

## TRANSCRIPT

# "AFTER WESTGATE: SECURITY AND HUMAN RIGHTS IN KENYA"

*A Conversation With Francis Auma, Jonathan Horowitz, and Hussein Khalid*

*Moderator: Sarah Pray*

### **ANNOUNCER:**

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### **SARAH PRAY:**

So thank you all for being here. My name is Sarah Pray. I'm a senior policy analyst for Africa here at The Open Society Foundation's Washington D.C. office. I'd like to welcome you all to this event on security and human rights in Kenya. Undoubtedly, it's been a tense year in U.S.-Kenya relations. Ahead of the March 2013 elections, many U.S. policymakers were wringing their hands over the prospect of a, quote, "ICC president," and were-- understandably fearful of election-related violence similar to the horrific events of 2007-2008.

As we know, President Obama sent a video message to the people of Kenya urging calm, (COUGH) encouraging-- them to vote their conscience, which was interpreted by many in Kenya to be-- a tacit approval of the ticket of Kenyatta and William Ruto. This then prompted Assistant Security Johnny Carson's famous *Voices Have Consequences* speech-- which left many wondering what the U.S.-Kenya relationship would look like after-- if-- President Kenyatta was elected.

So the election was credible enough so the U.S. could maintain some kind of relationship. But it certainly was not business as usual. Obviously, the events of September 21st at the Westgate Mall will be seen as a turning point for U.S.-Kenya relations.

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President Obama called President Kenyatta after the attack. This was the first-- interaction between the two, offering U.S. condolences, but also, pledging the ongoing-- support of the U.S. to Kenya. It's unclear what this will really translate into as far as our-- financial and diplomatic relationship. But it's clear to say that-- security systems will play a huge role in this.

So that's what we're here to talk about today. One of the things that we wanted to discuss is the current feeling in Kenya. Obviously, there's-- a lot of public outrage about the police looting following the attack. That's what really dominates the press.

But we're here to explore-- something much deeper, which is-- what's happening-- in the hearts and minds of Kenyans, and how they perceive their government and their-- police. Two of our panelists live and work in Mombasa. Our-- our first speaker is Hussein Khalid, who is the director of the Africa Human Rights Center, but until very recently, was the executive of Uhuru-- the organization Muslims for Human Rights, based in Mombasa.

Hussein will discuss the immediate aftermath of Westgate, and-- will-- discuss some of the events that happened in Mombasa, (NOISE) including the killing of Sheikh Ibrahim and the ensuing violence-- which we all-- recall from earlier this month. Hussein will also discuss what the attack means for accountability in Kenya, and will specifically address the big question of the day, which is the ICC.

As you know, President Kenyatta has asked the ICC to delay his trial, specifically citing Westgate as the reason he is unable to begin. His trial is slated to commence on November 12th. But-- given today's news that the prosecutor does not object to a start date in February, that-- November 12th date seems unlikely.

But the other major question is whether the U.N. Security Council will pass a resolution in favor of a deferral, which would delay the trial one year. So Hussein will also talk about what that would mean, what a deferral would mean to the people of Kenya.

Jonathan Horowitz is my colleague here at-- Open Society. He's the legal officer for the Open Society Justice Initiative and has spent a year working with MUHURI-- researching alleged human rights abuses committed by the Anti-Terror Police Unit. So he's gonna specifically be talking about that. It's a special clandestine unit of the police operating throughout Kenya. But-- it's important to note that the U.S. has a very strong relationship, financial and otherwise, with the ATPU. His research focused on hot spot of Mombasa. And he will describe the findings of his report and what it means for U.S. policy.

Lastly, Francis Auma-- is a project officer from Uhuri and is responsible for the rapid response unit and their counter-terrorism program. Francis sees the impact of the ATPU and other Kenyan security forces every single day. He works with citizens to document human rights abuses and to help seek redress.

Francis will describe his work and will further elaborate on the community's perception of the ATPU and the Kenyan government, and will also-- discuss-- another increasingly important issue, which is the challenges for Civil Society. Many-

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- among us fear an increasingly repressive environment for human rights defenders-- in Kenya. And Francis will talk about the reality of being a human rights defender in Kenya today and what he sees for the--

(BREAK IN TAPE)

## **SARAH PRAY:**

So with that, thanks again for-- for welc-- for-- for joining us today. And-- I welcome Hussein to kick us off.

## **HUSSEIN KHALID:**

Thank you very much, Sarah. And-- good morning, everyone. It's a privilege to be here, to talk to you-- about the situation in the country. As Sarah has explained-- it hasn't been a very-- easy year for us in Kenya. We were supposed to have elections late last year. But-- these were postponed by the courts to March.

At the coast-- the situation was not as-- simple as-- would have wanted it to be. Because-- we had the Mombasa Republican Council, which I'm sure most of you must have heard about it, which is a group that is calling for the cessation of-- the coastal region, from the mai-- main-- mainstream Kenya, or so to speak. And-- the group was active during the elections, saying that-- elections are not-- supposed to happen in coast, because coast is not part of Kenya. So we did experience-- some violence. A number of police officers, about ten, just below ten, seven police officers, were hacked to death by-- by this group. We also had a number of polling stations that-- did not open at all. So-- like thousands of the people from the coast province did not-- exercise their right to vote, as every other Kenyan did-- during these elections.

After the elections, of course-- we had the usual politics of-- you know-- nominations and appointments into government and so on and so forth. And-- the fight against terrorism, of course, has been ongoing. And-- we did experience a number of-- you know, grenade attacks within Mombasa, within-- the coastal area, but also, generally in the country.

And then came-- September 21st with the Westgate-- Mall attack. It was in the media. I think it was well covered by the-- you know, international news-- agencies, CNN, Sky News, and others. So I know that-- the information-- is out there. But it was-- a Saturday, just like-- you know, any other Saturday. And people were going about their business.

And the Westgate Mall is-- you know, a popular spot in Nairobi. Most of the people who travel to Nairobi would want to go to (CLEAR'S THROAT) Westgate, because it's-- you know, a mall that-- is frequented, not just by-- you know, local people and-- entertainers, or so to speak, but also, foreign diplomats and-- the international community.

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It's-- a shopping spot that-- you know, attracts very many people. It has a number of shops. You know, you can get almost anything there. I remember-- I was there about-- a month or so before the attack, and I was looking for a hat. So-- you know, it's-- it's-- it's a popular spot, or so to speak.

On that particular day-- I don't know if-- this is-- information the terrorists had beforehand, but there were a number of activities happening within the mall. So it wasn't just any other, you know, normal day at the mall. One of the activities was a cooking competition, a children cooking competition, which was being hosted by-- (NOISE) one of the local FM stations, you know, Asian FM stations.

And-- you know, children had come there, together with their parents, and they were going to compete in this-- competition to cook-- you know, different types of food-- to sort of like show their prof-- prowess in-- in-- in that particular-- competition. And-- about-- just before lunch hour-- the lunch hour-- some guys appeared.

Unfortunately, up to this point in time-- the government has not come (UNINTEL) to tell us the exact number of terrorists. But what we know from the CCTV cameras that have been obtained by a number of media houses is that there were four guys. The names are still being-- you know, discussed. But up to this point in time, the-- they are going by the color of the shirts that they're wearing.

There was Black Shirt, there was Blue Shirt, there was Pink Shirt, and I think there was Green Shirt, the fourth one. But-- you know, these four guys are the ones we've seen from the CCTV cameras. And what was happening was, you know, they just went in and started shooting indiscriminately, you know, just shooting people-- just to kill, nothing else.

And-- you know, people had to take cover. There are those who managed to hide in the shops. There were-- reports of grenades being hauled (?) at-- at a group. And-- there was-- the host of this program, the cooking competition, and-- he was hosting, together with his wife. They are co-presenters within that particular registration. And that day, they were hosting the cooking competition.

And he gave his account of what happened-- at that particular point in time. You know, he said that they were just going about their business, and, all of a sudden, just a young man appeared, fully loaded, with an AK-47 rifle, and-- you know, enough-- bullets to kill a whole crowd of elephants, and then just started shooting indiscriminately. He didn't care who was there.

And he said, "Well, usually in our country," now, this is the guy reported that the terrorists said, "In our country, we don't kill women and children. We're not allowed to do that by the rule of engagement. But your officers came to our country and did that. So we have no choice but to do the same." That is what he said. And I think-- he was referring to the Kennedy French Forces, who are currently in Somalia.

Whether it's true that that is what they're doing, that is left for, you know, anyone to guess. But that is what he said. And this is an account that was given on-- CNN-- where this-- radio presenter, you know, explained what he-- he saw and what the terrorists said.

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So that's just one incident. And-- you can imagine, by now, there were hundreds of people in that building. And everyone giving his-- account of what he saw and what transpired, and how they had to hide before they could come out. But-- on that very same day, in the evening-- one-- testimony caught the attention of many Kenyans, of-- a middle aged man, who said that-- you know, they were hiding in one of the shops, and they could see the terrorists as they were moving from store to store, looking for people to shoot to kill, and all that.

And then one of them decided to hide in a-- in a-- in a corner, and-- changed his clothing. And he was sitting there, and he was seeing what he was doing. So he changed his clothing, put on different-- you know, clothes, and continues-- hiding at that spot.

After a while-- they were-- they managed to, like-- you know, find an avenue to-- to run, to-- to get out of the mall. And this guy joined them. That's what he was saying, this guy joined them, and he went out together with them. And when he saw this, when he was finally outside, he told the police officers, and told them, "Arrest that guy. He is one of the terrorists. He is one of them." But the police officers didn't want to hear anything about it, and just told him to get away.

So again, these are all-- videos you can find on You Tube, (COUGH) the testimonies that have been given. These are not my words, but actually-- real testimonies of people who were there. So that's what-- transpired-- on-- on Saturday. And it was a four-day siege.

You know-- we were getting regular updates. But people were very, very concerned. Because-- there were still very many hostages inside. And we were-- we were being told that they're holed up in one corner with hostages. And-- it was very worrying. I know of a friend who could not attend a meeting because his cousin was actually one of those hostages inside there.

I personally lost a friend-- who was buried the day after. So it was tragic. The president himself lost his nephew, together with the fiancé. I'm sure you know about this. But-- what is very clear is that people just died without really knowing or realizing what was happening. If you listen to the guys (COUGH) who were there, some of them said they thought it was just some thugs coming in and wanting to steal either from the bank or from the jewelry stores. Before they realized it's a terrorist attack, you know, a number of people had lost their lives.

So at the end of it all-- 63 people officially-- lost their lives. We had at least-- three Kenya Defense Forces-- officers who also were killed. And we hear at least or approximately four of the terror-- terrorists were also killed. We can't confirm any of that, because-- what we also know is that the building collapsed. Three floors of the building collapsed or caved in. And, you know, from the top, where the parking-- lot is, you could see the pictures. I'm sure you must have seen them-- on-- on the med-- in the media-- with cars coming down. And so it was-- it was tragic.

Nairobi being Nairobi is a cosmopolitan area. So almost everyone has relatives in Nairobi. So we were all very shocked. The whole country was, you know, in shock at

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what had transpired. But one thing that remained amongst all of us is the sense of unity, and that we are going to get through this together.

And everyone we-- you know, people were donating blood-- not just in Nairobi, but in Mombasa. I remember visiting the area, and people came out in hundreds, in Nakuru, in Kisumu. You could see, you know, people wanting to help, people wanting to be there for their-- for their countrymen. And this is something that-- you know, was very commendable, that we stood united as a country against these-- cowardly acts by the terrorists. And we condemn it in all manners possible. And we would like to see-- these terrorists-- you know-- brought to book for the injustices they've committed to our country and to our people.

Just as-- it was dawning on us that, you, we were under attack, and after the second, the third day-- some of us became a bit concerned because of the statements that were-- were-- were coming out. And-- it's at that point in time, you know, we-- we started thinking of-- you know, what will be the aftermath after the-- the terror attack.

And-- judging from previous experiences, we know that-- certain sections of the population have always been profiled, have always been-- associated with terror attacks. Muslims and-- others, too. And-- I remember communicating to a number of friends and telling them, "We are all so saddened by what has happened. We've all suffered immense losses."

You know, loss of life-- a loss of life anywhere in-- (NOISE) in-- in-- in the world is terrible. And least of all, in such kind of a manner. But-- you know, we were wary that-- this could actually-- go back against our community, and we would bear the brunt. When I say, "Our community," I'm referring to the coastal region, where majority are Muslims, and where the fight against terrorism has really been-- you know, played out in that area.

And-- suffice it to say that's exactly what happened. Just a few days later-- you know, whether it's in response to the terror attack or whatever it may be-- one of the sheiks, who usually preaches at one of the popular mosques in Mombasa-- was driving home, together with his three colleagues, and-- before that, the Friday just after the-- the terror incident-- there were rumors that-- one of the terror suspects had been arrested and had been shot dead. And-- we feared that-- this might have negative repercussions. Because-- you know, being a Friday, which is what they usually-- do, there al-- there is always some sort of-- a rumor going 'round. You know, Friday's when people go to the mosque, and religious emotions are-- are-- are quite high.

So luckily, we were able to find this guy who was rumored to have-- been killed. And we urged him to come out publicly and say that he's well, and that there's nothing wrong, you know? And-- before prayers, he came out, and he agreed to our request. And-- you know, things cooled down.

But the following week-- Thursday evening again-- the sheik, Sheikh Ibrahim-- was-- shot dead at point-blank range, just a few-- you know, just near-- a police station. (NOISE) And this really infuriated the community. And-- unfortunately, executions

of this kind (SNEEZE) are not new in Kenya. Executions of terror suspects, the forced disappearances of terror suspects, have been the modus operandi, the-- the-- the-- the normal process of dealing with such cases.

Our suspicion, and I repeat, that's our suspicion-- because of the failure by the Anti-Terrorism Police Unit to prosecute successively in court, they have-- you know-- decided to use-- (NOISE) extra legal means to deal with suspects. This was not the first time suspects-- terror suspects were killed. You know, it has been happening for a couple of years. I don't know if you have heard of-- Sheikh Aboud Rogo, if you've heard of-- Samir Khan and others. But this has been the practice. So another fear is that we feel they're always trying to provoke youth to come out, to sort of like, you know-- agitate or demonstrate against what is happening. And this provides them with an opportunity to, again, hit back at the same-- same people-- when they're out in the streets. So this is-- a practice that has been happening.

And-- on that particular day, when the four-- young men and the sheik were killed-- (PAPERS RUSTLING) of course-- they were buried the same-- same night just a few hours. They were buried in a mass grave, the four of them together. And-- the day after-- there were protests in the streets.

And of course, because of the protests, unfortunately, more people were killed. And this time, very clearly, and they did not deny, by the police. Four other youths were killed by, you know, bullets from the police. And this is not, up to date, been investigated. Even the killing of the imam and the other three, not even a single statement has been taken by the police.

Ourselves, we went to the ne-- the police station, where you would (SNEEZE) normally report such incidences (SIC), and we requested the (SNEEZE) police officers to take-- I mean to-- to-- to-- to take note of what has happened, and to open up investigations. But the blanted-- blatantly told us that they cannot do that. And-- you know, she said that that's something much above her, and if I want anything to be done, then-- we should go see senior officers. So a simple thing as recording a statement or receiving a report on s-- a murder that has caused tension in-- in a region-- is something that the police have refused to do.

Then, immediately thereafter, of course I'm sure you saw in the media-- the-- our deputy president was at the ICC. And he requested-- to be allowed to come back to the country to deal with-- the situation. You've also seen-- a few days ago, that the president has requested a deferral of his case. And-- basing much of-- arguments on the situation in the country.

And-- we feel that-- you know-- this is something that-- we all have gone through. But-- we don't think that it should warrant-- such a drastic-- measure-- by the ICC. We know that Kenya is a beautiful country. (NOISE) We love our country very much. And we would like to see much more happening in terms of justice, in terms of rule of law and respect for human rights.

But we also know that there are certain individuals, in particular-- for us, the Anti-Terrorism Police Units, that are hell-bent on violating the fundamental rights and

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freedoms that are guaranteed in the constitution, a constitution that Kenyans voted for overwhelming (SIC). (COUGH)

The courts have fueled that actions by the ATPU are or were unconstitutional, in a number of instances. Yet, nothing has been done. So we have a situation where people are flagrantly violating the law-- security forces, individuals whom we are supposed to run to when we feel we are faced with a difficult situation, people who are supposed to protect us, people who are supposed to offer security. Yet today, they're the same people who are causing much harm, violating our rights, and abusing, you know, fundamental freedoms that every person should have.

So this is the situation. And we feel that-- one-- with the ICC case, we really don't care whether there's a conviction or not, whether the president and the deputy president are guilty or not, that is immaterial. I think the message that Kenyans want to be assured of is that (NOISE), irrespective of the position you hold in office, you are not above the law.

And, you know, you cannot circumvent due process and use politics or any kind of pressure to get away from due process. That is the message that Kenyans would like to hear from not just-- you know-- within the country, but also, at the international level. And we-- it would be, for us, a very big disappointment if, for whatever reason, you know-- the ICC was to choose, or the security council was to choose, to defer the cases. Because this would be a very big loss.

We have people who, you know, enjoy impunity of the highest order in the country. If this is allowed to move in the direction that it's headed, then-- impunity will become an ordinary thing, and people would feel that they can get away with anything. So I think-- I was wait-- I was told when I speak for too long, I'll be given a note saying (LAUGHTER) one more-- one more minute. So since it hasn't been coming, I've just been going on. (LAUGHTER) But--

## **SARAH PRAY:**

No, you're good, you're good. (LAUGHTER)

## **HUSSEIN KHALID:**

But I think I'll-- I'll-- I'll leave it there, because I know-- questions and comments from you will contribute to an even-- you know-- better engagement. Thank you very much.

## **SARAH PRAY:**

Thanks, Hussein. That's a perfect segue, actually, to Jonathan. Hussein mentioned some of the concerns with the ATPU. And Jonathan will get into much greater detail.



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## JONATHAN HOROWITZ:

Great. Good morning, and-- thank you all for coming. It's good to see you all here. I just wanted to-- sort of put some-- some-- meat on the bones of what Hussein has described within the context-- not only of post-Westgate, but also, pre-Westgate, but sort of post-terrorism-- in-- in-- in Afgha-- in-- Afghanistan! (LAUGHTER) In-- an old job. In-- (LAUGHTER) in-- in Kenya.

It is a problem. We all know about the embassy bombing in Nairobi in 1998. There's been a-- hotel bombing (SNIFF) in 2002 that killed 15 people in Kenya. There were-- rockets launched at a passenger airline that same day. And then, (NOISE) as Hussein had-- had alluded to, once Kenya went into Somalia to deal with-- the al-Shabab problem in 2010-- and '11, there was really a spike in, I would say, sort of-- significant but-- but-- but small-level attacks in forms of-- IEDs in places like Dadaab-- Refugee Camp-- grenade attacks in Mombasa and in Nairobi. There were kidnappings of-- some aid workers that actually triggered-- in many ways, Kenya going into Somalia.

And-- and that's an environment that Kenyans have been living in. And it's a real one, it's a significant one, it's a scary one. And there is an absolute duty on the Kenyan government to try to respond to-- these killings-- kidnappings, injuries-- this-- this terrorism.

The question, of course, is: Is the Kenyan government dealing with its responsibility in a responsible, lawful manner? And not only is it doing it in an unlawful manner, but-- but there's this other-- his-- history to remember, which is that-- that-- that is related to 2002-- 2007, 2008 election violence, which is that Kenyans came together to-- to pass a new constitution, to pass legal reforms, in particular, police reforms, to really try to end a cycle of violence, or a machinery (NOISE) of violence, that allowed the violence in 2000, 2000-- 2007 and 2008 to take place that-- brought an end to a cycle of violence that allowed the police to kill hundreds of-- outlawed gang members called the Mungiki-- in extrajudicial (PH) killings, which both international and national and local human rights groups have all documented quite extensively.

And so that's also part of this consideration is how well is Kenya following its human rights obligations in the fight against terrorism? Because the country came together and said, "We can't have any more of this. If-- if we're gonna-- if we're gonna be a stable government-- we need to follow the rule of law. We need to-- to follow human rights protections."

And so when I-- became involved in working on Kenya, I immediately-- found my way to Mombasa and to-- MUHURI. And-- and Francis will s-- will speak about the work that MUHURI does which-- overshadows anything that I could possibly do-- (TAPE SKIPS) basa. And-- they immediately-- the-- this acronym, ATPU, ATPU, the Anti-Terrorism Police Unit, that's the problem, that's the problem. That's the way the government is trying to fight terrorism, and it's really creating-- problems for the community in many different ways.

And so, in a few weeks-- MUHURI and the Open Society Justice Initiative (CLEARS

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THROAT) will be publicly releasing a report that really captures the types of human rights-- violations that the ATPU has been perpetrating in Mombasa. But it al-- also importantly recognizes the fact that the Anti-Terrorism Police Unit has been in existence since 2003, heavily funded by the international community, in particular, the-- United States, as well as the U.K. and others.

But it's not an institution that just started having problems in the last year or two. A high court decision earlier-- this year-- condemned the ATPU for involvement in-- the unconstitutional rendition of Kenyan nationals to Somalia, who then went on to Ethiopia, where they were tortured. The head of the ATPU at the time signed an affidavit for those court proceedings, saying that he was well aware that these renditions took place.

In 2010, the ATPU was at the tip of sphere of an operation that rendered Kenyans-- from Kenya to Uganda in relation to-- a bomb attack, an extremely severe bomb attack, in-- Uganda. The-- two high court justices separately condemned those renditions as being unconstitutional. The ATPU signed many affidavits saying they were the ones that picked these people up, transferred them over to the Ugandans.

The ATPU-- has a history of human rights abuses, the latest of which can be described in three different categories, which I'll describe now. One is dealing with terrorist suspects by simply detaining them, keeping them outside of any recognized police station, driving them around, beating them, interrogating (NOISE) them, as they're trying to gather information-- and eventually bringing them to one of many different police stations, where usually they will then not have access to-- outside contact with families, lawyers, et cetera.

They do end up in a court, but not before being verbalized-- sort of in the dark of night, depending on the time of which the operation takes place. Our report documents-- about six or seven of these instances that took place on an operation-- in November of 2012. But there are other-- lesser documents incidents that make-- make it clear that this is sort of a pattern and practice, the-- the detention of youths problem.

The other issue that the report looks into is the issue of disappearances of people, terrorist suspects being picked up by the ATPU and escorted off, never to be seen again, except for the unfortunate case of-- Samir Khan, who, in fact, was seen again-- in the bush-- with-- with significant torture marks on his body. As you know, disappearances are-- are characterized by the perpetrator being unknown. And so there is, as-- as Hussein alluded to, serious questions (UNINTEL) exactly sort of-- who exactly did this? Was it the state? Was it someone else? We don't exactly know-- except for the fact there is-- there is one case where we have-- we have two eyewitnesses that did put an individual who has yet to reappear after but disappeared for a year in the custody of the ATPU in-- in-- being seen visually in the custody of the ATPU.

That's the case of-- Badry Rumba (PH). MUHURI actually communicated that case to the U.N. Working Group on Forced Disappearances. The U.N. group

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communicated the issue with the Kenyan government. And we don't know where things stand at the moment.

A third category of abuses has to do with the issue of extrajudicial killings, or at least unlawful use of lethal force. There are, as-- Hussein (NOISE) had mentioned, several cases where people have been gunned down by unknown perpetrators. That requires an effective, robust investigation, which the government has failed to do. I'm not necessarily talking about those cases, although those are extremely problematic.

What I'm talking about are at least three cases where, again, there are eyewitnesses (TAPE SKIPS) to the police in two cases summarily executing two men who were handcuffed at the time-- and another case of a man who was-- trying to escape and was shot in the head and, I believe, the shoulder. His body fell dead on his wife, with his wife then pretending to play dead, and overhearing the police say, "Well, should we shoot her? No, she'll be dead soon enough. We'll just leave her." Complete disregard for human life within the counter-terrorism context.

\*NO TMCODE\*~00:3321\_00 These are the types of abuses that the-- that the forthcoming report documents-- and puts out into the public. (TAPE SKIPS) can demonstrate that Kenya is not combating terrorism in a way that complies with the type of rule of law that the Kenyan population had committed its government to doing. And then, on top of that, it's doing it in such a way that I would consider it to be counterproductive.

Which is demonstrated by the fear, the lack of trust, that the community, specifically Mombasa, has with not just the ATPU, the Anti-Terrorism Police Unit, but also by the police generally, such that you absolutely have-- I mean you-- you mentioned it. There were people donating blood in Mombasa, people trying to find out ways to help the victims of the terrorist attacks in Westgate-- overcome that-- that experience.

And yet, those same people who sympathize with those problems are fearful to go to the police to say, "Here's how we should probably try to solve this problem together," because they fear that, ultimately, they'll be detained, they'll disappear. They could be summarily executed. They could be beaten, at the very-- least.

And so there's a communication, trust, fear problem that is absolutely counterproductive to how any government can effectively combat terrorism-- with the accepted fact that military might is not gonna solve the problem-- of this type of violence that is extremely rear-- extremely real. And-- I don't know if it's getting better or-- (NOISE) worse. But, at the very least, it's flat lining at an extremely troubling level in terms of the number of grenade attacks, the Westgate attack- IED problems, kidnappings, things of that-- of that nature.

Maybe we could talk about it in discussions, so that I don't-- take up all of Francis's (CHUCKLE) time. This is obviously linked up to the issue of police reform in Kenya. Kenya tried to move itself along on a very-- fast, robust, impressive police reform agenda. It's stalled for a variety of reasons.

Our concern is that, even if it was moving at pace, whether or not the Anti-Terrorism

Police Unit and counter-terrorism operations generally would fall (CLEARS THROAT) properly under the-- under the proper scrutiny of the police reforms-- that-- that-- that the Kenyan government should be credited for, that the Kenyan people should be credited-- for, and-- and-- and parliament, as well.

In addition to this-- I mentioned the U.S.'s involvement with the Anti-Terrorism Police Unit. The U.S., the U.K., others, also pushed very strong for the Kenyan (SNIFF) government to adopt a Prevention of Terrorism Act, which was finally adopted in 2012. They tried in 2003. Civil Society said no. Tried in 2006. Civil Society said no. They finally got through-- in 2012, probably not coincidence-- ly (SIC) right after a-- soon after a shopping mall-- was bombed in Nairobi. (TAPE SKIPS) the discussion came back into the public realm. The legislation was passed. Is unclear how that legislation is being implemented. But it is clear-- from a sort of legal analysis perspective-- it falls within that category of prevention of terrorism acts where there are vaguely defined terms that can be used as a political suppression tool, as well as crime fighting tool. And there are some serious due process concerns, especially on the blacklisting component of (NOISE) the-- law, which I'm happy to talk about in more detail-- as we continue.

That's probably-- that's-- I'll probably leave it at-- at that, and-- and turn it over to Francis to actually talk about what's-- what mi-- (CHUCKLE) what you do on a day to day basis, as opposed to what I do-- every few weeks. (LAUGHTER)

## FRANCIS AUMA:

Sure, thank you, Jonathan. All right. Human right defenders, (SNEEZE) especially at the coastal of Kenya, my organization is the leading organization in terms of following injustice-- I mean in-- following issues of human rights violators. We have been working with the ground. I'm in charge of counter-terrorism projects and rapid response.

Rapid response (TAPE SKIPS) daily basis, I'm dealing with victims of injustice. People have got trust in my organization than even the police. Why I'm saying this, you have been beate-- you have been physical assaulted, instead of you going to police, (UNINTEL) you'd rather come to my office. Which translates, they don't trust police, because police are corrupt.

Police will frustrate you. (UNINTEL PHRASE). You rather say, "I leave it to God." Most of the-- most of them do say, "I leave it to God," which means they have given up. So I'm not authority as a police legal mandate to follow up the case, 'cause I don't have capacity to go and arrest somebody and to bring him or her to court. But people would rather come to my office.

We have recorded several cases where your name appear as a wanted terrorist. Yes, there'll be a name in the media that-- you're a suspect, you are wanted by the ATPU, a dreaded unit. My friend, you run like nobody's business. You come to my office for me to present you. Why coming to my office? Once we present you to the ATPU,

you are safe. If you don't appear to my office, you are dead. They'll shoot you, they'll kill you. And-- we have witnessed this.

A good example is Samir Khan. The wife came to my office two days before we found the body at the Savo (PH), I mean-- Nashira Park (PH). The wife came that, "My husband has disappeared." And I told her, "Why you coming to me?" Called (UNINTEL PHRASE) the police after reporting, you can come now, we can walk together, and let-- (UNINTEL PHRASE) reporting as a missing person.

He said, "No. If it is police, no. I just leave it to God." And then two days, news, the body has been found, tortured, in the park. (UNINTEL) went, and-- the police, they (UNINTEL PHRASE) the body, took (UNINTEL PHRASE) very far from the Naris (PH) Mortuary. I don't know what was the purpose, maybe to (SNIFF) interfere with-- with-- evidence. Okay.

The body finally, it was a Muslim, it was buried the very, very day. But even Muslim, I mean the-- community, the-- the-- the-- the family, turn against us. They say, "You guys, you're opport-- we report it to you. Where were you? Why you coming here? Excee-- excuse us. Give us peace. He is already dead. He cannot be alive. Let-- let us bury him. Okay, please, we don't want anything more with human right or anything more with the police. We are-- we-- we are done."

Sheik Rogo (PH) was killed. The wife, also had bullet wounds, and-- and the daughter. And the wife called Hussein Alid (PH), "Oh, it-- this is-- this is real. This is shooting now." The very, very day when he was sh-- they were shot. And then Hussein called me (UNINTEL PHRASE), "Where are you?" Fortunate, or unfortunately, I was in Rope (PH) (PH)-- Elijah Rope's office, ATPU. I was following a case.

And there was signal there. And Rope was like, "Okay, now could I talk to you? Hussein called me. What is it? Yes, come out. We are running to the scene of crime." (NOISE) Hussein was there. What happened at the end of the day? It was recommended by the government Hussein should be investigated. Out comes, the wife called him. Why-- why-- why could the wife call the police?

And today, that report is there in the public domain that us four said Hussein should be reported, that he should be-- should be investigated, and-- for-- for further investigation, you know. Was on the cases (?). Personally, I've been arrested a record of eight times. Hussein have been physically beaten. And others, you (UNINTEL PHRASE). The environment is not con-- conducive for us. (SNAP) We are-- we-- we are seen as busybodies.

Once we go, we want to dial up, we want to bring the police, a special ATPU, to come on board and talk to the people. We want to know what they are doing, their work. We want to know exactly. Even the police, regular police, doesn't know what exactly ATPU are doing. So ATPU, nobody knows the way they're operating. It is like movie. When they come here, they shoot everybody, and-- they make away with it. And at the end of the day, they leave the dead bodies. Who comes and collect the dead bodies? The regular police.

Sometimes we go and report that somebody's been shot dead. Police are shocked. "Who? Where? (UNINTEL PHRASE)? Oh, that's ATPU again. Oh, you guys." Now that's now off record, according to them. "You guys, can you lobby that-- these ATPU should-- we should work together?" They don't get command from us. This (UNINTEL PHRASE). We don't know that. That can bring now a lot of problem with its Muslim community. Because people-- they-- they-- the-- they may attack even the police station.

So even police, the regular police, their life is in danger the way-- ATPU operates. Nobody knows. Human right defender at the coast, the work we are doing is not easy. Because we don't have support from the government. We are just doing a risky job.

Even now, they know in America, I'm telling you, I don't know when you go back, (UNINTEL) be news, will be arrested at the airport. What have you got to be in America, ATPU again? So ATPU, they're operating the way they want, with impunity. And nobody in that unit has been convicted.

Community. At the coast. Uralda (PH), the way I said before, report the matter to the human right organization, then their police every Thursday. Every Thursday. (UNINTEL PHRASE) ad lib (UNINTEL) cannot pass. I thought they'll kill. And then on Friday, because they heard his mosque, youth will come out, and they'll shoot and they'll kill. And nobody will be br-- will-- will be brought to book. Nobody has been any p-- any police officer have been held criminal responsible for this. They make away with it.

So it will be business as usual. People have got no faith with the police. The way police operate is hell. I think I'll rest my case for that. (CHUCKLE) Thank you.

## SARAH PRAY:

Thank you, Francis. I love that, "I rest my case." I-- (CLEARS THROAT) I understand. (CHUCKLE) So-- before we open that up-- maybe I can just ask-- a few questions. Francis's last point about-- no ATPU officer ever being held accountable for his actions also raises another question-- which is how-- successful, or how effective, is the ATPU itself?

We have been talking this week about the fact that there have been very, very few prosecutions of the suspected terror suspects. So I'm wondering if you all can talk-- it's one thing to be, you know, this human rights-- repressing and-- violating regime that's particularly effective in capturing terror (CHUCKLE) suspects and bringing them to justice. It's another thing, you know-- if that's not the case. So I'm wondering if you could talk about that. (COUGH)

And then the second question-- especially because we do have some folks from the U.S. government in the room-- is twofold. You know, generally, what should the U.S. government relationship be with Kenya, you know, post-Westgate-- security systems and otherwise? We talked (COUGH) a little bit about the ICC. You know, it's

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obviously difficult, considering we are not-- we have not ratified the Rome Statute, and we're not part of the ICC. But, you know, is there a role that we can play to ensure that the-- the road to accountability-- continues in Kenya? And then secondly, in light of all these ATPU concerns, what should our relationship be with them? Do you wanna start?

## HUSSEIN KHALID:

Lemme begin with the-- with the second question. And-- that's-- with the ICC and accountability issues. I think-- it's very, very important for the international community to communicate very, very clearly that-- you know, they will stand firm-- with the-- obligations-- the international obligations.

Before the elections, and even after the elections-- the Kenyatta government, you know, made it very, very clear that-- they will commit-- they-- they will commit, and they will present themselves. And they have no intentions whatsoever to, you know, excommunicate with the ICC or in any way-- pull out from their own statutes. That was very clearly communicated.

What we are seeing now are attempts to actually subvert the rule of law. You know, using political means of-- African emotions to ask-- withdrawal en masse and things like that, I think that means that-- you know, there is something wrong somewhere. If there was a commitment before and after elections to, you know, stick to the principles that-- you know, guide the international-- criminal courts, we believe, a Civil Society in Kenya, that that process should proceed.

We are very wary of the concerns-- of terror attacks. We know that-- the situation is not as normal as we would have wanted it to be. But that should not be used in any way as a justification to defer the ICC case or, in any way-- you know, circumvent the-- the-- the rule of j-- the rule of law.

Even a Civil Society, at this point in time, we are trying to communicate, you know, that as a people, as Kenyans, we believe in the ICC. And we would want to see the process move on to its logical conclusion. We are not after conviction-- or acquittal for-- in any manner. But what we want is just to see that process move on. We also are aware that there are many other cases, many, many other cases.

And with the ICC, what-- if-- if you look historically at how we came to this situation, you will see that it is our own politicians that brought us to the position that we are in right now. After the Waki Commission, which basically investigate the 2007 post-election violence, they gave Kofi Annan, who was, at that time, the mediator, an envelope with ten names of people who actually were bearing the greatest responsibility in as far as-- the-- the post-election violence-- is-- are concerned.

And-- Kofi Annan made it very clear that this does not have to go to the ICC. And he gave Kenyans enough time to set up a local tribunal to present the work of the Waki Commission locally so that we can deal with it at that local level. A tribunal was proposed in parliament. They let us set up a tribunal to try this (SIC) individuals

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within the country. Our parliament overwhelmingly voted against the setting up of a local tribunal. And that paved way for the ICC to come in.

Amongst those who voted against the setting up of the local tribunal are the same individuals who are currently (CLEAR'S THROAT) at the ICC. The (UNINTEL) reports are there. Anyone and everyone can check who voted for and who voted against a local tribunal. Now, the-- the-- the matter was forwarded to the ICC. The ICC came in, they investigated, they collected evidence. And out of the ten names, they proposed six who they thought, you know, they have cases to answer.

Along the way, they dropped a number of them and proceeded with a few of them. Now we have a situation where the case is now in court, and now we have this whole hullabaloo about the international community coming in, this is Africa, you know, sovereignty and all (NOISE) that. We had that opportunity. We were given all the time to deal with this issue locally. But we decided that we do not want to go the local way. It is ourselves. Now we are here, trying to whip up African emotions and all that. And I think majority of the people from a local-- a survey that was carried out, majority of the people in Kenya do support the ICC process.

Again, you can Google the scene of it-- a public poll on this. Majority of the people support the ICC process. And we want to see it-- you know-- its logi-- run to its logical conclusion. (NOISE) So the international community, the U.S.-Kenya relations, I think it would be very important for the U.S. government to come out boldly and say, "Let us proceed with this. You made a commitment to your international obligations. Let's take to that."

In terms of-- how to deal with the-- the local system, we know that there are police reforms that are ongoing. Unfortunately, the security sector, we've been able to permeate almost all departments except the police, except the police. And this is where we have the biggest problem. The anti-- the suppression of terrorism bill that - Jonathan was-- talking about.

You know, we resisted the suppression of terrorism bill as Civil Society because we knew the kind of a police structure that we have within the country. The police we have even government's own reports, government's own reports list the police as the number one violators of human rights, as the most corrupt entity in the country.

You know, these are government reports. The Kenyan National Commission on Human Rights-- the-- Commission on Administrative Justice, the reports on internal security, performance and all that, the police-- leave alone Civil Society. Because you might say we are critical of the police. But these are government's own reports, you know, communicating this situation.

And then you have a rogue unit within that distant (?) that basically can just do whatever they want. And unfortunately, the atrocities that are being committed, the blatant violations of human rights, are being committed through the supports of Western countries' resources. Taxpayers' money from the American people is actually contributing to the work that is currently being undertaken by this unit that is alienating a community, alienating the people.



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And every other day, the gap between the authorities and the people are widening as we speak. And I mean MRC, the calling for cessation and all that, it's nothing-- other than feeling-- that feeling that, you know, we are treated as if we are not Kenyans. You know? There are no second class citizens. All Kenyans should be treated equally. But why should I not have my passport, just because I have a Muslim name, just because I come from the coast? That's very wrong.

There is a case that was brought to parliament by a member of parliament, where two brothers, I mean, you know, same mother, same father, coming from the same area, lived, went to school in the same community, one of them, when he-- when he-- when-- you know, converted to Islam. So his first name was a Muslim name. And both of them went to apply for the national identity card.

One of them got his identity card, and the Muslim did not. (NOISE) There is no other reason rather than the fact that he converted to Islam. Again, you can Google (CLEARS THROAT) this case. It's-- you know, in media reports, and it's everywhere. So I think the U.S. government, one, must listen to the other side. It's not official government reports only that should matter.

Please, if you're working with the government, or if you have-- influence in any way to talk to any of your representatives, whether it's the Senate, or the House of-- (CLEARS THROAT) Commons?

## **SARAH PRAY:**

Representatives.

## **HUSSEIN KHALID:**

Representatives.

(OVERTALK)

## **HUSSEIN KHALID:**

Then please, let's communicate that the situation in Kenya must be dealt with differently. The way they're dealing with it currently is counterproductive. It's alienating communities. And, you know, when you're pushed to the wall, this is what happens.

There's no other reason why youth are going to Somalia to train, rather than that feeling of marginalization and discriminate-- discrimi-- discrimination. You know? We-- we-- we can't continue to live that way. We are creating sympathy for terrorists who, you know, are finding breeding ground within that community, to use, to hoodwink, to brainwash youth into violence that is completely unnecessary.

So if there are ways we can communicate that, let's sit down, "Let's address issues

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that are very open for everyone to see. And you know this fight against terrorism is not working," then I think if we can do that, we'll have done a great deal of-- you know, good (PAPERS RUSTLING) for the people of Kenya.

## **SARAH PRAY:**

Jonathan, any response?

## **JONATHAN HOROWITZ:**

(CHUCKLE) Just a-- just a few thoughts. I mean-- around the time that there've been some of the-- (PAPERS RUSTLING) either suspected extrajudicial killings or-- murders by unknown sus-- (CLEARS THROAT) by unknown perpetrators-- there is-- a general sense, and this isn't just in Mombasa, you-- you hear this from-- community members in-- in Nairobi and others, which is-- people don't have any problem bringing terrorist suspects to court, that-- (CLEARS THROAT) bringing them to-- to trial or due process.

The problem is a counterterrorism strategy that operates outside the rule of law instead of inside the rule of law. And that's really sort of the-- it-- it seems to me that that's really a tipping point where-- and I don't think it's coincidental, that's the tipping point at which a counter-- terrorism strategy becomes counter-- productive.

And so you have the question of-- you know, why are people-- essentially, you know, shot and-- and killed-- and this is cases where the ATP does take credit for the shootings-- when it's well known where they are? They were handcuffed at the time that they were shot. They aren't sort of suspicious people that come and go across the border-- as (CLEARS THROAT) some terror suspects do. (COUGH) But they're sort of known in the community.

Omar Karaj (PH) was a butcher who-- who-- was, you know-- well known. Sort of what-- what's the purpose for not-- taking the time, gathering evidence-- bringing them-- to-- to court and-- and charging them? And this goes to-- to what Sarah had mentioned, which is it goes to a question of even the effectiveness of the ATPU. There are very few, at least known, and there's no reason that they shouldn't be known, cases where the ATPU has detained people and it's resulted in a conviction. There are two Iranians-- that were convicted. Their case may even-- go to appeal. There's shoddy evidence-- that's being gathered.

The-- Sheik Abu Rogo, who was-- killed in August of last year, a few months later, his house was-- raided and-- and his-- son and son-in-law were detained be-- and it's one of the cases that'll be in the report. The ATPU promised all sorts of evidence to the prosecutor. And essentially, the prosecutor dropped the charges, presented to the judge a letter that said, "Here's what the ATPU said they would give me, and I've received none of it. I have-- I have no other choice but to drop the charges."

Now, there are two problems there. Either the ATPU picked up the wrong people, or

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they picked up the right people and they didn't get the right evidence. I don't really care which one it is. It shows that the ATPU is absolutely dysfunctional in the question of whether or not it's being affective in a counter-terrorism strategy that operates within the rule of law. And so that's-- that's one point that I wanted to mention.

In terms of the U.S. relationship-- the U.S. government should continue to support Kenya on the police reform issues. On-- various legislation that's instituting specific mechanisms, continue to be encouraging, show that these are ways to crack the impunity problem, to help with accountability issues.

On the other side of the coin, there's a big move-- within parliament and other parts of the government to actually erode some of the reforms that have taken place, especially on the use of lethal force. The U.S. government, (CLEARS THROAT) as the E.U. has done, as my understanding is the U.K. has done, to join in that-- strong voice to say it is unacceptable for there to be erosions. I think the U.S. has probably done this to (TAPE SKIPS) some quiet diplomacy. I'll leave it to the U.S. to decide if that's the best strategy to-- to continue, instead of being a bit more-- public.

Funding-- can't contribute to a counter-terrorism-- strategy that operates outside the rule of law with such egregious types of abuses, with beatings, with killings, with-- with disappearances. It-- it just-- that-- that-- that-- that just can't be part of the equation, because it'll actually not only bring-- it-- not only-- will it be a waste of taxpayer money, but it'll-- it'll-- tarnish already a troubled image of the United States in Kenya, in a place where the U.S. has a huge invested (SIC) interest in trying to deal with the problem of terrorism. There's no doubt-- about that. There's no doubt about the threat that-- that el-Shabab poses-- to Kenya and-- and-- and that the U.S. can-- can-- can help-- them deal with that problem.

But it has to be done in a way that-- is a good use of money, (CLEARS THROAT) and is effective. And the U.S. now has absolutely a (NOISE) responsibility (TAPE SKIPS) monitor how the Prevention of Terrorism Act is being implemented. It has been at the forefront of pushing the Kenyans, of-- of-- of really making the Kenyans feel thoroughly guilty about not having in place a prevention of terrorism act.

Now they (COUGH. UNINTEL) now, it has to-- the U.S. has a responsibility to-- to nudge and push and monitor the Kenyans to make sure that it's being implemented-- in a way that's not (COUGH) abusive, that doesn't take advantage of the-- the-- the politicization that is open for it, to take advantage of it.

## **SARAH PRAY:**

So we have about 20 minutes. So why don't we open it up and maybe take a few questions for the panel. Devon (PH)?

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## DEVON:

I'd just like to confirm a little bit on the-- where the breakdowns and the prosecutions are occurring that are motivating this harsh strategy-- from the ATPU. Is it most-- most of the ATPU can't deliver the evidence? Or is it also-- a poor performance within-- within prosecutors and within jud-- j-- judicial system?

## JONATHAN HOROWITZ:

Yeah, I think that's-- that's a great question for-- to-- to solve the-- to solve the problem. Because of the way the ATPU operates, it's hard to know-- exactly where the problem rests. In-- meetings that we had with high level intelligence officials, they seem to be playing this card, and it-- and it's somewhat a-- an understandable one, of, "Well, so much of what we get is human intelligence, and probably-- so it's signalant (?) to probably sigand (UNINTEL) human-- that let's us know where the threat is so we can disrupt the threat, but we can't actually use that information as evidence in a court of law."

I-- I get that-- rationale. And-- and I realize that problem. But I also think it's absolutely-- reflects lazy law enforcement, that there-- that there's absolutely a way in which-- people who are up to the types of abuses, the types of crimes, murders, grenade attacks, things like that, that there-- there-- there-- you know, (NOISE) there's a history (UNINTEL) where you can gather evidence to-- to-- to prosecute and-- and-- and convict people. But that's my understanding is that it's a-- it's an ATPU evidence-gathering-- (NOISE) clog in the system.

## HUSSEIN KHALID:

Then there-- there's also the possibility that-- and this is something very real to the communities. And-- and I know at this level we can discuss the issues on evidence, issues to do with the process, the system, the analysis and all that. But the majority of the people on the ground, this-- the-- the-- to them, they have no evidence. The people, they have actually-- they feel that they need to account for the-- what they're doing, to show that they got someone, they arrested someone. And then, you know, without any evidence, just let it go. I don't know if you-- you-- you're understanding me. They want to show that they're doing something.

So they'll just come and pick someone and say, "This is a terror suspect." And most of the times, like, when we communicate, we ask them, "How did you find this information?" all that, they'll say, "He had his number." You know? Someone had someone else's number. To, like, them, that's enough evidence that we can go after this person.

And they're receiving huge amounts of money. And they have nothing to show for it. One thing we know for sure, and this is another area where the U.S. could actually

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assist in terms of police reforms and all that, is to support the Kenyan Police with equipment, the necessary equipment. You know, they don't have anything. Even when someone goes to complain to the police station, they'll ask you to fuel their vehicle so that they can come to the crime scene. You know, so they don't have facilities, they don't have anything.

But the rea-- to the people on the ground, the reality is that they have no idea of what is happening, but they need to show that they're working, they need to show that, you know, the resources they're receiving are put into good use, so they just come and arrest someone. And this has happened an-- not twice, not thrice, not ten times, not 100 times.

But they've arrested an individual in the morning. And there's such a huge, you know, media fuss, you know, like (COUGH) hundreds of vehicles-- not-- not hundreds of vehicles, but-- (CHUCKLE) tens of vehicles and hundreds of officers raiding a home, picking the guy, taking him to the police station for interrogation and all that. And then, before the end of the day, they would release him and say, "We didn't find anything."

But you see, to the media, to the reports, this terror suspect has been arrested. And to that person, that's the end of his life. Because once the media prosecutes you, you are guilty. We know of a number of officers who've lost-- I mean of-- a number of individuals who've lost their jobs, who have no way of-- you know, making it anymore because of the negative publicity that was associated with the arrests. And there's no way you can remedy that.

But to the ATPU, it will go on record that they arrested a suspect. And, you know, so those are some of the propaganda issues that we also need to look at, even as we, you know, try to find out exactly where the problem is within-- within the system.

## **FEDAVID BARRY:**

You talked a lot about ATPU-- in coast. And-- (CLEARS THROAT) one of my questions is whether or not you find the same conditions of ATPU throughout Kenya. Are there areas that are particular more-- abusive than others, that-- that we should know about? Another question is about-- building bridges. It's-- seems to me, from what I'm hearing, that it would pretty much be untenable to think about how-- (NOISE) how Civil Society could build that bridge with ATPU. But-- Hussein, a couple of things that you said made me feel like, with the police, the local police, that may be another story.

And I know with Kokosi (PH), for example, in coast, that they have done some excellent work building bridges between the local police and society. So-- is that something that should be explored f-- further, to work with local police and Civil Society as a counterweight to A-- ATPU? And then finally, is lama-- (PH) Civil-- Society working with-- with the police? And maybe you could talk a little bit about their work.

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**SARAH PRAY:**

Up to New York, we'll take yours, and then turn it over to the panel.

**FEDAVID BARRY:**

Yeah. Thanks.

(OVERTALK)

**FEDAVID BARRY:**

My name is-- yeah.

**SARAH PRAY:**

Hey!

(OVERTALK) (LAUGHTER)

**FEDAVID BARRY:**

Yeah, this has been really interesting-- as-- as-- as a Kenyan. My question has to do with-- the court of public opinion-- which is really important-- in-- in-- in advancing-- gains on issues like this. Because terrorism is-- a menace. And-- according to the recent polls-- Uhuru is now seen as a (HORN) national figure more than he was-- just in the aftermath of the-- of the March elections.

And-- you know, even for-- when there was a battle against the Mungiki, and the racial trial tactics, there was a lot of national-- support for that. So my question is-- to learn more about-- the work that's being done to also influence the court of public-- opinion, so that this is seen as issues that are not just NGO issues or Muslim issues or coast issues, but-- but are issues that every Kenyan then feels passionate about.

(NOISE)

(OVERTALK)

**DAVID BERRY:**

Can I--

**SARAH PRAY:**

Yes.

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**DAVID BERRY:**

Sorry, can I build off that, please? This is David Berry from The Justice Initiative. I'm very grateful for the insights-- today. And-- and my question is-- is sort of related to-- about the national mood and whether post-Westgate there are greater opportunities to involve in police reform and engage in criticism of the ATPU, or whether Westgate makes it harder to do that.

**SARAH PRAY:**

Great, thank you.

**DAVID BERRY:**

Thank you.

**SARAH PRAY:**

Francis, do you wanna begin?

**FRANCIS AUMA:**

Yes, thank you. What I'll say, we-- you support us, especially the country, to get information from Civil Society, not alone going to the government. Don't take government report as a gospel truth. Why I'm saying this? There was a time when (UNINTEL) Kenyatta said there was no relation (?) from ATPU for letting people's rights. And they went publicly, saying how nothing, "You have-- you-- you have the report." And nothing has happened, nothing wrong happened. They are doing a good job. So that's perception now widen gap between the-- the government and that-- the people.

And also, the support you gave to the ATPU, which you are saying is not bad, but-- now people think this American thing. And-- even the media guys, when they come to the ground-- they-- the victim or eight people ask, the-- the-- they'll ask, "Is it American?" They don't want even to-- they -- they feel this is America, and it's a push from America. Our suffering is America.

So (UNINTEL PHRASE) well. We should-- see the way can-- (UNINTEL) work together with the-- institution, Usalama, I mean-- the-- the police station. Usalama, unfortunately, they don't cover within my jurisdiction, coastal area. They are-- they are nationally. But-- (CLEARSTHROAT) I believe strongly they just within Nairobi. They just in Nairobi. Thank you.

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## HUSSEIN KHALID:

Thank you very much. And-- your-- your-- your questions actually go to the point and-- to the crux of the issue. Beyond coast, definitely. ATPU don't work at the coast only. But it is where their main operations are undertaken. They're very active also in Nairobi. They're very, very active also in northeastern.

Actually, that's one of the reasons why I left MUHURI to work with-- a regional body. Because-- it's not even just in Kenya. But we know they also have-- you know, partnerships, as-- Jonathan has-- very well-- given examples of Uganda-- how they were able to deal with the Ugandan forces, the rendition into Ethiopia and Somalia. So their operations are more-- are more regional.

And-- building bridges, definitely. There is-- an opportunity to do that. Even if it's through the mainstream-- Kenya Police-- there is that chance that we could do that. ATPU, at the moment, I think even to them, they've-- accepted that, to do their work, they don't have to be popular. I think that's the approach that they're also taking, that, "It's okay, let them hate us, let them think what they want to think. We think we are doing the right thing."

So it might-- it-- it will be a bit difficult to get them to, you know, deep down in dialogue. But also, with the ATPU, we should not give up. One thing that I've learned within Civil Society is that persistence works.

So you persist and you persist and you persist. Even the head of the Anti-Terrorism Police Unit, send him as many letters as you can. Try and get to him as much as you can. And somehow, eventually, if you don't lose hope, somehow you always get the results. So even with the ATPU, I believe there is that chance that we can get to sit down with them and get them to understand what is happening and how we can work together to improve the-- the situation.

Because we all abhor terrorism. We don't want it to happen. You know, we want our country to be peaceful. And I want to believe that, at the end of the day, irrespective of which side you come from, that's the main objective, to have peace in the country, to have people living in a society, you know, devoid of human rights violations and all that.

Usalama Forum, yes, we do have Usalama Forum. And-- we've partnered, at one point or another. I know they deal with the macro issues, you know, at that top level, police reforms-- the laws that are, you know, being-- enacted, and-- and issues of that nature. I think what we are talking about are the day to day experiences of victims of counter-terrorism.

And this is causing great-- division between the security agencies and the-- and the-- and the communities, especially along the Muslim dominated areas. That's in-- Mombas-- I mean the coast and the northwestern. But like I said-- their operations are not just even in Kenya, but also across-- across the country. Hi Gladys and Mary and everyone else in New York. Good to see you guys.

Definitely the court of public opinion-- it's something we can't ignore, especially at



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this point in time. And unfortunately, most of these things always happen after an incident such as Westgate has, you know, occurred. And I communicated this, that, you know, there is a lot of-- you know, feelings against terrorism. And this could be used by the Anti-Terrorism Police Unit to actually commit further atrocities. And it's true, that did happen. But you see, if we always-- side or put court of public opinion before anything else, then we might not end up getting justice. So it's very, very important. I agree with Gladys 100% that-- you know, it's-- it's-- it's crucial to consider the mood of the country. It's crucial to consider-- general perceptions.

The Mungiki case is a-- is a very good example. When human rights-- activists went out-- you know, this is a-- gang that was basically mutilating-- bodies and, you know, beheading. We'll find one arm on one corner of the farm, the other leg is someone there. There were committing just, you know, very, very serious-- crimes.

So when the police went in and cracked down hard on them, killing them and doing all that, of course the human rights community came out to say, "This is not right. Arrest them, charge them in court." And as Gladys rightfully said, the public opinion was against-- the human rights activists. But remember, for you to be right, you don't necessarily have to be with the majority.

Sometimes the majority are not always right. But you have to stand firm for what you believe in. And it's only by doing that will you also be able to influence the majority when they start thinking, "Why is he actually insisting on this point?" And rule of law, you know, you-- we just have to ensure that security authorities strictly operate within the confines of the law.

And that is all that we're asking. We're not asking for favors. We're not asking for certain communities to be treated-- specially. And this is the message that we need to send to the general population within the country, that, "Look, we have a constitution that we overwhelmingly voted for, one of the strongest bill of rights in the continent."

And I think it's article two that places the responsibility. And it says every person, not even every Kenyan, every person has the responsibility-- duty to defend the constitution of Kenya. So it's up to us to ensure that we defend that constitution which we believe it, irrespective of where, you know, the-- the public opinion lies in. And it, by doing that, we'll be doing a great service to our country.

## **SARAH PRAY:**

Before you-- turn it over, do you wanna say anything about whether it's easier to criticize-- (COUGH) no, I'm gonna--

(OVERTALK)

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**SARAH PRAY:**

--go to Jonathan. But-- just to answer David's question about whether it's easier to criticize the ATPU now in light of Westgate, or whether it's more difficult.

**HUSSEIN KHALID:**

Yes. I wanted to leave that to-- to Jonathan. (LAUGHTER) 'Cause--

**SARAH PRAY:**

Unh-uh (NEGATIVE).

**HUSSEIN KHALID:**

--we had-- we had these reports-- that we also wanted, actually, the original launching date was, I think, a week after Westgate. A week or two after Westgate. But then we felt that-- you know, that would not be the right time to do it because of, you know, the emotions that were high and all that.

So yes, it is-- difficult at this point in time to criticize-- you know-- the ATPU-- because of, as Gladys rightfully said, the opinion of the public at the moment is for them, is in support of what they're doing. And-- majority of the people, you know, would want to get the terrorists irrespective of, you know, the-- what they usually call collateral damage, or something like that, yeah? But-- you know, again, something has to give.

**SARAH PRAY:**

Last word to you.

**JONATHAN HOROWITZ:**

I mean-- yeah, Hussein's right, it-- we were-- supposed to put the report out, and-- and-- and-- the Westgate attack occurred. And-- for two reasons, we were reluctant to put it out. One was-- because of-- the court of public opinion. The other was to-- to sort of do a assessment of how the government would respond.

And-- and currently-- there are the problems that-- that-- that we've-- seen in Mombasa with-- the unidentified killings. There have been some detentions. There's one case in the report about a man being abused during his capture. Nairobi, I think, has actually seen-- a much-- more dramatic crackdown, as has-- Dadaab and-- and other parts of the country. Although I'm not writing off that problems will be coming

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to Mombasa-- in a more fierce way, by-- by any means.

But then what really changed things for us was-- the court of public opinion, not on the counter-terrorism issue-- but on the way that the police and the KDF responded to Westgate really demonstrated that the public was not pleased with how the government-- dealt with this extremely serious threat, almost as if-- the government's response-- through looting, through a complete lack of-- consideration that the KDF would even, you know, think about looting, that-- that the government really wasn't taking-- seriously the fight against terrorism.

And so there-- when I was just there a few-- a week or two ago, I guess, the only thing in the newspapers was the C-- what the CCTV footage demonstrated about what the KDF and the police were doing in the direct aftermath of the attack in the shopping mall, which was looting and other things. And the ICC issue, with-- the president and the vice president saying, "This war on terror thing-- requires me to be in Nairobi to receive daily briefings from my security-- security agencies."

And-- and for that reason, we felt that there was actually an opportunity to sort of latch onto the general public-- being educated (CHUCKLE) about what the KDF, what the police, not only what were they willing to do, but then, what parliament and others were willing to say-- were-- were willing to turn a blie-- blind eye to. So-- so parliament pa-- was it a resolution? They passed a resolution, they made a public statement saying, "KDF would never loot, absolutely not. It's j-- and wow, you people are crazy. Why would you ever-- (CLEAR THROAT) you know, these are good fighters, they fought in Somalia, they've lost their lives-- they've come to help on Westgate. They've-- they've saved a number of people. How can you possibly discredit the KDF?" And then the CCTV footage comes on with the KDF walking out with shopping bags-- full of goods. And then there are other anecdotes, as well. So-- so that did lend itself (PAPERS RUSTLING) to a-- to a-- to a more open atmosphere.

And then just to add to-- to the question-- that was already answered about-- (UNINTEL) your question, which is I-- I think it-- there is also a public education-- component to all of this, where-- you know, it happened in the United States, as much as it happened in Kenya, where people say, "Well, you know, tor-- but if torture works, then, you know, what's-- what's the big-- what's the big, (NOISE) you know, problem here?"

And I think that-- that has to absolutely be discredit in the-- in the court of public opinion, that there has to be an education component to that. And I think that's why, in the report, and in-- and meetings we've had with-- U.S. government officials and others, we try to talk about the effectiveness of a counter-terrorism strategy that exists outside the rule of law. Because it doesn't actually help the country, it-- makes things potentially-- worse.

And it's not only a matter of the idea that, oh, you might recruit more people into the ranks of al-Shabab. There-- the numbers of that, I have no idea. Empirically, it's-- almost impossible to figure out. But it is pretty easy to say that it reduces the credibility that a general population has with their government. And that is

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extremely damaging-- especially in the-- in-- in-- in a-- time period where you're around elections. The government-- the country has just passed a new constitution, and things like that. But I agree that it's an up-- it's an uphill battle. And it'll be interesting to see what the court of public says about the report when it is released in a few weeks.

## **SARAH PRAY:**

Thanks. Well, perfect timing, actually. We've come to-- to the end of this event. Thank you all, again, for coming. (TAPE SKIPS)

(OFF-MIC CONVERSATION)

## **SARAH PRAY:**

It better be quick. (LAUGHTER)

## **FEMALE VOICE:**

I was really interested to know, because the police units and the ATPU are Kenyan citizens, I'm wondering what's the representation of Muslims within these units? And how are they viewed within their own communities?

## **HUSSEIN KHALID:**

We know that-- the-- the representation of Muslims in-- in-- in-- for example, the KDF-- the Kenya Defense Force, the army and-- and the air force, is-- considerable. It's not insignificant.

In the ATPU, I don't know of-- many Muslims. But I know one-- in a senior-- position-- the son of a former-- internal-- minister-- internal security-- secretary. And-- the public opinion, of course, is not-- or amongst the Muslims, at least, is not that good. Because he's being accused of, quote unquote, being a "sellout," and things like that.

So, yes, we do have-- one or two. But then we also have to understand the command structure within-- the-- the police force, especially in Kenya. You know-- since independence, we've inherited a very top-down-- police structure, where in-- individuals at the bottom, you're not even allowed to think for yourself. You just have to check if it's okay with the senior bosses, and then that's what you do.

And they give the example of when we went to report this incident-- where-- four guys were shot at point-blank range just near a police station. And the officer couldn't do anything. And we were not asking her to investigate or to give a statement or anything, just to report that we've gone there to complain or to report

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about that incident. Just, you know, "Hussein Khalid, Francis Auma were here to say that-- you know, there were some-- four guys who were shot not very far from here." Just that. And she couldn't do it.

Because she felt, "This is something big, and I have to get my seniors to come in and to-- " so even at that level-- of-- of officers and-- the command structure that we have, it's very top-down-- you know, sort of like strict. You just have to stick to the orders that you are given, and-- unfortunately, that does not play out well.

## **SARAH PRAY:**

Okay. Well, please join me in thanking Jonathan and Francis and Hussein. And thank you all again for coming. Have a great deal. (APPLAUSE)

\* \* \*END OF TRANSCRIPT\* \* \*