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## Aid, Civil Society and the State in Kenya since 9/11

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## **I) Introduction**

The horrific bombings of the US embassies in Nairobi and Dar es Salaam thrust east Africa to the centre of world concern over the threat of terrorism and presaged the events of September 11<sup>th</sup> and the declaration of the Global 'War on Terror'. Images of crumbled office blocks and the twisted wreckage of buses and vehicles on the streets of central Nairobi gave rise to public consciousness of Osama Bin Laden and a new brand of international terrorism. Following the attacks, U.S. President Clinton ordered the targeted air strike of a pharmaceutical plant in Khartoum, the capital city of neighbouring Sudan, which remains on the US list of state sponsors of terror and for a time in the 1990s was official host to Bin Laden. Kenya has since been the theatre for further attacks targeting Israeli tourists and commercial interests. The conflagration of violence and renewed clan warfare that has gripped neighbouring Somalia since the invasion of US-backed Ethiopian forces in late 2006 against the Islamic Courts Union (ICU) that briefly governed southern Somalia has drawn Kenya deeper into the persecution of the 'War on Terror'.

Kenya's cooperation on counter-terrorism objectives in the 'War on Terror', in turn, has intersected with social divisions and debates in a shifting domestic political context, renewing concerns over the treatment of Muslims and Somalis and highlighting the fragility of civic space that was carved out during the democracy struggles of the 1990s. The background to these concerns and tensions was the historic election in 2002 of a coalition of opposition parties that was supported by a wide section of civil society including churches and religious leaders, human rights organisations and democracy and governance NGOs. The election marked the consolidation of democratic processes stretching back over a decade. Throughout this period aid levels continuously declined to the Kenyan government as increasing amounts of democracy assistance were channeled through a blossoming civil society organising around governance and human rights issues. The democratic triumphalism of 2002 marked the opening of political space and a shift in relations between the state and civil society.

Thus, the encapsulation of Kenya into the 'Global War on Terror' has coincided with democratic strides and a widening space for deliberative politics. There have been significant shifts in the terrain for organising outside of the state, as well. The role for civil society is no longer defined by gaining access to political processes and decision-making, which was marked by the election of a reformist government and the inclusion of several civil society leaders into elected positions and statutory bodies. However, the opening of political debate has been matched by the fragmentation of civil society around competing interest groups, reflecting deep divisions and centrifugal forces seen in wider society.

The changing role of diplomacy and aid has been significant, as well, in shaping the contours of state-civil society relations in the context of counter-terrorism. The Kenyan government has instituted a new counter-terrorism regime under considerable diplomatic and aid pressure thus giving rise to new pressures and threats for civil society. In this context, the leverage of aid has shifted away from previous priorities on good governance and human rights. Civil society support has also declined due to the drive of aid donors to align with the government's development priorities and goals and to this end work through government programmes and agencies. Elements of civil society have been an important part of internal forces that have opposed the introduction of new counter-terrorism structures and advocated for the protection of human rights and treatment of suspect communities. However, in spite of the opening of political space, the challenges of counter-terrorism have brought to light the lack of political consciousness in mainstream civil society, which on whole has failed to respond to emerging human rights concerns, the treatment of minorities and restrictions on the spaces for civil society to organise.

This paper begins by examining the politics of aid, civil society and the state in a deeper historical context. The emergence of civil society as a broad terrain for organising tied into state-building processes that disadvantaged certain populations and regions of the country. Since 2001 the security prerogatives of

northern governments have come to increasingly shape aid donorship through the creation of institutional linkages between development departments and security agencies, the inclusion of new security objectives in development strategies, and the concomitant development of programming and new funding pools to support security-oriented work. In Kenya, the role of aid has tended to support misconceptions and flaws embodied in the underlying logic of the 'Global War on Terror'. These are assessed in the third section. Certain aid actors have contributed to the establishment of new counter-terrorism structures, which are examined in section four. These have caused new pressures and threats for human rights, the treatment of Muslims and Somalis, and the spaces for civil society to organise. These are considered in light of the differential responses of civil society and the failure of mainstream groups and the media to interrogate the pretext of counter-terrorism in Kenya or the methods and strategies employed under the guise of security.

This paper draws upon fieldwork in Kenya carried out on several trips between July 2006 and June 2007. The research is based on a review of primary and secondary sources including government and donor documentation and media reports as well as qualitative interviewing with aid and donor agency staff, government officials, democracy and governance NGOs, humanitarian organisations, human rights activists, Muslim community leaders and journalists. A total of 56 interviews were carried out in Nairobi and Mombasa. Further, a roundtable was organised in Nairobi with donor agency officials, civil society activists and NGO representatives to scrutinise important themes arising from the interviews and to assess the wider context of donor – civil society relations in Kenya.

## **II) Politics of aid, civil society and the state**

The security prerogative affecting bilateral relations and shifts in development strategies and objectives is one of many pressures and trends shaping relations between civil society and the state in Kenya. Discussions on counter-terrorism tie into various divisions and debates in Kenya on uneven development, inequality, and marginalisation of certain communities and areas of the country. A deeper understanding of the positions different communities are staking in relation to global politics and counter-terrorism measures and legislation thus requires examining the broader social and political context of state-civil society relations.

The perception in the west of Kenya as a linchpin of stability in east and the Horn of Africa belies a history of armed conflict, social violence, subversive political struggle, and the abuse of powers by successive political leaders. Armed conflict and violence were constitutive of the modern Kenya nation-state, notably the pacification campaigns against pastoralist populations in the north of the country, the displacement and removal of Maasai peoples from high potential eco-zones, as well as insurgency by Mau Mau fighters against the colonial government throughout the state-declared emergency in the 1950s. Many state institutions that were created under colonial rule for advancing and consolidating the economic and political interests of the white settler and commercial farming classes remain in place. The provincial administration is a notable vestige of colonial governance and oppressive politico-administration that consists of a top-down hierarchy of appointed provincial and district commissioners, as well as district officers, village chiefs and administrative police. The Kenya National Police is both feared and reviled by a general public that has grown accustomed to corruption and brutality in policing practices. Throughout Kenya's post-independence history, the police and security agencies have been routinely implicated in human rights abuses including arbitrary arrest and detention, torture, as well as extra-judicial killings.



State bureaucratic practices of control in turn are perceived to disadvantage certain marginalised communities, in particular pastoralists, the urban destitute and slum dwellers, and Muslims. Feelings of marginalisation run deeply in these communities and tie into a legacy of unequal distribution of state resources for development and the failure of the state to provision social welfare and security for these groups. High levels of social violence and chronic low intensity conflict in some parts of Kenya are thus unsurprising in this context of oppressive state machinery and unequal development. In response to substantial development challenges and widespread poverty, the post-independence governments led by Jomo Kenyatta and Daniel Arap Moi promoted a notion of self-help, known as *harambee*, as well as charitable activity through missionaries that had been instrumental in provisioning health, education and agricultural extension services throughout Kenya during colonialism. Welfare-oriented community-level organisations such as women's and youth groups mushroomed under the state-promoted ideal of *harambee*. However, these were distinctly apolitical and mainly existed to address the manifestations of poverty while providing a clear channel for political patronage by political elites. This helped to create a precedent in Kenya in which charity is understood as gift-giving, not about challenging power relations and structures.<sup>i</sup> Under Kenyatta, Kenya became a one party state and there was a distinct intolerance for political organising outside of the ruling party machinery. Thus, there was no sanctioned political space for deliberation on the significant inequalities, uneven development and social and culture differences that underpin a chronic pattern of conflict and violence.

Kenyan civil society was shaped greatly by state building processes begun during colonialism and continuing in the period of industrialisation after independence in 1963. These processes led to the formation of modern forms of civil society such as trade unions, NGOs and professional societies, setting the stage for external engagement with civil society. A more politically-conscious form of civil society rose to prominence in the advent of multi-party politics in the early 1990s and subsequently during the struggle to secure a genuine democratic space through electoral reforms, such as opposing queue voting, and comprehensive

constitutional reform.<sup>ii</sup> Faith groups, including the Catholic Church and Protestant denominations, were instrumental in leveraging a politicised civil society in the late 1980s and early 1990s. Civil society, led initially by churches, flourished under public goodwill and receipt of donor assistance throughout the period of democratic struggle. Kenya under the regime of former President Moi was regarded as a near pariah state. Several leading donors ceased to channel funding through government offices or state institutions, instead favouring to support liberal-minded non-governmental organisations and human rights groups to pressure the government to commit to political reforms.

Moi regarded civil society with undisclosed contempt and, not inaccurately, as a way for donors to channel support to political opposition. In 1991, just before the introduction of multi-party politics, the government passed an NGO law. Before its inception, civil society lobbied the government to create an enabling legal and policy framework to coordinate the activities of the sector, which had expanded enormously since Kenya's independence in 1963. However, the NGO Act sought to restrict civil society by establishing a government NGO Bureau and a quasi-independent NGO Council stuffed with government appointees. Controversially, the law required re-registration of NGOs every five years, which NGOs viewed as a tactic of intimidation meant to limit their engagement in politics.<sup>iii</sup> The Act became a focus of NGO protest and in 1993 the government entered into dialogue with civil society over the content of an NGO policy framework. Although a policy was never agreed, NGOs were successful in pressuring the government to agree several changes be made to the legal framework that resulted in greater independence of the sector and self-regulation through an NGO Council whose leaders would be elected by NGO representatives themselves.

A network of religious leaders, discrete activists and influential CSOs – many supported by aid agencies – was at the forefront of the democratisation struggle throughout the 1990s. The victory in the December 2002 election of the National Rainbow Coalition (NARC), a motley grouping of political parties and former adversaries that campaigned on a political reform platform, was regarded as a

triumph for civil society and its efforts to consolidate democratic space. The election of NARC under the new President Mwai Kibaki was tied to its promises on governance reforms and a new political dispensation to address corruption, predation and the incompetence of politico-administrative functionaries and routine abuses by the police. Several key positions in the new government were filled by veteran civil society activists and human rights campaigners, including the Minister for Justice and Constitutional Affairs as well as the chief of a new ethics division in the Office of the President, who had been head of the Kenya chapter of Transparency International. Indeed, civil society perceived the NARC government to be its own.<sup>iv</sup> The struggle of a liberal, politically active civil society had been about gaining access to decision-making and to influence government policy and bureaucratic practice. Civil society, blinded by its apparent triumphalism in helping to elect NARC, was slow to define its purpose in the changed political context. Its growth during the democratisation process was determined by the nature of the former Moi regime and insipid politics at the heart of government at the time.<sup>v</sup> The failure of civil society to adequately define and articulate its role and purpose in the post-Moi context is a qualifier of its apparent achievement in gaining access to government.

Since the 2002 election, the ruling NARC coalition has divided over disagreements on proposed constitutional reforms. These centred on changing executive authority and dividing powers between the president and a new post of prime minister. The first draft of the constitution known as the Bomas Draft was prepared by a broad constitutional assembly but was subsequently amended by elements close to the President. The amended draft, known as the Wako Draft, was voted on in a plebiscite in November 2005, which was won by the 'No' camp that supported shifting power to an executive prime minister as proposed in the Bomas Draft. This led to a split in the government and the resignation or firing of ministers aligned with the 'No' camp, leaving the cabinet composed of close allies of the president.<sup>vi</sup>

Ongoing debates on constitutional reforms and, as described below, opposition to counter-terrorism measures and advocacy on human rights issues, have reinvigorated civil society to a degree. But civil society in Kenya has shown itself to be an arena of political divisions and social disharmony. Most of civil society was strongly aligned with the 'No' camp and invested significantly in civic education on its positions. Leadership of the government recognised representative body for NGOs, the NGO Council, supported the 'Yes' camp. This led to acrimony within civil society and contributed significantly to the management crisis that engulfed the NGO Council and the failure of civil society up to now to agree representation of the sector at higher political levels and forums of debate. Thus, for example, the government through the NGO Bureau has initiated discussions on establishing a policy framework for NGOs. The government has consulted discrete individuals in civil society but has been unable to seek a more broadly representative view from civil society in the absence of a functioning umbrella organisation.

There have been significant changes in aid policy and practice toward civil society in Kenya since 2002. The election of NARC heralded a new trust and confidence in the capacities and commitments of the Kenyan state. This, in turn, dovetailed with shifts in donor aid approaches more widely to align with the development priorities and objectives of aid-recipient governments, as well as better coordinate and harmonise bilateral aid and, to this end, to channel greater support through government-owned programmes. Many bilateral agencies have increased their aid to the Kenyan government as well as shifted their support to sector-wide programmes as opposed to providing project-based funds to individual NGOs. This has meant, for example, that donors are funding fewer one-off projects, such as supporting an NGO to distribute anti-retroviral drugs (ARVs) at a particular clinic. In the new aid context in Kenya, for example, donors instead would channel greater support through a Ministry of Health initiative to distribute ARVs, which may include supporting an NGO to distribute drugs in line with the Ministry's plans and targets. These changes are similar to donor approaches on governance in Afghanistan, where civil society is a mere afterthought in state-building strategies.

Governance is equated with government and the emphasis on checks and balances fades away once a government that speaks the good governance language of donors comes to power.

These changes in aid approaches are acutely evident in the democracy and governance sector, where many leading bilaterals are supporting a large reform programme on the Governance, Justice, Law and Order Sector, or GJLOS. GJLOS is a Kenyan government programme but the procurement systems and finances are managed by the accounting giant KPMG. The programme envisages an ideal type of relationship between the state and civil society whereby non-state actors implement reforms under priority areas that have been identified by the state and agreed by contributing donors. GJLOS incorporates a fund for supporting civil society. The Kenyan government has resisted the inclusion of civil society in GJLOS although it has welcomed its contribution in other sectors such as health and education.<sup>vii</sup> Further, civil society actors have objected fundamentally to receiving support under a government-controlled programme and have come to openly question the government's commitment to reforms. Many leading NGOs working on democracy, governance and human rights issues have experienced difficulties in accessing donor funds, which they explain is because donors have shifted their support away from civil society to the government. Leading donors including USAID and DfID maintain their funding for Kenyan government programmes is drawn from new support, which is reflected in an increase in overall aid they give to Kenya. Still, donors have tacitly recognised the difficulty many NGOs have encountered in accessing donors' funds for work on democracy and governance and are moving to establish a funding facility for non-state actors outside of GJLOS.<sup>viii</sup> But here, too, divisions have emerged between civil society, which insists on greater representation in deciding the use of these funds, and donors who believe this could lead to partiality and disagreements.<sup>ix</sup> Ultimately, the tensions point to a lack of trust between civil society and donors that has arisen since the election of the NARC government.

Another highly significant factor affecting donor engagement with civil society is fluctuating levels of funding for bilateral agencies and the concomitant shrinking of aid bureaucracies. Reductions in staffing levels have forced several donor agencies in Kenya to shift their approaches to working with civil society. These changes have involved greater outsourcing of key administrative and oversight functions to the private sector and large INGOs. An official with SIDA explained, '[i]n 2003 we found ourselves stuck with partnerships with thirty to thirty-five CSOs. It was impossible for us to handle that and to have dialogue with all of them. We didn't want to be a bank and that is the role we found ourselves [serving].'<sup>x</sup> In practice this has meant that donor agencies are giving larger grants to fewer, larger organisations with the administrative capacity for large grant administration. These trends disadvantage smaller, particularly indigenous civil society organisations without such capacity.

The changing aid context in Kenya has highlighted the fragility of liberal, predominantly urban-based NGOs that advocate on issues of democracy, governance and human rights. By attributing their current funding constraints to shifting aid approaches, NGOs in the democracy and governance sector shift attention from issues that are more fundamental to their longer-term existence and position in Kenyan civil society, such as their continued dependence on external aid and disconnectedness from a domestic constituency that could guarantee it an element of independence. The intertwining of aid and security in the post-9/11 context further complicates the situation of liberal civil society in Kenya. The greater emphasis on security in bilateral relations, and the expectation of leading donors that the Kenyan government will do its bidding on counter-terrorism in the region, implies that donors are less likely to prioritise and seek reassurance from Nairobi on internal governance and human rights concerns. Regardless of the strategic interests impinging on development politics, the leverage of donors to influence the Kenya government's policy and practice toward civil society is diminishing as Kenya's dependence on ODA decreases. In recent years, ODA has accounted for less than 10% of planned expenditure. Of interest here is that this reduced dependency on foreign aid has enabled the

Kenyan government to strike a populist chord in stalling new counter-terrorism legislation that is widely perceived as an imposition of US priorities.

Aid officials claim their commitment to transparency, accountability and human rights as reasons for continuing support to civil society. The new mission statement of the Democracy and Governance office of USAID emphasises governance and the balance of powers between branches of government as well as between government and civil society.<sup>xi</sup> However, these objectives are seemingly in contention with the US government's support for controversial counter-terrorism legislation in Kenya that would shift the balance of powers to unaccountable authorities as well as security agencies with a history of human rights abuses, as described below. Behind the official proclamations of support for civil society, many donors support moves by the Kenyan government to extend its regulatory control over civil society through a proposed new NGO policy framework and by way of anti-money laundering legislation. Thus, donor pronouncements on governance reforms would appear at odds with the macro strategic considerations that determine aid flows in furtherance of the Global 'War on Terror'. These signify a return to a Cold War era politics of aid that demotes human rights and democracy matters to the disadvantage of civil society groups organising around these interests.

### **III) Aid and security since 9/11**

#### *A. The securitisation of aid to Kenya*

The attacks of 9/11, and the background of the US embassy bombings in Nairobi and Dar es Salaam, intensified the convergence of security strategies and goals with the objectives and activities of development assistance in Kenya. Security concerns have crept into the development objectives of many donor agencies in Kenya, reflecting an intensifying encapsulation of development into the security strategies of leading bilateral and multi-lateral lenders. As detailed before, the national security strategies of several leading donor countries now posit a role for development aid as part of 'softer' security and counter-terrorism strategies. Development agencies, in turn, have underlined the security function of aid as part of a suite of calibrated measures in response to the terrorist threat. There is anecdotal evidence that counter-terrorism and security priorities are determining shifts in the targeting of development assistance to different regions within Kenya as well as to new activities. Generally, indications are that there is a refocusing of US development aid to communities that are perceived as a security risk, including the Somali population inhabiting a large swath of eastern Kenya and the Swahili Muslims living along the coast, who have historical linkages with Yemen and Oman. One example of this security-determined targeting is a new USAID initiative on pastoralist livelihoods and peace-building in the 'Mandera Triangle', a development term to refer to the region inhabited by Somali pastoralists where Kenya, Ethiopia and Somalia intersect. At the same time it is promoting new involvement with Somali pastoralists, USAID is scaling back significantly its efforts on conflict reduction and peace-building in the 'Karamoja Cluster' covering the pastoralist-inhabited border region between Uganda, Kenya and Sudan.

Another indication of these changes is the changing orientation of development activities since 2001 to address, explicitly, the presumed causes of terrorism and radicalisation. These are thought to include underdevelopment, poverty and high levels of youth unemployment. In Kenya, donor agencies have developed new programming, and created new funding pools, to support initiatives on



development-security linkages. Muslim groups vigorously opposed efforts by USAID to develop curriculum for madrassas under a new strategic objective on education that was added to the agency's development portfolio in 2003. This was ostensibly to support the new government's policy reform to provide universal free primary education.<sup>xii</sup> However, efforts on madrassas specifically were interpreted by many Kenyan Muslims as an attempt to influence teaching and support for US policies inside madrassas. More recently, USAID has been involved in teacher development of madrassa *maalims* (teachers) in Coast Province as part of an initiative on 'Education for Marginalised Children in Kenya'.<sup>xiii</sup>

The greater interest, generally, in supporting initiatives in Muslim communities shows how Muslims have come into the range of view of donor agencies. But this is according to a gaze that constructs Muslims as problematic. The example of USAID supporting reforms within madrassas indicates that greater support is being provided to organisations working in and on 'suspect' communities, such as Muslims and young men. A UK government official in Nairobi explained, "[i]f you look at the engagement of donors with Muslim civil society, it is greater now than it was before and this is because of 9/11. You don't see us engaging to this extent with Hindu groups, or Buddhist groups, for instance. We wouldn't engage with Muslim groups as we are doing if there wasn't a problem of Islamic extremism." The same official went on, "there are some in Muslim communities who have a self-interest in perpetuating the message that Muslims are marginalised as a community. If you compare to 2001, you'd find that our engagement, both specifically and generally, with Muslims has increased."<sup>xiv</sup>

The nature and objectives of this engagement, however, seems to be the issue for many leaders and activists within 'suspect' communities, who understandably question new attention and resources from western donors. Civil society activists in these communities, in general, expressed a lack of trust in the motives of donor agencies, which ties into both national politics in Kenya around state-civil society relations as well as global politics and the perception of a 'War on Islam'. Leaders and activists within Muslim communities, in particular, indicated difficulty in

securing funding for activities that could be construed as challenging the counter-terrorism efforts of leading donors, such as advocating for the human rights of terror suspects.

Still, there are mixed and not entirely negative outcomes of donor efforts to engage with groups in Muslim communities. One initiative that has generated significant interest within the aid establishment in Nairobi is through Danish DANIDA, and involves experimental small grant support to several community organisations in Coast Province under the rubric of ‘Peace, Development and Security’, a euphemism in development-speak for assistance targeted to counter-terrorism objectives. Groups receiving assistance under the DANIDA initiative have undertaken a variety of outreach and advocacy activities that address problems of social justice and conflict. One group brought together church leaders and Islamic clerics for dialogue on issues of local and national importance, such as the inclusion of *kadhi* courts for Muslim personal law into the draft constitution, an issue that broke interfaith unity over broader constitutional change. The same interfaith group also mediated between the provincial security apparatus in Kwale, south of Mombasa, and the *Mlungunipa*, a group of mostly armed youth who had retreated to forests along the Kenya –Tanzania border to protest their socio-economic marginalisation. The clergy offered to speak with the youth after other efforts at mediation failed, and the government threatened the use of force.<sup>xv</sup>

Other donor agencies have sought the involvement of civil society through initiatives that explicitly seek to create awareness and support around the creation of new counter-terrorism structures. UNDP and the Commonwealth Secretariat have both provided technical assistance to the Kenyan government to develop and implement counter-terrorism legislation. Internationally, UN efforts on counter-terrorism have been monitored by a Counter Terrorism Committee (CTC). The Danish chair of the CTC in 2005 took steps to enhance the technical assistance provided through the UN counter-terrorism programme and link it to expanded development assistance efforts.<sup>xvi</sup> These efforts in Kenya involve capacity-building through the UNDP. A component of support provided to UNDP

includes work with civil society. UNDP officials in Nairobi intend to work with Muslim civil society organisations to counter perceptions that counter-terrorism measures target Muslims as well as to promote support of the need for new counter-terrorism law.<sup>xvii</sup> The CTC proposes supporting civil society to address the presumed causes of terrorism and radicalism as an alternative to hard security measures such as airport and border security and the training of special counter-terrorist police branches, which has been a greater focus of counter-terrorism assistance thus far.

The role of civil society has come to be seen as important in recent counter-terrorism strategy in Kenya in view of the lack of public support for counter-terrorism measures, generally, as well as the perception that such measures target Muslim populations. The role envisioned for civil society is to lend the aura of popular legitimacy to security strategies and activities, as well as represent the views of 'suspect' communities in dialogues on governance, security and development. However, as referred to previously, there is not appreciation for the role of civil society in providing alternative views or in any way challenging the motive, need and method of counter-terrorism and security strategies.

This is because of an overriding suspicion of civil society as a willing accomplice, unbeknownst abettor, ideological sympathiser, or intrusive human rights and civil liberties defender. The 'War on Terror' has occasioned a new regulatory fervour in aid bureaucracies. Counter-terrorism measures and legislation in donor countries have entailed stringent anti-money laundering rules that extend liability for terrorist atrocities beyond financial institutions to funding agencies, civil society organisations, and even universities. In practice, this has meant that grant-makers such as bilateral donors and foundations, as well as northern-based international NGOs that provide grants to southern CSOs and CBOs, have had to expand their vetting and monitoring of partner organisations to ensure they do not have any linkages to listed terrorist groups. For example, USAID requires its grantees to sign an 'Anti-Terrorism Certificate' (ATC). Other funding bodies such as the Ford and Rockefeller Foundations have inserted new language in their standard grant

agreement letters that reflect such downward pressures on grant-making agencies to prevent the misuse of funds. However, at least some American aid officials in Nairobi imply that the ATC is a bureaucratic necessity but has little practical impact. One official commented, “if we have any doubts about an NGO in the sense they may support terrorism or violence, we would not support them anyway. The ‘Global War on Terror’ has not changed this.”<sup>xviii</sup>

However, there is counter-evidence that a fear factor is causing some donors to exercise greater caution in their dealings with partners, and in the sorts of organisations and groups they will consider for funding. One civil society veteran observed, “donors have become more conservative. In a world where we don’t know who is who, we’ll be more conservative and cautious. There is concern [among donors] of inadvertently supporting terrorism.”<sup>xix</sup> Unsurprisingly, the chill factor has been greater for Middle Eastern philanthropies and international NGOs. Many have scaled back their giving and some have ceased their operations altogether, with alleged knock-on effects on the communities where they formerly implemented development projects. A Gulf philanthropic group, for instance, was hesitant to fund a new Islamic university in Coast Province without US embassy assurance that this would not be seen as support for ‘Islamic radicalism’ (Harmony Project, 2007: footnote 89). However, at the same time, the climate of fear and suspicion surrounding Islamic charitable networks has not prevented new organising and the creation of new civil society organisations within Muslim communities as well as the entry of new Islamic foundations into the philanthropic arena in Kenya.

The securitisation of aid in Kenya has also included the new involvement of military and security actors in assistance activities. Since 2002 personnel from the Combined Joint Task Force Horn of Africa (CJTF-HOA), a US counter-terrorism base in Djibouti reporting to US Central Command, have carried out ‘hearts and minds’ activities in communities in Coast and North Eastern Provinces such as building schools and operating mobile veterinary clinics. The CJTF is developing liaison positions and coordination mechanisms with civilian agencies and

departments such as USAID to institutionalise its efforts on development, which depend on input from American diplomatic corps in each of the countries where CJTF operates. Thus far assistance by the military has been carried out independently on the whole of activities by international NGOs, which have a long presence in the region. Indeed, there are no regularised contacts or coordination meetings between the CJTF and NGOs even though within CJTF there is an NGO liaison position. CJTF personnel do consult with community groups and leaders for the purposes of implementing projects and ulterior intelligence gathering. There is varying and contradictory evidence on public responses to military involvement in development in these communities. Infamously, the US ambassador and CJTF personnel were stoned when they visited Garissa town in North Eastern Province to promote the military's efforts. Islamic clerics and elders in North Eastern Province have also addressed a letter to US officials condemning the military's activities. However, there is anecdotal evidence that villagers in communities in and around Lamu in Coast Province welcomed the assistance of the US military.<sup>xx</sup>

### *B. The politics of aid and security*

Generally, counter-terrorism has risen to the fore of conditionality requirements on aid recipient countries. After 9/11, the Cotonou Agreement between the EU and Africa, Caribbean and Pacific states was amended to require cooperation on counter-terrorism as part of the conditionality for receiving EU development aid. In Kenya, security conditionality on development aid has been most pronounced in its US bilateral relations. This pressure dates back to the 1998 embassy bombing since which time the US, as well as the UK and Israel, have criticised Kenya for inadequately pursuing and convicting terrorism suspects, which they attribute to weaknesses in policing and existing penal codes. The September 11<sup>th</sup> attacks ratcheted pressure on the Kenyan government to pass anti-terrorism legislation, as will be seen. The counter-terrorism agenda has defined Kenya – US bilateral relations to the extent that the US has in one instance abandoned a competing key diplomatic priority. As a condition for aid, the US attempted to strong arm the Kenyan government into signing a Bilateral Immunity Agreement (BIA) that would

grant US nationals immunity before the International Criminal Court (ICC), of which Kenya is a member. The Nethercutt Provision in the Foreign Operations Appropriations Bill ties US foreign assistance to countries' support of the ICC by pushing countries to sign the BIA. These agreements require ICC member countries to exempt all US nationals and non-national contractors from accountability before the ICC for war crimes, crimes against humanity and genocide. Kenya lost an estimated \$8 million in military financing and training aid after refusing to sign the BIA. However, this uncovered a conflict between the BIA requirement and Washington's counter-terrorism priorities in Kenya. The US eventually reversed its position in the summer of 2006 to permit the resumption of security and military training aid to the Kenyan government.

Further, there is a popular perception in Kenya, supported by many senior politicians and government officials, that the US and UK governments have sought to harm Kenya's tourism industry by issuing travel advisories as a punitive measure against the Kenyan government for failing to pass stronger counter-terrorism legislation. The issue topped Nairobi's agenda during Kibaki's state visit to Washington in November 2003 and, despite repeated diplomatic overtures by the Kenyan government since, the US and UK have refused to rescind the travel advisories.

In other ways, the Kenyan government has used its diminishing dependence on aid from traditional western donors to leverage its own interests in discussions on security and counter-terrorism. New security assistance to Kenya has derived from assessments of the probable threat of terrorism (Harmony Project, 2007). The Kenyan government has played on the perception of a significant terrorist threat in the Horn of Africa for diplomatic advantages. Internally, it has reacted to populist sentiment against counter-terrorism measures and legislation backed by Anglo-American pressure. Senior politicians have criticised US counter-terrorism policies in the region and have pressured the Kibaki administration to wager its cooperation on the receipt of various security hardware.<sup>xxi</sup> Similarly, the perception that there is American largesse to be tapped for organising around

security affects civil society outlooks on aid. An NGO head and leader in Muslim communities observed, “[f]ighting terror is big business. Probably I could get money as an NGO if I said I was going to fight terrorism. If I want to do this, I can go to the Americans tomorrow and get money for training in counter-terrorism and equipment. Counter-terrorism is used as an excuse for agencies and organisations to procure. Every government department wants to cash in on this to get training and equipment.”<sup>xxii</sup>

These challenges reveal that Kenya’s incentives in counter-terrorism are not fully aligned with those of donors since Nairobi can benefit materially from its cooperation, which is based on the perception of threat. It has been suggested as a way of overcoming this dilemma that donors reorient their assistance to areas where there are fewer opportunities for patronage, such as increased police and governance training as well as anti-corruption efforts (Harmony Project, 2007: 71). Elsewhere in Africa, it is observed that the US pursues a politics of destabilisation by playing on an exaggerated assessment of the terrorism threat to supply security assistance and military training aid to friendly regimes (Keenan, 2006). In turn, these regimes instigate conflict and acts of violence to create the appearance of instability.

## **IV) Counter-terrorism, the politics of fear and civil society responses**

### *A. Counter-terrorism structures in Kenya:*

Against this backdrop of diplomatic pressure and new security parameters on aid, the Kenyan government has instituted a range of new counter-terrorism structures. These structures encompass a suite of measures to enhance intelligence gathering as well as policing and surveillance of suspect communities. Unsurprisingly, foreign security assistance and training aid were pivotal to the establishment of post-9/11 counter-terrorism structures in Kenya, many of which involve new and greater levels of cooperation with foreign security and intelligence agencies, some by way of extra-judicial practices and institutions. Kenya was one of only five states to receive special training through the US government's Anti-Terrorism Assistance Program in the 2005 budget. Kenya was supported through the program to establish a National Security Intelligence Services (NSIS) (Harmony Project, 2007). Other measures include the establishment of a Joint Terrorism Task Force in 2003 and the National Security Advisory Committee in 2004 (*ibid.*: 57). In 2004 the US government funded the establishment in Nairobi of a National Counter-Terrorism Centre that, notionally, sits within the NSIS but is rumoured to be under the direct operational guidance of Washington.<sup>xxiii</sup>

Previously, police swoops on Muslim communities in the aftermath of the hotel bombing in Kikambala in November 2002 generated scrutiny and public debate on the involvement of foreign security agencies in the surveillance, arrest and interrogation of terror suspects. Human rights groups and the Kenyan media have reported numerous instances in which foreign security services interrogated terror suspects, in some cases involving the use of force as well as torture during interrogations (Amnesty International, 2005; authors' interviews). Alleged infringements of human rights of terror suspects was again highlighted by the capture of terrorism suspects in Kenya following the flight of civilians and fighters from southern Somalia into Kenya in early 2007 after military action led by the



Ethiopian government against the Islamic Courts Union, which briefly governed southern Somalia in 2006. The US acknowledged that investigators of the Federal Bureau of Investigations (FBI) interrogated terrorism suspects in Kenya, some whom were sent to Somalia and then transferred secretly to prisons in Ethiopia where they were again questioned by American intelligence agents.<sup>xxiv</sup> One suspect was extradited to Guantanamo Bay.<sup>xxv</sup> The circumstances of arrest and detention of terror suspects in these cases have shown that Kenyan authorities failed in certain instances to comply with international human rights law and standards as well as Kenyan law.

The central involvement in these raids of the Anti-Terror Police Unit (ATPU), established in the aftermath of the embassy bombing in 1998 within the national police force, has added to concerns for human rights and the treatment of Muslim communities, who feel targeted by anti-terrorist operations. More robust policing has been matched by closer scrutiny of individuals applying for identification papers and travel documents. These efforts, and other post-9/11 counter-terrorism measures, tie into broader political and deeper historical contexts concerning the identity, citizenship and political rights of Muslim communities along the coast and in North Eastern Province. As explained below, activists and groups organising around the interests of Kenya's Muslims allege that it is more difficult for Muslims to obtain identity cards that are required for employment, as well as passports to be able to take up overseas education and employment opportunities.

Kenya's counter-terrorism structures have been introduced in a legal vacuum. Human rights groups maintain there is no legal basis for some measures, such as the creation of the ATPU. Since 2002, diplomatic missions in Nairobi representing leading western donors have pressured the Kenyan government to adopt controversial new counter-terrorism legislation. Efforts by the Kenyan government to pass a Suppression of Terrorism Bill (SOT) in 2003 failed, as described below. The government has also drafted anti-money laundering legislation, which is a response to UN resolution 1373 (2001) that requests governments to undertake

measures to limit the use of businesses, remittances and charities to finance terrorism.<sup>xxvi</sup> NGOs have been a specific focus of money laundering suspicions in Kenya. In general, the Kenyan government has increased checks on NGOs as part of its counter-terrorism efforts. The closer inspection of NGOs goes back to the aftermath of the 1998 bombing of the US embassy, when several Muslim organisations that provided relief and welfare services to refugee communities in North Eastern Province were proscribed on suspicion of supporting terrorist activities. The longer-term impact of the clampdown was to cast suspicion over the Islamic charitable network consisting of small CSOs and madrassas as well as local offices of Middle Eastern charities.

Security concerns have also crept into discussions around a proposed new regulatory framework for NGOs as signaled in the Sessional Paper Number One of 2006 agreed by cabinet, with various political leaders associating the activities of some organisations with terrorism. Although the political rationale for the new framework is to fight corruption in NGOs, which are perceived to be misused for personal enrichment rather than undertaking activities for public benefit, some government officials have made statements expressing concern over prospective linkages between NGOs, terrorism and money laundering. This suspicion of NGOs as conduits for terrorist financing and money laundering is a recurring aspect of global political discourses on terrorism. Opposition in Malawi and Zambia have been labelled as terrorists. Rebels in Congo and Rwanda have been branded terrorists as well and beyond negotiation (BBC News online, 02-01-07). In Uganda, the government passed new legislation in 2006 that requires NGOs to re-register on an annual basis. The law also created representation for security agencies on the government's NGO registration board but not for NGOs themselves.

The principal measure in Kenya's post-9/11 counter-terrorism structures is the SOT Bill, which the Attorney General published in 2003. The government withdrew the bill following intense public opposition by the media, human rights organisations, Muslim groups, and, crucially, members of the Parliamentary

Committee on Justice and Constitutional Affairs charged with reviewing the bill before it was debated. The government initiated fresh discussions on the bill in 2005 and a new Anti-Terrorism Bill was circulated to government departments in 2006. A coalition of human rights activists and organisations through the Kenya Human Rights Network (K-HURINET) organised a concerted campaign against the bill, as described in the following section. They objected to the definition of 'terrorism' in the bill, which was felt to be vague and open to a number of interpretations. Another concern was that the bill lowered fair trial standards by requiring the prosecution in terror cases to show 'reasonable suspicion' based on the 'balance of probabilities' rather than prove their case beyond reasonable doubt, thus shifting the burden of proof to suspects. Objections were also raised that the bill targeted Muslim communities. In this regard, a clause of considerable concern created an offence for people dressed in a way "as to arouse reasonable suspicion that he is a member of a declared terrorist organisation" (RoK, 2003). The bill also granted the minister responsible for national security the powers to make exclusion orders but only against individuals with dual citizenship. This was perceived as directly targeting Muslims, many who descend from immigrants from Somalia, the Arabian Peninsula and south Asia. In response to the bill, the Kenya National Commission on Human Rights, the governmental human rights watchdog, stated "[l]aws or policies must not target or appear selective by community or group" (KNCHR, 2003: 8).

### *B. Organising around counter-terrorism structures*

Kenya's counter-terrorism structures have been instituted contrary to widespread opposition among domestic political constituencies. Human rights networks, legal groups and Muslim organisations have been galvanised to organise against proposed anti-terrorism legislation through the formation of new ad hoc networks and groups such as the Muslim Human Rights Forum and the Coast Anti-Terror Network. A sub-committee of K-HURINET has organised civil society opposition to the SOT Bill. They have argued that fundamental human rights must be protected, mechanisms to fight terrorism must safeguard human rights and that counter-terrorism should be a partnership between the state and society and not

one against the other. Among the controversial provisions in early versions of the SOT Bill, it would grant wide discretionary powers to authorities such as searches without warrant and to detain terror suspects without charge.

The thinking of groups opposed to the SOT Bill was informed by a background of struggle against human rights infringements and the abuse of powers by political functionaries and state security personnel. Throughout the struggle in the 1990s for democratic politics and the promotion of human rights, Kenyan civil society had opened additional space to organise outside of the state. The spaces for non-governmental public action came under scrutiny in the SOT Bill. Section 9 of the bill conferred the minister responsible for national security powers to proscribe any organisation they suspect of supporting terrorism but without establishing the norms to be used in determining suspicion. This matter was complicated by the broad and unclear definition of ‘terrorism’ in the bill. There is no consensus definition of terrorism even within multi-lateral institutions such as the UN. This complicates law-making on counter-terrorism since there is no internationally agreed legal definition. Northern governments, in passing their own anti-terrorism legislation, have tended to define the terrorist threat as qualitatively new and different, requiring extraordinary legislation.<sup>xxvii</sup> Kenyan scholar Professor Ali Mazrui noted that the “bill is so wide-ranging that the police or the minister can decide which kind of public demonstration constituted support for terrorist forces abroad” (2003: 5). The bill did not propose any appeal mechanism or independent adjudication authority in cases where an organisation wants to contest the minister’s declaration. New offences were also proposed for persons who are members, supporters, or fundraisers for organisations declared to support terrorism. However, as elsewhere in the bill, the use of indistinct language and inadequate definition of terms cast a shadow over individuals and groups who would have desired to assist a declared terrorist organisation in view of the fact that they risked being charged for ‘supporting’ terrorism. An official from a human rights NGO referred to the risks in a statement to the Kenyan media, “[t]his is a threat to civil society and activists. They can choose to declare the KHRC (Kenya Human Rights Commission, an NGO) a terrorist group for speaking out and

demonstrating against detention. It even puts you [the journalist] at risk for the simple reason that you are writing about and against the anti-terrorism bill, making you a target and possible terrorist suspect.”<sup>xxviii</sup>

A contributing factor to civil society opposition to the SOT Bill was the sentiment that Kenyans were being made to pay the price through more strident anti-terrorism measures for a terrorist threat that was not theirs. One civil society activist explained it this way, “the perception of most Kenyans is that the Kenyan victims of [terrorist] attacks are collateral damage and not targets themselves... Kenyans view themselves as caught up in the crossfire and [believe] that the conflict is not ours. It is western targets that have brought terror to Kenya.”<sup>xxix</sup> The popular view of Kenyans is that terrorism is not a domestic policy priority, or at least should not be, and that counter-terrorism is a western agenda that is being unfairly imposed on the country.<sup>xxx</sup> Civil society critiques of the bill also emphasised the importance of other issues that cause insecurity for the majority of Kenyans, such as economic disparities and access to resources. In comparison, terrorism was perceived as unimportant.<sup>xxxi</sup>

Although new restrictions on the spaces to organise outside of the state were an integral part of the SOT Bill, mainstream civil society was largely silent in its response. As referred to previously, human rights groups and organisations representing Muslim communities who were directly affected by the proposed law were the exceptions in civil society who organised against the bill. Church clergy have been silent on the treatment of Muslims in counter-terrorism operations even though they worked with Muslim religious scholars and leaders on constitutional reform issues in the lead up to a 2005 plebiscite, at which point disagreements emerged around the inclusion of *Kadhis* courts in the draft constitution for safeguarding Muslim personal law. The disagreement led to Muslim clerics withdrawing from the inter-faith Ufungamano Initiative that had lobbied for constitutional reform.<sup>xxxii</sup> The media, as well, has tended to cover human rights violations of terror suspects from a security perspective without interrogating government actions in the name of security.<sup>xxxiii</sup> Public opinion in Kenya is that

counter-terrorism measures affect Muslims. Mainstream civil society is also blinkered in its view of what constitutes ‘civil society’, one that does not include Muslim organisations and civic groups, and thus does not seek common cause with organisations for whom counter-terrorism is a major concern. The leader of one Muslim organisation explained the divisions within civil society around responding to the pressures caused by counter-terrorism,

Civil society is split into three groups. One group, out of fear, has stayed out of the question (of counter-terrorism) altogether. They fear being implicated by association and fear that their funding from western governments will be withdrawn. This is mostly Kenyan NGOs. But international NGOs have also not raised their voice on terrorism in Kenya, at least not locally. I can be clean as snow but if I am arrested on suspicion of terrorism, then everyone in the NGO community abandons me. There is a whole environment of fear. A second group take this as a *fait accompli*, that this is part of American power. The US is the strongest power and you cannot do anything, is their view. They will talk with us [Muslim organisations] and identify right and wrong in the Global ‘War on Terror’, and even sympathise with us, but they are resigned. Then there is a third group, consisting of a handful of organisations, that is challenging this directly...Almost all non-Muslim NGOs are in the first and second group. They are silent and not opening up much to us and we don’t know why.<sup>xxxiv</sup>

A further contributing factor to the lack of response by civil society is that since the NGO Council is moribund there is not a broader unified civil society voice on these issues. Human rights organisations and Muslim groups have tried to work around these constraints by coming together in ad-hoc coalitions and networks to oppose particular measures and laws but this does not make up the need for an umbrella body to give leverage to the advocacy issues and actions of a smaller number of organisations and groups.

The production of suspicion and fear around the Muslim charitable network has undoubtedly influenced the reticence observed in civil society as a whole. Pressures and threats for civil society generated by new counter-terrorism structures have disproportionately impacted Muslim organisations and groups where a ‘siege mentality’ has begun to take hold. As mentioned above, these

pressures date back to the aftermath of the US embassy bomb blast in 1998 when several Muslim NGOs were forced to suspend their operations, staff were detained and interrogated by security agencies, and the foreign heads of some organisations were deported. Some organisations were allowed to re-register but they faced constant monitoring and obstruction by the police and provincial administration in the areas in which they operated.<sup>xxxv</sup> In the time since, five Muslim NGOs have been proscribed often at the behest of foreign governments. The Saudi Al Haramain Foundation was proscribed in 2003 and has been subject to investigations in the US. The Crescent of Hope which did relief work in northern Kenya was forced to close. Some organisations have voluntarily closed down under immense government pressure, such as the Al Ibrahim Foundation. Other organisations such as the Africa Muslim Agency, Young Muslims Association and Northern Aid continue to operate but under stringent conditions and in spite of administrative interference by provincial authorities.<sup>xxxvi</sup> Many civic leaders in Muslim communities contend that the crackdown on larger welfare-oriented Muslim NGOs has caused a ripple effect impacting community based organisations who partnered with the larger NGOs in running orphanages, schools and health centres, particularly in North Eastern Province.<sup>xxxvii</sup> Part of the difficulty civil society has encountered in drawing attention to these impacts has been the paucity of documentation by NGOs and community leaders to detail the precise effects, for example in terms of numbers of children denied schooling or orphans being turned away.

A clampdown on Muslim NGOs has been matched by greater restrictions on the flow of funds originating from states in the Gulf and Middle East. Donorship from this region was relatively important for Muslim organisations working in North Eastern Province where again the impacts have been felt disproportionately although specific and precise evidence to quantify these claims is lacking, as well.

In other ways, the spaces for Muslims to organise have been constrained by various counter-terrorism measures and practices. Madrassas and mosques have been constructed as sites for radicalisation and extremism and have come under

greater scrutiny. Consultants for the Ministry of Education suggested assessing the content of madrassa curriculum.<sup>xxxviii</sup> Other recent proposals have sought greater regulatory oversight of mosques through central registration and monitoring charity flows through mosque networks. Currently, there is no central registration or regulatory authority for mosques or madrassas. These proposals have not been pursued but they have had the effect of intimidating local people who would otherwise give donations to madrassas or mosque committees.<sup>xxxix</sup>

There have been different responses within Muslim communities to these various pressures and threats. In regard to monitoring mosques, some Muslims proposed that mosques register with the government and keep a list of their members, which would then be made available to the state as is done in Turkey. Others within the community strongly resisted any attempts at government oversight.<sup>xl</sup> Some Muslim leaders and groups have vocally opposed counter-terrorism measures, laws and practices, as seen in their efforts to organise against the SOT Bill. A Muslim organisation has also sought to document the culpability of the Kenyan government in the rendition of 152 terror suspects to Somalia, including twenty Kenyan citizens (Muslim Human Rights Forum, 2007). Groups such as the Council of Imams and Preachers of Kenya and the National Muslim Leaders Forum have spoken out in the media against raids by the Anti-Terrorism Police Unit on Muslim neighbourhoods and have met with politicians and government officials to voice their concerns. In other ways, Muslims are adapting to rather than resisting increased pressures but this typically involves restricting their own efforts and rights to organise. Many groups are not seeking to formally register because they are resigned to the possibility of being denied registration.<sup>xli</sup> This self-censorship is also seen in organisations avoiding the use of Arabic names or the word 'Muslim'. Some groups have sought legal shelter by becoming a programme of a registered organisation, a tactic used in the 1990s by human rights organisations who encountered difficulties registering during the Moi regime.



Part of the difficulty for civil society organisations that want to work on these issues is the lack of donor support as well as the acute bureaucratic pressure on organisations that speak out against government counter-terrorism policies and practices. Human rights organisations have complained that the government uses the Kenya Revenue Authority to intimidate groups that speak out.<sup>xlii</sup> But democracy and governance civil society organisations can no longer rely on donors to pressure the government both because donor priorities themselves have shifted as well as the fact that the government's aid dependency has decreased meaning the leverage of donors to influence the behaviours of the Kenyan government has diminished, as detailed earlier. According to some civil society actors, mainstream NGOs risk losing donor support if they are seen to be helping Muslim organisations and human rights groups organising on these issues.<sup>xliii</sup> Muslim organisations and human rights groups that have organised on issues of counter-terrorism have done so in spite of a lack of funding and administrative harassment and bureaucratic obstruction in gaining access to sensitive information on terrorism suspects and police raids. However, the effective efforts of the few organisations and groups that have taken up these challenges in documenting and exposing government practices as well as opposing the SOT Bill shows there is scope for civil society to organise more determinedly and coherently around new and emerging counter-terrorism measures, laws and policing practices.

## **V) Conclusion**

The increasing encapsulation of Kenya into the military and political prosecution of the 'Global War on Terror' has coincided with processes of democratisation and the opening of political space. Observers have noted that in some cases fighting terrorism goes hand in hand with spreading democracy, as proposed laws have generated widespread debate in some new democracies such as South Africa and the Philippines (Whitaker, 2007). Proposed anti-terrorism legislation has been galvanising in Kenya but for no more than a minority segment of civil society consisting of urban-based lawyers, human rights organisations and networks, and groups representing Muslims who are disproportionately affected by new counter-terrorism measures and practices. Opposition to specific anti-terrorism measures, laws and practices in Kenya has occurred in spite of a lack of institutional support and funding, intimidation by governmental regulatory bodies and the associated risk of de-registration and blacklisting for groups organising on these issues, as well as the possibility of losing donor funding for other activities on the basis of being perceived as sympathising with terrorists.

The challenges for civil society in Kenya consist of persisting international pressure on the Kenyan government for its cooperation on the 'War on Terror', the subtle introduction of counter-terrorism measures outside of a supportive legal framework, and internal divisions within civil society that preclude a more coherent advocacy strategy and plan. The role of development aid has been problematic by reifying certain misconceptions that Kenyan Muslims are radicalised and sympathise with foreign terrorists. Despite this, there have been some positive impacts of some security-oriented development assistance to grassroots groups working on issues of human rights, conflict management and community development. Unfortunately, the securitisation of development has on the whole too often prompted a shift away from human security approaches to complex political situations. The efforts of some aid donors to promote capacity building of counter-terrorism institutions or encourage public awareness of the presumed need for new counter-terrorism structures are alienating to the section

of civil society that are trying to domesticate the debate and are taking ownership of the issues in the Kenyan political context by conducting their own research, documentation and advocacy. The use of more overt political criteria in targeting some types of aid in Kenya has also minimised the potentially ameliorative impacts of development. Or, as the head of a Muslim NGO put it, “the US can put up fifty schools in North Eastern Province but this does not change local perceptions.”<sup>xliv</sup>

Although the space for political debate and discourse is large and expanding, this has brought about the fragmentation of civil society into disparate groups coalescing around discrete economic, ethnic and regional interests. The effects of fragmentation are magnified by the disintegration of the NGO Council as the representative body of NGOs at higher levels of political debate and policy-making. The failures of NGO representation at a national level have impeded greater levels of connectivity among different interest groups, which could leverage the interests and concerns of smaller groupings and thus inject civil society more forcefully into discussions around the ‘War on Terror’ in Kenya and the region. The formation of ad-hoc coalitions and networks to advocate against specific counter-terrorism practices, measures and proposed laws is an adaptation to the post-2002 political landscape in which civil society engaged in democracy, governance and human rights issues is under growing pressure to better define and more forcefully assert its role and purpose. This is especially urgent in view of aid trends toward supporting government programmes and priority areas, which has entailed a de-emphasis on civil society support as a component of better governance. The strong protestations of democracy and governance civil society in the face of these changes ultimately points to its aid dependence and the want for private donorship in Kenya in support of human rights.

In many ways, these difficulties speak to the divisions seen in wider society and the lack of political consciousness among mainstream civil society. Many counter-terrorism issues such as police raids and the treatment of terrorism suspects are

perceived to involve Muslims, which again ties into larger political discourses beyond Kenya that construct Muslim communities as suspicious. Thus, in mainstream public debate the significance is lost of new counter-terrorism structures for the fundamental human rights of all, as well as for the actors and spaces of civil society. Many young Muslims in Kenya, in turn, feel targeted by counter-terrorism operations and believe their interests are sacrificed in discussions on 'security' that predominate policy in the Global 'War on Terror'. However, all of this points to the continuing need for civil society to make its contribution to policy discussions and public debates on the 'War on Terror'. The effective efforts of the few organisations and groups that have taken up these challenges in documenting and exposing government practices shows there is scope for civil society to organise more determinedly and coherently around new and emerging counter-terrorism measures, laws and security practices.

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<sup>ii</sup> Authors' interview. Nairobi. April 2007.

<sup>iii</sup> Ibid.

<sup>iv</sup> Authors' interview. Nairobi. July 20, 2006.

<sup>v</sup> Authors' interview. Nairobi. April 2007.

<sup>vi</sup> Authors' interview. Nairobi. February 2, 2007.

<sup>vii</sup> Authors' interview. Nairobi. January 18, 2007.

<sup>viii</sup> Authors' interview. Nairobi. February 2, 2007.

<sup>ix</sup> Authors' interview. Nairobi. June 5, 2007.

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<sup>xiii</sup> USAID, 2006. 'USAID/Education for Marginalised Children of Kenya (EMACK): quarterly technical report.'

<sup>xiv</sup> Authors' interview. Nairobi. February 1, 2007.

<sup>xv</sup> Authors' interview. Mombasa. January 25, 2007.

<sup>xvi</sup> See Cortright, 2005.

<sup>xvii</sup> Authors' interview. Nairobi. June 8, 2007.

<sup>xviii</sup> Authors' interview. July 20, 2006. Nairobi.

<sup>xix</sup> ICJ interview. January 20, 2007. Nairobi.

<sup>xx</sup> Personnel communication with Paul Goldsmith. June 28, 2007. London. See also Harmony Project, 2007: footnote 92.

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