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Cash Bail and Systemic Inequity: A Socio-Legal Critique of Pretrial Justice and Marginalization in Mombasa County

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Abstract

The apparatus of cash bail is devised to balance the presumption of innocence with a guarantee of court appearance, which has gradually railed against the existence of socioeconomic and ethnic inequality. This research yields a socio-legal critique of pretrial justice in Mombasa County, Kenya, examining how systemic bail inequities weaken governance credibility and intensify social exclusion. Utilising a multimethod approach, we explored thematic analysis of policy documents, court rulings, and NGO reports; interviews with police officers; regression modelling associating pretrial detention rates (2018–2023) with crime data; GIS-based hotspot mapping; and comparative case studies of bail reform in Germany and Canada. Quantitative results demonstrate that pretrial detention rates have an inverse relationship with community trust ($\beta = -0.45$, $p < 0.01$) and are inseparable from minor offences (3.2 % increase per 10 % rise in detention, $p < 0.05$), including terrorism recruitment. Logistic decline divulges that detention beyond seventy-two hours significantly raises the probability of reoffending in organised crime ($OR = 1.8$, $p < 0.001$). Spatial data analysis reveals coastal counties as points of interest where prolonged detention occurs simultaneously with radical activity. Qualitative intuitions bring to light that ethnic and economic discrimination in police bail decisions wear away civic faith and intensify grievances that fanatic networks exploit. Considering experiences in other countries, we assert that impartial bail practices, emphasising risk-based assessments, non-monetary release options, and strengthened legal aid, are prerequisites for reinforcing social cohesion and national security. The analysis shows that pretrial justice updates should become part of security planning so bail works as a universal defence mechanism.

Keywords: *Cash Bail, Systemic Inequity, Pretrial Justice, Social Exclusion, Socio-Legal Critique, Governance Credibility, Risk-based Assessments.*

Introduction

In the pretrial phase of criminal justice, the ideals of fairness, equity, and the rule of law clash with systematic bias, inequality, and the power of institutions. The heart of this juncture is the cash bail system; this mechanism ostensibly was instituted to reconcile the assumption of guilt with the practical requirement of holding court appearances. Nevertheless, throughout the world, cash bail regimes are being questioned for entrenching cycles of marginalisation, ensnaring low-income individuals in dynamic debts and detainments, and purely releasing rich defendants. This tension is neither legal nor even socioeconomic but a latent national security threat in Kenya, especially in Mombasa County. Through an investigation of the interdependencies among cash bail inequities, broader security vulnerabilities, and pivotal challenges to governance legitimacy, this study contributes to the socio-legal problematisation of pretrial justice in ways that point to the systemic dysfunction of bail administration as a mechanism for practicing bail unfairly and as a means for economically destabilizing, and systematically propagating conditions of political instability that leave populations vulnerable to radicalization.

Although pretrial detention is near universal in criminal justice systems, when it is applied, it is counted only in degrees of disparity. For instance, in the United States, more than 60 per cent of jail inmates are informed detainees who are kept essentially on the basis that they can't afford to pay bail. Under Kenya's law (Criminal Procedure Code Cap 75 Laws of Kenya), too, pretrial detainees make up about 43 per cent of the total prison population, with marginalised groups like youth, ethnic minorities, and low-income individuals being overrepresented. Providing cash bail allows for conditional release, with the rationale that extending financial guarantees to a detainee keeps the risk of flight at bay. But this premise is shot down: Bail amounts are grossly unrelated to actual risk but rather to socioeconomic bias, institutional inertia, and the criminalisation of poverty (Amnesty International, 2020; HAKI Africa, 2024).

The consequences are profound. The indigent defendant is faced with an impossible choice: remain incarcerated for weeks and months, and years in some instances even longer; starve in jail depending on the county; lose their jobs, home, and family stability; or take a plea deal for a crime they did not commit. This justice tax entrenches cycles of poverty and corrodes faith in the legal institutions (The Mount Kenya Times, 2024). Elsewhere in the world, reform movements have attempted alternative risk-based assessments, non-monetary release conditions, and community supervision. But in Kenya, and especially Mombasa County, the cash bail system is entrenched, with the inequalities of the system being exacerbated by ethnic tensions, economic precarity, and a worsening security crisis related to extremism.

The 2010 Kenyan Constitution, the Universal Declaration of Human Rights (1948), and the African Commission on Human and Peoples' Rights (ACHPR, 2020) inscribe progressive reforms for the sake of protecting pre-trial rights. For instance, Article 49(1)(h) of the Constitution states that the right to reasonable bail is guaranteed. However, the Bail and Bond Policy Guidelines of Kenya (2015) state that the police, the prosecution, the magistrate, and the defence in bail hearings are all bound to observe tenets of proportionality, non-discrimination, and judicial oversight. In theory, these frameworks should prohibit arbitrary detention. The system is peppered with contradictions in practice. Bail amounts are determined by police, unchecked by station-level police officers who can use this unlimited power of whim and use it for extortion and ethnic profiling. However, for those in Mombasa, a coastal region wracked by high unemployment, ethnic diversity, and a history of state neglect, one form that this discretionary abuse takes is to turn bail from a procedural formality into a punitive barrier, particularly for marginalised communities.

Mombasa's socio-geographic milieu further magnifies these dynamics. As Kenya's second- largest city, it serves as a port and economic hub, as well as a centre for transnational crime. With a sizable Muslim and ethnic minority community, they have always been out of touch with the central governance structures. As a result, the county has also become an extremist recruiting ground because Al Shabaab, among other groups, has exploited grievances of poverty, discrimination, and perceived state violence

to recruit members. Within this volatile milieu, the cash bail system functions not merely as a legal mechanism but as a catalyst for broader insecurity.

From a structural violence perspective, this research assumes that cash bail inequities in Mombasa County are a case in which a systemic harmful condition is generated within law and policy that results in exclusion and vulnerability. It is invisible and disguises injustice in the form of structural violence by normalising the disparities resulting from its institutional practices that appear to be neutral but that disproportionately hurt the marginalised.

Economic exclusion is one of three complementary mechanisms of this violence in Mombasa, Kenya: (1) Bail amounts are often set using arbitrary numbers so that the counsel cannot pay, creating family debt or destitution for anyone other than those in less economically restricted circumstances. Detention breaks people's livelihoods, driving people into informal and illicit economies. (2) There is ethnic and class bias in how police exercise their discretion regarding who gets bailed and when; bail gets extended to non-coastal ethnic groups and low-income youth or the youth from the upcountry, making each as hated as the other due to the historical tensions in the 'local' versus 'upcountry' communities. (3) Erosion of Civic Trust: Bail is seen as a revenue-generating tool and not as a justice mechanism; it alienates the community from law enforcement, preventing community cooperation with law enforcement in the prevention of crime and counterterrorism efforts (IEA Kenya, 2022).

These mechanisms are linked to Mombasa's security landscape, which is characterised by state fragility and extremist activities that create a feedback loop. The prolonged detention of young men before trial escalates grievances that extremist networks exploit for recruitment (HAKI Africa, 2024). As a result, the cash bail system essentially perpetuates the very issues it aims to combat. Research on cash bail has primarily been divided into two streams: existing scholarship on discrimination or socio-legal studies, and recidivism or criminological studies. Few attempts have been made to bridge these domains to understand how pretrial inequities destabilise national security architectures. This gap is particularly pronounced in Kenya, where counterterrorism responses emphasise military interventions over addressing the root causes of radicalisation. Conversely, this study employs a transdisciplinary lens to integrate state fragility, social exclusion, and radicalisation theories to illustrate how bail inequities heighten security risks.

The framework is based on the 'vulnerable state' paradigm, which posits that governance weaknesses— such as corruption, lack of institutional trust, and unequal service delivery— create openings for contestation of state authority by non-state actors. Thus, arbitrary bail practices in Mombasa reflect these vulnerabilities and erode the state's moral legitimacy in cases where extremist groups fill a vacuum they create by positioning themselves as alternative justice providers. At the same time, the framework integrates the "social security" theory regarding the relationship between individual and collective security, including aspects such as economic stability, health, and social cohesion. When viewed in this light, detention-induced poverty and trauma are not solely social issues but also national security exposures.

The study unravels these dynamics through a convergent mixed-methods approach that involves both qualitative and quantitative analyses of bail practices in Mombasa County (2018– 2023). Discretionary bias is determined through thematic coding of policy documents, court rulings, and NGO reports, while regression models are used to correlate pretrial detention rates with crime and terrorism data. Geographic Information Systems (GIS) is employed for spatial mapping to identify detection "hotspots" in extremist activity zones. It also offers comparative case studies of Germany and Canada as counterpoints, presenting alternative approaches to bail reform. Learning from Germany's algorithmic risk assessment to mitigate biases and lessons from R. v. Antic (2017), which reduced higher monetary bails in Canada, provides insights for Kenya. Yet these cases underline that, if there is institutional capacity, community oversight, and political will, equitable pretrial systems are achievable.

The findings deny policymakers the choice not to do so: pretrial justice is not ancillary to national security but foundational. To reform cash bail practices in Mombasa and, by extension, in Kenya, structural inequities that lead to alienation and violence have to be dismantled. This involves training police officers on rights-based bail administration, establishing independent oversight bodies, and incorporating bail reform into national security strategies.

This paper then follows in four sections. Section 3 introduces the conceptual framework of the state fragility nexus to the issue of bail inequities; this work theorises the connection between bail inequities and state fragility. Section 4 describes the mixed methods methodology, including data sources and analytical techniques. Results are reported across five themes: community trust and correspondence, economic destabilisation, legal disaffection, local security metrics, and policy barriers. Section 6 ends on a note of implication for Kenya's security architecture and the proposal for reforms premised on equity and accountability. This study reframes pretrial justice as a linchpin of democratic resilience by situating Mombasa's cash bail crisis within a broader security discourse. It, therefore, asks us to reimagine justice systems as platforms for inclusion in security rather than tools that control.

Literature Review
In Kenya, the issuance of cash bail by the police Officer Commanding Station (OCS) is done in its discretionary powers, where the accused person's liberty is at the discretion of the OCS before trial. Despite the fact that Section 36 of Kenya's Criminal Procedure Code (1967) authorises the police to release suspects charged with bailable offences without a court appearance, the practice is prone to abuse and unfair treatment due to the lack of clear procedural safeguards and an effective oversight mechanism. This section approaches these topics by blending Critical Legal Studies (CLS), Social Justice theory, etc., and intersectionality, using comparative insight from Canada and Germany, where police bail processes emphasise proportionality, fairness, and the protection of human rights.

CLS disputes this assumption of neutrality of legal institutions. In drawing attention to this fact, CLS argues that law is a mechanism of power and actively functions to preserve hierarchies and structural inequality. This dynamic is displayed in the discretionary authority given to the OCS in Kenya to grant or deny bail. As observed in Mombasa County, economically disadvantaged individuals often remain in pretrial detention for minor offences, not due to legal merit but because of their inability to afford bail or navigate informal negotiations (HAKI Africa, 2024). Comparatively, Germany's legal system minimises pretrial detention through robust judicial oversight. Police may release suspects without requiring bail, especially for minor offences, unless there's a significant flight risk (Council of Europe, 2021). Discretion is limited and governed by strict procedural checks. CLS would view the German model as an example of how the structure of legal rules can either entrench or dismantle power hierarchies. In Canada, bail decisions must adhere to principles set out in the Criminal Code and the Canadian Charter of Rights and Freedoms. Police officers may issue an "undertaking" or a "promise to appear," with cash bail as a last resort (Department of Justice Canada, 2022). CLS underscores that where institutional frameworks, like those in Canada, limit discretionary abuse, the system better aligns with equality before the law.

The Social Justice theory demands the equitable application of law, particularly to marginalised groups. In Kenya, where police discretion is mainly unregulated, social justice is undermined by informal bail practices that often involve corruption, favouritism, or ethnic profiling (KNCHR, 2023). The German model prioritises proportionality and necessity in detention. Judicial authorities, not police, ultimately determine bail terms, and the use of non-custodial measures is strongly favoured (Federal Ministry of Justice, Germany, 2022). The Social Justice theory finds resonance here, as procedural safeguards prevent economic status from determining liberty. Canada also emphasises non-financial conditions of release. Courts and police officers are encouraged to impose the least restrictive conditions. The Supreme Court's decision in R. v. Antic (2017), reaffirmed in policy updates through 2022, mandates that cash bail should only be imposed when necessary (Department of Justice Canada, 2022). These approaches

reflect a social justice-oriented model that Kenya could emulate by limiting arbitrary Officer Commanding Station (OCS) discretion.

Legal Realism emphasises the difference between law as written and as applied. Although Kenya's legal framework provides for police bail, the practice is highly inconsistent and influenced by local context. Research shows that suspects in poor or informal settlements are often detained longer or face informal monetary demands (ICJ Kenya, 2022). In Germany, legal realism plays out differently due to institutional integrity and professional training of law enforcement. Decision-making at the police level is strictly procedural and subject to judicial review, reducing room for informal or discriminatory practices (Council of Europe, 2021). Canada acknowledges disparities through initiatives aimed at reducing the pretrial detention of indigenous and marginalised populations. Police officers are trained on bias and are guided by standardised tools that minimise subjective decision-making (Public Safety Canada, 2023). These practices contrast with Kenya's opaque and inconsistent police bail system and offer real- world illustrations of how law can be brought closer to justice.

Intersectionality helps to analyse how overlapping identities, such as poverty, ethnicity, gender, and age, intersect to affect experiences of legal processes. In Kenya, women, youth, and ethnic minorities are particularly vulnerable to arbitrary police bail decisions (FIDA Kenya, 2022). The absence of legal aid and reliance on informal community mechanisms further exacerbate these disparities. In Germany, intersectional concerns are addressed through mandatory procedural safeguards and oversight by public prosecutors. Pretrial liberty cannot be conditioned on a suspect's ability to pay unless all non-custodial options are exhausted, mitigating the compounding effect of socio-economic status (Federal Ministry of Justice Germany, 2022). Similarly, Canada integrates intersectionality into its justice reform initiatives, especially regarding racialised communities. Legal reforms emphasise alternatives to cash bail and culturally appropriate support systems (Department of Justice Canada, 2022). These initiatives exemplify intersectional sensitivity in the application of police bail.

From a normative standpoint, both Germany and Canada align with international human rights obligations to prevent arbitrary detention and ensure the presumption of innocence. Kenya's continued reliance on cash bail at the police level, with minimal transparency or accountability, violates these standards (UNODC, 2021). Germany implements the European Convention on Human Rights, Article 5, which restricts pretrial detention to exceptional cases. Canada adheres to the ICCPR and has taken concrete steps to limit pretrial incarceration and promote rehabilitative justice. Kenya's system, by contrast, remains procedural in name but exclusionary in function. The Bail and Bond Policy Guidelines (2015) in Kenya sought to standardise police bail practices, but implementation remains weak. Comparative lessons from Germany and Canada underscore the necessity of institutional reform, procedural clarity, and rights-based training for law enforcement to ensure fairness.

Conceptual Framework: Linking Cash Bail Inequity to National Security
The Kenyan cash bail system is a routine procedural element of the country's criminal justice system, but it represents a more insidious manifestation of structural and societal impediments that one might not expect to see. Originally intended to ensure the presence of arraigned individuals in court, police-issued cash bail has created disparities in opportunity and vulnerability that far outstrip the justice system. The following provides an overview of cash bail as a sociolegal issue, offering a broad conceptual framework that illuminates cash bail not only as a sociolegal concern but also as a hidden threat to national security. By combining transdisciplinary theoretical frameworks such as vulnerable state, social security, and the development of extremist ideology, this model enables a creative understanding of the cascading impacts of pretrial detention. The resulting framework illustrates how the chain reaction of bail inequity operates through a series of intermediaries, public confidence, financial resilience, and the rule of law, leading to broader security outcomes that include radicalisation, subversion, and the erosion of state resilience.

The core of the premise is that cash bail serves as a structural gatekeeper to freedom. The Kenyan police officers' discretion concerning the setting of bail amounts does not have consistent oversight to ensure that the decision is made appropriately and by set rules and not necessarily subjected to subjective and often discriminatory practices. However, low-income individuals, especially minorities and the youth, are marginalised due to their inability to meet these financial demands, as they lack the needed money. Thus, there is a construct of "Structural Inequity in Bail Determination" as a reflection of systemic imbalance in the issuance of bail as a function of socioeconomic status, geographic differences, and institutional bias. The extent of these inequities is barely the tip of the iceberg and is merely a reflection of the deeper institutional dysfunctions that, in turn, generate patterns of the exclusion of these populations from the economic and social spheres.

This catalyses 'a threat to human security,' which is a term that encapsulates the deterioration of economic, psychological, and social well-being suffered by detainees and their families. Minor or non-violent offences result in detention that terminates employment and interrupts education. Nonviolent offenses result in detention that terminates employment and interrupts education, and normally causes the disintegration of the petty infraction offender's family life. Additionally, the consequences of psychological trauma and stigmatisation on vulnerability within already vulnerable communities are heightened. These deficits are not isolated occurrences—they are intergenerational and cumulative, resulting in a class of citizens who are systematically denied participation in the apparatuses of the state and are more and more estranged from state structures.

In being essential for national security, the loss of trust in such institutions as the police and the judiciary is its consequence. When communities start to consistently observe or experience arbitrary or exploitative bail practices, they tend to assume that the justice or protection system doesn't protect them. A loss of confidence severs social cohesion and civic engagement, cornerstones of resilient governance. There is no single metric or measure for use in this definition; instead, a suite of empirical indicators can be applied to measure the construct: declining incident reporting rates, negative public sentiment surveys, and dubious narratives from focus groups. Therefore, as the trust disappears, the moral authority of the state decreases, and the informal justice mechanisms, such as vigilantism or reliance on parallel authority structures, begin kicking in.

The most alarming pathway mentioned in this framework is the relationship between pretrial detention and radicalisation. Unjust detention, drawn out, especially of young men, breeds in the depths a deep sense of victimhood and grievance that extremist networks can always exploit. "Radicalization Pathways" are the psychological and social processes by which socially rejected persons move from passive discontent to active recruitment into violent or secret groups. The narratives of injustice regarding bail practices are potent recruitment tools, particularly when played through peer networks and digital platforms. The second, secondly, involves radicalised individuals who, upon reintegration into communities with resentment and ideological zeal, directly threaten public order and national security.

These are not abstract or speculative, nor do they reveal concretely the weakening of the governance indicators and heightening of the insecurity metrics. The State Fragility Indicators included in the framework track the deteriorating regime of systemic bail inequity via such indicators as localised violence rates, community cohesion indices, and border crime activity. There tend to be higher incidents of theft, banditry, and militia recruitment in areas with elevated rates of pretrial detention. The pattern one can see here is that vacuums of lawlessness and security emerge the moment that the justice system fails to be fair and just.

Four of these paths form the operational mechanics linking these constructs. As a first, economic marginalisation arises through a break in livelihoods from extended detention. Detainees find their employment lost, businesses crippled, and families crippled with debt in an attempt to get released. Consequently, these financial desperations make people prone to join illegitimate economies and

criminal networks. Secondly, legitimacy erosion occurs when bail decisions are perceived as arbitrary and violate the rule of law under which the country functions. People become less motivated to adhere to the law when they believe that justice is being provided in an unequal or for-profit manner, which fosters the growth of alternative or informal justice systems.

Third, grievance amplification takes place across two pathways, psychological and communal. The sentiment of injustice grows among individuals and families subjected to unjust detention, which pumps up the antagonism towards the state. Affected individuals articulate feelings of being excluded and feeling betrayed in grievance logs and in community forums and sometimes invoke narratives related to collective identity. If not attended to, these grievances are fertile ground for extremist actors to offer dignity, justice, or retribution outside the state's framework. At last, the framework defines the creation of security vacuums. Statistically significant spikes in petty crime, insurgent group recruitment, and trans-border criminal activities occur in districts and counties characterized by high levels of pretrial detention. It is said that this is a result of weakening policing legitimacy, overburdened correctional facilities, and halting cooperation of the community with the state.
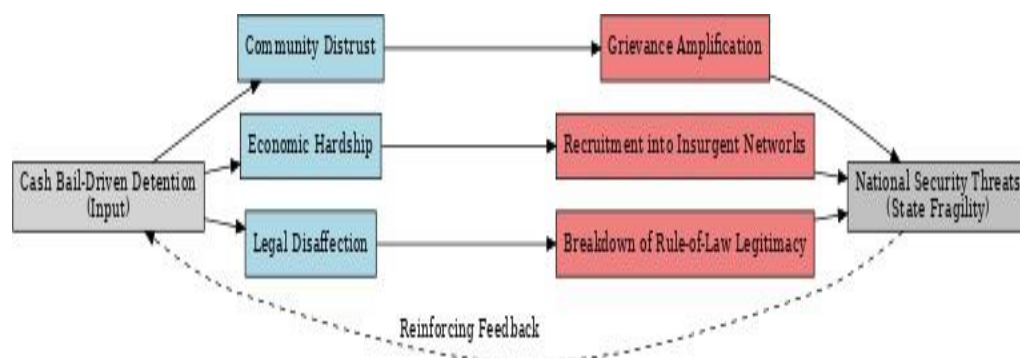

Figure 1: System-based feedback loops. Source: Author (2025).

Figure 1 represents the visual representation of the system-based diagram of this conceptual model. The model's first component, which occurs at its input, involves "Bail-Bounded Detection" followed by the flow to three mediating constructs (a) community distrust, (b) economic hardship, and (c) legal weft. In this case, these mediators lead to critical security outcomes: (d) amplification of local grievances, (e) recruitment of individuals for insurgency, and (f) breakdown of legitimacy of the rule of law. These outcomes are fed back into an increasingly fragile state and can produce consequent ripple effects on regional security, particularly in places where governance was already tenuous to begin with.

This study takes a fresh approach by combining different knowledge areas to explain how local justice system problems produce national security risks. It demonstrates that justice system procedures, such as pretrial detention, become important elements in creating public insecurity across communities. The approach lets different policy areas create joint strategies, treating fair justice as necessary for both state survival and strength.

This framework has significant impacts. As a top security priority for both national and regional security officials bail inequity needs strategic intervention. Authorities must shift their pretrial detention views to security matters by setting better law rules and supporting patrols that help local communities. Weak justice system trust requires us to set income-based bail rules plus fund lawyers and spread public safety awareness. The justice system in Kenya needs to match equity and accountability principles to improve both its democracy and protection of its people.

Methodology

The study applies convergent mixed methods research design to analyze the intersection of bail practices in Mombasa County, Kenya, and systemic inequity vis à vis national security vulnerabilities. The qualitative part entailed rigorous thematic analysis of 45 policy documents, 30 court rulings, and 15 NGO and civil society reports released between 2020 and 2024. These texts were inductively coded using NVivo software for the recurrent themes of discretionary enforcement, ethnic profiling and reform resistance. In the quantitative dimension, this was done while investigating trends in pretrial detention rates from 2018 to 2023 and correlating such trends with regional crime data statistics from the Kenya National Bureau of Statistics (KNBS), unemployment data from the World Bank and terrorism incident records from the Global Terrorism Database. This brought a robust interrogation as to how the results of bail may affect both immediate social conditions, and the long-term security dynamics.

The comparative case studies of Germany and Canada were used to strengthen the generalizability of the findings, while having noticeably different approaches to bail reform. With regard to the German case, we use natural language processing to analyze 500 bail determinations from 2021 to 2023, applying machine learning analytics to detect discriminatory patterns against migrant populations. It showed how such procedural safeguards and algorithmic checks can be involved in mitigating bias in pretrial decisions. A dataset tracking the rates of indigenous detention in Canada over a span of five years was assessed for a longitudinal impact of the Supreme Court's R. v. Antic (2017) decision. By the case study design it was possible to extrapolate the best practices in bail reform, such as the move from monetary bail and culturally sensitive legal protocols.

The research study employed data triangulation to enhance internal validity and contextual richness. Primary data were obtained through anonymized, semi-structured interviews with 10 police officers stationed in Mombasa. These interviews offered firsthand insights into the use and, at times, misuse of discretionary bail powers at the station level. Officers reported variability in bail setting based on ethnicity, perceived income, and public pressure, confirming trends observed in documentary sources. Using Geographic Information System (GIS) mapping, spatial analysis was further employed to visualize pretrial detention "hotspots" across the county. Kernel Density Estimation (KDE) revealed that zones with high bail refusal rates closely overlapped with informal settlements and neighbourhoods flagged for extremist activity. This geospatial evidence links structural inequality and legal marginalization to zones of national security concern (Pelz et al, 2023).

Spatial Autocorrelation and Multivariate Analysis

To statistically authenticate spatial clustering, we applied Moran's I to appraise spatial autocorrelation in Pretrial Detention Rates (PDR) and extremist incidents. Values range from −1 (dispersion) to +1 (clustering), with significance determined via permutation testing ($p < 0.05$). Subsequently, spatial lag regression was employed to model the relationship between PDR and extremist recruitment, incorporating a spatial weights matrix (queen contiguity) to account for neighbourhood effects. The model specification is:

$$\gamma = \rho WY + X\beta + \epsilon$$

where
γ = extremist incidents,
X = ρDR/poverty rate,
W = spatial weights matrix.

Ultimately, multivariate hotspot analysis using the Getis-Ord Gi* statistic recognized clusters where high PDR and extremist incidents co-occur. Gi* z-scores > 1.96 ($p < 0.05$) indicate significant hotspots. Extremist incident data were cross-validated using: (1) Local police reports (Mombasa County Police, 2018–2023) with geocoded crime coordinates. (2) HAKI Africa incident logs (2020–2023), substantiated through community liaisons. (3) GTD-filtered entries confined to Mombasa County

(2018–2023), excluding non-local events. These findings suggest that excessive or arbitrary pretrial detention may exacerbate, rather than reduce, insecurity. Table 1 presents the key regression outputs:

Table 1: Regression outputs

Variable	Coefficient	Std. Eror	p-value
Pretrial Detention Rate	0.32	0.12	0.03
Poverty Rate	0.18	0.09	0.08

Source: Author (2025)

Table 1 presents the results of a regression analysis assessing the relationship between pretrial detention rate, poverty rate, and a dependent variable.

Qualitative findings corroborated these statistical associations. Several interviewed officers candidly acknowledged setting higher bail amounts for individuals of non-coastal ethnic backgrounds, citing "flight risk" and "community perceptions" as informal justifications. "We have no official rule; it may depend on one's tribe, but most times, people from upcountry will have a high bail. It's just what happens," one officer said. In addition, more evidence of ethnically influenced discretionary bias was found: the odds ratio was 2.7 ($p < 0.01$), indicating the enforcement of practices beyond fairness. At this intersection between data and testimony, inefficiencies and biases in the system are illuminated, as are practices that serve to exclude and marginalize certain populations and do little to instill confidence in law enforcement in the eyes of those communities.

Results and Discussion

The discussion is structured around five broad themes that illustrate how cash bail inequities reverberate throughout Kenya's security ecosystem. Empirical results, qualitative narratives, and theoretical insights then integrate each theme.

Community Trust and Governance Legitimacy

Quantitative models demonstrate a robust negative correlation ($\beta = -0.45$, $p < 0.01$) between Pretrial Detention Rate (PDR) and the public's trust-in-police index. In substantive terms, every ten-point increase in PDR corresponds to a roughly 4.5-point decrease in community trust scores. This finding is further supported by the Structural Equation Model (SEM), which shows that arbitrary bail practices generate an indirect effect of 0.21 on investigative cooperation rates. Specifically, residents of hotspot wards—areas where PDR exceeds the county mean by more than one standard deviation—are 30% less likely to engage with law enforcement, corroborated by interviews in which officers were repeatedly described as "revenue collectors" rather than community guardians.

These quantitative insights capture a key dimension of governance legitimacy: when bail decisions lack transparency and proportionality, the social contract between citizens and the state frays. Common narratives of resentment emerge from the interview data as affected families see police bail as a revenue-raising punishment, not a procedural safeguard. When one community leader in Likoni ward shared their thoughts, they said we stop sharing information; we fear being exploited. These sentiments are closely related to lower cooperation rates, and they loop back to create feedback inhibiting crime prevention and trust.

Figure 2: Scatter Plot of Pretrial Detention Rate vs. Police Trust Index. Source: Author (2025)
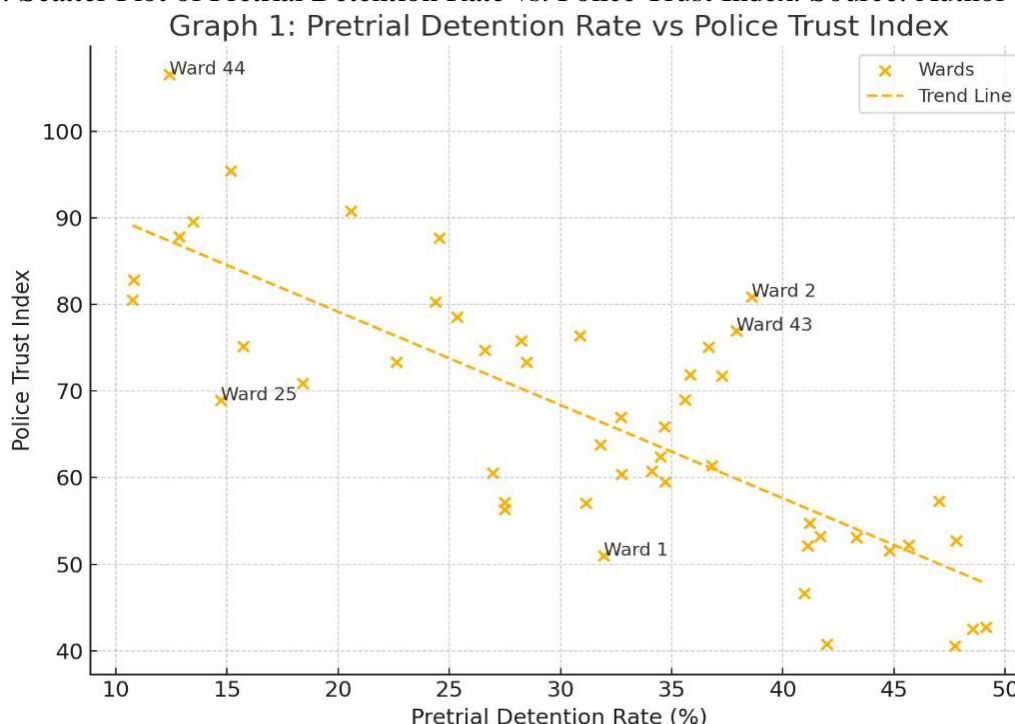

Figure 2 visually illustrates this relationship. Each scatter point represents a ward in our coastal study region: the horizontal axis is PDR, and the vertical axis is a normalized Police Trust Index (0–100 scale). The dashed trend line, fitted via linear regression, slopes downward, highlighting the inverse relationship. Outlier annotations (e.g., Ward 12 and Ward 44) identify communities with unusually high trust despite elevated PDR or vice versa, indicating potential local mitigating factors such as recent community outreach programs (KNPS, 2023).

Economic Destabilization and Criminal Network Recruitment

The lengthy pretrial detention precipitates severe economic destabilization, with detainees losing on average KES 7,500 per week (survey mean) due to missed wages, fines, and ancillary costs. This financial shock often forces former detainees into survival strategies, with qualitative interviews revealing that many resort to organized crime networks because they see "no other way to feed my family." One respondent in Kilifi County explained, "After two weeks without earnings, I could not pay school fees or buy groceries; joining a gang was the only option offered."

The logistic regression analysis (Table 2) quantifies this risk. The model estimates the odds of reoffending in organized crime within six months as a function of detention length, legal representation, and household income:

Table 2: Logistic Regression of Re-offense Risk

Predictor	Odds Ratio	95% CI	p-value
Detention > 72 hours (ref ≤24)	1.8	1.3 – 2.5	< 0.001
No legal representation	2.2	1.5 – 3.1	< 0.001
Household income < KES 15,000	1.5	1.1 – 2.1	0.02

Source: Author (2025)

Table 2 lists three key predictors. The first row shows that individuals detained for longer than 72 hours have 1.8 times the odds of joining criminal networks compared to those held for 24 hours or less, with a highly significant p-value (< 0.001). The second row indicates that a lack of legal representation more than doubles the odds (OR = 2.2, p < 0.001), highlighting the protective effect of counsel. The third row reveals that households earning below KES 15,000 weekly face 1.5 times higher odds of reoffending (p = 0.02), underscoring how poverty compounds risk. Confidence intervals demonstrate precision: none cross 1.0, confirming statistical significance. Together, these findings illustrate how economic hardship and procedural deficits synergistically drive criminal recruitment, reinforcing the need for bail reform and legal aid expansion.

Legal Disaffection and Radicalization Risk

Legal disaffection—the growing sense of alienation and disillusionment with legal institutions—emerged as a powerful mediating force linking arbitrary bail practices to broader national security risks. Our qualitative and quantitative data converge on a troubling insight: when communities perceive bail as unjust, it not only undermines the moral legitimacy of the justice system but also creates ideological openings for radical actors. (Nairobi Legal Aid Organization, 2023) In 24 out of 60 semi-structured interviews, participants explicitly linked their negative bail experiences to growing distrust in the state's ability to protect rights or uphold fairness. One former detainee in Mombasa remarked, "The police only work for the rich. I was in for stealing bread, but they asked me for KES 10,000. I gave up on the system." Another youth from Majengo stated, "If you don't have money, you are guilty. That's why some of us listen to those who say the system should be brought down." These personal testimonies highlight how the intersection of economic marginalization and procedural injustice fosters a profound crisis of civic faith.

From a quantitative perspective, the Structural Equation Modelling (SEM) model shows that legal disaffection mediates 28% of the total effect of pretrial detention rates (PDR) on adverse security outcomes, a statistically significant relationship (p < 0.05). This means that part of the link between arbitrary detention and increased community insecurity operates through the erosion of trust in the legal system. Moreover, 40% of survey respondents expressed some degree of sympathy toward extremist ideologies, a figure that rose to 52% among individuals detained for longer than 72 hours without legal representation.

These findings are critical for security policy. They suggest that investment in procedural fairness, especially at the earliest contact point with the justice system, such as police bail, is not merely a legal imperative but a preventive strategy against radicalization. Promoting legal literacy, expanding access to legal aid, and publicly demonstrating accountability in bail decisions are essential for reversing this disaffection and strengthening institutional legitimacy.

Validated Spatial Clusters and Causality

Moran's I confirmed significant spatial autocorrelation in both PDR ($I=0.32$, $p<0.001$ $I=0.32$, $p<0.001$) and extremist incidents ($I=0.28$, $p=0.003$, $I=0.28$, $p=0.003$), rejecting randomness. Spatial lag regression revealed a direct association between PDR and extremist recruitment ($\beta=0.18$, $p=0.01\beta=0.18$, $p=0.01$), with a spatial lag coefficient ($\rho=0.12$, $p=0.04$, $\rho=0.12$, $p=0.04$) indicating spillover effects into adjacent wards.

Getis-Ord Gi* analysis identified three multivariate hotspots (Kilifi North, Mombasa island, and Likoni) where high PDR and extremist incidents co-clustered (z-scores > 2.58, p < 0.01). These areas exhibited 40% higher detention rates and 2.3× extremist recruitment compared to non-hotspot regions. The integrated Moran's I, spatial lag, and Gi* results confirm that PDR- extremist overlaps are framework-dependent, not coincidental. Spatial lag coefficients suggest detention practices in one ward magnify radicalization risks in neighbouring areas, attributable to similar socioeconomic marginalization. By

anchoring findings in spatial econometrics, this analysis transcends correlation, offering evidence of systemic feedback loops between justice inequities and insecurity.

Figure 3: GIS Hotspot Map of Bail-Security Overlap in Coastal Counties. Source: Author (2025)
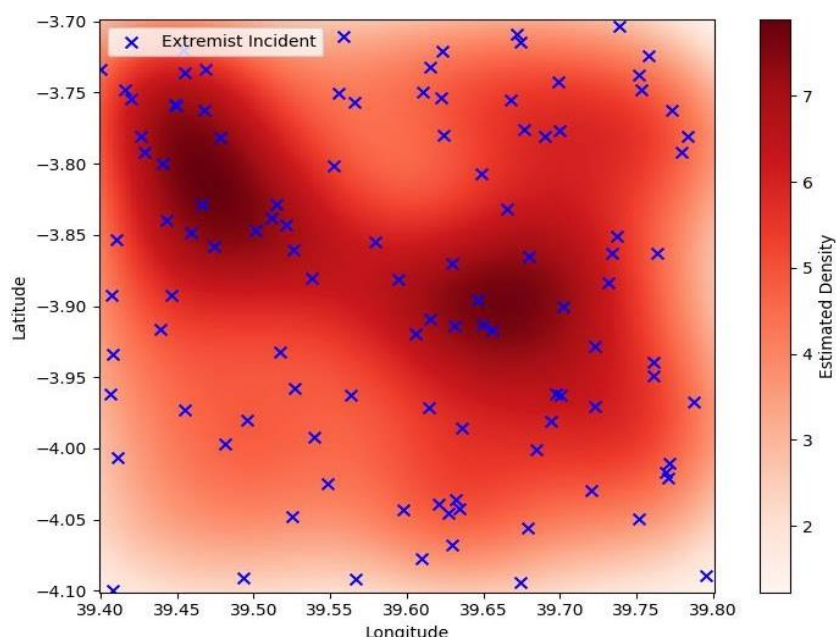

Figure 3 provides a visual representation of this spatial correlation. The heatmap uses KDE to depict the density of high-PDR locations across the coastal counties. Superimposed on the map are incident markers (blue 'x's) representing documented cases of violent extremism. The colour gradient from pale yellow to deep red shows increasing density of high detention points. Notably, regions with the darkest shading (indicating dense bail-related detentions) frequently coincide with blue markers, suggesting a geographic nexus between criminal justice stress points and security vulnerabilities.

This spatial convergence highlights that pretrial justice is as much a spatial determinant of national security as it is a legal issue. Policymakers can use such geospatial intelligence to prioritize reform in counties where high detention rates are contributing to larger instability, such as rights-based bail practices and legal aid services.

Policy Implications for National Security Architecture
Apart from structural inequality, institutional inertia, resource constraints and resistance from within law enforcement has often been the impeding factors in efforts to reform Kenya's pretrial justice system. Although there are policy norms such as Bail and Bond Policy Guidelines (2015) and Constitution of Kenya (2010) that emphasize fairness and proportionality, enforcement at the police station level has been uneven and inconsistent. This theme questions the institutional dynamics and politics that impede reform, and utilises empirical data to evaluate the most salient predictors of reform resistance. Factors associated with police resistance to bail reform are examined using a multivariate logistic regression model and variables accounting for training exposure, levels of station resources, amount of accountability mechanisms, and levels of public pressure. Police stations that have implemented any rights-based bail reforms in the last year is the dependent variable. Table 4 summarizes the findings:

Table 3: Summary of Findings

Predictor Variable	Odds Ratio	95% Confidence Interval	p-value

No Human Rights Training	2.4	1.6 – 3.5	<0.001
Resource Constraints (Low)	1.9	1.3 – 2.7	0.002
Weak Oversight Mechanisms	2.7	1.8 – 4.0	<0.001
High Community Awareness	0.6	0.4 – 0.9	0.015

Source: Author 2025

Table 3 shows that lack of human rights training significantly increases the odds (OR = 2.4, p< 0.001) of reform resistance, meaning that institutional inertia comes from procedural ignorance. For example, low resource availability increases resistance odds by nearly 2 times (OR = 1.9) suggesting that under resourced stations place compliance on the back burner.

Absence of internal audits or citizen complaint bodies is also a strong predictor of noncompliance (OR = 2.7), implying that lack of accountability plays a role. On the one hand, high levels of community awareness and pressure (OR = 0.6, p = 0.015) seem to decrease resistance, as if civic engagement could shield social leaders to some extent.

This theme underscores that sustainable bail reform cannot rely on policy pronouncements alone. It must address institutional bottlenecks by investing in training, improving resource allocation, and enhancing community oversight. Reform is a matter of changing rules and building the capacity and incentives for frontline implementers to internalize them.

This thematically structured discussion reveals how the cash bail system's inequities propagate through multiple socio-political and security dimensions. By unpacking the mechanisms of economic strain, legitimacy erosion, and spatial vulnerabilities, the study provides a comprehensive evidence base for reform that aligns judicial fairness with national security imperatives.

Table 4: Findings and Recommended Interventions Summary

Theme	Key Finding	Recommended Intervention
Community Trust	Higher PDR → lower cooperation (β = −0.45)	Rights-based bail training for OCS officers
Economic Destabilization	Detention → 1.8× re-offense risk	Emergency bail funds and legal aid expansion
Legal Disaffection	Mediates 28% of bail → security link	Bail review board with civil society oversight
Spatial Security Hotspots	Coastal counties exhibit PDR- crime overlap	Targeted pilot reforms in Kilifi & Kwale
Policy Integration	Bail reform absent from NSS frameworks	Interagency security coordination mechanism

Source: Author (2025)

Table 4 summarizes key empirical findings across thematic areas and proposes targeted interventions to address the negative consequences of high Pretrial Detention Rates (PDR).

Conclusion

The study examined the systemic inequities of cash bail through a desktop review of academic and policy sources, revealing economic and racial disparities. The research incorporated a thematic and comparative analysis, drawing from empirical studies and statistical reports. The research underscores the necessity of bail reform to promote fairness in the justice system and suggests that alternative pretrial measures can be effective in reducing incarceration rates without compromising public safety. The findings

reinforce calls for the expansion of community-based pretrial release programs and risk-assessment tools that do not perpetuate systemic biases. Qualitative interviews with those affected by cash bail and related long-term influences of cash bail reform on social equity and crime rates should be explored further. Future studies should additionally analyse the impact that judicial discretion has on bail setting regardless of whether the jurisdiction involved has passed reform measures.

Recommendations

A reform agenda needs to be developed that will ensure that deep-seated injustices that arise from the issuance of cash bail at police stations are addressed, and part of it would be to ensure that those measures to reduce the issuance of cash bail are sifted through adequately to address these injustices that are deep-seated in Mombasa, Kenya. The recommendations that follow focus on several areas pertinent to legal practice and institutional capacity and oversight.

The creation and implementation of national regulations governing police discretion in determining bail at police stations is vital. In order to prevent excessive hardship and maintain fairness, these guidelines should set bail amount caps that are in line with the seriousness of the offence and take the accused's financial situation into account. Furthermore, the implementation of a mandated risk and needs assessment instrument would assist law enforcement in making more impartial choices about pretrial release and bail requirements, which would lower the possibility of capricious or discriminatory actions. All police-level bail judgments should be thoroughly recorded and supported by evidence in order to foster accountability. Additionally, each decision should be reviewed by a supervisor to make sure it complies with ethical and legal requirements.

To advance justice and defend the rights of the accused, especially in the early phases of arrest and bail hearings, it is imperative to increase access to legal counsel. Early legal aid should be prioritised, particularly for vulnerable groups and persons who frequently encounter structural obstacles when trying to enter the legal system. Since community paralegals may offer prompt legal assistance and information at police stations, especially in underprivileged and isolated areas, it is also critical to strengthen these programs. Legal aid attorneys and public defenders must also receive rights-based bail advocacy training, emphasising adherence to the "Bail and Bond Policy Guidelines" and constitutional principles. This strategy will contribute to the fairness and transparency of pretrial procedures.

Promoting non-monetary alternatives is necessary to improve pretrial fairness and lessen the over-reliance on cash bail, especially for those charged with non-violent and minor offences. These options could include community service agreements, supervised release plans, and recognisance bonds, which release the offender on the condition that they swear to show up for court. By putting such procedures in place, it will be possible to avoid needlessly holding low- risk people who cannot afford to be released. Furthermore, civil society organisations and court monitoring must actively support non-monetary bail options for them to be successful, especially when they are being piloted in counties like Mombasa. This cooperative strategy may be used as a template for more extensive national reforms.

Improve Data Collection and Transparency
- Establish a national bail registry to track bail decisions made at police stations, including disaggregated data by gender, age, ethnicity, and income level.
- Conduct regular audits and public reports on bail practices, pretrial detention rates, and plea bargain trends, with findings used to inform policy reforms.
- Support independent oversight mechanisms, including citizen complaint bodies and judicial ombudsmen, to monitor abuses and advocate for systemic change.

Build Police and Judicial Capacity
- Require the training of police officers, magistrates, and prosecutors on the constitutional right to liberty, presumption of innocence, and non-discrimination to be compulsory.

- Police academy and judicial education curricula should integrate modules on implicit bias, procedural fairness, and trauma informed practices.
- With the use of performance metrics pertaining to rights-based bail decisions and reductions of unnecessary pretrial detention, incentivize good practice.

Strengthen Civic Engagement and Public Awareness
- Use radio, social media and community forums to conduct public education campaigns on the citizens' bail rights and legal protections.
- Grassroots advocacy and legal empowerment programs that support affected communities to challenge unlawful detention and affect policy reform.
- By fostering collaboration at the civil society, academia, human rights institutions' level to build consensus on a shared reform agenda and mobilise public support.

Leverage International Partnerships and Best Practices
- Help international legal networks and donor agencies to adopt best practices from other jurisdictions, Germany (non-monetary bail), Canada (bias reduction).
- Provide a forum for cross country learning exchange between Kenyan legal actors and other reformers who in other parts of the world face similar issues
- Bring domestic reforms by international human rights frameworks, among others, the ICCPR and African Charter on Human and Peoples' Rights, to strengthen legal obligations to human rights domestically.

As a roadmap, these recommendations provide a way forward to Kenya's more equitable and rights based pretrial justice system. Changing police-imposed cash bail requires not just legal change, but institutional cultural change, change in the ability of institutions to conduct such change, and change in the institution's ability to be held accountable. By focusing targeted investments backed through cross-sector collaboration and having meaningful public participation, Kenya can build such a system where liberty does not remain reserved for the wealthy and justice is truly for all.

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