Securing Justice: A Critical Analysis of Kenya's Post 9/11 Security Apparatus

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Abstract—The 9/11 suicide attacks in New York, Washington, D.C., and Pennsylvania, triggered a number of security responses both in the United States of America and other Countries in the World. Kenya, which is an ally and a close partner to North America and Europe, was not left behind. While many states had been parties to numerous terrorism conventions, their response in implementing them had been slow and *needed* this catalyst. This *special* case offered a window of opportunity for many "security conscious" regimes in cementing their legal-criminological and political security apparatus. At the international level, the 9/11 case led to the hasty adoption of Security Council resolution 1373 in 2001, which called upon states to *adopt wide-ranging and comprehensive steps and strategies to combat international terrorism and to become parties to the relevant international conventions and protocols relating to terrorism.* Since then, Kenya has responded with speed in devising social-legal-criminological-political actions.

Keywords—Justice, Policing, Security, Terrorism

I. INTRODUCTION

WHILE 9/11 might be termed as the beginning of a new wave of "*massive terror exposure*" to global audience, Kenya as a state had been uncovered to this violence prior to 9/11 attacks and the act had only helped in accelerating open responses to terrorism.

The following cases help in bringing out the acute problem of international terrorism where Kenya has been affected. On Sunday 1st July 2012, fifteen people are killed in grenade and gunfire attacks on churches in the Kenyan town of Garissa near Somalia, on 24th June 2012, a grenade blast tore through the Jericho bar, killing one on the spot and injuring many in the densely populated Mishomoroni area of Mombasa where fans were watching the Euro 2012 England-Italy football quarter final match, on May 28th 2012, a blast rocks the busy market stalls in Moi Avenue in Nairobi injuring 36 people, on 29th April, one person is killed and 10 wounded in a grenade attack on a church in Nairobi, on 15th Dec 2011, four people are injured by pellets from one of the grenades that exploded outside a restaurant popularly known as Florida Hotel in Garissa town, on October 2011, a grenade is hurled into a crowd of commuters on Racecourse Road in Nairobi killing one person and injuring dozens, hours later a similar attack occurs, this time in a pub on Mfangano Street. These grenade attacks, which have registered only one conviction, have seen pressure pile on the country's security organs to ensure culprits are punished. So far, Elgiva Bwire Oliacha, alias Mohammed Seif, who was linked to the Race Course attack, is the only suspect to have been convicted and is serving a life sentence. Numerous arrests of Kenyans and foreigners linked to these grenade attacks have continued while investigations lead to outside and inside the country.

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On December 31st 1980, a terror attack killed 16 and more than hundred were left injured after Norfolk Hotel, owned by an Israeli Jack Block was bombed, on August 7th an Al-Qaida connected suicide bomber killed 246 Kenyans and 12 Americans in what has been referred to as *Kenya's Dark Friday*, on November 28th 2002, Paradise hotel in Kikambala Coastal beaches is bombed leaving 15 dead coupled with a failed missile attack on an Israeli aircraft taking off from Mombasa Airport, on October 15th 2011, "Operation Linda Nchi" (operation to protect the country) was given a go ahead as a military intervention strategy by Kenya Defense Forces against the threats of Al Shabaab. This was after multiple kidnapping and piracy activities on Kenyan soil and waters by the terrorist group from Somalia. To date, multiple grenade attacks continue to rock major cities as Kenya's intervention in Somalia breed counter violence. From these violent cases, the picture dramatized is that of an outright attack on the interests of Israel, USA and the Western countries with Kenya hosting the theatre stage. Many Kenyans are presently worried by the idea of a prolonged military occupation in Somalia and are calling for a clear exit strategy. Fazul Abdullahi Mohammed (alias Abdul Karim, already killed on 7th June 2011) was the Al-Qaida mastermind for East African bombings, having had housed himself in Somalia with the help of the Islamist organisation Al-Ittihad al-Islamiya. Some of the suspects arrested in connection with grenade attacks in Nairobi have showed a strong link with Al Shabaab, a terror group which has followed on the footsteps of it predecessor in Somalia. Terrorism in East Africa has received support from Al-Ittihad al-Islamiya (AIAI) and Al Shabaab, whose central aim remains the creation of an Islamic government in Somalia based on Sharia law. All these cases of violence and political-criminological mental gymnastics leave many asking the question why certain individuals and governments would want to commit actions of such magnitude and ready to give their own lives and survival for it. Social scientists and military strategists are left with the desire to explain the motivation behind these acts of violence in an ever expanding and globalizing world. The main issues in peace and security have focused on how these threats can be effectively policed in a "runaway world" to use the words of Anthony Giddens.

This paper goes ahead to examine the social-legal-political-criminological security apparatus employed by Kenya, one decade after the 9/11 trigger of *new wars* and new forms of anti-terror and counter-terror. The discussions herein centers on the state-centric approaches to security and evaluate how these mechanisms and specifically, how the anti-terror-counter-terror regimes have affected ordinary citizens in their everyday life.

II. STATE, SECURITY AND CONSTITUTIONALISM

Since Aug. 7th 1998 when an Al-Qaida suicide bomber hit the American Embassy in Nairobi, Kenyans have said much relating to the link between anti-terrorism, security and policing.

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The argument on security holds that it is an issue that relates to every state and its citizenry and therefore the public-governance dialogue and conflicts must be encouraged. The state is obliged to provide security to its constituent and therefore wants to ensure that any threats to security and peace to its population are eliminated. On the other hand, the citizenry want a feeling of safety and will support government projects which are perceived as beneficial to individual and collective security. The on-going transformation of international crimes and terrorism in particular however, goes beyond the internal security thinking. At the international level, UN has left the problem of international crimes and terrorism to be solved by individual governments. Richard Roth [1], who was the senior UN correspondent to CNN's Diplomatic license, argued that UN had no structural arrangements to deal with international terrorism after the Madrid bombing in March 2004.

National security structures are therefore left to explore links between anti-terrorism policies and resolution of conflicts on both short and long-term basis. Kenya has not been left behind on this. The government has showed its commitment in addressing the problem of terrorism through;

i. Amendment of existing legislations that are useful in the fight against terrorism,
i. The enactment of new legislation in accordance to Security Council Resolution 1373 for the purpose of fighting against terrorism, and
i. The establishment of institutions for the purpose of combating terrorism.

III. PERCEPTION OF SECURITY

Security as a concept and a form of practice is viewed differently by the party concerned. Spiegel [2] says that "it is constantly changing, meaning different things to different people in different environment." Security has traditionally been viewed from a militaristic approach that borrows heavily from the writings of Thucydides, Hobbes, Machiavelli and Rousseau. The writings of the four have been analyzed in what has formed the realist tradition in international relations.

Realism concerns itself with the system of power politics and state-interest that are geared towards survival in an anarchic world. The French philosopher Jean-Jacques Rousseau [3] in his support of this preservation aspect and interest-orientations uses the analogy of the family and states that "the most ancient of societies, and the only one that is natural, is the family, and even the children remain attached to the father only so long as they need him for their preservation...If they remain united they continue so no longer naturally, but voluntarily; and the family itself is then maintained only through convention...[man's] first law to provide self preservation, his first cares and those which he owes to himself." It is possible to argue that this assertion of security in its traditional sense, simply involves self-preservation, protection of oneself and associations of individuals that one identifies with from threats and challenges of survival.

This perception to security has however been criticized from many directions for not taking into account the insecurity that is posed by states on their citizens. The state is supposed to protect those who have agreed to pledge allegiance to it through the constitution. However, many states, Kenya included have given more weight to internal sources of threats making their citizens a target for control and suppression. Kenya's situation on this has ended up with the state becoming the main source of individual insecurity. This individual insecurity is manifested through torture to opposition individuals, massive police raids based on social-cultural bias, lack of procedural justice in extraditions, securitization of specific cultures and religions and sustenance of poverty through skewed policies and other processes that undermine human dignity. Whereas there exist internal threats to security, the argument put forward in this paper carries the assumption that threats to peace and security go beyond the inside outlook. Anti-terrorism, policing and justice therefore require an inside-outside stance to cover those that result in a new global order where states and non-state actors are playing a major role in improvement of life as well as threatening the same. State-centric approaches and strategies have redirected their attention to military intervention in Somalia, ignoring other *securities* such as physical security, societal security environmental security, food security, economic security, and health. Contemporary evaluation of world social [dis]orders based only on a state-centric and militaristic lens to security are no longer appropriate in theory and practice. One founding member of Copenhagen school of security, Ole Wæver [4] agrees with the changing outlook of security, its conceptualization and says that "we have to come to terms with a new security agenda and its different inventory of threats."

IV. DEFINING TERRORISM

Terrorism as a phenomenon has been a contested field by scholars, media journalists and policy makers. The recent development in technology has complicated the term as originally viewed owing to the *changing faces of terrorism* and one can argue of a modern style of terrorism. There has not been a consensus on the exact definition of the term. Juergensmeyer [5] says that the term terrorism comes from a Latin word "*terrere* -to cause tremble and came into common usage in the political sense, as an assault on civil order, during the reign of terror in the French revolution." During this time it was used to describe the actions of the French government. Thousands of people who were perceived or considered the enemies of the state were put on trial and guillotined. This view was adopted by leadership such as the American administration under Bush Jr., where terrorism was declared as *America's enemy number one*. Mr. Bush vowed to continue with both non-violent means where possible, and military force in dealing with this problem.

In East and horn of Africa, Al-Qaida and Al Shabaab have been identified as leading on the enemy list for Nairobi bombings, Dar es Salaam bombings and the ongoing grenade attacks in many cities.

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Al-Qaida and Al Shabaab are therefore designated as an *evil* that has to be defeated. To echo this outlook of antagonists, Lincoln, Bruce [6] quotes the speech given on October 7th 2001 by President Bush who appealed to American citizens to be patient "given the nature and reach of the enemies". The striking part in this view is the prerequisite for one to define and identify a terrorist as an enemy and an evil. This view applies the demonological view to crime by identifying terrorists with and attributing their actions to "the evil" and demons. Morris and Hawkin [7] agrees to this view and says that it legitimizes the way in which crime is attributed to "invisibility, immateriality, eternity, omnipresent, and omnipotence." This perception offers a link between terrorism and belief systems.

At the same time, myriad of definitions advanced by governments, institutions and individuals have gone beyond belief systems to linked terrorism to crimes, politico-economic and psychological factors. The FBI [8] defines terrorism as "the unlawful use of force or violence against a person or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives. It further describes terrorism as either domestic or international, depending on the origin, base, and objectives of the terrorist organization." This definition is closely related to one adopted by the government of Kenya.

The government of Kenya [9] defines terrorism as

- "the use or threat of action where the action used or threatened-involves serious violence against a person, involves serious damage to property, endangers the life of any person other than the person committing the action, creates a serious health risk or safety of the public or a section of the public or is designed seriously to interfere with or seriously to disrupt an electronic system.
- The use or threat is designed to influence the government or to intimidate the public or a section of the public; and
- The use or threat made for the purpose of advancing a political, religious, or ideological cause"

The above definition by Kenya has been accused of being state-centric, where it applies a one sided government-lens in viewing terrorism. Terrorism here is taken to be either an already committed action or a perceived threat to people and property thus inviting pre-emptive and curative strategies. Pre-emptive force and covert actions applied by different states have threatened to polarize the world into two especially at the international law. Though Kenya has been affected by terrorism, it has created an image of neutrality to demands of the USA and Britain especially when it came to proposed unilateral pre-emptive and counter-terrorism strategies in Iraq, Afghanistan and Somalia (during the time of Mohammed Farah Aideed).

By then, Kenya expressed through its foreign ministry the desire for the UN to take central stage in targeted counter-terrorism and anti-terrorism activities during these periods. This can be interpreted as a self-preservation strategy for Kenya owing to its vulnerability.

Much of the Kenya's argument has focused on the legitimacy of the UN in matters of inter-state conflicts. This is however, a dilemma for many states since the UN on the other hand has left the problem of terrorism to be handled by individual states. Kenya's approach to anti-terrorism has also been criticized as encompassing everything in its classification of potential and actual terrorism threats. There are high risks of accusing minor offenders as terrorists as long as their actions or threats are perceived to be politically, religiously, or ideologically opposing to the view of the government. Thus some political parties, individual or religious sects may be labeled as terrorists and terrorist-groups. For both the current and former government regimes, some religious groups have been portrayed as enemies and a threat to peace.

On 8th march 2002, the Daily Nation Newspaper [10] reported that 18 sects, groups and private armies, some of them linked to prominent politicians, had been outlawed by the police. Among the groups banned were Mungiki and Taliban vigilantes who had participated in the violent clashes in one of Nairobi's region of Kariobangi. A number of people had been killed and hundreds injured. This violence was interpreted by some people as having ethnic indicators where Mungiki is believed to comprise of Kikuyu ethnic group while the Taliban include the majority Luo ethnic members. Other groups that were banned by former Police Commissioner Philemon Abong'o comprised Jeshi la Embakasi, Jeshi la Mzee, Baghdad Boys, Sungu Sungu, Amachuma, Chinkororo, Dallas Muslim Youth, Runyenjes Football Club, Jeshi la Kingole, Kaya Bombo Youth, Sakina Youth, Charo Shutu, Kuzacha Boys, Kosovo Boys, Banyamulenge and KamJesh.

At the international level, the UN [11] defines a terrorist as "any person who, acting independently of the specific recognition of a country or as a single person, or as a part of a group not recognized as an official part of division of a nation, acts to destroy or to injure civilians or destroy or damage property belonging to civilians or to governments in order to effect some political goal" This definition by the UN gives more emphasis on human-security of civilians as it tries to make them the focus and referent object in a more decentralized manner.

At the same time, the UN [12] defines terrorism as "an act of destroying or injuring civilian lives or the act of destroying or damaging civilian or government property without the express chartered permission of a specific government, thus by individuals or groups acting independently or governments on their own accord and belief, in an attempt to effect some political goals."

The above definition by the UN is important in that it adds into the bracket of terrorism those governments who resort to aggression that is not permitted by the United Nations Charter. Kenya Defense Force's intervention in Somalia is put into question when it comes to this evaluation vis a vis the UN charter and the Rome Statute. The intervention in Somalia by Kenya Defense Forces lacks the legitimacy since there was no military aggression from Somalia.

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The so called Al Shabaab are individuals who are not in combat and the focus should therefore be that of police related response to criminality rather than the army-related intervention. It is possible therefore to argue that Kenya is the aggressor since its military has crossed borders into Somalia territory. However, this aspect of engagement justified in modern asymmetrical wars where conventional armies engage with terrorist groupings that apply unconventional means.

The above aspect of terrorism is captured by Michael Walzer [13] who recognizes asymmetrical aggression by states and groupings as a crime and an example of immorality of decisions made by leaders. He sees terrorism as "a way of avoiding engagement with the enemy army and representing the extreme strategy of the indirect approach." Thus it can be implied that Al-Qaida terrorists were avoiding direct encounter with the mighty American military force when attacking Nairobi and Dar es Salaam. This idea focuses on the asymmetric nature of power characterized by the parties in a conflict. Groups and individuals who command less strategic power employ terrorism as an unconventional method in pursuing their interests. According to the contemporary military strategy, terrorism perceived in this sense could be classified as a 'crime of aggression' and thus requiring a legalistic approach. In Kenya's situation, the kidnapping of foreigners by Al Shabaab was interpreted as a crime of aggression by the government thus necessitating military actions. It is however wise to note that there was no member of Al Shabaab group who was clad in combat uniform during these raids and kidnappings thus questioning the militaristic response.This shows that there has been no legal-criminological agreement at the local and international level concerning the problem of terrorism. Every state has its own definition thus creating a conflict in its interpretation. Kenya offers its own definition which is different from those of other states creating an inconsistent environment for harmonized international law and norms. The famous saying of *one man's terrorist is another man's liberator goes* with this conflict at the international level. The late leader of Hamas, Dr. Abdul Aziz Rantinsi is quoted in Juergensmeyer [14] as not considering Hamas' activities as terrorism but rather preferred to call them "operations carried out by martyrs".

A criminological view however attributes terrorism to crime since it involve planning for violence, sourcing of human and material resource with illegal intention, and general perpetration of assault on innocent people. Kenya's penal code has not recognized the crime of terrorism but somehow identify the various forms that terrorism takes e.g. kidnapping, hijacking, suicide bombing, hostage taking, conspiracy, arson etc. It is therefore impossible to come up with one generally agreed approach to the definition since definitions of terrorism fluctuates according to time and space. Some forms of terrorism could be seen as crime, war, or revolutions. Other forms are long-term and enduring where individuals, groups and states support it in pursuit of their legitimate cause or deeply cherished values. What is called terrorism in one time and place could be called war and revolution while acts that were not considered terrorism could be classified as so in other times and places.

Terrorism is also an emotionally charged word that could be used to politically and socially discriminate against individuals or groups. At one time in the struggle for independence, the Mau Mau Liberation movement in Kenya was considered a terrorists group with Jomo Kenyatta as its leader. The current regime in Kenya in conjunction with the British authority has de-illegalized and de-labelised Mau Mau as a group of terrorists, with its founders recognized as freedom fighters and nationalists serving a justified cause.

Academicians have also sunk in the sea of confusion when it comes to problems associated with definition of terrorism. Schmid [15] defines terrorism as *"an anxiety-inspiring method of repeated violent action, employed by semi-clandestine individuals, groups or state actors, for idiosyncratic, criminal, or political reasons, whereby-in contrast to assassination-the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly [targets of opportunity] or selectively [representative or symbolic targets] from a target population, and serve as message generators. Threat and violence based communication processes between terrorist victims, and main targets are used to manipulate the main target [audiences] turning it into a target terror, target of demands or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily used.*

This definition identifies acts committed by individuals and those of oppressive states/governments. It helps in bringing the idea of government-sponsored terrorism. This view is not visible in the proposed Anti-Terrorism Bill that Kenya has proposed. The proposed bill therefore holds irresponsible government leaders as terrorism-free individuals. Schmid's definition also focuses on terrorism as an *attention-generating activity* i.e. communication between the adversary, the oppressor and the purported victim targets.

This communication aspect is further captured comprehensively by Cindy C. Combs [16] where she defines terrorism as "a synthesis of war and theatre, a dramatization of the most proscribed kind of violence-that which is perpetrated on innocent victims-played before an audience in the hope of creating a mood of fear, for political purposes". This means that there are "stages" that are produced for drama and as Lincoln Bruce [17] says "the activities on the stage are designed to attract and hold its audience, while also advancing the interest of the backers". Don DeLillo is quoted by Juergensmeyer [18] adding that terrorism is "the language of being noticed…without being noticed it would not exist." In setting the stage where the acts are to be committed, terrorists are interested in one that will produce the *most dramatic* thus, East Africa towns of Nairobi and Dar es Salaam proved to be excellent for a variety of symbolic reasons. Nairobi was considered by the Late Osama Bin Laden as portraying a symbol of secular political power, which is a threat to Islamic belief and interests while the attacks in Dar es Salaam was to keep the infidel away from the *"house of Islam"*.

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V. SECURING JUSTICE THROUGH LEGAL-CRIMINOLOGICAL-POLITICAL STRATEGIES

A. Frameworks of Securing Justice

The existing framework for addressing insecurity in Kenya is the criminal law. In particular it is in the form of penal code and the police Act. Legally, the criminal justice has dealt with the problem of crime but has not adequately addressed social dimensions of the problem of insecurity. It only deals with the symptoms rather than the root causes of the problem as convicted criminals are put to jails, fined, sent to community services or are put on probation programs. The police Act on the other hand provide a one-dimensional view to security. It does not encourage the police to see themselves as partners with the communities in the pursuit of peace. Police officers have come to be feared by the civilian community as harassment, torture, demand for briberies, illegal arrests and other state-sponsored violence creep in. It is thus imperative to begin changing the philosophy of policing in Kenya so that the police force perceives themselves as peace workers and propagating the values of justice and human rights.

Such a change will allow for civilians to take policing agents with seriousness when policing against terrorism and thus collaborate accordingly. The Anti-terrorism police unit which came into existence after the bombing in 1998 is yet to prioritize its relation with the ordinary civilians in risky communities. There has not been any coordinated interaction between the anti-terrorism unit and the civilian community living in urban cities or rural areas thus maintaining the gap.

The Anti-terrorism police unit that came into force is believed to be having the specialty that is required to carry out investigations and forensic searches that are characterized by the complexity of terrorism. The lack of technological machinery and trained police force to handle the complexity has however been met with pessimism by the public, as the process is seen to be haphazard and reactionary. Government ministries and departments such as ministry of internal security and provincial administration, ministry of trade and commerce, ministry of tourism and wildlife, ministry of communication, department of immigration, the police force and the judiciary have largely been stretched by the threats and actual acts of terrorism.

Since the beginning of 2003 and in response to perceived risk of further attacks, security agents and actors have taken the following selected measures:

- Published the *Suppression of Terrorism Bill* in April 2003,
- Established a specialized Anti-Terrorism Police Unit,
- Authorized the on-going military intervention into Somalia against Al Shabaab on 15th Oct. 2011
- Established the National Counter-Terrorism center in Nairobi in January 2004, under the responsibility of the National Security and Intelligence Service aimed at providing "timely" and "factual" intelligence in the fight against terrorism
- Prosecution and extradition of suspected terrorists

- Imposed and lifted flight bans between Kenya and Somalia such as the one of 19th June 2003 which was lifted on 8 July 2003
- Strengthened security measures at points of entry into Kenya, including airports
- Strengthened security measures at public places and hotels
- Engaged in cooperation to fight terrorism in the region, under the auspices of the Inter-Governmental Authority on Development (IGAD)

B. Suppression of Terrorism Bill, Politics and Policing

The Anti-Terrorism Bill was established in April 2003 but had been shelved for having numerous short-comings and strong critique by the public and human rights organizations. However, the Bill has been re-introduced to the cabinet for reconsideration before being tabled in parliament. The Anti-Terrorism Bill has advocated for the police institution to go beyond the existing national territories since terrorism is not limited to Kenya. However, much of the proposed measures in the legislation bear more internal impacts than the external ones especially with the thinking that Kenya has been earmarked as harboring terrorist groups and cells that have inter-continental links.

The Anti-terrorism bill in particular has reflected a number of biases following its proposals to the immigration officers and the police force in the pursuit of peace and security. It has become clear from its proposals that Kenya is highly becoming a *police-state*. Muslims and people of Somali ethnicity have become a major target with threats perceived to be coming from Coastal communities and Al Shabaab. It is no wonder that scholars such as Prof. Ali Mazrui [19] says that Islamophobia within Kenya will find policemen arresting Jesus Christ as a potential terrorist "if he walked on the streets of Nairobi with his long beards and Arab-style robes".

On matters relating to wearing and clothing in particular, the Anti-terrorism Bill [20] allows for "a member of the police force to arrest a person without a warrant if he has reasonable ground to suspect that the person is guilty of an offence." This proposal leaves the policing agents with a lot of discretion on what to consider as reasonable threat without any recourse for accountability. The process of suspecting and arresting thus follows a physical-overt evaluation by policing agents on a suspect, guided by the six-month training that the police acquired at the police academy. It is questionable whether a police constable who graduates from police academy after such a short period has the theoretical and practical skills to foretell the attributes of a potential terrorist. At the same time, this kind of approach takes policing back to the times of *Lombrossian thinking* where criminals were evaluated by their body-type or what Lombroso referred to as atavistic characteristics. It is therefore very likely that, a slim young male adult with curly hair and a sharp nose fall in the wrath of police officers as a suspect terrorist.

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Migrants and migrant-hosting communities have been affected by these emerging policing activities carried out by police officers in their everyday preventive and curative security measures. The direct effects are visible during the *swoop-operations* that take the form of estate-to-estate crackdown on illegal migrants. This is done with the false intentions of reducing the number of illegal migrants and migrant-related criminality. Within the objectives of these police swoop operations is the improvement in internal security. Contrary to this, there has been complaints coming from migrant diasporas concerning the manner in which policing is affecting their security. Soon after the 9/11 bombings, the following selected cases by the local Nation Daily Nation newspaper [21] reflects how security actors and agents pursued the issue of immigration in Kenya. On February 8th 2002, 1000 suspected illegal immigrants were arrested in a country-wide crackdown on crime, a survey carried out by Nation media on February 20th 2002 indicated that around 400-500 illegal immigrants from Somalia enter into Kenya through Wilson airport. On May 30th 2002, more than 800 refugees were arrested in a four-hour operation at Eastleigh Nairobi; on July 24th 2003 more than 70 illegal immigrants were arraigned in court in Mombasa.

Foreigners, especially those from Somalian, Ethiopian and Eritrean origins were generally seen as the "other", coming from outside, strange, alien and in many situations likened to problem makers. The concept of 'alien' has been used in the laws of Kenya under the *Aliens Restriction Act* [22] to mean "any person who is not a citizen of Kenya" and thus a strange and dangerous unknown identity different from that of "being Kenyan". The security gatekeepers have promoted a public attitude that tends to build on quick assumption that immigrants and non-citizens bring along with them some conflicts and ignorance of the laws of the land.

The former Police Commissioner, Mr. Nyaseda attributed the high rate of crimes in Kenya to high number of immigrants. He argued that Immigrants are linked with arms robberies, drug-trafficking and forgeries of documents. This line of thinking and operations goes hand in hand with what Francis [23] describes as migrants "not originally bound by, and probably not particularly familiar with the criminal laws". This has legitimated an attempt to apply a militaristic approach when *operationalizing* security policies at the expense of professional policing. This has in turn promoted the perception that criminals come from a given social-political-territorial category, to be dealt with as a designated enemy if security is to be achieved.

This criminological perception is worrying as it offers justice and punishment tailored to classification of criminals especially when dealing with migrant Diasporas. It is possible to argue that many arrests and prosecutions in certain areas will reflect a high frequency of the perceived ethnic community whose body type is seen to be criminogenic.

Maguire, Morgan, and Reiner [24] agree that the Police institution at the same time has a "major impact on what

becomes defined as crimes, which offences are prioritized, and which of the community are portrayed as dangerous or troublesome".

Communities that breed high crimes are generally given more attention when it comes to state policing as they are seen to be more risky and dangerous. However, following police statistics on the number of arrests and convictions in court might be misleading owing to the above bias based on body type. Urban centers, which act as economic centers report more crimes all over the world owing to heterogeneity of cultures, religion, occupation, technology and high population densities. The police might focus on these areas at the expense of rural areas. For this reason, policing should be an integral part of both the community and state, linking the citizens and the government in pursuit of peace and security. The Al Shabaab terrorist group has targeted tourists and citizens in remote areas as well as in big cities.

VI. CONCLUSION

Acts of terrorism presupposes the presence of an actual or perceived enemy. An enemy to be defeated by any means possible. Regrettably, individuals and governments employ different means in tackling the actual and perceived threats posed by terrorism. Strategies and tactics used to defeat and deter terrorism involve the use of force and violence on one side and through peaceful-non-violent means on the other. The criminal justice institutions in many countries are endowed to apply both of these strategies in their daily maintenance of law and security. On matters pertaining to application of force, the police and the military enjoy the legitimacy of implementing the monopolized state violence, where the law gives them room to shoot any person or animal that poses a threat to public peace. The Kenya Police Act [25] allows a police officer to use arm firstly to *"any person in lawful custody charged and convicted of felony, when such person is escaping or attempting to escape, secondly to any person who by force rescues or attempts to rescue another from lawful custody and thirdly, against any person who by force prevents or attempts to prevent lawful arrest of himself or of any other person"* The police and the military are therefore recognized as people sanctioned by the state with the powers to enforce the law, keep peace and defend the state. This means that the priority of the police and military institutions is in policing the public peace and therefore must do so guided by the rule of law, justice and human rights. Many advocates of modern policing of threats agree that the process is necessary as it serves the function of reinforcing positive social order in an environment of human-rights and peace-building.

However, there has been a dominantly state-centric approach to policing, ignoring the call for unitary policing between the police and civilians. Maguire, Morgan and Reiner [26] argue that public peace is not kept by the police but by primarily, an intricate almost unconscious network of voluntary controls and standards among the people themselves and enforced by the people themselves.

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This has not been the case in many states in East and horn of Africa where state policing has become isolated from the people whose peace it should be promoting. In 2001 when 9/11 happened, Kenya human Rights Commission (KHRC) [27] reported that police brutality remained the most visible form of state-perpetrated violence against Kenyans.

Violence by police officers on mwananchi [citizen] came in the form of torture, extra judicial executions and excessive use of force, arbitrary arrests, illegal confinement and sexual violence against women.

The violence meted in this manner creates more tension between the police and the community. To try and remedy this tension, there are concerted efforts to bring together the efforts of the police with those of the community. As a response, the Kenya police have created a special branch to deal with the issues of community-police relations which is a positive direction but yet to bear fruits. The Anti-Terrorism Police Unit at its core, concerns itself with the security of individuals in communities and thus a joint effort must be put in place in addressing the problem of terrorism together with the general public. The bombing of East African cities of Nairobi and Dar es Salaam exposed the laxity of policing at both border controls points and inland law enforcement.

It is therefore a challenge and a call for the terrorism policing agents to adjust to international trends that require policing activities within international and homeland security standards that recognize individual privacy, dignity and human rights. At the same time, the traditional way of focusing on internal security by many African states has failed to address the concerns of ordinary citizens, thus a call for joint efforts from state and citizens in terror policing. Sociologically, the legal-criminological-political strategies have tended to polarize religious and ethnic tension between Muslims and Christians with the view that *not all Muslims are terrorists but all terrorists are Muslims* in Kenya and probably the world over. Terrorism threats in Kenya have largely been perceived from an internal perspective thus creating a dissonance between state laws and international legal norms. The bill has exemplified this in all its sections that reflect a *nationalized* anti-terrorism legislation.

Much focus is given on the local population with an aim of containing and controlling it. Certain citizens are seen and interpreted as a threat and an enemy to the existing legitimate government. This kind of policing perception and implementation by the government adds to the risks of those groups and individuals who oppose decisions of the government. This has been manifested by the resentment aired by minorities such as Nubians in Kibera slums, Somali in Eastleigh, and Asian communities that live on the margins of the central business area. To this effect, one of the most features of modern urban life in Kenya has been the increasing level of insecurity, fear and tension.
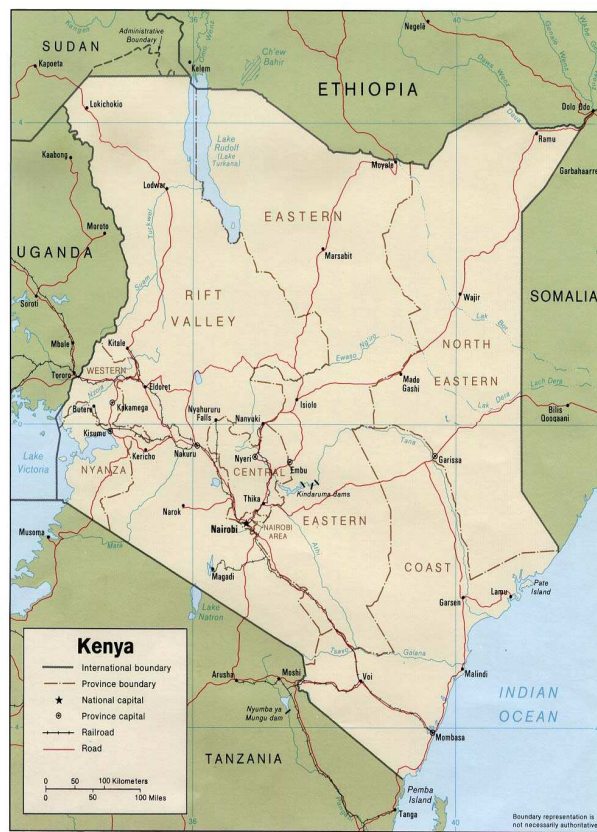

Fig. 1 Kenya and her global neighbors

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