To the Special Rapporteur on Counter-Terrorism and Human Rights
Human Rights Office of the High Commission
UNITED NATIONS.

December 2025

REF: SUBMISSIONS ON THE CALL FOR INPUTS: DEFINITIONS OF "TERRORISM", "TERRORIST ORGANISATION" AND "VIOLENT EXTREMISM"

Kenya's civil liberties landscape has significantly deteriorated in recent years, with escalating state repression and systemic human rights violations. The current government has intensified its crackdown on dissent, particularly following the youth-led protests against the annual Finance Bill in 2024 and 2025. The government's response has extended to digital platforms, where online activists and critics face abductions, surveillance, and threats. Additionally, legislative measures such as the Computer Misuse and Cybercrimes (Amendment) Act 2-25 threaten free expression by extending unchecked state surveillance over digital platforms. These developments have led to a downgrade of Kenya's civic space rating to "repressed" by the CIVICUS Monitor[1].

Amidst this climate of fear, civil society organizations in Kenya continue to advocate for the restoration and protection of fundamental freedoms. In 2025, ARTICLE 19 EASTERN AFRICA convened key human rights organizations in Kenya for the Coalition for Civil Liberties (CCL). In June 2025, the coalition conducted a unified, strategic, and sustained online advocacy campaign titled "13 Days of Advocacy for Civil Liberties" to reaffirm, defend, and promote fundamental freedoms and constitutional rights; from 25th June to 7th July 2025.

In November 2025, the Coalition members who drafted the submissions were:
1. ARTICLE 19 Eastern Africa
2. Muslims for Human Rights (MUHURI)
3. Kenya Ni Mimi (Kenya Is Me)
5. ACES Africa Centre
6. Independent Medico-Legal Unit (IMLU)
7. Social Justice Centre Working Group
8. Defenders Coalition, Kenya

[1] https://monitor.civicus.org/watchlist-july-2025/kenya/

9. Defenders Coalition
10. Kenya Human Rights Commission

Specific Comments

The submitted comments offer proposals on how States can apply counter-terrorism laws in a manner that avoids infringing individual rights or facilitating the harassment of civil society organizations. Furthermore, national legislation should remain fully aligned with international standards and obligations.

No.	QUESTION	Status & Kenyan Experiences	Proposal & Justification
1.	**What risks to human rights are presented by definition(s) of terrorism, violent extremism and extremism?**	In the Kenya experience, the following has been applied by the government against dissenting voices. Risks identified: a. They enable arbitrary harassment of individuals and groups thus curtailing freedom of expression and silencing dissenting voices[2]. This includes targetting young people, activists and online bloggers. b. They allow authorities to disperse protests without sufficient justification[3] citing insecurity yet the government fails to offer proper security as required by international law in public order management situations. c. They heighten risks of extrajudicial executions, enforced disappearances, and	Review and amend legislation that allows for arbitrary arrests, surveillance, or harassment of individuals expressing dissenting views online or offline, ensuring alignment with constitutional guarantees and international human rights standards. Ensure all public order management aligns with principles of necessity, proportionality, and legality as set out in international human rights law. Develop operational protocols for law

[2] https://icj-kenya.org/news/weaponizing-terrorism-laws-a-regional-playbook-to-silence-dissent/ Accessed on 30 November 2025
[3] https://www.voanews.com/a/kenya-bans-protests-in-capital-over-security-concerns-lack-of-leadership/7703078.html Accessed on 30th November 2025

		long-term trauma for affected families, as seen during the 2024/25 youth protests and abductions. d. They fuel discrimination and profiling, including unjust targeting of Somali communities without due diligence[4]. e. Oversight institutions such as Kenya National Commission on Human Rights and Civil society organizations risk facing heightened pressure, restricted access, and diminished cooperation from state agencies when reporting violations[5]. They may also encounter efforts to undermine their credibility, along with personal security risks or surveillance targeting their staff, which collectively weakens their ability to document abuses and influence policy. Further, authorities have been accused of exploiting anti-terror legislation to require community organizers to seek government permission for legitimate activities, creating an administrative burden and a chilling effect on their work.	enforcement that prioritize protection of life and property during protests, while minimizing the use of force. Enact or reinforce provisions guaranteeing the independence, access, and operational freedom of oversight bodies and civil society organizations. This enables KNCHR continue monitor counter-terrorism measures and ensure a human rights-based approach in service delivery by State security agencies.
	A. What types of physical acts and "specific intent"	There must be evidence of an intent to cause death or serious bodily injury (or equivalent	It is necessary to clearly limit the definition by specifying what it does not encompass, based on Kenya's

[4] https://www.amnesty.org/en/latest/press-release/2014/05/kenya-somalis-scapegoated-counter-terror-crackdown/ Accessed on 2nd December 2025
[5] https://www.hrw.org/world-report/2016/country-chapters/kenya? Accessed on 2nd December 2025

	elements should be avoided?	serious harm) not simply the expression of "extreme" or dissenting views. To raise the threshold for criminal liability by requiring "seriously" and "unduly" damaging acts, as well as an "objective contextual requirement"; namely, that the acts, "given their nature or context, may seriously damage a country or an international organization.	experience. This safeguard helps prevent misuse of counter-terrorism laws by state or political actors. Exclude non-violent conduct, particularly actions that are overly broad defined or pertain to the legitimate exercise of civic freedoms. The definition should explicitly exclude public assemblies - including labour strikes, demonstrations, and related activities—as well as the legitimate exercise of civil liberties, acts of civil disobedience, and the sharing of ideological opinions.
2.	**What physical conduct elements (actus reus) should define terrorism?**		
	A. Should terrorism be limited to intentionally causing death or serious personal injury or hostage taking? Does personal injury in this context cover mental or psychological harm where	Kenya's Prevention of Terrorism Act (POTA) 2012 has been used against human rights actors[6], largely due to vague definitions that encompass non-violent conduct. The State response to terrorism has also resulted in excesses by security agencies that have threatened or violated respect for human	To safeguard human rights, the proposals call for narrowing the definition of terrorism to intentional killing, serious bodily injury, direct mental health injury, hostage-taking or major property damage with clear intent to intimidate or coerce the

[6] https://www.bbc.com/news/world-africa-30494259#:~:text=Many%20of%20them%20appear%20to,domestic%20terrorism%20and%20security%20issues.Assessed 1st December 2025.

	there is no physical injury? Should the definition identify specific criminal acts that cause death/injury/hostage taking, or simply refer to any criminal act that intentionally causes such harm?	rights and affected civic space. The legitimate aims of national security, public order, or public safety are often difficult to comprehensively define and have thus enabled continued impunity by security agencies[7]. Further, digital content creators[8] and online activists[9] have been prosecuted under the Computer Misuse and Cyber Crimes Act 2025 under the banner of 'national security'. Additional recommendations include removing ambiguous terms like 'prejudice national security,' applying carve-outs for protests[10] creating gradations/classes of offences, and ensuring judicial oversight when designating terrorist organization. The Kenya POTA 2012 covers violence against persons, endangering life, serious property damage, interference with electronic systems and prejudice to national security. It has been interpreted broadly in practice, leading to	general public or particular section of the public. Define terrorism as acts that intentionally cause death, serious bodily injury or hostage-taking. Property destruction should qualify only when it causes serious damage or major economic loss. Thresholds for 'serious damage' or 'major economic loss' should be scientifically determined. Acts that endanger life or health should be included only when the threat is immediate and deliberate, not speculative. Terms such as 'prejudice national security' or 'serious risk to public safety" should be removed or defined narrowly. Clarify that mere membership or association without direct involvement

[7] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.article19.org/wp-content/uploads/2024/02/Article19-27.01.2024-V3.pdf#:~:text=to%20national%20security%2C%20the%20State%20response%20to,activists%20who%20are%20critical%20of%20the%20government.

[8] https://www.citizen.digital/article/dci-arrests-tiktoker-kakan-maiyo-for-inciting-violence-against-police-n366052

[9] https://www.theguardian.com/world/2025/jun/03/outrage-over-arrest-of-kenyan-software-developer-rose-njeri-as-regional-repression-grows?

[10] https://www.facebook.com/NTVKenya/videos/dpp-renson-ingonga-defends-terrorism-charges-against-protestors/1466689571007607/. Accessed 1st December 2025.

		abuse. Kenyan courts sometimes rely on circumstantial evidence to prove membership in a terrorist organization due to lack of clear criteria. The UN draft convention confines the offence to acts causing death or serious bodily injury or major property damage with intent to intimidate. Kenyan law goes beyond this by criminalizing broad risks without threshold requirements. Kenya's POTA 2012 does not clearly address mental injury.	in violent acts does not amount to terrorism. Some individuals recruited into terrorist groups are enticed or tricked into joining terrorist groups against their wishes. They could be witnesses during processes and not suspects. Limit terrorism to serious crimes that are not sufficiently covered under national criminal laws and penal codes. Psychological harm without physical injury should be excluded, because mental harm is difficult to quantify and risks overreach. Rather than an exhaustive list of offences, incorporate a general clause requiring intentional acts that cause the specified harm and meet the *mens rea* element. Specific crimes such as murder, grievous bodily harm, kidnapping and arson can be listed as examples.
	B. Should the definition also include reference to acts "endangering" or creating serious risks to life, health or public safety?	POTA includes acts that endanger life or create serious risk to health or public safety. This provision has been used to target protests and civil-society organization even when no violence occurs. Thresholds for inclusion of	Exclude broad 'risk' language. Definitions should apply only to completed or attempted violent acts causing tangible harm. Serious risks should be limited to imminent threats

		"endangering" or creating serious risks to life, health or public safety should be beyond reasonable doubt.	backed by clear evidence, such as planting explosives or releasing hazardous substances with intent to harm or specifically assigning a terrorist to undertake an attack.
	C. Should the definition include damage or destruction to property (public and private) without intentionally causing death or injury? If so, (i) what types of property should be included and (ii) what thresholds of damage, destruction or other consequences (e.g. major economic loss) should be required?	Kenya's POTA 2012 Act covers damage to property and interference with electronic systems or infrastructure but lacks thresholds such as 'major economic loss'. The broad scope has been used to prosecute vandalism and protests[11]; which should be situations managed under public order management laws or criminal law justice systems.	To include property destruction only when it causes 'serious damage' or 'major economic loss," mirroring the UN draft convention. Critical infrastructure and public utilities should be defined to include transportation systems, energy supply and communication networks, but only significant, intentional sabotage should qualify. Minor property damage, vandalism or disruption of services without violent intent should not be considered terrorism.
	D. Should acts against critical infrastructure be included, and if so, how? Should "critical infrastructure" be defined, and if so, how?	The POTA Cap 88 Laws of Kenya (Revised by 24th Annual Supplement (Legal Notice 221 of 2023) on 31 December 2022][12] refers to interference with electronic systems and prejudice to national security but does not define 'critical infrastructure.' This ambiguity	Include acts against critical infrastructure only when they cause death, serious injury or major economic loss and aim to intimidate the public or coerce the government. Define 'critical infrastructure' narrowly to cover systems essential for public

[11] https://www.facebook.com/NTVKenya/videos/dpp-renson-ingonga-defends-terrorism-charges-against-protestors/1466689571007607/
[12] https://new.kenyalaw.org/akn/ke/act/2017/12/eng@2022-12-31

		allows broad interpretation and State abuse in application.	safety (example public infrastructure: airports, power grids, water supply, road networks and other government offices). Exclude ordinary public buildings or private business establishments.
	E. Should terrorism cover acts against financial and electronic systems? If so, what thresholds of harm should be required?	Kenya's law criminalizes interference with electronic systems and financial systems without specifying harm thresholds. Under Computer Misuse and Cyber-crimes ACT 2025, "unauthorized interference" is an offence: any person who "intentionally and without authorisation does any act which causes an unauthorized interference to a computer system, program or data" commits an offence - regardless of whether any actual damage, loss or harm occurred.	Acts against financial or electronic systems should be included only if the intention is to commit a terrorist act which produces significant harm: disruption causing major economic loss or endangering lives (for example, hacking air-traffic control, interfering with electronic money movements eg jamming ATMs and online payment systems with the intention to harm government operations). Mere cyber-crime or fraud should be prosecuted under ordinary criminal laws when the evidence meets the threshold for prosecution.
3.	**Should international law more specifically define the mental element (mens rea) of terrorism, or should this be left to national jurisdictions?**	In the 2007 Kenya post-election violence context, the law failed to pursue the actual perpetrators, and the applicable international mechanisms did not adequately address the situation.	a. Establish a minimum standard while allowing for context-specific application in localized settings. b. Incorporating cultural and social contexts is essential for

			accurately assessing the *mens rea* associated with an offence. c. Ensure that the dignity of individuals and their families is upheld throughout the prosecution process. d. International law should provide the foundational definitions of terrorism to guide national frameworks.
	F. Should the definition require that the harmful outcome always be deliberate (i.e. intentional death or injury), or is it sufficient if the outcome would occur in the ordinary course of events (i.e., an intentional act would be highly certain to cause death/injury, even if death/injury was not specifically intended)?		The foreseeability of potential harm should be considered when evaluating actions, especially in cases classified as terrorism.
5.	**Should the definition additionally require that the act be committed with one or more of the following purposes: (i) political (see especially the 1994**		Yes, the definition should require an addition that the act be committed with one or more of the following purposes, political, ideological, philosophical, religious or racial.

	General Assembly Declaration on Measures to Eliminate International Terrorism), (ii) ideological, (iii) philosophical, (iv) religious or (v) racial?		However, the definition has to be careful not create a platform for discrimination based on the purposes stated above. This inclusion has to be holistic and not narrowly construed. There should be a universal standard so that localization avoids the risk of countries manipulating the situation to accommodate 'legal' matters in their own contexts being labelled in particular ways that allow for repression. We should borrow from universal principles and definitions that are specific. But exclude examples of ethnic-related banditry and religious extremist groups[13][14] (such as *shakahola* tragedy in Coastal Kenya 2023[15]).

[13]https://www.theeastafrican.co.ke/tea/news/east-africa/kenya-to-charge-shakahola-cult-leader-murder-terrorism-4493616#:~:text=Thank%20you%20for%20reading%20businessdailyafrica.com&text=Kenya's%20Director%20of%20Public%20Prosecutions,said%20in%20a%20press%20statement.

[14]https://www.aljazeera.com/news/2024/8/12/kenya-cult-leader-paul-mackenzie-on-trial-for-manslaughter#:~:text=The%20suspects%2C%2055%20men%20and,self%2Dregulation%20and%20government%20oversight.

[15] The Shakahola tragedy involved the Good News International Church, led by pastor Paul Mackenzie. In April 2023, authorities discovered mass graves in the Shakahola Forest in Kilifi County, where followers were allegedly encouraged to fast to death. The incident, unfolding between April and June 2023 as investigations continued, raised national concern about extremist religious practices, state oversight, and the protection of vulnerable communities.

			We should be clear on where criminality ends and terrorism begins. Example in the context of political opposition actions and public order management situations.
	G. Should such purpose be the exclusive or predominant purpose, a substantial or significant purpose, or merely one of any number of possibly mixed purposes?		Substantial or significant purpose. There must a clear reason why the 'terrorism' act was being committed.
	H. Do each of these purposes require further definition or interpretive guidance as to their scope, or can they be left to judicial interpretation over time?		There is need for further definition and interpretive guidance as to their scope. The danger of judicial interpretation over time risks biases, misinterpretations, or setting unfavorable precedents.
	I. Would such purposes help to distinguish terrorism from profit-oriented organized crime (including cartels and gangs), which is subject to the separate legal framework of the UN Convention against Transnational Organised Crime? Should the definition of terrorism include		Yes, terrorism definition should include organized crime, but to the extent of the 'terrorist' activities. Some organisations will not only be profit-oriented, but might also be involved in terrorist activities for instance the Al Shabab. Alternative opinion: Terrorism is a tool not a movement. It is a means to an end. How is ML terrorism?

	organised crime, and if so, how and to what extent?		Intent/purpose and conduct/actions should align.
10.	**Should international law define "violent extremism" and "extremism", or are these incapables of adequate legal definition in a manner that is consistent with international human rights law?**		Yes, although establishing a precise definition is challenging, it should allow flexibility for localization. Extremism refers to engaging in actions or beliefs at an extreme level, which may be perceived as positive or negative, but should not, by itself, be deemed unlawful or criminal. ***Alternative opinion:*** Extremism can also denote harmful or adverse situations, making it a critical term for consideration. An act considered extreme by one party may not be perceived as such by another. Therefore, the focus should be on defining violent extremism, rather than extremism in general. We should also consider how do we draw the line between freedom of Association and extremism? Example shakahola. ❖ Ensure adherence to the rule of law—freedom of expression

			must operate within legal boundaries and must not involve criminal conduct. How do we define violence? Does mental and psychological aspects matter, example of the religious groups' context? The term "violent" is an adjective, and "extremism" is a noun; together, they describe a specific phenomenon. • Extremism becomes unlawful when it infringes on the rights of others. • When extremism is combined with violence—defined as the actual or threatened use of force intended to cause harm in any form or context—it constitutes a criminal act under counter-terrorism frameworks. • For this discussion, political or religious extremism is not the focus. • Furthermore, universal concepts should be adapted to

			reflect local values and contextual realities.