

**REPUBLIC OF KENYA**



**KENYA NATIONAL ASSEMBLY**

**ELEVENTH PARLIAMENT – FIRST SESSION - 2013**

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**REPORT OF THE JOINT  
COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY; AND  
DEFENCE AND FOREIGN RELATIONS ON THE INQUIRY INTO THE WESTGATE  
TERRORIST ATTACK, AND OTHER TERROR ATTACKS IN MANDERA IN  
NORTH-EASTERN AND KILIFI IN THE COASTAL REGION**

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CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
**NAIROBI**

DECEMBER, 2013

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## **PREFACE**

The Departmental Committees on Administration and National Security; and Defence and Foreign Relations, are constituted under Standing Order 216(1) and are mandated to, inter-alia, ***“investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments.”***

The Joint Committee on Administration and National Security, and Defence and Foreign Relations, was constituted pursuant to Standing Order 202(1), which states that:-

***Two Committees of the Assembly considering similar matters may, with the approval of the Speaker, hold joint sittings.***

**Mr. Speaker, Sir,**

The following are the Members of the Committee:

The Hon. Asman Kamama, MGH, OGW, MP	<b>– Co-Chairperson</b>
The Hon. Ndung’u Gethenji, MP	<b>– Co-Chairperson</b>
The Hon. Alois M. Lentoimaga, MP	<b>– Vice Chairperson</b>
The Hon. Elias Barre Shill, MP	<b>– Vice Chairperson</b>
The Hon. Dalmas Otieno, EGH, MP	
The Hon. Ababu Namwamba, EGH, MP	
The Hon. Joseph Lekuton, MP	
The Hon. Alice Wahome, MP	
The Hon. Zakayo K. Cheruiyot, MP	
The Hon. Timothy W. Wetangula, MP	
The Hon. Patrick Ole Ntutu, MP	
The Hon. Ali Isaack Shaaban, MP	
The Hon. Samuel Moroto, MP	
The Hon. Humphrey Njuguna, MP	
The Hon. Francis K. Mwangangi, MP	
The Hon. Rashid J. Bedzimba, MP	
The Hon. David Gikaria, MP	
The Hon. Mohamed Shidiye, MP	
The Hon. Jane Machira, MP	
The Hon. Ibrahim Abdi Saney, MP	
The Hon. Joseph O. Ndiege, MP	
The Hon. (Maj. Rtd.) John K. Waluke, MP	
The Hon. Wanjiku Muhia, MP	

The Hon. Akuja Protus Ewesit, MP  
 The Hon. Joseph M. Kahangara, MP  
 The Hon. Ahmed Abdikadir Ore, MP  
 The Hon. Grace Kiptui, MP  
 The Hon. George Theuri, MP  
 The Hon. Regina Nthambi Muia, MP  
 The Hon. James Bett, MP  
 The Hon. Benard Shinali, MP  
 The Hon. David Pkosing, MP  
 The Hon. Nyiva Mwendwa, MP  
 The Hon. Katoo Ole Metito, EGH, MGH, MP  
 The Hon. Beatrice Nyaga, MP  
 The Hon. Gonzi Rai, M.P.  
 The Hon. John Lodepe Nakara, MP  
 The Hon. Roselinda Soipan Tuya, MP  
 The Hon. Annah Nyokabi Gathecha, MP  
 The Hon. David Wafula, MP  
 The Hon. Joseph Gitari, MP  
 The Hon. Chris Wamalwa, MP  
 The Hon. Joseph Kiuna, MP  
 The Hon. Yusuf Hassan, MP  
 The Hon. Elisha Busienei, MP  
 The Hon. Ali Dido Rasso, MP  
 The Hon. Mohammed Abass, MP  
 The Hon. Ibrahim Sane, MP  
 The Hon. Richard Onyonka, MP  
 The Hon. Jakoyo Midiwo, MP  
 The Hon. Joyce Wanjalay Lay, MP  
 The Hon. Maj.-General JK Nkaiserry, MP  
 The Hon. Adan Keynan, Mp  
 The Hon. Wafula Wamunyinyi, MP  
 The Hon. Dennitah Ghati, MP  
 The Hon. Ken Obura, MP

The Joint Committee was established after the terror attack in Westgate Mall on 21<sup>st</sup> September 2013. The Committee was constituted with a view to establishing the circumstances leading to the terror attack at the Mall, and whether there were any acts of commission and/or omission on the part of the intelligence and security organs in the country.

The Committee further extended the scope of its mandate to cover other areas that had been affected by terrorist attacks. Such areas included Garissa, Mandera, Wajir in North Eastern and Kilifi in the Coastal region.

The Joint Committee held its first sitting on 27<sup>th</sup> September 2013, and drew up the following Terms of Reference:-

1. The Joint Committee had the mandate under Standing Order 216(5) to:
  - a. **Investigate;**
  - b. **Inquire into;** and
  - c. **Report** on all matters surrounding the terrorist attack of the Westgate Mall.
2. The Joint Committee, in carrying out its mandate may inquire and investigate into any acts of omission and/ or commission that contributed to the attack;
3. The Joint Committee may inquire into and investigate past terrorist attacks including the findings and actions that may have been taken by the relevant departments and agencies to bring the perpetrators to justice;
4. While carrying out the investigations and inquiries, the Joint Committee may call witnesses from various departments, agencies including, but not limited to: National Security, Defence and Intelligence;
5. The Constitution under Article 125 gives the Joint Committee the power to call for evidence through summoning any person to appear before it and give evidence or provide information. To carry out this mandate, the Committee may seek to:-
  - a. Enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;
  - b. Compel the production of documents; and
  - c. Issue a commission or request to examine witnesses abroad.
6. The Joint Committee may make recommendations on preventive measures and steps to be taken drawn from the findings of the investigations that will seek to improve security in the Country and stem future acts of terror;

The Joint Committee planned to involve the public in the inquiry, especially the witnesses and victims of the Westgate Mall attack. To this end, the Committee placed paid adverts in the mainstream print media on 30<sup>th</sup> September, 2013, requesting

members of the public to submit memoranda on whatever information they could have on the Westgate attack and for other terrorist attacks in other parts of the country.

The Joint Committee further came up with a programme where its meetings were arranged between the Committee and witnesses, security organs, experts on intelligence gathering and security issues, as well as other interested individuals or groups who would assist the Committee to get into the bottom of the attacks.

The Committee held a total of twenty meetings. Apart from the witnesses who appeared before the Committee, the following individuals or groups:-

- i) The National Intelligence Service
- ii) Ministry of Interior and Coordination of National Government
- iii) The Inspector General of Police
- iv) Ministry of Defence
- v) Department of Immigration Services
- vi) Department of Refugee Affairs
- vii) Nakumatt Management
- viii) Kenya Red Cross Society
- ix) Althaus Services Ltd.
- x) Kenya Veterans Association
- xi) Dixons Electronics Ltd.
- xii) Securex Agencies (K) Ltd.
- xiii) Sony Holdings Ltd.

**According to a forensic report made available to the Members, the Joint Committee established the following:-**

1. Four (4) terrorists were involved in the attack at the Westgate Mall on 21<sup>st</sup> September, 2013. They were:-
  - i) Mohamed Abdi Noor of Somali nationality.
  - ii) Mohammed Hassan Dhulhulow a.k.a Abu Baraa Al Sudani – Norwegian citizen of Somali origin.
  - iii) Yahye Osman Ahmed a.k.a Arab, a Somali national of Arab descent.
  - iv) Ahmed Hassan Abukar of Somali nationality.
2. All the four (4) terrorists were killed during confrontation with the security forces. Their body parts, weapons and personal effects were recovered from the scene of attack. Forensic investigations confirm that the recovered body parts and unmarked weapons and ammunition belonged to the terrorists.
3. Four (4) AK47 rifles believed to have been used by the terrorists were recovered from the scene. Two (2) G3 rifles, one (1) Scar rifle and four (4) live grenades were also recovered.

4. Body parts including one (1) in a military boot were recovered from the scene on 1<sup>st</sup> October, 2013. Two (2) bodies believed to be of military personnel, one (1) M4 rifle and a military knife were also recovered from the scene on 2<sup>nd</sup> October, 2013.
5. One (1) Police officer died and eight (8) others were injured.
6. Two (2) empty ammunition belts of 5.56mm caliber, two (2) ammunition canisters and one (1) empty AK 47 magazine were recovered on 9<sup>th</sup> October, 2013.
7. Four (4) main suspects believed to be accomplices to the terrorists, have been arrested and arraigned in court. They are Mohamed Ahmed Abdi, Liban Abdule Omar, Adan Abdikadir Adan and Hussein Mustafa Hassan. Seven other suspects have been arrested and charged in court.
8. Five (5) other suspects are still at large.
9. A motor vehicle Mitsubishi Lancer registration no. KAS 575X was used by the terrorists during the attack.
10. Four (4) Safaricom sim cards were recovered from the vehicle used by the terrorists.
11. Sixty seven (67) people of different nationalities were killed during the Westgate Mall siege.
12. Over 200 persons were injured in the attack.
13. Digital Video Recorders (DVRs) are still being analyzed.

**The Committee made the following observations and conclusions on the Westgate Mall terror attack, among others, that;**

1. There was general information on the impending terror attack on the all the malls and other strategic Western interests especially in Nairobi. The information was made available to the relevant Security officers in Nairobi County.
2. There was general laxity among the police over terror alerts within Nairobi County.
3. The RECCE Company from the General Service Unit (GSU) had contained the terrorists in one corner of the Mall. There was however poor coordination during the changeover between the Kenya Defence Forces and the Police.
4. There was looting of business premises within the Mall by individual security officers. Action has already been taken against the culprits.
5. There is nationwide systemic failure on the part of the Immigration Services Department, Department of Refugee Affairs; and Registration of Persons Department attributed to corruption at the border control points and registration centres, mainly in Nairobi, Coast and North Eastern areas.
6. There was destruction of property occasioned by exchange of fire between the terrorists and the security forces.



The Joint Committee made the following recommendations, among others:-

1. The Government should declare war against al Shabaab wherever they are. The war against terrorism should be intensified within and outside the country. The Government should collaborate with the international community for a concerted effort to bring peace and stability to the Somali Republic with a view to ensuring that the country would no longer serve as a sanctuary for international crime and terrorism.
2. The Government should establish a National Inter-Agency Coordination Centre to be referred to as the Directorate of National Security, with membership drawn from all the security agencies, to ensure intelligence gathering, information sharing and implementation is carried out. The Directorate premised on a single and secure information management programme, shall be reporting the constituting agencies.
3. The Government should carry out radical surgery in the Department of Immigration Services and second trained security officers including retired military officers, vetted administrators and NIS officers who have a security background, to the Department. The Department should cease to victimize Kenya-Somali applicants seeking to acquire identification documents.
4. The Refugees Act 2006 should be repealed. The Act is redundant and cannot deal adequately with emerging issues on terrorism. A new law should be developed to guide on the handling of the Refugee phenomenon in the country.
5. Dadaab (Daghale, Ifo, Ifo II, Hagdera, Kambios) and Kakuma Refugee Camps should be closed and resident refugees repatriated to their country of origin. The recent signing of the Tripartite Agreement by the Government of Kenya, the Somali Republic and UNCHR is a step towards the right direction.
6. The Government should fast track the National Disaster Management Policy with a view to ensuring that legislation was developed to guard against haphazard and knee jack response to disasters.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings. The Committee wishes to thank all the witnesses for their cooperation and participation during the inquiry.

Lastly, the Committee would like to pay special tribute to the many gallant Kenyans who participated in the rescue mission at the Westgate Mall and ensured that hundreds of people were saved, while the injured were delivered to the hospitals, the security officers who lost their lives during the rescue mission, Members of the National Assembly and the many Kenyans, some of them from the Diaspora, who donated blood, funds and any other kind of support following the attack.

On behalf of the Committee, and pursuant to Standing Order 199(5), it is my pleasant duty to table in the House the Report of the Joint Committee on Administration and National Security; and Defence and Foreign Relations on its inquiry into the Westgate Mall terror attack, and terrorist attacks in other areas such as Mandera and Kilifi.

Signed..... Date.....

**Hon. Asman Kamama, MGH, OGW, MP**  
**Chairman, Departmental Committee on Administration and National Security**

Signed..... Date.....

**Hon. Ndung'u Gethenji, MP**  
**Chairman, Departmental Committee on Defence and Foreign Relations**

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## **BACKGROUND ON TERRORISM IN KENYA**

### **1.0 Introduction**

Terrorism has long been recognized as a serious foreign and domestic security threat of concern to the international community since 1937 when the League of Nations elaborated the Convention for the Prevention and Punishment of Terrorism. Subsequently, the United Nations and regional inter-governmental organizations have dealt with terrorism from a legal and political perspective. Since 1963, the international community has elaborated universal legal instruments related to the prevention and suppression of international terrorism.

Increasingly, the threat of terrorism has gained global phenomenon in the face of unprovoked and severe attacks evidenced in Kenya, Morocco, Tanzania, Pakistan, Saudi Arabia, Malaysia, the USA and most recently the United Kingdom and Egypt. Perhaps, this gives weight to the fact that terrorism has emerged as a heinous crime against humanity and one of the major drawback towards achieving global peace in the past decade.

### **1.1 Terrorism Defined**

The ambiguities and controversies surrounding the very definition of terrorism has become one of the major hindrances towards effective prevention and combat of terrorism. There is no universally acceptable definition of terrorism though there are generally accepted perceptions on who a terrorist is. Terrorism has been variously been defined as:

- The “use or threat of action” where the action involved or threatened can cause serious harm against a person, damage property, endanger other people’s lives, creates a serious risk to health or safety of the public or section of public. An act designed to interfere with or disrupt an electronic system, influence or intimidate the government or public, so as to advance political, religious or ideological causes using firearms, explosives, chemical biological radiological or nuclear weapons, or weapons of mass destruction in any form.

Throughout its recent history, Kenya has been a victim of terrorist attacks. The most prominent of these was on August 7 1998, when al-Qaeda attacked the United States (US) Embassy in Nairobi, killing about 224 people and injuring over 5,000 people. The attack was coordinated simultaneously with the bombing of the U.S. Embassy in Dar es Salaam, Tanzania, which killed 12 people. On November 28, 2002, al-Qaeda militants attacked the Israeli-owned Paradise Hotel in Mombasa, killing 15 people. Almost simultaneously, militants fired two shoulder-launched missiles at an Israeli charter plane in the same city, missing the target.

The recent escalation of terrorist attacks in Kenya is however attributed to the al-Shabab insurgency in the neighboring Somalia. On October 1, 2011, Marie Dedieu, a disabled French woman was kidnapped from her home near Manda Island, Lamu by suspected al-Shabab gunmen and died while in the assailants' custody. On October 13, suspected al-Shabab militants kidnapped two female Spanish Médecins sans Frontières (MSF) aid workers from the Dadaab refugee camp in Kenya, and took them to Somalia. These series of cross-border attacks, as well as prior kidnapping incidents, spurred Kenya's Defence Forces (KDF) to intervene in Somalia on October 14. Following the intervention of the KDF, Kenya has experienced several terrorist attacks largely attributed to the al-shaabab, culminating in the most recent West gate shopping mall terror attack on September 21, 2013.

## 2.0 Chronology of Terrorist Attacks in Kenya

Kenya has experienced attacks since about 1975 but terror attacks have been on the increase with the KDF intervention in Somalia.

### 2.1 Pre- Somalia intervention

DATE	NATURE OF TERRORISM ATTACK	NO. OF CASUALTIES	
		FATALITIES	INJURED
<b>February/March 1975</b>	A blast in a lavatory at the Starlight Nightclub [current integrity Centre], the second at the Information Bureau near the Hilton Hotel and the third, at the OTC bus station.	27 people at the OTC Bus station	
<b>New Year's Eve 1980</b>	A bomb at the <b>Norfolk Hotel</b>  Responsibility for the attack was claimed by an Arab group that said it was seeking retaliation for Kenya's allowing Israeli troops to refuel in Nairobi during the 1976 raid on Entebbe Airport in Uganda to rescue hostages from a hijacked aircraft.  Prime suspect was identified as 34-year-old Qaddura Mohammed Abdel al-Hamid of Morocco.	• 20 people	80 injured
<b>August 7, 1998</b>	Suicide bombers detonated two	224	5,000

	truck bombs outside the <b>US Embassy in Nairobi</b>		
<b>28 November 2002</b>	<b>Paradise hotel, Kikambala, Mombasa</b> - One of the suicide bombers blew himself up at the hotel's entrance. The second drove a vehicle loaded with explosives, gas canisters and containers of fuel, into a wall of the hotel.  The same East African cell responsible for executing the August 7 attacks was responsible. All but one of the suspects were Kenyan nationals.	13 tourists	More than 80.
<b>11 July 2007,</b>	<b>City Gate Restaurant, Hotel Ambassadeur-</b> the device was suspected to have detonated prematurely.	2 including one suspected of carrying explosives	
<b>13 June 2010</b>	3 grenades exploded at a political rally in <b>Uhuru Park, Nairobi</b>	6	30
<b>4 December 2010</b>	<b>Nairobi</b> in separate grenade attacks	3 police officers	
<b>20 December 2010</b>	A grenade attack at the <b>Kampala Coach bus terminus in River Road</b>	1 person was killed and 26 injured in a grenade attack	

## 2.2 Post- Somalia intervention

DATE	NATURE OF TERRORISM ATTACK	NO. OF CASUALTIES	
<b>17 October 2011</b>	<ul style="list-style-type: none"> <li>• <b>Mwaura's pub in Nairobi</b> when a grenade was thrown</li> <li>• <b>Coast of Lamu</b> - Kenyan navy patrol boat is hit by a suspected rock propelled grenade</li> </ul>	<ul style="list-style-type: none"> <li>• 1 person was killed and</li> </ul>	<ul style="list-style-type: none"> <li>• 15 injured</li> <li>• injuring 3 navy officers</li> </ul>
<b>24 October 2011</b>	A grenade thrown at people standing at a bus stop.	1 person was killed	8 injured

<b>27 October 2011</b>	A grenade hit a vehicle in <b>Mandera</b>	4 people	
<b>28 October 2011</b>	A vehicle carrying members of Kenya's paramilitary GSU heading to Liboi hit a roadside landmine 7km from Garissa town		3 people.
<b>16 November 2011</b>	Grenade attack at the East African Pentecostal church in Garissa.	2 people	
<b>24 November 2011</b>	Twin grenade attacks at the Holiday Inn and a shop in Garissa.	3 people	
<b>26 November 2011</b>	Suspected Al-Shaabab militants attack Arabia (trading centre near Mandera), and hit the local police station Arms and ammunition and destroying communications equipment were destroyed		
<b>5 December 2011</b>	A landmine targeting a United Nations convoy explodes <i>Ifo Refugee camp in Dadaab complex</i>	1 police officer	3 police officers
<b>11 Dec, 2011</b>	A remote controlled explosive device exploded near <b>Mandera Border Point 3</b>	1 police officer	3 police officers
	Landmine targeting a military convoy explodes <b>Wajir town</b>		9 soldiers
<b>11 January, 2012</b>	Armed Al- Shabaab militants attack the <i>Gerille camp, Wajir District</i> .  The militants also kidnapped 2 government officials.	6 people including 3 police officers	
<b>19 February 2012</b>	Attack on a police station <i>Hulugho, Garissa</i>	1 policeman and 1 civilian	injured 2 civilians.
<b>4 April 2012</b>	Grenade attacks at a church service in Mtwapa, Mombasa	2 killed	30 injured
<b>28 April 2012</b>	God's House of Miracles	1 person was killed and	16

	International Church in Ngara, Nairobi	injured.	
<b>16 May 2012</b>	2 Grenades thrown into Bella Vista bar, Mombasa.	1 security guard	
<b>28 May 2012</b>	Explosive device detonated in at the Assanands building on Moi Avenue, Nairobi	1 person killed and after an	30 injured
<b>25 June 2012</b>	<b>Jericho pub in Mombasa.</b>	1 person	several others injured
<b>18 July 2012</b>	Grenade attacks at the Garissa Catholic church and Africa Inland Church (AIC)	17 people	45 wounded
<b>19 July 2012</b>	Grenades thrown into a hotel restaurant and barber's shop Wajir border region		4 people
<b>30 September 2012</b>	A grenade attack at St Polycarp's church on Juja Road, Nairobi	1 child	3 seriously injured
<b>January 4, 2013</b>	A grenade attack from a saloon car Garissa	2	
<b>January 16, 2013</b>	Suspected Al-Shabaab shot people at a restaurant in Garissa	5 people and	3
<b>January 17, 2013</b>	<b>Hagdera Refugee camp in Dadaab-</b> improvised explosive devices went off	2 men believed to be suicide bombers	
<b>February 2, 2013</b>	Wajir	1 KDF soldier	2 other soldiers injured
<b>April 18, 2013</b>	Armed gangsters stormed Kwa Chege hotel and started shooting <b>Garissa</b>	6 are shot dead	10 seriously injured
<b>September 21, 2013</b>	Armed terrorists stormed the Westgate shopping mall in Nairobi	More than 70	More than 175
<b>September 25, 2013</b>	<i>Gunmen hurled 4 grenades and shot indiscriminately into an alley leading to the Kenya National Library Services Wajir</i>	1	5
<b>September 26,</b>	Gunmen stormed a Kenyan police	2	2

<b>2013</b>	compound in indiscriminately shooting into officers' homes Mandera and setting the governments vehicles on fire.		
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### 3.0 Why Kenya Remains Susceptible to Terror Attacks

Among the East African countries, Kenya has been the most vulnerable to terrorist attacks mostly owing to the intervention in Somalia by the KDF. However, Uganda and Burundi also have troops in Somalia yet they are not prone to the many attacks Kenya has experienced. Many factors may be responsible including political and socio-economic factors. Some of the reasons include among others:

*i. Political factors-* Kenya has an agreement with the United States for the use of local military facilities. The agreement allows US troops to use the Port of Mombasa, as well as airfields at Embakasi and Nanyuki. These facilities were used to support the American military intervention in Somalia in 1992-94 and have been used to support US and other coalition forces involved in counter-terrorism operations.

The Al-Qaeda and Al-shaabab target Kenya due to these close links with the Western countries as could be concluded in the 1998 bombings of the US embassy in Nairobi and Dar-es- Salaam. The presence of large expatriate communities also makes Kenya more attractive for terrorist operations.

*ii. Porous borders-* Kenya shares a border with Somalia which has experienced conflict since 1991 and is known to be a terrorist haven. Kenya's border with Somalia is long and cannot be secured effectively, and it is easy to smuggle across weapons and humans. The porous border makes it easy for terrorists to sneak in and out of the country further endangering the country.

*iii. Corruption-* Corruption has greatly led to the vulnerability of the country in many cases including where immigration officials are compromised thus permitting 'aliens' who could be terrorists to enter the country and acquire identification. This enables terrorists ease of movement and are therefore able to plan and execute attacks without the fear of discovery. Further compromising of security officials enables 'suspected individuals to fail to pursue suspected terrorists and enable them to secure early release when caught or reported in suspicious criminal activities.

*iv. Poor level of preparedness-* the level of preparedness of the security forces to terror attacks has been quite low despite several terror attacks mostly in the recent past. Most of the attacks have caught the security forces unawares hence the



response to most attacks is reactionary when the damage is already done as opposed to pro-activeness. Security forces intelligence and capacity has been seen to be ineffective allowing terrorists to move about freely, find safe haven, and establish logistical hubs in the country where they plan and execute the attacks undiscovered. The response mechanism of the security forces has also been slow and lacking in coordination to the extent that most of the damage is already done by the time the situation is contained.

- v. ***Proliferation of small arms and Light weapons (SALW)*** - Smuggling of SALW constitutes one of the most challenging and pressing problems in East Africa, posing an immediate security threat to individuals, societies and states in the region. Small Arms and Light Weapons are readily available on black markets greatly increasing the risk of attacks in the country. The flow of firearms has further been fuelled by persistent instability and recurring outbreaks of conflicts within the Horn of Africa and the Great Lakes Region. In addition to inter-community violence; organized criminal activities such as environmental crimes, drug trafficking, piracy, terrorist activities and urban robberies have been greatly assisted by the easy availability of illicit weapons.
- vi. ***Youth radicalization*** - Somalia has often been seen as the source of extremism in the region. Certain segments of Kenya's Muslim youth are becoming more and more at a risk of radicalization and recruitment into extremist groups for various reasons. This is visible because it is not Somali nationals behind most of the terrorist incidents outside Somalia's borders but Kenyan nationals. Though Somalia provides a safe haven, training camps and opportunities for extremists to fight the 'enemies of Islam', al-Qaeda and al-Shabaab have executed attacks in the region by relying on Kenyan youth assistance and support. The Government should therefore strive for strategies that address the youth radicalization.
- vii. ***The refugee problem*** - The prolonged situation of humanitarian crisis and conflict in Somalia has progressively mutated into a myriad of threats to the Somali population, the neighbouring states and the region. The influx of refugees into the neighboring countries and particularly into Kenya which hosts the Dadaab Refugee camp-the largest camp in the world, has been one of the resultant effects of the failed state of Somalia that Kenya has had to deal with.

From January to August 2012, the Dadaab and Alinjugur camps registered more than 5,700 new arrivals from Somalia, bringing the total population in these camps to some 474,000. The biggest jump in population growth occurred in Kakuma Camp in Turkana County where 13,000 new arrivals, mostly from South Sudan, were registered between January and August 2012. With a population exceeding 101,000, Kakuma is rapidly

running out of space. The total number of refugees and asylum-seekers in Kenya is estimated to be more than 630,000.

The influx and the resultant increase of refugee population in Kenya have led to deterioration in security and heightened refugee-local community tension due to competition for scarce resources and amenities. A major security threat has been the infiltration of terrorist elements such as Al Shabaab posing as refugees into the camp, and thus persistently obstructing humanitarian assistance to Somali refugees. The disguised militants have also reportedly used the camps to hide and ferry the SALW from Somalia to Nairobi and other urban centers in Kenya. This has threatened the security of areas around the Refugee Camps, North Eastern Province, and that of Kenya in general.

### **3.1 Terrorist Organizations**

Terrorists require funding and other logistical support to carry out their heinous acts against fellow human kind. Among the terrorist cells that have claimed responsibility for terrorism acts in Kenya are Al-Qaeda and Al-Shaabab.

### **3.2 The AL-QAEDA and Al-Shabaab factor**

Al-Qaeda is a global militant Islamist organization founded by Osama bin Laden in Pakistan between August 1988 and late 1989 with its origins being traceable to the Soviet War in Afghanistan. It operates as a network comprising both a multinational, stateless army and a radical Sunni Muslim movement calling for global Jihad and a strict interpretation of Sharia law. It has been designated as a terrorist organization by the United Nations Security Council, NATO, the European Union, the [United Kingdom](#), the [United States](#), [India](#) and various other countries.

Al-Qaeda has attacked civilian and military targets in various countries, including the September 11 attacks, 1998 U.S. embassy bombings and the 2002 Bali bombings. Al-Qaeda envisions a complete break from all foreign influences in Muslim countries, and the creation of a new world-wide Islamic leader. Osama bin Laden was the most historically notable commander and Senior Operations Chief of al-Qaeda prior to his assassination on May 1, 2011 by US forces.

Al Qaida began establishing cells in East Africa during the early and mid-1990s which were responsible for the 1998 attacks on the U.S. embassies. It is speculated that these cells were never entirely eliminated, and that Nairobi and Mombasa based remnants were responsible for the November 2002 attacks on Israeli tourists at the Paradise hotel. Fazul Abdallah Mohamed, the Comoros born mastermind of the embassy bombings, is widely considered responsible for the Mombasa attacks. Like co-conspirator, Ahmed Salim Swedan, Fazul was a product of Al Qaida training in Afghanistan. Despite being on the Federal Bureau of Investigation's highly publicized list

of the most wanted international terrorists, Fazul seems to have drawn no official scrutiny while living in the coastal town of Lamu near the Somali border. Under the alias "AbdulKarim," Fazul lived quietly, taught at a madrassa, and married a local woman. On May 1, 2011 US President Barack Obama announced that Osama bin Laden had been killed in a covert operation in Pakistan. Fazul was killed in June, 2011.

### **3.3 The al - Shabaab**

Al-Shabaab referred to as HSM in short which stands for "Harakat al-Shabaab al-Mujahideen" is the Somalia-based cell of the militant Islamist group al-Qaeda, formally recognized in 2012. As of 2012, the group controls large parts of the southern parts of the country, where it is said to have imposed its own strict form of Sharia.

Al-Shabaab's troop strength as of May 2011 was estimated at 14,426 militants. Al-Shabaab describes itself as waging jihad against "enemies of Islam", and is engaged in combat against the Transitional Federal Government and the African Union Mission to Somalia (AMISOM). Alleging ulterior motives on the part of foreign organizations, group members have also reportedly intimidated, kidnapped and killed aid workers, leading to a suspension of humanitarian operations and an exodus of relief agents. Al-Shabaab has been designated a terrorist organization by several Western governments and security services. The group has also been suspected of having links with Al-Qaeda in Islamic Maghreb and Boko Haram.

Fazul Abdullah Mohammed a Kenyan national was appointed by Osama bin Laden as al-Qaeda's leader in East Africa in late 2009. Before the death of Saleh Ali Saleh Nabhan, Mohammed served as the military operations chief for al-Qaeda in East Africa. He was an experienced al-Qaeda leader known to be able to move in and out of East African countries with ease. Mohammed was considered to be Shabaab's military leader, while Sheikh Muktar Abdelrahman Abu Zubeyr was Al-Shabaab's spiritual leader. He was killed on June 8, 2011.

On February 9, 2012, Mukhtar Abu al-Zubair 'Godane' announced in a fifteen-minute video message that al-Shabaab would be joining the Islamist militant terrorist organization al-Qaeda, under the leadership of Ayman al-Zawahiri. In response to Godane's announced name change and merger with al-Qaeda, all other Shabaab top leaders called a conference in Baidabo where they refused to adopt the new name (al-Qaeda in East Africa) and they agreed on a new policy. It therefore brought some internal rifts in the al-Shabaab.

## **4.0 The Aftermath of Terror Attacks: August 1998 and the Westgate Mall**

### **4.1 August, 1998 Bombing of the US Embassy**

The simultaneous bombing of the US Embassies in Kenya and Tanzania led to over 224 deaths and 5,000 injured. The suspects of the attacks included:

- Fazul Abdullah Mohammed, a Kenyan national, who came to be recognised as the leader of al-Qaeda's East African cell (he was killed in 2011).
- Fahid Mohammed Ally Msalam, a Kenyan national, who purchased the vehicle used by the Tanzanian cell together with Khalfan Khamis Mohamed and helped to load the truck with the bomb used to attack the US embassy in Tanzania.
- Msalam, together with Sheikh Ahmed Salim Swedan, another Kenyan national, also purchased the truck used to bomb the Kenyan embassy.
- Anas al-Liby (a Libyan), who conducted surveillance of potential US, British, French and Israeli targets in Nairobi. (He was arrested in Tripoli by the US forces on 6<sup>th</sup> October, 2013).
- Mohammed Sadeek Odeh, a Jordanian who had been granted Kenyan citizenship and settled near Malindi oversaw the construction of both devices (he was sentenced to life in prison in October 2001).
- Khalfan Khamis Mohamed (sentenced to life imprisonment in October, 2001) and Ahmed Khalfan Ghailani, both Tanzanian nationals.
- Wahid el-Hage (a Lebanese), who served as bin Laden's personal secretary and had moved to Kenya in 1994 to assist in the running of the Kenyan cell.
- Mustafa Mohamed Fadhil (an Egyptian), who was accused of preparing and loading explosives into the truck used in the attack in Tanzania.
- The Nairobi bombing was carried out by two Saudi nationals: Mohamed Rashed Daoud al-Owhali (sentenced to life imprisonment in October, 2001) who threw stun grenades at embassy guards before running off, and another, only referred to as 'Azzam', who was the suicide bomber.

After the al-Qaeda terrorist attacks in Kenya in 1998 and 2002, a Commission of inquiry was formed though its findings were never made public. The government however improved its ability to fight terrorism and related threats. It increased its capabilities to identify, arrest and detain suspects through an Anti-Terrorism Police Unit (ATPU) that was established in 2002. Yet al-Shabab's advances in Somalia during the last few years have challenged Kenya's ability to prevent terrorist attacks.

Poverty, weak borders, corruption, inept police, failed governments and rising disillusionment among young Islamists have made Kenya and other African nations easy targets and potential havens for global terrorists. Compared to countries like Egypt and Israel Kenya's counter-terrorism efforts are weak.

On the police side, the government has taken a number of measures aimed at strengthening the forces ability to combat terrorism and related crimes. Some of the measures include: the creation of Anti-terrorism Police Unit; the opening a Counter-Terrorism Center to provide an institutional framework to combat the threats, and significant funding of the center to bolster its capability in combating the terrorism threat and the enactment of the Prevention of terrorism Act, 2012. This have however still been seen to be ineffective.

#### **4.2 The Attack on Westgate Mall**

The series of attacks, into which the Westgate incident falls began in October 2011 after the Kenyan army intervention in Somalia. Since then, terrorist episodes have taken various forms including grenades hurled into crowds in urban spaces, the indiscriminate shooting into crowds of people, including in churches, and the slaying of security officers in cold blood. Most of these incidents took place in several towns in the north-eastern part of Kenya, which have become the epicenters of terrorism in Kenya.

A year before the attack, a Kenyan government intelligence report warned of a potential attack at Westgate. The briefing dated September 21, 2012, said Somali militants from the group al-Shabaab were planning to target the part-Israeli-owned mall. There were claims of intelligence reports that suspected al-Shabaab operatives were in Nairobi and planning to mount suicide attacks on an undisclosed date, targeting Westgate mall. Another intelligence briefing from February warned of attacks like those that struck Mumbai in late 2008, "where the operatives storm into a building with guns and grenades and probably hold hostages. It is unclear what measures were put in place to prevent the attacks.

On Saturday September 21 2013, attackers believed to be about 10 and 15 (number yet to be ascertained), stormed into west gate mall and randomly started shooting. About five armed attackers burst through one of the main entrances, guns blazing, while another four entered through an underground parking lot. Explosives also went off in the building causing it to cave in some floors. It is not clear who between the terrorists and the security forces set off the explosives.

The Chief of General Staff announced that the terrorists set mattresses on fire inside the building as a distraction while they escaped. The situation lasted for 3 days ending with the President's announcement on 24<sup>th</sup> September that the security forces had gained control of the building. It is reported that the attack led to over 70 deaths and more than 200 hundred were injured. Abu Baraal Al Sudani, Omar Nabhan and Khatab Al Kene have been identified as suspects.

The attack has demonstrated how utterly vulnerable Kenya is to acts of terrorism. Several questions arise out of this attack.

#### **4.2.1 Security lapses**

There are concerns that warnings about the attack may have been missed or ignored by the government. Reports indicate that information about suspected terrorists planning an attack was relayed to Kenya's security organs but no action was taken. These claims should be interrogated.

It should also be interrogated why other countries such as Ethiopia and Burundi who had earlier sent troops to Somalia have not been attacked by the al-shaabab. Tanzania has also not suffered any terrorist attacks after the 1998 bombings. Is it because our security forces are weak, indisciplined and easily corruptible? The measures put in place to protect the country after the 1998 bombings and following the intervention into Somalia by the KDF which has put the country at a greater risk should be identified.

#### **Security lapses before the attack**

- Were there any specific actions which any of our security services would have taken to prevent the attack which were not taken? If there were, how should we be proceeding now?
- What was the role of the NIS in preventing the Westgate attack?
- What actions (if any) were taken to prevent the attacks?

#### **Security lapses during the attack**

- It is reported that there was conflict in command during the operation which caused the attackers to gain ground and led to more deaths. Could these allegations be confirmed? Who was in charge/in command during the attacks?
- There are fears that some of the dead were killed in friendly fire, including a Kenyan police commander. What exactly took place during the operation at the Westgate? Could more people have been saved?
- How effective is the anti-terrorism police unit and what was their role during the attack?
- It was reported that the security forces were involved in looting of property at the mall. Can cases of looting by the security forces be confirmed?
- Did any suspects escape by pretending to be hostages?
- What happened to the terrorists? How many were killed?
- The Cabinet Secretary was accused of giving conflicting information with regard to the operation. What was the real situation?

## After the attack

- What measures were put in place after the 1998 bombings?
- What immediate and long term security measures have been put in place to prevent any further attacks following threats of other attacks issued by al-shabaab?
- Did any suspects escape?
- How many hostages were still in the building when the operation was concluded?
- How long will it take to remove the rubble?
- How can Kenya aim to strengthen the counter-terrorism unit to enable it to be comparable to that of the Israeli Special Forces or the United States Forces?

## Security lapses at the Immigration Department

The immigration department is accused of being highly corrupt and letting in drug dealers, wanted criminals and terrorists among other suspicious individuals. Security measures at the immigration department and especially at the borders should be interrogated as this is the point where the terrorists find a way to get through.

## Security at the Refugee Camps

Refugee camps are touted to be the haven for terrorists. What security measures have been put in place at these camps to protect humanitarian aid workers and prevent any acts of terrorism from occurring? What actions are in place to ensure that these camps are not havens for breeding terrorists?

### 4.2.2 Legislation

In external cooperation, Kenya has ratified the twelve international conventions relevant to the fight against terrorism. The East African Counterterrorism Initiative (EACTI) and CJTF-HOA is the foundation for U.S. counterterrorism programs in so far as US - Kenya partnership in counter-terrorism is concerned. Kenya has ratified Africa Union's Convention on the Prevention and Combating of Terrorism 1999 and its 2002 Protocol which has developed a 'Plan of Action on the Prevention and Combating of Terrorism in Africa which specifically references the obligations set out under UNSC RES1373. Some impediments, internal and external, still exists in the so far as Kenya's internal and external cooperation towards the implementation of UNSC Resolution 1373 is concerned.

The Penal Code Cap 63 of the laws of Kenya, the Banking law, and the Anti-Money-Laundering and Crime Proceeds of Crime Bill make it an offence for any individual or

organization to open, operate, finance, recruit or assist any person or organization engaged in terrorist activities.

Is the Legislation (Prevention of terrorism Act, 2012) in place to tackle terrorism effective? The law with regard to the offences may need to be reviewed. For instance, Under Clause 4 of the Act, a person who inflicts terror in Kenya can be sentenced to a maximum of 30 years in prison though he/she may be sentenced to life imprisonment if the act results in death of another person. However, a person who commits robbery with violence is sentenced to death.

#### **4.2.3 Funding**

It will be important to interrogate if the funding to the security forces is sufficient and how much of the funding to the security forces went directly towards the intelligence service and building and enhancing the anti- terrorism capability?

### **PROCEEDINGS OF THE JOINT COMMITTEE**

#### **5.0 JOINT COMMITTEE VISIT TO THE WESTGATE MALL ATTACK SITE**

The Committee visited the Westgate Mall site on Monday 30<sup>th</sup> September, 2013 at 2.30 pm. During a tour of the building, the Committee observed the following:-

- There was extensive destruction of property – walls were riddled with bullet holes; there was cracked glass in virtually all the shops; some of the shops such as the Phone Express Ltd. had empty shelves.
- Part of the building roof had collapsed due to apparent gun fire/explosives.
- The floors were covered with spots of blood which pointed to injuries suffered by the hostages during the attack.
- The floors were covered with water which the Committee learnt came from the fire fighters as they put out a fire which had started in the Nakumatt Supermarket.
- The floors were littered with personal effects of the fleeing hostages.
- A number of vehicles on the collapsed rooftop had been burnt extensively.

During a meeting with the security personnel, represented by Maj. Emmanuel Chichir of KDF and Inspector Vitalis Otieno OCPD Gigiri, Members were informed that:

The terrorists who were believed to be five in number attacked Westgate Mall on 21<sup>st</sup> September 2013 at around 11.30 am.



The heavily armed terrorists gained access to the Mall after forcing their way into the premise with the aid of three private cars and shot dead a supervisor with a security firm manning the Mall after the guard confronted them soon after he notified by his juniors who were at the main gate.

The OCPD Westlands took charge of the operation at the Mall soon after the terrorists went on rampage until when the Inspector General of Police arrived at the scene.

There was no bad blood among the security officers who were involved in the rescue operation at the Mall.

The advance team from Kenya Defence Forces arrived at the scene at 3.30 pm while the Special Forces arrived at about 5.00 pm.

Immediately after arrival at the scene, the Kenya Defence forces secured all the exits at the Mall with the aid of the Westgate Mall map that they were provided with by the management.

The final number of persons who lost their lives in the attack would be revealed once the investigations are over as the security forces were still in the process of retrieving the dead bodies trapped under the rubble.

When the army came in, the National Police Service withdrew their Officers to pave way for the army which was a superior force.

Investigation was underway on the allegations that security forces were involved in the looting spree at the Mall.

At one point the security forces retreated to re-strategize as terrorists were shooting at them from advantage point leading to a number of uniformed casualties.

Five terrorist were killed during the last onslaught to recapture the Westgate Mall and that it was believed that their bodies were still trapped under the rubble.

It was too early to tell the exact number of civilians who were trapped under the rubble and that the possibilities of friendly bodies being trapped under the rubble would be very insignificant if any because all the dead bodies were actually removed from the building before the building collapsed.

On the question of the prior knowledge of terrorist attack at the Mall, the OCPD informed the Members that he had no such information and that when he got posted he met the management of the Mall over security issues and was also taken through the Mall to carry out security assessment.

There was a lot of miscommunication surrounding the aftermath of Westgate terror attack going by the reports that the terrorists might have used the underground tunnel reported in the media as the escape route.

Criminal Investigation Department was investigating the allegation that prior to the terrorist attack, the attackers rented of the rooms at the Mall for business purposes.

No terrorist escaped from the building as the scene was heavily secured by the Kenya security forces.

The building collapsed as a result of explosives which were fired inside the Mall by the terrorist.

The recovery of the terrorists and civilians bodies still covered under the rubble might take a little longer as the process involves removal of the rubbles.

### **Concerns raised by the Committee Members**

The Committee Members sought to know the following from the security officers on the ground:

- I. The exact number of terrorists who were involved in the attack going by the conflicting information given by different government Officers.
- II. The total number of civilians killed in the attack.
- III. The number of hostages who were believed to have been in the building when the Mall collapsed.
- IV. The true cause of the fire that was witnessed at the Mall.
- V. The cause of the collapse of the rear side of the building.
- VI. The total number of security Officers who died from the terrorist fires and friendly fires.
- VII. When the security forces expect to finalize on their investigations.
- VIII. The allegations on rampant looting at the Mall.
- IX. The underground tunnel that was reportedly used by the terrorists to escape after carrying out the attack.

In response to the above clarifications, the Committee was informed as follows:-

The total number killed during the attack, according to Government sources, was 67. It was not possible to establish the number of hostages trapped in the building as the siege progressed till a section of the building collapsed.

The fire inside the supermarket was caused by the terror gang as a means to distract the security teams and create a situation which would enable them to regroup and launch further attacks. The section of the Mall that collapsed was due to heavy exchange of gun fire between the terrorists and the KDF soldiers.

The number of security officers killed during the Mall siege was not yet established. It was expected that forensic investigations would be initiated immediately after the rubble was cleared and once bodies were retrieved, it would then be possible to establish the number of officers and terrorists killed during the raid.

There was no looting by security officers at the Mall. The allegations were unfounded. However, there was extensive destruction of property occasioned by the heavy gun fight between the terrorists and the KDF soldiers. There was no tunnel leading out of the Mall which the terrorists could have used to escape.

## **6.0 MEETING WITH WITNESSES OF THE WESTGATE MALL TERROR ATTACK**

### **Witness no. 001/Westgate**

In her submissions, informed the Committee that;

She comes from Mathioya Constituency. She had worked in the Office of the Attorney and the Director of Medical Services.

Over time she has tried to reach authorities on what she referred to as information that could have helped in improving the security of the nation as she had been having a lot of concerns over operations of the security systems and the public service at large.

On 12<sup>th</sup> December, 2012, she came across seven young men sleeping in a mosque in Chuka – Ruai. When she inquired about their origin, they told her they were from the Comoro Islands and were waiting for the Ambassador of Yemen to process their visas so that they could go to Yemen for further education.

She called the District Officer Ruai who alerted his Administration Police who later arrested the young men.

The following week when she followed up on the case she learnt that the young men had been released after two days in custody. When she asked the DO about the release of the seven foreigners, the DO told her that he was not privy to the information about their release.

She later called the Officer Commanding Station (OCS), Nyati Police station who informed her that the suspects had been handed over to the Anti-terror unit, a statement she did not believe.

She reiterated that the lapse of security in the country was heightened by failure by the security agencies to heed caution from the general public. The Westgate terror attack and other related terror attacks in other parts of the country could have been prevented if the forces took security concerns by the public more seriously.

**Witness no. 002/Westgate**

He informed the Members that;

He was a businessman and was a presidential candidate in the 2013 general election.

In the process of wanting to be the president of the country, he built a network of friends from political, economic and former security chiefs from the Great Lakes region because he believed security was one of the pillars of a successful nation.

After the general elections he travelled out of the country with one of the diplomats in the East African region who was at one time the Attorney General and presidential security adviser in his country of origin.

During their journey, the diplomat engaged him in a discussion on insecurity in East Africa; they found out that the al-Shaabab had a network of spiritual leaders and prominent financiers in Kenya.

It emerged that some spiritual leaders of the al-Shaabab were carrying out recruitment with intentions to attack Kenya in revenge for the killing of Sheikh Aboud Rogo.

When he came back to the country in May 2013, he passed the information he had to the police. He alerted the police that there were plans to attack Kenya in revenge for the KDF invasion of Somalia and the subsequent killing of Sheikh Rogo. He met Mr. Nehemiah K. Bitok, the District Criminal Investigations Officer, Central Police Station. After listening to the tape recording, the DCIO sent him to the Anti-terrorist unit.

He later visited the Anti-terror unit and handed over the tape recording to an officer whom he identified only as Jack.

After two weeks, he followed up on the progress of his report to the Anti terror unit and realized no action had been taken.

He later decided to see the Inspector General of Police over the issue. When arrived at the IG's office he met Mr. William Okelo, the Chief of Staff at the National Police Service, whom he gave the tape recording. He also volunteered more recording captured with his spy camera pen on people who were disgruntled with the outcome of the March 2013 general election.

After deliberations on the contents of the information he had, Mr. Okelo promised to pass on the information to the IG and later call on him on the progress of the investigation. After a week, he requested a colleague to follow up the case as he was travelling. There was no response from the IG'S office.

When he came back from the said trip, he made inquiries about the case but realized that nothing had been done. He believed that had the security chiefs acted on the information he provided, the Westgate terror attack would have been averted.

He further recommended to the Committee that inter-faith healing and reconciliation should be undertaken in order to bring the country together.

#### **Witness no. 003/Westgate**

The witness stated as follows;

He was a Kenyan working with Able Citizens Network, a relief agency dealing with disaster management and response.

On the day of the terror attack, he was at Pangani watching TV when a colleague of his called him over the terror attack and they decided to rush to the scene at around 1.30 pm.

On arrival they found a lot of dead bodies at the parking. They decided to look for survivors. All this while, he was in coordination with Mr. Abbas Gullet and the Ngara OCPD Mr. Anamwe.

At around 4 pm, the KDF team arrived at the scene. An exchange of friendly fire ensued due to, according to him, lack of coordination. This resulted to the death of one RECCE unit officer. One KDF soldier was also hurt.

After the shooting incident, he left the scene to re-strategise. With the help of Administration police from Kabete police station they managed to rescue the last group who were hiding in the cold room at around 8 pm. The rescued hostages said that the terrorists were in black uniform but later changed to yellow attire. The attackers demanded to know the religion of the hostages, separating Christians from Muslims. They killed the Christians.

The rescue operation was resumed the following morning as KDF personnel called off the night offensive due to failure of the lighting system at the Mall.

On Monday 23<sup>rd</sup> September 2013, KDF soldiers engaged in a relentless gun fight with the terrorists.

He believed that KDF lit the fire at the Nakumatt Supermarket in order to distract and flush out the attackers from their hideout.

When he enquired from KDF soldiers on the torching of the supermarket, he was ordered to leave the scene because he was not part of the rescue operation.

According to him, KDF interfered with the operation that the RECCE squad would have finished by Saturday evening.

### **Response to Committee's concerns**

In response to issues raised by the Committee, he informed the Members that;

He was not in any identifiable attire commonly worn by rescuers during the rescue operations but was allowed to join the rescue team by the OCPD Pangani, Mr. Samuel Anampiu whom he personally knew, and Mr. Abbas Gullet who he had worked with before in other rescue operations.

He had participated in a number of rescue missions before such as the 1998 bomb blast Nairobi, the Nyamakima tragedy of 2006 and the Tsavo train crash.

On how he came to know the number of the people who were unaccounted for, he had read about the updates in the newspapers.

He had converted into Islam in 2011 because his colleagues Able Citizens Network were all Muslims and that he worships at the Pangani mosque.

He runs a private butchery at Pangani where he earns a living while he works voluntarily at the Able Citizens Network.

He did not see the terrorists inside the Mall. He did not witness any looting by the KDF soldiers, neither did he see them launching hand propelled missiles, as he was not allowed into the Mall after KDF took over.

The Members resolved that background check be done on witness no. 3, for the reason that his statements were contradictory.

It was further resolved that a thorough vetting be done on the witnesses who would be appearing before the Committee to ascertain their credibility.

## **7.0 PRESENTATIONS BY EXPERTS ON COUNTER-TERRORISM AND INTELLIGENCE GATHERING**

The experts took the Members through the following key points aimed at improving security of the nation;

- I. Intelligence and data collection: There was need to maximize data collection to enhance security through intelligence gathering.
- II. Intelligence sharing within and across security agencies: This is a core function of all security organs and must be encouraged.
- III. Hardening strategic installations: The Committee heard that many installations like Government laboratories were not adequately secured posing a threat to national security. There was no proper management and control on purchase of chemicals that are used for making fertilizers.
- IV. Public involvement and support for better policing: The public are not adequately engaged on security issues. New proposals like the “*nyumba kumi*” initiative needs to be strengthened as it has proved successful in other countries
- V. Role of counter terrorism Center: The Center should be fully operationalized and utilized.
- VI. Integrity within security services: There is need to pay more attention to vetting of security officers. Failure to punish offenders dents the image of the security agencies.
- VII. The need to promote effective oversight: The security officers need to be made accountable for their actions and at the same time funded adequately in order to tackle crime. Committee in charge of security should also have an oversight on how membership of the Security Council is structured.
- VIII. Better coordination of security: The Government needs to come up with the provisions for special security advisers to guide the President on security related issues.
- IX. The need to find an interface between the National Intelligence Service and the Military Intelligence: All other intelligence services such as the Kenya Revenue Authority, the Kenya Wildlife Service, the Kenya Police Service, etc should be coordinated towards a secured country without putting emphasis only on the National Intelligence Service. Intelligence gathering needs to be centralized and stringent reporting and accountability established.
- X. There is need for the National Assembly to come up with legislations on mandatory oversight over the security dockets.

The Committee Members raised the following issues from the experts;

What would have been the ideal command structure during the Westgate Mall rescue operation?

What role the Army, the Air Force and Navy plays in ensuring national security?

Why the numbers of youth being recruited into terrorism activities has increased over the years.

Whether there was a law that exists on coordination and collaboration between the security organs during response to emergencies.

What is the communication structure between the Kenya Defence Forces and the National Police Service?

Whether there was bad blood between the Kenya Defence Forces and the National Police Service that complicated the rescue operations and resulted into loss of lives from the friendly fire.

Which security organ, in their opinion, should appear first before the Committee?

If a framework could be developed on how Kenyans of good will can help in rescue missions as witnessed from the members of the Asian community and how they can be facilitated with life saving materials like bullet proof vests during such operations.

### **Responses to Members' concerns;**

The Committee Members were informed that:-

The Kenya Defence Forces ought not to have been deployed in Westgate Mall as the RECCE squad had already pinned down the terrorists by the time the KDF soldiers arrived at the scene of attacks. Involvement of the military should be a last resort decision especially if there is external threat to a nation's security.

Most youth are lured into terrorist activities as a result of economic hardships hence the urgent need to address poverty.

There's need to pay attention to the context while employing the "Nyumba Kumi" initiative as it is unlikely to work best in all estates for instance in the up-market residential areas where people lead very private lives.

The Presidential directive to have the Inspector General to take command of the Westgate Mall operation was proper. The Chief of the Kenya Defence Forces should have ordinary consulted with the Inspector General of Police and should have withheld the deployment of KDF.



The constitution too gives the KDF powers to supplement the services of the police within our borders but this must be in line with the Vienna agreement.

All security agents have counter terrorism units hence there is need to share information amongst the agencies in order to advance national security.

Poor coordination and brinkmanship resulted into poor management of the Westgate Mall rescue operation.

The National Intelligence Service should appear first before the Committee in order for the Members to gather as much information as possible on who did not perform their duties as required. This would enable the Committee to field questions and seek clarifications on acts of commission and/or omission by the security agencies.

### **The Way Forward**

The National Security Council needs to be reviewed and audited in order to enhance efficiency and accountability within the security forces.

The security sector reform agenda should be pursued in order to create an enabling environment for vibrant institutions.

The security agencies should be given adequate funding if the war against terrorism and insecurity within our borders is to be realized.

The national programme for ex-service officers should be put in place to curb cases of insecurity brought about by the ex-service men who take up to criminal activities upon dismissal from the force.

The private security sector and the National Police Service should work together towards a secured Nation. The private security sector should also be regulated. To that effect, the Private Security Bill, 2012 should be fast tracked. Community policing, through the “*Nyumba Kumi*” initiative, should be strengthened.

The prisons departments should work towards reforming offenders. The prisons should not be breeding grounds for prisoners to turn into hard core criminals.

The Judiciary should meet its obligations in the war against terrorism. Stiffer penalties on terrorists should be encouraged to deter new offenders from getting recruited into terrorism activities.

The Government should provide employment opportunities to the youth so that they can be actively and positively engaged for them to have no idle time to participate in terrorist activities.

Formulation of the National Security Policy, the Crime Management Strategy Paper and the National Disaster Management and Response Draft Policy document should be fast tracked and operationalized.

## **7.1 FIRST MEETING WITH CABINET SECRETARIES FOR INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT; AND DEFENCE; AND DIRECTOR GENERAL, NATIONAL INTELLIGENCE SERVICE**

The representatives from the Ministry of Defence, Interior and Coordination of National Government and the National Intelligence Service made elaborate presentations to the Committee concerning the Westgate Mall attack as well as other terrorist attacks in the Country.

The presentations included:

- A background on terrorist activity in the Country up to date;
- A detailed presentation on the operations of the Security agencies in averting the terrorist activities;
- An in depth presentation on the Westgate Mall ordeal and the method in which the attack was handled by the multi-agency operation including the challenges experienced in averting the risk.

### **7.1.1 Presentation by the Director General, National Intelligence Service**

The Director General, National Intelligence Service, informed the Committee as follows;

Kenya has borne the brunt of a series of terrorist attacks such as the Norfolk hotel bombing in 1980, the US Embassy blast of 1998, the Kikambala attack in 2002 and the Westgate Mall attack of September 2013.

NIS had also foiled some planned terrorist attacks in the country. Several terrorists have been identified and arrests have been made while others are on the run. An assortment of arms and ammunition, bomb making materials, suicide bomb vests have been recovered during raids on suspected terrorist abodes.

Over 300 al-Amniyat, the al Shabaab intelligence wing, have been dispatched to Kenya since 2011 to conduct covert surveillance and carry out attacks.

About 500 Kenyans have been recruited into al Shabaab. The recruits are mainly unemployed youth, mostly of Muslim faith and residing in the slum neighbourhoods such as the Majengo area of Nairobi. Over 200 Kenyan youth have been fighting alongside al-Shabaab since 2009. Some have come back to the country and are engaged in criminal activities, while others remained in Somalia.

Plans on Westgate attack were conducted between Kakuma refugee camp and Eastleigh Third and Sixth Street in Nairobi. The Mall had been identified as a possible target by 2011. An intelligence report was given to the Westgate Mall Management in 2011.

Surveillance of the Mall by terrorists intensified in 2012. Final preparations on the attack were done in June 2013, and heightened in September 20<sup>th</sup> through 21<sup>st</sup> September when the attack was executed.

NIS accessed the CCTV footage for purposes of constructing the events leading to the attack and in identifying the attackers. Investigations still on-going and a number of links have been pieced together while planners and the actual attackers have been identified.

Terrorist attacks were still being planned on several strategic areas in the country. Some of the attackers are ready to die for their cause. They are trained for intelligence gathering and counter intelligence and have expertise in assembling bombs. They come from an array of different communities in the country.

The National Intelligence Service has put up certain measures to counter terrorism. They are working closely with all the other security agencies.

The instability in Somalia continues to provide a breeding ground for terrorists. There is need for appraisal of the counter terrorism strategy. There is urgent need to address vulnerabilities, including accelerated peace efforts in Somalia.

### **7.1.2 Presentation by the Ministry of Defence**

The Cabinet Secretary and her team from the Ministry of Defence made her presentation to the Committee and informed the Members that:-

The Kenya Defence Forces is established under Article 241(1) of the Constitution. The Defence Forces were deployed to the Westgate Mall scene pursuant to Article 241(3)(b) which states that “ the Defence Forces shall assist and cooperate with other

authorities in situations of emergency or disaster, and report to the National Assembly whenever deployed in such circumstances...”

The Ministry by deploying troops to Westgate Mall was therefore within the law. The KDF soldiers used proportionate force to respond to the emergency situation at Westgate Mall.

The operation started around 3pm on Saturday 21<sup>st</sup> September, 2013. The KDF soldiers exchanged what was referred to as ‘friendly fire’ with the Police RECCE squad. As a result, one member of the squad was killed while a KDF soldier was hurt.

The soldiers moved from floor to floor as indicated on drawings and architectural designs of the Westgate Mall were displayed, indicating

The operation was conducted for three days until the situation was brought to control on Monday 23<sup>rd</sup> September, 2013.

### **7.1.3 Presentation by the National Police Service**

The Director, Criminal Investigation Department, informed the Committee that;

The attackers, believed to be of Somali origin, arrived at Westgate at around 12.30 pm in a saloon car registration number KAS 575X.

The GSU RECCE Company and Administration Police arrived first at the scene and were able to pin down the terrorists by about 4 pm. The KDF Rangers Strike Force (RSF) arrived at the scene. The Police units were withdrawn to let the KDF soldiers to take charge.

The confrontation continued to Monday 23<sup>rd</sup> October, 2013, when the terrorists were subdued. Forensic investigations started.

During the attack, sixty seven (67) persons lost their lives while 237 others were injured.

Investigations were thereafter started. Several suspects were arrested. Other persons are being pursued including persons who were involved in the purchase of the vehicle that transported the attackers to the scene. Forty seven (47) arrests have been made, Twenty three (23) have been released while eighteen (18) are still in custody.

Some body parts, believed to be those of the four terrorists and four AK 47 rifles, were found at the scene of attack.

The Police made the following observations:-

The attackers were mainly drawn from the Kakuma Refugee Camp. Logistical preparations were done by Kenyan Somalis based on the Third and Sixth Streets in Eastleigh.

The attackers had contact with the outside world with several calls being made to Somalia and Norway.

The main challenge that the investigations were faced with on DNA profiling is that there is no database available DNA database to compare with. Even after the forensic investigations are out, there is no legislation in place to enable for the creation of a viable DNA data base.

Mrs. Grace Kaindi, while presenting on the terrorist attacks in other areas, informed the Committee that;

The hotspots where attacks have occurred include Mandera, Wajir, Moyale, Garissa in North Eastern, Tana River in Eastern, Mombasa in the Coast Province, and Bungoma and Busia in the Western region.

The al Shabaab militias are believed to be behind the attacks in North Eastern. The outlawed Mombasa Republican Council (MRC) is responsible for attacks at the Coast, while conflicts in the Eastern area especially in Tana River and in Western region are politically instigated.

Conflicts have also been fuelled by cattle rustling especially among Communities living within the Upper Rift such as the Samburus and the Turkanas.

Several arrests have been made and the situation in most of these areas has now normalized.

## **7.2 SECOND MEETING WITH THE CABINET SECRETARIES FOR INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT; AND DEFENCE; AND DIRECTOR GENERAL, NATIONAL INTELLIGENCE SERVICE**

Following the previous meeting with the Security Chiefs, the Ministry of Defense made a presentation seeking to clear the allegations that had been made by the media through television program 'Jicho Pevu'. The presentation sought to respond to the videos shown by the program justifying why the Kenya Defence Forces were seen leaving from Nakumatt with plastic shopping bags.

The Members of the Committee sought the following clarifications from the Security Chiefs:

- i) Whether there was any conflict between the security agencies, that is, the NIS, the Ministry of Interior and the Ministry of Defence;
- ii) Whether the NIS intelligence information on the impending attack at Westgate Mall was shared with the other security agencies;
- iii) Reasons as to why KDF did not record statements of the other financial institutions within Westgate;
- iv) The number of terrorists who were killed;
- v) Whether there was any handover between the police and the army;
- vi) What informed the decision for KDF to intervene in the attack;
- vii) Whether the country is well equipped to handle such an attack, more specifically in terms of manpower;
- viii) Whether there are any operational guidelines for a multi-agency operation;
- ix) Whether there is a national security policy;
- x) What was the source of the fire within the supermarket;
- xi) What caused a section of the building to collapse.

The Director General NIS responded to the concerns raised by Members, as follows:

- i) Intelligence on the possibility of the attack was relayed as early as April 2011, and certain areas were pronounced as being primary targets, among which the Westgate Mall was part of the mentioned targets;
- ii) Information about the intention to air the 'Jicho Pevu' video clip was attained by NIS, and efforts were made by the Service to prevent the airing of the clip. However the clip was still aired. This only re-emphasizes the fact that the mandate of the NIS is very limited based on the Act passed by Parliament. Nevertheless, there are plans to ensure that action is taken against the persons who aired the clip.
- iii) The information given by the Hon. Senator Mike 'Sonko' was not relayed to the NIS, which presents another challenge the NIS is experiencing, that is, the flow of information between the security agencies and how to address the credibility of such information. In addition to this, there is also a challenge in the gathering of intelligence information.

- iv) Dealing with terrorism requires a multi-agency effort which justifies why all the Security agencies came together to deal with the attack; above all, there is need for a national effort to mitigate such threats from occurring.
- v) Considerations should also be made regarding the resources allocated to the Police in dealing with such matters; that is, there is an obvious and serious shortage of resources such as security apparatus, which is critical in handling such threats.
- vi) The importance of having a clear understanding of the role of NIS which is primarily to assist, support and co-operate with other national organs or agencies in the exercise of their powers and discharge of their functions. Additionally, there is need to appreciate that the NIS has no public voice and can therefore not defend or justify any allegations made by the public about the NIS.

The Inspector General made the following remarks in response to the clarifications sought by the Members:

- i) There was no handover between the police and KDF as the operation was being carried out by a multi-agency unit. Nevertheless, KDF had the blessing of the Kenya Police Service to take over the operation.
- ii) In the initial stages of the attack, five (5) officers were injured and one (1) killed. He stated that there was no friendly fire between the police and the KDF.
- iii) He further clarified that the country does have a National Security Policy.

The Cabinet Secretary for Defence and the Chief of the Defence Forces informed the Committee that:

- i) The right persons were sent in to deal with the attack, as such; Special Forces who have been trained in all manner of operations were flown in from Gilgil.
- ii) The fire was lit by the terrorist as a way to try and escape from the building, which led to the destruction of the building.
- iii) The decision of KDF to intervene in the attack was informed by the Constitution of Kenya 2010 under Article 241 (3) (b) which requires the KDF to assist and cooperate with other authorities in situations of emergency or disaster, and report to the National Assembly whenever deployed in such circumstances.

The Director of Criminal Investigation Department made the following clarifications:

- i) That based on the statements from the KDF, it is believed that all the terrorists were killed in the attack;
- ii) That there is need to establish the evidentiary threshold when dealing with certain terrorist cases.

## **8.0 MEETING WITH THE MANAGING DIRECTOR, NAKUMATT HOLDINGS LIMITED**

Mr. Atul Shah, the Managing Director, Nakumatt Holdings Ltd. And his team, informed the Members that;

Nakumatt lost three members of staff in the tragedy while two were injured.

The Nakumatt Supermarket CCTV Cameras were handed over to NIS. The Management had not received the DVR's yet.

One of the attackers was clearly of Somali origin during an encounter inside the Supermarket. The terrorist ordered the police officer who was escorting them to surrender his gun before shooting him.

The Management lost everything in the shop through the fire whose cause was yet to be established.

The Management could not tell whether there was looting at the shop as everything was had been razed down.

Eight million shillings was retrieved from the vaults. The amount of cash sale for Friday and Saturday could not be accounted for as all the cash counters got burnt.

### **Response to issues raised by the Committee**

The Management was not aware of any imminent attack at the Mall. The Mall was managed by the Althaus Services Limited.

There were stringent security measures at the supermarket. Four armed private security guards were stationed at the entrance of the Mall in addition to uniformed officers who were manning banks. Further all Nakumatt employees undergo disaster management training.

On how the KTN journalist acquired Nakumatt Supermarket CCTV footage, the MD stated that CCTV cameras were in the possession of the National Intelligence Service.

There was only one entrance to the cold room with no exit hence the terrorists could not have escaped through Nakumatt supermarket cold room as alleged

The management was yet to receive any answer concerning the cause of fire that gutted down the supermarket.

The value of stock lost at Westgate Nakumatt branch was Kshs. 1.6 billion in addition to three vehicles that also got burnt.



The Supermarket terrorist was insured against acts of terrorism, for 60% of the total cover.

Everyone was evacuated from the building before the building collapsed. All their emergency exits were opened after attacks were reported.

The impact of the terror attack had rendered the branch workers jobless. However, the affected workers would not be laid off.

The Management was not aware of any brief given to the caretaker about any imminent attack at the Mall. Such information could have been channelled to the owners of the building.

The paper bags seen being carried away by KDF soldiers were indeed from the supermarket but they could not tell the contents. He also confirmed that the building was owned by Israeli investors.

There were a total of 64 CCTV cameras at the supermarket and 4 DVR machines at the Managers office.

Power was switched off at around mid-day on Monday 23<sup>rd</sup> September 2013 making it difficult to know what happened at the after that.

The Management was deeply concerned on value of property lost at the branch and regretted the loss would have been prevented had rescue operation been coordinated properly.

The MD also informed the Members that police chiefs were advised over the possibility of increasing more police officers manning the malls in various parts of the country. A response was yet to be received.

## **9.0 PRESENTATIONS BY DR. ABBAS GULLET AND MR. ABDUL HAJJI**

### **9.1 Dr. Abbas Gullet**

In his presentation, he informed the Members that;

He received a phone call from a colleague at 12.35 pm and later another call at 12.40 pm from Red Cross Emergency Center informing him of the attack.

On arrival at Westgate, he decided to coordinate the removal the wounded persons to the hospital. As the hostages came down stairs they were screened but there was no time to carry out verification checks on their identification. He was not in a position to

confirm the allegation that one of the terrorists changed his clothes and left with the hostages.

By 5.00 pm the terrorists had been confined inside Nakumatt supermarket by the RECCE squad. The arrival of the KDF and the subsequent withdrawal of the RECCE squad gave the terrorists time to regroup.

The information on the missing persons was provided to Red Cross by relatives and was subject to verification. The Government provided up-dates on the number of lives lost. It was not the intention of the Red Cross to contradict the Government.

He did not see any of the terrorists while in the Mall neither could he tell their numbers. He relied on information given by the shoppers who put the number between 4-6 attackers.

Red Cross had no access to Nakumatt supermarket CCTV footage. The only clips that were available were from the media houses.

He could not tell who between the terrorists and the KDF officers shot dead the RECCE squad officer. He had not witnessed any looting by KDF soldiers or anyone else. However, there were a lot of supplies of water and food from well wishers. He could not tell the cause of fire at the Nakumatt Supermarket and the subsequent fall of part of the building.

There was indeed no smooth hand over between the KDF officers and the RECCE squad during change of command. There was no clear communication and coordination.

The country was not adequately prepared for disaster management. The response to emergencies is usually disjointed and lacking proper emergency response mechanisms. For instance there are no emergency blood banks or adequate facilities for storage.

## **9.2 Mr. Abdul Hajji**

In his presentation, Mr. Hajji informed the Members that;

He received a call from his brother who was at the Westgate Mall informing him of the attack and immediately rushed to the scene.

He joined a group the armed Asian community rescuers. The group gained entry into the Mall through the Java café and began their rescue mission.

As they were moving to ground floor, they encountered resistance from the terrorists. In the process one of the plain clothes police officer was shot. On the ground floor they were joined by police officers who lobbed tear gas canisters at the terrorists into the Nakumatt supermarket where the terrorists were shooting from.

The rescue took a turn with the arrival of the KDF officers who requested them to stay away.

There was no coordinated change over between the KDF and the RECCE squad as the KDF only asked them the location of the terrorists and moved in.

During the rescue operation that he participated in, all the properties were secured and the owners were evacuated. There was no looting at the time. The claims of looting came a day later.

He was not aware that there was an underground tunnel leading out of the Mall. He did not see the 'white' terrorist. The rescued hostages claimed to have seen four terrorists.

He believed that the RECCE squad could have subdued the terrorists even without the assistance of the military.

#### **10.0 MEETING WITH THE DIRECTOR OF IMMIGRATION, REGISTRAR OF PERSONS, DIRECTOR, NATIONAL REGISTRATION BUREAU AND AG. COMMISSIONER, DEPARTMENT OF REFUGEE AFFAIRS**

In her presentation, the Director of the Immigration Department informed the Members that;

When she assumed the position, she invited the Ethics and Anti-Corruption Commission to conduct a forensic audit of the whole Department. Arising from preliminary results of this forensic audit, twenty officers from the Department had been interdicted awaiting the outcome of further investigations. Thirteen other officers had been asked to step aside to allow investigations to be carried out.

The National Registration Bureau has established crime control mechanisms aimed at curbing vices associated with foreigners who register illegally as Kenyan nationals. Issuance of ID cards to refugees is a process involving a vetting committee that is composed of village elders, the local chief, OCPD and immigration officials.

The biggest challenge faced in the issuance of registration documents is the integrity of staff. Some immigration officials take bribes and register aliens who have no proper refugee status.

Plans are afoot to condense all registration information into one chip that will contain information like identification details, birth information, citizenship, etc.

The Registrar of Persons informed the Committee Members that there are many cases of late registration which presents a major challenge to the exercise. People of questionable nationalities take advantage of this lapse. A campaign to sensitize people on registration has been hatched. This is aimed at preventing incidents of late registration.

The acting Commissioner, Department of Refugee Affairs informed the Committee that:-

The Department was created by an act of Parliament. The Department offloaded some of the work of the United Nations High Commission on Human Rights [UNHCR]. The refugee problem has been exacerbated by the Somali war. However, a tripartite agreement would soon be signed between the Government, UNHCR and the Somali to expatriate refugees back to Somalia.

The Committee expressed concerns that there was a huge influx of refugees in the country, some of whom did not qualify as genuine refugees. Other Kenyans had sought refugee status in order to enjoy amenities offered inside the camps. Other refugees have stayed within the camps for long.

Members were of the view that refugees could be distributed to other countries which were stable. There were instances also where some of the foreigners had acquired massive properties in questionable circumstances. Some of the properties are believed to have been acquired through money laundering.

The Director, Department of Civil Registration, stated that the Department lacked adequate vehicle for registration officers to move from one registration centre to the other. Further, there were inadequate personnel to carry out registration over the vast areas in the North Eastern region. The Kenya Somali border is wide and long. The border control points are fewer hence immigrants find their way into the country through illegal entry points.

Information on visa application is relayed to NIS for verification. There is however need to computerize most of the activities of the Registration Department so as to reduce demand for manpower, and also instances of corruption and fraudulent incidents.

The Department of Immigration Services had rolled a programme to have the security features on third generation ID cards enhanced. All ID cards applications are processed at the National Registration Bureau. Budgetary constraints have affected operations in

the various immigration Departments with the 2013-2014 budget having been reduced by half.

Proposals are being made to capture bio data of children automatically by age 12 and later issue them with IDs once they attain 18 years. It is desired that eventually everyone is issued with third generation ID cards as soon as funds are availed to complete the project.

Procurement processes have held down progress on remodelling the Departments. Some strides have been however made, such as rolling out of the third generation ID cards programme, establishment of the e-visa management systems, creation of a central data base, etc.

The Government should be called upon to repatriate refugees back to their country of origin. To this end, plans were at an advanced level to sign a tripartite agreement between the Government of Kenya, the Somali Republic and the UNHCR.

There was need to amend the Foreign Nationals Management Act, 2012. Cabinet memos proposing changes in policy and law regarding refugees had been formulated and were awaiting approval.

The Refugees Act 2006 should be repealed.

## **11.0 MEETING WITH THE KENYA VETERANS ASSOCIATION**

The Chairman and members of the Kenya Veterans Association informed the Committee that:-

The Westgate Mall siege was a culmination of factors, ranging from the KDF entry into Somalia, to retaliatory acts by the al Shabaab cells due to Kenya's sustained war against terrorism.

Repealing of the Armed Forces Act to replace it with the Kenya Defence Forces Act, 2012, opened up many loopholes in the Armed Forces. For instance, Section 9(2)(b) of the KDF Act transfers authority of the President over the Armed Forces to the Chief of the Defence Forces. In the new set up, the Chief of the Defence Forces has power to deploy forces. This is ultra vires to Article 131(1)(c) of the Constitution.

Section 227(2) of the repealed Armed Forces Act bestowed upon Service Commanders powers to control, administer, supply, use of arms and inspection of troops on completion of an operation. This has been revoked by the new law. The soldiers would have ordinarily been inspected after the Westgate operation thus removing any chances of looting.

Under the new law, the Army Commander lacks a legal basis to set up a Court Martial for errant soldiers. This is because Part IX which establishes guidelines on setting up a Court Martial are against Article 169(1)(c) of the Constitution. The former law gave the Chief of Armed Forces authority to appoint a Court Martial. For instance, an officer, once he gets a summary dismissal, cannot be prosecuted and jailed.

The Westgate incident was an emergency and not a normal operation. The army responded with unnecessary full force. It was not prudent to deploy the Army to Westgate. The RECCE team had already taken control of the situation before the Army came. The Westgate incident required counter insurgency response which was within the purview of the police.

The Immigration Department should be held responsible for registering aliens without verification or insight into their backgrounds.

It is necessary to set up one elite squad to respond to emergency cases like terrorism. There should also be one Command Centre set up for response to disaster.

## **12.0 MEETING WITH ALTHAUS SERVICES LTD.**

During her presentation, Ms. Simmi Chanda, Althaus Services Ltd. Property Manager, informed the Committee that:-

The Mall commenced its operations on 1<sup>st</sup> July 2007 under the management of Knight Frank Limited up to 30<sup>th</sup> September 2012 when Althaus Services Ltd. took over.

Since the attack, the building was placed under security agencies that commenced forensic audit at the site. The management extended full cooperation to the government to ensure joint approach and capacity building on issues of terrorism and security.

Both the management and the private security firms had conducted explosives and counter terrorism training to the employees who were charged with the responsibility of guarding the Mall.

An effective CCTV monitoring system was installed from commencement at all strategic places and was monitored on a twenty hour basis.

The Mall had substantially invested on matters of security since its opening in 2007. At the time of the attack, the Mall was being manned by Securex Agencies (K) Limited that was awarded the contract by Knight Frank Kenya Limited, who were then managing the Mall.

All the sitting tenants except Imperial Bank were original tenants who renewed their leases subsequent to October 2012 when she took over from the management of the Mall.

No terrorist rented space within the building. The management carried out a comprehensive evaluation before letting out space to any individual tenant. The allegation that terrorists had rented a shop at the Mall was spread by the media.

The Mall was still in the hands of state organs and all the information concerning loss of lives, injuries and damages suffered during the attack could only be availed through the state.

There was no tunnel out of or into the building. However there was a drainage system out of the building. The matter of an existing tunnel out of the building was a fiction that was created by the media.

### **Responses to issues raised by the Members**

In response to issues raised by the Committee Members, the property Manager responded as follows:-

Westgate Mall is owned by Sony Holdings Limited whose Directors are Alex Trachtenberg of Israeli origin and Vaishali Madan Handa, a Kenyan.

There was no prior information on the imminent terror attack at the Mall. The only report on a possible terrorist attack ever received was on 17<sup>th</sup> June 2009, from the International Criminal Tribunal of Rwanda warning of possible attacks on sites frequented by foreigners.

The banks within the Mall had separate security arrangements from the one that was being provided by Althaus Services Limited.

The attack at the Mall was an armed intrusion that the guards could not avert given that they were not armed.

CCTV Surveillance was out sourced from a company known as Art Care Limited which used to man the footages on a 24 hour basis. Within half an hour after the attack, the security agencies were given access to live CCTV footages at the provider offices. A week later after the attack, the Digital Video Recorders (DVRs) were handed over to the CID department.

She had no idea how the media got access of the CCTV footages that were being aired on television. The management had lost two tenants in the attack and was yet to receive any information on the missing tenants.

The management did not allow the tenants to sub-let the premise once a contract was signed. The Director of the Westgate Mall would be better placed to say how he acquired the land where the building stood, the property value and the extent of the damages inflicted by the terrorists during the attack.

An evaluation was done by the National Counter Terrorism Centre on 28<sup>th</sup> January 2009 based on enhancing security. The recommendations were fully implemented by the Management.

Dixons Electronics Limited, a tenant at the Mall, opened the shop on 1<sup>st</sup> September 2013, five years after the signing of the lease agreement. This was due to the financial constraints that made it difficult for them to stock their goods in the premises. The shop was under renovation for close to five years.

### **13.0 MEETING WITH DIXONS ELECTRONICS LTD.**

During his presentation to the Committee, Mr. Mukhtar A. Parkar, Chairman, Dixons Electronics Ltd., stated that;

The family has been carrying out electronic business in Kenya for more than thirty four years.

He was the Chairman of Dixons Electronics Limited while his wife and daughter were the Directors.

Dixons rented a 10,000 square feet shop space which was reduced to 1,000 square feet after the management requested them to surrender some space for them to put up a hotel, a corridor leading to the hotel, six other shops and an extension of the management office.

The delay in renovation was based on discussions with the management in the view of reducing the size of the shop in order to create the space for the shops and a corridor for the proposed hotel.

Dixons paid rent amounting to sixty four thousand US dollars (about Kshs. 5,440,000). The company had no dispute with the landlord about rent.

The company's other branches are based at the Junction Shopping Mall, Sarit Center in Westlands, Kenyatta Avenue, Kimathi Street, Moi Avenue and other two branches in Mombasa and Kisumu soon to be opened.

### **Response to issues raised by the joint Committee Members;**



In response to issues raised by the Committee, Chairman stated as follows:

He was a Kenyan citizen by birth. Mr. Alex Trachtenberg, the owner of Westgate Mall, was a personal friend since he came to Kenya twenty years ago.

He left the building at 9 am before the attack. He was called later and informed that the building was under attack. Two of his employees were later evacuated at 4.00 pm. By the time the employees were moved, the shop was intact. There was no alert from the security agents about the eminent terrorist attack.

When he went back five days after the attack, the shop had been looted. All of the remaining stock had bullet holes. He did not know who looted the shop.

Dixons was among the first tenant to book space at the Mall before the completion of the construction in 2007. Since Nakumatt had taken major space from ground to first floor, the management requested Dixons to reduce space to cater for other facilities. With the cordial relationship Dixons enjoyed with the management, space was reduced by 9000 square feet out of which the management created six shops and a corridor.

Dixons had been in possession of the space for three years. The management took close to two and half years to complete putting up the shops and the corridor. Dixons had paid the management USD 64,000. The management was still owed them USD 16,000 (about Kshs. 13,600,000). The space the shop occupied cost around 2.5 to 3 dollars per square feet.

Dixons started operating in September 2013. The shop was strategically situated and he was confident his lease would be renewed as it was about to expire.

Dixons had twelve to thirteen million Kshs. worth of stock at the shop. It was projected that the shop would bring returns of twenty million Kenya shillings per month in sales.

The business took a little longer to start operating due to renovation works. Dixons would have recovered money within a year if business had picked up. There were shops which were still vacant despite their leases having been signed years back.

Dixons had over 70 staff at the outlets and it had been a practice to transfer them to new branches.

#### **14.0 SUBMISSION BY MR. BALVINDER K. SAHNI, MANAGING DIRECTOR, SECUREX AGENCIES (K) LTD.**

In a sworn affidavit submitted to the Joint Committee, Mr. Balvinder K. Sahni stated that:-

He was the Managing Director of Securex Agencies (K) Limited.

Securex Agencies (K) Limited is incorporated in Kenya to conduct security consultation, management services, auditing, implementation of security proposals, provide guards, escorts, training and other services.

The Company had not received any alert from Government organs in respect of the terror attack. However periodic security review had been undertaken with the involvement of the National Counter Terrorism Center.

On the day of the attack, the Company had 36 well trained guards strategically manning their duty areas, one supervisor and one senior supervisor. In conjunction with the Mall's Management, their guards had undergone regular training on all aspects of their duties and many of their senior staff had attended specialized training courses.

The law does not allow for private security guards to be armed. For many years the Company had, via its membership to the Kenya Security Industry Association, discussed with the Government regarding the possibility of selectively arming the guards and issuing protective equipment such as bullet proof vests.

At Westgate Mall Securex guards were able to call upon armed reinforcement in the form of a Back-Up Response Vehicle that was manned by a Securex driver, a response crew commander and two armed officers from the Diplomatic police unit. The patrol base for the vehicle was along Mwanzi Road from where it operated in support of clients within the vicinity.

The Company collaborates with any security organ both in the Government as well as the private sector and also constantly evaluates and improves the security strategy, training, application and application as changes occur.

Taking into consideration the nature of the terrorist attack that took place at the Mall, the guards could not have done anything more than raise the alarm and actively participate in the evacuation of shoppers and those working in the Mall.

#### **15.0 PRESENTATION BY ALEX TRACHTENBERG, MANAGING DIRECTOR, SONY HOLDINGS LTD.**

In his presentation before the Committee, Mr. Trachtenberg stated that;

He was the Managing Director of Sony Holdings Limited.

Neither the Company nor its employees had received any security alerts from the Government or any of its organs about the terrorist attack that occurred on the 21<sup>st</sup> September 2013.

The security of the building was contracted to Securex Agencies (K) Limited, which was a professional security provider but some tenants particularly the banks had their own armed security arrangements at the Mall.

In addition to Securex Agencies (K) Limited, there were CCTV cameras which covered common areas and each tenant was encouraged to install internal CCTV cameras. The management engaged an independent contractor, Adcare Limited, to provide a whole range of electronic services at the Mall, including the operation and maintenance of the surveillance system both in the Mall and a remote site at their offices on Chaka road, Titan building. Within thirty minutes of the attack, the security organs of the state were able to monitor the events at the Mall in real time.

It was regrettable that many people lost their lives or got injured while others lost their properties during the attack. Matters of terrorism were of great magnitude. Only the state had the means and power to intervene.

In such situations it would be appropriate for the Government to step in and compensate the persons whose businesses were affected by the attack and assist in the reconstruction or restoration of the destroyed opportunities as was the case during the American Embassy terror attack.

There was extensive damage, destruction, vandalism and looting at the Mall.

#### **Issues raised by the joint committee;**

The Committee Members sought to know the following:-

- i. The number of tenants who had lost their lives in the attack.
- ii. If profiling for tenants was done before and after allocation of the space.
- iii. Whether any of the tenants had reported looting of property.
- iv. If the management had any idea of the number of terrorists involved in the attack.
- v. What measures were put in place to avert such attacks given that Israeli installations were targets?
- vi. Which security agency was in charge of the CCTV cameras at Adcare Limited premises?
- vii. Who was responsible for the destruction of properties that occurred at the Mall?
- viii. If the management allowed for sub-tenancy in the Mall.

- ix. Whether he had any other property in the country besides Westgate Mall
- x. The nature of security arrangement at the Mall and if there was any security briefings by the security provider.
- xi. If the Mall was insured and compensations plans that were being put in place to the tenants who lost their properties in the attack
- xii. If he could comment on the controversy surrounding the land on which the Westgate Mall was built.

### **Responses to issues raised by the joint committee Members**

In response to issues raised by the Committee, the MD responded as follows:-

He was at the Westgate Mall before the attack as he normally holds management meetings at the Mall between 10 and 11 am. He left at around 11.30 am to attend another meeting and was informed about the attack at around 12.30 pm.

He was informed that security agencies had taken control of the CCTV control room within Adcare premises where they monitored the unfolding siege inside the Mall.

He could not tell what caused the destruction of a part of the building or who looted the business premises as the building was in the hands of security agents between 21<sup>st</sup> September and 19<sup>th</sup> November, 2013.

He could not tell how many terrorists took part in the attack and if they were killed by the security forces.

Westgate Mall had high profile security arrangements. The nature and the magnitude of the terror attack was beyond anyone's means. Securex normally deployed two armed police officers from the Diplomatic police base on a daily basis to respond to any armed intrusion.

The attack would have been prevented had proper information gathering put in place. He could not blame anyone for the destruction that took place at the Mall. When terrorists strike, there is bound to be serious consequences. He implored the Government to step in and compensate the persons whose businesses were affected by the attack and assist in the reconstruction and restoration of the destroyed opportunities.

There was no sub-letting at the Mall. All tenants were vetted thorough before being allocated space in the Mall.

The management requested Dixons Electronic Limited to surrender 9000 square feet towards the creation of six additional shops and a corridor. There were shops that

took longer to open than Dixons Electronic Limited. There was nothing fishy on Mr. Mukhtar A. Parkar as he knew him personally since he came to Kenya.

There was no prior information on the imminent terror attack at the Mall. The only report on a possible terrorist attack ever received was on 17<sup>th</sup> June 2009, from the International Criminal Tribunal of Rwanda warning of possible attacks on sites frequented by foreigners.

The DVRs were handed over to the CID department. The DVRs had not been surrendered back to them

He was not aware of what might have caused the fire and the collapse of the building since the security agents had taken control. Sony Holdings Limited was yet to receive any report from the Government on the same.

The land on which Westgate Shopping Mall stands on was acquired legally. The land, reference number 1870/1/556 is not on riparian land (opposite of the river) and lies on the northern side of Mwanzi Road, on the other side of the river.

## **16.0 JOINT COMMITTEE OBSERVATIONS, FINDINGS AND CONCLUSIONS**

**Arising from the various meetings with the security organs and other witnesses of the Westgate Mall terror attack, the Joint Committee made the following observations and conclusions:-**

- I. There was general information on the impending terror attack on all the malls and other strategic Western interests especially in Nairobi.**

The information was made available to the relevant security officers in Nairobi County on 6<sup>th</sup> August, 2013 and on 2<sup>nd</sup> September, 2013.

2. There was general laxity and unresponsiveness among the police over terror alerts within Nairobi.
3. During the siege, the RECCE Company from the General Service Unit (GSU) had contained the terrorists in one corner of the Westgate Mall. There was however poor coordination by the Multi-agency security forces during the operation. The change over between the Kenya Defence Forces and the Police was uncoordinated, which calls for the establishment of an incident Command Control Protocol.
4. There was looting of business premises within the Mall. Action has already been taken on three Kenya Defence Forces soldiers, one Administration Police officer, one Anti-Terror Police Unit officer and one Fire Brigade personnel involved in looting incidents.
5. There is nationwide systemic failure on the part of the Immigration Services Department, Department of Refugee Affairs; and Registration of Persons Department attributed to corruption at the border control points and registration centres, mainly in Nairobi, Coast and North Eastern areas.
6. There was destruction of property at the Westgate Mall, occasioned by exchange of fire between the terrorists and the security forces.

## **17.0 JOINT COMMITTEE GENERAL RECOMMENDATIONS**

The Joint Committee recommends that:-

1. The Government should declare war against al Shabaab wherever they are. The war against terrorism should be intensified within and outside the country. The Government should collaborate with the international community for a concerted effort to bring peace and stability to the Somali Republic with a view to ensuring that the

country would no longer serve as a sanctuary for international crime and terrorism.

2. **The Government should establish a National Inter-Agency Coordination Centre to be referred to as the Directorate of National Security, with membership drawn from all the security agencies, to ensure intelligence gathering, information sharing and implementation is carried out. The Directorate premised on a single and secure information management programme, shall be reporting the constituting agencies.**
3. **The Government should carry out radical surgery in the Department of Immigration Services and second trained security officers including retired military officers, vetted administrators and NIS officers who have a security background, to the Department. The Department should cease to victimize Kenya-Somali applicants seeking to acquire identification documents.**
4. **The Department of Immigration Services, the Registration of Persons Department, the National Registration Bureau and the Department of Refugee Affairs should be held accountable for compromising national security by registering aliens who later turn out to be terrorists. Stern action, including prosecution, should be taken against the culprits.**
5. **The Refugee Act, 2006, should be repealed. The Act is redundant and cannot deal adequately with emerging trends/threats on terrorism. A new law should be developed to guide on the handling of the Refugee phenomenon in the country.**
6. **Dadaab (Daghale, Ifo, Ifo II, Hagdera, Kambios) and Kakuma Refugee Camps should be closed and resident refugees repatriated to their country of origin. The recent signing of the Tripartite Agreement by the Government of Kenya, the Somali Republic and UNHCR is a step towards the right direction.**
7. **The Government should fully investigate the lapses among the security agencies. The investigation should focus on whether intelligence information provided was accurate, timely and specific.**
8. **The Government should establish well trained and adequately equipped Special Rapid Response Commandos within the military and the police to respond to emergency situations such as terrorism.**

9. **The Government should provide adequate resources to the security sector in order for the security organs to effectively address the rising crime in the country.**
10. **Completion of the forensic laboratory for the Directorate of Criminal Investigations should be expedited to ensure data collection, handling and compilation was improved.**
11. **The Government should formulate a policy to regulate media content when streaming live from emergency situations, with a view to ensuring management and delivery of information does not compromise national security. There is need to censure irresponsible journalism and reckless social media.**
12. **The Government should identify and keep a manifest of all important landmarks, strategic infrastructure and key installations that could be potential terrorist targets. Government portals and domains should be protected in order to guard against emerging cyber crime.**
13. **Kenya's Embassy to Somalia should immediately be relocated from Nairobi to Somalia in order to further strengthen diplomatic relations between the two countries.**
14. **The Government should fast track and operationalize the formulation of the National Security Policy, the Crime Management Strategy Paper and the National Disaster Management Draft Policy.**
15. **Mobile phone service providers should comply with the law to ensure all sim card owners are duly registered. There is need for collaboration with the security organs to ensure identification documents presented for registration are verified and authenticated as belonging to the applicant.**
16. **The Government should consider providing start-up capital and tax incentives to persons who lost their properties as well as offer ex-gratia assistance to the victims who lost their lives or were injured during the Westgate Mall terror attack.**
17. **The Government should put in place measures to ensure that youth are engaged in some gainful employment. More funds should be provided for youth empowerment programmes/initiatives. Unemployment and poverty among the youth drives them to**



radicalism into joining outlawed militia groups. In this regard, amnesty should be provided to youth willing to reform.

18. There is need to develop a school based curriculum on National Service premised on patriotism, nationalism and service to the nation, with a view to inculcating the said values to the youth and making them conscious to security responsiveness at their early stages in life.

# VOL. II

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**REPORT OF THE JOINT COMMITTEE ON DEFENCE AND FOREIGN  
RELATIONS; AND ADMINISTRATION AND NATIONAL SECURITY  
VISITS TO MANDERA IN NORTH EASTERN AND KILIFI IN THE  
COASTAL REGION; 14-16 NOVEMBER, 2013**

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## **18.0 JOINT SUB COMMITTEE VISIT TO MANDERA**

### **18.1 COURTESY CALL TO THE MANDERA COUNTY COMMISSIONER**

During a courtesy call to the Commissioner Mandera County, the sub Committee was informed that:-

The police were being accused of laxity by the local community. It was alleged that the police no longer go out on night patrols for fear of terrorist attacks. The locals do not cooperate with the police anymore.

There is no central command of the police at the county level. Differences still persist between the Kenya Police and the Administration Police County Commanders as each is trying to assert themselves. Although the County Commissioner is the Chairman of the Mandera County Security Intelligence Committee [MCSIC], more often than not, his orders are not obeyed.

Corruption among the security agencies is endemic along the border points. The police and immigration officials take bribes in order to allow aliens, contraband goods and arms to be sneaked into the country. The police assign themselves duties in the morning and they all troop to the border points. In the evening they retreat to their rooms, leaving the town at the mercy of militias.

The town is patrolled at night by a handful of Kenya Police Reservists or homeguards. These are ex service men and other volunteers who have been engaged to provide security in Mandera. For their services, they are paid Kshs. 7,000 per month. Their presence along the town streets has brought some semblance of security in Mandera town.

## **18.2 MEETING WITH THE MANDERA EAST SECURITY INTELLIGENCE COMMITTEE**

During a meeting with the Mandera East County Security Intelligence Committee, the Members were informed that:-

A number of terrorist attacks had been witnessed between December 2012 and September 2013. Most of the attacks have been directed at Administrative units and security officers. The last attack was on an Administrative Police Camp at Bulla Jamhuriya where hand grenades, Rocket Propelled grenades and guns were used. One police officer died while two others were injured.

The Sub County Security and Intelligence Committee has taken several steps to address terror attacks in Mandera. These include:-

Raids and swoops are conducted with the aim of netting the criminals. Leaders meetings are also held to sensitize people to assist in curbing the crime. The Bulla Hawa Administration of Somalia has been contacted in order to help in intelligence gathering and sharing.

More police officers have been posted to man the outposts and vital installations. Deployment of more security personnel to patrol the roads has been done. Movement of taxis has been regularized with all cars having their registration numbers clearly marked with bold large letters on the body of the taxis.

Outposts with few security officers such as Bulla Mpya, BPI, Khalaliyo and Hareri have been closed, and the officers sent to reinforce the other posts. The County Government has offered two civilian vehicles to help in patrolling the town.

### **Challenges facing security personnel in Mandera**

There are inadequate security personnel to man the porous border. This has led to closure of some posts leaving the borders exposed. Also, there are inadequate weapons for the officers to carry out patrols effectively. Lack of adequate resources such as funds to maintain the vehicles and fuel to run the patrol cars has hampered security operations. Other officers have been transferred without replacement.

Some sections of the local community are al Shabaab sympathizers who leak information to the militias and make it difficult to contact raids and swoops. The local people do not cooperate with the police to produce evidence in courts as witnesses.

There is rampant corruption by security officers and other government agents. As a result, many illegal immigrants have found their way into the town, as well as increased proliferation of small arms through the porous border. Many identification documents have been issued to non Kenyans.

The 'no-man's land' has been encroached. People from both sides of the border have settled on the demarcated area thus making it easy for criminals to cross over to either side of the border easily and undetected.

There is low morale of the security officer. The general feeling amongst officers is that being posted to the far flung and remote region of Mandera is a punitive measure. There is lack of incentives for the officers such as hardship allowances. Some officers overstay in hardship areas leading to them to feel dehumanized.

Housing and accommodation is inadequate at the outposts to house all the security personnel. The available houses are not in good habitable conditions.

Unemployment, poverty and drug use among the youth has led to many joining criminal activities. Some are known to collaborate with gangs for some little payment.

Weak legislation on terrorism has contributed to increased criminal activity. Suspected terrorists are bailed out after arrests. Also cultural aspects have led to interference of

cases where local mechanisms are employed to resolve conflicts, for instance, Maslah. This encourages others to commit crimes.

Registration documents have been issued to non-Kenyans. These include identity cards and birth certificates to non-Kenyan children attending Kenyan schools. The locals assist the aliens to acquire the registration documents.

### **Recommendations and way forward**

Adequate sensitization to members of the public should be carried out in order for them to volunteer information to the security agents on criminals living among them. The locals should be sensitized on importance to uphold laid down laws and regulations governing crime and desist from traditional ways of resolving conflicts.

More police should be posted to the region to enhance security and boost patrols within the border town. The personnel should be provided with one armoured vehicle, metal detectors and adequate weapons for patrol.

A major trench should be dug to deter potential immigrants from crossing the border. People should only be allowed to cross at designated areas. Screening of people crossing the border should be tightened while disarmament should be carried out.

A clear demarcation of the border should be done and structures constructed on no-man's land demolished. This will ensure that effective patrols are carried out and efficient management of the cross border movements.

There should be uniformity and fairness in the transfer of officers who have overstayed in hardship areas. Hardship allowances should be reviewed.

More land should be availed to construct decent housing for officers manning outposts. Human paths passing through or around the camps should be closed. Erection of a perimeter fence around police camps should be done. All illegal structures that have encroached into security camps such as Mandera Police Station, Buru Buru AP Camp and Mandera Military Camp should be removed.

The 'Nyumba Kumi' initiative should be implemented. The County Government should open up other areas and provide amenities like water and electricity in a bid to decongest Mandera town.

All identity card holders ought to be screened in order to establish the foreigners who may have been registered illegally. Serious disciplinary action should be taken on corrupt officers and Government agents who abet crime.

There is need for a highly trained anti-terror security team presence in Mandera.

### **18.3 MEETING WITH THE MANDERA COUNTY GOVERNOR**

The Committee held a session with the Mandera County Governor. During the meeting, the Committee was informed that;

Mandera has a population of 1,025,756 and covers 25,991.5 square Kms. The County borders Ethiopia to the North and Somalia Republic to the East. The County shares vast and porous borders with these countries. The effect of this is that there high proliferation of small arms and light weapons.

Successive Governments have neglected the plight of the local people. The officers posted in the County lack logistical support; do not have adequate equipment and equipment to deter crime, and fewer numbers of officers posted here.

The County has borne the biggest brunt of terrorism and other organized crimes. This scenario is exacerbated by the following drawbacks:-

1. The town is now completely under the siege of terrorists. The police are no longer in control. The County Government has engaged the Kenya Police Reservists at a token of Kshs. 7,500 per month to patrol the streets of Mandera town. The home-guards have brought some semblance of peace into the town.
2. Corruption among the police officers is endemic. No prosecutions are done on persons arrested over terrorist activities. There is no available data on cross border immigrants. Intelligence by the National Intelligence Service is not acted upon by the police. Police posts with less than 40 officers were closed down. The public are completely frustrated with the security teams.
3. There is no structured command and control amongst the few security officers in Mandera as the two County Commanders of Police and administrative Police report on a parallel line to their seniors leading to duplication of duties and lack of ultimate responsibility.
4. The border between Kenya and Somalia has been closed. However, Kenya Revenue Authority officers and police officers have continued to operate illegal border posts where arms and other contraband goods are smuggled into the country at a fee.
5. Police officers of Somali descent have been transferred to other areas in the country. This has compromised intelligence gathering within the security teams with the new officers having a language barrier.

6. The Registration of Persons Department has issued documents and identity cards illegally to foreigners. Non-Kenyans have hence received such documents as identity cards and birth certificates.

### **Suggested measures to improve security in Mandera**

1. The entire security teams in Mandera should be transferred without delay. The police are literally unable to patrol the streets. Corruption by the police and other Government agents is the order of the day.
2. Restructure the command and control of the police service in the County to ensure both departments have one central command. This would improve reporting.
3. Increase security personnel along the border; provide them with equipment and weapons and vehicles to enhance patrols.
4. All officers attached at the Mandera Border Point, which has been closed, must be transferred and investigated.
5. License civilians as gun holders to increase security with the town. These, together with the Kenya Police Reservists, would boost the security in Mandera.
6. Transfer Registration of Persons personnel from Mandera and improve mechanisms of acquiring national registration documents.
7. Retain officers who can speak and understand the local language in order to enhance information gathering.
8. Funding of the County Policing Authority from the National Police budget should be implemented as per the Act. The funding will definitely improve service delivery by the County Policing Authority.
9. Remove all structures and buildings on the 'no-man's land' along the Kenya-Somali border and re-establish the border line.
10. The Government should establish mechanisms to provide employment to the idle youth who are readily getting recruited into terror groups. This can be done through increased funding of youth programmes.
11. The military camp should be converted from a temporary base to a permanent camp. The Camp requires two or more armoured vehicles to enhance security and effective response to terrorism. To this end, a piece of land has been allocated near the new County offices site.
12. A road along the 300 km stretch along the border should be constructed to increase patrol along the border.

13. The airstrip needs to be relocated. The flight path is directly above residential areas and there is potential danger of planes being struck with Rocket Propelled Grenades.
14. Streamline taxi operations as the business is largely controlled by al Shabaab operatives.

#### **18.4 PUBLIC HEARING AT THE MANDERA COUNTY GOVERNOR'S CONFERENCE HALL**

At a meeting held at the Mandera County Governor's Hall, the Committee was informed that:-

Aliens are registered faster than the local people because money exchanges hands for the service. The registration officials should be transferred because they are corrupt.

The police officers are corrupt and lax too. They work in cahoots with al Shabaab and are paid to pass information to the latter. The whole security team should be transferred from Mandera. The local police of Kenya Somali origin should be returned to work in the County.

The 'no-man's land' should be re-established and structures along the demarcated area demolished.

There is need to increase home-guards to about 100 and improve their pay so as to restore security, which the police are unable to offer.

The military camp should be strengthened. More armoured vehicles should be provided to the military. The military should be deployed to patrol along the border between Kenya and Somalia.

Every County should recruit and employ own police. The Government should post local residents who serve in the police to work in Mandera as they understand the language and can be useful in information gathering.

Al Shabaab activities have disrupted teaching in some schools which have eventually been closed. This has effectively led to poor performance. Education Mandera has been compromised by the high level of insecurity in the County.

Further Somali children are admitted as Kenyan students and end up as Kenyan citizens who after school get absorbed into the military, police and public service. Mushrooming private schools also are admitting students from Somalia. Primary school



head-teachers should be subjected to thorough vetting as it is claimed that some of them are collaborators.

Introduce into the school programme subjects or units that inculcates into students patriotism and nationalism.

The Government ought to employ idle youth who engage in drug abuse and other vices and are easily recruited into militia groups.

Peace Committees have been hijacked by politicians and have been converted into outfits where political interests are being propagated at the behest of peace. The Mandera Peace Committees should be disbanded and new ones reconstituted.

There are questionable development of real estate by foreigners who are believed to have acquired national IDs illegally, and are using laundered wealth to construct houses and business centres.

Mobile communication is peculiarly disrupted on occasions when there are serious security issues. This problem has persisted for long. The residents are at a loss on why there is network failure when terrorist attacks occur within the region.

Police posts should be set up at Kamor, Barwaqo, Harer Hosle, Omar Jilow and Lethi locations along the Lafey-Mandera Road.

The border between Beled Hawa and Mandera town should be opened. Stringent measures should be put in place to ensure that illegal persons are not permitted through the post and no contraband goods are sneaked into the country through the entry point.

## **18.5 JOINT SUB COMMITTEE OBSERVATIONS AND FINDINGS IN MANDERA**

**The Sub Committee made the following observations:-**

- 1. The security officers had lost control of the town of Mandera. No patrols were ever conducted at night.**
- 2. The home-guards/Kenya Police Reservists had brought some semblance of calm within the town. Only KPR were visible at night.**

3. **The local community wanted the security teams transferred and new officers posted to Mandera East County.**
4. **There was encroachment on the area demarcated as ‘no man’s land’.**
5. **Many camps had been closed and police relocated elsewhere.**
6. **The presence of the military camp gave some assurance that peace could be brought to the border area with time, if the military were facilitated with more armoured cars and other sophisticated weapons.**

#### **18.6 JOINT SUB COMMITTEE RECOMMENDATIONS – MANDERA**

1. **There is need to overhaul the whole security structure in Mandera. The police who have overstayed in the Mandera East Sub County should be transferred to other areas promptly.**
2. **Thorough investigations should be conducted over allegations of corruption and laxity amongst the security and immigration officers in Mandera County. Those found culpable should be prosecuted.**
3. **The Government should post more security personnel to boost patrols along the border in Mandera County. There is literally no police presence or patrol in Mandera town at night. The town is patrolled by a handful number of home-guards who are not properly equipped to deal with any major militia insurgency.**
4. **The Government should demolish all illegal structures constructed in ‘no man’s land’ and clearly demarcate the border between Kenya and Somalia. A major trench should be dug to deter potential immigrants from crossing the border. People should only be allowed to cross at designated areas. Screening of people crossing the border should be tightened.**
5. **There is need to increase home-guards to about 500 in order to supplement the security forces especially along the Kenya-Somali porous border. There is also need to increase their pay.**
6. **The Administration Police posts such as Damasa, Libihiya, Hareri, Kalaliyo, Hareri Hosle, Kamor, and Border Point I, should be**

reopened immediately in order to lives and property of the people residing there.

7. **The military camp should be strengthened. More armoured vehicles should be provided to the military. The military should be deployed to patrol along the border between Kenya and Somalia.**
8. **Bases for the General Service Unit (GSU) and the Rapid Deployment Unit (RDU), should be immediately established at Omar Jillo and Damasa Locations which are entry points for heavily armed militia and members of the al Shabaab group from Somalia that constantly attack the people of Mandera living along the Kenya-Somali border.**
9. **Admissions into basic primary education should be thoroughly scrutinized. It is alleged that children of non Kenyans are admitted as Kenyan students and end up as citizens who after school get absorbed into the military, police and public service. Mushrooming private schools also are admitting students from Somalia. Primary school head-teachers should keep separate registers for Kenyan and non Kenyan students.**
10. **The Government should establish mechanisms to provide employment to the idle youth who are readily getting recruited into terror groups. This can be done through increased funding of youth programmes.**
11. **The airstrip needs to be relocated. The flight path is directly above residential areas and there is potential danger of planes being struck with Rocket Propelled Grenades.**
12. **The ‘Nyumba Kumi’ initiative should be implemented in the County to help in the fight against insecurity.**

## **19.0 JOINT SUB COMMITTEE VISIT TO KILIFI COUNTY**

### **19.1 MEETING WITH THE KILIFI COUNTY SECURITY INTELLIGENCE COMMITTEE**

During a meeting with the Kilifi County Security Intelligence Committee, the Sub-Committee Members were briefed as follows:-

#### **Terrorism**

The issue MRC was the major threat in the County; however there were al Shabaab cells in the County who do carry out attacks in the neighbouring counties like

Mombasa and Malindi. Kilifi County was being used as a planning area for terrorist attacks in the above areas.

The al Shaabab militia group has been carrying out recruitment in the County. The security personnel were doing their best to address the problem.

The al Shabaab group had sympathizers amongst the local population. This group was complicating the war against terrorism in the County.

The terrorists are well funded. They fund numerous activities in the County and are able to live amongst the residents unnoticed.

There was an urgent need to improve the training of the anti-terrorist unit in order to put it at par with international standards. The unit should also be adequately funded.

Corrupt immigration officials and the police at border points allow aliens and arms to be sneaked into the County.

Funding was a major challenge as the police lack the adequate facilities to combat insecurity in the County.

There was need to create awareness among the citizens on the importance of sharing information with the police. The corporation between the public and the police needs to be strengthened if the war against terrorism is to be realized.

The 'Nyumba Kumi' initiative would soon be implemented in the County to help in the fight against insecurity.

### **The Mombasa Republican Council**

The cession calls and activities of the Mombasa Republican Council (MRC) have greatly decreased but the residents were still receiving threats.

The issue of MRC was being addressed through efforts by the Government in the issuance of title deeds and appointments of Coast residents to key decision making positions in the National Government.

MRC was working in the perceived power vacuum as they felt there was no authority to tame them due inadequate presence of security personnel in the County.

The police lacked facilities needed to fight the illegal groupings like MRC in the region. There was also poor accessibility to security prone areas posing a challenge to law enforcement officers whenever they are called to respond to emergencies.

There was apathy from the citizens to offer information to the officers and the information that is normally volunteered if any does not provide concrete evidences to warrant arrests.

MRC normally attack police posts using guerilla tactics making it hard for the police officers to know exactly when and how they intend to carry the attack.

Local leaders from the County should come out openly and condemn the illegal activities of MRC in the region.

A lot of arrests have been made and are awaiting prosecution. The county security further urged the National Assembly to come up with laws that would give stringent punishments to members of illegal groups like MRC in order to discourage others from joining such groupings.

There were inadequate security officers to beef up security in the County. There was need to increase the number of security officers in key government installations. The Rapid Response Unit would soon be put in place to help in the war against MRC.

There was need to fully implement the policy restricting police officers from working at their places of origin. It had been noted that officers working at their home areas pose a challenge to the fight against security in the County and the entire country through collusion with the culprits and passing of confidential information to them.

### **Witchcraft related killings**

Elders beyond the age of 65 years were being killed on suspicion of practicing witchcraft causing widespread fear among the residents especially the aging.

No one including the family members of the casualties volunteers the information to the security officers prior to the attacks; only the area chiefs do report the attacks but when it is too late to avert the crime.

The vice was attributed to high levels of illiteracy in the County. This matter was being addressed through public *barazas* and sensitization programmes during public holidays.

### **Drugs**

The county had recorded a remarkable decrease in drug abuse. Drug supplies had been reduced through increased and continuous crackdown by police and the National Authority for the Campaign against Alcohol and Drug Abuse [NACADA].

There was need to follow due processes in issuance of licenses to bar owners to rid the business of unscrupulous business persons.

Police reservists should be recruited among the locals to pass on information to the police on criminal activities in the County.

### **Land**

The County Security Committee had received reports over incitements of the residents by political leaders to invade private land belonging to persons from other parts of the County whom they referred to as *foreigners*.

There were also '*professional squatters*' who fraudulently acquire land through false pretence.

The County had also witnessed massive land fraud through invasion of private lands whose leases had expired. The County Security Committee has intervened and many arrests had been done and were awaiting prosecution.

Execution of court orders on eviction of illegal land occupants/grabbers is normally affected by interference from the politicians who come in and condemn the officers whenever they implement such orders.

### **Recommendations**

The Government should facilitate security personnel with adequate patrol vehicles, housing, offices and modern training in line with international standards to help them in tackling criminal activities in the County and the entire country.

Operational police posts should be put in place around the County as adequate presence of security personnel alone was enough to deter some criminals from carrying out criminal activities.

Government officers should attend several meetings convened by political leaders as it will enable the citizens to feel the presence of government security agencies and deter the would-be offenders from committing crimes.

Corruption by the immigration and police officers should be addressed urgently.

The National and County Governments should join in the war against activities of illegal groups like MRC.

The National Land Commission should be very firm in carrying out its mandate in order to address land issues which is a major concern among residents of the County and Coast region at large. Politicians too should desist from politicizing the land issue in the region.

The citizens should be enlightened through their elected leaders on the importance of obeying the Constitution especially Chapter four on the Bill of Rights.

Security should be given adequate funding if vision 2030 is to be realized as it is one of the core pillars of vision 2030.

### **Responses to the issues raised by the Committee**

The County Security Committee responded to issues raised by the Sub-Committee, as follows;

The police have other sources of information besides NIS which is shared among the different security agencies in the County.

It was true that there were returnees from Somalia who interact with the MRC further complicating the war against insecurity in Kilifi County. The matter was being addressed by the security teams.

There was no linkage between the sale of *miraa* and al Shabaab activities in the County. It was true that Ali Farouk had connections with the al Shaabab but security agencies were keenly monitoring his activities and that the relevant authorities had also been notified about him.

The long process taken to allocate the resources from the headquarters in Nairobi to the County also contributes to the insecurity in the County as the law enforcement officers at times are incapable of tackling the crime due to lack of funds.

Traffic patrols would be improved in the entire county as the presence of police officers on the road was also a deterrent mechanism.

Large tracks of land in the county had been fraudulently taken away from the residents through the use of corrupt officials from the Ministry of land. The National Land Commission should address the land issue in the County with a lot of seriousness.

There were anti-terrorism units in Mombasa and Malindi and that they were working jointly with the DCIO and NIS towards apprehending the culprits.

The media especially KTN Station (Jicho Pevu) misreported on the issue of the recent killings of Muslim Sheikhs in the Coast region.

### **19.2 MEETING WITH LOCAL LEADERS AT THE KILIFI COUNTY HALL**

At a meeting with the Community leaders at the Kilifi County Hall, the Sub-Committee was informed that;

There was lack of police night patrols in the County giving criminal gangs the leeway to terrorize the residents as early as 6.30pm.

Poverty among the residents as a result of unemployment makes many youths in the area vulnerable to criminal activities hence the urgent need for the Government to address the problem of unemployment in the region.

The region had suffered a lot through lack of solutions to historical injustices like the issuance of title deeds turning many of the residents into squatters.

There were influential personalities in the region with large tracks of land at the expense of the common residents. The Government should address the issue of landlessness in the region.

There was lack of transparency in the issuance of title deeds in the region. Corrupt officials in the Ministry of Lands fraudulently issue title deeds to illegal owners of land thus depriving genuine owners of land. It was proposed that decentralization of issuance of title deeds should be undertaken.

Many young men in the region indulge in the consumption of illicit drugs even during the day. There was laxity among the police officers to address the vice.

Expired leases should not be renewed. The locals should benefit from land whose leases have expired.

The region has high levels of illiteracy as majority of the residents are primary school drop outs. The National and County Governments should build village polytechnics to cater for the residents who fail to meet the minimum qualifications required to join universities to help address the matter.

Some officers had overstayed in their work stations for over ten years. Such officers should be transferred to other places as majority of them were suspected to be colluding with criminals in terrorizing the residents.

There was also lack of facilities for the officers to combat the escalating insecurity in the region. The National Government should ensure that the security sector is adequately funded to enable the officers tackle the insecurity in the region.

The National Government should ensure fairness in the distribution of the national resources in order to address the problem of marginalization of the region as witnessed during the past regimes.

The Government should address the issue of rampant killings of old persons who are condemned on suspicion of practicing witchcraft as it had caused fear among the locals.



The residents decried the increase in cases of early pregnancy and marriages and called upon Parliament to come up with the laws that would provide stringent rules to wipe out the practice.

The ratio of police officers versus the citizens should be increased and that police reservists should be deployed to help the police in the fight against crime.

The Government should revive collapsed factories in the region to help in the creation of employment opportunities to the youth and help reduce criminal activities in the region.

On the war against consumption of illegal drugs, the residents informed the Sub-Committee that whenever they make reports to police officers, they are normally treated as the real culprits making them lose faith with the security teams.

### **19.3 JOINT SUB COMMITTEE OBSERVATIONS AND FINDINGS IN KILIFI**

**The Sub Committee made the following observations and findings in Kilifi:-**

- 1. The police were no longer patrolling the town of Kilifi at night. Criminal gangs have taken advantage of this to terrorize the residents at night.**
- 2. Land was a very emotive issue within the Coastal region. Many people claim to have been dispossessed of land thus there was presence of a big percentage of squatters in the area.**
- 3. Many youths were unemployed. The idleness had pushed them to engage in activities such as consumption of illicit brews, while others have joined illegal groups like MRC.**
- 4. The Government, through the National Authority for the Campaign against Alcohol and Drug Abuse [NACADA], should step up the war against alcohol and drug abuse in the Coastal region. The vice has affected many youth in the area due to addiction.**
- 5. Retrogressive beliefs and practices such as witchcraft was a cause to the County lagging behind in development. High levels of illiteracy could also be attributed to entrenchment into traditional ways of life.**
- 6. Poverty was widespread in the County.**

7. Many industries that had offered employment to the locals, such as the cashew nut and sisal factories, had been shut, rendering many people jobless.

#### **19.4 JOINT SUB COMMITTEE RECOMMENDATIONS - KILIFI**

The Sub Committee recommends:-

1. The Government should adequately fund the security agencies to enable them deal adequately with insecurity and cases of terrorism in the country.
2. The Police should be well trained and equipped with modern communication, transport and other equipment to deal rapidly with cases of insecurity.
3. The Police Service should recruit more police officers and deploy them to areas prone to insecurity and attacks by terrorists. While recruiting police officers and other security personnel the service should vet the recruits so as to avoid situations where criminals are recruited into the service. The Police Service commission should strive to improve the welfare and working conditions of the security personnel.
4. The Police Service Commission and the Inspector General of Police should ensure that police officers do not overstay in a police station/police post for long. This has been attributed to laxity in executing their mandate.
5. The Police Service Commission and the Inspector General of Police should take stern disciplinary action including dismissal of officers who collude or collaborate with criminals or terrorists.
6. The Government through the Ministry of Lands should address the issue of landlessness and squatters in the coastal region. This is one of the reasons for the emergence of the outlawed militia group, MRC.
7. The Government should open up factories and revive those that had stalled with the aim of creating employment of youth in the regions. This will go a long way in alleviating the poverty and idleness among youths who fall prey to militia and terror groups. The Government as

**a matter of urgency should revive the cashew nut factory in Kilifi County.**

- 8. The Government should entrench the ‘*Nyumba Kumi*’ initiative as a policy in combating insecurity in the country. Intensive civic education on patriotism and ‘*Nyumba Kumi*’ as a civic duty should be conducted by the Government and civil society organizations.**