

**AN ASSESSMENT ON LOCALLY FUNDED SCHEMES AS A PREVENTIVE MEASURE
TO HUMAN WILDLIFE CONFLICT AND AS A REASONABLE MEASURE TAKEN TO
PROTECT CROPS, LIVESTOCK OR PROPERTY FROM DAMAGE BY WILDLIFE.**

Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree, Strathmore University Law School.



Prepared under the supervision of

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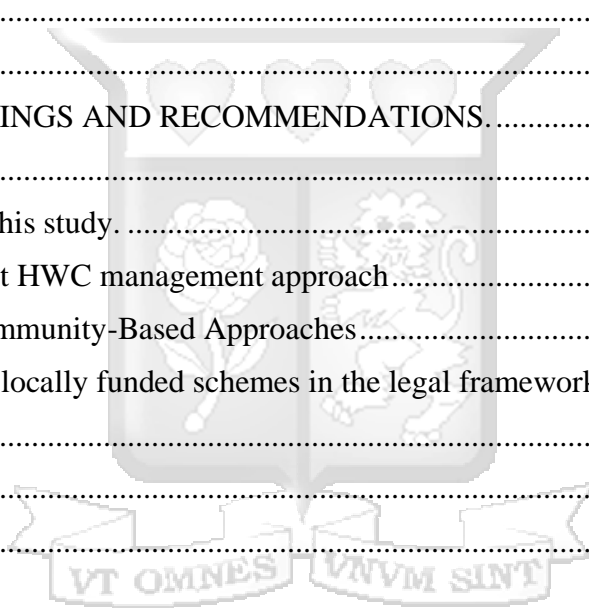
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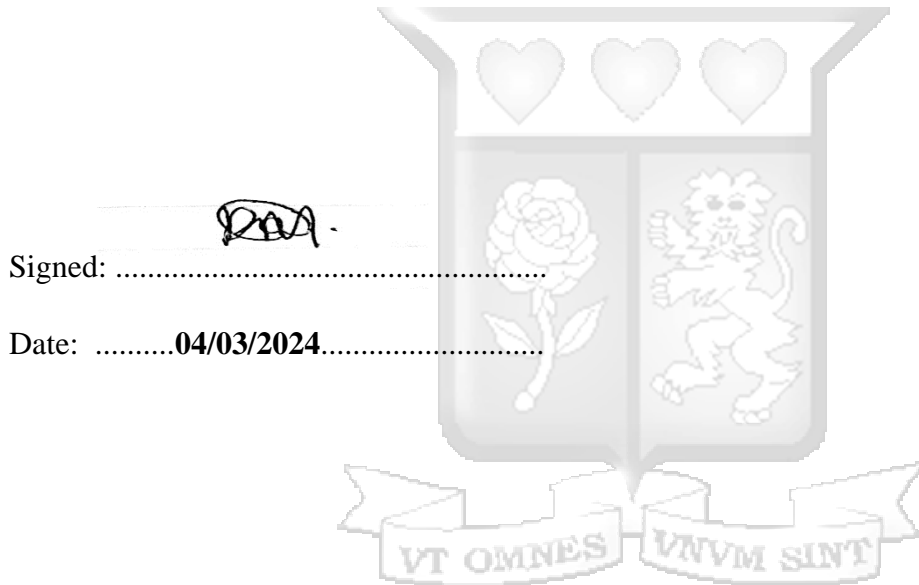
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DECLARATION.

I, NDURU RAYMOND MUGI, declare that this dissertation titled "An Assessment of Locally Funded Schemes as a Preventive Measure to Human-Wildlife Conflict and as a Reasonable Measure Taken to Protect Crops, Livestock or Property from Damage by Wildlife" is my original work and has not been submitted to any other university for academic credit. Other works cited or referred to are accordingly acknowledged.

I understand what plagiarism is and I am aware of the university's policy in this regard. I understand that any false claim of authorship constitutes an act of academic dishonesty and is a serious offense that will be dealt with severely by the university.



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Date: 04/03/2024

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: Macharia Kaguru

Supervisor's name: ...Macharia Kaguru.....

LIST OF ABBREVIATIONS

HWC - Human-Wildlife Conflict

KWS - Kenya Wildlife Service

WCMA - Wildlife Conservation and Management Act

WCMD - Wildlife Conservation and Management Department

CS - Cabinet Secretary

KES - Kenya Shillings

PPP - Public-Private Partnerships

NGOs – Non-Governmental Organisations.

CBOs – Community-Based Organizations.

UNEP- United Nations Environment Programme.

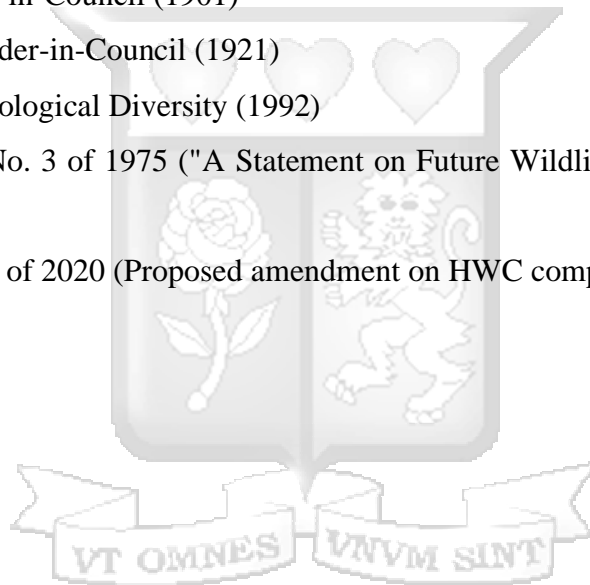
WWF – World Wildlife Fund.

CSR- Corporate Social Responsibility.



LIST OF LEGAL INSTRUMENTS

1. Constitution of Kenya (2010)
2. Wildlife Conservation and Management Act (No. 47 of 2013)
3. Wildlife (Conservation and Management) Act (1976)
4. Wildlife (Conservation and Management) Act (Repealed) (1989)
5. Crown Lands Ordinance (1902)
6. Crown Lands Ordinance (1915)
7. Crown Lands (Amendment) Ordinance (1938)
8. Land Acquisition Act (1894)
9. East Africa Order-in-Council (1901)
10. Kenya Colony Order-in-Council (1921)
11. Convention on Biological Diversity (1992)
12. Sessional Paper No. 3 of 1975 ("A Statement on Future Wildlife Management Policy in Kenya")
13. Senate Bill No 30 of 2020 (Proposed amendment on HWC compensation)



ABSTRACT

Human Wildlife Conflict (HWC) remains an ongoing issue facing Kenya and the world at large. The consequences of this conflict are detrimental to both human beings and wild animals. This study focuses on approaches to managing this conflict in Kenya with the aim of developing a more sustainable and community-inclusive solution. This study argues that community inclusive solutions are necessary to address this conflict and have proven to be effective where they have been implemented. Locally funded schemes have been proposed as community inclusive solutions which when implemented prevent the conflict and allow the communities to directly benefit from their co-existence with wildlife. It is this papers argument that community inclusive solutions should be recognized as reasonable measures taken to protect the community and their property.

Data from KWS reports, reported incidences from media outlets and various publications has been relied on in analysing the current approach and its current challenges. Overall, the current approach to the conflict faces various challenges due to other different factors thus falling short of its conservation goals. A qualitative comparison between the current approach to the proposed introduction of locally funded schemes shows the latter aims to empower communities as active stakeholders through communal resources for preventative monitoring and implementation of solutions tailored to local circumstances.

On the whole, this in-depth examination aims to contribute to developing Kenya's approach to HWC management through preventive, community-inclusive resolutions aligned with its legal framework. The dissertation analysis and proposes policy changes seek to balance growing human and wildlife needs through creative solutions recognizing locally led initiatives' value in sustainably safeguarding wildlife and rural livelihoods.

1.0: INTRODUCTION.

1.1 Background.

Human Wildlife Conflict (HWC) has been in existence for as long as human beings and wild animals have shared the same landscapes and resources. The co-existence of these two species results in healthy ecosystems that allow us to survive, provide food and enable livelihoods.¹ Due to various factors including climate change, the rising population of human beings and livestock, the shared landscapes and resources have become very limited.² This has seen an increase in competition for the shared landscapes and resources resulting in HWC. This conflict has become a global challenge making wildlife conservation more difficult and threatens the wellbeing of the people in wildlife conservation and management areas.³

Kenya faces HWC similar to other developing nations in the tropical and subtropical climates. The conflict has been reported in all 47 counties with the highest number of reported cases being from Taita Taveta County.⁴ The cases reported in this county between 2021 and 2022 were compensated to the tune of Kshs. 139 million.⁵ This conflict leads to loss of lives, post-traumatic stress and psychological impacts, destruction of property and loss of livelihood.⁶

¹ Muruthi P, African Wildlife Foundation Human-wildlife conflict: A review of current management strategies and future directions <https://www.awf.org/sites/default/files/media/Resources/Books%20and%20Papers/AWF_Human_Wildlife_Conflict.pdf>. (2015).

² Muthui L, 'A Review of Various Options for Alleviating Human-Wildlife Conflicts in Kenya' The Kenya Institute for Public Policy Research and Analysis, Discussion Paper No. 138 2012, 22, <DP138.pdf>- 2012.

³ Gross E, Jayasinghe N., Brooks A., Polet G., Wadhwa R. and Hilderink-Koopmans F, ' A Future for All: The Need for Human-Wildlife Coexistence' WWF and UNEP - <https://wwfint.awsassets.panda.org/downloads/a_future_for_all_the_need_for_human_wildlife_coexistence.pdf> 2021.

⁴ Mkanyika L, 'Residents go hungry as human-wildlife conflict escalates in Taita Taveta' Nation, 16 February 2023- < <https://nation.africa/kenya/counties/taita-taveta/residents-go-hungry-as-human-wildlife-conflict-escalates-in-taita-taveta-4126026>> on 16 February 2023.

⁵ Muingi S, 'Taita Taveta victims of human-wildlife conflict to be compensated' The Star, 23 October 2022- <<https://www.the-star.co.ke/counties/coast/2022-10-21-taita-taveta-victims-of-human-wildlife-conflict-to-be-compensated>> on 23 October 2022.

⁶ Mkanyika L, 'Residents go hungry as human-wildlife conflict escalates in Taita Taveta' Nation, 16 February 2023- < <https://nation.africa/kenya/counties/taita-taveta/residents-go-hungry-as-human-wildlife-conflict-escalates-in-taita-taveta-4126026>> on 16 February 2023.

The National Government has intervened in tackling this challenge through enacting *The Wildlife Conservation and Management Act No 47 of 2013* (The Act). It has also established and maintained the state corporation Kenya Wildlife Service (KWS) responsible for wildlife management and conservation. Section 25 of the Act reconciles Human Wildlife Conflict by providing for compensation for personal injury or death or damage to property by any wildlife.⁷

There is an established County Wildlife Conservation and Compensation Committee to “verify a claim made and upon verification of the claim, submit the claim to the Cabinet Secretary for the time being responsible for matters relating to wildlife, together with its recommendations.⁸ The committee has the power to review the claim, award compensation valued at the ruling market rates so long as the owner of the livestock, crops or other property took reasonable measures, to protect such crops, livestock or property from damage by wildlife or his land use practices are compatible with the ecosystem-based management plan for the area.”⁹

My research aims to introduce locally funded schemes which involve the community in addressing and preventing the conflict. It points out that the approach of compensating victims does not mitigate the problem; rather it ends up creating the risk of fostering dependence where cheating is not easily avoided.¹⁰ The society needs to foster a pro-conservation stance and affected communities should also take part as active members and equal participants in wildlife conservation and management. A more viable solution would be through introduction of locally funded schemes as a preventive measure to this conflict. The scheme takes the form of a local contribution paid by those communities at risk, in amounts determined by their exposure to this risk. This allows the community to invest in addressing HWC and is also in line with the prevention principle of International Environmental Law.¹¹

⁷ Section 25(1), *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

⁸ Section 19(i), *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

⁹ Section 25(5), *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

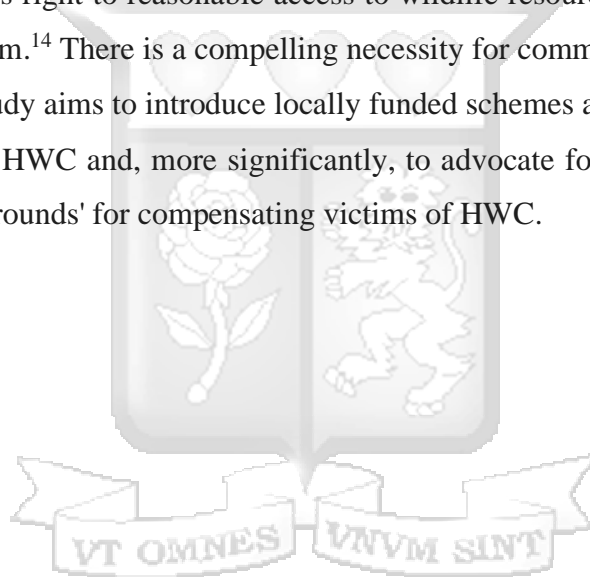
¹⁰ Mc Guinness Shane, *The effects of human-wildlife conflict on conservation and development: a case study of Volcanoes National Park, northern Rwanda*’ Published PHD Thesis, University of Dublin, Trinity College, 2014, 19.

¹¹ Rio Declaration on Environment and Development. (1992)

1.2 Problem Statement.

HWC continues to inflict severe consequences on Kenya's communities, with an escalating financial burden on the government due to compensation payouts to victims. Despite legislative provisions in Section 25(5) of the Wildlife Conservation and Management Act that stipulate compensation for victims dependent on them taking 'reasonable measures' to protect themselves and their property, many individuals affected by HWC remain uncompensated and do not trust that they will be compensated.¹² Between 2021 and 2022, the Kenyan government disbursed Kshs 139 million in compensation payments to Taita Taveta County alone, highlighting the pressing need to address this issue.¹³

In light of every Kenyan's right to reasonable access to wildlife resources and entitlement to the benefits derived from them.¹⁴ There is a compelling necessity for community-based interventions to prevent HWC. This study aims to introduce locally funded schemes as a preventive measure to reduce the incidences of HWC and, more significantly, to advocate for the recognition of these schemes as 'reasonable grounds' for compensating victims of HWC.



¹² Mkanyika L, 'Residents go hungry as human-wildlife conflict escalates in Taita Taveta' Nation, 16 February 2023- < <https://nation.africa/kenya/counties/taita-taveta/residents-go-hungry-as-human-wildlife-conflict-escalates-in-taita-taveta-4126026>> on 16 February 2023.

¹³ Muingi S, 'Taita Taveta victims of human-wildlife conflict to be compensated' The Star, 23 October 2022- <https://www.the-star.co.ke/counties/coast/2022-10-21-taita-taveta-victims-of-human-wildlife-conflict-to-be-compensated> on 23 October 2022.

¹⁴ Section 71, *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

1.3 Research Objectives.

1. To assess Kenya's current approach to HWC and the measures taken to address the conflict.
2. To examine a rather different approach for managing conflicts between local communities, wildlife and conservation authorities which is community inclusive.
3. To investigate whether this community inclusive approach changes the attitudes of affected communities to wildlife and the conservation institutions.
4. To introduce locally funded schemes and propose the recognition of these schemes as a reasonable ground for compensation of victims of HWC through amendment of Section 25 of the Act.

1.4 Research Questions.

1. What are the current approaches to managing HWC in Kenya?
2. Is Kenya's wildlife conservation and management approach community inclusive to change the attitudes of affected communities to wildlife and the conservation institutions thus diffusing the conflict?
3. Does the establishment of locally funded schemes change the attitude of the affected communities and is thus inclusive of them in diffusing this conflict?
4. How can the *Wildlife Conservation and Management Act* be amended in order to endorse a community inclusive approach that is proportionate to its aims and thus in line with sustainable conservation practices.

1.5 Hypothesis

The current practice of compensating victims of Human-Wildlife Conflict (HWC) by the National Government, conditional to the victims taking reasonable steps to mitigate such conflict, is insufficient in effectively addressing the HWC challenge in Kenya. The primary reasons for this insufficiency are the high number of HWC victims and the stringent criteria for compensation, which often leave many victims without redress. As such, my hypothesis is that over and above the compensation, addressing HWC requires the involvement of the community through locally funded schemes and thus Section 25(5) of the Act should be amended so as to recognize and qualify for compensation, locally funded schemes as a reasonable measure taken “to protect such crops, livestock or property from damage by wildlife.”¹⁵ The success of this endeavour will not only alleviate the financial burden on the government but also foster a sense of social altruism within Kenyan communities to protect both their livelihoods and wildlife resources.

1.6 Justification.

This study aims to introduce locally funded schemes as a proactive approach to mitigating HWC. These schemes, if properly designed and implemented, can provide communities with the means to protect themselves and their property more effectively, thereby reducing HWC incidents. Furthermore, the study seeks to advocate for the recognition of such schemes as reasonable grounds for compensation of HWC victims. By doing so, it aims to bring social altruism to the forefront, encouraging local communities to take a more active role in solving the HWC problem.

This study will be useful to lawmakers, KWS and the Compensation Committees by investigating the introduction of locally funded schemes and their potential for recognition in compensation claims, it aims to contribute to a more sustainable and just approach to managing HWC in Kenya.

¹⁵ Section 25(5), *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

1.7 Conceptual Framework:

Addressing HWC requires effective solutions that cater for the needs of the rural communities and conserve wildlife. This study sets out to assess the current approach to this conflict in Kenya as well as the impact of the implementation of locally funded schemes which offer local solutions as well as secure local support in conservation.

1.7.1 The current approach to HWC in Kenya

HWC continues to be a perpetual problem in Kenya and continues to threaten the lives of local communities, their crops and livestock, and the population of wildlife. Human deaths and injuries are less prevalent, but they constitute the most severe form of HWC. In most situations, people are attacked when attempting to safeguard their crops or when they come into touch with animals. Elephants, baboons, hippos, and buffaloes are among the wild creatures that cause agricultural damage. Elephants can destroy an entire farm in one night and are considered the biggest threat to African farmers.¹⁶ Wildlife mortality is a direct result of this conflict, as communities suffer the devastating effects of this conflict, they retaliate by attacking the animal. Communities such as the Maasai kill any wild animal(s) that attack them or their property and as a result the African Lion has been mostly affected.

HWC is caused by factors such as expanding human population, a lack of spatial land use planning and a national land use strategy, climate change issues, and insufficient resources to address wildlife management concerns.¹⁷ During the fiscal year 2016/2017, 5,462 cases of human-wildlife conflict (HWC) were reported in Kenya's 47 administrative counties.¹⁸

KWS, a state corporation mandated to conserve and manage wildlife, has undertaken measures and projects to control, prevent and reduce the impact of this conflict. Listed below are the measures.

¹⁶ Parker, G.E., Osborn, F.V., Hoare R.E. and Niskanen, L.S. (Eds) (2007), Human Elephant Conflict Mitigation: A Training Course for Community-Based Approaches in Africa, Participants Manual

¹⁷ Kenya Wildlife Services, *Annual Report 2017*, 21-23.

¹⁸ Kenya Wildlife Services, *Annual Report 2017*, 21-23.

1.7.1.1 Erection of wildlife proof barriers such as electric fences:

KWS has erected wildlife proof barriers around national parks and around special areas where the fences were deemed as a solution to the persistent problem in those areas. Fences control the movement of wild animals to protect livestock, crops and humans. However, the challenge with this solution is the high cost of erecting these fences as well as maintaining them. According to a study back in 2012 the cost of erecting 1 Kilometre of an electric fence is approximately Kshs. 2,000,000.¹⁹ KWS recognizes the high expense of these obstacles and continues to seek private-public partnerships for fence projects (PPP). The agency continues to urge communities to use alternate strategies of minimizing human-wildlife interactions.²⁰

1.7.1.2 Active problem animal control and translocation of wildlife

KWS has active problem animal management units stationed at several KWS community wildlife stations, county administration offices, and outposts throughout Kenya. The purpose of these units is to move those animals responsible for conflict from one area to another. Many farmers prefer this method as it reduces the conflict in agricultural areas.²¹ Again, this measure is very expensive, in fact in 2011 the government spent a total of US\$ 460,609.00 on translocation of wildlife²²

1.7.1.3 Facilitating payment of wildlife compensation claims.

The Wildlife Conservation and Management Act mandates the National Government with responsibility to compensate victims of HWC.²³ KWS facilitates and processes these claims by the County Wildlife Conservation and Management Committees. Although Compensation of victims mitigates and reduces the impact of the conflict, it is very expensive as admitted by KWS and has resulted in the service to review the wildlife compensation regulations to provide guidelines for the compensation process.²⁴

¹⁹ Muthui L, 'A Review of Various Options for Alleviating Human-Wildlife Conflicts in Kenya' The Kenya Institute for Public Policy Research and Analysis, Discussion Paper No. 138 2012, 21, -< [DP138.pdf](#)>- 2012.

²⁰ Kenya Wildlife Services, *Annual Report 2017*, 21-23.

²¹ Muthui L, 'A Review of Various Options for Alleviating Human-Wildlife Conflicts in Kenya' The Kenya Institute for Public Policy Research and Analysis, Discussion Paper No. 138 2012, 22, -< [DP138.pdf](#)>- 2012.

²² Kenya Wildlife Services, *Annual Report 2011*

²³ Section 25(1), *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

²⁴ Kenya Wildlife Services, *Annual Report 2017*, 21-23.

1.7.1.4 Corporate Social Responsibility (CSR) programmes and community enterprise.

KWS provides incentives to local communities that live in wildlife regions and incur the costs of wildlife, such as the loss of farming operations, which results in the loss of livelihoods. For example, KWS supports education-related projects, particularly in remote locations, such as the construction of classrooms and school administrative buildings to allow young people living in wildlife areas to access education through wildlife programs. KWS also supports the distribution of bursaries to the tune of Kshs.20 million per year in the Tsavo-Amboseli ecosystems as benefit sharing.²⁵ KWS also educates the communities which is aimed at creating awareness on the value of wildlife conservation with the aim of winning public support for conservation.

From these solutions it is evident that the National Government through KWS commits to addressing this conflict despite the shortcomings. However, it is important to ensure that there is involvement of all stakeholders such as the government authorities, NGOs and the local people. The local people should be fully involved in the development and implementation of HWC policies. Locally funded schemes as advocated for in this study are one of the creative solutions through which the local community contributes to wildlife conservation and management.

1.7.2 Implementation of locally funded schemes

Locally funded schemes for communities affected by HWC are an economic incentive to increase tolerance to wildlife. The schemes are also referred to as common fund solutions and have been found to be a useful instrument in addressing human-wildlife conflicts in developing nations. The locally funded scheme takes the form of a local contribution paid by those at risk, in amounts determined by their exposure to this risk. For these schemes to be successful the local community needs to be involved in decision-making and subsequent design of the programme.²⁶

By involving the community in the decision-making process, building local capacity, and creating a sustainable funding mechanism, it is possible establish a locally funded scheme that effectively prevents human-wildlife conflict while fostering a sense of responsibility and ownership within

²⁵ Kenya Wildlife Services, *Annual Report 2017*, 21-23.

²⁶ Bennett, N. J., Roth R, Klain, and Cullman, G., & Stedman, R. *Mainstreaming the social sciences in conservation. Conservation Biology*, 31(1), 2017, 56-66.

the community There are various components of locally funded schemes which need to be implemented for prevention of HWC and the long-term sustainability of the scheme.

The first component requires identification and selection of individuals who will be eligible to participate in the scheme in areas affected by HWC. The community is made up of various individuals and the first step would be to identify who in the community contributes to the scheme. There are various factors to consider such as age and income levels of the members of the community and other relevant criteria. In the identification criteria, managers of the scheme can also be picked out from the community creating more employment opportunities.

The second component of the locally funded scheme should be the scheme design. The scheme should be designed to meet the various needs of the members as well as to ensure sustainability of the locally funded scheme. Factors such as setting the payment terms well terms and conditions are important. While taking into consideration these factors, the members of the communities need to be involved. For effective involvement of these members, they need to be educated on all the relevant information. The scheme design should also be able to integrate technology in its implementation.

The third component of the scheme is the establishment of the fund to finance the preventive measures. This fund could be set up through contributions from community members, fundraising events, or partnerships with local businesses or organisations. It is important to ensure transparency and accountability in managing the fund. For efficiency of the scheme, it will be important to collaborate with relevant stakeholders, including local government agencies, wildlife conservation organisations, and NGOs. Partnerships will be useful as they leverage additional resources, technical expertise, and support for the locally funded scheme.

The fourth component of these schemes is the monitoring and evaluation of the scheme to determine its effectiveness. The goals of these schemes are meant to benefit the members of the community as well as to prevent the conflict. The schemes should therefore be monitored and adjusted where necessary to meet the objectives of the schemes. Regular review of the impact of reducing human-wildlife conflicts and adjustment strategies are important. Monitoring and evaluation should involve the community.

The fifth component for the scheme is incentives. The community should come up with incentives for those who contribute to the scheme. This could include benefits such as access to training programs, income-generating activities in conservation areas, or even public recognition. This study advocates for incentives such as recognition of the schemes as a reasonable measure taken to protect the victims of the conflict and their property.

When all these components are in place, the schemes prevent the conflict as the community no longer has animosity towards wildlife and instead promotes environmental stewardship as a result of benefitting from the presence of wildlife. This approach therefore changes the attitude of affected communities to wildlife.

1.7.3 Introduction of locally funded schemes as both a preventive measure of HWC and as a reasonable ground for compensation

The Wildlife Conservation and management Act of 2013 prescribes measures that enhance community participation in the conservation and management of wildlife. The Act recognises the importance of a community-based approach in wildlife conservation and management. This section of my study examines such an approach through locally funded schemes which when well implemented prevent HWC. In addition, my study proposes the incentivization of these schemes through their recognition as a reasonable measure taken to protect themselves and their property.

Locally funded schemes address HWC by preventing the conflict. The schemes take the form of a contribution by the affected communities creating a pool of communal funds. These funds can then be utilised to effect preventive measures such as building fences around the community land, establishing wildlife conservancy or sanctuary in accordance with the Act, or even establish a community wildlife association and register it under the appropriate law.²⁷ The Wildlife Conservation and Management Act recognises such measures and even works in collaboration with sanctuaries and offer support.²⁸ Such measures not only allow human beings and wild animals to co-exist but also allow human beings to fully utilise the natural resources.

²⁷ Section 39, *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

²⁸ Section 43, *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

Communities which establish such schemes take the initiative to protect themselves and their livelihood. Compensation of victims of human wildlife conflict is a mitigation measure for the conflict. It prevents communities taking action against the problem animal and resulting in further conflict. Section 25(5) of the Act provides for compensation of the victims of HWC by vesting the power on the County Wildlife Conservation and Compensation Committee to “verify a claim made and upon verification of the claim submit the claim to the Cabinet Secretary together with its recommendations.”²⁹ The committee has the power to review the claim, award and pay a compensation valued at the ruling market rates so long as the owner of the livestock, crops or other property took “reasonable measures, to protect such crops, livestock or property from damage by wildlife or his land use practices are compatible with the ecosystem-based management plan for the area.”³⁰

This section of the Act also gives discretion to the committees to determine what amounts to reasonable measures taken by the victims to protect themselves, their livestock and crops or other property. Having established how locally funded schemes are a preventive measure to human wildlife conflict, it is important to incentivise such schemes and as such my study seek the recognition of such schemes as a reasonable ground for compensation. This approach promotes the establishment of locally funded schemes. When the community’s actions to address the conflict through the locally funded schemes are recognized as grounds for compensation there is a mindset shift.

It must be noted that as much as the locally funded schemes prevent the conflict, the National Government still bears the duty to compensate the victims of the conflict. The scheme prevents the conflict by minimising the number of cases and does fund compensation of victims.

This concept of locally funded schemes as a preventive measure and as a reasonable ground for compensation of victims of HWC will be used to develop Kenya’s approach to managing this conflict. First the approach will be different in dealing with conflicts between local communities and wildlife as it involves changing the attitude of the affected local communities to wildlife and it will require them to be active participants in managing the conflict. Second, the approach seeks recognition of the active participation of the members in managing the conflict as a reasonable

²⁹ Section 19(i), *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

³⁰ Section 25(5), *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

ground for compensation in the event of conflict and as a beneficial effect to the management of the conflict.

1.8 Literature Review.

1.8.1 On Human Wildlife Conflict in Kenya

Conflict between people and wildlife occurs when their needs conflict, referred to as HWC. HWC is a major problem across the globe, however it is particularly critical in developing nations such as Kenya where the vast majority of people rely on natural resources to survive. One of the most pressing issues facing many parts of Kenya is human-wildlife conflict. As habitats for large mammal species like elephants, lions, leopards and buffalo continue to shrink and become fragmented due to increasing human activities involving agriculture and settlement, conflicts between humans and wildlife have risen. When these species' habitats are disrupted, it often results in dangerous encounters where people are injured or even killed, and their property destroyed. Tragically, this also leads to retaliatory killings of wildlife by human beings.

Several approaches have been attempted to help address this conflict. First, the focus shall be on the preventive measures. Preventive measures are those that minimise the risk of conflicts arising between people and animals.³¹ Such measures include habitat restoration, education and awareness, land-and-use planning. Habitat restoration, which is one of the most effective ways of eradicating conflict involves exclusion by use of physical barriers and creation of buffer zones around protected areas to separate farms from wildlife areas as seen in places like Laikipia but comes with significant financial costs and uses up valuable land.

Education and awareness involve informing communities about the importance of wildlife and how to live alongside them safely. These programs include workshops, training sessions, and outreach programs that provide information on wildlife behaviour, habitat conservation, and

³¹ Makindi S, Mutinda M, Olekaikai N, and Olelebo W, 'Human-Wildlife Conflicts: Causes and Mitigation Measures in Tsavo Conservation Area, Kenya,' International Journal of Science and Research 2012-<<http://ir.mksu.ac.ke/bitstream/handle/123456780/4146/document%282%29.pdf?sequence=1&isAllowed=y>>.

responsible tourism.³² It also involves educating the members of the community on preventive ways they can use to keep wildlife away from their property through fear provoking stimuli or even through community-based approaches. Translocation of the individual "problem" animals is another common technique, but locating suitable release sites with adequate habitat has proven to be challenging.

The second approach is the mitigation approach, mitigation measures occur once the conflict has already occurred and are mostly facilitated by the state through corporations such as Kenya Wildlife Services.³³ The overarching purpose of mitigation mechanisms is to provide a buffer to people when an event occurs and maintain tolerance to wildlife.³⁴ Mitigation measures mainly include 3rd party funded compensation, ex-gratia payments, community partnerships, and interim relief schemes. Payments from these schemes are provided to individuals or families for HWC incidents that have resulted in tangible damage, loss, injury or death.³⁵

In Kenya mitigation measures are mainly undertaken by the state and the law provides for such measures. The government through the County Wildlife Conservation and Compensation Committee compensates individuals or families of HWC incidents that have resulted in tangible damage, loss, injury or death. Provided such victims took reasonable measures.

Community-based conservation programs that provide economic incentives for people to coexist peacefully with wildlife, such as tourism revenue sharing or livestock insurance, have achieved some success in reducing tensions as well as building local support for conservation efforts.³⁶

³² Makindi S, Mutinda M, Olekaikai N, and Olelebo W, 'Human-Wildlife Conflicts: Causes and Mitigation Measures in Tsavo Conservation Area, Kenya,' International Journal of Science and Research 2012-<<http://ir.mksu.ac.ke/bitstream/handle/123456780/4146/document%282%29.pdf?sequence=1&isAllowed=y>>.

³³ Human-Wildlife Conflict Microinsurance Scheme, 'Global Wildlife Program and Environment, Natural resources and Blue Economy Webinar' 12 November 2019 -<<https://thedocs.worldbank.org/en/doc/2f50dedcced3bdf69ee776654e04f443-0320072019/original/LIFE-Kenya-Human-Wildlife-Conflict-Microinsurance-Scheme-11-12-19.pdf>>.

³⁴ Muruthi P, African Wildlife Foundation Human-wildlife conflict: A review of current management strategies and future directions-<https://www.awf.org/sites/default/files/media/Resources/Books%20and%20Papers/AWF_Human_Wildlife_Conflict.pdf>. (2015).

³⁵ Nyhus P, Osofsky A, Ferraro P, Madden F, and Fischer H 'People and Wildlife, Conflict or Co-existence?' Cambridge University Press, 2005 107-121.

³⁶ Western J and Waithaka E, 'Land tenure reform in Kenya: Good news for whom?' (2005) 1(1) Strathmore Law Journal, Page 15.

Research has shown that long-lasting solutions will require innovative strategies that will address both wildlife and the community needs simultaneously. With the climate and land use patterns projected to change dramatically across Kenya in the coming decades, more study is still needed to understand how human-wildlife dynamics may shift as a result. Ultimately, achieving coexistence between humans and wildlife will demand flexible policies and programs supported by ongoing evaluation and adaptation over time such as those suggested in this study.

1.7.2 On community-based approaches to managing conflicts between local communities and wildlife.

Recent studies have shown that community-based strategies are successful in reducing HWC, with community inclusivity playing a crucial role in the efficacy of these interventions.³⁷ This literature review attempts to examine the available research on community inclusivity in managing HWC. My study proposes a different approach that is community inclusive compared to the previous approach where only the state and hardly the community is involved in wildlife conservation and management.

The success of community inclusivity in dealing with Human Wildlife Conflict has been seen following research done and collected from academic databases where the focus has been in African regions experiencing wildlife conflicts. Community inclusive programs included those that incorporate revenue sharing, insurance schemes, development projects, or alternative protein sources aimed at communities suffering crop/livestock losses to species like elephants or great apes.

Several studies have demonstrated success in reducing this conflict. In Kenya's Maasai Mara National Reserve, it was found that allocating 20% of park entrance fees to surrounding Maasai for healthcare and education correlated with over a 70% drop in lion retaliation killings after just 2 years.³⁸ Similarly, in Tanzania's Tarangire National Park, studies revealed that livestock insurance programs by the community lessened elephant-related crop damage and human-elephant conflict over time as the fund was used to take preventive measures.

³⁷ Muthui L, 'A Review of Various Options for Alleviating Human-Wildlife Conflicts in Kenya' The Kenya Institute for Public Policy Research and Analysis, Discussion Paper No. 138 2012, 24, -< [DP138.pdf](#)>- 2012.

³⁸ Western J and Waithaka E, 'Land tenure reform in Kenya: Good news for whom?' (2005) 1(1) Strathmore Law Journal, Page 15.

In Uganda's Bwindi Impenetrable National Park, it was reported that by providing protein supplements to offset gorilla crop-raiding and establishing community patrols, illegal hunting and snares set for gorillas declined substantially as well as the crop damage. In Namibia, it was also observed how channelling trophy hunting revenues into community projects, like water infrastructure, gave locals in Namibia's Kunene region an economic incentive to conserve black rhinos on communal lands.

Community inclusivity, while not a complete solution given the complexity of human-wildlife dynamics, this literature review shows that when properly designed and monitored, community-based conservation initiatives show promise in managing the conflict. By making coexistence economically beneficial through incentives for alternative livelihood activities or development projects, these programs can help protect wildlife and human well-being in shared landscapes in a sustainable, community-supported manner through ongoing adaptive engagement over the long-term.

1.7.3 On Government recognition of community inclusive programs for managing HWC.

As human and wildlife populations come into increasing contact, community-based initiatives have emerged as a promising means of mitigating conflict in a sustainable manner. However, without strong legal policies to back them up, such programs face challenges to long-term viability. This literature review analyses the need for supportive legislation and policy frameworks to legitimise community participation in conservation efforts by assessing how national laws and policies impact recognition of community-inclusive conflict mitigation programs in the Global South.

Strong legal frameworks in Tanzania that formalise community-run Wildlife Management Areas are associated with a decrease in retaliatory killings due to the advantages and management of tourism. On the other hand, poor policies were associated with unsuccessful programs. In India, attempts to stop crop raiding and poaching near protected areas were hindered by the community forest patrols' lack of legal authority. Similarly, in Brazil, the removal of government subsidies caused the extractive reserve projects that had previously lessened conflicts resulting from deforestation to fail.

From the above case studies, it is clear that supportive regulatory and policy frameworks are essential for community approaches to survive. Addressing the social and economic causes of conflict more sustainably involves formalising local involvement and providing financial incentives through benefit-sharing and devolved authority. But insufficient acknowledgment makes these kinds of projects susceptible to changes in legislation. It is worth considering more in light of the strong legal enshrinement of community involvement in conservation.

In conclusion, this critical analysis suggests strengthening legal frameworks for community inclusion in conflict mitigation programs could help optimise outcomes through long-term viability and adaptive governance. More research is still needed on crafting optimal legislative designs to legitimise grassroots participation.

1.8 Contribution

This study will, as a whole, contribute to Human Wildlife Conflict management studies in Kenya. While previous studies in Kenya have focused on preventive and mitigative measures for managing the conflict. The practice is barely inclusive of the community and where engagement exists it is minimal. This study will go ahead to propose a way to engage the community in the mitigation of this conflict. The study will be unique in as far as I) its analysis of the HWC management measures in Kenya and seeks to develop the measures through proposing the engagement of the community in managing the conflict and II) it will seek the recognition of the community engagement by the law in an effort to manage the conflict better.

Finally, the study will also complement Senate Bill No 30 of 2020 by Senator James Mwaruma of Taita Taveta County on the compensation for personal injury or death or damage to property as a result of HWC.

1.9 Methodology

This study will consist of two major parts: the first detailing Kenya's approach to management of Human Wildlife Conflict and the second part assessing how this approach can be community inclusive to minimise the conflict. The study will rely on qualitative evidence from mostly secondary sources such as KWS reports, books, articles, case law and reports. It will also use a primary source which is the Wildlife Conservation and Management Act. The study will, in general, utilise a deductive approach with the first two chapters setting up a premise each, from which the main claim will be derived.

In the first part on Kenya's approach, the study will first look into the two approaches to management of human wildlife conflict-the prevention approach that involves taking measures to ensure the conflict does not occur and the mitigation approach that involves taking measures to reduce the impact of the conflict. This will be mainly by looking at articles and books by other scholars who have detailed management of HWC in Kenya.

The study will then discuss the establishment of locally funded schemes and their role in the mitigation of HWC. This will also entail looking at articles and reports on the performance of these locally funded schemes and their potential to mitigate the conflict. The analysis will show how the schemes are community inclusive and how they change the community's attitude to wildlife conservation and management. The study will also look at the Wildlife Conservation and Management Act to establish how such schemes should be recognised as reasonable measures taken for compensation of victims of HWC.

2. THE LEGAL FRAMEWORK OF WILDLIFE CONSERVATION AND MANAGEMENT IN KENYA.

2.0 Introduction

The objectives of this chapter are to give a historical overview on wildlife conservation and management in Kenya, the effects of the imposed laws by the colonial government on wildlife conservation and management and protection of the same in the current legal regime. The aim of this chapter is to understand the approach taken in managing HWC in Kenya. The chapter begins by discussing the relevance of wildlife conservation and management. The discussion on the legal framework will be divided into two parts, the first being that of the colonial legal framework and the second being the wildlife conservation approach in Kenya and the legal framework. This section will outline some of the key parts of Kenya's legal framework that are relevant to wildlife conservation and management. First, it will discuss provisions found in Kenya's Constitution relating to the environment and natural resources. Next, it will look at important statutes or Acts of Parliament that have been passed covering areas like land and wildlife. Finally, it will mention some past court cases where judges have ruled on issues around wildlife conservation. Together, these legal sources establish the ground rules and guidelines that Kenya follows in managing its wildlife resources.

Wildlife conservation and management are extremely relevant issues that all countries must prioritise. As populations expand and development increases, protecting natural habitats and ecosystems is crucial. Kenya recognizes this importance, as its tourism industry relies heavily on maintaining abundant wildlife populations that attract visitors from around the world. Tourism brings in significant foreign exchange that boosts Kenya's economy.³⁹ With continued conservation efforts, this valuable Kenyan industry can be preserved.

³⁹ Waithaka M, "Historical Factors that have Shaped Land Tenure Systems in Kenya" (2012), 1.

In addition to economic relevance, wildlife plays important ecological and social roles. Many species help maintain balance within complex food webs and natural processes like pollination.⁴⁰ When wildlife numbers decline or local extinctions occur, surrounding plant and animal communities can be disrupted. This threatens long-term sustainability of ecosystems. Furthermore, some communities in Kenya derive parts of their identities and cultural practices from interactions with wildlife in their areas. Conservation continues to support the maintenance of these social and cultural values.

Legally, Kenya has recognized the significance of wildlife by establishing a framework around the Wildlife Conservation and Management Act. International agreements like the Convention on Biological Diversity that Kenya has signed also emphasise the global relevance of preserving biodiversity.⁴¹ With climate change and other threats, strong conservation is needed now more than ever to safeguard natural resources for current and future generations.

Finally, wildlife holds relevance for Kenya's economy, environment, society and legal system. Continued efforts to implement effective conservation policies through approaches like community involvement and benefit-sharing will help ensure wildlife remains viable for years to come despite pressing challenges. With dedicated action, this relevance can be sustained long into the future.

2.1 A historical account of wildlife conservation and management during the colonial era.

The colonial era in Kenya from 1895 to 1963 had a significant impact on the approach to wildlife conservation and natural resource management in the country.⁴² When Britain established control over Kenya and declared it a colony in 1895, they introduced a style of governance, land ownership policies, and philosophy of wildlife utilisation that shaped the Kenyan attitude towards wildlife conservation for decades.⁴³ This period saw both progress towards protection of wildlife through

⁴⁰ Bolen EG and Robinson JG, 'Forest Fragmentation and Abundance of Non-Timber Forest Products: A Meta-Analysis' (1995).

⁴¹ Convention on Biological Diversity (opened for signature 5 June 1992, 1760 UNTS 79; entered into force 29 December 1993).

⁴² Waithaka M, "Historical Factors that have Shaped Land Tenure Systems in Kenya" (2012), 21.

⁴³ Waithaka M, "Historical Factors that have Shaped Land Tenure Systems in Kenya" (2012), 21.

reserve creation, as well as detrimental impacts of land appropriation and hunting that devastated populations and alienated local communities.

One of the first actions of the colonial government was establishing the Southern and Northern Game Reserves in 1899-1900, covering 70,000 square kilometres in an effort to safeguard habitat. However, these reserves existed alongside policies that were harmful to wildlife. Large tracts of the most fertile highlands were designated as "White Highlands" for European settlers, displacing indigenous groups from their traditional lands and severing cultural and spiritual connections to the environment. Wildlife outside reserves faced massive threats due to unchecked hunting and habitat loss as more land was cleared for agriculture.⁴⁴

The construction of the Uganda Railway from 1896-1901 transformed Kenya's landscape both physically and socially in ways that troubled conservation efforts for decades. As the railway opened up new areas for farming and settlement, it accelerated the rate of wildlife decline. Settlers decimated animal populations to create space for crops and livestock, killing thousands of wild animals. Professional hunters were also attracted to the region's big game, launching extravagant hunting expeditions that further depleted numbers. By the 1930s, concerns arose over widespread cultivation and numbers of animals killed to protect crops which drove calls for stronger protections like national parks and reserves.

While the Game Department established in 1907 was tasked with enforcing laws and managing reserves, it struggled with lack of funding and personnel.⁴⁵ A major issue was addressing human-wildlife conflicts as animals left reserves and damaged crops or killed livestock. The Department spent more time and money carrying out mass killings of so-called "vermin" animals than protecting them. This dysfunctional approach failed to safeguard resources or address root causes of threats like habitat loss and extravagant game hunting.

The colonial legacy had long-term negative impacts. Traditional hunting practices were banned while subsistence use became illegal, severing cultural and livelihood connections. A series of land laws justified large-scale expropriation of indigenous territories without compensation, fuelling resentment by the local communities. By independence in 1963, wildlife conservation had few

⁴⁴ Mungehm B, *The Ecology of Acacia-Commiphora Bushlands of Northern Kenya* (1966).

⁴⁵ Parker J and Bleazard A, *The Use of Trees on Farms in Kenya* (2001).

supporters amidst an alienated population after 70 years under this British system of governance, land policies, and conservation philosophy during the colonial period in Kenya. While some progress was made through reserve creation, the colonial approach overall had detrimental impacts through unsustainable land use and failed community engagement that continues shaping wildlife conservation challenges till date.

In conclusion, the historical account of wildlife conservation and natural resource management during Kenya's colonial era from 1895-1963 was complex, with both advances as well as setbacks that significantly influenced the long-term relationship between people and nature in the country. While initial steps towards protection were taken through early reserve establishment, detrimental land policies, hunting, and a dysfunctional management approach severely depleted wildlife populations and alienated local communities in ways that created lasting impacts. A nuanced understanding of this colonial legacy remains important for addressing ongoing conservation challenges in Kenya stemming from that period.

2.2 Detrimental land legal instruments that affected wildlife conservation and management.

The British made incorrect assumptions about Kenya's status as a protectorate. They thought this gave them rights over the land, but it did not. Maurice Sorrenson, a famous professor and author on European settlement in Kenya, advised against this.⁴⁶ Sorrenson said the British authorities did not actually own the land, as Kenya was a foreign country. The people of Kenya remained the true owners. However, the British enacted laws to establish their rule and claim land rights. These policies on land privatisation had consequential effects on wildlife conservation and management.

The large-scale privatisation of land in Kenya during the colonial period had severely detrimental impacts on the country's wildlife populations. As vast tracts of the most fertile highlands were designated as "White Highlands" and deeded to European settlers, vast areas of important habitat for many species were lost. Settlers were incentivized to clear the land of wildlife that occupied the spaces they wanted for their livestock and agriculture. Lions, leopards, elephants and other prestigious animals were killed simply for being in the way of development. This reduced the wildlife numbers and fragmented their ranges. With the best lands now off limits in private

⁴⁶ Colonial Office to Foreign Office, Foreign Office Confidential Print 6861, 1896, 212.

ownership, many species were pushed into smaller, less viable areas that could not support stable populations.

The privatisation of land also had important social impacts that negatively influenced wildlife conservation. As indigenous groups were displaced from their ancestral lands and lost access to traditional hunting grounds, it severed important cultural and spiritual connections people had to the natural world. Combined with other colonial policies, this alienated local communities from wildlife and the resources they had traditionally relied on. With their livelihoods disrupted and relationships to the land destroyed, there was little motivation among the local population to support conservation efforts like protected area establishment. Resentment of wildlife grew as a result, hampering protection over the long term.

There were several reasons for issuing private land titles to Europeans. One was to formally register and organise land ownership. This allowed land to be transferred and sold as well as helping force out local communities.⁴⁷ It also cleared the way for the Kenya-Uganda railway's construction.⁴⁸ Vast areas were then leased to white settlers and companies for 99 years. This included the fertile highlands. Another purpose of the land titles was to prevent Africans from demanding compensation later on. The British wanted to invalidate any claims about land taken by settlers or the government.⁴⁹

2.2.1 The Crown Lands Ordinance(1902)

According to the 1901 East Africa Order-in-Council, Crown Land is "all public lands within the East African Protectorate which, at present, are subject to control of His Majesty by virtue of any Treaty, Convention or Agreement, or His Majesty's Protectorate, and all lands which have been or may hereafter be acquired by His Majesty under The Land Acquisition Act, 1894, or otherwise however."⁵⁰

⁴⁷ Munro A, 'The Land Tenure Revolution in Kenya 1954-1959; Legal and political implications' Published LL.M Thesis, Columbia University, 1959, 4.

⁴⁸ Information Cradle, "Land Alienation in Kenya" (4 November 2019) <https://informationcradle.com/kenya/land-alienation-in-kenya/>.

⁴⁹ The Kenya Land Commission (Carter Commission), The Kenya Land Commission Report, April 1934, para. 30

⁵⁰ Sorrenson M, Origins of European Settlement in Kenya, Oxford University Press, Nairobi, 1968, 53.

The first Crown Land Ordinance of 1902 granted settlers ninety-nine-year leases and subjected them to state administration. This legislation superseded the Ordinance of 1897, which provided for leases valid for twenty-one years.⁵¹ Sir Charles Elliot used this Ordinance to evacuate the natives from their lands which were alienated for settler use.

2.2.2 The Crown Lands Ordinance (1915)

The adoption of this Ordinance vested all land in Kenya to the Crown, leaving indigenous as simple tenants at the will of the Crown.⁵² Barth CJ in *Isaka Wainaina v Murito*⁵³ revealed the full meaning of this Ordinance by ruling that no native private rights were reserved, and the Kenya Colony Order-in-Council of 1921 vested territory reserved for local tribes in the Crown. In essence, Her Majesty the Queen held the ability to dispose of the land. This act extended the period of leases granted to white settlers from ninety-nine to nine hundred and ninety-nine years. Furthermore, it designated all 'waste and vacant' land in the Protectorate 'Crown Land', classed that land as subject to the Governor's powers of alienation, and delimited it into either 'Scheduled Areas' for European settlement or Non-Scheduled Areas or African Reserves.⁵⁴

2.2.3 The Crown Lands (Amendment) Ordinance (1938)

This legal instrument gave legal effect to the dual policy of European white highlands or high potential areas and African native reserves or marginal lands. This duality supported a legal plurality with African customary law being in force in the African reserves and English law governing matters regarding the white highlands.⁵⁵ This approach eliminated native claims to places outside of African reserves. Until 1959, the regulations governing land held by Europeans differed from those governing Africans.⁵⁶

⁵¹ -<https://informationcradle.com/kenya/land-alienation-in-kenya/> on 4 November 2019.

⁵² Okoth-Ogendo HWO, *Tenants of the Crown: Evolution of agrarian law and institutions in Kenya*, African Centre for Technology Studies Press, Nairobi, 1991, 11.

⁵³ *Isaka Wainaina v Murito* [1923] (2) KLR.

⁵⁴ <https://informationcradle.com/kenya/land-alienation-in-kenya/> on 5 November 2019.

⁵⁵ <https://informationcradle.com/kenya/land-alienation-in-kenya/> on 5 November 2019.

⁵⁶ <https://api.parliament.uk/historic-hansard/lords/1932/may/04/kenya-land-commission> on 5 November 2019.

2.3 The Wildlife (Conservation and Management) Act, Cap 376.

Kenya's wildlife policy was embodied in the Sessional Paper No. 3 of 1975 entitled "*A Statement on Future Wildlife Management Policy in Kenya*".⁵⁷ This policy was a radical departure from the previous approach to wildlife conservation, which emphasised protected areas. The policy sought to underscore the following important policy changes:

- a) It identified the primary goal of wildlife conservation as the optimization of returns from wildlife defined broadly to include aesthetic, cultural, scientific and economic gains, considering the income from other land uses.
- (b) It pointed out the need to identify and implement compatible land uses and fair distribution of benefits derived from wildlife including from both non-consumptive and consumptive uses of wildlife.
- (c) It underscored the need for an integrated approach to wildlife conservation and management to minimise human-wildlife conflicts; and
- (d) The government assumed the responsibility of paying compensation for damages caused by wildlife.

The Wildlife (Conservation and Management) Act of 1976 subsequently established the legal provisions for the implementation of the Policy. This Act amalgamated the then Game Department and the Kenya National Parks to form a single agency, the Wildlife Conservation and Management Department (WCMD), to manage wildlife. Subsequently, through an Amendment to the Act in 1989, the Kenya Wildlife Service (KWS) was established to replace WCMD.

However, although the Act attained significant success at first, it failed to attain the objectives for which it was set out to achieve. The Act failed to reduce the conflict between people and wildlife; achieve the desired goal of adopting an integrated approach to wildlife management; achieve the desired goal of mainstreaming the needs and aspirations of landowners and communities in wildlife areas into wildlife conservation planning and decision making processes; achieve greater protection or conservation of wildlife within the protected and outside protected areas; achieve the

⁵⁷ Sessional Paper No. 3 of 1975, "*A Statement on Future Wildlife Management Policy in Kenya*" (Kenya, 1975).

desired goal of putting in place a regulatory framework for wildlife utilisation; and finally to put into place mechanisms to monitor and ensure the implementation

2.4 The legal regime regulating wildlife management and conservation in Kenya.

The legal framework regulating wildlife conservation and management in Kenya had been regulated by various sectoral laws until the Wildlife Conservation and Management Bill of 1989 which amalgamated these laws. This law was enacted in 1976 and was significantly amended in 1989 and no other amendment was made after. This Bill was transformative to wildlife conservation and management and despite its success the Act failed to reduce the conflict between people and wildlife. To achieve this goal the Wildlife and Conservation Bill of 2013, the current governing law, was enacted and came into force on 10th January 2014.⁵⁸

Currently the legal framework establishes a system through the Constitution of Kenya 2010, the Wildlife (Conservation and Management) Act of 2013, and various other sectoral laws such as land and forest acts. This section shall look into this legal regime and the various relevant provisions to give an overview of the regime.

2.4.1 The Constitution of Kenya

The Constitution, being the grund-norm, comprises the laws that form the basis upon which statutes and other legal instruments are drafted. The constitution protects and preserves the environment by placing an obligation on the state as the custodian of the environment and its natural resources for the benefits of the Kenyan people.⁵⁹ In doing so, the state is also required to engage the public in matters of environmental conservation. As a result, her people have an obligation to cooperate with state organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.⁶⁰

⁵⁸ *Wildlife Conservation and Management Act* (No. 47 of 2013).

⁵⁹ Article 69, *Constitution of Kenya* (2010).

⁶⁰ Article 69, *Constitution of Kenya* (2010).

The Parliament of Kenya is required by the constitution to ratify any transaction that involves the grant of a right or concession by or on behalf of any person including the national government to another person for the exploitation of any natural resource of Kenya.⁶¹

The Fourth Schedule which deals with distribution of functions between the national government and the county governments, obligates the government to protect the environment and natural resources with a view to establishing a durable and sustainable system of development including in particular; fishing, hunting and gathering; protection of animals and wildlife; water protection, securing sufficient residual water, hydraulic engineering and the safety of dams and energy policy.⁶²

2.4.2 The Wildlife Conservation and Management Act, 2013.

The preamble to the Wildlife Conservation and Management Act (WCMA) states that “it was enacted to provide for the protection, conservation, sustainable use and management of wildlife in Kenya and for connected purposes.” The guidelines of the Act apply to all wildlife resources on public, communal, and private property, as well as Kenya's territorial seas. The Act's implementation is influenced by broad concepts such as devolution, public engagement, ecosystem approach, sustainable use, and benefit sharing. To ensure that the Act is properly implemented, the Cabinet Secretary (CS) for all wildlife-related affairs must develop and publish a national wildlife conservation and management strategy at least once every five years. This plan aims to guide the preservation, conservation, management, and regulation of wildlife resources and the wildlife industry.

The WCMA is comprehensive and tackles most topics of wildlife conservation and management. This includes Kenya's institutional framework for wildlife conservation, regulation of the wildlife industry, and the preservation and management of wildlife and protected areas. The Act also covers human-wildlife conflict reduction, incentives and benefit sharing, offenses and penalties, and enforcement and compliance.

⁶¹ Article 71, *Constitution of Kenya* (2010).

⁶² Schedule IV of *The Constitution of Kenya* (2010).

The CS is authorized to issue rules to ensure that the Act's provisions are properly implemented. There have been no rules adopted under the WCMA. However, the Act states in its transition provision that rules implementing the Wildlife (Conservation and Management) Act (Repealed) would remain in effect until replaced by regulations enacted under the WCMA. The regulations made under the repealed Act are the *Wildlife (Conservation and Management) (Recognised Airfields) Regulations*, the *Wildlife (Conservation and Management) (National Parks) Regulations*, the *Wildlife (Conservation and Management) (Control of Raw Ivory) Regulations* and the *Wildlife (Conservation and Management) (Aloe Species) Regulations*.

The WCMA was amended in 2018 to address various shortcomings it had that prevented its proper enforcement including minimum penalties and lack of a comprehensive list of protected species.

2.5 Conclusion

Wildlife conservation has undergone significant changes in Kenya over time due to both positive progress as well as detrimental impacts. During the colonial era from 1895-1963, the approach was mixed - reserves were established but harmful land policies displaced people from ancestral lands and hunting depleted populations. This created long-lasting negative effects on relationships with wildlife. However, after independence the government recognized conservation's importance through the Wildlife Conservation and Management Act of 1976. This established KWS and aimed to fulfil the pledge to protect resources using all means. But it failed to reduce human-wildlife conflicts or integrate community needs.

Currently, Kenya has a strong legal framework centred around the Constitution of 2010 and Wildlife Conservation and Management Act of 2013. These Acts recognize wildlife's significance and place obligations on the state to engage the public and ensure sustainable development of natural resources. While challenges remain due to past detrimental impacts, Kenya has demonstrated commitment to conservation through progressive legal reforms that incorporate principles like public participation, benefit-sharing, and an integrated ecosystem approach. With dedicated implementation of these laws and community inclusive strategies, Kenya can continue safeguarding its globally significant wildlife heritage long into the future.

3. A QUALITATIVE COMPARISON BETWEEN THE CURRENT COMPENSATION APPROACH TO HWC AND THE PROPOSED APPROACH OF COMMUNITY INCLUSIVE FUNDED SCHEMES AS A PREVENTIVE MEASURE AND AS A REASONABLE GROUND FOR COMPENSATION

3.0 Introduction

HWC remains an ongoing challenge faced by many communities in Kenya. The costs of human-wildlife conflict are substantial. Crop and property destruction by wildlife negatively impacts rural livelihoods and food security. Livestock predation causes economic losses for communities. Injuries and fatalities due to attacks also take both an economic and social toll. At the same time, retaliatory killings of problematic animals by farmers seeking to protect their resources threatens wildlife conservation efforts. This chapter seeks to juxtapose the current compensation approach of dealing with this conflict and the introduction of locally funded schemes as a community inclusive solution to HWC. Thereafter, the similarities, differences and unique aspects of each system drawn from the comparison will be pitted against each other to determine which of the two systems is a more ideal means of resolving HWC.

This chapter is divided into three parts. It begins by looking at the current compensation approach of victims of HWC and the pros and cons of this approach. The chapter, in the second part, then focuses on a community-based resolution using locally funded schemes- an alternative approach that is specifically tailored to involve the affected communities in resolving the dispute and the recognition of the schemes as a reasonable measure taken by the community to protect themselves and their property. The last part picks out which of the two is more suited to resolve this conflict followed by a conclusion on the chapter.

3.2 The current compensation resolution to HWC

Compensation of victims of HWC as part of wildlife conservation efforts was first introduced in Kenya in 1976 through the Wildlife (Conservation and management) Act, 1976, part 9, section 62, which states:

“Where any person suffers any bodily injury from or is killed by any animal, the person injured or in the case of a deceased person, any other person who was dependent upon him at the date of his death, may make application to a district committee established by this section, for the award of compensation for the injury or death.”⁶³

However, initial payments for injury/death were very low at only Kenya shillings 15,000-30,000.⁶⁴ Claims processing was also very slow creating dissatisfaction with the system. As a result, in 2006, amendments increased injury or death compensation amounts to K.shs 50,000-200,000.⁶⁵ However, compensation for property damage like crop and livestock losses had been suspended in 1989 and was not reinstated until the new Wildlife Conservation and Management Act of 2013 Act. This Act substantially raised all payment amounts and expanded species coverage, showing recognition of multiple conflict-causing species. For example, permanent disability is now compensated up to K.shs 5,000,000.⁶⁶ These gradual improvements demonstrate the government's efforts to strengthen compensation as a tool of mitigation.

Between the years 2007-2016, a total of 18,794 compensation claims were filed under the Kenya National Compensation Scheme. Snakes caused the most conflicts overall (44.8%), human deaths (43.1%), and injuries (76.9%). Elephants were the second highest at 22.3% of total cases and caused most crop/property damage.⁶⁷ The distribution of conflicts and payouts was uneven across Kenya's 47 counties. Some counties like Tana River and Wajir saw the most human deaths while Kitui and Wajir had the most injuries.

⁶³ Section 62 *Wildlife (Conservation and management) Act 1976*

⁶⁴ Ogutu JO, Piepho HP, Said MY, Ojwang GO, Njino LW, Kifugo SC, Wargute PW, 'Extreme wildlife declines and concurrent increase in livestock numbers in Kenya: What are the causes?' (2016) 11(9) PLoS One e0163249 - <<https://doi.org/10.1371/journal.pone.0163249>>- page 3.

⁶⁵ *Wildlife (Conservation and management) Act 1976.*

⁶⁶ Section 25(3), *Wildlife Conservation and Management Act (No. 47 of 2013).*

⁶⁷ Ogutu JO, Piepho HP, Said MY, Ojwang GO, Njino LW, Kifugo SC, Wargute PW, 'Extreme wildlife declines and concurrent increase in livestock numbers in Kenya: What are the causes?' (2016) 11(9) PLoS One e0163249 - <<https://doi.org/10.1371/journal.pone.0163249>>- page 3.

Since the WCMA's passage in 2013, the government, through the Ministry of Tourism and Wildlife, has disbursed a total of Kshs. 1,201,350,000 (one billion, two hundred and one million, three hundred and fifty thousand) to KWS for HWC between 2014 and 2018, as follows: In the fiscal year 2014/15, a total of 147 million; in the succeeding year 2015/16, a total of Kshs 235 million; Kshs 230 million was spent in the year 2016/17; Kshs 150 million in the year 2017/18; and Kshs 439 million in the year 2018/19. Despite these high and growing statistics, additional claims totalling Kshs 1.859 billion have been put off due to a lack of necessary evidence,⁶⁸ while reject claims total Kshs 1.506 billion. These rejected claims, although some being true and denied on a technical basis, have produced anger among the affected populations, leading in retaliatory kills of animals, which is a disadvantage to the present conservation efforts.

The goal of compensation is to increase tolerance for wildlife by recognizing losses and promoting coexistence over retaliation. Studies show certain programs in Kenya have reduced retaliatory killings of threatened species like lions by changing the attitudes of affected communities. By financially acknowledging conflicts, compensation aims to gain community support for conservation rather than treating wildlife as a "problem" to be eradicated. International examples also indicate compensation can be an effective policy tool when adequately funded and administered. At its best, compensation recognizes the human costs of living alongside wildlife and incentivizes peaceful coexistence.

However, compensation faces substantial challenges in Kenya. The Kenya National Compensation Scheme has spent over KES 3 billion since 2007 while only compensating 30% of claims.⁶⁹ Inconsistent funding competes with other government priorities and limits payouts especially during the tough economic times that Kenya faces. Slow claims processing has also reduced satisfaction in the system. Covering a small portion of losses may not achieve the aimed attitude changes of the community. Early schemes ignored certain conflict causers like snakes and till date the schemes only offer compensation for losses from certain animals. The significant financial and

⁶⁸ Ogutu JO, Piepho HP, Said MY, Ojwang GO, Njino LW, Kifugo SC, Wargute PW, 'Extreme wildlife declines and concurrent increase in livestock numbers in Kenya: What are the causes?' (2016) 11(9) PLoS One e0163249 - <<https://doi.org/10.1371/journal.pone.0163249>> - page 5.

⁶⁹ Ogutu JO, Piepho HP, Said MY, Ojwang GO, Njino LW, Kifugo SC, Wargute PW, 'Extreme wildlife declines and concurrent increase in livestock numbers in Kenya: What are the causes?' (2016) 11(9) PLoS One e0163249 - <<https://doi.org/10.1371/journal.pone.0163249>> - page 1.

administrative burdens raise questions about long-term sustainability as a primary solution given the rising conflicts with growing human and wildlife populations.

While compensation aims to promote tolerance, evidence shows it faces limitations as Kenya's primary response to human-wildlife conflicts. Funding shortfalls, slow processing, failure to adequately cover losses, and geographical biases reduce its effectiveness over time. A sole focus on top-down financial remedies risks overlooking locally appropriate, integrated solutions better suited to changing conditions on the ground. Combining compensation with community-led approaches shows promise, such as improved animal husbandry, habitat protection through conservancies, and educational programs. With creative policymaking, Kenya can sustainably balance growing human needs with thriving wildlife for shared economic and ecological benefits long into the future.

3.3 Introduction of locally funded schemes as both a preventive measure of HWC and as a reasonable ground for compensation

The Wildlife Conservation and management Act of 2013 prescribes measures that enhance community participation in the conservation and management of wildlife. The Act recognises the importance of a community-based approach in wildlife conservation and management.⁷⁰ This section of my study examines such an approach through locally funded schemes which when well implemented prevent HWC. In addition, my study proposes the incentivization of these schemes through their recognition as a reasonable measure taken to protect themselves and their property.

⁷⁰ Section 5(2), *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

3.3.1 Locally funded schemes as a preventive measure of HWC

Locally funded schemes address HWC by preventing the conflict. The schemes take the form of a contribution by the affected communities creating a pool of communal funds. These funds when managed can then be utilised to effect preventive measures such as building fences around the community land, establishing a wildlife conservancy or sanctuary in accordance with the Act, or even establish a community wildlife association and register it under the appropriate law.⁷¹ The Wildlife Conservation and Management Act recognises such measures and even works in collaboration with sanctuaries and offers support to the sanctuaries.⁷² Communities which establish such schemes take the initiative to protect themselves and their livelihood, in addition the members of those communities enjoy the benefits of co-existence with wildlife.

Locally funded schemes prevent the conflict from occurring rather than dealing with the consequences of HWC. As a result, human beings are able to protect their lives as well as their livelihood, at the same time such a scheme is a step into more income for the community. Wildlife conservancies and sanctuaries are an attraction site for both domestic and foreign tourists. With the guaranteed support from the government in accordance with the Act, such sanctuaries would result to better livelihoods for the community as well as their growth economically. Communities which establish locally funded schemes as a preventive measure enjoy both the tranquillity of securing their lives and livelihoods, as well as the benefits that accrue from wildlife conservation and management.

The communities' efforts on wildlife conservation and management enables biodiversity and restores wildlife populations. A study by the Yale School of the Environment shows that wildlife species, throughout their interaction with the environment, are the missing link between biodiversity and climate and protecting or restoring their populations could collectively facilitate the additional capture of 6.41 billion tons of carbon dioxide annually. This is 95% of the amount needed every year to meet the Paris Agreement target of removing enough carbon from the atmosphere to keep global warming below the 1.5-degree Celsius threshold.⁷³ Other environmental

⁷¹ Section 39, *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

⁷² Section 43, *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

⁷³ "Solving the climate crisis and protecting wildlife can go hand in hand," Yale School of the Environment, 14 November 2022,

benefits include protection of food chains which determine the equilibrium of populations in their habitat.

In conclusion, locally funded schemes are a preventive measure to HWC and are community inclusive. They effectively manage the conflict and offer beneficial co-existence for both animals and human beings. They not only cater for the needs of animals and human beings but also the environment at large making them an effective solution to the conflict.

3.3.2 Locally funded schemes as a reasonable ground for compensation of HWC victims.

Section 25(5) of the Act provides for compensation of victims of HWC by vesting the power on the County Wildlife Conservation and Compensation Committee to verify a claim made and upon verification of the claim submit the claim to the Cabinet Secretary together with its recommendations.⁷⁴ The committee has the power to review the claim, award and pay a compensation valued at the ruling market rates so long as the owner of the livestock, crops or other property took reasonable measures, to protect such crops, livestock or property from damage by wildlife or his land use practices are in compatible with the ecosystem-based management plan for the area.⁷⁵

This section of the Act also gives discretion to the committees to determine what amounts to reasonable measures taken by the victims to protect themselves, their livestock and crops or other property. Having established how locally funded schemes are a preventive measure to human wildlife conflict and the benefits that accrue from them, it is also important to note that accidents being unusual happenings do occur and the communities are still at risk, though minimal, of wildlife attacks. It is therefore necessary for the committees to recognise such measures taken to protect lives and livelihoods and support them by incentivising their implementation. This will enable their full implementation, encourage more communities to undertake such measures and provide a better framework for wildlife conservation and management. As such, my study seeks for the recognition of such schemes as a reasonable ground for compensation of victims of HWC. This approach promotes the establishment of locally funded schemes since when the community's

⁷⁴ Section 19(i), *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

⁷⁵ Section 25(5), *Wildlife Conservation and Management Act* (Act No. 47 of 2013).

actions to address the conflict through the locally funded schemes are recognized as grounds for compensation there is a mindset shift.

It must be noted that as much as the locally funded schemes prevent the conflict, the National Government still bears the duty to compensate the victims of the conflict. The scheme prevents the conflict by minimising the number of HWC cases through community incentivised preventive measures and does not fund compensation of victims, a role of the National Government.

This concept of locally funded schemes as a preventive measure and as a reasonable ground for compensation of victims of HWC will be used to develop Kenya's approach to managing this conflict. First the approach will be different in dealing with conflicts between local communities and wildlife as it involves changing the attitude of the affected local communities to wildlife and it will require them to be active participants in managing the conflict. Second, the approach seeks recognition of the active participation of the members in managing the conflict as a reasonable ground for compensation in the event of conflict and as a beneficial effect to the management of the conflict.

3.4 A comparison of the two approaches and why locally funded schemes are better suited to address the conflict.

This subsection compares the current compensation approach to the proposed locally funded community schemes approach to determine the more ideal means of resolving conflicts. From the previous two approaches, determining the most suitable primary solution moving forward requires a brief comparison of the two.

Both the current compensation approach and locally funded community schemes aim to resolve the ongoing issue of human-wildlife conflict (HWC) in Kenya. While they take different avenues, they share the goal of finding sustainable solutions that consider the needs of both human communities and wildlife conservation. One key similarity is that they both seek to mitigate the costs of HWC on communities. The compensation approach aims to provide financial relief to victims of attacks through payments to cover injuries, deaths and property damage. Similarly, locally funded schemes established by communities aim to protect livelihoods by establishing preventive measures like fences, early warning systems or wildlife associations. Both approaches recognize the suffering of communities living near wildlife and try to address it.

However, compensation alone may not fully address the economic and social toll of conflicts like loss of livelihoods. In contrast, locally funded schemes aim to do so by providing resources for prevention of the conflict as well as compensation of victims which promote sustainability of human-wildlife coexistence. This makes them effective as they not only increase tolerance to wildlife by recognizing losses and promoting coexistence but also prevent the same conflict from reoccurring. The proposed approach engages victims as stakeholders to rapidly address problems through locally relevant, preventative efforts instead of relying on top-down actions alone.

Community participation and ownership in resolutions affecting them is vital for long-term sustainability of wildlife. The proposed approach fosters direct involvement of impacted communities, incentivizing cooperation and building long-term support for coexistence. In contrast, the other risks being perceived as removing local control and facing funding shortfalls challenging its sustainability over time.

Locally funded schemes also aim to fully cover all economic and social costs of human-wildlife coexistence, unlike the compensation approach which has often fallen short. Solutions tailored specifically for local circumstances through grassroots resolutions allow the challenges to be addressed more appropriately and swiftly than the current approach of processing of claims.

The above analysis evidence the need of a community inclusive approach in addressing this conflict compared to the current compensation mechanism. A shift to this approach would be more suitable as it would recognize the needs of the growing human population and the diminishing land resources fought for between them and the animals by providing a system of coexistence between the two where both benefits.

3.5 Conclusion

This chapter has been divided into three parts to compare and contrast the current compensation approach for HWC in Kenya to locally funded community-based resolution schemes.

The first part examined the compensation approach established by the Wildlife Conservation and Management Act of 1976 and subsequent amendments. It outlined both the pros and cons of using compensation as the primary response to HWC. While compensation provides financial relief for victims and recognizes communities' suffering, the process faces issues like delays, failure to cover full costs of losses, and lack of prevention of future conflicts.

The second part explored locally funded schemes as an alternative approach led by affected communities. These schemes aim to empower communities by providing resources to proactively monitor problem animals and implement preventive measures. It also sought the recognition of schemes taken by communities to protect themselves and property as reasonable measures.

By comparing these two approaches, the last part analysed their similarities and differences, such as compensation being reactive versus schemes taking a proactive prevention approach. It also considered important determining factors for the ideal HWC resolution method such as cost-effectiveness, sustainability, community buy-in, and prevention of future conflicts.

In conclusion, while compensation plays an important role in mitigating costs of HWC, locally funded community-based resolution schemes present a more holistic solution aligned with conditions on the ground in Kenya. Involving communities as active stakeholders in locally led schemes increases sustainability of conflict management over the long-term as human and wildlife populations grow. A combined approach utilising compensation together with community participation balances both immediate financial relief and integrated, locally appropriate prevention strategies. With creative policymaking recognizing the value of community-driven solutions, Kenya can develop its approach to HWC in a way that considers all stakeholders for shared economic and ecological benefits.

4. CONCLUSION, FINDINGS AND RECOMMENDATIONS.

4.0 Introduction

This chapter wraps up this study by stating the findings, addressing the objectives set out at the beginning study and offers recommendation on a community inclusive approach to address HWC. Specifically, it sought to:

- 1) Assess Kenya's current HWC management approach and the measures she has taken.
- 2) Examine a community inclusive approach of addressing HWC through locally funded schemes as a preventive measure.
- 3) Determine if the examined approach changes the community attitudes towards wildlife.
- 4) Propose the recognition of such a scheme as a reasonable measure taken by the community to protect themselves from damage from wildlife

This concluding chapter will summarize the key findings and present recommendations based on the research objectives with the aim of contributing to sustainable HWC resolutions aligning with Kenya's legal framework.

4.1 Findings based on this study.

4.1.1 Kenya's Current HWC management approach

Kenya's current management approach is mainly focused on compensation of victims as a mitigation measure to HWC. However, it faces challenges of inconsistent funding, slow claims processing and failure to fully cover losses as seen in Chapter 3 of this study. KWS undertakes prevention and mitigation measures such as erection of barriers, translocation of problematic animals, among other but high costs limit the effectiveness of these measures. The current approach puts more emphasis on compensation of victims rather than community inclusive approaches which are necessary for the long-term successes of HWC measures.

4.1.2 Alternative Community-Based Approaches

The WCMA 2013 recognises the need for community inclusive solutions in wildlife management and conservation. International examples provided in chapter one indicate the success of such community inclusive solutions in addressing this conflict. This study advocates for such a community inclusive solution through locally funded schemes which are a preventive measure of HWC and change community attitudes by providing resources and incentives for coexistence. This study shows how effective such schemes can be.

4.1.3 Recognition of locally funded schemes in the legal framework.

Locally funded schemes as discussed in this study are community inclusive preventive measures. They play a major role in not only conserving wildlife but also the environment at large. The WCMA recognizes community inclusive measures like conservancies but does not incentivize such measures. Schemes. This study has proposed the recognitions of such schemes as 'reasonable measures' qualifying communities for compensation to promote their establishment and coexistence between human beings and wildlife.

4.2 Recommendations

1. Section 25(5) of the Act should be amended to recognize locally funded schemes as 'reasonable measures' taken by victims of HWC to protect themselves and their livelihood from damage by wildlife, providing a basis for compensation claims. This will incentivise the implementation of such schemes by affected communities, engage the community in HWC resolutions and encourage community participation in resolving HWC.
2. The legislative body of government should develop guidelines for the establishment and management of locally funded schemes. These guidelines should provide a framework for scheme registration, governance, funding, project selection, monitoring and evaluation. This will formalise and recognise schemes within the Kenyan legal framework.
- 3 The engagement between KWS and communities should be strengthened. KWS should continue supporting the community through capacity-building activities and provide technical expertise to locally funded scheme projects when called upon. This is will further develop the necessary partnership within the community forming a united stand to address HWC.

4 Local communities should be educated and introduced to locally funded schemes and the benefits that accrue from them. Once they are implemented and serve their conservatory purpose the government should explore benefit sharing approaches from proceeds of wildlife conservation. When communities directly benefit from wildlife, incentives for coexistence will increase.

5 The Government should conduct regular reviews to assess scheme impacts on conflict levels and community attitudes. They should then adapt guidelines and approaches in response to lessons learnt from the reviews and changing conditions on-ground. This will help to maintain the flexibility of such schemes for their long-term viability.

4.3 Conclusion

This study's recommendations aim to strengthen Kenya's HWC management through a community-inclusive approach aligned with her legal framework. Recognizing locally funded schemes will incentivise their implementation as a community inclusive resolution. The legal guidelines will provide an oversight and concurrently empower communities as active stakeholders. Partnerships between KWS and local communities continue to leverage their comparative advantages for mutual benefit. Benefit-sharing programs further change attitudes by economically valuing wildlife.

Overall, a shift towards community participation in HWC solutions holds promise for balancing the growing human and wildlife needs. With dedicated implementation of the proposed recommendations through creative policymaking and coordinated action, Kenya can continue safeguarding its globally significant wildlife heritage and rural livelihoods for generations to come. The recommendations presented in this study aim to contribute practical solutions supporting this vision of sustainable coexistence.

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