OFFICIAL RESPONSES TO THE COVID-19 PANDEMIC

In Kenya, the government relied on two legislative provisions, notably the Public Order Act²² and Public Health Act,²³ to create a Curfew Order and Health Rules.²⁴ The Curfew Order restricted population movement between the hours of 19:00 and 05:00 (EAT) and the Health Rules stipulated regulations relating to issues such as social-distancing requirements, and the disposal of COVID-19 positive bodies. In April 2020, strict movement restrictions were placed on five counties (including the major centers of Nairobi and Mombasa), with reported high infection rates, due to fears that Easter-weekend travelers would spread the virus across the country. The cessation of movement imposed in these four areas blocked travel for three weeks and was subsequently extended twice for 21 days at a time. These restrictions were ultimately lifted on 7 July 2020 when it was reported that the infection rate in these areas had diminished.²⁵

Work from home policies were implemented in some organizations, and schools were closed in March 2020. They were partially reopened on 19 October 2020, and fully reopened on 4 January 2021.²⁶ On 16 May 2020, the Government announced the closure of the borders with Tanzania and Somalia until at least 6 June 2020 to curtail the spread of COVID-19, although exceptions were made for freight.²⁷ International flights to Kenya have since resumed, and land borders opened.

In Somalia, hygiene and social distancing advice was disseminated as widely as possible by the Federal Government of Somalia (FGS), with the support of humanitarian agencies, but many

interviewees report that these were not widely adhered to. For those lacking access to clean water and residing in overcrowded conditions, adherence to these recommendations is in any case next to impossible. Internally displaced persons (IDPs) living in camps on the edge of Mogadishu are particularly vulnerable, and there are vast swathes of the country over which the FGS has no access, let alone control - namely territories controlled by al-Shabaab.

Educational institutions were shut, most flights suspended, population movement restricted, and a night-time curfew imposed in Mogadishu. In practice, there seemed to be limited curtailment of freedom of movement as by and large these restrictions appear not to have been followed or enforced. The closure of mosques in some areas has been contentious,²⁸ and the social distancing advice from the FGS was largely ignored across Mogadishu, where markets remain crowded. As is the case in most of Sub-Saharan Africa, a complete lockdown was unfeasible due to the majority of the population dependent on subsistence labour and needing to prioritize immediate survival over an invisible threat such as COVID-19.

Somalia's elections were postponed due to internal security concerns rather than the pandemic. However, COVID-19 contributed to a delay in implementing reforms and related processes and thus may have inhibited overall government effectiveness.

22 https://www.rightofassembly.info/assets/downloads/1950_Public_Order_Act_of_Kenya_1.pdf

23 <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PublicHealthActCap242.pdf>

24 <https://www.kenyachamber.or.ke/wp-content/uploads/2020/04/COVID-19RULES.pdf>

25 See African Criminal Justice Reform (ACJR) and Dullah Omar Institute study, 'Criminal justice, human rights and COVID-19 - a comparative study of measures taken in five African countries' (October 2021), available at: <https://acjr.org.za/acjr-publications/combined-covid-19-report-13-10-2021-final.pdf> ("ACJR Study").

26 See Benta Abuya, 'The deeper divide: what Kenya's pandemic school closures left in their wake' (2022), available at: <https://theconversation.com/deeper-divide-what-kenyas-pandemic-school-closures-left-in-their-wake-176098> (noting inequality caused by the digital divide and a gender gap despite efforts to enhance online forms of learning).

27 See for example: <https://crisis24.garda.com/alerts/2020/05/kenya-borders-with-tanzania-and-somalia-closed-and-curfew-extended-until-june-6-as-covid-19-cases-increase-update-20>

28 See West Point Al-Shabaab and COVID-19 Study, at p. 34.

2.1 Impact of COVID-19 on law enforcement and judicial institutions in Somalia

Even prior to the COVID-19 outbreak, judicial and law enforcement institutions in Somalia and Kenya were confronted with several systemic challenges in investigating, prosecuting and adjudicating terrorist and other serious crimes.

In Somalia, terrorism cases are heard by the military rather than the civilian courts. While COVID-19 stopped hearings in civilian courts, it appeared to have limited, if any, impact on the military courts - which seemed to function fairly unimpeded during the pandemic.

Concerning the pandemic's impact on the efficacy of Somalia's response to terrorism, it is difficult to differentiate COVID-19-related challenges from a number of pre-existing weaknesses within the Somali criminal justice sector. A shortage of personnel relative to caseload, weak case management systems, and underdeveloped infrastructure, were all characteristics of this sector prior to the pandemic. Somali law enforcement authorities have limited resources and capacity to support specialized investigative methods commonly used in better-resourced jurisdictions. Investigations of terrorist networks and leadership structures additionally require advanced human, and other forms of, intelligence-gathering capacities, which were a work in progress in Somalia pre-COVID-19 and which have also been adversely impacted by pandemic restrictions. Defector programs for disengaging terrorist fighters and al-Shabaab members are not always formalized, sufficiently resourced, or well-integrated into the criminal justice processes and procedures. Prosecutors have also confronted challenges in obtaining testimony of witnesses to al-Shabaab attacks due to fear of reprisals, and witness protection capacity in Somalia remains underdeveloped.

Long-standing and extensive donor engagement had sought to enhance national capacities and develop core competencies in these, and other, areas. Much work remains ongoing across many

sectors of the Somali criminal justice system, supported by various donors. There are some promising signs of progress, such as a proposal to set up a specialized Financial Investigations Unit, and to re-route financial cases to the civilian courts. Enhanced security for judges and prosecutors was also achieved and they received COVID-19 vaccines on a priority basis.

Interviewees noted that COVID-19 travel restrictions and staff turnover were, however, significant constraints on many donor activities in these areas. Diminished funding and shifting priorities, including redirection of donor financing toward pandemic mitigation, curtailed several programs and placed constraints on capacity building and other activities, and in some instances disrupting long-standing networks and relationships. Interviewees concurred that there was limited scope for online engagement whilst lockdowns and travel restrictions persisted, due to limited infrastructure and technical capacity. Moreover, personal relationships are viewed as critical in the Somali context and difficult to maintain or develop remotely.

Somali justice and police institutions have shown resilience and determination to build core prosecutorial and investigative skills despite these impediments, and efforts continue to develop more effective and human-rights compliant terrorism investigations in Somalia. However, gaps in investigative capabilities and resourcing are likely to persist.

2.2 Impact of COVID-19 on law enforcement and the judiciary in Kenya

The Kenyan justice system also suffers from several systemic weaknesses and a crowded overall docket. However, there have been several encouraging developments regarding Kenya's terrorism prevention capabilities. A specifically designated counter-terrorism court, Kahawa Law Court, opened in December 2020. This specialized court was constructed with support from the UNODC's Global Maritime Crime Programme (GMCP)²⁹ and funded by the Government of the United States of America, with support from the Government of the United

29 See <https://www.unodc.org/unodc/en/piracy/index.html>

Kingdom.³⁰ Situated in Kiambu County, within the precincts of Kamiti Maximum Prison on the outskirts of Nairobi, this new court is the first and largest court in Kenya dedicated to terrorism cases and related high-risk cases. In 2010, UNODC GMCP had supported the construction of Shanzu Law Court within Shimo La Tewa Prison precincts in Mombasa, as part of a counter piracy project for high security trials. The proximate location of Shanzu Law Court to the prison made it convenient for criminal justice actors, and reduced the time and resources required to move high risk suspects to distant courts for hearing of their cases. The construction of the Kahawa Law Court built on this success.

More streamlined case management guidelines were also adopted in the past year, and indications from interviewees are that they have been welcomed by the judiciary.

In response to the declaration of a global pandemic, the Kenyan justice system implemented several restrictions to control the spread of the disease and to ensure continuity in the delivery of essential services. The National Council for the Administration of Justice (NCAJ) on 15 March 2020 published an Administrative and Contingency Management Plan to mitigate COVID-19 in the Kenyan justice sector.³¹ The NCAJ scaled down all face-to-face interactions, including a temporary suspension of prison visits. It issued a number of directives relating to the handling of civil and criminal matters and the safety of staff and litigants during the curfew. It suspended the execution of civil orders and the delivery of judgements in open court, and all court houses were closed to the public, while directed to operate with minimal staff.

All court sittings were suspended except for urgent matters. Bringing prisoners to court for remand hearings was also suspended.³² On 2 April 2020, about 4,800 convicted persons serving short sentences for petty crimes, or who were close to the

end of their sentences, were released early under measures to reduce prison overcrowding and the spread of COVID-19.³³ There is no indication that these early release provisions extended to anyone convicted of terrorist crimes.³⁴

On 15 April 2020, the NCAJ announced a raft of further measures regarding the operation of the judiciary and delivery of justice. Electronic case management Practice Directions, issued on 20 March 2020, enabled e-filings in relation to urgent cases or those that may lapse on account of time limitations. However, judicial officers in a focus group discussion indicated that e-filing of cases was not possible in all parts of the country due to poor, or complete lack of, network connectivity in remote areas. Courts were substantially reopened in mid-2021 with persistent restrictions on jury trials. In some settings, courts have been able to adapt to COVID-19 restrictions, for instance by holding hearings outdoors, while in other settings, courts have adopted virtual hearings.

It was announced that applications by e-filing would be retained in the Kenyan justice system post-pandemic in the interests of judicial efficiency.³⁵ Initially designed as a response to the pandemic, this is an innovation that is likely to spearhead significant broader changes within the Kenyan justice system. However, interviewees question whether there is sufficient budgetary allocation for widespread technological improvements.

Although the move to virtual hearings, as well as the mobilization of donor funds to support this, is undoubtedly positive, some interviewees highlighted limitations upon the use of technology and remote hearings in the Kenyan context. Although these measures have enjoyed some success, they are also dependent on software, internet access and electricity, which are not always available. For example, many prisons lack laptops. Further, remote consultations and hearings can

30 See <https://www.unodc.org/easternafrika/Stories/kahawa-law-court-opening.html>

31 See National Council for the Administration of Justice (NCAJ), Press Release of 15 March 2020, available at: <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Chief-Justice-Press-Statement-Administrative-and-contingency-management-plan-to-mitigate-COVID-19-in-Kenya%E2%80%99s-Justice-Sector.pdf>

32 National Council for the Administration of Justice (NCAJ), Press Release of 15 March 2020, available at: <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Chief-Justice-Press-Statement-Administrative-and-contingency-management-plan-to-mitigate-COVID-19-in-Kenya%E2%80%99s-Justice-Sector.pdf>

33 See ACJR Report, Annex One (Kenya), at p. 12, available at: <https://acjr.org.za/acjr-publications/appendix-one-kenya.pdf>

34 A highly-publicised escape of three terrorist suspects from Kamiti Prison occurred, however, in November 2021. While this prompted a review of the handling of terrorist suspects and convicts in prison, there is no indication that this breach stemmed from any COVID-related condition: see <https://www.voanews.com/a/three-terror-convicts-escape-from-kenyan-maximum-security-prison/6315163.html>

35 National Council for the Administration of Justice (NCAJ), Press Statement of 15 April 2020, available at: <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Chief-Justice-Press-Statement-Administrative-and-contingency-management-plan-to-mitigate-COVID-19-in-Kenya%E2%80%99s-Justice-Sector.pdf>

arguably not provide all the necessary safeguards for persons in detention. However, the Kenyan judiciary has sought to adapt to COVID-19 restrictions and made significant efforts to compensate for the lack of in-person access to court via video-conferencing and other electronic means. Further, and despite these constraints, many of these initiatives are likely to be enduring and contribute to the upgrading of the justice sector as a whole.³⁶

Unquestionably however, the pandemic impeded the courts' ability to operate. It adversely affected resolution of cases in courts despite the numerous measures designed to mitigate its impact, and digital proceedings and other innovations only partially compensated for the lack of access to courts. COVID-19 restrictions delayed most matters, and it appears that the already-significant backlog of cases in Kenya has further increased. The number of cases that were resolved in all courts reduced from 469,359 in the financial year 2018/19 to 289,728 cases in 2019/20, when COVID-19 was first reported in Kenya – a drop of some 38%. These backlogs are likely to persist and worsen if restrictions continue. While it is difficult to attribute this reduction wholly to the pandemic, or to isolate its impact on terrorism cases specifically, court closures and other measures clearly had an adverse impact across the entire Kenyan justice sector.³⁷

Although precise data in this area is difficult to obtain, COVID-19 appears to have a particularly disadvantageous impact on terrorism investigations and prosecutions. Some experts indicated that movement restrictions constrained capacity to conduct investigations and to carry out arrests. They also impeded community policing and other activities heavily dependent on human intelligence.

Other interviewees, however, stressed that COVID-19 restrictions were far from the only constraint, and that Kenya confronts numerous pre-existing challenges in undertaking effective and coordinated criminal investigations in this area.

Another area of contemporary focus concerns efforts to strengthen Kenya's anti-money laundering (AML) and countering financing of terrorism (CFT) capacities, in accordance with the Financial Action Task Force (FATF) standards. The FATF Recommendations are recognized as the global AML/CFT standard.³⁸ The FATF identifies jurisdictions which have strategic weaknesses in their AML/CFT frameworks. Designation by FATF as a high-risk country carries a number of adverse consequences.³⁹ In 2014, the FATF recognized that Kenya had made significant progress in improving its AML/CTF regime. It noted that Kenya had established the legal and regulatory framework to meet its commitments regarding the strategic deficiencies that the FATF had identified in 2010, and that Kenya was therefore no longer subject to FATF's monitoring process under its on-going global AML/CFT compliance process.⁴⁰ Kenya then undertook to address the full range of AML/CFT issues that had been identified. As Kenya is currently entering a fresh review by the FATF this has given impetus to ongoing reforms to its money laundering and proceeds of crime legislation, and its implementation within Kenya's regulatory sectors.

In Kenya, too, COVID-19 restrictions have significantly impacted donor funding, leading to a reduction in in-person activities. Whilst considerable agility and adaptability was shown in response to these challenges, the Kenyan justice system continues to require support to address the gaps previously identified. As in Somalia, there are concerns that shifting donor priorities may now jeopardize many of these initiatives: an eventuality that would be short-sighted and which could lead to the reversal of many hard-won gains or the emergence of new vulnerabilities.

36 Mercy Muendo, 'Kenya is struggling to deliver justice online: what needs to be done' (2020), available at: <https://theconversation.com/kenya-is-struggling-to-deliver-justice-online-what-needs-to-be-done-139675>

37 See M. Marang'a et. al., 'Effect of COVID-19 pandemic on resolution of cases in courts: The Kenyan Judiciary' (2021), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3851886; see also ACJR Report.

38 The Financial Action Task Force (FATF) is an independent intergovernmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction: see <https://www.fatf-gafi.org/about/>

39 For all countries identified as high-risk, the FATF urges all jurisdictions to apply enhanced due diligence, and, in the most serious cases, to apply counter-measures to protect the international financial system from the money laundering, terrorist financing, and proliferation financing risks emanating from the country. This list is often externally referred to as the "black list" (<https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-march-2022.html>).

40 <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/fatf-compliance-june-2014.html#Kenya>

3. GENERAL CHALLENGES POSED BY COVID-19 TO THE TERRORISM PREVENTION LANDSCAPE

A 2020 United Nations Counter-Terrorism Committee Executive Directorate (CTED) study monitored the impact of the pandemic on the global counter-terrorism landscape.⁴¹ While acknowledging that the COVID-19 pandemic is far from over, an updated 2021 CTED study mapped the potential short, medium and long-term impacts of the pandemic on terrorism and terrorism prevention, as well as key regional and thematic trends.⁴²

COVID-19 has made the countering of violent extremism and terrorism more challenging globally. 69% of respondents in a 2021 CTED study stated that countering terrorism has become more challenging as a result of the pandemic.

(Source: <https://www.un.org/securitycouncil/ctc/content/update-impact-covid-19-pandemic-terrorism-counter-terrorism-and-countering-violent-extremism>)

Most of these findings are potentially relevant to the present study. However, those which may have the greatest relevance to al-Shabaab's changing modalities of operation, and to the Kenyan and Somali response, include:

- Border control measures and restrictions on international travel have curtailed terrorist movement, impacting their ability to conduct attacks, recruit and conduct operations;
- Reduction in air passenger travel has resulted in an increase in illicit activities using parcel services and maritime cargo;
- Terrorist and violent armed groups have sought
- Limited ability of financial agencies to conduct
- to expose an increasingly online global population to their propaganda on virtual platforms;
- Limited or delayed implementation of gender-related programs (including those seeking to counter violent extremism (CVE)) due to budget reallocation is a cause for concern;
- Socio-economic restrictions have reinforced traditional gender roles and undermined women's safety and economic security;
- Access to some justice and legal services has been affected or suspended, making it more difficult to secure criminal accountability and to respond to gender-based violence;
- Lack of resources and the need to uphold constitutional and human rights principles has limited States' ability shift courts online. Delays in judicial proceedings, including obtaining search warrants and arrest orders, may also have long-term impacts on overall efforts to prevent and counter terrorism;
- Limitations on public gatherings have affected the timing and frequency of activities related to the implementation of rehabilitative and reintegration components of CVE strategies;
- COVID-19 stimulus and support programs have been used fraudulently, with the result that illicitly obtained funds could be laundered through legitimate organizations and institutions;
- An increased use of virtual and other novel assets for terrorism-financing purposes;

41 UN Security Council Counter-Terrorism Committee Executive Directorate (CTED), The impact of the COVID-19 pandemic on counter-terrorism and countering violent extremism (2020), available at: <https://www.un.org/securitycouncil/ctc/content/cted-paper%E2%80%93impact-covid-19-pandemic-counter-terrorism-and-countering-violent-extremism> ("CTED 2020 Report").

42 UN Security Council Counter-Terrorism Committee Executive Directorate (CTED), *Update on the impact of the COVID-19 pandemic on terrorism, counter-terrorism and countering violent extremism* (2021), available at: https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/files/documents/2021/Jun/cted_covid_paper_15june2021_1.pdf ("CTED 2021 Updated Report").

customer due diligence and detect potential financial anomalies;

- **Curtailed freedom of movement and assembly, curtailing both terrorist operations and CVE programs, including community engagement.** Reduced funding for CSO activities has decreased the quality and quantity of services provided by these organizations, potentially exacerbating challenges faced by vulnerable populations;
- **Securitized COVID-19 responses (including arrests and detentions) have diminished trust among vulnerable populations and created fear and anger against government entities; and**
- **Pandemic-related impacts have created a volatile socio-economic climate in States already facing inter-communal tensions. Conspiracy theories and anti-Government sentiments fuel existing societal fissures, coalescing violent terrorist groups around their ideological fringes.**

Although noting that in conflict zones, where the threat of terrorism is predominant, the pandemic appears to have had limited impact on terrorist activity, the updated CTED report (2021) noted that the pandemic has exacerbated many pre-existing issues and challenges that shape the terrorist threat landscape. Terrorists and armed groups have sought to exploit pandemic-related sociocultural restrictions and economic fragility, including via efforts to recruit, radicalize and organize on virtual platforms. However, there is limited data on the long-term impacts of COVID-19 on recruitment and radicalization efforts, and further research is required to understand any correlation between pandemic-related impacts and increases in terrorist violence.⁴³

CTED's analysis also stressed that the pandemic is far from over and that most geographical regions and thematic areas continue to face existing pandemic-related challenges. These challenges are fluid and evolving, and more data and analysis will be required to draw comprehensive conclusions.

CTED has identified a number of trends and potential impacts across the following key thematic areas:

- **Border management and law enforcement;**
- **Information and communications technologies;**
- **Prosecution, rehabilitation and reintegration;**
- **Gendered impact; and**
- **Human rights.**

Source: CTED Update on the impact of the COVID-19 pandemic on terrorism, counter-terrorism and countering violent extremism, June 2021, available at: https://www.un.org/securitycouncil/ctc/sites/www.un.org/securitycouncil.ctc/files/files/documents/2021/Jun/cted_covid_paper_15june2021_1.pdf

43 CTED 2021 Updated Report, at pp. 1, 20; see *generally* UNDP Extremism in Africa Study.

4. POTENTIAL OR EMERGING AL-SHABAAB RESPONSES TO THE COVID-19 PANDEMIC

Against the backdrop of the above global and regional trends, the next section maps how, and with what effect, al-Shabaab may operate under these new conditions. Whilst firm conclusions cannot be yet be drawn, there are a number of potential trajectories that emerge.

COVID-19 represents a crisis of global proportions that will likely have significant impact on international security in ways that are both predictable and unanticipated. As noted by terrorism prevention expert Audrey Kurth Cronin, “COVID-19 is a boost to non-status quo actors of every type”.⁴⁴ This is true also for al-Shabaab, and in the wake of the COVID-19 pandemic, regional security agencies have flagged the potential for a new wave of violent extremism to emerge within Somalia.⁴⁵

COVID-19 is a boost to non-status quo actors of every type

Source: Audrey Kurth Cronin, Professor at the School of International Service at American University and the Director of the Center for Security, Innovation and New Technology

By its nature, al-Shabaab is a challenging research subject. The pandemic itself further constrained efforts to conduct interviews and assess realities on the ground in Somalia and Kenya. Further, it is often hard to identify causal links with the pandemic, and to draw a direct correlation between the impacts of the pandemic and al-Shabaab operations and other activities. Despite this, it is clear that the pandemic presents opportunities for al-Shabaab to ramp up their rhetorical and physical attacks while governments were weakened and distracted by

the virus, with the dual objectives of furthering their own ambitions and expanding their support base.⁴⁶

While it is challenging to isolate the impact of COVID-19 from the overall deteriorating political and security environment in Somalia, extrapolations regarding al-Shabaab’s possible future behavior can also be deduced from its past behavior. The themes explored below are identified by leading researchers and experts interviewed, and borne out to some extent in the data collected in support of this study,

4.1 Potential pandemic-related changes to al-Shabaab’s modus operandi

Armed and terrorist groups, including al-Shabaab, may have been forced to alter their operational methods some extent to, against the backdrop of ongoing COVID-related restrictions. However, the COVID-19 pandemic to date has seen no significant diminution or let up in the frequency of attacks.

COVID-19 saw no diminution or let up in the frequency of attacks. Insofar as the pandemic has constrained freedom of movement across and within borders, COVID-19 may have provided both an operational constraint and an opportunity for innovation and planning.

The Hiraal Institute reported that the year 2020 had started with al-Shabaab increasingly on the

44 Editorial, Special Issue, COVID-19 and Counter-terrorism, *CTC Sentinel (Combating Terrorism Center at West Point)*, June 2020 (vol. 13, issue 6), at p.1.

45 See United Nations Security Council Counter-Terrorism Committee Executive Directorate, *Update on the impact of the COVID-19 pandemic on terrorism, counter-terrorism and countering violent extremism* (2021).

46 Stephanie Carver and Samantha Kruber, ‘To Act or Not? Al-Shabaab’s Response to a COVID-19 Crisis in Somalia, Lowy Institute’ (May 2020), available at: <https://www.lowyinstitute.org/the-interpreter/act-or-not-al-shabaab-s-response-covid-19-crisis-somalia>.

defensive, but still very active offensively, as it had been subjected to raids into the group's strongholds. By the first quarter of 2020, the group had lost its main gateways into the capital and, along with this, its tax collections points and sites for adjudication of its affairs. By the second quarter, while it managed to maintain its urban operations, it failed to match its previous successes in conducting complex and suicide vehicle-borne improvised explosive device (SVBIED) attacks. To mitigate this loss, it switched to improvised explosive device (IED) attacks. Furthermore, it has used its limited SVBIED attacks to support military operations or to attempt to assassinate high profile threats, which suggests that it still has the capability but lacks opportunity and worthwhile targets.⁴⁷

Interviewees associated with law enforcement institutions in Somalia account no obvious lull in al-Shabaab attacks since the onset of the pandemic. Interviewees account for no discernible changes in al-Shabaab's modus operandi, which continue to predominantly consist of IED attacks against civilians within marketplaces and other similar targets.

Insofar as there has been any hiatus due to COVID-19 in Kenya or Somalia, al-Shabaab may have used this opportunity for strategic and proactive activity, including planning, fundraising, and advancing agenda online. As the pandemic has constrained al-Shabaab's freedom of maneuver, it also likely provided an opportunity for further innovation and future planning. Where pandemic-related restrictions have temporarily suppressed the threat of terrorist violence in Kenya and Somalia, their easing may thus result in an increase in future violence.

Law enforcement institutions have also utilized this period to improve their own adaptability and capacity to prevent and deter attacks. While the importance of intelligence to remain abreast of future al-Shabaab changes in operational modalities is well-recognized, obtaining this is in practice also dependent on donor support, technical as well as financial.

4.2 Vulnerability of land and maritime boundaries and changing transit patterns

Somalia and Kenya's land and maritime boundaries are vast, porous and challenging to police. While there is hence doubt as to whether this can genuinely be described as a COVID-19-related impact, pandemic restrictions may have increased the vulnerabilities of border communities and rendered them still more susceptible to influence or exploitation by al-Shabaab.

Somalia and Kenya's land and maritime boundaries are vast and have always been porous and difficult to police. COVID-19 restrictions may have increased the vulnerabilities of border communities and encouraged al-Shabaab to rely increasingly on maritime transportation.

Enhanced border security may also have encouraged al-Shabaab to rely increasingly on maritime routes. While no data could be obtained from Kenyan law enforcement officials during the period of this research, Somali law enforcement personnel indicate having sought to reinforce border, maritime and airport security during the pandemic. The scope of the challenges in these areas are daunting, and likely require sustained donor engagement and significant financial and technological investment to be fully addressed.

4.3 The various impacts of increasing economic fragility due to COVID-19

al-Shabaab has frequently sought to exploit aspects of the COVID-19 pandemic, including discontent at the socio-economic consequences of pandemic-related measures, for their own purposes. For instance, they have sought to exploit pandemic-related restrictions and vulnerabilities in their efforts to recruit, radicalize, and mobilize members, including via virtual platforms. Both Kenya and Somalia have been significantly affected by the

⁴⁷ Hiraal Institute, 'Semi-Annual Somalia Security Report' (2020), available at: <https://hiraalinstitute.org/semi-annual-somalia-security-report/>

secondary impacts of the pandemic, including growing economic inequities, and deepening social divisions, coupled with pre-existing skepticism regarding the capacities of both Governments to meet the welfare concerns of all citizens. These economic impacts have also increased humanitarian needs, while travel restrictions have simultaneously curtailed humanitarian access and outreach - particularly in Somalia. The pandemic has thus laid bare social inequities and structural challenges and exposed how those vulnerabilities might be exploited by al-Shabaab and its affiliates. Increasing youth unemployment, shrinking educational opportunities and the increased vulnerability of women and girls is singled out for particular attention below.

There is limited data available on the long-term impacts of COVID-19, recruitment and radicalization efforts, and further research is required to understand the potential correlations between pandemic-related impacts and increases, or changes, in the nature and intensity of al-Shabaab tactics. However, the pandemic is likely to have increased the underlying drivers and structural factors that are often conducive to violent extremism and terrorism. Further, the reinstatement of social restrictions and other containment measures, should Kenya or Somalia be afflicted by surges from variants of the virus in the future, would likely continue and exacerbate these cycles. Regardless of ideology, pandemic-related economic hardships, such as rising unemployment, poverty, growing inequality, and food insecurity are potential drivers of an increased threat of violent extremism and terrorism.

Al-Shabaab has long been adept at exploiting frustrations and vulnerabilities in order to appeal to its recruitment base. In Somalia and Kenya, the pandemic is likely to have increased the underlying drivers and structural factors that are often conducive to terrorism

Further, declining fiscal revenues due to contraction of the economy due to COVID-19, creates a vicious cycle in which States may further lag in addressing the economic challenges and social frustrations arising from the pandemic. Other State services, including those provided by law enforcement

institutions, may also face fiscal constraints at a time when demand for an improved justice system intensifies and COVID-19-related backlogs surge.

Declining revenues is, paradoxically, a conundrum likely shared by al-Shabaab within the territories it controls. The virus also has broader implications for al-Shabaab's financial self-sufficiency and thus, for its resilience. Many of its revenue streams are drawn from the Somali economy: racketeering and the extortion of local industries, the imposition of crop levies and land taxes, fees for business licenses and automobile imports, and the tapping of remittance flows and illicit markets. COVID-related disruption to this commercial circuitry, or the labour force underpinning it, may increase pressure on the group's funding and, by extension, its decision-making.⁴⁸

Increasing financial hardship and poverty within these areas may have also reduced revenues obtainable via zakat - the system of taxation enforced by al-Shabaab in these territories. This in turn may serve as an impetus to seek out new and different revenue streams. New means of terrorist financing may include diversification into new commodities and contraband, where COVID-19 restrictions make conventional means harder to obtain. al-Shabaab's use of modalities, such as the hawala system and commodity exchange, and the general nature of the Somali war economy, have long made its revenue streams difficult to track within the conventional financial system, which remains underdeveloped in Somalia. While these issues pre-date the COVID-19 pandemic, they are likely to have been accentuated by any shift to more creative means of fundraising by al-Shabaab, in response to the pandemic.

4.4 Stemming terrorist financing and the diversion of resources by COVID-19

Decreased availability of donor funding risk a retrenchment in terrorism prevention measures and security assistance in both Kenya and Somalia - creating further challenges in a region significantly

⁴⁸ West Point Al-Shabaab and COVID-19 Study, at p. 36 (noting that arguments over cash shortages reportedly also created a division between the group's leaders in early 2020).

at risk of violent extremism and terrorism, and which has continued to require such assistance.

The economic impact of COVID-19 on donors has also led to the diversion of existing resources away from initiatives and capacity building in terrorism prevention and countering violent extremism (CVE), as well as for programs supporting vulnerable communities, including women and children. Further, COVID-19 has diverted funds to new priorities, including pandemic mitigation measures. Financial and other forms of aid, now available for COVID-19, may in turn be vulnerable to diversion by terrorist organizations, such as al-Shabaab, as well as corruption. These shifting priorities may also create new opportunities for terrorist groups to abuse fundraising platforms and the non-profit sector under the guise of charitable giving.

The Kenyan government has also shifted its focus and resources away from terrorism prevention and CVE to containing the pandemic. For instance, the Kenyan government in 2020 and 2021 redirected its internal security agencies, media, and substantial budgetary allocation to COVID-19 awareness, monitoring and prevention. Furthermore, Kenyan law enforcement agencies have often been called back from patrolling borders to enforce social distancing and the curfew in e.g. Nairobi, potentially leading to further insecurity at border towns and creating a security vacuum to be exploited by al-Shabaab.

Experts, including the Financial Action Task Force (FATF), suggest that pandemic-related changes in financial behaviors (especially the increase in volume of contactless and on-line transactions) may have exacerbated terrorism-financing vulnerabilities - although the extent to which this has actually materialized in Eastern Africa is unclear.

The importance of disrupting al-Shabaab financing is well-recognized in the region, but also seen as highly challenging given its various sources, many of which are informal and beyond the reach of regular financial institutions. These are in any case underdeveloped in Somalia. In Kenya, there is room for improvement and a concern to avoid backsliding in connection with the current FATF periodical review (as mentioned in Section 2).

4.5 Erosion of State legitimacy

Al-Shabaab owes its existence, in part, to its ability to project itself as a credible or preferable alternative to State authority. Thus, the terrorist group, like the Governments of the region, has also pondered how to respond to the pandemic. Its responses have ranged, indisputably, from propagandizing and proselytizing in efforts to capitalize on the pandemic, to more speculative possibilities in welfare and health care provisions.

Like the Governments of the region, Al-Shabaab has also pondered how to respond to the pandemic. Its responses have ranged from propagandizing and proselytising in efforts to capitalize on the pandemic, to more speculative possibilities in the area of welfare and health care provision.

Based on analyses of al-Shabaab's behavior during past humanitarian emergencies, it may have exploited the pandemic to cultivate its authority and legitimacy, and to expand its recruitment and radicalization tactics through charity, the provision of food or monetary resources, and other related support. Some experts query whether al-Shabaab has sought, in response to the pandemic, to offer welfare or health care provision in Somalia to further undermine loyalty to State institutions and bolster its profile as a better alternative.⁴⁹ Whether al-Shabaab has in fact responded to the pandemic by providing community health services of any significance is unclear. The extent to which this has occurred, and with what intent, are both disputed.

It is clear that al-Shabaab has shown a high degree of opportunism and that it has sought to exploit the COVID-19 pandemic for ideological or theological purposes. It has characterized the virus as being intentionally spread by crusader forces in Somalia, and as a just punishment by Allah of the 'disbelievers' for their treatment of Muslims, but also as a scourge, as Somali citizens would also be affected by it due to the fact that the foreigners were in their land, and suggesting that this was further reason to 'expel them from our country'.⁵⁰ In this context,

49 See e.g. West Point Al-Shabaab and COVID-19 Study, at p. 33 (describing Al-Shabaab's apparent issuance of health advice and the establishment of an isolation centre as an 'experiment in militant governance').

50 See e.g. West Point Al-Shabaab and COVID-19 Study, at pp. 33-34 (noting that Al-Shabaab's official propaganda outlets first focussed on the virus in a Consultative Forum on Jihad in Eastern Africa convened by the group's Office for Policy and Wilayat (administrative divisions) in March 2020. The group warned Muslims to "take caution against" infectious diseases like COVID-19 and suggested that its "spread is contributed to by the crusader

governance-related competition between the State and al-Shabaab has undoubtedly occurred and, depending on the future course of the pandemic and the adroitness of State responses, may further increase. However, the route of health-care provision is considered by some as likely a double-edged sword, as it would also reveal al-Shabaab's incapacity.⁵¹ The key question, however, may be whether the authorities, which the group is fighting, can do any better.

4.6 Exploitation of heavy-handed or inappropriate security or law enforcement responses

Pandemic-related socioeconomic grievances and political tensions can be exacerbated by related restrictions - particularly where they are perceived as disproportionate, unjustified or discriminatory. In Eastern Africa, some Member States have used pandemic-related restrictions to curb dissent and proliferate emergency measures, raising legitimate human rights concerns. Counter-productive or heavy-handed counter-terrorist responses by national authorities may also increase alienation and enhance the appeal of terrorist and armed groups to certain constituencies.

Pandemic-related socioeconomic grievances and political tensions can be exacerbated by related restrictions, particularly where they are perceived as disproportionate, unjustified or discriminatory. These too can be exploited by terrorist organizations to expand their influence, drive recruitment efforts, and undermine State authority.

Court processes which are viewed as unfair may also erode community trust and accentuate pre-existing grievances. These and similar features can be exploited by terrorist organizations to expand their influence, drive their recruitment efforts, and undermine State authority.

One interviewee referred to community tensions following the shooting of two men in Mogadishu, allegedly whilst enforcing COVID-19 restrictions in 2020. The use of military courts for terrorism cases is arguably also a risk factor in this area. In other settings, military tribunals, which tend to utilize expedited procedures and rules of evidence, has given rise to concerns regarding the quality of procedural justice or lack of due process. Pre-pandemic, al-Shabaab's mobile courts remained a widely favored mechanism for civil arbitration, and are by many Somalis often viewed as more efficient and less corrupt than the State institutions.⁵² Should such perceptions become widespread or substantiated in Somalia, this may serve to exacerbate existing grievances.

The Kenyan response to terrorism has frequently been perceived as heavy-handed vis-à-vis the Somali diaspora.⁵³ This arguably represents a lost opportunity for greater community engagement and outreach to the Somali community, which could yield significant dividends for countering violent extremism and terrorism, as well as enhanced intelligence-gathering capacities. While these concerns predate COVID-19, this intelligence gap was likely exacerbated by the pandemic, as in-person access to inmates and persons in rehabilitation and reintegration facilities and programmes was restricted.

forces who have invaded the country and the disbelieving countries that support them." Other resolutions emerging from the forum included a call for expanding public services such as "security, justice, education and health"— provided by the 'Islamic Wilayat.' In a speech directly addressing the pandemic at the end of April 2020, the Al-Shabaab spokesperson Ali Mahmoud Rage ('Ali Dheere') suggested that the virus may have been intentionally spread by foreign forces in Somalia. He urged followers to "be cautious" of medical assistance from non-Muslims, to instead turn to Allah and to be charitable. Reiterating a message delivered by other officials during sermons, Rage argued that Muslims should celebrate because Allah is justly punishing the 'disbelievers' for their treatment of Muslims. However, he lamented that Somalis would also be affected due to the fact that the foreigners were in their land and suggested that this was further reason to 'expel them from our country.'

51 See West Point Al-Shabaab and COVID-19 Study, at p. 33 (noting instead that the pandemic 'may expose intrinsic limits in Al-Shabaab's response to civic governance').

52 West Point Al-Shabaab and COVID-19 study, at p. 34.

53 See e.g. Rukaya Mohamed, 'Youth, Violent Extremism, Recruitment and COVID-19 in Kenya' (June 2020), available at: <https://www.hstoday.us/subject-matter-areas/counterterrorism/youth-violent-extremist-recruitment-and-covid-19-in-kenya/> (noting that in the coastal and north eastern regions, law enforcement agencies often link Muslim youth to terrorism, with reports of young men being executed, forcibly disappeared, harassed through arbitrary arrests, or arraigned on trumped-up charges of terrorism).

4.7 Increasing use of online platforms and accelerated dependence on digital technologies

Greater use of online platforms and accelerated use of digital technologies – by terrorist organizations, citizens and law enforcement agencies alike – create new vulnerabilities vis-à-vis online radicalization and cybercrime, but also great potential for economic resilience and enhanced law enforcement capabilities.

Greater use of online platforms and accelerated use of digital technologies creates new vulnerabilities vis-à-vis online radicalization and cybercrime, but also great potential for enhanced law enforcement capabilities.

A significant impact of the pandemic worldwide is that many individuals and entities spend increasing amounts of time online. Al-Shabaab has long used social media and online platforms for propagandistic and recruitment purposes. It is likely that these efforts to spread propaganda, recruit and radicalize via virtual platforms were upscaled during the pandemic.⁵⁴

Digital infrastructure in East Africa is frequently under-developed and dispersed, and unevenly distributed. Although only 1.7% of the Somali population (193,000) had access to Internet in 2016, al-Shabaab has made increased use of Twitter and Facebook in order to share its messages and engage with citizens.⁵⁵ Furthermore, rates of online access in the region (especially in fast-growing economies such as Kenya) has grown rapidly in recent years, and continues to increase.⁵⁶ In addition, the closure of schools and other educational institutions led to a significant shift of education online, particularly in Kenya, even if the impact of this was uneven due to socioeconomic disparities and technological limitations on access. It follows that in Eastern Africa, as elsewhere, there is a

growing incidence of cybercrime and risk of online radicalization, especially once pandemic-related social restrictions resulted in closures of educational institutions, reduced employment and entertainment opportunities, and curtailed community programmes.

4.8 Gendered impact, and consequences for children and youth

The gendered impact of the COVID-19 pandemic is well-documented, as is the gendered nature of al-Shabaab's operations. The worldview of al-Shabaab is highly conservative and patriarchal, with a disjuncture between al-Shabaab's stated beliefs about the role of women, and the group's actual use of women, which tends to be opportunistic and exploitative.⁵⁷ Many women affiliated with al-Shabaab may be active and willing members in their own right, even if women's agency is likely understated by the al-Shabaab leadership. Although the interaction of Al-Shabaab and COVID-19 will therefore be highly gendered, more research may be required to determine exactly how.

The gendered impact of the pandemic is well-documented, as is the gendered nature of al-Shabaab's operations. Although the interaction of al-Shabaab and COVID-19 too will be highly gendered, more research is required to determine exactly how.

The impact of al-Shabaab and COVID-19 on children has each been profound; the interaction of the two catastrophic.

A gender analysis of the impact of COVID-19 in Eastern Africa, suggests that COVID-19 has had wide-ranging economic and other consequences for women and girls, stemming from the closure of schools and limited access to healthcare, an increased burden of care, and diminished access to

54 See UNDP study, 'Social media in Africa: A double-edged sword for security and development', by Kate Cox et. al., at p. 12 ("UNDP Social media in Africa Study") (noting that since 2007, Al-Shabaab has established itself as one of the more technologically advanced jihadist groups worldwide through early adoption of the Internet as a strategic tool for furthering its political and operational objectives).

55 UNDP Social Media in Africa Study, at p. 13 (nothing also frequent use of radio, given this limited internet reach).

56 UNDP Social media in Africa Study, at p. 7 (noting that internet bandwidth availability for Africa's one billion citizens has grown twenty-fold between 2008 and 2012, and 46 per cent of the overall population in Africa had subscribed to mobile services by the end of 2015).

57 See generally Orly Stern, *Al-Shabaab's Gendered Economy*, Adam Smith International (2021), at p. 33.

sexual and gender based violence (SGBV) support and sexual and reproductive health services. Women are also more likely to work in the informal sector, which was disproportionately impacted by the socioeconomic effects of COVID-19. The gender gap in the use of technology and literacy in the region has also affected educational outcomes and access to resources. Women and girls faced increased risk of SGBV, including female genital mutilation, during the pandemic. According to UNICEF, Somalia has a 98% prevalence of female genital mutilation (FGM) amongst women – the highest in the world.⁵⁸ However, lockdowns and the loss of livelihoods driven by COVID-19, have led to increases in domestic violence across the region.⁵⁹

Youth make up most of the Somali and Kenyan population, many of whom face hardship due to the impact of COVID-19, and vulnerability to recruitment by terrorist organizations. The United Nations reported significant direct victimization of children by Al-Shabaab in Somalia in 2021, but made no express linkage to COVID-19.⁶⁰

However, COVID-19 and terrorist organizations have had a particularly pernicious impact on children. While grave violations of children's rights in conflict situations were on the increase pre-COVID-19 pandemic, gross violations of children's rights reached alarming levels during the pandemic – when significantly more children were killed, maimed, recruited and used by armed and terrorist groups, sexually abused and exploited, denied access to humanitarian help, trafficked, and arrested for association with terrorist or armed groups.

The pandemic severely restricted access to education worldwide, violating children's rights and placing them at increased risk of being recruited by terrorist and armed groups, being forced into menial labour, and made vulnerable to SGBV. A reduction in educational, entertainment, and employment prospects for youth may also potentially weaken existing defenses and resilience

against violent extremist and terrorist discourse. Youth whom since the 1990s have moved to Nairobi for employment, business ventures, and higher educational opportunities, have seen these opportunities significantly reduce due to the pandemic.⁶¹

The closures of schools, avenues for socialization and places for play negatively affected children's access to other essential services, including health and nutrition. Lockdowns meant that many children spend more time at home and, in some cases, online. COVID-19-related stresses on parents and caregivers have exposed some children to domestic violence. Online, children have been exposed to increased chances of exploitation and abuse. Without access to support mechanisms provided by schools and friends, cases of mental illness have increased among children during the pandemic. Tragically, with many families unable to make ends meet because of COVID-19, child marriages and sexual violence against children has increased in several countries in Africa, including Kenya and Somalia. The deprivations caused by COVID-19 have pushed many children into the worst forms of child labour and trafficking to engage in hazardous work and, sometimes, sexual exploitation. Armed groups have recruited many children; sometimes these children join these groups 'voluntarily' as a last resort to survive and provide for their families devastated by COVID-19.

Restrictions, including closure of civic spaces, have also made it challenging for civil society organizations (CSOs) and others to carry out programmatic activities, including gender-related interventions and those supporting children, in communities vulnerable to radicalization. These programmes also face risks that funds may be channeled toward other priorities.

58 UNICEF. (2021) Female genital mutilation (FGM) data <https://data.unicef.org/topic/child-protection/female-genital-mutilation/>

59 UNDP/African Union, *The Impact of the COVID-19 Outbreak on Governance, Peace and Security in the Horn of Africa* (July 2020), at p. 15, available at: https://www.undp.org/content/dam/rba/docs/COVID-19-CO-Response/UNDP-AU-Horn-Africa-RegionalBrief_final.pdf

60 See United Nations General Assembly, *Children and Armed Conflict*, Report of the Secretary-General, A/75/873 – S/2021/437, 6 May 2021, at paras 136-140 (in Somalia, the United Nations verified grave violations against 3,810 children, including the recruitment and use of 1,716 children, including 1,407 by Al-Shabaab, and the remainder by government security forces. A total of 212 children (211 boys, 1 girl) were detained for alleged association with armed groups by the Somali Police Force and other government security forces. The killing and maiming of 329 children was also attributed to Al-Shabaab. Violations were also attributed to clan militia, the African Union Mission in Somalia (AMISOM), the Ethiopian National Defence Forces and unidentified perpetrators. Some 406 children (6 boys, 400 girls) were raped and were victims of other forms of sexual violence by government security forces and Al-Shabaab, including some forced marriages. The United Nations also verified 58 attacks on schools and hospitals, attributed to Al-Shabaab).

61 See Rukaya Mohamed, 'Youth, Violent Extremism, Recruitment and COVID-19 in Kenya' (June 2020), available at: <https://www.hstoday.us/subject-matter-areas/counterterrorism/youth-violent-extremist-recruitment-and-covid-19-in-kenya/>

5. CONCLUSIONS AND IMPLICATIONS: CHALLENGES, VULNERABILITIES AND OPPORTUNITIES

The 2015 United Nations Plan of Action on Preventing Violent Extremism urged States to pay closer attention to the root causes and drivers of extremism, after decades of focus on militarized approaches to counter terrorism and violent extremism. Acknowledging that groups such as Al-Shabaab do not arise in a vacuum, it recognized that narratives of grievance, actual or perceived injustice, promised empowerment and sweeping change become attractive where human rights are violated, good governance is lacking, and aspirations are crushed.

The pandemic has also caused unparalleled upheaval to the existing global order. As States juggle their recovery efforts with the pandemic's ongoing impact, including the discovery of new variants, the transnational nature of the challenge is clear. Rising rates of inoculation in some States have suggested they may have turned a corner in combatting the pandemic. However, in Eastern Africa, as in many parts of the world, lack of access to vaccines, caused by unequal distribution, has left millions still vulnerable to the virus - allowing deadly variants to emerge and spread globally. Given recent surges in COVID-19 case numbers, and the discovery of a highly transmissible new variants, recent easing of restrictions may in the future be temporarily halted or reversed. Reducing worldwide vulnerability to the COVID-19 virus through vaccine equity and improved public health responses thus remains vital.

Recommendations stemming from this paper which may warrant further consideration include:

- **Harness knowledge regarding the transnational nature of the terrorist and COVID-19 threats to strengthen regional, inter-agency and international cooperation and multi-agency coordination to counter both COVID-19 and terrorism;**
- **Address the threats of violent extremism and terrorism in a post-pandemic world based on the principles of inter-agency and international cooperation, shared responsibility, and enhanced multilateralism;**
- **Enhance multilateral and bilateral collaboration to further develop national investigative and prosecutorial capacity in countering violent extremism and counter-terrorism;**
- **Build State legitimacy through improved governance performance and accountability;**
- **Enhance community engagement and prisoner rehabilitation and reintegration programs to build trust within marginalized communities, and improve intelligence capabilities and information-sharing;**
- **Ensure sustained and long-term donor engagement, particularly in relation to intelligence capabilities and interventions to protect women and children;**
- **Adopt new technological tools and advanced monitoring methods to detect and deter financial and cyber-crime (including terrorist financing);**
- **Develop advanced monitoring methods, and skills preventing abuse of the digital space for any terrorism-related purpose (including terrorism financing);**
- **Explore technological solutions to assist in border-control measures, to enforce travel restrictions, and conduct contact tracing;**
- **Continue efforts at digitizing and streamlining remote hearing modalities and case management systems before courts, whilst addressing the digital divide;**
- **Evaluate the capacity of existing Somali and Kenyan laws to address online incitement, hate speech and radicalization;**

- Continue efforts, with donor support, to enhance capacities in forensic, ballistics, data exploitation and intelligence gathering and exploitation;
- Ensure that children and young people at risk of radicalization are promptly identified and channeled into welfare programs that are fit for purpose;
- Ensure the appropriate treatment of juveniles charged with criminal offences following victimization by Al-Shabaab, including diversion to youth courts and amnesties where children are below the age of legal responsibility;
- Adapt existing policies and measures, where necessary, to ensure an adequate response to evolving challenges; and
- Continue to assess and analyze the impact of COVID-19 on the Al-Shabaab threat, terrorism prevention responses, and other emerging issues and challenges.



Counter-Terrorism Centre of Excellence

EAPCCO CTCoE: EAPCCO CTCoE, EAPCCO Secretariat Regional Office, Mazingira Complex Block- F, P.O.BOX 42997, 00100, Nairobi, Kenya; Tel. +25420-851209-06, Fax: +25420-3512100. Email: info@eapcco-ctcoe.org; <https://eapcco-ctcoe.org/>.



Funded by the Government of the Federal Republic of Germany as part of the UNODC regional project Supporting EAPCCO and its Regional Counter-Terrorism Centre of Excellence to prevent and counter terrorism in Eastern Africa