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American ideals. Universal values.

BLUEPRINT

How the United States Can Help Counter Violent Extremism and Support Civil Society in Kenya

BLUEPRINT FOR U.S. GOVERNMENT POLICY

JULY 2015

Human Rights First

American ideals. Universal values.

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We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

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“Countries that respect human rights—including freedom of association—happen to be our closest partners....When these rights are suppressed, it fuels grievances and a sense of injustice that over time can fuel instability or extremism. So I believe America’s support for civil society is a matter of national security.”

–President Obama, September 23, 2014

“First, for civil society to continue to succeed it must have open, free, democratic space. I have followed closely the ongoing debate in Kenya around civil society and its regulation.... [A]ccountability and transparency are important for civil society organizations, just as they are for all others. But there are ways to achieve accountability and transparency that do not restrict or impede the vital work of civil society.... Regulation should embrace diversity. Regulation must not be used to silence opinions or stifle views that the powerful do not share.... We carry out extensive due diligence on all the organizations we partner with, to ensure that they are not being used for illicit purposes, such as terrorist financing. We have not seen any evidence to suggest Haki Africa’s activities pose a threat to national security or jeopardize Kenya’s efforts at combating terrorism.”

–U.S. Ambassador to Kenya, Robert F. Godec, June 5, 2015

Introduction

The visit of President Obama to Kenya in July 2015—the first by a sitting U.S. president—is much anticipated in the country, which faces serious challenges, including poverty, terrorism, corruption, and abuses by state security forces. Kenya has yet to fully recover from large-scale violence following the 2008 election, when around 1,300 people were killed—including hundreds by the police—and half a million were displaced during a six-week period. Kenya also hosts around half a million refugees fleeing war in Somalia.

The U.S. government has sought to help Kenya address its human rights problem with humanitarian, good governance, and security initiatives. Kenya is routinely among the top seven recipients of U.S. aid, getting hundreds of millions of dollars every year.

Yet the United States should strengthen and sharpen its efforts to support Kenya. A reinvigorated approach, initiated by the President's visit, would both improve the lives of Kenyans and serve U.S. interests by combating violent extremism. This report recommends actions the U.S. government should take to promote greater stability in Kenya and the region, and outlines in particular how the U.S. government should support Kenyan civil society.

In 2010 Kenyan voters approved a new constitution, which contains strong human rights safeguards, protections for civil society, and judicial reforms. And it is in many ways a model of legal protection for human rights. It provides for the creation of several important bodies, including the National Gender Equality Commission—which is pushing for the implementation of article 81b of the constitution: “not more than two thirds of the members of

elective public bodies shall be of the same gender”—and the Kenyan National Commission on Human Rights.

Unfortunately, these and other official entities set up under the constitution to protect rights are insufficiently resourced and politically weak. The government's implementation of the constitution has generally not matched the promise of its text. It has attacked civil society groups and attempted to muzzle dissent, often in the name of counterterrorism. The 2013 Public Benefit Organizations (PBO) Act, a law designed to regulate and protect civil society, has yet to be implemented. On the positive side, parts of the Kenyan judiciary remain defiantly independent of government interference, something President Obama should praise during his trip.

The Kenya section in the U.S. State Department Country Reports on Human Rights Practices for 2014 states: “The most serious human rights problems were security force abuses, including alleged unlawful killings, forced disappearances, torture, and use of excessive force; interethnic violence; and widespread corruption and impunity throughout the government.... Widespread impunity at all levels of government was a serious problem, despite public statements by the president and deputy president and police and judicial reforms. The government took only limited steps to address cases of unlawful killings by security force members.”

That crackdown runs counter to President Obama's insistence that stability and security require “freedom for civil society groups.” During his visit, President Obama should discuss the crackdown on civil society along with other pressing and sensitive issues: security cooperation, corruption, refugee protection, and the human rights of LGBT people.

This report amplifies advice of civil society activists, whose recommendations to the U.S. government concern tone as well as content. The vast majority of Kenyans get their news from the radio, and the president should design his messaging accordingly. It is vital that wherever possible, he frame his advice to Kenyan authorities in the context of the Kenyan constitution, citing the strong provisions that protect civil society and the importance of honoring both the spirit and letter of Kenya's own laws.

President Obama and other U.S. officials should also emphasize the positive energy generated by the approval of the constitution, and by efforts to shift authority away from Nairobi toward the regions. This momentum has stalled as the central government tries to hold onto power.

Activists warn that a “preachy” tone they sometimes hear from U.S. officials does not go over well with Kenyan public officials or with a public fully aware of the indefinite detentions at Guantanamo Bay, the CIA's use of torture, and other U.S. human rights abuses. Activists say it is essential that the president acknowledge his country's own problems—including police violence—and acknowledge that the United States has not always upheld the rule of law in its own efforts to combat terrorism.

Still, President Obama's Kenyan heritage can be a powerful political force if he uses it carefully, these activists say. A stop early in his visit to his father's village at Kogele to see his family—some type of formal “homecoming”—would help cement his credibility with the Kenyan public and give him greater political license to deliver the tough messages that the Kenyan government needs to hear, they say. Prominent human rights defender Boniface Mwangi told Human Rights First that President

Obama “owes this country love because his father is from here, and in love you have to tell the truth.”

This blueprint is based on a Human Rights First research trip to Kenya in June and July 2015, including dozens of discussions with human rights defenders, civil society activists, journalists, academics, lawyers, independent experts, former senior Kenyan security officials, and government officials from the United States and other countries. Some activists spoke to Human Rights First on condition of anonymity out of fear for their safety. Human Rights First thanks all those who provided information for this report.

Civil Society: Calling a Dog Names

Kenya has traditionally enjoyed one of the strongest media and civil society movements in Africa. But civil society now faces a government crackdown that leading activists date to 2010, when the International Criminal Court (ICC) accused senior Kenyan officials of crimes against humanity in connection with post-election violence in 2007/2008. In 2011, six officials—including current President Uhuru Kenyetta and Deputy President William Ruto—were indicted. Some in the Kenyan government believe civil society orchestrated the ICC indictments and therefore view the sector with significant hostility. The charges against Kenyetta were dropped in December 2014, but those against Ruto are still pending.

The 2014 State Department country reports note dryly that in Kenya, “Observers believed the government monitored various civil society

meetings, and sometimes took reprisals against critics of the government.”

The 2010 constitution includes safeguards on freedom of expression and assembly and creates bodies designed to fight corruption and protect human rights. Civil society activists generally agree that these parts of the constitution are not being implemented and that the current government is attempting to dilute its protections.

In addition, a law passed to regulate and safeguard the free operation of non-governmental organizations, the PBO Act of 2013, has yet to be implemented. “The government is now trying to weaken the act by amending it to give the authorities more control,” Roland Ebole of the Kenya Human Rights Commission told Human Rights First. Leaked drafts of amendments have alarmed activists in recent months, with rumors of caps on foreign funding and the prevention of some human rights organizations from registering with the government.

“There’s a saying that if you want to kill a dog you first call it names—discredit it and blame it for things. That’s what the government has started to do against civil society,” said Regina Opondo, Executive Secretary of Creco, a network of 23 Kenyan civil society organizations.

Some organizations have already been targeted. Within days of the April 2015 terrorist attacks on Garissa University that left 148 people dead, Kenyan authorities listed 85 entities “suspected to be associated with” al-Shabab, a terrorist group with origins in Somalia.

The list included the internationally respected human rights NGOs Muslims for Human Rights (Muhuri) and Haki Africa. Both are known for

their outspoken criticism of Kenya’s police forces, particularly of abuses police have committed in the name of countering terrorism. The government froze the bank accounts of each. Hussein Khalid, chief executive officer of Haki Africa, was among the activists in attendance at February’s White House Summit on Countering Violent Extremism. In June, the two groups won a court injunction in Kenya rejecting the terrorist designation, but their bank accounts remain frozen.

When Secretary of State John Kerry visited Kenya in May, he met a small number of prominent civil society leaders, including Boniface Mwangi. “It’s vital that President Obama takes a public stand on the side of civil society when he arrives here,” Mwangi told Human Rights First. “This year alone around eight people have been shot in peaceful protests, in violation of their constitutional rights. Another urgent issue is addressing the electoral reform. The two past elections, in 2007 and 2013, were hotly disputed.... We still don’t have the final vote tallies. If we don’t have electoral reforms before 2017, there is high likelihood of more politically motivated violence.”

Mwangi told Human Rights First that he has received death threats, and he was arrested again on July 1. Human rights defenders complain of mistreatment by the police and the courts. For example, the courts have been increasing bail fees of those arrested for peaceful protests, activists say.

The 2014 State Department country reports also noted that in Kenya, “Less-established NGOs, particularly in rural areas, reported harassment and threats by county-level officials and security forces. Human rights activists claimed security forces conducted surveillance of their activities, and some reported threats and intimidation.”

Ruth Mumbi works in Nairobi's slum area of Mathare. A finalist for the 2013 Front Line Award for Human Rights Defenders at Risk, she told Human Rights First that she began her activism at the age of 16, trying to get a bus stop moved nearer to her school. Her activism got her expelled. She now advocates on a range of human rights issues in her community, including justice for the families of those killed by the police.

Mumbi says that police bail for human rights-related work, such as for peacefully protesting, was typically Ksh10,000 (US\$100) a couple of years ago. "Now it can be Ksh200,000 (\$2,000) or more. There's a criminalization of human rights defender work, and Obama should speak out against it when he comes," she told Human Rights First. "There's constant harassment—you can be summoned to court every few weeks, spend hours and hours, usually all day there, usually without any result. It just drains your time."

Mumbi has been trying to get investigations opened into some of the police violence in Mathare, and has been threatened and followed. When Human Rights First visited the settlement in June 2015, locals spoke of widespread fear of the police, and of police impunity. Local activists estimate that in the first six months of 2015 there have been 50 extrajudicial killings or disappearances in the Mathare settlement alone.

During his visit, President Obama should meet representatives of Kenyan civil society and hear about their difficulties firsthand. Given the struggles of human rights defenders in neighboring countries, including Burundi, Rwanda, and Somalia, he should also use the opportunity to meet with a group of regional human rights activists.

Corruption

In 2006 Senator Obama spoke at Nairobi University and told his Kenyan audience that the country was facing a corruption crisis, that "corruption ... erodes the state from the inside out, sickening the justice system until there is no justice to be found, poisoning the police forces until their presence becomes a source of insecurity rather than comfort."

Nine years later the problem remains, and according to some experts, has become worse. Despite official commitments to tackle the issue, Kenya still ranks 145 out of 175 countries on Transparency International's 2014 Corruption Perceptions Index.

The 2014 State Department country reports for Kenya note: "The law provides criminal penalties for official corruption; however, the government did not implement these laws effectively, and officials engaged in corrupt practices with impunity. Despite public scandals the government did not prosecute any top official successfully for corruption."

A veteran diplomat said that although the problem of corruption in Kenya is not new, its unpredictability and inconsistency is now making it much more difficult for international businesses to operate in Kenya. Before, he said, "a six percent or whatever 'tax' was the cost of doing business, and was factored in," but now new, surprising demands make doing business more unpredictable and less attractive.

Local human rights defenders working in some of Nairobi's poorest areas told Human Rights First about the everyday police bribery that destroys trust in the rule of law. There's a rough price list for those arrested to pay their way out of trouble, with a drunk and disorderly arrest costing around Kenya Shillings 2,000, (US\$20),

and Ksh10,000 for robbery with violence. These sums—in a country where 46 percent of people live on less than a dollar a day—are astronomical.

The problem of bribery extends to policing in the name of counterterrorism. An experienced Mombasa photojournalist told Human Rights First about a general lack of trust in the professionalism of police charged with counterterrorism work: “There are cases of the police targeting and shooting the wrong person through mistaken identity, and reports of [terrorist] suspects being able to bribe their way out of custody.”

Another civil society leader engaged in policing reform said that the police target Somali communities and arrest young Somali men in part because of the bribery revenue it yields. “They can charge them serious money to have them released. They plant stuff on the men and Somali families have a reputation for being able to mobilize fast to raise money to have them released. It amounts to hostage taking.”

In his 2006 speech Obama rightly noted how corruption undermines the struggle against violent extremism—an observation even more relevant today given the escalating security threats from terrorism and violent extremism Kenya now faces.

“Some of the worst actors on the international stage can also take advantage of the collective exhaustion and outrage that people feel with official corruption, as we’ve seen with Islamic extremists who promise purification, but deliver totalitarianism. Endemic corruption opens the door to this kind of movement, and in its wake comes a new set of distortions and betrayals of public trust.... In the end, if the people cannot trust their government to do the job for which it exists—to protect them and to promote their

common welfare—all else is lost,” then-Senator Obama said in 2006.

Jedidah Waruhiu is a commissioner for the Kenya National Commission on Human Rights. “President Obama needs to say something very strong on corruption while he is here and say what action the U.S. is going to take against corrupt Kenyan officials stashing their money in American banks,” she told Human Rights First.

“We need investigative capacity to get to corruption,” said veteran Kenyan civil society leader Maina Kiai, who is also the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. “The FBI could help with that,” he said.

Presidential Proclamation 7750 restricts foreign officials who engage in corruption in the performance of public functions from gaining entry into the United States where that corruption has “serious adverse effects on international activity of U.S. businesses, foreign assistance goals, the security of the United States against transnational crime and terrorism, or the stability of democratic institutions and nations.”

The proclamation also bars entry to any family members or dependents of a corrupt foreign official if they have benefited from the corruption. Supporting legislation permits U.S. officials to revoke visas of foreign officials involved in corruption specifically relating to the extraction of natural resources in their countries. Public Law 111-8 instructs the State Department to identify foreign officials believed to have engaged in natural resources corruption and prohibits entry of those officials and their family members if the Secretary of State has “credible evidence” that the official has been “involved in corruption.” Unlike the proclamation,

Public Law 111-8 does not contain a serious harm requirement.

The United States should use its authority under Proclamation 7750 and its firmer mandate under P.L. 111-8 to deny entry to such Kenyan officials and their beneficiaries. Local activists said that seeing the U.S. government implementing visa bans would help show that Washington is serious about fighting corruption in Kenya. Taking such action against an ally is not unprecedented. The United States applied Proclamation 7750 to NATO ally Hungary in 2014 when it denied visas to several Hungarian officials on grounds of corruption.

Policing Problems

Since 2012, at least 600 people have been killed in Kenya by the terrorist group al-Shabab, including at least 67 at Nairobi's Westgate shopping mall in 2013 and 148 at Garissa University College in April 2015. The coastal area, which has a large Muslim population, is one area of particular tension.

In January 2015 a pastor was shot dead in the Majengo area of Mombasa, the major coastal city, during a church service—the latest in a string of attacks on churches. The city's main Christian centers have heavily increased security.

An Anglican pastor based in a city suburb told Human Rights First that a security consultant advised him on the best church entrances and exits for his parishioners, and that the congregation keeps an eye out for strangers. "We have armed police around the church for every service, and all day on Sundays," he said.

There is low public confidence across the country in the Kenyan security forces' ability to prevent further attacks. Undermined by a lack of professionalism, corruption, and impunity for their own abuses, Kenya's police needs urgent reform. According to the 2014 State Department Kenyan country report, "Police were largely ineffective, and there was a public perception that police often were complicit in criminal activity. Police incompetence and complicity in criminal activity contributed to an increase in crime, especially in Nairobi. Poor casework, police incompetence, and corruption undermined successful prosecutions; the conviction rate was between 13 and 16 percent....Police officials resisted investigations and jailed some human rights activists for going to a police station to make a complaint." It noted too that "Police frequently used excessive force when making arrests," and "frequently arrested and detained persons arbitrarily.

Overwhelmingly, victims of arbitrary arrest were poor young men."

Policing problems are deep and widespread across the country, ranging from petty corruption to poor standards of recruitment and training. Kenya's 2012 Prevention of Terrorism Act is vaguely worded and criminalizes individuals for being members of designated terrorist entities regardless of their specific actions. There is no domestic legal definition of terrorism in Kenyan law, and counterproductive policing methods aimed at Muslim communities are fueling the sort of extremism they are intended to prevent.

Muslim leaders complain of widespread harassment and say the police are too ready to link the whole community to al-Shabab. "Every time people see one of these massacres—no sane person celebrates that," said Khelef Khalifa, Chair of the Mombasa-based NGO

Muhuri. “But the government can't succeed in fighting terrorists if it alienates Muslims.”

He says the police harass Muslims, that they are “90 percent more likely” to arrest Muslim men, who they then exploit for bribes. “The last two years have been hell for the Muslim community,” said Khalifa.

Khalifa complains of a police methodology that relies too often on circumstantial evidence rather than hard intelligence, of a network of paid informants who feel pressured to “produce information” whether true or not, and of unnecessarily violent policing, including by the Anti-Terror Police Unit (ATPU). The ATPU has received \$50 million from the U.S. government and is accused by Muhuri of torture and a string of extra-judicial executions. “Sometimes they want to arrest someone—why not go to where he works or pick him up during the daytime if he's not in hiding? They come at night, raiding houses, shooting up the place, hurting people. It breeds bad blood with the Muslim community,” said Khalifa.

Kenyan authorities accept there is a problem. They have established both an Internal Affairs Unit to handle police complaints and the Independent Policing Oversight Authority (IPOA), which was set up by a November 2011 Act of Parliament to provide for civilian oversight over Kenyan police. Despite a lack of resources and political attacks, IPOA has taken on police abuses.

A 2014 counterterrorism security operation known as Usamala Watch targeted Nairobi's Somali neighborhood of Eastleigh after a series of bombing and grenade attacks. An IPOA report revealed a series of serious police abuses in the course of the operation:

It is apparent from documents availed to the Authority that the National Police

Service considered Eastleigh Estate and its suburbs to provide a conducive environment to hide illegal immigrants and even al-Shabab operatives from Somalia.... This environment would, in their view, also be conducive for the preparation and execution of the terrorist attacks. Documents availed to the Authority indicate that as at 24th May 2014, a total number of 2724 persons had been screened by the Police. Out of this number, **322** were listed as **Kenya Somalis** while **293** were listed as **Other Kenyans**. This dichotomy of listing members of the Somali ethnic group from “other Kenyans” must have fuelled the accusation labeled against the Police of “ethnic profiling” as it meant that for purposes of identification, those labeled as “Kenya Somalis” were kept separate and distinct from the “other Kenyans.”

IPOA regularly condemns police abuses, reminding the authorities, “unfair policing shapes the view of police as biased and untrustworthy. It generates reluctance to cooperate with police officers, which in turn undermines efficiency in profound ways. IPOA is confident that that is not the image that an increasingly professionalized and accountable National Police Service would wish to foster in the minds of the public.”

The U.S. government is supporting Kenya's security forces in a number of ways. Kenya is a major African recipient of Department of Defense (DOD) “train and equip” aid, totaling almost \$80 million to date, and the country is one of the top five global recipients of State Department Anti-Terrorism Assistance (ATA) funding, averaging around \$8 million annually in recent years.

The U.S. government works directly with the Kenyan security services, providing training and assistance. Law enforcement assistance over the past five years has been over \$60 million, including some to IPOA, but the U.S. government needs to prioritize ending the exclusion of Kenyan civil society from the discussion and decisions surrounding the fight against extremism.

President Obama should address the issue of Kenyan police abuse and how it undermines the fight against violent extremism, while acknowledging that the United States has its own security force problems. In late May 2015 U.S. Ambassador to Kenya Robert Godec struck the right tone in a speech at Laikipia University. With a commendable lack of finger-wagging the ambassador said:

As many of you know, in the United States we continue to debate the role and power of the police. This has been a difficult time for police relations with some communities, particularly the African American communities, in the United States. Local police forces have used excessive force in some cases, and innocent people have died as a result. But, protecting human rights is not only the right thing to do. It is the smart thing to do.... Time and time again, we have seen that human rights abuses—by governments, by courts, by security forces, and even by citizens against other citizens—foment violent extremism. Depriving people of their rights fuels the kind of anger and desperation that can lead to violence.

It is this sort of non-judgmental posture that President Obama should adopt when speaking about Kenyan police abuses.

The Fight against Extremism

The Kenyan authorities, like those in the United States and elsewhere, are still reaching for a fuller understanding of what drives extremism, and what attracts some to violence. Some things are known. As President Obama said at the February 2015 White House Summit on Countering Violent Extremism, “poverty alone does not cause a person to become a terrorist, any more than poverty alone causes someone to become a criminal.... But when people—especially young people—feel entirely trapped in impoverished communities, where there is no order and no path for advancement, where there are no educational opportunities, where there are no ways to support families, and no escape from injustice and the humiliations of corruption—that feeds instability and disorder, and makes those communities ripe for extremist recruitment.”

Kenya’s high unemployment and poverty rates—fueled by corruption—threaten the country’s stability and help drive disillusioned youth to join al-Shabab and other extremist groups. According to a World Bank report of May 2015, about 90 percent of people are employed in the informal sector, 70 percent of unemployed people are between 18 and 35 years old, and the country needs to create millions of new jobs annually to address the growing rate of unemployment.

The World Bank also warns of “risks... from the continued downturn of the tourism sector arising from security concerns.” Visitors to Kenya are down 25 percent this year. This follows a fall of 4.3 percent the year before and has forced the Kenyan government to allocate \$55 million for “tourism recovery.” In June 2015 Brussels

Airlines, which has been flying passengers from Belgium to Kenya for 58 years, announced it would stop all flights to Nairobi beginning in October this year.

President Obama also pointed to other grievances that terrorists exploit: “[T]he link is undeniable. When people are oppressed, and human rights are denied—particularly along sectarian lines or ethnic lines—when dissent is silenced, it feeds violent extremism. It creates an environment that is ripe for terrorists to exploit... And so we must recognize that lasting stability and real security require democracy. That means... independent judiciaries that uphold the rule of law, and police and security forces that respect human rights, and free speech and freedom for civil society groups.”

Kenya held its own Countering Violent Extremism conference at the end of June 2015, billing it as “a follow up to the February 2015 White House Summit.” While agenda topics included “Effective Partnering in Combating Violent Extremism,” and “Understanding the Architecture and Dynamics of Radicalisation and Recruitment,” it failed to include most groups working on these issues, even excluding the Kenya National Commission on Human Rights, a public institution established by the 2010 constitution.

Although organizers claimed more than 500 participants attended, few were from civil society. Muhuri and Haki Africa were not invited, although Haki Africa Director Hussein Khalid was part of the White House Summit in February 2015. Undersecretary of State Sarah Sewall, who headed the U.S. delegation to the conference, rightly addressed the omission in her opening remarks: “The United States is disappointed that some of the Kenyan civil society groups so central to the discussion

about security and terrorism such as Muhuri and Haki Africa, which President Obama welcomed at the February White House summit, are not able to participate in our discussion today. Governments are stronger in their fight against extremism when they make all citizens feel included, protected and respected.”

Human Rights First attended the conference, and the level of discussion was patchy. Several speeches made the points that explanations of extremism cannot be reduced to religion or poverty, and that young people and civil society needed to be engaged in efforts to counter terrorism. Yet very few young people or civil society representatives were invited to the conference.

In his speech to the plenary, Professor Ludeki Chweya, Director of the Kenya School of Government, suggested that drivers of extremism include a breakdown in the traditional family structure, single parent families, a lack of old school discipline, and the new unacceptability of flogging the neighbors’ misbehaving children.

Meanwhile, too many of those with real expertise were not invited to the four-day conference, raising questions about the Kenyan authorities’ commitment to an inclusive approach to countering extremism. President Kenyetta’s speech promised that his government “will work with civil society,” citing “the need to strengthen communities so that they can ward off extremists and work confidently with security agencies to root out terrorists and prevent radicalization.” But while civil society organizations and journalists are targeted for exposing security force abuses, this rhetoric sounds empty and false.

A Mombasa-based journalist told Human Rights First that reporters are routinely “clobbered”—

physically beaten—by security forces when covering counterterrorism incidents.

The Kenyan president also highlighted the amnesty initiative his administration established to rehabilitate and integrate terrorists who want to return home, offering “an unconditional amnesty to all the youths that have been in foreign lands.” It’s an interesting idea, but so far there are few takers. The Kenyan Ministry of the Interior reported only 85 people were participating in the initiative by the end of May 2015.

“It’s a poorly thought-through project,” a former senior Kenyan security officer told Human Rights First. “It needs a mix of civil society and government planning but that’s not what’s happened. It must be a timebound offer with clear coordination and a proper strategy. This is something the U.S. government could help with.”

Kenya’s efforts at countering extremism are failing partly because of a lack of cooperation with civil society. Muhuri Executive Director Hassan Abdi Abille said, “This government will never win the war on terrorism because of a lack of public participation. If the elite like us isn’t allowed to participate how will the common people?”

President Obama should mention Muhuri and Haki Africa by name in his public remarks in Kenya, and meet with representatives of both organizations to signal that attacking legitimate dissent is harmful to the struggle against violent extremism.

Abdul Malik

President Obama should raise with the Kenyan government the return of the one remaining Kenyan detainee in Guantanamo Bay to his homeland. Abdul Malik (aka Mohammad Abdul Malik Bajabu) has been imprisoned at the Guantanamo detention facility since 2007 without charge or trial, and has been designated for indefinite detention—meaning he has not been cleared for release and likely would never be tried for any crimes. Malik, according to a U.S. government assessment of questionable reliability, was involved in planning and executing the 2002 attacks against an Israeli-owned hotel and an Israeli airliner in Mombasa, Kenya, and involved with other plots against Kenyan targets.

President Obama’s meeting with the Kenyan government provides a prime opportunity to create a plan for Malik’s return to Kenya, in line with the president’s plan to close Guantanamo.

First, Malik should be given a long-overdue Periodic Review Board (PRB) hearing so that the current level of risk he presents to the United States can be accurately assessed. President Obama established the PRB, made up of high-level representatives of all relevant agencies (including the CIA, Defense Department, State Department, and Office of the Director of National Intelligence) to review the cases of Guantanamo detainees and assess the threat they pose to the United States and its allies.

If the PRB decides that Malik no longer poses a serious threat, he should be cleared for release to Kenya. If the PRB determines he does pose a significant threat, the United States and Kenya can still craft an appropriate security agreement so that he can be transferred and tried or detained in Kenya, as necessary for U.S. security and appropriate under Kenyan law. Such an agreement may include periodic reporting of his status and whereabouts to satisfy any legitimate U.S. security concerns. We urge President Obama to address this issue with the Kenyan government and agree to a plan for returning Malik to his homeland rather than have him languish indefinitely in the Guantanamo Bay prison without charge or trial.

Vulnerable Communities

LGBT

President Obama's trip is prompting another round of attacks on Kenya's LGBT community, attacks that some activists fear could turn violent around the time of the visit. A series of senior political and religious leaders have stepped up their negative rhetoric in recent months, with Deputy President William Ruto telling churchgoers in May, "We will not allow homosexuality in our society as it violates our religious and cultural beliefs," and "There's no room for homosexuality in this country. That one I can assure you."

Although the new Kenyan constitution outlaws discrimination and "guarantees to all Kenyans the rights to life, liberty, security of person, and privacy," and "protects individuals' freedom of expression, association and assembly, and movement," the penal code still permits long prison terms for "acts of gross indecency" and acts "against the order of nature."

As the 2014 State Department country reports described it, "Violence and discrimination against LGBT individuals was widespread."

When President Obama visited Senegal in 2013 he said, "I want the African people to just hear what I believe... My basic view is that regardless of race, regardless of religion, regardless of gender, regardless of sexual orientation, when it comes to how the law treats you... people should be treated equally."

In a response at the time, head of the Catholic Church in Kenya Cardinal Njue said he didn't think God was "making a mistake when he created Adam and Eve." At a June 2015 religious event the cardinal described gay and lesbian practices as "rubbish," saying they were

imposed on Kenyans by foreign nations. The cardinal's line that gay rights are Western values and anti-African is a common and potent theme, one that the president should handle candidly, but with some delicacy during his trip.

Assembly majority leader Aden Duale this year described homosexuality as a social problem "as serious as terrorism," and warned, "We want to tell Obama that if one of the agendas of his visit is to push for the adoption of same sex marriage, we won't accept it. As a Muslim and a leader in [governing] Jubilee administration I must tell the president the truth about issues that are dear to the Muslim community." At a Catholic church meeting with other MPs at the end of June Duale said, "Let Obama keep away from the gay topic when he comes to Kenya. Let him know that we read the Bible and the Quran; we are Africans and don't want these evil things." MP Samuel Gichigi added, "We are telling Obama that he should talk only about development and how to promote relations between the two countries. He should not talk about anything to do with gay marriages. We [are] Africans and we do not want gayism and other evil things in Africa."

The small but vocal Republican Liberal Party is trying to push an anti-homosexuality bill through parliament. Several LGBT and other civil society leaders in Kenya told Human Rights First they hoped Obama would not address the issue openly in public, fearful of him provoking a powerful backlash that would hurt those defending the human rights of LGBT people.

Esther Adhiambo, based in Mombasa, is a human rights defender working to advance the human rights of gender and sexual minorities. She is the Programs Coordinator of the Persons Marginalized and Aggrieved (PEMA Kenya). She told Human Rights First she is nervous about what Obama will say publicly on the issue

of the rights of LGBT people. “We’re already putting a security system in place in anticipation of the reaction to what Obama might say—his visit could be used as a trigger to violence against LGBT people,” she said. “We’ve already seen how vigilantes come to people’s houses and chase them out of their neighborhood—transgender people are often more visible and particularly vulnerable.” She says she would rather the president not address the issue openly, not “say the magic words LGBT in a speech, but rather focus on human rights in general as outlined in the Kenyan constitution.”

An Anglican priest in Mombasa also told Human Rights First he fears that if Obama mentions the issue publicly, “there will be demonstrations the next day” because “priests and Muslim leaders will be told by their senior leaders to organize protests in response.”

Other activists say Obama should not stay silent on the issue, and since he raised it in West Africa three years ago he should raise it in East Africa on this trip. They also note that the Kenyan press will ask him about the issue anyway.

Some activists say he should seize the rare chance to speak as a western leader of African heritage to push back against the idea that human rights for LGBT people are “unAfrican,” and remind Kenyans that last year the African Commission on Human and Peoples Rights adopted Resolution 275 on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity.

Eric Gitari of Kenya’s National Gay and Lesbian Human Rights Commission told Human Rights First that Obama should publicly address the issue. He said the visit “is a unique opportunity—a president with Kenyan heritage who can call people here brothers and sisters.

It’s a rare chance for the issue to be raised this way, to show that it’s not a ‘foreign issue.’”

Gitari tried to officially register the NGO with Kenya’s government in 2012, but it was rejected six times. He filed a petition based on Article 66 of Kenya’s constitution, which guarantees the right to freedom of association, and in April 2015 the High Court of Kenya ruled in Gitari’s favor.

Civil society groups also fear that LGBT groups will be targeted in amendments to the PBO Act, governing the operation of civil society organizations. A document believed to be a draft of the latest amendments to the act found its way into the hands of several activists. Human Rights First reviewed it during its trip. The draft includes a provision “to prohibit registration” to groups engaged in the “promotion and advocacy of indecent acts.”

Although the LGBT community faces official and public attacks, there is some indication that attitudes are changing. A 2007 Pew Research Study found 4 percent of Kenyans said society should accept homosexuality—by 2013 that percentage doubled.

Refugees and the Somali Diaspora

Kenya’s refugee issues are tightly bound to Kenya’s security issues and the war in Somalia. According to figures from the Office of the United Nations High Commissioner for Refugees (UNHCR), the number of refugees and asylum seekers in Kenya at the end of May 2015, based on UNHCR registration, was 591,101. Of these 419,046 were from Somalia.

Around half of the Somali refugees and asylum seekers in Kenya live in the Dadaab refugee camp. Some have been there for as long as 24 years.

Some in the Kenyan security forces and others often suspect Somali refugees to be sympathizers of Somali-based al-Shabab. Even though the Garissa massacre had nothing to do with Somali refugees, the police responded with mass arrests, extortion, and abuse against inhabitants in Somali neighborhoods of Nairobi. The year before, in a security operation between April and July 2014, around 350 undocumented Somali nationals were deported to Mogadishu.

The 2014 State Department country reports noted: “Police abuse of asylum seekers and refugees increased significantly after the government’s March 25 directive restricting all urban refugees to designated camps and as a result of the Usalama Watch [security] operation. As more than 5,000 urban refugees were being forcibly relocated to refugee camps, multiple NGOs reported brutal treatment of refugees from April to July while the directive was implemented. Police officers reportedly beat scores of refugees, including women and children, during day and night raids on homes and detained many for extended periods without charge in poor prison conditions, according to rights organizations. Somali refugees, particularly in Nairobi and in northeastern areas such as the Dadaab refugee camp, experienced frequent harassment.”

The Somali community continues to suffer from police targeting. “Somali refugees and Kenyan Somalis are often packaged as one in Kenyan minds, and Somalis are losing the blame game,” said Catherine Hamon Sharpe of UNHCR. The Kenyan government is pushing for large

Abuse by Local Security Forces Spurs Local Radicalization

At a regional conference in June 2015 on Countering Violent Extremism (CVE), hosted in Kazakhstan, U.S. State Department official Robert Berschinski repeated what had been presented at the Nairobi CVE conference the week before. “One of the data points noted during that [Nairobi] conference was that 65 percent of Shabaab members interviewed by a think tank said they joined the group as a reaction to the aggressive and discriminatory actions of local security forces, as well as ethnic profiling, arbitrary detentions, and police corruption,” he noted. “Now we need to take each instance of radicalization within a local context, but there is a generalizable point to be made that populations that have access to transparent and non-corrupt governance, the rule of law, and the fundamental freedoms of expression, religious belief, association, and assembly tend to have fewer grievances and more outlets for what grievances they do have, and are thus more resistant to the call of violent extremism.”

numbers of Somali refugees to return to Somalia, and has announced a target of 100,000 repatriations to Somalia by the end of 2015.

So far this year only a couple of thousand people have been voluntarily repatriated, making the 100,000 figure absurdly ambitious. “All returns must be strictly voluntary,” said Hamon Sharpe. “President Obama should emphasize that when he’s here that the U.S. and Kenyan government should do everything they can to make returning to Somalia a much

more attractive and sustainable option than it is now,” she said.

Few want to return to Somalia while the situation is so volatile and the infrastructure so poor. The only durable solution to the Somali refugee issue is for Somalia to be a safe and viable option for large numbers to return to.

Civil society leaders believe the Kenyan churches could show greater leadership on refugee issues, challenging the negative views, casual discrimination, and collective punishments targeting refugee and Somali diaspora communities.

To counter the view of the Somali and wider Muslim community as being suspect, “Obama should say something positive about the Muslim community and its social and economic contribution to the country,” said Hussein Khalid, Executive Director of Haki Africa.

Conclusion

Kenya’s robust civil society is under increasing threat, and in the interests of effective counter-terrorism and the sustainable stability of Kenya, the U.S. government should use the opportunities presented by President Obama’s July trip to express support for independent activists. It should also use its extensive aid and interaction with Kenyan security services to work to roll back harassment and abuse targeting civil society leaders and groups. The United States cannot afford for Kenya to slide into repressive governance if it is to be the ally Washington needs in the fight against al-Shabab and other violent extremist groups.

Recommendations

During his forthcoming trip President Obama should:

- Speak out publicly for the need to protect civil society and journalists, and to involve civil society experts in discussions and decisions on countering extremism.
- Emphasize the promise of the 2010 constitution, and warn against the dangers of its protections not being implemented.
- Present advice on Kenya’s security challenges in the context of shared challenges, referencing the United States’ own policing problems and U.S. violations in the war on terror.
- Reference the positive contribution made by Kenya’s Muslim community to the country, and warn against the risks of collective suspicion and punishment.
- Publicly meet Kenyan civil society leaders, including LGBT leaders, representatives from targeted NGOs Muhuri and Haki Africa and refugee NGOs, ideally a representative from the refugee community in Dadaab. He should mention Muhuri and Haki Africa by name in his public remarks as NGOs with a valuable contribution to make in the fight against extremism.
- Visit his family village at Kogele to establish greater credibility with the Kenyan public.
- Reference the rights of LGBT people in the context of protections afforded by the Kenya Constitution and with reference to Resolution 275 of the African Commission.
- Publicly meet human rights defenders from the region including Rwanda, Ethiopia, Somalia, Burundi, and eastern Congo.

- Publicly meet representatives of commissions set up by the constitution, including the Kenya National Commission on Human Rights, and of the Independent Policing Oversight Authority.
 - Raise with President Kenyatta the repatriation of Guantanamo detainee Abdul Malik.
 - Remind the Kenyan authorities that while the country hosts large numbers of refugees, it needs to properly protect them and work to ensure that actions against al-Shabab are not directed at refugees or the Somali community in Kenya.
 - Insist that all returns of refugees to Somalia must be voluntary, and outline how the U.S. government will work with the Kenyan authorities to make that option more attractive and sustainable to Somali refugees in Kenya.
 - Publicly challenge the misconception held by some government officials and security sector practitioners that resources spent on upholding international human rights standards are resources diverted from maintaining security and stability.
 - Remind government officials that human rights are key to achieving security and stability, that security force effectiveness will improve as relations with communities improve, which will in turn contribute to longer-term security. He should emphasize that security efforts rife with human rights violations undermine security and encourage violent extremism.
 - Announce what practical steps the U.S. government will take in the fight against corruption, including addressing the issue of the spoils of corruption held in U.S. banks, technical help from U.S. security forces in investigating corruption, and Presidential Proclamation 7750.
 - Urge the implementation of the Public Benefit Organizations (PBO) Act without delay.
 - Avoid meeting Deputy President William Ruto, whose homophobic rhetoric and ICC indictment should not be rewarded with a photo op or meeting.
- Obama's public messages should be made in a radio address, possibly including some local language phrasing, to reach the maximum Kenyan audience.

The U.S. Government Should:

- Vigorously implement Presidential Proclamation 7750, which would deny entry to the United States to corrupt Kenyan officials who solicit or accept bribes, as well as their family members and dependents who benefit from the corruption, thereby refusing to enable corrupt officials to benefit from U.S. resources or find a safe haven in the United States.
- Regularly convey through private conversations and public actions that the United States believes Kenyan policies foment instability.
- Continue support for Independent Policing Oversight Authority.
- Expand support for the Security Governance Initiative, and particularly for the SGI's efforts with Kenya. Good governance is a necessary component of establishing and maintaining an effective, human rights compliant security sector. Without it, "train and equip" security cooperation is likely to be ineffective or counterproductive.

- Ensure all U.S. agencies engaged in Kenya raise concerns about harassment and abuse of civil society as well as the need to create an environment for civil society to flourish (as outlined in September 2014 presidential directive on standing with civil society).

The U.S. Embassy in Nairobi should:

- Continue to publicly state, as Ambassador Godec has, the need for police reform and the protection of civil society.
- Post on its website the Supporting Human Rights Defenders guidelines published by the State Department in March 2013, outlining what support the embassy can provide to human rights defenders. President Obama's February 2015 speech on countering violent extremism should also be posted in English, Swahili, and other local languages.
- Show public support for Haki Africa, Muhuri and other NGOs and activists targeted by the authorities.
- Review restrictions on embassy personnel traveling to certain parts of the country (e.g. Mombasa) to enable better engagement with civil society.
- Promote exchanges between religious leaders in the United States and Kenya (ensuring these don't legitimate proponents of religious intolerance).
- Promote educational and cultural exchanges with regional Kenyan governorates—twinning cities, for example—to establish a closer Kenya-U.S. relationship not dependent on central government and to promote devolution.



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