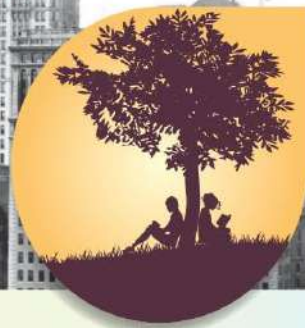


Journal of Conflict Management & Sustainable Development



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Editor's Note

Journal of Conflict Management and Sustainable Development

Welcome to Volume 10 Issue 4 of the Journal of Conflict Management and Sustainable Development.

The Journal is committed to providing a platform for established and upcoming scholars to engage in intellectual debate on key and pertinent themes in Conflict Management and Sustainable Development.

Sustainable Development has been defined as development that meets the needs of both the present and future generations. The Journal is thus vital in the ongoing debate around the globe towards attaining inter and intra generational equity.

However, sustainable development cannot be realised in an environment marred with conflicts. The Journal further offers insight on key conflict management techniques and concerns with the aim of creating a conducive environment both in Kenya and across the globe for the attainment of the ideal of sustainable development.

The Journal is peer reviewed and refereed in order to adhere to the highest quality of academic standards and credibility of information. To achieve this aim, the Journal draws from the experience and expertise of highly qualified and competent internal and external reviewers.

This volume contains papers covering relevant and emerging issues on the themes of Conflict Management, Sustainable Development and related fields of knowledge. These topics are: *Safeguarding Human Health through Health in All Policies Approach to Sustainability; The Case for the Independence of Kenya's Directorate of Criminal Investigations*

(DCI): Lessons from International Best Practices; Governance at The Bottom of The Pyramid: Regulating Profit & Corporate Purpose in The Kenyan Bottom-Up Economic Model; Developing an Effective National Counter - Terrorism Strategy for Kenya: Lessons from Comparative Best Practices; Fostering Efficient Management of Community Land Conflicts in Kenya for Sustainable Development; The Role of the Board and The Corporate Secretary in Incorporating Environmental, Social and Governance Issues in an Organisation; Entrenching the Role of Communities in Achieving Sustainable Development; A collaborative approach to climate technologies for climate change mitigation and sustainable development; Renewable Energy Transition: Powering a Sustainable Future with Solar, Wind, Hydro, and Geothermal Solutions; A Clarion call for Action: Realising True Sustainable Development; A Review of Kenya's National Strategy to Counter Violent Extremism: The Case for Reform; and Climate Justice and Equity: Navigating the Unequal Impacts of Climate Change towards Equitable Solutions.

Despite the immense success of the Journal since its launch, the Editorial Team is committed to steering it to even greater heights. We thus welcome feedback from our readers both in Kenya and across the globe to help us continue improving the Journal.

I wish to thank the contributing authors, editorial team, reviewers and all those who have made it possible to continue publishing such a high impact Journal.

The Journal can be accessed on <https://journalofcmsd.net>

We welcome the submission of papers, commentaries, case digests, legal opinions and book reviews on the themes of Conflict Management and Sustainable Development or other related fields of knowledge to be considered for publication in subsequent issues of the Journal. These submissions should be channeled to editor@journalofcmsd.net and copied to admin@kmco.co.ke.

The Journal adopts an open and non-biased approach in its publication. We thus encourage students, members outside the legal profession and other upcoming authors to submit papers to be considered for publication in subsequent issues of the Journal.

Hon. Dr. Kariuki Muigua, Ph.D., FCI Arb, (Ch. Arb), Accredited Mediator.
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June, 2023.

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Journal of Conflict Management and Sustainable Development

Volume 10 Issue 4

Content	Author	Page
Safeguarding Human Health through Health in all Policies Approach to Sustainability	Kariuki Muigua	1
The Case for the Independence of Kenya's Directorate of Criminal Investigations (DCI): Lessons from International Best Practices	Michael Sang	18
Governance at The Bottom of the Pyramid: Regulating Profit & Corporate Purpose in The Kenyan Bottom-Up Economic Model	Jacqueline Waihenya	58
Developing an Effective National Counter - Terrorism Strategy for Kenya: Lessons from Comparative Best Practices	Michael Sang	86
Fostering Efficient Management of Community Land Conflicts in Kenya for Sustainable Development	James Njuguna	122
Incorporating Environmental, Social and Governance in an Organisation	Linda Namiinda	139
Entrenching the Role of Communities in Achieving Sustainable Development	Kariuki Muigua	166
Embracing Climate Technologies in Climate Change Mitigation and Adaptation for Sustainable Development	Anne Wairimu Kiramba	189
Renewable Energy Transition: Powering a Sustainable Future with Solar, Wind, Hydro, and Geothermal Solutions	Dynesius Nyangau	201
A Clarion call for Action: Realising True Sustainable Development	Kariuki Muigua	241
A Review of Kenya's National Strategy to Counter Violent Extremism: The Case for Reform	Michael Sang	269
Climate Justice and Equity: Navigating the Unequal Impacts of Climate Change towards Equitable Solutions	Dynesius Nyangau	297

Safeguarding Human Health through Health in all Policies Approach to Sustainability

*By: Hon. Dr. Kariuki Muigua**

Abstract

As part of safeguarding both human and environmental health, the international environmental law framework requires States to collaborate in a spirit of global partnership to conserve, maintain, and restore the health and integrity of the earth's environment. States are also obligated to work together effectively to deter or prohibit the relocation and transfer of any activities or chemicals that seriously degrade the environment or are determined to be detrimental to human health. This paper makes a case for human health considerations while making policies in all sectors of the economy through adoption of the Health in All Policies approach to sustainability. The author argues that this approach will go a long way in incorporating human health considerations in decision-making processes across all sectors as a step towards achieving sustainability. Notably, this is part of the human rights considerations in approaches towards achieving sustainability.

1. Introduction

An approach to public policy known as Health in All Policies (HiAP) tries to promote population health and health equity by systematically considering the health consequences of policies, pursuing synergies, and avoiding negative health impacts. In the context of urban policies to support public health interventions targeted at reaching SDG objectives, HiAP is essential for local decision-making processes. HiAPs largely rely on the utilisation of scientific data and assessment instruments like health impact assessments (HIAs). In order to inform the incorporation of health recommendations in urban policy, HIAs may incorporate city-level

quantitative burden of illness evaluations, health economic analyses, and citizen and other stakeholders' engagement.¹

HiAP acknowledges that a variety of factors outside of healthcare and frequently outside the purview of conventional public health activities contribute to health, and the strategy may also be successful in finding evidence gaps and promoting health equity.²

This paper makes a case for human health considerations while making policies in all sectors of economy through adoption of the Health in All Policies approach to sustainability. The author argues that this approach will go a long way in incorporating human health considerations in decision-making processes across all sectors as a step towards achieving sustainability. Notably, this is part of the human rights considerations in approaches towards achieving sustainability.

2. Elements of Health in All Policies (HiAP) Approach

The World Health Organization notes that the Health in All Policies (HiAP) initiative acknowledges that population health is significantly

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¹ Ramirez-Rubio, O., Daher, C., Fanjul, G., Gascon, M., Mueller, N., Pajín, L., Plasencia, A., Rojas-Rueda, D., Thondoo, M. and Nieuwenhuijsen, M.J., 'Urban Health: An Example of a "Health in All Policies" Approach in the Context of SDGs Implementation' (2019) 15 Globalization and Health 87.

² 'Health in All Policies | AD for Policy and Strategy | CDC' (18 June 2019) <<https://www.cdc.gov/policy/hiap/index.html>> accessed 16 April 2023.

influenced by policies that direct behaviours outside of the health sector, rather than only being a byproduct of health sector programmes. Health and health inequality might possibly be impacted by policy in every area of government. Using a HiAP strategy tries to address policies that have an impact on things like transportation, housing and urban planning, the environment, education, agriculture, finance, taxes, and economic development in order to make them more supportive of overall health and health equality.³

The Pan American Health Organization (PAHO) notes that many of the social, environmental, and economic factors that influence health have causes other than the medical industry and government health policy. The influence on health must thus be taken into account across all industries and levels of administration. In addition, PAHO notes that the HiAP strategy emphasizes participation, sustainability, accountability, transparency, access to information, and cross-sectoral cooperation.⁴

As a WHO member, Kenya has pledged to embrace HiAP, which is outlined in the country's health policy for the years 2014 to 2030.⁵ The budgeting procedure and planning for the Sustainable Development

³ 'Promoting Health in All Policies and Intersectoral Action Capacities' <<https://www.who.int/activities/promoting-health-in-all-policies-and-intersectoral-action-capacities>> accessed 16 April 2023.

⁴ User S and <https://www.facebook.com/pahowho>, 'PAHO/WHO | About Health in All Policies' (*Pan American Health Organization / World Health Organization*, 6 March 2014) <https://www3.paho.org/hq/index.php?option=com_content&view=article&id=9360:2014-about-health-all-policies&Itemid=0&lang=en#gsc.tab=0> accessed 16 April 2023.

⁵ Mauti, J., Gautier, L., De Neve, J.W., Beiersmann, C., Tosun, J. and Jahn, A., 'Kenya's Health in All Policies Strategy: A Policy Analysis Using Kingdon's Multiple Streams' (2019) 17 *Health Research Policy and Systems* 15.

Goals(SDGs) have reportedly been identified as possible windows of opportunity for the mainstreaming of the HiAP approach in all sectors with health promotion as a clear goal.⁶

As a method for tackling the many elements that affect health and equality, often known as the social determinants of health, which include educational attainment, housing, transport alternatives, and neighbourhood safety, APHA recommends a "health in all policies" approach.⁷

Every government agency has a responsibility to play in creating a vibrant, just community. The concept underlying Health in All Policies is this: HiAP is fundamentally about bringing together government departments to establish shared objectives, make the most of available resources, coordinate efforts, and engage in large-scale, multifaceted solutions. Public organisations can employ this strategy in collaboration with the communities they serve to address their biggest social and environmental problems.⁸ In order to reduce health disparities and achieve health equity, HiAP is an essential technique. Decision-makers may best serve their communities by applying a HiAP strategy across sectors and policy areas since no one government agency has complete control over the laws and policies that have an impact on the basic causes of inequality.⁹

⁶ Ibid.

⁷ 'Health in All Policies' <<https://www.apha.org/topics-and-issues/health-in-all-policies>> accessed 16 April 2023.

⁸ 'Health in All Policies | ChangeLab Solutions' <<https://www.changelabsolutions.org/health-all-policies>> accessed 16 April 2023.

⁹ Ibid.

Designing a conceptual framework with the SDGs, urban and transportation planning, environmental exposures, behaviour, and health outcomes in mind is possible. The HiAP approach's potential to transfer knowledge into SDG implementation depends on a number of key factors, including data accessibility, consideration of equity concerns, strengthening communication between experts, decision-makers, and people, and participation of all significant stakeholders.¹⁰

3. Human Rights Based Approach to Sustainable Development

Since 1945, when the United Nations Charter was adopted, human rights have been a keystone of the organization's activities.¹¹ The Universal Declaration of Human Rights, issued by the UN General Assembly in 1948, states that the equal and inalienable rights of every human being serve as the cornerstone for freedom, justice, and peace in the world.¹²

Since the United Nations Environmental Agency suggested a new rights-based agenda for sustainable development in the report "Transforming Our World: The 2030 Agenda for Sustainable

¹⁰ Ramirez-Rubio, O., Daher, C., Fanjul, G., Gascon, M., Mueller, N., Pajín, L., Plasencia, A., Rojas-Rueda, D., Thondoo, M. and Nieuwenhuijsen, M.J., 'Urban Health: An Example of a "Health in All Policies" Approach in the Context of SDGs Implementation' (2019) 15 Globalization and Health 87.

¹¹ 'UNSDG | Human Rights-Based Approach' <<https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>> accessed 19 April 2023.

¹² 'The Human Rights-Based Approach' (United Nations Population Fund) <<https://www.unfpa.org/human-rights-based-approach>> accessed 19 April 2023.

Development," (UN, 2015), a rights-based approach to environmental concerns has gained support.¹³

A conceptual framework for the process of human development, the Human Rights-Based Approach (HRBA) is operationally focused on advancing and defending human rights while normatively basing itself on international human rights norms. It aims to address unfair power dynamics and discriminatory behaviours that inhibit development and frequently leave some groups of people behind. These issues are at the core of development discourse, and it strives to analyse and address them.¹⁴ The human rights-based strategy puts the spotlight on those who are the most disadvantaged, excluded, or subjected to discrimination. In order to make sure that interventions reach the most vulnerable sections of the community, it is frequently necessary to analyse gender norms, various types of discrimination, and power disparities.¹⁵

According to the HRBA, all civil, cultural, economic, political, and social rights as well as the right to development are based in a system of rights and associated duties created by international law. The HRBA mandates that the United Nations development cooperation adhere to the human rights principles of universality, indivisibility, equality, and non-discrimination, participation, and accountability, and place special emphasis on building the capacities of both "duty-bearers" to fulfil their duties and "rights-holders" to assert their

¹³ Choondassery Y, 'Rights-Based Approach: The Hub of Sustainable Development' (2017) 8 Discourse and Communication for Sustainable Education 17.

¹⁴ 'UNSDG | Human Rights-Based Approach' <<https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>> accessed 19 April 2023.

¹⁵ 'The Human Rights-Based Approach' (United Nations Population Fund) <<https://www.unfpa.org/human-rights-based-approach>> accessed 19 April 2023.

rights.¹⁶ A rights-based strategy helps duty-bearers become more capable of carrying out their responsibilities and motivates right holders to exercise their rights. Governments are required to respect, safeguard, and uphold all rights on three different levels: Respecting a right entails not interfering with how that right is used. To defend a right is to stop other parties from obstructing it from being exercised. In order to ensure that individuals may exercise their rights, laws, regulations, institutions, and procedures must be put in place. This includes allocating resources.¹⁷

The Human Rights system and the SDGs complement each other in that the former ensures the binding stamp and, most importantly, monitoring and accountability mechanisms, while the latter also integrates "people, planet, prosperity, peace, and partnership" for the achievement of sustainable development.¹⁸ Several of the SDGs' aims are changed from a goal or aspiration into immediate rights when examined through the prisms of current human rights legislation. In this regard, the implementation of the SDGs can be much more successful if it is influenced by a human rights-approach and takes into account the findings and suggestions of international and regional treaty-based bodies as well as National Human Rights Institutions (NHRIs).¹⁹

¹⁶ 'UNSDG | Human Rights-Based Approach' <<https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>> accessed 19 April 2023.

¹⁷ 'The Human Rights-Based Approach' (*United Nations Population Fund*) <<https://www.unfpa.org/human-rights-based-approach>> accessed 19 April 2023.

¹⁸ 'Intersessional Meeting on Human Rights and the 2030 Agenda (16 January 2019)' (OHCHR) < <https://www.ohchr.org/en/hr-bodies/hrc/intersessional-meeting2030-agenda> > accessed 19 April 2023.

¹⁹ Ibid.

In fact, local, regional, and international human rights organisations can be used to ensure that national policies and programmes for the implementation, monitoring, and reporting of the SDGs are based on a human rights-based approach. The various human rights mechanisms can provide useful and occasionally disaggregated data to feed decision-making and reporting processes, and the institutions overseeing human rights processes can be a useful bridge between governments and various vulnerable groups.²⁰

A human rights-based approach (HRBA) to development seeks to achieve outcomes that are relevant to human rights standards, such as the right to adequate housing, through the adoption of procedures that uphold the human rights principles of equality and non-discrimination, inclusion and participation, accountability, and the rule of law.²¹ Indigenous peoples and local communities' ways of life and territorial boundaries are important components of the solution to our global crises, and they must be recognised and supported throughout the framework, including through the recognition of rights over lands, territories, and resources, in area-based policies, in customary sustainable use, in traditional knowledge, and in fully and effectively participating in decision-making processes.²²

It has been argued that although the concepts of a rights-based approach to development are consistent with the 2030 Agenda in

²⁰ Ibid.

²¹ 'A Rights-Based Approach to Urban Development - Urban Jonsson, the Owls | UN-Habitat' <<https://unhabitat.org/a-rights-based-approach-to-urban-development-urban-jonsson-the-owls>> accessed 19 April 2023.

²² 'Implementing a Human Rights-Based Approach to Biodiversity Conservation - Paper 3 | FPP' <<https://www.forestpeoples.org/en/report/2022/implementing-human-rights-BA>> accessed 19 April 2023.

some areas, more work has to be done in the implementation, monitoring, and assessment of the SDGs to guarantee that the full range of benefits offered by a rights-based approach may be realized.²³

According to the Swedish International Development Cooperation Agency, the following are key questions to ask when applying the HRBA:²⁴

- a) **Participation:** Do all relevant stakeholders engage actively, in a way which allows rights holders to contribute meaningfully and influence outcomes?
- b) **Link to human rights obligations:** How are relevant human rights standards and recommendations from international and regional human rights mechanisms identified and used in formulating objectives and to advance processes and outcomes?
- c) **Accountability:** Who are the duty bearers at different levels, and do they have sufficient capacity and interest to be accountable to rights holders? Are there mechanisms for participation and complaints in place for rights holders, civil society and other stakeholders to hold the duty bearers to account?
- d) **Non-discrimination and equality:** Are rights holders and the root causes of the non-realisation of their human rights identified and taken into account, particularly those most subject to discrimination and marginalisation?

²³ de Man A, 'The Sustainable Development Goals and the Rights-Based Approach to Development: Compatible or Missing the Point?' (2019) 19 African Human Rights Law Journal 445.

²⁴ Human Rights Based Approach | Sida. <https://www.sida.se/en/for-partners/methods-materials/human-rights-based-approach> (accessed 2023-05-22).

- e) Empowerment and capacity development: How does the intervention contribute to the empowerment of rights holders to claim their rights, as well as capacity development of duty bearers to uphold their responsibilities, and of other relevant stakeholders to contribute to positive outcomes?
- f) Transparency: What measures are put in place to ensure that all stakeholders are able to access relevant information and knowledge regarding the intervention?²⁵

4. Biodiversity and health

The relationship between biodiversity and health is one that has been recognised internationally.²⁶ One Health is an integrated, unifying strategy with the goal of optimising the wellbeing of humans, animals, and ecosystems in a sustainable manner. It acknowledges the interconnectedness and interdependence of human health, that of domestic and wild animals, plants, and the larger environment (including ecosystems).²⁷

COP 15 encouraged Parties and their subnational and local governments, and invited other Governments, in accordance with national circumstances and priorities, where appropriate, and relevant stakeholders: (a) to take steps towards a long-term and inclusive recovery from the COVID-19 pandemic that support biodiversity preservation and sustainable usage, hence reducing the danger of zoonotic illnesses in the future, while also taking the One

²⁵ Human Rights Based Approach | Sida. <https://www.sida.se/en/for-partners/methods-materials/human-rights-based-approach> (accessed 2023-05-22).

²⁶ Unit, B. Biodiversity and Health. <https://www.cbd.int/health/> (accessed 2023-05-22).

²⁷ 'One Health' <<https://www.who.int/health-topics/one-health>> accessed 17 February 2023.

Health concept into consideration, among other holistic methods;²⁸ (b) to assist the implementation of the Kunming-Montreal Global Biodiversity Framework by further integrating the One Health approach—among other holistic approaches—into their national biodiversity policies and action plans, as well as national health programmes, if necessary;²⁹ (c) to further support capacity-building and development for mainstreaming biodiversity and health linkages into the implementation of the Kunming-Montreal Global Biodiversity Framework;³⁰ and (d) to strengthen compliance with international and national provisions on access and benefit-sharing, in order to enhance the fair and equitable sharing of benefits arising from the utilization of genetic resources, as well as the fair and equitable sharing of benefits arising from the use of digital sequence information on genetic resources, in the relevant health sectors.³¹

COP 15 also invited the Quadripartite for One Health, the One Health High-Level Expert Panel, and other relevant expert groups and initiatives:³² (a) to consider in their work the connections between health and biodiversity, the need for the One Health approach, among other holistic approaches, in accordance with decisions XIII/6 and 14/4, as well as equity and solidarity, and social determinants of health and socioeconomic inequalities between developing and developed countries;³³ (b) to contribute with guidance, interdisciplinary education and training, to the implementation of health-related elements and the application of the One Health

²⁸ 15/29. Biodiversity and health, CBD/COP/DEC/15/29, 19 December 2022, para. 1(a).

²⁹ Ibid, para. 1(b).

³⁰ Ibid, para. 1(c).

³¹ Ibid 1(d).

³² 15/29. Biodiversity and health, CBD/COP/DEC/15/29, 19 December 2022, para. 2.

³³ Ibid, 2(a).

approach, among other holistic approaches, in the Kunming-Montreal Global Biodiversity Framework;³⁴ (c) To contribute to the development of, and reporting on, health-related indicators of the monitoring framework for the Kunming-Montreal Global Biodiversity Framework;³⁵ and (d) to collaborate with the Executive Secretary in providing Parties with capacity-building, technology transfer, and resource mobilization opportunities for mainstreaming biodiversity and health linkages.³⁶

The COP 15 further invited the Global Environment Facility, in accordance with its mandate, as appropriate, to consider providing technical and financial support for mainstreaming biodiversity and health linkages.³⁷ It also invited Parties, other Governments, and all relevant donors and funding organizations in a position to do so, to consider providing technical support and mobilizing resources for mainstreaming biodiversity and health linkages.³⁸

COP 15 further requested the Executive Secretary, subject to the availability of resources, in consultation with the Bureau of the Subsidiary Body on Scientific, Technical and Technological Advice, and in collaboration with the World Health Organization and the Quadripartite for One Health, to complete the work pursuant to decision 14/4, paragraph 13 (b) and (c) on targeted messages and a draft global action plan, drawing on the deliberations of the resumed session of the twenty-fourth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice, as follows: (a) to produce an updated version of the draft global action plan and

³⁴ Ibid (2(b)).

³⁵ Ibid 2(c).

³⁶ Ibid, 2(d).

³⁷ Ibid, para. 3.

³⁸ Ibid, para. 4.

targeted messages based on the inputs received from Parties, other Governments, indigenous peoples and local communities, women, youth, and other relevant stakeholders, recognizing the issues of equity, including through the fair and equitable sharing of benefits arising from the utilization of genetic resources as well as the fair and equitable sharing of benefits arising from the use of digital sequence information on genetic resources and traditional knowledge associated with genetic resources; (b) to invite Parties, other Governments, indigenous peoples and local communities, women, youth, and other relevant stakeholders to review the updated version of the draft global action plan; (c) to make the outcomes of this work available for consideration by the Subsidiary Body on Scientific, Technical and Technological Advice at a future meeting, with a view to making recommendations to the Conference of the Parties at its sixteenth meeting.³⁹

5. Conclusion

Article 42 (a) of the 2010 Constitution of Kenya guarantees that: “every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures.” There are various sectors of the economy that have adverse effects on human health and thus pose a risk to the realisation of Article 42 of the Constitution of Kenya on the right to Clean and Healthy Environment for all. As a result, it is important that all stakeholders join hands in addressing the menace for the sake of all, and promoting public health. It is not the time to point fingers and watch as the general populace suffers; both levels of government should intentionally act towards achieving better human health as a step towards sustainability.

³⁹ Ibid, para. 5.

Safeguarding human health through Health in all Policies Approach to sustainability is a viable ideal worth pursuing.

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The Case for the Independence of Kenya's Directorate of Criminal Investigations (DCI): Lessons from International Best Practices

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Abstract

This study examines the lessons that Kenya can learn from the United States and the United Kingdom in establishing an institutionally independent Directorate of Criminal Investigations (DCI) and regulating its investigation powers. The paper highlights best practices in institutional design for independence, budgetary autonomy, recruitment and training, including oversight and regulation of investigation powers. Drawing from the US experience, the paper discusses the importance of direct budgetary appropriations, stringent admission criteria's for DCI officers, and the obligation to cooperate with and report investigatory findings to the ODPP similar to US District Attorneys. From the UK experience, the study focuses on the robust statutory basis for intelligence services and the investigatory powers legislation, as well as the oversight role of the Investigatory Powers Commissioner's Office (IPCO). Additionally, the paper highlights special and enhanced investigation powers, including the statutory recognition of broader investigation powers under The Terrorism Prevention and Investigation Measures (TPIMs) Act 2011. By examining these best practices, the paper provides insights into how Kenya can enhance the institutional independence and effectiveness of its DCI while ensuring respect for human rights and the rule of law.

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Key Words: *Institutional independence, Investigation powers, Oversight, Directorate of Criminal Investigations, Best practices, Kenya, US, UK*

1. Introduction

The effectiveness of any criminal justice system is largely dependent on the ability of law enforcement agencies to carry out their mandate independently, efficiently and effectively¹. In Kenya, the Directorate of Criminal Investigations (DCI) is tasked with conducting criminal investigations, but its institutional independence has been questioned due to its attachment to the National Police Service (NPS). This has led to concerns about potential interference from the executive branch and other powerful interest groups.²

To address these concerns, there have been calls for the establishment of an institutionally independent DCI, modeled after similar agencies in countries such as the United States of America and the United Kingdom.³ This paper explores the lessons that can be drawn from these countries, and how they can be applied to Kenya. Specifically, the paper focuses on the institutional design for independence, including budgetary autonomy, recruitment and training standards, including oversight and regulation of investigation powers. In examining these issues, the paper highlights best practices from the United States of America, including the autonomy of the Federal Bureau of Investigation (FBI) and its cooperation with US District Attorneys, as well as the stringent criteria for admission and training at the FBI Academy in Quantico. The paper also looks at best practices from the United Kingdom, including the robust statutory basis for

¹ Chege, M., (2018). The Kenyan DCI: A Case Study on Investigation-Driven Policing in Africa. *African Security*, 11(2), pp. 1-17.

² Ibid

³ Ibid

intelligence agencies, the oversight role of the Investigatory Powers Commissioner's Office (IPCO), and the recognition of broader investigation powers under the Terrorism Prevention and Investigation Measures (TPIMs) Act 2011.

By examining these best practices, the paper aims to provide insights into how Kenya can establish an institutionally independent DCI, which is critical for enhancing the integrity and effectiveness of the country's Criminal Justice System.

2. Constitutional, Legislative And Institutional Framework for the Investigation Function in Kenya

2.1 Constitutional Framework

2.1.1 Functions of the DCI

The Constitution of Kenya (CoK) 2010 stipulates that Parliament may enact legislation establishing other police services under the supervision of the National Police Service and under the command of the Inspector General of the Service.⁴ The National Police Service Act has expounded on the establishment and role of the DCI.⁵

2.1.2 Role of the Inspector General (IG) of the National Police Service

The CoK 2010 stipulates that 'The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector General with respect to – (a) the investigation of any particular offence or offences;

⁴ Article 247 of the Constitution of Kenya (CoK) 2010

⁵ This shall be addressed later in the study.

(b) the enforcement of the law against any particular person or persons; or (c) the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.⁶

The provision is aimed at protecting the independence of the Inspector General of the National Police Service, who is the head of the police service in Kenya, from external interference in matters related to specific investigations, law enforcement actions, and personnel matters. This protection of the Inspector General's independence is critical for ensuring that law enforcement agencies operate without fear, favor, or prejudice, and for promoting transparency and accountability in the criminal justice system.

The provision also implies that the Directorate of Criminal Investigations (DCI) cannot give directions to the Inspector General on matters related to specific investigations, essentially because the DCI is under the IG, who commands the National Police Service⁷. This provision is necessary to ensure that the DCI operates independently from the Inspector General and other external actors, such as politicians or influential individuals. By doing so, the DCI can carry out its mandate effectively, objectively, and impartially, in line with international best practices.

2.1.3 Role of the Director of Public Prosecutions (DPP)

The CoK 2010 stipulates that 'The Director of Public Prosecutions shall have power to direct the Inspector General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such

⁶ Article 245 (4) of CoK 2010.

⁷ Section 8(1) of the National Police Service (NPS) Act 2014

direction.⁸ This provision does not compromise the independence of the National Police Service or the IG or the Directorate of Criminal Investigations (DCI). The provision only grants the DPP the power to direct the Inspector General to investigate information or allegations of criminal conduct. It does not give the DPP the power to interfere with the conduct of specific investigations or to dictate the outcome of investigations. However, the study posits that this provision appears to conflict with Article 245 (4) of CoK 2010 that stipulates that no person may give a direction to the Inspector General with respect to the investigation of any particular offence or offences. The study avers that such conflict presents a potential lacuna in law that may cause misinterpretation as to the roles of the DPP and IG.

2.2 Legislative Framework

2.2.1 National Police Service Act, 2012

It establishes the DCI which shall be under the direction, command and control of the Inspector-General.⁹ The Act also highlights the functions of The Directorate which include; (a) collect and provide criminal intelligence; (b) undertake investigations on serious crimes including homicide, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, and cybercrime among others; (c) maintain law and order; (d) detect and prevent crime; (e) apprehend offenders; (f) maintain criminal records; (g) conduct forensic analysis; (h) execute the directions given to the Inspector-General by the Director of Public Prosecutions pursuant to Article 157 (4) of the Constitution; (i) co-ordinate country Interpol Affairs; (j) investigate any matter that may be referred to it by the

⁸ Article 157 (4) CoK 2010

⁹ Section 28 of the NPS Act.

Independent Police Oversight Authority; and (k) perform any other function conferred on it by any other written law.¹⁰

Under the Act, The NPS shall be under the overall and independent command of the Inspector-General appointed in accordance with Article 245 of the Constitution and the provisions of the NPS Act.¹¹

2.2.2 National Intelligence Service (NIS) Act, 2012

It establishes the NIS which shall have the power to investigate, gather, collate, correlate, evaluate, interpret, disseminate and store information which is relevant in the performance of its functions whether within or outside Kenya.¹² The CoK 2010 also establishes the NIS which is responsible for security intelligence and counter intelligence to enhance national security in accordance with the Constitution.¹³

2.2.3 Office of The Director of Public Prosecutions Act (ODPP), 2013

Pursuant to Article 157 of the Constitution the Director of Public Prosecutions shall have power to direct the Inspector-General to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction.¹⁴ The implications of this provision have been analyzed above. The Director shall also exercise State powers of prosecution and may direct that investigations be conducted by an investigative agency named in the direction.¹⁵ In addition, The Director may assign an officer

¹⁰ Section 35 of the NPS Act

¹¹ Section 8 of the NPS Act

¹² Section 6 (2) (a) of the National Intelligence Service (NIS) Act 2012

¹³ Article 242 of the Constitution of Kenya 2010

¹⁴ Section 5 (1) (a) of the Office of the Director of Public Prosecutions (ODPP) Act, 2013

¹⁵ Section 5 (2) (b) of the ODPP Act, 2013.

subordinate to him to assist or guide in the investigation of a crime and every investigative Agency shall give effect to that direction.¹⁶ The Director is also required to cooperate with the National Police Service, investigative agencies, the courts, the legal profession and other Government agencies or institutions so as to ensure the fairness and effectiveness of public prosecutions.¹⁷

Furthermore, The Inspector-General or any other investigative agency shall disclose to the Director all material facts and information collected in the course of an investigation that may be reasonably expected to assist the case of the prosecution or defence. The IG or any other investigative agency is mandated to; (a) conduct thorough investigations; (b) compile all evidence; and (c) submit all relevant information in relation to any investigation undertaken.¹⁸ The Director may by regulation upon consultation with the Inspector-General and other investigative agencies, issue guidelines on cooperation and collaboration in the investigation of crimes.¹⁹

These provisions underscore the significance of maximum co-operation and collaboration between the ODPP and the investigative agencies including the DCI and IG. If one institution fails to co-operate, it impairs the functions and operations of the other institutions.

2.3 Institutional Framework

This section addresses some of the institutions put in place for the investigation function in Kenya. They include The Ministry of Interior

¹⁶ Section 5 (3) of the ODPP Act, 2013

¹⁷ Section 5 (4) (c) of the ODPP Act, 2013

¹⁸ Section 26 of the ODPP Act, 2013

¹⁹ Section 50 (3) of the ODPP Act, 2013

and National Administration, Inspector General of Police and the Directorate of Criminal Investigations. The IG and DCI have already been discussed above.

The Ministry of Interior and National Administration in Kenya is responsible for overseeing the internal security of the country, including law enforcement agencies such as the National Police Service and the Directorate of Criminal Investigations²⁰. The Ministry plays a critical role in the institutional framework that governs the investigation function in Kenya. One of the key functions of the Ministry of Interior is to ensure that law enforcement agencies operate effectively and efficiently to maintain law and order.²¹ The Ministry is responsible for developing policies and strategies that guide the operations of the National Police Service and the DCI, and it oversees their implementation. It also provides budgetary and logistical support to these agencies to enable them to carry out their mandate effectively.²²

Additionally, the Ministry of Interior is responsible for coordinating and collaborating with other government agencies involved in the investigation function, such as the Director of Public Prosecutions and the National Intelligence Service. This coordination is critical for ensuring that investigations are carried out efficiently, that intelligence is shared among agencies, and that there is no duplication of efforts²³.

²⁰ The Ministry of Interior and National Administration website available at <https://www.president.go.ke/ministries-ke/ministry-of-interior-national-administration/> accessed 4 May 2023

²¹ Ibid

²² Ibid

²³ Ibid

3. Problematic Implications of the Current Institutional Location of The DCI Under The National Police Service

3.1 Risk of Interference

The institutional location of the DCI under the National Police Service creates a risk of interference in the investigation function. As a police department under the Inspector General of the National Police Service, the DCI is susceptible to political influence and pressure from within the police hierarchy. This may compromise the independence of the DCI in carrying out investigations and may lead to biased or incomplete investigations.²⁴ This risk of interference is compounded by the fact that the Inspector General is appointed by the President, and the President may have a vested interest in controlling the investigation function for political gain. This may lead to selective or politically motivated investigations, which can undermine public trust in the Criminal Justice System.²⁵ This position is not farfetched and calls for innovative and progressive ways of separating the 'Policing Function' of the National Police Service under the IG and the 'Investigation Function' of the DCI.

Therefore, the institutional location of the DCI under the National Police Service raises concerns about the independence and effectiveness of the investigation function. To address these concerns, there is a need to explore alternative institutional arrangements that can enhance the independence and effectiveness of the DCI in carrying out its investigation function²⁶ on the one hand, and

²⁴ Chege, M., (2018). The Kenyan DCI: A Case Study on Investigation-Driven Policing in Africa. *African Security*, 11(2), pp. 1-17.

²⁵ Ibid

²⁶ Ibid

distinguish it completely, from the policing and other general functions of the National Police Service.

3.2 Budgetary Shortfalls Due to Reliance on National Police Service Budget Allocation

The institutional location of the DCI under the National Police Service also creates budgetary shortfalls that may undermine the effectiveness of the DCI's investigation function. The DCI relies on the National Police Service budget allocation for its funding, which may be insufficient to meet its operational needs.²⁷ Due to the limited resources, the DCI may face challenges in hiring and retaining qualified staff, acquiring modern equipment and technology, and conducting effective investigations. This may result in delayed or incomplete investigations, which can compromise the quality of evidence and the success of criminal prosecutions.²⁸

Furthermore, the DCI may face challenges in conducting specialized investigations, such as financial investigation into crimes, cybercrime or cyber enabled crimes, and terrorism or terrorism related offences. These investigations require specialized skills, equipment, and resources that may not be readily available within the National Police Service budget allocation.²⁹ The reliance on the National Police Service budget allocation alone also makes the DCI vulnerable to political interference, as the Inspector General may prioritize funding for other police departments over the DCI's investigation function.³⁰ This also interferes with the independence of the DCI, who cannot be

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

bold and objective in decision-making for fear of their budget being slashed.³¹

Therefore, the study posits that the institutional location of the DCI under the National Police Service raises concerns about budgetary shortfalls and the sufficiency of resources for the effective functioning of the investigation function. To address these concerns, there is a need to explore alternative funding models that can ensure the adequate resourcing of the DCI to carry out its investigative mandate effectively.

3.3 Skills Shortage Due to Low Entry Qualifications

The institutional location of the DCI under the National Police Service also creates a skills shortage in the investigative function due to low entry qualifications.³² The entry qualification for DCI officers is a minimum of a Kenya Certificate of Secondary Education (KCSE) with a mean grade of C,³³ while that of the regular police is D+.³⁴ These low entry qualification requirements may result in a lack of specialized skills and expertise in conducting investigations, such as forensic analysis, digital forensics, cybercrime or cyber enabled crime, and financial investigation of crimes etcetera. The DCI may also face challenges in attracting and retaining qualified personnel, as

³¹ Ibid

³² Kimani, J. and Ndubai, F., 2020. Criminal justice system in Kenya: Issues and challenges. *Global Handbook of Police and Justice Administration* (pp. 1-28). CRC Press.

³³ Entry Qualifications for DCI available at <https://keweb.co/how-to-join-kenya-dci/> accessed 4 May 2023

³⁴ Kenya Police Recruitment Requirements available at <https://kenyadmission.com/kenya-police-recruitment-requirements/> accessed 5 May 2023

individuals with higher qualifications may prefer to work in other institutions that offer better remuneration and career prospects.³⁵

Furthermore, the low entry qualification requirements may contribute to the perception of the DCI as a less prestigious department within the National Police Service, which can affect its ability to attract and retain skilled personnel.³⁶ This skills shortage can have implications for the quality and effectiveness of investigations conducted by the DCI. Investigations may take longer to complete, or they may not meet the required standard of evidence needed for successful prosecutions.³⁷

Therefore, the institutional location of the DCI under the National Police Service raises concerns about the skills shortage in the investigative function due to low entry qualifications. To address these concerns, there is a need to review the entry qualifications for DCI officers to attract and retain highly skilled personnel with specialized skills and expertise required in modern criminal investigations.³⁸

3.4 Limited Basis of Enhanced Power

Another problematic implication of the current institutional location of the DCI under the National Police Service is the limited basis of enhanced power. This is due to the lack of a separate DCI statute,

³⁵ Kimani, J. and Ndubai, F., 2020. Criminal justice system in Kenya: Issues and challenges. *Global Handbook of Police and Justice Administration* (pp. 1-28). CRC Press.

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

which means that its powers are not dissimilar to those of other police units under the National Police Service Act.³⁹

The DCI's powers are mostly derived from the National Police Service Act, which mainly deals with the structure, command, and management of the National Police Service. Although the DCI has a specific mandate to investigate serious crimes and maintain law and order, its powers are not well defined and are subject to interpretation.⁴⁰ This limited basis of enhanced power affects the DCI's ability to effectively carry out its mandate, since it may not have the necessary legal framework to operate autonomously and effectively. It also limits the DCI's ability to adopt modern investigative techniques and technologies, which may be necessary for solving complex criminal cases⁴¹. Moreover, the lack of a separate statute for the DCI may contribute to the perception of the DCI as just another police unit, which can affect its ability to attract and retain skilled personnel⁴² or even utilize innovative and progressive developments in technology designed to combat crime in the Digital Age.

Therefore, the study postulates that there is a urgent need to enact a separate DCI statute to define its powers, functions, and jurisdiction. This would enhance the DCI's independence and autonomy, as well as provide a legal basis for its activities. It would also allow the DCI to adopt modern and special investigative techniques and technologies necessary for effective investigation and prosecution of serious crimes.

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

3.5 Impediments to Foreign Cooperation

Another problematic implication of the current institutional location of the DCI under the National Police Service is the impediments to foreign cooperation. The DCI is responsible for investigating a multiplicity of transnational organized crimes, including terrorism, human trafficking, drug trafficking, Cybercrime and/or Cyber enabled Crime etcetera, which often requires collaboration with international law enforcement agencies.⁴³ However, the DCI's institutional location under the National Police Service may hinder foreign cooperation due to the perception that it is a part of the National Police Service, which may have a negative reputation in some Countries emanating probably from its 'Policing Function' which has no relation to its 'Investigation Function'. This may lead to reluctance by foreign law enforcement agencies to share sensitive information or collaborate with the DCI.⁴⁴

Additionally, the DCI's institutional location may limit its ability to develop and maintain relationships with reputable international law enforcement agencies, since it may not have the requisite resources or expertise to do so. This may make it more difficult for the DCI to access reputable and prestigious foreign law enforcement networks, which are essential for international cooperation in the fight against many forms of transnational organized crimes.⁴⁵

Therefore, there is a need to establish a separate institutional framework for the DCI, which would enhance its reputation and

⁴³ Ondiege, P. and Ndungu, S., 2019. Towards strengthening Kenya's criminal justice system. In *Strengthening Criminal Justice Systems in Eastern Africa* (pp. 19-39). Springer.

⁴⁴ Ibid

⁴⁵ Ibid

independence, and facilitate foreign cooperation. This may involve establishing a separate agency or elevating the DCI to the status of an independent directorate, with the necessary resources and expertise to develop and maintain relationships with foreign law enforcement agencies.⁴⁶

4. Establishing an Institutionally Independent DCI i Kenya: Lessons From The United States Of America And The United Kingdom

4.1 The Institutional Design For Independence: What Needs To Change?

4.1.1 Dependence on the National Police Service budget: - The need for independent Budgetary Allocation from Treasury

In order to establish an institutionally independent Directorate of Criminal Investigations (DCI) in Kenya, there is a need for a comprehensive institutional design that ensures the DCI's independence from the National Police Service (NPS). One of the key changes required in this regard is the need for independent budgetary allocation from Treasury.⁴⁷

Currently, the DCI is heavily reliant on budgetary allocations from the NPS, which has several implications. Firstly, it makes the DCI vulnerable to the budgetary shortfalls and restrictions of the NPS, which may not necessarily prioritize the DCI's budgetary needs. This may lead to inadequate funding and resources for the DCI, which can have serious implications for its ability to effectively investigate

⁴⁶ Ibid

⁴⁷ Murungi, J. (2019). Institutional Reforms and Police Effectiveness in Kenya. *African Security Review*, 28(2), 113-127.

crimes.⁴⁸ Secondly, the DCI's dependence on the NPS budget may undermine its independence from the National Police Service, since it may be perceived as being subservient to the NPS. This may hinder the DCI's ability to act impartially and without fear or favor in the investigation of crimes.⁴⁹

To address this issue, the DCI needs to be allocated a separate budget that is independent of the NPS budget. This would ensure that the DCI has the necessary resources to effectively carry out its mandate without being subject to the budgetary constraints of the NPS.⁵⁰

The United States of America and the United Kingdom provide good examples of how an independent budgetary allocation can be achieved for law enforcement agencies. In the United States of America, for instance, the Federal Bureau of Investigations (FBI) has an independent budget that is allocated directly by Congress. Similarly, in the United Kingdom, the National Crime Agency (NCA) has an independent budget that is allocated directly by Treasury.⁵¹

Therefore, Kenya can learn from these countries and establish a similar system where the DCI is allocated an independent budget that is directly allocated by Treasury. This would ensure the DCI's independence and provide it with the necessary resources to effectively carry out its mandate.

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

4.1.2 Low minimum qualification and training standards - The need to raise academic qualification above that of other regular police officers

In order to establish an institutionally independent DCI in Kenya, there is a need to raise the minimum qualification and training standards required for its officers above that of other regular police officers.⁵² This is because the DCI requires a higher level of expertise and knowledge in various fields such as forensic science, cybercrime, financial crimes, and intelligence gathering and analysis.⁵³

In the United States, for instance, the Federal Bureau of Investigation (FBI), which is an independent agency, requires its special agents to have a minimum of a four-year college degree, as well as several years of relevant work experience. In addition, they undergo extensive training in special investigative techniques, law enforcement, and firearms, among others.⁵⁴

Similarly, in the United Kingdom, the National Crime Agency (NCA), which is also an independent agency, requires its officers to have a minimum of a two-year degree or equivalent qualification, as well as relevant work experience. They also undergo rigorous training in intelligence gathering, investigation techniques, and forensic science, among others.⁵⁵

⁵² Otieno, C. F. (2019). Reforms in the Directorate of Criminal Investigations and Their Implications for Criminal Justice Administration in Kenya. *Journal of Social Sciences and Humanities Research*, 7(2), 106-119.

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

Therefore, to establish an independent DCI in Kenya, there is a need to raise the minimum qualification and training standards required for its officers to reflect the specialized skills and expertise required for the job. This can be achieved through the development of specialized training programs and the recruitment of personnel with relevant academic qualifications and work experience.⁵⁶

4.1.3 Jurisdictional conflict with DPP and other agencies - the need for cooperation as opposed to conflict between DCI and DPP, as well as other agencies

To ensure the independence of the DCI, it is essential to address jurisdictional conflicts with the DPP and other agencies. This can be achieved by promoting cooperation rather than conflict between the DCI and the DPP, as well as other agencies. The DCI should be given the mandate to investigate and prepare cases for prosecution, while the DPP should be responsible for prosecuting cases in court.⁵⁷

To achieve this, there needs to be a clear delineation of the roles and responsibilities of both agencies, as well as mechanisms for collaboration and information sharing.⁵⁸ The DCI should have the authority to conduct investigations independently without interference from other agencies, while the DPP should have the power to direct the DCI to investigate specific cases as needed.⁵⁹

⁵⁶ Ibid

⁵⁷ Njagi, L. W. (2018). The Directorate of Criminal Investigations in Kenya: The Search for a Workable Model. *International Journal of Social Science and Humanities Research*, 6(1), 93-104.

⁵⁸ Ibid

⁵⁹ Ibid

In addition, there needs to be a framework for coordinating investigations between different agencies, including the DCI, the DPP, and other law enforcement agencies. This will ensure that investigations are not duplicated or compromised due to inter-agency conflicts. By promoting cooperation and collaboration between different agencies, Kenya can establish an efficient and effective Criminal Justice System that upholds the rule of law and promotes public trust.⁶⁰

4.1.4 Non-Recognition of special investigation powers of DCI - The Need for Justifiably Broader Investigation Powers in the case of Suspects believed to be posing a risk to the Public and who cannot be Prosecuted or Deported

In order to establish an institutionally independent DCI in Kenya, there is need to address the non-recognition of the special investigation powers of the DCI. Currently, the DCI operates under the National Police Service Act, which limits its powers to those of a regular police unit.⁶¹ However, there are certain cases where suspects may pose a risk to the public, and cannot be prosecuted or deported. In such cases, it is necessary for the DCI to have justifiably broader investigation powers, in order to properly address such threats.⁶²

In the United States and the United Kingdom, there are specialized agencies with investigative powers that are distinct from regular police units. For example, the Federal Bureau of Investigation (FBI) in the United States and the National Crime Agency (NCA) in the United Kingdom have powers that are separate from those of regular police units. These agencies have been able to successfully address

⁶⁰ Ibid

⁶¹ Ibid

⁶² Ibid

threats to national security and public safety, due to their specialized training, resources, and powers.⁶³

In Kenya, the DCI should be granted specialized investigation powers, similar to those of the FBI and NCA, in order to effectively address cases where suspects pose a risk to the public but cannot be prosecuted or deported.⁶⁴ This would require legislative changes, as well as sufficient resources and training for the DCI to properly exercise these powers. Additionally, requirements have to be in place to ensure clear guidelines and oversight to these powers, to avoid abuse or inappropriate use.⁶⁵

4.1.5 Unrestricted transfer of personnel from other police departments to DCI - The Need for Restrictions on the skills mismatch that results from haphazard transfer of officers from other police units to the DCI

One of the key changes that need to be made in the institutional design for the independence of the DCI in Kenya is the need for restrictions on the unrestricted transfer of personnel from other police departments to the DCI. Currently, officers from other police units can be transferred to the DCI without proper training or consideration of their skills. For instance, there can be transfer of officers from The Anti-stock Theft Unit to the Banking Fraud Unit without proper or adequate training requirements. This often results in a skills mismatch, which can affect the quality of investigations conducted by the DCI.⁶⁶

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Nduta, S. M. (2017). The Kenya Police Reforms and Their Impact on Crime Management in Nairobi County. *Journal of Criminology and Criminal Justice Research*, 2(1), 1-13.

To address this issue, there is need for clear guidelines on the transfer of officers to the DCI.⁶⁷ This should include restrictions on the transfer of officers who do not meet the minimum qualification and training standards required for the DCI. Additionally, officers who are transferred to the DCI should receive specialized training to ensure they have the necessary skills and knowledge to carry out their duties effectively.⁶⁸

The study opines that restricting the transfer of personnel to the DCI will also help to ensure that the unit has a more stable and experienced workforce, which is crucial for effective investigations. This will also help to address concerns around the independence of the DCI, since officers who are trained specifically for the unit are more likely to be committed to its mandate and less susceptible to outside influence.

4.2 Lessons from the United States of America

4.2.1 FBI within the Department of Justice

The Federal Bureau of Investigation (FBI) is a law enforcement agency within the United States Department of Justice.⁶⁹ While the FBI is within the Department of Justice (DOJ), it operates independently with a distinct mission and separate budget from other DOJ components. The FBI Director is appointed by the

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Makori, E. O., & Ondabu, I. W. (2018). Re-engineering the criminal investigations department in Kenya for effective service delivery: lessons from the US federal bureau of investigation. *Journal of Business and Management*, 20(6), 1-12

President and confirmed by the Senate, and serves a 10-year term to ensure independence from political pressures.⁷⁰

One of the key lessons that Kenya could learn from the FBI model is the need for institutional independence and a clear mandate.⁷¹ The FBI's mandate is to protect and defend the United States of America against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and Criminal Justice Services to both federal and local agencies. This mandate is clearly defined in the U.S. Code, which provides a framework for the FBI's operations and accountability.⁷²

Furthermore, the FBI's budget is separate from that of other DOJ components, which ensures that it is not beholden to other agencies or political pressures. This budget independence enables the FBI to invest in training, technology, and infrastructure to enhance its investigative capabilities.⁷³ The FBI also has a strong focus on recruitment and retention of highly qualified personnel, which is critical for maintaining its institutional independence and effectiveness.⁷⁴

4.2.2 Best Practice Lessons For Kenya

4.2.2.1 Budgetary Autonomy

One best practice lesson for Kenya to learn from the United States of America with regards to establishing an institutionally independent

⁷⁰ Ibid

⁷¹ Ibid

⁷² Ibid

⁷³ Ibid

⁷⁴ Ibid

DCI is to ensure budgetary autonomy through direct budgetary appropriations⁷⁵. In the United States, the FBI operates under the Department of Justice but has its own separate budget allocated directly by Congress. This ensures that the FBI can carry out its investigative functions independently, without being reliant on the budget of the Department of Justice, which could be influenced by political interests or priorities.⁷⁶

Similarly, in Kenya, the DCI should have direct budgetary appropriations from Treasury, separate from the Budget of the National Police Service, to ensure its financial independence and ability to carry out investigations without external influence.⁷⁷ This would enable the DCI to allocate resources and prioritize investigations based on their merit and national security interests, rather than on the interests of the National Police Service or other government agencies. It would also ensure that the DCI has the necessary resources to hire and retain highly qualified personnel, provide adequate training, and procure modern investigative technology and equipment.⁷⁸

4.2.2.2 Independence in Recruitment and Training - The stringent criteria for Admission at Quantico, Virginia

The United States' Federal Bureau of Investigation (FBI) has a highly independent recruitment and training process that could provide a best practice model for Kenya. The FBI recruits its agents from a wide

⁷⁵ Kariuki, M. W., & Waweru, L. M. (2019). The effectiveness of the US FBI's transformation in Kenya: an analysis of lessons learnt. *International Journal of Scientific Research and Management*, 7(2), 952-958

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Ibid

variety of backgrounds, including law, accounting, engineering, and military service. To be considered for the FBI, candidates must have a four-year degree from an accredited college or university and at least three years of professional work experience.⁷⁹

Furthermore, FBI recruits must pass rigorous physical fitness tests, a medical exam, a drug test, and a thorough background investigation. Once accepted, FBI agents undergo a 20-week training program at the FBI Academy in Quantico, Virginia, where they receive intensive instruction in various fields, including intelligence gathering, criminal investigations, and firearms training.⁸⁰

Kenya could benefit from adopting a similar recruitment and training process for the DCI. By raising the minimum entry qualifications and implementing strict admission criteria, the DCI could attract more qualified and skilled personnel.⁸¹ Additionally, by providing comprehensive training programs, the DCI can equip its officers with the skills necessary to conduct sophisticated investigations and ensure high-quality investigative outcomes.⁸²

4.2.2.3 Obligation to Cooperate with and Report Findings to US District Attorneys

In the United States, the Federal Bureau of Investigation (FBI) has the obligation to cooperate with and report findings to US District Attorneys and other law enforcement agencies.⁸³ This enhances

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ibid

⁸³ Nyamwamu, W. K., & Ondieki, B. A. (2019). Institutional transformation: the FBI experience in Kenya. *International Journal of Academic Research in Business and Social Sciences*, 9(4), 117-133.

accountability and promotes transparency in investigations.⁸⁴ Kenya could adopt a similar practice where the DCI has the obligation to cooperate with and report findings to the Director of Public Prosecutions (DPP) and other relevant agencies.⁸⁵ This would ensure that investigations are conducted in a coordinated and efficient manner, and would promote public confidence in the investigation process. It would also ensure that the results of investigations are used appropriately in the prosecution of cases, leading to more successful prosecutions and better outcomes for victims and the public at large.⁸⁶

4.2.2.4 Oversight by the House and Senate Judiciary Committees

The oversight role played by the House and Senate Judiciary Committees in the United States of America is a best practice lesson that Kenya could adopt for an independent DCI. These committees have the mandate to oversee the operations of the Department of Justice and its agencies, including the Federal Bureau of Investigation (FBI).⁸⁷ They are responsible for conducting hearings, investigations, and making recommendations to the department and the FBI on matters of policy, budget, and operations.⁸⁸

In Kenya, the Parliamentary Committee on Administration and Internal Affairs could be given a similar mandate to oversee the operations of an independent DCI.⁸⁹ This would ensure that the DCI

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Gikonyo, P. W., & Chege, J. K. (2019). The US Federal Bureau of Investigation: Lessons for the Criminal Investigations Department of Kenya. *International Journal of Innovative Research and Advanced Studies*, 6(12), 28-39.

operates in compliance with the law and upholds the rights and/or interests of citizens. It would also create a forum for accountability and transparency, where concerns about the DCI's operations could be raised and addressed.⁹⁰

The study asserts that by adopting the oversight model of the House and Senate Judiciary Committees in the United States, Kenya would ensure that the operations of the DCI are subject to regular review and scrutiny, and that the agency remains accountable to the public. This would help to build trust in the agency and improve its effectiveness in combating crime.

4.3 Lessons from the United Kingdom

4.3.1 MI5 under the Home Secretary

In the United Kingdom, the Security Service, commonly known as MI5, operates under the authority of the Home Secretary.⁹¹ The Home Secretary is a senior government official who is responsible for national security and law enforcement in the UK. MI5 is accountable to the Home Secretary and is subject to oversight by the Intelligence and Security Committee of Parliament.⁹² MI5 is responsible for protecting the UK against threats to national security, including terrorism, espionage, and cyber-attacks. It operates independently of other law enforcement agencies in the UK, such as the police, and its agents have special powers to gather intelligence and conduct covert operations.⁹³

⁹⁰ Ibid

⁹¹ Wabwile, M. (2019). The Directorate of Criminal Investigations in Kenya: Challenges and Prospects of Institutional Independence. *The African Review: A Journal of African Politics, Development and International Affairs*, 46(1), 47-68.

⁹² Ibid

⁹³ Ibid

The Home Secretary has the power to issue warrants authorizing MI5 to carry out activities that would normally be illegal, such as entering and searching private property without the owner's consent. However, these powers are subject to strict legal and procedural safeguards, and the Home Secretary is required to report to Parliament on their use.⁹⁴

4.3.2 Best Practice Lessons for Kenya

4.3.2.1 Robust Statutory Basis

i) Security Services Act 1989

The Security Service Act of 1989 provides a robust statutory basis for the operations of MI5, which is the United Kingdom's domestic security and counterintelligence agency. The Act sets out the functions of the Security Service, the circumstances under which it can carry out investigations, and the limitations on its powers.⁹⁵ This clear legal framework ensures that the agency operates within the law and is accountable to the government and the public.

In Kenya, there is currently no specific legislation governing the operations of the DCI. Instead, the agency operates under the National Police Service Act, which does not provide the DCI with a clear mandate or specific powers to carry out its functions.⁹⁶ Therefore, Kenya could learn from the United Kingdom's approach by enacting legislation that clearly defines the functions, powers, and

⁹⁴ Ibid

⁹⁵ Section 1, Security Service Act 1989

⁹⁶ Wabwile, M. (2019). The Directorate of Criminal Investigations in Kenya: Challenges and Prospects of Institutional Independence. *The African Review: A Journal of African Politics, Development and International Affairs*, 46(1), 47-68.

limitations of the DCI, and which is specifically tailored to its role as a criminal investigation's agency.⁹⁷

Moreover, such legislation would enhance transparency and accountability, and could include provisions for regular reporting to the National Assembly or an independent oversight body. This would ensure that the DCI operates within the law and in accordance with public expectations, while also providing a framework for robust oversight and accountability.⁹⁸

ii) Intelligence Services Act 1994

The Intelligence Services Act 1994 provides a comprehensive statutory basis for the operations and oversight of intelligence agencies in the United Kingdom, including MI5. The Act establishes the legal framework for the intelligence agencies to carry out their functions, subject to appropriate safeguards and oversight mechanisms.⁹⁹

The Act establishes The Secret Intelligence Service whose functions are to obtain and provide information relating to the actions or intentions of persons outside the British Islands; and to perform other tasks relating to the actions or intentions of such persons.¹⁰⁰ It also highlights The Chief of the Intelligence Service who shall be responsible for the efficiency of that Service and it shall be his duty to ensure that there are arrangements for securing that no information is obtained by the Intelligence Service except so far as necessary for

⁹⁷ Ibid

⁹⁸ Ibid

⁹⁹ Intelligence Services Act 1994 available at <https://www.legislation.gov.uk/ukpga/1994/13/contents> accessed 5 May 2023

¹⁰⁰ Section 1, Intelligence Services Act 1994

the proper discharge of its functions and that no information is disclosed by it except so far as necessary for that purpose; in the interests of national security; for the purpose of the prevention or detection of serious crime; or for the purpose of any criminal proceedings.¹⁰¹

The Act also sets out the powers of the agencies, including the power to intercept communications, and the limitations on those powers, such as the requirement to obtain warrants from independent judicial commissioners.¹⁰²

The study avers that Kenya can learn from the robust statutory basis provided by the Intelligence Services Act in the UK. An institutionally independent DCI would require a similar legal framework that sets out its functions, powers, and limitations. Such a framework would provide clarity and transparency, as well as the necessary checks and balances to ensure that the DCI operates within the law and with respect for human rights.

iii) Investigatory Powers Act 2016

The Investigatory Powers Act 2016 (IPA)¹⁰³ is a UK law that sets out the powers and limitations of intelligence and law enforcement agencies in their use of investigatory techniques such as interception of communications, acquisition of communications data, and hacking.¹⁰⁴ The IPA provides a robust statutory basis for the actions

¹⁰¹ Section 2, Intelligence Services Act 1994

¹⁰² Section 5, Intelligence Services Act 1994

¹⁰³ Investigatory Powers Act 2016 available at

<https://www.legislation.gov.uk/ukpga/2016/25/contents/enacted> accessed 5 May 2023

¹⁰⁴ Ibid

of these agencies and includes important safeguards to protect individual privacy and prevent abuses of power.¹⁰⁵

One of the key features of the IPA is the creation of a new Investigatory Powers Commissioner, who is responsible for overseeing the use of investigatory powers by intelligence and law enforcement agencies.¹⁰⁶ The Commissioner is a senior judge appointed by the Prime Minister and has the power to authorize the use of certain investigatory powers and to review and report on their use.¹⁰⁷

The IPA also requires agencies to obtain a warrant from a Judicial Commissioner before using certain investigatory powers, and sets out strict criteria that must be met for such warrants to be granted.¹⁰⁸ The law also includes provisions for transparency and accountability, requiring agencies to publish annual transparency reports and for the Investigatory Powers Commissioner to provide annual reports to Parliament.¹⁰⁹

These provisions in the IPA provide an important framework for the lawful use of investigatory powers by intelligence and law enforcement agencies, while also ensuring that individual rights to privacy are protected. Kenya could learn from the robust statutory basis provided by the IPA, and could consider implementing similar provisions in any legislation governing the operations of an independent DCI.

¹⁰⁵ Ibid

¹⁰⁶ Part 8, Investigatory Powers Act 2016

¹⁰⁷ Ibid

¹⁰⁸ Section 23, Investigatory Powers Act 2016

¹⁰⁹ Section 234, Investigatory Powers Act 2016

4.3.2.2 Oversight and Regulation of Investigation Powers The Independent Oversight role of the Investigatory Powers Commissioner's Office (IPCO)

The United Kingdom has established an independent oversight body known as the Investigatory Powers Commissioner's Office (IPCO) to regulate the investigatory powers of its intelligence agencies, including MI5.¹¹⁰ The IPCO is responsible for ensuring that the use of investigatory powers is lawful and necessary and for protecting the privacy and human rights of individuals.¹¹¹

The IPCO is headed by the Investigatory Powers Commissioner, who is appointed by the Queen on the recommendation of the Prime Minister. The Commissioner is a senior judge and is independent of the government and the intelligence agencies. The Commissioner's role is to oversee the use of investigatory powers by the intelligence agencies and to ensure compliance with the law and human rights standards.¹¹² The IPCO is also responsible for investigating complaints against the intelligence agencies and for conducting inspections to ensure that the use of investigatory powers is lawful and necessary. The IPCO reports annually to Parliament on its activities and findings.¹¹³

This model of independent oversight of investigatory powers could provide best practice lessons for Kenya in establishing an independent oversight body for the DCI. Such a body could be responsible for ensuring that the use of investigatory powers is lawful and necessary and for protecting the privacy and human rights of

¹¹⁰ Part 8, Investigatory Powers Act 2016

¹¹¹ Ibid

¹¹² Ibid

¹¹³ Ibid

individuals. It could also investigate complaints against the DCI and conduct inspections to ensure compliance with the law and human rights standards. The independence of such a body, similar to the IPCO, would be critical to its effectiveness.

Other key provisions of the Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016

The Regulation of Investigatory Powers Act 2000 (RIPA) has several key provisions that can serve as best practice lessons for Kenya in terms of oversight and regulation of investigation powers. For instance, RIPA requires a warrant for intrusive surveillance, including interception of communications, directed surveillance, and intrusive surveillance.¹¹⁴ This ensures that such powers are only used when necessary and proportionate. RIPA also requires that an authorizing officer, who is independent of the investigation, must grant permission for the use of intrusive surveillance.¹¹⁵ This ensures that the use of such powers is subject to an independent authorization.

In addition, RIPA provides for safeguards to protect the rights of those under surveillance, including the right to privacy and freedom of expression. This includes requirements for the destruction of intercepted material when it is no longer needed and the use of interception material in legal proceedings.¹¹⁶ RIPA also established the Office of Surveillance Commissioners, an independent body responsible for overseeing the use of surveillance powers by public authorities. This includes ensuring compliance with the law, issuing

¹¹⁴ Part 1, Regulation of Investigatory Powers Act 2000

¹¹⁵ Section 32; section 35, Regulation of Investigatory Powers Act 2000

¹¹⁶ Chapter 1, Regulation of Investigatory Powers Act 2000

codes of practice, and providing guidance.¹¹⁷ Finally, RIPA provides for a complaints process under the Tribunal for individuals who believe they have been subjected to unlawful surveillance. This ensures that individuals have a means to seek redress if their rights have been violated.¹¹⁸

These provisions ensure that the use of investigation powers is subject to oversight, safeguards, and accountability, and that the rights of individuals are protected.

The Investigatory Powers Act 2016 is a UK law that makes provision about the interception of communications, equipment interference and the acquisition and retention of communications data, bulk personal datasets and other information; the treatment of material held as a result of such interception, equipment interference or acquisition or retention; the Investigatory Powers Commissioner and other Judicial Commissioners; other oversight arrangements and; investigatory powers and national security.¹¹⁹

The Act requires the approval of a judicial commissioner for the use of certain interception powers. This ensures that there is independent judicial oversight of interception activities, which is important for protecting civil liberties and preventing abuse of power.¹²⁰ The Act includes provisions for protecting privacy, including the requirement

¹¹⁷ Sections 40, 62, 63, Regulation of Investigatory Powers Act 2000

¹¹⁸ Section 65-70, Regulation of Investigatory Powers Act 2000

¹¹⁹ Introductory Text, Investigatory Powers Act 2016

¹²⁰ Sections 23, 89, 108, 140, 146, 159, 165, 179, 187, 208, 216, 254, Investigatory Powers Act 2016

for warrants to be targeted and specific, and the provision of safeguards for sensitive information.¹²¹

The Act establishes the Investigatory Powers Commissioner's Office (IPCO), which is responsible for overseeing the use of interception powers by public bodies. This ensures that there is independent oversight of interception activities, and that public bodies are held accountable for their actions.¹²² Finally, The Act includes provisions for transparency, including the requirement for public authorities to report on their use of interception powers and for the IPCO to report annually on its activities.¹²³

These provisions serve as best practice lessons for Kenya in terms of ensuring that interception powers are used in a lawful and proportionate manner, with appropriate oversight and protections for civil liberties.

4.3.2.3 Special and Enhanced Investigation Powers the Statutory Recognition of Broader Investigation Powers under the Terrorism Prevention and Investigation Measures (TPIMs) Act 2011

The Terrorism Prevention and Investigation Measures (TPIMs) Act 2011 in the United Kingdom provides an example of special and enhanced investigation powers granted to security agencies in certain circumstances. TPIMs are court-imposed restrictions used to manage

¹²¹ Part 2, 5,6,7 Ibid

¹²² Part 8, Ibid

¹²³ Section 234, Ibid

the risk posed by individuals suspected of involvement in terrorism-related activity who cannot be prosecuted or deported.¹²⁴

Under the TPIMs Act, authorities are granted special powers to monitor and restrict the activities of such individuals, including electronic surveillance, restrictions on travel, communication, and association with others, among others. These measures are subject to judicial oversight and must be renewed periodically.¹²⁵

The TPIMs Act also includes provisions for the disclosure of sensitive information to relevant authorities for the purpose of managing the risk posed by individuals subject to TPIMs. However, such disclosures are subject to strict conditions and safeguards to protect the privacy and rights of individuals.¹²⁶

In the context of Kenya, the study posits that adopting a similar legal framework could provide security agencies with necessary powers to manage the risk posed by individuals suspected of involvement in terrorism-related activity who cannot be prosecuted or deported. However, it is crucial to ensure that such powers are subject to strict oversight and safeguards to protect the privacy and rights of individuals.

5. Conclusion

The establishment of an institutionally independent DCI in Kenya is extremely essential to ensuring effective and impartial law

¹²⁴ Muiruri, E. (2019). Institutionalizing independence in the criminal justice system in Kenya: A critical analysis of the role of the Directorate of Criminal Investigations (DCI). *Journal of African Law*, 63(1), 41-63.

¹²⁵ Schedule 1, Terrorism Prevention and Investigation Measures Act 2011

¹²⁶ Schedule 1, Part 1, section 10, Ibid

enforcement obligations and proper investigation of crimes. The United States of America and the United Kingdom provide excellent examples of best practices in institutional design, recruitment and training, budgetary autonomy, and oversight including regulation of investigation powers. These best practices include establishing a robust statutory basis, providing extensive training and recruitment criteria, ensuring independence in budgetary allocation, and creating oversight mechanisms to ensure accountability and transparency.

In particular, the UK's Investigatory Powers Act 2016 and the US FBI's rigorous admission standards demonstrate how to provide special and enhanced investigation powers while ensuring accountability and transparency. To fully realize the benefits of these best practices, Kenya needs to enact legislation that empowers the DCI with special investigation powers, provide budgetary autonomy, improve recruitment and training standards, and create oversight mechanisms.

Ultimately, an independent DCI would ensure that law enforcement agencies operate within the rule of law, investigate crimes impartially, and promote public trust in the Criminal Justice System. By implementing best practices and measures from the US and UK discussed hereinabove, Kenya can establish a DCI that will be a beacon of hope aligned to effectively discharging requisite law enforcement obligations, promoting public safety inclusive of national security interests, protecting and/or safeguarding the rule of law on the one hand while remaining cognizant of respecting human rights for all Kenyans.

Such an independent DCI will distinguish itself completely through the '*Investigation Function*' from the '*Policing Function*' of the larger

National Police Service, enabling it to focus on the effective discharge of its investigative mandate and receive recognition from the International Standardization Organization (ISO) similar to its peers globally, hence achieving complementarity status, integrity, fidelity to the rule of law, reliability, equanimity and prestige, equal to other reputable international investigatory law enforcement agencies across the globe.

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*Governance at the Bottom of the Pyramid:
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Governance at The Bottom of the Pyramid: Regulating Profit & Corporate Purpose in The Kenyan Bottom-Up Economic Model

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Abstract

Academic scholarship of corporate governance in Kenya has evolved into an examination of a landscape defined to include the public and private sectors and to a lesser extent the not-for-profit sectors.

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Governance regulation for its part has primarily focused on the public sector with the Mwongozo Code as well as public listed companies and public companies incorporated under the Companies Act. Micro-Small & Medium Sized Enterprises (MSMEs) which form the engine of the economy have historically largely been absent in this conversation primarily justified on the grounds of expense and they have been left to flounder around without form and void. That is, until the Kenya Kwanza Government was elected on a platform described as “Bottom-Up Economic Pyramid Model” bringing into sharp focus an amorphous group baptized “the hustlers” defined loosely to inhabit the bottom of the economic pyramid. Scholarship on the Bottom-Up Economic Transformation Agenda (BETA) remains in the embryonic stage and as it is heavily politically nuanced it bears repeating that the United Nations Sustainable Development Goals Nos.1 and 8 heavily underline inclusive and sustainable growth, employment and decent work for all particularly in the current realities of climate change amid the Post Covid economic global crises. This paper, therefore, seeks to capture the place of key Governance issues that may or may not impact uniquely upon MSMEs, particularly within the emerging dynamic focus on the bottom of the so-called pyramid.

1.0 Introduction:

It is now widely accepted that good corporate governance practices are a necessary foundation for any institution to engender trust, transparency and accountability which in turn fosters greater confidence for purposes of attracting capital, investment and otherwise signaling long term sustainability.¹

¹ OECD (2015), G20/OECD Principles of Corporate Governance, OECD Publishing, Paris. Available at https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en [Last accessed on 22 June 23]

In Kenya, the study and practice of corporate governance has primarily revolved around the *Mwongozo Code*² and the *Capital Markets Authority Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015*³ both touted to number amongst the most progressive in Africa.⁴ These codes being the most prevalent and visible have further been adopted as sources of best practice by institutions and enterprises desirous of voluntarily applying good corporate governance practices.

1.1 The Classic Conceptualization of Corporate Governance:

Since the seminal articulation of corporate governance declared in the Cadbury's Report to be *the system by which companies are directed and controlled*⁵ the concept has been subjected to various interpretations but is yet to achieve a canonical definition. Whilst in essence corporate governance refers to anything and everything that influences the way in which an institution is run and includes external influences, the preponderance of study and discourse has

² MWONGOZO. *The Code of Governance for State Corporations*. Issued jointly by: Public Service Commission (PSC). State Corporations Advisory Committee (SCAC). Available at <https://www.scac.go.ke/2015-02-16-09-34-58/mwongozo> [Last accessed on 19 June 2023]

³ Capital Markets Authority, *The Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015*. Available at <https://www.cma.or.ke/index.php/regulatory-frame-work/corporate-governance-for-issuers?download=79:code-of-corporate-governance-practices-for-issuers-of-securities-to-the-public-2015> [Last accessed on 19 June 2023]

⁴ Scribe Services, *An open letter to Regulators & Boards of Directors* (June 2021) <https://scriberegistrars.com/an-open-letter-to-regulators-and-boards-of-directors/> [Last accessed on 19 June 2023]

⁵ Cadbury, A. (1992). *Report of the Committee on the Financial Aspects of Corporate Governance*. London: Gee & Co. Available at [https://www.frc.org.uk/getattachment/9c19ea6f-bcc7-434c-b481-f2e29c1c271a/The-Financial-Aspects-of-Corporate-Governance-\(the-Cadbury-Code\).pdf](https://www.frc.org.uk/getattachment/9c19ea6f-bcc7-434c-b481-f2e29c1c271a/The-Financial-Aspects-of-Corporate-Governance-(the-Cadbury-Code).pdf) [Last accessed on 22 June 2023]

been directed towards the mechanics of internal governance particularly the relationship between the managers, directors and shareholders.⁶ This can be attributed to the fact that predominantly the corporate governance machinery has been invoked at various times in response to corporate crises and failure leading to economic hardship.⁷

Accordingly, for instance, the collapse of Maxwell and BCCI lent a great boost to the Cadbury's Report, the Enron Scandal birthed the *Sarbanes-Oxley Act of 2002*⁸ and the financial crisis of 2008 paved the way for the *Dodd-Frank Act of 2010*.⁹ More recently corporate governance has been expanded to address (1) rising inequality; (2) gender inequity; and (3) human rights and environmental protection¹⁰ providing a response mechanism that has given rise to environmental, social and governance reporting.¹¹

The evolution of corporate governance which initially emerged to temper corporate power for the benefit of the public evolved into a conceptualization of shareholder primacy with directors and

⁶ Mariana Pargendler, *The Corporate Governance Obsession* (2016) 42 J Corp L 359 Available on Heinonline [last accessed on 22 Jun 23]

⁷ Ibid

⁸ Congress.gov. "Text - H.R.3763 - 107th Congress (2001-2002): *Sarbanes-Oxley Act of 2002*." July 30, 2002. Available at <https://www.congress.gov/bill/107th-congress/house-bill/3763/text>. [Last accessed on 22 June 23]

⁹ Congress.gov. *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Public Law 203, U.S. Statutes at Large 124 (2010): 1376-2223. Available at <https://www.congress.gov/bill/111th-congress/house-bill/4173/text> [Last accessed on 22 June 23]

¹⁰ Mariana Pargendier Supra Ibid

¹¹ Satyajit Bose, Guo Dong, Anne Simpson, *The Financial Ecosystem: The Role of Finance in achieving Sustainability* (2019) Palgrave MacMillan

managers serving in agency to the owners. Given the scale at which these considerations have been studied and discussed the corporate governance machinery has advanced and expanded to comprise (1) law, regulations, guidelines, policies as well as judicial precedent at the domestic and international planes; (2) government including the legislature and executive particularly regulatory authorities; (3) market institutions and intermediaries; and (4) culture.¹² Naturally, corporate governance has therefore developed into a complex field revolving around public listed entities and government owned entities comprising a plethora of experts from distinct disciplines which number of players have contributed to the significant expense.

1.2 The Evolving & Emerging Need to Reconceptualize Corporate Governance for Micro-Small & Medium Enterprises:

In large part due to the ever-evolving complexity the focus of corporate governance on big business has continued to permeate notwithstanding the fact that in actual fact Micro-Small & Medium-sized Enterprises (MSMEs) are the prevalent model for engaging in business and are in essence the heart and thrust of not only the Kenyan but the global economy.¹³

¹² Dorothy S. Lund and Elizabeth Pollman, Elizabeth, *The Corporate Governance Machine* (2021). Faculty Scholarship at Penn Carey Law. 2775. Available at https://scholarship.law.upenn.edu/faculty_scholarship/2775 [Last accessed on 22 June 23]

¹³ Joshua Yindenaba Abor & Charles Komla Delali Adjasi, *Corporate Governance and the Small & Medium Sized Enterprises Sector: Theory & Implications* (April 2007) Corporate Governance International Journal of Business Society. Available at DOI: 10.1108/14720700710739769 [Last accessed on 23 June 2023]

The dominant justification for exempting MSMEs from the rigours of corporate governance is the premise that it is “an unnecessary cost” which small institutions ought not to be burdened with.¹⁴

However, when we recall the OECD articulation of good corporate governance to be to the effect that this comprises the framework governing the relationship of owners, managers and stakeholders of a corporation that contribute to growth, financial stability and integrity as well as economic efficiency¹⁵ coupled with the renewed emphasis on sustainability and resilience in the 2023 revision¹⁶ that was prompted by the Covid 19 Pandemic and its aftershocks on big and small business and the global economic system then a rethink of this premise becomes inevitable.

The prudent approach therefore becomes to work from the premise that good governance is a long journey which SMEs ought to commence adopting from early stages to reap real benefits particularly since there are undeniable benefits.¹⁷ Research further supports the position that poor governance lead directly to poor business performance, fraud and catastrophic failures.¹⁸ The 2 sides of this coin therefore create a rationale and business case to invest in good governance particularly when considering accessibility to credit

¹⁴ Ibid

¹⁵ OECD Principles of Corporate Governance Supra Ibid

¹⁶ OECD, *Recommendation of the Council on Principles of Corporate Governance*, OECD/LEGAL/0413 (2023) Available at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0413> [Last accessed on 22 June 23]

¹⁷ International Finance Corporation, *SME Governance Guidebook* (2019) Available at <https://documents1.worldbank.org/curated/en/594351582262788634/pdf/SME-Governance-Guidebook.pdf> [Last accessed on 22 June 23]

¹⁸ Ibid

and investors arising from enhanced performance, risk management and stakeholder confidence.¹⁹

2.0 Micro-Small & Medium Enterprises:

Micro, Small & Medium Enterprises (MSMEs) comprise 24% of the Kenya's gross domestic product (GDP) represent over 90% of the private sector enterprises and 93% of the total labour force.²⁰ This compares with global statistics which per the World Bank²¹ and United Nations²² MSMEs comprise the majority of business worldwide representing 90% of formal global businesses which provide 60% to 70% of employment and 50% of the world's GDP.²³ These numbers increase significantly when informal MSMEs are included.²⁴ Instructively for our purposes the *United Nations Sustainable Development Goal (SDGs)*²⁵ which are *a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity*²⁶ by the year 2030 whose very first goal is the

¹⁹ Ibid

²⁰ Micro & Small Enterprises Authority, *Policy Interventions Geared Towards the Growth and Development of the Micro & Small Enterprise Sector in Kenya* (2022). Available at <https://msea.go.ke/wp-content/uploads/2022/03/MSES-HISTORICAL-POLICY-INTERVENTIONS.pdf> <Accessed on 17 May 23>

²¹ The World Bank, *Small and Medium Enterprises (SMEs) Finance Improving SMEs' access to finance and finding innovative: solutions to unlock sources of capital* (2023) Available at <https://www.worldbank.org/en/topic/sme/finance> [Last accessed on 18 June 2023]

²² United Nations, *Micro-Small & Medium Businesses Day June 27* (2023) Available at <https://www.un.org/en/observances/micro-small-medium-businesses-day> [Last accessed on 18 June 2023]

²³ Ibid

²⁴ The World Bank *Supra* Ibid

²⁵ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1, available at: <https://www.refworld.org/docid/57b6e3e44.html> [Last accessed on 19 June 2023]

²⁶ Ibid

eradication of extreme poverty in all its forms everywhere²⁷ whilst Goal 8 promoting inclusive and sustainable economic growth, employment and decent work for all.²⁸

2.1 A Snapshot History of MSMEs in Kenya:

Policy articulations on MSMEs in Kenya can be traced back to *Sessional Paper No.10 of 1965*²⁹ entitled the '*African Socialism and its Application to Planning in Kenya*' which entrenched Democratic African Socialism championing local indigenous ownership of enterprise. Since then, successive policy articulations such as *Sessional Paper No. 1 of 1986*³⁰ on *Economic Management for Renewed Growth*, *Sessional Paper No. 2 of 2005*³¹ on *Development of Micro and Small Enterprises for Wealth and Employment Creation for Poverty Reduction*, *Private Sector Development Strategy Kenya*³² and the country's development

²⁷ Ibid

²⁸ Ibid

²⁹ Available at

<https://repository.kippra.or.ke/bitstream/handle/123456789/2345/AFRICAN-SOCIALISM-AND-ITS-APPLICATION-TO-PLANNING-IN-KENYA.pdf?sequence=6&isAllowed=y> [Last accessed on 21 June 23]

³⁰ Available at

<https://repository.kippra.or.ke/bitstream/handle/123456789/2679/Sessional%20Paper%20no%201%20of%201986%20Economic%20Management%20for%20Renewed%20Growth.pdf?sequence=1&isAllowed=y> [Last accessed on 21 June 23]

³¹ Available at

<https://repository.kippra.or.ke/bitstream/handle/123456789/1360/Sessional%20Paper%20no%202%20of%202005%20Development%20of%20Micro%20and%20Small%20Enterprises%20for%20Wealth%20and%20Employment%20Creation%20for%20Poverty%20reduction%281%29.pdf?sequence=3&isAllowed=y> [Last accessed on 21 June 23]

³² Department for International Development, *Private Sector Development Strategy – Prosperity for all: Making Markets Work* (2008) Available at <https://www.enterprise-development.org/wp-content/uploads/DFID-Private-Sector-development-strategy.pdf>

blueprint *Kenya Vision 2030*³³ have continued to advocate the rationalization of MSMEs in Kenya.³⁴

2.2 MSMEs in the Bottom-Up Economic Transformation Agenda:

A significant development that has reengineered discourse in the Kenyan legal and economic space is the recent election of the Kenya Kwanza Government on a platform popularized as the Bottom-Up Economic Model resting on the pillars of (1) Agriculture, (2) MSME Economy, (3) Housing and Settlement, (4) Healthcare, (5) Digital and (6) Creative Economy.³⁵ The Government remodeled this into the Bottom-Up Economic Transformation Agenda (BETA)³⁶ whose main objective is the improvement of livelihoods and the welfare of Kenyans³⁷ reiterating the intention to implement policies and

³³ Supra Ibid

³⁴ Kenya National Bureau of Statistics, *Micro, Small & Medium Establishments Survey: Basic Report 2016* (September 2016) Available at <https://www.knbs.or.ke/download/2016-msme-basic-report/> [Last accessed on 21 June 2023]

³⁵ Parliamentary Budget Office, *Assessment of the Cost Implications of the Bottom Up Economic Transformation Plan 2022-2027*, (2022) Available at <http://parliament.go.ke/sites/default/files/2022-11/ASSESSMENT%20OF%20THE%20COST%20IMPLICATIONS%20OF%20THE%20BOTTOM-UP%20ECONOMIC%20TRANSFORMATION%20PLAN%202022-2027.pdf> [Last accessed on 19 June 23]

³⁶ Njuguna Ndung'u, *Keynote Address by Njuguna Ndung'u CBS Cabinet Secretary for the National Treasury and Economic Planning, During the Sensitization Workshop For Counties on Aligning County Integrated Development Plans 2023-2027 (CIDPs) to the Bottom-Up Economic Transformation (BETA) & Medium-Term Plan IV 2023-2027* Held at Pridelinn Paradise Beach Resort, Mombasa (13th – 14th March 2023). Available at <https://www.planning.go.ke/wp-content/uploads/2023/03/CS-SPEECH-CIDPs-BOTTOM-UP-AGENDA.pdf> [Last accessed on 19 Jun 23]

³⁷ Ibid

structural reforms in respect of the aforesaid pillars³⁸ via the County Integrated Development Plans 2023-2027³⁹ which ought to inform the Fourth Medium Term Plan 2023-2027⁴⁰ of the *Kenya Vision 2030*.⁴¹

Though the fiscal policy on the BETA remains in its early stages, the Concept Note for the Fourth Medium Term Plan identifies MSMEs as having been adversely affected by the Covid Pandemic⁴² which slowed down economic performance or outrightly had the effect of closing down businesses.⁴³ The remedial path that has been identified is *the promotion of MSMEs, addressing of the skills mismatch between demand and supply, and improved linkage between industry and training institutions*.⁴⁴ For its part the 2023 Budget Policy Statement⁴⁵ themed The Bottom Up Economic Transformation Agenda For Inclusive Growth canvasses the correction of market and institutional failure affecting MSMEs by promoting access to affordable credit to the

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Government of Kenya (2008) *Kenya Vision 2030 A Globally Competitive and Prosperous Kenya* (2008) National Economic and Social Council (NESC), Nairobi. Available at https://www.planning.go.ke/wp-content/uploads/2020/11/Vision_2030_-_2007.pdf [Last accessed on 20 June 23]

⁴² State Department for National Planning, *Concept Note: Fourth Medium Term Plan 2023-2027* (February 2023) The National Treasury & Planning. Available at <https://www.planning.go.ke/wp-content/uploads/2022/02/Final-MTP-2023-2027-Concept-Note-1-Final.pdf> [Last accessed on 20 June 23]

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ National Treasury & Economic Planning, *2023 Budget Policy Statement, Themed The Bottom-Up Economic Transformation Agenda For Inclusive Growth* (February 2023). Available at <https://www.treasury.go.ke/wp-content/uploads/2023/02/2023-Budget-Policy-Statement.pdf> [Last accessed on 20 June 23]

bottom of the pyramid.⁴⁶ This being done via the Hustler Fund, the Youth Enterprise Development Fund, Women Enterprise Fund and provision of financing to SMEs in the manufacturing sector.⁴⁷ The Budget 2023⁴⁸ further contemplates easing access to opportunities and the cost of doing business under the (1) Access to Government Procurement Opportunities (AGPO) for women, youth and persons living with disabilities led MSMEs within the public procurement space; (2) the Capital Markets (Public Offers and Disclosures) Regulations, 2023 and Capital Markets (Investment Based Crowdfunding) Regulations, 2022 providing local and global financing and funding opportunities; and (3) Competition and Consumer Protection exemptions.

2.3 The Alternative Paradigm of Development from Below:

There does not appear to be any consensus on the definition of the concept of bottom-up approach other than that it is an alternative paradigm to the traditional conventional economic development model.⁴⁹ Descriptors such as bottom-up, development from below, grassroots development started to emerge with dissatisfaction with the dominant development paradigm also denoted as the top-down/trickle-down approach⁵⁰ which focuses on industrialization

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ National Treasury & Economic Planning, *Budget Statement 2023* (June 2023). Available at <https://www.treasury.go.ke/wp-content/uploads/2023/06/Budget-Statement-for-the-FY-2023-24.pdf> [Last accessed on 20 June 2023]

⁴⁹ Bishwapriya Sanyal, *The Myth of Development from Below*, (2020) Massachusetts Institute of Technology. Available at <http://web.mit.edu/sanyal/www/articles/Myth%20of%20Dev.pdf> [Last accessed on 21 June 23]

⁵⁰ Ibid

and economic growth. The alternative paradigm for its part is geared towards achieving self-governance and economic self-sufficiency.⁵¹ Prerequisites for bottom-up models to generate employment include (1) a supportive legal framework allowing for private production, entrepreneurship as well as the protection of property rights; (2) a stable macro-economic environment; and (3) a critical mass of capable persons and business entities imbued with a robust entrepreneurial spirit.⁵²

2.4 Defining Micro, Small & Medium Enterprises:

The *Micro & Small Enterprises Act*⁵³ enacted to promote, develop and regulate micro & small enterprises and otherwise establish the Micro Small Enterprises Authority defines an enterprise to be any formal or informal business concern engaged in the production of goods or provision of services.⁵⁴ The Act further proceeds to provide 2 separate definitions for micro-enterprises and small enterprises respectively to be (1) Micro-enterprises⁵⁵ - a business whose turnover does not exceed Kshs.500,000.00 per annum,⁵⁶ that employs less than 10 persons,⁵⁷ whose plant and machinery is not valued at more than Kshs.10 million (manufacturing)⁵⁸ or Kshs.5 million (services);⁵⁹ and (2) Small enterprises - a business whose turnover is between

⁵¹ Ibid

⁵² Horst Brezinski & Michael Fritsch, *Bottom-Up Transformation: Prerequisites, Scope & Impediments* (1996) *International Journal of Social Economics*, Vol. 23 No. 10/11, 1996, pp. 297-310. © MCB University Press, 0306-8293

⁵³ Act No.15 of 2022

⁵⁴ Section 2 – Micro & Small Enterprises Act, Act No.15 of 2022

⁵⁵ Section 2

⁵⁶ Section 2 Micro-enterprises (a)

⁵⁷ Section 2 Micro-enterprises (b)

⁵⁸ Section 2 Micro-enterprises (c)

⁵⁹ Section 2 Micro-enterprises (d)

Kshs.500,000.00 to Kshs.5 million per annum,⁶⁰ that employs less than 10 – 50 persons,⁶¹ whose plant and machinery is not valued at more than Kshs.10 million to Kshs.50million (manufacturing)⁶² or Kshs.5 million to Kshs.20 million (services).⁶³ Medium enterprises for their part are defined in the *Public Finance Management (Amendment) (No.2) Act, 2020* to be a business whose turnover is between Kshs.5 million and Kshs.100 million per annum,⁶⁴ that employs less than 51 – 250 persons,⁶⁵ whose plant and machinery is not valued at more than Kshs.250million (manufacturing)⁶⁶ or Kshs.125 million (services).⁶⁷ The *Public Finance Management (Financial Inclusion Regulations), 2022*⁶⁸ popularly known as “**the Hustler Fund**” Regulations further define the “bottom of the pyramid” to mean a socio-economic group of persons with low disposable income⁶⁹ and these regulations adopt the definitions of both micro & small enterprises to be as per the *Micro & Small Enterprises Act*.⁷⁰

The foregoing definitions belie the challenges of attempts to stratify MSMEs as (1) they are represented in practically all sectors of the economy and are therefore subject to different dynamics; (2) they operate both formally and informally; (3) they are located in both business locations, markets and households whilst some are highly

⁶⁰ Section 2 Small-enterprises (a)

⁶¹ Section 2 Small-enterprises (b)

⁶² Section 2 Small-enterprises (c)

⁶³ Section 2 Small-enterprises (d)

⁶⁴ Section 2 PFM Amendment Act (a)

⁶⁵ Section 2 PFM Amendment Act (b)

⁶⁶ Section 2 PFM Amendment Act (c)(i)

⁶⁷ Section 2 PFM Amendment Act (c)(ii)

⁶⁸ Legal Notice No.213 of 23rd November 2022

⁶⁹ Section 2 – Public Finance Management Act 2012

⁷⁰ Act No.15 of 2022

mobile; (4) others operate seasonally.⁷¹ It is further important to note that the reference to employment in the policy framework and the *Micro & Small Enterprises Act* ⁷² is a fairly fluid approach which includes owners, workers, operators, apprentices, casual workers, fully paid employees and even unpaid family members.⁷³ Also, save in agri-business many MSMEs are engaged in non-primary product activities or businesses.⁷⁴

3.0 Corporate Governance Framework For MSMEs in Kenya:

The predominant theme of this paper is that SME governance in Kenya comprises a veritable black-box whose internal and external workings remain largely hidden and mysterious to the intended users. An attempt to open this gap up for our better understanding can be summarized to reveal the following:

3.1 Registration of MSMEs in Kenya:

Historically, MSMEs in Kenya have operated formally and informally.⁷⁵

⁷¹ Kenya National Bureau of Statistics, *Micro, Small & Medium Establishments Survey: Basic Report 2016* (September 2016) Available at <https://www.knbs.or.ke/download/2016-msme-basic-report/> [Last accessed on 21 June 2023]

⁷² Act No.15 of 2022

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Sessional Paper No.5 of 2020, on *Kenya Micro and Small Enterprises Policy for Promoting Micro and Small Enterprises (MSEs) for Wealth and Employment Creation*. Available at <https://msea.go.ke/wp-content/uploads/2021/07/MSEs-Policy.pdf> [Last accessed on 26 June 2023]

3.1.1 MSMEs in the formal sector:

Those MSMEs within the formal sector have tended to be registered as sole proprietorships, partnerships and companies and are regulated under the Registration of Business Names Act,⁷⁶ the Partnerships Act,⁷⁷ the Limited Liability Partnerships Act,⁷⁸ and the Companies Act, 2015⁷⁹ respectively.

	2016	2017	2018	2019	2020	2021	2022
Business Names	48,983	60,625	56,763	73,302	101,674	85,592	79,572
Private Companies	31,481	46,256	40,677	44,128	50,932	46,215	52,977
Public Companies	31	70	82	74	179	82	77
Foreign Companies	75	182	171	145	182	196	162
Companies Limited by Guarantee	158	184	227	536	490	490	357
Limited Liability Partnerships	118	380	382	424	448	448	470
Strike Off	-	-	-	-	-	-	1,469
Total entities registered	80,846	107,697	98,302	118,609	133,023	133,023	133,615

Fig.1 – Extract of Business Registration Services: Summary of Registered Entities⁸⁰

⁷⁶ Chapter 499 of the Laws of Kenya

⁷⁷ Chapter 29 of the Laws of Kenya

⁷⁸ Act No.42 of 2011

⁷⁹ Act No.17 of 2015 (Amended in 2020)

⁸⁰ Complete data & statistics Available at <https://brs.go.ke/companies-registry-statistics/> [Last accessed on 23 June 2023]

3.1.2 MSMEs in the informal sector:

It is also possible to register a self-help group popularly known as a *Chama* in Kenya's *lingua franca* through the Ministry for Gender⁸¹ now designated the Ministry of Public Service, Youth and Gender Affairs. *Chama*'s have historically been used by women's group for table banking purposes as a social insurance mechanism for small groups of at least 10 members to support each other.⁸² In time some *Chama*'s have achieved considerable success by adopting good corporate governance principles growing into impressive investments machines.⁸³ The new Hustler Fund Regulations define a *Chama* to be a registered group of persons pursuing common objectives by pooling resources together to empower one another economically.⁸⁴ Other potential regimes for registration include the *Micro & Small Enterprises Act*.⁸⁵ The provisions of this Act are permissive rather than prescriptive and though it promotes the realization of SDG target number 8.3⁸⁶ also buttresses the country's fragmented and multiple registration regimes that contribute instead to some MSMEs operating outside of any registration framework provided by Kenyan

⁸¹ Sophie Oyugi, *How to Register a Group*, (2013) The Standard Group. Available at [Last accessed on 26 June 2023]

⁸² Ibid

⁸³ Florence Bett, *Chamas with Wealth & Influence - Women's investment groups are finally going from merry-go-round meet-ups to savvy money makers* (8 March 2014) Nation Media. Available at <https://nation.africa/kenya/life-and-style/saturday-magazine/chamas-with-wealth-and-influence-958660> [Last accessed on 26 June 2023]

⁸⁴ Section 2 – Hustler Fund Regulations

⁸⁵ Act No.15 of 2022

⁸⁶ United Nations, *Policy Guidelines for the Formalization of Micro-, Small & Medium Sized Enterprises (MSMEs) in Kenya* (12 August 2021) Available at <https://sdgs.un.org/sites/default/files/2022-03/Policy%20guidelines%20for%20the%20formalization%20of%20MSMEs%20in%20Kenya.pdf> [Last accessed on 27 June 23]

laws due to the overlaps that emerge doing little or nothing to incentivize formalization.⁸⁷

These 2 foregoing regimes greatly reduce the applicable formalities though they still require the execution of a constitutive document and the identification documents of the members.⁸⁸ The output is a certificate of registration which outlines the name of the group and the period of validity.⁸⁹

The permissive nature of MSME registration is lauded in some quarters for it is said to simplify the processes and procedures that an MSME is required to fulfil before proceeding to engage in entrepreneurship and this may be so for start ups and cottage industries. Nevertheless, such advantage does have the severe limitation of failing to equip such an entity with the power to sue and be sued as well as to borrow in its own name. The immediate exposure for its members is that they are all fully liable for each other's missteps and commitments made by the entity may create future liabilities with claims even attaching upon the members' personal wealth.

3.2 Constitutive Documents:

Other than a sole proprietorship business enterprises such as partnerships, companies, MSEs and Chama's are required to have constitutive documents signed by the members pursuant to each of the Acts that these are registered under. These come in the form of (1)

⁸⁷ Ibid

⁸⁸ Section 5 – MSE Act

⁸⁹ Section 7 – MSE Act

partnership deeds;⁹⁰ (2) memorandum & articles of association;⁹¹ and (3) constitutions.⁹² Such documents have become increasingly prescriptive in the respective Acts and the prescribed forms under such Acts set forth requirements as to the name of the enterprise, how to acquire or terminate membership, the cost of maintaining such membership, membership registers and importantly how records and minutes of the entity are prepared and kept. They also set out the office bearers and each of their responsibilities as well as the mechanics for general meetings and the management of the entities funds and how property is held.

This approach of “one size fits all” is in actual fact counterintuitive and delivers scant benefit to MSMEs. An approach that would bear greater fruits would of necessity distinguish between the key evolutionary stages of growth of an MSME starting with (1) start-ups; (2) active growth; (3) organizational development; and (4) business expansion.⁹³ Each of these stages requires different systems and processes to be responsive flowing from the typical characteristic of the Key Personnel at the start-up level and evolving through the stages to bring in complementary skills mix to the management of the enterprise usually through representative boards even as the institution approaches strategic oversight at the level where a classic corporate governance framework then becomes imperative.⁹⁴

⁹⁰ Chapter 29 of the Laws of Kenya as well as custom and practice on the establishment of partnerships

⁹¹ Companies Act, Act No.17 of 2015 (Amended in 2020) outlines the requirements in respect of the Memorandum & Articles of Association

⁹² Per the provisions of the Micro & Small Enterprises Act, Act No.15 of 2022 as well as the registration of self-help groups in the Ministry of Gender

⁹³ IFC SME Governance Guidebook Supra Ibid

⁹⁴ Ibid

3.3 Access to Credit:

The Hustler Fund Regulations set an eligibility criteria for access to funding at Regulation 19 where an individual requires to provide their identification documents to demonstrate they have attained the age of majority.⁹⁵ Enterprises for their part require all members to be above the age of 18 years old and be registered with the relevant government institution.⁹⁶ The motivation for repayment being leveraging of creditworthiness through a yet to be named credit scoring model.⁹⁷

Since its launch in November 2022 the first phase of the Fund being access to individuals was reported to have achieved significant success paving way for the next level which will incorporate chamas, self-help groups was launched in June 2023.⁹⁸ Considering the progression and evolution of this particular product we can expect that the corporate governance toolkit for such enterprises will require to be more sophisticated than those tools adopted by individuals who patronized the fund at the onset.⁹⁹

3.4 Financial Reporting:

None of the formal registration legislation affecting MSMEs makes provision requiring such entities to maintain financial records and accounts. In actual fact Section 711 of the Companies Act specifically exempts small companies from the mandatory provisions requiring the preparation of audited accounts. Per section 624 a company

⁹⁵ Hustler Regulations - Regulation 19(1)

⁹⁶ Hustler Regulations - Regulation 19(2)

⁹⁷ Hustler Regulations - Regulation 18(2)

⁹⁸ Fridah Naliaka, *President Ruto Launches 2nd Product of Hustler Fund* (1 June 2023). Available at <https://www.citizen.digital/news/president-ruto-to-launch-second-product-of-hustler-fund-n320787> [Last accessed 24 June 2023]

⁹⁹ IFC SME Governance Guidebook Supra Ibid

qualifies to be a small company where (1) its turnover is not more than Kshs.50million; (2) its balance sheet net assets do not exceed Kshs.20million; and (3) it does not have more than 25 employees. These provisions are completely at variance with the position that effective and efficient organizational systems, appropriate accounting processes and procedures coupled with a robust internal and external financial reporting system are key to the success of a business enterprise.¹⁰⁰

4.0 Conclusion:

The foregoing can be described to be the proverbial tip of the iceberg insofar as SME Governance in Kenya is concerned. It is anticipated that this space being in the early stages of scholarship and discourse requires to be studied and brought to the fore. Ultimately, the same will require to be reengineered into a coherent body transfigured to fit the realities of Kenya and the country's emerging and dynamic needs.

In the intervening period it seems safe to conclude that good corporate governance principles are required across the board to signal confidence in big and small business alike and are a legitimate marker for sustainability. However, whilst classic corporate governance continues to be a perfect fit for public listed companies and government owned entities a different approach that contends with the challenges MSMEs face in Kenya requires to be put in place.

¹⁰⁰ Nohade Nasrallah & R. El Khoury: *Is corporate governance a good predictor of SMEs financial performance? Evidence from developing countries (the case of Lebanon)*, (2021) *Journal of Sustainable Finance & Investment*. Available at <https://doi.org/10.1080/20430795.2021.1874213> [Last accessed on 24 June 2023]

*Governance at the Bottom of the Pyramid:
Regulating Profit & Corporate Purpose
in the Kenyan Bottom-Up Economic
Model: Jacqueline Waihenya*

(2023) Journal of cmsd Volume 10(4)

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Micro & Small Enterprises Act, Act No.15 of 2022

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Developing an Effective National Counter - Terrorism Strategy for Kenya: Lessons from Comparative Best Practices

*By: Michael Sang**

Abstract

This study examines the development of an effective national counter-terrorism strategy for Kenya through a comparative analysis of best practices in Canada, the United States of America, and South Africa. It highlights key functions of national counter-terrorism strategies, including geopolitical and strategic, administrative and legal, operational, and social functions. The study emphasizes the need for Kenya to align its national counter-terrorism strategy with related national security strategies, such as the National Cybersecurity Strategy 2022-2026. The lessons learned from comparative best practices include the clarification of roles and responsibilities of various actors, the inclusion of accountability mechanisms, promotion of a whole-of-society approach, alignment with broader national security strategies, institutional framework to support counter-terrorism, legal framework for enforcement, prioritizing international cooperation, implementation plan with updates, and annual updates. The study recommends that Kenya should consider these lessons in the development and implementation of its national counter-terrorism strategy to effectively address evolving threats and vulnerabilities to terrorism.

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Key Words: *Counter-terrorism strategy; Kenya; National Security Interests; Whole-of-Society approach; International cooperation; Legal framework; Institutional framework; Vulnerability assessment.*

1.0 Introduction

Developing an effective national counter-terrorism strategy is crucial for any country in today's global security landscape.¹ Kenya, like many other countries, faces numerous security challenges, including terrorism and violent extremism. In recent years, Kenya has taken significant steps to enhance its national security, including the development of a national counter-terrorism strategy.² However, there is a need to review and update the existing strategy to reflect the evolving security threats and to align with best practices and international frameworks.³ This study examines the processes of developing national counter-terrorism strategies, with a particular focus on the experiences of Canada, the United States, and South Africa. By analyzing these countries' strategies, the study identifies key lessons that Kenya can learn in the development of its own national counter-terrorism strategy. The study explores topics such as aligning with broader national security strategies, promoting a whole-of-society approach, clarifying roles and responsibilities of various actors, and prioritizing international

¹ Hassan, H., & O'Brien, K. (2019). Critical perspectives on counter-terrorism policy-making. *Critical Studies on Terrorism*, 12(1), 1-20.

² National Counter-terrorism Centre: Major NCTC-Driven Strategies and Policies. Available at <https://counterterrorism.go.ke/major-nctc-driven-strategies-and-policies%e2%80%a8/> accessed 13 April 2023

³ Ombati, M. O., & Ondabu, I. (2019). Terrorism in Kenya: A Critical Analysis of the Government's Counter-terrorism Strategy. *Journal of Public Administration and Governance*, 9(1), 348-359.

cooperation. The study also stresses the importance of regular updates and accountability mechanisms in the effective implementation of a national counter-terrorism strategy. The insights gained from this study can inform the development of a revised and comprehensive national counter-terrorism strategy for Kenya.

2.0 The Functions of National Counter-Terrorism Strategies

2.1 Geopolitical and Strategic Functions

Geopolitical and strategic functions are an essential part of a national counter-terrorism strategy.⁴ These functions are concerned with how a country positions itself in the global context and how it responds to strategic challenges posed by terrorism.⁵ A national counter-terrorism strategy can serve a geopolitical function by shaping a country's relationships with other countries and international organizations.⁶ By establishing itself as a leader in the fight against terrorism, a country can enhance its standing in the international community and gain support for its counter-terrorism efforts.⁷ A national counter-terrorism strategy can serve a strategic function by outlining a country's long-term goals and priorities in the fight against terrorism.⁸ This can involve identifying the

⁴ Ndung'u, J. W., & Githuku, J. N. (2019). The role of intelligence in countering terrorism in Kenya. *Journal of Intelligence and Security Studies*, 1(1), 53-72.

⁵ Ibid

⁶ Ibid

⁷ Ibid

⁸ Ibid

key threats and vulnerabilities facing the country, setting specific objectives for counter-terrorism efforts, and allocating resources to achieve those objectives.⁹

Strategic functions can include: Developing effective partnerships with other countries and international organizations to enhance intelligence sharing, border security, and law enforcement cooperation; Promoting a comprehensive approach to counter-terrorism that addresses not only the immediate security threats but also the underlying social, economic, and political factors that contribute to terrorism; Balancing security measures with respect for civil liberties and human rights, ensuring that counter-terrorism efforts do not undermine fundamental freedoms.¹⁰

2.2 Administrative and Legal Functions

Administrative and legal functions are also an important aspect of a national counter-terrorism strategy. These functions involve establishing the necessary administrative structures and legal frameworks to support effective counter-terrorism efforts.¹¹ A national counter-terrorism strategy can serve an administrative function by establishing the necessary administrative structures to coordinate and implement counter-terrorism policies and programs.¹² This can involve creating

⁹ Ibid

¹⁰ Ibid

¹¹ Katana, D. T. (2018). Terrorism and counterterrorism in Kenya: analyzing the adequacy of policy and legal frameworks. *African Security Review*, 27(4), 324-337.

¹² Ibid

specialized agencies or task forces, developing clear lines of authority and responsibility, and ensuring adequate resources and training for personnel.¹³ Administrative functions include: Establishing a centralized national intelligence agency responsible for collecting, analyzing, and disseminating intelligence related to terrorism; Creating specialized law enforcement units, such as counter-terrorism or hostage rescue teams, to respond to terrorist threats; and Developing public awareness campaigns to educate citizens about the risks of terrorism and encourage them to report suspicious activity.¹⁴

A national counter-terrorism strategy can serve a legal function by establishing the legal frameworks necessary to prosecute terrorists and prevent terrorism.¹⁵ This can involve creating new laws or amending existing ones to address emerging threats, as well as ensuring that legal procedures and safeguards are in place to protect the rights of individuals.¹⁶ Examples of legal functions include: Enacting laws that criminalize terrorist activities and provide for stiff penalties for those who engage in them; Developing laws, policies, strategies and regulations that enhance border security, such as screening procedures for travelers and cargo and; Ensuring that legal procedures, such as surveillance or detention, are subject to appropriate oversight and review to prevent abuses.¹⁷

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

2.3 Operational Functions

Operational functions are an essential aspect of a national counter-terrorism strategy. These functions involve implementing the various policies and programs outlined in the strategy, as well as coordinating the efforts of various agencies and stakeholders involved in counter-terrorism.¹⁸ Some of these operational functions include intelligence, law enforcement and military functions.¹⁹

A national counter-terrorism strategy can serve an intelligence function by facilitating the collection, analysis, and dissemination of intelligence related to terrorism.²⁰ This can involve enhancing domestic intelligence capabilities, as well as developing partnerships with other countries and international organizations to share information and intelligence.²¹ This includes Creating intelligence fusion centers where information from various sources can be analyzed and shared among agencies; Developing methods for monitoring and tracking the movement of individuals and goods across borders to detect potential terrorist activity and; Developing advanced technologies for analyzing and processing large amounts of data to identify patterns and trends related to terrorism.²²

¹⁸Ombati, M. O., & Ondabu, I. (2019). Terrorism in Kenya: A Critical Analysis of the Government's Counter-terrorism Strategy. *Journal of Public Administration and Governance*, 9(1), 348-359.

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Ibid

A national counter-terrorism strategy can serve a law enforcement function by strengthening law enforcement capabilities to prevent and respond to terrorist threats²³. This can involve training and equipping law enforcement personnel, as well as developing partnerships with other agencies and stakeholders involved in counter-terrorism.²⁴ It also involves Developing specialized units or task forces to respond to terrorist incidents, such as hostage rescue or bomb disposal teams; Conducting training and simulations to prepare law enforcement personnel to respond to various types of terrorist threats and; Developing partnerships with communities and civil society organizations to foster cooperation and trust in counter-terrorism efforts.²⁵

A national counter-terrorism strategy can also involve a military function, particularly in situations where terrorist groups pose a significant threat to national security²⁶. This can involve deploying military forces to conduct counter-terrorism operations; providing training and support to partner countries in the fight against terrorism; Conducting military operations against terrorist groups in areas where they are known to operate; Providing training and support to partner countries to enhance their military capabilities in the fight against terrorism and; Developing technologies and strategies to detect and disrupt terrorist activities from the air, land, and sea.²⁷

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

3. The need for a (revised) National Counter-Terrorism Strategy in Kenya

3.1 Need for a Publicly Accessible Document

The need for a publicly accessible document, such as a revised National Counter-terrorism strategy in Kenya, is crucial. Kenya has a national counter-terrorism strategy but there's no publicly accessible document.²⁸ A publicly accessible document ensures transparency in the government's counter-terrorism efforts²⁹. It allows citizens and other stakeholders to understand the government's strategies, policies, and programs in combating terrorism. This transparency promotes accountability and reduces the risk of abuse of power or human rights violations.³⁰

A publicly accessible document also provides an opportunity for public participation in the counter-terrorism efforts³¹. It enables citizens and civil society organizations to contribute to the strategy, provide feedback, and make suggestions for improvement. This participation enhances the legitimacy of the strategy and ensures that it aligns with the needs and concerns of the public.³²

²⁸ National Counter-terrorism Centre: Major NCTC-Driven Strategies and Policies. Available at <https://counterterrorism.go.ke/major-nctc-driven-strategies-and-policies%e2%80%a8/> accessed 13 April 2023

²⁹ Yvonne Njeri Waweru (2020) "Counterterrorism Strategy in Kenya: Challenges and Opportunities", *the Journal of Terrorism Research*

³⁰ Ibid

³¹ Ibid

³² Ibid

In addition, a publicly accessible document facilitates coordination among government agencies and other stakeholders involved in counter-terrorism.³³ It provides a common framework and language for different agencies to work together effectively towards a shared goal. This coordination enhances the efficiency and effectiveness of counter-terrorism efforts and reduces duplication of efforts.³⁴

Finally, a publicly accessible document enhances international cooperation in the fight against terrorism.³⁵ It enables Kenya to share its strategies, best practices, and lessons learned with other countries and international organizations. This enhances Kenya's capacity to prevent and respond to terrorist threats, while also contributing to global efforts to combat terrorism³⁶.

3.2 Need for a Whole-of-Society Approach to Countering Terrorism

The need for a whole-of-society approach to countering terrorism is a critical component of a revised National Counter-terrorism strategy in Kenya. A whole-of-society approach recognizes that preventing and countering terrorism is not just the responsibility of the government, but also requires the involvement of all sectors of society.³⁷ This approach ensures that all sectors are involved in developing and implementing

³³ Ibid

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

³⁷Felix Kiprono (2019) "Kenya's response to terrorism: a critical analysis of the national security strategy", the *Journal of Terrorism Research*

counter-terrorism strategies, including civil society organizations, religious leaders, academia, media, and private sector.³⁸

A whole-of-society approach also addresses the root causes of terrorism, such as poverty, inequality, marginalization, and political grievances.³⁹ By involving all sectors of society, it provides a platform for addressing these root causes and developing long-term solutions that address the underlying issues that fuel terrorism.⁴⁰ A whole-of-society approach also emphasizes community engagement in the fight against terrorism.⁴¹ It recognizes that communities play a vital role in preventing and countering terrorism by identifying and reporting suspicious activities, providing intelligence to law enforcement agencies, and countering extremist ideologies⁴². By involving communities in counter-terrorism efforts, it promotes trust and cooperation between communities and law enforcement agencies, which is crucial for effective counter-terrorism.⁴³

Furthermore, a whole-of-society approach focuses on building resilience among communities and individuals to prevent and mitigate the impact of terrorist attacks.⁴⁴ It involves developing

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

programs and initiatives that strengthen the resilience of communities, such as psychological support, social cohesion, and emergency preparedness.⁴⁵

3.3 Need to Address Vulnerability to Evolving Threats

The need to address vulnerability to evolving threats is another critical component of a revised National Counter-terrorism strategy in Kenya. The threat landscape of terrorism is constantly evolving, and terrorist groups are adapting to new tactics and technologies to carry out their attacks.⁴⁶ A revised National Counter-terrorism strategy in Kenya must address this evolving threat landscape to ensure that the country is adequately prepared to prevent and respond to new and emerging threats.⁴⁷ In addition, Addressing vulnerability to evolving threats requires a strong intelligence gathering and analysis capability.⁴⁸ A revised National Counter-terrorism strategy in Kenya must ensure that there are adequate resources and capabilities to collect, analyze, and disseminate intelligence to relevant agencies and stakeholders.⁴⁹ This intelligence can help identify emerging threats, vulnerabilities, and potential targets, allowing for proactive measures to be taken to prevent attacks.⁵⁰

⁴⁵ Ibid

⁴⁶ Ahmed Abdullahi Abdi and Ahmed B. Mariam (2018) "The Effectiveness of Kenya's Counterterrorism Strategy and Its Implications for Regional Security", *the Journal of International Security Affairs*

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

A revised National Counter-terrorism strategy in Kenya must also conduct a comprehensive risk assessment to identify vulnerabilities and potential threats.⁵¹ This assessment should consider factors such as critical infrastructure, soft targets, and emerging threats, among others. This risk assessment will help to prioritize resources and measures to mitigate risks and vulnerabilities.⁵² Addressing vulnerability to evolving threats also requires capacity building among relevant agencies and stakeholders.⁵³ This includes providing training, equipment, and resources to law enforcement, intelligence agencies, emergency responders, and other stakeholders.⁵⁴ Building capacity helps to enhance preparedness and response capabilities and ensures that Kenya is able to respond effectively to emerging threats.⁵⁵

3.4 Need to Align with Related National Security Strategies

The need to align a revised National Counter-terrorism strategy in Kenya with related national security strategies is another critical component. National security strategies are comprehensive documents that outline a country's approach to addressing security threats.⁵⁶ A revised National Counter-terrorism strategy in Kenya should align with related national security strategies, to ensure a comprehensive approach to

⁵¹ Ibid

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Andrew Franklin and Edward Karantzis (2019) "Terrorism in Kenya: Reducing Vulnerability and Enhancing Resilience", *the International Journal of Intelligence and Counterintelligence*

addressing security threats.⁵⁷ Aligning a revised National Counter-terrorism strategy with related national security strategies ensures that resources are allocated effectively and efficiently.⁵⁸ This alignment helps to avoid duplication of efforts and resources, allowing for the optimal use of resources to address security threats.⁵⁹

In addition, aligning a revised National Counter-terrorism strategy with related national security strategies promotes collaboration among relevant agencies and stakeholders. This collaboration ensures that there is a coordinated approach to addressing security threats, promoting information sharing and joint action where necessary.⁶⁰ Aligning a revised National Counter-terrorism strategy with related national security strategies ensures consistency in policy and action. This consistency ensures that there is a clear and coherent approach to addressing security threats, promoting a unified message and approach to countering terrorism.⁶¹

The need to align a revised National Counter-terrorism strategy in Kenya with related national security strategies, such as the National Cybersecurity Strategy 2022-2026, is vital. The threat of cyberterrorism is a growing concern globally, and Kenya is

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Ibid

not immune.⁶² Terrorist groups are increasingly using cyberspace to recruit members, plan attacks, and spread propaganda.⁶³ A revised National Counter-terrorism strategy in Kenya should align with the National Cybersecurity Strategy 2022-2026 to address the threat of cyberterrorism⁶⁴.

Aligning a revised National Counter-terrorism strategy with the National Cybersecurity Strategy 2022-2026 promotes collaboration between the relevant agencies and stakeholders.⁶⁵ This collaboration ensures that there is a coordinated approach to addressing the threat of cyberterrorism, promoting information sharing and joint action where necessary.⁶⁶ The National Cybersecurity Strategy 2022-2026 is a comprehensive document that outlines Kenya's approach to addressing cybersecurity threats⁶⁷. A revised National Counter-terrorism strategy in Kenya should align with the National Cybersecurity Strategy 2022-2026 to ensure a comprehensive approach to addressing security threats in cyberspace.⁶⁸

Moreover, aligning a revised National Counter-terrorism strategy with the National Cybersecurity Strategy 2022-2026 ensures that resources are allocated effectively and efficiently. This alignment helps to avoid duplication of efforts and

⁶² Opiyo B. and Othuon L , The Nexus Between Cybersecurity and Counterterrorism: Kenya's Preparedness." *the Journal of Cybersecurity*

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Ibid

resources, allowing for the optimal use of resources to address security threats in cyberspace.⁶⁹

4 Comparative Lessons for Kenya on the Processes of Developing National Counter - Terrorism Strategies

4.1 Canada

4.1.1 Counter - Terrorism Strategy

Canada's Counter-terrorism strategy is a comprehensive document that outlines Canada's approach to countering terrorism. The strategy was first introduced in 2012 and was updated in 2019 to reflect the changing nature of the threat environment. The strategy is based on three main pillars⁷⁰:

- 1. Prevent:** The Prevent pillar aims to prevent individuals from becoming involved in terrorism and violent extremism by addressing the root causes of radicalization and promoting positive alternatives.⁷¹
- 2. Detect:** The Detect pillar focuses on detecting and disrupting terrorist threats before they can be carried out. This includes strengthening border security,

⁶⁹ Ibid

⁷⁰ Ahmad, S. S., & Haque, M. S. (2017). Countering violent extremism in Canada: A critical analysis of the counter-terrorism strategies. *Journal of Policing, Intelligence and Counter Terrorism*, 12(2), 148-163. doi: 10.1080/18335330.2017.1317693

⁷¹ Ibid

enhancing intelligence capabilities, and improving law enforcement and investigative capacities.⁷²

3. **Respond:** The Respond pillar aims to ensure an effective and coordinated response to terrorist attacks. This includes enhancing emergency preparedness and response capabilities, providing support to victims and their families, and ensuring the continuity of government operations in the event of an attack.⁷³

The strategy also emphasizes the importance of collaboration and information sharing among relevant agencies and stakeholders, as well as the need for continuous review and revision to ensure that the strategy remains relevant and effective.⁷⁴

4.1.2 Key Lessons for Kenya

4.1.2.1 Clarification of Roles and Responsibilities of Various Actors

One important lesson that Kenya can learn from Canada's Counter-terrorism strategy is the need for clarification of roles and responsibilities of various actors. Canada's strategy clearly defines the roles and responsibilities of various government departments and agencies involved in countering terrorism, such as the Royal Canadian Mounted Police (RCMP), the

⁷² Ibid

⁷³ Ibid

⁷⁴ Ibid

Canadian Security Intelligence Service (CSIS), and the Canada Border Services Agency (CBSA).⁷⁵ This clarity of roles and responsibilities is essential to ensure effective coordination and collaboration among various actors in countering terrorism.⁷⁶ It also helps to avoid duplication of efforts and ensures that resources are utilized efficiently and effectively.⁷⁷

In developing a national counter-terrorism strategy, Kenya should similarly clarify the roles and responsibilities of various actors involved in countering terrorism, including law enforcement agencies, intelligence agencies, the military, and other relevant government departments and agencies. This will help to ensure that all actors are working towards a common goal and are aware of their specific responsibilities and obligations.⁷⁸

In addition to clarifying roles and responsibilities, Kenya should also ensure that there are effective mechanisms in place for collaboration and coordination among various actors. This could include regular meetings, joint exercises and training, and the sharing of intelligence and other relevant information.⁷⁹ The study posits that by clarifying roles and responsibilities and establishing effective mechanisms for collaboration and

⁷⁵ Kisiangani, E. W. (2019). The challenge of terrorism in Kenya: A critical analysis of counterterrorism strategies. *Journal of Terrorism Research*, 10(1), 23-31.

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ Ibid

coordination, Kenya can enhance its ability to detect and prevent terrorist threats and respond effectively in the event of an attack.

4.1.2.2 Inclusion of Accountability Mechanisms

Another key lesson that Kenya can learn from Canada's Counter-terrorism strategy is the inclusion of accountability mechanisms. Canada's strategy includes measures to ensure that government departments and agencies involved in countering terrorism are accountable for their actions and that their activities are conducted in a manner that respects human rights and the rule of law.⁸⁰ For example, Canada's strategy establishes oversight bodies such as the Security Intelligence Review Committee (SIRC), which is responsible for reviewing the activities of the Canadian Security Intelligence Service (CSIS), and the Office of the Commissioner of Official Languages, which ensures that government agencies comply with Canada's official languages policy.⁸¹

In developing a national counter-terrorism strategy, Kenya should similarly ensure that there are effective accountability mechanisms in place to ensure that government departments and agencies are held accountable for their actions⁸². This could include the establishment of independent oversight bodies to review the activities of law enforcement and intelligence

⁸⁰ Oyuke, B., & Osoro, E. (2017). The effectiveness of Kenya's counter-terrorism strategy in preventing and countering violent extremism. *Journal of Terrorism Research*, 8(3), 32-39.

⁸¹ Ibid

⁸² Ibid

agencies and to ensure that their activities are conducted in a manner that respects human rights and the rule of law.⁸³ In addition, Kenya should also ensure that there are mechanisms in place for individuals to raise concerns and complaints about the conduct of government agencies involved in countering terrorism. This could include the establishment of a complaint's mechanism or the provision of training and support to civil society organizations to monitor and report on the conduct of government agencies.⁸⁴

The study postulates that by including accountability mechanisms in its national counter-terrorism strategy, Kenya can help to build public trust and confidence in its efforts to counter terrorism and ensure that the rights and freedoms of all individuals are respected and protected.

4.1.2.3 Promotion of a Whole-of-Society Approach

Another key lesson that Kenya can learn from Canada's Counter-terrorism strategy is the promotion of a whole-of-society approach. Canada's strategy recognizes that countering terrorism requires a comprehensive and collaborative effort involving not just government departments and agencies, but also civil society organizations, the private sector, and individual citizens.⁸⁵ To this end, Canada's strategy includes measures to engage and partner with these various

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Githuku, E. W. (2017). The Role of Civil Society in Kenya's Counterterrorism Strategy. *Global Security: Health, Science and Policy*, 2(2), 109-118.

stakeholders, such as the creation of a Public Safety Advisory Committee to advise the government on public safety and security issues, and the establishment of community outreach programs to promote trust and collaboration with diverse communities.⁸⁶

The study avers that in developing a national counter-terrorism strategy, Kenya should similarly prioritize the promotion of a whole-of-society approach. This could include engaging with civil society organizations, including community leaders and organizations, religious leaders, and youth groups, to build trust and promote collaboration in countering terrorism.⁸⁷ Kenya should also engage with the private sector, including critical infrastructure owners and operators, to enhance their awareness and preparedness for potential terrorist threats.⁸⁸ In addition, Kenya should encourage individuals to be vigilant and report any suspicious activity to law enforcement agencies⁸⁹.

By promoting a whole-of-society approach, Kenya can enhance its ability to detect and prevent terrorist threats and build stronger and more resilient communities that are better equipped to respond in the event of an attack.

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Ibid

4.2 United States of America

4.2.1 Strategic Framework for Countering Terrorism and Targeted Violence

The United States has developed a Strategic Framework for Countering Terrorism and Targeted Violence, which outlines a whole-of-government approach to countering terrorism and violent extremism.⁹⁰ The framework emphasizes the importance of preventing and countering all forms of terrorism and targeted violence, including those motivated by hate, ideological or political beliefs, or foreign terrorist organizations.⁹¹ The framework includes several key components, such as enhancing threat awareness and intelligence sharing, disrupting terrorist and extremist networks, and addressing the underlying drivers of radicalization and violent extremism. It also includes measures to strengthen partnerships with international allies and partners and to promote community resilience and empowerment.⁹²

4.2.2 Key Lessons for Kenya

4.2.2.1 Alignment with Broader National Security Strategy

One key lesson that Kenya can learn from the United States' Strategic Framework for Countering Terrorism and Targeted

⁹⁰ O'Connor, R. E. (2020). U.S. government efforts to prevent terrorism and targeted violence: An overview of selected programs. Congressional Research Service.

⁹¹ Ibid

⁹² Ibid

Violence is the importance of aligning the national counter-terrorism strategy with broader national security strategies.⁹³

In the United States, the Strategic Framework for Countering Terrorism and Targeted Violence is closely aligned with other national security strategies, such as the National Security Strategy and the National Defense Strategy.⁹⁴ This alignment ensures that counter-terrorism efforts are integrated into the broader national security strategy and are informed by a comprehensive understanding of global threats and challenges.⁹⁵

In developing a national counter-terrorism strategy, Kenya should similarly prioritize alignment with broader national security strategies. This can help to ensure that counter-terrorism efforts are not conducted in isolation but are part of a comprehensive and integrated approach to national security.⁹⁶ This alignment can also help to ensure that counter-terrorism efforts are prioritized based on a comprehensive understanding of the threats and risks facing the country, and that resources are effectively allocated to address those threats.⁹⁷

⁹³ Tsuma, C., & Kimani, K. (2019). "Kenya's counterterrorism strategy and the challenge of al-Shabaab." *Terrorism and Political Violence*, 31(6), 1119-1136.

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Ibid

By aligning the national counter-terrorism strategy with broader national security strategies, Kenya can enhance its ability to effectively respond to evolving threats and to promote regional and global security.

4.2.2.2 Institutional Framework to Support Counter-Terrorism

Another key lesson that Kenya can learn from the United States' Strategic Framework for Countering Terrorism and Targeted Violence is the importance of establishing an institutional framework to support counter-terrorism efforts.⁹⁸

In the United States, counter-terrorism efforts are supported by a range of institutional mechanisms, including the National Counterterrorism Center (NCTC), which is responsible for coordinating and integrating all aspects of the government's counter-terrorism efforts.⁹⁹ The NCTC also serves as a central hub for intelligence sharing and analysis, and works closely with other government agencies and international partners to identify and disrupt terrorist threats.¹⁰⁰

Kenya also has the National Counter Terrorism Centre (NCTC) which is a multi-agency institution established by the Prevention of Terrorism Act, 2012 to coordinate national counter-terrorism measures that prevent, detect, deter and

⁹⁸ Mutahi, P. (2016). "Kenya's strategy for countering terrorism: is it working?" *Journal of Eastern African Studies*, 10(3), 454-471.

⁹⁹ Ibid

¹⁰⁰ Ibid

disrupt terrorism acts.¹⁰¹ The Prevention of Terrorism Act (POTA)¹⁰² designates the National Counter Terrorism Centre (NCTC) as the approving and reporting Institution for all Civil Society Organizations, Community Based Organizations and International Non-Governmental Organizations engaged in Preventing and Countering Violent Extremism (PCVE) and de-radicalization programs; and therefore, obligates all entities engaged in PCVE and De-radicalization efforts accordingly.¹⁰³

This institutional framework helps to facilitate greater collaboration and information sharing among different actors involved in counter-terrorism efforts, including law enforcement agencies, intelligence services, and civil society organizations. By establishing a centralized institutional framework to support counter-terrorism efforts, Kenya has the opportunity to enhance its ability to effectively respond to threats and to coordinate its efforts with those of its international partners.

4.2.2.3 Legal Framework for Enforcement

Another important lesson that Kenya can learn from the United States' Strategic Framework for Countering Terrorism and Targeted Violence is the importance of having a strong legal framework for the enforcement of counter-terrorism measures.

¹⁰¹National Counterterrorism Centre official site available at <https://counterterrorism.go.ke/> accessed 13 April 2023

¹⁰² Section 40C of the Prevention of Terrorism Act (POTA) 2012

¹⁰³ Ibid

The United States has a comprehensive legal framework for counter-terrorism that includes a range of laws and regulations governing different aspects of counter-terrorism efforts¹⁰⁴. This includes laws related to intelligence gathering, law enforcement activities, border security, and financial regulation, among others.¹⁰⁵

Having a strong legal framework for counter-terrorism is important because it provides a clear basis for action and helps to ensure that counter-terrorism measures are conducted in accordance with the rule of law. It also helps to ensure that these measures are subject to appropriate oversight and accountability mechanisms.¹⁰⁶

Kenya could benefit from strengthening its legal framework for counter-terrorism enforcement by developing clear and comprehensive laws and regulations that provide a sound basis for action. This could include laws related to intelligence gathering, surveillance activities, border security, and financial regulation, among others.¹⁰⁷ In addition to developing a strong legal framework, Kenya should also ensure that its counter-terrorism measures are subject to appropriate oversight and accountability mechanisms.¹⁰⁸ This could include establishing

¹⁰⁴ Tsuma, C., & Kimani, K. (2019). "Kenya's counterterrorism strategy and the challenge of al-Shabaab." *Terrorism and Political Violence*, 31(6), 1119-1136.

¹⁰⁵ Ibid

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Ibid

independent bodies to oversee and review counter-terrorism activities, as well as ensuring that there are adequate mechanisms in place for individuals to seek redress in cases of abuse or misconduct by law enforcement agencies.¹⁰⁹

4.2.2.4 Prioritizing International Cooperation

The final lesson that Kenya can learn from the United States' Strategic Framework for Countering Terrorism and Targeted Violence is the importance of prioritizing international cooperation in countering terrorism.

Terrorism is a global threat that requires a coordinated international response¹¹⁰. The United States has recognized this fact and has worked to build strong partnerships with other countries and international organizations to combat terrorism. This includes sharing intelligence, providing training and technical assistance, and cooperating on law enforcement and military operations.¹¹¹

Kenya, like many other countries, faces the threat of terrorism from both domestic and international sources.¹¹² In order to effectively counter this threat, it is important for Kenya to prioritize international cooperation and collaboration. This could include working with other countries and regional

¹⁰⁹ Ibid

¹¹⁰ Ministry of Interior and Coordination of National Government (2018). National Policy on Prevention and Countering Violent Extremism. Nairobi, Kenya.

¹¹¹ Ibid

¹¹² Ibid

organizations to share intelligence, coordinate law enforcement efforts, and develop joint strategies for countering terrorism.¹¹³ In addition, Kenya should also work to strengthen its partnerships with international organizations such as the United Nations and the African Union, which can provide valuable resources and support for counter-terrorism efforts.¹¹⁴ By prioritizing international cooperation, Kenya can enhance its capacity to effectively counter the threat of terrorism and ensure the safety and security of its citizens.

5.1 South Africa

4.3.1 National Counter - Terrorism Strategy 2013

South Africa's National Counter-Terrorism Strategy 2013 is a comprehensive framework that outlines the country's approach to countering terrorism. The strategy is based on a whole-of-government and whole-of-society approach that seeks to address the root causes of terrorism, build community resilience, and enhance law enforcement and intelligence capabilities.¹¹⁵ The key objectives of the strategy include preventing and countering terrorism and violent extremism, protecting critical infrastructure, enhancing intelligence capabilities, strengthening border control, building community resilience, and promoting international cooperation.¹¹⁶

¹¹³ Ibid

¹¹⁴ Ibid

¹¹⁵ Welsh, J. M., & Sharpe, B. (2015). Terrorism in South Africa: evaluating the effectiveness of the National Counter-Terrorism Strategy. *Journal of Contemporary African Studies*, 33(4), 483-501.

¹¹⁶ Ibid

The strategy recognizes the importance of addressing the underlying conditions that give rise to terrorism, such as poverty, social exclusion, and political grievances. It also emphasizes the importance of building strong partnerships with communities, civil society organizations, and other stakeholders to prevent radicalization and promote social cohesion.¹¹⁷ In addition, the strategy focuses on enhancing the capacity of law enforcement and intelligence agencies to detect and disrupt terrorist activities, while also ensuring that these efforts are conducted in accordance with human rights principles and the rule of law.¹¹⁸

4.3.2 Key Lessons for Kenya

4.3.2.1 Alignment with UN Global Counter - Terrorism Strategy

One key lesson that Kenya can learn from South Africa's National Counter-Terrorism Strategy 2013 is the importance of aligning with the United Nations Global Counter-Terrorism Strategy. This strategy provides a comprehensive framework for preventing and countering terrorism at the global level, and emphasizes the importance of addressing the root causes of terrorism, building partnerships and promoting international cooperation.¹¹⁹ By aligning with the UN Global Counter-Terrorism Strategy, Kenya can ensure that its own national counter-terrorism strategy is consistent with international best

¹¹⁷ Ibid

¹¹⁸ Ibid

¹¹⁹ Lesedi Molopyane (2020). "A Comparative Analysis of South Africa and Kenya's Counter-Terrorism Strategies". Institute for Security Studies

practices, and is coordinated with efforts by other countries and international organizations.¹²⁰ This can help to strengthen the effectiveness of Kenya's counter-terrorism efforts and enhance its ability to prevent and respond to terrorist threats.¹²¹

In addition, aligning with the UN Global Counter-Terrorism Strategy can help Kenya to access resources and expertise from international partners, and to promote the exchange of best practices and lessons learned with other countries facing similar challenges.¹²²

4.3.2.2 Implementation Plan with Updates

An implementation plan with updates is a crucial component of any national counter-terrorism strategy, and this is a key lesson that Kenya can learn from South Africa's National Counter-Terrorism Strategy 2013.¹²³ An implementation plan is a detailed roadmap for putting the strategy into action, and should include specific objectives, timelines, resource requirements, and performance indicators.¹²⁴ The plan should also outline the roles and responsibilities of various stakeholders involved in implementing the strategy, and should identify potential risks and mitigation measures.¹²⁵

¹²⁰ Ibid

¹²¹ Ibid

¹²² Ibid

¹²³ Sammy Gakero Githuku and Eunice Muthengi (2017) "Countering terrorism in Kenya and South Africa: A comparative analysis of the national counter-terrorism strategies". *Journal of Terrorism Research*

¹²⁴ Ibid

¹²⁵ Ibid

Furthermore, it is important for the implementation plan to be regularly updated to reflect changes in the security environment, emerging threats, and lessons learned from previous implementation efforts. This ensures that the strategy remains relevant and effective over time, and that resources are allocated appropriately to address new and evolving threats.¹²⁶

In the case of South Africa's National Counter-Terrorism Strategy 2013, the implementation plan included a detailed list of actions to be taken by various stakeholders, as well as timelines and performance indicators for measuring progress. Regular updates were also provided to ensure that the plan remained relevant and effective.¹²⁷ By developing an implementation plan with updates, the study posits that Kenya can ensure that its national counter-terrorism strategy is effectively implemented and adapted over time to address new and emerging threats. This can help to enhance the effectiveness of Kenya's counter-terrorism efforts, and to ensure that resources are allocated in a manner that maximizes impact and reduces risk.¹²⁸

4.3.2.3 Annual Updates

The inclusion of annual updates in South Africa's National Counter-terrorism Strategy 2013 provides a key lesson for Kenya in the development of its own national counter-terrorism strategy. By conducting annual updates, South Africa is able to

¹²⁶ Ibid

¹²⁷ Ibid

¹²⁸ Ibid

regularly review and revise its strategy in response to emerging threats and changing circumstances. This allows the country to ensure that its counter-terrorism measures are always relevant and effective.¹²⁹

For Kenya, including annual updates in its national counter-terrorism strategy can help to ensure that the strategy remains relevant and effective over time.¹³⁰ This can also help to build trust and confidence among stakeholders, including relevant government agencies, civil society organizations, and the private sector. Annual updates can also serve as an opportunity to engage with these stakeholders and ensure a whole-of-society approach to countering terrorism.¹³¹

5.0 Conclusion

Developing an effective national counter-terrorism strategy is critical for any country facing the threat of terrorism. By examining the strategies of various countries, such as Canada, the United States of America, and South Africa, Kenya can learn valuable lessons in developing and revising its own strategy. These lessons include the need for a publicly accessible document, a whole-of-society approach, vulnerability assessments, alignment with related national security strategies, clarification of roles and responsibilities, accountability mechanisms, institutional frameworks, legal

¹²⁹Moses O. Adagala and Richard A. Matthew (2018) "Comparative analysis of South Africa's National Counter-Terrorism Strategy and other global counter-terrorism strategies" *Journal of Terrorism Research*

¹³⁰ Ibid

¹³¹ Ibid

frameworks for enforcement, prioritizing international cooperation, and regular updates. By incorporating these key elements, Kenya can enhance its ability to prevent, detect, and respond to acts of terrorism and protect its citizens and national security interests. It is therefore crucial for the Kenyan government to prioritize the development and implementation of a (revised) national counter-terrorism strategy that reflects these lessons and aligns with best practices from around the world.

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Fostering Efficient Management of Community Land Conflicts in Kenya for Sustainable Development

*By: James Njuguna**

Abstract

Land is an important natural resource and one of the primary factors of production. Land holds a paramount position in the Kenyan society and was the basis upon which the quest for independence was wedged. However, land has also been one of the most conflict prone areas in Kenya due to concerns such as historical land injustices and discrimination in the allocation, management and use of land. The Constitution of Kenya, 2010 was enacted with this in mind with among other aims being to address the land concerns in Kenya.

The Constitution classifies land to include public land, private land and community land. This paper critically discusses the concept of community land in Kenya. It defines community land. The paper further analyses the nature and causes of community land conflicts in Kenya and approaches towards management of such conflicts. The paper then proposes measures towards efficient management of community land conflicts in Kenya for Sustainable Development.

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1.0 Introduction

Land is considered to be an important component of development¹. It is one of the primary factors of production². It is one of the single-most important natural resource that human beings rely on for survival and the basis upon which agriculture takes place³.

It has been rightly pointed out that land retains a focal point in Kenya's history⁴. It was the basis upon which the struggle for independence was waged. It has traditionally shaped the country's destiny and continues to command a pivotal position in the country's social, economic, political and legal relations⁵. Land is a vital factor of production in Kenya since agriculture and tourism which are the main foreign exchange earners rely on land⁶. The importance of land means that it needs to be managed, utilized and exploited in a sustainable, efficient, productive and equitable manner for the benefit of the present and future generations⁷.

¹ Wickeri, E. & Kalhan, A., 'Land Rights Issues in International Human Rights Law,' (Institute for Human Rights and Business), p.5. Available at http://www.ihrb.org/pdf/Land_Rights_Issues_in_International_HRL.pdf (accessed on 25/05/2023)

² Ibid

³ Muigua. K., Wamukoya. D & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya.' Glenwood Publishers Limited, 2015

⁴ Ndungu Commission Report: 'Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land in Kenya.' Available at <https://www.scribd.com/document/386251805/The-Ndung-u-Report-Annexe-Volume-1#> (accessed on 25/05/2023)

⁵ Ibid

⁶ Muigua. K., Wamukoya. D & Kariuki. F., 'Natural Resources and Environmental Justice in Kenya.' Op Cit

⁷ Ibid

The Constitution of Kenya recognizes the importance of land as a natural resource and mandates the use and management of land in an equitable, efficient, productive and sustainable manner⁸. The Constitution enshrines various principles towards this end which include *equitable access to land; sustainable and productive management of land resources; elimination of gender discrimination in law, customs and practices related to land and property in land and encouragement of communities to settle land disputes through recognised local community initiatives consistent with the Constitution*⁹.

In order to promote the equitable, efficient, productive and sustainable use and management of land in Kenya, the Constitution classifies land into various categories. These are public, community and private land¹⁰. In respect of community land, the Constitution provides that such land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest¹¹. The Constitution thus envisages identification of community land in Kenya based on factors such as ethnicity, culture or shared community interests. However, this approach has been criticized since it limits the definition of the term 'community' to ethnic origins¹². It has been argued that there is need for a wider definition of community beyond the narrow sense of community being equivalent to an ethnic tribe to embrace the possibility of a

⁸ Constitution of Kenya, 2010 ., Article 60 (1)

⁹ Ibid,

¹⁰ Ibid, article 61

¹¹ Ibid, article 63 (1)

¹² Njuguna. J. N, '*Arbitration as a Tool for Management of Community Land Conflicts in Kenya.*' University of Nairobi, 2018 ., available at https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=arbitration+as+a+tool+for+management+of+community+land+disputes+in+Kenya&btnG= (Accessed on 25/05/2023)

cosmopolitan nature of a community for purposes of a better definition of community land in Kenya¹³.

The *Community Land Act, 2016*¹⁴ was enacted to provide a framework for the recognition, protection and registration of community land rights, management and administration of community land and to provide for the role of county governments in relation to unregistered community land.¹⁵ The Act defines "community" to mean citizens of Kenya who belong to an organized group of users of community land and share any of the following attributes- common ancestry; similar culture; socio-economic or other common interest; geographical space; or ecological space¹⁶. This definition is broader and integrative and attempts to overcome the perception of a community being synonymous with tribe or ethnicity, as it has been the case in Kenya. This paper critically discusses management of community land conflicts in Kenya. It analyses the current approach towards management of community land conflicts in Kenya. The paper then proposes approaches towards effective management of community land disputes in Kenya for Sustainable Development.

2.0 Nature of Community Land Conflicts in Kenya

It has been asserted that conflicts over natural resources such as land vary across different communities and their manifestation may differ¹⁷. Such causes can range from control over vital natural resources to contestations over certain aspects such as use and ownership of natural resources at the individual, community or

¹³ Ibid

¹⁴ Community Land Act, No. 27 of 2016, Laws of Kenya

¹⁵ Ibid, Preamble.

¹⁶ Ibid, S 2

¹⁷ Muigua. K., *'Nurturing Our Environment for Sustainable Development.'* Glenwood Publishers Limited, 2016

national level¹⁸. Land conflicts are prevalent especially in Sub Saharan Africa due to the history of land inequalities and a skewed distribution of land resources¹⁹. In Kenya, land conflicts have been triggered by factors such as the contentious history of land laws, the emotive nature of the land question as well as the real or perceived land injustices in the country since the pre-colonial era²⁰.

Indigenous African communities espoused customary land tenure systems which were the earliest manifestation of the concept of community ownership of land. However, these systems were dismantled in Kenya during the colonial era since the colonial government considered them to be inconsistent with development and modernization²¹. All land was declared as crown land and alienated from customary systems without compensation²². Most communities were displaced from their land due to this approach and resettled in native reserves a situation that was not addressed after independence contributing to some of the current land conflicts in Kenya²³.

Community land conflicts in Kenya occur in various forms. These include Conflict between households, neighborhoods and neighboring 'communities' over land rights and boundaries; Conflict

¹⁸ Ibid

¹⁹ Urmilla.B "Land-related conflicts in sub-Saharan Africa," *African Journal on Conflict Resolution* 10, No. 2 (2010):

²⁰ Adam. L, 'Land reform and Socio-Economic Change in Kenya' in Wanjala C. Smokin, *Essays on Land Law; The Reform Debate in Kenya* (Faculty of Law University of Nairobi 2000)

²¹ Veit. P., 'History of Land Conflicts in Kenya.' Available at <https://gatesopenresearch.org/documents/3-982> (accessed on 25/05/2023)

²² Ibid

²³ Ibid

between traditional and 'non-traditional' local organisations in land management and conflict resolution; Inheritance-related conflict among family members; Conflict between 'newcomer' households and long standing residents; Conflict arising from household mobility; Generational conflict over land use and appropriation of benefits; Conflict between interest groups over appropriate land purposes; Distribution of benefits from land development projects; Escalating levels of crime and violence undermining both land rights and land management practices; and gender conflict over land access, land use and appropriation of benefits²⁴.

Management of community land conflicts is key in promoting Sustainable Development and fostering peace and security in Kenya and Africa at large. Due to the many shared and vested interest in community land, conflicts can trigger concerns such as depletion of natural resources, wars, insecurity and gender based violence²⁵. Thus, there is need for efficient management of community land conflicts in Kenya for Sustainable Development.

3.0 Current Approaches towards Management of Community Land Conflicts in Kenya

One of the salient principles undergirding land policy in Kenya is the encouragement of communities to settle land disputes through recognized local community initiatives consistent with the Constitution²⁶. Consequently, the Community Land Act encourages registered communities to use Alternative Dispute Resolution (ADR) mechanisms including traditional dispute and conflict resolution

²⁴ Urmilla.B "Land-related conflicts in sub-Saharan Africa," Op Cit

²⁵ Muigua. K., 'Nurturing Our Environment for Sustainable Development' Op Cit

²⁶ Constitution of Kenya, 2010., Article 60 (1) (g)

mechanisms for purposes of managing disputes and conflicts involving community land²⁷. The Act further requires registered communities to give priority to ADR mechanisms for purposes of managing conflicts and disputes involving community land²⁸.

ADR mechanisms offer a viable option for managing conflicts and disputes involving community land. These mechanisms have been practiced by indigenous communities since time immemorial and were premised on institutions such as the council of elders²⁹. It has rightly been pointed out that 'Kenyan communities and Africa in general have always used informal negotiation and mediation in the management of conflicts'³⁰. Such mechanisms are thus able to guarantee effective and efficient management of conflicts and disputes involving community land in Kenya.

ADR mechanisms include negotiation, conciliation, mediation, arbitration, adjudication, expert determination among others³¹. These mechanisms have been hailed for their attributes which include voluntariness, party autonomy, privacy and confidentiality and the ability to foster expeditious and cost effective management of disputes³². In relation to conflicts and disputes involving community land, ADR mechanisms are able to guarantee justice due to emphasis on the root causes of the conflict and other underlying issues such as

²⁷ Community Land Act, No. 27 of 2016, S 39 (1)

²⁸ Ibid, S 39 (3)

²⁹ Muigua.K., 'Alternative Dispute Resolution and Access to Justice in Kenya.' Glenwood Publishers Limited, 2015

³⁰ Ibid

³¹ Ibid

³² Muigua. K & Kariuki.F., 'ADR, Access to Justice and Development in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/ADR-access-to-justice-and-development-in-Kenya.pdf> (Accessed on 26/05/2023)

the history of the land³³. This approach ensures that there is finality to the conflict and the likelihood of the dispute arising again is eliminated³⁴. Parties thereto can thus continue to co-exist and live harmoniously in the community.

Due to the advantages of ADR mechanisms, the Community Land Act advocates for the promotion of these mechanisms especially mediation and arbitration for purposes of managing conflicts and disputes involving community land³⁵. However, mediation and arbitration as ADR processes suffer from certain drawbacks that may potentially limit their effectiveness in managing conflicts and disputes involving community land. Mediation is notably not binding and parties have sometimes used it to delay the negotiation process or to obtain more information about the other party's case³⁶. The non-binding nature of mediation is a limitation since parties often have to resort to other binding mechanisms to resolve their conflict³⁷.

Arbitration may also not be a viable tool of managing community land conflicts in Kenya due to several drawbacks. The possibility of court interference in the arbitration proceedings may deny parties the advantages associated with other ADR mechanisms and further result in delay in managing the conflict³⁸. Further, resort to court brings in issues of delays, costs, procedural technicalities and

³³ Njuguna. J. N, '*Arbitration as a Tool for Management of Community Land Conflicts in Kenya*, Op Cit

³⁴ Ibid

³⁵ Community Land Act., No. 27 of 2016, S 40 & 41.

³⁶ Njuguna. J. N, '*Arbitration as a Tool for Management of Community Land Conflicts in Kenya*, Op Cit

³⁷ Ibid

³⁸ Ibid

publicity that parties may have been intending to avoid all along when they resorted to arbitration³⁹. Arbitration is a means of dispute settlement based on rights and may not appreciate the interests and needs of individual parties or in the case of community land disputes, it may not appreciate the cultural influences of the problem at hand⁴⁰. Arbitration may therefore not resolve the underlying issues in conflicts and disputes involving community land resulting in the possibility of such disputes reoccurring in the future.

The Community Land Act also allows conflicts and disputes involving community land to be managed through litigation where all other efforts of managing such conflicts and disputes have failed⁴¹. However, litigation may not a viable option in managing community land conflicts since it is a right based system whereas most traditional communities emphasize on harmony and togetherness over individual interests ⁴². Litigation may therefore not settle the underlying issues in a dispute but rather results in a determination based on the facts and evidence presented before the court⁴³. This may eventually affect the relationship of the parties in the system of community land where there is common ownership of land. Further, concerns such as delays, costs and procedural technicalities inherent

³⁹ Gakeri J. K., 'Placing Kenya on the Global Platform: An Evaluation of the Legal Framework on Arbitration and ADR,' *International Journal of Humanities and Social Science*, Vol. 1 No. 6; June 2011.

⁴⁰ Ibid

⁴¹ Community Land Act., No. 27 of 2016, S 42

⁴² Mkangi K., 'Indigenous Social Mechanism of Conflict Resolution in Kenya: A Contextualized Paradigm for Examining Conflict in Africa,' (Nairobi, University of Nairobi, 1997).

⁴³ Muigua. K & Kariuki.F., 'ADR, Access to Justice and Development in Kenya.' Op Cit

in litigation may hinder efficient management of conflicts and disputes involving community land⁴⁴.

From the foregoing discussion, it is evident that the Community Land Act envisages management of community land conflicts and disputes through mechanisms such as Traditional Dispute Resolution Mechanisms (TDRMs), arbitration, mediation and litigation. However, these mechanisms suffer from several drawbacks that may hinder efficient management of conflicts and disputes involving community land. There is therefore need for reforms in order to ensure efficient management of community land conflicts in Kenya in order to promote Sustainable Development.

4.0 Way Forward

Land holds an important position among indigenous Kenyan communities and is much more than just physical soil⁴⁵. Conflicts and disputes involving community land may threaten peace, harmony and co-existence among members of the community affecting the fabric of the community⁴⁶. Such conflicts may result in instances such as wars, internal strife and domestic and gender based violence within the community affecting the attainment of Sustainable Development⁴⁷. Efficient management of community land conflicts is thus an essential component of the Sustainable Development agenda. There is need to promote the vision of the Constitution by encouraging communities to manage land conflicts and disputes

⁴⁴ Njuguna. J. N, '*Arbitration as a Tool for Management of Community Land Conflicts in Kenya*, Op Cit

⁴⁵ Ojienda T, '*Principles of Conveyancing in Kenya: A Practical Approach*, May 2007.

⁴⁶ Njuguna. J. N, '*Arbitration as a Tool for Management of Community Land Conflicts in Kenya*, Op Cit

⁴⁷ Urmilla.B "Land-related conflicts in sub-Saharan Africa," Op Cit

through local community initiatives consistent with the Constitution⁴⁸. This is also espoused in the Community Land Act that also envisions management of conflicts and disputes between members of a registered community and those between two or more registered communities through internal dispute resolution mechanisms set out in the respective community by-laws ⁴⁹ . Traditional Dispute Resolution Mechanisms (TDRMs) thus offer a viable option of managing conflicts and disputes involving community land. However, there is need to address procedural and appropriateness concerns of these mechanisms through measures such coordination and harmonization with formal justice systems in a way that ensures that the informality of these mechanisms is not lost⁵⁰. There is also need to include communities and the affected parties in appointment of traditional dispute resolvers to help lend credence to the process and repositioning the traditional authority especially as far as resolution of land conflicts within communities, as contemplated under Article 60(1) (g) of the Constitution, is concerned⁵¹.

There is also need to promote public awareness among communities about the viability of managing community land conflicts through ADR processes including traditional dispute resolution mechanisms. Communities should be encouraged to pursue these mechanisms at

⁴⁸ Constitution of Kenya, 2010, S 60 (1) (g)

⁴⁹ Community Land Act, No. 27 of 2016, S 39 (2)

⁵⁰ Muigua.K., 'Effective Application of Traditional Dispute Resolution Mechanisms in the Management of Land Conflicts in Kenya: Challenges and Prospects.' Available at <http://kmco.co.ke/wp-content/uploads/2019/10/Effective-Application-of-Traditional-Dispute-Resolution-Mechanisms-in-Management-of-Land-Conflicts-in-Kenya-Challenges-and-Prospects-October-2019-5.pdf> (Accessed on 26/05/2023)

⁵¹ Ibid

the expense of litigation in order to benefit from the advantages inherent in most of these systems such as flexibility, expediency, low costs and settling the root cause of a problem⁵². This will help to preserve social order and ensure that members can continue to co-exist in the community.

Another way of fostering efficient management of community land disputes in Kenya is by streamlining the conflict management mechanisms under the Community Land Act. There is need to cure some of the challenges that are bedeviling ADR mechanisms including delays, costs and court interference especially in arbitration⁵³. Where this occurs, then the whole purpose of Alternative Dispute Resolution is defeated⁵⁴. These shortcomings can be cured by streamlining alternative dispute resolution in line with the Constitutional provisions⁵⁵. While pursuing arbitration, parties should be discouraged from making numerous and unnecessary applications to court as this results in inordinate delays⁵⁶. Further, there is need to institutionalize traditional dispute resolution mechanisms in line with the Constitution to ensure their efficacy in settling community land conflicts⁵⁷.

⁵² Njuguna. J. N, 'Arbitration as a Tool for Management of Community Land Conflicts in Kenya, Op Cit

⁵³ Muigua. K & Kariuki.F., 'ADR, Access to Justice and Development in Kenya.' Op Cit

⁵⁴ Ibid

⁵⁵ Njuguna. J. N, 'Arbitration as a Tool for Management of Community Land Conflicts in Kenya, Op Cit

⁵⁶ Ibid

⁵⁷ Muigua.K., 'Effective Application of Traditional Dispute Resolution Mechanisms in the Management of Land Conflicts in Kenya: Challenges and Prospects.' Op Cit

Parties should also be encouraged to use hybrid ADR mechanisms such as Med-Arb in managing conflicts and disputes involving community land. Med-Arb entails subjecting a conflict to mediation then resorting to arbitration if the mediation fails⁵⁸. The system allows parties to benefit from the advantages of mediation and arbitration in the dispute resolution process⁵⁹. Further, the system guarantees finality, efficiency and flexibility which are key features of both arbitration and mediation⁶⁰. Through such hybrid systems, it is possible to achieve efficient management of community land conflicts in Kenya.

5.0 Conclusion

Land occupies an integral place among Kenyan communities and continues to shape the country's social, economic, political and legal future.⁶¹ Consequently, land has been one of the major areas of conflicts in Kenya due to the country's past historical land injustices and bad policies in the management, allocation and use of land⁶². Conflicts and disputes involving community land may threaten the attainment of Sustainable Development by affecting the social order of the community by triggering concerns such as depletion of natural resources, wars, insecurity and gender based violence⁶³. However, the mechanisms set out under the Community Land Act for

⁵⁸ Muigua. K., "Heralding a New Dawn: Achieving Justice Through Effective Application of Alternative Dispute Resolution Mechanisms (ADR) in Kenya", Chartered Institute of Arbitrators (Kenya), *Alternative Dispute Resolution*, Vol. 1, No 1, (2013), pp. 43-78

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Ndungu Commission Report: 'Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land in Kenya.' Op Cit

⁶² Ibid

⁶³ Muigua. K., 'Nurturing Our Environment for Sustainable Development' Op Cit

management of such conflicts and disputes suffer from several drawbacks that hinder their effectiveness towards this end. Thus, there is need for reforms through measures such as encouraging communities to manage conflicts through local community initiatives consistent with the Constitution, promoting public awareness, streamlining the conflict management mechanisms under the Community Land Act and promoting the use of hybrid ADR mechanisms such as Med-Arb. Through this, it will be possible to foster efficient management of community land conflicts in Kenya for Sustainable Development.

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Njuguna. J. N, 'Arbitration as a Tool for Management of Community Land Conflicts in Kenya.' University of Nairobi, 2018 ., available at https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=arbitration+as+a+tool+for+management+of+community+land+disputes+in+Kenya&btnG=

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Incorporating Environmental, Social and Governance in an Organisation

By: *Linda Namiinda**

Abstract

This paper discusses how to successfully introduce Environmental, Social and Governance (ESG) into organizations. The paper defines ESG and its applicability in Kenya. It then proceeds to look at the importance of incorporating ESG into an organization. It also suggests how to equip the Board and the Corporate Secretaries so that they can be ESG leads in organizations since ESG is quickly metamorphosing into a must have in all organizations intending to remain a going concern in Kenya.

1. Introduction

We may recall sometime in early 2022 when Kentucky Fried Chicken (KFC)¹ announced that they could no longer sell potato chips in Kenya as they had run out of potatoes.² In a tweet on their official

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¹ KFC is a United States of America based fast food restaurant which has franchises in most major towns and cities in Kenya and globally. They are popular for their air fried potato chips and crispy coated chicken,

² Waihiga Mwaura 'How KFC in Kenya got fried over its chip shortage' BBC News 8th January, 2022 <<https://www.bbc.com/news/world-africa-59898362>> accessed 11th June, 2023; See also Brin Oruta 'Kenyans furious as KFC runs out of imported potatoes for chips' *The Star Nairobi* 4th January, 2022 <<https://www.the-star.co.ke/news/2022-01-04-kenyans-furious-as-kfc-runs-out-of-imported-potatoes-for-chips/>> accessed 11th June, 2023. and Duncan Omondi

page, they blamed it on Kenyans who loved their chips a “*little too much*” during the festive season and they had run out of potatoes which had to be imported.³ They claimed that the delays had been caused by the COVID pandemic and other factors.⁴ This inevitably led to an uproar on social media threatening to boycott the enterprise claiming they ought to import their customers as well.⁵ Other members of the public were disappointed that after ten years of selling potato chips in Kenya, the enterprise did not find the potatoes grown in Kenya “good enough” for their potato chips.⁶ Other Companies such as Chicken Inn and Burger King who are also known for selling potato chips and other fast foods took the golden opportunity to advertise their foods on social media which they said are locally produced in an attempt to outsmart and/or outshine KFC.⁷ As with most social media news, this too faded away without causing

‘KFC runs out of potatoes as farmers struggle with oversupply’ *The Standard*, Nairobi, 4th January, 2022

<<https://www.standardmedia.co.ke/business/news/article/2001433386/kfc-runs-out-of-potatoes-as-farmers-struggle-with-oversupply>> accessed 11th June, 2023.

³ See <<https://twitter.com/KFCinKenya/status/1477930454036594769>> accessed 16th June, 2023.

⁴ Bonface Otieno ‘KFC runs out of imported potatoes for chips, snubs local farmers’ *Business Daily Nairobi* 4th January, 2022 <<https://www.businessdailyafrica.com/bd/corporate/companies/kfc-runs-out-of-potatoes-for-chips-3671470>> accessed 16th June, 2023.

⁵ Njoroge Josephine ‘Import customers as well, Kenyans retort after KFC announces potato shortage’ *Nation*, Nairobi 4th January, 2023 at <<https://nation.africa/kenya/business/import-customers-as-well-kenyans-retort-after-kfc-announces-potato-shortage-3671730>> accessed 16th June, 2023.

⁶ Marita Bosco ‘KFC reveals why they cannot buy Kenyan potatoes’ *The Star Nairobi* available at <https://www.the-star.co.ke/news/2022-01-04-kfc-reveals-why-they-cannot-buy-kenyan-potatoes/> accessed 16th June, 2023.

⁷ See Waihiga Mwaura n2

too much harm on the KFC enterprise.⁸ However, this was a classic example of a Company failing to appreciate the locals particularly suppliers in the community in which it operates which is important for ESG compliance. The Potato scenario was lacking in the S section of ESG as we will understand shortly as we problematize, conceptualize and contextualize ESG in this paper.

2. Defining ESG;

But what exactly are these Environment, Social and Governance issues abbreviated as ESG? We will break it down into three parts and explain each part as follows.

The **E** in ESG stands for the Environment, that is Environmental aspects which include measures taken to reduce climate risks and emission of greenhouse gases, proper waste management, sustainable water use and management, protection of biodiversity and ecosystems and any other steps taken for the protection of the environment.⁹

The **S** in ESG stands for the social aspect including Social Welfare and other issues including avoidance of child labour and slavery, fair labour practices including fair pay and reasonable working hours, safe working environment and concern for the local community¹⁰

⁸ The *#boycottKFC* hashtag was only trending on twitter during the month of January but other, more pressing issues overtook it shortly thereafter. A topic is trending when several people are tweeting about it.

⁹ Who Cares Wins; Connecting Financial Markets to a Changing World see <https://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf> accessed 14th June, 2023.

¹⁰ Presentation made to Corporate Secretaries on 10th February, 2023 under the ESG series at the Sarova Stanley Hotel Nairobi dubbed *ESG Course part 1*.

and racial equity.¹¹ It recognizes that *people* matter, including the organization's customers, suppliers and communities.¹² It also incorporates Corporate Social Responsibility (CSR) which is basically how the organization participates in improving the life of the Community within which it operates.¹³

In the KFC scenario discussed above, the enterprise was lacking in the S sector of ESG as they completely ignored and/or belittled local potato farmers as potential suppliers for the ten or so years that they had been trading in Kenya.¹⁴ This came to light when there were delays in the importation of potatoes and the local farmers were not very amused by this.¹⁵ The Kenyan customers threatened to desist from making purchases from the said restaurant if the local potato farmers were not supported.¹⁶

The **G** stands for Governance, particularly, good corporate governance practices including shareholder rights and executive compensation. Governance could also broadly include innovation

¹¹ Alicia E. Plerhoples, 'ESG & Anti-Black Racism' (2022) 24 U Pa J Bus L 909

¹² Debra Brown and Brown, David 'ESG Matters'. 1st edn. Governance Solutions Inc (2021) available at <https://www.perlego.com/book/2939870/esg-matters-how-to-save-the-planet-empower-people-and-outperform-the-competition-pdf> accessed 13th June, 2023.

¹³ Bradley, B. *ESG Investing For Dummies* 1st edn. Wiley (2021) available at: <https://www.perlego.com/book/2237439/esg-investing-for-dummies-pdf> accessed 16th June, 2023.

¹⁴ KFC was launched in Kenya on 12th August, 2011 at the Junction Mall, Ngong Road, Nairobi, see <https://newint.org/immersive/2021/06/08/when-kfc-came-kenya-fff#:~:text=On%20the%20afternoon%20of%2012,in%20Nairobi%2C%20the%20Kenyan%20capital.> accessed 6th June, 2023.

¹⁵ See Njoroge Josephine, n5.

¹⁶ See Njoroge Josephine, n5.

and infrastructure adopted by organizations as well as partnerships including mergers and acquisitions entered into by organizations.¹⁷ Incorporating ESG into financial reports means that the organizations are required to report on the steps they are taking to ensure the three categories are complied with.¹⁸

3. The Genesis of ESG

So where did ESG come from?

Environmental, Social and Governance as a term was coined in 2005 in the “Who Cares Wins” initiative.¹⁹ The initiative had its genesis when the former United Nations invited top investors for a joint initiative to find ways to incorporate Environmental and Social Governance Issues into financial analysis of organizations.²⁰ The initiative produced a report coined “*Who Cares Wins*” which report attempts to assist investors, and financial analysts to deal with problems arising from ESG including its definition and

¹⁷ Kariuki Muigua, ‘*Embracing Environmental, Social and Governance (ESG) Principles for Sustainable Development in Kenya*’ (2022) Volume 9(2) *Journal of Conflict Management and Sustainable Development*, <<https://journalofcmsd.net/wp-content/uploads/2022/10/Embracing-Environmental-Social-and-Governance-ESG-Principles-for-Sustainable-Development-in-Kenya.pdf>> accessed 15th June, 2023.

¹⁸ See generally ‘ESG and Sustainability reporting guidelines for Mongolian Companies’ Chapter three: How to Report, at page 26-27 available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-08/ESG%20reporting%20ENG.pdf> accessed 16th June, 2023.

¹⁹ Georg Kell, The Remarkable Rise of ESG *Forbes* 11th July, 2018 <<https://www.forbes.com/sites/georgkell/2018/07/11/the-remarkable-rise-of-esg/?sh=75ba82661695>> accessed 13th June, 2023.

²⁰ Secretary-General Launches ‘Principles for Responsible Investment’ Backed by World’s Largest Investors, *United Nations Meetings Coverage and Press Releases* 27th April, 2006 <<https://press.un.org/en/2006/sg2111.doc.htm>> accessed 16th June, 2023.

applicability.²¹ Around the same time, the United Nations Environmental Program Finance Initiative also produced the famous “Freshfield Report” which is basically a “legal framework for the integration of Environmental, Social and Governance issues into organizational investment”²²

4. ESG applicability and enforceability in Kenya

Although Environmental and Social Governance has been in existence for a while although not properly so called, it has become quite prevalent in the past two or so years in Kenya.²³ It is argued that organizations that adopt ESG have a higher probability for success, or rather, pose a much less risk for investors.²⁴ In the past, we have had environmental regulations and provisions on sustainable development guiding companies including the Sustainable Development Goals.²⁵ We have also had Corporate Social Responsibility (CSR) activities where companies voluntarily

²¹ Financial Sector Initiative, Who Cares Wins: Connecting Financial Markets to a Changing World
<https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FFinancial_markets%2Fwho_cares_who_wins.pdf> accessed 13th June, 2023

²² See
<https://www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf> accessed 13th June, 2023

²³ The Nairobi Securities Exchange ESG Disclosures Guidance Manual was launched in Kenya in 2021, barely two years ago which was a huge step in the ESG conversation in Kenya.

²⁴ Beth Haddock, Tucker Pribor and Kate Starr, ‘Why Corporate Attorneys and other Gatekeepers should consider ESG and Sustainability Principles’ (2018), Vol. 30, No. 1, Fordham Environmental Law Review
<<https://www.jstor.org/stable/10.2307/26775220>> accessed 16th June, 2023

²⁵ The SDGs in Action, UNDP <https://www.undp.org/sustainable-development-goals?gclid=CjwKCAjwyyqWkBhBMEiwAp2yUFquAIEKqT2mqwI-9DjsIMWxZ9-Mn5xRsy09VtoCoF73T8K76RliAihoC5KYQAvD_BwE> accessed 14th June, 2023

participate in assisting the less privileged in the community.²⁶ The CSR activities have previously been used as a marketing strategy rather than actual care and concern for the community since the organizations are aware that CSR, if well utilized, would contribute to competitiveness and profit-maximization.²⁷ Social Responsibility of organizations, which can be summarized as 'the unwritten contract between an organization and the community in which it operates'.²⁸ Social Responsibility can be deduced from Article 66 of the Constitution of Kenya.²⁹ Other examples of social responsibility under the Kenyan law include the provisions of the Petroleum Act which encourages developing and procuring of a locally available workforce.³⁰ The Companies Act also requires Directors to have regard to the impact of their activities on the community.³¹

Finally, we have had corporate governance guidelines governing companies on governance issues including the Mwongozo Code of Governance³² which governs public companies, the Code of Corporate Governance Practices for Issuers of Securities To The Public, 2015 which are Regulations under the Capital Markets Act Cap 485A governing listed/quoted companies and general

²⁶ Muthuri Judy N. and Gilbert Victoria 'An Organizational Analysis of Corporate Social Responsibility in Kenya' 2011, Vol. 98, No. 3 pp.467-483, *Journal of Business Ethics* < <https://www.jstor.org/stable/41476144> > accessed 16th June, 2023.

²⁷ Ibid

²⁸ Debra Brown and Brown, David n12.

²⁹ The Article provides that local communities and their economies should benefit from investment in property.

³⁰ Petroleum Act Number 2 of 2019, S2 and Part VI of the Act.

³¹ See S143 (1)(d) of the Companies Act, Number 17 of 2015

³² < <https://www.scac.go.ke/index.php/2015-02-16-09-56-36/2015-10-22-05-29-57?download=14:overview-of-mwongozo> > accessed 15th June, 2023.

guidelines in the Companies Act and Regulations.³³ ESG is a conglomeration of all these subsectors as it includes environmental and social impact and governance structures that enhance stakeholder wellbeing.³⁴

Other than the above steps which have been taken to introduce ESG whether wholly or partially into Kenyan organizations, the Institute of Certified Secretaries (ICS), Kenya has also launched ESG courses³⁵ aimed to train Corporate Secretaries on ESG to enable them lead in ESG issues in their respective organizations.³⁶ Further, the annual conference organized by ICS this year will be ESG themed³⁷ just to sensitize members of the Institute and other attendees on matters ESG. Additionally, Kenyan companies such as Bamburi Cement

³³ Sections relating to the Directors and the Company Secretary under the Companies Act, Number 17 of 2015.

³⁴ Kyle Peterdy, ESG (Environmental, Social & Governance) A management and analysis framework to understand and measure how sustainably an organization is operating 30th June, 2022 see <<https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/>> accessed 16th June, 2023

³⁵ See the relevant brochures for the ESG courses here <<https://ics.ke/downloads-center-2?task=download.send&id=208&catid=3&m=0>> and here

<<https://ics.ke/downloads-center-2?task=download.send&id=209&catid=3&m=0>>

³⁶ Institute of Certified Secretaries Calendar of events, 2023 <<https://ics.ke/downloads-center-2?task=download.send&id=205&catid=3&m=0>> accessed 16th June, 2023.

³⁷ See

<<https://www.facebook.com/photo/?fbid=585109470474814&set=gm.1993269354341770>> accessed 16th June, 2023.

PLC³⁸, Safaricom PLC³⁹ and KCB⁴⁰ and a few others have already published their maiden sustainability reports as required by the ESG guidelines in Kenya.⁴¹

a. ESG Regulation in Kenya

Despite all the above steps and guidelines on matters ESG, organizations would only see the need to adhere to the principles set out under ESG were there are actual enforceable rules and regulations regarding the same.⁴² Unfortunately, there are no clear regulations on ESG as a concept in Kenya to date. All that is there is an ESG Disclosure Manual developed by the Nairobi Securities Exchange. The Manual is to guide listed/quoted companies on the material issues that they must disclose in adhering to ESG Guidelines.⁴³

³⁸ See <<https://www.lafarge.co.ke/sites/kenya/files/2022-11/bamburi-cement-sustainability-report-2021.pdf>> accessed 14th June, 2023.

³⁹ See <<https://www.safaricom.co.ke/images/Downloads/2022-Safaricom-Sustainability-Report.pdf>> accessed 14th June, 2023.

⁴⁰ See <<https://kcbgroup.com/wp-content/uploads/2022/08/KCB-Sustainability-Report-2021.pdf>> accessed 14th June, 2023.

⁴¹ Otiato Guguyu, Only 10pc of listed firms comply with ESG norms, *Business Daily*, Nairobi 28th July, 2022
<<https://www.businessdailyafrica.com/bd/data-hub/only-10pc-of-listed-firms-comply-with-esg-norms-3894194>> accessed 16th June, 2023.

⁴² Ibid

⁴³ Kariuki Muigua, n17.

5. Why should organizations care about ESG? After all, they are just unenforceable guidelines!

ESG Investing⁴⁴ has grown exponentially over the past one decade.⁴⁵ Lead investors, after years of investing in companies and only considering financial risks realized that a company may have very good accounting books projecting profits but still end up in great losses due to non-financial losses.⁴⁶ The impact of ESG on the financial performance of a company could no longer be downplayed.⁴⁷ The investors therefore decided that they were safer if the companies gave full disclosure of other factors particularly environmental, social and governance factors which may have an impact in the future of the company.⁴⁸ But rather than the risk aversion that investors were concerned with, they were also genuinely concerned about the environment, the society and good governance in the Companies they were associated with.⁴⁹

From the above, the Board ought to be concerned with ESG for two reasons. First is the full disclosure required for purposes of securing financial and other assistance from investors.⁵⁰ Since investors are now considering ESG investing where they only invest in companies that are ESG compliant, an organization which wants to maximize its

⁴⁴ Responsible investing where the investor is conscious of the role the investment will make on the environment and society at large. See Beth Haddock, Tucker Pribor and Kate Starr, at n24

⁴⁵ Dana Brakman Reiser & Anne Tucker, 'Buyer Beware: Variation and Opacity in ESG and ESG Index Funds' (2020) 41 *Cardozo L Rev* 1921.

⁴⁶ Financial Sector Initiative, *Who Cares Wins* n21

⁴⁷ Roopali Garg & Gurjant Singh Cheema, 'The Role of International Arbitration in the Rise of ESG Disputes' (2023) 32 *Supremo Amicus* [255]. Introduction.

⁴⁸ Financial Sector Initiative, *Who Cares Wins* n21

⁴⁹ *Ibid*

⁵⁰ *Ibid*

property by looking towards investors investing in their company must consider implementing ESG requirements.

The second is that the board of directors of companies and organizations generally, regardless of the size has a duty to ensure the success of the organization which success may be achieved through non-financial activities such as ensuring the needs of the employees are well taken care of, foster the company's business relationships with suppliers, customers and others, protection of the environment by taking onto consideration the impact of the organization's activities on the environment and the community at large and good governance practices among other activities.⁵¹

Finally, other jurisdictions that are way ahead of Kenya in terms of ESG compliance have considered prosecuting Directors for failing to adhere to ESG guidelines and thereby causing companies untold losses.⁵² The Directors could be sued by the minority under derivative action for failing to abide by their fiduciary duty of ensuring the success of the company.⁵³ Considering our company laws are borrowed from other jurisdictions,⁵⁴ very soon, our Directors may be

⁵¹ Section 17 of the Companies Act Kenya Number 17 of 2015

⁵² Dewi Tamara & Feronia Budiman, 'New Index ESG Leaders & Investment Decisions in

Indonesia Relating to ESG Principles' (2022) 12 J Mgmt & Sustainability 64 available at

<https://vpn.uonbi.ac.ke/proxy/1507e9ab/https://heinonline.org/HOL/PrintRequest?public=true&handle=hein.journals/colb2022&div=17&start_page=732&collection=usjournals&set_as_cursor=19&men_tab=srchresults&print=section&format=PDFsearchable&submit=Print%2FDownload> accessed 18th June, 2023.

⁵³ Ibid.

⁵⁴ Such as the attempts made in Delaware although they have not been successful yet due to the pre-requisites of filing derivative claims. See more on Roy Shapira, 'Mission Critical ESG and the Scope of Director Oversight Duties' (2022), 2022 Colum Bus L Rev 732

liable for failing to comply with ESG despite ESG itself being unenforceable in Kenya.⁵⁵

6. Who should enforce ESG? The Board, the Company Secretary or the Legal Department?

ESG as defined above is very wide.⁵⁶ If it were to be properly implemented, it would require an environmental specialist or conservationist, a labour rights activist, a community development enthusiast, a corporate governance expert and an actuarial scientist⁵⁷ to predict and assess the risks involved.⁵⁸ This would be a very expensive affair for any organization.

In the recent past, titles like the *ESG lead* have emerged where different professionals with different career backgrounds but with a passion in ESG have come out to lead organizations in the pursuit of ESG Compliance.⁵⁹ This is because of the wide nature of ESG which has in some instances forced Directors to hire experts from outside

⁵⁵ Dewi Tamara & Feronia Budiman, n52

⁵⁶ Ibid.

⁵⁷ See Sean O'Neill 'What kind of jobs can you get with a qualification in ESG?' 2022 Corporate Governance Institute
<<https://www.thecorporategovernanceinstitute.com/insights/guides/what-kind-of-jobs-can-you-get-with-a-qualification-in-esg/>> accessed 18th June, 2023.

⁵⁸ ESG reporting involves a material analysis which involves identifying the areas and/or topics that would make an impact on the company's performance. The material topics are diverse and could include human rights, bribery and corruption, occupation, health and safety, carbon emissions, waste management, data privacy and compliance among others. See Nairobi Securities Exchange ESG Disclosures Guidance Manual. These areas are quite diverse and each would require a certain level of expertise to sufficiently report on their effect on the organization's overall performance. See also Virginia Harper Ho, 'Modernizing ESG Disclosure' (2022) U Ill L Rev 277.

⁵⁹ An ESG lead could be an actuary, an accountant, a portfolio manager, a financial adviser, Sean O'Neill n 57

the organization who are conversant with the divergent ESG components.⁶⁰

The Institute of Certified Secretaries which is also known as the “Governance Profession” and which institute is mandated to train Corporate Secretaries, has taken it upon itself to train Secretaries on ESG matters through several short courses.⁶¹ The annual 3- day international conference is themed “ESG for a Sustainable Future: Aligning People, Profit and Planet” which will be held in August 2023.⁶² Any Certified Secretary intending to remain in good standing with the institute is required to obtain at least 20 Continuous Development Points (CPDs) in a year or an aggregate of 60 CPD Points earned in the immediate past three years. Only members in good standing are entitled to practice as corporate secretaries and participate in the activities of the Institute. The CPD points are acquired through attending the trainings held by the Institute.⁶³ The trainings are therefore somewhat compulsory although a participant has the liberty to choose the topic for the training they wish to attend. A certified Secretary desirous of advancing the ESG conversation in their organization would therefore prefer ESG themed trainings and conferences.

Since ESG would need participation from most if not all departments of the organization, and since the Board has a duty to ensure the

⁶⁰ Roy Shapira, n54

⁶¹ <<https://www.ics.ke/downloads-center-2?task=download.send&id=208&catid=3&m=0>> accessed 17th June, 2023

⁶² [https://events.ics.ke/events/ODE=and<<https://www.facebook.com/photo/?fbid=585109470474814&set=gm.1993269354341770>>](https://events.ics.ke/events/ODE=and%20ESG%20for%20a%20Sustainable%20Future%20-%20August%202023) accessed 16th June, 2023

⁶³ The Institute of Certified Secretaries current CPD Policy may be accessed on<<https://ics.ke/downloads-center-2?task=download.send&id=85&catid=3&m=0>> accessed 17th June, 2023.

success of the organization by giving it general direction,⁶⁴ and the Corporate Secretary is Compliance lead in the organization,⁶⁵ the Board with the help of the Corporate Secretary must take the lead in introducing ESG to the organization. As much as the role of the Corporate Secretary has evolved from being a mere minute taker⁶⁶ to being recognized as an officer of the Company⁶⁷ who would therefore be liable in the event of corporate criminal culpability, it is well settled that it is the Board that gives the general direction of the Company including the introduction of new concepts such as ESG. However, the Corporate Secretary, being the general adviser of the Company in matters governance must take the initiative to guide the Board on the entire process. The Board's Role would be to facilitate the process while the Corporate Secretary would be in charge of ensuring enforcement.⁶⁸

In most organizations, the Corporate Secretary has a legal background as is therefore both the organizations Corporate

⁶⁴ Section 143 of the Companies Act, Number 17 of 2015, Laws of Kenya.

⁶⁵ Kariuki Muigua, The Company Secretary as a Compliance Leader – Maintenance of Global Standards, <http://kmco.co.ke/wp-content/uploads/2018/08/076_CS_Compliance_Leader.pdf> accessed 17th June, 2023.

⁶⁶ See the case of *Barnett, Hoares & Co v South London Tramways Co* (1887) 18 QBD 815, where Lord Esher MR described the secretary as “a mere servant” who must “do what they are told.”

⁶⁷ In a later case of *Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd* [1971] 2 QB 711, the Court reversed the decision in *Barnett, Hoares & Co* and held that the Company secretary is an officer of the Company with extensive duties and responsibilities.

⁶⁸ See generally the role of the Corporate Secretary as discussed by William B. Browder in ‘The Corporate Law Department and the Corporate Secretary Function’ 1979 Vol. 34, The Business Lawyer, Proceedings of “Corporate Law Department Forum, March 8 and 9, 1978” (February 1979), pp. 875-880, American Bar Association see <https://www.jstor.org/stable/40685958> accessed 18th June, 2023.

Secretary and head of legal affairs as evidenced by recent job adverts in Kenya for renowned companies such as Development Bank of Kenya,⁶⁹ National Oil Corporation, Kenya,⁷⁰ National Hospital Insurance Fund (NHIF),⁷¹ Kenya Airports Authority (KAA),⁷² and Kenya National Commission for UNESCO (KNATCOM).⁷³ According to some, the ideal situation is to have the Corporate Secretary and the General Counsel as one and the same person.⁷⁴ This combination of qualifications comes with its set of advantages since the legal affairs department would be at a better place to confirm that all the laws and guidelines related To ESG are complied with. As explained earlier, ESG has a very wide coverage and therefore, a professional with an Environmental, Employment and Governance background would have a lot of value addition to a company seeking to comply with ESG Guidelines.

7. Is the Corporate Secretary sufficiently equipped to handle ESG issues?

Considering how wide ESG is, it would be virtually impossible for a single person to be an expert in the entire ESG concept. However, an organization should have a leader in all major departments. In my

⁶⁹See <https://www.myjobmag.co.ke/job/company-secretary-and-head-of-legal-development-bank-of-kenya> accessed 18th June, 2023.

⁷⁰ See <https://nationaloil.co.ke/wp-content/uploads/2020/07/Job-Advert-Company-Secretary-Manager-Legal-Services.pdf> accessed 18th June, 2023.

⁷¹ See <https://www.nhif.or.ke/wp-content/uploads/2023/04/CORPORATION-SECRETARY-AND-DIRECTOR-LEGAL-SERVICES.pdf> accessed 18th June, 2023.

⁷² See <https://www.kaa.go.ke/jobs/corporation-secretarychief-legal-officer-ref-legalcssept-2021/#:~:text=The%20Corporation%20Secretary%2FChief%20Legal,litigation%20function%20of%20the%20Authority>. Accessed 18th June, 2023.

⁷³ See <https://jobs.digger.co.ke/39539/corporation-secretary-and-director-legal-services> accessed 18th June, 2023.

⁷⁴ William B. Browder n68

view, it is advisable for the Corporate Secretary to take the lead in matters ESG.⁷⁵ I will explain why.

The Corporate Secretary already distinguished themselves as the Governance specialist in organizations.⁷⁶ The statutory mandate of the Institute of Certified Secretaries includes promoting good governance.⁷⁷ In fact, the Certified Governance Secretaries Bill 2023 is proposing to change the name of the Certified Secretary to a Certified Governance Secretary at Section 2.⁷⁸ The corporate secretaries have a role to ensure that the Organization, whether public or private is adhering to governance best practices.⁷⁹ The Corporate Secretary already has the G covered and only needs to expand their territory to the E and S of ESG.

Having already covered the G aspect, the Corporate Secretary would have an easier task enforcing the E and S as compared to other professionals. I strongly opine that the Corporate Secretary should therefore lead the ESG discussions, of course with the support of the board and other relevant departments. Being a compliance expert, the Company Secretary would find it easy to ensure compliance with ESG guidelines. Furthermore, the Institute of Certified Secretaries

⁷⁵ Some have argued that accountants are best equipped to take the lead in ESG matters due to their analytical skills and expertise in reporting, see Sean O'Neill, n57.

⁷⁶ Kariuki Muigua, *The Company Secretary as a Compliance Leader* n65

⁷⁷ See <https://www.ics.ke/about-us> accessed 17th June, 2023.

⁷⁸ <https://mcusercontent.com/95d0a0e7ae38d71e257b38a32/files/d616814f-d9e4-a753-4ab9-a23a2fdce8f8/Draft_Certified_Governance_Secretaries_Bill_2023.pdf> accessed 17th June, 2023.

⁷⁹ Kariuki Muigua, *The Company Secretary as a Compliance Leader* n65

continues to train Secretaries on this emerging issue to ensure the corporate secretaries guide the corporations appropriately.⁸⁰

8. Conclusion

As much as ESG only seems like an advisable step that organizations should take, it is worth noting that ESG is a wave which will cover every organization eventually. The earlier organizations start planning for it, the safer they will be when it becomes compulsory for all organizations to adopt it. It does not matter whether an organization is self-sufficient such that it does not require investors who will insist on ESG compliance. ESG is important for an organization that wishes to remain competitive, improve its brand and enjoy other reputational benefits.⁸¹ Our planet is one and it must be utilized sustainably for our benefit and the benefit of future generations.⁸² Every single person in Kenya has a responsibility to care for the environment and it matters not that an organization is too small to make an impact.⁸³ It would therefore be wise for small enterprises (as well as big ones), to invest in sustainability.⁸⁴ Every

⁸⁰ The Institute of Certified Secretaries Calendar of events, 2023 <<https://ics.ke/downloads-center-2?task=download.send&id=205&catid=3&m=0>> accessed 16th June, 2023.

⁸¹ Sanders, N. and Wood, J. *Foundations of Sustainable Business* 2nd edn. Wiley. (2019) <<https://www.perlego.com/book/2328887/foundations-of-sustainable-business-theory-function-and-strategy-pdf>> accessed 17th June 2023

⁸² <<https://www.undp.org/cambodia/news/only-one-earth-living-sustainably-harmony-nature>> accessed 18th June, 2023.

⁸³ Article 69 (2) of the Constitution of Kenya provides that “Every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.”

⁸⁴ Joey Hodges the Role Small Businesses Can Play in Building A Sustainable Future *Forbes* 9th June, 2021

<<https://www.forbes.com/sites/forbesagencycouncil/2021/06/09/the-role-small-businesses-can-play-in-building-a-sustainable-future/?sh=1023fec72da5>> accessed 18th June, 2023.

organization, even a sole proprietorship produces waste and uses energy.⁸⁵ Separation of waste and using energy saving bulbs and clean energy would be contributions to the ESG mantra by the sole proprietor.⁸⁶

9. Recommendations

First, more steps need to be taken to sensitize both the Board and the Corporate Secretaries on Matters ESG. Other medium sized and small enterprises including sole proprietorships which have no board should also be sensitized from the onset as it is these companies which sometimes grow into big companies complete with boards.

The Institute of Certified Secretaries may consider ESG Certification Courses as well as incorporating ESG as a concept in the professional papers required for qualification as a Certified Secretary. They could also include an award for ESG leads in the Champion for Governance Awards which is held annually and which event commends corporate secretaries who have done well in their respective organizations.⁸⁷

Other Courses such as Company Law or the Law of Business Associations taught in Law Schools⁸⁸ and Commercial Transactions taught at the Kenya School of Law⁸⁹ and any other courses on the Environment and corporates and other organizations could also consider incorporating ESG as an examinable topic in their curricula.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ <<https://www.ics.ke/cog-award>> accessed 17th June, 2023.

⁸⁸ See Part II, Number 9 of the Second Schedule to the Legal Education Act Kenya, Number 27 of 2012.

⁸⁹ See The Kenya School of Law (Training Programmes) Regulations, Regulation 10(i) under the Kenya School of Law Act Number 26 of 2012.

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Entrenching a Human Rights Based Approach to Sustainable Development

By: *Hon. Dr. Kariuki Muigua**

Abstract

This paper discusses a Human Rights Based Approach (HRBA) to sustainability as envisaged under the Sustainable Development agenda, and the related topics. The right to development, human rights, and sound governance are all parts of sustainable development, sometimes referred to as sustainable human development. To achieve sustainable human development, emphasis is put on both material and intangible components of development, such as participation and rights.

people who are oppressed and living in multifaceted poverty who are most marginalised and discriminated against are those that development cooperation is most focused on helping. The plan identifies the persons and institutions in responsibility of protecting, supporting, and enforcing those human rights with the intention of enabling those who are oppressed and living in poverty to take action to change their situation.

This is due to the fact that a Human Rights-Based Approach always includes the following provisions: empowerment of women, men, girls, boys, and non-binary people living in poverty and oppression – the rights holders – with, for example, optimism, self-confidence, expertise, abilities, resources, networks, communication channels, and access to justice to enable them to assert their rights both individually and collectively; and capacity development of those with obligations to respect, protect, and uphold the rights of others.

The author advocates for entrenchment of the Human Rights Based Approach in all efforts geared towards achieving sustainable development.

1. Introduction

Article 25 (1) of the *Universal Declaration on Human Rights*¹ states that ‘everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control’.

Principle 1 of the 1992 *Rio Declaration on the Environment and Development*² states that “Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature”.

When referred to as sustainable human development, Sustainable Development is also associated with the right to development, human rights, and good governance. Focus is placed on both tangible and immaterial aspects of human development, such as participation and rights, in order to achieve sustainable human development. Moreover, it aspires to a variety of objectives, including the

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¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

² UN General Assembly, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992. Volume 1, Resolutions adopted by the Conference: corrigendum*, A/CONF.151/26/Rev.1(Vol.I)/Corr.1.

eradication of poverty, the advancement of human rights, the promotion of equal opportunities, the preservation of the environment, and the evaluation of the effects of development efforts.³ Kenya's Vision 2030 adopts sustainable human development as it seeks to address the economic, social and political pillars. It thus fosters both material factors and non-material factors.⁴ Sustainable human development is, therefore, inextricably linked to people's livelihoods, and is thus requisite in moving towards environmental justice.

This paper discusses the place of a Human Rights Based Approach to sustainability as envisaged under the Sustainable Development agenda, and the related topics.

2. Human Rights Based Approach to Sustainable Development

Since 1945, when the United Nations Charter was adopted, human rights have been a keystone of the organization's activities.⁵ The Universal Declaration of Human Rights, issued by the UN General Assembly in 1948, states that the equal and inalienable rights of every human being serve as the cornerstone for freedom, justice, and peace in the world.⁶

³ See generally Amartya S., *Development as Freedom* (Anchor Books, New York, 1999), pp.35-53; See also UNDP, Human Development Report 2011, *The Real Wealth of Nations: Pathways to Human Development*, (Palgrave Macmillan Houndmills, Basingtoke, Hampshire, 2011), p. (i)-12. This report defines sustainable human development as the expansion of the substantive freedoms of people today while making reasonable efforts to avoid seriously compromising those of future generations.

⁴ Kenya Vision 2030, Government of Kenya, 2007.

⁵ 'UNSDG | Human Rights-Based Approach'

<<https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>> accessed 19 April 2023.

⁶ 'The Human Rights-Based Approach' (*United Nations Population Fund*)

Since the United Nations Environmental Agency suggested a new rights-based agenda for sustainable development in the report "Transforming Our World: The 2030 Agenda for Sustainable Development," (UN, 2015), a rights-based approach to environmental concerns has gained support.⁷

A conceptual framework for the process of human development, the Human Rights-Based Approach (HRBA) is operationally focused on advancing and defending human rights while normatively basing itself on international human rights norms. It aims to address unfair power dynamics and discriminatory behaviours that inhibit development and frequently leave some groups of people behind. These issues are at the core of development issues, and it strives to analyse and address them.⁸ The human rights-based strategy puts the spotlight on those who are the most disadvantaged, excluded, or subjected to discrimination. In order to make sure that interventions reach the most vulnerable sections of the community, it is frequently necessary to analyse gender norms, various types of discrimination, and power disparities.⁹

According to the HRBA, all civil, cultural, economic, political, and social rights as well as the right to development are based in a system of rights and associated duties created by international law. The

<<https://www.unfpa.org/human-rights-based-approach>> accessed 19 April 2023.

⁷ Choondassery Y, 'Rights-Based Approach: The Hub of Sustainable Development' (2017) 8 Discourse and Communication for Sustainable Education 17.

⁸ 'UNSDG | Human Rights-Based Approach' <<https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>> accessed 19 April 2023.

⁹ 'The Human Rights-Based Approach' (United Nations Population Fund) <<https://www.unfpa.org/human-rights-based-approach>> accessed 19 April 2023.

HRBA mandates that the United Nations development cooperation adhere to the human rights principles of universality, indivisibility, equality, and non-discrimination, participation, and accountability, and place special emphasis on building the capacities of both "duty-bearers" to fulfil their duties and "rights-holders" to assert their rights.¹⁰ A rights-based strategy helps duty-bearers become more capable of carrying out their responsibilities and motivates right holders to exercise their rights. Governments are required to respect, safeguard, and uphold all rights on three different levels. Respecting a right entails not interfering with how that right is used. To defend a right is to stop other parties from obstructing it from being exercised. In order to ensure that individuals may exercise their rights, laws, regulations, institutions, and procedures must be put in place. This includes allocating resources.¹¹

The Human Rights system and the SDGs complement each other in that the former ensures the binding stamp and, most importantly, monitoring and accountability mechanisms, while the latter also integrates "people, planet, prosperity, peace, and partnership" for the achievement of sustainable development.¹² Several of the SDGs' aims are changed from a goal or aspiration into immediate rights when examined through the prisms of current human rights legislation. In this regard, the implementation of the SDGs can be much more successful if it is influenced by a human rights-approach and takes

¹⁰ 'UNSDG | Human Rights-Based Approach'

<<https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>> accessed 19 April 2023.

¹¹ 'The Human Rights-Based Approach' (*United Nations Population Fund*) <<https://www.unfpa.org/human-rights-based-approach>> accessed 19 April 2023.

¹² 'Intersessional Meeting on Human Rights and the 2030 Agenda (16 January 2019)' (OHCHR) < <https://www.ohchr.org/en/hr-bodies/hrc/intersessional-meeting2030-agenda> > accessed 19 April 2023.

into account the findings and suggestions of international and regional treaty-based bodies as well as National Human Rights Institutions (NHRIs).¹³

In fact, local, regional, and international human rights organisations can be used to ensure that national policies and programmes for the implementation, monitoring, and reporting of the SDGs are based on a human rights-based approach. The various human rights mechanisms can provide useful and occasionally disaggregated data to feed decision-making and reporting processes, and the institutions overseeing human rights processes can be a useful bridge between governments and various vulnerable groups.¹⁴

HRBA in development seeks to achieve outcomes that are relevant to human rights standards, such as the right to adequate housing, through the adoption of procedures that uphold the human rights principles of equality and non-discrimination, inclusion and participation, accountability, and the rule of law.¹⁵ Indigenous peoples and local communities' ways of life and territorial boundaries are important components of the solution to our global crises, and they must be recognised and supported throughout the framework, including through the recognition of rights over lands, territories, and resources, in area-based policies, in customary sustainable use, in traditional knowledge, and in fully and effectively participating in decision-making processes.¹⁶

¹³ Ibid.

¹⁴ Ibid.

¹⁵ 'A Rights-Based Approach to Urban Development - Urban Jonsson, the Owls | UN-Habitat' <<https://unhabitat.org/a-rights-based-approach-to-urban-development-urban-jonsson-the-owls>> accessed 19 April 2023.

¹⁶ 'Implementing a Human Rights-Based Approach to Biodiversity Conservation - Paper 3 | FPP'

In the *Case Concerning the Gabčíkovo-Nagymaros Project*,¹⁷ ICJ Judge Warramantry rightly opined that Sustainable Development reaffirms the need for both development and environmental protection, and that neither can be neglected at the expense of the other. He considered sustainable development to be a '*principle with normative value*' demanding a balance between development and environmental protection, and as a principle of reconciliation in the context of conflicting human rights, that is the *human right to development* and the *human right to protection of the environment*. Sustainable Development reconciles these rights by ensuring that the right to development tolerates the '*reasonable demands of environmental protection*.'¹⁸

3. Place of Law in Achieving Human Rights and Sustainability

The relationship between law and governance has been conceptualised by certain scholars in broad terms. Law and

<<https://www.forestpeoples.org/en/report/2022/implementing-human-rights-BA>>
accessed 19 April 2023.

¹⁷ The Gabčíkovo–Nagymaros Project relates to a large damming project on the Danube River. This river is classified as an international waterway as it passes through or touches the borders of ten European countries before emptying into the Black Sea. The Project was specific to the part of the river passing through Hungary and Slovakia. It was initiated by the Budapest Treaty of 1977 between Slovakia and Hungary and aimed at preventing floods, improving river navigability and producing clean electricity for the two countries. Only a part of the project was completed in Slovakia, under the name Gabčíkovo Dam. Hungary suspended the Project in its territory and then later tried to terminate it citing environmental and economic concerns. Slovakia then proceeded with an alternative solution, called "Variant C", which involved diverting the river. These developments caused an international dispute between the two countries and they turned to the International Court of Justice for redress.

¹⁸ Hungary v Slovakia, 1997 WL 1168556 (I.C.J-1997).

governance have been successfully connected, according to some, as hereunder: listed below:¹⁹

Constitutions provide the framework for the legal and political institutions through which government takes place. They provide- legal ‘power-maps’ for how power will be held and exercised; a legal framework for accountability, often enforceable by apex courts; a legalized text which embodies the underlying political settlement or elite-level pact from which any political community flows; rights and safeguards for individuals from abuses of power by political actors and institutions; Public institutions of governance are themselves also creatures of law, operating according to law and sometimes even having secondary law-making functions; Good governance depends on a legal platform of both criminal law and civil law, to create the environment – here law’s key role is to provide background norms that enable horizontal interactions; International law increasingly impacts on, and increasingly even regulates governance at the state level. This regulation is diverse and multifarious, including- International legal regulation of political change processes (including peace settlements, coup d’état, or other forms of regime change), which attempts to ensure only ‘democratic’ regime change; International legal requirements for human rights to be protected at the domestic level; Human

¹⁹ Bell, C., “Governance and Law: The Distinctive Context of Transitions from Conflict and its Consequences for Development Interventions,” *Briefing Paper 4*, (The Political Settlements Programme Consortium, 2015), pp.1-2. Available at http://www.politicalsettlements.org/wp-content/uploads/2017/09/2015_BP_4_Bell_Governance-and-Law.pdf [Accessed on 6/1/2023].

rights directly impact on the internal governance arrangements of states; International legal requirements for 'inclusion' both in change processes and in the terms of the new political settlement itself; A range of diverse international bodies shape domestic governance in what have been termed 'transnational global administrative spaces' which impact on domestic governance.

Article 10 of the Constitution of Kenya outlines the national values and principles of governance that inform application or interpretation of the Constitution, enacting, application or interpretation of any legislation, or making or execution of public policy.²⁰ The law thus has a significant impact on governance issues since it not only establishes the necessary governance structures but also specifies how they should operate.

The nexus between sustainable development and the right to clean and healthy environment, as well as the place of the polluter pays principle in enhancing this connection, was captured in the case of *John Muthui & 19 others v County Government of Kitui & 7 others* [2020] eKLR²¹ in the following excerpt:

83. Indeed, Section 18 of the Environment and Land Court Act and Section 3(5) of the Environmental Management and Co-ordination Act provides that this court should be guided by the principle of *intergenerational* equity while resolving environmental disputes. Section 2 of the Environmental

²⁰ Art. 10(1), Constitution of Kenya 2010.

²¹ *John Muthui & 19 others v County Government of Kitui & 7 others* [2020] eKLR, ELC. Petition No. E06 of 2020.

Management and Co-ordination Act defines *intergenerational equity* as follows:

“intergenerational equity” means that the present generation should ensure that in exercising its rights to beneficial use of the environment the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.”

84. The quality of life for the future generation depends on our decisions today. The need for change in human development for them to lead happy lives has been debated for decades. The sustainability discourse started in the 1970s, and the 1992 UN Conference on the Environment and Development recognized intergenerational equity as central for policymaking that safeguards the future - this principle is now found in the constitutions of many countries, including Kenya.

85. Indeed, the World Commission on Environment and Development noted as follows: *“We borrow environmental capital from future generations with no intention or prospect of repaying.... We act as we do because we can get away with it; future generations do not vote; they have no political or financial power; they cannot challenge our decisions.”*

86. Some countries, most notably Israel and Hungary, have created their own guardian or commissioner for future generations, independent voices for the long term that act as temporal checks and balances. Based on the human right to a healthy environment (*Hungary*) and on a basic law concerning sustainable development (*Israel*), the Commissioners in each country have unrestrained access to the information behind

polycymaking; respond to citizens' concerns; and publicly expose the long-term implications of current decisions.

105. The right to a clean and healthy environment is bestowed on every person, and has been considered by the courts and eminent authors to be essential for the existence of mankind. In *Adrian Kamotho Njenga vs. Council of Governors & 3 others* [2020] eKLR, it was held that:

"18. Article 42 of the Constitution guarantees every person the right to a clean and healthy environment and to have the environment protected for the benefit of present and future generations through the measures prescribed by Article 69. The right extends to having the obligations relating to the environment under Article 70 fulfilled.

19. Unlike the other rights in the bill of rights which are guaranteed for enjoyment by individuals during their lifetime, the right to a clean and healthy environment is an entitlement of present and future generations and is to be enjoyed by every person with the obligation to conserve and protect the environment. The right has three components; the right itself, the right to have unrestricted access to the courts to seek redress where a person alleges the right to a clean and healthy environment has been infringed or is threatened; and the right to have the court make any order or give any directions it considers appropriate to either prevent or discontinue the act harmful to the environment, or compel any public officer to take measures to prevent or discontinue the act that is harmful to the environment or award compensation to any victim of a violation of the right to a clean and healthy environment."

107. This position was elaborately considered in the case of *Martin Osano Rabera & Another vs. Municipal Council of Nakuru & 2 others* [2018] eKLR where the court adopted the decision in *Communication No.155/96: The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights vs. Nigeria* where the African Commission on Human and People's Rights stated as follows:

"These rights recognize the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual. As has been rightly observed by Alexander Kiss, "an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health."

The right to general satisfactory environment, as guaranteed under article 24 of the Africa Charter or the right to healthy environment, as it is widely known therefore imposes clear obligations upon a government. It requires the State to take reasonable measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources."

123. *Sustainable Development* is one of the national values and principles of governance in the Constitution that bind all State organs, State officers, public officers and all persons. In its report, *Our Common Future*, the Brundtland Commission defined Sustainable as *development that meets the needs of the present*

without compromising the ability of future generations to meet their own needs’.

124. Under Section 2 of the Environmental and Management Co-ordination Act, sustainable development is defined as follows:

“sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs by maintaining the carrying capacity of the supporting ecosystems.”

125. In the Case Concerning the Gabčíkovo-Nagymaros Project, (*Hungary v Slovakia*), 1997 WL 1168556 (ICJ), it was held as follows:

“Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations - of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed [and] set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities, but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development. For the purposes of the present case, this means that the Parties together should

look afresh at the effects on the environment of the operation of the Gabčíkovo power plant. In particular, they must find a satisfactory solution for the volume of water to be released into the old bed of the Danube and into the side-arms on both sides of the river."

126. Essentially, sustainable development seeks to address *intra-generational equity*, that is equity among the present generation and *inter-generation equity*, that is equity between generations. As opined in *Gabcikovo* case (*supra*), sustainable development reaffirms the need for both development and environmental protection, and neither can be neglected at the expense of the other.

127. The four (4) recurring elements that comprise the concept of '*sustainable development*' is the need to preserve natural resources for the benefit of future generations (*the principle of intergenerational equity*); exploiting natural resources in a manner which is '*sustainable*', '*prudent*', '*rational*', '*wise*' or '*appropriate*' (*the principle of sustainable use*); the '*equitable*' use of natural resources, and the need to ensure that environmental considerations are integrated into economic and other development plans, programmes and projects, (*the principle of integration*).

128. The principle of sustainable development seeks to limit environmental damage arising from anthropogenic activities and lessen the depletion of natural resources and pollution of the environment (*See Cullet P., Differential Treatment in International Environmental Law and its Contribution to the Evolution of International Law (Aldershot: Ashgate, 2003) pp 8-9*).

129. Sustainable development is a principle with a normative value, demanding a balance between development and environmental protection, and as a principle of reconciliation in the context of conflicting human rights, that is the right to development and the right to protecting the environment.

In the case of *Martin Osano Rabera & another v Municipal Council of Nakuru & 2 others* [2018] eKLR²², the Court stated as follows:

48. I have considered the petition, the evidence both in support and opposition to it and the submissions. That a clean and healthy environment is a fundamental prerequisite for life is not a matter that needs belabouring. It is for this reason that the drafters of the Constitution of Kenya, 2010 saw it fit to provide for the right to a clean and healthy environment at **Article 42** within the Bill of Rights. Needless to state, Kenyans voted overwhelmingly in favour of the draft, thus giving their seal of approval to its provisions. **Article 42** states as follows:

Every person has the right to a clean and healthy environment, which includes the right –

(a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and

(b) to have obligations relating to the environment fulfilled under Article 70.

²² *Martin Osano Rabera & another v Municipal Council of Nakuru & 2 others* [2018] eKLR, Petition No. 53 of 2012.

49. A duty to have the environment protected for the benefit of present and future generations is imposed on both the State and every person under Article 69 which among others requires the state to ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits; to establish systems of environmental impact assessment, environmental audit and monitoring of the environment and to eliminate processes and activities that are likely to endanger the environment. Under the same article, every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources. In short, the obligation to ensure a clean and healthy environment imposed on everybody – from the state to all persons be they natural, juridical, association or other group of persons whether incorporated or not.

50. So as to further safeguard environmental rights and to facilitate access to court for purposes of enforcing the right secured by Article 42, Article 70 of the constitution provides that if a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to court for redress in addition to any other legal remedies that are available in respect to the same matter and that he does not have to demonstrate that any person has incurred loss or suffered injury.

51. Provisions similar to those at **Article 42** are found at **Section 3 of the Environmental Management and Co-ordination Act,**

1999 (EMCA). Under **Section 3 (3)** of EMCA, if a person alleges that the right to a clean and healthy environment has been, is being or is likely to be denied, violated, infringed or threatened, in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may on his behalf or on behalf of a group or class of persons, members of an association or in the public interest may apply to this court and this court may make such orders, among others, to prevent, stop or discontinue any act or omission deleterious to the environment; to compel the persons responsible for the environmental degradation to restore the degraded environment as far as practicable to its immediate condition prior to the damage; and to provide compensation for any victim of pollution and the cost of beneficial uses lost as a result of an act of pollution and other connected losses.

52. I have outlined all these provisions to underscore the importance placed by the constitution and statute law on protection of the right to a clean and healthy environment and conservation of the environment generally.

4. Conclusion

Although the concepts of a rights-based approach to development are consistent with the 2030 Agenda in some areas, more work has to be done in the implementation, monitoring, and assessment of the SDGs to guarantee that the full range of benefits offered by a rights-based approach may be realized.²³

²³ de Man A, 'The Sustainable Development Goals and the Rights-Based Approach to Development: Compatible or Missing the Point?' (2019) 19 African Human Rights Law Journal 445.

According to the Swedish International Development Cooperation Agency, the following are key questions to ask when applying the HRBA: Participation: Do all relevant stakeholders engage actively, in a way which allows rights holders to contribute meaningfully and influence outcomes? Link to human rights obligations: How are relevant human rights standards and recommendations from international and regional human rights mechanisms identified and used in formulating objectives and to advance processes and outcomes? Accountability: Who are the duty bearers at different levels, and do they have sufficient capacity and interest to be accountable to rights holders? Are there mechanisms for participation and complaints in place for rights holders, civil society and other stakeholders to hold the duty bearers to account? Non-discrimination and equality: Are rights holders and the root causes of the non-realisation of their human rights identified and taken into account, particularly those most subject to discrimination and marginalisation? Empowerment and capacity development: How does the intervention contribute to the empowerment of rights holders to claim their rights, as well as capacity development of duty bearers to uphold their responsibilities, and of other relevant stakeholders to contribute to positive outcomes? And finally, transparency: What measures are put in place to ensure that all stakeholders are able to access relevant information and knowledge regarding the intervention?

Respecting human rights and providing equal opportunity for everyone in society is a key component of sustainability. With an emphasis on reducing poverty, it necessitates an equal distribution of resources. There is a focus on local communities, including preserving and enhancing their life support systems, acknowledging and respecting other cultures, and averting all forms of exploitation.

Hence, social outcomes comprise social capital, trust, increased equity, and raised living standards.²⁴

The human rights approach is at the core of the 2030 Agenda for Sustainable Development. In order for the world to continue to serve the requirements of the present and future generations, everyone has a responsibility to prevent it from degrading, especially via sustainable production and consumption, the management of its natural resources, and urgent action on climate change. Sustainable development must take into account the relationship between human rights and environmental protection. Sustainable development is contingent upon upholding peoples' rights to a secure environment where they can thrive.²⁵

The HRBA places the most marginalised and discriminated among those who are living in multidimensional poverty and oppression at the centre of development cooperation. The strategy identifies the individuals and institutions in charge of upholding, defending, and enforcing those human rights with the goal of empowering people who are oppressed and living in poverty to take action to escape their circumstances.²⁶ This is because the HRBA always includes the following provisions: empowerment of women, men, girls, boys, and non-binary people living in poverty and oppression – the rights holders – with, for instance, hope, assertiveness, knowledge, skills, tools, networks, communication channels, and access to justice to

²⁴ Ibid, p. 3; Banik D, 'Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication' (2009) 1 Hague Journal on the Rule of Law 117.

²⁵ Choondassery Y, 'Rights-Based Approach: The Hub of Sustainable Development' (2017) 8 Discourse and Communication for Sustainable Education.

²⁶ Cybercom, 'Human Rights Based Approach' (Sida)

<<https://www.sida.se/en/for-partners/methods-materials/human-rights-based-approach>> accessed 19 April 2023.

enable them to assert their rights both individually and collectively; and capacity development of those with obligations to respect, protect, promote, and fulfil human rights – the duty bearers – through, among other things, education.²⁷

Entrenching a Human Rights Approach to Sustainable Development is the way to go so as to secure human rights and environmental protection.

²⁷ Ibid.

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Embracing Climate Technologies in Climate Change Mitigation and Adaptation for Sustainable Development

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Abstract

Embracing technology is significant in curbing climate change, both in mitigation and adaptation efforts. Digital Technology helps to be more prepared for the effects of climate change. Advanced weather forecasting systems, for instance, offers early warning of extreme weather occurrences. Traditional approaches towards climate change mitigation and adaptation such as the enactment of laws and policies have not been effective. This has resulted in the continued threat of climate change that hinders attainment of Sustainable Development.

The paper postulates that there is need to embrace climate technologies for climate change mitigation and adaptation in order to foster Sustainable Development. The adverse effects of climate change are being felt across the globe and adaptation to these effects is significant as the minimizing of the emissions of greenhouses gases. This paper makes a case for the challenges and opportunities for climate technologies in climate change mitigation and adaptation towards Sustainable Development. It provides actionable insights that address climate change issues.

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1.0 Introduction

Climate change is the most pressing global concern of the 21st Century. Climate change has been defined as the change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods¹. Climate change has been associated with effects such drought, crop failure resulting in food insecurity, water scarcity, rising sea levels, displacement of people, health hazard and unemployment². Climate change hinders the attainment of Sustainable Development³.

In addition, most part of the world encounter disproportionately severe consequences from climate change, the most hit are tourism, health and agriculture and overall livelihood is put into a halt. Effects of climate slows sustainable development as the effects supplements and complements each other advancing their effects.

Sustainable Development has been defined as the development that meets the needs of the present without compromising the ability of future generations to meet their own needs⁴. The concept of Sustainable Development has been adopted as the global blueprint for development as envisaged by the United Nations Agenda for

¹ United Nations Framework Convention on Climate Change (United Nations, 1992), Article 1 (2)., Available at <https://unfccc.int/resource/docs/convkp/conveng.pdf> (Accessed on 15/06/2023)

² Muigua. K., 'Nurturing Our Environment for Sustainable Development.' Glenwood Publishers Limited, 2016

³ Ibid

⁴ *Our Common Future*, Report of the World Commission on Environment and Development, 1987 (Brundtland Report)

Sustainable Development⁵. The Sustainable Development Goals are universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity⁶. However, attainment of the Sustainable Development agenda is faced by several challenges key among them being the threat of climate change⁷. Consequently, one of the priority concerns under the Sustainable Development agenda is combating climate change⁸.

Various techniques and approaches have been adopted towards climate change mitigation and adaptation in the quest towards Sustainable Development. Such measures include the enactment of laws and policies on climate change at the global and national levels⁹. However, despite these measures, the threat of climate change still persists. Thus, to promote Sustainable Development, it is important that climate change be embraced, which impedes climate change mitigation and adaptation.

The paper aims to shed light on the explicit needs and issues for climate technologies in mitigation and adaptation to climate change for Sustainable Development. It further posits that technological

⁵ United Nations., 'Transforming Our World: The 2030 Agenda for Sustainable Development.' Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 15/06/2023)

⁶ Ibid

⁷ Ibid

⁸ Sustainable Development Goal 13., 'Available at https://www.undp.org/sustainable-development-goals/climate-action?gclid=Cj0KCQjw7aqkBhDPArlsAKGa0oJBBwTdYd3P8F1StpqICbJdXLUiKKDP6CeT6vrkjvGQ9QF5ktjg9WwaAgPuEALw_wcB (Accessed on 15/06/2023)

⁹ See for example the Paris Agreement and the Climate Change Act of Kenya

innovation is crucial for an effective and efficient long term global response to climate change and enhancing Sustainable Development¹⁰. The agenda of this paper is to contribute to ways of achieving climate resilience which promote the readiness and capacity to respond to the adverse effects of climate change through digital technologies.

2.0 The Role of Climate Technologies in Climate Change Mitigation and Adaptation: Opportunities and Challenges

Climate technologies refer to technology approaches adopted to combat climate change by mitigating global greenhouse gas emissions¹¹. These are technologies used to address the global threat of climate change¹². Climate technologies aim to combat climate change by removing greenhouse gases in the atmosphere and reducing future emissions¹³. Climate technologies are able to achieve environmentally and socially sound, cost effective and efficient approaches towards climate change mitigation and adaptation¹⁴.

¹⁰ Lee. W. J & Mwebaza. R., 'The Role of the Climate Technology Centre and Network as a Climate Technology and Innovation Matchmaker for Developing Countries.' Available at <https://www.ctc-n.org/sites/www.ctc-n.org/files/resources/sustainability-12-07956.pdf> (Accessed on 15/06/2023)

¹¹ Hetler. A., 'Climate tech vs clean tech: What's the difference.' Available at <https://www.techtarget.com/whatis/feature/Climate-tech-vs-clean-tech-Whats-the-difference> (Accessed on 15/06/2023)

¹² United Nations Climate Change., 'What is Technology Development and Transfer.' Available at <https://unfccc.int/topics/what-is-technology-development-and-transfer> (Accessed on 15/06/2023)

¹³ Ibid

¹⁴ Lee. W. J & Mwebaza. R., 'The Role of the Climate Technology Centre and Network as a Climate Technology and Innovation Matchmaker for Developing Countries.' Op Cit

The *United Nations Framework Convention on Climate Change*¹⁵ recognizes the role of technology in climate change mitigation and adaptation. It calls upon member states to control greenhouse gas emissions through the use of appropriate technologies¹⁶. It further advocates for the transfer of suitable technologies to developing countries to aid in their efforts towards climate change mitigation and adaptation¹⁷. The *Paris Agreement* also recognizes the importance of technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions¹⁸. It calls for the adoption of technology in order to implement the mitigation and adaptation strategies set out under the Agreement¹⁹. The *Sustainable Development Goals* also envisage the role of technology in limiting global greenhouse gas emissions and rise in temperatures²⁰. The United Nations further asserts that technology is integral in the climate change agenda and argues a case for transfer of technologies to developing countries in order to promote meaningful adaptation and mitigation actions towards attaining the sustainable development goals and objectives²¹. In Kenya, the *Climate Change Act* enshrines the importance of technology and technological innovations relevant to climate change in formulating the National Climate Change Action Plan²².

¹⁵ United Nations Framework Convention on Climate Change., Op Cit

¹⁶ Ibid

¹⁷ Ibid, Article 4 (1) (c)

¹⁸ Paris Agreement., 'United Nations, 2015.' Article 10., Available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf (Accessed on 15/06/2023)

¹⁹ Ibid

²⁰ Sustainable Development Goal 13., Op Cit

²¹ United Nations., 'Acting on Climate Change: The UN Delivering as One.' (United Nations, New York, November 2008), p 32

²² Climate Change Act, No. 11 of 2016, S 13 (5) (b)

Climate technologies therefore have an important role to play in climate change mitigation towards Sustainable Development. Climate technologies include Agri-tech initiatives such as the use of drought-resistant crops, using less pesticides, use of manure and improving crop growing processes; afforestation to aid in carbon capture; use of carbon capture technologies and use of geoengineering to alter the climate system in order to reduce the effects of climate change²³. These technologies also include renewable energy sources such as solar energy, wind energy and hydropower and technologies geared towards adapting to adverse effects of climate change such as early warning systems and sea walls²⁴.

Climate technologies present several advantages in climate change mitigation and adaptation. Technology ensures that countries are better equipped to achieve their economic and social development goals in a more climate resilient manner ²⁵ . Further, climate technologies can be more robust and cost-effective in climate change mitigation and adaptation especially when combined with other approaches such as nature-based solutions²⁶. Climate technologies are thus viable in climate change mitigation and adaptation.

However, despite the important role of climate technologies in climate change mitigation and adaptation, several challenges have

²³ Hetler. A., 'Climate tech vs clean tech: What's the difference.' Op Cit

²⁴ United Nations Climate Change., 'What is Technology Development and Transfer.' Op Cit

²⁵ De Coninck , H & Sagar. A., 'Making Sense of Policy for Climate Technology Development and Transfer.' Climate Policy, Volume 15, No.1

²⁶ United Nations Framework Convention on Climate Change., 'How Technology Can Help Fight Climate Change.' Available at <https://unfccc.int/news/how-technology-can-help-fight-climate-change> (Accessed on 15/06/2023)

hindered effective adoption of technology as a tool of managing climate change. Financial and economic hurdles may prevent certain countries especially those in developing regions of the world from accessing suitable technology necessary for climate change mitigation and adaptation²⁷. Further, legal and regulatory challenges such as insufficient legal framework and bureaucracy may hinder effective transfer and adoption of technology for climate change mitigation and adaptation²⁸. In addition, institutional and capacity challenges such as absence or limited institutions dealing with climate technologies and lack of technical knowhow may hinder effective adoption of climate technologies²⁹. Finally, adoption of climate technologies may be hindered by environmental factors and physical conditions in a particular country such as the condition of infrastructure³⁰.

Climate technologies offer huge potential in climate change mitigation and adaptation towards Sustainable Development. However, the challenges highlighted above hinder effective adoption and transfer of technology as a tool of climate change mitigation. There is need to address these challenges in order to enhance the role of climate change technologies in climate change mitigation and adaptation and foster Sustainable Development.

²⁷ United Nations Environment Programme., 'Overcoming Barriers to the Transfer and Diffusion of Climate Technologies.' Available at https://www.researchgate.net/profile/Ivan-Nygaard-2/publication/318109356_Overcoming_Barriers_to_the_Transfer_and_Diffusion_of_Climate_Technologies_Second_edition/links/595a13cc0f7e9ba95e147f67/Overcoming-Barriers-to-the-Transfer-and-Diffusion-of-Climate-Technologies-Second-edition.pdf (Accessed on 15/06/2023)

²⁸ Ibid

²⁹ Traerup. S., 'The Role of Climate Technologies in Green Transition Pathways.' *The Journal of Field Actions*, No. 24 of 2022

³⁰ Ibid

3.0 Way Forward

In order to enhance the role of technology in climate change mitigation and adaptation, there is need for countries to strengthen technological innovation so that it can deliver environmentally and socially sound, cost effective, and better-performing climate technologies at a larger and more widespread scale³¹. Governments and the private sector can spearhead this endeavor through funding, enactment of governing laws and regulations, political goodwill, training among other measures. There is also need for increased cooperation among public actors, private actors and international actors to enhance national and global partnerships towards adoption of climate technologies³². Adaptation policies at all levels should better reflect social vulnerability to climate change and vulnerable groups should be involved in the design of fair adaptation policies and socially just adaptation in cities³³.

There is also need for developing countries to support climate change responses of developing countries through technology transfer, setting up of innovative technologies and enhancing the national systems of innovation in developing countries³⁴. Both the *United Nations Framework Convention on Climate Change* and the *Paris Agreement* acknowledge the role of technology transfer in climate

³¹ Lee. W. J & Mwebaza. R., 'The Role of the Climate Technology Centre and Network as a Climate Technology and Innovation Matchmaker for Developing Countries.' Op Cit

³² Traerup. S., 'The Role of Climate Technologies in Green Transition Pathways.' Op Cit

³³ Mariya Gancheva, Sarah O'Brien, Tugce Tugran and Camille Borrett (Milieu Consulting SRL) Commission for the Environment, Climate Change and energy

https://cor.europa.eu/en/engage/studies/Documents/Climate%20Change_adaptation.pdf

³⁴ Ibid

change mitigation and adaptation³⁵. There is need to promote the vision of these instruments and enhance effective technology transfer for climate change mitigation and adaptation. Technology transfer is essential in promoting the diffusion and uptake of environmentally friendly and climate friendly technologies and practices towards achieving objectives of mitigation and adaptation at the country levels³⁶. For there to be effective technology transfer, there is need for local anchoring of climate technologies with local production, skills upgrading and strengthening of local markets in order to ensure that climate technologies suit to the needs and circumstances of specific countries³⁷. Through these measures, climate technologies will be widely adopted for climate change mitigation and adaptation towards Sustainable Development.

4.0 Conclusion

Climate technologies offer huge potential in climate change mitigation and adaptation. Such technologies can be more viable than traditional approaches such as the use of laws and policies in combating climate change. There is need to embrace climate technologies in climate change mitigation and adaptation in order to foster Sustainable Development. A collaborative approach to the digital technologies aids climate adaptation by managing risks through use of remote sensors like satellites and weather radars, supporting monitoring, and promoting sustainability through responsible use. By leveraging digital innovation and big data,

³⁵ United Nations Framework Convention on Climate Change., Article 4 (1) (c); Paris Agreement., Article 10

³⁶ United Nations., 'Acting on Climate Change: The UN Delivering as One.' Op Cit

³⁷ Traerup. S., 'The Role of Climate Technologies in Green Transition Pathways.' Op Cit

advanced levels of interventions for achieving sustainable development can be unveiled. Collaboration between organizations, businesses, and people is essential for successful climate action and a future that is more sustainable for future generations. There is a dire need for resilient infrastructure that can stand climate change adverse effects such floods and promote climate change adaptation.

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United Nations Framework Convention on Climate Change (United Nations, 1992), Article 1 (2)., Available at <https://unfccc.int/resource/docs/convkp/conveng.pdf> (Accessed on 15/06/2023)

United Nations Framework Convention on Climate Change., 'How Technology Can Help Fight Climate Change.' Available at <https://unfccc.int/news/how-technology-can-help-fight-climate-change>

United Nations., 'Acting on Climate Change: The UN Delivering as One.' (United Nations, New York, November 2008)

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Renewable Energy Transition: Powering a Sustainable Future with Solar, Wind, Hydro, and Geothermal Solutions

*By: Dr. Dynesius Nyangau**

Abstract

This paper delves into the critical topic of the renewable energy transition, focusing on the shift from fossil fuels to renewable energy sources such as solar, wind, hydro, and geothermal power. The discussion explores various facets of this transition, including technological advancements, policy frameworks, and the economic benefits associated with renewable energy. The paper begins with an introduction to the renewable energy transition, highlighting its significance in combating climate change and reducing dependence on finite fossil fuel resources. The various renewable energy sources are introduced, showcasing their potential for sustainable electricity generation and their role in decarbonizing the energy sector. The discussion further examines the technological advancements in renewable energy, encompassing solar energy technologies, wind turbine design, hydroelectric power generation, and geothermal energy extraction techniques. The paper emphasizes the importance of innovation in driving the scalability and efficiency of renewable energy systems. Policy frameworks for promoting the renewable energy transition are explored, including international agreements, national renewable energy policies, and public-private partnerships. The paper analyzes the role of supportive policies in driving investment, research and development, and market adoption of renewable energy technologies. The economic benefits of renewable energy are also addressed, emphasizing the potential for job creation, energy independence, and enhanced energy security. The abstract highlights the cost trends and price competitiveness of renewable energy technologies, illustrating their

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economic viability and long-term sustainability. It emphasizes the significance of the renewable energy transition in achieving sustainable and resilient energy systems. It underscores the importance of technology, policy, and economic considerations in facilitating the widespread adoption of renewable energy sources. The abstract calls for continued efforts and collaboration across various sectors to accelerate the transition and realize the environmental, social, and economic benefits of renewable energy. Overall, this abstract provides a concise overview of the renewable energy transition, covering key aspects such as technology, policy, and economic considerations. It highlights the potential of renewable energy sources in transforming the energy landscape and fostering a sustainable future.

Key words: renewable energy transition, solar energy, wind power, hydroelectricity, geothermal energy.

I. Introduction

The world is at a critical juncture in its quest for a sustainable future, with the rapid depletion of fossil fuel reserves and the detrimental effects of climate change becoming increasingly evident.¹ In response to these pressing challenges, the transition from conventional fossil fuel-based energy systems to renewable energy sources has gained significant attention worldwide. The renewable energy transition refers to the shift from finite and environmentally harmful energy sources, such as coal, oil, and natural gas, to clean, abundant, and sustainable alternatives, including solar, wind, hydro, and geothermal power.²

¹ Hoffmann, M. J. (2011). *Climate governance at the crossroads: Experimenting with a global response after Kyoto*. Oxford University Press; See, Asif, M., & Muneer, T. (2007). Energy supply, its demand and security issues for developed and emerging economies. *Renewable and sustainable energy reviews*, 11(7), 1389-1399.

² Ibid.

Renewable energy sources offer immense potential to mitigate the adverse environmental impacts associated with fossil fuel consumption.³ Unlike non-renewable resources, renewable energy harnesses natural processes that constantly replenish themselves, ensuring an enduring energy supply.⁴ By leveraging the power of the sun, wind, water, and heat from the Earth's core, societies can reduce greenhouse gas emissions, combat climate change, and safeguard the planet for future generations.⁵

This discussion explores the shift from fossil fuels to renewable energy sources, including solar, wind, hydro, and geothermal power, and delves into the technological advancements, policy frameworks, and economic benefits associated with renewable energy. This paper asserts that the transition to renewable energy represents a vital pathway to achieving a sustainable future. By examining the technological developments, policy frameworks, and economic advantages linked to solar, wind, hydro, and geothermal solutions, this research aims to shed light on the transformative potential of renewable energy and highlight the essential role it plays in shaping a more environmentally friendly and economically prosperous world.

The paper will delve into the various renewable energy sources, their characteristics, and the advancements made in harnessing their potential. It will explore the multifaceted benefits of adopting renewable energy, including the reduction of greenhouse gas

³ Shahsavari, A., & Akbari, M. (2018). Potential of solar energy in developing countries for reducing energy-related emissions. *Renewable and Sustainable Energy Reviews*, 90, 275-291.

⁴ Ibid.

⁵ Ibid.

emissions, the promotion of energy security, the creation of job opportunities, and the stimulation of economic growth. Additionally, the study will examine the policy frameworks and incentives that governments and organizations have implemented to facilitate the transition to renewable energy.

By presenting a comprehensive analysis of the renewable energy transition, this paper seeks to inform policymakers, researchers, and stakeholders about the transformative power of sustainable energy sources. It aims to contribute to the ongoing discourse on renewable energy, fostering an understanding of its significance and inspiring further action towards a future powered by solar, wind, hydro, and geothermal solutions.

II. Understanding Renewable Energy Sources

Solar energy is derived from the radiation emitted by the sun and has emerged as a prominent renewable energy source for electricity generation.⁶ The photovoltaic (PV) technology used in solar panels converts sunlight directly into electricity through the photovoltaic effect.⁷ Solar power offers vast potential for clean and sustainable energy production.⁸ The sun is an abundant and virtually inexhaustible resource, providing an estimated 173,000 terawatts of solar energy to Earth every day.⁹ The utilization of solar energy for electricity generation has witnessed remarkable advancements in

⁶ Singh, G. K. (2013). Solar power generation by PV (photovoltaic) technology: A review. *Energy*, 53, 1-13.

⁷ Singh, G. K. (2013).

⁸ Ibid.

⁹ Wilfing, M. S. (2019). *Integration of Solar Microgrids* (Doctoral dissertation, Purdue University). See, Sornette, D., Kröger, W., & Wheatley, S. (2018). *New ways and needs for exploiting nuclear energy*. Springer.

recent years.¹⁰ The efficiency of solar panels has increased, making them more cost-effective and capable of converting a higher percentage of sunlight into usable electricity.¹¹ The integration of energy storage technologies, such as batteries, enables the storage and utilization of solar energy even during non-sunlight hours.¹²

Wind energy harnesses the kinetic energy of the wind to generate electricity.¹³ Wind turbines, equipped with rotating blades, convert the wind's mechanical energy into electrical energy through a generator.¹⁴ Wind power has gained considerable momentum as a viable renewable energy source due to its wide availability and minimal environmental impact.¹⁵ The implementation of wind farms, consisting of multiple wind turbines, has significantly contributed to electricity generation from wind energy.¹⁶ These farms can be established both onshore and offshore, with offshore locations often benefiting from stronger and more consistent wind patterns.¹⁷ Technological advancements have led to the development of larger, more efficient turbines capable of generating higher power outputs.¹⁸ Hydroelectric power utilizes the energy of moving water, typically in

¹⁰ Ibid.

¹¹ Meral, M. E., & Dincer, F. (2011). A review of the factors affecting operation and efficiency of photovoltaic based electricity generation systems. *Renewable and Sustainable Energy Reviews*, 15(5), 2176-2184.

¹² Ibid.

¹³ Ibid.

¹⁴ Dang, T. (2009, October). Introduction, history, and theory of wind power. In *41st North American Power Symposium* (pp. 1-6). IEEE.

¹⁵ Ibid.

¹⁶ Perveen, R., Kishor, N., & Mohanty, S. R. (2014). Off-shore wind farm development: Present status and challenges. *Renewable and Sustainable Energy Reviews*, 29, 780-792.

¹⁷ Ibid.

¹⁸ Ibid.

the form of rivers, to generate electricity.¹⁹ It is one of the most established and widely used renewable energy sources, accounting for a substantial portion of global electricity production.²⁰ Hydroelectric power plants consist of dams that store water, which is released in a controlled manner to drive turbines and produce electricity.²¹

Hydroelectric power offers numerous benefits. It is a clean and renewable energy source that produces no greenhouse gas emissions during operation.²² Hydroelectric plants also provide reliable and consistent power generation, as water flow can be regulated to meet demand. Additionally, these plants contribute to water management and flood control, and their reservoirs can serve as recreational areas and habitats for various species.²³ Geothermal energy harnesses the heat from the Earth's core for electricity generation and other heating applications.²⁴ It taps into the natural heat trapped within the Earth's crust, utilizing geothermal power plants to convert this heat into electricity.²⁵ Geothermal energy is available continuously and is considered a reliable and environmentally friendly energy source.²⁶

¹⁹ Ibid.

²⁰ Ellabban, O., Abu-Rub, H., & Blaabjerg, F. (2014). Renewable energy resources: Current status, future prospects and their enabling technology. *Renewable and sustainable energy reviews*, 39, 751-757.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Fletcher, R. (2010). When environmental issues collide: Climate change and the shifting political ecology of hydroelectric power. *Peace & Conflict Review*, 5(1), 14-30.

²⁶ Ibid.

Geothermal power plants can be classified into three main types: dry steam, flash steam, and binary cycle plants.²⁷ These plants make use of different technologies to exploit the heat reservoirs beneath the Earth's surface.²⁸ Geothermal energy not only provides a constant and reliable source of power but also has the advantage of being independent of weather conditions, making it a highly stable renewable energy option.²⁹ By understanding the characteristics and potential of solar energy, wind energy, hydroelectric power, and geothermal energy, stakeholders can make informed decisions about the most suitable renewable energy sources for specific regions. This knowledge serves as a foundation for planning and implementing sustainable energy systems that contribute to a greener and more sustainable future.³⁰

III. Technological Advancements in Renewable Energy

Significant advancements have been made in photovoltaic (PV) cell technology, which forms the backbone of solar power generation.³¹ Innovations in PV cell materials and designs have led to improved efficiency and cost-effectiveness.³² For instance, the development of thin-film solar cells, such as CIGS (copper indium gallium selenide) and perovskite cells, has increased the efficiency and reduced the manufacturing costs of solar panels. Additionally, research is being

²⁷ Ibid.

²⁸ Ibid.

²⁹ Franco, A., & Villani, M. (2009). Optimal design of binary cycle power plants for water-dominated, medium-temperature geothermal fields. *Geothermics*, 38(4), 379-391.

³⁰ Ibid.

³¹ Ibid.

³² Franco, A., & Villani, M. (2009). Optimal design of binary cycle power plants for water-dominated, medium-temperature geothermal fields. *Geothermics*, 38(4), 387-390.

conducted on tandem solar cells, which stack multiple layers of different materials to capture a broader range of the solar spectrum, thereby increasing overall energy conversion efficiency.³³

Concentrated Solar Power (CSP) technologies focus sunlight onto a small area, generating heat that drives turbines for electricity production.³⁴ Technological advancements in CSP have led to the development of more efficient and cost-effective systems.³⁵ New types of concentrating solar collectors, such as parabolic troughs, solar power towers, and linear Fresnel reflectors, have improved the concentration and capture of solar energy.³⁶ The integration of thermal energy storage systems allows CSP plants to generate electricity even when sunlight is unavailable, enabling consistent power supply.³⁷

Wind turbine technology has witnessed remarkable breakthroughs in recent years. The size of wind turbines has increased significantly, with modern turbines reaching heights of over 200 meters and rotor diameters exceeding 150 meters.³⁸ Larger turbines capture more wind energy and generate higher power outputs, increasing the efficiency and cost-effectiveness of wind farms. Innovations in turbine blade

³³ Ibid.

³⁴ Ummadisingu, A., & Soni, M. S. (2011). Concentrating solar power-technology, potential and policy in India. *Renewable and sustainable energy reviews*, 15(9), 5169-5175.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Santos, J. J., Palacio, J. C., Reyes, A. M., Carvalho, M., Freire, A. J., & Barone, M. A. (2018). Concentrating solar power. In *Advances in renewable energies and power technologies* (pp. 377-481). Elsevier.

³⁸ Wharton, S., & Lundquist, J. K. (2012). Assessing atmospheric stability and its impacts on rotor-disk wind characteristics at an onshore wind farm. *Wind Energy*, 15(4), 530-527.

designs have improved aerodynamic efficiency, allowing turbines to capture more wind energy at lower wind speeds.³⁹ For example, the introduction of curved or swept-back blades reduces turbulence and increases energy capture. Furthermore, the use of advanced materials, such as carbon fiber composites, reduces the weight of the blades while maintaining structural integrity, resulting in improved efficiency.

Hydroelectric power generation has benefitted from advancements in turbine design and efficiency. New turbine designs, such as Kaplan and Francis turbines, offer higher efficiency across a broader range of flow conditions.⁴⁰ Additionally, the use of adjustable blades and variable-speed turbines optimizes power generation based on water flow, enhancing overall efficiency.⁴¹ Technological advancements have facilitated the integration of energy storage systems with hydroelectric power generation. Pumped storage hydroelectricity (PSH) plants utilize surplus electricity during low-demand periods to pump water to an elevated reservoir. When electricity demand is high, the stored water is released, passing through turbines to generate electricity.⁴² PSH plants provide grid stabilization and load balancing capabilities, improving the reliability and flexibility of renewable energy integration.⁴³

³⁹ Barnes, R. H., Morozov, E. V., & Shankar, K. (2015). Improved methodology for design of low wind speed specific wind turbine blades. *Composite Structures*, 119, 677-684.

⁴⁰ Waters, S., & Aggidis, G. A. (2015). Over 2000 years in review: Revival of the Archimedes Screw from Pump to Turbine. *Renewable and Sustainable Energy Reviews*, 51, 497-505.

⁴¹ Ibid.

⁴² Guney, M. S., & Tepe, Y. (2017). Classification and assessment of energy storage systems. *Renewable and Sustainable Energy Reviews*, 75, 1187-1197.

⁴³ Ibid.

Enhanced Geothermal Systems (EGS) involves the extraction of geothermal energy from hot rocks located deeper underground.⁴⁴ Technological advancements in EGS techniques, such as hydraulic fracturing and reservoir stimulation, have expanded the potential for geothermal energy extraction in areas with lower heat resources.⁴⁵ This approach has the potential to unlock vast geothermal resources previously considered inaccessible.

Geothermal heat pumps utilize the constant temperature of the Earth to provide heating and cooling for buildings.⁴⁶ Advances in geothermal heat pump technology have improved efficiency and expanded their applicability to a wider range of climates. Innovations in ground loop designs and the use of advanced heat exchangers enhance heat transfer efficiency, resulting in higher system performance.⁴⁷

IV. Policy Frameworks for Renewable Energy Transition

International agreements and targets play a crucial role in driving the global transition to renewable energy.⁴⁸ The Paris Agreement, signed by nearly all nations, aims to limit global warming to well below 2 degrees Celsius above pre-industrial levels.⁴⁹ It recognizes the

⁴⁴ Kumari, W. G. P., & Ranjith, P. G. (2019). Sustainable development of enhanced geothermal systems based on geotechnical research—A review. *Earth-Science Reviews*, 199, 102955.

⁴⁵ Ibid.

⁴⁶ Bina, S. M., Fujii, H., Tsuya, S., & Kosukegawa, H. (2022). Comparative study of hybrid ground source heat pump in cooling and heating dominant climates. *Energy Conversion and Management*, 252, 115122.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Rogelj, J., Den Elzen, M., Höhne, N., Fransen, T., Fekete, H., Winkler, H., ... & Meinshausen, M. (2016). Paris Agreement climate proposals need a boost to keep warming well below 2 C. *Nature*, 534(7609), 631-639.

importance of renewable energy in achieving this goal and encourages countries to enhance their renewable energy capacities. Furthermore, organizations like the International Renewable Energy Agency (IRENA) provide platforms for collaboration and knowledge sharing among nations. IRENA assists countries in setting renewable energy targets and facilitates the exchange of best practices, promoting the adoption of renewable energy at a global scale.⁵⁰

National policies and regulations are essential for creating an enabling environment for renewable energy deployment.⁵¹ Many countries have implemented feed-in tariffs, which guarantee long-term contracts and financial incentives for renewable energy producers.⁵² These mechanisms have proven effective in stimulating investment and market growth. Other policy instruments include renewable portfolio standards, which mandate a certain percentage of electricity generation from renewable sources, and tax incentives or subsidies for renewable energy technologies.⁵³ Additionally, regulatory frameworks that simplify grid integration and streamline project approval processes are critical in encouraging renewable energy development.⁵⁴

Numerous countries have successfully implemented supportive policy frameworks to drive renewable energy adoption. Germany's Renewable Energy Sources Act (EEG) introduced feed-in tariffs and

⁵⁰ Rogelj, J., et.al. (2016).

⁵¹ Charabi, Y., & Al-Badi, A. H. (2015). Creating an enabling environment for renewable energy application in the Sultanate of Oman. *International Journal of Green Energy*, 12(11), 1169-1177.

⁵² Ibid.

⁵³ Fischer, C. (2010). Renewable portfolio standards: when do they lower energy prices?. *The Energy Journal*, 31(1).

⁵⁴ Ibid.

provided a stable and predictable market for renewable energy investments, leading to significant growth in wind and solar power generation.⁵⁵ Similarly, Denmark's Energy Agreement established a long-term vision and comprehensive policy framework for transitioning to a 100% renewable energy system, setting a global benchmark.⁵⁶ In the United States, states like California and Texas have implemented ambitious renewable portfolio standards, resulting in substantial renewable energy capacity additions.⁵⁷ China's aggressive policies and incentives have made it a global leader in renewable energy deployment, significantly increasing its installed capacity of wind and solar power.⁵⁸

Public-private partnerships and collaborations are instrumental in driving the renewable energy transition. Governments can leverage private sector expertise, resources, and innovation to accelerate renewable energy adoption.⁵⁹ Collaboration can take the form of research and development partnerships, joint ventures, and knowledge-sharing platforms. Public-private collaborations enable the sharing of risks, costs, and benefits associated with renewable

⁵⁵ Couture, T., & Gagnon, Y. (2010). An analysis of feed-in tariff remuneration models: Implications for renewable energy investment. *Energy policy*, 38(2), 955-965.

⁵⁶ Taibi, E., Miranda, R., Vanhoudt, W., Winkel, T., Lanoix, J. C., & Barth, F. (2018). Hydrogen from renewable power: Technology outlook for the energy transition.

⁵⁷ Langniss, O., & Wiser, R. (2003). The renewables portfolio standard in Texas: an early assessment. *Energy policy*, 31(6), 527-535.

⁵⁸ Zhang, S., & He, Y. (2013). Analysis on the development and policy of solar PV power in China. *Renewable and Sustainable Energy Reviews*, 21, 393-401.

⁵⁹ Veugelers, R. (2012). Which policy instruments to induce clean innovating?. *Research policy*, 41(10), 1770-1778.

energy projects.⁶⁰ They can also foster technology transfer, facilitate market development, and attract investments. Governments can provide policy stability and incentives, while private entities bring technical expertise, capital, and market knowledge, creating a mutually beneficial ecosystem.⁶¹

Collaboration among governments, private sector actors, and civil society organizations can ensure inclusive decision-making processes and address social and environmental concerns associated with renewable energy deployment.⁶² Policy frameworks are crucial in driving the renewable energy transition. International agreements and targets set the stage for global action, while national policies and regulations provide the necessary support for renewable energy adoption.⁶³ Successful case studies demonstrate the effectiveness of comprehensive policy frameworks. Additionally, public-private partnerships and collaborations enhance the transition by leveraging resources and expertise.⁶⁴ By implementing robust and supportive policy frameworks, countries can accelerate the shift to a sustainable and renewable energy future.

V. Economic Benefits of Renewable Energy

The renewable energy sector offers significant economic opportunities and has the potential to create numerous jobs.

⁶⁰ Martins, A. C., Marques, R. C., & Cruz, C. O. (2011). Public-private partnerships for wind power generation: The Portuguese case. *Energy policy*, 39(1), 94-104.

⁶¹ Gielen, D., Boshell, F., Saygin, D., Bazilian, M. D., Wagner, N., & Gorini, R. (2019). The role of renewable energy in the global energy transformation. *Energy strategy reviews*, 24, 38-50.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

Investments in renewable energy projects stimulate economic growth by attracting capital, driving technological innovation, and creating employment opportunities.⁶⁵ The installation, operation, and maintenance of renewable energy systems require a diverse range of skills, from engineering and construction to research and development. Studies have consistently shown that the renewable energy sector generates more jobs per unit of energy produced compared to fossil fuel-based energy.⁶⁶ The labor-intensive nature of renewable energy projects, such as solar panel installation and wind turbine maintenance, results in a higher job creation potential.⁶⁷ These jobs are often local, providing opportunities for communities and contributing to regional economic development.⁶⁸

Renewable energy technologies have experienced significant cost reductions in recent years, making them increasingly price competitive with conventional energy sources.⁶⁹ The levelized cost of electricity (LCOE) for renewable energy, such as solar and wind, has dropped significantly, surpassing the cost of new fossil fuel-based power plants in many regions.⁷⁰ Advancements in technology, economies of scale, and streamlined manufacturing processes have

⁶⁵ Amankwah-Amoah, J. (2015). Solar energy in sub-Saharan Africa: The challenges and opportunities of technological leapfrogging. *Thunderbird International Business Review*, 57(1), 15-31.

⁶⁶ Kammen, D. M. (2008). *Putting renewables to work: how many jobs can the clean energy industry generate?*. DIANE Publishing.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ram, M., Child, M., Aghahosseini, A., Bogdanov, D., Lohrmann, A., & Breyer, C. (2018). A comparative analysis of electricity generation costs from renewable, fossil fuel and nuclear sources in G20 countries for the period 2015-2030. *Journal of Cleaner Production*, 199, 687-704.

contributed to cost reductions in renewable energy systems.⁷¹ Additionally, the declining costs of components, such as solar panels and wind turbines, have further enhanced the price competitiveness of renewable energy.⁷²

As the cost of renewable energy continues to decrease, it reduces the reliance on government subsidies and increases the attractiveness of renewable energy investments from an economic standpoint.⁷³ This shift toward cost-competitive renewable energy sources promotes energy affordability and stability, benefiting consumers and businesses alike. Renewable energy sources provide an opportunity for countries to achieve energy independence and enhance energy security.⁷⁴ Reliance on fossil fuel imports exposes nations to geopolitical risks and price volatility. By diversifying their energy mix with renewables, countries can reduce their dependence on external energy sources and mitigate the economic and political risks associated with fossil fuels.⁷⁵

Renewable energy technologies, such as solar and wind power, can be harnessed domestically, utilizing a nation's own natural

⁷¹ Goodrich, A., James, T., & Woodhouse, M. (2012). *Residential, commercial, and utility-scale photovoltaic (PV) system prices in the United States: current drivers and cost-reduction opportunities* (No. NREL/TP-6A20-53347). National Renewable Energy Lab.(NREL), Golden, CO (United States).

⁷² Ibid.

⁷³ Frondel, M., Ritter, N., Schmidt, C. M., & Vance, C. (2010). Economic impacts from the promotion of renewable energy technologies: The German experience. *Energy Policy*, 38(8), 4048-4056.

⁷⁴ Wang, B., Wang, Q., Wei, Y. M., & Li, Z. P. (2018). Role of renewable energy in China's energy security and climate change mitigation: An index decomposition analysis. *Renewable and sustainable energy reviews*, 90, 187-194.

⁷⁵ Ibid.

resources.⁷⁶ This reduces exposure to fluctuations in global energy markets and enhances energy self-sufficiency.⁷⁷ The decentralized nature of renewable energy allows for distributed generation, minimizing the vulnerability of the energy system to disruptions.⁷⁸ Decentralized energy systems, which rely on renewable energy sources, offer several economic advantages. Localized generation and distribution of energy reduce transmission and distribution losses, resulting in higher overall system efficiency.⁷⁹ This can lead to cost savings for consumers and businesses, as well as reduced strain on infrastructure investments.⁸⁰

Community-owned renewable energy projects empower local communities, enabling them to actively participate in and benefit from the energy transition.⁸¹ Community ownership not only fosters social and economic empowerment but also keeps a larger share of the economic benefits within the local economy.⁸² This includes revenue from energy sales, job creation, and increased local investments. Community-owned renewable projects also promote social cohesion, as they often involve collective decision-making

⁷⁶ Shaaban, M., & Petinrin, J. O. (2014). Renewable energy potentials in Nigeria: Meeting rural energy needs. *Renewable and sustainable energy reviews*, 29, 72-84.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Gutfleisch, O., Willard, M. A., Brück, E., Chen, C. H., Sankar, S. G., & Liu, J. P. (2011). Magnetic materials and devices for the 21st century: stronger, lighter, and more energy efficient. *Advanced materials*, 23(7), 821-842.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Bramwell, A., & Wolfe, D. A. (2008). Universities and regional economic development: The entrepreneurial University of Waterloo. *Research policy*, 37(8), 1175-1187.

processes and foster community engagement.⁸³ These projects can revitalize rural areas, create new business opportunities, and contribute to sustainable development at the local level.⁸⁴

Renewable energy offers significant economic benefits. It creates job opportunities, stimulates economic growth, and enhances regional development.⁸⁵ The cost competitiveness of renewable energy technologies continues to improve, making them increasingly attractive investments.⁸⁶ Additionally, renewables contribute to energy independence, reduce reliance on fossil fuel imports, and enhance energy security.⁸⁷ The economic advantages of decentralized energy systems and community-owned projects further contribute to the transition towards a sustainable and prosperous future.⁸⁸

VI. Overcoming Challenges in the Renewable Energy Transition

Intermittency, or the variability of renewable energy sources, poses a significant challenge to their integration into the grid.⁸⁹ Solar and wind power generation is dependent on weather conditions, resulting in fluctuations in electricity output.⁹⁰ To overcome this challenge, grid integration strategies must be employed.⁹¹ One

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Frondel, M., Ritter, N., Schmidt, C. M., & Vance, C. (2010). Economic impacts from the promotion of renewable energy technologies: The German experience. *Energy Policy*, 38(8), 4048-4056.

⁸⁶ Ibid.

⁸⁷ Widén, J. (2011). Correlations between large-scale solar and wind power in a future scenario for Sweden. *IEEE transactions on sustainable energy*, 2(2), 177-184.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

approach is the diversification of renewable energy sources. Combining different types of renewables, such as solar, wind, and hydroelectric power, helps mitigate the intermittency issue.⁹² Additionally, the development of forecasting technologies enables more accurate predictions of renewable energy generation, allowing grid operators to balance supply and demand.⁹³

Grid flexibility is also critical. Enhancements in demand response systems, energy storage, and grid management technologies enable better integration of variable renewable energy sources.⁹⁴ This flexibility allows for the efficient utilization of excess renewable energy during peak production periods and its subsequent release during periods of low generation.⁹⁵ Energy storage plays a crucial role in overcoming the intermittent nature of renewable energy. Storage technologies allow for the capture and storage of excess energy during periods of high generation, which can then be deployed during times of low generation.⁹⁶ Advancements in battery technologies, such as lithium-ion batteries, have improved the feasibility and efficiency of energy storage systems.⁹⁷ Additionally, emerging technologies like flow batteries, compressed air energy

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Tronchin, L., Manfren, M., & Nastasi, B. (2018). Energy efficiency, demand side management and energy storage technologies–A critical analysis of possible paths of integration in the built environment. *Renewable and Sustainable Energy Reviews*, 95, 341-353.

⁹⁵ Ibid.

⁹⁶ Denholm, P., Ela, E., Kirby, B., & Milligan, M. (2010). *Role of energy storage with renewable electricity generation* (No. NREL/TP-6A2-47187). National Renewable Energy Lab.(NREL), Golden, CO (United States).

⁹⁷ Ibid.

storage, and hydrogen storage offer promising solutions for large-scale and long-duration energy storage.⁹⁸

Implementing a diversified portfolio of energy storage technologies at various scales, from residential to utility-level, provides the flexibility needed to balance energy supply and demand.⁹⁹ Integrating energy storage with renewable energy projects enhances grid stability, enables reliable electricity supply, and supports the transition to a clean and resilient energy system.¹⁰⁰ Barriers to entry, such as financing and regulatory hurdles, can impede the widespread adoption of renewable energy technologies.¹⁰¹ Access to affordable financing is essential to attract investment in renewable energy projects. Governments and financial institutions should provide favorable policies, incentives, and innovative financing mechanisms, such as green bonds and feed-in tariffs, to facilitate access to capital and reduce the financial risks associated with renewable energy investments.¹⁰²

Regulatory frameworks play a crucial role in creating an enabling environment for renewable energy development. Streamlining

⁹⁸ Ibid.

⁹⁹ Castillo, A., & Gayme, D. F. (2014). Grid-scale energy storage applications in renewable energy integration: A survey. *Energy Conversion and Management*, 87, 885-894.

¹⁰⁰ Koirala, B. P., Koliou, E., Friege, J., Hakvoort, R. A., & Herder, P. M. (2016). Energetic communities for community energy: A review of key issues and trends shaping integrated community energy systems. *Renewable and Sustainable Energy Reviews*, 56, 722-744.

¹⁰¹ Ibid.

¹⁰² Bertoldi, P., Economidou, M., Palermo, V., Boza-Kiss, B., & Todeschi, V. (2021). How to finance energy renovation of residential buildings: Review of current and emerging financing instruments in the EU. *Wiley Interdisciplinary Reviews: Energy and Environment*, 10(1), e384.

permitting processes, establishing clear and consistent policies, and providing long-term contracts and power purchase agreements (PPAs) enhance investor confidence and reduce regulatory uncertainties.¹⁰³ Additionally, ensuring grid access and fair market competition for renewable energy producers encourages market growth and diversification.¹⁰⁴

Collaboration between stakeholders is vital in overcoming these barriers. Public-private partnerships and industry engagement can facilitate dialogue, address regulatory challenges, and promote knowledge sharing.¹⁰⁵ By fostering an environment conducive to renewable energy deployment, countries can attract investments, create jobs, and accelerate the transition to a sustainable energy future.¹⁰⁶

Public awareness, education, and acceptance are crucial for the successful transition to renewable energy.¹⁰⁷ Public understanding of the benefits and importance of renewable energy sources can generate support for policies and initiatives that promote their adoption.¹⁰⁸ Education initiatives, including public outreach campaigns and school curricula, can raise awareness about

¹⁰³ Polzin, F., Egli, F., Steffen, B., & Schmidt, T. S. (2019). How do policies mobilize private finance for renewable energy? – A systematic review with an investor perspective. *Applied Energy*, 236, 1249-1268.

¹⁰⁴ Ibid.

¹⁰⁵ Robinson, H., Carrillo, P., Anumba, C. J., & Patel, M. (2009). *Governance and knowledge management for public-private partnerships*. John Wiley & Sons.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Almulhim, A. I. (2022). Understanding public awareness and attitudes toward renewable energy resources in Saudi Arabia. *Renewable Energy*, 192, 572-582.

renewable energy technologies, their benefits, and the urgency of transitioning to a low-carbon economy.¹⁰⁹ Promoting energy literacy empowers individuals and communities to make informed decisions regarding their energy consumption and encourages the adoption of sustainable practices.¹¹⁰ Engaging stakeholders, including local communities, in the decision-making process fosters acceptance and ensures that renewable energy projects align with local needs and priorities.¹¹¹ Addressing concerns related to visual impacts, land use, and potential environmental impacts through transparent communication and participatory processes enhances public acceptance.¹¹²

VII. Case Studies and Success Stories

Several countries and regions around the world have made remarkable progress in the renewable energy transition, serving as inspiring examples for others to follow. Denmark stands out as a global leader in renewable energy adoption.¹¹³ Through strong political commitment and supportive policies, Denmark has achieved a high share of wind energy in its electricity mix.¹¹⁴ It has successfully integrated wind power into its grid, with wind energy accounting for over 40% of the country's electricity consumption.¹¹⁵ Germany is another notable success story.¹¹⁶ The country's Energiewende, or

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Lipp, J. (2007). Lessons for effective renewable electricity policy from Denmark, Germany and the United Kingdom. *Energy policy*, 35(11), 5481-5495.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

energy transition, has been driven by a combination of supportive policies, incentives, and public engagement.¹¹⁷ Germany has rapidly expanded its renewable energy capacity, with solar and wind power contributing significantly to its electricity generation. The Energiewende has not only reduced carbon emissions but also spurred economic growth and job creation in the renewable energy sector.¹¹⁸

Costa Rica, a small Central American nation, has demonstrated its commitment to renewable energy by achieving nearly 100% renewable electricity generation.¹¹⁹ Its rich renewable resources, including hydro, geothermal, wind, and solar power, have been harnessed effectively.¹²⁰ Costa Rica's success can be attributed to long-term planning, investment in infrastructure, and strong partnerships between the government, private sector, and local communities.¹²¹

Community-driven renewable energy projects have emerged as powerful models for fostering local engagement, empowerment, and the democratization of energy production.¹²² The Danish island of Samso serves as an exemplary case.¹²³ The community embarked on an ambitious renewable energy initiative, aiming to become energy

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Recalde, M. Y. (2016). The different paths for renewable energies in Latin American Countries: the relevance of the enabling frameworks and the design of instruments. *Wiley Interdisciplinary Reviews: Energy and Environment*, 5(3), 305-326.

¹²⁰ Recalde, M. Y. (2016).

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

self-sufficient.¹²⁴ Through a combination of wind turbines, solar panels, and biomass, the island now produces more energy than it consumes, leading to economic growth and a strong sense of community ownership.¹²⁵

Germany's energy cooperatives provide another inspiring example of community-driven renewable energy projects.¹²⁶ These cooperatives involve local citizens pooling their resources to develop renewable energy installations, primarily wind and solar.¹²⁷ By promoting decentralized ownership and shared benefits, energy cooperatives have revitalized local economies, generated jobs, and contributed to renewable energy growth. Innovative business models and financing mechanisms have played a pivotal role in driving renewable energy adoption.¹²⁸ Power Purchase Agreements (PPAs) have been instrumental in enabling large-scale renewable energy projects. For instance, the SolarCity model in the United States offers residential and commercial customers the option to install solar panels at no upfront cost.¹²⁹ Instead, customers enter into long-term contracts to purchase the electricity generated at a fixed rate, providing stable revenue streams for renewable energy developers.¹³⁰

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Roesler, T. (2019). Community resources for energy transition: Implementing bioenergy villages in Germany. *Area*, 51(2), 268-276.

¹²⁷ Ibid.

¹²⁸ Roesler, T. (2019).

¹²⁹ Kollins, K., Speer, B., & Cory, K. (2009). *Solar PV project financing: Regulatory and legislative challenges for third-party PPA system owners* (No. NREL/TP-6A2-46723). National Renewable Energy Lab.(NREL), Golden, CO (United States).

¹³⁰ Ibid.

Crowdfunding platforms have also emerged as effective financing mechanisms for small-scale renewable energy projects.¹³¹ Platforms like Kickstarter and Mosaic enable individuals to invest in renewable energy installations and earn returns on their investments.¹³² This approach democratizes access to renewable energy investments, allowing ordinary citizens to participate in the transition and benefit financially. Green bonds have gained traction as a means of financing renewable energy projects.¹³³ These fixed-income securities are specifically issued to finance projects that have positive environmental impacts.¹³⁴ Green bonds provide investors with an opportunity to support renewable energy initiatives while generating financial returns, thereby mobilizing capital for the sector.¹³⁵

Case studies and success stories demonstrate the feasibility and benefits of the renewable energy transition. Countries like Denmark, Germany, and Costa Rica have showcased the potential of renewable energy sources, driven by supportive policies and strong political will. Community-driven renewable energy projects have empowered local communities, fostering engagement and generating economic and social benefits.¹³⁶ Innovative business models and financing mechanisms, such as PPAs, crowd-funding, and green bonds, have

¹³¹ Lam, P. T., & Law, A. O. (2016). Crowdfunding for renewable and sustainable energy projects: An exploratory case study approach. *Renewable and sustainable energy reviews*, 60, 11-20.

¹³² Ibid.

¹³³ Gilchrist, D., Yu, J., & Zhong, R. (2021). The limits of green finance: A survey of literature in the context of green bonds and green loans. *Sustainability*, 13(2), 478.

¹³⁴ Ibid.

¹³⁵ Gilchrist, D., Yu, J., & Zhong, R. (2021).

¹³⁶ Ibid.

played a vital role in mobilizing investment and accelerating renewable energy deployment.¹³⁷

VIII Renewable Energy Resources in Kenya and Africa¹³⁸

Africa, with its abundant natural resources and growing energy demands, has immense potential for renewable energy development.¹³⁹ Solar energy is one of the most abundant renewable energy resources in Africa, and Kenya is at the forefront of its adoption.¹⁴⁰ The country's strategic location along the equator ensures abundant sunlight throughout the year, making solar power an ideal solution for decentralized energy access.¹⁴¹ Kenya has made significant strides in solar energy deployment through initiatives such as the Scaling Solar Program, which aims to increase solar capacity and reduce electricity costs.¹⁴² The establishment of solar parks, installation of solar mini-grids in rural areas, and the adoption of solar home systems have expanded access to clean and affordable energy, particularly in off-grid regions.¹⁴³ Challenges such as upfront costs, limited financing options, and inadequate grid infrastructure

¹³⁷ Ibid.

¹³⁸ The Author of this paper, Dynesius Nyangau has studied multiple solar and wind sites with up to 40pv in Kenya, Tanzania and Ethiopia.

¹³⁹ Asif, M., & Muneer, T. (2007). Energy supply, its demand and security issues for developed and emerging economies. *Renewable and sustainable energy reviews*, 11(7), 1388-1413.

¹⁴⁰ Amankwah-Amoah, J. (2015). Solar energy in sub-Saharan Africa: The challenges and opportunities of technological leapfrogging. *Thunderbird International Business Review*, 57(1), 15-31.

¹⁴¹ Amankwah-Amoah, J. (2015).

¹⁴² Ulsrud, K., Rohrer, H., Winther, T., Muchunku, C., & Palit, D. (2018). Pathways to electricity for all: What makes village-scale solar power successful?. *Energy research & social science*, 44, 32-40.

¹⁴³ Ibid.

hinder the widespread adoption of solar energy.¹⁴⁴ Overcoming these challenges requires innovative financing mechanisms, such as pay-as-you-go models and public-private partnerships, as well as investments in grid infrastructure to enable the integration of solar power into the national grid.¹⁴⁵

Africa possesses vast wind energy potential,¹⁴⁶ and several countries, including Kenya, have recognized its importance in their energy mix. Kenya's windy Rift Valley and coastal regions make it an ideal location for wind power generation.¹⁴⁷ The Lake Turkana Wind Power Project,¹⁴⁸ one of Africa's largest wind farms, exemplifies Kenya's commitment to harnessing wind energy. It has a capacity of 310 MW and significantly contributes to the country's renewable energy targets.¹⁴⁹

However, wind energy development faces challenges such as intermittency and grid integration.¹⁵⁰ Balancing the variable nature of wind power with grid stability requires the development of advanced forecasting techniques, energy storage solutions, and a robust grid infrastructure.¹⁵¹ Additionally, supportive policies, incentives, and

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Kenfack, J., Bossou, O. V., & Tchaptchet, E. (2017). How can we promote renewable energy and energy efficiency in Central Africa? A Cameroon case study. *Renewable and Sustainable Energy Reviews*, 75, 1217-1224.

¹⁴⁷ Hayek, J., & Kahwaji, R. (2013). *Hydrolus: Design of a Savonius Wind Pump for Developing Regions* (Doctoral dissertation, McGill University).

¹⁴⁸ Gregersen, C. T. T. (2022). Local learning and capability building through technology transfer: Experiences from the Lake Turkana Wind Power Project in Kenya. *Innovation and Development*, 12(2), 209-230.

¹⁴⁹ Gregersen, C. T. T. (2022).

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

streamlined regulatory frameworks are necessary to attract investment and promote the growth of wind energy projects.¹⁵² Hydroelectric power has long been a reliable source of renewable energy in Africa, and Kenya has harnessed its hydro potential effectively.¹⁵³ The country's numerous rivers and highland areas provide ample opportunities for hydroelectric power generation. Projects such as the Seven Forks Hydroelectric Complex and the Turkwel Gorge Power Station have significantly contributed to Kenya's electricity generation capacity.¹⁵⁴

Despite its advantages, hydroelectric power faces challenges related to environmental impacts, land acquisition, and displacement of communities.¹⁵⁵ Proper environmental impact assessments, community engagement, and mitigation measures are crucial to ensure sustainable and socially responsible hydroelectric development.¹⁵⁶ Africa's Rift Valley region is known for its geothermal energy potential, and Kenya has emerged as a global leader in geothermal power generation.¹⁵⁷ The Olkaria Geothermal complex, located in the Rift Valley, is one of the largest geothermal power installations in the world. Kenya's geothermal capacity has steadily increased, providing a stable and sustainable source of electricity.¹⁵⁸

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Otieno, H. O., & Awange, J. L. (2006). Energy resources in East Africa: Opportunities and challenges.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Merem, E. C., Twumasi, Y., Wesley, J., Olagbegi, D., Fageir, S., Crisler, M., ... & Washington, J. (2019). Analyzing geothermal energy use in the East African Region: The case of Kenya. *Energy and Power*, 9(1), 12-26.

¹⁵⁸ Ibid.

Geothermal energy offers several advantages, including baseload power generation, minimal greenhouse gas emissions, and long-term energy security.¹⁵⁹ However, the high upfront costs of geothermal exploration and drilling pose financial barriers. Collaborative efforts between governments, development agencies, and private investors are essential to mobilize the necessary capital and promote geothermal development.¹⁶⁰

IX. Conclusion

This paper has explored the renewable energy transition and its potential to power a sustainable future with solar, wind, hydro, and geothermal solutions. The key points discussed include the definition and significance of the renewable energy transition, technological advancements, policy frameworks, economic benefits, challenges, and success stories associated with renewable energy adoption.

The urgent need for the renewable energy transition cannot be overstated. Climate change poses a significant threat to our planet and its inhabitants, and transitioning to renewable energy sources is crucial in mitigating its impacts.¹⁶¹ The burning of fossil fuels is the primary contributor to greenhouse gas emissions, leading to global warming and environmental degradation.¹⁶² By shifting to renewable energy, we can reduce carbon emissions, improve air quality, and promote environmental sustainability.¹⁶³

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Merem, E. C., et.al. (2019).

¹⁶² Ibid.

¹⁶³ Ibid.

The renewable energy transition aligns with global sustainability goals.¹⁶⁴ The United Nations Sustainable Development Goals, including affordable and clean energy, climate action, and sustainable cities and communities, emphasize the importance of renewable energy for a sustainable future.¹⁶⁵ Achieving these goals requires a swift and comprehensive transition to renewable energy sources.

Therefore, a call to action is necessary for governments, businesses, and individuals to support and accelerate the shift to renewable energy sources. Governments should enact supportive policies and regulatory frameworks that incentivize renewable energy adoption, streamline permitting processes, and promote investment in clean technologies. Businesses should embrace renewable energy solutions, invest in research and development, and prioritize sustainability in their operations. Individuals can contribute by adopting energy-efficient practices, investing in renewable energy technologies for their homes, and advocating for renewable energy policies and initiatives.

Collaboration and collective action are vital to driving the renewable energy transition forward.¹⁶⁶ Governments, businesses, and individuals must work together to overcome challenges, seize opportunities, and accelerate the deployment of renewable energy technologies. By doing so, we can create a sustainable future, combat climate change, and ensure a clean and resilient planet for generations to come. The time for action is now, and the renewable

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Merem, E. C., et.al. (2019).

*Renewable Energy Transition: Powering a
Sustainable Future with Solar, Wind,
Hydro, and Geothermal Solutions:*
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energy transition is our pathway to a brighter and more sustainable future.

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A Clarion call for Action: Realising True Sustainable Development

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Abstract

There has never been a more urgent time than now for the world to come together and work towards achieving sustainable development. This is due to the accelerated rate of environmental degradation and the rising levels of poverty among communities. Sustainable development seeks to adopt a three-pronged approach that seeks to balance environmental, social and economic needs of the society. This paper argues that there is a need for all stakeholders to rise and take their places towards achieving sustainable development. It also affirms that international cooperation is important in achieving sustainability.

1. Introduction

The United Nations 2030 Agenda for Sustainable Development¹ captures the global goals towards securing environmental, economic, social and political development and sustainability for the sake of current and future generations. Notably, this means that the goals call for action from various actors from the state agencies, private sector, communities, among others.

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¹ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

This paper seeks to explore the specific roles of each of these actors, overlapping areas and how they can all collaborate towards realisation of the sustainable development agenda. The paper also looks at the place of international actors in all these.

The discourse adopts a human rights based approach, ecosystem management approaches as well as other approaches envisaged under the Sustainable Development agenda, and the related topics thus feature prominently across the paper.

2. Background Information on Sustainable Development and the General Actors

The idea of sustainable development stretches back to traditional societies and ancient civilizations, predating the 1972 Stockholm Conference.² It aims to reduce pollution of the environment, the depletion of non-renewable resources, and environmental damage caused by anthropogenic activities.³ The *Brundtland Commission*⁴ defined sustainable development as, “*development that meets the needs of the present without compromising the ability of future generations to*

² Per Judge Christopher Weeramantry in *Hungary v Slovakia*, 1997 WL 1168556 (I.C.J-1997).

³ Cullet P., *Differential Treatment in International Environmental Law and its Contribution to the Evolution of International Law* (Aldershot: Ashgate, 2003), pp.8 -9.

⁴ The Brundtland Commission was established by the United Nations in 1983 to address the problem of deterioration of natural resources. Its mission was to unite countries to pursue sustainable development together. The Commission was named after its chairperson, Gro Harlem Brundtland, a former Prime Minister of Norway. It was officially dissolved in 1987 after releasing a report entitled *Our Common Future*, also known as the *Brundtland Report*. This report defined the meaning of the term Sustainable Development.

meet their own needs.”⁵ Under section 2 of *Environmental Management and Co-ordination Act, 1999*⁶ (EMCA), sustainable development is defined as development that meets the needs of the present generation without compromising the ability of future generations to meet their needs by maintaining the carrying capacity of the supporting ecosystems. Essentially, sustainable development seeks to address *intra-generational equity*, that is equity among present generations, and *inter-generational equity*, that is equity between generations.⁷

When referred to as Sustainable Human Development, Sustainable Development is also associated with the right to development, human rights, and good governance. Focus is placed on both tangible and immaterial aspects of human development, such as participation and rights, in order to achieve sustainable human development. Moreover, it aspires to a variety of objectives, including the eradication of poverty, the advancement of human rights, the promotion of equal opportunities, the preservation of the environment, and the evaluation of the effects of development efforts. ⁸ Kenya’s Vision 2030 adopts sustainable human

⁵ World Commission on Environment and Development, *Our Common Future*, GAOR, 42ndSess, Supp. No. 25, UN Doc, A/42/25 (1987), p.27; See also the Rio Declaration of 1992, UN Doc. A/CONF.151/26 (Vol. I).

⁶ Environmental Management and Co-ordination Act, No. 8 of 1999, Laws of Kenya.

⁷ Weiss, E.B., “In Fairness to Future Generations and Sustainable Development,” *American University International Law Review*, Vol.8, 1992.

⁸ See generally Amartya S., *Development as Freedom* (Anchor Books, New York, 1999), pp.35-53; See also UNDP, Human Development Report 2011, *The Real Wealth of Nations: Pathways to Human Development*, (Palgrave Macmillan Houndmills, Basingtoke, Hampshire, 2011), p. (i)-12. This report defines sustainable human development as the expansion of the substantive freedoms of people today while making reasonable efforts to avoid seriously compromising those of future generations.

development as it seeks to address the economic, social and political pillars. It thus fosters both material factors and non-material factors.⁹ Sustainable Human Development is, therefore, inextricably linked to people's livelihoods, and is thus requisite in moving towards environmental justice.

In the *Case Concerning the Gabčíkovo-Nagymoros Project*,¹⁰ ICJ Judge Weeramantry rightly opined that Sustainable Development reaffirms the need for both development and environmental protection, and that neither can be neglected at the expense of the other. He considered Sustainable Development to be a '*principle with normative value*' demanding a balance between development and environmental protection, and as a principle of reconciliation in the context of conflicting human rights, that is the *human right to development* and the *human right to protection of the environment*. Sustainable Development reconciles these rights by ensuring that the right to development tolerates the '*reasonable demands of environmental protection*.'¹¹

⁹ Kenya Vision 2030, Government of Kenya, 2007.

¹⁰ The Gabčíkovo–Nagymaros Project relates to a large damming project on the Danube River. This river is classified as an international waterway as it passes through or touches the borders of ten European countries before emptying into the Black Sea. The Project was specific to the part of the river passing through Hungary and Slovakia. It was initiated by the Budapest Treaty of 1977 between Slovakia and Hungary and aimed at preventing floods, improving river navigability and producing clean electricity for the two countries. Only a part of the project was completed in Slovakia, under the name Gabčíkovo Dam. Hungary suspended the Project in its territory and then later tried to terminate it citing environmental and economic concerns. Slovakia then proceeded with an alternative solution, called "Variant C", which involved diverting the river. These developments caused an international dispute between the two countries and they turned to the International Court of Justice for redress.

¹¹ Hungary v Slovakia, 1997 WL 1168556 (I.C.J-1997).

SDG Goal 12.2 mandates that by 2030, all States should achieve the sustainable management and efficient use of natural resources in order to guarantee sustainable consumption and production patterns. The goal is to prevent the world from degrading, which includes doing so through sustainable production and consumption, managing its natural resources responsibly, and taking immediate action to combat climate change, so that it may satisfy the demands of both the present and future generations.¹²

Sustainable use refers to the need to reduce and eliminate unsustainable patterns of production and consumption.¹³ It is described as use that in any way and rate does not lead to long-term decline of biological diversity, thereby maintaining its potential to meet the needs of present and future generations.¹⁴ It requires that present use of the environment and natural resources does not compromise the ability of future generations to use these resources or degrade the carrying capacity of supporting ecosystems.¹⁵ It is a principle that is applied to determine the permissibility of natural resource exploitation¹⁶ and is central to the principle of sustainable development.

In order to maintain strong sustainability as opposed to weak sustainability, governments and public bodies must assure sustainable usage. Strong sustainability recognises that the environment has benefits beyond economic potential. According to

¹² Preamble, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1.

¹³ Principle 8 of the Rio Declaration.

¹⁴ Art.2, Convention on Biological Diversity.

¹⁵ S. 2 of Act, No. 8 of 1999.

¹⁶ See Birnie, P., Boyle, A. and Redgwell, C., *International Law and the Environment*, (3rd ed., Oxford 2009).

some observers, future generations shouldn't inherit a deteriorated ecosystem, regardless of how many other sources of income are available to them, because the environment provides services and benefits that cannot be replaced by wealth created by humans.¹⁷ Strong sustainability is preferable to weak sustainability for reasons such as 'non-substitutability',¹⁸ 'uncertainty'¹⁹ and 'irreversibility.'²⁰ Weak sustainability makes a wrong assumption that future generations will be adequately compensated for any loss of environmental amenity by having alternative sources of wealth creation.²¹

Sustainable use, therefore, puts fetters in the utilization of natural resources. For example, not all forms of resource use will be permissible since certain forms of exploitation may lead to destruction of environmental resources with no substitutes, thus limiting the enjoyment of these resources by future generations.²² Public, private, and non-profit sectors can all be categorized as

¹⁷ Beder, S., "Costing the Earth: Equity, Sustainable Development and Environmental Economics," *New Zealand Journal of Environmental Law*, Vol.4, 2000, pp.227-243.

¹⁸ Ibid. The argument is that there are many environmental assets for which there are no substitutes, such as the ozone layer, tropical forests, wetlands, etc.

¹⁹ Ibid. It has been said that scientific knowledge about the functions of natural systems and the possible consequences of depleting and degrading them is uncertain.

²⁰ Ibid. The depletion of natural capital can lead to irreversible losses such as species and habitats, which cannot be recreated using man-made resources.

²¹ Ibid.

²² Kuhlman T and Farrington J, 'What Is Sustainability?' (2010) 2 Sustainability 3436; Chu EW and Karr JR, 'Environmental Impact: Concept, Consequences, Measurement' [2017] Reference Module in Life Sciences B978; Freedman B, 'Chapter 12 ~ Resources and Sustainable Development' <<https://ecampusontario.pressbooks.pub/environmentalscience/chapter/chapter-12-resources-and-sustainable-development/>> accessed 19 April 2023.

players who can support sustainable development.²³ Even throughout evaluation, sustainability is always being redefined and interpreted in new ways. Some scholars contend that in order to arrive at the basically normative concept of sustainable development, stakeholders' and citizens' perspectives must be taken into account while evaluating the application of international rules.²⁴

NGOs, workers' unions, local governments or "local authorities, business and industry, scientific and technological communities, children and youth, women, farmer(s), aboriginal peoples and communities, are among the nine primary players of Sustainable Development that the United Nations has identified. According to Rio Agenda 21, the degree of commitment and sincere participation of all social groups and the general public in decision-making will determine how effectively Sustainable Development is implemented.²⁵

3. Getting Private Actors and non-State Actors on Board

Since the 1980s, Sustainable Development has played a role in influencing local public policy. According to the World Commission on Environment and Development, sustainable development is "development that meets the needs of the present without

²³ Nițoia P and Camară G, 'Roles of Actors in Promoting Sustainable Development' [2018] *Present Environment and Sustainable Development* 169.

²⁴ Pülzl H and Wydra D, 'The Evaluation of the Implementation of Sustainability Norms: An Exercise for Experts or Citizens?' (2011) 2 *International Journal of Social Ecology and Sustainable Development (IJSESD)* 31, 32.

²⁵ Rafika, K., Rym, K., Souad, S.B. and Youcef, L., "A public actor awareness for sustainable development." *Procedia-Social and Behavioral Sciences* 216 (2016): 151-162, p. 154.

compromising the ability of future generations to meet their own needs."²⁶ Thus, the widespread adoption of public policy agendas, such as localizing the United Nations Sustainable Development Goals, and the thousands of local governments worldwide creating sustainability plans reflect the need for a collective effort to overcome the social, ecological, and economic difficulties inherent in achieving sustainability.²⁷

The 2030 Agenda for Sustainable Development was adopted by the United Nations in 2015 and includes 17 Goals (SDGs).²⁸ Conflict management and access to justice are considered to be an important element of Sustainable Development agenda.²⁹ For human civilization to continue, peace and harmony are necessary. According to the United Nations (2016), SDG 16 demands for equal access to information and judicial services while creating inclusive, peaceful societies with access to justice.³⁰

²⁶ MacDonald, A., Clarke, A., Ordonez-Ponce, E., Chai, Z. and Andreasen, J., 'Sustainability Managers: The Job Roles and Competencies of Building Sustainable Cities and Communities' (2020) 43 Public Performance & Management Review 1413, p.2.

²⁷ Ibid, p. 39.

²⁸ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

²⁹ Muigua, D., 'Understanding the Place of Conflict Management in Sustainable Development Agenda' (27 September 2022) <<https://papers.ssrn.com/abstract=4371703>> accessed 31 March 2023.

³⁰ Leal Filho, W., Tripathi, S.K., Andrade Guerra, J.B.S.O.D., Giné-Garriga, R., Orlovic Lovren, V. and Willats, J., 'Using the Sustainable Development Goals towards a Better Understanding of Sustainability Challenges' (2019) 26 International Journal of Sustainable Development & World Ecology 179.

Arguably, commercial and business activities contribute a great deal to climate change and other ills that lead to environmental degradation.³¹

While the environmental effects of these economic activities are often mitigated through Corporate Social Responsibility (CSR) activities, these may not at times be sufficient in tackling the resultant increased rates of degradation. Indeed, many of the top scientists in the world believe that human-caused climate change is the "defining issue of our time." Many people now prefer to use the term "Climate Crisis" to emphasise how quickly and severely the world's climate is changing and how urgently we need to take action to create a sustainable future.³² According to the Intergovernmental Panel on Climate Change (IPCC), global CO₂ emissions must decrease over the next ten years to around half of 2010 levels and achieve net zero by 2050. According to the IPCC, in order to keep global warming to 1.5 °C, all facets of society would need to undergo quick, significant, and unheard-of adjustments.³³ In addition to climate change, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) of the United Nations found equally alarming results in its 2019 assessment report on biodiversity and ecosystem services.³⁴

³¹ 'Trade and the Environment - OECD'
<<https://www.oecd.org/trade/topics/trade-and-the-environment/>> accessed 1 April 2023.

³² McGregor D, Whitaker S and Sritharan M, 'Indigenous Environmental Justice and Sustainability' (2020) 43 Current Opinion in Environmental Sustainability 35, p.35.

³³ Ibid, p.35.

³⁴ Ibid, p.35.

4. The Place of International Cooperation towards Achieving Sustainability

The place of international law in achieving sustainability is well recognised as was pointed out by Kenyan courts in the case of *Amina Said Abdalla & 2 others v County Government of Kilifi & 2 others* [2017] eKLR³⁵, that ‘the Environmental Law is principally concerned with ensuring the sustainable utilization of natural resources according to a number of fundamental principles developed over the years through both municipal and international processes’. ³⁶ At the international level, these principles include, *inter alia*, the international cooperation in management of natural resources and common but differentiated responsibilities.³

International collaboration is now required in the management of natural resources as more nations embrace globalization and the resulting struggle over resources, particularly those that are transboundary in nature, to spur economic growth. This is because some environmental issues, like climate change, that result from poor management of natural resources are themselves global in scope, necessitating the work and collaboration of all states to address them. This collaboration primarily involves bilateral, transnational, multilateral, and corporate sector relationships.³⁷

³⁵ *Amina Said Abdalla & 2 others v County Government of Kilifi & 2 others* [2017] eKLR, ELC Case No. 283 OF 2016.

³⁶ *Ibid*, para. 17.

³⁷ Nkonya, E.M., Cenacchi, N. and Ringler, C., International cooperation for sustainable land and water management, *SOLAW Background Thematic Report* - TR16.

4.2. International Cooperation in Management of Natural Resources

In international law, the obligation to collaborate is firmly established. "States must collaborate in a spirit of global partnership to conserve, maintain, and restore the health and integrity of the earth's environment," the Rio Declaration's Principle 7's opening sentence reads. According to Principle 14, States shall work together effectively to deter or prohibit the relocation and transfer of any activities or chemicals that seriously degrade the environment or are determined to be detrimental to human health. This Principle has not received much attention in Kenyan natural resources legislation. Nonetheless, EMCA acknowledges this Principle as one of the guiding principles for managing natural resources that are shared by one or more states.³⁸

This idea is particularly important when it comes to cross-border trading across countries and regions. For instance, the United Nations Conference on Sustainable Development, also known as Rio+20, calls on nations to collaborate in developing well-designed and managed tourism in order to significantly contribute to the three pillars of sustainable development, with close ties to other sectors, and with the potential to create decent jobs and expand trade opportunities.³⁹

The *2030 Agenda on SDGs* also affirms that international trade is an engine for inclusive economic growth and poverty reduction, and

³⁸ EMCA, No. 8 of 1999, S. 3 (5) (c).

³⁹ United Nations, *The Future We Want*, A/RES/66/288, Sixty-sixth session Agenda item 19, Resolution adopted by the General Assembly on 27 July 2012, para. 130. Art. 1.11 of the RIO+20 Report, requires State parties to strengthen international cooperation to address the persistent challenges related to sustainable development for all, in particular in developing countries.

contributes to the promotion of sustainable development.⁴⁰ As such, it seeks to continue to promote a universal, rules-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the World Trade Organization, as well as meaningful trade liberalization. It also calls upon all members of the World Trade Organization to redouble their efforts to promptly conclude the negotiations on the Doha Development Agenda.⁴¹

Achieving food security, creating decent employment opportunities for the unemployed, fostering technology transfer ⁴², ensuring national economic security, and supporting infrastructure development, not only for transporting goods to and from ports but also for the provision of basic services like health, education, water, sanitation, and energy, are all possible thanks to fair international trade.⁴³ This is crucial for achieving SDG Goal 8, which aims to promote full and productive employment, sustained, inclusive, and sustainable economic growth, and decent work for everyone.

⁴⁰ 'Trading Into Sustainable Development: Trade, Market Access, and the Sustainable Development Goals' (2016)
<https://unctad.org/system/files/official-document/ditctab2015d3_en.pdf>
accessed 19 April 2023.

⁴¹ SDG 17.

⁴² Art. 7 of the Agreement on Trade-Related Aspects of Intellectual Property Rights states that: "The protection and enforcement of intellectual property should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."

⁴³ Galmes G, 'Trade as an enabler of sustainable development and poverty eradication,' in United Nations, *The Road from Rio+20: Towards Sustainable Development Goals*, Issue 4, September 2014, p. 10.
UNCTAD/DITC/TED/2014/1<<https://www.tralac.org/images/docs/6328/ch-3-trade-as-an-enabler-of-sustainable-development.pdf>> [Accessed on 8/1/2019].

Participating in international trade can increase the economic space required to generate new job opportunities, encourage resource efficiency, increase access to food, energy, and essential services, and enhance the managerial, entrepreneurial, and productive capabilities necessary for economic diversification, growth, and development.⁴⁴

With international collaboration for the realisation of the Sustainable Development agenda, this may be accomplished successfully.⁴⁵

The SDG Goal 17 – to strengthen implementation mechanisms and re-energize the international cooperation for sustainable development – also reflects this. This is intended, among other things, through enhancing domestic capacity for tax and other revenue collection, especially through international assistance to poor nations.⁴⁶ Goal 17.6, which aims to improve North-South, South-South, and triangular regional and international cooperation on and access to science, technology, and innovation as well as enhance knowledge sharing on mutually agreed terms, includes improved coordination among existing mechanisms, particularly at the UN level, as well as through a global technology facilitation mechanism. This goal also promotes international cooperation. Enhancing international support for the implementation of efficient

⁴⁴ Muigua, K., *Nurturing Our Environment for Sustainable Development*, Glenwood Publishers, Nairobi – 2016), p. 244.

⁴⁵ Principle 5 of the *Rio Declaration* calls on all States and all people to cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world; See also World Commission on Environment and Development, *Our Common Future: Report of the World Commission on Environment and Development*, 1987, A/42/427.

⁴⁶ SDG Goal 17.1.

and targeted capacity-building in developing countries to support national plans to implement all the sustainable development goals, including through North-South, South-South, and triangular cooperation, is another important aspect of international cooperation for capacity building.⁴⁷

Notably, the 2030 Agenda on Sustainable Development strongly advises against adopting and enforcing any unilateral economic, financial, or trade measures that are in violation of international law and the United Nations Charter and that would hinder the full realisation of economic and social development, especially in developing nations.⁴⁸

4.3. Common but Differentiated Responsibilities

The idea of the "shared heritage of mankind" is claimed to have given rise to the idea of "common but differentiated responsibility," which is also a manifestation of general principles of justice in international law.⁴⁹ Governments must work together in a spirit of international collaboration to preserve, protect, and restore the health and integrity of the earth's environment, according to Principle 7 of the Rio Declaration. It continues by stating that States have similar but distinct obligations in light of the various ways in which environmental deterioration throughout the world is caused.⁵⁰

⁴⁷ SDG Goal 17.9.

⁴⁸ A/RES/70/1 - Transforming our world: the 2030 Agenda for Sustainable Development.

⁴⁹ The Principle of Common but Differentiated Responsibilities: Origins and Scope, For the World Summit on Sustainable Development, 2002, Johannesburg, 26 August, *A Centre for International Sustainable Development Law (CISDL) Legal Brief*, p. 1.

⁵⁰ Tokuç A, 'Rio Declaration on Environment and Development (UN)' in Samuel O Idowu and others (eds), *Encyclopedia of Corporate Social*

This idea is included in several international legal documents, such as the Rio Declaration and the Kyoto Protocol of the United Nations Framework Convention on Climate Change (UNFCCC). According to the UNFCCC, Parties must act "on the basis of equality and in accordance with their common but differentiated responsibilities and respective capabilities" in order to preserve the climate system.⁵¹

The member states that have polluted the most must shoulder the bulk of the burden for minimising the impacts of that pollution. In order to provide fairness to developing and Least Developed States, who have made smaller contributions to climate change and global warming, differentiated responsibility is particularly crucial. Depending on how much emissions each State produces, each has a different level of accountability. For instance, compared to a small developing State, large growing economies would have a greater need to manage and conserve the environment.⁵²

The notion of "common but differentiated responsibility" is a means to take into consideration the diverse conditions, especially in regards to each state's role to the development of environmental issues and its capacity to avoid, minimise, or regulate them.⁵³ The goal is to promote equity and participation for everyone.⁵⁴ This principle is crucial for achieving the Agenda 2030 Sustainable

Responsibility (Springer 2013) <https://doi.org/10.1007/978-3-642-28036-8_19> accessed 19 April 2023.

⁵¹ Art.3 of the UNFCCC.

⁵² 'Smallest Footprints, Largest Impacts: Least Developed Countries Need a Just Sustainable Transition | UNCTAD' <<https://unctad.org/topic/least-developed-countries/chart-october-2021>> accessed 19 April 2023.

⁵³ Kurukulasuriya, L. and Robinson, N.A., "UNEP Training Manual on International Environmental Law." *Nairobi: United Nations Environment Programme* (2006).

⁵⁴ Ibid.

Development Goals (SDGs), which include, among other things, the notion of common but differentiated responsibilities outlined in principle 7 of the Rio Declaration on Environment and Development. SDG Goal 10(a)s aims to, among other things, implement the principle of special and differentiated treatment for developing countries, particularly least developed countries, in conformity with World Trade Organization agreements in order to minimise inequality within and between nations.⁵⁵

5. Concluding Remarks

Unquestionably, the human rights approach is at the core of the 2030 Agenda for Sustainable Development. In order for the world to continue to serve the requirements of the present and future generations, everyone has a responsibility to prevent it from degrading, especially via sustainable production and consumption, the management of its natural resources, and urgent action on climate change. Sustainable Development must take into account the relationship between human rights and environmental protection. Sustainable Development is contingent upon upholding peoples' rights to a secure environment where they can thrive.⁵⁶

The Sustainable Development Goals (SDGs) also envisions a world where democracy, good governance, and the rule of law are essential for Sustainable Development, which includes inclusive and sustained economic growth, social development, environmental protection,

⁵⁵ Hub ISK, 'Guest Article: Common But Differentiated Governance: Making the SDGs Work | SDG Knowledge Hub | IISD' <<http://sdg.iisd.org/commentary/guest-articles/common-but-differentiated-governance-making-the-sdgs-work/>> accessed 19 April 2023.

⁵⁶ Choondassery Y, 'Rights-Based Approach: The Hub of Sustainable Development' (2017) 8 Discourse and Communication for Sustainable Education.

and the eradication of poverty and hunger.⁵⁷ In this sense, "steering" – which comprises both procedures and institutions – is referred to as "governance" since it entails a certain amount of power. Process refers to how choices are made on priorities, how disagreements are handled, if at all, and how coordination of people's actions with regard to resource usage is made simpler. The structural part, on the other hand, deals with the organisation and 'management' of these operations.⁵⁸

Addressing conflict of whatever nature is part of the social aspects of sustainability that must be put into consideration if Sustainable Development agenda is to be achieved. Thus, the Sustainable Development agenda advocates for an integrated approach to tackling environmental management challenges as well as social problems affecting the society.⁵⁹ The Organisation for Economic Co-operation and Development (OECD) calls for an integrated approach to the implementation of Sustainable Development and argues that many SDGs are interconnected with each other; an integrated approach implies managing trade-offs and maximising synergies across targets.⁶⁰ The fundamental action principle of Sustainable Development is integrated decision-making, which is the process of

⁵⁷ United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* | Department of Economic and Social Affairs' <<https://sdgs.un.org/2030agenda>> accessed 1 April 2023.

⁵⁸ Vatn, Arild, *Environmental governance: institutions, policies and actions*, Edward Elgar Publishing, 2015, p. 133.

⁵⁹ See Hussein Abaza and Andrea Baranzini, *Implementing Sustainable Development: Integrated Assessment and Participatory Decision-Making Processes* (Edward Elgar Publishing 2002).

⁶⁰ Rizza Ambra, 'An Integrated Approach to the Sustainable Development Goals' (Assembly of European Regions, 4 March 2019) <<https://aer.eu/integrated-approach-sdgs/>> accessed 1 April 2023.

taking environmental, social, and economic goals and issues into consideration when making decisions.⁶¹

Sustainable Development's environmental component must be considered in its economic, social, and governance facets. This is due to the fact that fostering sustainable economic growth depends on environmental protection, as the natural environment supports economic activity both directly and indirectly through ecosystem services like carbon sequestration, water purification, managing flood risks, and nutrient cycling.⁶²

The SDGs are global, multifaceted, and ambitious, and it is arguable that in order to fulfil them, we need an integrated framework that encourages a growth path that protects the environment and whose benefits are shared by everyone, not just by the fortunate few.⁶³ Thus, the idea of Sustainable Development forces us to reconsider how we interact with the world and how we anticipate that governments would implement policies that promote that worldview.⁶⁴

Corporations, through following Environment Social and Governance (ESG) frameworks or guidelines, can also play a huge role in promoting sustainability within the localities that they operate

⁶¹ Dernbach, J.C. and Mintz, J.A., "Environmental laws and sustainability: an introduction. Sustainability, 3 (3), 531-540." (2011), 532.

⁶² *UN Environment*, 'GOAL 8: Decent Work and Economic Growth' (UNEP - UN Environment Programme, 2 June 2021) <<http://www.unep.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter/goal-8>> accessed 1 April 2023.

⁶³ Ramos, G., "The Sustainable Development Goals: A duty and an opportunity." (2016): 17-21, in Love, P. (ed.), *Debate the Issues: New Approaches to Economic Challenges*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264264687-3-en>. 1 April 2023.

⁶⁴ *Ibid.*

in and the country at large. ESG Reporting should be encouraged and used as a tool of promoting sustainability within the companies, communities and country. Under this, organisations make it part of their operational procedures to report publicly on their economic, environmental, and/or social impacts, and hence its contributions – positive or negative – towards the goal of Sustainable Development.⁶⁵ As the business community seeks to invest in various sectors, there is a need for them to take into account ESG requirements under SDGs.

The law (government) and other policy makers should work towards supporting businesses in their efforts to transition to more sustainable business models, through using various legal, policy and other effective incentives. The law should move towards ensuring that non-financial reporting on ESG becomes the standard mode of operation for ease of enforcing such principles as “the polluter pays principle”, among others. This is especially important as it has been pointed out that ‘previous literature, which attempted to investigate the link between sustainability and investment performance, found that a critical barrier to ESG integration is that investors lack reliable and non-manipulated information’, at least in other jurisdictions, practices which may also take place in Kenya.⁶⁶ While it may not be

⁶⁵ ‘(10) Global ESG Disclosure Regulations: From Awareness to Practice towards Sustainability | LinkedIn’ <<https://www.linkedin.com/pulse/global-esg-disclosure-regulations-from-awareness-dr-mahendra/>> accessed 1 April 2023; Boffo R and Patalano R, ‘ESG Investing: Practices, Progress and Challenges’ [2020] Editions OCDE, Paris; ‘What ESG Reporting Is and How to Do It | A MovingWorlds Guide’ (MovingWorlds.org) <<https://movingworlds.org/esg-reporting-guide>> accessed 1 April 2023; PricewaterhouseCoopers, ‘ESG Reporting and Preparation of a Sustainability Report’ (PwC, 26 January 2021) <<https://www.pwc.com/sk/en/environmental-social-and-corporate-governance-esg/esg-reporting.html>> accessed 1 April 2023.

⁶⁶ Roy, P.P., Rao, S., Marshall, A.P. and Thapa, C., ‘Mandatory Corporate Social Responsibility and Foreign Institutional Investor Preferences’ (2020).

disputed that institutional investors vary in their approaches to integrating ESG factors into their investment decisions, the end game should at least show some tangible and verifiable positive results.⁶⁷ It has also been suggested that businesses and companies should embrace technology and innovation in engineering and product development as well as with regard to management structures and entrepreneurship, which will arguably continue to be crucial to overall sustainability strategy. Doing more with less may be a challenge that technology may help solve since it can reduce the strict ecological limitations while also relieving political and economic pressures (thereby allowing space and opportunity for more sustainability solutions from all quarters).⁶⁸

There is a need to adopt innovative governance approaches which integrate economic, social development and sustainable development principles at multiple levels of social organization in addressing the serious challenges facing our globe and achievement of the 2030 Agenda on Sustainable Development Goals.⁶⁹

The Human Rights Based Approach(HRBA) places the most marginalised and discriminated among those who are living in multidimensional poverty and oppression at the centre of development cooperation. The strategy identifies the individuals and

⁶⁷ OECD, *OECD Business and Finance Outlook 2020: Sustainable and Resilient Finance* (OECD 2020)

<https://www.oecd-ilibrary.org/finance-and-investment/oecd-business-and-finance-outlook-2020_eb61fd29-en> accessed 1 April 2023.

⁶⁸ Clune WH and Zehnder AJB, 'The Three Pillars of Sustainability Framework: Approaches for Laws and Governance' (2018) 9 *Journal of Environmental Protection* 211.

⁶⁹ Kramer, J.M. and Johnson, C.D., "Sustainable Development and Social Development: Necessary Partners for the Future." *Sustainable Development* (1996), p.89.

institutions in charge of upholding, defending, and enforcing those human rights with the goal of empowering people who are oppressed and living in poverty to take action to escape their circumstances.⁷⁰ This is because the HRBA always includes the following provisions: empowerment of women, men, girls, boys, and non-binary people living in poverty and oppression – the rights holders – with, for instance, hope, assertiveness, knowledge, skills, tools, networks, communication channels, and access to justice to enable them to assert their rights both individually and collectively; and capacity development of those with obligations to respect, protect, promote, and fulfil human rights – the duty bearers – through, among other things, education.⁷¹

Realizing true Sustainable Development is an ideal whose time is now.

⁷⁰ Cybercom, 'Human Rights Based Approach' (Sida) <<https://www.sida.se/en/for-partners/methods-materials/human-rights-based-approach>> accessed 19 April 2023.

⁷¹ Ibid.

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A Review of Kenya's National Strategy to Counter Violent Extremism: The Case for Reform

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Abstract

This study reviews Kenya's National Strategy to Counter Violent Extremism and makes a case for reform. The strategy's main features and strengths, including its multi-agency and whole-of-society approaches, are analyzed. However, the study identifies key weaknesses in the strategy, including limited awareness and comprehension, and a failure to address related crime. To improve the strategy, the study draws lessons from national and international jurisdictions, including the African Union's Regional Strategy, the European Union's Strategy, the United States Strategic Framework, and the United Kingdom's CONTEST Strategy. Kenya can learn from these strategies and develop a more comprehensive and effective approach to preventing and countering terrorism in the country.

Key Words: Kenya; Counter violent extremism; Strategy; Reform; Lessons

1. Introduction

Violent extremism has become a pressing issue across the world, with many countries grappling with the challenge of how to prevent and counter it.¹ Violent extremism refers to the use of violence, often in the name of a political or religious ideology, to achieve goals that are

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¹ Horgan, J. (2017). What is 'violent extremism'? The Royal Society for the encouragement of Arts, Manufactures and Commerce (RSA).

typically extreme and radical.² Kenya has not been immune to this phenomenon, with the country experiencing a rise in violent extremism in recent years.³ To address this issue, the Kenyan government has developed a National Strategy to Counter Violent Extremism, which aims to prevent and counter the spread of radicalization and violent extremism in the country.⁴ This paper reviews Kenya's National Strategy to Counter Violent Extremism, highlighting its main features and strengths, as well as its key weaknesses. The study also analyzes the possibility of integrating other strategies as a way of reforming the current approach. By drawing on lessons from national and international jurisdictions, the study identifies ways that Kenya can improve its strategy and develop a more comprehensive and effective approach to preventing and countering violent extremism in the country.

2. Background on Radicalization to Violent Extremism in Kenya

2.1 Brief history

Kenya has faced a growing threat of violent extremism since the early 2000s⁵. The roots of this threat can be traced back to several factors, including political, economic, social, and religious grievances.⁶ One of the earliest instances of violent extremism in Kenya occurred in 1998, when Al Qaeda bombed the US embassy in Nairobi, killing over

² Ibid

³ Makinda, S. M., & Okumu, W. A. (2017). The security-development nexus in countering violent extremism in Africa: Lessons from Kenya. *Africa Development*, 42(1), 1-22.

⁴ Kimani, N. W. (2018). Kenya's national strategy to counter violent extremism: A critical appraisal. *Journal of Strategic Security*, 11(4), 1-22.

⁵ Ibid

⁶ Ibid

200 people.⁷ This attack marked a turning point in the country's history, as it exposed the vulnerability of Kenya to external terrorist threats. In the years that followed, Kenya experienced a rise in domestic radicalization, with several incidents of terrorism occurring within the country.⁸ These incidents included the 2002 bombing of an Israeli-owned hotel in Mombasa, which killed 13 people, and a series of grenade attacks in Nairobi in 2011, which were attributed to the Somali Islamist militant group Al-Shabaab.⁹

Al-Shabaab has been the most active and visible extremist group operating in Kenya in recent years.¹⁰ The group has been responsible for several high-profile attacks, including the 2013 Westgate Mall attack in Nairobi, which killed 67 people, and the 2015 Garissa University College attack, in which 148 people were killed¹¹. The factors driving radicalization in Kenya are complex and multifaceted. They include political and economic marginalization, corruption, ethnic tensions, and religious extremism.¹² The Kenyan government has responded to the threat of violent extremism by implementing various measures, including the development of a national strategy to counter radicalization and the establishment of a specialized police unit to combat terrorism. However, these measures have faced criticism for being ineffective and for potentially exacerbating the problem of radicalization.¹³

⁷ Mwangi, K. (2017). The Evolution of Terrorism and Counterterrorism in Kenya: A Historical Perspective. *International Journal of Advanced Research in Social Sciences*, 6(1), 1-12.

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² Mwenda, K. (2015). History of Terrorism in Kenya: A Perspective. *International Journal of Research in Humanities and Social Sciences*, 3(5), 42-53.

¹³ Ibid

2.2 Rise of Terrorism and Gang Culture

The rise of terrorism and gang culture has been a significant challenge for Kenya in recent years. While terrorism is primarily driven by extremist ideologies and political grievances, gang culture is often driven by economic and social factors¹⁴. Terrorism in Kenya has been primarily perpetrated by the Somali Islamist militant group Al-Shabaab, which has carried out a series of attacks targeting civilians, government officials, and security forces.¹⁵ Al-Shabaab has been able to recruit Kenyan youths, particularly those from marginalized communities, by exploiting their grievances and promising to provide them with a sense of purpose, belonging, and financial rewards¹⁶.

Gang culture, on the other hand, is driven by a combination of economic and social factors, including poverty, unemployment, social exclusion, and the breakdown of family and community structures.¹⁷ In urban areas such as Nairobi, criminal gangs known as "chokoras" have emerged as a major source of violence and insecurity.¹⁸ These gangs often engage in activities such as robbery, drug trafficking, and extortion, and they have been known to use violence to intimidate their rivals and enforce their dominance.¹⁹ The rise of terrorism and gang culture in Kenya has had a significant impact on the country's social, economic, and political fabric. It has contributed to a sense of insecurity and fear among the population, undermined the rule of law, and damaged Kenya's reputation as a

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Nduta, E. (2018). An Analysis of Gangs and Their Activities in Nairobi, Kenya. *International Journal of Criminal Justice Sciences*, 13(1), 16-28.

¹⁸ Ibid

¹⁹ Ibid

safe and stable country in the region.²⁰ The Kenyan government has responded to these challenges by implementing a range of measures, including increased security operations, community policing initiatives, and social welfare programs aimed at addressing the underlying drivers of radicalization and gang culture.²¹

2.3 Current Situation

The situation on Radicalization to violent extremism in Kenya remains a challenge, although there have been some positive developments in recent years.²² While the number of terrorist attacks in Kenya has declined in recent years, the threat of violent extremism remains high, particularly in the northeastern part of the country and along the border with Somalia.²³

One of the key factors contributing to the ongoing threat of radicalization is the persistence of political, economic, and social grievances, particularly among marginalized communities²⁴. These grievances include feelings of exclusion, discrimination, and inequality, which can be exploited by extremist groups to recruit and radicalize individuals.²⁵ Another factor contributing to the ongoing threat of radicalization is the continued presence and activity of Al-Shabaab in the region.²⁶ While the group has suffered significant setbacks in recent years, including the loss of territory and leadership,

²⁰ Ibid

²¹ Ibid

²² Mwenda, A. (2021). *Radicalization to Violent Extremism in Kenya: The State of the Nation*. Nairobi: Institute for Security Studies.

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

it remains a potent force in the region, with the ability to launch high-profile attacks.²⁷

The Kenyan government has responded to the threat of radicalization through a range of measures, including the implementation of a national strategy to counter violent extremism, the establishment of specialized security units to combat terrorism, and the adoption of community-based approaches to preventing radicalization.²⁸ However, there is still significant work to be done in addressing the underlying drivers of radicalization, including political, economic, and social grievances.²⁹

The study posits that the situation on Radicalization to violent extremism in Kenya remains challenging, and continued efforts will be needed to prevent the spread of extremist ideologies and to address the underlying drivers of radicalization in the country.

3. An Analysis of Kenya's National Strategy to Counter Violent Extremism

3.1 Main Features and Strengths

3.1.1 The Ten (10) Pillars

Kenya's National Strategy to Counter Violent Extremism consists of ten pillars that outline the various areas of focus for the strategy. These pillars are:

Ideological: Take a strong stance in defending the core Kenyan principles of constitutional rule, democracy, inter-faith harmony,

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

respect for religious freedom, and secular government in the face of violent extremist ideologies. It is also important to acknowledge and protect those who bravely speak out against violent extremism and terrorism.³⁰

Political: Create strong and inclusive citizenship through civic awareness, promoting Kenya's unique and positive qualities.³¹

Education: Utilize education, critical reasoning, sports and the promotion of arts and culture to build the resilience of Kenyans.³²

Economic: Utilize livelihood training and resourcing for economic empowerment to strengthen a sense of belonging amongst Kenyans, particularly the youth.³³

Psychosocial: Disengage, rehabilitate and re-integrate risk-assessed extremists and provide psychosocial support to their families and social networks³⁴.

Media and Online: facilitate Prevention/Countering Violent extremism (P/CVE) practitioners with tools and skills to carry out innovative and context-based P/CVE campaigns on relevant media and online platforms.³⁵

Gender: mainstream gender equality, equity and sensitivities in all P/CVE work as the drivers and interventions are different between men, women, boys and girls.³⁶

Victims of Terrorism: Aligned with the UNSCR 2331 (2016), it is important to address the needs of victims in a comprehensive manner while also respecting their right to privacy and security. This includes

³⁰ National Counter Terrorism Center. (2017). The National Strategy to Counter Violent Extremism: Monitoring and Evaluation Framework. Nairobi: Government Printer.

³¹ Ibid

³² Ibid

³³ Ibid

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

providing or facilitating access to medical and psychosocial assistance as well as legal aid.³⁷

Law Enforcement: Pass appropriate legislation and facilitate its enforcement; develop and put into action effective and proactive policies, and enhance institutional frameworks to support efforts in preventing and countering violent extremism (P/CVE) at all levels.³⁸

Research: Conduct and encourage research and surveys based on evidence for P/CVE to promote effective interventions and programs.³⁹

3.1.2 The Multi-Agency Approach

Kenya's National Strategy to Counter Violent Extremism takes a multi-agency approach to address the challenge of violent extremism in the country, which is a key strength of the strategy. The strategy recognizes that addressing violent extremism requires a collaborative effort among various government agencies, civil society organizations, and other stakeholders.⁴⁰

The multi-agency approach brings together multiple stakeholders to identify and address the underlying drivers of violent extremism, and to implement coordinated and integrated responses to prevent and counter it.⁴¹ The strategy leverages the expertise and resources of various stakeholders, including law enforcement agencies, religious leaders, and community-based organizations, among others.⁴²

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

⁴⁰ Sitienei, E. K. (2019). The role of multi-agency approach in enhancing security in Kenya: A case study of Nairobi County. *International Journal of Social Science and Humanities Research*, 7(2), 131-139.

⁴¹ Ibid

⁴² Ibid

By taking a multi-agency approach, the strategy can draw on the strengths and capabilities of different stakeholders to address the complex and multifaceted challenge of violent extremism.⁴³ This approach also helps to promote a shared understanding of the problem and to build consensus around the most effective solutions⁴⁴. Furthermore, the multi-agency approach ensures that the strategy is not siloed in any one government agency or sector. Instead, it promotes cross-sectoral collaboration and information sharing, which is essential for effective prevention and counter-radicalization efforts.⁴⁵

The study avers that the multi-agency approach of Kenya's National Strategy to Counter Violent Extremism is therefore a key strength of the strategy, as it allows for a more coordinated, integrated, and comprehensive response to the challenge of violent extremism in the country.

3.1.3 The Whole-of-Society Approach

Another key strength of Kenya's National Strategy to Counter Violent Extremism is its whole-of-society approach. The strategy recognizes that preventing and countering violent extremism requires the involvement and support of all segments of society, including government, civil society, private sector, religious and community leaders, and individuals.⁴⁶ This approach encourages active participation and collaboration between government agencies, civil society organizations, and local communities to create a shared

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Gitari, W., & Mwangi, E. (2020). Assessing the Whole-of-Society Approach in Kenya's National Strategy to Counter Violent Extremism. *Journal of Strategic Security*, 13(2), 1-18.

understanding of the drivers of violent extremism and to develop effective prevention and response measures.⁴⁷

By engaging all segments of society, the strategy helps to promote greater social cohesion and to build community resilience against violent extremism.⁴⁸ It also encourages a sense of ownership and responsibility among individuals and communities in addressing the problem, which is critical for the sustainability of prevention efforts.⁴⁹ Moreover, the whole-of-society approach ensures that the strategy is not solely dependent on government efforts. Instead, it leverages the resources, expertise, and networks of a wide range of stakeholders, including non-governmental organizations, religious leaders, and community groups, among others.⁵⁰ This helps to promote greater innovation, flexibility, and responsiveness in preventing and countering violent extremism.⁵¹

The study postulates that this approach is a key strength of the strategy, as it encourages active participation and collaboration among diverse stakeholders, promotes greater community resilience, and helps to build sustainable prevention efforts.

3.1.4 The Possibility of Integrating Other Strategies

Kenya's National Strategy to Counter Violent Extremism has the main feature and strength of integrating other strategies to enhance its effectiveness. The strategy recognizes that the challenge of violent extremism is complex and multifaceted, and requires a

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

comprehensive and integrated approach to address it effectively.⁵² The strategy integrates various existing policies and strategies, such as the National Counter Terrorism Strategy and the National Action Plan for Preventing and Countering Violent Extremism, among others.⁵³ This integration allows for a more coordinated and cohesive approach to preventing and countering violent extremism, leveraging the strengths and resources of different strategies.⁵⁴

Additionally, the strategy is adaptable to changing circumstances and can be updated to incorporate new knowledge and emerging threats. This ensures that the strategy remains relevant and effective in addressing the evolving nature of violent extremism.⁵⁵

By integrating various strategies and policies, Kenya's National Strategy to Counter Violent Extremism can draw on a wide range of resources, expertise, and networks to address the underlying drivers of violent extremism and to implement effective prevention and counter-radicalization efforts.⁵⁶ This approach helps to promote greater collaboration and coordination among different stakeholders, which is essential for a successful response to violent extremism.⁵⁷

Indeed, the integration of other strategies is a key feature and strength of Kenya's National Strategy to Counter Violent Extremism, as it allows for a more comprehensive and adaptable approach to

⁵² Kisangani, E. M. (2018). Countering violent extremism and the role of national security organs in Kenya. *Journal of Policing, Intelligence and Counter Terrorism*, 13(1), 43-58.

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Ibid

preventing and countering violent extremism, leveraging the strengths of different strategies to address the challenge effectively.

3.2 Key Weaknesses

3.2.1 Limited Awareness and Comprehension

One of the key weaknesses of Kenya's National Strategy to Counter Violent Extremism is limited awareness and comprehension among the target audience. The strategy aims to prevent and counter violent extremism through community engagement and public awareness campaigns. However, the success of these efforts largely depends on the ability of the target audience to understand and comprehend the messaging.⁵⁸ In some cases, there may be limited awareness among the general population about the threat of violent extremism, the drivers of radicalization, and the appropriate response measures.⁵⁹ This may be due to a lack of information or misinformation about the issue, as well as low levels of education and awareness.⁶⁰

Moreover, the messaging may not be tailored to the specific needs and concerns of the target audience, which may limit its effectiveness in preventing and countering violent extremism. For example, the messaging may not effectively address the concerns of marginalized communities or may not resonate with the cultural and religious beliefs of the target audience.⁶¹

⁵⁸ Gitari, Mugambi. "Countering violent extremism in Kenya: Current policies, gaps and opportunities." *Journal of Terrorism Research* 8, no. 2 (2017): 21-32.

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ Ibid

This limited awareness and comprehension among the target audience can undermine the effectiveness of Kenya's National Strategy to Counter Violent Extremism in preventing and countering violent extremism.⁶² Therefore, it is important for the strategy to prioritize effective communication and outreach efforts, including targeted messaging, community engagement, and public education campaigns, to ensure that the target audience fully understands the threat of violent extremism and the appropriate response measures.⁶³

3.2.2 Failure to Address Related Crime.

Another key weakness of Kenya's National Strategy to Counter Violent Extremism is its failure to adequately address related crimes. While the strategy aims to prevent and counter violent extremism, it may not effectively address related crimes such as organized crime, corruption, and human trafficking, which may fuel or exacerbate the problem of violent extremism.⁶⁴ For example, terrorist groups may engage in criminal activities such as smuggling and trafficking of weapons, drugs, and people, which provide them with the resources and means to carry out attacks.⁶⁵ Similarly, corruption and organized crime may undermine the rule of law and promote grievances and disillusionment among marginalized communities, which may increase the risk of radicalization.⁶⁶

Therefore, it is important for Kenya's National Strategy to Counter Violent Extremism to address related crimes as part of its overall

⁶² Ibid

⁶³ Ibid

⁶⁴ Kamunge, E., & Mbote, D. (2019). The Effectiveness of the Kenyan National Strategy to Counter Violent Extremism in Disrupting Radicalization and Recruitment. *International Journal of Social Science Studies*, 7(1), 125-140.

⁶⁵ Ibid

⁶⁶ Ibid

approach. This can be done by strengthening law enforcement and judicial systems, promoting good governance and accountability, and addressing socio-economic grievances and inequality⁶⁷. By addressing related crimes, the strategy can help to disrupt the flow of resources and support to violent extremist groups and to address the underlying grievances that may fuel radicalization. This can help to reduce the risk of violent extremism and promote greater stability and security in Kenya.⁶⁸

The failure to address related crimes is a key weakness of Kenya's National Strategy to Counter Violent Extremism, and addressing this issue should be a priority in order to effectively prevent and counter violent extremism.

4. The Case for Reform: Lessons from National and International Jurisdictions

4.1 African Union

4.1.1 Regional Strategy for Preventing and Countering Violent Extremism

The African Union's Regional Strategy for Preventing and Countering Violent Extremism is a comprehensive framework that seeks to address the root causes of violent extremism in Africa.⁶⁹ The strategy focuses on five key pillars: promoting good governance and the rule of law, addressing socio-economic grievances, countering extremist propaganda and ideology, enhancing security and military

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Kassam, A., & Mairiga, L. (2019). African Union's evolving counter-terrorism agenda. Institute for Security Studies

measures, and strengthening regional and international cooperation.⁷⁰

One of the key strengths of the African Union's strategy is its emphasis on addressing the underlying drivers of violent extremism, such as poverty, inequality, and political marginalization.⁷¹ By addressing these root causes, the strategy seeks to prevent radicalization and promote greater stability and security in the region.⁷² Moreover, the strategy recognizes the importance of multi-sectoral and multi-stakeholder approaches, which involve the participation of civil society, communities, and other actors in preventing and countering violent extremism.⁷³ This approach helps to build trust and legitimacy in the strategy and promotes greater ownership and sustainability of the initiatives.⁷⁴

However, one of the key challenges of the African Union's strategy is the limited capacity and resources of member states to implement the strategy effectively. Many African countries face significant socio-economic and political challenges, which may limit their ability to implement the strategy comprehensively.⁷⁵

Therefore, there is a need for greater investment in building the capacity of member states to prevent and counter violent extremism, including through the provision of technical assistance, training, and financial support. By strengthening the capacity of member states, the African Union's strategy can be more effective in addressing the root

⁷⁰ Ibid

⁷¹ Ibid

⁷² Ibid

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Ibid

causes of violent extremism and promoting greater stability and security in the region.⁷⁶

4.1.2 Key Lessons

Kenya can learn several key lessons from the African Union's Regional Strategy for Preventing and Countering Violent Extremism. One is addressing root causes. Kenya can adopt a comprehensive approach to address the root causes of violent extremism, such as poverty, inequality, and political marginalization. This can help to prevent radicalization and promote greater stability and security in the country.⁷⁷ Second is the multi-sectoral and multi-stakeholder approach. Kenya can adopt a multi-sectoral and multi-stakeholder approach to preventing and countering violent extremism. This approach involves the participation of civil society, communities, and other actors in preventing and countering violent extremism, which helps to build trust and legitimacy in the strategy and promote greater ownership and sustainability of the initiatives.⁷⁸ Capacity building is also a key lesson. Kenya can invest in building the capacity of law enforcement agencies, government institutions, and civil society organizations to prevent and counter violent extremism. This includes the provision of technical assistance, training, and financial support to enhance the effectiveness of initiatives.⁷⁹ Finally, is Regional and international cooperation. Kenya can strengthen regional and international cooperation to prevent and counter violent extremism. This involves working with other countries and regional

⁷⁶ Ibid

⁷⁷ Aning, K., & Atuobi, S. K. (2017). The African Union and its strategy for countering violent extremism. In *countering violent extremism in Africa* (pp. 29-46). Springer, Cham.

⁷⁸ Ibid

⁷⁹ Ibid

organizations to share best practices, exchange information, and coordinate efforts to prevent and counter violent extremism.⁸⁰

By adopting these key lessons from the African Union's Regional Strategy for Preventing and Countering Violent Extremism, Kenya can develop a more effective and comprehensive strategy to prevent and counter violent extremism, which can promote greater stability and security in the country.

4.2 European Union

4.2.1 The European Union's Strategy for Combating Radicalization and Recruitment to Terrorism

It is a comprehensive framework aimed at preventing radicalization and addressing the root causes of violent extremism in Europe. The strategy is built around four pillars: prevention, protection, prosecution, and response.⁸¹

One of the key strengths of the European Union's strategy is its emphasis on a multi-disciplinary and multi-sectoral approach, which involves various actors such as government agencies, civil society, communities, and religious organizations.⁸² This approach aims to build trust and partnerships between these actors to prevent radicalization and promote greater social cohesion.⁸³ The strategy also recognizes the importance of addressing the underlying drivers of violent extremism, such as discrimination, marginalization, and socio-economic grievances.⁸⁴ It emphasizes the need to address these

⁸⁰ Ibid

⁸¹ Bures, O. (2019). The EU's approach to counterterrorism: A critical appraisal. *Journal of Common Market Studies*, 57(1), 19-36.

⁸² Ibid

⁸³ Ibid

⁸⁴ Ibid

factors through targeted initiatives and policies, such as promoting education, employment, and social inclusion.⁸⁵ Furthermore, the strategy emphasizes the importance of early detection and intervention to prevent radicalization. It focuses on strengthening community resilience and promoting the involvement of families, friends, and other trusted individuals in detecting and reporting signs of radicalization.⁸⁶

However, one of the challenges of the European Union's strategy is the limited resources available to implement the initiatives effectively.⁸⁷ Additionally, there are concerns about the potential for stigmatization and discrimination of certain communities, particularly Muslim communities, which may undermine the effectiveness of the strategy.⁸⁸

4.2.2 Key Lessons

Kenya can learn several important lessons from the European Union's strategy for combating radicalization and recruitment to terrorism. One is the importance of a multi-disciplinary and multi-sectoral approach.⁸⁹ Like the European Union, Kenya can adopt a comprehensive and collaborative approach to preventing and countering violent extremism. This approach involves the participation of various actors such as government agencies, civil society organizations, communities, and religious organizations.⁹⁰ It aims to build trust and partnerships between these actors to prevent

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Mugambiwa, S. S., & Chikulo, B. C. (2017). The European Union's Counter-Terrorism Strategy and Its Implications for Africa. *Journal of African Foreign Affairs*, 4(2), 1-21.

⁹⁰ Ibid

radicalization and promote greater social cohesion.⁹¹ Second involves addressing the underlying drivers of violent extremism. The European Union recognizes the importance of addressing the underlying drivers of violent extremism, such as discrimination, marginalization, and socio-economic grievances.⁹² Kenya can adopt a similar approach by implementing targeted initiatives and policies that promote education, employment, and social inclusion to address these drivers of violent extremism.⁹³ Early detection and intervention is also another key lesson. The European Union emphasizes the importance of early detection and intervention to prevent radicalization. This involves strengthening community resilience and promoting the involvement of families, friends, and other trusted individuals in detecting and reporting signs of radicalization.⁹⁴

Kenya can learn from this approach by implementing similar initiatives that empower communities to prevent and counter violent extremism.⁹⁵ Finally, Balancing security and human rights is a vital lesson for Kenya. The European Union recognizes the importance of balancing security concerns with respect for human rights and the rule of law.⁹⁶ Kenya can adopt a similar approach to ensure that its efforts to prevent and counter violent extremism do not violate human rights or undermine democratic values.⁹⁷

⁹¹ Ibid

⁹² Ibid

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Ibid

By adopting these lessons from the European Union's strategy, Kenya can develop a more effective and comprehensive strategy to prevent and counter violent extremism in the country.

4.3. United States

4.3.1 Strategic Framework

The United States Strategic Framework for Countering Terrorism and Targeted Violence is a comprehensive framework aimed at preventing and countering terrorism and targeted violence within the United States. The framework is built around four pillars: understanding the threat, prevention and disruption, mitigation and response, and cross-cutting areas.⁹⁸

One of the key strengths of the United States' strategic framework is its emphasis on a comprehensive and collaborative approach to preventing and countering terrorism and targeted violence⁹⁹. This approach involves the participation of various actors such as government agencies, law enforcement, civil society organizations, communities, and private sector stakeholders.¹⁰⁰ It aims to build trust and partnerships between these actors to prevent radicalization and promote greater social cohesion.¹⁰¹ The framework also recognizes the importance of addressing the underlying drivers of violent extremism and targeted violence, such as hate, intolerance, and discrimination. It emphasizes the need to address these factors through targeted initiatives and policies, such as promoting

⁹⁸ Ibrahim, A., & Smith, C. (2018). An analysis of the US government's strategy for Countering Violent Extremism. *Studies in Conflict & Terrorism*, 41(5), 345-362.

⁹⁹ Ibid

¹⁰⁰ Ibid

¹⁰¹ Ibid

education, community engagement, and social inclusion.¹⁰² Furthermore, the framework emphasizes the importance of early detection and intervention to prevent radicalization and targeted violence. It focuses on strengthening community resilience and promoting the involvement of families, friends, and other trusted individuals in detecting and reporting signs of radicalization and targeted violence.¹⁰³

However, one of the challenges of the United States' strategic framework is the potential for stigmatization and discrimination of certain communities, particularly Muslim and other minority communities. This can undermine the effectiveness of the strategy and further fuel resentment and distrust towards the government and law enforcement agencies.¹⁰⁴

4.3.2 Key Lessons

Key lessons that Kenya can learn from the United States Strategic Framework for Countering Terrorism and Targeted Violence are quite a number. One is Comprehensive and Collaborative Approach. Kenya can adopt a comprehensive and collaborative approach to preventing and countering violent extremism and targeted violence by involving various actors such as government agencies, law enforcement, civil society organizations, communities, and private sector stakeholders.¹⁰⁵ This can help to build trust and partnerships

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ Ibid

¹⁰⁵ Kimathi, M., & Kamau, J. (2017). Countering Violent Extremism: A review of the US strategy and lessons for Kenya. *Journal of Strategic Security*, 10(2), 16-34.

between these actors to prevent radicalization and promote greater social cohesion.¹⁰⁶

Addressing Underlying Drivers is also a key lesson for Kenya. Kenya can address the underlying drivers of violent extremism and targeted violence, such as hate, intolerance, and discrimination through targeted initiatives and policies.¹⁰⁷ This could include promoting education, community engagement, and social inclusion to address these factors.¹⁰⁸ Another lesson is Early Detection and Intervention. Kenya can focus on early detection and intervention to prevent radicalization and targeted violence by strengthening community resilience and involving families, friends, and other trusted individuals in detecting and reporting signs of radicalization and targeted violence.¹⁰⁹ Finally, is avoiding Stigmatization and Discrimination. Kenya should avoid stigmatizing and discriminating against certain communities, particularly Muslim and other minority communities, which can undermine the effectiveness of the strategy and further fuel resentment and distrust towards the government and law enforcement agencies.¹¹⁰

By adopting these lessons, Kenya can develop a more effective strategy to prevent and counter violent extremism and targeted violence in the country.

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Ibid

¹⁰⁹ Ibid

¹¹⁰ Ibid

4.4 United Kingdom

4.4.1 CONTEST Strategy

The United Kingdom's CONTEST Strategy is a comprehensive and multi-disciplinary approach to preventing and countering terrorism.¹¹¹ The strategy has four key pillars: Pursue, Prevent, Protect, and Prepare.¹¹² The "Pursue" pillar focuses on detecting, prosecuting, and disrupting terrorist activities. The "Prevent" pillar aims to stop people from becoming terrorists or supporting terrorism in the first place, by addressing the root causes of radicalization and extremism. The "Protect" pillar seeks to strengthen the country's protection against terrorist attacks, by improving physical security measures and increasing public awareness. Finally, the "Prepare" pillar focuses on building resilience and preparedness among individuals, communities, and institutions to deal with the impact of a terrorist attack.¹¹³

4.4.2 Key Lessons

Some key lessons that Kenya can learn from the UK's CONTEST Strategy include: A full throng Multi-Agency Approach. Kenya can adopt a multi-agency approach, involving various government departments, law enforcement agencies, and civil society organizations, to implement a comprehensive counter-terrorism strategy;¹¹⁴ Community Engagement: Kenya can increase community engagement and partnership-building initiatives with vulnerable and

¹¹¹ Tarek Younis and Amina Easat-Daas (2018). A critical assessment of the UK's counter-terrorism strategy and its implications for Islamophobia

¹¹² Ibid

¹¹³ Ibid

¹¹⁴ Ngau, P., & Kisiangani, E. W. (2018). The United Kingdom's Contest strategy: Implications for countering violent extremism in Kenya. *Journal of Terrorism Research*, 9(1), 1-12

at risk communities, to prevent radicalization while building mutual trust and cooperation with law enforcement agencies;¹¹⁵ Early Intervention: Kenya can develop programs to identify and intervene likely individuals, who are at risk of radicalization, through a combination of education, mental health support/psychosocial support, and including other social services; Addressing Root Causes: Kenya can prioritize addressing the root causes of radicalization and extremism, including social, economic, and political grievances, as a key component of its counter-terrorism strategy.¹¹⁶

By adopting these lessons, Kenya can develop a more comprehensive and effective strategy to prevent and counter terrorism in the country.

5. Conclusion

Kenya's National Strategy to Counter Violent Extremism has made important strides in preventing and countering the spread of radicalization and violent extremism in the country. The strategy's multi-agency and whole-of-society approach are notable strengths, as they recognize the importance of collaboration and community engagement in addressing this complex issue. However, the strategy has several key weaknesses, including limited awareness, comprehension and a failure to address related crimes. To improve the strategy, Kenya can learn some lessons from regional and international jurisdictions, including the African Union's Regional Strategy, the European Union's Strategy, the United States Strategic Framework, and the United Kingdom's CONTEST Strategy. These examples provide useful insights on how, Kenya can strengthen its approach to countering violent extremism. Ultimately, reforming and

¹¹⁵ Ibid

¹¹⁶ Ibid

improving Kenya's National Strategy to Counter Violent Extremism is essential to ensure that the country can effectively prevent and counter the spread of radicalization and violent extremism, and create a safer and more secure society for all Kenyans.

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Climate Justice and Equity: Navigating the Unequal Impacts of Climate Change towards Equitable Solutions

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Abstract

This paper focuses on the critical topic of climate justice and equity, shedding light on the unequal impacts of climate change on vulnerable communities and emphasizing the need for equitable solutions. The discussion encompasses various dimensions of climate justice, including climate refugees, social justice, gender equality, and the inclusion of marginalized groups in decision-making processes. The paper begins by introducing the concept of climate justice and its significance in addressing the disproportionate impacts of climate change on vulnerable populations. It highlights the urgency of addressing these disparities and ensuring that climate action is inclusive and fair. The discussion delves into the issue of climate refugees, examining the plight of individuals and communities displaced by climate change-induced events such as rising sea levels, extreme weather events, and environmental degradation. The paper highlights the need for effective policies and international cooperation to protect the rights and provide assistance to climate refugees. Social justice and climate change are intertwined, and the abstract explores the ways in which marginalized communities, particularly those in low-income areas, bear the brunt of climate impacts. It emphasizes the importance of equitable distribution of resources, access to basic services, and fair representation in climate decision-making processes. Gender equality is a crucial aspect of climate justice, and the abstract highlights the unique challenges faced by women in the context of climate change. It addresses the need for gender-responsive approaches that empower women as agents of change and recognize their

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knowledge and resilience in adapting to climate impacts. The paper also emphasizes the importance of involving marginalized groups, including indigenous communities and vulnerable populations, in decision-making processes related to climate change. It explores the role of inclusive governance structures, participatory approaches, and community-led initiatives in fostering equitable solutions. The paper underscores the imperative of addressing climate justice and equity in the face of climate change. It advocates for comprehensive approaches that address the unequal impacts, protect the rights of vulnerable communities, promote social justice and gender equality, and involve marginalized groups in decision-making processes. The abstract calls for collective action and transformative change to achieve a just and sustainable future for all. It provides a concise overview of climate justice and equity, covering key aspects such as climate refugees, social justice, gender equality, and the inclusion of marginalized groups. It highlights the need for comprehensive and inclusive approaches to address the unequal impacts of climate change and build a more equitable and resilient society.

Key words: climate justice, equity, vulnerable communities, climate refugees, marginalized groups

I. Introduction

Climate justice refers to the fair and just distribution of the burdens and benefits of climate change mitigation and adaptation, ensuring that the most vulnerable communities and individuals are not disproportionately affected.¹ It encompasses the principles of fairness, equity, and human rights in addressing climate change and its impacts.² Equity, within the context of climate justice, focuses on reducing disparities and ensuring equal access to resources,

¹ Okereke, C. (2010). Climate justice and the international regime. *Wiley interdisciplinary reviews: climate change*, 1(3), 469-473.

² Ibid.

opportunities, and decision-making processes for all communities, particularly those marginalized or facing socio-economic disadvantages.³

The impacts of climate change are not evenly distributed, and vulnerable communities, often located in low-income areas, face disproportionately higher risks and challenges.⁴ These communities may lack resources, infrastructure, and institutional support to cope with and adapt to climate change impacts.⁵ According to the Intergovernmental Panel on Climate Change (IPCC), marginalized groups such as indigenous peoples, women, and people in poverty are particularly susceptible to climate risks and experience greater vulnerabilities.⁶ The unequal impacts of climate change on vulnerable communities present an urgent need for action. As temperatures rise, extreme weather events become more frequent, and ecosystems are disrupted, these communities bear the brunt of these changes. Without targeted interventions and equitable solutions, climate change exacerbates existing social inequalities, deepens poverty, and undermines human rights.⁷

This discussion will highlight the need for equitable solutions in addressing climate change and its impacts on marginalized groups. To address the unequal impacts of climate change on vulnerable communities, it is imperative to focus on equitable solutions that prioritize justice, fairness, and inclusivity. This involves recognizing

³ Ibid.

⁴ Hardoy, J., & Lankao, P. R. (2011). Latin American cities and climate change: challenges and options to mitigation and adaptation responses. *Current Opinion in Environmental Sustainability*, 3(3), 159-162.

⁵ Ibid.

⁶ Ibid.

⁷ Hardoy, J. et.al, 163.

and rectifying historical and ongoing injustices, empowering marginalized groups, and ensuring their meaningful participation in decision-making processes related to climate change.⁸ The adoption of equitable solutions can help build resilience, promote social justice, and advance sustainable development for all.⁹

In this discussion, we will explore the concept of climate justice and equity, examining the unequal impacts of climate change on vulnerable communities. We will delve into the specific issues of climate refugees, social justice, gender equality, and the involvement of marginalized groups in decision-making processes. Through the analysis of research findings and the exploration of case studies, we aim to shed light on the urgent need for equitable solutions and the transformative potential of addressing climate change through a justice-focused lens.

II. Unequal Impacts of Climate Change

Climate change poses significant challenges for vulnerable communities, leading to disproportionate impacts on their well-being and livelihoods.¹⁰ The Intergovernmental Panel on Climate Change (IPCC) reports that these communities, often located in low-income areas, face higher exposure to climate risks due to limited resources,

⁸ Hughes, S., & Hoffmann, M. (2020). Just urban transitions: Toward a research agenda. *Wiley Interdisciplinary Reviews: Climate Change*, 11(3), e640.

⁹ Ibid.

¹⁰ Shahzad, L., Tahir, A., Sharif, F., Khan, W. U. D., Farooq, M. A., Abbas, A., & Saqib, Z. A. (2019). Vulnerability, well-being, and livelihood adaptation under changing environmental conditions: a case from mountainous region of Pakistan. *Environmental Science and Pollution Research*, 26, 26748-26764. Refer further in Kemp, S. P., Palinkas, L. A., Wong, M., & Wagner, K. (2015). Strengthening the social response to the human impacts of environmental change. *Grand Challenges for Social Work Initiative Working Paper*, 5, 1-31.

inadequate infrastructure, and social vulnerabilities.¹¹ They are more likely to rely on climate-sensitive sectors such as agriculture, fisheries, and forestry, making them highly susceptible to changes in temperature, precipitation patterns, and extreme weather events.¹² Additionally, factors such as limited access to education, healthcare, and social safety nets further amplify their vulnerability to climate impacts.¹³

Climate change impacts vary across regions and populations, further exacerbating inequalities.¹⁴ For instance, in sub-Saharan Africa, prolonged droughts and changing rainfall patterns affect agricultural productivity, leading to food insecurity and economic instability for millions of smallholder farmers.¹⁵ Coastal regions, particularly in low-lying areas and small island nations, face the escalating threat of sea-level rise and increased frequency of storm surges, jeopardizing infrastructure, human settlements, and economies. Indigenous communities, who rely on traditional livelihoods closely connected to the environment, face cultural and economic losses as their

¹¹ Field, C. B., Barros, V., Stocker, T. F., & Dahe, Q. (Eds.). (2012). *Managing the risks of extreme events and disasters to advance climate change adaptation: special report of the intergovernmental panel on climate change*. Cambridge University Press.

¹² UN, I. R. B. (1992). Convention on biological diversity. *Treaty Collection*.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Climate change impacts vary across regions and populations, further exacerbating inequalities. For instance, in sub-Saharan Africa, prolonged droughts and changing rainfall patterns affect agricultural productivity, leading to food insecurity and economic instability for millions of smallholder farmers.

ecosystems are disrupted by changing climate conditions.¹⁶ These examples highlight the differentiated impacts of climate change on various regions and populations, further deepening existing inequalities.

Climate change is intertwined with other forms of inequality, including poverty, race, and gender.¹⁷ Poverty exacerbates vulnerability to climate impacts, as impoverished communities often lack resources to adapt to changing conditions and recover from climate-related disasters.¹⁸ Research has also shown that racial and ethnic minorities are disproportionately affected by climate change due to factors such as social marginalization, limited access to resources, and discriminatory policies.¹⁹ Moreover, gender inequalities intersect with climate change, as women often face greater challenges in accessing resources, participating in decision-making processes, and adapting to climate impacts.²⁰ These intersecting forms of inequality compound the disproportionate

¹⁶ Bedeke, S. B. (2023). Climate change vulnerability and adaptation of crop producers in sub-Saharan Africa: A review on concepts, approaches and methods. *Environment, Development and Sustainability*, 25(2), 1017-1051.

¹⁷ Ibid.

¹⁸ Ruiz Meza, L. E. (2015). Adaptive capacity of small-scale coffee farmers to climate change impacts in the Soconusco region of Chiapas, Mexico. *Climate and Development*, 7(2), 100-109.

¹⁹ Climate change is intertwined with other forms of inequality, including poverty, race, and gender. Poverty exacerbates vulnerability to climate impacts, as impoverished communities often lack resources to adapt to changing conditions and recover from climate-related disasters. Research has also shown that racial and ethnic minorities are disproportionately affected by climate change due to factors such as social marginalization, limited access to resources, and discriminatory policies.

²⁰ Terry, G. (2009). No climate justice without gender justice: an overview of the issues. *Gender & Development*, 17(1), 8-9.

burden faced by vulnerable communities, hindering their ability to respond effectively to climate change.²¹

Climate change has profound implications for vulnerable communities, leading to disproportionate impacts on their well-being and exacerbating existing inequalities.²² Specific regions and populations experience varying consequences, with impacts on agriculture, coastal regions, and indigenous communities being particularly pronounced.²³ The intersectionality of climate change with other forms of inequality, such as poverty, race, and gender, further compounds the vulnerabilities faced by marginalized groups.²⁴ Recognizing these unequal impacts and addressing the intersecting inequalities is essential for designing effective climate change mitigation and adaptation strategies that promote resilience, justice, and social equity.²⁵

III. Climate Refugees

Climate refugees, also known as environmental migrants²⁶, are individuals or communities forced to leave their homes or places of habitual residence due to the adverse impacts of climate change.²⁷ They face unique challenges as their displacement is primarily driven by climate-related factors such as sea-level rise, desertification,

²¹ Ibid. 10

²² Ibid. 14

²³ Ibid. 15

²⁴ Ibid. 16

²⁵ Ibid. 17

²⁶ Jakobeit, C., & Methmann, C. (2012). 'Climate refugees' as dawning catastrophe? A critique of the dominant quest for numbers. In *Climate change, human security and violent conflict: Challenges for societal stability* (pp. 301-314). Berlin, Heidelberg: Springer Berlin Heidelberg.

²⁷ Ibid.

extreme weather events, and loss of habitable land.²⁸ Unlike traditional refugees who are protected under international law, climate refugees currently lack legal recognition and specific protections.²⁹ This lack of recognition poses significant challenges in terms of accessing assistance, resources, and international support.³⁰ Statistics and case studies provide compelling evidence of the scale and impact of climate-induced displacement.³¹ For example, according to the Internal Displacement Monitoring Centre, an estimated 23.9 million people were displaced by climate-related events in 2019 alone. Case studies such as the Carteret Islanders in Papua New Guinea and the residents of Isle de Jean Charles in Louisiana, USA, showcase communities directly impacted by sea-level rise, resulting in their displacement.³² These examples highlight the reality that climate change is already displacing communities and that this trend is likely to intensify in the future.

The legal frameworks and international response to climate refugees are currently inadequate.³³ The existing refugee protection framework, primarily the 1951 Refugee Convention and its 1967 Protocol, does not explicitly include climate-related displacement as

²⁸ Ibid.

²⁹ Terminski, B. (2012). Towards recognition and protection of forced environmental migrants in the public international law: Refugee or IDPs umbrella?.

³⁰ Ibid.

³¹ Gray, C., & Wise, E. (2016). Country-specific effects of climate variability on human migration. *Climatic change*, 135, 555-568.

³² Sullivan, M. E. (2022). *Erasure through Engagement: The Community Resettlement of Isle de Jean Charles* (Doctoral dissertation, Portland State University).

³³ Atapattu, S. (2020). Climate change and displacement: protecting 'climate refugees' within a framework of justice and human rights. *Journal of Human Rights and the Environment*, 11(1), 97-100.

a protected category.³⁴ Efforts to expand legal protections for climate refugees have been met with challenges due to the complexity of defining and attributing displacement solely to climate change.³⁵ However, there have been some regional and national initiatives aiming to address this gap.³⁶ For example, the Pacific Islands Forum's Biketawa Declaration acknowledges the issue of climate displacement in the Pacific region and calls for international cooperation in responding to it.

The advocacy for the protection and rights of climate refugees is gaining traction.³⁷ Civil society organizations, human rights groups, and environmental activists have been at the forefront of raising awareness about the unique challenges faced by climate refugees and advocating for their rights.³⁸ They emphasize the need for legal recognition, adequate support, and durable solutions for displaced communities.³⁹ International bodies such as the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) are also increasingly engaging with the issue of climate-induced displacement and advocating for stronger protection mechanisms.⁴⁰

³⁴ Warren, P. D. (2016). Forced migration after Paris cop21: Evaluating the 'climate change displacement coordination facility'. *Colum. L. Rev.*, 116, 2103.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Eckersley, R. (2015). The common but differentiated responsibilities of states to assist and receive 'climate refugees'. *European Journal of Political Theory*, 14(4), 490-495.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

Climate refugees face distinct challenges as a result of displacement driven by climate change.⁴¹ Despite lacking specific legal recognition and protections, their numbers continue to grow, necessitating urgent attention and action.⁴² Statistics and case studies provide evidence of the displacement caused by climate change, while legal frameworks and international responses are evolving slowly.⁴³ Advocacy efforts are crucial in promoting the protection and rights of climate refugees and pushing for adequate international mechanisms to address this urgent issue.⁴⁴

IV. Social Justice and Climate Change

Climate change has profound social justice implications, as its impacts are disproportionately felt by marginalized communities and individuals.⁴⁵ The Intergovernmental Panel on Climate Change (IPCC) highlights that climate change exacerbates existing inequalities, deepening poverty, and undermining human rights.⁴⁶ Vulnerable communities, including low-income populations, indigenous peoples, and racial and ethnic minorities, often bear the brunt of climate-related disasters, experiencing greater health risks, displacement, and economic hardships.⁴⁷ The unequal distribution of

⁴¹ Gemenne, F. (2011). Why the numbers don't add up: A review of estimates and predictions of people displaced by environmental changes. *Global Environmental Change*, 21, S45-S48.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Pörtner, H. O., Roberts, D. C., Adams, H., Adler, C., Aldunce, P., Ali, E., ... & Ibrahim, Z. Z. (2022). *Climate change 2022: Impacts, adaptation and vulnerability* (p. 3056). Geneva, Switzerland.: IPCC.

⁴⁷ Ibid.

climate change impacts raises ethical concerns and calls for a social justice lens in addressing climate change.⁴⁸

Vulnerable communities are disproportionately affected by climate-related disasters due to a combination of factors including limited resources, social inequalities, and geographical location.⁴⁹ For example, low-income communities often reside in areas more prone to flooding, hurricanes, or heatwaves, and lack the financial means to adapt or recover from these events. Indigenous communities, with their close connection to the land and dependence on traditional livelihoods, face the loss of cultural heritage and economic stability when their ecosystems are disrupted.⁵⁰ The vulnerability of these communities to climate-related disasters underscores the need for targeted interventions and support to promote social justice.⁵¹

Community-led initiatives play a vital role in promoting social justice in climate action.⁵² For instance, grassroots organizations have been at the forefront of advocating for environmental justice, amplifying the voices of affected communities, and demanding equitable solutions. Community-based adaptation projects, such as local farming cooperatives or renewable energy cooperatives, empower marginalized communities economically and environmentally,

⁴⁸ Ibid.

⁴⁹ Thomas, K., Hardy, R. D., Lazrus, H., Mendez, M., Orlove, B., Rivera-Collazo, I., ... & Winthrop, R. (2019). Explaining differential vulnerability to climate change: A social science review. *Wiley Interdisciplinary Reviews: Climate Change*, 10(2), e565.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Henfrey, T., Feola, G., Penha-Lopes, G., Sekulova, F., & Esteves, A. M. (2023). Rethinking the sustainable development goals: Learning with and from community-led initiatives. *Sustainable Development*, 31(1), 211-222.

fostering social justice in climate change responses.⁵³ Additionally, indigenous-led land stewardship practices and traditional ecological knowledge contribute to sustainable resource management while preserving cultural integrity.⁵⁴

Policies and initiatives that prioritize social justice in climate change mitigation and adaptation strategies are crucial for equitable outcomes.⁵⁵ This includes integrating principles of fairness, inclusivity, and participation in decision-making processes related to climate action.⁵⁶ For example, the implementation of just transition policies ensures that the shift to a low-carbon economy does not leave workers and communities behind, offering retraining and job opportunities in renewable energy sectors. Climate finance mechanisms that prioritize support for vulnerable communities and adaptation projects also contribute to social justice by addressing their specific needs.⁵⁷

The social justice implications of climate change necessitate a focused and deliberate approach in addressing the disproportionate impacts on vulnerable communities.⁵⁸ Recognizing and rectifying existing inequalities, empowering marginalized communities, and involving

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Chu, E., Anguelovski, I., & Carmin, J. (2016). Inclusive approaches to urban climate adaptation planning and implementation in the Global South. *Climate Policy*, 16(3), 382-391.

⁵⁶ Figueiredo, P., & Perkins, P. E. (2013). Women and water management in times of climate change: participatory and inclusive processes. *Journal of Cleaner Production*, 60, 189-193.

⁵⁷ Ibid.

⁵⁸ Popke, J., Curtis, S., & Gamble, D. W. (2016). A social justice framing of climate change discourse and policy: Adaptation, resilience and vulnerability in a Jamaican agricultural landscape. *Geoforum*, 73, 71-74.

them in decision-making processes are essential for promoting social justice in climate change responses. Community-led initiatives, alongside policies and initiatives that prioritize social justice, serve as crucial pathways for equitable and sustainable solutions to address the social injustices arising from climate change.⁵⁹

V. Gender Equality and Climate Change

Climate change affects women and gender minorities differently due to existing gender inequalities and social norms.⁶⁰ Women often bear a disproportionate burden as they play critical roles in sectors such as agriculture, water collection, and energy provision, which are highly vulnerable to climate change.⁶¹ They face increased challenges in accessing resources, education, and healthcare during climate-related disasters.⁶² Furthermore, gender-based violence tends to rise in the aftermath of such events, further compromising the safety and well-being of women and gender minorities.⁶³ Recognizing these differential impacts is crucial for addressing gender inequalities in climate change responses.⁶⁴

⁵⁹ Ibid. 78-80.

⁶⁰ Heise, L., Greene, M. E., Oppen, N., Stavropoulou, M., Harper, C., Nascimento, M., ... & Gupta, G. R. (2019). Gender inequality and restrictive gender norms: framing the challenges to health. *The Lancet*, 393(10189), 2445-2452.

⁶¹ Ibid.

⁶² Schramm, P. J., Al Janabi, A. L., Campbell, L. W., Donatuto, J. L., & Gaughen, S. C. (2020). How Indigenous Communities Are Adapting To Climate Change: Insights From The Climate-Ready Tribes Initiative: Analysis examines how indigenous communities are adapting to climate change. *Health Affairs*, 39(12), 2153-2159.

⁶³ Ibid.

⁶⁴ Ibid.

Gender-based vulnerabilities and roles intersect with climate change adaptation and resilience.⁶⁵ Women often possess valuable knowledge of local ecosystems and sustainable resource management practices.⁶⁶ However, limited access to resources, unequal decision-making power, and cultural norms restrict their participation and influence in climate adaptation strategies.⁶⁷ Gender disparities also impact women's ability to access financial resources, technology, and information necessary for resilience-building.⁶⁸ Recognizing and addressing these vulnerabilities and empowering women and gender minorities as active participants in climate action is crucial for building adaptive and resilient societies.⁶⁹

Numerous initiatives are promoting gender equality in climate action and decision-making processes.⁷⁰ For example, the Women's Global Call for Climate Justice advocates for the inclusion of women's rights and gender equality in climate policies and programs. Gender-responsive climate finance mechanisms, such as the Green Climate Fund's gender policy, aim to support projects that address the specific needs and priorities of women and gender minorities.⁷¹ Additionally,

⁶⁵ Vinyeta, K., Whyte, K., & Lynn, K. (2016). Climate change through an intersectional lens: gendered vulnerability and resilience in indigenous communities in the United States.

⁶⁶ Olsson, P., & Folke, C. (2001). Local ecological knowledge and institutional dynamics for ecosystem management: a study of Lake Racken watershed, Sweden. *Ecosystems*, 4, 85-104.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Aguilar, L. (2012). Establishing the linkages between gender and climate change adaptation and mitigation. In *Gender and climate change: An introduction* (pp. 201-221). Routledge.

⁷¹ Swim, J., Clayton, S., Doherty, T., Gifford, R., Howard, G., Reser, J., ... & Weber, E. (2009). Psychology and global climate change: Addressing a multi-

grassroots organizations and networks, such as the Global Alliance for Green and Gender Action, work to amplify the voices and agency of women and gender minorities in shaping climate responses.⁷² Integrating gender perspectives in climate policies and programs is vital for effective and equitable outcomes.⁷³ By considering the differentiated impacts of climate change on women and gender minorities, policies can address their specific needs and vulnerabilities.⁷⁴ Gender-responsive approaches ensure that women and gender minorities have equal access to resources, decision-making processes, and benefits arising from climate action.⁷⁵ Additionally, recognizing the important roles that women play as agents of change and leaders in climate resilience enhances the effectiveness and sustainability of climate policies and programs.⁷⁶

Gender equality is a crucial aspect of addressing climate change.⁷⁷ Analyzing the differential impacts on women and gender minorities, understanding their vulnerabilities and roles in adaptation and resilience, promoting initiatives that empower them, and integrating gender perspectives in climate policies and programs are all essential

faceted phenomenon and set of challenges. A report by the American Psychological Association's task force on the interface between psychology and global climate change. *American Psychological Association, Washington*, 66, 241-250.

⁷² Ibid.

⁷³ Rahaman, M. M., & Varis, O. (2005). Integrated water resources management: evolution, prospects and future challenges. *Sustainability: science, practice and policy*, 1(1), 15.

⁷⁴ Ibid. 17.

⁷⁵ Ibid. 18.

⁷⁶ Ibid. 19.

⁷⁷ Lau, J. D., Kleiber, D., Lawless, S., & Cohen, P. J. (2021). Gender equality in climate policy and practice hindered by assumptions. *Nature climate change*, 11(3), 186-192.

for achieving sustainable and equitable climate outcomes.⁷⁸ By addressing gender inequalities, we can foster a more inclusive and effective response to the challenges posed by climate change.⁷⁹

VI. Marginalized Communities and Decision-Making

Marginalized communities often face exclusion from decision-making processes related to climate change, leading to their voices and perspectives being overlooked.⁸⁰ Factors such as socio-economic disparities, unequal access to education and resources, and systemic discrimination contribute to this exclusion.⁸¹ As a result, policies and strategies implemented may not adequately address the unique needs, concerns, and priorities of marginalized groups.⁸² The exclusion of these communities perpetuates existing inequalities and hampers the effectiveness and legitimacy of climate change decision-making.⁸³

Inclusive and participatory approaches to decision-making are essential for addressing the needs of marginalized communities and achieving equitable climate outcomes.⁸⁴ By involving marginalized groups in decision-making processes, their experiences and knowledge can inform the development of context-specific

⁷⁸ Denton, F. (2002). Climate change vulnerability, impacts, and adaptation: Why does gender matter?. *Gender & Development*, 10(2), 10-20.

⁷⁹ Ibid.

⁸⁰ Ojha, H. R., Ghimire, S., Pain, A., Nightingale, A., Khatri, D. B., & Dhungana, H. (2016). Policy without politics: Technocratic control of climate change adaptation policy making in Nepal. *Climate Policy*, 16(4), 419-430.

⁸¹ Shaw, M., Dorling, D., & Smith, G. D. (1999). Poverty, social exclusion, and minorities. *Social determinants of health*, 2, 197-198.

⁸² Ibid. 120.

⁸³ Ibid. 121.

⁸⁴ Ibid. 122.

solutions.⁸⁵ Inclusive decision-making processes also promote a sense of ownership and empowerment among marginalized communities, fostering a more sustainable and just transition.⁸⁶ Furthermore, the diversity of perspectives brought by marginalized groups enriches discussions, leading to more comprehensive and effective climate strategies.⁸⁷

Numerous case studies showcase successful examples of involving marginalized communities in climate action.⁸⁸ For instance, the Indigenous-led initiatives in Canada, such as the Indigenous Climate Action, empower Indigenous communities to lead climate resilience efforts by combining traditional knowledge with modern technologies.⁸⁹ Participatory budgeting processes in Brazil and other countries have enabled marginalized communities to have a direct say in climate-related resource allocation decisions.⁹⁰ These examples demonstrate that when marginalized communities are engaged and

⁸⁵ Krause, G., Brugere, C., Diedrich, A., Ebeling, M. W., Ferse, S. C., Mikkelsen, E., ... & Troell, M. (2015). A revolution without people? Closing the people-policy gap in aquaculture development. *Aquaculture*, 447, 46-54.

⁸⁶ Ibid.

⁸⁷ Scoones, I. (2009). Livelihoods perspectives and rural development. *The journal of peasant studies*, 36(1), 171-196.

⁸⁸ Benevolenza, M. A., & DeRigne, L. (2019). The impact of climate change and natural disasters on vulnerable populations: A systematic review of literature. *Journal of Human Behavior in the Social Environment*, 29(2), 266-281. See, Ravera, F., Reyes-García, V., Pascual, U., Drucker, A. G., Tarrasón, D., & Bellon, M. R. (2019). Gendered agrobiodiversity management and adaptation to climate change: differentiated strategies in two marginal rural areas of India. *Agriculture and human values*, 36, 455-474. See, Tol, R. S., Fankhauser, S., Richels, R. G., & Smith, J. B. (2000). How much damage will climate change do? Recent estimates. *WORLD ECONOMICS-HENLEY ON THAMES*-, 1(4), 179-180.

⁸⁹ Ibid. 180-181.

⁹⁰ Ibid. 183.

empowered, they can contribute valuable insights and solutions to climate change challenges.

There is a growing recognition of the need to increase the representation and empowerment of marginalized groups in climate policy and planning.⁹¹ Calls for greater inclusion have come from various stakeholders, including civil society organizations, indigenous rights activists, and social justice advocates.⁹² Increasing representation can be achieved through diverse mechanisms such as establishing advisory boards, incorporating marginalized voices in formal decision-making bodies, and ensuring inclusive consultations and participation processes.⁹³ Empowering marginalized communities also involves providing them with the necessary resources, capacity-building, and support to actively engage in climate policy discussions and implementation.⁹⁴

Exclusion of marginalized communities from decision-making processes related to climate change is a significant concern.⁹⁵ Inclusive and participatory approaches are essential for addressing this exclusion, as they recognize the importance of incorporating diverse perspectives and ensuring that climate policies and strategies

⁹¹ Tompkins, E. L., & Adger, W. N. (2004). Does adaptive management of natural resources enhance resilience to climate change?. *Ecology and society*, 9(2).

⁹² Batliwala, S. (2002). Grassroots movements as transnational actors: Implications for global civil society. *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 13, 395-404.

⁹³ Dreher, T. (2012). A partial promise of voice: Digital storytelling and the limits of listening. *Media International Australia*, 142(1), 157-158.

⁹⁴ Ibid. 158-160.

⁹⁵ Ibid. 161-162

are equitable and effective.⁹⁶ Successful case studies demonstrate the benefits of involving marginalized communities in climate action. Calls to increase representation and empowerment of marginalized groups in climate policy and planning emphasize the need to rectify existing power imbalances and promote a more just and sustainable approach to climate change.

VII. Equitable Solutions for Climate Justice

Achieving climate justice and equity requires the implementation of policy approaches and frameworks that prioritize the needs of marginalized communities and address underlying systemic inequalities.⁹⁷ One example is the concept of just transition, which aims to ensure a fair and equitable transition to a low-carbon economy, safeguarding the rights and livelihoods of workers and communities affected by the shift away from fossil fuels.⁹⁸ Additionally, environmental justice frameworks seek to address the disproportionate burden of pollution and environmental degradation on marginalized communities and advocate for their meaningful participation in decision-making processes.⁹⁹

Incorporating equity considerations is crucial for effective climate change mitigation and adaptation strategies.¹⁰⁰ By recognizing and

⁹⁶ Ibid. 165-166

⁹⁷ Malloy, J. T., & Ashcraft, C. M. (2020). A framework for implementing socially just climate adaptation. *Climatic Change*, 160(1), 1-14. See, Alcaraz, K. I., Wiedt, T. L., Daniels, E. C., Yabroff, K. R., Guerra, C. E., & Wender, R. C. (2020). Understanding and addressing social determinants to advance cancer health equity in the United States: a blueprint for practice, research, and policy. *CA: a cancer journal for clinicians*, 70(1), 31-38.

⁹⁸ Ibid. 44.

⁹⁹ Malloy, J. T., et.al. 43-44.

¹⁰⁰ Wiegandt, E. (2001). Climate change, equity, and international negotiations. *International relations and global climate change*, 128-130.

addressing the unequal distribution of climate impacts and vulnerabilities, policies and actions can be tailored to meet the specific needs of marginalized communities.¹⁰¹ This includes ensuring access to renewable energy, clean water, and resilient infrastructure, as well as providing support for sustainable livelihoods and adaptation measures.¹⁰² By prioritizing equity, climate actions can avoid exacerbating existing social disparities and work towards more just and inclusive outcomes.

Funding mechanisms and support for vulnerable communities are essential in achieving climate justice and equity.¹⁰³ Financial resources should be allocated to projects that prioritize the needs of marginalized communities, particularly in developing countries, where the impacts of climate change are often more severe.¹⁰⁴ Climate finance mechanisms, such as the Green Climate Fund, aim to channel financial resources to adaptation and mitigation projects that benefit vulnerable communities.¹⁰⁵ Capacity-building programs and technical assistance can also support communities in implementing climate-resilient practices and accessing funding opportunities.¹⁰⁶

Numerous initiatives and projects are promoting equitable solutions to climate change.¹⁰⁷ For instance, community-led renewable energy

¹⁰¹ Ibid. 130-132.

¹⁰² Ibid. 133-136.

¹⁰³ Okereke, C., & Coventry, P. (2016). Climate justice and the international regime: before, during, and after Paris. *Wiley Interdisciplinary Reviews: Climate Change*, 7(6), 834.

¹⁰⁴ Ibid. 834-836.

¹⁰⁵ Ibid. 837-838.

¹⁰⁶ Ibid. 839-840.

¹⁰⁷ Denton, F. (2002). Climate change vulnerability, impacts, and adaptation: Why does gender matter?. *Gender & Development*, 10(2), 10-20.

projects, such as solar cooperatives, empower marginalized communities by providing access to clean and affordable energy while creating local job opportunities. Nature-based solutions, such as reforestation and ecosystem restoration projects, not only contribute to climate mitigation but also provide co-benefits for local communities,¹⁰⁸ such as improved water resources and biodiversity conservation. Indigenous-led land stewardship initiatives, which integrate traditional knowledge with modern practices, highlight the importance of preserving cultural heritage and promoting sustainable resource management.¹⁰⁹

Achieving climate justice and equity requires the implementation of policy approaches, frameworks, and initiatives that prioritize the needs of marginalized communities and address systemic inequalities.¹¹⁰ Incorporating equity considerations in climate change mitigation and adaptation strategies, along with the provision of funding and support for vulnerable communities, is essential.¹¹¹ By promoting equitable solutions to climate change, we can work towards a more just and sustainable future.¹¹²

VIII. Conclusion

In this discussion on climate justice and equity, this paper has explored the unequal impacts of climate change on vulnerable

¹⁰⁸ Martin, E. G., Costa, M. M., & Máñez, K. S. (2020). An operationalized classification of Nature Based Solutions for water-related hazards: From theory to practice. *Ecological Economics*, 167, 106460.

¹⁰⁹ Ibid.

¹¹⁰ Ciple, D. (2021). From energy privilege to energy justice: A framework for embedded sustainable development. *Energy Research & Social Science*, 75, 101996.

¹¹¹ Ibid.

¹¹² Ibid.

communities. It has examined the challenges faced by climate refugees, the importance of social justice and gender equality in climate action, and the exclusion of marginalized groups from decision-making processes. Throughout our exploration, the paper emphasized the need for equitable solutions that address the specific needs and experiences of marginalized communities.

It is crucial for policymakers, organizations, and individuals to prioritize climate justice and equity in their efforts. This requires integrating the principles of fairness, inclusivity, and social responsibility into climate policies, programs, and initiatives. Policymakers should develop and implement policies that explicitly address the needs of vulnerable communities and ensure their meaningful participation in decision-making processes. Organizations and individuals should advocate for equitable solutions, support community-led initiatives, and foster partnerships that promote climate justice and equity.

Addressing the unequal impacts of climate change is essential for building a sustainable and just future. Climate change exacerbates existing social and economic disparities, further marginalizing already vulnerable communities. By recognizing and addressing these inequalities, we can create a more resilient and equitable society. This requires addressing the root causes of vulnerability, empowering marginalized communities, and promoting inclusive approaches to decision-making and action. It is only through concerted efforts and a collective commitment to climate justice and equity that we can overcome the challenges of climate change and create a future that is sustainable, just, and inclusive for all.

Climate justice and equity must be at the forefront of our efforts to address the impacts of climate change on vulnerable communities. By acknowledging the unequal burden faced by marginalized groups, including climate refugees, and recognizing the intersections with social justice, gender equality, and decision-making processes, we can work towards equitable solutions. Let us join together in taking action, advocating for change, and prioritizing climate justice and equity as we strive for a sustainable and just future.

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