



**HUMAN RIGHTS ISSUES AND MUSLIM MINORITIES
IN KENYA (2001-2013):
A CASE OF MOMBASA CITY**

BY

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ABSTRACT

This study analyzes the human rights issues affecting Muslim minorities in Kenya after 9/11, with special reference to Mombasa City. The study is based on both primary and secondary sources, content analysis of several documents and in-depth interview of 11 knowledgeable persons selected through snowball method. Among the interviewees were Muslim community leaders, defense lawyers, and human rights activists, representatives of human rights organizations, Muslim youth activists and victims. The study focuses on the various forms of human rights violations suffered by Muslims in Kenya and the factors which account for these transgressions. Its framework relates human rights violations (HRV) to the internal and external factors contributing to human rights violations against Muslim minorities in Kenya. The research identifies a number of pertinent indicators of human rights violations faced by them, such as cases of arbitrary arrests and detentions, extra judicial killings, illegal extradition outside Kenyan jurisdiction, forceful disappearances and torture. In addition, the study identifies the following indicators of the internal factors facilitating human rights violations: the absence of regulating and monitoring of police work and security, a biased judiciary, repressive regime policies, ineffective NGOs and unchecked acts of impunity on the part of government officials. The study draws attention to the linkage between human rights violations against Muslim minorities and anti-terror measures introduced after 9/11 as part of the Bush administration's "Global War on Terror" and related counter-terrorism financial assistance Programme.

خلاصة البحث

تتناول هذه الدراسة قضايا حقوق الإنسان ومدى تأثيرها على الأقلية المسلمة بعد أحداث الحادي عشر من سبتمبر في كينيا بشكل عام وفي مدينة مومباسا بشكل خاص. تستند هذه الدراسة إلى نوعين من المصادر أحدهما أساسي والآخر ثانوي، كما تتناول تحليل العديد من الوثائق وكذلك تبني المقابلات المركزة كأداة لجمع البيانات. اختار الباحث أحد عشر مشاركا من خلال طريقة كرة الثلج (Snowball) بحيث تنوعت مراكز أفراد العينة المشاركة؛ فمنهم قادة في المجتمع المسلم، ومحامون، وناشطون في مجال حقوق الإنسان وممثلون لمؤسسات حقوق الإنسان، وناشطون من حركات الشباب المسلمين، وكذلك بعض الضحايا. تركز الدراسة على عدة أنواع لانتهاكات حقوق الإنسان التي عاش المسلمون تحت وطأتها في دولة كينيا، والعوامل التي أدت إلى تلك التجاوزات. إن الإطار العام للدراسة يربط بين قضية انتهاكات حقوق الإنسان والعوامل الداخلية والخارجية التي ساهمت في ظهور تلك الانتهاكات في حق الأقلية المسلمة التي تعيش في كينيا. أبرز هذا البحث عدة مؤشرات وثيقة الصلة بقضية انتهاكات حقوق الإنسان التي تعرضت لها الأقلية المسلمة في كينيا، مثل حالات الاعتقال التعسفي، والاحتجاز، والقتل خارج نطاق القانون، والتسليم غير القانوني للمحتجزين إلى جهات خارجية، وحالات الاختفاء القسري والتعذيب، وأسفرت الدراسة عن المؤشرات الداخلية التالية التي أدت إلى انتهاكات لحقوق الإنسان وثقتها، مثل غياب تنظيم ومراقبة عمل رجال الشرطة والأمن، وانحياز القضاء، وسياسات النظام القمعية، وعدم فاعلية المنظمات غير الحكومية، وقيام المسؤولين الحكوميين بأعمال دون رادع وذلك لتأكيدهم من الإفلات من العقاب. تلفت الدراسة النظر إلى العلاقة بين انتهاكات حقوق الإنسان بحق الأقليات المسلمة والإجراءات التي وُضعت لمحاربة الإرهاب والتي ظهرت بعد الحادي عشر من سبتمبر كجزء من خطة بوش (الرئيس الأمريكي الأسبق) المسماة "الحرب العالمية ضد الإرهاب" وعلاقتها بالبرنامج الاقتصادي لمكافحة الإرهاب.

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole or in part for any other degrees at IIUM or other institutions.

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*I dedicate this research to my late father Khamis Swaleh Mwamburi and
my mother Maryam Mwenda*

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Then which of the favours of your Lord will you deny (Qur'an 55:13)

Indeed, all praise is due to Allah (SWT) for His help and forgiveness. I seek refuge with Allah from the evils of my soul and the wrong of my acts. He whom Allah (SWT) guides, no one can misguide; and he whom He misguides, no one can guide. First and foremost I thank Allah (SWT) for making it easy for me to undertake this noble task without His grace and mercy I could not accomplish the task

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LIST OF ABBREVIATIONS

ATA	Anti-Terrorism Assistance
ATB	Anti-Terrorism Bill
ATPU	Anti-Terror Police Unit
CAT	Convention against Torture
CS	Civil Society
CT	Counter-terrorism
CTM	Counter-terrorism Measures
EACTI	East African Counter-terrorism Initiative (EACTI)
ECHR	European Convention on Human Rights
ESRC	Economic and Social Research Council
FIDH	International Federation for Human Rights
FMF	Foreign Military Financing
GWOT	Global War on Terror
HR	Human Rights
HROs	Human Rights Organizations
HRW	Human Rights Watch
ICC	International Criminal Court
ICU	Islamic Courts Union
ICCPR	International Covenant on Civil and Political Rights
IPK	Islamic Party of Kenya
IPOA	Independent Policing Oversight Authority
KDF	Kenya Defense Forces
KNHREC	Kenya National Human Rights and Equality Commission.
MHRF	Muslim Human Rights Forum
MP:	Member of Parliament
MRC	Mombasa Republican Council
MUHURI	Muslims for Human Rights
NAMLEF	National Muslim leaders Forum
NARK	National Rainbow Coalition-Kenya
NCIC	National Cohesion and Integration Commission
NGO	Non-Governmental Organization
ODM	Orange Democratic Movement
PEV	Post-Election Violence
P.O.W	Prisoners of War
SOT	Suppression of Terrorism Bill
STFG	Somalia Transitional Federal Government
SUPKEM	Supreme Council of Kenya Muslims
UDHR	Universal Declaration of Human Rights

CHAPTER ONE

HUMAN RIGHTS: A FRAMEWORK FOR ANALYSIS.

1.1 BACKGROUND TO THE STUDY

The human rights violations against Muslim minorities in Kenya, specifically in Mombasa during 2001 to 2013 were alarming and of great concern to the Muslim community. Muslims have suffered the brutality in the process of the counter-terrorism measures carried out by state security agencies. Despite the constitutional obligations and guarantees to protect and uphold human rights values to all citizens without prejudice or discrimination, human rights violations against the Kenyan Muslim minorities still thrive and persist .

In spite of the fact that there is acknowledgment of the violations by the media, human rights bodies and, state ministers, the violations became intense and the perpetrators have never been identified and brought to justice. This suggests that there are powerful political forces of impunity behind these violations, thus necessitating a critical study and investigation.

The human rights concerns after September 11,2001 events are unique in nature and have taken a different dimension not experienced before 9/11 by the Muslim community. The issues of extra-judicial executions of Muslim clerics and activists, forceful disappearances of Muslim terror suspects, arbitrary arrests of Muslims, increasing raids on Muslim homes and mosques, all these violations did not exist before the September 11 events (9/11).The crisis and predicaments of Muslim minorities were aggravated by the inauguration of the special unit by the government of Kenya, known as Anti-Terrorist Police Unit (ATPU) in 2003, which mainly focused on Muslim community, and their activities in Kenya.

Despite the killings and enforced disappearances of several Muslim youths and clerics in Mombasa, no suspects have been arrested in connection with these mysterious and gruesome human rights abuses. This further strengthens the notion that the killers are supported and sanctioned by the government (Ahmednasir, 2012). Otherwise, in the event of the normal killings; the suspects are normally apprehended within the shortest time possible and charged in a court of law. However, this do not happening when Muslims are killed or mysteriously disappeared in Mombasa.

The violations of these fundamental rights which Muslim minorities complain about are significant in the sense that they cannot be abrogated, waived or taken away by any state. They are supported and legally protected by various regional, national and international treaties and conventions like the Constitution of Kenya (2010). Article 21 (1) of the Constitution of Kenya (2010) states “The state shall enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms”. It is therefore incumbent and a fundamental duty of the state to observe, protect, promote and fulfill the fundamental rights as conferred by the constitution, by putting in place measures and policies to achieve these fundamental rights.

The government of Kenya, either by omission or commission, is responsible for any human rights violations committed against the Muslims in Kenya. It has the sole responsibility of providing and protecting her citizens as provided in the Constitution. Therefore, if any of the citizens’ rights is violated through killings, murders and mysterious disappearances, the government owes sufficient explanation to the Muslim community by effectively investigating and bringing the perpetrators to justice. Unfortunately, with all the killings, enforced disappearances and illegal

extraditions, no single suspect has been arrested and charged in court. This has really discouraged the Muslim community and led them to lose faith in the manner in which security issues are handled.

1.2 STATEMENT OF THE PROBLEM

The September 11, 2001 events also known as 9/11, the day on which terrorists hijacked airplanes and crashed them on the Twin Towers of the World Trade Centre in New York City, and the subsequent launching of the Global War On Terror (GWOT) by the United States of America (U.S.A), have indirectly contributed to a rising number of human rights violations faced by Muslim community in Kenya, and Mombasa City in particular. These concerns over more and more aggravated cases of human rights violations after 9/11 have become more serious in nature in response to the growing number of cases involving extra judicial executions of Muslim clerics and activists, forceful disappearances of Muslim terror suspects, arbitrary arrests, and stepped up raids on mosques and Muslim homes. This state of crisis and persecution, Muslim minorities are forced to live in have been aggravated by a special unit set up by the government of Kenya in 2003. It is officially known as the Anti-Terrorist Police Unit (ATPU) and targets local Muslim community in particular.

The ATPU carries out its official mandate “to prevent, detect, disrupt and interdict imminent terrorist activities within the country” (Horowitz, 2013: 17). This police unit has committed brutal and violent human rights abuse on its various counter-terrorism measures which unmistakably violate international, regional and domestic law. These violations directly impact the security of all Kenyan Muslims, especially those living in Mombasa, and are of great concern to all Muslims in the region.

Human rights violations against Kenyan Muslims have grown at an alarming pace and scale ranging from police forces storming mosques, lobbing teargas and eventually killing the assembled worshippers, extra-judicial killings, assassinations, abductions and enforced disappearances of individuals suspected of involvement in terrorism, arbitrary arrests, extradition of activists without due legal process of the law, secret detention, excessive use of force during house raids, detention beyond the stipulated period by the law, denied access to legal representation and communication to immediate family members, indefinite detention and denied rights for a fair and timely trial, and use of torture as an interrogation technique applied to Muslims suspected of terrorism activities (*Daily Nation*, 2012).

Several Muslim activists and individuals suspected of involvement in terrorism and who were on the ATPU terror watch list had either disappeared without trace or were brutally executed. (Horowitz, 2013: 17). There were at least reported 21 victims of extra judicial killings, assassinations and enforced disappearances (Horowitz, 2013: 12). All these victims were on the Kenya ATPU surveillance and had pending cases in Kenyan courts. However, none of them had ever been duly convicted due to the lack of evidence linking them to terrorist activities (*Daily Nation*, 2013).

Although available publications point to the existence of human rights violations committed against Muslim minority groups in Kenya, there is nonetheless a dearth of academic studies on the human rights transgressions affecting Kenyan Muslims, particularly in Mombasa and after 9/11. The exact nature of human rights violations and the reasons behind the targeting of Muslims in Kenya, especially in Mombasa, have yet to be exhaustively documented and analyzed.

The Muslim community in Kenya has become the target of oppressive measures taken against them by their own government and they have yet to devise

challenging strategies and eventually overcome their state of persecution and their role as targets of state-controlled suspicion and aggression.

In order to address the scarcity of academic research on this subject, this study focuses on documenting and analyzing the human rights violations committed against Muslim minorities in Mombasa after 9/11 and identifies the reasons behind targeting Muslims in Kenya's counter-terrorism operations. In doing so, the study will be able to propose remedies and recommendations capable of advancing peace, order and inter-religious harmony in Kenya which constitutes a society of mixed faiths. Although it is the obligation and responsibility of every government to protect and safeguard the fundamental human rights of its citizens without discrimination (*Standard Newspaper*, 2012), human rights agencies regard the Kenyan government as directly responsible for such gross violations executed by its Anti-Terrorism Police Unit (ATPU).

The problem of human rights violations calls for a timely and viable solution since it threatens regional stability and peace. The crisis has grown into an interreligious conflict in which a specific religious group has become the target of organized human rights violations. Since Kenya is a country with Christian majority, Muslim citizens and residents constitute a minority group which is exposed to state violence for the sole reason that they are Muslims. Inter-religious harmony between Kenyans cannot be maintained in a state where the killing of Muslim scholars and activists in Mombasa results in retaliation and more violence by outraged Muslim youths who rally in demonstrations and vent their anger and frustrations on Christian churches in return. Violence only begets more violence (*Standard Newspaper*, 2012). Rather than removing a potential threat posed by alleged Muslim terrorists, these

operations actually facilitate hatred among the religious communities, hardened negative attitudes of one another and increased mutual distrust and contempt.

Despite the reported killings and enforced disappearances of several Muslims youths and clerics in Mombasa, no suspects have been arrested in connection to these human rights abuses. This further strengthens the notion that the individuals responsible for these abductions and executions are supported and sanctioned by the government (*Daily Nation*, 2012). Such lack of response cannot be explained by an incompetent police force because other cases of murder usually result in the timely apprehension of suspects followed by their charge in a court of law.

If this systematic crackdown on Muslim citizens and residents in Kenya under the guise of anti-terrorism operations continues unabated it is likely to result in the radicalization of Muslim youths and more public violence and unrests. As such, rather than removing a potential threat to national security, such a threat is being willfully created. Continued violations against human rights as executed by state agencies may indeed compel the Muslim community to organize a more forceful measure of resistance by taking up arms and thus, enabling themselves to retaliate against aggression and defend their rights whenever they are attacked. Such a situation of things can easily result in nationwide civil unrest and even civil war.

The brutal actions of the ATPU have instilled fear and unrest among Kenyan Muslims in Mombasa City and thus call for a critical study and objective investigation of the conflict. Despite several existing studies which have already investigated recent human rights violations in Kenya, no specific academic study has been completed having as subject the prime target of these human rights violations, namely human rights issues affecting Muslim minorities in Mombasa City, Kenya after the 9/11 events.

1.3 RESEARCH QUESTIONS

This study, therefore, attempts to answer the following questions;

1. What are the specific forms of human rights violations faced by Muslim minorities in the city of Mombasa after September 11, 2001?
2. What are the internal factors that account for human rights violations against Muslim minorities in Kenya, especially in Mombasa?
3. What are the external factors that account for human rights violations against Muslim minorities in Kenya, especially in Mombasa?

1.4 OBJECTIVES OF THE STUDY

The main objectives of this study are to appraise the human rights issues affecting Muslim minorities in Kenya after 9/11, with a special reference on Mombasa City. The specific objectives are: Firstly, to investigate the specific types of human rights violations faced by Muslim minorities in the city of Mombasa, after September 11, 2001. Secondly, this study examines the internal and external factors contributing to the human rights violations against Muslim minorities in Kenya and Mombasa in particular. Therefore the study seeks to examine the human rights concerns adversely affecting Muslim minorities in Kenya with specific focus on Muslims in Mombasa city and to investigate the actual forms of these human rights violations which have been committed against Muslim minorities in Kenya after 9/11. It further examines the reasons why Muslims in Kenya and Mombasa in particular become the victims of these human rights violations.

1.1.4 SIGNIFICANCE OF THE STUDY

This study aims at addressing the human rights violations perpetrated against Muslim minorities in Kenya under the guise of counter- terrorism strategies after 9/11. The study demonstrates that the kind of oppression these Muslim minorities experience presently could at any time also be directed against other minority groups as well. Thus, raising public awareness of this issue constitutes a moral responsibility according to which every individual who values human dignity ought to stand up against and defend human rights in order that such action may serve as a deterrent against future abuses. This may benefit policy makers in their capacity of enacting laws that will discourage impunity of human rights violations committed against Muslim minorities in Mombasa and hopefully contribute to alleviating the underlying crisis.

This study is also aimed at providing vital information for human rights bodies and other interested parties in Kenya in order to support and facilitate their efforts in protecting the human rights of all Kenyan people. It is hoped that it will also be useful to the global Muslim community by raising general awareness of the extent of the discrimination and violence Muslims minorities are exposed to. The study also aspires to provide suggestions and recommendations as a constructive way of responding to the crisis.

The study may not only provide a sound factual basis to the status of Muslims in Kenya but may also serve as a starting point for further academic studies into human rights violations after 9/11 in Kenya and other parts of the world where Muslim citizens and residents constitute the minorities.

1.5 LITERATURE REVIEW

There exists an abundance of scholarly literature with reference to human rights violations and Muslim minorities in Kenya in the aftermath of 9/11. The literature review is divided into two Sections. Section one addresses the human rights issues in a general perspective, while Section two addresses human rights in Kenya.

1.5.1 Human Rights: A General Overview

Birdsall (2010) focuses on violations of international human rights laws under the pretext of counter- terrorism strategies and national security challenges with special reference to the Guantanamo Bay Detention Center. He analyses the legal and political challenges faced by human rights organizations in protecting and defending the human rights of its detainees. He asserts that the developments occurring in the aftermath of 9/11 bear a profoundly negative effect upon international human rights standards which curtail civil liberties in the name of national security. Although the United States prides itself in its role as ‘champion of human rights’ on a global scale, it grossly misinterprets international human rights laws to suit its own domestic policies. Birdsall (2010) insists that security concerns and human rights advocacy are two closely connected issues and cannot be pursued in isolation. Security challenges cannot be a justification to abandon the promotion of human rights as it happened after 9/11. Kenya constitutes one of the many examples of administrations which have followed the U.S. government’s example and violated human rights of their citizens in the course of the so-called counterterrorist programme allegedly in the name of national security.

Birdsall (2010) focuses his argumentation on the gross infringements of international human rights and humanitarian law at Guantanamo, with specific emphasis on the Geneva Convention and Torture Convention. According to the Geneva Convention, prisoners of war (P.O.W) have to be granted the status of prisoners of war. However, in Guantanamo, the detainees are denied the status of prisoners of war, denied access to legal assistance and are exposed to torture as an interrogation technique. In his eyes, politics and the rule of law are inseparable and, therefore, upholding human rights values constitutes a significant part in the quest for international peace. The author argue that even if the prisoners are not classified as POWs, the detainees are still entitled to basic rights, like the right to a fair trial, legal representation and to be informed of the reason for their arrest. The history of Guantanamo is marred with torture controversies. Birdsall (2010: 683) continues to state that, by 2005 the number of detainees had grown to 520 when complaints related to torture and the degrading treatment of prisoners finally surfaced and dominated the press. The U.S. administration defended these violations by arguing that terrorism constituted a new and unique challenge to the state which required new responses such as the applied interrogation techniques which the author firmly rejects and calls a deceitful excuse to infringe the detainees' basic rights.

The author goes further by condemning the U.S. Justice Department which has always been regarded as a human rights defender for its move to redefine torture in order to argue that the interrogation methodspractises in Guantanamo were within the limitations set by international law. Birdsall (2010: 689) quotes a 'torture memo' issued by Judge Jay S. Byee in August 2002 which stated that, "Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death."