

Prosecutorial Efficiency in Terrorism Cases in Kenya: Legal and Institutional Challenges

Robert Oyiembo*, Dennis Ndambo, Gladys Rotich

National Defence University – Kenya

*Corresponding author

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ABSTRACT

This study investigates the factors influencing prosecutorial efficiency in handling terrorism cases in Kenya, focusing on the causes of trial delays and the impact of prosecutorial discretion on the constitutional right to a speedy trial. The addressed problem is the delays in terrorism-related trials, facilities like the legal framework represented by the Prevention of Terrorism Act (2012) are already in place. The study employs mixed-methods design, pairing qualitative interviews with 24 prosecutors, 16 judges as well as 40 defense attorneys, with quantitative statistics gathered via surveys, in order to examine the correlation between prosecutorial decisions and trial delay. The findings reveal that resource constraints, lack of specialized training, poor coordination between agencies, and political interference are the primary factors contributing to the inefficiency of terrorism prosecutions. The backlog of cases, lack of funds and inadequate dedicated terrorism courts especially worsen delay in trials. As a solution, the study proposes enhancing funding given to the Office of the Director of Public Prosecution (ODPP), offering professionalized education to legal practitioners, better inter-agency collaboration and more specially set-up terrorism courts to face the peculiar circumstances of terrorism cases. These recommendations would enable the criminal justice system in Kenya to realize trials that are timely, fulfill the right to a speedy trial and enhance the general effectiveness of terrorism-related crimes.

Keywords: Prosecutorial efficiency, terrorism cases, trial delays, prosecutorial discretion, inter-agency coordination, dedicated terrorism courts.

BACKGROUND

The efficiency of prosecutors in dealing with cases on terrorism forms a very crucial aspect of the criminal justice system in Kenya, especially because Kenya is vulnerable to incidents of terrorism. Kenya is at the forefront of the security challenge of terrorism, the Westgate Mall siege in 2013 and the DusitD2 complex attack in 2019 illustrate yet again the need to have an effective prosecutorial framework (Kirima & Khayundi, 2024). Such high profile cases have proven that decisive action is urgently required to punish the wrongdoers and this would only be achieved using quick and fair-minded legal procedures. Nevertheless, the backlog in the prosecution of terrorism cases in Kenya has been plagued with the systemic inefficiencies, such as delays, resource gaps, and inter-agencies coordination issues (Kenya Law Reform Commission, 2021). These time lags are usually due to the failure to exchange relevant intelligence and evidence between the security agencies and the ODPP. Such inefficiencies do not only compromise the constitutional right of the person to have his case speedily handled as contained in Article 50(2) (e) of the Kenyan Constitution but also erodes the trust of the society in the justice system (Makori, 2023). Misperceptions by the people regarding ineffective and slow judicial system will result in the loss of trust hence making it difficult to counter terrorism.

Several factors affect the effectiveness of prosecution, and these factors include access to resources, the expertise of legal practitioners, and the coordination of prosecution agencies and the law enforcement system (Olofinbiyi, 2023). In Kenya, several cases involving terrorism are regularly assigned to prosecutors who deem the caseloads excessive. It is not unusual that some prosecutors end up having up to 150 active files at any time (ODPP, 2023). This workload does not allow the prosecutors to devote adequate time to attend to the terrorism

cases which are specialized cases that need more attention. Amidst scarce resources they find it hard to amass enough evidence, and the complicated nature of terrorism matters mean that the cases tend to be stalled by poor preparation. This is further accentuated by the fact that the training in terrorism law is not specialized, which is why it is hard to manage the highly complicated cases that occasionally emerge in the sphere of national security (Waringa, 2021). In addition, the dearth of training on the current trends in terrorism has complicated the prosecution of the cases that involve the international actors including those involving the groups like Al-Shabaab or ISIS.

Moreover, the problem of political interventions and bureaucracy complicates the work of prosecutors even further, as there are long pretrial detentions and backlogs (Botha, 2021). It is a deprivation of the right of a suspect of terrorism to be tried within a reasonable time limit and it subjects the prison system to more pressure. According to this study, the pressure under which judicial systems undergo in certain cases in the political arena is quite strong as the timely and efficient resolution of the cases tends to expend political influence on the prosecutorial work. This political interference affects the independence of the judiciary and the ODPP, which is also one of the reasons why terrorism cases take so long to process.

The institutional ills that lead to inefficiency in prosecution can be found in many countries other than Kenya. The situation is reflected in the Nigerian and South African comparative research reports, which also suggest the inappropriate level of funding, a lack of collaboration between different agencies, and political demands (Buchanan-Clarke, 2021; Tijani, 2022). However, Kenya is a special case, since it is adjacent to conflict-areas as Somalia, requiring a highly developed and flexible prosecutorial policy (Kirima & Khayundi, 2024). Other regional nations encounter different difficulties unlike Kenya which is affected by the cross border-crossing nature of terrorism; that is, terror groups may not be prosecuted based on national borders. This geographical fact complicates the judicial process and international cooperation and collaboration must be realized in order to effectively deal with terrorism.

To resolve these issues, it is necessary to implement a complex solution comprising a high quality of training being provided to the prosecutors, a greater allocation of resources, as well as better institutional structures to protect the independence of prosecutors (Simai, 2024). To achieve a more responsive judicial system, it is crucial to pay strategic attention to international collaboration and enhancement of the local capacity. This study aims to explore how prosecutorial efficiency in terrorism cases in Kenya is influenced and the factors that include limitations of resources, lack of inter-agency coordination, and the effects of political interference. With the identification of these issues, the study intends to offer credible proposals for reform that can be implemented to improve the efficacy and efficiency of terrorism prosecutions without breaching the constitutional promise of a fair and expeditious trial. The results will be part of the larger debate on criminal justice reform in Kenya and will provide policy guidelines to policymakers, justice officers, and law enforcement institutions.

Statement Of the Problem

Terrorism remains an urgent critical threat to Kenya's national security, and effective prosecution is central to ensuring justice and public safety. Yet, many terrorism cases continue to experience lengthy delays in the courts, despite the existence of legal frameworks like the Prevention of Terrorism Act (2012). Prosecutors often face overwhelming workloads, inadequate resources, and a lack of specialized training needed to handle complex terrorism cases. Moreover, poor coordination among the Office of the Director of Public Prosecutions (ODPP), law enforcement agencies, and intelligence services further complicates case preparation and trial management. In some instances, political interference undermines the impartiality and independence of prosecutorial decisions. These challenges not only prolong the legal process but also infringe on the constitutional right to a fair and speedy trial, diminishing public trust in the justice system. As terrorism evolves, so must the institutions tasked with responding to it. This study was driven by the need to understand why prosecutorial efficiency in terrorism cases remains elusive in Kenya and what reforms are necessary to ensure justice is both timely and credible.

Scope Of the Study

This study examines the legal and institutional factors affecting prosecutorial efficiency in terrorism-related cases in Kenya, with a focus on Nairobi and Mombasa key regions for terrorism prosecutions due to their strategic relevance. It targets prosecutors, judges, and defense attorneys, whose roles are central to trial management.

Thematically, the study explores prosecutorial discretion, resource constraints, inter-agency coordination, case backlog, political interference, and the capacity to handle complex terrorism cases. It assesses how these factors impact the constitutional right to a fair and speedy trial under Article 50 of Kenya's Constitution.

Data was collected in 2025, reflecting current prosecutorial realities. While broader counterterrorism elements like policing and intelligence are beyond its scope, the study focuses on the prosecutorial process, offering insights for judicial reform and policy development.

EMPRICAL LITERATURE REVIEW

Scholars and legal practitioners have devised particular reforms to enhance the efficiency of prosecutors who deal with terrorism-related cases. Judicial systems world-wide need restructuring to process complex cases efficiently while safeguarding both national security interests and defendant rights. These reforms establish specialized training while establishing dedicated courts as well as system improvements for case management alongside enhanced coordination between organizations. Research collected from different regions provides evidence-based solutions that improve efficiency during terrorism trials through practical applications shown in this section.

Yon and Milton (2024) conducted a study at the United States to evaluate difficulties with terrorism prosecutions through federal courts and proposed methods to enhance operational efficiency. The research employed qualitative case studies to analyze major terrorism prosecutions beginning with 9/11 attacks followed by the San Bernardino shooting from 2015. This study conducted interviews of a variety of key individuals responsible for terrorism cases including prosecutors along with defense lawyers and judges. The main delay factors in Kenyan courts resulted from two factors: complex evidence management involving classified intelligence and insufficient resources to handle case backlogs. A "National Security Prosecution Unit" should become a new independent unit inside the Office of The Director of Public Prosecutions for managing all terrorism case prosecutions exclusively. This study proposes the establishment of judicial institutions focused on national security that would boost effectiveness and speed up terrorism case proceedings. The experts determined that training programs must focus on secure information procedures and they advocated for better communications between agencies to hasten the judicial process.

The research by Li (2022) examined how political interference and judicial influences damaged terrorism trial efficiency in separatist ethnic groups within Xinjiang China. The research conducted by Li (2022) included professional interviews with lawyers along with legal document analysis and questionnaires directed at judicial and law enforcement organizations. The reported study documented how political manipulation introduced process delays in criminal cases by making prosecutors wait for regulations from their higher-ups. Special National Security Legal Review Panels should be established by the researchers to observe and prevent political interference in prosecutorial choices. The authors suggested establishing a national unit for counter-terrorism prosecutions as a solution to manage cases more efficiently and speed up the process. Yang and Feng determined these changes would protect the judicial process through independence of decisions and enhance the efficiency of terror cases during trials.

Systemic delays in UK terrorism cases were studied by Mahmood (2020) to establish whether specialized judicial systems could streamline the process. Foster conducted qualitative interviews with more than 30 senior members from both Crown Prosecution Service (CPS) and judiciary through which he examined post-9/11 terrorism cases especially after the 2005 London bombings. The study showed that resource inefficiencies including insufficient expertise and intelligence agency sluggishness produced major delays according to Foster. Establishment of counter-terrorism courts under the High Court jurisdiction was recommended

alongside experts in national security and terrorism law to be responsible for these courts. Mahmood (2020) advocated for putting in place advanced case management systems which would enhance terrorism-related case tracking and allocation processes. The research established that these reform measures would shorten case delays while maintaining both judicial oversight and high procedural quality standards.

A study from Arugu and Owamagbe, (2023) examined the delays during terrorism trial proceedings of Boko Haram-related cases in Nigeria through an investigation of the structural flaws in the prosecution process. Through their study Arugu and Owamagbe (2023) collected data by performing survey research and case study analysis which included African legal professionals who handled terrorism cases in northern Nigeria. Resource constraints appear to be the main reason behind system delays according to the research since Boko Haram cases lacked sufficient funding for prosecutors while lawyers needed better training for handling terrorism cases. A "National Counter-Terrorism Prosecution Agency" should be established to unify terrorism prosecution operations while providing focused instruction for legal professionals who investigate terrorist cases the study advised. Through their research the authors suggested implementing fast-track court procedures to speed up the trial process of essential cases. Research results indicated that pending reforms will create more efficient ways for Nigeria to handle terrorism cases as well as reduce the heavy case backlog affecting judicial operations.

Research by Buchanan-Clarke (2021) within South Africa identified delays in terrorist court cases due to poor communication spanning law enforcement agencies and prosecution units. The research team executed qualitative interview sessions alongside court documents analysis in conjunction with expert and prosecutor and police officer testimonies specifically regarding the 2018 ISIS-related terrorist plot. Customer information delays and intelligence partnership coordination problems caused significant impediments to the prosecutor's ability to operate efficiently according to Buchanan-Clarke (2021). A "Counter-Terrorism Prosecution Task Force" should be established according to research proposals to function jointly with intelligence agencies for efficient evidence collection. The research demanded that prosecutors receive specialized training about terrorism-related cases through nationwide educational programs because this would enhance their essential abilities. These reforms proved capable of significantly decreasing delays and creating more efficient processes which maintain proper handling of terrorism-related cases.

Through an investigation Edwards, (2021) studied the impact of political forces on terrorism trial delays applied to opposition terrorist groups who faced charges. Edwards (2021) conducted this research by performing a qualitative case study evaluation of legal expertise which included judges, prosecutors and defense attorneys who had worked on political dissident prosecutions. Staff of prosecution faced pressure from political entities to conduct trial postponements in order to prevent negative political reactions according to the research. Based on these findings the author proposed establishing a Judicial Oversight Committee with independent oversight authority to monitor terrorism trials for free from political influence. Edwards (2021) suggested that specialized counter-terrorism courts should be created to enhance trial management while speeding up the court process. The research findings showed that terrorism trial effectiveness improves when judges demonstrate independence alongside specific expertise training for legal officials in Egyptian courts.

The research conducted by Antai et al. (2024) in Uganda explored the cause of prolonged criminal trial periods that involved extremist group activities. The research employed survey techniques directed at both prosecutors and law enforcement personnel and judges who studied major cases from the 2010 Kampala bombings. The research by Antai et al., (2024) established that insufficient training combined with resource shortages caused these delays. A "Terrorism Case Management Unit" according to the study should be established by the Ugandan Directorate of Public Prosecutions (DPP) to handle expedited prosecution of terrorist cases. According to Antai et al., (2024), specialized counter-terrorism training should be established to build prosecutor and judge expertise related to complex terrorism cases. Results from this study indicate that such reforms will minimize process delays and boost Uganda's judicial performance for terrorism cases.

Khaemba et al., (2021) investigated Tanzanian judicial system problems with handling terrorism-related cases. In their research of the Tanzanian justice system. Khaemba et al. (2021) conducted interviews and analyzed documents to discover that poor case management systems combined with insufficient financing and untrained prosecutors were the main reasons behind the prolonged delays. A digital case management system should be

introduced to enhance terrorism case monitoring and priority setting together with dedicated courts designated for terrorism cases. Khaemba et al., (2021) stressed that Tanzanian counter-terrorism training requires international collaboration for prosecutors and judges. The research findings suggested Tanzania could achieve better efficiency in terrorism cases by implementing the suggested reforms which would cut down the duration of trial proceedings.

Tibebu (2024) evaluated the failing aspects of Ethiopian court systems that handle terrorism cases between ethnic and political organizations. Tibebu, (2024) conducted case research on high-profile OLF and separatist movement trials through an applied methodological approach. The research discovered that investigation slowness together with insufficient specialized legal staff were primary causes behind the delays. The authors recommended establishing a "National Counter-Terrorism Legal Training Institute" which would supply trained personnel to terrorism prosecutors and judges and police professionals. Ethiopia should develop a Terrorism Prosecution Agency with unified resources and specialized expertise for handling all cases of terrorism. Results revealed how these reforms would both increase the speed of trials while guaranteeing their honest and effective conclusion.

The 2013 Westgate Mall attack served as the topic of Waringa's (2021) investigation into Kenya's challenges during terrorism-related prosecution processes. Results from qualitative interviews showed prosecutors, investigation officers and judges involved in terrorism cases reported three main factors limiting case progressions: scarce resources, weak government-agency connections and insufficient legal expertise training. Waringa (2021) proposed creating terrorism-specific courts and he also advocated for lasting educational training programs for court officials such as prosecutors and judges who deal with terrorism cases. Waringa (2021) advised that authorities should enhance their cooperation between law enforcement agents and intelligence agencies and judicial departments in order to advance investigations and court evidence presentation. These specific reforms according to the study analysis would create a substantial decrease in Kenya's terrorism trial delays and lead to better judicial processes in terrorism case management.

Theoretical Framework

Theories in research hold a central role in determining the investigations by establishing guides through which the relationship between the acts of prosecutors and the slow progress of the terrorism trials is visualized. Discretionary Theory and Due Process Theory have been utilized in this study as the pillars of knowledge regarding the fact that prosecutorial discretion can cause delays and how such delays can impinge on the constitutional rights of defendants to speedy trial. The two theories share valuable information on the conflict between the actions of the prosecutors in prosecuting terrorists and the rights of the suspects, especially the right to a fair trial and a speedy decision being reached. The target is to understand the major causes contributing to delay in terrorism prosecutions that may amount to infringement of the rights of the accused to a speedy trial and the possible solution to enhancement in the delivery of justice.

Discretionary Theory

Discretionary Theory was pioneered by Herbert Packer of 1968, stressing the presence of discretion in criminal justice system as applied in law enforcement, judicial and prosecutorial decision making (Packer, 1968). The idea of this theory is that, those involved in the justice system, in making decisions- prosecutors, need to be flexible because the rules may never be preferable as they deal with the criminal cases mostly taking the form of terrorism. As an example, terrorism cases frequently entail national security concerns, classified knowledge, and international contacts so that decisions cannot constantly be made using strict statutes. The prosecutors have been given the discretion to decide on the priorities of the cases, choice of charges, when a case should be prosecuted and how it would be prosecuted with reference to the complexity of cases and issues of national security (Van Natta, 2000). This flexibility is pegged in view of terrorism whereby the question of national security needs to be addressed adequately. Nonetheless, it might also contribute to inconsistent handling of cases because, due to personal judgments, political factors, or even societal factors, the cases might be delayed most of the time (Van Natta, 2000).

The opponents of Discretionary Theory claim that this popular provision of high powers to the prosecutors may lead to discriminatory provisions of the defendants especially in situations where the demand of justice should be ignored by political policies or national security issues. According to Van Natta, (2000), the possibility of personal bias or nil external influence in prosecution decision may take time hence resulting to inconsistent justice. In Kenyan context, this could be in form of the delay of trials or even the prosecution of certain cases selectively due to political and or security interests as opposed to special merit. Since prosecutors are given discretionary powers to decide in terrorism cases, the reduction of trial due to consideration of competing interests by the prosecutor can be detrimental to the rights of the defendants especially that of a speedy trial. The present research will examine whether the discretionary acts), including prioritizing cases or delaying the making process can contribute to the prolonged process of trial and compromise of the justice process fairness.

Due Process Theory

According to the writings by William Blackstone and further developed by other researchers, the Due Process Theory has become an essential rule in any criminal justice system, suggesting that audi alteram partem and fair processing should be observed along with the promotion of individual rights within the law (Pennington, 2023). According to this theory, there is a need to ensure that every person, even a terrorist suspect receives equal justice before coming before the law and justice must not be postponed. It also requires that there must be fairness of procedures that require that trials are conducted within a reasonable time. To illustrate, the Fifth and the Fourteenth Amendments to the U.S. Constitution lay the foundation to secure the rights of people to a fair trial, which is the right of the trial without any unnecessary delays (Pennington, 2023). The Due Process Theory puts an argument on the point that delays in the case of terrorism can be said to be against the due process of the law and the accused cannot be said to have received his due process as he does not get a timely resolution to his case.

The Due Process Theory is especially important in the framework of terrorism because it gives way to the balance that has to be maintained between the safety of a nation and the rights of a person. Cases involving terrorism usually involve complications and matters that relate sensitive to national security hence may need extensive pretrial detention or postponement of the case. Nevertheless, the theory holds that such actions cannot be at the expense of the right of the defendant to a prompt trial. Terrorism trials should observe the principles of due process, Zaman, (2024) asserts, even though they may have to resort to a few points of delay in the trials due to the security concerns. Generally, security-sensitive information might be a good enough reason to defer proceedings to some extent but the delay in trial should not belong to the extent that it violates the rights of the accused. Such a balance is a focal point in this study which will seek to examine how sometimes cases in terrorism trials result in clashes between the prosecutorial decision and respective rights to due process and infringement upon the right to a speedy trial.

The main arguments against Due Process Theory when applied to the use of terrorism trials include the inefficiencies in operations that the theory can lead to. The critics claim that the procedural fairness leads to judicial delays, particularly in the cases of the national security (Walker, 2020). Protection of due process may drag out the process as it takes a lengthy process before due process can take place which when dealing with terrorism can be considered blocking quick reactions that are apt to face national security challenges. According to Sarkin, (2021), procedural delays can be held as constitutional (in some instances), but the delays should be thoroughly examined to guarantee that it does not interfere with the constitutional rights of the accused. Such issues of the impediment of swift justice due to these procedural safeguards, whereas necessary to secure individual rights, will be explored in this study and how they may be reconciled to meet the demands of national security against terrorism cases.

The Due Process Theory is important mainly in the context of applying the rights guaranteed by the constitution to terrorism suspects in Kenya, especially answering the provisions that require trials to be concluded within a reasonable time. The theory highlights the need to make all defendants including those charged with terrorism to be treated equally and any delay in the trial of the defendants should be out of legal justifications and not out of mere security concerns (Zaman, 2024). Case The paper will address the use of the Due Process Theory in the Kenyan terrorism trials and how delays in trials have been affecting the

constitutional right to fair trial and recommend measures that can help mitigate the compromise that national security has on the rights to due process.

METHODOLOGY

Research Design

This study adopted both qualitative and quantitative research methodologies to achieve a comprehensive examination of prosecutorial discretion and its effects on terrorism cases, particularly concerning defendants' rights to an expeditious trial in Kenya. This research employed a mixed-methods approach, which combined the strengths of qualitative and quantitative data to facilitate an in-depth investigation of the research problem (Creswell, 2014).

The qualitative component involved interviews with key stakeholders from the prosecution, judiciary, and defense legal teams to gather detailed insights into the factors influencing prosecutorial decisions and the causes of trial scheduling delays in terrorism cases. This methodology revealed significant subjective aspects of prosecutorial discretion within Kenya's legal system by capturing personal viewpoints and experiential narratives.

The quantitative section of the study entailed the collection of numerical survey responses addressing the frequency of trial delays, case backlog occurrences, and the correlation between prosecutorial decision-making and the right to a speedy trial. The quantitative data enabled the researchers to identify patterns and generate statistical evidence that supported generalizable conclusions.

By integrating qualitative and quantitative methods, the study effectively aligned with its objectives, allowing for both precise analysis of individual cases and broader statistical examination (Tashakkori & Teddlie, 2003). The combination of multiple data collection strategies offered a cohesive understanding of the issue and enhanced the reliability and validity of the findings.

Site Description

Sample Size Determination

The sample size for this study was calculated using **Cochran's formula** for sample size determination, which is appropriate for studies involving finite populations. Cochran's formula is as follows:

$$n_0 = \frac{Z^2 * p * (1 - p)}{e^2}$$

Where:

- n_0 is the sample size for an infinite population,
- Z is the Z-value for the desired confidence level (1.96 for a 95% confidence level),
- p is the estimated proportion of the population (usually set to 0.5 for maximum variability),
- e is the margin of error (set at 0.05 or 5%).

Calculating n_0 ;

$Z = 1.96$ (for 95% confidence level)

$P = 0.5$ (maximizing the sample size when proportion is unknown)

$E=0.05$ (5% margin of error).

Substitute these values into Cochran's formula:

$$n_0 = \frac{1.96^2 * 0.5 * (1 - 0.5)}{0.05^2}$$

$$n_0 = \frac{3.8410 * 0.25 * (1 - 0.5)}{0.0025}$$

$$n_0 = 384$$

Thus, the sample size for an infinite population is **384**.

Adjust for Finite Population

Given that the total target population is **100**, we apply the finite population correction (FPC) to adjust the sample size:

$$n = \frac{n_0}{1 + \frac{n_0 - 1}{N}}$$

Where:

- $n_0=384$ (calculated sample size for infinite population),
- $N=100$ (the total population size).

Applying the correction

$$n = \frac{384}{1 + \frac{384 - 1}{100}} \approx 79.7$$

Allocation to Specific Groups

Since the total population consists of 30 prosecutors, 20 judges and 50 Defense Lawyers, we will allocate the sample size proportionally to each group:

$$\text{Prosecutors: } \frac{30}{100} * 80 = 24$$

$$\text{Judges: } \frac{20}{100} * 80 = 16$$

$$\text{Defense Lawyers: } \frac{50}{100} * 80 = 40$$

Thus, the final sample for this study consists of 24 prosecutors, 16 judges and 40 Defense Lawyers. The total sample size for the study is 80 participants, ensuring appropriate representation from each group involved in

terrorism-related cases in Kenya. This distribution allows for a balanced analysis of the perspectives of prosecutors, judges and Defense Lawyers, all of whom play critical roles in the judicial process surrounding terrorism trials, thereby providing a comprehensive understanding of how prosecutorial discretion impacts the right to an expeditious trial.

DATA COLLECTION METHOD

This study employed two primary research tools: questionnaires and interview guides. Questionnaires were administered to prosecutors and defense attorneys to collect quantitative data, incorporating both closed and open-ended questions. The closed-ended questions gathered measurable information on the prevalence of delays in terrorism-related trials, the influence of prosecutorial discretion, and the impact of systemic challenges on trial efficiency, while the open-ended questions allowed participants to elaborate on their experiences and perceptions, providing additional qualitative insights. The questionnaires were pre-tested for clarity and reliability to ensure effective data collection. In addition, semi-structured interviews were conducted using interview guides with judges and a select group of prosecutors and defense attorneys. These guides featured open-ended questions aimed at exploring judges' experiences in presiding over terrorism cases and their perspectives on prosecutorial discretion and associated trial management challenges. By integrating both tools, the study gathered quantitative data for statistical analysis and qualitative data for a comprehensive understanding of how prosecutorial discretion influences the right to an expeditious trial in Kenya.

Ethical Considerations

The study adhered to strict ethical standards to protect participants' rights and dignity. Informed consent was obtained after participants were briefed on the study's purpose, procedures, risks, and benefits. Participation was voluntary, with the right to withdraw at any time without consequence. Written consent was secured for both questionnaires and interviews. Confidentiality and anonymity were maintained by securely storing data, removing identifying information, and limiting access to the researcher and assistants. Interview data were transcribed securely, and no identities appeared in the final report. Ethical approval was obtained from the university review board and NACOSTI in compliance with Kenyan regulations.

Data Processing and Analysis

Data analysis for this study involved both quantitative and qualitative techniques to comprehensively address the research questions. Quantitative data from the questionnaires were analyzed using multiple regression analysis to examine the relationship between prosecutorial discretion (independent variable) and the right to an expeditious trial (dependent variable) in terrorism-related cases. The regression model assessed how factors such as case prioritization, charge selection, and prosecution timing contributed to trial delays. The model took the form:

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + \epsilon,$$

where Y represented the right to an expeditious trial, X_1 – X_3 represented prosecutorial discretion factors, β_0 was the intercept, β_1 – β_3 were coefficients, and ϵ was the error term. This model quantified the influence of prosecutorial decisions on trial delays, offering statistical insight into the most significant contributing factors.

Qualitative data from interviews were analyzed thematically. Thematic analysis identified and interpreted patterns emerging from participants' responses. Themes were developed inductively from the data, capturing the perspectives of judges, prosecutors, and defense attorneys on how prosecutorial discretion affected trial timelines. This dual approach ensured a robust, multidimensional understanding of the impact of prosecutorial discretion on the right to a speedy trial in Kenya.

FINDINGS

Response Rate

The questionnaire return rate was very important to the study in order to observe the level of participation in this study according to the sample size of the participants. This has given the current study the basics of evaluating the level of representation.

Table 1: Questionnaire Return Rate

Response	Frequency	Percentage (%)
Filled in questionnaires	70	88%
Unreturned questionnaires	10	12%
Total	80	100%

[Source: Field Data, 2025]

Questionnaire Return Rate table 1 above shows the response rate for the questionnaires distributed in the study. A total of 80 questionnaires were issued, of which 70 were completed and returned, representing 88% of the total sample. The remaining 10 questionnaires, accounting for 12%, were not returned. This high return rate indicates a strong level of engagement from the respondents, ensuring that the data collected is both robust and representative of the sample.

Demographic Characteristics Of Respondents

Years of Experience in Current Role

This section examines the years of experience that respondents have in their current roles. Understanding the level of experience helps contextualize their insights and perspectives on prosecutorial discretion and the expeditious trial process in terrorism-related cases.

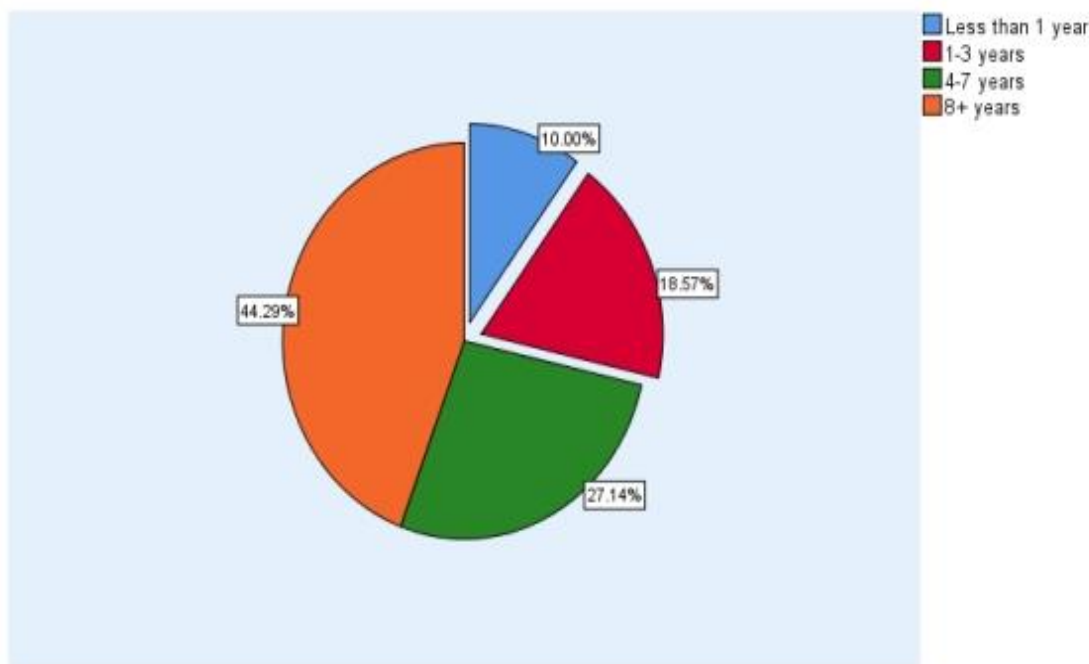


Figure 1: Years of Experience in Current Role

[Source: Field Data, 2025]

Figure 1 shows the distribution of respondents based on their years of experience in their current role. A significant portion of respondents, 44.3% (31 individuals), have 8+ years of experience, indicating a highly experienced group of professionals. 27.1% (19 individuals) have between 4-7 years of experience, while 18.6% (13 individuals) have 1-3 years of experience. A smaller group, 10.0% (7 individuals), have been in their current role for less than 1 year. This distribution reflects a strong base of experienced professionals, with a balance of newer participants providing fresh perspectives.

Primary County of Work

This section explores the primary counties in which the respondents work, providing insight into the geographical distribution of participants involved in terrorism-related cases.

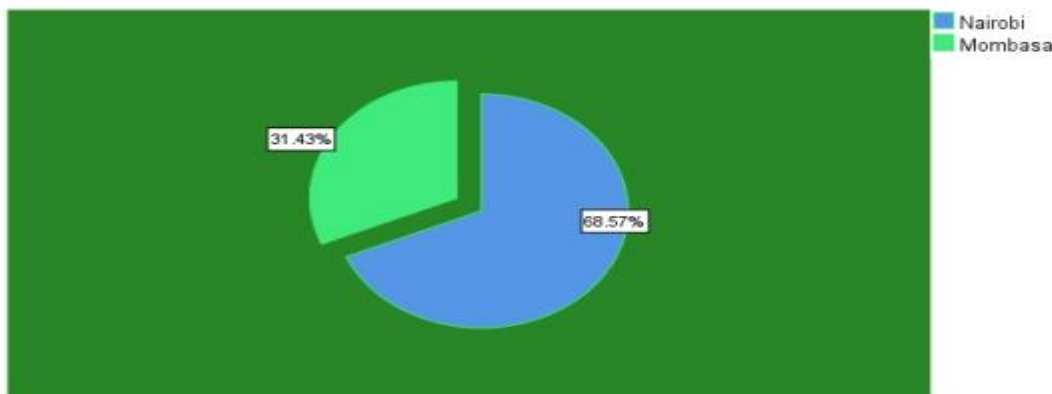


Figure 2: Primary County of Work

(Source: Field Data, 2025)

Figure 2 shows the distribution of respondents based on their primary county of work. The majority of respondents, 68.6% (48 individuals), work in Nairobi, while 31.4% (22 individuals) work in Mombasa. This distribution reflects the prominence of Nairobi, as the capital city, in handling terrorism-related cases, with Mombasa also being an important location due to its strategic geographical position. The data suggests that these two counties are central to the prosecution and adjudication of terrorism cases in Kenya.

Experience In Handling Terrorism-Related Cases

This section explores whether respondents have specific experience in handling terrorism-related cases. This information is crucial as it helps determine the level of expertise and familiarity that participants have with the complexities of prosecuting and defending terrorism-related offenses, which directly informs their insights on the challenges and processes involved in such cases.

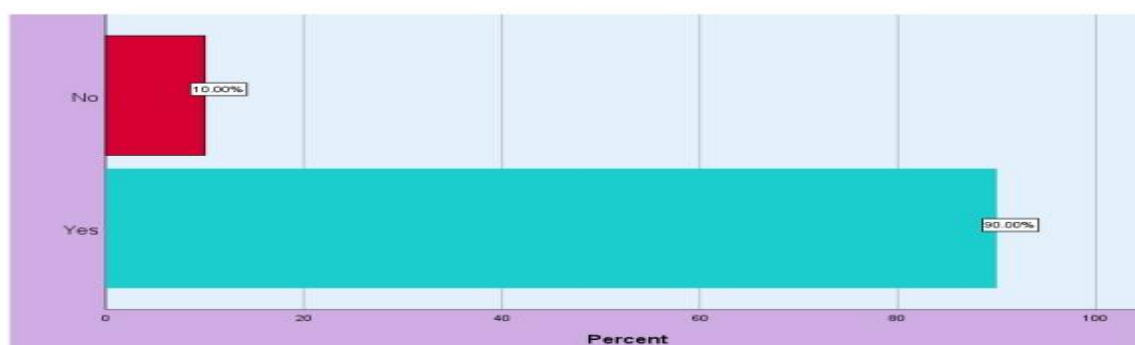


Figure 3: Experience in Handling Terrorism-Related Cases

[Source: Field Data, 2025]

Figure 3 shows that the majority of respondents, 90.0% (63 individuals), have specific experience in handling terrorism-related cases, while a smaller proportion, 10.0% (7 individuals), do not have this experience. This indicates that most of the participants are well-versed in dealing with terrorism-related legal matters, providing valuable insights into the challenges and dynamics of prosecutorial discretion and the expeditious trial process in such cases.

Highest Level of Education Completed

This section examines the highest level of education attained by the respondents. Understanding the educational background of participants is important, as it can provide context for their expertise, decision-making and approach to handling terrorism-related cases.

Table 2: Highest Level of Education Completed

		Frequency	Percent
	Bachelor's Degree	46	65.7%
	Master's Degree	11	15.7%
	Doctoral Degree	13	18.6%
	Total	70	100.0%

[Source: Field Data, 2025]

Table 2 shows the educational background of the respondents. The majority, 65.7% (46 individuals), have completed a Bachelor's Degree, while 15.7% (11 individuals) hold a Master's Degree and 18.6% (13 individuals) have achieved a Doctoral Degree. This distribution suggests that most of the respondents have a solid foundational education, with a significant proportion possessing advanced degrees. This indicates a well-educated group of professionals with the necessary academic qualifications to provide informed insights into the prosecutorial processes in terrorism-related cases.

Main Respondents' Demographic Information

Factors Influencing Prosecutorial Efficiency in Handling Terrorism Cases

The objective of this study was to determine the factors influencing prosecutorial efficiency in handling terrorism cases in Kenya and identify potential areas for improvement. For this purpose, well-structured questions were used and the responses were shown in the next sections.

Factors Impacting Prosecutorial Efficiency in Handling Terrorism Cases

The study presents an analysis of the factor's respondents believe most significantly impact prosecutorial efficiency in handling terrorism-related cases in Kenya. The factors include availability of resources, coordination between agencies and case complexity, among others.

Table 3: Frequency Table for Factors Impacting Prosecutorial Efficiency

Factor	Frequency	Percentage (%)
Availability of financial resource	8	11.4%
Availability of human resources (staffing levels)	14	20%
Access to technology and legal research tools	6	8.6%
Level of training and specialization of prosecutors	10	14.3%
Coordination between prosecutorial bodies, law enforcement	12	17.1%

and intelligence agencies		
Political influence or interference in decision making	5	7.1%
Case complexity (eg international or organized terrorism networks)	9	12.9%
Backlog of terrorism related cases in the judiciary	6	8.6%
Total	70	100%

[Source: Field Data, 2025]

Table 3 shows the reasons respondents believe make the most difference to prosecutors' efficiency in handling cases involving terrorism in Kenya. Staffing levels were viewed as the main priority by 20.0% of respondents and coordination between prosecutors, police and intelligence bodies came second (17.1%). Specialization and qualification of the prosecutor (14.3%) and the difficulty or complexity of the case (12.9%) were considered important factors as well. However, issues such as political influence (7.1%) or the significant backlog of terrorism cases (8.6%) were reported as less urgent, yet still a clear difficulty.

This demonstrates findings similar to those in past research on prosecutors' work pace. In their research, Al-Janabi and Al-Saadi noted that better staffing and training are necessary for strengthening the ability of prosecutors in complex territorial cases such as terrorism. Almeida, (2020) also noted that effective case management depends on inter-agency cooperation. An interviewee mentioned:

"Coordination issues among prosecutors and law enforcement agencies often lead to long delays in terrorism cases before a trial can begin." (Interviewee 5)

This point highlights that when agencies collaborate better, it helps speed up case handling. Having skilled and experienced staff and specific training is considered key to dealing with complex terrorism issues, as agreed by Arugu and Owamagbe, (2023), who said the lack of specialized legal experience is a main barrier to effective prosecution of terrorism cases.

Delays in Handling Terrorism Cases Due to Resource Constraints

In this subsection, the respondents were asked to indicate the frequency that they have experience delays in managing terrorism cases. Results were as presented in Table 2.

Table 4: Frequency Table for Delays Due to Resource Constraints

Response	Frequency	Percent (%)
Very frequently	28	40.0%
Occasionally	30	42.9%
Rarely	10	14.3%
Never	2	2.9%
Total	70	100%

[Source: Field Data, 2025]

Table 4 indicates that 42.9% of participant's experience occasional delays due to resource issues and another 40.0% say these issues result in delays for them most of the time. Nearly all of the respondents, 92.8%, say that they often have to deal with resource shortages and only 2.9% say that such issues do not come up in their work. Therefore, issues with budget and manpower greatly contribute to the delays in handling terrorist cases in Kenya. The findings support the idea that extra funding is necessary to make the judicial process faster and more effective.

Improvements to Prosecutorial Efficiency in Terrorism-Related Cases

This section explores respondents' opinions on what measures would most improve prosecutorial efficiency in terrorism-related cases in Kenya. Participants in the survey were asked to indicate the reform they considered most important from among increasing funds, promoting cooperation between agencies and establishing new courts for terrorism.

Table 5: Frequency Table for Measures to Improve Prosecutorial Efficiency

Improved measure	Frequency	Percentage (%)
Increased funding for prosecutorial office	10	14.3%
More specialized training for prosecutors in handling terrorism cases	15	21.4%
Enhanced collaboration and information sharing between prosecutorial bodies, law enforcement and intelligence agencies	20	28.6%
Creation of dedicated terrorism courts	8	11.4%
Improved case management systems	7	10.0%
Streamlined approval process for evidence handling	5	7.1%
Reduction in the number of terrorism related case assigned to each prosecutor	5	7.1%
Total	70	100%

[Source: Field Data, 2025]

Table 5 shows the options respondents think are most important for improving prosecutors' work on terrorism cases in Kenya. According to the results, the wider collaboration and sharing of information among prosecutorial bodies, law enforcement and intelligence agencies is valued as the most significant change, identified by 28.6% of respondents. The survey also pointed out that giving prosecutors special training helps them deal with the difficulties of terrorism cases, with 21.4% confirming this view. Notable actions by the federal government included supporting prosecutorial departments with more funds (14.3%) and setting up new courts for terrorism cases (11.4%).

These findings match up with what Arugu and Owamagbe, (2023) reported which stresses how coordination among various agencies helps improve the results of terrorism prosecutions. Reporting verbatim from one of the interviewees:

" Frequently, the lack of good cooperation between teams in the justice system leads to unnecessary delays. Greater openness in communication allows things to be handled quicker."
(Interviewee 3)

This stresses the importance of all relevant agencies joining together to address terrorism cases properly. Also, the importance of special training is supported by Aziz, (2021), who notes that it allows prosecutors to better handle terrorism cases which leads to greater efficiency in the courts. Creating special terrorism courts and updating case management systems are also important (11.4% and 10.0% of participants voted for them), but they are considered less crucial than teamwork and training among security bodies. From these findings, it is clear that focusing on strong partnerships, proper skills and sufficient funds is necessary for improving the efficiency of prosecution in Kenya's terrorism trials.

Impact of Political Interference on the Prosecutorial Process

This section explores respondents' views on the impact of political interference on the prosecutorial process in terrorism-related cases in Kenya. Participants were questioned about the roles that politics play in determining

how efficiently and fairly prosecutions are handled in human rights cases. The involvement of politics in trials can cause proceedings to be delayed, introduce more inefficiency and threaten the judicial process's independence.

Table 6: Frequency Table for Impact of Political Interference

Impact of political interference	Frequency	Percentage (%)
Strongly impact negatively, leading to delays and inefficiencies	30	42.9%
Somewhat impact, but not significantly	25	35.7%
Has little to no impact	10	14.3%
I do not know on cannot asses this	5	7.1%
Total	70	100%

[Source: Field Data, 2025]

Table 6 lists the opinions of respondents on how much political influence affects the prosecution of terrorism cases in Kenya. From the findings, 42.9% felt strongly that political interferences cause delays and inefficiency to terrorism cases, 35.7% believed it only adds a degree of influence and 14.3% thought it did not affect cases much. Most respondents (92.9%) acknowledged political interference but 7.1% said they couldn't say whether it had an impact.

This result is consistent with Almeida, (2020), who pointed out that political pressure usually exists in criminal justice systems, most commonly in cases involving terrorism. According to Aziz, (2021), even though politicians can influence courts and cause problems, the extent of this influence changes from one situation to another. During the interviews, one interviewee commented on the issue.

" There is a serious challenge when politics influence how terrorism cases are managed. As a result, action is delayed and choices are made mainly with politics in mind, often overlooking the law." (Interviewee 7)

The statement spreads concern about the possible impact of political influence, leading to slow prosecutions and poor decision-making. While political pressure was admitted as a problem by many respondents, a notable percentage of professionals (35.7%) believe its effects are less severe and the justice system is still capable of handling cases objectively.

Level of Agreement on Factors Affecting Prosecutorial Efficiency

This table shows the levels of agreement on various factors influencing prosecutorial efficiency in terrorism-related cases. The mean and SD for each statement are calculated to measure central tendency and variability

in the responses.

Table 7: Frequency Table for Prosecutorial Efficiency Statements

Statement	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Mean	SD
Prosecutors in Kenya have adequate resources (financial, staffing, technological) to handle terrorism cases efficiently.	5 (7.1%)	15 (21.4%)	20 (28.6%)	15 (21.4%)	15 (21.4%)	2.29	1.25

Prosecutors receive sufficient specialized training to manage terrorism-related cases effectively.	10 (14.3%)	20 (28.6%)	18 (25.7%)	12 (17.1%)	10 (14.3%)	2.43	1.21
There is strong coordination between prosecutors, law enforcement and intelligence agencies in terrorism cases.	5 (7.1%)	20 (28.6%)	18 (25.7%)	15 (21.4%)	12 (17.1%)	2.29	1.19
Political interference significantly disrupts the prosecution of terrorism-related cases in Kenya.	15 (21.4%)	25 (35.7%)	20 (28.6%)	5 (7.1%)	5 (7.1%)	2.87	1.13
The backlog of terrorism-related cases in Kenya has a major negative effect on the speed of prosecution.	10 (14.3%)	20 (28.6%)	18 (25.7%)	15 (21.4%)	7 (10.0%)	2.57	1.12
Average						2.49	1.14

[Source: Field Data, 2025]

Table 7 presents respondents' levels of agreement with various statements about prosecutorial efficiency in handling terrorism-related cases in Kenya. The results reflect a mixed view on the factors that impact prosecutorial efficiency, with significant concerns regarding resource allocation, training, coordination, political interference and case backlogs. The mean for this statement is 2.29, indicating that respondents generally disagree with the notion that prosecutors have adequate resources (financial, staffing, technological) to handle terrorism cases efficiently. The large standard deviation (1.25) implies that some people see enough resources, but others are aware of significant resource shortages. This is backed up by Baker, (2020)'s study which noted the key role of resources in lifting prosecutorial efficiency. According to one of the interviewees,

" When we lack the necessary assets, it adds extra complication and length to the process of dealing with terrorism cases." [Interviewee 4]

This demonstrates that the lack of resources is a major worry for the prosecution of terrorism in Kenya. The results show a mean score of 2.43, showing that some respondents think training is enough, but the overall trend suggests that training may be lacking. Moderate differences or neutral viewpoints are implied by the standard deviation (1.21). This result is in line with Aziz, (2021)'s, point that specialized training is very important for addressing difficult terrorism cases. A respondent noted:

" Although practice has become more advanced, specific training is still lacking for dealing with terrorism cases." [Interviewee 2]

This shows that there is a shortcoming where prosecutors may not be equipped to manage criminal cases related to terrorism. As in the previous case, the mean for teamwork between prosecutors, law enforcement and intelligence agencies are 2.29 and their standard deviation of 1.19 suggests respondents feel slightly less coordination exists between these groups. Respondents believe that improved cooperation among agencies would make the prosecution of criminal cases timelier and more efficient. Similar to Baker, (2020) findings, strategic cooperation among agencies is essential for minimizing the time it takes to hold terrorism trials. One interviewee mentioned:

" When prosecutors and intelligence agencies are not working closely, it often causes case preparations to stall." [Interviewee 5]

Therefore, better collaboration can help the prosecution improve its efficiency. Among the survey statements, the one on political interference received the highest mean, meaning this topic is regarded as significant by the

respondents. Since the standard deviation is only 1.13, there is not much disagreement about this issue. The view that political factors can disrupt the process of prosecution agrees with Botha, (2021) finding that political intervention often obstructs justice and lowers judicial independence. As one interviewee expressed:

"Terrorism cases can take a long time and cost more than they should due to political pressures."
[Interviewee 6]

This demonstrates that political involvement strongly impacts the prosecution in Kenya. The mean for the "backlog of terrorism cases" statement is 2.57 which means while some do not think the backlog matters, a significant number feels it is a concern for prosecutors. There is some variability in how people responded, as hinted by the standard deviation of 1.12. Scott-Hayward and Fradella, (2019) found that delays in the judicial system are a key obstacle to handling terrorism-related cases in a timely manner which is consistent with our study. A respondent remarked:

"The high number of backlogged cases in the court system makes it hard for us to deal with terrorism cases quickly, so trials often take a long time." [Interviewee 8]

This demonstrates how the huge number of cases about terrorism affects the justice system. A mean score of 2.49 implies that respondents believe there are many factors holding back the effectiveness of prosecutors in Kenya. With an average standard deviation of 1.14, we can see there are moderate differences in how people view the challenges, showing that while similar views are common, experiences and thoughts can differ among people. Political interference and a build-up of cases are faced as the highest obstacles and insufficient resources and coordination are seen as big barriers. The research highlights that to make prosecution more efficient, Kenya should focus on improving teamwork between agencies, enhancing training and handling existing backlogs.

DISCUSSION

The findings of this study illuminate a constellation of factors that significantly compromise the efficiency of prosecutors in handling terrorism cases in Kenya. These factors resource constraints, inadequate inter-agency coordination, insufficient specialized training, political interference, and an overwhelming backlog interact to weaken not only prosecutorial effectiveness but also the constitutional guarantee of a fair and expeditious trial as articulated in Article 50(2)(e) of the Kenyan Constitution.

Among the most salient observations is the acute shortage of resources confronting the Office of the Director of Public Prosecutions (ODPP). A substantial proportion of respondents (42.9%) cited persistent deficits in staffing, technological capacity, and financial support as primary impediments to timely prosecutions. This empirical reality aligns with Baker's (2020) proposition under Resource Dependency Theory that institutional performance is heavily conditioned by access to critical resources. Where prosecutorial bodies lack sufficient means, their ability to independently pursue complex terrorism cases is compromised, resulting in procedural lags that infringe upon defendants' constitutional rights.

Equally compelling is the issue of inadequate specialized training. While the prosecutorial function in terrorism cases demands heightened technical expertise given the intricate evidentiary standards, transnational linkages, and security sensitivities involved the study found that many prosecutors lacked targeted preparation. This is consistent with Aziz's (2021) emphasis on the necessity of specialized competencies in handling terrorism-related trials. From the perspective of Social Cognitive Theory, without opportunities to cultivate situational judgment and legal self-efficacy specific to terrorism prosecutions, prosecutors face increased risks of procedural missteps, thereby prolonging case timelines.

The study also underscores the detrimental effects of weak coordination among prosecutorial agencies, law enforcement, and intelligence services. Respondents attested that poor synergy often leads to delays in case building and trial commencement, observations echoed by Almeida (2020), who stressed that inter-agency collaboration is indispensable for effective case management in terrorism matters. As one respondent aptly remarked, "Due to poor coordination among prosecutors and law enforcers, terrorism-related cases can take a

long period of time before a trial can be commenced.” Interpreted through Rational Choice Theory, these coordination failures introduce significant transactional inefficiencies, raising the costs and time associated with prosecuting complex security cases.

Political interference emerged as an additional factor of concern, with 42.9% of participants identifying it as a potent disruptor of prosecutorial independence. This finding parallels Botha’s (2021) analysis, which highlights how political considerations can distort prosecutorial discretion, undermining the rule of law. Tyler’s Legitimacy Theory offers a critical lens here: where prosecutorial processes are perceived as subject to political manipulation, public trust in the justice system erodes, weakening voluntary compliance and fostering perceptions of partiality.

Finally, the backlog of terrorism cases in Kenyan courts further compounds delays, effectively denying many defendants their right to be tried within a reasonable time. This study’s findings mirror those of Scott-Hayward and Fradella (2019), who demonstrated that congested judicial dockets disproportionately affect the resolution of complex criminal matters. As one respondent noted, “The ratification of the backlogged cases in the court system is high, thus it has not been able to handle the terrorism cases in a relatively shorter time.” This observation underscores the necessity for systemic judicial reforms aimed at expediting case clearance.

Taken together, these findings highlight that prosecutorial inefficiency in terrorism cases is not merely an operational deficiency but a structural challenge with profound constitutional implications. The persistent delays and inadequacies identified undermine the promise of fair and timely justice, threatening the delicate balance between safeguarding national security and upholding fundamental rights. Addressing these challenges therefore requires holistic reforms that integrate institutional strengthening with robust constitutional safeguards.

CONCLUSION

This study concludes that prosecutorial inefficiency in the handling of terrorism cases in Kenya is primarily rooted in inadequate resources, insufficient specialized training, poor inter-agency coordination, political interference, and an entrenched backlog of cases. Each of these factors independently hampers the prosecutorial process, but in combination they create a systemic environment in which delays become the norm, eroding the constitutional right to a speedy and fair trial.

The empirical evidence, corroborated by extant literature and framed within relevant theoretical paradigms, demonstrates that these inefficiencies undermine not only individual rights but also the integrity and legitimacy of Kenya’s criminal justice system in managing complex terrorism threats. As such, this study posits that any sustainable improvement must involve multi-faceted interventions aimed at enhancing prosecutorial capacity while simultaneously fortifying protections for constitutional rights. By doing so, Kenya can better align its counter-terrorism efforts with both its domestic constitutional commitments and broader international human rights obligations.

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