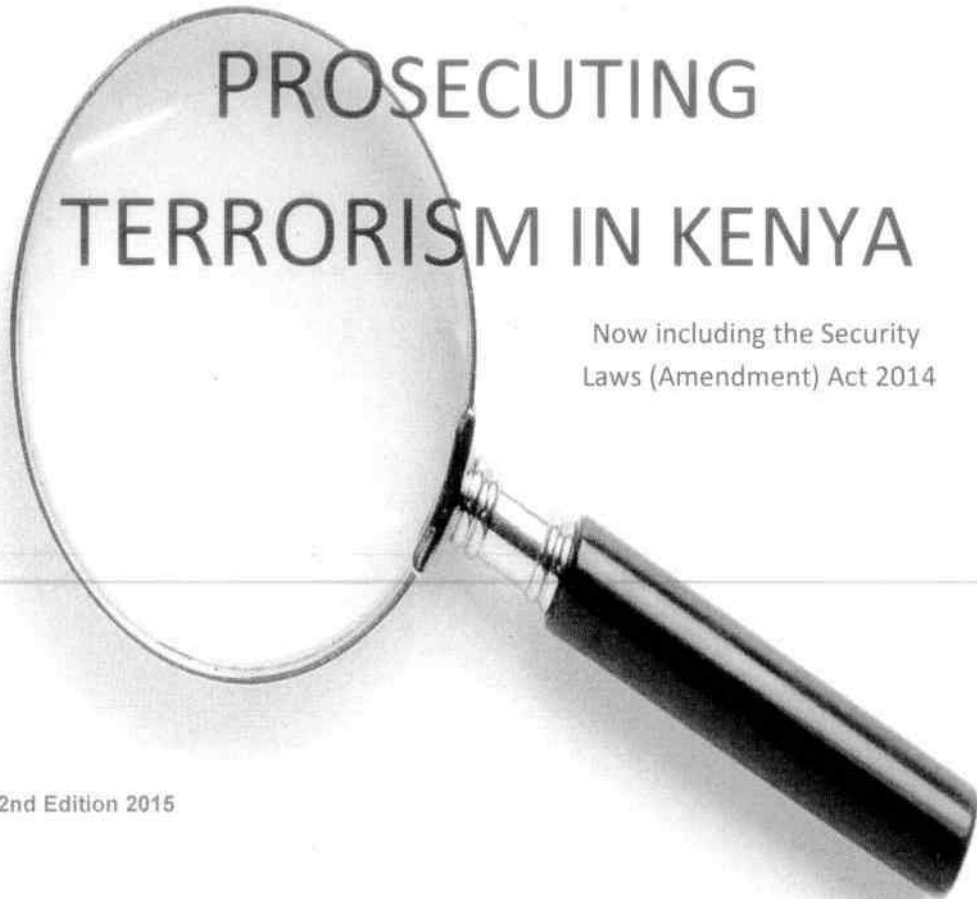


POINTS TO PROVE:
INVESTIGATING AND
PROSECUTING
TERRORISM IN KENYA

Now including the Security
Laws (Amendment) Act 2014

2nd Edition 2015





**A Rapid Reference Guide for the
Investigation and Prosecution
of Terrorism and Related Offences**



Australian High Commission
Kenya



**British
High Commission
Nairobi**

Second Edition – May 2015

CONTENTS

ABBREVIATIONS.....	5
INTRODUCTION	6
SECTION 1 7	
OFFENCES UNDER THE PREVENTION OF TERRORISM ACT 2012 (POTA) INCLUDING AMENDMENTS UNDER THE SECURITY LAWS (AMENDMENT) ACT 2014	7
PART A – OFFENCES RELATING TO TERRORIST ATTACKS.....	7
PART B – POTA OFFENCES RELATING TO PROPERTY (not weapons).....	10
PART C – OFFENCES OF SUPPORT/PREPARATION/PLANNING (for weapons – see Part D)	15
PART D – POTA OFFENCES INVOLVING WEAPONS (for TRAINING SEE PART E).....	23
PART E – TERRORIST TRAINING OFFENCES	27
PART F – RECRUITMENT/RADICALISATION AND MEMBERSHIP OFFENCES.....	30
PART G – OVERSEAS ATTACKS AND FOREIGN FIGHTERS	33
See also s21 for conspiracy to commit offences abroad (Part C from page 15)	33
Notes: 33	
PART H – OBSTRUCTION OFFENCES UNDER POTA	35
SECTION 2 - ANCILLARY POWERS UNDER POTA EXERCISABLE BY POLICE AND PROSECUTORS	39
SECTION 3 - ON CONVICTION AND SENTENCING	42
SECTION 4 - OFFENCES UNDER THE PREVENTION OF ORGANISED CRIME ACT 2010	43
SECTION 5 - ANCILLARY POWERS UNDER POCA	47
SECTION 6 - FIREARMS AND EXPLOSIVES OFFENCES UNDER	49
ALTERNATIVE LEGISLATION	49
SECTION 7 - CITIZENSHIP AND IMMIGRATION OFFENCES	52
SECTION 8 - GUIDELINES IN DRAFTING AFFIDAVIT IN OBJECTION TO GRANT OF BAIL – TO BE ATTACHED TO EVERY PROSECUTION FILE	54
ANNEX A: 56	
STANDARD OPERATING PROCEDURES (S.O.P) FOR TERRORISM CASES FOR THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP) AND THE NATIONAL POLICE SERVICE (ANTI-TERRORISM POLICE UNIT).....	56
ANNEX B: EXTRACTS OF SLAA 2014 SPECIFIC TO POTA 2012	60
ANNEX C : PREVENTION OF TERRORISM ACT 2012.....	66

ABBREVIATIONS

AG	Attorney General
AML	Anti Money Laundering
ARA	Asset Recovery Agency
ATPU	Anti-Terrorism Police Unit
CTD	Counter Terrorism Division
DPP	Director of Public Prosecutions
ODPP	Office of the Director of Public Prosecutions
FRC	Financial Reporting Centre
GSU	General Service Unit
IO	Investigating Officer
KDF	Kenya Defence Forces
KRA	Kenya Revenue Authority
MLA	Mutual Legal Assistance
NIS	National Intelligence Service
OCG	Organised Criminal Group
POCA	Prevention of Organised Crime Act 2010
POTA	Prevention of Terrorism Act 2012

INTRODUCTION

The Office of The Director of Public Prosecutions as well as the Anti Terrorism Police Unit are collaborative agencies each set up to play the roles of key actors in the criminal justice system and specifically where this relates to the fight against terrorism.

It is in this regard that the two agencies agreed to come up with this 'Points to Prove' guide. This decision was equally informed by the emergence and prevalence of terrorism and related offences and the need for effective and efficient investigation and prosecution of the same.

It is intended that this guide should offer a quick reference for investigators and prosecutors alike, to the various offences as stipulated by statute as well as what is needed to build an evidential case against those suspected and/or accused of those offences.

The guide also includes the ancillary powers bestowed upon the two agencies by statute and the roles to be played in exercise of these powers.

Finally, the guide lays out the requirements to be met in relation to remand and bail/bond hearings and the attendant applications.

This guide is applicable to all officers from these institutions and is geared to foster better co-operation and collaboration between them. It is subject to review as and when circumstances may call for the same.

ACKNOWLEDGEMENT

This guide was developed by a joint team of prosecutors and senior investigators drawn from the ODPP and ATPU respectively.

The team expresses profound gratitude to the Director of Public Prosecutions and the Commandant of the Anti Terrorism Police Unit for their support for the completion of this guide and development of standard operating procedures between both agencies. The team would also like to acknowledge the assistance of the Australian High Commission and the British High Commission in this endeavour.

SECTION 1

OFFENCES UNDER THE PREVENTION OF TERRORISM ACT 2012 (POTA)
INCLUDING AMENDMENTS UNDER THE SECURITY LAWS (AMENDMENT)
ACT 2014

PART A – OFFENCES RELATING TO TERRORIST ATTACKS

s4 (1) Commission of a Terrorist Act – Max 30 Years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	[REDACTED]
The commission of a terrorist act as defined in section 2 POTA	[REDACTED]
Death of a victim is relevant to sentencing under section 4(2) POTA	[REDACTED]
[REDACTED]	[REDACTED]
Agencies: [REDACTED]	
This offence is applicable where a terrorist attack has actually taken place [REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	

**s28 – Kidnapping and Hostage Taking whilst Committing a Terrorist Act
- Max 30 years**

POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
<p>Date and location</p> <p>Commission of a terrorist act under section 2; AND</p> <p>Kidnap or detention of another whilst committing that terrorist act AND</p> <p>A threat to kill or injure or continue detention of that person unless demand is met</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Agencies: [REDACTED]</p>	
<p>Evidence: <i>likely to include but not limited to:</i> [REDACTED]</p> <p>[REDACTED]</p>	
<p>Notes:</p>	

s10 – Harboursing of Persons Committing terrorist Acts/Concealing a Suspect – Max 30 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	[REDACTED]
Act of harboursing or concealment of a suspect	[REDACTED]
Proof that the suspect was wanted by police	[REDACTED]
OR act that amounts to interference with an arrest	
Proof that the actions actually interfered or prevented or hindered an arrest [REDACTED]	
Actual knowledge or having reasonable grounds to believe that the person in question is involved in terrorist activities [REDACTED] and	
Where there is an arrest that is interfered with, knowledge that the police want that person for arrest.	
Agencies: [REDACTED]	
Evidence: [REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	

PART B – POTA OFFENCES RELATING TO PROPERTY (not weapons)

s5 - Collection or Provision of Property and Services for Commission of Terrorist Acts as amended - Max 20 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and Location	[REDACTED]
Identify the property/fund or service in question	[REDACTED]
Actual collection [REDACTED] provision/ or an invitation to another to provide that property or make it available to another	[REDACTED]
Intention that it should be used for a terrorist attack (or to facilitate an attack) OR	[REDACTED]
That the suspect had 'reasonable grounds to believe' that it would be used by: a terrorist group OR any person(s) who:	[REDACTED]
i) commits or attempts to commit indirectly, unlawfully and wilfully a terrorist act OR;	
ii) participates as an accomplice in the commission of terrorism OR	
iii) organizes or directs others to commit terrorist acts OR	
iv) contributes to the commission of such acts.	
Agencies: [REDACTED]	
Evidence: [REDACTED]	
Evidence is likely to include but is not limited to: [REDACTED]	
Note: see section 21 for where the terrorist act is to be carried out in a foreign state.	

s6 - Possession of Property for Commission of Terrorist Act - Max 20 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and Location	[REDACTED]
Identify the property in question	[REDACTED]
Actual possession of that property	[REDACTED]
[REDACTED]	[REDACTED]
Actual intention or knowledge that it shall be used for the purposes described above.	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
[REDACTED]	
May be useful in relation to items like vehicles. <i>Evidence likely to include but not limited to:</i>	
[REDACTED]	
[REDACTED]	
On possession: [REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
Notes:	

s7 - Arrangements for the Retention or Control of Terrorist Property e.g. Concealment or Removal from the Jurisdiction – Max 20 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	[REDACTED]
Identify the property in question	[REDACTED]
Proof that the item is 'terrorist' property' within the definition of section 2	[REDACTED]
[REDACTED]	[REDACTED]
OR that it belongs to a 'specified entity.'	[REDACTED]
Proof that there is an 'arrangement' to retain or control that property on behalf of a third party	[REDACTED]
[REDACTED]	[REDACTED]
That the suspect KNEW that the property was terrorist property	
Agencies: [REDACTED]	
Evidence: [REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
Notes:	

s8 - Dealing in Property Owned or Controlled by Terrorist Groups - Max 20 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	[REDACTED]
Identify the property in question	[REDACTED]
Proof that the property is owned or controlled by a terrorist group	[REDACTED]
Proof that there is 'dealing' or a transaction or provision of a service in relation to that property	[REDACTED]
That the suspect knew the transaction in question was being conducted on behalf or at the direction of a 'terrorist group'.	[REDACTED]
Agencies: [REDACTED]	
<p>Note: a terrorist group is defined in section 2 i.e. an entity that has as one of its purposes the commission of a terrorist act or a specified entity.</p> <p>Evidence: likely to include but not limited to: [REDACTED]</p>	
Notes:	

s30 - Possession of an Article or Information Held on Behalf of Third Party for Use in a Terrorist Act. – Max 30 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	[REDACTED]
Proof of possession of an article or information [REDACTED] [REDACTED] AND [REDACTED]	[REDACTED]
Proof the suspect was holding it on behalf of a third party	[REDACTED]
Proof the suspect knew that the article or information was for use in the preparation or commission of a terrorist act	[REDACTED]
Agencies: [REDACTED]	
Evidence: [REDACTED]	
Notes:	

PART C – OFFENCES OF SUPPORT/PREPARATION/PLANNING (for weapons – see Part D)

s9 – Soliciting and Giving of Support for the Commission of Terrorist Acts - Max 20 years s30E POTA (s64SLAA) – Aiding and Abetting the Commission of an Offence under POTA – Max 20 years.	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	[REDACTED]
Proof of an act of support OR	[REDACTED]
Proof of an act of seeking support	[REDACTED]
Evidence that the support/aid or abetting was for the commission of a terrorist act.	[REDACTED]
Proof that the recipient of such support was a 'terrorist group' as defined in section 2 but s9 also applies to providing support to 'a person'.	[REDACTED]
[REDACTED]	[REDACTED]
Agencies: [REDACTED]	
Evidence: [REDACTED]	
Notes:	

S61 SLAA – inserts s9A into POTA – Advocating, Promoting, Advising or Facilitating a Terrorist Act or any Act Preparatory to a terrorist act – Max 20 years.

POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
<p>Date and location</p> <p>Act or statement likely to be understood by another as direct or indirect encouragement, promotion, advice or facilitation of a terrorist act</p> <p>Or as direct or indirect encouragement, promotion, advice or facilitation to an act of preparation for a terrorist act.</p> <p>Intending or being reckless that his act/statement would be regarded as such.</p>	<p>[REDACTED]</p> <p>[REDACTED] - [REDACTED]</p>
<p>Agencies: [REDACTED]</p>	
<p>[REDACTED]</p>	
<p>Evidence: [REDACTED]</p>	
<p>Notes:</p>	

s12 – Direction and Instruction in the Commission of a Terrorist Act - Max life imprisonment	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and Location	[REDACTED]
Membership of a terrorist group – see page 32	[REDACTED]
An act of direction or instruction to commit a terrorist act	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Agencies: [REDACTED]	
Evidence: [REDACTED]	
Notes:	

s22 – Authorising Terrorism Related Meetings at Suspect's Premises; Buildings, Ships and Aircrafts) - Max 20 years

POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
<p>Date and location</p> <p>That the suspect owns or is in control/charge of property or vessel/aircraft in question</p> <p>That he authorized [REDACTED] a meeting or use of the same</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Agencies: [REDACTED]</p>	
<p>Evidence: [REDACTED]</p>	
<p>Notes:</p>	

s23 – Conspiracy to Commit a Terrorist Act – Max 20 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	[REDACTED]
The existence of an agreement	[REDACTED]
Evidence that at least two people were involved in that agreement	[REDACTED]
That the agreement was to commit a <u>terrorist</u> offence	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
<i>Location of suspect and planned attack is important for charging correctly:</i>	
s23 (1) – the suspect is OUTSIDE Kenya and is conspiring with someone INSIDE Kenya to carry out an attack OUTSIDE Kenya.	
s23(2) – the suspect is INSIDE Kenya and is conspiring with someone OUTSIDE Kenya to carry out an attack INSIDE Kenya.	
s23(3) (amended by SLAA) – the suspect is INSIDE Kenya and is conspiring with someone also INSIDE Kenya to carry out an attack either INSIDE or OUTSIDE Kenya.	
Agencies: [REDACTED]	
Evidence: [REDACTED]	

s25: Organizing, Assisting of Meetings in Support of a Terrorist Group - Max 20 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	[REDACTED]
That the suspect organized or facilitated a meeting;	[REDACTED]
That the meeting was to support or further the activities of the terrorist group OR	[REDACTED]
That a speaker at the meeting was a member or professed to be a member of a terrorist group; AND	[REDACTED]
[REDACTED]	[REDACTED]
That the suspect would have had reason to believe the aims of the meeting was to support/further the activities or host a speaker who was a member/professed member of a terrorist group.	
Agencies: [REDACTED]	
Note: [REDACTED] [REDACTED] [REDACTED]	
Notes:	

s27 – Incitement to Commit a Terrorist Act – Max 30 years

POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
<p>Date and location</p> <p>Identify the material in question or information in question [REDACTED] AND</p> <p>It was published, distributed or made available to others AND</p> <p>Prove that the suspect was responsible for the publication [REDACTED] or distribution of material [REDACTED]; AND</p> <p>His/her intention was to incite another to commit a terrorist act, 'directly or indirectly'.</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Agencies: [REDACTED]</p>	
<p>Evidence: [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>Notes:</p>	

s29 - Collection of Information for Use in a Commission of a Terrorist Act - Max 30 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	[REDACTED]
The suspect is a member of a terrorist group OR	[REDACTED]
Is committing/instigating/preparing or facilitating a terrorist act; AND	[REDACTED]
He/she is in possession of or has transmitted or has generated 'Information'	[REDACTED]
Identify the 'information in question' [REDACTED]	[REDACTED]
[REDACTED]	
Agencies: [REDACTED]	
Evidence: <i>likely to include but not limited to:</i> [REDACTED] [REDACTED] [REDACTED]	
Notes:	

PART D – POTA OFFENCES INVOLVING WEAPONS (for TRAINING SEE PART E)

s11 – Provisions of Weapons to Terrorist Groups. - Max 30 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	
That the item is a 'weapon'	
Proof of actual provision of that weapon to another and	
The Recipient of that weapon is a 'terrorist group' or a 'member of a terrorist group' or a person who intends to use it for a terrorist act	
OR	
Where no actual provision has occurred:	
An offer to supply or actual supply of the weapon in question	
Agencies:	
Evidence: likely to include but not limited to:	

s62 SLAA – inserts s12A into POTA – Possession of a weapon, IED or IED component- MINIMUM 25 years.	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location:	[REDACTED]
Possession:	[REDACTED]
That the item is a 'weapon' [REDACTED] [REDACTED] OR	[REDACTED]
That the item is an IED (improvised explosive device) OR	
That the item is a component of an IED [REDACTED] [REDACTED] [REDACTED] [REDACTED]	
Agencies: [REDACTED]	
[REDACTED]	
[REDACTED]	
Evidence: [REDACTED] [REDACTED] [REDACTED]	
Notes:	

s62 SLAA – inserts s12B into POTA – Possession of a weapon, IED or IED Component(s) when Inside Premises, Institutions or at a Public Place – Max 30 years

POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location [REDACTED]	[REDACTED]
Possession	[REDACTED]
'Weapon' [REDACTED] [REDACTED] OR	[REDACTED]
Item is an IED (improvised explosive device) OR	[REDACTED]
Item is a component of an IED [REDACTED] [REDACTED]	
No legal authority to possess [REDACTED]	
Agencies: [REDACTED]	
[REDACTED]	
Evidence: [REDACTED] [REDACTED]	

s62 SLAA – inserts s12C into POTA – Failing to Prevent Entry or Storage of weapons at Premises - Max 30 years.	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location [REDACTED]	[REDACTED]
The suspect is 'in charge' of said location even if not found there at the time	[REDACTED]
Weapons are found there [REDACTED]	[REDACTED]
No lawful authority to have those weapons either at that location or at all	[REDACTED]
Agencies: [REDACTED]	
[REDACTED]	
[REDACTED]	
Evidence: [REDACTED]	
[REDACTED]	
Notes:	

PART E – TERRORIST TRAINING OFFENCES

s14 – Training and Directing of Terrorist groups and Persons (includes Facilitating the Provision of Instructions for Training in Kenya and Overseas) - Max 30 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
<p>Date and location</p> <p>Provision of training or instruction [REDACTED] [REDACTED] or</p> <p>Facilitation of such training</p> <p>Identification of the recipient</p> <p>That the training relates to the making or use of a weapon; or execution of a terrorist act or practice of military exercises; and</p> <p>That the suspect knows that the recipient intends to make use of his training in the commission of a terrorist act.</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Agencies: [REDACTED]</p>	
<p>This offences targets the 'trainer' of the 'organiser' or 'facilitator'.</p> <p>Evidence: likely to include but not limited to: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	
<p>Notes:</p>	

s14 (2) – Receiving Terrorist Training - Max 20 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	[REDACTED]
That the suspect received training	[REDACTED]
That the training related to the subjects above	[REDACTED]
That the suspect was intending to engage or 'prepare' for the commission of a terrorist act.	[REDACTED]
Agencies: [REDACTED]	
This offence targets the recipient.	
Evidence: likely to include but not limited to: [REDACTED]	
[REDACTED]	
[REDACTED]	
Notes:	
[REDACTED]	

s64 SLAA – inserts s30B into POTA – Terrorist Training - Minimum 10 years.

POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location [REDACTED]	[REDACTED]
Suspect attended training or received instruction	[REDACTED]
Training or instruction related to use or handling of weapons or other skills	[REDACTED]
Suspect intended to use the skills in which he was instructed or trained	[REDACTED]
For or in connection with the commission/ preparation of acts of terrorism OR	[REDACTED]
For assisting in the commission/preparation of others of such acts/offences.	
<i>For certain countries, there will a presumption that travel there was for the purposes of receiving training</i> [REDACTED]	
Agencies: [REDACTED]	
This offence targets those who travel abroad to receive training or those intending to receive such training by attending at a place of training.	
[REDACTED]	
Evidence: [REDACTED]	
[REDACTED]	

PART F – RECRUITMENT/RADICALISATION AND MEMBERSHIP OFFENCES

s61 SLAA – inserts s12D into POTA – Radicalisation offences - Max 30 years.	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
<p>Date and location</p> <p>Statements or acts that disclose an 'extreme belief system' that advocates/facilitates violence to advance political/religious or social change</p> <p>Acts or statements 'promoting' that belief system OR</p> <p>Acts or statements that show the suspect was 'adopting' that belief system</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Agencies: [REDACTED]</p>	
<p>Aimed primarily at those who set out to radicalise others, but also catering for those who become radicalised. [REDACTED]</p>	
<p>Evidence: [REDACTED]</p>	
<p>Notes:</p>	

s13 – Recruitment or Facilitating Recruitment of Members of a Terrorist Group - Max 30 years.	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	[REDACTED]
Actual recruitment [REDACTED] or	[REDACTED] [REDACTED]
An act of facilitating a recruitment of another	[REDACTED]
The existence of the 'terrorist group'	[REDACTED] [REDACTED]
Knowledge that the group into which the person is being recruited is a 'terrorist group'	[REDACTED] [REDACTED] [REDACTED]
Agencies: [REDACTED]	
Evidence: likely to include but not limited to: [REDACTED] [REDACTED]	
Note: where this offence takes place in Kenya but the terrorist act is to be carried out in a foreign state, see section 21 at page 19.	
Notes:	

[illegible]

PART G – OVERSEAS ATTACKS AND FOREIGN FIGHTERS

s21 – Acts Carried out for Commission of Terrorist Acts in Foreign States - Max 30 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
<p>Date and location</p> <p>The suspect is in Kenya, and he:</p> <p>Knowingly promotes or facilitates an act; AND/OR</p> <p>Recruits another; AND/OR</p> <p>Accumulates/stockpiles or keeps weapons; AND/OR</p> <p>Engages in training in use of weapons or military exercises; AND/OR</p> <p>Receives training in the same; AND/OR</p> <p>Provides money, goods or services to a body or association with a view to carrying out or facilitating a terrorist act in another country</p>	<div style="background-color: black; height: 15px; width: 100%;"></div> <div style="background-color: black; height: 15px; width: 100%;"></div> <div style="background-color: black; height: 15px; width: 100%;"></div> <div style="background-color: black; height: 15px; width: 100%;"></div> <div style="background-color: black; height: 15px; width: 100%;"></div> <div style="background-color: black; height: 15px; width: 100%;"></div>
<p>Agencies: [REDACTED]</p>	
<p>Evidence: <i>likely to include but not limited to:</i> [REDACTED]</p>	
<p>See also s21 for conspiracy to commit offences abroad [REDACTED]</p>	
<p><i>Notes:</i></p> 	

s64 SLAA – inserts s30D into POTA – FOREIGN FIGHTERS – Max 30 years	
POINTS TO PROVE	ANCILLARY POWERS (SECTION 2 – PAGE 39)
Date and location	[REDACTED]
Suspect is NOT a Kenyan citizen	[REDACTED]
Found in Kenya	[REDACTED]
Intention to engage in terrorist activities.	[REDACTED]
Agencies: [REDACTED]	
<p>This offence targets those who cross into Kenya illegally at the border with Somalia or legally through ports and borders for the purposes of committing attacks.</p> <p>[REDACTED]</p>	
Evidence: [REDACTED]	
Notes:	

PART H – OBSTRUCTION OFFENCES UNDER POTA

OFFENCE	POINTS TO PROVE
<p>s15(1) Obstructing or hindering the course of justice – Max 20 years</p>	<p>The accused does an act that</p> <p>Causes an obstruction of justice; and</p> <p>He intends to obstruct the course of justice</p>
<p>s15(2) Interfering with the judicial process – Max 20 years</p> <p>Notes:</p>	<p>Use or threat of force or intimidation or</p> <p>Use of words or actions designed to dissuade or</p> <p>Use of words or actions that interfere with giving of evidence [REDACTED]</p> <p>[REDACTED] and</p> <p>Intention to Interfere in course of justice and</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

OFFENCE	POINTS TO PROVE
<p>s16 Obstructing a public officer in execution of his duties under this Act - Max 20 years</p>	<p>Identify the witness as a 'public officer' and</p> <p>Proof he/she was acting in execution of his/her duties OR that he/she was acting under direction of another officer</p> <p>That the suspect used words or actions that obstructed the officer in the execution of his/her duties and</p> <p>That the suspect intended to obstruct the officer or was reckless as to whether his conduct obstructed the officer.</p>
<p>s17 Retaliation against a person or family member who has given evidence under this Act - Max 20 years</p> <p>Notes:</p>	<p>That a person has given evidence or information under this Act.</p> <p>Proof of an act of retaliation against that same person or a family member of that person or a family member</p> <div data-bbox="895 1149 1284 1283" style="background-color: black; width: 100%; height: 60px;"></div> <div data-bbox="895 1305 1284 1395" style="background-color: black; width: 100%; height: 40px;"></div>

OFFENCE	POINTS TO PROVE
s18 Intimidation of another - Max 20 years	<p>Act of intimidation</p> <p>That act causes the victim to reasonably fear for his safety or that of another known to him AND</p> <p>It is the aim of the suspect to compel that victim to either stop doing something that he has lawful right to do under this Act (e.g. disclose) or to make him do something that he has a lawful right to abstain from doing.</p>
s19 Disclosure of information that prejudices an investigation or interferes with material relevant to an investigation – Max 20 years	<p>Act of disclosure by the suspect</p> <p>That disclosure does in fact or is likely to prejudice or interfere with an investigation [REDACTED] AND</p> <p>That the suspect had knowledge or reasonable grounds to suspect that the officer was conducting an investigation under THIS Act.</p>
s20 Knowingly giving a misleading Statement to an officer under this Act, - Max 20years	<p>The suspect made a statement [REDACTED]</p> <p>That statement was made to an officer.</p> <p>The suspect knew that the officer was in fact an 'officer' [REDACTED]</p> <p>[REDACTED]</p> <p>Proof that the statement was false and</p> <p>The suspect intended to mislead the officer.</p>

s26 Making a Hoax Call – Max 20 years	
POINTS TO PROVE	ANCILLARY POWERS
<p>The suspect issued information stating either that a terrorist act had happened or was about to happen</p> <p>That information was false AND</p> <p>The suspect knew the information was false.</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Agencies: [REDACTED]</p>	
<p>Evidence: [REDACTED]</p>	
S73 SLAA – on s41 POTA – Failing to Disclose Max 3 years	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location</p> <p>Suspect had information</p> <p>That he knew or believed might be of material assistance in preventing a terrorist act or securing the arrest or prosecution of another connected with an offence under POTA.</p> <p>Failure to disclose that information to a police officer</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Agencies: [REDACTED]</p>	
<p>This offence is now in play as SLAA as introduced the penalty (3 years). It places a legal duty to report information to the police. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	

SECTION 2 - ANCILLARY POWERS UNDER POTA EXERCISABLE BY POLICE AND PROSECUTORS

POWER TO REMAND IN CUSTODY PRE-CHARGE - s33 POTA

What is it?	Power to seek a remand (usually up to 30 days at a time), 360 days max under Security Laws (Amendment) Act 2014 s66)
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

INTERCEPT - s36 POTA (as amended by s68 SLAA)

[illegible]

POWER TO GATHER INFORMATION- s34

What is it?	Power to require a person to provide information before the court relating to an offence under this Act or the whereabouts of a suspect, both where an offence has already happened or where it is likely that an offence is going to be committed.
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

SEIZURE OF PROPERTY- s37

What is it?	Power to seize property that has been or is being used to commit an offence under this Act.
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

SEIZURE AND RESTRAINT OF PROPERTY – s43

What is it?	Power to seize property and restrain (stop) a person from disposing of property connected with a terrorist offence.
[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED]

ORDERS FOR FORFEITURE OF PROPERTY – s44

What is it?	Power to order forfeiture to the State of any property owned or controlled by a terrorist group or used or intended for use in a terrorist offence.
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

SECTION 3 - ON CONVICTION AND SENTENCING

FORFEITURE UPON CONVICTION – s40

What is it?	Power to order forfeiture of property to the State.
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

SENTENCING CONSIDERATIONS

A PERSON CONVICTED UNDER POTA WILL BE SUBJECT TO POLICE SUPERVISION FOR 5 YEARS FROM THE DATE OF RELEASE FROM PRISON – s18 SLAA amending s344A Penal Code.

The suspect may be required to reside within certain limits and not leave or move without the written consent of the police officer in charge of that area; further he may be required to present himself when called upon by an officer in charge of that area. Failure to comply is an offence punishable by 6 months imprisonment on first conviction; twelve months max for subsequent breaches of this section (s345 SLAA).

RIGHT OF APPEAL AGAINST ACQUITTAL/REFUSAL TO ALLOW CHARGE OR DISMISSAL OF CHARGES – s19 SLAA amending s348A Penal Code

ODPP may appeal to the higher court on a matter of fact or law – High Court or Court of Appeal may substitute acquittal with conviction and proceed to sentence.

ADDITIONAL POWERS EXERCISABLE BY OTHER AGENCIES

These include power to prohibit funds being made available to persons in foreign states (section 45); refusal of registration of associations (section 46); provision of information relating to persons entering or leaving the country (section 47); powers to refuse refugee applications (section 48).

SECTION 4 - OFFENCES UNDER THE PREVENTION OF ORGANISED CRIME ACT 2010

NOTE:

OCG = Organised Criminal Group; OCA = Organised Criminal Activity.

OFFENCE	POINTS TO PROVE		EVIDENCE (not limited to)	ANCILLARY POWERS	AGENCIES
S3(a) being a member or professing to be a member 10 years max 500,000Ksh fine	Admission of membership or see s7 POCA at page 32 above				
S3(b) knowingly Advises/causes/ encourages/recruits another to become a member of an OCG	Giving of advice or act or words that amount to encouragement To another To join an OCG Existence of that OCG (3 or more people with Aim to commit a serious crime)				

OFFENCE	POINTS TO PROVE		EVIDENCE (not limited to)	ANCILLARY POWERS	AGENCIES
S3(c) Acting in concert with other persons to commit serious offence for purpose of obtaining material or financial benefit or for any other purpose	-3 or more people S did an act in furtherance of a 'serious crime' NB: 'Serious crime' attracts imprisonment of more than 6 months	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
S3 (i) possession of article for purposes connected with the commission, preparation or instigation of organized crime	Actual Possession Identify the article Establish the article is for use in an OCA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

PREVENTION OF ORGANISED CRIME ACT 2010	PREVENTION OF TERRORISM ACT 2012
<ul style="list-style-type: none"> • Weapons training s3(h) • Directing s3 (d) • Recruitment s3 (b) • Conspiracy s6 • Provision of property s3(k) • Kidnap s3 (g) • Retention and control of 'criminal group funds' s3(m) • Arrangement of meetings s3(o) • Retaliation s9 • Intimidation s12 • Obstruction of justice s8 • False statements s11 • Disclosure of information s13 	<ul style="list-style-type: none"> • Weapons training s14 • Directing s12 • Recruitment s13 • Conspiracy s23 • Provision of property s5 • Kidnap s28 • Retention and control of terrorist property s7 • Arrangement of meetings 25 • Retaliation s 17 • Intimidation s12 • Obstruction of justice s 15 • False statements s20 • Disclosure of information s19

SECTION 5 - ANCILLARY POWERS UNDER POCA

PROPERTY TRACING - s15 POCA

What is it?	Power to compel any person to produce any document or record that identifies, locates, quantifies property or to require a bank or financial institution/trustee/cash dealer/custodian to produce all information/records etc. re: any business transaction by or on behalf of the person concerned
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

RESTRAINT ORDERS - s16 POCA

What is it?	A temporary order to suspend dealings of a specified person or a person charged under POCA or 'any other specified person'
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

SEIZURE AND DETENTION OF OCG CASH - s17 POCA

What is it?	Power to seize and hold cash that is imported or exported by an OCG.
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

FORFEITURE OF PROPERTY UPON CONVICTION – s18 POCA

What is it?	Power to order forfeiture of property to the State.
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

**SECTION 6 - FIREARMS AND EXPLOSIVES OFFENCES UNDER
ALTERNATIVE LEGISLATION**

<p>s4 FIREARMS ACT – purchase, acquisition or possession of a firearm of ammunition without a certificate. Certificate in force at the time. Penalty: between 7 years and 15 years or 5 years and 10 years depending on type of firearm.</p>	
POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location</p> <p>That the item is a firearm/ammunition within the definition of the Act.</p> <p>The suspect either purchased/somehow obtained a firearm/ ammunition OR</p> <p>The suspect was in possession of firearm/ ammunition; AND</p> <p>Proof that there was no valid a firearms certificate in force at the time</p> <p align="center">OR</p> <p>Suspect had possession of ammunition in the excess of authorized quantities</p> <p align="center">OR</p> <p>He has a firearms certificate but there is non-compliance with the conditions attached to the certificate</p>	
	
<p>Evidence: </p> <p><i>Notes:</i></p>	

s4A FIREARMS ACT - for AK47, G3, MP5 - Possession of a specified firearm without a license, if having a licence, unlawfully allowing another to take possession of it in order to advance the course of organised criminal activity.
Penalty: Life imprisonment.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location</p> <p>Possession of item Proof that the item was a weapon within the definition of this section [REDACTED]</p> <p>The absence of license; OR</p> <p>If in possession of license, that the suspect has given permission to another for posses it or use it for organized criminal activity [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>Evidence: [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	
<p><i>Notes:</i></p>	

s29 EXPLOSIVE ACT – Unlawfully Making or Possessing Explosives - Max: 7 years.

POINTS TO PROVE	ANCILLARY POWERS
<p>Date and location</p> <p>That the item is an 'Explosive' i.e. defined under section 2 as:</p> <p>a) 'gunpowder, nitro glycerine, dynamite, gun cotton, blasting powders, fulminate of mercury or other metals, coloured fires and every other substance, whether similar to those mentioned herein or not which is used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect.</p> <p>b) any fuse, rocket, detonator or cartridge and every adaptation or preparation of an explosive as herein defined or</p> <p>c) any other substance which the Minister may, by notice in the Gazette, declare to be an explosive.'</p> <p>AND that the suspect had the item in his possession or control AND</p> <p>That he had no lawful excuse for so doing.</p>	<p>[REDACTED]</p>
<p>Evidence: [REDACTED]</p>	
Other Offences	Points to Prove
s4 –Manufacture of any unauthorized explosive – up to 2 years/5000Ksh	That it was an explosive (as above) and an act of 'manufacture' [REDACTED]
s6 – possession/storage of unauthorized explosive – up to 1 year/3000Ksh	That it was an explosive (as above); possession without authority. [REDACTED]
s13 –transport of explosives - 2000Ksh or up to 6 months	That it was an explosive (as above); transport without authority.

SECTION 7 - CITIZENSHIP AND IMMIGRATION OFFENCES

Kenya Citizenship and Immigration Act 2011.

Offence	Points to Prove
s53(1)(b) Being found in Kenya while an order for removal is in force. 500,000Ksh fine and/or 3 years max.	Evidence that suspect is 'in' Kenya. Proof that there is an order for removal of that person.
s53(1) (j) Unlawfully entering or being present in Kenya. 500,000Ksh fine and/or 3 years max.	Evidence that the suspect is 'in' Kenya Evidence of lack of residency/permit to reside/absence of lawful excuse.
s53(1)(m) working without a permit/lawful authority. 500,000Ksh fine and/or 3 years max.	Evidence that suspect is not a citizen Evidence that suspect has no permit or exemption under this Act allowing him to work. Evidence that he is working, whether or not for profit or reward.

Offence	Points to Prove
<p>s54 use or possession of a forged passport, work permit, residence permit, visa or registration or other forged or altered consent, endorsement or approval.</p> <p>5 million Ksh or 5 years Max</p>	<p>Evidence of use or possession</p> <p>Evidence that the document is a forgery or has been altered/issued without lawful authority.</p> <p>AND</p> <p>Evidence the suspect knew it was false/forged.</p>
<p>s54(d) possession of documents belonging to another without reasonable excuse.</p> <p>5 million Ksh or 5 years Max</p>	<p>Evidence of possession and</p> <p>Evidence that they belong to another</p> <p>Absence of a reasonable excuse.</p>
<p>s54(g) Presenting a forged altered or false document in order to obtain passport/registration/visa/work permit/residence/pass or other written authority.</p> <p>s54(m) (s83SLAA) – using a passport, pass or authority that was issued to another person.</p> <p>5 million Ksh or 5 years Max</p>	<p>Act of 'presentation' [REDACTED]</p> <p>Evidence that the document has been forged/altered.</p> <p>[REDACTED]</p> <p>Evidence that the pass was issued to another (s54(m)).</p>

Finally, see Cap 107 Registration of Persons Act for offences relating to identification documents under s14 of that Act e.g. unlawful possession of identity documents belonging to another or issue of false identification documents, alteration, entry on to or erasure from the same. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STANDARD OPERATING PROCEDURES (S.O.P) FOR TERRORISM CASES FOR
THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP) AND THE
NATIONAL POLICE SERVICE (ANTI-TERRORISM POLICE UNIT)

Article 157 of the Constitution of the Republic of Kenya provides for the establishment of the Office of the Director of Public Prosecution (ODPP). **Article 157(6)(a)** provides that the ODPP shall exercise State powers of prosecution and may institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed¹.

In order to ensure efficiency of investigations and prosecution of terrorism and related offence(s), there is need to have a close cooperation between the ODPP and Anti-Terrorism Police Unit (A.T.P.U).

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]