

Journal of Conflict Management & Sustainable Development



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Volume 10

Issue 4

2023

ISEN 978-9966-046-15-4

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

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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.

4.2 United States of America

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Ibid

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.

1.1 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

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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

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

¹⁵Ibid, 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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Community Land Conflicts in Kenya
for Sustainable Development:*
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(2023) Journal of cmsd Volume 10(4)

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



ISBN 978-9966-046-15-4



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