

**UNIVERSITY OF NAIROBI**

**FACULTY OF LAW**

**LLM PROJECT**

**TOPIC**

**THE CLIMATE CHANGE LEGAL AND POLICY FRAMEWORK IN  
KENYA:**

**AN ANALYSIS OF THE GENDER PERSPECTIVES**

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**DECLARATION**

I CHRISTINE VIOLET ASUNA OKELLO hereby declare this work to be a result of my own research effort. Where references have been made to other people's works, due acknowledgement has been made in accordance with the faculty of law regulations.

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## ABBREVIATIONS AND ACCRONYMS

|         |  |
|---------|--|
| COP     | Conference of Parties  |
| GAD     | Gender and Development   |
| UNFCC   | United Nations Framework Convention on Climate Change                      |
| NCCRS   | National Climate change response strategy                                  |
| CCAP    | Climate Change Action Plan   |
| MDGs    | Millennium Development Goals   |
| OECD    | Organization for Economic Cooperation and Development                      |
| UN      | United Nations   |
| ICT     | Information Communication Technology                                       |
| UDHR    | Universal Declaration on Human Rights                                      |
| CEDAW   | Convention on the Elimination of all forms of Discrimination against Women |
| SDGs    | Sustainable Development Goals  |
| COP     | Conference of Parties  |
| UN      | United Nations   |
| UDHR    | United Nations Declaration Human Rights                                    |
| CEDAW   | Convention on the Elimination of all Forms of Discrimination against Women |
| CAHOSCC | Committee of African Heads of State and Governments on Climate Change      |
| NCCC    | National Climate Change Council  |
| NCCAP   | National Climate Change Action Plan  |
| NCCSR   | National Climate Change Response Strategy                                  |
| NAP     | National Adaptation Plan   |
| INDC    | Intended Nationally Determined Contributions                               |
| LGSA    | Local Self Governance Act (Nepal)  |

## Table of Contents

|   |     |
|---|-----|
| Declaration.....  | ii  |
| Acknowledgement.....  | iii |
| Abbreviations and Acronyms.....   | iv  |
| Table of Contents.....  | 1   |
| Abstract.....   | 6   |
| <b>CHAPTER ONE</b> .....  | 10  |
| 1.0 Introduction.....   | 10  |
| 1.2 Background.....   | 12  |
| 1.3 Statement of the Problem.....   | 15  |
| 1.4 Literature Review.....  | 17  |
| 1.4.1 Responsiveness of the legislative and institutional framework on climate change<br>gender perspectives..... | 17  |
| 1.4.2 Socio-economic effects of climate change on gender.....   | 18  |
| 1.4.3 Gender sensitive approaches to climate change and the need for empowerment.....                             | 19  |
| 1.5 Theoretical Framework.....  | 20  |
| 1.5.1 Theory of Change on Gender Equality.....  | 20  |
| 1.5.2 The Social, Economic, Political Dynamics of the theory of change. ....                                      | 21  |
| 1.5.2.1 Political Awareness.....  | 21  |
| 1.5.2.2 <i>Social Dimensions</i> .....  | 21  |
| 1.5.2.5 <i>Access to Information, Communication Technology and Social Media Technologies</i> .....                | 23  |
| 1.5.3 Vision and Mission of the Change Theory.....  | 23  |
| 1.5.4 Women’s Rights.....   | 24  |
| 1.6 Research Hypothesis.....  | 26  |
| 1.7 Research Objectives.....  | 26  |
| 1.7.1 Overall Objective.....  | 26  |
| 1.7.2 Specific Objectives.....  | 26  |
| 1.8 Research Questions.....   | 26  |
| 1.9 Research methodology.....   | 27  |
| 1.9.1 Data Collection.....  | 27  |
| 1.9.1 Data Analysis.....  | 27  |

|  |    |
|--|----|
| 1.10 Limitations of the Study.....   | 27 |
| 1.11 Chapter Breakdown .....   | 28 |
| CHAPTER TWO .....  | 29 |
| 2.0 Introduction.....  | 29 |
| 2.1 Rationale for a gendered approach .....                                  | 30 |
| 2.2 Contrasting the roles of men and women .....                             | 31 |
| 2.3 Gender inequality occasioned by climate change.....                      | 32 |
| 2.3.1 Health, Gender and Climate Change .....                                | 32 |
| 2.3.2 Agriculture, gender and climate change .....                           | 34 |
| 2.3.3 Water, Gender and Climate change .....                                 | 35 |
| 2.3.4 Conflict, Climate Change and Gender .....                              | 35 |
| 2.4 Promoting Gender Equality .....  | 36 |
| 2.4.1 Gender Empowerment .....   | 36 |
| 2.4.1.3 Political Empowerment.....   | 38 |
| 2.5 Gender Mainstreaming.....  | 38 |
| 2.5.1 Gender Mainstreaming and Development .....                             | 39 |
| 2.6 Mainstreaming Gender into Adaptation and Mitigation projects .....       | 40 |
| 2.6.1 Gender Analysis.....   | 41 |
| 2.7 Dangers of Gender Blind interventions .....                              | 41 |
| 2.8 Contextualizing vulnerability of women .....                             | 42 |
| CHAPTER THREE .....  | 43 |
| 3.0 Introduction.....  | 43 |
| 3.1 Gendered Approach to Climate Change at International Parlance .....      | 44 |
| 3.2 United Nations Framework on Climate Change (UNFCCC).....                 | 44 |
| 3.2.1 Milestones under the UNFCCC Framework .....                            | 45 |
| 3.3 Regional Approaches to Climate Change and Gender Perspective .....       | 47 |
| 3.4 Kenya’s Climate Change Legal Framework and its Gender Perspectives. .... | 47 |
| 3.4.1 Climate Change Act (No 11 of 2016).....                                | 48 |
| 3.4.2 National Climate Change Response Strategy .....                        | 51 |
| 3.4.3 National Climate Change Action Plan (NCCAP) 2013-2017.....             | 51 |
| 3.4.5 National Adaptation Plan (NAP) 2016 .....                              | 53 |
| 3.4.6 Nationally Determined Contributions (2015).....                        | 54 |

|   |    |
|---|----|
| 3.5 Conclusion .....  | 55 |
| CHAPTER FOUR.....   | 56 |
| 4.0 Introduction.....   | 56 |
| 4.1 Mainstreaming of Gender into the legal frameworks in Asia and the Pacific .....   | 57 |
| 4.1.1 Nepal.....  | 60 |
| 4.1.2 Nepal’s Climate Change Policy (2011) .....  | 63 |
| 4.1.3 Philippines.....  | 64 |
| 4.2 Best Practices from Asia in Mainstreaming Gender into Mitigation and Adaptation<br>Actions through Nationally Appropriate Mitigation Actions (NAMA) ..... | 66 |
| CHAPTER FIVE .....  | 68 |
| 5.0 Introduction.....   | 68 |
| 5.1 Conclusions.....  | 68 |
| 5.1.2 Legal and policy frameworks.....  | 69 |
| 5.1.3 Gender Dimensions in Climate Change Discourse.....  | 70 |
| 5.2 Inhibitive factors to gender mainstreaming. ....  | 71 |
| 5.3 Gender Responsiveness of the Climate Change Legal Framework in Kenya .....  | 72 |
| 5.3.1 National Climate Change Response Strategy .....   | 72 |
| 5.3.2 Climate Change Act 2016.....  | 73 |
| 5.3.3 National Climate Change Action Plan (2018) .....  | 73 |
| 5.3.4 Nationally Determined Contributions.....  | 74 |
| 5.4 RECOMMENDATIONS .....   | 75 |
| 5.4.1 Short Term Recommendations .....  | 75 |
| 5.4.2 Long Term Recommendations.....  | 77 |
| 5.4.2.1 Legal and policy frameworks.....  | 77 |
| 5.4.2.2 Bottom up Approach.....   | 78 |
| 5.4.2.3 Gender mainstreaming financing .....  | 78 |
| 5.4.2.5 Further Research .....  | 80 |
| Bibliography .....  | 80 |

**ABSTRACT**

*“Gender inequalities intersect with climate risks and vulnerabilities. Women’s historic disadvantage- their limited access to resources, restricted rights, and a muted voice in*



*shaping decisions make them highly vulnerable to climate change. The nature of that vulnerability varies widely cautioning against generalization. But climate change is likely to magnify existing patterns of gender disadvantage”* United Nations Development Programme, Human Development Report 2007/2008 Fighting climate change: Human solidarity in a divided world, New York, 2007

Climate change has severe socio-economic and environmental consequences. The effects include water shortage, floods in coastal low land areas, heat waves, droughts, and increases in cardio- respiratory and infectious diseases. The phenomenon has been identified as presenting serious threats towards achievement of any meaningful development and could in fact reverse the gains made so far.

Though Climate change is not an entirely new subject as a whole, the gender perspective is a somewhat new dimension and approach. As such not much research has been undertaken which seeks to establish a link between climate change and gender issues.

The impacts of climate change on gender vary depending on the socio-economic status. In most scenarios women are the most affected by these impacts owing to their perceived and actual roles in the society which mostly revolve around household chores. In post disaster scenarios women have been known to stay behind and undertake reconstruction of their homes as the men set off in search of work.

Kenya has recently enacted a climate change law becoming the first country in Sub Saharan Africa to do so. On the surface, the development is a major milestone in confronting climate change. This study shall interrogate the legislation to determine whether gender perspectives have been given consideration. Specifically the researcher will put into perspective various gender roles and highlight the need for the legal framework to be proactive on gender dimensions.

The researcher shall seek to build on the scanty literature available and make recommendation that would hopefully enlighten future studies and interventions in gender and climate change legal and policy frameworks.

## **CHAPTER ONE**

### **1.0 Introduction**

Climate Change has been defined as ‘change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods’.<sup>1</sup>

Gender in this research report is understood as the variance that occur out of sociological and cultural constructions between women and men which are apparent through their roles and responsibilities. Gender and gender perspectives shall further be contextualized in chapter

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<sup>1</sup>Art 1

two of the study. Whereas the study gender perspectives in general, the study lays more focus on female gender being the most vulnerable gender to impacts of climate change.

Gender sensitivity is underscored by the ability to acknowledge and highlight existing gender differences, issues and inequalities and their subsequent inclusion into strategies and actions.<sup>2</sup>

The impacts of Climate Change are manifest being felt on the global sphere and at every human level. According to Climate Change experts, the most vulnerable and susceptible group to the effects of climate change are the marginalized who lack the capacity to adapt and are often left out of negotiations on mitigation.<sup>3</sup> By virtue of forming the highest percentage of the marginalized and in most cases the poorest, women are the most affected and hence the most vulnerable.

Poverty and Climate Change are interwoven. The poorest and most vulnerable groups in society more often than not are reliant on climate sensitive resources e.g. Rain-fed agriculture. This in effect exposes them to disproportionate susceptibility to the harsh effects of climate change. Further they lack the necessary resources such as strong houses that can withstand the vagaries of harsh weather. This handicap compels them to resort to environmentally unsustainable practices for example deforestation to cater for their basic needs.<sup>4</sup>

Several factors have been attributed as contributing to gender variance in vulnerability to climate change. One of them is discrimination by formal institutions including legal frameworks that deny women opportunities. Compared to men, women are under-

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<sup>2</sup>Gender Equality Index (2015) viewed at <https://eige.europa.eu/rdc/eige-publications/gender-equality-index-2015-measuring-gender-equality-european-union-2005-2012-report>

<sup>4</sup> Women Watch 2009 Note 7 viewed at

represented in decision making processes rendering them incapable of influencing major decisions.<sup>5</sup>

Besides productive and reproductive duties, the roles women play in natural resource management cannot be under estimated. Their insightful knowledge and experience is vital in climate change mitigation and adaptation measures hence the need to position them strategically as agents of change.<sup>6</sup>

Climate Change has been described as having “pervasive and far-reaching social, economic, political and environmental” consequences. That the enormous task of confronting climate change cannot be met without the collective power and knowledge of both women and men.<sup>7</sup> Chapter two gives specific illustrations of women’s vulnerabilities to climate change.

## **1.2 Background**

The Lima Work Programme on Gender while acknowledging the strides made in advancing gender equality and balance in climate change policies noted the need for mainstreaming gender issues. It also invited parties to further enhance gender balance in the development and implementation of climate change policies.<sup>8</sup>

COP 22 held in Marrakech sought to build on the Lima Work Programme on Gender. It called for institutionalization of gender issues within the UNFCCC. Whereas the Lima talks had focused on justifying the essence of gender dimensions in climate discourse, COP 22 focused more on advocating for more finances and capacity building for women. It resolved

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<sup>5</sup>World Bank,

<sup>6</sup> Women watch (2009) ibid at Note 3

<sup>7</sup>Bennett, L. (2005) *Gender, Caste and Ethnic Exclusion in Nepal: Following the Policy Process from Analysis to Action*, World Bank

<http://siteresources.worldbank.org/INTRANETSOCIALDEVELOPMENT/Resources/Bennett.rev.pdf>

<sup>8</sup> COP20 Lima Work Programme on Gender 18/CP. 20 2014 .Viewed at:

[https://unfccc.int/files/meetings/lima\\_dec\\_2014/decisions/application/pdf/auv\\_cop20\\_gender.pdf](https://unfccc.int/files/meetings/lima_dec_2014/decisions/application/pdf/auv_cop20_gender.pdf)

to: obligate state parties to report on national gender specific efforts; augment capacity building strives for women negotiators and improve knowledge sharing avenues.<sup>9</sup>

At COP23, the first ever UNFCCC Gender Action Plan was approved. The action plan seeks to integrate both gender equality and human rights into climate action agenda. Its overall objective is to shore up actualization of gender related dispositions in the UNFCCC. It explicitly brings to the fore the need for enhancing gender responsive policies in the spheres of adaptation and mitigation as well as the implementation processes which involve financing, capacity building and technology transfer.<sup>10</sup>

Women in Kenya and in Africa as a whole have historically faced significant challenges including: discriminative property ownership policies; gender stereotyping, omission from decision making processes; negative socialization just to mention but a few. In Kenya, women play a major role in the agricultural sector with most of them concentrated in subsistence agriculture. The fact that unpredictable weather conditions caused by climate change results in poor agricultural output means that women are the first to be impacted by the effects of climate change.<sup>11</sup>

Towards establishing a comprehensive legal framework for combating climate change, Kenya has made significant strides. The evolution began with the launch of the National Climate Change Response Strategy (NCCRS) of 2010.<sup>12</sup> The strategy's main goal was to ensure the integration of adaptation and mitigation actions into government's processes including planning and budgeting and in execution of development projects. It underscored the need for enactment of a comprehensive policy on Climate Change. NCCSR was later complemented by the Climate Change Action Plan (CCAP) (2013-2017) which provided for

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<sup>9</sup> United Nations Climate Change,

<sup>10</sup> Cop23

<sup>11</sup> Stephen Mutimba, Rachael Wanyoike,

<sup>12</sup> 2016 viewed at [www.ke.undp.org/.../2016/Climate-Change-Framework-Policy\(31Nov2016\).doc](http://www.ke.undp.org/.../2016/Climate-Change-Framework-Policy(31Nov2016).doc)

implementation frameworks for the NCCSR.<sup>13</sup> The National Climate Change Action Plan (NCCAP) has been updated to cover the 2018-22 period. This is in accordance with section 13 of the Climate Change Act which requires that the NCCAP be updated every five years. The focus of NCCAP (2018-2022) is to identify priority actions to address mitigation and adaptation measures. Its formulation involved consultation with counties, civil society, women, and marginalized groups.

Subsequent to the NCCSR and CCAP, numerous drafts of National Environment Policy were mooted. The revised draft of 2013 recognized Climate Change as having a direct link with the occurrences of natural disasters and made proposals for tackling climate change. These included: Implementation of the NCCRS; awareness campaigns on the available opportunities for climate change adaptation especially through capacity building and technology transfer; development of warning and response systems for climate change risks and disasters.<sup>14</sup>

The Climate change strategies and policies culminated in the enactment of the Climate Change Act of 2016. In itself this step is a major milestone as it made Kenya the first African country to enact a national legislation on climate change. It was assented into law on May 2016.<sup>15</sup> As such it can be said that Kenya has set the stage towards tackling climate change. The Act is however yet to become fully operational as it awaits the constitution of the National Climate Change Council which shall be the lead agency charged with implementing the Act. Rolling out of the rules for operationalization of the Act is also ongoing.

Since the enactment of the Climate change legal framework, there have been concerted efforts to mainstream gender issues into policies and to address the social imbalances. Key milestones that have been achieved include: National policy on Gender and Development;

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<sup>13</sup> ibid

<sup>14</sup> Draft National Environmental Policy 2013 viewed at [www.environment.go.ke/wp.../NATIONAL-ENVIRONMENT-POLICY-20131.pdf](http://www.environment.go.ke/wp.../NATIONAL-ENVIRONMENT-POLICY-20131.pdf)

<sup>15</sup>

Sessional Paper No 2 of 2006 on Gender Equality and Development, National Gender and Equality Commission and the creation of gender units in various government departments.<sup>16</sup>

Under the National Environment Policy, the role played by gender in the management of the environment has been given prominence. The policy underscores the distinctive roles played by the different demographics in the protection of the environment owing to each group's special capabilities and knowledge. As such the government has committed itself to mainstreaming gender and equity in its development policies.<sup>17</sup> The policy supplements the Constitution of Kenya which guarantees equality of all persons before the law irrespective of their gender.<sup>18</sup>

### **1.3 Statement of the Problem**

The Constitutional underpinnings in Kenya's governance system propagate for equality, social justice, and protection of the marginalized, sustainable development among others.<sup>19</sup>

The Constitution obligates the state to put in place affirmative action programmes tailored towards ensuring that marginalized groups get an opportunity to participate in governance matters and have reasonable access to amenities such as water, infrastructure and health services among others.<sup>20</sup> The Climate Change Act (2016) was enacted with the overall objective of "*providing regulatory framework for enhanced responses to climate change; providing mechanisms for achieving low carbon climate development and for connected purposes*". Specifically the Act is to be used among others: to mainstream climate change

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<sup>16</sup> *ibid*

<sup>17</sup> at 5.12

<sup>19</sup> See Preamble

<sup>20</sup> Art 27 *Ibid*

responses into development planning, decision making and implementation; mainstream intergenerational and gender equity in all aspects of climate change responses.<sup>21</sup>

The impacts of climate change have been identified as major contributor to the further widening of the existing gender inequalities and an impediment to the gains made towards achieving gender equality in developing countries.<sup>22</sup> Women's vulnerability mainly arise from their disadvantaged position in terms of access to resources, household tasks and suppressed voices in decision making processes. In the back drop of these challenges faced by women, they play a pivotal role in the stewardship of environment and natural resources. Their invaluable knowledge, understanding and their experiences of the environment is fundamental in influencing adaptation and resilience mechanisms.

One of the means in which the gender equality contemplated by the Constitution of Kenya can be achieved is through mainstreaming gender issues into institutional, legislative and policy frameworks. There is need to put in place mechanisms that will enhance women's roles and improve their coping capacity. Gender mainstreaming also entails the assessment of the implications of planned climate change actions on gender especially on policies, legislations and programmes at all levels to ensure they attain gender equality.

In this study the researcher put into perspective the relatively novel issue of gender perspectives in climate change response mechanisms. The study critically appraised the Climate Change Legal and Policy Framework in Kenya to assess whether the proposed adaptation and mitigation responses are gender sensitive i.e. whether they can enhance equity and equality and are beneficial to both men and women. The Legal and Policy framework was also appraised to establish whether specific mechanisms for addressing marginalization and vulnerability have been incorporated. The researcher probed the framework to determine

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<sup>21</sup> Short Title, Climate Changer Act(2016)

<sup>22</sup> Winnie Byanyima, Foreward



whether mechanisms that ensure and promote participation by different gender have been incorporated.

#### **1.4 Literature Review**

This section reviewed the writings of scholars on the subject so as to identify the gaps that ought to be plugged through further research. As noted on the onset not too many studies have been conducted on the interface between climate change and gender perspectives. As such the researcher was somewhat limited on the scope of literature at her disposal. The literature review was done thematically based on the themes which the researcher shall delve deeper into in subsequent chapters of the study.

##### **1.4.1 Responsiveness of the legislative and institutional framework on climate change gender perspectives**

According to Esther Lungahi et.al (2004), owing to the localized nature of the effects of climate change, effective and efficient responses shall be possible if deliberations take place at the lowest level. The decision making process ought to be gender sensitive and inclusive of the marginalized and vulnerable groups. Prior to such deliberations, relevant climate information should be supplied to enable meaningful participation.<sup>23</sup> The study herein probed the legal framework in place to establish whether provisions for participation at the lowest levels with gender dimensions have been incorporated.

According to Alyson Brody *et.al* (2008) a gender positive response goes beyond merely showing up data that indicate the disparities of the impact of climate change on men and women. It requires thoughtful interrogation of the existing gender inequalities and how they aggravate the impacts of climate change on men and women. For instance girls and women may be disadvantaged when it comes to access to vital information on adaptation and

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<sup>23</sup> Esther Lungahi, Anthony Mugo, James Nguo, Sylvia Ogendo, Nicola Ward and Maureen Ambani(2014) Joto Africa. Viewed at [www.alin.net](http://www.alin.net)

mitigation strategies since most of their time is taken up by carrying out household and domestic chores. This lack of access to vital information and opportunities to participate exacerbate into failure to collectively forge a common front in the fight against climate change.<sup>24</sup> The study underscores the importance of gender sensitivity in climate change discourses and decision making processes for successful adaptation and mitigation responses. The study laments the absence of women in most decision making forums either due to their commitments elsewhere or simply because their input is deemed superfluous or that they lack resources to contribute.<sup>25</sup> The researcher in this study sought to establish whether the new law in Kenya recognizes the critical role played by gender in climate change mitigation and adaptation responses.

#### **1.4.2 Socio-economic effects of climate change on gender**

As per Tacoli et.al (2014) integrating gender aspects on research and policy on environmental matters goes to the root of the concept of resilience.<sup>26</sup> Cannon et.al further assert that not centralizing socio-cultural elements such as gender would be self-defeatist to the climate change discourse since the underlying themes that make humans vulnerable are inextricable to social and cultural practice.<sup>27</sup>

The major reason that has been consistently cited in the literature as attributing to women's vulnerability to climate change effects is the social and cultural construction pertaining gender roles and their disadvantage in accessing assets to mitigate or adapt to climate change.<sup>28</sup> Most studies however point to the intricate nature of gender and climate change and call for further research to be conducted to enhance knowledge base on the differential

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<sup>24</sup>Alyson Brody,

<sup>25</sup> ibid

<sup>26</sup> Tacoli C Pollack, londo uk.

<sup>27</sup> Cannon Societies.

<sup>28</sup> Goh,

climate change impacts on men and women and to also come up with mechanisms suitable to alleviate both men and women from the impacts of climate change by making them resilient.

### **1.4.3 Gender sensitive approaches to climate change and the need for empowerment**

Gender sensitive climate adaptation measures requires leadership at all levels. At the community level, integration of considerations such as indigenous and traditional knowledge into existing approaches is a premium in addition to existing approaches. At the national level there is a call for enactment of gender-sensitive adaptation policies and plans. This can be further supplemented by cascading global treaties and agreements on gender perspectives into national legislations, policies and strategies.<sup>29</sup>

Scaling up of the integration of gender sensitive approaches also requires the enhancement of capacities through raised awareness achieved through dedicated training programmes. The capacity of community based practitioners need to be enhanced through additional financing and the sharing of information indicators of gender responsiveness mechanisms ought to be developed as well as guides on effective gender participation in consultation processes.<sup>30</sup> The researcher will seek to establish whether Kenya's legal framework has provided specific mechanisms for gender empowerment in the face of climate change risks and adverse impacts.

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<sup>29</sup>Technical paper on "Best practices and available tools for the use of indigenous and traditional knowledge and practices for adaptation, and the application of gender -sensitive approaches and tools for understanding and assessing impacts, vulnerability and adaptation to climate change"

<sup>30</sup> *ibid*

## **1.5 Theoretical Framework**

### **1.5.1 Theory of Change on Gender Equality**

This study was based on the theory of change on gender equality and women and girls empowerment. The theory of change expresses a vision for gender equality and seeks to demystify the relationship between gender equality, attainment of empowerment and securing women and girls' rights.

According to the World Bank gender refers to “*socially constructed norms and ideologies which determine behavior and actions of men and women*”.<sup>31</sup> Gender has been described as a fundamental source of inequality and exclusion in the world. That it manifests in both formal and informal setting for example formally through laws and government agencies and informally through.<sup>32</sup> Under the change theory, gender inequality should not be limited to be a women issue but as equally concerning men. That it's a manifestation of the inequity between men and women which inhibits women's choices and constrain their ability to participate in developmental quests.<sup>33</sup>

In the theory of change diagram, the barriers level exhibit the multiplicity of the causes and consequences of gender disparities and how they are mutually intertwined. It is posited that social norms have to a great extent contributed to the perpetual disparity between men and women. That the systemic entrenchment of discrimination against women has been contributed by continuous failure to address gender inequalities. The end result has been manifested in aspects such as violence against women, discrimination in ownership of property, passive participation in decision making processes among others.<sup>34</sup>

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<sup>31</sup> World Bank(2012) World Development Report

<sup>32</sup>DFID PPA Learning Partnership

<sup>33</sup> ibid

<sup>34</sup> DFID

## **1.5.2 The Social, Economic, Political Dynamics of the theory of change.**

### **1.5.2.1 Political Awareness**

The Millennium Development Goals (MDGS) promulgated in the year 2000 were lauded as setting the stage and providing a spring board for gender equality and women empowerment by calling for affirmative action and integrating gender issues as being inherent in development quests. Critics have however criticized the MDG's for failure to emphasize the need for women participation in political discourses both at national and local levels. They also lament the apathy in fast tracking women as having contributed to the slow implementation of the other MDG's.<sup>35</sup> Nonetheless the obligations placed on governments to report track progress and to report to report on measures put in place to empower women resulted in many nations enacting legislation for women empowerment and affirmative action.<sup>36</sup> At the close of the MDGs in 2015, it could not be definitively stated that the objectives had been achieved.

At International parlance, institutions such as the World Bank have led the way in enhancing gender equality. The World Bank has been at the fore front in championing for the recognition of the nexuses between women's economic empowerment and their voices.<sup>37</sup> Within the United Nations (UN) a single dedicated agency, the UN Entity for Gender Equality and the Empowerment for Women also known as UN Women was established in 2011 to specifically champion for women rights.

### **1.5.2.2 Social Dimensions.**

In spite the various gender equality movements; there still exists conservative groups opposed to women emancipation especially in respect of sexual and reproductive health rights. This

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<sup>35</sup> Smee, S

<sup>36</sup> Greeley, M (2010) In Focus:. viewed at [www.ids.ac.uk/publication/](http://www.ids.ac.uk/publication/); MDG 3 Review Report 2010

<sup>37</sup> World Bank (2011)

<https://openknowledge.worldbank.org/handle/10986/19036>

has been prevalent even at the international level during inter-governmental negotiations.<sup>38</sup> And whereas there has been increased recognition of the special needs of girls at adolescent stage, the historical discriminatory norms that constrain the girls sphere to domestic chores still remain prevalent.<sup>39</sup>

### ***1.5.2.3 Economic Dimensions.***

Whereas there has been increased sensitization and political commitment towards women empowerment, the same is yet to result in sustained funding for gender empowerment.<sup>40</sup> The privatization of most essential services has resulted in fewer opportunities for women as the private sector is not always gender sensitive.<sup>41</sup> The liberalization of markets through outsourcing of production and supply chains has also had its impacts on gender and especially women as they constitute the bulk of the workforce in sectors such as garment industry. In these sectors they face numerous exploitation challenges including poor pay, harassment, poor working conditions, denial of maternity leave and lack collective bargaining agreements.<sup>42</sup>

### ***1.5.2.4 Environmental Dimensions***

It has been established that the achievement of sustainable development is dependent on gender equality.<sup>43</sup> Global responses have however been primarily focused on economic and scientific approaches while sidelining human and gender dimensions. Women's potential and role in climate change responses remain underutilized.<sup>44</sup> Women in most cases continue to be given a wide berth during environmental discourses.

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<sup>38</sup> see:

<sup>39</sup> AWID (2011)

<sup>40</sup> Action Aid (2011)

<sup>41</sup> ibid

<sup>42</sup> ibid

<sup>43</sup> UN Report(2012)

<sup>44</sup> GSDRC,

These discriminations occur in spite of the fact that women suffer the most during calamities associated with climate change. This results from the fact that women's low social economic status makes them more vulnerable to the vagaries of unpredictable weather.<sup>45</sup>

#### ***1.5.2.5 Access to Information, Communication Technology and Social Media Technologies.***

Women, especially those in rural areas are disadvantaged in the utilization of technology. Not only do they lack the required skills, literacy and infrastructure but they are also inhibited by domestic chores and social restrictions on mobility as well as meager resources. This is not to mention the under representation of women in ICT sectors.<sup>46</sup>

Whereas the accessibility and functionality of social media is creating new avenues for equality movements to organize and spread their equality campaigns, women sometimes face prejudice in the social media platforms as they are subjected to abuse , threats and insults especially gender activists.<sup>47</sup>

#### **1.5.3 Vision and Mission of the Change Theory**

Change theorists envision a world of equality among men, women, girls and boys can equally contribute, benefit from the social, economic development and be able to realize their full potential. They advocate for equality in all spheres including but not limited to health, education, economic and political opportunities as well as the freedoms and liberties inherent on every human being. They assert that the achievement of gender equality is dependent on the advancements made in all the socio economic and political spheres.<sup>48</sup>

To the gender theorists, achievement of gender equality equals women empowerment. In the context involves: the ability to conceive an idea, make one's own decision and actualize desired goals without coercion or fears; the capacity for women to enter into relations and be

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<sup>45</sup> CARE (2012)

<sup>46</sup> A. Gurumurthy, September 2004

<sup>47</sup> See Working to Halt Abuse Online: <http://www.haltabuse.org/resources/stats/>

<sup>48</sup> DFID PPA, Action Aid UK.

able to freely negotiate their individual or collective empowerment and an enabling surrounding environment conducive for expressing one's choices.<sup>49</sup>

#### **1.5.4 Women's Rights**

The attainment of women's empowerment is dependent on the attainment of women's human rights. Women rights just like all other fundamental rights, freedoms and liberties are inherent rights which are not donated by any one and cannot be taken away. They are universal and indivisible.<sup>50</sup>

According to the change theorists, there is need to distinguish women's rights in a society where there is evident inequality.<sup>51</sup> As such women's rights have been laid down in several international instruments. These include:

- a) The Universal Declaration of Human Rights (UDHR). This historic document was adopted by the UN in 1948 and since then has formed the basis of universal human rights. Since its adoption civil society organizations and women rights movements have used it to hold governments to account for the full realization of their rights.<sup>52</sup>
- b) The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Was adopted in 1979 by the UN General Assembly and has variously been described as an International Bill of Rights for Women. It has been viewed largely as the best international set of principles on women's rights. The Convention encompasses all spheres of discrimination against women including but not limited to: gender stereotyping and prejudice; political and public life; violence against women; education; employment; health among others.<sup>53</sup>

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<sup>49</sup> *ibid*

<sup>50</sup> Dennis Bours, viewed at [www.seachangecop.org/node/215](http://www.seachangecop.org/node/215).

<sup>51</sup> DFID PPA Learning Partnership, viewed on 28<sup>th</sup> February 2018 at

<http://genderlinks.org.za/gmdc/publications/>

<sup>52</sup> [www.un.org/en/documents/udhr](http://www.un.org/en/documents/udhr)

<sup>53</sup> *IBID*



c) Beijing Declaration and Platform for Action. This was the outcome of the Fourth World Conference on Women convened by the UN in Beijing China in 1995. The Conference was premised on 12 key areas of concern and after extensive deliberations, the conference adopted the Beijing Declaration and Platform for Action to address the concerns. As a follow up to the Beijing Conference, the UN Commission on the Status of Women passed a political declaration reaffirming governments' commitment to the Beijing agreements and reaffirmed that their full implantation was essential for the achievement of the Millennium Development Goals. The priority areas which the Beijing Platform for Action highlighted include: Poverty, violence against women, education, armed conflict, institutional mechanism for advancement of women, human rights of women and the environment among others.<sup>54</sup>

d) The Millennium Development Goals and the Sustainable Development Goals. The MDGs adopted in the year 2000 and which lapsed in 2015 during their duration informed policy, programming and funding. Whereas the duration lapsed without full implementation, in them was an explicit commitment to gender equality. MDG 3 specifically provided for promotion of gender equality and empowerment of women. It also called for specific action on girls' education and women's representation in the work force and decision making processes. SDG 5 has been dedicated to the achievement of gender equality and empowerment of all women and girls. Studies however reveal that gender inequality persists globally and that to successfully achieve the desired equality calls for concerted deliberate rigorous efforts including

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<sup>54</sup>[www.un.org/womenwatch/daw/beijing/official.html](http://www.un.org/womenwatch/daw/beijing/official.html)

enactment of legal frameworks to deal with deep rooted historical gender based discrimination that have culminated in patriarchal tendencies.<sup>55</sup>

## **1.6 Research Hypothesis**

The climate change legal and policy framework in Kenya is inadequate in mainstreaming gender perspectives.

## **1.7 Research Objectives**

### **1.7.1 Overall Objective**

The overall objective of the study highlighted women's vulnerability to the effects of climate change and thus advocates for mainstreaming of gender issues in climate change discourses especially legal frameworks. The study critically examined Kenya's Legal and Policy framework to establish whether gender perspectives and specific response mechanisms have been given prominence.

### **1.7.2 Specific Objectives**

Specifically the researcher sought to fulfill the following objectives;

- 1) To contextualize gender perspectives in climate change discourse.
- 2) To critically analyze Kenya's Climate Change legal framework to establish whether gender perspectives to the climate change phenomena have been given prominence and whether any special mechanisms have been incorporated which mainstream gender.
- 3) To examine approaches adopted by other jurisdictions in mainstreaming gender into their climate change legal framework to establish best practices.

## **1.8 Research Questions**

The researcher was guided by the following research questions:

1. What are the gender perspectives in climate change discourses?

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<sup>55</sup>Sdg 5

2. How has the climate change legal framework in Kenya mainstreamed gender perspectives?
3. What approaches have other jurisdictions adopted in mainstreaming gender perspectives into their Climate Change legal frameworks and what best practices can Kenya can adopt from them?

## **1.9 Research methodology**

The researcher adopted a qualitative research methodology.

### **1.9.1 Data Collection**

The study was largely a desktop research. As such the researcher obtained his data from secondary sources of data including journals, books, and websites as well as reviewing local and international legislative frameworks.

### **1.9.1 Data Analysis**

The data collected was purposefully summarized, collated and synthesized to match the research objectives of the study. Since the researcher conducted a qualitative study, the data collected was analyzed and presented qualitatively.

## **1.10 Limitations of the Study**

The limitations of the study included

1. Gender perspectives of climate change phenomena being a relatively new area of the study, the researcher was inclined to infer gender perspectives from other sectors outside climate change and draw conclusions therefrom
2. Time constraint. The researcher had limited time to conduct and present his findings for examination purposes. Ideally the researcher would have wished to collect primary

data through interviews and observation from the vulnerable gender which is comprised mainly of women in rural areas who mostly depend on climate sensitive resources. Conducting field studies would have required at least a dedicated period of six months to collect, synthesize and collate data.

3. Limited resources. Ideally the researcher would have wished to conduct field study however due to financial constraints, the same was not be possible.

### **1.11 Chapter Breakdown**

Chapter one is the Research Proposal. It introduces the topic of research; provides a brief background to the study and states the research problem which the researcher undertakes to provide viable solutions. The chapter also reviewed previous studies conducted by other scholars on the area of study and brings out the gaps left out in those studies which the researcher seeks to plug in. The research methodology adopted by the researcher is also described.

Chapter Two is a conceptual framework of the study. In this chapter the researcher contextualized the theories and concepts that are relevant to the research topic. It further demonstrated an understanding of the research phenomena and the relevance of the various concepts and theories to the study.

Chapter three is a critical analysis of the Kenya's legal and policy framework. It examined the climate change law and policies in place to interrogate the integration of gender perspectives

Chapter Four is a consideration of other jurisdictions that have mainstreamed gender into their legal frameworks on climate change and the lessons Kenya can adopt.

Chapter Five comprises the conclusions drawn from the study and presents recommendations which may be adopted to make the legislative and policy frameworks responsive to gender perspectives.

## **CHAPTER TWO**

### **CONCEPTUAL FRAMEWORK OF GENDER PERSPECTIVES IN CLIMATE CHANGE DISCOURSE**

#### **2.0 Introduction**

The Chapter contextualizes gender and climate change theories, themes and their interfaces.

Gender has been defined as the distinctions that arise out of sociological and cultural constructions between men and women which manifest through their roles, responsibilities and attributes. These distinctions are not occasioned by natural or biological factors but rather

determined by entrenched norms and traditions gained mainly through socialization.<sup>56</sup> According to Momsen, gender is derived from the socially acquired notions of masculinity and femininity by which women and men are identified.<sup>57</sup>

A gendered approach to climate change discourse entails demystifying the inequalities between men and women and understanding their causes. The approach goes beyond viewing women as an oppressed group but instead gives equal consideration to the differences between both genders by glancing at their status, roles, needs, challenges in their social, economic, cultural and geographic contexts.<sup>58</sup>

## **2.1 Rationale for a gendered approach**

Previously gender perspectives were deemed superfluous to climate change discourses. International response to climate change focused solely on technological and scientific responses as the only means to address climate change. The social impacts of climate change on gender was completely ignored. Over time however studies have demonstrated that gender inequalities occupy a central role in any effort to combat the impacts of climate change<sup>59</sup>

The theory of gender and development has progressed from the previous strict view of women to a more general recognition of gender. Marxists critiques of the earlier proposition posited that women have always formed part of the development process safe for the fact that structural differences had worked against women. The concept of gender and development thus recognizes the critical role that both women and men play in development processes and only makes a differentiation as to the variance of responsibilities.<sup>60</sup>

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<sup>56</sup> Katharine Vincent et.al (2010) UNDP

<sup>57</sup> Moms.

<sup>58</sup> Carr, E.R., *Geography Compass* 8: 182–197

<sup>59</sup> Masika, R., (2002), viewed at <http://www.fao.org/docrep/005/>

<sup>60</sup> Gender and Development: Women and Rights, Oxfam Journal, Vol 3, June 1995.

The effects of climate change phenomena are already being felt at a human level with the marginalized groups being impacted the most.<sup>61</sup> Whereas climate change discourse is not an entirely new topic, the integration of gender perspectives is a recent departure. And whereas there might be scarce hard evidence, there is a general consensus that climate change exacerbates gender inequality.<sup>62</sup> It follows then that the responses to gender equality should be gender sensitive through a thorough examination and understanding of the ways in which the climate change phenomena exacerbates gender inequalities. As such there is need for gender consciousness in consultations and decision making processes for effective responses to climate change.<sup>63</sup> As concluded in the Beijing conference, the main objective of gender based approach should be to ensure that sticky gender relations are always taken into consideration through deliberate measures in decisions taken at all levels from the community, local, national, regional and international levels.<sup>64</sup>

## **2.2 Contrasting the roles of men and women**

Historically and traditionally, men and women have distinct roles to play in the society. These distinctions can be traced to biblical, historical and even biological roots. Whereas the distinctions are more pronounced and enforced in some societies than others, the general consensus is that even where the distinctions are muted their existence are formally acknowledged. These roles tend to be more prevalent in rural settings than in urban areas. Overall, women tend to be more involved in household chores and taking care of the family.<sup>65</sup>

What is of note is that in most cases while women are involved in the household activities that do not attract an income, the men on the other hand will be engaged in gainful

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<sup>61</sup> IPCC (2007) Viewed at [www.ipcc](http://www.ipcc).

<sup>62</sup> Masika ,R(2002)

<sup>63</sup> Bridge (2008)

<sup>64</sup> Beijing Declaration and Platform for Action, Chapter IV, par. 202.

<sup>65</sup> Gooden, L. (2011).. *Sept 5, 2011*

employment or income generating activities. The more income at the disposal of the men enable them to acquire more formal skills through education while the women apart from being disadvantaged in terms of resources, they also lack the time as they are overwhelmed by household chores. As such women are more vulnerable and impacted more by the effects of climate change owing to their weak economic capacities.<sup>66</sup> Whereas the Kenyan constitution has provided for affirmative action for women through what is commonly referred to as “two-third gender rule” and through programmes such as Women enterprise fund, studies reveal that women still bear the brunt of poverty and inequality in economic, social and political spheres.<sup>67</sup>

### **2.3 Gender inequality occasioned by climate change**

Gender inequality is mainly attributable to the disparity between men and women’s access to resources vital for development. In many occasions women play a supportive role to men. Most of these roles involve reproduction and home chores leaving the more visible functions to be performed by men. Therefore whereas women play a vital role in production chains and sustaining the environment and the economy, their voices are often than not suppressed by the men who take the front row.

During decision making processes, women rarely get the opportunity to participate and even where they participate their opinions may not be given consideration. Gender inequalities can be aggravated in a number of ways by climate change. These include:

#### **2.3.1 Health, Gender and Climate Change**

One of the visible consequences of climate change is the rise in sea levels occasioned by the melting glaciers. This rise in sea levels is predicted to result in a surge of water borne

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<sup>66</sup> Ayeesha Constable, Department of Geography and Geology.

<sup>67</sup> Henry Owino, (2017) Climate Change in Kenya and its impact on gender. Available at <http://kw.awcfs.org/article/climate-change-in-kenya-and-its-impact-on-gender/>



diseases.<sup>68</sup> At the same time other hazards anticipated to be exacerbated by climate change include food shortages occasioned by unpredictable weather patterns which in turn shall result in malnutrition cases<sup>69</sup>; cases of heat waves resulting in morbidity and mortality are expected to surge as well as respiratory complications<sup>70</sup>.

The societal burden placed on women to undertake household chores, take care of the sick and also to take care of homes in times of disasters. These obligations deny them valuable time of engaging in income generating activities and consequently exposing them to the vulnerability to poverty. Their participation at community level discourses in climate change is greatly inhibited by the household chores<sup>71</sup>.

In terms of accessing healthcare women face a challenge of paying for drugs as a result of their weak economic positions. Access is further restricted to those in rural areas where one has to travel long distances to access health facilities. Elderly women have been found to be most vulnerable owing to scanty resources and the failure of governments to provide social protection nets.<sup>72</sup>

Men have also not been spared by the climate change scourge. Owing to the decline in food security caused by unpredictable weather patterns, men have been subjected to mental strain and stress owing to their inability to meet their expectations as the providers of the basic needs. The recurrences of disasters also contribute to mental disturbances especially when they lead to displacements causing families to separate.<sup>73</sup>

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<sup>68</sup>Mansour SA (2013)

<sup>70</sup> Bartlett, S (2008) at [www.iied.org](http://www.iied.org)

<sup>71</sup>Canadian Agency (CIDA), (2002),

<sup>72</sup> WHO:Improving Performance 2000,

<sup>73</sup> Bartlett, S (2008)available from mid-2008 at [www.iied.org](http://www.iied.org)

### 2.3.2 Agriculture, gender and climate change

The impacts of climate change in the agriculture sector are manifested through the rise of temperature and unpredictable rainfall patterns as well as the frequent recurrence of extreme events.<sup>74</sup>

It is projected that the full impact on small scale farmers will be made even more complex by other environmental processes whose impacts are on a large scale having effect on human health and extending to non-agricultural activities.<sup>75</sup>

In most rural areas, it is the women who are involved in production in the agriculture sector. They till the land grow crops mostly on small scale and take care of livestock. This subsistence farming is vital for the survival of most families and thus if production of food is interrupted by the effects of climate change, the survival of those reliant in the subsistence farming is placed at risk. The duty of finding alternative means of feeding families in such situations often than not falls in the hands of the women.<sup>76</sup> The situation is compounded by historical injustices whereby laws and customs inhibit women from owning property and consequently often lack collaterals to enable them access credit facilities. These challenges subject women to more vulnerability in the face of climate change.<sup>77</sup> Agriculture remains the backbone of Kenya's economy and the drivers of this sector are mainly women predominantly in horticulture, tea, coffee and maize subsectors. Sadly however their pay is usually very low. Their woes have for long been compounded by the inability to acquire credit facilities from financial institutions for lack of collaterals. This situation has condemned them to being used as cheap labor as they lack alternative sources of income.

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<sup>74</sup>Climate Change 2007 –IPCC (978 0521 88010-7 Hardback;

<sup>75</sup>Morton J F, (2007)

<sup>76</sup> Canadian International Development Association (CIDA), (undated), "*Gender Equality and Climate Change: Why consider gender equality when taking action on climate change?*"

<sup>77</sup> Mitchell et al (2007)

### **2.3.3 Water, Gender and Climate change**

It's been projected that by the year 2025, up to two thirds of the world's population will experience water shortage and even more alarming is that the shortage could be so severe for up to one billion people.<sup>78</sup> Climate change is expected to result in more frequent flood as well long spells of drought. Both these scenarios will affect the availability and the quality of water resources. Women are known for bearing the responsibility of fetching water for domestic chores as well as watering small livestock herds. As such scarcity of water will impact women more as they will be forced to dedicate more time searching for water.<sup>79</sup> In the process of travelling long distances or queuing for long hours women are deprived of the time to engage in other productive activities and are consequently denied of a decent livelihood. There are also cases of women being victims of assault and sexual attacks especially in war torn regions.<sup>80</sup>

### **2.3.4 Conflict, Climate Change and Gender**

It has been documented that one of the consequences of climate change will be the diminishing of natural resources. The diminished resources will ultimately result in competition for the remaining scarce resources. Conflict is bound to arise where there is competition for scarce resources<sup>81</sup> Conflicts are also bound to occur in non-inclusive processes for instance in the implementation of large scale Clean Development Mechanisms projects.<sup>82</sup>

Women are known to suffer more during armed conflicts. Women have been subjected to sexual violence and denied access to resources crucial for their survival. They are also expected to nurse the injured during conflicts reducing the time at their disposal to perform

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<sup>78</sup> WEDO, (2003), :

<sup>79</sup> id

<sup>80</sup> Fisher, J. (2006),

<sup>81</sup>Hemmati, M., (2005),

<sup>82</sup>Röhr, U., (2006), Gender Issues and Climate Change, In "*Tiempo, Bulletin on Climate Change*", Issue 59, (IIED)

other productive duties. Women are also exposed to the dangers of war such as death and maiming. Ongoing conflicts for instance in Sudan and DRC Congo are a clear illustration of the differential impacts conflicts can have on gender. Whereas the men go out and fight the women are left behind to care of the homes and children and when conflict intensifies they are forced to flee their homes to IDP Camps as well as refugee camps.

Gender equity has been identified as being essential in post conflict period. As such all gender should be incorporated and fully participate in post conflict political processes. The UN has called for enhanced participation of both genders in climate change related processes including adaptation and mitigation efforts.<sup>83</sup>

## **2.4 Promoting Gender Equality**

Gender equality in this context refers to the recognition and treatment of men and women as being equal and affording them with similar status, powers, responsibilities and adequate resources to fulfill their potential.<sup>84</sup>

As previously described, because of historical social and cultural construct, gender equality has been a challenge to achieve. However there has been slow recognition that meaningful development can only be possible if there is overall participation achievable through gender equality has given fresh impetus for deliberate efforts to be made to level the playing field.

### **2.4.1 Gender Empowerment**

One of the ways through which equality can be achieved is through empowerment. Empowerment has been defined as the process through which people are liberated of the power dynamics at play in their life situations and through this empowerment they are able to develop capacity and the confidence to influence and control their fate without violating the

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<sup>83</sup> UNSC 1325

<sup>84</sup> Woodroffe J, et al(2011)

rights of others but instead uplifting his/her fellow citizens wellbeing as well.<sup>85</sup> Empowerment must encompass the three critical spheres of social, economic and political affairs.<sup>86</sup> The Kenyan government has made huge strides in addressing gender inequalities through establishment of the National Commission on Gender and Equality<sup>87</sup> as well as setting up gender desks in government departments. The gender commission inter alia coordinates and facilitates the mainstreaming of gender issues into the national development programmes and advises the government on related aspects.

#### **2.4.1.1 Social Empowerment**

This can be actualized through changing the society's narrative by recognizing the important role played by women and allowing them the freedom to express themselves and chart their own causes instead of dictating to them. This enables women to obtain a self-importance and autonomy.<sup>88</sup> Further full social empowerment is achievable through giving a voice to the marginalized by affording them the opportunity to be heard during public discourses and discussions and through ensuring that their opinions form part of the final decision made.<sup>89</sup>

#### **2.4.1.2 Economic empowerment**

It has been asserted that gender economic empowerment is a precondition for the achievement of sustainable development and all millennium development goals as well as an equal and equitable society<sup>90</sup>. Whereas achievement of women economic empowerment is not a quick fix owing to historical barriers laden with systemic deprivation, sound policies and a holistic approach from all the actors is a premium.<sup>91</sup> Access to vital resources such as

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<sup>85</sup>UNDP, 2010."Gender, Climate Change and Community-Based Adaptation" UNDP, New York

<sup>86</sup> Rowlands J (1995), Vol 5, No 2 Taylor and Francis Ltd.

<sup>87</sup> Set up through an Act of parliament in 2011 to succeed the Kenya National Human Rights and Equality Commission.

<sup>88</sup> Ibid

<sup>89</sup>GenderCC Network, 2007. "Gender: Missing Links in Financing Climate Change Adaptation and Mitigation". Unpublished

<sup>90</sup>World Bank

<sup>91</sup> DAC Network on Gender Equality, OECD.

land, water, credit facilities increases their productivity and promotes their economic growth.<sup>92</sup>

#### **2.4.1.3 Political Empowerment**

Is mainly expressed through representation in governance and political institutions. CEDAW the international bill of rights for women implores state parties to take appropriate measures geared towards elimination of discrimination against women in political and public life spheres. It calls on member states to ensure that women participate in formulation and implementation of government policies and also hold and perform public functions at all levels of government.<sup>93</sup> Political parties are best placed to promote women's political empowerment owing to their central role in the nomination of candidates for positions and also policy development. Overall, promotion of women's political participation should encompass a change in mindsets in terms of cultural attitudes and institutionalized stereotypes and biases.<sup>94</sup> Kenya's new constitution has been heralded as a powerful tool for addressing gender equality as it seeks to reverse the trend of exclusion of women in every aspect of development.

#### **2.5 Gender Mainstreaming**

Gender mainstreaming has been defined as .... "the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels..."<sup>95</sup> It is a strategy employed in integrating men and women's concerns and desires into during the formulation, implementation, monitoring and evaluation of policies and programmes touching on social, economic and political spheres with the ultimate aim of achieving gender equality.<sup>96</sup>

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<sup>92</sup> ibid

<sup>93</sup> CEDAW(1979) at Article 7.

<sup>94</sup> UNDP(2017).

<sup>95</sup>Dankelman, I. (2010)Earthscan

<sup>96</sup>ECOSOC (1997)New York: ESOC

The fourth UN Conference on Women (UNFWCW) held in Beijing China in 1995 adopted the *Beijing Declaration and Platform for Action*. The document laid emphasis on the essence of putting into consideration the impacts of any activity on any sector on gender.<sup>97</sup>

Mainstreaming should not be seen as an end in itself but rather as a means towards achieving the bigger goal of gender equity. As such mainstreaming programmes should strive towards ensuring: that both men and women interests are always taken into consideration in an organization's structure and management as well as in the formulation and implementation of programmes; both gender participate from the point of inception of plans through to planning so that everyone's priorities are factored in; gender equality should form the basis of every activity including planning, research, resource allocation, implementation and monitoring of projects.<sup>98</sup>

### **2.5.1 Gender Mainstreaming and Development**

However in addressing climate change as a development issue, not much regard has been given to gender mainstreaming. One of the justifications has been that scientific and technological techniques are more effective when crafting mitigation and adaptation policies instead of what some term as soft policies such as gender considerations which deal with behavioral and social differences.<sup>99</sup>The UN has however been at the fore front championing for recognition and incorporation of gender perspectives into climate change programmes arguing that the climate change phenomena revolves around people.<sup>100</sup>

Gender mainstreaming in climate change discourses and policies is not insurmountable. The principles and strategies used in mainstreaming gender into other development spheres can be

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<sup>97</sup> ibid

<sup>98</sup> Virginie (2015) ,Working Paper, BRACED,UKaid

<sup>99</sup> Lambrou, Yianna and Grazia Piana (2006): "Gender: The Missing Component of the Response to Climate Change". Food and Agricultural Organization of the United Nations (FAO).

<sup>100</sup> UNDP (2009): "Resource Guide on Gender and Climate Change" UNDP

adopted in climate change since the impacts of other development themes closely resemble the impacts of climate change on gender.<sup>101</sup>

Some commentators have however criticized gender mainstreaming as seeking to engender into existing agenda the perspective of gender where it could be made invisible by the lack of political will.<sup>102</sup> Others contend that rights based approach would be advantageous over gender approach in integrating the majority who are often excluded and may not necessarily be confined to one gender.<sup>103</sup>

## **2.6 Mainstreaming Gender into Adaptation and Mitigation projects**

Mainstreaming should ideally go beyond the mere addition of women's voices into existing plans and programmes. Instead it should strive to transform social and institutional structures to be responsive to gender so as to afford equal benefits to both gender. Mainstreaming involves evaluating the likely implications of a planned activity on both men and women.

Following the decision on 'Mainstreaming gender into the climate change regime' adopted by the Women's caucus at COP-10<sup>104</sup> and supported by UNEP's women assembly<sup>105</sup> propelled the civil society to lobby for the mainstreaming of gender issues at international policy legislative frameworks.<sup>106</sup>

Mainstreaming of gender into community based adaptation projects requires careful planning steps involving: establishing the effects of climate change from both gender perspectives; formulation of gender sensitive criterion and indicators; look out for special talents of both genders and leverage on the same; give priority to the marginalized gender in terms of access

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<sup>101</sup>*Developing World. Approaches to Development 2009*. Sandra Manata.

<sup>102</sup>Hannan, C. (2000). Lund: Lund University

<sup>103</sup>Meer, S. (2007) 'Reframing rights for social change, Chicago: KIT/OXFAM

<sup>104</sup> UNFCCC Conference of Parties Meeting at Buenos Aires(2004)

<sup>105</sup> Nairobi 2004

<sup>106</sup>Roehr, U. (2007) .



to participation and decision making processes.<sup>107</sup> In addition, a gender responsive budget that recognizes that though the needs of men and women are in some cases similar, in other cases those needs and vary and the differentiation must be reflected in the budget allocations.

In terms of mitigation NDC's have more comprehensive measures that incorporate diverse mitigation and adaptation techniques for all countries post 2020. The shift towards a more bottom-up orientation and a wider range of evaluation criteria for allocating support which in turn has helped in strengthening the alignment between mitigation and women empowerment objectives. The challenge now is implanting the texts on the INDC's into action.<sup>108</sup>

### **2.6.1 Gender Analysis**

Gender sensitive analysis has been described as “*a tool used in addressing gender dimensions in any given issue or intervention to mainstream gender*”<sup>109</sup>. The objective of gender analysis is to discover the variances in gender roles, needs and opportunities which each gender can exploit to maximize their capabilities. Gender analysis is necessary as it provides a summary of crucial data necessary for effective gender mainstreaming and is thus prerequisite procedure in ensuring community based adaptation programmes are gender sensitive thus promoting gender equality. Gender analysis tool should be applied all through a project cycle i.e. from the inception stage; project formulation and finally the implementation stage.

### **2.7 Dangers of Gender Blind interventions**

If decisions and projects on tackling climate change are implemented without taking into consideration the gender inequalities, the result of such endeavors will be failure to achieve the desired goals of enhancing people's livelihoods and consequently exacerbate further marginalization and discrimination between the empowered and the less empowered.<sup>110</sup> For

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<sup>107</sup>UNDP , 2007

<sup>108</sup>Boos, Daniela, Hauke Broecker, Tobias Dorr, Heiner von Luepke, and Sudhir Sharma. 2014. How Are INDCs and NAMAs Linked? Eschborn, Germany: GIZ.

[http://www.igep.in/live/hrdpmp/hrdpmaster/igep/content/e54413/e54441/e61720/NAMAINDCPublication. pdf](http://www.igep.in/live/hrdpmp/hrdpmaster/igep/content/e54413/e54441/e61720/NAMAINDCPublication.pdf)

<sup>109</sup> ibid

<sup>110</sup>Masika, R. (2002)

the longest time, climate change discourses have been dominated by scientists, economists and engineers. These fields are concentrated and led mainly by the male gender who then dictates climate agenda, policies and projects. Gender perspectives thus go beyond merely highlighting the gender inequalities but also seek to challenge male dominated institutions.<sup>111</sup>

## **2.8 Contextualizing vulnerability of women**

Gender vulnerability ought to be understood in a wider context. This is because women are not a homogenous lot. Not all women are poor in fact some are richer than men, not all women live in rural areas, others live in urban setting, they come from different family backgrounds. Therefore it is possible to find men who are more vulnerable to climate change effects than some women. As such to demystify the linkages of gender and climate change requires context specific case studies.<sup>112</sup> Attention needs to be directed more towards the larger political economy and establishment of the factors that exacerbate vulnerability and inequalities.<sup>113</sup>

Vulnerability ought to be viewed more in terms of the power distinctions that create vulnerability at the onset. A generalized conclusion in women's vulnerability tends to silence contextual differences. As such both genders must be viewed objectively as being responsible for climate change as well as being potential agents for climate change mitigation.<sup>114</sup>

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<sup>111</sup>Buckingham, S. (2010) '(7323) 502.

<sup>112</sup> O'Brien et al(2004) Mapping Vulnerability to multiple stressors: Climate Change and globalization in India. Global Environmental Change 14.

<sup>113</sup> Arora –Jonsson,S (2009). Discordant connections: 35(1).213-240

<sup>114</sup> ibid

## **CHAPTER THREE**

### **AN ANALYSIS OF THE GENDER PERSPECTIVES OF THE CLIMATE CHANGE LEGAL AND POLICY FRAMEWORK IN KENYA**

#### **3.0 Introduction**

Climate change has been described as “the defining human development issue of our generation”<sup>115</sup>. Yet in spite of this bold statement, climate change mainstreaming has not been emphasized in most development discourses. Specifically gender mainstreaming has not been championed as one of the strategies of confronting the impacts of climate change. This chapter seeks to highlight the major role gender could play in climate change responses when mainstreamed into the legal frameworks.

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<sup>115</sup> Watkins, Kevin et.al (2008): Human Development Report 2007/2008:.

Nobel Laureate, Amartya Sen, asserts that for development efforts to be successful, women must be incorporated and recognized as the central agents of change.<sup>116</sup> The failure to mainstream gender into action plans, policies and legislations however continue to inhibit women's participation and impact in decision making processes. They remain underrepresented in climate change negotiations both at the local and international level.<sup>117</sup>

Calls for gender mainstreaming into development activities started in the 1980's.<sup>118</sup> However it was not until 1995 during the Beijing women's conference that the emphasis of mainstreaming gender into all development aspect was made a central theme.<sup>119</sup>

### **3.1 Gendered Approach to Climate Change at International Parlance**

Gender has been acknowledged as a fundamental ingredient in development discourse generally at the international scale. This was illustrated for instance in the now redundant Millennium development goal number three which aimed at promoting gender equality and empowering women as one of the key goals.<sup>120</sup> Similarly the Sustainable Development Goals, though lamenting the slow pace of change and the apparent gender inequalities which persists, pays tribute to the strides made under the MDGs and aims to build on the achievements by striving towards ending all forms of discrimination against women and girls everywhere.<sup>121</sup>

### **3.2 United Nations Framework on Climate Change (UNFCCC)**

Ironical of the UNFCCC is the fact that whereas Agenda 21, a product of the Rio Summit just like the UNFCCC, gender and specifically women's issues were elaborately canvassed<sup>122</sup>, the UNFCCC made no mention of gender issues. Similarly during subsequent UNFCCC Conference

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<sup>116</sup> Sen, Amartya (1999) .

<sup>117</sup> Denton, Fatma, (2002) "Climate Change Vulnerability, Impacts and Adaptation: Why Does Gender matter?"

<sup>118</sup> women watch

<sup>119</sup> UN. (2002): Gender Mainstreaming-An Overview.

<sup>120</sup> UNDP (2009).

<sup>121</sup> Sustainable Development Goals Booklet (UNDP) viewed at:

[http://www.undp.org/content/dam/undp/library/corporate/brochure/SDGs\\_Booklet\\_Web\\_En.pdf](http://www.undp.org/content/dam/undp/library/corporate/brochure/SDGs_Booklet_Web_En.pdf)

<sup>122</sup> Chapter 24 of Agenda 21 calls on governments to give girls equal access to education...and to ensure women participation in social, cultural and public life.

of Parties (COP) gender did not feature in the agenda. It was only until the adoption of the Kyoto Protocol<sup>123</sup>, that gender aspects featured through the Clean Development Mechanisms (CDMs) where most projects under the CDM are conducted by women.<sup>124</sup>

It was not until COP-8(2002) held in India that the first official side event on gender was organized. Though it was merely a side event not forming the main agenda, it marked a turning point for the awakening of the gender debate. The next COP-9 held in Milan witnessed enhanced advocacy for the incorporation and mainstreaming gender into the COP discussions.<sup>125</sup>

It was however not until COP-13(2007) held in Bali that gender was recognized and centralized as a central theme of climate change discourse rather than a collateral.<sup>126</sup> During the COP, gender activists appealed to the participants to “recognize that women are powerful agents of change and that their full participation in climate change adaptation and mitigation policies and initiatives is indispensable and to ensure participation of women and female gender experts in all decisions relating to climate change”<sup>127</sup>

### **3.2.1 Milestones under the UNFCCC Framework**

In over two decades post the ratification of the UNFCCC, only three decisions which primarily focus on gender issues have been adopted. The first major decision adopted at COP-7 dwelt on enhancing women’s participation and representation in bodies created under the UNFCCC framework<sup>128</sup>. It is instructive to note however that the decision was ineffective in its wording as it only invited parties to give consideration to gender in choosing membership for

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<sup>123</sup> Kyoto Protocol

<sup>124</sup>Skutsch, M. 2004. viewed at [www.energia.org/pubs/papers/wamukunya\\_skutch.pdf](http://www.energia.org/pubs/papers/wamukunya_skutch.pdf)

<sup>125</sup> Hemmati, M (2005)

<sup>126</sup> ibid

<sup>127</sup> Ibid at 6

<sup>128</sup> (Decision 36/CP.7) Marrakesh, Morocco 2001.COP-7

negotiation teams. Ultimately the decision was unfruitful as no major increase in women's participation was witnessed.<sup>129</sup>

Over a decade later in Doha (2012), parties sought to build on the earlier call for greater participation by adopting a decision on gender balance. The decision implored state parties to strive towards gender balance in their National delegations<sup>130</sup>. During the COP, gender and climate change was for the first time made a standalone agenda for discussion by the plenary. This effectively elevated and mainstreamed gender issues which had in the earlier COPs been discussed at ad-hoc levels.

The third decision was adopted in Lima at COP-20 in 2014. The decision dubbed 'Lima Work Programme on Gender'<sup>131</sup>sought to promote gender balance in practice. it was modeled as a two year work programme for promoting gender balance through a hands on approach on the delegates through training them on issues of gender balance and the importance of equal participation. The Lima decision traversed the question of gender balance by seeking to promote gender sensitivity in the development and implementation of climate change policies.<sup>132</sup>

The mainstreaming of gender into international climate change framework has been a slow one. This has partly been attributed to the fact that climate change discourse has mainly been dominated by men.<sup>133</sup> Further the gender discourse has been inhibited by International community's focus on scientific and technological solutions and in the process neglecting social and gender aspects.<sup>134</sup>

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<sup>129</sup> Tenzing J,Andrel Sviewed at: <http://pubs.iied.org/17313iied>  
<sup>130</sup>23/CP.18

<sup>131</sup> 18/CP.20

<sup>132</sup> Supra at Note 15

<sup>133</sup> Denton,F (2002) , Vol 10,No 2

<sup>134</sup> Sandra,M (2009)Gendering Climate Change,

### **3.3 Regional Approaches to Climate Change and Gender Perspective**

The African Union's approach to advancement of gender equality has mainly been shaped by the International and specifically UN's treaties and conventions. The most prominent instruments referred to are: the UN Charter (1948), Universal Declaration on Human Rights (UDHR) and The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). During the 23<sup>rd</sup> ordinary session of the AU, the Committee of African Heads of State and Governments on Climate Change (CAHOSCC) resolved to establish Women and Gender Programme on climate change to address gender issues in climate change discourses in the continent.<sup>135</sup> Most African continents have since then formulated their own climate change policies, strategies and action plans with a gendered outlook. These climate change policies and plans have also been mainstreamed into development plans.<sup>136</sup> It would however be desirable if the regional body formulates a united approach towards gendering climate change responses in the form of a regional treaty or convention on climate change.

### **3.4 Kenya's Climate Change Legal Framework and its Gender Perspectives.**

Kenya prides itself as having been the first sub-Saharan state to enact climate change legislation. The motivation for this swift action can be traced to the proactive Constitution of Kenya (2010) which from the onset lays a firm foundation for the care of the environment and emphasizes on inclusivity.<sup>137</sup> The national values and principles of governance further entrenches the fundamental principles of rule of law, inclusiveness, equality, equity, protection of the marginalized, non-discrimination, sustainable development among others.<sup>138</sup> The constitutional framework thus laid a firm foundation for addressing climate change as an environmental issue as well as the mainstreaming of gender issues into proposed plans and

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<sup>135</sup> AU 2011 viewed at: <https://au.int/en/documents/20110324-0>

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<sup>137</sup> The Preamble highlights the people's determination to sustain the environment for posterity as well as bringing forth the core values of equality, social justice, rule of law among others.

<sup>138</sup> Art 10 Constitution of Kenya(2010)

policies. To address injustices occasioned by past discriminative laws, the constitution obliges the state to put in place legislative as well as other affirmative action measures and programmes.<sup>139</sup> These measures specifically include the principle of not having not more than two-thirds of the members of elective or appointive bodies being of the same gender.<sup>140</sup> It's also on this backdrop that the Climate Change Act 2016 as well as other policies and strategies have been formulated.

### **3.4.1 Climate Change Act (No 11 of 2016)**

The principal objective of the Act is to “provide a regulatory framework for an enhanced response to climate change; provide measures and mechanisms for achievement of low carbon climate development”<sup>141</sup> Among its specific objectives is the “mainstreaming of intergenerational and gender equity in all aspects of climate change responses” as well as “facilitate capacity development for public participation in climate change responses through awareness creation, consultation, representation and access to information”.<sup>142</sup> In essence thus the legislation is expected to provide mechanisms for integrating public participation as well as gender perspectives in climate change responses.

Among the guiding principles that have been provided for the implementation of the Act is ‘ensuring equity and social inclusion in allocation of effort and costs and benefits to cater for special needs, vulnerabilities, capabilities, disparities and responsibilities’ and “ensure participation and consultations with relevant stakeholders”<sup>143</sup>. From these principles there is a clear emphasis on inclusion especially of marginalized and vulnerable groups which include women.

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<sup>139</sup> Art 27(6)Ibid

<sup>140</sup> Art 27(8) Ibid

<sup>141</sup> Preamble to the Climate Change Act(2016)

<sup>142</sup> Sec 3(2)e, h ibid

<sup>143</sup> Sec 4(2)d Climate Change Act 2016



The Act makes provision for public participation. It obliges public entities at all levels of government to publish relevant information and undertake public consultations and awareness campaigns in enacting policies, strategies and laws in relation to climate change.<sup>144</sup>

The public engagements are expected to be conducted in a manner that ensures that the contribution of the public has an influence on the final decision.<sup>145</sup> The challenge with the implementation of the provision however is there is no mechanism of ensuring that public contributions are indeed taken into consideration when final decisions are made. Whereas the Act provides for the enactment of regulations for actualizing public contributions, they are yet to be enacted.

The objectives of the Act are to be operationalized by the National Climate Change Council (NCCC).<sup>146</sup> It is instructive to note that two years since the enactment of the law, the NCCC is yet to be fully constituted with parliament having rejected some of the nominees to the council during vetting exercise.<sup>147</sup> Once fully constituted, the council shall among others be tasked with “approving a national gender responsive and public education awareness strategy and implementation programme”. Even before the full constitution of the council, fears have been raised as to whether the NCCC itself shall be gender sensitive and specifically be in compliance with the two thirds gender rule<sup>148</sup> designated by the constitution on Kenya.<sup>149</sup> Already the three automatic members of the NCCC i.e. the President, Deputy President and cabinet secretary in charge of the Environment are of the same gender hence it is incumbent that gender considerations play an important in the nomination and appointment of the remaining members.

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<sup>144</sup> Sec 24(1) Ibid

<sup>145</sup> Sec 24(2) Ibid

<sup>146</sup> Sec 5 Ibid

<sup>147</sup> The Star Newspaper, January ,11,2017 viewed at [https://www.the-star.co.ke/news/2017/01/11/house-rejects-two-nominees-to-national-climate-change-council\\_c1485259](https://www.the-star.co.ke/news/2017/01/11/house-rejects-two-nominees-to-national-climate-change-council_c1485259)

<sup>148</sup> Art 27(8) Constitution of Kenya 2010

<sup>149</sup>

The Act tasks the cabinet secretary in charge of environment to “formulate a national gender and intergenerational responsive public education and awareness strategy on climate change and implementation programme”<sup>150</sup>. The cabinet secretary shall be assisted by a directorate whose functions among others shall be to coordinate implementation of gender and intergenerational climate change education, consultation and learning at both levels of government<sup>151</sup>. Should the spirit of the Act be adhered to, then these two mechanisms shall ensure that gender is part and parcel of every response strategy to climate change. It is upon the gender activists to push for the strict implementation of the law for the gains provided for to be achieved.

Additionally the Act provides for the creation of a Climate Change Fund to aid in the financing of priority climate change actions and interventions<sup>152</sup>. The fund is a direct charge of the consolidated fund meaning that once operational there shall be not instances where a priority project shall fail to take off due to unavailability of fund. Whereas the Act does not prescribe how the fund shall specifically benefit the vulnerable gender, it is expected that once operational, projects which mainstream gender perspectives shall be given consideration based on the general objectives and guiding principles of the Act.

Overall, the Act does not specify the mechanisms for gender incorporation in public consultations and awareness campaigns. Whereas public participation is featured as key principle in implementation of the Act, there is no emphasis of regard for gender and vulnerable groups during the public hearings.

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<sup>150</sup> sec 8(c) Climate Change Act(2016)

<sup>151</sup> Sec 8(f) Ibid

<sup>152</sup> Sec 25 Ibid

### **3.4.2 National Climate Change Response Strategy**

The National Climate Change Response Strategy highlights the evidence of climate change in Kenya as epitomized by extreme weather conditions, the impacts on the country and makes recommendations on dealing with the impacts.<sup>153</sup>

The objectives of the strategy include enhancing understanding of climate change and its impacts on the people and making recommendations on vulnerability assessment, monitoring of impacts as well as development of capacity building frameworks.<sup>154</sup>

Some of the remedial measures proposed in the strategy include: adaptation and mitigation in key sectors; legislative and institutional frameworks; capacity building; sharing of vital information and education and the utilization of technology and transfer of knowledge among others. The strategy proposes the creation of programmes for target groups such as women, children, youth and people with disabilities.<sup>155</sup> Implementation of these remedial measures especially those on capacity building for marginalized groups as well as the vulnerable could be vital in addressing gender vulnerability to climate change impacts.

### **3.4.3 National Climate Change Action Plan (NCCAP) 2013-2017**

The NCCAP (2013-2017) was the first action plan developed to implement the NCCRS. It covered all sectors of the economy and created mechanisms for mainstreaming the NCCAP into every sector.<sup>156</sup> The NCCAP was specifically focused at reducing the vulnerability of those who are subjected to the impacts more acutely such as women and the poor. To actualize this goal, the NCCAP developed eight subcomponents i.e.: ‘Long-term National Low Carbon Climate Resilient Development Pathway; Enabling Policy and Regulatory Framework; Adaptation Analysis and Prioritization; Mitigation Actions; Technology; National Performance and Benefit Measurement; Knowledge Management and Capacity

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<sup>153</sup> Government of Kenya(2010)

<sup>154</sup> *ibid*

<sup>155</sup> *ibid*

<sup>156</sup> Sec 13(4)Climate Change Act(2016)

Development and Finance'<sup>157</sup>. They recommended the dissemination of climate change knowledge and benefits to the most vulnerable and affected especially women.

The NCCAP is vital as it mainstreams gender by making specific references to vulnerable groups and women as special considerations in climate change response.

#### **3.4.4 National Climate Change Action Plan (2018-2022)**

The NCCAP (2018-2022) builds on the lapsed (2013-2018) which made significant progress most notable being the establishment of climate change funds in county governments, establishing the National Climate Change Resource Centre and improvement of the legal and policy framework for climate change.

Climate Change Action being a shared responsibility between the National and County governments, the formulation of the second Action Plan (2018-22) has been spearheaded by the National government while coordination and implementation of the Action Plan shall be a shared responsibility between National and County governments. The roles of both the National and County governments have been highlighted of how climate change results shall be achieved.

The NCCAP (2018-2022) purposes to enhance Kenya's development agenda by providing mechanisms and measures to achieve low carbon climate resilient development in a way that prioritizes adaptation. It seeks to among others: align climate change actions with the government's development agenda including what has been termed as the "Big Four Agenda"; encourage participation by all the stakeholders including private sector, youth and marginalized groups including women, people with disabilities and indigenous groups; provide a framework for mainstreaming climate change into sector functions at the National and County levels.

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<sup>157</sup> GOK NAP,2013-2017

To undertake climate change action without impeding economic and sustainable development objectives, The NCCAP is guided by noble principles. These include: a human rights approach that ensures that interests of the youth, marginalized groups, and the poor are given priority through an inclusive approach to climate change action ; deployment of appropriate technologies for both adaptation and mitigation measures

The NCCAP (2018-2022) is supplemented by the Adaptation Technical Analysis Report (ATAR) and Mitigation Technical Analysis Report) that provide substantive technical analysis.

#### **3.4.5 National Adaptation Plan (NAP) 2016**

The main purpose of the NAP was to operationalize the NCCAP. Its development involved an elaborate consultative process. It was devised to enable both the National and County governments in the implementation of the NCCAP through providing guidance and indicators on priority areas.<sup>158</sup>

NAP proposes a mainstreaming approach in which adaptation and development goals complement each other. The NAP addresses climate hazards such as floods, droughts and sea level rise as priority areas which should be subjected to vulnerability analysis. It proposes performance indicators to be employed against expected major climate changes.<sup>159</sup>

Whereas public participation and access to information are at the core of NAP, it falls short in recognizing and bringing to the fore the critical role played by women and the youth in climate change mitigation. Further it doesn't make mention of the vulnerability of these groups and the need to give them special protection.<sup>160</sup>. Whereas gender inclusion was a prominent aspect in the development stage of NAP, the separation of gender and vulnerable

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<sup>158</sup> MENRM,2016

<sup>159</sup> NAP (2015-2013) "Enhancing Climate resilience towards the attainment of vision 2030 and Beyond

<sup>160</sup>UNDP/FAO(2017)

groups in the sectoral adaptation actions in the NAP may prove ineffective since advancing gender considerations in isolation without integration into the main adaptation action plans.<sup>161</sup>

NAP also fails to appreciate that gender issues may vary from one sub-sector to the other for instance women in agriculture may be impacted differently by climate change from those in the fisheries sector which thus require gender to be viewed as a cross-cutting consideration in all adaptation actions. And whereas it has laid down performance indicators for both national and county levels, these indicators do not take into account gender variances which could in effect serve as a barrier to effective implementation of the NAP as gender will not necessarily be a consideration during planning and monitoring of activities.<sup>162</sup>

#### **3.4.6 Nationally Determined Contributions (2015)**

The NDC were previously fashioned as Intended Nationally Determined Contributions (INDC). Upon the coming into force of the Paris Agreement on 4<sup>th</sup> November 2016, it obligated state parties to put forward their best efforts through nationally determined contributions (NDCs). These are aimed at achieving the objectives of the UNFCCC as set out in article 2 which provides thus ‘The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner’. The

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<sup>161</sup> Ibid

<sup>162</sup> Ibid

INDC were developed by the state parties to the UNFCCC following the resolution adopted during the 19<sup>th</sup> and 29<sup>th</sup> sessions of the Conference of Parties (COP)<sup>163</sup>

Kenya's NDC indicate that its mitigation and adaptation plans are hinged principally on the NAP and NCCAP both of which are subject to review every five years. Further the implementation of the NDC is dependent on the structures created by the Climate Change Act (2016). It has set a target of lowering greenhouse gas emissions (GHC) by 30% by the year 2030 despite the fact that it contributes less than 0.1% of the total global emissions.<sup>164</sup>

One of the priority adaptation actions provided by the INDC is the call to strengthen the adaptive capacities of the most vulnerable groups through safety nets and insurance schemes to be implemented through Gender, Vulnerable Groups and Youth Medium Term Plan sector. Further it emphasizes on the need for education, training access to information, public awareness and participation across the public and private sectors.<sup>165</sup> Whereas the NDC reiterates on the importance of integrating vulnerable groups, gender considerations have not been given prominence. It is therefore incumbent upon the implementers of the NDC to deliberately mainstream gender into their programmes.

### **3.5 Conclusion**

The successful integration and mainstreaming of gender into climate change responses will largely depend on the implementation of the Climate Change Act (2016) being the anchor legal framework for climate change in Kenya. The Act provides aspirational provisions which if fully implemented would entrench gender principle in climate change response mechanisms. For instance it is provided as a guiding principle that there is need for 'ensuring equity and social inclusion in allocation of effort, costs and benefit to cater for special needs,

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<sup>163</sup> Art 2, UNFCCC

<sup>164</sup> Supporting Kenya's Intended National Determined Contributions(2015) Climate & Development Knowledge Network. Viewed at <https://cdkn.org/project/project-supporting-kenyas-intended-nationally-determined-contribution/>

<sup>165</sup> Government of Kenya(2015) INDC

vulnerabilities, capabilities, disparities and responsibilities.’ The Act makes a proposal for the inclusion of climate change topics with a gendered perspective in schools curricula. This will further entrench gender as a mainstream consideration in climate change responses. Of critical importance is the provision of budget allocation for gender specific action to assist women in climate change initiatives and programmes.

## **CHAPTER FOUR**

### **ANALYSIS OF BEST PRACTICES FROM OTHER JURISDICTIONS ON MAINTREAMING GENDER INTO CLIMATE CHANGE LEGAL FRAMEWORK**

#### **4.0 Introduction**

This chapter looks into other jurisdictions that have recognized gender as a key consideration in climate change response strategies and mechanisms. The study shall be more focused on those states that have mainstreamed gender perspectives into their policy and legislative frameworks to establish best practices that can be adopted to improve Kenya’s legislative and policy framework. The study focused specifically on



Asian states namely Nepal and Philippines which states have made huge strides in mainstreaming gender into their legal and policy frameworks. These States also have similar climate change impacts as those of Kenya.

#### **4.1 Mainstreaming of Gender into the legal frameworks in Asia and the Pacific**

In most of the Asian countries, recognition has been made of IPCC's finding that men and women are affected by climate change differently. The said differences in experiencing the effects of climate change are attributed to the existing variations in terms of levels of accessing resources, knowledge, skills as well as finances among men and women.<sup>166</sup> As a result, men and women respond to the effects of climate change basing on the how they experience its effects. Studies indicate that in the initial stages of international climate negotiations the above mentioned differences did not receive substantial recognition<sup>167</sup>. Subsequent trends in this sector however, reveal that changes have been embraced whereby active engagement of women as agents of change in matters climate solutions leads to stabilization of climate in addition to realization of other several benefits such as women empowerment and gender equality.<sup>168</sup>

Support for mainstreaming gender in climate change in this region has been reinforced through the Sustainable Development Goals (SDGs)<sup>169</sup>. This is emphasized by providing that the international development community must in their projects, incorporate actions that are tailored towards women empowerment in terms of response to climate change. At the national level, policy makers have incorporated gender in climate change mitigation

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<sup>166</sup> Asian Development Bank. 2013

<sup>167</sup> Nellesmann, C., Ritu Verma, and Lawrence Hislop. 2011.

<sup>168</sup> The GCF's Gender Policy and Action Plan 2014-2017 provides evidence of the benefits of mainstreaming gender in climate financing decisions

<sup>169</sup> Ibid

initiatives.<sup>170</sup> It is observed that there is an increase in the number of nations that have resolved to include the gender element in climate change mitigation actions geared towards the reduction of greenhouses by 2020.<sup>171</sup>

In Asian countries, the commitment by both national and international organizations to mainstream gender in climate change initiatives is underpinned in their realization that women empowerment and subsequent gender equality is crucial to socioeconomic development<sup>172</sup>. This is because studies have established that women perform well on tasks assigned to them and also greatly contribute to making of investments<sup>173</sup>. The proof for the zeal to realize this is evidenced in agreements like the Convention on the Elimination of All Forms of Discrimination against Women and the 2030 development agenda.<sup>174</sup> These provisions are to the effect that there is a shared understanding that women, just as men are entitled to political, social and economic rights and such include participation in major decision making processes.

As already emphasized, the existence of gender inequalities has led environmental challenges to have different impacts on men, women, boys and girls. A research carried out in the Asia-Pacific reveals that women account for the two thirds of the poor people in the region thereby making their economic insecurity a disadvantage to them in terms of experiencing the harsh effects of climate change.<sup>175</sup> This is said to have been facilitated by discrimination against women in terms of employment, land ownership, rapid urbanization, and high vulnerability to climate change effects of the region as well as

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<sup>170</sup>UNFCCC COP 14.

<sup>171</sup>Aguilar, Lorena. "Establishing the linkages between gender and climate change adaptation and mitigation." (Routledge, 2012).

<sup>172</sup>Asian Development Bank. 2013. VIEWED at <http://public.eblib.com/choice/publicfullrecord.aspx?p=3111081>.

<sup>173</sup>Dankelman, Irene, ed. *Gender and climate change: An introduction*. Routledge, 2010.

<sup>174</sup>SDG 5 on Gender Equality

<sup>175</sup>Demetriades, Justina, and Emily Esplen. "The gender dimensions of poverty and climate change adaptation." *Ids Bulletin* 39, no. 4 (2008): 24-31.

ecosystem degradation.<sup>176</sup> A study carried out by the UN Environment Asia and Pacific has established that the element of incorporating gender in environmental conservation is informed by the above stated inequalities, variations in needs, vulnerabilities, the divergent capacities roles of men and women<sup>177</sup>.

Through UNDP, the Asia-Pacific region has realized that involving women in mitigating effects of climate change is not only a good social increases the effectiveness the responses designed to address the menace.<sup>178</sup> Women have unique knowledge and skills in the field of managing natural resources, energy as well as production of food. When put to use, these attributes would to a greater extent address the high prevalent climate change issues in the region.

In the bid to achieve this, there has been developed the concept of integration of gender perspectives into forest policies in Asia and the Pacific. This concept is anchored on a number of factors including the participation of women and their representation in forest management structures, women's rights regarding decision making and their access and control over forest resources<sup>179</sup>. OECD observes that the absence of gender disaggregated data is the main undoing in the design and development of policies and programs that are gender sensitive and responsive in the forestry sector<sup>180</sup>. The foregoing has contributed to development of gender-specific policies which enshrine women gender related needs in their development. Such policies also identify certain strategies which are appropriate for women.

Records indicate that most of the forest laws in the Asia Pacific region were formulated before the 1960s, a time when the relevance of mainstreaming gender perspectives was

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<sup>176</sup>Demetriades and Emily. "The gender dimensions of poverty and climate change adaptation.

<sup>177</sup>Barrs (2009), London.

<sup>178</sup>UNDP. [www.undp.org/gender](http://www.undp.org/gender)

<sup>179</sup>Ibid at 194

<sup>180</sup>DAC Network on Gender Equality (2014), (OECD Publishing, Paris).

highly limited.<sup>181</sup> For instance, in the Philippines the policy that highlighted women in development emerged in 1970 which was designed to promote the integration of the concerns, needs and aspirations of women into all sectors relating to development.<sup>182</sup> The Gender and Development (GAD) approach emphasized on roles that were socially constructed, responsibilities and rights, in addition to how they were re-in forced within communities.<sup>183</sup>

Nepal and the Philippines have been rated as relatively progressive as far as integrating gender perspectives in forest policies is concerned.<sup>184</sup> These two nations recognize women in light of being the primary users of forests. As such, they acknowledge the fact that women could be wonderful managers of forests given that they are also the first victims that are affected by the problems associated with the forests.

#### **4.1.1 Nepal**

In Nepal, the National Forest Plan of 1976 presents the first government legal framework that provides for express acknowledgement of the importance of public participation in managing of the forests in the company.<sup>185</sup> In 1977, the Forest Act of 1961 was subjected to amendments that introduced provisions that ordered that some of the forest areas which were mainly degraded be handed over to village institutions.<sup>186</sup> However, including women in the management of forests took a longer time where and became actualized in the 1988 master plan for the Forest Sector.<sup>187</sup> According to the Master Plan, a recommendation is given that at least a third of the executive committee for every user

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<sup>181</sup> Ibid

<sup>182</sup> Ibid

<sup>183</sup> Ibid

<sup>184</sup> Nellemann, C., Ritu Verma, and Lawrence Hislop. 2011.

<sup>185</sup> Mainlay, Jony, and Su Fei Tan. "Mainstreaming gender and climate change in Nepal." *London: IIED Climate Change Working Paper (2)* (2012).

<sup>186</sup> Mainlay and Su Fei Tan. "Mainstreaming gender and climate change in Nepal."

<sup>187</sup> Ibid

group of the forest be comprised women. The changes in the political systems of Nepal introduced democracy which saw to it that that the momentum for increasing women participation in forestry management was increased. This was illustrated in the enactment of laws that provided for household membership in the community forest user groups to include one male and one female member.<sup>188</sup>

In 2009, after having instituted the strategy of gender and social inclusion, the forestry guidelines were amended resulting into the development of a criteria that mandated women to form 50 % of the community forest user group executive committees.<sup>189</sup> The Ministry of Forests and Soil Conservation assigns gender focal points both at the ministerial and departmental levels. The ministry also sees to it that the gender, poverty and Social equity monitoring framework indicators are integrated into the database system of the community forestry for purposes of recording gender-disaggregated data<sup>190</sup>.

Later, a revision of the community forestry guidelines was done whereby it introduced a law to the effect that 35% of the total income generated from the community forestry user groups be allocated to interventions that are prop-poor in nature.<sup>191</sup> In this regard, the poor are singled out using a well-being procedure. Funds are then channeled to support activities that have been designed to improve the livelihoods of the women, poor and marginalized groups.<sup>192</sup> The marginalized groups comprise of women and men that come from poorest households. Examples of these groups of people include Dalits, Janajati and

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<sup>188</sup> The forest Act 1993, Forest Regulations 1995 (Nepal) available at <http://extwprlegs1.fao.org/docs/pdf/nep4527.pdf>

<sup>189</sup>Mainlay and Su Fei Tan. "Mainstreaming gender and climate change in Nepal."

<sup>190</sup> Ibid

<sup>191</sup>Mainlay and another "Mainstreaming gender and climate change in Nepal."

<sup>192</sup>Alston, Margaret. "Gender mainstreaming and climate change." In *Women's Studies International Forum*, vol. 47, pp. 287-294.(Pergamon, 2014).

non-Dalit caste groups, people residing in remote geographic locations and the religious minorities.<sup>193</sup>

A Multi Stakeholder Programme on forestry which covers ten years was put in place in 2011 which now works in 61 districts of Nepal having address of gender inequalities as one of its major strategic aims.<sup>194</sup> The programme is implemented in partnership with Department for International Development, UK, The Finnish International Development Agency and the Swiss agency for Development and Cooperation.<sup>195</sup> Other objectives of the programme are outlined as resolving the governance and exclusion issues that mar the forestry together with climate change fields.

Nepal being a developing country just like Kenya is highly vulnerable to climate change. In both countries, the female gender is more vulnerable to the effects of climate change owing to their adaptive capacity which is determined by the availability and accessibility of natural resources. In countries such as Nepal and Kenya that report cases of discrimination against women in its traditional practices and cultures, climate change exacerbates these existing gender inequalities.<sup>196</sup> These countries that have historically been characterized by patriarchal values, in many instances rely on the privileged sector of the society for decision making. The input of women in decision making processes especially formulation of laws and policies remain at a pittance. Their voices are suppressed both at international negotiations and at the local level.<sup>197</sup>

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<sup>193</sup>Ibid

<sup>194</sup>Mainlay, J. and Tan, S.F. (2012) Mainstreaming gender and climate change in Nepal. IIED Climate Change Working Paper No. 2, November 2012

<sup>195</sup> Ibid

<sup>196</sup>Mainlay, J. and Tan, S.F. (2012) Mainstreaming gender and climate change in Nepal. IIED Climate Change Working Paper No. 2, November 2012 Available at [www.iied.org](http://www.iied.org)

<sup>197</sup>Wydra, M., Jay, S., Johnson, T., Draper, A., Escobosa, E., Le Cerf, E., Maurseth, A. (2010) *Empowering Women in Nepal: A 2010 Report* [http://pages.uoregon.edu/aweiss/intl442\\_542/Nepal-Empowering%20Women.pdf](http://pages.uoregon.edu/aweiss/intl442_542/Nepal-Empowering%20Women.pdf) (accessed 22 October 2018)

Being a signatory of international instruments such as the Convention on the Elimination of all Forms of Discrimination (CEDAW), Nepal has enacted legislation to give effect to their international obligations and also enforce constitutional provisions.

For instance the Local Self Governance Act (LGSA) 1999 which governs decentralized system of government in Nepal. The law provides for participatory governance approaches at the local level during planning and implementation of programmes. It is a requirement that women be included in the participatory processes.<sup>198</sup> In this regard it mandates that women be included in village development councils and committees. It's a requirement that the village development committees give priority to plans and projects which benefit women. The plans and projects must include income generating projects.<sup>199</sup>

The bottom up development planning model provided by the Act which is participatory in nature, ensures that marginalized and vulnerable groups are not left out in decision making processes. Whereas the bottom-up approach may be overly centralized in terms of the guidelines set out by the central government for instance limited budgets, the actual task of formulating plans heavily incorporates the views of the local communities who are charged with identifying local priorities.

#### **4.1.2 Nepal's Climate Change Policy (2011)**

Nepal has also enacted a climate change policy which recognizes the differential impacts of climate change on communities. It acknowledges that the impacts of climate change are greater on vulnerable groups including women and the poor. In its objective for capacity building, the policy recognizes people's participation and empowerment. It emphasizes women's involvement and participation in the implementation of climate adaptation programmes. Specifically the policy calls for 'ensuring the participation of poor people,

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<sup>198</sup>Sec 8.2c LGSA

<sup>199</sup>Sec 111.4 e & 116.6 d *ibid*.

Dalits, marginalised indigenous communities, women, children and youth in the implementation of climate adaptation and climate change related programmes<sup>200</sup>. Further Nepal's National Adaptation Programme of Action (NAPA) recognises gender specific inequalities and vulnerabilities of women to climate change.

Nepal presents a good case study of significant achievements in which best practices on gender can be adopted. These include:

- a) Nepal has incorporated gender in formulation of its National Adaptation Programme of Action (NAPA) in furtherance of UNFCCC's guidelines on formulation of NAPA's which underline the significance of including gender analysis in the NAPA process. Specifically as illustrated in the Local Self Governance Act, a useful law for planning at the local level as it emphasizes on gender inclusion in the formulation of local initiatives. However just like other laws and policies, mainstreaming of gender will be impactful if the legislative provision are actually implemented.
- b) Nepal's case also illustrates that achievement of gender equity and taming of women's vulnerability is through empowerment. This empowerment is achievable through capacity building and enhancing their skills to enable them meet their needs.

### **4.1.3 Philippines**

Gender equality has been well advanced in the Philippines. It has been documented to score highly on gender equality measures and indices. It is a signatory to most international human rights instruments and has enacted national laws and policies that

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<sup>200</sup>Sec 8.4.2 Nepal Climate Change Policy(2011)



protect and promote women's rights. Despite these achievements however, the implementation of the laws and policies is sometimes slow and uneven.<sup>201</sup>

The Philippine Commission Women (PCW) memorandum Circular No. 2011-01 provides for guidelines of institutionalizing as well as strengthening the GAD focal point system.<sup>202</sup> The PCW uses the Gender and Development Focal Point System (GADFS) as a tool for influencing all agencies of the government to mainstream gender in their departments.<sup>203</sup> For instance, the DENR-FMB's GAD plays a major role in mainstreaming gender in the government unit forest plans at the local level.<sup>204</sup> There are established gender and development guidelines that use gender analysis tools to examine specific needs and concerns of men and women in the management and implementation of all projects including the ones that are related to climate change.<sup>205</sup> As at now, CBFM is one of the flagship programmes in the Philippines that has a gender-inclusive approach.

As much as most countries in the Asia Pacific region seem to be warming up for this noble idea of mainstreaming gender in climate change programmes, there is a concern that some have not yet put in place legal frameworks to actualize the said cause. For instance, as much as the law of Forest protection and Development (2004) of Vietnam recognizes that men and women have equal land rights, there is no clear demarcation of forest land.<sup>206</sup> This undermines actualization of the goal of ensuring that women too have secure titles and access to land so that they could hence barring them from actively using

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<sup>201</sup> Fast-Facts. Gender Equality and Women's empowerment in the Phillipines. United Nations Development Programme(2010). Available at <http://www.undp.org/content/dam/philippines/docs/Governance/fastFacts%20-%20Gender%20Equality%20and%20Women%20Empowerment%20in%20the%20Philippines%20rev%201.5.pdf>

<sup>202</sup>Aguilar, Lorena. "Establishing the linkages between gender and climate change adaptation and mitigation." pp. 201-221. (Routledge, 2012).

<sup>203</sup>Steier, Gabriela., 2016. *International food law and policy*..

<sup>204</sup> Ibid

<sup>205</sup> Ibid

<sup>206</sup>Biermann, Frank, and Norichika Kanie. 2017.

and managing forest resources.<sup>207</sup> It also has been noted that as much as the land use right certificate has names of both spouses, women face a lot of challenges as regards access to secure land rights. This is illustrated in a scenario where women are barred from using the land-use right certificate because of the requirement of the co-holder's endorsement. Similarly, while the 2002 Cambodian Forestry Law is a presentation of the legal framework that fosters the inclusion of the user- groups in the protection and management of forests, the rights of women as well as their priorities is not explicit.<sup>208</sup> As a result, it has been found that the percentage of women holding management posts in Community Forest management committees does not exceed 5.<sup>209</sup>

Pakistan which is the second largest country in South Asia has adopted several critical international commitments to gender equality and women's rights.<sup>210</sup> The country has also national commitments in respect to mainstreaming gender in climate change in the form of developing the national Policy for Development and empowerment of Women, protection against Harassment of Women at Workplace Act. The Country also local commitments such as Gender Equality Policy frameworks as well as Women's Empowerment packages and Initiatives.<sup>211</sup>

## **4.2 Best Practices from Asia in Mainstreaming Gender into Mitigation and Adaptation Actions through Nationally Appropriate Mitigation Actions (NAMA)**

Several strategies have been developed to assist policy makers in formulation of NAMAS. For instance the UNFCCC formulated National Adaptation Programmes of Action (NAPA) in 2001 to address urgent adaptation needs of Least Developed Countries

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<sup>207</sup> UN-REDD, 2013

<sup>208</sup>Leal Filho, Walter. 2017.

<sup>209</sup> Ibid

<sup>210</sup> CEDAW and SDGs).

<sup>211</sup>Leal Filho. *Climate change adaptation in Pacific countries: fostering resilience and improving the quality of life*

(LDCs). Nepal being one of the LDCs submitted its NAPA to UNFCCC in 2010. Nepal's NAPA details the country's adaptation priorities and needs.

The NAPA preparation process is a participatory one utilizing a bottom up approach that ensure that the priorities of the local communities and vulnerable groups are taken into consideration in identification of adaptation and mitigation proprieties.<sup>212</sup> Whereas Nepal's NAPA highlights gender specific vulnerabilities and categorizes women as a vulnerable group, it fails to prescribe any special targets for women's involvement neither does it provide for gender specific project.

To facilitate the participatory approach proposed under NAPAs, Local Adaptation Plans of Action (LAPAs) were developed.

#### **4.2.1 LAPAs**

The objective of establishing LAPAs was to formulate a mechanism for effecting NAPA at the local levels. LAPAs were meant to support climate adaptation at the local level to ensure mainstreaming climate adaptation into development planning framework. They are designed at the local level with the participation of local communities and organizations who identify local adaptation needs and come up with the relevant adaptation responses. Four key principles have been identified as useful in development of LAPAs. These are: a bottom up approach; inclusivity; responsiveness and flexibility. The units for LAPA planning are Village Development Committees and municipalities.

The significance undertaking LAPAs at the lowest level is to: enable communities to appreciate the unpredictable and changing future climatic conditions and involve them in the whole process of development of adaptation priorities; implement climate resilient

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<sup>212</sup>Ministry of Environment, Government of Nepal(2010)

plans that are adaptable and flexible to be able to respond to the unpredictable and fluctuating climatic conditions; aid sectoral programmes and improve integrated approaches between the various players.

There is an emphasis that in the development of LAPAs at the lowest levels, all groups of people including the vulnerable and women be involved throughout the process.

## **CHAPTER FIVE CONCLUSIONS AND RECOMMENDATIONS**

### **5.0 Introduction**

The research study set out to establish the mainstreaming of gender perspectives into the climate change legal and policy framework in Kenya thus far. The researcher was motivated to make enquiries into this field by the recent enactment of the Climate Change Act (2016), a first in the region. The study sought to examine the gender responsiveness of the law and the general legal framework on climate change as one of the mechanism of responding to the impacts of climate change.

### **5.1 Conclusions**

Gender mainstreaming in the context of this study has been understood to mean the process of integrating men and women's concerns into consideration formulation, implementation, monitoring and evaluation of policies and programmes touching on social, economic and

political spheres with the ultimate aim of achieving gender equality. Invariably however the study ended up focussing on the mainstreaming of female gender issues owing to the undeniable inordinate vulnerability to climate change effects. The study however alluded to instances where the male gender find themselves vulnerable.

### **5.1.1 Summary of Findings**

The study established that there's a general consensus by governments and international organizations that gender equality is a worthwhile goal which has been embedded in most international agreements. The remaining challenges are the strategies of achieving gender equality.

The study was based on the hypothesis that 'the climate change legal and policy framework in Kenya is inadequate in mainstreaming gender perspectives'. To a larger extent the study proved the hypothesis. This conclusion is based on the finding that whereas most legal and policy frameworks have incorporated gender as an important consideration, the gender remain descriptive on gender inclusion but lack on the prescriptive measures of actualising the gender aspirations.

### **5.1.2 Legal and policy frameworks**

Key steps have been taken in Kenya towards mainstreaming gender issues as epitomized by the Constitution (2010), national policies, strategies and plans which have placed gender issues at the core through gender considerations in composition of organizational structures, integration of gender priorities in policy formulation, programming and implementation. Some of the specific policy frameworks that address gender mainstreaming include: National

Policy on Gender and Development; Environment Policy 2013; Energy policy 2014 and the Ministry of Agriculture's Gender Mainstreaming Strategy 2010 among others.

Despite the express gender provisions in the legal and policy provisions, challenges still exist in achievement of gender equity which gender mainstreaming aim at achieving. These challenges include: limited engendering during planning, budget implementation and monitoring and evaluation of programmes; lack of harmonization of gender mainstreaming among government departments; embedded discriminatory socio-economic and cultural practices and beliefs; poor means of enforcing gender mainstreaming in projects and programmes as well as weak institutional structures for gender mainstreaming.

### **5.1.3 Gender Dimensions in Climate Change Discourse**

The study proceeded on the premise that a gendered approach to climate change involves identifying the inequalities between men and women and understanding their causes. Further the approach gives equal consideration to the challenges faced by both genders based on their needs, status, roles and cultural backgrounds.

Whereas gender was previously deemed superfluous in climate change discourses, this study established that over time gender and the equalities thereof have begun to occupy a critical position in efforts towards tackling the impacts of climate change. The increased focus on gender has arisen out the realization that the most vulnerable groups to climate change are those working in sectors most impacted such as agriculture. Due to gender role differentiation the majority of those in the vulnerable group are women. Women's vulnerability arises mainly due to their societal and cultural roles, limited access to resources and suppressed voices in decision making processes.

The study established that unless gender dimensions are mainstreamed into climate change response strategies, the existing gender inequalities shall further widen and serve as an

impediment to the gains already made towards achieving gender equality in the developing world.

The push for mainstreaming gender has been given further impetus by the realization of the pivotal role played by women in the stewardship of environmental and natural resources. Depletion of natural resources and degradation of the environment exacerbates the impacts of climate change and hence the need to protect and conserve them. Women are best placed due to their constant interaction to best protect and conserve the environment and natural resources.

### **5.2 Inhibitive factors to gender mainstreaming.**

The study established that mainstreaming gender begins with the assessment of the underlying reasons for the gender inequalities in a particular area, based on the findings can one then look for the opportunities within the subject for narrowing the inequalities.

Indeed the study established that climate change exacerbates gender inequality in terms of access to resources. As a result of the impacts of climate change women have been made to spend more time cultivating crops and travel longer distances in search of water hence depriving them the time and opportunity of participating in decision making processes and even in the limited opportunities they get to participate their voices are often suppressed. It is however noteworthy that these impacts are prevalent for women living in the rural areas and that the situation may be entirely different for urban women except for those living in low income brackets in urban areas. The contemporary urban educated woman in most cases are not exposed to those challenges. This is because they are educated, socially, economically and even politically empowered. As such a differentiation has to be made between the status of a particular person to determine their vulnerability.

The study established that mainstreaming ought not to be viewed as an end in itself but a means towards achievement of a broader goal which is gender equity. Mainstreaming quests should thus focus on broader objectives such as integrating both men and women's interests in organisation's set-up, programmes and plans ensuring that every activity has a gender underlying theme.

### **5.3 Gender Responsiveness of the Climate Change Legal Framework in Kenya.**

The study established that whereas gender mainstreaming concept has previously been mainstreamed into Kenya's legal and policy framework. This was however prevalent in legislation relating to sectors with strong women participation such as healthcare, agriculture and education. Very little focus was paid to mainstreaming gender into the environmental sector.

#### **5.3.1 National Climate Change Response Strategy**

The National Climate Change Response Strategy published in 2010 was the first Kenyan Policy to expressly and exclusively address Climate Change issues. Among the actions it recommended for mainstreaming into national development plans was the enactment of a climate change legislation.<sup>213</sup> This recommendation culminated in the eventual enactment of The Climate Change Act (2016). The strategy also recommended public awareness campaigns to sensitize and mobilize the public to adopt and mitigate against the impacts of climate change. Public awareness however has largely been left to non-governmental organizations with the government devoting little or no financial allocation at all towards this endeavour.

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<sup>213</sup> National Climate Change Response Strategy(2010) pg 22



### **5.3.2 Climate Change Act 2016**

The Climate Change Act (2016) was enacted with the overall objective of providing a regulatory framework for enhanced response to climate change. The Act creates a lead agency known as National Climate Change Council whose mandate among other things is the implantation of the Act and specifically coordinating all response strategies for fighting climate change. However close to three years since the enactment of the legislation, the lead agency is yet to be constituted. This in effect has placed the implementation of the Climate Change Act in limbo as it cannot operate without the lead agency to coordinate the actions required to be taken.

The Act establishes a directorate whose mandate among others is to ensure the coordination and implementation of the gender and intergenerational climate change education, consultation and learning at both National and County government level. The NCCC is obligated to approve a national gender and intergenerational responsive public education awareness strategy and implementation programme as an overarching national climate change co-ordination mechanism. The Act mandates the cabinet secretary at the time being in charge of matters relating to climate change to formulate a national gender and intergenerational response public education and awareness strategy on climate change and implementation programme which if fully implemented will ensure that gender perspectives are given due recognition.

### **5.3.3 National Climate Change Action Plan (2018)**

The NCCAP seeks to reduce Kenya's vulnerability to climate change and the adoption of a new low carbon development pathway with more focus on the poor and vulnerable that are impacted more by climate change. It addresses all the sectors of the economy and creates mechanisms for the mainstreaming of the NCCAP into the various sectors. In furtherance of this endeavour, eight subcomponents have been developed under NCCAP .These are: Long-

Term National Low Carbon Climate Resilient Development Pathway; Enabling Policy and Regulatory Framework; Adaptation Analysis and Prioritization; Mitigation Actions; Technology; National Performance and Benefit Measurement; Knowledge Management and Capacity Development and Finance. Through these subcomponents climate change information will be channelled to vulnerable groups and are binding on every entity involved in addressing climate change.

The NCCAP also prioritizes the urgent attention to climate sensitive resources such as improvement of access to water resources; improved disaster preparedness programmes; modern meteorological systems and early and appropriate responses to disasters such as droughts. These measures are particularly vital to vulnerable groups who in most cases are women and children. NCCAP is thus significant in promoting gender mainstreaming as it makes specific references to women and vulnerable groups in its approaches to confronting climate change phenomena.

#### **5.3.4 Nationally Determined Contributions**

The NDC's emphasize the country's determination to provide education, public awareness and participation in climate change discourses. The NDC's priority adaptations actions are provided to include the strengthening of the adaptive capacities of the most vulnerable groups through safety nets and insurance schemes. It however does not make explicit reference to gender considerations. There is therefore need for the implementers of the NDC to deliberately integrate gender considerations in climate change programmes.

From the case study of Nepal, it is paramount to note that the inclusion of gender perspective in legal frameworks and policy document coupled with failure to incorporate in the implementation framework is counterproductive in the whole scheme of seeking gender equity.

## **5.4 RECOMMENDATIONS**

### **5.4.1 Short Term Recommendations**

The analysis of the climate change legal framework in Kenya illustrate that the provisions mainstreaming gender remain largely descriptive in terms of what gender mainstreaming entails. The provisions do not specifically prescribe the mechanisms for actualizing gender mainstreaming. There is therefore need for greater gender awareness and knowledge dissemination for actualization of gender mainstreaming tools such as gender assessment, design, monitoring and evaluation. Whereas the Climate Change Act of 2016 provides for public participation and Access to information in section 24 it is silent on gender dimensions of the participation. This can be actualized under the proposed Senate Bill on Public Participation (2018). The proposed law seeks to provide a general framework for effective public participation and to give effect to the constitutional principles of democracy and participation of the people as provided in articles 1(2), 10(2), 35 of the Constitution. The bill however does not provide gender to be one of the guiding principles in the conduct of public participation. Senate however still has an opportunity to introduce a provision emphasizing on gender before the Bill is enacted into law.

The NCCC has also been empowered to publish regulations on the design and procedure of undertaking public participation. It is therefore recommended that once the council publishes the regulations the gender dimensions should feature prominently.

The Climate Change Act was enacted into law in 2016. It established the National Council for Climate Change as its lead agency for operationalizing the Act. More than two years later the said council is yet to be constituted. The delay in constituting the National Climate Change Council continues to hamper the operationalization of the Climate Change Act. It is hoped that once established the agency shall address all procedural and substantive aspects in

relation to climate change mitigation, adaptation and mainstreaming. The agency shall be in charge of monitoring compliance of climate change duties and enforcement of those duties

Section 7(1) of the Act provides for the membership of the NCCC. It states that the council shall comprise of 9 members appointed by the president. However there seems to be lack of clarity on the number of membership as sec 7(2) read conjunctively with sec 5 suggest the membership to be eleven.

It is noted from the above that the first 4 slots are already taken up by the male gender. It is therefore recommended that during appointments the president does give priority to women representatives for purposes of gender balance to ensure that women are adequately represented in decisions made by the council in compliance with sec 7(6) which calls for compliance with the constitutional gender principle.

Whereas the legal frameworks make extensive reference to the aspects of ‘gender’ and ‘gender and gender equality’, they appear to make assumptions that all women and are homogenous. The reality however is that there are variances among women just like with men. These differences could be based on class, religion, age and other factors. As such gender mainstreaming should take into account the differentiations that exists among the both gender.

From the analysis of the Asian states of Nepal and Philippines, an initial step towards appreciating the gender disparities and vulnerabilities, is through disaggregated data that define men and women’s differing roles, opportunities and circumstances. Such data is vital in determining the gendered effects of projects and the best ways to respond to the effects of climate change.

## **5.4.2 Long Term Recommendations**

### **5.4.2.1 Legal and policy frameworks**

Legal frameworks should also address the differences in legal status and entitlements.

Whereas Kenya's Constitution and sectoral laws as well as international instruments proclaim gender equality, in practice there still exist many instances where women are denied equal status as that of men. These especially manifests in questions of land, inheritance, employment and others. As such gender mainstreaming should not be limited to integrating women perspectives into development plans but should extend to addressing the issues that bring about gender discrimination.

Among the objects of the Climate Change Act (2016) is mainstreaming intergenerational equity and gender equity in all aspects of climate change responses. Further the Act is guided by the constitutional principles and values of governance which include equality and participation of the people. The Act specifically emphasises on participation and consultation with stakeholders in accordance with the schedule. The schedule is however silent on gender as a public engagement strategy. The legislature missed the opportunity to entrench gender participation by failing to underline the importance of gender in public engagements. There is however an opportunity to remedy the situation as the yet to be established NCCC has been given the latitude to review public engagement strategies from time to time.

The Environment Policy (2013) recognising the central role that gender plays in the management of the environment and natural resources, recommended the development and implementation of an Environment, Gender Strategy Action Plan. It is incumbent upon the Ministry of Environment and Natural Resources to fast-track the implantation of the Action Plan to promote gender equity.

### **5.4.2.2 Bottom up Approach**

To further mainstream gender considerations into legal and policy frameworks calls for continued education, awareness and capacity building for adaptation and mitigation interventions. As illustrated in the Asian states case study, a bottom up approach of engaging the local population in identification of the most pressing needs and the appropriate remedial measures to be taken leads to more sustainable solutions. The bottom up approach ensures that existing initiatives and programmes are enhanced rather than creation of entirely new institutional mechanisms. For example in Nepal, strengthening of institutions such as Community Forest User Groups which promote gender equity objectives have ensured that gender considerations are mainstreamed into plans of actions. Similar models can be incorporated into Kenya's case through the existing Community Forest Associations (CFAs) which exist in most forests such as the Karura Forest Association and Ngong Road Community Forest Associations which have proved quite efficient in both management and conservation of forests as well as economically empowering the forest users who in most cases are women. The concept of Community Forests Associations in Kenya is fairly new having been introduced by the Forest Act.<sup>214</sup> Strengthening of these institutions especially through policies can prove vital in mainstreaming gender into plans of action and overall in the achievement of sustainable development especially within the concept of climate change.

### **5.4.2.3 Gender mainstreaming financing**

The Climate Change Act (2016) establishes a climate change fund whose objective is to provide a financing mechanism for priority climate change actions and interventions.<sup>215</sup> Whereas the fund is to be vested in the National Treasury, it shall be administered by the NCCC which shall among other considerations take into account gender and intergenerational equity in disbursing the funds. The Climate Change Fund takes a queue

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<sup>214</sup>Sec 48 Forest Act, No 34 of 2016

<sup>215</sup> Sec 25(1) Climate Change Act No 11 of 2016

from the Green Climate Fund<sup>216</sup>, which was set up in 2010 with the aim of assisting developing countries adapt to sustainable mechanisms in combating the impacts of climate change. The Green Climate Change fund gives special attention to mainstreaming of gender factors in climate change financing. For instance it is provided that,

“The Fund will provide simplified and improved access to funding, including direct access, basing its activities On a country-driven approach and will encourage the involvement of relevant stakeholders, including vulnerable groups and addressing gender aspects.”<sup>217</sup>

There is therefore need to hasten the constitution of the NCCC so as to operationalize the envisaged Climate Change Fund.

#### **5.4.2.4 Empowerment and Gender Participation in decision making processes**

Empowerment has been proven to one of the key ways in which gender equity and managing women vulnerability can be addressed. Empowerment ensures that women are equipped with the skills that enable them meet their needs. Empowerment can be actualized through formulation of gender focus service delivery mechanisms.

There is a higher possibility that gender sensitive policies shall be made possible where more women are represented in climate change decision making processes. In countries where more women are highly represented in ratification of environmental agreements, the result is a stronger climate change regime.<sup>218</sup>

One of the ways in which the Asia-Pacific states have leveraged on women’s unique skills in the management of natural resources is by integrating gender into specific natural resource policies and especially forest policies. The policies prescribe the minimum level of participation of women and their minimum representation in forest management structure,

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<sup>216</sup> Governing Instrument for the Green Climate Fund, 2011,

<sup>217</sup> Para 3, Governing Instrument for the Green Climate Fund, 2011

<sup>218</sup> KLUGMAN J, “Human Development Report 2011 Sustainability and Equity: A Better Future for All”, United Nations Development Programme, 2011, p.63.

their involvement in decision making as well as their access and control over forest resources. The states that have been cited as having the most progressive policies on gender mainstreaming are Nepal and Philippines. In the two states women are expressly acknowledged by legislation as the primary users of forests. As such they have been given the mandate to act as stewards of the forests in recognition of their vulnerability in the event of destruction of the forests.

#### **5.4.2.5 Further Research**

More detailed and context research is required to unravel the differential impacts of climate change on gender. Such studies should be derived from the local knowledge of natural resource management and the traditional response mechanisms to climate variability. Such studies will be vital in formulating new strategies of mainstreaming gender into adaptation and mitigation programmes.

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