

Introduction

Violations of freedom of religion or belief in Kenya are primarily perpetrated by members and sympathisers of the Somali terrorist group al Shabaab. The al Hijra faction of al Shabaab consists predominantly of East Africans, most of them reportedly Kenyan nationals. Since October 2011 the group has perpetrated attacks on churches, security installations and villages. The areas of the country that border Somalia have experienced the majority of attacks.

Notable al Shabaab attacks

Al Shabaab is reported to have set up permanent training bases in the Boni forest in mid-2012. Although the area is now surrounded by three Kenyan Defence Forces (KDF) army bases, a member of the local community has said the group has continued to cause ‘untold suffering’ and was ‘having a field day inside the forest without any fear of the soldiers and the police.’

On 21 September 2013, at least 67 people were killed and around 200 wounded in an attack on the Westgate shopping centre in Nairobi by four al Shabaab terrorists, who reportedly targeted victims according to religion and nationality, and who also died at the scene. In October 2020, a Kenyan court sentenced Mohamed Ahmed Abdi and Hussein Hassan Mustafa to 33 and 18 years in prison respectively for their roles in assisting al Shabaab extremists.

On 2 April 2015 al Shabaab killed at least 147 people, most of them students, at Garissa University. The attackers reportedly singled out Christian students for execution. It was the fourth attack in which al Shabaab terrorists had separated hostages according to religious identity and murdered them accordingly.

From May 2017 there was a notable increase of al Shabaab attacks. A particular spike was observed towards the end of 2017, and attacks continued on a regular basis throughout 2018, 2019 and 2020.

In January 2019 al Shabaab carried out an attack on the DusitD2 complex, a popular meeting place in Nairobi. Four gunmen attacked the business complex, killing 21 people before being killed by Kenyan security forces.

Al Shabaab has also been responsible for frequent attacks on villages, security personnel, schools, businesses and major transportation routes, particularly in Lamu and Garissa. There are also reports of al Shabaab terrorists

executing individuals who fail to recite the Muslim profession of faith and Quranic verses.

Violations of human rights in the fight against terrorism

There are serious concerns that Kenyan authorities have been responsible for human rights violations as they attempt to combat terrorism. Several domestic and international organisations have alleged that Kenyan police have been responsible for extrajudicial executions and torture. In November 2018, the Independent Medico Legal Unit (IMLU) claimed Kenyan police were responsible for 267 extrajudicial killings in 2018, a significant increase from IMLU’s estimate of 152 extrajudicial executions in 2017.¹

The changing nature of the threat that al Shabaab poses highlights the need for a change in strategy by the state party. The January 2019 DusitD2 was one of the first attacks where the perpetrator was not ethnically Somali. The fact that the leader of the attack, Ali Salim Gichuge, was a 26-year-old Kenyan from the predominantly Christian Meru tribe indicates the terrorist group’s ability to target and recruit marginalised individuals from ethnic groups that have no connections with Somalia or communities in neighbouring counties and to manipulate historical fractures and conflict dynamics.

There is an urgent need for the government to address both local grievances and the societal exclusion of teeming numbers of unemployed youth which renders them vulnerable to recruitment by extremists offering a source of income.

Moreover, the failure to ensure that human rights of civilians and even of suspects are respected in the fight against terrorism risks alienating local communities, mitigating against cooperation with intelligence gathering efforts, and causing some to sympathise with and even join the terrorist movement.

In an effort to build trust, Kenya has initiated community policing to transform the police organisation into a people-centred service. However, “societal dynamics such as tribalism, nepotism and corruption lie at the root of many political, economic and social processes [...] influencing rule of law and the justice system as a whole.”² A comprehensive programme of reform and democratisation is required to underpin this initiative and to ensure its effectiveness.

¹ Democracy in Africa, ‘Obtaining Justice for Extrajudicial Killings in Kenya’, 14 November 2018
<http://democracyin africa.org/obtainingjustice-extrajudicial-killings-kenya/>

² Police Reform and Community Policing in Kenya: The Bumpy Road from Policy to Practice, Journal of Human Security 16,
<https://www.researchgate.net/journal/Journal-of-Human-Security-1835-3800>

Recent developments

Universal Periodic Review, January 2020

In January 2020, Kenya's human rights record was reviewed as part of the United Nations Human Rights Council's Universal Periodic Review (UPR) process. During the review, Kenya received and accepted seven recommendations relating to increasing efforts to counter terrorism, including recommendations from Haiti and the Solomon Islands which made specific reference to ensuring the protection of vulnerable Christian communities.

Kenya also accepted nine recommendations calling on the state to take steps to investigate instances of extra-judicial killings, including recommendations from Botswana and the Republic of Korea which made specific reference to extrajudicial killings within a counter-terrorism context.

Continuing al Shabaab violence

In January 2020, al Shabaab perpetrated a sophisticated attack on Manda Bay camp, a US military base near the coastal port of Lamu. The attack led to the deaths of three US nationals, the highest US casualty rate in Africa since 2017. The incident led to the destruction of valuable surveillance aircraft and highlighted the weakness of the defences of the military base perimeter. It also may have precipitated the January 2020 withdrawal of 800 US troops from Somalia, who had been working closely with the African Union Mission and the Somalia National Army to set up the elite counter-terrorism unit Somali Danab Advanced Infantry Brigade.

In June 2020, CSW published a briefing which detailed ongoing al Shabaab attacks from October 2019-March 2020.³ The briefing also raised concerns that the terrorist group might take advantage of the ongoing COVID-19 pandemic to recruit youth from communities suffering under the economic effects of the pandemic.

On 9 March 2021, security agents repulsed an attempted attack by al Shabaab on a newly reconstructed military camp in the Elram area in Elwak, Mandera County.

Attacks on houses of worship

In late January 2021, five church properties in Otamba village in Kisii County were damaged in a series of arson attacks that occurred between 1am and 3am. The assailants also threw human faeces into the premises.

An attack on St. Monica's Catholic Church in the early hours of 20 January in which the altar was destroyed was followed by the burning of a Worldwide Church, a Legio Maria Church building and the offices of the Seventh Day Adventist Church on 21 January. Finally, on 24 January, the Pentecostal Church premises was burned.

On 26 January, 10 people were arrested in connection with the arson attacks.

Recommendations

To the government of Kenya:

- Increase efforts to clear the Boni forest and surrounding areas of al Shabaab fighters, and increase the numbers of security personnel deployed to the coastal region to protect civilians.
- Strengthen counter-terrorism efforts with a particular focus on Lamu and Garissa Counties.
- Ensure that the humanitarian needs of communities displaced or affected by al Shabaab violence in Lamu and Garissa Counties are met.
- Bring to justice any police officers found guilty of receiving bribes or engaging in other forms of corruption that undermine the rule of law and mitigate against efforts to combat terrorism and criminality.
- Conduct coordinated assessments, along with the government of Somalia, of the al Shabaab counter-terrorism strategy and its potential impact on civilians, ensuring that all counter-terrorism measures fully respect Kenya's national and international obligations.
- Conduct detailed investigations into allegations of extrajudicial killings, torture and enforced disappearances, ensuring that perpetrators are brought to justice.
- Strengthen human rights training within the security forces to ensure that officers operate in accordance with Kenya's constitutional and international legal obligations.
- Urgently formulate poverty alleviation and income generating initiatives targeting unemployed youth in particular in order to render them less susceptible to financial inducements from terrorist recruiters.
- Address and resolve historical grievances that are manipulated by al Shabaab to recruit Kenyan nationals to its cause.

³ CSW, 'al Shabaab attacks October 2019-March 2020', 10 June 2020
<https://www.csw.org.uk/2020/06/10/report/4686/article.htm>