Challenges And Opportunities Of The Criminal Justice System In Address Youth Radicalization In Mombasa And Kwale Counties, Kenya.

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Abstract

Violent extremist ideologies has become a global threat. Kenya has attempted to minimize youth radicalization following a number of terror attacks but it has yielded no fruits. Despite many youths having been arrested, prosecuted or even eliminated, youth radicalization seems to be on the rise which points to the fact that the very criminal justice system contributes to youth radicalization. Anchored on the social identity theory, the criminal justice theory and the psychoanalysis theory, the study evaluated the challenges and opportunities of the Criminal Justice system in relation to youth radicalization in the two Counties. A descriptive survey design was adopted. The target population was 320. Stratified simple random sampling was used to select respondents. A sample size of 96 was derived representing 30% of the target population. Both primary and secondary data were used. Validity and reliability of data was tested using Cronbach's alpha. Data was analyzed and presented using descriptive statistics; percentages, frequencies, means and standard deviations.The study found that radicalized youths cause a big challenge to the criminal justice system. The courts systems are ill-prepared to handle radicalization cases and, in most cases, justice is not served as required. The study recommends that the statutory provisions in place should be utilized to arrest and prosecute the suspects with a well-trained judiciary staff on matters of radicalization. The prisons to be used to reform the radicalized youth through de-radicalization.

Key Concepts; community based policy, returnees, youth radicalization

Introduction

Hicks *et al* (2012), on the other hand, considers radicalization as politically subversive, innovative and extremist without being inherently illegal, criminal or a social danger. However, violent radicalisation, often encouraged through hiring and training, is conceived as a social and psychological mechanism by which a person is gradually committed to politically-motivated violence against civilians. He argues that radicalisation takes place when the individual develops political or religious agendas and institutions that contravene educational or mainstream standards (Schimid, 2013).

According to (Schimidt, 2013) radicalization has emerged as a broad concept referring to unconventional attitudes as well as to violent actions. The tendency to associate radicalization to jihadism or religious (Islamic) extremism has come under scrutiny as recent studies have suggested that radicalized individuals are less likely to have histories of deprivation, unemployment or criminality. They are in fact better educated than the general population Krueger &Laitin, (2007). However it is important to note that political extremism has been a very frequent form of radicalization in Europe through labour movements and human rights campaigns since the 1870s laying the foundations of contemporary schools of thought such as feminism, environmental and democratic ideologies.

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McCauley and Moskalenko (2011) observed that motivation and ideologies of groups that embrace violent radicalization are often specific to political, historical, social and cultural contexts that can shape their behavior and actions.

Sageman (2008) and Atran (2010) reported that violent terrorist acts have extreme consequences on lives, mental health and psychological injuries. They noted that the 9/11 attacks in the United States killed 3000 people, in between 2003 and 2004, suicide bombers in Iraq killed 12,284 Iraqi civilians while a total of 30,644 civilians were injured.

Atran (2010), has reported that in the past terrorist trends originated from foreign radical Islamists. This has since shifted towards homegrown terrorists who are recruited and radicalized within countries through organized recruitment and financing by external forces. These emerging trends have continued to raise unprecedented challenges for both developed and developing countries serving as a motivation for this study. Radicalization has become homegrown and is now entrenched even in the rural society.

In Europe, reports indicate that about 5000 youth have joined the Islamic State of Iraq and Syria (ISIS). Drawn from France Belgium, Middle East, North Africa, Jordan, Egypt, Pakistan, India and Bangladesh. These youth have identified themselves as foreign fighters who believe in restoring justice and obtaining revenge for the domination suffered (Sageman, 2008). It is not lost to many that prisons have also become places of radicalization of youth jailed for criminal causes. Varvelli (2016) argues that that urban slums in most European countries have also become recruitment centers due to high unemployment rates, delinquency and sentiments of social and geographical marginalization experienced by the youth. This study is relevant to the current one since it has pointed out the socio-economic structures that breed radicalization; however, it fails to provide direction as far as addressing the socio-economic structures are concened.

In East Africa, the political, socio-economic and individual factors that drive radicalization are varied thus making it difficult for counter radicalization to arrive at a universally applicable approach. The Somali question continues to haunt East African countries in the sense that the future of Al-Shabaab depends on its ability to recruit new members along the East African coast and in urban centres. It has been observed that the Al-Shabaab religious and political ideology attracts the youth and provide them with a sense of identity, purpose and community (Ostebo, 2012). This study tend to narrow the problem of youth radicalization to be religious in nature which is not the case.

This why Onkware*et al* (2010) in their article: "Counter-Terrorism strategies by Kenya against Somalia Terrorism" argued that: "One way to strike Equilibrium is to focus more on improving the capacity of local business interests to develop their own security infrastructure. Rather than focusing on building a security architecture that secures an unemployed, poor and restless populace ripe for radical recruitment, more pragmatic aid policies might support local actors with an economic interest in imposing favorable security conditions".

In the mix of fight against terrorism, issues of human rights also emerge. The Human Rights Watch (2010) reported that between 2008 and 2009, terrorist attacks were launched in the Kenyan Capital Nairobi and at the Kenyan Coast. These attacks were claimed to have been perpetrated by the Al-Shabaab, a militant group based in war torn Somalia. The group claimed that it was considered as an act of retaliation for what Al-Shabaab views as an act of aggression by an occupation force. The militant group has continued to launch a number of high-profile attacks in Kenya. These include the Westgate Mall in 2013 where 67 people were killed; Mpeketoni, Lamu County in 2014 where 48 people were killed; Lamu and Tana river where 87 people were killed; Mandera where 28 people were killed in a quarry most of whom were non-muslims and in 2015 at a University in Garissa where 147 people were killed (Ligawa*et al*, 2016). On 15th January 2019, the Dusit Hotel in Nairobi was attached by terrorists. The attack left about 21 civilians dead and several injured. The Al-Shabaab claimed responsibility for the attack. Ligawa and Odhiambo (2016) study is relevant as it isolates incidences of terror attacks that infringe on human rights of victims; however, it does not interrogate the criminal justice system that deals with issues of radicalization. Thus, these continued acts of violence on Kenyan targets highlight the high prevalence of radicalization among populations in Kenya. The need to understand law enforcement as a startegy to tame the trends of youth radicalization is important to the current study.

Haki Africa (2016), a Human Rights organization based in Mombasa, reported an increase in the number of human rights violations from 1,383 cases in 2017 to 1,895 cases in 2018.The organization also raised concerns over a notable increase in the number of criminal gangs operating in Kenyan urban areas specifically in Nairobi and Mombasa counties.

In as much as this study is relevenat to the current one; there is need to for an intergrated approach on issues of law enforcement. Thus, the need to establish whether the emergence of these criminal gangs is associated with an increased trend of youth radicalization in Mombasa and Kwale counties formed the motivation for the study.

1.2 Statement of the Problem

Although the criminal justice system is mandated to apply legal measures towards deterrence and correction from criminal offences, there realization is that this is not always the case at least as far are countering radicalization and terrorism is concerned. In most cases, attempts by the criminal justice system to curb radicalization have been unsuccessful, sometimes even the criminal justice officers themselves falling victims (Kwale County Action Plan, 2013).

However, while existing research have identified gaps within the criminal justice system in addressing radicalization, violent extremsm and terrorism (Bhui*et al.,* 2012), there is dearth of research inquiry as to challenges and opportunities of the Criminal Justice system in address youth radicalization in Mombasa and Kwale Counties, Kenya. The study hypothesized that certain practices within the criminal justice system including, discrimination in law enforcement by the police, arbitrary killings and execution, fored disappearances, delayed trials, failures to follow due process in trial, biased court processes and harsh prison conditions precipitate radicalization among the muslim youth especially in Mombasa and Kwale counties where incidents of youth radicalization have been rampant. In answering to this hypothesis, the study sought to investigate the nature of contribution that the criminal justice system has on youth radicalization. Further, it sought to establish whether or not upholding the criminal justice system by state and non-state actors can effectively work as a counter-radicalization measure among the youth who perceive themselves as disadvantaged by the society

The study's focus on the youth was deliberate. The Kenyan youth are an upcoming generation identified by a number of unique characteristics. They have experienced ethnic, religious, post-election, social and economic conflicts that shape their socio-political views and their trust or distrust with political leadership and judicial agencies (Botha, 2013). These feelings of skepticism lead to frustration and, thus act as push factors into radicalization. On the other hand, religious indoctrination including radical teaching of jihad and perceived historical injustices against Muslims make youth Muslims want to revenge in defense of their religion and thus become a fertile ground for radicalization.

1.3 Objectives

The objective of the study was to evaluate the challenges and opportunities of the Criminal Justice system in address youth radicalization in Mombasa and Kwale Counties, Kenya.

1.4 Research Questions

What are the challenges and opportunities presented by the criminal justice system in addressing youth radicalization in Mombasa and Kwale Counties?

1.5 Justification of the study

1.5.1 Academic Justification

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

1.5.2 Policy Justification

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

1.5.3 Philosophical Justification

The present study was underpinned by the positivist philosophical approach for some salient reasons.

The significant extent correlational and this aligns with the positivist approach since positivist approach correlates the findings to what is happening in the real world. Aiyabei& Odhiambo (2020) in their article titled; "The relationship between maintaining status as a socio-cultural element and conflict dynamism within Kerio Valley Delta", underscores the philosophy of localization as an emancipative effort of promoting peace and security; broadening the concept of maintenance of peace and security beyond the understanding of many States that still hold national security as being synonymous with state security and even more narrowly as regime security". This study therefore contributes to the philosophy of localization of peace, conflict and security.

2.1 Youth radicalization in Kenya

Scofield (2016) is of the view that radicalization and recruitment are complex issues which connect non-violent members of the community into a violent and extreme member of society and later graduate to terrorism. Dealing with radicalization is quite important when dealing with security challenges of countering terrorism. It is observed that for a long time radicalization was tied to revenge and grievances of youth who had no identity or engagement after school. However, radicalization has now changed to include discussions on vulnerability and susceptibility to extremism. It is noted that recruitment processes are taking root in Kenya with Al-Shabaab changing tactics and becoming smarter in the recruitment process. The youth in schools have become targets of the recruitment agents. Radicalization by rogue preachers is also given as one of the process of recruitment.

Burke (2018) observes that terrorist groups publish propaganda content using ICT with the intent to radicalize. The social media allows groups to reach huge audiences and circulate their message worldwide. Social medial can be used to create a sense of community or for one- on-one conversation between terrorists and interested parties. ICT facilitates recruitment through expected radicalization and community building and is also used with more devious tactics such as luring recruits with job announcements for fake positions in other Countries. Terrorists groups publish their own media in order to dictate the frame of their stories. The author's main focus is the Al-Shabaab of Somalia which he refers to as a Salaf-jihadist terrorist group. The author notes that Al-Shabaab's goal of survival has put it under pressure to recruit youths in both Somalia and Kenya. This is done through the use of communication technology. This study is relevant to the current one as it identifies use of ICT in radicalization of youths. However, it fails to point out how laws can limit youth radicalization through ICT.

Gatuiku (2016) notes that quite often strategies used by governments in the Horn of Africa (Somalia, Ethiopia, Eritrea, Djibouti, Kenya, Uganda Sudan and South Sudan to combat terrorism acts are more hard – power oriented (militaristic). The writer notes that one of the reasons why the Horn of Africa has become a battlefield for Jihadists and their foes in the spread of radical Islam has been linked to socio economic conditions and widespread poverty, a deep sense of marginalization of several groups in the countries in the region.

Human Rights Watch (2016) observes in its investigation on deaths and disappearances in Nairobi and North Eastern Kenya that in most cases military intelligence officers decide on how detainees should be treated, including if they should be executed, based on their judgment of the individuals' guilt. Human Rights watch documented 11 cases in which bodies were found in shallow graves, mortuaries or dumped in various location in Kenya were ultimately identified to be individuals last seen in Kenya with security officers in Wajir. The report identifies weaknesses in the approaches of reducing radicalization and terror attacks but lacks suggestions on how to stop the same.

2.2 Challenges and Opportunities of criminal justice system in relation to youth Radicalization

2.2.1 Regulatory Discontinuities

Regulation refers to strategies and process that are used to enforce legal compliance either through punishment or persuasion. Regulation defies the traditional command-and-control-based mechanisms in that it is more 'responsive', and regulators are charged with the responsibility to recognize and respond to the conduct of those they seek to regulate in ways that are sensitive to the conditions in which regulation occurs and the capacity of the regulated for self-regulation (Braithwaite, 2009). In models of regulation, there are diverse assumptions about the motivations and competencies of the regulated individuals or groups.

In considering the operationalization of regulation and its relation to youth radicalization, a significant question arises on how regulatory bodies including the CJS deploy various regulatory tools to administer justice. For instance, the decision of when to punish or persuade radicalized members of the society and how to integrate them back into the community (Braithwaite, 2009).

This task is more difficult for balancing the encroachment of personal freedoms against the protection of public safety concerns.   The Kenyan Constitution provide for the freedom of conscience. Given the growing recognition of the limitations of formal systems of criminal justice to effect behavioural changes, notions of 'better regulation 'have become prominent issues for governments, corporations and others. In the context of crime, notions of 'responsive regulation' have been particularly influential in debates about the role and value of restorative justice interventions (especially with young people) and their uncertain relationship with traditional forms of penal justice.

2.2.2 Gang problem

While gangs are a social reality, their existence and spread poses myriad challenges that hinder the implementation of criminal justice measures. Morselli (2009) discovered that gang members participate in a number of different crimes and groups, in addition to those committed with their own gang. He notes that while some of their crimes are linked to their membership in the gang, others clearly are not. Empirical research on gang organization demonstrates that most gangs participate in drug trafficking with some groups penetrating into community organizations and are capable of organizing homicide (Vakatesh, 1997). Curry has examined the relationships between gangs and terrorist groups and found out that even though the motivations of gangs and terrorists may be totally different, a common thread is drawn in that both terrorist and gangs groups engage in criminal activities and employ violence as a strategy.

According to Hogg and Adelman (2013), individuals by prescribing prototypes, will identify themselves with groups that provide people identity and reduce uncertainty relating to who they are, how to behave, and what to think, and who others are and how they might behave, think. Hogg and Wagoner (2017) assert that when the feeling of self-uncertainty becomes chronic, pervasive, or acute, people are strongly attracted to extremist groups, because they prescribe a clear prototype for how one should behave, think, and feel in all situations, and how to behave toward out-group members

2.4.3 Opportunities

Criminal justice system has positive opportunities in controlling youth radicalization and in mainstreaming strategies of crime control into a systemized format that ensure the administration of justice to all. Radicalization is a security threat. Empirically, it has been proven that systems of radicalized individual tendentially employ violence or join terrorist groups in a bid to protect their interests. There are various opportunities for the criminal justice system for controlling youth radicalization.

Prisons present an important opportunity for transforming lives and behaviour. Following the period of imprisonment most violent extremist offenders are released back into the society and without proper de-radicalization and complete disengagement with radicalized groups they can pose a continuing security threat. While prison based de-radicalization and rehabilitation is a new frontier in controlling radicalization it presents numerous opportunities for success. A comprehensive system that aims at behavior change is essential in the fight against ideological and religious extremism and violent manifestations. Sociologically, if an individual can adopt radical ideas and beliefs then it is possible that the individual can abandon the radical beliefs and stop expressing extremist ideas. Prison de-radicalization programmes therefore focus on the social and psychological process whereby an individual's commitment to, and involvement in, violent extremism is reduced to the extent that they are no longer at risk of involvement and engagement in violent activity. Horgan cites five factors that contribute to psychological de-radicalisation in ethno-nationalist and Islamist extremists, including three types of disillusionment (discordance between their ideal and the reality of the group experience, internal disputes over tactical decisions and political infighting); burn-out; and changing personal priorities (Horgan, 2009).

De-radicalization projects have the greatest chance of succeeding when nestled in a stable, protected and well-managed custodial atmosphere in which prisoners' human rights are respected. Interventions tend to concentrate on educational initiatives that reject nationalist agendas and narratives that clarify and justify state behavior through more inclusive language that is fact-based rather than rumor-based (such as the occupation of a particular area or the quest for mosques). Interventions also aim to concentrate on moral (re)education, which demonstrates that killing is wrong and that the Holy Koran or Bible is not correctly interpreted; and the use of religious scholars to clarify that there is no religious obligation to kill and that there is no religious need for a jihad (Bennett, 2010).

Barrelle (2010) identifies that de-radicalization programs have had success in countries like Germany, France, Sweden and the Netherlands. For these programs the Swedish 'exit' programs for right wing extremists utilizes a five phased model; motivation, dis-engagement, settlement, reflection, and stabilization which each individual must undergo. Other programs in Saudi Arabia and Singapore have had tremendous success in de-radicalizing violent extremist offenders.

3. Conceptual Framework

Wasike and Odhiambo (2016) discuss the role of theories in guiding the thrust of academic studies. They emphasise the importance of theories in offering compelling and incisive causal explanations with calculated precision. They buttress their argument by quoting Smith (1996) who asserts that theories play the role of predicting, prescribing and evaluating socio-political phenomena hence they cannot be ignored.

3.1.1 Social Identity Theory (SIT)

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

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

3.1.2 Criminal Justice Theory (CJT)

The criminal justice theory explains the official responses that the criminal justice agents have on behavior that is labelled criminal (Spines and Maguire, 2015). The behavior in this case includes all forms of actual behavioral phenomenon such as decisions and actions or non-behavioral phenomena including attitudes, philosophical orientation, or policies.

Within the interpretation of CJT, the justice system embeds on three broad streams of operations that entangle both individual and organizational schema. The first, encompasses the individual behavior of criminal justice agents; the police and other law enforcement officials, court-room officials, correctional officers and other personnel involved in the response to criminal behavior. The second focuses on the organizational behavior of criminal justice organizations such as police departments, courts and correctional organizations. The third concerns the characteristics of the overall justice system together with its components. Such characteristics may include actions of the police and justice systems that defy the concept of justice such as police killings, incarcerations and 'get tough' sentencing (Bernard & Engel, 2001). As Gottfredson and Gottfredson (1981) explain, the criminal justice entails a series of critical decision making, criminal diagnosis, classification and prediction by criminal justice agents.

3.1.3 The Psychoanalysis Theory

Understanding the theory of psychoanalysis began with research into various case studies of patients with neurotic conditions, including, though not limited to, obsessive-compulsive disorders and other documented phobic conditions.

Patients with hysterical symptoms have been reported to complain of shortness of breath, paralysis, and limb contractures for which no physical symptoms are known. Freud and his early co-worker and mentor, Josef Breuer, an Austrian physician, noticed in the course of interviews that many of their patients were unaware of how or when their symptoms progressed and even seemed oblivious to the immense discomfort caused by the symptoms. It was noted that the thoughts associated with the symptoms were locked from the conscious level of the minds of the individuals and thus ignored by normal curiosity (Freud, 1856).

Freud (1856) believed that the specific drive for these neurotic symptoms lay in the desire of the patient to continually block deeply distressing events from his unconscious memory that were incompatible with the societal moral standards of the individual and therefore contrary to them. These events were considered to have been sexual or violent in nature, and further exploration convinced Freud that even earlier troubling sexual experiences had been had by his patients where the memories were dormant until a more recent sexual or violent encounter awakened them. Freud further argued that previous experiences had an impact on the behavior of people under study. Freud has therefore formulated the theory of psychoanalysis to show that personality is shaped by such experiences as are many other traumatic or frustrating instances that have already been presented during a person's childhood and have been expressed in terms of behavior (Borum, 2011)

Freud (1856) believed that his patients were inspired to suppress such dreams about them that were both thrilling and repellent. Freud defined various psychological devices as protection mechanisms, formed to protect one from oneself, by which people tried to make fantasies bearable, such as obsessive compulsive behavior where people embrace persistent unwanted ideas or repeated overwhelming impulses to perform certain actions, such as incessant hand washing, defense maneuvers are called isolation and displacemen They consist of separating a fantasy from recognized emotions (isolating) and then adding the emotion to another, previously trivial idea. Freud also pointed out that in interpersonal contacts, individuals who rely on isolation and displacement are otherwise distinguished by nonpathological personality traits such as perfectionism, indecisiveness, and formality. The illusions for Freud were the mental representations of basic motivations or drives in the unconscious mind to achieve anything like sex, hostility and self-preservation (Ajzen, 1985).

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

3.2 Conceptual model

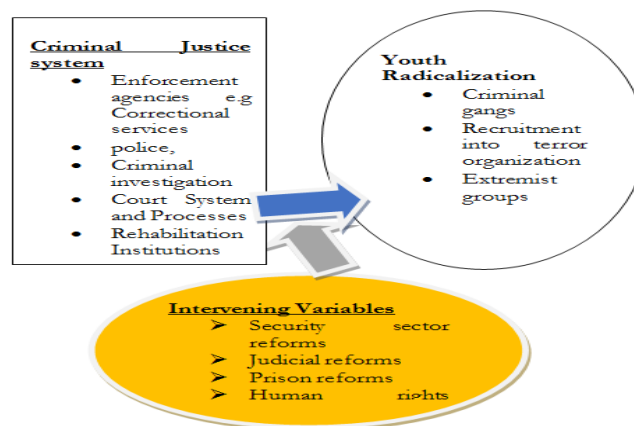**Independent VariableDependent Variables**

Figure 1: Conceptual Model indicating the interaction of independent, dependent and intervening variables.
Source: Researcher, 2019

4. Research methodology

4.1 Research Design

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

4.2 Study Area

Mombasa County is located in the South Eastern part of the Coast region. It is one of the   smallest counties and covers an area of 229.9 Kms². It borders Kilifi County to the North, Kwale County to the South and South West and the Indian Ocean to the East. The entire County basically lies within the Coastal strip and experiences hot tropical climate influenced by the monsoon winds. According to the 2019 Kenya Population Census, Mombasa County's population is 1,208,333 people.

Kwale County has a very big potential in the blue economy. There are several tourist hotels and cottages in Kwale County. The impact of youth radicalization and violent extremism has badly affected the tourism industry in the County. Sandy Beaches, marine parks and Wildlife are major tourist attractions. The Shimba Hills National Reserve, Mwaluganje animal sanctuary, Kigite /Mpunguti Marine Park, Shimon caves, Kongo Mosque and the long Sandy beaches are the main tourist attracting points. The Hotels in Kwale range from normal standard ones to five-star level.

Kwale has the highest Al-Shabaab recruitment rates. There are several returnees who came back to Kenya after fighting on the side of Al-Shabaab in Somalia. It is a county that has been home to so many conflicts since 1992, 1997 election clashes, 2002 Kaya Bombo violence, theMlungunipa 1 and Mlungunipa 2 skirmishes. Figure 3 shows the Map of the study area.
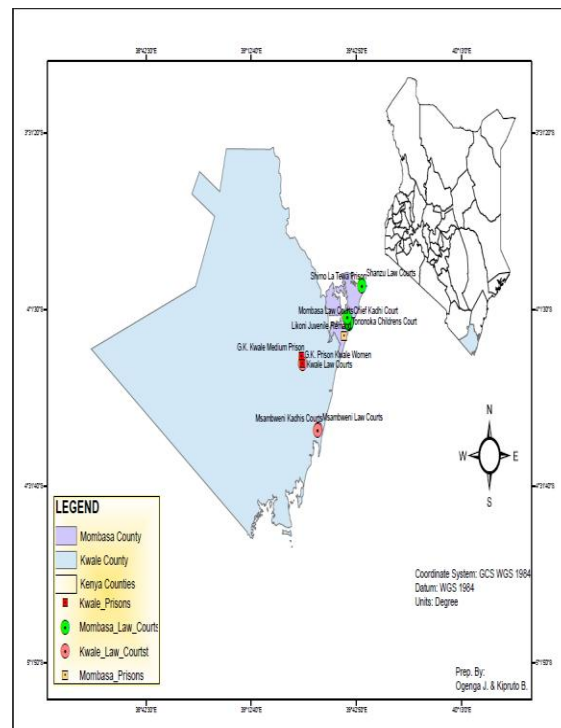

Figure 2: Study Area

4.3 Sampling Strategy and Sample size Determination

The first stage of sample selection involved the identification of relevant organizations and institutions in Mombasa and Kwale counties that formed a good respondent's base for the study. Purposive sampling was used, where a list of institutions and organizations whose work falls within the study's core thematic areas of criminal justice system and youth radialicalization was created.

The target population was drawn from religious organizations, the judiciary, the correctional institutions, non-governmental organizations, the Independent Oversight and Policing Authority (IPOA) and the Police Service.

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

4.4 Data Collection Methods

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

4.5 Data Analysis and Presentation

Data was analyzed using descriptive statistics, where relationship between the independent variable and the dependent variable were determined. The data collected was refined, coded and entered into the computer system. The presentation of data in the form of descriptions of the mean, mode, standard deviation, frequencies, and percentages. The Statistical Package for Social Sciences (SPSS version 27) and R was used for analysis.

5. Results

5.1 Opportunities to cope with challenges facing radicalization strategies in Mombasa and Kwale Counties

Table 1: Observation on Opportunities on Youth Radicalization

	N	SA (%)	A (%)	N (%)	D (%)	SD (%)	Mean	Std. Dev.
Radicalization can be resolved if those in charge of the Criminal justice system engage the youth.	39	25 (64.1)	7 (17.9)	6 (15.4)	1 (2.6)	0 (0.0)	1.59	0.938
There is need to pursue the problem of youth radicalization through community organization.	39	27 (69.2)	4 (10.3)	7 (17.9)	1 (2.6)	0 (0.0)	1.59	1.069

Source (Field data - 2020)

From the study findings, 25(64.1%) of the respondents strongly agreed that radicalization can be resolved if those in charge of the Criminal justice system engage the youth. This shows that solutions on reduction of radicalization cases in Mombasa and Kwale Counties should involve the youths within the Counties. Additionally, 27(69.2%) of the respondents strongly agreed that there is need to pursue the problem of youth radicalization through community organization. This shows that the community plays a big role in molding the youths (Table1). Likewise, political amnesty provides an opportunity to solve the problem of youth radicalization in the country.

Though terrorism causes tension between the rule of law and maintaining national security - a raison d'etrefor the State - evidence of extrajudicial killings indicates the State's failure in the former role. Therefore, with this state of affairs, it becomes difficult to differentiate between legitimate and illegitimate course. There is no proper framework on how to handle returnees. The security agencies dupe them into coming out of their hideout places and later they get victimized or even killed. Thise who are lucky to be released without being tortured.

Without doubt, abusing civil liberties by perpetuating extrajudicial killings is equally shocking as terrorism activities. It is only a proper Court furnished with proper evidence that can tell the difference between a terrorist and an innocent citizen. Failure of which, families whose members succumb to extrajudicial execution end up joining militia groups to avenge the deaths of their kin. This further escalates the war making it hard for proper coordination between security agencies and the public. To mitigate this effect, the state should live to its promises and deliver justice to the families of Muslim clerics. Also, it should ensure that all cases of extrajudicial killings are properly investigated and the perpetrators prosecuted.

In an interview at Ukunda with a respondent whise brother was killed, the respondent had this to say:

My brother went to Mombasa on a normal errand. On his way back while on board a Nissan matatu, the security agents stopped the vehicle, called out his name, removed him from the vehicle and shot him just outside the vehicle. About two years later, I was arrested and put in the cells at the local police station for no good reason. Upon making inquiries, I was told that there was intelligence report that the family of my deceased brother was planning revenge attacks. It is these incidents which drive the youth to radicalization. Even if the security agents were convinced that my brother was involved in criminal acts related to extreme violence, why not arrest, prosecute and have him imprisoned. He left a big family which I can't take care of as I am unemployed.

Prison radicalization to violence is an issue of considerable importance. Recruitment in prison or attempts to recruits, successful or otherwise, do occur. Whether violent extremist prisoners are separated, dispersed, or concentrated, there remains a risk that some violent extremist prisoners, particularly leaders, may seek to radicalize other prisoners to violence and to further radicalize those prisoners who are in prison for a violent extremist offence. Respondents from the two prisons of Shimo La Tewa and Kwale have suggested that violent extremist recruitment methods are not always expected to yield a high number of recruits. Violent extremist messages may be delivered to many prisoners with the understanding that most will resist radicalization to violence (Hocking, 2003). However, a single prisoner radicalized to violence can be a significant threat to public safety.

With reference to amnesty, one of the key informants mentioned that; many radicalized youth have changed their habits and would like to be given a second chance. They however fear reprisals and arrests if they surrender to the state as returnees. If the amnesty is open and genuine, many would take it up. However, de-radicalization programmes are necessary for the returnees. Amnesty is good, however the returnees are mostly subjected to police brutality, or enforced disappearance hence making them loose faith in the Criminal Justice actors. It will reintegrate the returnees into their families, promoting cohesiveness among the family members.

The Republic of Kenya's unique social, cultural, religious, political, psychological, and economic aspects factor the emergence of diverse generation of terrorists (Horgan, 2014). The convergence of these positive and negative factors requires an equally diverse counter-radicalization strategy. A diverse strategy identifies threats posed by terrorists based on typologies or generic profiles of terrorists. As such, each aspect of the strategy focuses on unique strategies used by terrorists to radicalize youths. Recent events in Kenya signals existence of a diverse intelligence led counter-terrorism strategy. Closure of radicalization and indoctrination into terror cells and groups in East Africa by the National Intelligence Service (NIS) is indicative of a successful multifaceted strategy. The Intelligence Service has also profiled dozens of terror recruitment agents operating on the cyber-space and some people have been arrested and others prosecuted.Thats why Odhiambo (2019) in his article "Character Development Challenges and Opportunities Influencing Anglo-Kenyan Diplomatic Relations" says that: Character entails qualities of moral excellence which compel a person to do the right thing despite pressure or temptations to the contrary.To educate a person in mind and not in morals is to educate a menace to society."

Increased army operations against the Somali Islamist, besides border operations by special army units, and confound proliferation of the border by the terror groups are paying off. This has led to the arrests of recruiters and killings of dozens of key Al-Shabaab terrorists, and many facing cases in court. Some suspects are on the terror watch-list, while key terror cells in East Africa are being closely monitored by intelligence services. One of the community leaders mentioned that;

Kenya government should deal with Al-Shabaab ruthlessly like the Ethiopian forces and the border points must be corruption free to curb the entry of militants into Kenyan territory. Likewise, the government should stop the influx of unchecked refugees. Why don't the Somali refugees go to Ethiopia? Why is it that the Al-Shabaab do not attack Ethiopia or Ethiopian forces? This is because Ethiopia has been ruthless to them. (An NGO officer in Mombasa on 24th February, 2020).

Another respondent had this to say:

There is a feeling that the Kenyan Defence Forces have not been decisive in dealing with the Al-Shabaab Millitants in Somalia. The KDF is expected to launch massive head hunt of the Al-Shabaa in Somali and eliminate them. This may not be easy as the Al – Shabaab is an ainarphons organization. (Interview with a community leader at Kisauni, Mombasa on 11th February, 2020)

The role of the intelligence service is to identify and provide effective counterintelligence on threats to national security, as such the intelligence service is limited in its counter-intelligence operations. It depends on the police service to effectively neutralize the threats. The Government of Kenya should engage the youth in various economic activities and conduct seminars on proper and truthful Islamic teachings and facilitate youth in business and hand craft. This will result in employment to the youth, talent promotion, provision of business opportunities, and youth participation in capacity building. One of the youth affirmed that;

The youths in Mombasa and Kwale Counties are made to engage in terror activities due to lack of employment and job opportunities. The government should implement existing youth policies and give first priority to the residents of Mombasa and Kwale Counties (Interview with a youth at Ukunda, Kwale on 13th February, 2020)

These sentiments echo the general high unemployment levels among the youth in the study area. This makes the youth to be vulnerable to the recruitment terrorist agents. The Government of Kenya should intervene by providing full support in dealing with youth radicalization in Kwale/Mombasa Counties so as to eliminate the problem. For example, the Historical land injustices should be addressed by providing fair employment opportunities and involvement of the youth in community activities. Alternatively, the government can dialogue with the community and formulate the amnesty policy or plan a dialogue with the Muslim youth.

6.1 Challenges Facing the Criminal Justice Sector in Countering Youth Radicalization

Table 2: Challenges faced by Judicial Officers

	Response	Frequency	Percentage (%)
Does the prosecution have problems with securing witnesses to testify against those charged with cases involving terrorism/radicalization	Yes	9	75.0%
	No	3	25.0%
Are there incidents where witnesses have been threatened and decline to testify	Yes	9	75.0%
	No	3	25.0%
Does the prosecution utilize the witness protection act in dealing with cases involving radicalization	Yes	7	58.3%
	No	5	41.7%
Are there incidents whereby suspects of radicalization have waged revenge attacks on informers, witnesses or local leaders	Yes	8	66.7%
	No	4	33.3%

Source: Field Data, 2020

From the study findings in Table 2, 9(75.0%) of the judicial officers agreed that the prosecution has problems with securing witnesses to testify against those charged with cases involving terrorism/radicalization. Likewise, 6(75.0%) of the judicial officers admitted that there are incidents where witnesses have been threatened and decline to testify. Another 7(58.3%) of the judicial officers agreed that the prosecution utilize the Witness Protection Act in dealing with cases involving radicalization. Lastly, 8(66.7%) of the respondents agreed that there are incidents whereby suspects of radicalization have waged revenge attacks on informers, witnesses or local leaders.

A Judicial Officer in Mombasa complained about the manner in which cases related to radicalization were being handled by the police.

People are arrested on serious claims of radicalization such as being a member of a terrorist group. The DPP prays for the accused not to be released on bond. The trials takes quite long. Instance one cyber-crime specialist may be the only one who testifies in all cases country wide. The Courts have to adjourn the cases to wait for that witness to be available. Those in custody feel that it is the court which is adjourning the cases for no good reasons and the likelihood of them becoming more radicalized is real. At times matter come under miscellaneous application by the DPP whereby they seek more time to investigate. Such applications include time to extract information from a phone.

This leads to prolonged detention of the suspect. (Interview with a judicial officer at Mombasa Law Courts on 15th January, 2020)

Another respondent from the Judiciary had this to say on the challenges being faced by the Judiciary.

At times the police arrest many people with no tangible evidence. For instance, weapons were recovered in Likoni. Many people were arrested. The court gave an order for legal representation of the suspects. After sometimes the case was withdrawn. When the Court acquit the accused for lack of evidence the Judiciary is blamed yet the standard of proof in criminal cases is constant. Had the Court not granted legal representation to those arrested in Likoni in relation to the recovered weapons, the suspects would have remained in remand for a long period of time while the prosecution keep on seeking adjournment. There are no guidelines on timelines for such cases. (Interview with a judicial officer at Shanzu Law Courts on 10th February 2020)

The sentiments by the judicial officers do confirm that there are serious challenges when it comes to investigation of radicalisation related cases. At times, the cases are rashed to Court before investigations are complete. The fear of being attacked and lapses in security poses a threat to the judicial officers. One paramount consideration is whether the release of the individual will endanger public security, safety and the overall interest of the wider public. In Republic vs MuneerHarron Ismail & 4 others, H.C. Cr. Revision No. 51 of 2009) bail was denied and this is the ratio decided from the dictum of the presiding judge:

"In considering what would be the fair and just thing to do in the matter before me, I had recourse to the words of Lord Taylor in the case of R v Smurthinaite [1994]1 All ER 898 at page 903, in which he said:

Fairness of the proceedings involves a consideration not only of fairness to the accused but also, as has been said before, fairness to the public. Denial of bail when justified in accordance with the law does not amount to the applicants' loss of their right to the presumption of innocence or to a fair hearing. The right to bail is not one of those illimitable rights under Article 24 of the Constitution.

The study found out that most of those charged with radicalization and extreme violence related cases lacked the financial support or security documents such as title deeds to secure their release on bail pending trial.

The nature of the charges and the gravity of the punishment in the event of conviction were also contemplated in the ruling by Judge L.A. Achode. It shows how serious the Court holds crimes of terrorism from this ruling. This shows that there is fear of personal safety for the judicial officers handling terrorism matters. Fear instilled to witnesses and lack of adequate training for judicial officers on laws relating to terrorism/radicalization hence jeopardizing the cases. From the results of the research the issue that to a very large extent posed a challenge in the Judiciary strategy implementation process is that the Judiciary is not allocated enough resources. The Judiciary's budgetary allocation is less than that of, for instance, Parliament or even some other small institutions or government ministries although it is one of the three arms of Government. One would expect its allocation to be almost the same as that of Parliament. The Judiciary needs the funds for infrastructural and institutional development. It requires the same to build more courts, buy stationery, pay witness allowances, pauper briefs, computerize the courts and comfortably run its day to day activities. Most interviewees felt the Judiciary had been neglected for quite some time. With the new Constitution they felt there was a lot of hope that things were bound to change for better. Although the parliamentary budget includes the CDF aspect, there is need to allocate more resources to the Judiciary.

Respondents were not happy with the way the Judiciary managed its resources. It was felt the organization poorly managed its resources. The resources comprise financial, physical, human and technological resources. The financial resources end up not being expended as targeted. The infrastructure is in shambles. One of the judicial officers mentioned that there is lack of adequate training for judicial officers on laws relating to terrorism/radicalization. This showed that there is lack of adequate personnel to handle terror cases in Mombasa and Kwale Counties, hence resulting in prolonged trial due to high number of witnesses. More and better court buildings with well stocked libraries and conducive and customer-friendly court rooms are required. In terms of human resources, the Judiciary does not use its personnel well. Judges and magistrates are not allowed to specialize in the matters they handle. Bora *et al* (2018a) noted that the transfer policy creates more problems than it solves. The policy leads to a backlog of cases as more often than not the officers are not afforded time enough to clear their desks. At times Judicial officers are transferred while they have partly heard some sensitive cases and due to lack of funds, it becomes extremely impossible for such an officer to be financed to go back to his/her former Court station and complete such cases.

6.1.1 Influx of Al-Shabaab Returnees from Somalia

The launch of the National Strategy to Counter Violent Extremism (NSCVE) in 2016, envisaged among other things, the rehabilitation, repatriation and reintegration of foreign terrorist returnees in the country (Gakuo, 2018), supposedly from jihadi theatres across the world, such as Somalia, Libya, Egyptian Sinai, Syria, Yemen, and Iraq. However, Al-Shabaab returnees pose a direct threat to Kenya's security, in the midst of the ongoing war against the group by Kenyan security agencies. As Mbijiwe observes "Al-Shabaab is a big threat to Kenya…they [Al-Shabaab fighters] hold Kenyan passports and Kenyan ID cards. They are our sons and daughters. For them to come back home, is so easy" (Burridge, 2014), Al-Shabaab carried out mass recruitment in the coastal region, with the message that the 'holy war' would help establish "pure Islamic rule' in "lost' Muslim lands, and by extension, restore inhabitants' social, economic and political rights" (TRT World, 2019).

Odhiambo *et al* (2013) in the article "Al-Shabaab Terrorists Propaganda & the Kenya government Response" argues that: Although accounting for most violence, state terrorism is widely presented as justified, while opponents are the forces of disorder and, thus, are illegitimate

However, as the Al-Shabaab group continues to incur significant battle defeats against the African Union Mission in Somalia (AMISOM), and in-group pressures mount, foreign fighters especially Kenyans, are bearing the brunt of Al-Shabaab's frustrations. According to Benjamin, 2019, the foreign fighters in Somali observed;

They use Kenyans and other foreigners as pawns, for suicide missions, as foot soldiers on the frontlines, or they are assassinated for suspicions of spying for the enemy…. Foreigners as prosecuted on flimsy grounds and put on the frontlines to test their loyalty….it has lowered the morale of Kenyan foreign fighters within Al-Shabaab and reduced recruitment and participation…. Most of us are now running back home (Benjamin, 2019, para. 14). Most retunees have a story to tell about their lives in Somalia. They were mainly recruited behaving that they were going to work and earn a salary. When they realized that they were fighting a war whose end result is unknown and will not behalf they, they returned to Kenya. (Benjamin, 2019).

One of the major challenges arising from the wave of Al-Shabaab returnees in Kenya, is however, the lack of legal and policy frameworks for addressing returnee problem either through amnesty or rehabilitation programs. As such, the returnees creep back into Kenyan communities, afraid of the criminal justice system and remain unrehabilitated, leaving room for potential relapse back into terrorism. As one observer notes, "returnees are nervous about their security, and the community is nervous that the people coming back are not transformed and the consequences of associating with such people (Yarrow, 2016)." On the other hand, the returnees are haunted by the extra-judicial killing by the Kenyan security forces (as the law for amnesty is absent) and Al-Shabaab forces, who track them down once they leave the group. As such, some returnees are faced with the choice of going back into the extremist group (Abdisaid, 2008), further threating the country's national security and rolling back any gains made in the fight against terrorism and violent extremism.

7.1 Summary and conclusion

There are several challenges facing those involved in investigation of cases involving radicalization. It is quite difficult to point out a radicalized person. It is only when such a person commits a crime which could mainly be a terror related. Lack of evidence which proves the cases presented before the court up to the required standard has been a challenge. The judiciary and the prison face financial challenges and this act as a predicament in dealing with radicalization.

Those who left for Somalia to fight alongside the Al-Shabaab but later returned to their homes have caused a big challenge to the criminal justice system. These people are well trained in combat fight and some are armed. They have waged attacks against the security and government officers including chiefs and village chairmen. This is further corroborated by

Odhiambo *et al*(2013) in their article: "The Reprisal Attacks by Al-Shabaabagainst Kenya" when they argue that: "The KDF incursion into Somalia has increased Kenya's civilian casualties as reprisal attacks from Al-Shabaab".

There are opportunities which can be utilized in the government's effort to eliminate radicalization. Although some of the law passed by the National Assembly have been challenged, there are statutory provisions which are in place and can be utilized to arrest and prosecute the suspects.

7.2 Recommendation

The judiciary can train its staff on how to handle radicalization cases. The prisons can be used to reform the radicalized youth through de-radicalization and economic empowerment of the youth. The criminal Justice system can engage the community, and this is a good opportunity in fighting radicalization.

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