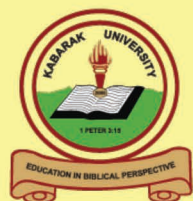


Journal of Law and Ethics

Volume 3, 2018

A peer-reviewed publication of the
Centre for Jurisprudence & Constitutional Studies
Kabarak University School of Law



Countering Involvement of Kenyan Children in Terrorism through Realization of their Socio-Economic Rights

Irene Maithya*

Abstract

State and multinational efforts aimed at containing terrorism in Kenya have only yielded modest results despite the repressive nature of these efforts. The ranks of the foot soldiers of *Al Shabaab* fundamentalist sects continue to swell even in the face of the ferocious onslaught on their membership by state troops. Abandoned by the state, coupled with poverty, children become easy targets for radicalization and are subsequently recruited into terrorist groups. This article argues that poverty is the main cause that exposes children to abuse, criminalization and subsequent mobilization into terrorism. It argues that until the practices of rampant child abuse and state-neglect of children as a vulnerable group are addressed through better education, employment opportunities and poverty reduction, Kenya is likely to remain a breeding ground of violent conflicts and persistent attacks by the terrorists.

The realization of the socio-economic rights of children has only been given the priority it deserves by the human rights groups as a way forward

* LL.M. (Pretoria), LL.B. Hons. (Moi), Dip. Law (Kenya School of Law), Post Graduate Certificate (Harvard – U.S.A, Advocate of the High Court of Kenya and Lecturer in Law at Moi University School of Law. irene.maithya@yahoo.com.

for the country of Kenya to counter the involvement of children in the terror groups. This radicalization of children must get the support from all the spheres of the country. The government must put in place the required strategies to achieve this. The rate at which Kenya's youth are getting in the terror groups is alarming and the number is expected to rise if the realization of socio-economic rights of the youths is not urgently addressed by the state.

This article, therefore, focuses on this recent phenomenon of involvement of children in Kenya into terrorism activities. The article attempts to briefly explore the impacts of involvement of children in Kenya as a new challenge in relation to the discourse of child protection. With a view of mitigating the harm on the lives, well-being, survival and development of children in some parts of Kenya, the article sets out viable solutions that should be considered in the fight against involvement of children in terrorism.

Part 1

1.1 Introduction

Recent trends in armed conflict have resulted in new challenges for the protection of children. Previously armed conflict involved confrontations between states, whereas currently intra-state conflicts are more frequent. As battle lines become blurred and fragmented, armed groups increasingly rely on improvised explosive devices and suicide missions, as well as the use of children to carry out attacks. Both boys and girls have been targeted for recruitment and use by such groups, which indoctrinate and manipulate in order to coerce or force children to participate in hostilities, including acts of extreme violence. Girls and boys are often unaware of the actions or consequences of the acts they are manipulated or coerced to commit, which explains the current situation in some parts of Kenya.

There has been a range of research done on the effects of global terrorism and its impact on Kenya and how that has quickly spread. Kenya is a compelling target of global terrorism because of a combination of several factors such as, regional, historical, political, economic, geographic, socio-cultural and historical factors. Economic imbalance is one of the factors that contribute to terrorism. In their analysis of terrorism in Africa, scholars acknowledge the roles marginalization and poverty play among the Muslims that invite sectarian and inter-ethnic strife, despair, and anti-Western resentment.¹

Some of the gaps with regard to most research is that, there has been little research done on the involvement of children into acts of terrorism. What is the driving force for the children in joining terrorist activities in the recent days? Are the children encouraged by their religion (Islam) to become terrorists? To what extent does poverty induce Kenyan children (especially those of Islamic religion) to engage in terrorist activities? Researches done so far in Kenya seem to be more general at the policy level and Kenya in general and how global terror is affecting Africa.²

¹ Kurt Campbell, Michele Flournoy, *To Prevail, an America Strategy for the Campaign against Terrorism*. (Washington, DC: Center for Africa Strategic Studies 2001) 255-256.

² Caroline Watheka, 'The Youth and The Potential For Involvement In Acts Of Terrorism: A Case Study Of The Eastleigh Suburb In Nairobi' Kenya (Unpublished Masters Thesis. United States International University, 2015).

This article is divided into the three parts. Part one is an introductory that sets out the background of the study. Part two sets out the problem statement and delves further into the impact of children's involvement in terrorism activities. Part three is the last part that sets out the conclusions and recommendations. Some of the solutions suggested include governance strategies that are geared towards the realization of children's socio-economic rights.

1.2 Problem Statement

There has been an increasing incidence of terrorism in Kenya. In 2016, Kenya ranked 19th globally at 6.578 (10 being highest), on the Global Terrorism Index.³ Children involvement in terrorism in Kenya is a real threat with the target group for the militants varying in age. Terrorism is a term that is notoriously difficult to define.⁴ One view is that it is imprecise, ambiguous and above all it serves no operative purpose.⁵ Scholars in the fields of political science, law, history, psychology, theology have tried a definition, but it seems there is no single definition.⁶

There are reports that a swoop carried out in Mombasa's Musa Mosque by security agents rescued over 200 children as young as 12 years who were said to be undergoing radicalization.⁷ A recent report by Regional News Service estimates that 255 persons have left to join the terrorist group since 2013. Other reports may however give an indication that this figure could be higher in Isiolo County in Eastern Kenya alone, an estimated 200 children were reported missing since 2014 and assumed to have crossed over to Somalia.⁸ The target group for the recruiters are children and youth between ages of 15-30 and mostly boys.

³ United Nations Development Assistance Framework For Kenya: 2018-2022 Common Country Assessment Report. January 2018. <http://ke.one.un.org/content/dam/kenya/docs/unct/Kenya%20Common%20Country%20Assessment%20%202018_.pdf> [Accessed 24 July 2018].

⁴ Myra Williamson, *Terrorism, War and International Law*. (Ashgate 2009) 38.

⁵ Richard Baxter, 'A Skeptical Look at the Concept of Terrorism,' (1974) 7 *Akron Law Review* 380.

⁶ There is no consensus on the bounds of terrorism; some observers define as terrorism nearly every act of disruptive violence and ignore violence by established regimes; some scholars want psychopaths and criminals to be examined and others do not; and there are those who, defending a cherished cause, deny that their patriots are terrorists...No one has a definition of terrorism.'; Bower Bell, 'Trends in Terror: The Analysis of Political Violence' (World Politics 1977) 481.

⁷ The African Committee of Experts on that the Rights and Welfare of the Child, 'Continental Study On The Impact of Armed Conflict On Children In Africa (2016) <www.acerwr.org> accessed 9 May 2017.

⁸ *Ibid.*

Children and young people can be drawn into violence or they can be exposed to the messages of extremist groups through a range of means. Other jurisdictions such as Nigeria have dealt with this phenomenon of having their street children drawn into it.⁹ These can include exposure through the influence of family members or friends and/or direct contact with extremist groups and organisations or, increasingly, through the internet. Children are easily vulnerable to exposure to, or involvement with, groups or individuals who advocate violence as a means to a political or ideological end.¹⁰

Looking at the case in Kenya, a number of interrelated social, political and economic factors are fuelling the radicalization of children. Geographically, the epicentre of involvement of children in terrorism appears to be the Northern province which is dominated by ethnic Somalis, and by most accounts, it is considered to be the most neglected part of the country by the state. According to a report by the International Crisis Group, the Northern Province has a history of insurgency, misrule and repression, chronic poverty, massive youth unemployment, high population growth, insecurity, poor infrastructure and lack of basic services, which resulted in the bleak socio-economic and political conditions.

The rate of poverty is significantly higher in the areas where radicalization of children is rampant, thus the vulnerability of children and young people being lured to join these groups. Moreover, the unfolding conflict in neighbouring Somalia has also had a largely negative effect on the province. Reports also reveal the existence of a high level of small arms flow across the Northern Kenya, which provides a conducive environment for the extremists to easily arm their recruits.

The Northern part of Kenya hosts the largest number of Somalis. However there are other regions in the country that host them as well. The other large group of Somalis is found in the Eastleigh suburb of Nairobi, which also hosts a large population of Somalis who sought refuge in Kenya from the civil strife that erupted after the 1991 collapse of the regime of Muhammad Siad Barre. There is another very important Muslim settlement in Kenya – the coastal region, which hosts about 30 per cent of the Kenyan Muslim population, is considered the ‘gateway’ between the Islamic faith in the Arab world and the Islamic faith in Kenya and the entire East and Central African region, and links Muslims in these regions to a rich

⁹ Iro Aghedo, Surulola James Eke, ‘From Alms to Arms: The *Almajiri* Phenomenon and Internal Security in Northern Nigeria’ (2013) 28 *The Korean Journal of Policy Studies*, 97-123.

¹⁰ Merton Camden Safeguarding Children Board, ‘Guidance for Working with Children and Young People who are vulnerable to the messages of Radicalisation and Extremism’ (London Borough of Merton 2015) <www.merton.gov.uk/mscb_prevent_guidance_final.pdf> [accessed 3 May 2017].

Islamic heritage that spans centuries.¹¹ These three regions are the most affected as far as children involvement in terrorism is concerned.

The most recent United Nations Country report on Kenya filed in January 2018 depicts that initial security threat posed by Somalia-based *Al-Shabaab* has spread into a web of regionally located terror cells, with partial alliances to terror groups beyond the region. This report notes that radicalisation and violent extremism are serious challenges in several Kenyan counties (especially Garissa, Isiolo, Kilifi, Kwale and Mombasa). Mandera, with its proximity to Somalia, is heavily affected. According to Armed Conflict Location and Event Data Project (ACLED), 34 per cent of Al Shabaab attacks in Kenya have occurred in Garissa, making it the most targeted region along with Nairobi. The report further notes that key drivers of violent extremism among youth are poor access to education, poverty, unemployment and lack of opportunities to earn an income as well as a feeling of marginalization and exclusion.¹² As a result, the incentive of monetary rewards is believed to have attracted many youths to extremist causes. Perceptions of long-standing regional or communal grievances over land and other resources have also been used to lure youth.

Radicalization and violent extremism are rooted in economic marginalization, social exclusion and poor governance, leading to mistrust in national values and institutions. It is argued that a successful response would promote inclusive human development, particularly in ungoverned spaces, by creating deeper democracy through devolved systems, promoting respect for human rights and social cohesion and the development of attractive and stable livelihood opportunities for youth.

This article argues that poor socioeconomic conditions play a crucial role in children's recruitment and involvement in terrorism. One example is the Kenyan village of Siyu on Pate Island in the coast province. Its population of approximately 1 500 people is extremely poor and without basic necessities, such as running water.¹³ Consequently, this close-knit Islamic community welcomed Fazul Abdullah Mohammed, the leader of al-Qaeda's East African cell, as both a Muslim and a generous provider of money who brought some relief to their dire economic conditions. These credentials and activities enabled him, and others like

¹¹ Anneli Botha, Assessing, *The Vulnerability of Kenyan Youths To Radicalization And Extremism*(Institute for Security Studies 2013) 245..013

¹² Journey To Extremism In Africa: Drivers, Incentives And The Tipping Point For Recruitment Report <http://journey-to-extremism.undp.org/content/downloads/UNDP-JourneyToExtremism-report-2017-english.pdf> [Accessed 25 July 2018].

¹³ *ibid*

him, to further embed himself within local society with a view to recruiting as many children as possible.

1.3 Impact of Children's Involvement in Terrorism Activities

Children's involvement in terrorism activities affects their lives negatively in many ways. It results in grave violations of children's rights including killing, sexual violence, displacement and denial of health services. Particularly, its impact on education has become a worrying trend as children are being denied the chance of going to school. There are indications that in some places schools are closed down for considerably long time as parents have stopped sending their children to school for fear of having their children recruited into *Al Shabaab*.¹⁴ Further, there are wide-reaching implications for children there are pupils who have not reported to schools for a long time and no one seems to know their whereabouts. As captured in the continental study on the impact of armed conflict on children in Africa, by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), in Isiolo county of Eastern Kenya, at least 200 children had not reported to school in 2015.¹⁵

Besides its impact on education, there are alleged reports of detention of children suspected to be involved in terrorist activities. A Human Rights Watch report (2014) indicated there was strong evidence that Kenya's Anti-Terrorism Police Unit had carried out a series of extrajudicial killings and enforced disappearances.¹⁶ In 2007 and 2008, Human Rights Watch and Muslim Human Rights Forum separately documented the involvement of the unit and other Kenyan security forces in the arbitrary detention and unlawful rendition of at least 85 people including 19 women and 15 children from Kenya to Somalia.¹⁷

Besides, during the raid of Masjid Mosque in Mombasa, reports indicate that at least 30 children who were rescued during this operation were detained and then placed in remand homes. This act of arbitrary detention is clearly contrary to international and national laws which prescribe every individual's rights to liberty and the security of his or her person.

¹⁴ Supra note 7.

¹⁵ *ibid*

¹⁶ Human Rights Watch, 'Kenya: Killings, Disappearances by Anti-Terror Police,' Human Rights Watch (August 18, 2014) <www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police> accessed 8 May 2017.

¹⁷ *ibid*

Part II

2.1 *An Analysis of Legal and Institutional Protection of Children's Socio-Economic Rights*

The essence of economic and social rights consist of moral claims to secure access to the decencies of life, which can be summed up in the claim to a standard of life adequate for the health, well-being and human development of the person and his family.¹⁸ In the present study, children's economic and social rights represent the interest of every child to have legally protected access to basic subsistence, health care, nutrition, education, housing, and more broadly standards of life adequate for the child's development. These claims to social and economic well being of children have been recognized by the international community of states as being so important as to justify the protection of the various apparatus of the international law.¹⁹

2.2 *Protection of Children's Socio-Economic Rights in Kenya*

2.2.1 Domestic Legal Status of International Human Rights Law

Before the 2010 Constitution was adopted, Kenya was a dualist state, requiring implementing legislation before any ratified treaty could have the force of law nationally. Kenya passed implementing legislation for some treaties notably the CRC through the Children's Act and the Rome statute though the International Crimes Act. The overall effect was lack of unification as any treaty could be implemented through a series of laws.²⁰

The 2010 Constitution transformed Kenya from a dualist to a monist State by providing that all treaties ratified by Kenya would form part of the law

¹⁸ UN Declaration of human rights capture these rights in Article 22-26. A list of the items that constitute the essential of package for social and economic rights is contained in the famous speech given by the US president Roosevelt in the State of the Union message on January 11, 1994. <www.american-rhetoric.cpm/speeches> accessed 9 May 2017.

¹⁹ Douglas Hodgson, 'The Right of a Child to Life, Survival, And Development' (1994) 2 International Journal of Children's Right 369-380.

²⁰ Kenya National Commission on Human Rights Report to the Human Rights Committee to inform its Review of Kenya's Third Periodic Report on implementation of the Provisions of the International Covenant on Civil and Political Rights 2012 <www2.ohchr.org/english/bodies/hrc/docs/ngos/KNCHR_Kenya> accessed 11 September 2017.

of Kenya. This means that there is no longer need for implementing legislation and international treaties can now be invoked before the courts, tribunals and administrative authorities in the Republic. However, article 2(5) and 2(6) of the Constitution has to be given full effect and clarity through legislation. This is more so since article 21(4) of the Constitution requires the state to enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms. This means that where a treaty is non-self executing, requisite legislation has to be passed particularly for human rights treaties.²¹

2.2.2 Treaty Law

(i) *1966 International Covenant on Economic, Social and Cultural Rights*

Article 6-15 of the Economic Covenant enacts its substantive rights provisions. Of specific importance is Article 10 which requires state parties to promulgate and enforce regulations for the kinds and terms of lawful child work and legitimate economic participation of children, minimum age for entry in employment, prohibition of child labour and redress for all forms of economic exploitation of children. Secondly it demands that all state parties take 'special measures of protection and assistance' on behalf of children and young persons without any discrimination. This article argues that the State is in blatant breach of its obligations under this treaty.

(ii) *Children's Economic and Social Rights in the Convention on the Rights of the Child*

The CRC is the major global instrument on children's rights.²² It has been ratified by all countries except the U.S.²³ The CRC follows a holistic approach to children's rights, recognizing that the rights anchored in the Convention are indivisible and interrelated, and that equal importance must be attached to each and every right contained therein.²⁴ However, since the rights derived from the basic principles outlined above are multifaceted, they can be clustered into eight

²¹ *ibid*, 3.

²² Sharon Detrick, *A Commentary on The United Nations Convention On The Rights Of The Child* (The Hague: Kluwer Law International 1999) 14.

²³ As of May 2016, the Convention had not been ratified by the United States. <www.treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-> [accessed 30 May 2017].

²⁴ Oliver Ruppel 'The Protection Of Children's Rights Under International Law From A Namibian Perspective' (2012) 2 Namibia Law Journal Volume.

categories, namely: general measures of implementation, definition of child,²⁵ general principles, civil rights and freedoms, family environment, alternative care, basic health and welfare.²⁶

Article 6 that commences the list of rights recognized in the Convention declares that every child has an inherent right to life and that it is the responsibility of state parties to ensure to the maximum extent possible the survival and development of the child.²⁷ Among 41 substantive articles, only one article will be analyzed in this article. Article 32 of the Child Convention binds state parties to protect the child from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health, physical, mental, spiritual, moral or social development.

This paper argues that Kenya is in serious breach of its obligations. The CRC Committee on the Rights of the Child in the most recent report of 2016 and for the first time addressed radicalisation of children in its concluding observations.²⁸ Kenya was called upon to put measures to mitigate but to date this is yet to take place.²⁹

²⁵ The definition of *child* as being a person under the age of 18 is contained in Article 1 of the CRC. However, this principle may be inapplicable where, under the law applicable to the child, majority is attained earlier.

²⁶ This classification is used by the Committee on the Rights of the Child for the reporting by and questioning of States Parties. It has to be noted, however, that the rights contained in the Convention have been categorized in a variety of ways. For instance one of the scholars has grouped the rights into "survival rights", "membership rights", "protection rights" and "empowerment rights" See Lawrence Leblanc, *The Convention On The Rights Of The Child: United Nations Lawmaking On Human Rights*. (Lincoln: University of Nebraska Press 1995) 65.

²⁷ Michael Wabwile, *Legal Protection of Social and Economic Rights of Children in Developing Countries; Reassessing International Co-operation and Responsibility* (Intersentia 2010).

²⁸ Compendium on Submissions to Committee on Child Rights CRC 2016. Child Concluding observations on the combined third to fifth periodic reports of Kenya, 2016. <http://www.knchr.org/Portals/0/InternationalObligationsReports/CRC%20Book%20%20A4%20.pdf?ver=2016-08-18-115854-767> [accessed 20 July 2018].

²⁹ See above report at page 151 Children in armed conflicts

Paragraph 65. The Committee is concerned about the "radicalization" of children and their recruitment into non-State armed groups, mainly due to the social and economic marginalization of certain religious or ethnic groups. The Committee is also concerned about:

- (a) Certain counter-terrorism and security measures, such as mass raids, which do not comply with international human rights standards, including the Convention, and which have caused family separation, arbitrary detentions of children, and negative psychological impacts on children affected by the measures, such as fear and feelings of collective punishment;
- (b) Increased attacks on educational institutions and teachers by non-State armed groups, leading to mass deserting by teachers and the closing down of schools in the affected areas.

Paragraph 66. The Committee urges the State party to:

- (a) Enhance its efforts to prevent radicalization of children by prioritizing efforts to eliminate

To date, no specific measures have been put in place to deal with radicalisation realities of radicalisation and children in conflict.

However, it is important to note that the state ratified the Optional Protocol on children in armed conflict on 28th January 2002. In this regard, it has put in place initiatives to protect children in areas prone to cattle rustling, militia activities in volatile borders, such as the Kenya/Somalia, Kenya/Sudan and Kenya/Ethiopia. Some of these initiatives include increasing security, disarmament programmes in cattle rustling areas, and peace and reconciliation initiatives.

(iii) 1990 African Charter on the Rights and Welfare of the Child

The ACRWC is the most comprehensive regional instrument on children's rights. The ACRWC was created as a response to CRC to represent an African concept of children's rights. The wording of ACRWC is designed to reflect virtues of the African civilization. It is 'Africa Sensitive'.³⁰ The ACRWC is said to be the most progressive of the treaties on the rights of the child. The most significant innovation empowers the monitoring committee to receive communications from any person, group or non-governmental organization recognized by the African Unity. So children have been empowered and can petition the Committee on alleged violation of their rights including economic, social and cultural rights.³¹ Furthermore, unlike the CRC, the welfare of children is the primary consideration.

Article 15 of the ACRWC is of particular importance for the purpose of this study. This article expressly provides that every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development. In Addition to this article, the charter obligates State under its

the social, economic and political marginalization of certain groups, in particular children and youth who belong to Muslim communities or to the Somali ethnic group;

- (b) Ensure that counter-terrorism and security measures fully respect the rights of the child provided under the Convention and are sensitive to the potential negative impact on children who are affected by such measures. The Committee wishes to underline that measures that do not fully comply with human rights standards would be counterproductive and may contribute further to the radicalization of children;
- (c) Implement the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, as the State party pledged under the Safe Schools Declaration (2015).

³⁰ Manziere Mpaka, 'The Prevention Of HIV Transmission From Mother-To-Child: The Obligations Of The South African Government In Terms Of National And International Laws (Unpublished LLM Dissertation, University Of South Africa, 2010)

³¹ A Lloyd 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the Gauntlet' (2002) *International Journal of Children's Rights* 179.

article 22 to take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.

It is argued that the treaty body has not paid sufficient attention to radicalisation of children in the concluding observations. The most recent periodic report that highlighted Kenya's realization of its obligations under the ACRWC made broad remarks on terrorism. The Government pointed out that it had enacted the *Prevention of Terrorism Act No. 30 of 2012* which contains strict guidelines to be followed in any action to combat terrorism. However, the report noted that a large number of terrorist attacks had been carried out by radicalized Kenyan youth.³² The State had not put specific measures to deal with radicalisation of children.

2.2.3 Soft Law

(i) *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa*

These Principles and Guidelines were adopted by the African Commission on Human and Peoples' Rights during its 56th Ordinary Session in Banjul, Gambia in April 2015.³³ The Principles and Guidelines include a set of fourteen general principles, such as prohibition of arbitrary detention and guidance on specific issues that the Commission regarded as being particularly relevant to the protection of human rights while combating terrorism. It is argued that the guidelines could also be applied on matters related to children's rights accordingly.

³² http://www.achpr.org/files/activity-reports/40/actrep40_2016_eng.pdf [accessed 16 July 2018].

See paragraph 294. Kenya has however faced challenges in promoting national security due to an upsurge of terrorism attacks. In October 2011, a coordinated operation between the Somali military and the Kenyan military, known as operation Linda Nchi, began against the Al-Shabaab group of insurgents in southern Somalia. The mission was officially led by the Somali army, with the Kenyan forces providing a support role. In early June 2012, Kenyan forces were formally integrated into African Union Mission in Somalia (AMISOM). Since then, a series of terrorist attacks, believed to have been retaliatory attacks by Al-Shabaab have rocked various areas in Kenya.

Paragraph 295. Increasingly, a large number of terrorist attacks have been carried out by radicalized Kenyan youth. Unemployment, poverty and political marginalization are contributing to the Islamic radicalization of Kenya's youth, a situation which the government of Kenya is attempting to address through economic empowerment and inclusive policies.

³³ The Principles and Guidelines on Human and Peoples Rights while countering terrorism in Africa, African Commission on Human and Peoples Rights <www.achpr.org/files/special-mechanisms/human-rights-defenders/principles_and_guidelines_on_human_and_peoples_rights_while_countering_terrorism_in_africa.pdf> accessed 9 May 2017.

2.2.4. United Nations Social Development Goals (SDGs)

On 1st January 2016, the 17 SDGs of the 2030 Agenda for Sustainable Development adopted by world leaders in September 2015 at an historic UN summit officially came into force. Over the next fifteen years, with these new Goals that universally apply to all, countries will mobilize efforts to end all forms of poverty, fight inequalities and tackle climate change, while ensuring that no one is left behind. The new Goals are unique in that they call for action by all countries, poor, rich and middle-income to promote prosperity while protecting the planet.

While the SDGs are not legally binding, governments are expected to take ownership and establish national frameworks for the achievement of the 17 Goals. Countries have the primary responsibility for follow-up and review of the progress made in implementing the Goals, which will require quality, accessible and timely data collection. Regional follow-up and review will be based on national-level analyses and contribute to follow-up and review at the global level. This study will focus on two of the goals.

(i) Goal 1- Poverty

Poverty eradication must go hand-in-hand with strategies that build economic growth and addresses a range of social needs including education, health, social protection and job opportunities. Currently, 836 million people still live in extreme poverty. About one in five persons in developing regions such as Kenya live on less than \$1.25 per day. The overwhelming majority of people living on less than \$1.25 a day belong to two regions: Southern Asia and sub-Saharan Africa

Poverty is more than the lack of income and resources to ensure a sustainable livelihood. Its manifestations include hunger and malnutrition, limited access to education and other basic services, social discrimination and exclusion as well as the lack of participation in decision-making. Economic growth must be inclusive to provide sustainable jobs and promote equality.

(ii) Goal 4 - Education

Enrolment in primary education in developing countries has reached 91 per cent but 57 million children remain out of school.³⁴ More than half of children that have not enrolled in school live in sub-Saharan Africa. An estimated 50 per

³⁴ Sustainable Development Goals <www.un.org/sustainabledevelopment/sustainable-development-goals/> accessed 9 May 2017.

cent of out-of-school children of primary school age live in conflict-affected areas. 103 million youth worldwide lack basic literacy skills, and more than 60 per cent of them are women. This study asserts that this demographic cohort provides a rich base of recruitment into terrorism activities as the money offered is “too good.”

This goal has envisioned that by 2030, states will have put in place measures that substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship.³⁵

2.3 Domestic Legal Framework

2.3.1 The 2010 Constitution

The Constitution of Kenya, 2010 is a transformative document with unprecedented Bill of Rights.³⁶ It is worth noting that, socio-economic rights unlike other ‘social’ rights have elicited much debate and litigation to the extent of overshadowing other rights.³⁷ Article 29 (c) and Article 21, in entirety; bind all state organs to implement the Bill of Rights. Article 10(2) on the other hand enumerates human rights, protection of marginalised, equality and non-discrimination as part of national values and principles of governance in Kenya. It is however commendable to note that the judiciary has in the recent past crafted very innovative remedies with regard to enforcement of socio economic rights in order to ensure the state’s commitment in ensuring access to justice.

The inclusion of human rights norms in the Constitution, particularly article 43 which provides for a number of socio-economic rights, offers a blueprint for the betterment of the plight and welfare of Kenyan society. This includes children who are further entitled under articles 53(1)(a) and (c) to the right to basic and compulsory education, basic nutrition, shelter and health care. Article 21(3) provides for the obligation of ‘all state organs and public officers’ to address the needs of ‘vulnerable groups within society ... including children’.

³⁵ *ibid*

³⁶ Kalpana Rawal, *The Immediate Realization of Women and Children’s Rights: Lessons from the Kenyan Case of C.K & 11 Others V Commissioner of Police/Inspector General of Police & 2 Others* (Petition No. 8 of 2012) <www.kenyalaw.org> accessed 11 May 2017.

³⁷ *ibid*

The Constitution provides for a number of general principles in relation to the interpretation of rights, including children's rights. Article 24 provides for the limitations clause requiring any limitation to any right under the Bill of Rights to be 'reasonable and justifiable'. Article 20 provides that the interpretation of the meaning and scope of human rights shall be with respect to the promotion of values such as those that underpin an open and democratic society and based on human dignity, equality, equity and freedom. Article 21(2) provides that the state shall take legislative, policy and other measures to ensure the progressive realisation of socio-economic rights provided for under article 43 of the Constitution. Article 20(5) provides that the state bears the burden of proving that it lacks resources to implement socio-economic rights, but calls on the state to ensure that the process of allocation of resources is done in light of 'prevailing circumstances ... including the vulnerability of particular groups and individuals', which under article 21(3) explicitly includes children.

It is instructive to note that the qualifications regarding the progressive nature of state obligations and availability of resources in relation to socio-economic rights under article 43³⁸ of the Constitution are not made with regard to children's rights under article 53, including the right to free and compulsory basic education and children's rights to nutrition, shelter and health care.³⁹ The implication is therefore that the legal obligations regarding children's socio-economic rights are of an immediate nature. Hence, in instances where the state is primarily obliged to provide for these rights, the state cannot claim that such an obligation is progressive over time and/or is subject to the availability of resources.

³⁸ Article 43 of the Constitution states as follows;

- (1) Every person has the right—
 - (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
 - (b) to accessible and adequate housing, and to reasonable standards of sanitation;
 - (c) to be free from hunger, and to have adequate food of acceptable quality;
 - (d) to clean and safe water in adequate quantities;
 - (e) to social security; and
 - (f) to education.
- (2) A person shall not be denied emergency medical treatment.
- (3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.

³⁹ Godfrey Odongo, 'Caught Between Progress, Stagnation And A Reversal Of Some Gains: Reflections On Kenya's Record In Implementing Children's Rights Norms' (2012) 12 African Human Rights Law Journal (AHRLJ).

2.3.2 The Prevention of Terrorism Act 2012

In Kenya, Terrorism is covered by the Prevention of Terrorism Act (Act 30 of 2012) which was promulgated on 24th October, 2012. It creates over 30 offences and provides for special powers of arrest, procedures to gather information and even limits certain rights when conducting investigations. It also provides compensation for terrorist victims, while the people involved in terrorist activities risk 30 years in jail if they commit a terrorism act or a life sentence if the act leads to death of another person and their properties seized. Those that assist terrorists risk 20 years in jail. Stiff penalties for joining a terrorist group are also provided.

It is important to note that the Act does not specifically single out the recruitment of children into terrorism activities as a serious offence. The Act provides a general provision on recruitment and it gives wide discretion to the judicial officer when sentencing as it states that once one is found guilty then a jail term not exceeding 30 years cannot be imposed.⁴⁰ This means that a guilty person can easily serve a one month jail term or less. This does not serve the deterrence purpose of a criminal justice system.

The judiciary is beginning to make bold interpretation of the offence of radicalisation. In 2016, a Muslim cleric was jailed 20 years for radicalizing school children to join *Al-Shabaab* terror group in the coastal city of Mombasa.⁴¹

2.3.3 The Children's Act

The Children's Act is the primary Kenyan law which sets forth legal obligations of all duty bearers - the government, parents, and civil society- to respect, protect and fulfil the rights of children.⁴² It has been commended as it is the first example of a comprehensive enactment in Kenya which gives effect to any international human rights treaty to which the country is a party.⁴³

⁴⁰ Section 13 of the Act states:

Recruitment of members of a terrorist group

A person who knowingly recruits or facilitates the recruitment of another person—

(a) to be a member of a terrorist group; or

(b) to commit or participate in the commission of a terrorist act, commits an offence and is liable, on conviction, to imprisonment for a term not exceeding thirty years.

⁴¹ Kenya's Islamic Cleric Jailed For 20 Years For Radicalizing Minors http://www.xinhuanet.com/english/2016-01/07/c_134987911.htm [accessed 19 July 2018].

⁴² Children's Act 8 of 2001. The Children's Act aims to implement international law, by "[giving] effect to the principles of the CRC and the ACRWC <www.kenyalaw.org> accessed 12 January 2017.

⁴³ Michael Wabwile, *Rights Brought Home? Human Rights in Kenya's Children Act 2001* (A Bain-

With regard to children's socio economic rights, the government has made attempts on some of them. The government seems keen on realizing some of the rights enshrined in the Act. A good example is the modest effort the government has made in making Kenyan children's right to primary education a reality. The free primary education program although faced with challenges, stands out as the most significant development. This study argues that the political will is lacking in realization of this right in marginalized areas such as the northern and coastal regions where radicalization of children is more dominant.

Section 22 confers jurisdiction on the High Court to enforce any of the rights of the child and confers legal standing (*locus standi*) on any member of the public to institute action and approach the Court for such enforcement.⁴⁴ This is a positive step as it encourages socio economic rights litigation. Perceptions of children and childhood have often implicitly and/or explicitly influenced how courts have interpreted socio economic rights and applied such provisions.⁴⁵ For instance, in its *Advisory Opinion on the Juridical Condition of the Child*,⁴⁶ the Inter-American Court of Human Rights stated that education and care for the health of children require various measures of protection and are the key pillars to ensure enjoyment of a decent life by the children, who in view of their immaturity and vulnerability often lack adequate means to effectively defend their rights.⁴⁷

The Court had previously commented in this decision that the best interests principle is based on the very dignity of the human being, on the characteristics of children themselves, and on the need to foster their development, making full use of their potential, as well as on the nature and scope of the Convention on the Rights of the Child.⁴⁸ Here, the Court specifically justified the paternalistic best interest principle in terms of, amongst other things, the need to develop the child's

haim, & B Rwezaura, B eds. *The International Survey of Family Law* Bristol: Jordan Publishing, 2005) 394. The author described the Act as 'historic' and as having 'broken new ground in Kenya's human rights law'

⁴⁴ This too is a landmark legal development since Kenyan courts have over the time restrictively interpreted *locus standi* in the sense that only those with a 'sufficient interest' in a matter may have the right to sue in court. This restricted interpretation has been a significant constraint to 'public interest litigation' even in constitutional and civil litigation cases which touch on enforcement of fundamental rights and freedoms

⁴⁵ Aoife Nolan, *The Child's Right to Health and the Courts* (J. Harrington & M Stuttaford (eds), *Global Health and Human Rights: Legal and Philosophical Perspective* London: Routledge 2010) 135-162.

⁴⁶ *Advisory Opinion OC-17/2002 on the Juridical Condition and Human Rights of the Child*, 28 August 2002.

⁴⁷ *Ibid* para 86.

⁴⁸ Nolan (n 45 above) 135-162.

potential – that is, to maximize the child’s future capacity for autonomy. In the context of children’s involvement in terrorism, litigation is a powerful tool as it will provide an opportunity to interpret the obligations of the state.

In certain respects however, the Act falls short of a full guarantee of the provisions of international law. In answering the question whether the Act really ‘brings home’ the rights of the child, scholars have argued that ‘contrary to popular impressions, the legal framework falls far short of what is required to establish a credible children’s rights .This view is motivated by the flaws in the Act and what these scholars describe as the absence of ‘more radical and pragmatic reforms’.⁴⁹ For instance, the Act has failed to embody specific offences that protect children from being recruited into terrorist activities.

The Children Act is currently being reviewed and a zero draft generated by the National Council for Children Services has attempted a definition of” radicalisation”, It will be interesting to see the final substantive provisions on radicalisation under this Act.

⁴⁹ *ibid.*

Part III

3.1 *Conclusions and Recommendations*

3.1.1 Conclusions: Slaying the Dragon

The issue of youth involvement in the in the terror groups in Kenya is a serious matter that the Kenyan government must address urgently. The most effective strategy is youth empowerment. This is the step in the right direction as it will raise their social and economic rights and in the long term mitigate poverty. From the above discussion it is clear that provision of education alone to the youths cannot solve the problem.

3.2 *Recommendations*

3.2.1 Governance Strategies

First is the issue of governance. As illustrated in the study most of the children recruited into the militia accept to do so for economic reasons. They are helpless. They do not see a bright future life ahead. They are disillusioned by how people access employment opportunities. Streamlining access to opportunities is perhaps a policy issue to pay attention to. It requires political and bureaucratic commitment. It requires political direction in the form of making a bold decision to punish the members of cartels that distribute 'public jobs' for a pay. But the cartels are usually very powerful. They have the ability to bring down anyone messing with their incomes. The answer to their powers and influence lies in commitment to the rule of law. This of course is a dream that may not be lived this soon.

The ongoing investment in infrastructure projects across the country by both the county and the national government is laudable as it is absorbing many of the unemployed youth. However its mainly focused in Nairobi and is yet to be felt in the marginalized parts of the country. The National Youth Service (NYS) projects are quite visible in some of the counties where they are doing feeder roads, opening drainage systems, and undertaking other public works. The numbers of youth involved in NYS and non-NYS related projects are many. It is suggested that efforts be made by the state to implement such projects in North eastern and coast province.

3.2.2 Inclusive Intelligence Structures

Fighting terrorism is a complex issue as the “enemy” is within and not easy to detect. As such it is suggested that NIS should consider adopting “informers” from the demographic cohort of children and youth.

3.2.3 Prosecution of insightful clerics and “recruiters”

The government should muster the required political will and bring sponsors of violence to book. Religious clerics who preach hatred and intolerance should be monitored and cautioned. If they persist in inciting the children and youth against the state and society, they should be tried openly and fairly in the courts and appropriate punishment meted out to them.

3.2.4 Harsh penalties for those found guilty of recruiting children

As a deterrent measure stiff penalties should be prescribed for those found guilty of radicalizing and recruiting children into terrorism activities.

3.2.5 Amendment of the Prevention of Terrorism Act, 2012

The Act should single out children as a vulnerable group and prescribe the offence of recruiting them into terrorism and set out harsh penalties.