Submission to the Special Rapporteur on counter-terrorism and human rights' call for input on Definitions of "terrorism", "terrorist organisation" and "violent extremism"

Submitted by:

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INTRODUCTION

The Centre for Human Rights and Policy Studies (CHRIPS) welcomes the opportunity to provide input to the Special Rapporteur's thematic report on the definitions of "terrorism", "terrorist organisation" and "violent extremism". This submission draws from our extensive research on the impact of counterterrorism measures on civic space in Kenya, documented in our 2024 report "The Security Playbook: Counterterrorism and Civic Space Restrictions in Kenya."

Our research reveals a systematic pattern whereby vague and overbroad definitions of terrorism have been instrumentalised to restrict civic freedoms, target civil society organisations (CSOs), and suppress legitimate dissent. This submission synthesises lessons from Kenya's experience to inform international best practices.

1. RISKS TO HUMAN RIGHTS FROM VAGUE DEFINITIONS

A. Expansion of Executive Power Without Accountability

Kenya's Prevention of Terrorism Act (POTA) 2012 fails to define "terrorism" itself, instead defining only "acts of terrorism" in Section 2 with language so broad that Kenya's High Court declared multiple provisions unconstitutional. The Court in *Coalition for Reform and Democracy (CORD) & 2 Others v Republic of Kenya* [2015] held that provisions were "vague and broad, and so lacking in precision, as to leave a person who is required to abide by it in doubt as to what is intended to be prohibited, and what is permissible."

B. Systematic Targeting of Civil Society

Between 2014 and 2017, Kenya's government exploited vague definitions to: arbitrarily list organisations, including Muslim for Human Rights (MUHURI) and Haki Africa as "suspected to be associated with Al-Shabaab" without disclosing evidence, and giving them only 24 hours to respond; deregister or cancel CSO licences; and arbitrarily freeze bank accounts of CSOs.

In 2025, numerous protesters were charged with terror-related offences for taking part in demonstrations expressing dissatisfaction with President William Ruto's administration. While charges were later dropped, it demonstrates the continued misuse of the Prevention of Terrorism Act to stifle dissent.

C. Chilling Effect on Civic Freedoms

Our documentation shows that ambiguous definitions have led to: **Restricted assembly** with authorities invoking alleged terror threats to ban protests; **Media intimidation** with journalists charged for reporting on counterterrorism operations or security lapses; and **Self-censorship** among CSOs, particularly those working in Muslim communities due to fear of being labelled "sympathisers".

Physical Acts That Should Be Avoided

1. **Protests and demonstrations** – POTA's broad language allows authorities to criminalize protests that "disrupt essential services" or "create serious risk to public safety". It states that a protest, demonstration or stoppage of work shall be deemed not to be a terrorist act within the meaning of this definition so long as the act is not intended to result In the following harms: (i) involves the use of violence against a person; (ii) endangers the life of a person, other than the person committing the action; (iii) creates a serious risk to the health or safety of the public or a section of the public; or (iv) results in serious damage to property
2. **Property damage without intent to harm persons** – This has been abused to prosecute protesters and environmental activists
3. **Acts causing "fear" or "panic"** – Enables administrative targeting and prosecution of journalists and social media users for reporting

"Specific Intent" Elements That Should Be Avoided

1. **"Destabilizing institutions"** – Kenya's POTA Section 2 criminalizes acts aimed at "destabilizing the religious, political, constitutional, economic or social institutions of a country," allowing abuse of individuals and groups legitimate advocacy activities.
2. **"Supporting terrorism"** without clear definition – POTA Section 25 criminalizes meetings to "support terrorism groups" or "further activities," chilling assembly rights
3. **"Extreme belief systems"** – POTA Section 12D prohibits "adopting or promoting an extreme belief system for facilitating ideologically based violence," punishable by 30 years imprisonment, with no clear definition of "extreme"

2. PHYSICAL CONDUCT ELEMENTS (ACTUS REUS)

The definition of terrorism should be limited to intentionally causing death or serious personal injury or hostage taking. It's important for the definition to be narrow and limited only to these violent acts so as to reduce risks of abuse. Serious personal injury should also include both physical and significant psychological harm where there is demonstrable long-term impact.

Physical acts that should be specifically excluded

A. Acts "Endangering" Life Without Actual Harm

Kenya's experience shows that "endangering" language enables:

- Criminal charges against protesters for "creating risk to public safety"
- Prosecution of journalists for publishing security information
- Arbitrary designation of CSOs for activities deemed to "threaten national security"

B. Property Damage

Property damage is adequately covered under ordinary criminal law and should not fall part of terrorism definition.

C. Critical Infrastructure

"Critical infrastructure" language is particularly prone to abuse. Kenya's Official Secrets Act bans photographing "prohibited places" – a vague term that has been used to arrest journalists attempting to expose security failures.

D. Financial and Electronic Systems

Any offences against financial and electronic systems are adequately addressed through ordinary criminal and cyber law without terrorism designation. There is a danger of cybersecurity provisions overlapping with terrorism law without clear links to intent.

3. MENTAL ELEMENT (MENS REA)

International law should establish clear *mens rea* requirements rather than leaving this to national jurisdictions, as national discretion has enabled systematic abuse.

In Kenya for instance, POTA Section 3 allows designation of entities as terrorism supporters based on "reasonable grounds to believe" – a far lower threshold than "beyond reasonable doubt" required for criminal convictions. This grants unfettered discretion to security officials. There is a need for a higher standard of proof. "Beyond reasonable doubt" must apply to all terrorism charges

Considering broad powers for prolonged detention of terrorism suspects, this can be abused to impose harsh penalties and punish persons despite low chances of conviction. POTA Section 32(10) for instance, allows detention for up to 90 days for "investigation" before charging a suspect.

4. "SPECIFIC INTENT" ELEMENTS

Specific intent elements should be limited to:

- Intent to unduly coerce or compel a government or international organisation - **"Compel" must be "unduly compel"**. Legitimate advocacy, for instance, seeks to influence the government but should not meet the threshold for a terror offence.
- Intent to seriously intimidate the public or a group of persons - **"Intimidate" must require serious intimidation** to prevent misuse for acts that cause mere discomfort or political pressure.

Specific intent elements that should be explicitly excluded

- **"Causing Terror" or "Panic" - Kenya's** POTA Section 27 prohibits publishing information "calculated or results in panic, chaos, or violence." This language enables prosecution without requiring proof of actual violence or harm. It has further allowed intimidation and prosecution of journalists for reporting on terror attacks. Citizen journalists have also been intimidated for social media posts. Activist Shadrack Omondi was, for instance, charged with a terror offence for a satirical TikTok post.
- **"Destabilising" Language - POTA's** prohibition on acts aimed at "destabilising institutions" has been weaponised against Opposition political parties organising protests, CSOs advocating for accountability, and Media reporting on government failures

5. POLITICAL, IDEOLOGICAL, OR RELIGIOUS PURPOSE

Definitions should require political, ideological, religious, racial, or philosophical purpose to distinguish terrorism from ordinary crime, BUT with explicit exclusions to protect legitimate activity.

A. Purpose Should Be Predominant

In Kenya, for instance, environmental activists opposing coal plant construction were accused of terrorism despite clear environmental advocacy purposes. Human rights defenders monitoring counterterrorism abuses have also been arbitrarily listed as terrorism supporters and faced disproportionate administrative and financial sanctions.

B. Necessary Distinctions from Ordinary Crime

Kenya's overlap between terrorism and ordinary criminal law has led to numerous challenges, including terrorism charges for theft and property damage during protests; terror designation for

groups engaged in criminal activity without political motive; and confusion between gang violence and terrorism

The purpose requirement helps distinguish - Cartels motivated by profit from ideologically motivated groups; and criminal gangs from political movements using violence. However, Kenya's experience shows authorities deliberately conflate these categories to expand counterterrorism powers

C. Essential Exclusions

Any purpose-based definition MUST explicitly exclude:

1. **Legitimate political advocacy** – Even if seeking fundamental political or social change
2. **Human rights defence** – Even if critical of government
3. **Religious practice and expression** – Kenya's Muslim communities face systematic profiling based on religious identity

6. NECESSARY EXCEPTIONS TO TERRORISM DEFINITIONS

A. Protests Not Causing Death or Serious Injury

Yes. Language should explicitly state that acts of protest, assembly, demonstration, or strike that do not intentionally cause death, serious personal injury, or hostage taking shall not constitute terrorism, regardless of property damage, disruption of services, or degree of political opposition expressed.

F. Defence of Human Rights

Yes**.** Our research documents systematic targeting of human rights defenders. Language should state clearly that activities undertaken in good faith defence or promotion of human rights as recognised under international law, including documentation, advocacy, legal representation, and peaceful protest, shall not constitute terrorism.

9. DEFINITION OF "TERRORIST ORGANISATION"

Yes. International law definition could encourage more specificity and reduce potential for abuse. Kenya’s POTA Section 3 on the designation process, for instance, has inadequate due process safeguards. The Inspector General of Police is granted "unfettered discretion" to make such a designation without a clear requirement to disclose evidence, and with a lower threshold of proof needed than required in criminal cases.

This has been abused to target civil society actors. In 2015 for instance, 85 entities were listed as supporters of terrorism arbitrarily. They were only given 24 hours to respond. No evidence was

disclosed; no clear standards were applied and there were no appeal mechanisms. Organisations still face negative effects despite court orders finding no evidence.

Elements necessary to define "organisation" and articulate its link to terrorism

1. **Organizational Structure**
    - Persistent association (not ad hoc or spontaneous)
    - Leadership structure
    - Operational capacity
    - But NOT so rigid as to exclude networks
2. **Link to Terrorism**
    - Primary purpose is commission of terrorist acts OR
    - Significant role in terrorist operations AND
    - Not merely sympathetic beliefs or associations
3. **Due Process guarantees**
    - Right to be informed of specific allegations
    - Right to present evidence and challenge designation
    - Regular review of listings (at least annually)
    - Clear delisting procedures
    - Compensation for wrongful listing
    - Judicial review must be available
4. **Temporal Limitations**
    - Designation should not be indefinite
    - Regular reassessment required
    - Changed circumstances must lead to delisting

E. Specific Exclusions

Must explicitly state that designation cannot be based on:

- Provision of humanitarian assistance
- Advocacy for political or social change
- Religious identity or practice
- Ethnic or community associations
- Prior government criticism
- Relationships with communities where designated groups operate

10. "VIOLENT EXTREMISM" AND "EXTREMISM"

These Terms Should Not Be Defined or Used in Legal Frameworks because they

- are inherently vague and subjective
- Create a lower threshold than terrorism
- Criminalise thought rather than action
- Disproportionately impacts minority groups, particularly Muslim communities

Kenya's POTA Section 12(D) criminalises "adopting or promoting an extreme belief system for facilitating ideologically based violence", with punishment of up to 30 years imprisonment. Yet it offers no definition of "extreme" or "belief system" This has potential to chill legitimate work on peacebuilding and community safety.

"Violent extremism" and "extremism" are **incapable of adequate legal definition** consistent with human rights law and **should not be used** as a basis for:

- Criminal prosecution
- Administrative sanctions
- Asset freezing
- Travel restrictions
- NGO regulation
- Surveillance programs

Rather than defining "extremism",

1. **Focus on criminal acts** – Use existing criminal laws for incitement, conspiracy and preparatory acts
2. **Protect civic space** – Ensure advocacy, belief, and association rights
3. **Address root causes** – Tackle marginalisation, inequality, governance failures without securitisation
4. **Community engagement** – Support locally-led initiatives without imposing a counterterrorism frame

CONCLUSION

Kenya's experience over two decades of counterterrorism legislation provides critical lessons for international definition-making:

1. **Vague definitions enable systematic abuse** – Not occasional misapplication, but deliberate weaponisation against civic space
2. **CSOs become primary targets** – Human rights defenders, environmental activists, and governance advocates face terrorism accusations more frequently than actual terrorists
3. **Muslim communities suffer discrimination** – Counterterrorism becomes a pretext for marginalising minorities
4. **Courts cannot sufficiently constrain abuse** – Even constitutional provisions fail when executive power is securitised
5. **"Violent extremism" framework expands harm** – Provides broader tools for civic space restriction

Essential elements for rights-respecting terrorism definition

- Limited to acts causing death, serious injury, or hostage-taking
- Clear intent requirements

- Coercion or serious intimidation purpose
- Explicit exclusions for protests, humanitarian work, human rights defense
- Strong due process for listings
- Judicial oversight of sanctions
- Regular review mechanisms
- Compensation for wrongful designation

Essential elements to exclude from terrorism definition

- Property damage without intent to harm persons
- "Endangering" without actual harm
- Critical infrastructure absent clear harm threshold
- Financial/cyber acts covered by ordinary criminal law
- Vague "extreme belief" language
- "Violent extremism" terminology
- Blanket state immunity

The international community must recognise that vague terrorism definitions constitute a major global threat to civic space, human rights defenders, and democratic governance. Kenya's experience is replicated across Africa and globally.

Clear, narrow, rights-respecting definitions are not merely technical legal improvements—they are essential human rights safeguards to prevent the weaponisation of counterterrorism against the very civil society actors who defend rights, demand accountability, and document abuses.

We urge the Special Rapporteur to:

1. Prioritise civic space protection in all definition recommendations
2. Centre experiences of CSOs and human rights defenders from affected countries
3. Explicitly address state terrorism and official impunity
4. Recommend against the use of "violent extremism" terminology in legal frameworks
5. Provide model language for necessary exceptions and due process safeguards
6. Call for review and reform of existing regional and national definitions