



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

OPENING REMARKS

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TRAINING

ON

COUNTER TERRORISM FOR JUDGES

VENUE: SAROVA WHITESANDS, MOMBASA

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Good morning,

1. I am grateful for the honour bestowed on me to give the opening remarks during this training organized by the Kenya Judiciary Academy (KJA). On behalf of the Office of the Director of Public Prosecutions (ODPP), I wish to express my congratulations to the leadership of KJA for all the preparations made for the success of this training together with the EU AML-CFT ESCAY Project. Special gratitude to the Chief Justice and President of the Supreme Court of Kenya and to the entire Judiciary of Kenya with whom we have had a long and fruitful partnership.

Ladies and gentlemen,

2. This Counter-Terrorism training represents an opportunity for us to share and draw lessons from our experiences with a view to synchronize our counter-terrorism initiatives and strategies as criminal justice actors.

3. The presence of Stakeholders such as the National Police Service, the Directorate of Criminal Investigations, the Financial Reporting Centre, the National Centre for Counter Terrorism among others offers a chance to review our domestic threat landscape, legal strategies and to reinvigorate our enduring commitment to an effective multilateral cooperation. The magnitude, complexities and evolving nature of terrorism requires a robust and coordinated whole of Government approach while upholding human rights.

4. The threat of terrorism and violent extremism continues to pose significant risk to peace and security in the region. Terrorism and Terrorism financing hampers our efforts to promote and protect human rights and therefore an obstacle to national development.

5. In addition, terrorists are exploiting social media, encrypted communications in the deep and dark web to spread propaganda, recruit new followers and coordinate attacks. The increase in radicalization has been exacerbated by the penetration of terrorist groups into Cyberspace. Therefore, the threat from terrorism continues to evolve and as such we must adapt and learn lessons from past experiences and best international practices.
6. It is in this context that handling of such serious and complex crimes requires concerted efforts. The Judiciary plays a critical role such as facilitating various pre-charge applications, extradition requests, applications for orders to investigate accounts, mutual legal assistance requests on financial records and trials which enable the investigative agencies effectively carry out their respective mandate.
7. The establishment of the specialized courts at Kahawa and Shanzu Law Courts by the Judiciary in partnership with development partners seeks to bolster the efforts made within the criminal justice sector. The complex

nature of terrorism and terror financing cases requires specialized training and specialized units. Further, the ODPP established the Counter Terrorism and Transnational Organized Crimes Division with specialized prosecutors.

8. Cumulatively, these strategies emphasize on the need of a coordinated approach in handling the complex nature of terrorism and terrorism financing cases through institutional, policy and legal reforms.

Ladies and Gentlemen,

9. The investigation and prosecution of terrorism related offences requires a human rights centric approach that upholds the rights of victims while at the same time safeguarding the rights of suspects/accused persons.

10. Pursuant to the prosecution guided investigation model, the ODPP has been successful in ensuring adherence to the tenets of human rights as well as the threshold of best international practices in so far as investigations and

prosecutions are concerned. Therefore, the development of the inter-agency guidelines on terrorism and Terrorism financing provides a solid foundation of this collaborative efforts.

11. I would like to acknowledge significant progress in the prosecution of terrorism related cases. Please allow me to highlight a few cases. Firstly, in **Milimani Criminal Case No. 700 of 2018 Republic vs Adbimajit Hassan Adan & 5 others** the prosecution secured a conviction on a raft of offences including that of membership to a terrorist group. The convicts were arrested while undertaking the preparatory acts which experts testified that such acts would have caused immeasurable harm if successful. In addition, witnesses testified via video conferencing from multiple jurisdictions.

12. We also celebrate the recent decision by **Hon. Justice Kanyi Kimondo (Milimani) in High Court Criminal Appeal No. E008 of 2022 Ismael Mona Otieno vs Republic**. The appellant alleged that the electronic evidence relied upon by the prosecution was illegally obtained

because investigators had not obtained warrants to exploit electronic gadgets (that is 9 mobile phones) recovered during arrest. The Hon. Judge dismissed all the grounds and affirmed the trial court's conviction and sentence.

13. Further, the Hon. Judge held that a right to privacy as provided for under **article 50(3)** of the Constitution may be limited as provided for in **articles 24 and 25** of the Constitution as well as **Section 35** of POTA. This judgment will guide magistrates in the subordinate courts who have declined to admit electronic evidence without prior interlocutory orders.
14. In our view the Judgment gives the much-needed impetus to **Section 39A** of the Prevention of Terrorism Act that permits courts to admit electronic evidence after considering authenticity. This renews and bolsters the relentless efforts made by law enforcement and security agencies who operate under unimaginable timelines and ever-increasing pressure to effectively combat terrorism and all forms of serious organized crime.

15. Additionally, the Honorable Judge upheld the conviction and sentence on the charge of membership contrary to Section 24 of **the Prevention of Terrorism of Terrorism Act** and provided an analysis that ***membership to a terror group may be inferred by the conduct of an accused person.*** This is a major milestone in the concerted efforts to counter terrorism and terrorism financing and will encourage investigators to prefer similar charges.

16. While we appreciate the progressive jurisprudence from the courts, the ODPP has encountered challenges such as in the recent decision of the trial court in **Milimani Criminal Case No. 165/2020 Republic Versus Pharijala Opaka Osore** with regard to sentencing. In this particular case, the learned magistrate convicted the accused person for the offence relating to collection of information for terrorist purposes contrary to **Section 29** of the Prevention of Terrorism of Terrorism Act however meted out a sentence of Kenya Shillings 300,000/- in default to serve 5 years imprisonment.

17. ***The penal sentences provided under the Prevention of Terrorism Act are expressly limited to custodial sentences ONLY without any option of a fine***, and this includes Section 29 the Prevention of Terrorism Act alluded to earlier, which provides for a custodial sentence not exceeding 20 years imprisonment. Consequently, the ODPP filed Revision to the High Court in Milimani to re-examine the legality, regularity, correctness and propriety of the sentence.

18. It should be appreciated that Judicial decisions transcend courtrooms and go beyond acquittals or convictions. Judicial decisions in public interest cases inform regulatory, institutional and policy reforms. The Inter - Agency Guidelines on Cooperation and Collaboration in the Investigation and Prosecution of Terrorism and Terrorism Financing, 2022 is an example. The guidelines have proved to be a useful tool for both investigators and prosecutors handling terrorism related cases.

Ladies and Gentlemen,

19. Terrorist related crimes are inter-twined with other forms of organized crime such as arms smuggling, human trafficking, smuggling of migrants and illicit financial flows, money laundering amongst others. Terror groups operate beyond multiple jurisdictions and have access to the formal financial systems and therefore law enforcement agencies should adapt special investigative techniques in financial investigations and intelligence so as to initiate proceedings or suits for asset confiscation, seizure, recovery and forfeiture. This is a very powerful tool in addressing serious and emerging complex crimes such as terrorism and terrorism financing.

20. The inclusion of Kenya in the Financial Action Task Force's (FATF) grey list, on 23rd February 2024, poses significant challenges to Kenya's economic and social progress. This calls for a strengthened and sustained commitment to collaborative efforts such as this forum to counter the facets of terrorism and terrorism financing.

21. In addition, capacity building programs for the criminal justice stakeholders, will be pivotal in the implementation of measures to reverse this position. The judiciary should leverage on technology and innovation to facilitate open and constructive discussions on counterterrorism strategies, challenges and lessons learned.

Ladies and Gentlemen,

22. Finally, I would like to thank the Judiciary through the Kenya Judiciary Academy for its continuous efforts in capacity building of Judges. It is my hope that the lessons learned from this training will be uniformly applied in terrorism and terror related cases.

23. I further extend my gratitude to all agencies represented here and encourage their representatives to share critical lessons and the diverse experiences. Your presence here is a testament to our collaborative engagement to effectively and efficiently mitigate the effects of terrorism and terrorism financing.

24. I sincerely appreciate the development partners present for facilitating this important training. I wish you fruitful deliberations and urge you to share the outcomes with key stakeholders in the criminal justice system.

Thank you all,

God bless you All.

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