



Counter-Terrorism  
Centre of Excellence

## EAPCCO CTCoE Issue Paper 6 / 2022

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### Overview of Prosecution, Rehabilitation, and Reintegration Initiatives in Eastern Africa

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to prevent and counter terrorism and transnational organized crime in Eastern Africa

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## Abstract

Addressing violent extremism (VE) and terrorism – whether originating and manifesting from domestic organizations and/or foreign terrorist fighters (FTFs) returning from other conflict areas – within a criminal justice framework, increasingly requires States to assess, develop, and implement strategies beyond preventing and countering VE and terrorism. Countries have an obligation to develop and implement comprehensive and tailored prosecution, rehabilitation, and reintegration (PRR) strategies in order to successfully undertake a ‘whole-of-government’ and ‘whole-of-society’ approach. Ensuring justice is, however, only one part of the strategy. Concrete steps are needed to rehabilitate and assist men, women, and children to address psychological trauma in order to become productive members of society again, while preparing and supporting families and the broader community to facilitate this process.

The following paper outlines measures taken by Kenya, Somalia, Sudan, Rwanda, and Uganda within a criminal justice framework to initiate alternative efforts to imprisonment, including amnesty, while confronted with challenges in categorizing violent extremists and terrorist offenders in deciding whom to prosecute and whom to offer noncustodial alternatives. The second part of the paper presents ten recommendations for developing and implementing comprehensive PRR strategies that take into account the unique circumstances within Eastern Africa.

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# 1. INTRODUCTION

## 1.1 Background

With the financial support from the Government of the Federal Republic of Germany, since 2020, the 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 members<sup>1</sup> in enhancing national and regional capacities to effectively prevent and counter violent extremism and terrorism, and transnational organized crime.

One of the objectives of the project is to produce evidence-based research and knowledge products, relevant for the law enforcement and criminal justice practitioners in Eastern Africa. The CTCoE developed this paper, a new installment in the series of publications addressing various terrorism- and transnational organized crime-related challenges faced by Eastern Africa,<sup>2</sup> with the support from UNODC as part of this objective.



## 1.2 The threat posed by foreign terrorist fighters and an obligation to implement prosecution, rehabilitation, and reintegration strategies

Over the past decades, the threat of violent extremism and terrorism, as well as the way countries respond to these threats, have evolved. From a localized threat to security, today it extends beyond national and regional borders. So does the associated movement of individuals traversing borders to join terrorist groups as foreign terrorist fighters (FTFs).

Groups that recruit FTFs and present a threat to the security of local communities, individual countries, and the Eastern African region, are diverse. FTFs from around the region, and beyond, travel to Somalia to join al-Shabaab (SOe.001). Further fueling the intake of fighters, al-Shabaab retaliated to the troop-contributing countries of the African Union Mission in Somalia (AMISOM), launching attacks, and recruiting FTFs from Kenya, Uganda, Djibouti and, more recently, Ethiopia.

In the aftermath of the Ugandan Civil War, which concluded in 1986, groups such as the Allied Democratic Forces (ADF) (CDe.001) and Lord's Resistance Army (LRA) (CFe.002) formed and established themselves in the Democratic Republic of the Congo (DRC). The ADF, having pledged allegiance to Da'esh, have been responsible for the recent escalation of violence and increased recruitment of FTFs, emerging as a regional terrorist threat.<sup>3</sup> In the aftermath of the Rwandan genocide (1994), the Burundian Civil War (1993-2005) and the Second Sudanese Civil War (1983 to 2005), the eastern part

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

2 Please consult the section of the EAPCCO CTCoE website to explore the full range of the EAPCCO CTCoE Issue Papers: <https://eapcco-ctcoe.org/ct-issue-papers/>

3 United Nations, Fifteenth report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat, 26 July 2022, S/2022/576.

of the DRC became a hotbed of remnants of armed groups associated with these conflicts.

However, historic challenges related to limited resources and the sheer volume of individuals returning to their respective countries of origin, meant that instead of following the criminal justice approach, with focus on law enforcement and prosecution, the military took the lead. Since militaries are neither traditionally trained, nor equipped to collect evidence and build a case that meets the required legal standard, the focus was on military justice and amnesties.

Consequently, even before the threat of FTFs reached an unprecedented level of global urgency, countries in Eastern Africa had already been confronted with very similar circumstances due to domestic and transnational armed movements and terrorist groups. These periods, of domestic as well as transnational and regional instability, were predominately addressed through Disarmament, Demobilization and Reintegration (DDR) programs.

**Analysts may be confronted with the question if there is a place for a traditional DDR approach in the context of modern violent extremist organizations, terrorist organizations and/or returning FTFs. Traditionally the focus has been on encouraging former fighters to disengage by offering small packages to enable self-sustainability and less on ideological deradicalization. But should this approach be considered when discussing individuals associated with Al-Shabaab, Al-Qaida, Da'esh, and other terrorist groups?**

**The following considerations can help find an answer to this question:**

- 1. Context of the conflict, especially radicalization and recruitment strategies, and the role ideology plays in the reason why individuals join.**
- 2. Geographic focus of the conflict, and whether the organization is concentrated and attracting the attention of a specific category of individuals or has a broader and more diverse support base.**
- 3. Ability of government and its security forces to maintain effective control over territory.**
- 4. The level of broader public or communal support for the violent extremist organization.**

**These considerations, among other, will have a direct impact on whether a DDR-related approach will be applicable. In other words, context matters and even countries within the same region may be confronted with different circumstances that will ultimately determine the strategy they select. This paper does not debate individual approaches but rather provides an overview of the immediate domestic circumstances and challenges which may require a combination of approaches to address complex scenarios.**

By 2014, the threat posed by FTFs reached global attention. Adopting the resolution 2178 (2014), the United Nations Security Council (UNSC) created an obligation for the United Nations Member States to develop and implement comprehensive and tailored prosecution, rehabilitation, and reintegration (PRR) strategies. Renewed calls, including through UNSC resolution 2396 (2017) followed when it became apparent that Da'esh was losing territory in Syria and Iraq. Member States then had to increasingly address FTFs returning with families and children, in contrast to lone individuals previously joining terrorist groups such as al-Qaida.

In other words, the focus of an international approach shifted, now requiring the police to take the lead and, where necessary, train the military in battlefield evidence, to investigate, prosecute, rehabilitate, and reintegrate violent extremist and terrorist offenders back into the community. Countries are also increasingly required to participate and assist in criminal investigations in foreign jurisdictions, including in relation to mutual legal assistance (MLA) and extradition. To facilitate cooperation, as well as the growing understanding of the factors that facilitate radicalization and recruitment into violent extremist organizations, international good practices developed.

The region presents valuable lessons for the further development of good practices. Although none of the Eastern African Member States refer to PRR strategies, initiatives currently being developed and implemented, are applicable to enhancing capabilities to strengthen criminal justice response to violent extremism and terrorism. In this context, it is important to note that none of the Eastern Africa countries separate FTFs from domestic violent extremists in terms of legislation, policy and/or strategy.

### 1.3 Objective and methodology

The objective of this paper is to assess the framework within the criminal justice systems, in order to highlight the interaction between investigation and to facilitate prosecution, without providing detailed description of each national programme.

The paper divided into the two main thematic parts. First, it presents the approaches of Somalia, Sudan, Kenya, Uganda, and Rwanda to PRR-related efforts. Since UNSCR 2178 (2014) and UNSCR 2396 (2017) were influenced by the need to address FTFs and to facilitate the PRR process for returnees, brief reference will be made to the legislative framework of these countries (excluding Somalia) in criminalizing illegal activities associated with leaving the country of origin to participate in acts of terrorism in another.

The paper provides a summary of alternative efforts to imprisonment, including amnesty and the challenge in categorising violent extremists and terrorist offenders while deciding whom to prosecute and whom to offer noncustodial alternatives. The first part of the paper concludes with successes within the criminal justice system in prosecuting violent extremist offenders, leading to rehabilitation and reintegration following imprisonment and/or periods in rehabilitation centers. Military justice, however, is outside the scope of this publication.

The second part of the paper provides recommendations based on the main research findings following a series of interviews conducted with 73 police officers, 17 prosecutors, and 27 civil society representatives in Kenya, Uganda, Tanzania, and Rwanda between September 2021 and January 2022.

## 2. CONDITIONS UNDER WHICH INDIVIDUALS ENTERED PROSECUTION, REHABILITATION, AND REINTEGRATION INITIATIVES



This paper focuses on individuals arrested within a country's borders, on those implicated in terrorism-related offences, as well as on returning FTFs. The latter can broadly be classified into:

- Voluntary returnees, including individuals who return disillusioned by their experiences under the violent extremist organization rule.
- Arrested outside the country of origin and returned through bilateral negotiations or deported for not being in the possession of the required documentation to facilitate their ongoing journey.

- Returning illegally without the knowledge of authorities that represents the most direct risk of continuous radicalization and recruitment, facilitation and/or execution of acts of terrorism in the country and beyond.

Due to differing circumstances, countries in the region adopted diverse initiatives to find a balance between justice and security. Somalia, DRC, Kenya, Rwanda, and Uganda, for example, initiated amnesty or exit programmes to encourage violent extremists to disengage from the various groups and enter rehabilitation and reintegration processes, while other countries in the region did not need to consider these approaches.



### 3. KENYA



The Kenyan government has been working to prevent the transit of foreign terrorist fighters, including Kenyan nationals attempting to join al-Shabaab or Da'esh and those returning from fighting with these groups abroad. Instead of directly travelling to Kenya, suspicious individuals prefer to travel via neighboring countries. It is however the recruitment of Kenyan nationals to leave the country to participate in other conflict areas, especially Somalia, that is of the primary concern.<sup>4</sup>

The Prevention of Terrorism Act of 2012, revised 2019, under Article 21, specifically criminalizes offences carried out in foreign states, therefore providing the legal framework to deal with FTFs:

*A person who, being in Kenya—*

- *knowingly promotes or facilitates the commission of an act;*
- *recruits another person to become a member of or serve in a body or association of persons whose objective is the commission of a terrorist act;*
- *accumulates, stockpiles or otherwise keeps any weapons;*
- *trains or participates in the training of a person in the use of weapons or in the practice of military exercises or movements;*
- *receives training in the use of weapons or in the practice of military exercises or movements;*
- *provides any money or goods to, or performs services for or on behalf of a person, body or association; or*
- *receives or solicits money or goods or the performance of services, for the purpose of carrying out or facilitating the commission of a terrorist act in a foreign State, commits an offence and is liable, on conviction, to imprisonment for a term not exceeding thirty years.*

Additionally, the Kenyan Security Laws (Amendment) Act of 2014 specifically refers to:

*foreign terrorist fighters in reference to Article 30D: 'A person who is not a Kenyan citizen who enters or passes through Kenya for purposes of engaging in terrorist activities in Kenya or elsewhere commits an offence and shall on conviction, be liable to imprisonment for a term not exceeding thirty years.'*

The National Counter Terrorism Centre of Kenya provides the following valuable definitions:<sup>5</sup>

*De-radicalization refers to concerted efforts directed at radicalised individuals at different stages of the extremist 'lifecycle': immediately before joining a group or network, as active members, or following their exit. The efforts are aimed at changing their attitudes and ideological stances.*

*Rehabilitation is a process that aims to ensure that disengaged and de-radicalised violent extremists and terrorists are given the counselling, critical reasoning tools, knowledge and gender appropriate interventions to shift their mind-sets and enable them to be peaceful and law-abiding citizens.*

During April 2015, then-Interior Cabinet Secretary Joseph Nkaissey announced amnesty to youths who joined al-Shabaab, encouraging them to report to County Commissioners in Nairobi, Mombasa, and Garissa for further directions. President Uhuru Kenyatta in his address to the African Union Peace and Security Council (PSC) meeting in Addis Ababa, on 28 January 2018, reemphasized the importance of "rehabilitation programmes and initiatives that enhance de-radicalization processes through amnesty for all

4 United States Department of State, Country Reports on Terrorism 2016 - Kenya, 19 July 2017, available at: <https://www.refworld.org/docid/5981e43313.html> [accessed 12 January 2022]

5 NCTC, Definitions for the Counter Violent Extremism Work the NCTC Coordinates, 2021, Kenya, <https://counterterrorism.go.ke/definitions-for-the-counter-violent-extremism-work-the-nctc-coordinates/>

*returnees from Somalia who wish to abandon criminal affiliations to re-join the society*".<sup>6</sup>

However, while recognized by political commitment at the highest level, the announcement was not gazetted. The amnesty programme remains a bill and lacks a clear legislative framework upon which those willing to come forward and surrender could rely on and feel protected by. Although these individuals are not arrested, coming out of the shadows may have more severe consequences. Those wanting to disengage cannot be certain what happens if they come forward or whether they qualify for amnesty or not.

Voluntary returnees, who often come back disillusioned by their experiences with al-Shabaab in Somalia, are encouraged to report to the Office of the County Commissioner in the applicable county and surrender to receive amnesty. Returnees who do not report to the Office of the County Commissioner, and instead of surrendering hide in a new location, or who rely on Civil Society Organizations (CSOs) for support, fall outside the amnesty process placing them at risk of actions taken by security forces. Further, the legal situation of the CSOs engaging with returnees are not clear.

Irrespective of whether they are disengaging due to being disillusioned, al-Shabaab recruits fear al-Shabaab retaliation. Questions regarding guarantees of returnees' safety were raised when returnees started to disappear and/or were killed upon return to Kenya. The existing trust deficit on the part of security forces does not benefit the situation – especially since cases involving defecting returnees remain unresolved. The level of community's acceptance of returnees as well as returnees risk management framework remain equally unclear.

Kenya introduced its National Strategy to Counter Violent Extremism in 2016 as part of its overall counterterrorism initiatives and updated the strategy in 2019.<sup>7</sup> As established under Pillar nine of the National Strategy under Stakeholder Action, the objective of the strategy was also to provide ways and guidelines on how citizens, communities, civil society, the private sector, media, and

multilateral and bilateral partners will be able to engage in CVE effectively and productively. The list of "Major NCTC-Driven Strategies and Policies" includes the "Radicalised Kenyans on the risky journey to recruitment into terrorist groups have been disengaged throughout the country as part of the Disengagement Programme" and the "Returnee disengagement and rehabilitation framework".<sup>8</sup>

Since 2017 the National Strategy, was predominately implemented through County-level Action Plans (CAP). Kenya's National Counter-Terrorism Centre (NCTC) worked with county governments, security actors, and civil society to launch action plans in Kwale, Mombasa, Lamu, and Kilifi Counties as frontline counties. Since then, other counties also started to develop their own localized plans – that greatly depend on the threat contributing to urgency and focus. The involvement of CSOs in developing CAPs is evident in the lists of CSOs who participated in drafting the respective strategies. For example, Mombasa in its CAP list 36 CSOs as being 'instrumental' in the development of the Action Plan.

The NCTC also led Kenya's Country Support Mechanism for the Global Community Engagement and Resilience Fund (GCERF), which awards grants for community initiatives, through primary recipients coordinating consortiums of CSOs, to prevent and counter violent extremism. What is remarkable about this initiative is the bottom-up approach within the broader National Strategy to facilitate the tailoring of initiatives to address local realities.

Once the individual is deemed ready for reintegration, they are referred to IOM to enroll as participants of IOM CVE and reintegration project and initiatives. IOM continues to provide psychosocial counselling, and IOM field staff are trained in counselling and offer a maximum of five counselling sessions (over the phone, and in-person pre-COVID-19) to the engaged individual. Once deemed ready to proceed in the process, parallel to continued psychosocial support, individuals are introduced to business orientation or educational subsidies. Whether livelihood or educational support is provided depends on individual

6 The Presidency. Kenya Has Instituted Measures to Fight Terror, President Kenyatta Says. 28 January 2018. <https://www.president.go.ke/2018/01/28/kenya-has-instituted-measures-to-fight-terror-president-kenyatta-says/>

7 Updated strategy has not been launched at the time of writing.

8 NCTC, Major NCTC-Driven Strategies and Policies, Kenya, 2021. Available at: <https://counterterrorism.go.ke/major-nctc-driven-strategies-and-policies%e2%80%a8/>



assessment and preferences of the individual. Livelihood training contains business support and skill development, while educational subsidy entails IOM covering the cost of vocational courses with private institutions.

IOM further offers a mentorship program to local leaders and individuals in the communities on acceptance and how to engage with returnees. Community-level engagements further include preventative initiatives targeting at risk-youth, which may entail Youth Accountability Forums and community activities such as sports, dialogue sessions, community services, clean of drives on the beaches of the Swahili Coast etc. The subsequent monitoring process lasts from a minimum of two months to maximum six months, and once IOM has concluded initiatives with individuals, they are referred to NCTC for continued monitoring purposes.<sup>9</sup>

Giving effect to the Amnesty and building on County Action Plans (CAPs) aligned with the NSCVE, individual screenings and assessments are conducted by the NCTC and County Commissioner's Offices. The case-by-case approach facilitates a process length that reportedly ranges from three months to one year – subject to the individual development of the engaged individual during the process. Initially, county governments sent fifty returnees to rehabilitation centers in Mombasa – utilizing a rehabilitation programme developed in collaboration between the NCTC and the IOM.

The programme has since then expanded. While some of the returnees are supported directly by the Government of Kenya, IOM has, between 2018 and 2021 through various CVE initiatives, supported 825 persons: an estimated 60% of these are categorized as “vulnerable” to, or at risk of, recruitment and radicalization, while an estimated 40% of the total figure are returnees (330 persons). Out of the 330 returnees, 40% (132) are women. All the returnees have been referred to IOM by NCTC. Despite remaining a bill, individuals continue to enroll in the suggested Amnesty programme, by surrendering or reporting on the county level to the County Commissioners' Office or to NCTC field officers.<sup>10</sup>

## **Decentralizing the development and implementation of CVE Strategies**

**Kenya, through the National Strategy to Counter Violent Extremism (KNSCVE), highlights the importance of engagement with civil society and developing county-level CVE Action Plans. The KNSCVE mandate the 47 Kenyan counties to develop County Action Plans (CAPs), in order to align local efforts with national strategies to counter violent extremism and terrorism. The Lamu, Kwale, and Mombasa County governments were the first to establish county-level CVE strategies, CAPs, in 2016. An important lesson drawn from this approach is the need for local ownership that will consequently facilitate action. Furthermore, taking the first step in recognizing the problems facilitating radicalization and recruitment, and working through developing a strategy to address these issues, are considerably easier than implementation – not the least due to limited resources and simultaneous competing priority areas in the respective counties.**

**The decentralized nature of implementing strategies should be seen in the context of subsequent developments since the introduction of Kenya's Constitution in 2010. Although security is categorized in the Fourth Schedule titled 'Distribution of Functions Between the National Government and The County Governments' as a responsibility of the national government, local administrations since then received more power. Currently, regional commissioners are in charge of a cluster of counties, under which county commissioners are in charge of counties, followed by assistant county commissioners, chiefs, and assistant chiefs. These Administrative Officers are seen as representatives of the President in their areas of jurisdiction. These administrators chair all security meetings and report directly to the Interior Cabinet Secretary. Regional and county commissioners have the power to direct and coordinate all central government functions and programmes, including with respect to security. Regional commissioners also received growing power to mobilize resources across counties to support security operations - therefore establishing the ability to arbitrate conflicts or security threats across counties.<sup>11</sup>**

9 Correspondence between Tina Mykkänen and representatives of IOM in Kenya.

10 Correspondence between Tina Mykkänen and representatives of IOM in Kenya.

11 Peter Leftie. Regional and county commissioners get new powers on security. Nation, 2 July 2020. <https://nation.africa/kenya/news/regional-and-county-commissioners-get-new-powers-on-security-1126952?view=htmlamp>

While returnees continue to make use of the Amnesty process, Kenyan authorities arrested and convicted nationals and foreigners for terrorism-related offences in criminal courts. For example, in January 2016, Samuel Wanjala Wabwile alias Salim Mohamed Wabwile, a primary school teacher was convicted for recruiting pupils to al-Shabaab and sentenced to 20 years imprisonment. The judge ruled the teacher took advantage of the poverty in Kilifi.<sup>12</sup> Thabit Jamaludin Yahya, one of the attackers on Bella Vista Club, a night club in Mombasa in May 2012, was sentenced to death on 11 March 2016 by the Mombasa High Court for being one of the assailants who threw four hand grenades into the club killing a security guard.<sup>13</sup> A death sentence was issued against Sudi Mohamed Sudi (44) for fatally wounding Mohammed Idris, a Muslim cleric who had campaigned against radical interpretations of Islam – as a member of the Council of Imams and Preachers of Kenya (CIPK) – in 2014 in Mombasa.<sup>14</sup>

In 2016, Abdirazak Muktar was sentenced to 20 years in prison after being convicted of being a member of al-Shabaab. Owning a car-hire business, at the time of his arrest in 2014 in Maasai Mara Game reserve, he was found in possession of terrorism-related materials which included journals, pictures, and videos. He also rented a car to Sheikh Hassan Blacky, an individual wanted in connection with terrorism cases.<sup>15</sup>

In July 2017, Badister Charo Katana was sentenced to 70-years imprisonment for being linked to attacks directed at security officers and civilians in Lamu and Tana River since 2014. He confessed to being a member of al-Shabaab, being in possession of military attire and boots with intent to commit acts of terrorism. The third charge related to the collection of information on military and security operations in Lamu and Tana River that he passed on to al-Shabaab.

During 2019, the 2015 Garissa University attack concluded with three convictions: Rashid Charles Mberesero, a Tanzanian was sentenced to life in

prison (he was arrested while hiding in the ceiling and was carrying ammunition), while Mohamed Ali Abdikadir and Hassan Aden Hassan, both Kenyan nationals, were each sentenced to 41 years in prison. According to evidence presented in court all three were in constant telephonic contact with the four assailants responsible for the attacks on 2 April 2015 before the attackers rounded up students and faculty members before shooting those who were not Muslim. The four gunmen were killed at the scene and Mohamed Kuno, alias Sheikh Mohamed Dulayadayn, Gamadhere, or Mohamed Mohamud, who planned the attack was killed in a raid in Kismayo, Somalia in 2016.

Concluding the Westgate attack in 2013, Mohamed Ahmed Abdi and Hussein Hassan Mustafa received guilty verdicts for their roles in the attack. Liban Abdullah Omar was acquitted of charges and Adan Dheq, was released in 2019 due to a lack of evidence.<sup>16</sup>

Once convicted, Kenya prison officers in Shimo La Tewa Maximum Security Prison in Mombasa – where the majority of VEOs are housed – developed their own assessment procedure called 2K (based on Violent Extremism Risk Assessment or VERA) – that is also used at other facilities, including those housing female detainees. According to female prisons officials, recognizing that this instrument was developed before the country witnessed the involvement of women in violent extremist organizations, it requires further tailoring to specifically account for female offenders.<sup>17</sup>

There is a growing recognition that children and youth require a specialized approach. In Kenya, to advance the Justice for Children agenda, UNICEF Kenya<sup>18</sup> partnered with the National Council for Administration of Justice – Special Taskforce on Children matters. The development of a Justice for Children (J4C) strategy outlining priorities for improved access to justice for children, ensuring that resources are channeled to the most pressing needs to enhance the administration of justice for children.

12 The Jerusalem Post. Kenyan teacher jailed for enlisting pupils into al-Shabaab. 8 January 2016. <http://www.jpost.com/Breaking-News/Kenyan-teacher-jailed-for-enlisting-pupils-into-al-Shabaab-440765>

13 Coastweek. Mombasa High Court sentences Kenyan terror suspect to death. 12 March 2016. <http://www.coastweek.com/3910-Mombasa-High-Court-sentences-terror-suspect-to-death.htm>

14 Joseph Akwiri. Kenyan sentenced to death for killing Muslim cleric. Euronews, 15 April 2016. <http://www.euronews.com/newswires/3180919-kenyan-sentenced-to-death-for-killing-muslim-cleric/>

15 The Star. Kenya jails Abdirazak Muktar 20 years for being al-Shabaab member. 30 September 2016. <https://www.the-star.co.ke/news/2016-09-30-kenya-jails-abdirazak-muktar-20-years-for-being-al-shabaab-member/>

16 Reese Oxner. 2 Men Found Guilty For Aiding Mall Attack In Kenya That Left 67 Dead. WAMU88.5, 7 October 2020. <https://wamu.org/story/20/10/07/2-men-found-guilty-for-aiding-mall-attack-in-kenya-that-left-67-dead/>

17 Correspondence between Dr Anneli Botha and officers associated with Shimo La Tewa Maximum Security Prison.

18 The following summary is taken from correspondence between Dr Anneli Botha and Tina Mykkänen with representatives of UNICEF.

## 4. SOMALIA



Since the formation of al-Shabaab in Somalia, the organization has undergone periods of growth and decline. Periods of decline have been sparked by internal conflict and the loss of territory. Consequently, members at all hierarchical levels would begin to doubt their commitment to the organization, its cause and the individual's willingness to risk their life and limb.

The Federal Government of Somalia through its Inter-Ministerial Task Force on Disengaging Combatants introduced the National Program for the Treatment and Handling of Disengaging Combatants to deal with individuals disengaging from al-Shabaab. According to this programme, Somali institutions receive, rehabilitate, and reintegrate fighters or former combatants who renounced violence, voluntarily surrender, or are captured from al-Shabaab or other armed groups, within the framework of international humanitarian and human rights law, and restorative justice.

To facilitate this process, at least four 'transition centers' or 'rehabilitation centers' were established in Mogadishu, Baidoa, Beletwyane, and Kismayo.

Additionally, these centers were also designed to protect former al-Shabaab members from retaliation from their former comrades.<sup>19</sup> These initiatives have been supported by, among other, the United Nations Assistance Mission in Somalia (UNSOM) and the International Organization for Migration (IOM), supported financially by a community of donors.

The term 'disengagement' within the Somali context does not distinguish between defecting from al-Shabaab and having been detained – although a distinction is made between high- and low-risk individuals. Once received, the National Intelligence and Security Agency (NISA) screens the individual to for this categorization. While low-risk members are being transferred to rehabilitation centers, high-risk individuals are being prosecuted in military court. Combatants who complete the rehabilitation phase in the rehabilitation center are subsequently released and reintegrated back into the community.<sup>20</sup> The rehabilitation program for low-risk combatants consists of family reunification, religious education, vocational and literacy training, civic education, and social reintegration.

## 5. SUDAN



Sudan has experience with FTFs associated with Al-Qaida returning from Afghanistan and Iraq after having been detained at Guantanamo Bay, and more recently, Sudanese nationals associated with Da'esh returning from Iraq and Syria.

Sudan makes use of its Anti-Terrorism legislation adopted in 2001 to prosecute individuals on terrorism-related offences, including FTFs. Under Article 6 of the Act:

*"Anyone who organizes or coerces or intends or participate or facilitates verbally or by act*

19 Muggah, Robert, and Chris O'Donnell. "Next generation disarmament, demobilization and reintegration." *Stability: International Journal of Security and Development* 4, no. 1 (2015): p.4

20 Parrin, A., 2016. Creating a Legal Framework for Terrorism Defectors and Detainees in Somalia. *Colum. J. Transnat'l L.*, 55, p. 257

*to administrate, organize, plant, network to commit a crime or terrorist crimes either working in Sudan territory or outside Sudan or the territory of any state inside Sudan, or a city or a village or any specific place occupied by a group of people an act that will endanger people and property and public safety, that act will be classified as a terrorist crime and when convicted will be punishable by death penalty”.*

Following a bilateral agreement between the United States and Sudan, on the closure of Guantanamo Bay as per Executive order by the President Barak Obama, eighty-three former Guantanamo Bay detainees have returned since 2013. These returnees were housed in ‘safe houses’ where religious scholars, part of the Sudan National Commission for Counter-Terrorism (SNCCT), engaged in religious dialogue with individual returnees. These dialogues lasted between one to six months. A few individuals were housed for eighteen months – assessed to require more extensive dialogue. After completing the programme, these individuals returned to their families who play an important role in the reintroduction process with the community. This approach, although not universally successful, does reflect the culture of dialogue in Sudan, where the family is invited to take responsibility for the individual.

Building on the tradition that started with the Guantanamo Bay group of returnees, Sudanese Da’esh returnees have subsequently undergone a very similar process. In contrast to the group of male returnees returning from Guantanamo Bay, women and children have also returned to Sudan. Assessments are being conducted by the Commission, which include religious scholars engaging with ideologically committed individuals. Due to the central role of the family in the social life, authorities rely on local communities and especially family members to come forward with information.

Most of the women who returned with their husbands were not considered a concern and hence no specific programmes are available to female returnees. The only women that the Commission engage within religious dialogue – through female religious scholars – are two women who were recruited while at university studying medicine and pharmacology. In the end, they were

also returned to their respective families. In the case of children, fifteen children between the ages of six months and twelve years returned to Sudan. The Ministry of Religious Affairs and Endowments and humanitarian organizations worked to place returned children in the custody of their relatives.<sup>21</sup>

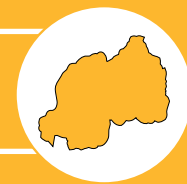
Da’esh returnees in Sudan can broadly be categorized into three groups:

- Individuals who return disappointed in the idea that Da’esh propagated – realizing that once they arrived in Da’esh controlled territory, the practical reality was far removed from the theory or expectations. These individuals were arrested upon their return and taken to ‘safe houses’ where they were engaged in dialogue to determine their ideological commitment, while also approached with dialogue on incorrect religious interpretations.
- Individuals (and families) that had to leave as Da’esh territorial losses commenced. These individuals returned to Sudan through Libya, following bilateral discussions between these two countries, recognizing the domestic instability in neighboring Libya that complicated this process. In addition to State intervention, organizations such as the Red Cross also facilitated the return of nationals.
- Individuals returning illegally without authorities’ knowledge.

Sudan also took steps towards the development of its National Action Plan (NAP) on Preventing/Countering Violent Extremism (P/CVE). Individual screening in Sudan focuses almost exclusively on the ideological commitment that directly relates to religious interpretations. The Sudan National Commission for Counter-Terrorism (SNCCT) and the Ministry of Religious Affairs, through Search for Common Ground as implementation partner, leads this process. During the screening process, individuals are asked to provide justification for their views that become the foundation for religious dialogue. Furthermore, the focus is on those ideologically capable of committing violence. It is also, for this reason, that very little attention is directed towards the roles of women in violent extremism which is a common trend amongst all countries under review.

21 Interviews and correspondence between Dr Anneli Botha and counter-terrorism officials in Sudan.

## 6. RWANDA



Law No. 45/2008 of 2008 on Counter-Terrorism in Article 21 stipulates that:

*Any person involved or participating in the following acts of a terrorist group shall be considered to be an accomplice:*

- committing or abstaining from committing an act outside the country to the extent that if it was committed within the country, it would be a terrorist act;
- entering or remaining in any country in the interest of or in collaboration with a terrorist group.

Rwanda, following the 1994-genocide, developed, and subsequently maintained instruments to facilitate the return of Rwandan nationals who joined armed groups as a consequence of the genocide and since left for neighboring countries (especially the DRC). Almost thirty years since the genocide, Rwanda still facilitate the return, rehabilitation, and reintegration of individuals who then, and since then, joined illegal organizations pursuing their objectives through armed violence.

There are various UNSC-listed and non-listed groups in Rwanda, such as Democratic Forces for the Liberation of Rwanda (*Forces démocratiques de libération du Rwanda or FDLR*) (CDe.005), Rwanda National Congress (RNC) and National Liberation Front (FLN). The Rwanda Demobilisation and Reintegration Commission (RDRC)<sup>22</sup> was created in 1997 as per a Cabinet decision and approved by the Presidential Decree No.37/01 of 09/04/2002, instituting the Commission to support the design, implementation and administration of the Rwanda Demobilisation and Reintegration Programme. The Presidential Decree has been repealed by the Law N°50/2015 of 14 December 2015 establishing Rwanda Demobilisation and Reintegration Commission and determining its responsibilities, organization, and functioning. This approach is

unique since it constitutes a part of the Economic Development and Poverty Reduction Strategy (EDPRS) framework of the country.

The Justice, Reconciliation, Law and Order Sector Strategic Plan 2018/19 to 2023/24<sup>23</sup> provides insight into coordination between government agencies, and also between government, the public, CSOs and international donors. Included in this Strategic Plan is the Rwanda Internal Security Policy (amongst the Justice for Children Policy, Legal Aid Policy and the Rwanda Anti-Corruption Policy). Although not specifically focusing on PRR, this document provides an overall framework for all the principles as well as an assessment of the progress Rwanda made following the previous Sector Strategic Plan (2013/14 - 2017/18). It also provides an example of how a country developed a whole-of-government and a whole-of-society approach tailored to domestic circumstances.

The National Policy on Unity and Reconciliation is based on the following three guiding principles:

1. To combat genocide and its ideology.
2. To strive at creating a nation governed by the rule of law and respect for human rights.
3. To combat any form of divisions and discrimination.

These principles form part of the general objectives of the Justice Sector where the Sector objective is enhanced rule of law to promote accountable governance, and a culture of peace for poverty reduction.

After determining whether the returning fighter belongs to any of the illegal organizations, the rehabilitation or deradicalization processes take place at the national rehabilitation and reintegration demobilization center called Mutobo. Through this Centre, both willing fighters, extradited or, at

<sup>22</sup> Rwanda Demobilization and Reintegration Commission (RDRC) official website. <http://demobrwanada.gov.rw/index.php?id=2>

<sup>23</sup> Ministry of Justice. Justice, Reconciliation, Law and Order Sector Strategic Plan 2018/19 to 2023/24. 7 December 2017. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.minijust.gov.rw%2Ffileadmin%2Fuser\_upload%2FMinijust%2FPublications%2FStrategic\_Plans%2FJLOS\_New\_SSP\_.pdf&chunk=true



times, captured while fighting, are treated at the said facility with the objective to be rehabilitated and deradicalized.

Demobilization has targeted 5,500 former armed group combatants, including approximately 500 child soldiers depending on the rate of repatriation, and up to a maximum of 4,000 members of Rwanda Defence Forces to reduce the size of the military. The Programme also provides reinsertion support for approximately 10,000 family members of armed groups, as well as 400 previous beneficiaries who did not receive support, with emphasis on children and the disabled. Principal activities include general sensitization regarding civilian life and counselling, HIV/AIDS voluntary counselling and testing (VCT), provision of special needs for women, and toddlers who may accompany them, socio-economic profiling, and support with basic needs while encamped, including catering services and basic health care.<sup>24</sup>

After the demobilization process, social and economic reintegration facilitates the reincorporation of former fighters into society. This support includes Reintegration Grants (RG) for micro-projects, Vulnerability Support Window (VSW) grants for the vulnerable, psycho-social counselling and therapy, HIV/AIDS awareness training, community sensitization, support to capacity building of former combatants' cooperatives, and targeted reintegration assistance provided to children, women, and individuals with health conditions or impairments.<sup>25</sup>

Reinsertion includes an initial three-month period of assistance to help former combatants meet their minimum basic needs from the first day of reintegration into the community. The project aids in accordance with past practices to ensure consistency and equal treatment of all demobilized, and this involves a Basic Needs Kit (BNK), Recognition-of-Service Allowances (RSA) for regular military personnel, and Reinsertion Kits.<sup>26</sup>

Mainstreaming into long-term support services are particularly provided to the people with health conditions or impairments, chronically ill, psycho-social assistance to former combatants, and services

that are tailored to children. This process includes relevant ministries and agencies. Within the broader juvenile justice framework, Rwanda in its Justice for Children Policy in 2014 emphasized the need for a more holistic concept of justice for children. Propagating the Integrated Child Rights Policy established in 2011 under the Ministry of Gender and Family Promotion, a "comprehensive juvenile justice system" characterized by three pillars: diversion, restorative justice, and alternatives to custodial sentencing were emphasized. Although these policies were not formulated within the Justice, Reconciliation, Law and Order Sector, the Government has implemented or is implementing certain measures on juvenile justice which are contained in the Orphans and Other Vulnerable Children Policy and the Integrated Child Rights Policy.<sup>27</sup>

Rwanda, in its Justice for Children Policy in 2014 and the Child Rights Policy established in 2011 under the Ministry of Gender and Family Promotion emphasizes the need for a more holistic concept of justice for children and provides valuable insights which is commendable. UNICEF<sup>28</sup> partnered with the Ministry of Justice, the Institute for Legal Practice and Development (ILPD), and the Rwanda Investigations Bureau (RIB) to enhance access to justice for children.

Working with the Rwanda Investigations Bureau (RIB) the first comprehensive standard operating procedures (SOPs) was developed and validated to ensure child-friendly investigations and processing of suspects. As part of this initiative, a Child-Friendly Space (CFS) is being piloted in the RIB office in Kigali which is built according to the Gessel chamber model. The CFS includes a separate private space for all children (victims, witnesses, or suspects) while they are waiting and when being interviewed.

Furthermore, in partnership with ILPD, UNICEF assisted in the development of the 9-month post-graduate diploma programme to emphasize the importance of international standards on the treatment of children in contact with the justice system and is targeted at justice, law enforcement and social services professionals.

24 World Bank. "World Bank approves grant for Rwanda's Second Emergency Demobilization and Reintegration Project." 27 August 2009. <https://reliefweb.int/report/rwanda/world-bank-approves-grant-rwandas-second-emergency-demobilization-and-reintegration>

25 Op cit.

26 Op cit.

27 Government of Rwanda. Justice for Children Policy. [chrome-extension://efaidnbnmnncppajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.minijust.gov.rw%2Ffileadmin%2Fuser\\_upload%2FMinijust%2FPublications%2FPolicies%2FJustice\\_for\\_Children\\_Policy.pdf&chunk=true](chrome-extension://efaidnbnmnncppajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.minijust.gov.rw%2Ffileadmin%2Fuser_upload%2FMinijust%2FPublications%2FPolicies%2FJustice_for_Children_Policy.pdf&chunk=true)

28 The following summary is taken from correspondence between Dr Anneli Botha and Tina Mykkänen with representatives of UNICEF.



## 7. UGANDA



In the aftermath of decades of armed violence that severely impacted Uganda since independence, the Government introduced the Amnesty Act of 2000. Providing a legal framework to prosecute FTFs, Uganda in its Anti-Terrorism Amendment Act of 2017 in Article 7 established that *a person commits an act of terrorism who –*

- a. *carries out or perpetrates any act, whether occurring in Uganda or elsewhere, that constitutes a crime in accordance with agreements, protocols and treaties described in the annex to the International Convention for the Suppression of the Financing of Terrorism, 1999; or*
- b. *travels outside Uganda for the purpose of the perpetration, planning, or preparation of, or participation in terrorist acts or the providing or receiving of terrorist training.*

Until 2012, Uganda, through the Amnesty Act of 2000, provided a blanket amnesty to fighters who renounced violence. The Amnesty Act had three main functions:

1. Providing amnesty to fighters who renounce armed struggle and give up their arms.
2. Facilitating an institutionalized resettlement and repatriation process; and
3. Providing reintegration support, including skills training for former combatants, and promoting reconciliation.

The act also established an Amnesty Commission under the Peace, Recovery and Development Programme, tasked with implementing the act and issuing certificates of amnesty.

As of December 2021, a total of 27,621 fighters from 29 different armed groups had received amnesty.<sup>29</sup> According to the Amnesty Commission, 13,032 Lord Resistance Army (LRA) (CFe.002) members bene-

fitted from amnesty, of which 3,680 were female and 9,342 males. With reference to the Allied Democratic Forces (ADF) (CDe.001), 2,040 ADF members benefitted from amnesty, of which 942 were female and 1,098 males before the organization pledged allegiance to Da'esh.

In addition, family tracing and union, psychological support, and counselling are provided as part of long-term reintegration and resettlement efforts. For example, in Kasese District, the Amnesty Commission has trained former fighters of the ADF in technology and skills development. The training is also part of the process for the reintegration of former fighters and host communities.<sup>30</sup>

The National Prevention and Countering of Violent Extremism and Terrorism (PCVET) Strategy was drafted by the National Technical Committee on PCVET set up for that purpose in 2017, in consultation with the National Counter-Terrorism Centre. All relevant Ministries, Departments and Agencies, as well as civil society, were involved in the process. The adoption process involved the Ministries responsible for Internal Affairs and Defence, as well as the Uganda Police Force, Uganda People's Defence Forces, and the Intelligence agencies. The sentiment of the whole-of-society, and the whole-of-Government approach is echoed throughout the Strategy, from its design, development, and implementation as well as during evaluation and monitoring.

In summary, the Strategy has five pillars and twelve Priority Areas for Action. The Action Plan of the Strategy sets out specific objectives, strategic outcomes, indicators, implementation frameworks (including annual work plans), budgets and timeframes to facilitate implementation. Lastly, monitoring and evaluation will be conducted annually, midterm and periodically to enable strategic reviews.<sup>31</sup>

29 Herbert Zziwa. Over 400 ADF rebels granted amnesty in the last five years. NTV, 9 December 2021. <https://www.ntv.co.ug/ug/news/national/over-400-adf-rebels-granted-amnesty-in-the-last-five-years-3646900>

30 Basajja Idd. Amnesty Commission Mandate to End in May. URN, 7 January 2021. <https://ugandaradionetwork.net/story/amnesty-commission-mandate-to-end-in-may>

31 Interview and correspondence between Dr Anneli Botha and Mr Anthony Nakhaima

The National Transitional Justice Policy (NTJP) was announced in July 2019. Although the Ugandan government will facilitate the overall implementation, it will include a multi-sectoral, multi-dimensional approach that involves Civil Society Organizations (CSOs), development partners and other non-State actors in the private sector to fund as well as implement the policy. The Policy makes provision for the following five processes:<sup>32</sup>

1. Formal Justice in which Government will ensure that witnesses are protected, and victims participate in proceedings to the extent possible, and to remove barriers for access to justice by victims – especially the vulnerable
2. Traditional Justice whereby Government recognizes traditional justice mechanisms as a tool for conflict resolution
3. Nation-building and Reconciliation as per which Government shall establish and resource nation-building and reconciliation processes
4. Reparations as per which Government shall establish and implement a reparations programme for victims affected by conflict - however, this aspect of the policy is the most challenging and without which victims are reluctant to participate
5. Amnesty - there shall be no blanket amnesty and the Government shall encourage those amnestied to participate in truth-seeking and traditional justice processes

Jamil Mukulu (CDi.015), the leader of the ADF, as well as Abdallah Omar and Muhammad Matovu were arrested in April 2015 in Tanzania and extradited to Uganda in 2015. Pretrial proceedings continued since 2018 to review available evidence and exhibits.<sup>33</sup> During the period under review, the suspects remained in custody till Mukulu, and 37 others were formally charged with twenty charges including terrorism, murder, aggravated robbery, aiding and abetting terrorism, crimes against humanity, attempted murder and belonging to a terrorist organization.<sup>34</sup>

The most important conviction in Uganda was delivered on 26 May 2016 when seven of thirteen of the accused were convicted for their involvement in the 2010 Kampala attacks during the FIFA World Cup. Initially, 60 people were arrested in Uganda, Kenya, and Tanzania in connection with the attack. Those found guilty were convicted for terrorism (counterterrorism legislation), murder and attempted murder (Penal Code). The court handed down five life sentences while two accomplices got 50-year jail terms.<sup>35</sup>

Furthermore, in August 2017, the High Court sentenced Sheikh Mohammad Yunus Kamoga, who heads the Tabliq group to life imprisonment, while two others were given 30 years each. The cases included the murders of nine Muslim scholars since 2012, as well as the assassination of Joan Kagezi. While celebrated as a victory, it is important to note that a day earlier, six accused were convicted on terrorism-related charges, but none for murder as the court felt that prosecutors failed to place any of the accused at the scene of the crime.<sup>36</sup>

Similarly to Kenya and Rwanda, Uganda benefits from the UNICEF support to address the specific needs of children.<sup>37</sup> In Uganda, UNICEF works with the Justice Law and Order Section (JLOS) and other justice actors, including police, judiciary, ODPP (Office of the Director of Public Prosecutions), Probation and Social Welfare Officers (PSWOs), District Community Development Officers (DCDOs), local councils, and local councils at village level. JLOS initiated the Justice for Children (J4C) programme in 2011 through a system approach in which fourteen J4C coordinators (lawyers recruited by the JLOS) are placed at high courts and each high court oversees 4 or 5 districts. J4C coordinators follow up with children related cases to make sure that children's cases are not delayed and to do police investigations to ensure that there is no incarceration, detention, and to facilitate diversion at the police level.

32 Ministry of Internal Affairs. National Transitional Justice Policy, June 2019. [https://drive.google.com/file/d/1zbqYzGRVpUpDrQUTM5c\\_GeMsultrB9O2/view](https://drive.google.com/file/d/1zbqYzGRVpUpDrQUTM5c_GeMsultrB9O2/view)

33 The Independent. Court to confirm charges against Jamil Mukulu in January. 21 December 2018. <https://www.independent.co.ug/court-to-confirm-charges-against-jamil-mukulu-in-january/>

34 Kukunda Judith. Jamil Mukulu Trial Pushed to March. Uganda Radio Network, 28 January 2021. <https://ugandaradionetwork.net/story/jamil-mukulu-trial-pushed-to-march>

35 Mohammed Yusuf. Seven Convicted in 2010 Terrorist Attack on World Cup Fans in Uganda. Voice of America, 26 May 2016. <https://www.voanews.com/a/uganda-convicts-mastermind-in-2010-bombing/3347317.html>

36 AlJazeera. Uganda jails Muslim leader Sheikh Kamoga over 'terror'. 25 August 2017. <https://www.aljazeera.com/news/2017/8/25/uganda-jails-muslim-leader-sheikh-kamoga-over-terror>

37 The following summary is taken from correspondence between Dr Anneli Botha and Tina Mykkänen with representatives of UNICEF.

## 8. RECOMMENDATIONS



### 8.1 Development of a dedicated prosecution rehabilitation and reintegration strategy

While most countries already developed or are in the process of developing counterterrorism and/or countering violent extremism strategies, there is a need to focus on what a successful PRR strategy entails:

1. A successful strategy begins with robust investigation capabilities of different agencies to collect legally admissible evidence. Preventing future frustration, these agencies need to be trained and equipped to convert and use intelligence as evidence, collect battlefield evidence, and other types of evidence in terrorism-related cases.
2. Countries should solidify the responsibility of specialized counterterrorism investigators to take the lead. In the context of terrorism-related investigations, there is a need to define the mandate of each security agency further to prevent conflict between agencies.

Research has shown that one of the most common challenges in practice is the expectation based on perception that the different agencies, departments, units etc. cooperate with another, till one starts to ask individuals to recall examples or experiences in which they've actively worked with another. In other words, while the perception exists that departments and agencies cooperate, they seldom do without clear directions.

3. Importance of a whole-of-government involvement in especially rehabilitation and reintegration. A clearly defined PRR strategy needs to broaden the responsibility to prevent and counter radicalization to other departments within government beyond criminal justice actors.
4. Whole-of-society approach translating into tailored measures to facilitate the rehabilitation and reintegration of individuals, inclusive of CSOs and the community is an important step to ensure the sustainability of these initiatives while minimizing reoffending.
5. For those prosecuted, rehabilitation and reintegration is a process that starts immediately with the arrest of an accused individual. Specialized training and capacity building should be provided for the law enforcement and prison officers to equip officers with the relevant skills.

### 8.2 Enhance specialization and cooperation within the criminal justice system

#### 8.2.1 Between the police and prosecutors

In addition to having specific counterterrorism units within the police, there is a need to facilitate and strengthen the relationship between the police (investigator) and the prosecutor. The following elements are suggested facilitating this approach:

1. Like specialized counterterrorism units within the police, the prosecuting authority should consider establishing specialized units that exclusively prosecute terrorism-related cases.

The reality is that, in most prosecution offices, there are too few prosecutors available who have received specialized training in violent extremism and terrorism. Considering that terrorism-related cases are specialized and can be time-consuming, at least two prosecutors need to be allocated to terrorism-related cases to ensure continuity. Unfortunately, due to insufficient staffing, prosecutors are called to handle other, often unrelated, cases. In addressing these challenges, Uganda, for example, established the International Crimes Division within the High Court in 2008 to adjudicate the following specialized crimes: War Crimes; Crimes against Humanity; Genocide; Terrorism; Human trafficking; Piracy and other transnational crimes.

2. In addition to a policy on cooperation, mechanisms and procedures need to be put in place to effectively implement cooperation between law enforcement and prosecution authorities.

**Both prosecutors and investigators refer to time constraints due to caseloads as a challenge to regularly interact. Prosecutors make specific reference to mutual urgency, followed by mutual trust and purpose, as important factors that will further facilitate cooperation. For investigators, the classification of intelligence and limited training for both police and investigators to engage with each other as further challenges to enhance cooperation.**

3. The prosecutor needs to be involved from the onset of the investigation to provide strategic and legal advice.

**Prosecutors may provide essential legal advice to the police and other security agencies to quickly obtain answers to difficult legal questions. By forming a team between the investigator/intelligence officer and prosecutor, the latter can advise both on how to turn intelligence into evidence. The prosecutor can also guide the investigator on any further evidence that the prosecutor may require to successfully prosecute a case. Although this principle and its value are recognized, challenges remain in imp-**

**lementing this practice following the tradition of excluding the prosecution authority before an arrest. Consequently, after being arrested and presented in court, prosecutors and the court must often deal with insufficient evidence, leading to requests for extensions to initiate investigations. Technical assistance and capacity building on how to turn intelligence into evidence are common requests from police and prosecution authorities.**

4. Involve the prosecution authority when amnesty is considered.

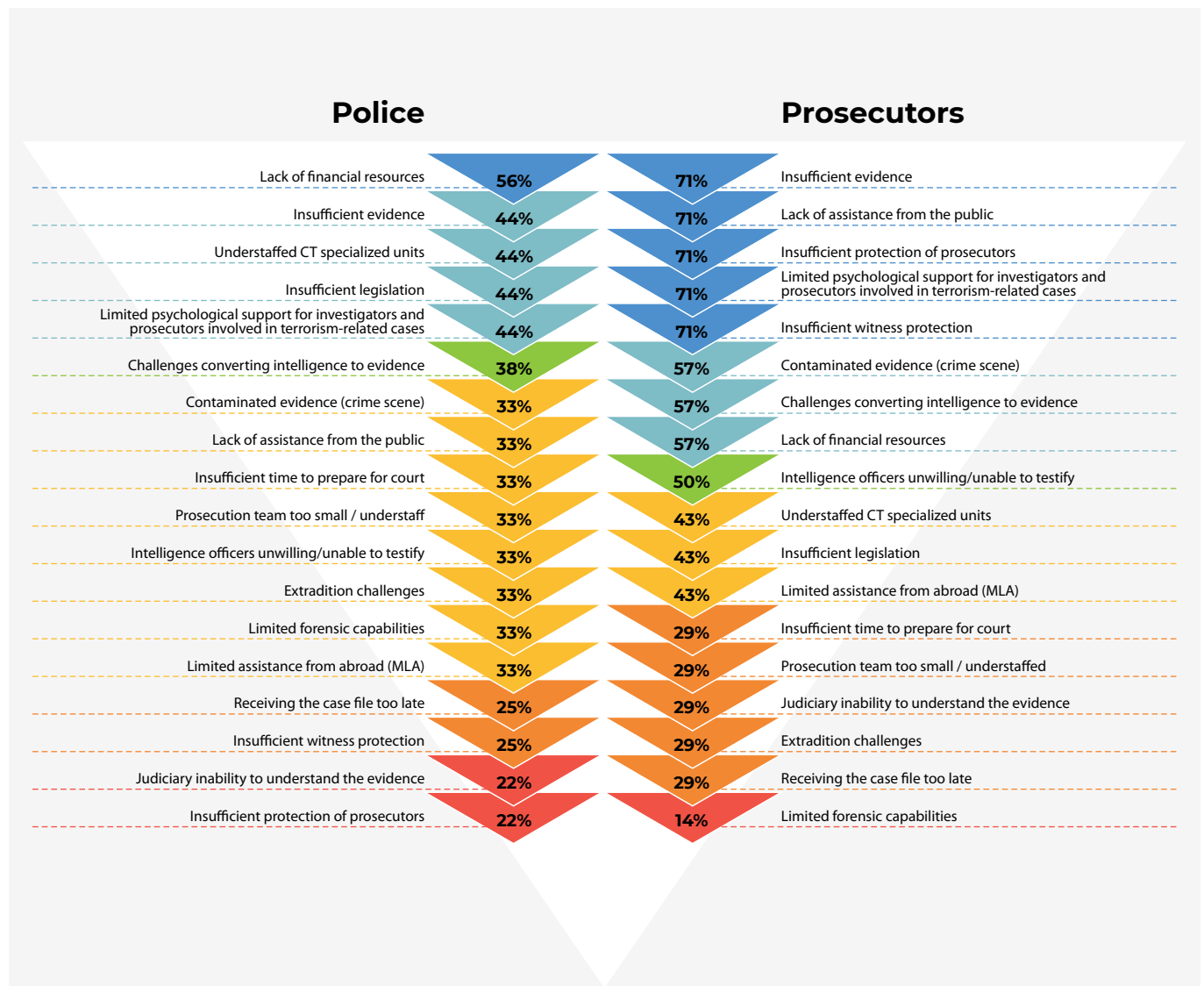
**Uganda involves the prosecution authority when deciding on amnesty. In Kenya, the NCTC oversees its amnesty process, but the prosecution authority is not included - or at least not formally - in the classification and rehabilitation process, which may contribute to a level of uncertainty.**

On the question of the type of challenges prosecutors are being confronted with during the prosecution of terrorism-related offences, prosecutors made specific reference to the way confessions are being obtained, with 86% of prosecutors identifying this factor as a challenge limiting the successful prosecution of terrorism-related cases. Insufficient witness protection is categorized as equally challenging (71%) on the part of prosecutors. This may partly explain the lack of assistance from the public highlighted by prosecutors (71%) while 33% of police officers identified the same.

Respondents representing the prosecution authority further clarified that 83% of community members and 71% of former violent extremists expressed being unwilling to testify in fear of retribution that had a direct impact on the successful outcome of the legal proceedings. Insufficient evidence to either proceed with legal proceedings as well as in securing a conviction. Recognizing and rectifying the different views of police (44%) and prosecution authorities (71%) on this particular challenge is an important element needed to enhance cooperation. The protection of prosecutors is also an issue raised by prosecutors (71%).

**Figure 1**

**Influence of the following challenges on the successful prosecution of terrorism-related cases**



Addressing these challenges, prosecutors propose the following solutions (order based on importance) when working with law enforcement:

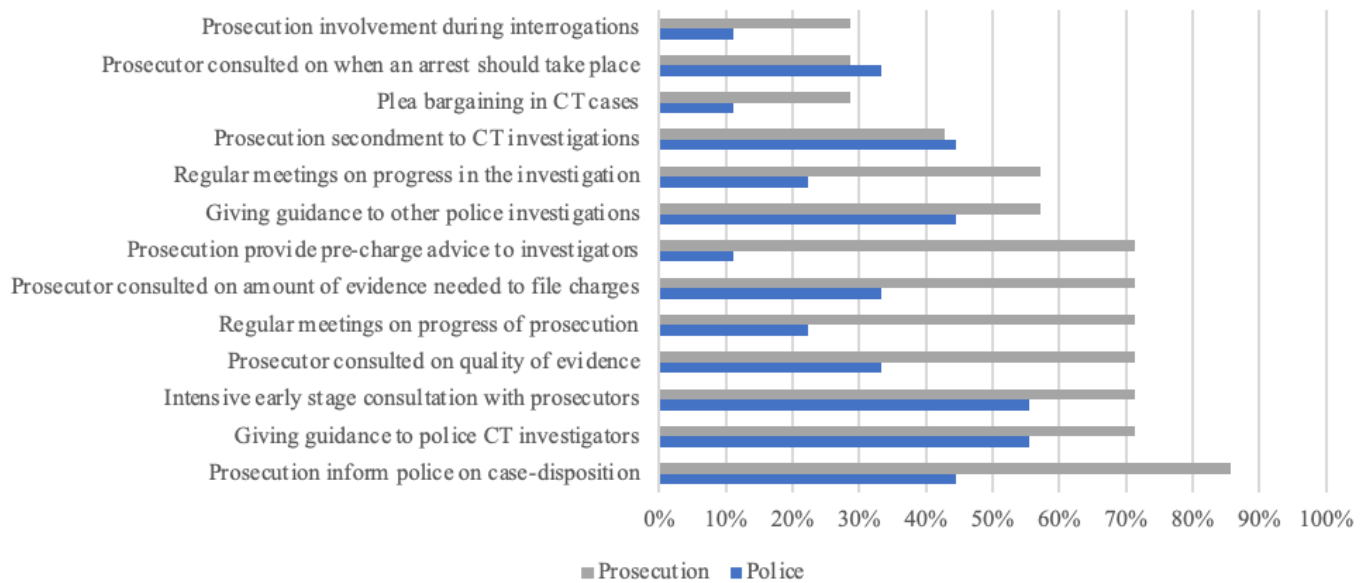
1. Prosecutors to inform the police on case disposition.
2. Intensive early-stage consultation with prosecutors, during which investigators consult with prosecutors on the quality and quantity of evidence, leading to pre-charge advice to investigators.
3. Regular meetings on progress in the investigation.

Two areas where police officers place a greater value than prosecutors that will enhance the potential for a successful outcome is:

1. For a prosecutor to be consulted on when an arrest should take place; and
2. Secondment of a prosecution official to counterterrorism investigators.

**Figure 2**

**Practices that will increase success when prosecuting CT-related cases**



It is important to note that 29% of prosecutors (and 35% of police officers) identified insufficient legislation that criminalizes leaving the country, while only 14% of prosecutors and 39% of police respondents referred to limited legislation to establish jurisdiction over crimes committed in another country as challenges when prosecuting FTFs.

### 8.2.2 Between police and prisons

In addition to cooperation between law enforcement and the prosecution authority, there is also a need to focus on cooperation between police and prisons. The importance of police and prison cooperation is highlighted in the UN Global Counter-Terrorism Strategy, the UN Secretary General’s PVE Plan of Action, the Madrid Guiding Principles (2015) and its Addendum (2018).

#### **INSTITUTIONAL AND INDIVIDUAL ACTION PLANS TO MEASURE COMPLIANCE**

Recognizing respect for human rights as an integral part of creating an environment where rehabilitation can occur, Kenya recently initiated a program, under the leadership of the Kenya Prisons Headquarters, in turning the 122 United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) and the 70 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) into measurable commitments. In testing compliance, institutional and individual action plans were created to conduct institutional assessments and to measure individual performance. Implementation of this strategy corresponds with first delivering training to officers before developing action plans that are being monitored through a monthly reporting system. While initiated in Kenya, this approach was also adopted by the East Africa Community (EAC) and is currently being implemented in Burundi, Rwanda, South Sudan, Tanzania, and Uganda with assistance and funding from Sweden.



Although both agencies are important actors within the criminal justice framework addressing violent extremism, and therefore also responding to returning FTFs, cooperation should not be automatically assumed or expected. While the earlier focus has been directed towards cooperation between investigation and prosecution, the value of cooperation between police and prisons has, until recently, remained underestimated. In a recent study conducted by the EAPCCO CTCoE that included police and prison officials in Kenya, Uganda, and Rwanda, the existing as well as expected levels of cooperation, were assessed.

The study found that the classification of information is the most important factor preventing cooperation between the two institutions, especially since there is no policy in place to facilitate the sharing of information. In other words, structures to facilitate sharing is closely associated with a policy. Uganda, even before these results were published initiated a process of formalizing a Memorandum of Understanding (MoU) to provide clear guidelines and liaison structures to facilitate future cooperation (at the time of writing discussions between the two agencies regarding the MoU were still ongoing). This initiative is promising since it is going beyond ad hoc requests for information to create an information-sharing environment, which considers procedural requirements. In Kenya, on the micro-level as explained under the Amnesty process, coordination takes place at the county level with prisons (when present in the county) having a seat at security meetings.

Furthermore, the utilization of parole needs to be revisited. In both Kenya and Uganda, police officers are expected to be involved in the placement of convicted violent extremists. While no policy or structural framework is established to facilitate the process, police officers from both intelligence and investigation perspectives may have information at their disposal that may add value in forming the decision. For example, police officers may currently investigate a case where the placement of a violent extremist in a particular holding facility may have a positive or negative impact on the outcome of the investigation. Being involved in developing the risk assessment of a detainee is another topic police officers are expected to be involved in although not accommodated in practice.

## 8.3 Amnesty and transitional justice lessons

1. Transitional justice mechanisms should not be seen as a long-term solution. While such mechanisms may alleviate or address challenges during the times when the regular justice system is otherwise absent, once situation regularizes there is a need for more robust mechanisms that allow to, for instance, gather evidence that will meet the judicial burden of proof.
2. Legislative framework and implementation strategy that establish the conditions for amnesty and the required process that should be followed. Success eventually depends on trust and faith in the process, especially from the party and/or individuals that have the most to lose. From a cost-benefit perspective, defections from violent extremist organizations are always a win for the opposite party in both short and medium term. However, should the party receiving the benefit act in a manner that raises the cost, benefit reverts to the original party.
3. Although the focus is often predominately on those responsible for violence, dedicated steps need to be taken to include victims (including secondary and in-direct victims) and other marginalized groups in the process
4. Finding balance between the need for justice while considering that perpetrators may have been victims themselves is often challenging.

**This is especially the case when individuals who did not join a violent extremist organization out of their free will, but who later became leaders within the organization and were responsible for atrocities. In one of the more recent examples, in February 2021 the International Criminal Court (ICC) convicted Dominic Ongwen of war crimes and crimes against humanity including murder, torture, and enslavement. Although Ongwen was responsible for these crimes, he was initially abducted by the LRA when he was between the ages of nine and fourteen.**

5. Suitability in cases where radicalization and recruitment occurred in identifiable vulnerable communities, from where both victims and perpetrators may originate.

## 8.4 Increase focus on gender mainstreaming and specific programming for the youth

Historically men present a greater proportion of individuals who join violent extremist and / or terrorist organizations, of which the youth and young adults are more vulnerable. However, radicalization and recruitment efforts of al-Shabaab, Da'esh and other terrorist organizations, target both young men and women, placing a lack of efforts to facilitate the return of young women (often accompanied by young children) in the spotlight.

Countries in the region are confronted with the need to develop and implement deradicalization and reintegration efforts for all – men, women, the youth, as well as young children – each with its own challenges and needs. Although armed groups in the past included women and children, the focus have been less on ideology than encouraging former fighters to disengage by offering small packages to enable self-sustainability. While this traditional DRR approach had its place for these types of conflict, the nature and focus of violent extremist organizations includes a stronger ideological component. Individuals join violent extremist organizations for a combination of reasons, and these individual factors need to be taken into consideration in the development of tailored deradicalization and rehabilitation efforts, through gender mainstreaming and with a gender sensitive approach.

Limited gender mainstreaming and gender sensitivity are a reality in all countries under review, which has a negative impact on understanding why women are susceptible to violent extremism. In recent years, as part of revising and updating County Action Plans (CAPs), international organizations such as UN Women has aided countries, including Kenya, in gender mainstreaming.

Despite the recent increased awareness of a gendered approach to analysis of causation, as well as incorporating gender sensitivity, the common perception that women follow their husbands, alternatively were forced into joining, prevails in the countries under review. Although the indicated reasons for female enrolment are not excluded,

women are not always innocent nor solely providing 'household' support to male fighters with al-Shabaab, Da'esh or other terrorist groups.

This inaccurate perception has, however, allowed VEO's to capitalize on this peaceful or non-threatening image of women, to facilitate and execute attacks in Eastern Africa. Without understanding the necessity of gender sensitivity and mainstreaming, authorities will not be able to effectively tailor screening procedures, nor will they be able to implement effective rehabilitation and reintegration strategies, especially aimed at female FTFs.

## 8.5 Addressing the specific needs of youth and children

The UN General Assembly Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (Resolution 69/194) of 2014 recalled that in accordance with Article 1 of the Convention on the Rights of the Child defines a 'child' as being below the age of eighteen years. Furthermore, the 5th Review of the United Nations Global Counter-Terrorism Strategy Review (Resolution 70/291) in 2016 called on Member States to review national legislation and measures in protecting children both as victims and suspects.<sup>38</sup>

*Stressing the importance of the development and maintenance of effective, fair, humane, transparent and accountable criminal justice systems, taking into account, inter alia, the rights and needs of children...*

*Reiterates that, given their potential status as victims of terrorism as well as of other violations of international law, every child alleged as, accused of or recognized as having infringed the law, particularly those who are deprived of their liberty, as well as child victims and witnesses of crimes, should be treated in a manner consistent with his or her rights, dignity and needs, in accordance with applicable international law, in particular obligations under the Convention on the Rights of the Child [1989] and, bearing in mind relevant international standards on human rights in*

38 United Nations General Assembly, "The United Nations Global Counter-Terrorism Strategy Review." Seventieth session, Agenda item 117. A/70/L.55, 1 July 2016. See also: UNODC. "Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System." 2017.

*the administration of justice in this regard, urges Member States to take relevant measures to effectively reintegrate children formerly associated with armed groups, including terrorist groups (par 18)*

*Calls upon all Member States, in accordance with their obligations under international law, to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by preventing the radicalization to terrorism and recruitment of foreign terrorist fighters, including children (par 44)*

One of the first challenges noted is that countries in the region have a different minimum age of criminal responsibility (MACR). For example, in Kenya the current MACR is 8 years old, in Tanzania it is 10 years, and in Uganda it is 12 years. All MACRs are below the international recommended age of 14, while the Convention on the Rights of the Child defines a 'child' as being below the age of eighteen years (Rwanda is the only country meeting this standard). UNICEF Kenya has been supporting the drafting of the new Children Bill (passed in 2022) where the minimum age of criminal responsibility is proposed at 12 years.

UNICEF is playing an active role in promoting the rights of the child within the criminal justice system in the region. UNICEF, however, prefers not to categorize its reintegration work with children as PRR in fear that it would stigmatize children. Additional efforts are, however, required to safeguard the rights of the child across the region and ensure that countries have knowledge and capacity to roll-out tailored programmes addressing specific needs of children in the context of rehabilitation and reintegration.

## **8.6 Strengthening national coordinated rehabilitation and reintegration strategies**

Currently, although most prison officials recognize the need to adopt a different approach when dealing with violent extremist offenders (VEOs) (including FTFs), dedicated strategies still need to be developed (standardized) and coordinated within most countries in the region. Prison officials interviewed referred to initiatives in their respective

facilities, while some countries in the region – for example Somalia, Sudan, and Kenya – established rehabilitation centers. An important question is to which extent are these efforts being coordinated and managed to ensure that individuals participating in these initiatives receive the same benefits.

Respondents across police, prisons and CSOs samples identified the need to establish and implement clear, comprehensive, and tailored rehabilitation programmes for men, women, and children beyond vocational training and skills development to also include psychological counselling and social support, with funding allocated to support individuals beyond conclusion of immediate implementation of programmatic activities and projects.

## **8.7 Enhance effectiveness of monitoring and evaluation**

Limited information is available on internal monitoring and evaluation processes. Yet, while evidence from previous disengagement and reintegration efforts are crucial, limited attention is directed towards following up, monitoring, and responding to individual progress as part of the reintegration process. Questions surrounding sufficient resources are already raised in implementation. This is however not limited to VEOs, since although provision is being made for probation, practitioners explained that probation is still recognized as relatively new.

In the absence of national initiatives, county administration and traditional community leaders (elders and chiefs) hold very important roles in the social welfare of communities. External observers often underestimate the reach and influence of elders and chiefs as the first to be consulted by community members in personal matters. While reintegration occurs with the assistance of traditional leaders, a need exists to first acknowledge its importance and to direct support where required.

Rwanda Demobilization and Reintegration Commission (RDRC) reported in April 2021 that it had effectively completed an eight-day assessment of former combatants' reintegration activities country-wide. The aim of the activity was among others to assess the impact of economic support that was given to former combatants and their dependents; encourage former combatants to join cooperatives; as well as provide psychosocial support. As part of the same process, RDRC staff analyzed former combatants' social cohesion in the communities in which they were being reintegrated, to identify challenges and find solutions.

Recognizing many former combatants, the RDRC encourages the formation of cooperatives to facilitate faster integration in society, while also raising individual and collective incomes. The assessment found that these cooperatives have started diversifying their activities to also include other projects like extensive agriculture, environment protection, fishing, etc.

Following its success, the RDRC now encourages former combatants to form or join cooperatives with other community members, to accelerate reconciliation while enhancing social-economic prosperity for the broader community. To further the success of this approach, the RDRC supports these cooperatives through capacity building and advocacy while encouraging competition between the projects.<sup>39</sup>

## 8.8 Enhance efforts to build relationships of trust with communities

Positive and constructive relationships with the public, and especially vulnerable communities, are critical at all levels of the PRR processes. For example, enabling family members, friends, and broader community members to come forward with information regarding suspected radicalization and recruitment into both domestic, and international violent extremist organizations requires trust in the security forces.

High levels of trust promote healthy interactions, whereas low levels of trust undermine the possibility of a constructive relationship. Trust, or the confidence to come forward with information that may lead to the arrest and conviction of a person should outweigh the cost of not doing so. Similarly, trust will also play an important role in the willingness of a witness to testify, and the openness of communities to work with government agencies to integrate former violent extremist offenders (VEOs) or FTFs back into communities.

Although several factors play a role in building a positive relationship between the public and security forces, law enforcement agencies in the region make use of community policing to achieve this objective. While community policing may involve different approaches and initiatives, and although both parties – community and the police – may have different expectations, the concept commonly relates to positive interactions, the creation of a partnership between the community and law enforcement, and the involvement of both in solving problems. Community policing strategies aim at enhancing the willingness of community members coming forward with information to act in a proactive manner preventing individuals from joining and/or leaving the country.

According to the surveyed CSO representatives, attempts by the police to engage with the public through community policing initiatives was presented as 44%, while success of these initiatives was assessed at 41%. Asking respondents representing CSO to reflect on the occurrence and success of initiatives from the community to engage with the police, community engagement with the police was estimated at 26% with success of this interaction projected at 42%. It is important to note that although community-initiated interaction may be less prevalent, its achievements show an upward trajectory.

<sup>39</sup> Rwanda Demobilization and Reintegration Commission. RDRC winds up country-wide mentorship on beneficiaries IGAs, and psychosocial support and sensitization on social cohesion and Cooperatives. 9 April 2021. [http://demobr.wanda.gov.rw/index.php?id=9&tx\\_news\\_pi1%5Bnews%5D=279&tx\\_news\\_pi1%5Bday%5D=9&tx\\_news\\_pi1%5Bmonth%5D=4&tx\\_news\\_pi1%5Byear%5D=2021&cHash=24cf1676dbd5f83327406922a4fa22cb](http://demobr.wanda.gov.rw/index.php?id=9&tx_news_pi1%5Bnews%5D=279&tx_news_pi1%5Bday%5D=9&tx_news_pi1%5Bmonth%5D=4&tx_news_pi1%5Byear%5D=2021&cHash=24cf1676dbd5f83327406922a4fa22cb)

## 8.9 Fostering participation of civil society organizations in PRR programmes

Civil society organizations play important roles within the PRR framework. These organizations do not only secure local ownership, but without their direct involvement and assistance, governments are not able to implement strategies, policies, and initiatives.

Although CSOs in Eastern Africa may have different opportunities to access and influence governments' strategy and approach to communities they are engaged with (there exists a perception amongst local CSOs engaged in representing marginalized or minority communities and/or actively involved in promoting human rights that there is a 'shrinking civic space' in which some organizations are 'discouraged' to get involved in security-sensitive

topics), it is unmistakable that a vibrant network of CSOs exists within vulnerable communities. Organizations within a broader PRR agenda include:

- Human rights organizations holding law enforcement accountable to human rights abuses, ensure that due process is followed while also supporting direct and indirect victims, including families of suspected violent extremist offenders.
- Faith-based organizations inclusively address several functions although community outreach and dialogue have been of particular interest.
- Community support organizations.
- Women organizations that provide essential gender dimensions to P/CVE and PRR strategies.
- Youth organizations.

**Figure 3**

**Prominence of challenges CSOs are confronted with when working on C/PVE-related issues**





**Kenya started to acknowledge the important reach of local CSOs in especially vulnerable communities as witnessed in the development of Mombasa's CAP that involved thirty-six CSOs.**

**Uganda, on their part, included CISCAVE within its national P/CVE coordination structure within the Ministry of Internal Affairs. Consolidating CSOs working within the field of P/CVE makes practical sense considering the vast range of organizations. Despite this positive development, according to a prosecutor from Uganda, there is a need for the Ministry of Labour, Social and Economic Development, the Amnesty Commission, and Uganda Prisons Services to enhance working with CSOs on matters associated with PRR.**

Families also play a central role in facilitating disengagement, deradicalization and reintegration. While families might not have supported, nor been aware of the decision and subsequent movement of a relative to join a terrorist organization, family members still considered it a risk to come forward with information to security forces and law enforcement. It is also for this reason that when a member of the family leaves to join al-Shabaab or Da'esh, the family is under scrutiny from both the security forces and the broader community - often being questioned if parents, spouses and/or siblings were aware of a person's decision to join and/or leave.

Understanding the communal impact, CSOs have been active in engaging with families in providing legal and social support when engaging with security forces. Alleged human rights abuses directed against individuals suspected to be involved in violent extremism, as well as treating family members as being complicit, leads to cycles of suspicion on the part of both family members and security personnel limiting the potential for cooperation. These circumstances led to security agencies being isolated from communities they are mandated to protect.

Within vulnerable communities, 'communal radicalization' may be an additional factor. However, these communities confronted with larger numbers of radicalization may have a better understanding

of challenges leading to more support. With the assistance of CSOs, human rights activists and families act as intermediaries convincing individuals who left for violent extremist organizations to return and make use of the amnesty process when available. Understandably, building trust takes time, and as such CSOs, especially religious, women, and youth organizations step in and implement programs to enhance community dialogue while working with communities at risk.

Asking police representatives to reflect on the involvement of local CSOs as well as international intergovernmental organizations in reintegration, both were estimated at 47% successful, with the involvement of local governments at 53%. Least successful according to this sample was amnesty at 17%. It is interesting to note that CSO representatives were even less convinced that amnesty as provided by government currently was successful, with only 9% rating it as successful.

## **8.10 Increase the involvement of survivors in rehabilitation efforts**

In addition to important steps being taken to implement initiatives to encourage disengagement, rehabilitation, and reintegration, a risk persists: While the primary focus is on the offender, the perception amongst especially the victims, is that perpetrators are being 'rewarded' for previous offences, whereas those who have not committed offences or those who must live with the consequences of the actions of perpetrators, do not receive any support. It is especially the long-term invisible psychological scars that require the most support. It is especially for this reason that victims and their families often feel betrayed when amnesty, especially blanket amnesty, is considered.

Then there are the insecurities receiving communities are confronted with. Furthermore, social challenges, for example limited employment opportunities may add to friction if the perception exists that former combatants receive special treatment. Resentment within communities against former members will have a negative impact on the success of reintegration efforts. It is especially for this reason that social and economic development



initiatives should be directed at the broader community and not only those who offended.

Authorities with the support of CSOs need to develop tailored strategies – based on communal experiences, for example if members of the community were targeted in previous attacks and other factors – and prepare communities for reconciliation and reintegration. It is therefore recommended

that these efforts form part of an overarching PRR strategy inclusive of victim participation, CSOs, and Government departments, even those not traditionally part of the security and justice sector to ensure that this strategy involves the whole-of-government and the whole-of-society within the framework of domestic and regional realities while recognizing international best practices.



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