

**SOCIALLY INCLUSIVE DEVELOPMENT UNDER THE DEVOLVED SYSTEM OF  
GOVERNMENT; TOWARDS A GREEN ECONOMY IN KENYA:**

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**DECLARATION**

I, **FLORENCE AKOTH ODUK**, do hereby declare that this is my original work and has not been submitted and is not currently being submitted for a degree in any other University.

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## TABLE OF CONTENTS

DECLARATION .....	ii
ACKNOWLEDGMENTS .....	iii
TABLE OF CONTENTS.....	iv
LIST OF ACRONYMS .....	vii
CHAPTER1 .....	1
1.0 INTRODUCTION .....	1
1.1 Background.....	1
1.2 Statement of the problem .....	3
1.3 Limitations .....	5
1.4 Hypothesis.....	5
1.5 Significance of the study.....	6
1.6 Theoretical Framework.....	6
1.7 Statement of issues.....	7
1.8 Methodology .....	7
1.9 Literature review .....	8
10.0 Chapter Breakdown .....	13
CHAPTER 2 .....	14
2.0 THE DEVOLVED SYSTEM OF GOVERNMENT IN KENYA - OPPORTUNITIES FOR MAKING THE TRANSITION TO A SOCIALLY INCLUSIVE GREEN ECONOMY .....	14
2.1 The concept of devolution .....	14
2.2 Devolution in Kenya.....	15
2.2.1 Functional Assignment.....	16
2.2.2 Resource Allocation .....	17
2.2.3 Institutional Competences .....	18
2.2.5 Intergovernmental Relations .....	20
2.3 Opportunities for social inclusivity under Kenya’s devolved system of Government .....	23
2.3.1 Public Participation .....	23
2.3.2 Devolved decision-making.....	27
2.3.3 Management of financial resources.....	28
2.3.4 Gender mainstreaming and anti-discrimination .....	30

2.3.5 Functions .....	31
2.4 Conclusion .....	33
CHAPTER 3 .....	35
3.0 GENDER DIMENSIONS OF SOCIAL EXCLUSION .....	35
3.1 Gender Mainstreaming in a global perspective .....	35
3.2 Gender poverty and the environment.....	37
3.3 The evolution of gender responsive international instruments .....	40
3.3.1 The 1992 Earth Summit .....	41
3.3.2 The 1995 Beijing Plan for Action .....	41
3.3.3 The 1997 Earth Summit +5 .....	41
3.3.4 The 2000 Millennium Summit and The Millennium Development Goals .....	42
3.3.5 The 2002 World Summit on Sustainable Development.....	42
3.3.6 The 2005 World Summit.....	43
3.3.7 Convention on Biological diversity.....	45
3.3.8 The 2012 UN Conference on Sustainable Development (Rio+20).....	48
3.4 Opportunities presented by the Constitution.....	48
3.5 Addressing Gender Dimensions of Exclusion Through a County based Green Economy.....	50
3.5.1 Women in governance.....	52
3.5.2 Gender Equality and Public Expenditure.....	59
3.6 Conclusion .....	66
CHAPTER 4 .....	69
4.0 NON-GENDER DIMENSIONS OF SOCIAL EXCLUSION .....	69
4.1 Structures of non-gender social exclusion in Kenya.....	69
4.2 The Constitution and social inclusion.....	75
4.3 Addressing Non- Gender Dimensions of Exclusion Through a County Based Green Economy .....	77
4.3.1 Social Protection .....	78
4.3.2 Green Jobs .....	80
4.3.3 Capacity Building.....	88
4.4 Conclusion .....	92

CHAPTER 5 .....	93
5.0 RECCOMENDATIONS AND CONCLUSIONS .....	93
5.1 Gender dimensions of social exclusion.....	93
5.2 Labour Policies .....	95
5.3 Green Economy Policies.....	95
5.4 BIBLIOGRAPHY.....	98
5.4.1 List of Statutes.....	99

## LIST OF ACRONYMS

ASALs.....	Arid and Semi- Arid Lands
CEC.....	County Executive Member
COP.....	Conference of the Parties
CoK.....	Constitution of Kenya
GDP.....	Gross Domestic Product
GHG.....	Green House Emissions
GRB.....	Gender Responsive Budgeting
HDI.....	Human Development Index
ILO.....	International Labour Organization
PFMA.....	Public Finance Management Act
SAM.....	Social Accounting Matrixes
SHS.....	Solar Home Systems
SMEs.....	Small and Medium Size Enterprises
UNEP.....	United Nations Environmental Programme
UNDP.....	United Nations Development Programme
UNFCCC.....	United Nations Framework Convention on Climate Change

# CHAPTER 1

## 1.0 INTRODUCTION

### 1.1 Background

United Nations Environmental Programme (UNEP) defines a Green Economy as one that results “in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities”.<sup>1</sup> It is a low-carbon, resource efficient, and socially inclusive economy, where income and employment are driven by public and private investments that reduce carbon emissions and pollution, enhance energy and resource efficiency, and prevent the loss of biodiversity and ecosystem services.<sup>2</sup>

Green Economy is characterized by (a) respect for planetary boundaries or ecological limits or scarcity (b) low carbon emissions (c) Protection of biodiversity and ecosystems (d) resource and energy efficiency, (e) creation of decent work and green jobs, (f) facilitation of education and skills development (g) equity, fairness and justice (h) poverty reduction, social protection and access to essential services (i) inclusivity, democracy, participation, accountability, transparency (j) innovation and technology transfer (k) Internalization of externalities (l) and sustained economic growth<sup>3</sup>.

The outcome document of Rio+20 “The Future We Want”, signed by the highest representatives of countries throughout the world at the United Nations Conference held in Rio de Janeiro in 2012, lays the foundation for Green Economy as one of the important tools available for achieving sustainable development and poverty eradication.<sup>4</sup>

It acknowledges that to transition successfully to a Green Economy, Governments must put in place adequate and favourable enabling conditions. These conditions include ensuring that Government investment and spending targets area that stimulate sustainable management and

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<sup>1</sup> United Nations Environmental Programme (UNEP) (2011) Towards a Green Economy ; Pathways to Sustainable Development and Poverty Eradication; Pp16

<sup>2</sup> Ibid Pp. 17

<sup>3</sup> United Nations Economic Commission for Europe (2014) Green Economy ;Online:  
<http://www.unecce.org/greeneconomy/welcome/what-does-green-economy-mean.html>

<sup>4</sup> United Nations Environmental Programme (UNEP) (2012) Resolution adopted by the General Assembly on 27<sup>th</sup> July 2012: The Future We Want



utilization of economic sectors, establishing sound regulatory frameworks, limiting spending in areas that deplete natural resources, employing taxes and market based instruments to shift consumer preference and promote green investment and innovation and investing in capacity building and training.<sup>5</sup>

It is anticipated that should Governments put in place these enabling conditions in the specified natural resource sectors, there would be increased access to services and infrastructure, alleviation of poverty, overall improvement in the quality of life and protected ecosystems. For instance, by increasing investment in natural assets that are used by the poor to earn their livelihoods, the shift towards a Green Economy enhances livelihoods in many low-income areas. A good example of this comes from India's National Rural Employment Guarantee Act 2006. This is a social protection and livelihood security scheme for the rural poor that invests in the preservation and restoration of natural capital. It takes the form of a public works programme guaranteeing at least 100 days of paid work per year to every household who wants to volunteer an adult member. The scheme has grown fourfold since its inception and investment last year amounted to over 8 billion US Dollars, creating 3 billion workdays and benefiting 59 million households. About 84% of this investment goes into water conservation, irrigation and land development. The benefits derived from such a project are therefore three fold, (i) Environmental conservation (ii) job creation and (iii) economic development.

Secondly, Governments may adopt innovative financing that targets renewable energy as opposed to fossil fuel. This transition has the potential of making significant contribution to improving living standards and health in low-income areas, particularly in off-grid situations. A case in point here would be the "Grameen Shakti" of Bangladesh which was founded in 1996 and is currently one of the fastest growing rural-based companies in the field of renewable energy in the world. Grameen Shakti provides soft credits through different financial packages to make solar home systems (SHS) available and affordable to rural populations. By the end of 2009 more than 320,000 SHSs had been installed, in addition to biogas plants and improved cooking stoves. The improved cooking stoves and biogas programmes contribute to the reduction

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<sup>5</sup>United Nations Environmental Programme (UNEP) (2011) Towards a Green Economy ; Pathways to Sustainable Development and Poverty Eradication; Pp. 22

of the use of biomass and in turn decrease indoor pollution, while biogas technology further helps with sustainable waste management. Grameen Shakti aims to install over 1 million SHS by 2015, while also providing the necessary maintenance, thereby generating local employment.

## **1.2 Statement of the problem**

Since attaining political independence in 1963, Kenya has been grappling with the persistent problem of unbalanced regional development. Through various policies and interventions, the Government has tried to reverse the discriminative effects of colonial policies that had created wide disparities and imbalances between regions. However, after decades of experimenting with different economic and social policies, regional disparities and imbalances in economic, social and political development still persist.

Disparities manifest on different levels;<sup>6</sup>

- i. disparity in economic diversity and activities as well as economic development infrastructure (number and types of institutions, economic activities, size of credits and deposits, and a notable difference in the age structure indicating migration of labour to the capital).
- ii. disparity in human development levels on the basis of ethnicity, class, region, gender, age and disabilities, e.g. literacy levels, school enrolment. This disparity will have a significant future impact on productive capacity and diversity of economic activities.
- iii. disparity in social structure and living conditions between and among Kenyan communities especially in terms of income levels, percentage of the poor, and distribution of social infrastructure.
- iv. disparity in political representation and participation in decision-making processes and generalized access to and use of political resources.

The CoK provides a solid legal and institutional framework for redressing these disparities. It does this through its rights-based approach to development, where everyone is entitled to

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<sup>6</sup>Friedrich-Ebert-Stiftung, (2012) Regional Disparities and Marginalisation in Kenya; Online;<http://www.feskenya.org/media/publications/2013/Regional%20Disparities%20Book.pdf>

development as a right and recognizes the environment and its natural resources as a key driver in this respect.<sup>7</sup>

With the coming into place of the Constitution, it has also become clear that policy makers need to adopt different approaches to development and poverty eradication, thus making the transition to a socially inclusive Green Economy is justifiable. Natural resource sectors such as agriculture, forestry and tourism are the key sectors contributing to our national income with poor households relying disproportionately on them for their livelihoods and income. For this reason, the poor are more vulnerable to natural disasters such as droughts and floods and to the ongoing impacts of climate change. At the same time, on the one hand Kenyan counties are generally characterized by low-levels of carbon emissions and relatively low investments in polluting technologies. On the other hand, because most of Kenyans are poor, they are more dependent on natural resources. For this reason, reforms that reduce environmental risks and ecological scarcities are critical to improving human well-being and social equity and ensuring overall socio-economic development.

With the advent of devolution, it is now pertinent to examine what policy and legal approaches may be adopted by County Governments so that they can deliver development that does not only focus on the environment and the economy but development that is just, equitable and socially inclusive.<sup>8</sup> Making the transition to a socially inclusive Green Economy offers County Governments such an opportunity.

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<sup>7</sup> Article 43 of the CoK provides that;(1) Every person has the right— (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care; (b) to accessible and adequate housing, and to reasonable standards of sanitation; (c) to be free from hunger, and to have adequate food of acceptable quality; (d) to clean and safe water in adequate quantities; (e) to social security; and (f) to education. (2) A person shall not be denied emergency medical treatment. (3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.

Under Article 10 of the CoK, national values and principles of governance are outlined. These values and principles bind all State organs, State officers, public officers and all persons whenever any of them (a) applies or interprets this Constitution; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions and include Sustainable Development.

<sup>8</sup>Devolution, which is also referred to as democratic decentralization, is an internal arrangement that gives target entities near-autonomous rights, ideally embedded in a legislative framework specifying relations among the periphery entities, as well as between these entities and the central government.

### **1.3 Limitations**

This thesis does not discuss the various laws or policies that have been put in place by the previous regimes with the aim of addressing exclusion, inequitable distribution of resources, marginalisation or discrimination of any kind that is of relevance to this study.

Secondly, while the Green Economy is also concerned with ensuring low-carbon and resource efficiency in societies, this paper focuses on the social dimensions of Green Economy. The social dimensions of Green Economy are premised on the understanding that economic development must take place within the context of what nature can tolerate, and ensure a fair distribution of resources between people, between men and women and between generations. Social dimension of Green Economy are therefore associated with equity, equality, livelihood security, social protection and empowerment and are often addressed in terms of green jobs and the kinds of education/retraining, social safety-nets and social dialogue required to facilitate the transition, with poverty eradication being an inevitable outcome from this transition.<sup>9</sup>

### **1.4 Hypothesis**

This research is based on the argument that the devolved system of Government as established in Kenya presents an opportunity for enhancing progress towards a socially inclusive Green Economy in Kenya. This can be achieved through the development and implementation of appropriate laws and policies by County Governments.

This argument is based on three factors; firstly, there has been an increased resolve to align economic development with environmental and social considerations, following the *constitutionalization* of sustainable development. Secondly, throughout the Constitution, great emphasis has been placed on the inclusion and equitable treatment of persons from every corner of the nation and responsibilities placed on persons and institutions to ensure such inclusion. Through the devolved system of Government, efforts aimed at reforming institutional structures to ensure effective implementation of socially inclusive Green Economy policies and development of suitable laws have been bolstered significantly and the necessary resources

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<sup>9</sup>European Parliament -Committee on Women's Rights and Gender Equality (2009) Plenary sitting on the role of women in the Green Economy (2012/2035)

which can facilitate the implementation of Green Economy projects, programmes and processes have been allocated. Thirdly, through a raft of legal provisions, it is anticipated that there shall be expanded involvement and awareness among the citizenry on political, socio-economic and governance affairs both at the county and at the national level.

### **1.5 Significance of the study**

This paper is intended to be a conceptual resource material for law and policy makers to examine how County Government mandates, powers, functions and resources can be structured to scale up Green Economy within the counties. Through a general overview of the concept of Green Economy vis-à-vis the concept of devolution, the paper demonstrate the inter-linkages that exist between the two concepts and how these linkages can assist policy makers end discriminatory, inequitable and socially exclusive practices in the counties. The thesis also highlights emerging principles, trends and best practices in the form of a legal drafters' and policy makers' guide from other countries while paying special attention to areas that are likely to exacerbate existing inequalities with a view to forewarn legal drafters and policy makers about trends that may make the Green Economy inequitable.

### **1.6 Theoretical Framework**

This study is based on the concept of Green Economy. Green Economy, as shall be discussed elsewhere in this paper, does not replace sustainable development, “...*but there is now a growing recognition that achieving sustainability rests almost entirely on getting the economy right.*” Thus the Rio Outcome document clearly states that “*there are different approaches, visions, models and tools available to each country, in accordance with its national circumstances and priorities, to achieve sustainable development in its three dimensions which is our overarching goal. In this regard, we consider Green Economy in the context of sustainable development and poverty eradication as one of the important tools available for achieving sustainable development and that it could provide options for policymaking*”.<sup>10</sup>

The concept of Green Economy makes the case for strategic economic policies that recognize not only that the goal of sustainable development is improving the quality of life within the

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<sup>10</sup>UN General Assembly Resolution A/RES/66/288, The Future We Want

constraints of the environment, but also addressing the concerns of intergenerational equity and poverty eradication, enhancing social inclusion, improving human welfare and creating opportunities for employment and decent work for all, while maintaining the healthy functioning of the Earths ecosystems<sup>11</sup>. The need for making this transition rests on the fact that *decades of creating new wealth through a 'brown economy' model based on fossil fuels have not substantially addressed social marginalisation, environmental degradation and resource depletion*".<sup>12</sup>

In its implementation, Governments must take a leadership role in developing policies and strategies through an inclusive and transparent process. A mixture of measures ranging from economic instruments such as taxes, subsidies and trading schemes, regulations and policies including the setting of standards and non-economic measures such as voluntary approaches and information provision are all proper tools that may be used by Governments.<sup>13</sup>

### **1.7 Statement of issues**

This paper examines the following issues;

- i. Why is the devolved system of Government best placed to promote social equity through the Green Economy?
- ii. What are the re-enforcing links between Gender Inequality and other forms of social exclusion with the Green Economy?
- iii. How can the mandates, functions, resources and powers of County Governments ensure that Green Economy approaches improve the livelihoods of those who are poor, marginalised and discriminated upon?

### **1.8 Methodology**

The study will rely on historical research design to collect, verify, and synthesize new and innovative laws from other countries. This design is appropriate for this study, as the study attempts to analyse emerging trends in environmental law; based on what other countries have

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<sup>11</sup>United Nations Environmental Programme (2011) Towards Green Economy : Pathways to sustainable development and poverty eradication Page 17-22

<sup>13</sup>UN General Assembly Resolution A/RES/66/288, The Future We Want

done in the past. In terms of data, the study will rely on secondary sources and primary documentary evidence including official records, reports and archives. The use of this method will help to establish facts that defend or refute the hypothesis. The study will also adopt a multi stage sampling procedure for primary data. The rationale for the adoption of multi-stage sampling is that it gives leeway in determining the procedure to adapt at different stages of the study. This is particularly important due to the fact that both Devolution and Green Economy are new concepts in Kenya and as such, the study will be heavily dependent on new and emerging information from other jurisdictions. Data collection will be undertaken primarily through desktop studies.

## **1.9 Literature review**

**Towards a Green Economy: Pathways to sustainable development and poverty eradication:**<sup>14</sup>This report was developed by the United Nations Environmental Programme in 2011. Its main aim was to debunk myths and misconceptions about “going green” and to provide practical guidance to policy makers on the kind of reforms required to unlock the productive and employment potential of Green Economy. The report focused on three key areas. Firstly, it illustrated how a shift in investments from popular sectors to “Green Economy” sectors could lead to economic growth due to an increase in job opportunities. Secondly, it illustrated how Green Economy could reduce poverty across a variety of sectors such as agriculture and energy that are critical to poor people. Thirdly, it provided guidance on policies to enable the transition to Green Economy; outlining various policy interventions that may be considered by countries that are new to Green Economy. It notes that such interventions should target the elimination of harmful subsidies, address market failures, create market-based incentives, implement appropriate regulatory frameworks, initiate green public procurement and stimulate investment among other things. However, the report does not go into the specific design of these policy interventions. As a way of taking this conversation a step further, this study highlights specific legislative provisions that other countries have developed which may enable the transition to a Green Economy and that are relevant in a devolved system of Government.

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<sup>14</sup> United Nations Environmental Programme ( 2011) Towards Green Economy : Pathways to sustainable development and poverty eradication

**The Kenya Vision 2030<sup>15</sup>** is a blueprint for development in Kenya covering the period between 2008 and 2030. The aim of this blueprint is to transform Kenya into a newly industrializing, middle -income country providing a high quality of life to all its citizens by the year 2030. Vision 2030 is anchored on three key pillars; economic, social and political. The economic pillar aims to achieve an economic growth rate of 10% per annum and sustain the same till the year 2030. The objective of the Social Pillar is investing in the people of Kenya in order to improve the quality of life for all Kenyans by targeting a cross-section of human and social welfare projects and programmes such as education and training, environment, gender, children and social development. The Political Pillar envisions a democratic system that is issue based, people centred, results oriented and is accountable to the public. The pillar is anchored on transformation of Kenya’s political governance across several strategic areas including the rule of law, electoral and political processes, democracy and public service delivery and transparency and accountability. This vision is implemented through five-year medium rolling plans forming the benchmark for gauging the performance of Government going forward. Despite expressing the attainment of a clean secure and sustainable environment by the year 2030, this blueprint only addresses environmental matters in passing without setting sufficient measurable targets for its implementation.

**Sustainable Development, Liberty, and Global Social Justice<sup>16</sup>** This article expounds on the various points of criticism leveled against the concept of sustainable development namely that; ( a) The term sustainability is descriptively vague as it does not describe a particular institution, or a specific pattern of activity, or a specific environmental asset which is supposed to be sustained and further, that there aren’t any agreed measurable criteria that are being met in a development program. (b) If the (Brundtland) Report tries to combine sustainability and the right to development it becomes anthropocentrically biased or even worse, it might be the smokescreen put up by the rich and affluent North to the poor South. (c) Sustainable development is “morally repugnant and logically redundant” because for instance, it mixes technical characteristics of a particular development path with a moral injunction to pursue it. (d) The Report falsely focuses

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<sup>15</sup>The Kenya Vision 2030, Government of Kenya (2007)

<sup>16</sup> Kostas Koukouvelis, Public Reason, Sustainable Development, Liberty, and Global Social Justice1; University of Crete (2012) Online;[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&ved=0CF0QFjAH&url=http%3A%2F%2Fpubl icreason.ro%2Fpdfa%2F67&ei=wDFeU92uK6Xb7Aats4DoCw&usg=AFQjCNFHp0Z86CwK\\_5EpvWIwAGAW2xP3w&sig2=453m03uq9zC3mkFRzGbsTw](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&ved=0CF0QFjAH&url=http%3A%2F%2Fpubl icreason.ro%2Fpdfa%2F67&ei=wDFeU92uK6Xb7Aats4DoCw&usg=AFQjCNFHp0Z86CwK_5EpvWIwAGAW2xP3w&sig2=453m03uq9zC3mkFRzGbsTw) Accessed on 28th /04.2014



on the concept of needs' satisfaction. This is erroneous because, firstly, the concept of needs is subjective and therefore, to a certain extent useless, because it does not offer clues as to what has to be preserved for current and future generations and Secondly, needs satisfaction, especially at a global level can be hugely unsustainable given the fact of population inflation especially in the developing world.

The author looks at each point of criticism critically and makes an argument that sustainability cannot be defined objectively, that is, in a value-neutral way that would make it automatically applicable and more concrete in content. He notes that any effort to define the concept of sustainability or sustainable development involves value judgments to a great extent as opposed to the efforts by scientists to find an easy and measurable criterion of identification.

**A guide to the mandates and procedures of County Governments in Kenya:**<sup>17</sup> This is a guidebook that synthesizes the powers, roles and functions of the two arms of County Governments. Its main contribution is that it brings all the Acts of Parliament that have an impact on devolution into one handbook thus making it easier for a reader to find information that is relevant to county governance. This book, however, does not offer any specific guidelines on how to overcome any challenges that counties may face at inception.

**Subnational Governments and the Green Economy:**<sup>18</sup>This Article looks at how Subnational Governments can contribute to the transition to a Green Economy. It outlines certain key areas such as establishing sound regulatory frameworks; prioritizing Government investment and spending in areas that stimulate the greening of economic sectors; limiting Government spending in areas that deplete natural capital; employing taxes and market-based instruments to promote green investment and innovation; investing in capacity building, training and education and strengthening international governance.

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<sup>17</sup>, A guide to the mandates and procedures of County Governments in Kenya Transition Authority & Electoral Institute for Sustainable Democracy in Africa (EISA) 2013 ,

<sup>18</sup>Sub-national Governments and the Green Economy; Network of Regional Governments for Sustainable Development (2011)

**Working towards sustainable development: opportunities for decent work and social inclusion in a Green Economy:**<sup>19</sup>The report argues for the transition to Green Economy as a necessary means of achieving sustainable development. It emphasizes the need for a new model of development that puts people and the planet at the center of development and documents evidence that for countries at all levels of development, the drive towards environmental sustainability and greener economies holds numerous benefits such as the creation of jobs and social inclusion. More fundamentally, the report demonstrates that creation of jobs and social inclusion must be at the center of any development strategy and must be included in policies that address climate change. The report assesses the sectoral employment implications of the transition to the Green Economy and highlights necessary condition, policy prescriptions and good practices required to ensure that Green Economy is characterized by employment opportunities and social inclusion.

**In the Spirit of Harambee; Addressing Discrimination and Inequality in Kenya:**<sup>20</sup>This report provides an overview of the demographic, economic, social, political and historical context of discrimination and inequality in Kenya. It discusses the principal patterns of discrimination and inequality affecting different groups in Kenya and analyses the legal and policy framework as it relates to discrimination and inequality. The report notes that Kenya has made important steps on the road to greater equality since the beginning of the century, most recently and most significantly adopting a Constitution which bears witness to the country's commitment to tackling discrimination and inequality. However, it concludes that there is a clear need for Kenya to harmonise and strengthen its legal system in respect to equality. As such, the report contains a number of recommendations which would enable Kenya to meet its obligations to respect, protect and fulfill the rights to non-discrimination and equality and in so doing meet the aspirations of the Constitution.

**Regional Disparities and Marginalisation in Kenya:**<sup>21</sup>The authors of this publication argue that the introduction of devolved governance that is understood by many to be a panacea to

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<sup>19</sup>Working towards sustainable development, Opportunities for decent work and social inclusion in a Green Economy; International Labour Organization (2012)

<sup>20</sup> Equal Rights Trust Country Report Series: 1 (2012);In the Spirit of Harambee; Addressing Discrimination and Inequality in Kenya ,

<sup>21</sup> Stiftung, Friedrich-Ebert- (2012) Regional Disparities and Marginalisation in Kenya

regional disparities and marginalisation, to ethnic rivalries about the control of financial, economic and political resources anticipated to be taken to counties, could easily usher in new conflicts within and between counties which could undermine peace, stability, governance and effective service delivery. Therefore, in the new governance framework conflicts caused by marginalisation and regional discontent are no more dismissible issues. This publication therefore interrogates the dynamics of marginalisation and regional disparities in Kenya with a view to proposing policy options for addressing them.

**An analysis of Kenyan youth and their integration into political, socio- economic life:**<sup>22</sup>This book sought to interrogate and analyse the place of the youth in the Kenyan state. It identifies the root causes of Kenyan conflicts to be the same over the years, as issues of ethnicity, marginalisation and exclusion continue to characterize socio-economic and political life in the country. The author argues that the stratification in society is no longer confined to identity based on ethnicity, but transcends these divisions to issues of class and age as excluded populations consolidate and mobilize themselves around the commonalities of their struggles and life. He notes that these similar life experiences solidify a common identity, which then legitimizes the workings of social groupings such as the Mungiki. The article recommends that the Government quickly address issues of service delivery in order to reverse the trend of underground governance. He notes that human security challenges must also be addressed to relieve the pressure arising from the rapidly increasing youth population. In this respect he argues that the lack of security in low-income areas and the inability of the state to protect all citizens creates a gap that vigilante groups occupy which also legitimizes private security brokers over the state.

**Gender Responsive Budgeting and its Application to Planning in Kenya:**<sup>23</sup>This book presents the findings of a study on the gender responsive budgeting process and how it can be applied to Kenya's planning process. The book contains a review of the gender responsive initiatives in Kenya, spelling out the key requirements for the successful gender mainstreaming of budgets in Kenya. It presents some of the success stories from around the globe, which can be useful 'take-aways' especially for policy makers and policy implementation institutions working

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<sup>22</sup>Forti Daniel and Maina Grace, (2011), The danger of marginalisation: An analysis of Kenyan youth and their integration into political, socio- economic life

<sup>23</sup> Society for International Development( 2012) Gender Responsive Budgeting and its Application to Planning in Kenya

in the realm of gender mainstreaming in Kenya. There are also illustrations of how to check for gender responsiveness in the budgets and budget policy statements, using examples from the most recent Kenyan budget policy statement. A wide range of tools is presented that can be used to audit national budgets and sectoral policy statements for gender responsiveness. Further, there is some background information on what gains Kenya has made in the quest to transform the public financial management system for the country through gender mainstreaming<sup>24</sup>.

## **10.0 Chapter Breakdown**

This study is organized into five chapters. Chapter one introduces the study. Chapter two discusses the opportunities presented by the devolved system of Government in Kenya to enable a transition to a socially inclusive Green Economy. Chapter three discusses gender dimensions of social exclusion. Chapter four looks at non-gender dimensions of social exclusion. Chapter five gives the conclusions and recommendations.

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<sup>24</sup>Gender mainstreaming is the public policy concept of assessing the different implications for women and men of any planned policy action, including legislation and programmes, in all areas and levels.

## CHAPTER 2

### 2.0 THE DEVOLVED SYSTEM OF GOVERNMENT IN KENYA - OPPORTUNITIES FOR MAKING THE TRANSITION TO A SOCIALLY INCLUSIVE GREEN ECONOMY

This chapter discusses the design and architecture of devolution in Kenya. It argues that the devolved system of Government established under the CoK presents several unique opportunities for making the transition from unsustainable patterns of development to development that is equitable and socially inclusive. It demonstrates through examples, the linkages that exist between the concept of devolution and the Green Economy and makes the case for the transition to a socially inclusive Green Economy as a means of achieving sustainable development in tandem with the goals of devolution in Kenya.

#### 2.1 The concept of devolution

A conceptual definition of devolution entails an understanding of the complex dynamics of decentralization from which devolution is premised<sup>25</sup>. Decentralization is based on the *principle of subsidiarity*, which assigns specific functions hitherto conducted by the centre of an entity to the lowest feasible subcentres on the periphery. It has three fundamental dimensions, which may occur independently or jointly. These dimensions are administrative, political and fiscal.<sup>26</sup>

*Administrative* decentralization transfers responsibility of functions from a central agency to one or more of its lower levels internally, or to peripheral agencies, such as a state corporation. *Political* decentralization separates powers and responsibilities horizontally or vertically. In these instances, decentralization is between or among agencies of comparable status, such as the executive, legislature and judiciary, or vertically to agencies that relate hierarchically, such as local authorities. Finally, *fiscal* decentralization involves changing the locus of revenue generation, primarily, but also offers expenditure autonomy. Through this dimension, the central agency assigns some revenue generation responsibilities to subnational agencies, whether the product enters the central kitty or is retained at the collecting agency for local spending.<sup>27</sup>

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<sup>25</sup> Mwenda Albert, (2010 ) Devolution In Kenya Prospects, Challenges and the Future; Institute of Economic Affairs, Pp 15

<sup>26</sup> Othieno Nyanjom , (2011) Devolution in Kenya's new Constitution, Constitution Working Paper No. 4. Society for International Development (SID) Pp 14-18

<sup>27</sup> Ibid Pp 18

There are several *types* of decentralization including de- concentration, delegation and devolution. *De-concentration* involves assigning responsibilities to regional or peripheral agencies within the same institution, such as the central Government assigning policy implementation (oversight) to subnational levels. *Delegation* transfers responsibility to substantive and potentially independent institutions, such as state corporations, local authorities or non- Government sector. Whereas de-concentration and delegation perpetuate the central place of the originating authority, *devolution* – also referred to as democratic decentralization – is an internal arrangement that gives target entities near-autonomous rights, ideally embedded in a legislative framework specifying relations among the periphery entities, as well as between them and the centre.<sup>28</sup>

Closely related to devolution is the concept of *federation*. While devolution involves the centre ceding authority to the periphery, federation can be the initiative of initially independent entities willing to cede some autonomy for an anticipated greater collective good. Thus, whereas a federation recognizes a centre of authority, the component states are self-contained entities in as many respects as the instruments of federation provide.<sup>29</sup>

## **2.2 Devolution in Kenya**

The two-tier system of governance set out in chapter eleven of the Kenyan Constitution, establishes the national Government and County Governments as distinct but interdependent governance entities. Article 6(2) of the Constitution provides that “the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation”, while Article 189 states that “Government at either level shall-perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level”.<sup>30</sup>

These provisions clearly define the Constitutional distinctiveness and inter-dependence in a manner that outlaws subservience of one level of Government to the other. This means that there

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<sup>28</sup> Ibid Pp 15-18

<sup>29</sup> Ibid PP 15-18

<sup>30</sup> CoK (2010) Art.6 and Art.189

is a cooperative, rather than a hierarchical, relationship between the levels of Government. The scenario that therefore emerges is a combination of self-governance at the county level and shared governance at the national level through shared decision making processes and concurrent functions. In other words, although the two levels are distinct in their Constitutional functions; resource allocation and management, institutional arrangements and legal frameworks, the system is not based on absolute autonomy but on inter-dependence and cooperation<sup>31</sup>. The main features of devolution revolve around functions, resources and powers.

### **2.2.1 Functional Assignment**

The functions and powers of the national Government and the County Governments, respectively, are as set out in the Fourth Schedule of the Constitution. These functions are categorized in three as follows;<sup>32</sup>

- (a) exclusive functions and powers, that is, as set out in the Fourth Schedule, unless otherwise transferred from one level of Government to the other level under Article 187 of the Constitution
- (b) concurrent functions and powers, that is, those that are conferred on more than one level of Government (national and county)
- (c) residual functions or powers, that is, those that are not assigned by the Constitution or national legislation to a county, which repose in the national Government, but may be assigned to the County Governments through national legislation.

It is anticipated that no level of Government should unduly interfere in the functions of the other, particularly where the functions are exclusive, unless of course a function is transferred under Article 173 based on a mutually executed agreement. Where the functions are concurrent, there is need to unbundle or clearly outline them to avoid duplication. For example, in the case of disaster management which is both a national and county function, unbundling of this concurrent function will have to show what county or national level disaster is. The following functions have been devolved to County Governments under the Fourth Schedule to the Constitution.<sup>33</sup>

1. Agriculture,

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<sup>31</sup> CoK (2010) Art.6

<sup>32</sup> CoK (2010) Art.186

<sup>33</sup> CoK (2010) The Fourth Schedule

2. County health services, including, in particular-refuse removal, refuse dumps and solid waste disposal.
3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising.
4. Cultural activities, public entertainment and public amenities, including-county parks, beaches and recreation facilities.
5. County transport, including-(a) county roads;(b) street lighting;(c) traffic and parking;(d) public road transport; and (e) ferries and harbours
6. Animal control and welfare;
7. Trade development and regulation, including-trade licences (c) fair trading practices; local tourism;
8. County planning and development, including-housing; electricity and gas reticulation and energy regulation.
9. Implementation of specific national Government policies on natural resources and environmental conservation, including-(a) soil and water conservation; and(b) forestry.
10. County public works and services, including-(a) storm water management systems in built-up areas; and(b) water and sanitation services.
11. Fire fighting services and disaster management.
12. Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

### **2.2.2 Resource Allocation**

The Constitution allocates various financial resources to each level of Government to ensure that each is able to perform the functions assigned. It also sets out financial management systems for the two levels of Government. Article 209 assigns taxation powers to both levels of Government. Articles 202 and 203 provide for equitable shares of revenue raised nationally including conditional and unconditional grants to both levels of Government. Article 204 makes provision for additional shares from the equalization fund (for traditionally marginalised) counties that require equalization infrastructure.<sup>34</sup>

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<sup>34</sup>CoK (2010) Art.201-219



In addition to this, Articles 211 and 212 provide for borrowing powers by the two levels of Government. Under these two Articles, borrowing by both levels of Government is subject to controls by Parliament through legislation. Article 211 seeks to control borrowing by national Government by empowering Parliament to prescribe the terms on which the national Government may borrow and imposing reporting requirements; Article 212 seeks to control borrowing by County Governments by providing that a county Government may borrow only if the national Government guarantees the loan and with the approval of the county Government's assembly; Article 213 elaborates on the subject of guarantees by national Government by enjoining Parliament to prescribe the terms and conditions under which the national Government may guarantee loans<sup>35</sup>.

Further, Article 201 subjects borrowing by both levels of Government to controls by introducing the concept of intergenerational equity, that is, that the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations. The notion of intergenerational equity demands that borrowing by the present generation be controlled so as to avoid passing on to the future generations an undue debt burden.<sup>36</sup>

### **2.2.3 Institutional Competences**

The Constitution establishes institutions at each level of Government and confers on them functions. For instance, the Constitution establishes an executive arm and a legislative arm at the county level of Government and assigns them very specific functions. Article 5 (2) of the County Government Act 2012, states that a county Government shall be responsible for: county legislation in accordance with Article 185 of the Constitution;<sup>37</sup> exercising executive functions in accordance with Article 183 of the Constitution; functions provided for in Article 186 and assigned in the Fourth Schedule of the Constitution; any other function that may be transferred to

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<sup>35</sup> Ibid Art. 212-213

<sup>36</sup> Ibid Art.201

<sup>37</sup> Article 185 provides that (1) The legislative authority of a county is vested in, and exercised by, its county assembly. (2) A county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county Government under the Fourth Schedule. (3) A county assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and any other county executive organs. for— (4) A county assembly may receive and approve plans and policies (a) the management and exploitation of the county's resources; and (b) the development and management of its infrastructure and institutions.

County Governments from the national Government under Article 187 of the Constitution;<sup>38</sup> any functions agreed upon with other County Governments under Article 189 (2) of the Constitution;<sup>39</sup> and establishment and staffing of its public service as contemplated under Article 235 of the Constitution.<sup>40</sup>

The executive on the other hand is mandated by the Constitution to; implement county legislation; implement, within the county, national legislation to the extent that the legislation so requires and to manage and coordinate the functions of the county administration and its departments. Further, a county executive committee may prepare proposed legislation for consideration by the county assembly.<sup>41</sup>

Article 232 of the Constitution establishes the values and principles of public service which apply to both levels of Government; These values include; responsive, prompt, effective, impartial and equitable provision of services; involvement of the people in the process of policymaking; fair competition and merit as the basis of appointments and promotions; representation of Kenya's diverse communities; and affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of (i) men and women; (ii) the members of all ethnic groups; and (iii) persons with disabilities.

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<sup>38</sup> Article 187 states as follows; A function or power of Government at one level may be transferred to a Government at the other level by agreement between the Governments if— (a) the function or power would be more effectively performed or exercised by the receiving Government; and (b) the transfer of the function or power is not prohibited by the legislation under which it is to be performed or exercised. (2) If a function or power is transferred from a Government at one level to a Government at the other level— (a) arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; and (b) constitutional responsibility for the performance of the function or exercise of the power shall remain with the Government to which it is assigned by the Fourth Schedule.

<sup>39</sup> Article 189 (2) provides that; Government at each level, and different Governments at the county level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

<sup>40</sup> Article 235 provides that “A county government is responsible, within a framework of uniform norms and standards prescribed by an Act of Parliament, for—(a) establishing and abolishing offices in its public service; (b) appointing persons to hold or act in those offices, and(c) exercising disciplinary control over and removing persons holding or acting in those offices.(2) Clause (1) shall not apply to any office or position subject to the Teachers Service Commission.”

<sup>41</sup> CoK (2010) Art. 185

### 2.2.5 Intergovernmental Relations

The principle of inter-governmentalism runs through the CoK and is reflected in the principle of interdependence and cooperation between the two levels of Government<sup>42</sup>. These relations are also relevant in view of the fact that there are several shared institutions that serve and render services at and to both levels of Government for instance, Under Article 131 (1) (a) of the Constitution; the President is both head of state and Government. This means that as the head of state, the presidency is a shared institution serving both the National and the County Governments. Secondly, Chapter 15 Commissions are by dint of their Constitutional functions and authority under Article 249(1) shared institutions, since they render services to both the County and the National Government. These include;

- a) The Commission on Revenue Allocation under Article 216 which makes recommendations for the vertical and horizontal sharing of the revenue raised nationally which then provides a framework for the equitable shares for both levels of Government and for each county;<sup>43</sup>
- b) The Ethics and Anti-Corruption Commission is mandated under Article 79 to ensure compliance with and enforcement of the provisions on leadership and integrity set out in Chapter Six of the Constitution which binds state officers at both levels of Government;<sup>44</sup>
- c) The Human Rights and Equality Commission and its successor commissions are required under Article 59 to protect and enforce human rights at both the levels of Government;<sup>45</sup>
- d) The National Land Commission is mandated under Article 67 to manage public land on behalf of and to recommend a national land policy to be used in the administration and management of land by both levels of Government; to assess

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<sup>42</sup> Article 187 provides that “Government at either level shall— (a) perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of Government at the other level, and respects the constitutional status and institutions of Government at the other level and, in the case of county Government, within the county level; (b) assist, support and consult and, as appropriate, implement the legislation of the other level of Government; and (c) liaise with Government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.”

<sup>43</sup> CoK (2010) Art. 216

<sup>44</sup> Ibid Art. 79

<sup>45</sup> Ibid Art. 59

all the taxes on land and other immovable property; and to monitor and have oversight responsibilities over land use planning throughout the country;<sup>46</sup>

Devolution presents several social, administrative, political and economic benefits that are pertinent to making the transition to a socially inclusive Green Economy.<sup>47</sup> As earlier stated, a truly sustainable ‘Green Economy’ would involve economic development that takes place within the limits of nature, and ensures a fair distribution of resources among all counties and social groups. This kind of economy is characterized by inter-alia; Creation and sustenance of decent jobs and expansion of other economic opportunities that benefit the poor; Stimulation of innovation and adoption of green technologies that can benefit the poor; and diversification and enhancement of the resilience of local economies;<sup>48</sup>

A socially inclusive Green Economy also aims to ensure improvement of health and well-being; promotion of equity, including gender equality; built social capital and enhanced resilience of local communities; empowerment of citizens through access to information and justice and participation in decision- making, transparency and accountability in the public and private sectors. To achieve this kind of economy, the Rio outcome document advises that policies that are put in place to further Green Economy goals should, inter-alia;<sup>49</sup>

- (a) promote sustained and inclusive economic growth, foster innovation and provide opportunities, benefits and empowerment for all and respect of all human rights;
- (b) enhance the welfare of women, children, youth, persons with disabilities, smallholder and subsistence farmers, fisherfolk and those working in small and medium-sized enterprises, and improve the livelihoods and empowerment of the poor and vulnerable groups
- (c) mobilize the full potential and ensure the equal contribution of both women and men;
- (d) address the concern about inequalities and promote social inclusion, including social protection floors; and
- (e) continue efforts to strive for inclusive, equitable development approaches to overcome poverty and inequality.

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<sup>46</sup>Ibid Art. 67

<sup>47</sup> Institute of Economic Affairs, (2010 ) Devolution In Kenya Prospects, Challenges and the Future; Pp 18-20

<sup>48</sup> UN General Assembly Resolution A/RES/66/288, the Future We Want, Chapter III, Para. 56. 27<sup>th</sup> July 2012

<sup>49</sup>UN General Assembly Resolution A/RES/66/288, the Future We Want, Chapter III, 27<sup>th</sup> July 2012

Coincidentally, the aspirations reflected under the devolved system of Government, bear a striking resemblance to the goals of a socially inclusive Green Economy. In various ways, it is clear that the Constitution aims to reduce incidences of inequality in the distribution of resources in the country, inequalities, discrimination and marginalisation. In the pre-amble, the Constitution is explicit in its recognition of ethnic cultural and religious diversity and the aspirations of all Kenyans to form a Government that is based on essential values of human rights, equality, freedom, democracy, social justice and the rule of law. The Constitution also reflects certain principles and values that are aimed at reducing the influence of the vice of social exclusion arising from inequality, marginalisation and discrimination. These national values and principles of governance are listed under Article 10 of the Constitution and include;<sup>50</sup>

- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
- (c) good governance, integrity, transparency and accountability; and sustainable development.

The Constitution further states that all these principles and values bind all State organs, State officers, public officers and all persons whenever any of them;

- (a) applies or interprets the Constitution;
- (b) enacts, applies or interprets any law; or
- (c) makes or implements public policy decisions.

In addition to this, Chapter 11 of the Constitution provides the objects and purposes of devolution. As listed therein, the objects of devolution include;<sup>51</sup>

- (a) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;

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<sup>50</sup> CoK (2010) Art. 10

<sup>51</sup> CoK (2010) Chapter 11

- (d) to recognise the right of communities to manage their own affairs and to further their development;
- (e) to protect and promote the interests and rights of minorities and marginalised communities;
- (f) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya; and
- (g) to ensure equitable sharing of national and local resources throughout Kenya;

The Constitution also requires that County Governments reflect certain principles including that no more than two-thirds of the members of representative bodies in each county Government shall be of the same gender thereby attempting to address issues of marginalisation and discrimination on the basis of sex.

### **2.3 Opportunities for social inclusivity under Kenya’s devolved system of Government**

The Kenyan Constitution promises radical changes in the management of the country’s affairs and gives greater say to communities through a two-tier system of Government. The greatest allure of devolution is its promise to engender equitable distribution of national resources and, therefore, address socio-economic inequalities that were inherent in a centralised system for many decades. The manner in which devolution has been structured presents numerous avenues for development that is socially inclusive. This can be demonstrated as follows.<sup>52</sup>

#### **2.3.1 Public Participation**

Devolution enhances democratic culture by multiplying the opportunities for public participation. Public participation is a two-way process where the Government provides opportunities for citizen involvement and the citizens choose whether or not to utilize these opportunities based on their interest among other things<sup>53</sup>. The significance of public participation is that it ensures that the public has a realistic idea of how duty bearers such as

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<sup>52</sup>Nyamwamu Cyprian Orina (2013); From A Centralized System to A Devolved System of Governments: Past, Present and Future Dynamics; Paper Presented by At the **Friedrich Ebert Stiftung** Conference on State of Implementation of the Constitution since 2010, Retrieved on 10/08/ 2014, Accessed from <http://www.feskenya.org/media/publications/From%20A%20Centralized%20System%20To%20A%20Devolved%20System%20Of%20Governments%20-%20Cyprian%20Orina-Nyamwamu.pdf>

<sup>53</sup> Muriu Abraham Rugo, Oduor Chrispine and Nguti Veronica, (2013) Anchoring Devolution: The Acts and Basics in the Constitution (ABC) Futures Bulletin. Institute of Economic Affairs (IEA) Issue No.15, April 2013

elected and appointed leaders should perform. Because of this knowledge, they can hold their county Government to account. Throughout the Constitution and other devolution laws, public participation is provided for in very clear terms. Some of these provisions are listed below;

- a) Article 1 of the Constitution states that all sovereign power is vested in the people of Kenya and can be expressed through direct participation or indirectly through elected representatives.
- b) Article 174 of the Constitution sets out the objects of devolution as inter-alia; to give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them and to recognize the rights of communities to manage their own affairs and to further their development.
- c) Article 184 (1) of the Constitution states that National Legislation shall provide for the governance and management of urban areas and cities and shall in particular; provide for participation by residents in the governance of urban areas and cities.
- d) Article 196 (1) of the Constitution states that a county assembly shall conduct its business in an open manner and hold its sittings and those of committees in public, and facilitate public participation and involvement in the legislative and other business of the assembly and its committees;
- e) Article 232 (1) of the Constitution, on the values and principles of public service, includes involvement of the people in the process of policy making, accountability for administrative acts, transparency and provision to the public of timely and accurate information;
- f) The fourth schedule to the Constitution, Part 2 (14) stipulates that the functions and powers of the county are to ensure and coordinate the participation of communities and locations in governance at the local level and to assist communities to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

Further, County Assemblies are mandated to develop laws and regulations which give effect to the requirement for effective citizen participation in development planning and performance management within a county under different pieces of legislation. For instance, in the County

Governments Act, 2012, the county executive committee is tasked with providing for citizen participation in the management plan to evaluate the performance of the County Public Service Board and implementation of county policies. In the Urban Areas and Cities Act, 2011, section 11(d) provides that active citizen participation by residents in the management of urban areas and city affairs shall be institutionalized. In some instances, various bodies or officers are explicitly tasked with the facilitation and coordination of citizen participation these include the Sub-County, Ward, Village Administrators, the Village council among others.

Of significance to this thesis is the recognition that citizen participation is a means of redressing past injustices. The law specifically outlines the principles of citizen participation in County Governments to include, inter-alia; the protection and promotion of the interest and rights of minorities, marginalised groups and communities and their access to relevant information and legal standing to interested or affected persons, organizations, and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalised communities, including women, the youth and disadvantaged communities.

Various avenues for participation are also laid down within the Constitution and devolution laws. For instance, citizens may participate in the identification of community needs and development planning for the county; county budget preparation and validation; implementation of development projects at the local level and in the actual monitoring and evaluation of projects or programs being implemented through public funds in the county. They can also conduct local referendum, town hall meetings, and visit development project sites.

In financial matters, the Public Finance Management Act, 2012 provides for public participation in public financial management and in particular in the formulation of the Budget Policy Statement, County Fiscal Strategy Paper and the Budget Estimates; the preparation of Division of Revenue Bill and County Allocation of Revenue Bill. It also establishes the County Budget and Economic Forum as a platform for public participation in county planning and budgeting.



Through public participation, devolution enhances communities' sense of ownership of development projects undertaken within their localities by affording them a chance to participate in their planning and implementation and by ensuring that decisions are made in a rational informed and transparent manner. Inclusion of the public in the planning of development projects is specifically designed to eradicate inequality, marginalisation and discrimination with the County Governments Act providing for instance, that the principles of planning and development facilitation shall include:<sup>54</sup>

- (a) To integrate national values in all processes and concepts.
- (b) To protect the right to self-fulfilment within the county communities and with responsibility to future generations.
- (c) To protect and integrate rights and interest of minorities and marginalised groups and communities.
- (d) To protect and develop natural resources in a manner that aligns national and County Governments policies.
- (e) To align county financial and institutional resources to agreed policy objectives and programme
- (f) To promote the pursuit of equity in resource allocation within the county.
- (g) To provide a platform for unifying planning, budgeting, financing, programme implementation and performance review;
- (h) To serve as a basis for engagement between county Government and the citizenry, other stakeholders and interest groups.

Through public participation, minority parties, the poor and the marginalised have been given access to justice and an opportunity to air out their grievances, thus ensuring that there is equity in the management of Governments and accountability from leaders. For example, aggrieved residents may write petitions, for instance, to the President to suspend a county, or to the county Government to consider matters within their authorities. In the Urban Areas and Cities Act 2011,<sup>55</sup> the boards are tasked with inviting petitions from the residents and the citizens' fora.

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<sup>54</sup>County Governments Act, 2012 Part X

<sup>55</sup>Urban Areas and Cities Act, 2011 Section 22 and 35

There are also opportunities and mechanisms to recall the elected representatives. Citizens are allowed to lodge complaints and make presentations (written or oral) to boards or committees; raise objection to partnerships or joint ventures between the public service delivery boards and utility companies and inspect records for applications in response to advertisements by various offices in the county. Resident may also participate in commissions, boards (County assembly service board) and committees (conferment of city, Municipality and Town Status) by way of nomination by the President, Governor, professional and umbrella bodies.

Adopting a participatory approach involving relevant stakeholders is key to a socially inclusive Green Economy because for instance, in policy development and implementation, public participation ensures that policies reflect the concerns and priorities of the public, particularly the target group and affected communities. It also ensures the support and contribution of the general public and local communities in the implementation of proposed policies, plans, and programmes and therefore it provides a better chance for the implementation and success of the proposed policies.

### **2.3.2 Devolved decision-making**

Devolution puts in place the right institutional framework for the development and implementation of Green Economy laws and policies; The Green Economy report identifies specific enabling conditions that must be put in place for a successful transition to Green Economy. These conditions include establishing sound regulatory frameworks, prioritizing Government investment and spending in areas that stimulate the greening of economic sectors, limiting spending in areas that deplete natural resources, employing taxes and market based instruments to shift consumer preference and promote green investment and innovation and investing in capacity building and training.<sup>56</sup>

A look at these pre-requisites vis-à-vis the mandates and responsibilities of County Governments reveals that each of these enabling conditions, can be put in place by county Government if the opportunities provided by the law are exploited as anticipated. To take as an

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<sup>56</sup> United Nations Environmental Programme (UNEP) (2011) Towards a Green Economy; pathways to Sustainable Development and Poverty Eradication, page 22

example, it is recommended that there should be changes in law for an effective transition to Green Economy. Article 185 of the Constitution vests legislative authority of a county in the county assembly and mandates them to make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the County Government under the Fourth Schedule to the Constitution.

To take a second example, it is recommended that countries employ taxes and market based instruments to shift consumer preference and promote green investment and innovation, if they wish to make the transition to a Green Economy<sup>57</sup>. The power to impose taxes and charges is provided for under Article 209 of the Constitution which authorizes counties to impose (a) property rates; (b) entertainment taxes; and (c) any other tax that it is authorised to impose by an Act of Parliament and any charges for the services they provide. This therefore gives counties the mandate to for instance, set limits on permitted pollution levels for a county in order to meet a certain environment objective and also offer tax breaks or other financial incentives to groups, individuals or industries investing in cleaner technologies<sup>58</sup>.

Through this avenue, devolution also promotes efficiency in the provision of public services. This is because devolved units, by virtue of their proximity to the beneficiaries of policy outcomes, are more directly accountable to local constituents and can directly identify and articulate regional needs.

### **2.3.3 Management of financial resources**

The fact that higher and more regular flows of financing are needed to help sustain broad-based socially inclusive Green Economy strategies over the longer- term can not be over-emphasized.

<sup>59</sup>According to Article 201(b) (iii), one of the principles of public finance is to promote an equitable society -- ensuring that public “expenditure shall promote the equitable development of the country including by making special provision for marginalised groups and areas.” Article 202 puts the criteria for determining the equitable sharing of national revenue as consideration of

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<sup>57</sup> Ibid Pp 22

<sup>58</sup>Denne, Tim (2005) Economic Instruments for the Environment; Environment Waikato Technical Report 2006/23 online; <http://www.naturvardsverket.se/Documents/publikationer/620-8221-3.pdf>, Pp. 3-8

<sup>59</sup> CoK(2010) Art. 201

a) economic disparities within and among counties and the need to remedy them; b) the need for affirmative action in respect of disadvantaged areas and groups.<sup>60</sup>

The Constitution in Articles 202, 203 and 204 guarantees financial outflow to the counties by providing for the transfer of finances from the national Government to County Governments at a minimum of 15% of the national revenue based on the most recent audited accounts. Other sources of funding provided for under the Constitution include conditional grants which are funds provided to counties to implement specific projects, programs or perform specific functions; unconditional grants that can be used by counties to implement projects, programs or provide services of choice; monies from the equitable shares of revenues as shared amongst counties by the Commission for Revenue Allocation and; equalization fund to marginalised areas for the provision of basic services including water, roads, health facilities and electricity and monies accrued from imposition of taxes and charges as provided for under Article 209 of the Constitution.<sup>61</sup>

Devolution recognizes that for public expenditure to be an effective tool for reducing inequality, it should be skewed in favour of counties that have high levels of poverty as such the Constitution establishes the Equalisation Fund under Article 204, which will see at least 0.5 per cent of Kenya's annual revenue distributed to the poorer regions of the country for a period of 20 years to assist in the provision of basic services to marginalised areas so as to bring the quality of services in those areas to the level generally enjoyed by the rest of the nation.

This is meant to ensure that the not-so-developed counties are able to catch up with the rest of Kenya. The provision of the equalization fund is particularly significant in making the transition to a socially inclusive Green Economy as monies from the fund can go into the provision of services such as sustainable energy production through the development of renewable energy technologies that are more responsive to the needs of communities that cannot access electricity from the national grid.

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<sup>60</sup> Ibid Art.203

<sup>61</sup> Ibid, Chapter 12

To ensure accountability, the Constitution reduces the concentration of power at the centre thus hindering its arbitrary use. Proper checks and balances in the management of public funds are ensured for instance, through elaborate institutional arrangements that have been set up by the Constitution both at the County and National levels. Article 215 of the Constitution establishes the Commission on Revenue Allocation, with the responsibility to make recommendations on the criteria for equitable sharing of national revenue and other matters relating to financial management by County Governments. Under chapter 12 of the Constitution other constitutional offices with implications on the decentralised framework of governance are established including a) the Controller of Budget who oversees the implementation of the national and county budgets by authorizing withdrawals from public funds; b) The Auditor-General who audits the accounts of all entities funded from public funds c) Salaries and Remuneration Commission which regularly reviews and sets remuneration and benefits of all State officers and public officers.<sup>62</sup>

Through the provision of financial resources, devolution further cushions minorities and marginalised groups from unforeseen adverse occurrences, accidents or incidences; For example, through the Public Finance Management Act, the County Executive Committee is mandated to establish County Government emergency funds. The purpose of an Emergency Fund is to enable payments to be made in respect of a county when an urgent and unforeseen need for expenditure for which there is no specific legislative authority arises. Authority is conferred to the County Executive Committee to make payments from emergency funds. In addition to the emergency funds, the County Executive Committee (CEC) is permitted to establish any other public fund, with approval of the CEC and the County Assembly, and appoint a designated person to administer such public fund.

#### **2.3.4 Gender mainstreaming and anti-discrimination**

Devolution also makes it mandatory for County Governments to mainstream gender and include persons with disabilities in governance. The Bill of rights categorically, states that women and men have the right to equal treatment, including the right to equal opportunities in political,

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<sup>62</sup> Ibid Art.215 and 230

economic, cultural and social spheres. In addition, discrimination on account of sex either by the state or by an individual is also outlawed.<sup>63</sup>

Further, Article 175(c) of the CoK states categorically that no more than two thirds of members of representative bodies in each county Government shall be of the same gender. Article 197 reinforces this by stating that no more than two thirds of any county assembly or county executive committee shall be of the same gender. Article 177(b) of the CoK provides the mechanism through which this will be attained. The Article creates Special Seats in each county legislature, whose total number will be determined by the number of special seats necessary to ensure that no more than two thirds of the membership of the county assembly is of the same gender. The Constitution also provides for election or nomination of marginalised groups, including Persons with disabilities and the youth.

### **2.3.5 Functions**

Devolution devolves functions that are directly related to the Green Economy to the counties. According to the Green Economy report, there are 10 key sectors that if scaled up through “green interventions”, will become the drivers of economic growth, increase human well-being and social equity, and reduce environmental risks and ecological scarcities. These sectors are divided into two. The first component is with reference to sectors derived from natural capital including agriculture, fishing, forests and water. The rationale behind this categorization hinges on the fact that these sectors have a material impact on the economy because they form the basis for primary production and secondly, that the livelihoods of poor people depend on them. The second component of the report focuses on “built capital” which includes sectors such as transportation, energy and manufacturing which have huge opportunities for resource savings with commensurate effects on poverty reduction, social equity and ecological benefits. For instance;<sup>64</sup>

- a) Agriculture is one of the largest employers with a large number of poor rural workers and subsistence farmers notably women, engaging in agricultural activities at some level.

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<sup>63</sup> Ibid Art. 27

<sup>64</sup>Creating Opportunities for Low-Income Women in the Green Economy: Report by Women’s Economic Security Campaign in conjunction with Wider Opportunities for Women

Strong investment in skills, rural infrastructure and organization to enable smallholder farmers to adopt greener and more productive farming practices could boost food security, lift millions out of poverty and prevent accelerated rural–urban migration.

- b) Sustainable forest management provides both essential environmental services and renewable raw material to other sectors while also providing quality jobs.
- c) Sustainable management of the fisheries sector can ensure employment for millions of workers who are mostly poor artisanal fishermen.
- d) In the energy sector, rapid employment growth in renewable energy, improvements in energy efficiency and enhanced access to energy can lead to major gains in employment and income opportunities, as well as in significant environmental benefits.
- e) Resource-intensive manufacturing has seen a decline in employment for decades, in which the environment has been a minor factor. However, a Green Economy could increase demand for products from these industries, contributing to improved competitiveness while protecting existing employment and even creating new jobs.
- f) Recycling is critical for energy efficiency, avoidance of waste, safe treatment of hazardous waste and recovery of valuable materials. Employment could be increased significantly by improving recycling rates, and there is major potential to improve social inclusion and reduce poverty through formalization, as the majority of waste pickers, notably women and child labourers, are concentrated in informal employment.
- g) Resource-efficient buildings have the largest potential to reduce greenhouse gas emissions and resource use. There are also significant opportunities for employment creation in new, green buildings, and even more opportunities in retrofitting the large estate of older buildings. A successful strategy hinges on skills development and on preparation and upgrading among the small and medium-sized enterprises (SMEs) which tends to dominate this sector.

- h) Transport is the most rapidly growing source of greenhouse gas emissions globally. However, substantial gains in employment can be created by a shift to mass transportation and to more energy-efficient vehicles.

Devolution enables County Governments to manage functions such as agriculture, refuse removal, refuse dumps and solid waste disposal, Control of air pollution, noise pollution, other public nuisances, county parks and beaches, transport, animal control and welfare, trade development and regulation, county planning and development, (including—housing; electricity and gas reticulation and energy regulation) implementation of specific national Government policies on natural resources and environmental conservation, (including—(a) soil and water conservation; and(b) forestry;) and county public works and services, (including—(a) storm water management systems in built-up areas; and(b) water and sanitation services) and capacity building).<sup>65</sup>

## **2.4 Conclusion**

In this chapter, I have made the point that devolution presents several social, administrative, political and economic benefits that are pertinent to making the transition to a socially inclusive Green Economy through a raft of legal provisions that impact resource allocation, public participation and decision making at the County level. I have proposed the transition to a Green Economy as a means of addressing social exclusion, discrimination and marginalisation in development. I have also demonstrated that the CoK and other devolution laws have given County Governments the requisite powers, resources and mandates that can be used in unison to ensure socially inclusive development in all areas of a County.

This thesis cautions, however, that the biggest threat to making a successful transition to a socially inclusive Green Economy may be the implementation of both the Constitution and devolution laws as the same have presented quite a radical shift from the manner in which the Government has operated for centuries. Through public participaton, an informed citizenry can ensure that devolution benefits the local communities as anticipated in law, even if that may

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<sup>65</sup> The CoK (2010) ; Fourth Schedule



require changes in the current framework which present challenges. For instance, it is noted that while resources allocation is to be done based on a formula that was developed by the Commission on Revenue allocation taking into account five factors namely; population parameter, poverty gap parameter, land area, basic equal share parameter, fiscal responsibility, the element of poverty has not been given the eminence that it deserves.

As the Commission is currently collecting fresh County data required to make an informed review of the revenue formulae that had been in use since 2012/2013 financial year in order to fulfill the Constitution's requirement that the first review be undertaken after three years, the public must ensure that resources allocated on the basis of poverty are reviewed. This review is also important reasons because some of the data used in determining the equitable shares is not a fixed and is bound to change with time. For instance, the commission relied on 2009 Census data for its computations during 2012/2013, 2013/2014 and 2014/2015 financial years - data that would obviously be in serious need of updating by 2015 and which cannot wait for the next population census scheduled for 2019.

The thesis also notes that while the equitable fund has been provided for in the constitution, there is great ambiguity as to the manner of its management<sup>66</sup>. While the Constitution is silent on management of the equalization fund, a reading of Section 18 of the Public Finance Management Act, 2012 reveals that the fund is specifically vested in the national treasury- an arrangement which may entrench past unjust practices on resource allocation. It is therefore recommended that the fund be allocated directly to county Government as conditional grants.

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<sup>66</sup>CoK (2010) Art.202

## CHAPTER 3

### 3.0 GENDER DIMENSIONS OF SOCIAL EXCLUSION

In this chapter, I begin by looking at gender dimensions of exclusion and gender mainstreaming in a global perspective. I then proceed to look at the connection between gender, poverty and the environment with a view to showcasing the significance of making the transition to a socially inclusive Green Economy particularly for women who form the largest population of people living below the poverty line, while disproportionately depending on the environment for their livelihoods. The chapter concludes by making recommendations for law and policy makers in County Governments that may act as a guide for counties who aim to make the transition to a socially inclusive Green Economy.

#### 3.1 Gender Mainstreaming in a global perspective

Experience shows that the resiliency of households and communities depends greatly on the resiliency of women.<sup>67</sup> At the same time women are increasingly perceived to play a significant role in realising the transformation to a greener economy and poverty reduction in many developing economies. The direct and indirect impact of women entrepreneurs to the overall economy has been widely researched on. For instance, it has been shown that raising female employment could impact a country's Gross Domestic Product by a growth rate of up to 34%. Women also contribute to the greater availability of human resources of a country's green industry by investing household income in the well-being and proper education of their children. At the same time, women are known to apply particularly environmental friendly behaviour in various spheres. These include more resource efficient production as well as consumption behaviour and higher sustainable decisions for their households and businesses.<sup>68</sup>

Despite this, ensuring gender equality and equity remains a burning issue. Overall, women still face many barriers in finding their rightful place in economic life. They tend to earn less than male workers. Those working on farms are often denied the right to own land. They struggle

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<sup>67</sup> United Nations Development Programme (2012) Gender and Environment and Energy  
Online:[http://www.undp.org/content/undp/en/home/ourwork/womenempowerment/focus\\_areas/women\\_and\\_environmentalchange/](http://www.undp.org/content/undp/en/home/ourwork/womenempowerment/focus_areas/women_and_environmentalchange/) Accessed 12<sup>th</sup> February 2015.

<sup>68</sup>Mangis Anais (2014) How Women Entrepreneurs are contributing to the Green Economy .  
Online;<http://businessinnovationfacility.org/profiles/blogs/how-women-entrepreneurs-are-contributing-to-the-green-economy>  
Accessed 14th February 2015

with education and skills training to fully unleash their businesses potential. More often than not, the Government ignores them in terms of policy, laws and services and they have difficulty accessing capital to grow their businesses. An even more pressing barrier is the traditional view on male and women roles being reinforced by cultural values which requires that women fulfil their responsibilities in domestic and family work, while entrepreneurship is an area reserved for men.<sup>69</sup>

At the Rio+20 Conference in 2012, the concept of a Green Economy was presented as a positive response to this dilemma. The objective was to show that economic growth could be reconciled with a low-carbon and socially inclusive economy through the convergence of economic and environmental policies. A gender responsive Green Economy as envisioned by world leaders, was said to be one that will "enhance the welfare of women, children, youth, persons with disabilities, smallholder and subsistence farmers, fisherfolk and those working in small and medium-sized enterprises, and improve the livelihoods and empowerment of the poor and vulnerable groups in particular in developing countries; Mobilize the full potential and ensure the equal contribution of both women and men; and address the concern about inequalities and promote social inclusion, including social protection floors".<sup>70</sup>

However, most civil society organizations, including feminist movements, have rejected the proposed concept because they believe that a Green Economy does little to promote gender-just and socially inclusive development. The concept is criticized for being largely gender-blind with a strong reliance on green technologies and market mechanisms to reach the goal of a greener economy and also because, under this concept, the economy continues to rely on unpaid and underpaid care work to provide essential care and support to dependent adults and children and non-human beings – a role that is primarily performed by women. Critics are therefore stressing the need for structural changes in the economic system with emphasis on distributional and development aspects.<sup>71</sup>

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<sup>69</sup>Ibid Pp 2

<sup>70</sup> Rio Outcome document- The Future We Want, July 2012

<sup>71</sup>Stiftung Friedrich-Ebert-Garnet (2014) On Gender, Care and Sustainable Economy. Online <http://www.fes-sustainability.org/en/blog/postwachstum/gender-care-and-sustainable-economy-concept-note>, Accessed 12<sup>th</sup> February 2015

The criticism notwithstanding, linking gender equality and Green Economy has been perceived to be important for several reasons. First, it is a moral and ethical imperative: achieving gender equality and realizing the human rights, dignity and capabilities of diverse groups of women is a central requirement of a just and sustainable world. Second, it is critical to redress the disproportionate impact of economic, social and environmental shocks and stresses on women and girls, which undermine the enjoyment of their human rights and their vital roles in sustaining their families and communities. Third, and most significantly, it is important to build up women's agency and capabilities to create better synergies between gender equality and Green Economy outcomes<sup>72</sup>. In making the transition to a socially inclusive and gender responsive Green Economy, County Governments must first appreciate the linkages that exist between gender and environment and gender and poverty.

### **3.2 Gender poverty and the environment**

While sex refers to those roles and relationships that are biologically determined, gender denotes the range of socially constructed roles of men and women as well as the relationships between them. The positioning of people not only by race, ethnicity and class but by gender, is inseparably linked to domestic roles and responsibilities and access to and control of natural resources. In Kenya, as indeed in many African countries, gender roles put women in direct contact with natural resources such as forests, water, land and wildlife because they utilize these resources to supply basic needs for their families.<sup>73</sup>

For instance, women come directly in contact with land in their effort to produce food. On most farms in villages, you will find women providing over 80% of labor directly in food production. This activity is major among other chores like fuel- wood collection, pole-wood for construction, fetching of water for domestic use, cooking and feeding of the family, and treatment of common rural ailments. When soils do not yield enough crops because of exhaustion, its women to deal with modification of farming practices like provision of local manure to replenish the soil. When

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<sup>72</sup> Ibid

<sup>73</sup> Businge Monday S. and Maina Immaculate N. ( 2012)Socioeconomic status poverty, gender and environment online: [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&ved=0CGoQFjAH&url=http%3A%2F%2Fwww.nema.go.ke%2Findex.php%3Foption%3Dcom\\_phocadownload%26view%3Dcategory%26download%3D60%3Ach2&ei=Bm1TVOfmA4fhaKDxgrAN&usg=AFQjCNHeRdzkXrVe3LbgRnV4L9OfdHhUg&sig2=BHH85zRHnUoUJYjNH\\_3Dww&bvm=bv.78677474,d.d2s](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&ved=0CGoQFjAH&url=http%3A%2F%2Fwww.nema.go.ke%2Findex.php%3Foption%3Dcom_phocadownload%26view%3Dcategory%26download%3D60%3Ach2&ei=Bm1TVOfmA4fhaKDxgrAN&usg=AFQjCNHeRdzkXrVe3LbgRnV4L9OfdHhUg&sig2=BHH85zRHnUoUJYjNH_3Dww&bvm=bv.78677474,d.d2s), Accessed 11<sup>th</sup> February 2015

there is destruction of soil cover that causes soil erosion, more often than not, it is women who do the terracing or develop other strategies be they enlightened or naïve. When only little and poor land is available for subsistence crops, women are forced to work much harder or go long distances to reach scattered parcels of land to farm for domestic food crop use.<sup>74</sup>

When it comes to water, women are the main collectors and users of water in rural Kenya. They have to decide where to collect water, how to draw, transport and store it, how much water to draw, how many sources of water to exploit and for what purposes. Forests are also important to women particularly in supplying fuel wood. Women use forests to supplement fuel and food sources from own land e.g. fuel wood {as trees planted on farms and other agro-forestry projects are owned by men}, nuts and fibres, wild fruits, vegetables, tubers, honey and wild bush meat. Forests are also used for cultural and spiritual purposes and in provision of medicinal plants, which cater for most rural healthcare.<sup>75</sup>

Because of these linkages, ultimately, as the principal caregivers in most households, women will have to contend with a worsening disease environment. As the poorest segment of the population, women's low access to new technologies, credit and assets limits their inherent ability to adapt. Moreover, as women's incomes and access to resources also affects their bargaining power within households, which in turn affects their ability to ensure that their children will receive adequate nutrition and care, drops in female production and earnings opportunities will have negative repercussions for the next generation<sup>76</sup>.

Over the past years, perception has steadily grown around the globe that poverty is becoming increasingly feminized, that is, that an increasing proportion of the world's poor are female. According to the Platform for Action adopted at the Fourth World Conference on Women in Beijing in September 1995, "More than one billion people in the world today, the great majority of whom are women, live in unacceptable conditions of poverty, mostly in the developing

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<sup>74</sup>Volunteers For Africa (2009) The role of rural women in natural resource management in Kenya; Online ; <https://www.ammado.com/nonprofit/50795/articles/7325>, Accessed 11<sup>th</sup> February 2015

<sup>75</sup> Ibid

<sup>76</sup> United Nations Development Programme (2012) Powerful synergies: Gender Equality, Economic Development and Environmental Sustainability; Online: <http://www.undp.org/content/dam/undp/library/gender/Gender%20and%20Environment/Powerful-Synergies.pdf>, Accessed on 11<sup>th</sup> February 2015

countries”<sup>77</sup>.Poverty, in its broader definition, transcends non monetary aspects and encompasses ill health, illiteracy, social exclusion, insecurity, powerlessness, lack of access to information and governance failures.<sup>78</sup>

Because women disproportionately live below the poverty line in comparison to men, poverty remains widespread and poses a range of development challenges. According to the World Bank, in Kenya for instance, majority of the poor in rural areas are food and subsistence farmers and those who derive the bulk of their income from the informal sector. About a third of rural households are female-headed, and two-thirds of them have no male support, in other words, they are headed by widowed, divorced, or separated women with children. The incidence of severe poverty is significantly higher among such households, standing at 44 percent compared to 20 percent for male-headed households.<sup>79</sup>

This state of affairs forces poor people, particularly women, to overexploit open access or under-regulated natural resources because to them, these natural resources are their main source of livelihood. Households predominantly rely on the dwindling forests for their wood fuel as well as wood carving, homestead fencing and construction timber, honey and herbal medicine needs. In addition, there is increased over reliance by the burgeoning curio industry on the country’s granite and soap stone quarries for sculpting and on the wetlands’ clay for pottery and reeds for basket, mat and furniture making which has further enhanced the destruction of ecosystems.

In addition, continued use of rudimentary technology due to poverty contributes to environmental degradation. For example, use of fire as a tool for lighting, honey harvesting, game hunting, defence against wildlife predation and clearing agricultural land for subsistence farming has largely been responsible for accidental fires that lead to loss of biodiversity in the

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<sup>77</sup> Moghadam Valentine M. ( 2005) the ‘feminization of poverty’ and women’s human rights; online; [http://www.cpahq.org/cpahq/cpadocs/Feminization\\_of\\_Poverty.pdf](http://www.cpahq.org/cpahq/cpadocs/Feminization_of_Poverty.pdf), Accessed on 11<sup>th</sup> February 2015

<sup>78</sup> United Nations Development Programme (2012) Powerful synergies: Gender Equality, Economic Development and Environmental Sustainability; Online: <http://www.undp.org/content/dam/undp/library/gender/Gender%20and%20Environment/Powerful-Synergies.pdf>, Accessed on 11<sup>th</sup> February 2015

<sup>79</sup> The World Bank (1995) Kenya: Poverty Assessment Online:[http://www.wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1995/03/15/000009265\\_3961214160137/Rendered/PDF/multi0page.pdf](http://www.wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1995/03/15/000009265_3961214160137/Rendered/PDF/multi0page.pdf), Accessed on 11<sup>th</sup> February 2015

country's forests and rangelands. Frequent occurrences of fires lead to loss of ground cover and make the land more prone to desertification and soil erosion. In the Arid and Semi-Arid Lands, environmental degradation takes the form of sheet and gully soil erosion due to the fragile ecosystems and livestock overstocking although it also occurs in the arable lands where inappropriate agricultural techniques are used. This degradation reduces soil fertility and has negative implications on land productivity, livestock carrying capacity, water quantity and quality and wood fuel availability.

Further, because the poor don't enjoy secure land rights, they are forced to cultivate ecologically fragile landscapes such as forests, wetlands, lakeshores and hillsides with catastrophic consequences for themselves, biodiversity, ecosystems and the general environment. In addition, because they lack security of tenure, the poor often risk predation to occupy wildlife dispersal areas and migration corridors consequently degrading and constricting the wildlife's potential breeding and feeding grounds and rendering threatened species extinct.<sup>80</sup>

### **3.3 The evolution of gender responsive international instruments**

Up until the recent past, both national and international environmental legal instruments have paid insufficient attention to women. In most cases, international environmental documents barely mention women or gender. When references are made, they tend to be very broad and, therefore, of little practical use or impact. A few international environmental instruments have, however, made some progress in incorporating provisions on women and gender in a meaningful way and should serve as a model for future law-making in this field. Some of these instruments are briefly discussed below;<sup>81</sup>

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<sup>80</sup>Businge Monday S. and Maina Immaculate N. (2012) Socioeconomic status poverty, gender and environment, online, [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&ved=0CGoQFjAH&url=http%3A%2F%2Fwww.nema.go.ke%2Findex.php%3Foption%3Dcom\\_phocadownload%26view%3Dcategory%26download%3D60%3Ach2&ei=Bm1TVOfmA4fhaKDxgrAN&usg=AFQjCNHeRdzkXrVe3LbgRnV4L9OfdHhUg&sig2=BHH85zRHnUoUJYjNH\\_3Dww&bvm=bv.78677474,d.d2s](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&ved=0CGoQFjAH&url=http%3A%2F%2Fwww.nema.go.ke%2Findex.php%3Foption%3Dcom_phocadownload%26view%3Dcategory%26download%3D60%3Ach2&ei=Bm1TVOfmA4fhaKDxgrAN&usg=AFQjCNHeRdzkXrVe3LbgRnV4L9OfdHhUg&sig2=BHH85zRHnUoUJYjNH_3Dww&bvm=bv.78677474,d.d2s)

<sup>81</sup>United Nations Development Programme (2012) Gender and Environment and Energy Online: [http://www.undp.org/content/undp/en/home/ourwork/womenempowerment/focus\\_areas/women\\_and\\_environmentalchange/](http://www.undp.org/content/undp/en/home/ourwork/womenempowerment/focus_areas/women_and_environmentalchange/) Accessed on 11<sup>th</sup> February 2015

### **3.3.1 The 1992 Earth Summit**

This Earth summit arguably marks the first recognition of gender in international environmental law, as evidenced by the references found in the key documents adopted at the Summit. In particular, the Rio Declaration included new language specifying that “women have a vital role in environmental management and development. Their full participation is therefore essential to achieving sustainable development.” Agenda 21, with an entire chapter dedicated to ‘Global Action for Women towards Sustainable Development’, likewise included women among nine ‘major groups’ whose commitment and genuine involvement were deemed critical to the effective implementation of its objectives, policies and mechanisms. Though the changes the Earth Summit had called for would require time, meanwhile, pressures on the environment continued to increase. By the 1997 Earth Summit+5, the state of the global environment had deteriorated further: While “[s]ome progress has been made in terms of institutional development, international consensus-building, public participation and private sector actions... Overall... trends are worsening.” In the parallel international track on gender, similar conclusions were being reached.

### **3.3.2 The 1995 Beijing Plan for Action**

This plan was adopted at the Fourth World Conference on Women in 1995 details how the impact of this ongoing decline was especially felt by women; and that efforts to integrate gender into the environmental field had fallen far short. In an attempt to address these shortcomings, the international community pledged to redouble efforts to reverse harmful trends and promote sustainable development, including activities to address and incorporate gender.

### **3.3.3 The 1997 Earth Summit +5**

The Earth Summit+5 Outcome Document contains 15 references to women, reiterating the need and commitment to promote women’s involvement, empowerment, equality and equity in sustainable development policy and practice. The momentum from this recommitment, in turn, fed into the negotiations of the international agenda for the 21st century at the Millennium Summit.



### **3.3.4 The 2000 Millennium Summit and The Millennium Development Goals**

Both gender equality and the environment figured prominently at the Millennium Summit. The Millennium Declaration includes ‘respect for nature’ as one of six fundamental values that it deems essential to international relations in the twenty-first century. Gender, meanwhile, features in two of the other values enumerated: freedom and equality. Unfortunately, however, the explicit inclusion of women observed in Rio and Rio+5 is not found in the environmental paragraphs here.

While the environment and women are both featured in the MDGs, they are treated as separate rather than linked priorities. Significant shortfalls were also noted in the lead up to the 2002 World Summit on Sustainable Development, at which the international community would gather again to assess the progress made on the Rio principles and plan of action, ten years after the Earth Summit. It is unsurprising then, that the World Summit on Sustainable Development rang with calls to make good on the laudable Rio goals for gender integration.

### **3.3.5 The 2002 World Summit on Sustainable Development**

This summit produced the Johannesburg Declaration on Sustainable Development and Plan of Implementation of the World Summit on Sustainable Development. Principle 20 of the Johannesburg Declaration proclaims a commitment to “ensuring that women’s empowerment, emancipation and gender equality are integrated in all the activities encompassed within Agenda 21, the Millennium Development Goals and the Plan of Implementation of the Summit.”

The Plan of Implementation also presents a reasonably engendered strategy, particularly in the chapter on poverty alleviation. The document contains over 45 references to women and gender across a variety of subjects, from eliminating violence and discrimination, to agriculture, biodiversity, education and access to health services, land and other resources. The mention of gender considerations would appear to reflect a growing commitment and consensus on the need to recognize and involve women. Further evidence can be found in the Commission on Sustainable Development’s 2003 decision to make gender a cross-cutting issue in all its work through 2015. Following a successful push from women’s organizations and advocates, the United Nations Environment Programme (UNEP) soon followed suit, adopting a decision calling

upon Governments and UNEP itself to mainstream gender into all environmental policies and programmes, assess the effects of environmental policies on women, and integrate gender equality and environmental considerations into their work, at the 23<sup>rd</sup> session of its Governing Council in 2005.

A few months later, in July 2005, the Economic and Social Council passed a similar resolution calling upon all UN entities to mainstream a gender perspective in all the policies and programmes of the UN system. That same year, the international community convened in New York to assess the implementation of the Millennium Declaration five years on.

### **3.3.6 The 2005 World Summit**

The 2005 World Summit continued to champion the integration of gender. An entire subpart under the development agenda is entitled ‘Gender Equality and Empowerment of Women’, and emphasizes the importance of gender mainstreaming. Critically, however, this subpart makes no mention of the environment. The provisions on the environment mirror this omission: although gendered terms appear over 40 times across a range of topics, including education, employment, human rights, rule of law and prevention and resolution of conflicts—for which gender receives another dedicated subpart—they are conspicuously absent from the nine paragraphs under the subpart ‘Sustainable development: managing and protecting our common environment’, which contains no reference to women or gender. At the 2005 World Summit, the international community largely turned its back on the vital roles and needs of women in the field of the environment. Sadly, this prevailing trend is also observable in the law surrounding one of the global problems that receives the greatest attention in international environmental law and policy circles: climate change.

#### **3.3.6.1 The 1992 Earth Summit**

The United Nations Framework Convention on Climate Change (UNFCCC) was negotiated at the United Nations Conference on Environment and Development (UNCED), informally known as the Earth Summit, held in Rio de Janeiro 1992. Notwithstanding the considerable attention paid to women’s issues at the Summit, the UNFCCC makes no reference to women or gender equality; nor does the only protocol to the Convention to date, the 1997 Kyoto Protocol. These

omissions are all the more disturbing for the reality that the effects of climate change are “superimposed on existing vulnerabilities,” including gender disparities, and that women have a critical contribution to make as leaders and innovators in the fight against climate change. The international climate change regime has been slow in integrating gender into its policies and processes. Without any systematic incorporation of a gender dimension in the UNFCCC or Kyoto Protocol, women have long been an afterthought in this system, their needs addressed only in bits and pieces.

Six years after this, COP-7 adopted a decision on improving the participation of women in the representation of the parties, but its scope was limited to monitoring and increasing the election of women to convention posts and bodies. The first official side event on gender was held the following year at the eighth meeting of the Conference of the Parties in New Delhi in 2002. Nonetheless, it was not until its fourth assessment report in 2007 that the Inter-Governmental Panel on Climate Change, the scientific inter-Governmental body tasked with assessing the current state of climate change science, recognized the role of gender in shaping people’s vulnerability and adaptation.

In the intervening years, gender had still been largely ignored, in spite of a dedicated lobby of women’s organizations. Fortunately, the enduring efforts of the women’s groups have succeeded in drawing the climate change regime’s attention to gender in the last few years. COP-13, in Bali in 2007, featured five formal side events dedicated to gender issues and saw the launch of a joint Global Gender and Climate Alliance between the United Nations Development Programme, the United Nations Environment Programme and leading environmental and women’s organizations.

In 2009, gendered language finally appeared in the outcome documents of COP-15 in Copenhagen. The Copenhagen documents recognize that “the effects of climate change will be felt most acutely by those parts of the population that are already vulnerable owing to youth, gender, age or disability.” Furthermore, they assert the need for “gender equality and the effective participation of women” and call for gender sensitivity and consideration in efforts on adaptation, capacity building and deforestation. Gender held its place the following year in

Cancún, with at least 10 references in the conference outcome documents, albeit in the same general areas as before.

At the most recent COP-17, held in Durban in 2011, the outcome documents featured even more gendered terms and provisions, and also referenced the need for greater gender equality under the UNFCCC in general. Most critically, gender appears in the decision text on the Green Climate Fund, finally breaking into the financing arrangements under the Convention. Looking forward, gender-sensitivity and participation also made their way into the decision on national adaptation plans, a relatively new mechanism in the international climate change regime.

### **3.3.7 Convention on Biological diversity**

Right from the start, the international regime for biodiversity conservation recognized the role of women. The preamble to the 1992 Convention on Biodiversity recognizes “the vital role that women play in the conservation and sustainable use of biological diversity,” and affirms “the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation.”

The Convention on Biodiversity system is among the most nominally engendered regimes in international environmental law. A full decade ahead of the UNFCCC bodies, the Conference of the Parties to the Convention’s Subsidiary Body on Scientific, Technical and Technological Advice introduced an early reference to women at its second meeting in Montreal in 1996, in a provision on biodiversity in agriculture.

At the third meeting of the COP the following year, the parties adopted two engendered decisions: one on conservation and the sustainable use of agricultural biological diversity, which recognizes that many farmers are women and calls on parties to mobilize farming communities with specific reference to gender roles; and a second on article 8(j) of the convention, which deals with traditional knowledge, innovations and practices, that calls for gender representation in the selection of funded workshop participants.

A few years later in 1999, the fourth meeting of the subsidiary body produced another recommendation that makes reference to gender-this time on the sustainable use of biological resources, including tourism-recognizing that tourism may affect gender relationships by offering different employment opportunities to women and men.

At its fifth meeting in Montreal in 2000, the subsidiary body included gender balance among the considerations it recommended that parties review in composing ad hoc technical expert groups, subsidiary bodies, and the roster of experts.

Later that same year, the Parties gathered in Nairobi for COP-5, adopting the Subsidiary Body's tourism assessment, along with two other decisions that speak to the need for gender balance in the expert roster, and the increased participation of women in the Article 8(j) programme of work.

In 2002 and 2004, the parties adopted decisions that included gender among the social factors that may affect traditional knowledge; nonetheless, they and other participants recognized that still not enough was being done to integrate women's practices, knowledge and interests. In March 2006, the executive secretary of the Convention appointed a gender focal point, in line with gender mainstreaming directives adopted by the Economic and Social Council and the United Nations Environment Programme Governing Council in 2005.

The following July, the Ad Hoc Open-ended Working Group on the Review of Implementation on the Convention met for the second time in Paris, and adopted a report that, in part, urges the parties to, inter alia, promote the mainstreaming of gender considerations in developing, implementing and revising their national and regional biodiversity strategies and action plans.

In response to this mounting pressure for greater integration of gender in the Convention's system, the secretariat adopted a dedicated plan to stimulate and facilitate efforts to overcome constraints, and take advantages of opportunities to promote gender equality.

The 'Gender Plan of Action' recognizes gender mainstreaming as "the primary methodology for integrating a gender approach into any development or environmental effort," and sets forth an ambitious programme to truly mainstream gender in the work of the Convention. The plan identifies four strategic objectives: 1.To mainstream a gender perspective into the implementation of the Convention and the secretariat's work; 2.To promote gender equality in achieving the objectives of the Convention and later instruments; 3.To demonstrate the benefits of gender mainstreaming in biodiversity conservation, sustainable use and benefit sharing; and 4.To increase the effectiveness of the secretariat's work.

The plan then outlines four spheres of activities—policy, organizational, delivery and constituency, each with its own subsets of targets, actions/steps, and indicators—to address gender concerns over the period from 2008 through 2012. Since the adoption of the Gender Plan of Action in 2008, the secretariat has developed technical guidelines for mainstreaming gender into National Biodiversity Strategies and Action Plans.

Building on its secretariat's dedication to gender efforts, the COP adopted a decision at its tenth meeting in 2010, urging the parties to take heed of these guidelines; requesting that the secretary cooperate in efforts to develop clear indicators to monitor progress within the broader international community; and calling for gender mainstreaming in all programmes of work under the Convention.

On paper, some positive steps have already been recorded. Namely, the preamble of the 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, recognizes "the vital role that women play in access and benefit-sharing and affirming the need for the full participation of women at all levels of policy-making," while the body of the protocol contains several references to women in the context of traditional knowledge, capacity building, and financing. Laudable provisions, however, do not translate automatically into tangible results, and much work remains to be done to deliver on these promises.

### **3.3.8 The 2012 UN Conference on Sustainable Development (Rio+20)**

Finally, the latest major global gathering on the environment, the UN Conference on Sustainable Development (Rio+20) held in Rio de Janeiro in June 2012, recognized gender equality and women's empowerment as a cross-cutting issue in sustainable development stating at paragraph 45 thereof that "we underscore that women have a vital role to play in achieving sustainable development. We recognize the leadership role of women, and we resolve to promote gender equality and women's empowerment and to ensure their full and effective participation in sustainable development policies, programmes and decision-making at all levels".<sup>82</sup>

With specific reference to the Green Economy Paragraph 56 and 58 of the outcome document recognise inclusiveness and social equity as key principles in a Green Economy, emphasizing that Green Economy should contribute to the enhancement of social inclusion and welfare of women, indigenous communities between other categories. Paragraph 58 on the other hand underlines that Green Economy policies should be supported by an enabling environment and institutions allowing participation of all stakeholders, including civil society while paragraph 62 encourages countries to drive sustained, inclusive and equitable economic growth and job creation, particularly for women, youth and the poor.

In contributing to the outcome document, the Women's major Group provided input that began with a clear vision for an equitable and sustainable world noting that "Social equity, gender equality and environmental justice must form the heart of sustainable development and the outcomes of the rio+20 conference." the position paper identifies measures that should promote: gender equality in all spheres of our societies; respect for human rights and social justice; and environmental conservation and protection of human health.<sup>83</sup>

### **3.4 Opportunities presented by the Constitution**

The CoK provides a solid legal and institutional framework for the recognition and protection of the rights of women principally by creating a framework for affirmative action that ensures that

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<sup>82</sup>United Nations General Assembly /RES/66/288\* (2012) Sixty-sixth session Agenda item 19 Resolution adopted by the General Assembly on 27 July 2012; The Future We Want

<sup>83</sup> Ibid

minorities and the marginalised are brought up to speed in social, economic and cultural development.<sup>84</sup>

Chapter 11 on devolved Government contains provisions that will improve equality of gender and ensure equity. For instance, Article 174 on the objects of devolution contains the objectives of devolution as follows: a) “foster national unity by recognising diversity; b) recognising the right of communities to manage their own affairs and to further their development; e). Protect and promote the interests and rights of minorities and marginalised communities; and c) Ensure equitable sharing of national and local resources throughout Kenya.

In the Bill of Rights, equality and freedom from discrimination is provided for categorically by stating that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres<sup>13</sup>. In addition, discrimination on account of sex either by the state or by an individual, is also outlawed.

Article 175(c) of the Constitution states that “County governments established under this Constitution shall reflect the following principles—(a) county governments shall be based on democratic principles and the separation of powers (b) county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively; and(c) no more than two-thirds of the members of representative bodies in each county government shall be of the same gender.

Article 197 reinforces this by stating that; “No more than two thirds of any county assembly or county executive committee shall be of the same gender”. Article 177(b) provides the mechanism through which this will be attained. The Article creates Special Seats in each county legislature, whose total number will be determined by the number of special seats necessary to ensure that no more than two thirds of the membership of the county assembly is of the same gender and provides for election or nomination of marginalised groups, including persons with disabilities and the youth.

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<sup>84</sup> CoK (2010) Art. 174, 175,177 and 197,



Further to this, the Constitution has addressed the issue of inequalities through the budgeting process.<sup>85</sup> The allocation of public funds among and between regions through the budget is the main policy tool that could be used to address regional inequalities.<sup>86</sup> In most developed economies, the redistribution policy is designed in such a way that low-income regions enjoy a higher inflow of public resources, while high income generating regions provide the surplus resources needed. The Constitution has adopted a similar mechanism through the establishment of the Equalization Fund which will see at least 0.5 per cent of Kenya's annual revenue distributed to the poorer regions of the country for a period of 20 years to assist in the provision of basic services to marginalised areas so as to bring the quality of services in those areas to the level generally enjoyed by the rest of the nation. The provision of this fund is important to women as it will ensure that services such as water, sanitation and health are improved with the overall result that the livelihood of women, particularly rural women, will be improved<sup>87</sup>.

### **3.5 Addressing Gender Dimensions of Exclusion Through a County based Green Economy**

The latest major global gathering on the environment, the UN Conference on Sustainable Development (Rio+20) held in Rio de Janeiro in June 2012, recognized gender equality and women's empowerment as a cross-cutting issue in sustainable development stating at paragraph 45 thereof that "we underscore that women have a vital role to play in achieving sustainable development. We recognize the leadership role of women, and we resolve to promote gender equality and women's empowerment and to ensure their full and effective participation in sustainable development policies, programmes and decision-making at all levels".<sup>88</sup>

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<sup>85</sup> Ibid Chapter 12

<sup>86</sup> Stiftung Friedrich-Ebert-,(2012) Regional Disparities and Marginalisation in Kenya ,Pp 21

<sup>87</sup> CoK (2010) Art.204

<sup>88</sup>United Nations General Assembly /RES/66/288\* (2012) Sixty-sixth session Agenda item 19 Resolution adopted by the General Assembly on 27 July 2012;The Future We Want

encourages countries to drive sustained, inclusive and equitable economic growth and job creation, particularly for women, youth and the poor.<sup>89</sup>

In contributing to the outcome document, the Women's major Group provided input that began with a clear vision for an equitable and sustainable world noting that "Social equity, gender equality and environmental justice must form the heart of sustainable development and the outcomes of the rio+20 conference." the position paper identifies measures that should promote: gender equality in all spheres of our societies; respect for human rights and social justice; and environmental conservation and protection of human health.<sup>90</sup>

The Green Economy offers a possibility for a more equitable sharing of revenue between men and women, capital and labour, and rich and poor counties. However, market-based approaches that emphasize economic growth have tended to exploit and marginalize women in their roles as workers, consumers and citizens. According to Candice Wallace, as workers, women are being excluded from the Green Economy due to gender-segregated employment patterns and discrimination. As consumers, women are more likely than men to buy eco-friendly products but they have limited purchasing power. As citizens, women are crucial to good governance in the Green Economy but have little influence because very few women hold management positions in both public and private sectors.<sup>91</sup>

County Governments that aim to make a socially inclusive transition to Green Economy must therefore act to close gender gaps that threaten to make the Green Economy as inequitable as its forerunners by adopting approaches that would assure a fuller role for women. Significantly, women need to be freed from patriarchal systems and economic, legal and political constraints that limit their ability to own land, control rights to natural resources, obtain necessary training, access information, raise financing and acquire relevant technology.

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<sup>89</sup> Ibid Paragraph 56 and 58

<sup>90</sup> Ibid Paragraph 62

<sup>91</sup> Stevens Candice (2012) Gender in the Green Economy Online:

<http://www.unrisd.org/unrisd/website/newsview.nsf/%28httpNews%29/C9BAB159600EE0A5C1257A210036A71C?OpenDocument>, Accessed on 11<sup>th</sup> November 2014

In addition, a sustainable Green Economy will depend in part on the availability and transfer of environmentally friendly technology, which requires a profound reform of trade related intellectual property rights. These technologies should be women-friendly technologies in the sense that they can free up women's time, reduce their drudgery, and expand their economic, social and political opportunities. Access to sustainable and advanced technologies for household management, agricultural production, business enterprises, transportation information media and communications will allow more women to become engaged in sustainable livelihoods if they can obtain those technologies, along with appropriate training and skills to use them. In the final analysis, a socially inclusive Green Economy must ensure that women play a greater role in governance, as workers and as consumers.<sup>92</sup> These conditions can be met if County Governments implement the legal and constitutional mandates that have been assigned to them through international law, the Constitution and devolution laws.

### **3.5.1 Women in governance**

Different authors have argued that women and men bring different perspectives to decision-making, and a lack of women in Government limits the effectiveness of the state and its policies and diminishes its representational quality. Yet, women remain vastly under-represented in governance forums. In most counties, there is a clear absence of women involved in decision-making processes. This may be due to their low labour force participation and time poverty in relation to men as well as stereotypical attitudes towards the societal roles of women and men.

In the political sphere for instance, it has been the experience in Kenya that women are underrepresented<sup>93</sup>. From the 1<sup>st</sup> general election held in Kenya to the most recent 2013 general election, men have been the majority in parliament. There was not a single female MP in the first legislature in 1963. Prior to the promulgation of the Kenyan Constitution, female representation only improved slightly with Parliament having 4.1% female representation in 1997, 8.1% in 2002 and 9.8% in 2007.

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<sup>92</sup> Ibid

<sup>93</sup> Ibid

This trend has been particularly worrying because studies have shown that when women are well-represented in decision-making bodies, the overall quality of governance tends to rise and levels of corruption decrease. Secondly, due to somewhat different priorities, women in Government are more likely to work towards passing laws that benefit families, women, children, and traditionally marginalised groups. Surveys of women holding political office find that respondents evidence a different view of politics and of society than their male counterparts. They give greater emphasis to social welfare, legal protection and transparency in Government and business and they tend to introduce more legislation reinforcing labour rights, social security, education, land redistribution, and electoral initiatives<sup>94</sup>. According to Candace Williams, women are crucial to good governance in the Green Economy because “women in Government give greater emphasis than men to social welfare and ecological issues and tend to be less corrupt and because women, more than men, tend to advocate Government intervention in the marketplace to ban unsustainable products and to subsidize environmentally friendly goods”.<sup>95</sup>

Lower representation of women can be attributed to a number of factors in the Kenyan context. A study of women civic leaders in the Rift Valley established that women frequently have no financial bases sufficient to enable them mount vigorous campaigns when vying for political posts. In addition, women are frequently subjected to violence so as to intimidate them into giving up the quest for political office. This coupled with patriarchal notions about the suitability of women to lead, leads one to the conclusion that the hurdles for women are a lot more than mere lack of opportunity. This problem is further exacerbated by the fact that political rules of engagement, formulated as they are by men, reflect and respond to men’s experiences thereby locking out women.<sup>96</sup>

The CoK has attempted to correct some of these injustices by institutionalizing direct gender-specific measures that seek to correct the consequences of women’s historical exclusion from the

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<sup>94</sup>Gender and Sustainable Development (2008) ; Maximising the Economic, Social and Environmental Role Of Women; Online [Http://Www.Oecd.Org/Social/40881538.Pdf](http://www.Oecd.Org/Social/40881538.Pdf), Assessed on 20<sup>th</sup> February 2015

<sup>95</sup>Candice Stevens (2012) Gender in the Green Economy; Online: <http://www.unrisd.org/unrisd/website/newsview.nsf/%28httpNews%29/C9BAB159600EE0A5C1257A210036A71C?OpenDocument>, Assessed 20<sup>th</sup> February 2015

society through its various provisions. For instance, Article 91 of the Constitution requires every political party in Kenya to inter-alia;

- (a) have a democratically elected governing body;
- (b) abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party;
- (c) respect the right of all persons to participate in the political process, including minorities and marginalised groups;
- (d) respect and promote human rights and fundamental freedoms, and gender equality and equity. In addition to this, a political party shall not;
  - be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis;
  - engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person; and
  - engage in bribery or other forms of corruption;

The Constitution also provides for affirmative action. Generally, affirmative action means a deliberate move to reforming or eliminating past and present discrimination using a set of public policies and initiatives designed to help on the basis of colour, creed, geographical location, race, origin and gender among others. It involves steps that are taken for the purpose of eliminating the present effects of past discrimination and takes into account under representation and insignificant occupation of positions by some minorities in the society. The underlying motive for affirmative action is the principle of equal opportunity, which holds that all persons have the right to equal access to self-development.<sup>97</sup>

Article 27 provides that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres and that either the State or any person shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. The Article goes ahead to

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<sup>97</sup>International Journal of Business, Humanities and Technology (2013) An Analysis of Affirmative Action: The Two-Thirds Gender Rule in Kenya online:[http://www.ijbhtnet.com/journals/Vol\\_3\\_No\\_6\\_June\\_2013/11.pdf](http://www.ijbhtnet.com/journals/Vol_3_No_6_June_2013/11.pdf); Accessed on 20<sup>th</sup> February 2015

provide that the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination, to give full effect to the realisation of the rights guaranteed under this Article.

Article 81 (b) provides that the electoral system shall comply with certain principles which includes that; (b) not more than two-thirds of the members of elective public bodies shall be of the same gender. It also reiterates and reinforces the principle of affirmative action as prescribed in Article 27(8) of the Constitution, which provides that in addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. The two thirds gender ratio is also a requirement at the county level and is adequately provided for in the constitution. Article 175(c) thereof states that County Governments established under this Constitution shall reflect the principle that no more than two-thirds of the members of representative bodies in each county Government shall be of the same gender.

According to Article 177(1), a County Assembly consists of, among other members, (b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; Further, Article 197 (1) reiterates this principle and states that not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender.

The manner of implementing this provision has however, been a subject of much debate. In the months leading up to the March 2013 General Elections, the Attorney-General moved the Supreme Court for an advisory opinion on “...whether Article 81(b) as read with other provisions of the Constitution required a progressive realization of the one-third gender rule, or the same to be implemented (immediately) during the general elections of 4th March, 2013.”

In making his case, the Attorney General submitted that as a consequence of the uncertainty of language in the Constitution's gender-equity clauses, there was only one certainty: that, by Article 97(1)(b), the mandatory number of persons of the female gender who are to form part of the National Assembly's membership is 13.4 percent. Thus, if the electorate should fail to elect women in numbers satisfying the gender-equity rule, the only way to comply with prescribed equity fractions would be through nominations. Nominations on those lines would automatically raise the membership figure of the national legislative bodies well beyond the prescriptions of the Constitution. So there would be a conflict between the Constitution's terms on gender proportions, and its terms on the overall numerical strength of these organs. Besides such conflicts in fundamental principles, the Attorney-General further urged, unduly-large national legislative bodies would place the citizen under an undue tax burden. The Attorney-General thus commended an interpretation of the Constitution that supports a progressive realization of the gender-equity principle in elective representation, for the central legislative agencies.

The court issued an advisory opinion on the matter soon thereafter stating at paragraph [74] thereof, that "As Article 81(b) of the Constitution standing as a general principle cannot replace the specific provisions of Articles 97 and 98, not having ripened into a specific, enforceable right as far as the composition of the National Assembly and Senate are concerned, it follows and this is the burden of our Opinion on this matter that it cannot be enforced immediately. If the measures contemplated to ensure its crystallization into an enforceable right are not taken before the elections of 4 March 2013, then it is our opinion, Article 81(b) will not be applicable to the said elections. The effect is that Article 81(b) of the Constitution is amenable only to progressive realization even though it is immediately applicable in the case of County Assemblies under Article 177." However, the Chief Justice, Dr. W. Mutunga dissented from the majority and stated that to avoid the unconstitutionality of the next Parliament, the 10<sup>th</sup> Parliament is supposed to legislate here and now and secure the rights of women under the two-thirds gender principle.

This opinion has been widely criticized for clawing back on constitutional gains but the message that it passes on to the state is that while the full realization of the rights may be achieved progressively, steps toward that goal must be taken within a reasonably short time. Such steps must be deliberate, concrete and targeted as clearly as possible towards meeting the

obligations recognized in the Constitution. This decision also enables women to demand as of right, that the Government implements policies in place to realize the gender equity rule.

Other than the question of how to implement affirmative action provisions, women are still facing a myriad of challenges. For instance, whereas the laws have been put in place, political parties in Kenya are still generally gendered, undemocratic and unaccountable outfits. While some parties have included women within their structural ranks, often this is no more than mere tokenism intended to camouflage the real powers behind them. The avenue for entry into politics is restricted in the very first instance, owing to the usual prejudices against women. This can be exemplified by the process of nomination which is often grueling with political parties routinely shutting out women either by requiring exorbitant nomination fees or failing to provide a nomination system devoid of favouritism, intimidation and harassment.

In this respect however, there is an important innovation in the Constitution that should serve to ameliorate some of the difficulties fomented by political party frameworks. Under Article 85, a person who is not a member of a political party or has not been such a member for at least 3 months before an election but who satisfies other minimum requirements for election to the relevant body, shall be free to stand as independent candidate.

The independent candidature provision offers women the opportunity to have a stab at elective position without having to succumb to the gruelling demands that come with political party nomination. However, facilitating female participation in governance may depend on special training and information programmes to explain complex processes<sup>98</sup>. This is a function that County Governments are required to do, not only because “enhancing the participation of the people in the exercise of the powers of the state”, forms the basis of devolution but also because, under the Fourth Schedule to the Constitution, County Governments are required to ensure and coordinate “the participation of communities and locations in governance at the local level and to assist communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level”.

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<sup>98</sup>Gender and Sustainable Development (2008); Maximising the Economic, Social And Environmental Role Of Women Online [Http://Www.Oecd.Org/Social/40881538.Pdf](http://www.oecd.org/social/40881538.pdf)



Secondly, while the scope of affirmative action as currently legislated in Kenya extends only to appointed and elective posts, it may be wise for County Governments to look into ways of expanding its application. The European Commission for instance, has proposed legislation with the goal of achieving 40% representation of women in non-executive board member positions in publicly-listed companies<sup>99</sup>. The proposed Directive sets an objective of a 40% presence of the under-represented sex among non-executive directors of companies listed on stock exchanges.

Companies which have a lower share (less than 40%) of the under-represented sex among the non-executive directors will be required to make appointments to those positions on the basis of a comparative analysis of the qualifications of each candidate, by applying clear, gender-neutral and unambiguous criteria. Given equal qualification, priority shall be given to the under-represented sex. The objective of attaining at least 40% membership of the under-represented sex for the non-executive positions should thus be met by 2020 while public undertakings – over which public authorities exercise a dominant influence – will have two years less, until 2018. The proposal is expected to apply to around 5 000 listed companies in the European Union. It does not apply to small and medium-sized enterprises or non-listed companies.<sup>100</sup>

The rationale for making this move is that firstly, it would result in improved company performance as various studies suggest that companies with a higher share of women at top levels deliver strong organisational and financial performance. Studies have also shown that where governance is weak, female directors can exercise strong oversight and have a “positive, value-relevant impact” on the company. A gender-balanced board is more likely to pay attention to managing and controlling risk. Secondly, according to recent estimates, women control about 70% of global consumer spending decisions. More women in management positions can therefore provide a broader insight in economic behaviour and consumer choices. Products and services that are more in line with consumers’ needs and preferences can boost sales figures.

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<sup>99</sup>Kathleen Roger (2013) Fixing the Green Economy Gender Gap; online:<http://www.earthday.org/blog/2013/06/07/fixing-green-economy-gender-gap> Accessed on 13th February 2015

<sup>100</sup> European Commission Press release (2012); Women on Boards: Commission proposes 40% objective; Online; [http://europa.eu/rapid/press-release\\_IP-12-1205\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1205_en.htm) Accessed on 13th February 2015

Thirdly, it would result in better quality of decision-making because diversity among employees and board members boosts creativity and innovation by adding complementary knowledge, skills and experience. A more diverse board of directors can contribute to better performance because decisions are based on evaluating more alternatives compared to homogenous boards.

Fourth, it would lead to improved corporate governance and ethics as studies have shown that the quality of corporate governance and ethical behaviour is high in companies with a high share of women on boards and finally, it would ensure that there is better use of the talent pool. The argument attached herewith is that 60% of university graduates in Europe are women. In times of skills shortages and an ageing population, Europe can no longer afford to underutilise female talent. If half the talent pool is not even considered for leadership positions, the quality of appointments may be compromised. Systematically including suitable candidates of both sexes ensures that new board members are selected from the very best candidates, both male and female.<sup>101</sup>

### **3.5.2 Gender Equality and Public Expenditure**

Budgets are universally accepted as a powerful tool for achieving development objectives<sup>102</sup>. County Budgets reflect how those Governments mobilize and allocate public resources and how they aim to meet the social and economic needs of their people. Thus, the Government budgetary policy plays a major role in achieving the objective of gender equality with investment in women's economic empowerment being an important measure of Governments' commitment to achieving a socially inclusive Green Economy. Through its budget allocations, County Governments have the potential to redress inequalities and discrimination in the household, in property ownership, and in labor and credit markets. This can be achieved through various Green Economy measures including spending on education and training that close gender gaps and by making investments and expenditures that reduce women's care burden.<sup>103</sup>

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<sup>101</sup> European Commission (2014) Women on boards - Factsheet 1; The economic arguments, Online [http://ec.europa.eu/justice/gender\\_equality/files/womenonboards/factsheet-general-1\\_en.pdf](http://ec.europa.eu/justice/gender_equality/files/womenonboards/factsheet-general-1_en.pdf), Accessed on 11th February 2015

<sup>102</sup> Society for international development; Gender Responsive Budgeting in Kenya; Policy Brief No. 1 (2012); Online; [http://www.sidint.net/docs/GenderResponsiveBudgeting\\_PolicyBrief.pdf](http://www.sidint.net/docs/GenderResponsiveBudgeting_PolicyBrief.pdf), Accessed on 11<sup>th</sup> February 2015

<sup>103</sup> Seguino Stephanie (2013) ; Financing for Gender Equality: Reframing and Prioritizing Public Expenditures to Promote Gender Equality online ; [http://www.genderbudgets.org/index.php?option=com\\_joomdoc&view=documents&path=suggested-readings/seguino-s-paper&Itemid=587](http://www.genderbudgets.org/index.php?option=com_joomdoc&view=documents&path=suggested-readings/seguino-s-paper&Itemid=587), Accessed on 13<sup>th</sup> February 2015

Financing for gender equality in the Green Economy, however, requires a well-targeted approach that strategically uses resources capable of leveraging change in multiple domains. In order to do this, County Governments must be clear about what their precise gender equality goals are vis-a-vis the potential budget allocations. It's important to note that there is no one-size-fits-all rule on gender equality priorities because priorities vary by county and context. However, while the priorities will depend on county-specific conditions, those goals that can leverage change in other domains should be prioritized.

As earlier elaborated, Article 27(1) on the Bill of rights in the Constitution, 2010, explicitly provides for gender equality. Further, Article 201 (b) (iii) states that: "The public finance system shall promote an equitable society, and in particular, public expenditure shall promote the equitable development of the country, including making special provision for marginalised groups and areas. Thus, the question of equity in the planning and budgeting process is well grounded in the Constitution and is an important basis for advocating gender responsive budgets.

The Public Finance Management Act, 2012 also makes special provisions that support gender mainstreaming by providing that the principle of equity be adhered to both at national and county level Governments. In particular; Section 132 (1 &3) stipulate that "each financial year, the County Executive member for finance shall, with the approval of the County Executive Committee, make a pronouncement of the revenue raising measures for the county Government. Any recommendations made by the relevant committee or adopted by the county assembly on revenue matters shall take into account the principles of equity, certainty and ease of collection".

Section 125 of the Public Finance Management Act, 2012 provides the procedure to be followed in the budget making process at the county level to include;

- a) development of an integrated development planning process, which includes both long term and medium term planning;
- b) planning for and establishing financial and economic priorities for the county over the medium term;
- c) making an overall estimation of the county Government's revenues and expenditure;
- d) adoption of the County Fiscal Strategy Paper;

- e) preparing budget estimates for the county Government and submitting estimates to the county assembly;
- f) debate and approval of the budget estimates by the county assembly;
- g) enactment of the appropriation law and any other laws required to implement the county Government's budget;
- h) implementation of the county Government's budget;
- i) accounting for, and evaluating the county Government's budgeted revenues and expenditure.

The county treasury has the mandate to prepare and submit to the county executive committee the County Strategy Fiscal Paper for approval. The county executive then submits the County Strategy Fiscal Paper to the county assembly for approval by 28th February each year. The County Strategy Fiscal Paper contains the strategic priorities and policy goals for the county Government, the estimates, expenditure, revenue and borrowing for the next financial year.

Within 14 days, the county assembly should consider and adopt the Strategy Fiscal Paper with or without amendments. The county treasury shall then consider any recommendations made by the county assembly and publish the Fiscal Paper within 7 days. It is also required that the county executive prepares annual cash flow projections for the next financial year by 15th June, to be sent to the Controller of Budget, Inter-Governmental Budget and Economic Council and the National Treasury.

The county executive member in charge of the county treasury shall submit the budget estimates and other documents together with the draft Bills (for implementation of the county Government budget), except the Finance Bill, to the County Executive Committee for approval by 30th April every year. Following approval by the County Executive Committee, the budget estimates shall be submitted to the county assembly for approval. The clerk to the county assembly shall then prepare the budget estimates for the assembly and forward them to assembly and the county executive committee member in charge of the county treasury for comments.

After submission of budget estimates to the County Assembly for approval, the County Executive Committee member in charge of the county treasury shall publish and publicise them. Upon approval, the county executive committee for finance shall prepare and submit the County Appropriation Bill with the approved budget estimates to the county assembly.

During the month of May, the county budget committee holds public hearings on the budget following which, the county assembly shall consider and approve the Appropriation Bill, with or without amendments, and within 90 days after its passing, the assembly shall pass the Finance Bill. On October 30th, the county Government must publish the first quarterly implementation report.

This budget procedure having been elaborately set out, the issue that remains of concern is how to make the connection between the budgeting process at the county level and gender equity, especially for the poor. Over the last several years, a conceptual framework has emerged that identifies three domains of gender (in) equality: capabilities, economic opportunities (access to and control over resources), and empowerment (or voice in decision-making). Indicators of capabilities include: education, access to health care, reproductive care, and support for care work. Economic opportunities can be measured by wage equality, share of paid employment, access to credit and technical assistance, and women's land ownership rights and access to land while empowerment or voice is illustrated by women's share of political and civil Government positions and their share of professional, managerial and supervisory jobs.

A tool that has been adopted by other countries is Gender-Responsive Budgeting. This tool promotes gender equality by assessing the effect of Government revenue and expenditure policies on both women and men. It is premised on the notion that implementation of gender equality commitments requires translation of those commitments into programs, services and measures that should be reflected in sector and local plans and budgets. In its simplest form, gender responsive budgeting is an approach built around five steps.<sup>104</sup>

- i. Gender analysis of the situation of men, women, girls and boys in a particular sector;
- ii. Analysis of how policies address the identified gender issues

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<sup>104</sup>Society for international development; Policy Brief No. 1 (2012) ; Gender Responsive Budgeting in Kenya; Online; [http://www.sidint.net/docs/GenderResponsiveBudgeting\\_PolicyBrief.pdf](http://www.sidint.net/docs/GenderResponsiveBudgeting_PolicyBrief.pdf)

- iii. Analysis of whether the assigned budget allocations are sufficient to implement gender responsive policy
- iv. Monitoring of expenditure and implementation of policies (which require assessing whether public expenditure was spent as intended); and
- v. Evaluation of outcomes (which require assessing the impact of policy expenditure and checking how it has contributed to the Government gender equality commitments).

Each of the above steps corresponds to stages of public policy making from planning, to budgeting, implementation, monitoring and evaluation. Applying the tool entails utilizing a range of tools and methodologies at each of those stages. At the planning stage, gender analysis, audit and policy assessment are useful for identifying needs, and ensuring that gender equality priorities are integrated in national and sector development plans. At the sector planning stages, it is important to identify effective interventions and programs that should be provided by the sector ministries, and the necessary budgets and monitoring budget performance from a gender perspective (these include budget analysis, beneficiary incidence analysis, and citizen report cards).

This tool has been successful in other countries for instance, in Morocco, the Gender Responsive Budgeting project was set up in two phases: the first one facilitated the sensitization of ministries and the elaboration of gender responsive budgeting tools (i.e., Practical Guide and Gender Responsive Budgeting Handbook). The handbook on Gender Responsive Budgeting was prepared for capacity building of budgeting and planning managers in every line ministry in the gender analysis of budgets. The handbook was meant to serve as a normative framework for the implementation of the results oriented budget reform and for the identification of entry points for the integration of gender concerns within the planning and programming budget process. The second phase (2005-2008) entailed the institutionalization of the Gender Report, which accompanied the Finance Bill. The gender report analyzed the gender dimensions of public policies and budgets and their impacts on the population. It also reinforced the accountability of the Moroccan Government and its commitment towards gender equality and human development

and stressed the successes and gaps of its policies in meeting women and men's needs and thus informed the decision-making process.<sup>105</sup>

There are also various tools that can be utilized for a gender-sensitive analysis of budgets including the following;<sup>106</sup>

- i. gender-aware policy appraisal: This is an analytical approach that involves scrutinizing the policies of different programmes by focusing on their gender dimensions. It questions the assumption that policies are 'gender-neutral' in their effects and asks instead: In what ways are the policies and their associated resource allocations likely to reduce or increase gender inequalities?
- ii. gender-disaggregated beneficiary assessments: This technique is used to ask actual or potential beneficiaries the extent to which Government policies and programmes match these peoples' priorities.
- iii. gender-disaggregated public expenditure incidence analysis: This research technique looks at the distribution of public expenditure between women and men, girls and boys. For instance, a public expenditure incidence analysis can be carried out to examine how uwezo funds benefits men and women.
- iv. gender-disaggregated tax incidence analysis: This research technique examines how the burden of taxation is borne by different individuals or households. The analysis can be disaggregated by gender.
- v. gender-disaggregated analysis of the impact of the budget on time use: This looks at the relationship between the Government budget and the way time is used in households. This ensures that the time spent by women in unpaid work is accounted for in policy analysis.
- vi. gender Aware Social Accounting Matrices (SAM): A SAM is a comprehensive, economy-wide data framework, typically representing the economy of a nation. It is a useful tool for policy analysis. The SAM can be engendered to allow gendered policy simulations by disaggregating labour and household accounts by gender and also

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<sup>105</sup> Society for international development; Policy Brief No. 1 (2012); Gender Responsive Budgeting in Kenya; Online; [http://www.sidint.net/docs/GenderResponsiveBudgeting\\_PolicyBrief.pdf](http://www.sidint.net/docs/GenderResponsiveBudgeting_PolicyBrief.pdf)

<sup>106</sup> Society for International Development, 2012 Gender Responsive Budgeting and its Application to Planning in Kenya Online: [http://www.sidint.net/docs/GenderResponsiveBudgeting\\_booklet.pdf](http://www.sidint.net/docs/GenderResponsiveBudgeting_booklet.pdf)

extending the SAM by incorporating non-market activities (household production and leisure activities).<sup>107</sup>

- vii. Gender-aware budget statement: this is a Government report of an accountability process regarding its commitment to gender equality. In this process, any of the above tools are used to analyze the Government's policies, programmes and related budgets. Their implications for gender equality are summarized with a number of indicators like the share of total expenditure targeted to gender equality programmes, the share of public service expenditure used mainly by women, and gender balance in Government jobs, contracts and training. It requires a high degree of commitment and coordination throughout the public sector as ministries or departments undertake an assessment of the gender impact of their line budgets.

County Governments are well placed to adapt these proposals. They may opt to prepare and provide all Government ministries with gender mainstreaming guidelines, which should be used in the implementation of Gender Responsive Budgeting. Counties may also design their Ministries of Finance in a manner that mirrors the national level. Section 36 of the Public Financial Management Act allows the Cabinet Secretary responsible for Finance to add a clause in the budget circular requiring all sector reports to include a gender dimension in reporting their activities and indicators for all their programmes. For the Ministry of Finance to take this lead role, there is need for sensitization and training of the relevant finance officers on the need to mainstream gender in the budget process.

To mainstream gender in sector reports, each ministry and sector should come up with clear outcome indicators and targets, which should include targets for the reduction of any existing gender inequalities. As a Gender Responsive Budget pilot, implementation can start with a few critical sectors/ministries before rolling out to all the other ministries. A key input into this process is collection and analysis of gender disaggregated data (for instance through a baseline survey), which is necessary for identifying gender gaps and designing outcome indicators and performance targets within each sector.

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<sup>107</sup>A SAM is a particular representation of the macro and meso economic accounts of a socio-economic system, which capture the transactions and transfers between all economic agents in the system (Pyatt and Round, 1985; Reinert and Roland-Holst, 1997).



Lastly, other stakeholders in the budget process, especially county assemblies, civil society and the citizenry, can play an important role in pushing for the mainstreaming of gender in the budget process. However, this also requires sensitization and training in gender responsive budgeting, with emphasis on the importance of gender responsive budgeting in bridging gender inequalities in Kenyan Counties.

### **3.6 Conclusion**

Gender equality, poverty eradication and the Green Economy are intrinsically linked. These linkages cut across the social, economic, environmental and governance dimensions of Green Economy. Acknowledging how development challenges and responses affect women, as well as women's vital contributions to economic progress, is essential for the success of all socially inclusive Green Economy and poverty eradication policies and practices.<sup>108</sup>

Fundamentally, since women are the primary caretakers of families, communities and natural resources, they have accumulated specific knowledge and skills about local conditions and ecological resources. Furthermore, research has shown that women are more inclined than men to choose sustainability as a lifestyle, engage in environmentally appropriate behaviour and make sustainable consumption choices. It is therefore critical to ensure that women participate equally and meaningfully in decision-making and control of Green Economy efforts. Particular attention needs to be paid to the active participation and leadership of indigenous women, poor women and women from minority groups. This paper therefore recommends that County Governments do the following;<sup>109</sup>

- a) ensure that Green Economy debates and practices clearly reflect a gender analysis and that gender equality considerations underpin all discussions, institutional frameworks and actions;

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<sup>108</sup>United Nations Environmental Programme (2012) Powerful synergies Gender Equality, Economic Development and Environmental Sustainability page 3-15

<sup>109</sup> Ibid Pp. 3-15

- b) develop participatory and gender-responsive consultation processes to inform and ensure equitable decision-making in Green Economy processes and in the implementation of such policies and programmes;
- c) establish gender indicators and conduct gender analyses to strengthen women's participation in Green Economy related governance processes and structures;
- d) create targets to ensure that women are trained and hired for decision-making positions;
- e) secure decent work, education, assets, resources, incentives and supportive networks to enable women workers and entrepreneurs to fully participate in and benefit from the Green Economy ;
- f) establish targets for job creation in the Green Economy for women ;
- g) ensure a social protection floor, including income support, access to basic services, education, health, universal health coverage, and safe food, water and sanitation, housing and energy that benefits local women, their families and communities;
- h) increase the visibility of women's unpaid and paid contributions to the economy and modify GDP calculations to reflect these contributions to the economy;
- i) place women and gender equality at the core of drafting environmental law and include specific provisions and matching commitments for their practical implementation;
- j) use existing international norms and standards, national policies and commitments towards gender equality and women's empowerment to inform a socially inclusive Green Economy and environmental legal frameworks and policies and their implementation;
- k) centre Green Economy goals on equity, gender equality, poverty eradication and overall human development;
- l) mandate and promote improved quantitative and qualitative sex-disaggregated data collection and analysis when implementing programmes and projects;
- m) make firm political commitments for new and additional financial resources for gender mainstreaming in Green Economy and ensure that these funds are available, accessible and beneficial to women;
- n) implement participatory and gender-responsive budget initiatives in all Green Economy sectors at all governance levels.

- o) use appropriate tools and resources for gender mainstreaming, including gender audits, participatory needs assessments, sex-disaggregated data and gender-based monitoring and evaluation in Green Economy sectors and related mechanisms and funds;

## CHAPTER 4

### 4.0 NON-GENDER DIMENSIONS OF SOCIAL EXCLUSION

Other than imbalances between the male and female gender, Kenya suffers from several other forms of social exclusion. Resource distribution entails a dark lining of inequality based on region, ethnicity, and class; infrastructural development further marginalizes the already marginalised communities; and public service exhibits generalised ethnic imbalances in favour of communities whose members have occupied the presidency, to give but a few examples. In this chapter, I look at the various forms of social exclusion that are prevalent in Kenya and how they have been addressed in the Constitution. I then proceed to argue for the transition to a socially inclusive Green Economy as a means of implementing the anti-discrimination provisions of the Constitution as a means of achieving equitable development in the country and addressing social exclusion. The chapter concludes by giving options and recommendations for policy makers.

#### 4.1 Structures of non-gender social exclusion in Kenya

Social exclusion in Kenya can be explained from a number of perspectives. The first is a nature-based explanation where the origins of regional disparities are seen as the result of the migratory and settlement patterns of the various ethnic groups. During migration each community settled in areas suitable to their practices. Those that led a pastoralist life settled in areas with abundant grazing land for their animals. Cultivators settled in areas with rich fertile soils for their crops. Fish eaters settled alongside rivers or near lakes. While some communities settled in resource rich regions, others settled in resource scarcity regions thus resulting in the type of marginalisation and inequalities seen in Kenya today.<sup>110</sup>

The second explanation is in terms of access to public services provided by the Government such as education and health care. To take an example of education, because of the benefits that accrue from getting an education, communities that have had access to schools have had an advantage over the rest. This form of exclusion in Kenya has been systematic, ensuring for instance, that infrastructure was only available to certain regions and that when schools were

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<sup>110</sup>Stiftung Friedrich-Ebert(2012) Regional Disparities and Marginalisation in Kenya Pp. 7-8

located in more accessible areas, the costs were too exorbitant to enable the common man to have access. In this regard, the education system reproduced, not altered, the inequitable economic, social and political structures inherited at independence.<sup>111</sup>

The third explanation for social exclusion is related to the state, the struggles to control the state and other institutions of the state as well as the state's discriminatory and exclusionary policies that were meant to either provide advantages to certain communities and regions or to discriminate against others. This has taken a number of forms: First, political patronage and other policies pursued by successive Governments in Kenya tended to provide state resources in such a skewed manner that they benefited mostly those that controlled the state and/ or certain regions. Second, the appointment and recruitment of state officers, which had favoured certain regions and ethnic groups since independence, gave regional disparities an ethnic basis. Third, disparities have been perpetuated by the unfair system of representation, which has seen certain areas being over-represented while others are grossly under-represented. This is because the creation of constituencies was not based on population size or the size of territory but had, since independence, depended on the arbitrariness of the president.<sup>112</sup>

Finally, marginalisation, inequalities and other forms of disparities have also been the result of ethnicity and ethnic-based politics. Ethno-regional disparities and marginalisation have been exacerbated by the discriminatory nature in which: a) the cabinet membership and other senior positions in Government, the public sector and parastatal bodies have been allocated; b) the discriminatory nature of public spending, especially the manner in which the Government financed infrastructural development and other big contracts were awarded; c) national resource endowments; d) political patronage; and, e) corruption, bureaucratic discretion and elite excesses. The latter reasons have influenced the manner in which public resources have been disproportionately used to provide public services such as education and health, which have exacerbated inequalities and marginalisation.<sup>113</sup>

Kenya has exhibited certain patterns of exclusion involving the poor, the marginalised,

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<sup>111</sup> Ibid Pp 7-8

<sup>112</sup> Ibid Pp 7-8

<sup>113</sup> Ibid Pp 7-8

minorities, people from certain ethnic groups and persons with disabilities. These patterns are briefly discussed below;<sup>114</sup>

**I. Poverty-** According to United Nations Development Programme data for 2011, Kenya ranks 143rd out of 187 countries for which the human development index has been calculated. However, the use of average or aggregate figures belies the level of income and wealth inequality in the country. An analysis of the impact of inequality on human development, undertaken by the UNDP in 2010, indicates that Kenya's Human Development Index value reduces by 31.9% when it is adjusted for inequalities. The Human Development Index measures the average achievements in a country in three basic dimensions of human development: a long and healthy life, education, and a decent standard of living, so a drop in the value of close to one third indicates that inequality has a significant impact on the extent to which all Kenyan citizens enjoy a basic level of development. World Bank data from 2005 confirms the highly unequal distribution of income in Kenya, showing that 38% of income accrues to the top 10%, compared with just 2% accruing to the poorest 10%.

Poverty, inequality and discrimination are interwoven. Thus, poverty is often a cause of discrimination, with the most economically disadvantaged experiencing discrimination, disadvantage and inequality of access to basic amenities and public services on grounds of their poverty alone. On the other hand, poverty is also often a consequence of discrimination, with a range of groups, including women, persons with disabilities and indigenous communities falling into poverty as a consequence of the status-based discrimination they suffer. Finally, poverty can act as an aggravating factor, increasing the exposure to discrimination of persons already vulnerable because of an aspect of their identity such as a disability.

For those suffering identity-based discrimination, poverty is often a direct consequence. For instance, for women in rural areas suffering discrimination in property and succession cases decided by customary courts, poverty is an immediate consequence of

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<sup>114</sup> The Equal Rights Trust (2012) Equal Rights Trust Country Report Series: No.1; In the Spirit of Harambee :Addressing Discrimination and Inequality in Kenya.

judgments against them. Ethnic minorities living in the country's arid and semi-arid land areas which have been subjects of discriminatory resource allocation policies, enjoy poorer access to infrastructure and basic amenities, public services, education and employment, and hence are more likely to live in poverty.

Poverty is itself a cause, as well as a consequence, of discrimination and inequality with the country's poor being discriminated against, experiencing inequality in access to public services and access to basic amenities and having lower levels of participation in public life.

Another intersection between poverty and discrimination in Kenya arises in respect of ethnicity. As discussed in more detail in the section below, Kenya's politics have been dominated by ethnicity, as "wielders of political office have often afforded different and preferential treatment in making appointments to public positions, in allocating public land and other resources". Political leaders have for the past several years, sought the support of particular ethnic groups with promises of benefits for their region, and rewarded those who have voted for them with greater land, funding or infrastructure investment.

- II. Ethnicity-** Over decades, Kenya's politics has become increasingly dominated by ethnicity, with politicians on all sides tending to use ethnicity as a means to secure and maintain political support, both drawing on and fuelling perceptions of inter-ethnic competition. This politicisation of ethnicity – combined with significant actual disparities in wealth, infrastructure and services between ethnic groups living in different parts of the country – contributes to a perception that that when in Government, politicians treat certain ethnic groups favourably especially when it comes to resource allocation.

While there is no aggregate data that can assist researchers in substantiating this perception, examining regional imbalances provides a useful basis to assess the presence of de facto inequalities between ethnic groups and to suspect ethnic discrimination, whether direct or indirect, in resource allocation. There is ample evidence showing for instance, that the central Kenya has benefited disproportionately to say, North Eastern because of the influence of policy making from that region. The significant disparities in amenities, infrastructure and services between different regions translate into great

inequalities in participation in all areas of civil, political, economic, social and cultural life between those living in the marginalised areas and those outside them.

**III. Minority groups** -Indigenous communities such as pastoralists have for many years been blocked from living on or accessing their traditional lands, with a significant impact both upon their traditional sources of subsistence and on their capacity to enjoy their religious, cultural and social rights. In addition, these communities often share experiences of political marginalisation, finding it impossible to secure adequate representation both because of their small numbers and because of policy decisions exacerbating their minority status. Decisions about constituency sizes and boundaries, denial of access to citizenship documents and exclusion from census collection have all contributed to situations where these communities remain in a minority in their respective localities. Indigenous communities are commonly affected by severe poverty, are not active in the formal economy and have limited access to basic services such as education and healthcare.

**IV. Persons with disability**- There are three types of barriers preventing people with disabilities from participating in life on an equal basis: abuse and violence, discriminatory attitudes and limited access. Discriminatory attitudes towards disability start within families with far-reaching consequences for their ability to participate equally in other areas of life. For instance persons with disabilities may not be able to access education because their parents refuse to send them to school because of preconceptions about their disability. This relative lack of education combined with prejudice among employers about the capacities of persons with disabilities and lack of reasonable accommodation in the work- place become the key barriers preventing equality in employment.

The key driver of exclusion in Kenya is the negative manipulation of ethnicity<sup>115</sup>. While Kenyans define themselves in terms of national identity and not ethnic identity, multiple

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<sup>115</sup>Daniel Forti and Grace Maina (2011) The danger of marginalisation: An analysis of Kenyan youth and their integration into political, socio- economic life



quantitative studies have proven that ethnicity plays an important role in determining how the country votes for its political officials and how official Government positions are distributed. This trend has been steadily entrenched in our society by the fact that Kenyan politicians all too often, invoke and manipulate tribal identity so as to mobilise power and garner votes during elections. A further manifestation of this is that in each successive Government, it has been the case that presidential candidates surround themselves with kinsmen from different ethnic communities so as to generate the highest standing for their respective blocs.

As a result, millions of 'non-elite' Kenyans continue to be marginalised and excluded from the political machinery on the basis of not only ethnicity but also class. Even in this new dispensation, Government jobs are distributed on the basis of ethnicity. While the aim is to ensure equitable dispersal of opportunities, requiring job applicants to declare their county of origin is totally misleading due to the fact that many Kenyans particularly the youth are of mixed ethnicity due to intermarriages. Secondly, several Kenyans were born and raised in urban areas and therefore they have no real connection to their county of origin, yet in terms of ethnicity, they would be categorized as belonging to that one particular ethnic group.

A second key factor relates to land. Contestation over land has been prevalent both at the local and national level in Kenya. Whilst many analyse the land conflict as one of ethnicity, it has become apparent that land has ultimately resided in the hands of a few ruling elites.

A third driver relates to economic inequalities: Forty per cent of Kenya's people live in urban areas and many of them in slums. Unemployment, especially among the urban youth, remains alarmingly high and the benefits from past macro-economic policies have only accrued to a select group of elites. Hundreds of thousands of Kenyans remain displaced from the 2007 conflict, and land in many parts of the country continues to be heavily contested by different stakeholders.

Weak Government institutions have also accelerated the rate of inequality in Kenya because such institutions preclude checks and balances on executive power. In circumstances where for instance, taxation and public expenditure policies, budgeting and governance institutions are

weak and not impervious to political and bureaucratic manipulations, distortions in public spending are not uncommon. In this circumstances senior civil servants misdirect public spending in favour of certain regions or projects. Weak institutions create room for distorted planning priorities, and end up with unfair construction and distribution of schools, health facilities and other important amenities needed for development.

Another driver of social exclusion relates to elections. Elections in Kenya are truly contentious events, as politicians play one tribe against another to expand and protect their political space. Questions of vote manipulation and electoral fraud dominate the electoral dialogue. The political character of ruling elites and the free use of hate speech are ever-present sparks for violence during electoral periods.

#### **4.2 The Constitution and social inclusion**

The importance of the CoKin fighting or eliminating inequalities in Kenya cannot be over-emphasised as it provides a solid legal and institutional framework for the recognition and protection of the rights of minorities and those of marginalised groups. It does this through its rights-based approach to development, where everyone is entitled to development as a right. The Constitution has several provisions specifically addressing issues of minorities and marginalised groups. The following section outlines some of these provisions;

- I. Marginalisation;**<sup>116</sup>The Constitution addresses two types of marginalisation: a marginalised community and a marginalised group. It defines a marginalised community as “a community that, (a) because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole; (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole; (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on hunter or gatherer economy; or (d) pastoral persons and communities, whether they are: (i) nomadic; or (ii) a settled community that, because of its relative geographic isolation, has

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<sup>116</sup>CoK; Article 262

experienced only marginal participation in the integrated social and economic life of Kenya as a whole. ”While a marginalised group is defined as “a group of people who, because of laws or practices before, on or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4)”. The Article gives these grounds as race, sex, pregnancy, marital status, health, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

To ensure that this category of person enjoy full social political and economic benefits, the Constitution provides that the state shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups: (a) participate and are presented in governance and other spheres of life; (b) are accorded special opportunities in education and economic fields; (c) are provided special opportunities for access to employment; (d) develop their cultural values, languages and practices; and, (e) have reasonable access to water, health services and infrastructure. This is in addition to the assertion under Article 27 of the Constitution that minorities and the marginalised persons cannot be discriminated against either by the state or by individuals.<sup>117</sup>

Further to this parliament is directed to enact legislation Under Article 197(2) to (a) ensure that the community and cultural diversity of a county is reflected in its assembly and county executive committee, and (b) prescribe mechanisms to protect minorities within counties.

- II. **Persons with Disabilities:** The Constitution defines a person with disability to include one who has any physical, sensory, mental, psychological, or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day to day activities.

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<sup>117</sup>CoK ; Chapter Four

Article 54 gives a number of entitlements to persons with disabilities. That article categorically states that a person with any disability is entitled (a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning; (b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person; (c) to reasonable access to all places, public transport and information; (d) to use Sign language, Braille or other appropriate means of communication; and (e) to access materials and devices to overcome constraints arising from the person's disability.

The Article concludes by requiring the state to ensure the progressive implementation of the principle that at least 5 per cent of the members of the public in elective and appointive bodies are persons with disabilities. This is in addition to Article 27 which protects persons with disabilities from discrimination either by the state or individuals.

- III. **Youth:** Article 55 of the Constitution requires the state to take measures, including affirmative action programmes, to ensure that the youth have: access to education, training, opportunities to participate in political, social and economic spheres of life; access to employment and protection from exploitation and other harmful practices.
- IV. **Discrimination:** Article 27(4) outlaws discrimination (direct or indirect) by the state against any person on any ground, including race, sex, pregnancy, marital status, health, ethnic or social origin, colour, disability, religion, conscience, belief, culture, dress, language and birth<sup>118</sup>.

### **4.3 Addressing Non- Gender Dimensions of Exclusion Through a County Based Green Economy**

Addressing disparities in Kenya call for a fresh approach that provides a multifaceted and multi-sectoral framework that fosters more balanced economic development in the country. Such an approach could revolve around the formulation and implementation of equity-oriented policies and programmes; the formulation and implementation of integrated county development

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<sup>118</sup> Ibid Chapter 4

framework; reforms in the legal environment in order to create a more cohesive framework for addressing disparities and a robust monitoring framework that will develop and monitor the achievement of key indicators and milestones of balanced development.

The litmus test for the Green Economy is not only its ability to address the consequences of environmental and economic change, it must also seek to transform the social structures, institutions and power relations that underpin vulnerability, inequality and poverty. To ensure the transition towards a greener and socially inclusive economy, a comprehensive policy approach is needed. The approach must recognize the county specific and sector-specific challenges while ensuring that opportunities for social inclusion are achieved. This can be achieved through three different approaches; social protection, green jobs and civic education.

#### **4.3.1 Social Protection**

Access to adequate social protection is recognized as a basic right. It is also widely considered to be instrumental in promoting human welfare and social consensus on a broad scale, and to be conducive to and indispensable for fair growth, social stability and economic performance<sup>119</sup>The Rio outcome document affirms that Green Economy policies should “*address the concern about inequalities and promote social inclusion, including social protection floors*”

Social protection can be defined as<sup>120</sup>“policies and actions, including legislative measures, that enhance the capacity of and opportunities for the poor and vulnerable to improve and sustain their lives, livelihoods, and welfare, that enable income-earners and their dependants to maintain a reasonable level of income through decent work, and that ensure access to affordable health care, social security, and social assistance.”

Various provisions of the CoK make reference to the fundamental tenets of social protection. For instance, Article 43 expressly guarantees all Kenyans their economic, social, and cultural rights, including basic rights to health, education, food, and decent livelihoods. It explicitly asserts the

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<sup>119</sup> International Labour Organization (2014) Social Protection; Online; <http://ilo.org/global/about-the-ilo/decent-work-agenda/social-protection/lang--en/index.htm>

<sup>120</sup> Ministry of planning, National Development and Vision 2030 (2012) Social Protection Sector Review; Online: [http://www.africanchildforum.org/clar/policy%20per%20country/kenya/kenya\\_socialprot\\_2011\\_en.pdf](http://www.africanchildforum.org/clar/policy%20per%20country/kenya/kenya_socialprot_2011_en.pdf)

right “of every person... to social security” and binds the State in Article 43(3) to “provide appropriate social security to persons who are unable to support themselves and their dependants.” This implies social protection in its totality: social assistance; social security; and health insurance.<sup>121</sup>

In addition to this, the constitutional right to social security, in both the wide and narrow sense, is closely interlinked with other social protection rights<sup>122</sup>. These include the right to the highest attainable standard of health, such as the right to healthcare services. It also includes the rights to equality and freedom from discrimination, human dignity, freedom of movement and residence, reasonable working conditions, fair administrative actions, access to justice, and the resolution of disputes in a fair manner and through public hearing before a court or independent and impartial tribunal or body; all of which are entrenched in the Constitution.

To ensure that Governments implement these provisions, Article 21 of the Constitution commits the State to working towards the gradual realization of the social and economic rights and binds the State “to observe, respect, protect, promote, and fulfil the rights and fundamental freedoms in the Bill of Rights,” by among other things, taking whatever legislative, policy, and other measures as necessary, including the setting of standards.

While the National Government is mandated to come up with measures including legislative measures, to operationalize these provisions through a participatory process, Counties are required to implement such legislation through Article 189 of the Constitution which states as follows “Government at either level shall—

- (a) perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;

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<sup>121</sup> Government of Kenya(2012) Kenya Social Protection Policy; Online; [http://www.africanchildforum.org/clar/policy%20per%20country/kenya/kenya\\_socialprot\\_2011\\_en.pdf](http://www.africanchildforum.org/clar/policy%20per%20country/kenya/kenya_socialprot_2011_en.pdf), Accessed on 20<sup>th</sup> February 2015.

<sup>122</sup> Ibid

- (b) assist, support and consult and, as appropriate, implement the legislation of the other level of government; and
- (c) liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.”

The County Assembly is then vested with the mandate to oversight county executive committees and any other county executive organs.<sup>123</sup> The sum total of this is that County Governments have been provided with the mandate and the relevant safeguards to ensure that social and economic rights are gradually realized.

A further obligation placed upon Governments in this respect is provided for under Article 20 of the Constitution. While making reference to social and economic rights, this Article states *inter alia* that; “if the State claims that it does not have the resources to implement the right, a court, tribunal or other authority shall be guided by the principle that it is the responsibility of the State to show that the resources are not available”.

One avenue through which County Governments can address inequality is through the development of appropriate social policies. Social policy encompasses a range of public actions designed to manage livelihood risks, protect people against contingencies (such as ill-health and loss of income) and invest in their capacities to contribute productively to the economy. Achieving such outcomes requires not only social assistance but also redistributive policies, support for families and social reproduction, and investments.

These social policies, if developed appropriately, can enhance productivity and contribute to reducing poverty while providing the foundations for more equitable growth. They can facilitate employment and skill transitions, and are a key policy instrument for providing incentives to change the behaviour of consumers and ultimately foster social inclusion.

#### **4.3.2 Green Jobs**

The concept of green jobs is quickly gaining ground around the world with many countries embracing a shift to creation of jobs that are socially inclusive in nature. The International Labour Organization defines green jobs as “transformation of economies, enterprises,

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<sup>123</sup> CoK Art. 183

workplaces and labour markets into a sustainable, low- carbon economy providing decent work”.<sup>124</sup> According to UNEP, green jobs are defined as “ work in agriculture, industry, services and administration that contribute to preserving or restoring the quality of the environment”.<sup>125</sup> UNEP further elaborates on its definition by qualifying green jobs as good jobs that meet long-standing demands and goals of the labour movement such as adequate wages, safe working conditions and workers rights, including the right to organize labour unions. In practice these jobs: (i) reduce consumption of energy and raw materials; (ii) limit Green House Gas emissions; (iii) minimize waste and pollution; (iv) protect and restore ecosystems; and (v) enable enterprises and communities to adapt to climate change.<sup>126</sup>

An important element in the definition of green jobs is the fact that the jobs have to be not only green but also decent, i.e. jobs that are productive, provide adequate incomes and social protection, respect the rights of workers and give workers a say in decisions which will affect their lives<sup>127</sup>. These jobs are located in diverse industries and include jobs in energy efficiency, clean technologies, efficient use of natural resources, and activities in low-Green House Gas emissions<sup>128</sup>. All these Green Economy sectors are heavily relied upon by poor people around the country. By encouraging the practice of green jobs, County Governments provide these poor people, who have previously been excluded from economic affairs, a chance to participate and benefit from economic development.

Closely related to the protection of social and economic rights, is the issue of “decent” job opportunities. A socially inclusive Green Economy lays down the dignity principle as one of its 9 principles. Behind the dignity principle are calls for, among other things, the transformation of traditional jobs and active development of new, decent, green jobs, capacity building and respect for the rights of workers and trade unions. This principle implies the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young

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<sup>124</sup> Ibid

<sup>125</sup> United Nations Development Programme (2013) Green Jobs for Women and Youth — What Can Local Governments Do?

<sup>126</sup> Ibid Pp.3

<sup>127</sup> International Labour organization 2013; Sustainable development, decent work and green jobs; Pp 23 Online : [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/-relconf/documents/meetingdocument/wcms\\_207370.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/-relconf/documents/meetingdocument/wcms_207370.pdf)

<sup>128</sup> Imas, M., Pacca,; Socio-economic Benefits of Wind Power in Brazil, Pp 27-40,



persons and women, provision for old age and injury, recognition of the principle of equal remuneration for work of equal value and the recognition of the principle of freedom of association. All these matters are pertinent to any discussion on inclusive development and have been widely endorsed by the international community during Green Economy deliberations<sup>129</sup>.

In its submission for Rio+20, the major group “Workers and Trade Unions” suggested that the world’s leaders commit to “ A country by country self identified target on decent and green jobs to be reached in the next 5 - 10 years, accompanied by a package of decent work policies to secure jobs quality. This target should help at least doubling the number of ‘green and decent jobs ”Furthermore, they suggest that “ In any agreement on sustainable development goals, Governments should agree on a commitment to ensure that at least half of the workers of the world have decent jobs by 2020, accompanied by a second goal ensuring all Governments have...a Social Protection Floor in place by 2020”<sup>130</sup>.

These views found favour with world leaders present in the Rio+20 conference as can be seen from the Outcome Document. Paragraph 62 of the outcome document states as follows; “ ....we encourage each country to consider the implementation of Green Economy policies ..... in a manner that endeavours to drive sustained, inclusive and equitable economic growth and job creation, particularly for women, youth and the poor. In this respect, we note the importance of ensuring that workers are equipped with the necessary skills, including through education and capacity-building, and are provided with the necessary social and health protections”<sup>131</sup>

According to the International Labour Organization, the employment and economic implications of a move to a Green Economy arise as follows; Increased demand and investment in greener products and services, as well as the equipment and infrastructure to produce them, leads to the expansion of certain industries and enterprises. This will translate into higher labour demand and job creation (direct jobs), primarily in green sectors such as forestry and fishing.<sup>132</sup>

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<sup>129</sup>Rio(2012) Issues Briefs; Produced by the UNCS Secretariat, November 2011, Issue No. 7.

Online <http://sustainabledevelopment.un.org/content/documents/135brief7.pdf>, Accessed 26<sup>th</sup> February 2015

<sup>131</sup> International Labour organization 2013; Sustainable development, decent work and green jobs; Pp 23 Online : [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/-relconf/documents/meetingdocument/wcms\\_207370.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/-relconf/documents/meetingdocument/wcms_207370.pdf)

<sup>132</sup> International Labour Office Organization (2012) Working towards sustainable development: opportunities for decent work and social inclusion in a Green Economy ; Online; [http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_181836.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_181836.pdf)

In addition, due to inter-industry relations of the expanding industries, other parts of the economy which supply inputs to the expanding green sectors also benefit, creating additional employment (indirect jobs), including sectors such as high-insulation glass and cement for green buildings or steel and carbon fibre for the blades and towers of wind turbines. The income generated by this additional economic activity is redistributed by spending on additional consumption and investment across the economy, creating further employment (induced effects) in addition to the direct and indirect jobs. The number of jobs created at all stages of the greening process is a function of the size of demand and investment, of trade (where products themselves or in-puts are imported, subtracting from domestic demand or export, thereby increasing domestic demand and related employment) and of the employment elasticity (jobs created or maintained per unit of demand).<sup>133</sup>

A further conditioning factor are “budget effects”. If green products and services are more expensive than their substitutes, enterprises and households will have fewer resources left to spend on other goods and services. A negative budget effect can, for example, be associated with the introduction of renewable energy. Although the cost of power generation using renewables has been falling fast and has become increasingly competitive, it initially resulted in higher costs to consumers, albeit temporarily. Conversely, positive budget effects do occur due, for example, to cost-effective investments in energy efficiency and broader resource efficiency. The resulting gains shift demand away from energy consumption, which has a low employment elasticity, to goods and services with higher elasticity’s. Importantly, these gains are cumulative over time. Thus, the potential for job creation is not only limited to certain industries, but can occur throughout the economy, with some significant spillover effects. Together, these add up to the gross gains in employment.<sup>134</sup>

However, this mechanism also has a downside since, for every job lost, employment (and income) will be adversely affected in other parts of the economy, because a given green product or service replaces a less green one. An increase in renewable energy, for example, reduces demand for conventional fossil power and thus for fossil power plants as well as having an

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<sup>133</sup> Ibid

<sup>134</sup> Ibid

impact on supply sectors, such as coal mining. The direct, indirect and reduced losses add up to a gross loss in employment.

Due to the fact that Kenyan Counties are endowed with natural resources that they have interacted with and exploited for centuries, they are properly placed to make the shift towards a socially inclusive Green Economy through the creation of green jobs which will address issues of exclusion that have been experienced in the past.

The practice of green jobs has a strong ally in the CoK which has made elaborate provisions aimed at protecting workers from adverse impact of exclusion and inequality. Labour relations are dealt with under Article 41 which states among other things that first and foremost, every person has the right to fair labour practices. Secondly, the Constitution states that every worker has the right;

- (a) to fair remuneration;
- (b) to reasonable working conditions;
- (c) to form, join or participate in the activities and programmes of a trade union; and
- (d) to go on strike.

Further it recognizes trade unions and pronounces that every trade union and every employers' organisation has the right;

- (a) to determine its own administration, programmes and activities;
- (b) to organise; and
- (c) to form and join a federation and to engage in collective bargaining.

These provisions are critical and are the basis for formulating strategies and policies for green jobs. There are many avenues through which these strategies and policies can be formulated. Other jurisdictions have approached the creation of green jobs by developing a green job plan. A green job plan is a plan that takes into account the fact that inter alia; it will be critical to attract new entrants to new sectors, to provide them with green and decent jobs and to ensure the availability and accessibility of skills-enhancing programmes that will promote their assimilation into the labour market.

A fundamental component of a green job plan is that it must provide opportunities for youth women and marginalised persons and facilitate their employability through anti-discrimination

and family-friendly strategies, special programmes and quotas to hire women for non-traditional jobs, green skills training and policies aimed at reducing gender wage gaps. A green job plan must also be relevant for informal workers, again comprising mostly women and youth, and provide them with a pathway towards decent work<sup>135</sup>. Using their constitutional mandates, powers and resources, counties can begin the transition to a socially inclusive economy by putting in place a green jobs plan.

The role of enterprises is also central to achieving a socially inclusive greener economy in a number of the key sectors. Broadly speaking, “greening of enterprises” entails the promotion and implementation of sustainable production processes at the firm level. This involves the adoption of practices that are energy and resource efficient, low-waste, low-carbon and non-polluting, so as to reduce enterprises’ environmental footprint. Resource inputs represent an important production cost for industries. Therefore, supporting enterprises to improve eco-efficiency and resource productivity has the potential to help boost their competitive advantage and profitability, improve the sustainability of their growth, and thereby stimulate job creation and retention with ancillary positive effects throughout the supply chain. As such, the greening of enterprises can also lead to greater energy security and reduced costs through increased productivity, thereby potentially contributing to poverty alleviation efforts<sup>136</sup>.

An important dimension of greening enterprises is the role of Small and Medium Size Enterprises. Indeed, these enterprises account for more than two-thirds of all permanent employment and are an important resource consumer. They are also the biggest source of new job creation and innovation. As such, their role will determine how successfully the transformation to a Green Economy will be, especially as regards employment and income distribution.

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<sup>135</sup> United Nations Development Programme (2013) Green Jobs for women and youth, What can local Governments do? Online; [http://www.undp.org/content/dam/undp/library/Poverty%20Reduction/Participatory%20Local%20Development/GreenJobs\\_web.pdf](http://www.undp.org/content/dam/undp/library/Poverty%20Reduction/Participatory%20Local%20Development/GreenJobs_web.pdf)

<sup>136</sup> International Labour Office Organization (2012) Working towards sustainable development: opportunities for decent work and social inclusion in a Green Economy ; Online; [http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_181836.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_181836.pdf)

Fundamental to green jobs is social dialogue. Social partners and tripartism are key constituents and mechanisms for addressing the challenges and leveraging the opportunities that the transition towards a Green Economy can offer, notably with regard to (i) productivity; (ii) skill development and employability; (iii) income dynamics; (iv) labour standards; and (v) the acceptance of environmental reforms and of greening the economy. The 1992 Rio Declaration states: “As their representatives, trade unions are vital actors in facilitating the achievement of sustainable development in view of their experience in addressing industrial change, the extremely high priority they give to protection of the working environment and the related natural environment, and their promotion of socially responsible and economic development.”

Social dialogue, as defined by the International Labour Organization, includes all types of negotiations, consultations and exchanges of information between or among Government, employers’ and workers’ representatives on issues of common interest relating to economic and social policy.

Social dialogue can take several forms, including information sharing and consultation as well as tripartite negotiations and collective bargaining of which collective bargaining is one of the core tools. Collective bargaining refers to the process of negotiations between employers’ and workers’ respective organizations, which aims at improving and regulating the terms and conditions of employment through collective agreements. Key issues covered include wages, working hours, training and education, health and safety, and grievance mechanisms. The negotiations are usually intended to result in a collective agreement. According to the International Labour Organization, this mode of engagement is vital for a number of reasons including the following;<sup>137</sup>

Firstly, social partners can play a key role in how productivity gains are achieved and how they are distributed between workers and firm. Secondly, it can inform national systems and institutions about the implications of a transition towards a Green Economy for qualifications and employment prospects. Social partners can act as a source of information, in particular as

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<sup>137</sup> International Labour Organization (2013) Key Features Of National Social Dialogue:A Social Dialogue Resource Book

regards changes in the demand for competencies associated with a Green Economy. They can help identify the skills required by such a transition thereby facilitating labour demand and supply matching. Social partners can also carry out and be key partners in research and surveys to collect data on skills shortages and knowledge gaps.

Thirdly, they can promote and organize skills upgrading and training schemes for workers. Indeed, a skilled workforce is the key to increased productivity, resulting eventually in an efficient and effective utilization of resources, which in turn is essential to economic recovery and growth.

Fourth, it can ensure fair transitions for workers and enterprises. Engaging in social dialogue will be equally important to monitor shifts in income, notably income distribution, to ensure that the process is fair and does not exacerbate existing inequalities or generate new ones. In some cases, social partners may help secure programmes of income support, so as to compensate for the eventual layoffs or job separation involved in a transition to a Green Economy.

In China for example, the transition of almost 1 million redundant workers in the forestry sector was accompanied by income replacement and effective active labour market policy measures. Spain's tripartite round tables on social dialogue, created in 2005, are perhaps the most commonly cited example of effective social dialogue on environmental and employment issues. They were established to tackle compliance with the commitments under the Kyoto Protocol (through regulation of trading emissions rights) while checking the impacts on competitiveness, employment and social cohesion. Following Spain's crisis in the construction sector, a tripartite Declaration of principles for the promotion of the economy, employment, competitiveness and social progress was also issued in July 2008, suggesting a broad range of measures targeting increased liquidity of companies, financing protected housing construction and reforming the vocational training system;

Fifth, social dialogue ensures that labour standards are, at a minimum, respected, and ideally, improved in the context of greening. For example, in Brazil, a tripartite dialogue was initiated in 2008 to improve the working and living conditions for cane cutters. In 2009, six federal

Government ministries, employers and unions agreed on a set of voluntary commitments with regard to health and safety and work contracts.

Sixth, measures are more effective and long-lasting when they are consultative and inclusive. Social dialogue in this regard can contribute to raising awareness and acceptance and finding specific solutions for workers and enterprises (especially SMEs) to challenges posed by a green transition. In France, the “Grenelle de l’Environnement” (Environment Round Table) process was set up in 2007, bringing together for the first time Government, unions, employers, NGOs and local authorities to discuss the country’s environmental policies. This resulted in a new sustainable development strategy for 2010–13 being adopted in July 2010, as well as in the creation of a new ministry of Ecology and sustainable development.

### **4.3.3 Capacity Building**

Inadequate skills development can be the cause of a vicious downward circle of low skills, low productivity and low income. If quality education and training is unavailable, the working poor will remain trapped in low-skilled, low-productive and, as a result, low-wage jobs while persons with no skills at all will remain excluded from the work force and from participating in economic growth and social development.<sup>138</sup>

Improved and more widely available skills on the other hand will enable individuals, enterprises and society to innovate, adopt new technologies, and diversify the economy. This is essential to address the opportunities and challenges of green economies because such skills will fuel technological change, investment, diversification of the economy and contribute to the competitiveness of enterprises and industries. Skills development, therefore, is a leverage to boost job quantity in growing sectors and job quality through more productive and sustainable enterprises and through improved working conditions and worker employability.<sup>139</sup>

The transition to a Green Economy will result in the creation of new jobs, but there will also be a need to redefine many existing job profiles. The demand for new related skills will also rise in

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<sup>138</sup>European Centre for the Development of Vocational Training, 2009 Future skill needs for the Green Economy; Online;[http://www.cedefop.europa.eu/EN/Files/5501\\_en.pdf](http://www.cedefop.europa.eu/EN/Files/5501_en.pdf)

<sup>139</sup> Ibid

most occupations. To meet this challenge, education and training systems will need to supply a well-trained, highly skilled labour force. Putting in place the right training programmes for employees in declining sectors will help counties redeploy workers who are difficult to place. A well-trained and environmentally aware workforce will also be more innovative in improving resource efficiency. To achieve this, counties will need comprehensive lifelong learning strategies and training systems that integrate socially inclusive and ensure that the right skills are supplied.

Capacity building and civic education forms part of Kenyan law and is a function of County Governments. Under the fourth schedule to the constitution, it is provided that County Governments should ensure and coordinate the participation of communities and locations in governance at the local level and assist communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

In addition to this, the County Governments Act<sup>140</sup> requires counties to conduct civic education to members of the community for a variety of reasons i.e to have an informed citizenry that actively participates in governance affairs of the society on the basis of enhanced knowledge, understanding and ownership of the Constitution while its objects include

- (a) sustained citizens' engagement in the implementation of the Constitution.
- (b) improved understanding, appreciation and engagement in the operationalization of the county system of Government.
- (c) institutionalizing a culture of constitutionalism.
- (d) knowledge of Kenya's transformed political system, context and implications.
- (e) enhanced knowledge and understanding of electoral system and procedures.
- (f) enhanced awareness and mainstreaming of the Bill of Rights and National values.
- (g) heightened demand by citizens for service delivery by institutions of governance at the county level.
- (h) ownership and knowledge on the principal economic, social and political issues facing county administrations and their form, structures and procedures and

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<sup>140</sup>County Government Act 2012: Section 100



- (i) appreciation for the diversity of Kenya’s communities as building blocks for national cohesion and integration.

Under Section 100 of County Government Act 2012, “each county Government shall implement an appropriate civic education programme and establish a civic education unit using the established National Government design and framework of civic education. Further, it will determine the contents of the curriculum for civic education taking into account the provisions of Article 33 of the CoK.

These provisions therefore present counties with an opportunity for carrying out capacity building and training. Workplace training to address changes in production processes will be a key element of the any skills strategy adopted by counties. The extent of skills and occupation transition will very much depend on a number of factors including county-specific industrial structure and stage of development. Nevertheless, some important lessons and considerations should be taken into account when developing a skills strategy, notably:

- i. Skills and training adjustment will occur principally among resource- and carbon-intensive sectors: This is because workers in resource-intensive sectors in Kenya tend to have lower skill levels on average and may require the most retraining. The same has been the experience of countries such as France where the region of Aquitaine provided funding for upgrading the skills of those in traditional automobile industry occupations (e.g. electricians and welders) to be able to take up employment related to wind-turbine production. Brazil has developed several initiatives to retrain workers formerly employed in manual cutting of sugarcane which requires the highly polluting burning of fields prior to harvest. Burning has been progressively banned and workers are being trained and relocated to both better job opportunities within their own plants and in other segments of the economy.
- ii. Counties must target initiatives towards the environmental goods and services sector. The expansion of these sectors will create new demands for a variety of skill profiles. For instance, in several counties, skills gaps in the renewable energy sector will be existent,

particularly for skilled technicians, managers and operators. Other skills gaps are present in the areas of knowledge on sustainable materials, skills in measuring carbon footprint and in environmental impact assessment. All these will need to be addressed.

- iii. Counties must ensure that education systems are responsive to the development of new technologies and changing skill requirements: Changing skill and education requirements can occur in industries and enterprises which are indirectly affected by the green transition via input–output links. If supply chains of “green” enterprises change and certain inputs are more highly demanded, the production processes of other enterprises will also change. For example, advice on carbon auditing and low-carbon technologies for enterprises could expand considerably. The challenge will be to ensure that future generations, notably youth, have the appropriate education as well as skills and competencies to take advantage of the opportunities presented by a greener economy.

For County Governments to succeed in this regard, there will be need for coordination particularly at three levels. First, coordination needs to bridge basic education, vocational training, lifelong learning and the labour market by establishing coherent learning paths that lead to jobs. Second, coordinating mechanisms are needed between employers and skills providers that help match skills demand and supply. Third, skills development policies and strategies need to be coordinated with and closely linked to industrial, trade, technology, macroeconomic and environmental policies.

Institutions play a key role in managing these processes; in particular, as markets can fail to provide information, incentives and coordination. Skills forecasting systems in line with environmental policies and labour-market information systems generate data on skills requirements. Counties need to make sure that the exchange of information is regular and that the data are used by all stakeholders. Local feedback-mechanisms between employers and training providers are as important as sectoral and county mechanisms to adjust training systems to new demands.

#### **4.4 Conclusion**

This chapter presents various options for County Governments to tackle non-gender dimensions of social exclusion. It proposes the creation of green jobs, social protection and capacity building as ways of ensuring that the local communities fully participate and benefit from making the transition to a Green Economy. However, it also sounds a warning that making the transition to green jobs, may exacerbate previous patterns of inequality, discrimination and social exclusion, if not properly designed.

It notes for instance that inadequate skills development can be the cause of a vicious downward circle of low skills, low productivity and low income. If quality education and training is unavailable, the working poor will remain trapped in low-skilled, low-productive and, as a result, low-wage jobs while persons with no skills at all will remain excluded from the work force and from participating in economic growth and social development. It therefore makes proposals that aside from creation of jobs and training the local communities to enhance their skills, social protection policies and social dialogue must also form part of a socially inclusive Green Economy.

A final general measure that County Governments ought to consider is changing consumption patterns as this can play an important role in triggering a transition towards a Green Economy. Consumer decisions and preferences can be influenced through prices and other incentives or compulsory measures. For example, preferences for consumption patterns may evolve and be impacted by sociological and cultural factors such as role models or through regulations and new standards, norms and conventions. This can be achieved through greater consumer transparency (e.g. through eco-labelling) which is likely to lead to increased awareness and greater environmental responsibility which will lead to a higher willingness to pay and encourage profit-seeking firms to invest in green production facilities and to offer sustainable products and services.

## CHAPTER 5

### 5.0 RECCOMENDATIONS AND CONCLUSIONS

The overriding objective of this thesis is to emphasize that social inclusion must form part of any Green Economy strategy and be fully incorporated in all Government policies if issues of exclusion are to be addressed in Kenya. I have made the point that devolution presents several social, administrative, political and economic benefits that are pertinent to making the transition to a socially inclusive Green Economy through a raft of legal provisions that impact resource allocation, public participation and decision making at the county level. I have argued that the transition to a socially inclusive Green Economy is necessary as it brings with it great opportunities for addressing social exclusion, discrimination and marginalisation in development. I have also demonstrated that through constitutional and legal provisions, the Constitution and other devolution laws have given County Governments the requisite powers, resources and mandates that can be used in unison to ensure socially inclusive development in all areas of a county.

#### 5.1 Gender dimensions of social exclusion

With specific reference to gender dimensions of social exclusion, this paper has demonstrated that gender equality, poverty eradication and the Green Economy are intrinsically linked and that these linkages cut across the social, economic, environmental and governance dimensions of Green Economy. Thus, acknowledging how development challenges and responses affect women, as well as women's vital contributions to economic progress, is essential for the success of all socially inclusive Green Economy and poverty eradication policies and practices which also have within them the overall outcome of inclusion and socially equity. The paper therefore recommends that County Governments do the following;<sup>141</sup>

- a) ensure that Green Economy debates and practices clearly reflect a gender analysis and that gender equality considerations underpin all discussions, institutional frameworks and actions;

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<sup>141</sup> United Nations Development Programme (2012) Powerful synergies Gender Equality, Economic Development and Environmental Sustainability; Pp 3,10,15

- b) develop participatory and gender-responsive consultation processes to inform and ensure equitable decision-making in Green Economy processes and in the implementation of such policies and programmes;
- c) establish gender indicators and conduct gender analyses to strengthen women's participation in Green Economy related governance processes and structures;
- d) create targets to ensure that women are trained and hired for decision-making positions;
- e) secure decent work, education, assets, resources, incentives and supportive networks to enable women workers and entrepreneurs to fully participate in and benefit from the Green Economy ;
- f) establish targets for job creation in the Green Economy for women ;
- g) ensure a social protection floor, including income support, access to basic services, education, health, universal health coverage, and safe food, water and sanitation, housing and energy that benefits local women, their families and communities;
- h) increase the visibility of women's unpaid and paid contributions to the economy and modify GDP calculations to reflect these contributions to the economy;
- i) Place women and gender equality at the core of drafting environmental law and include specific provisions and matching commitments for their practical implementation;
- j) Use existing international norms and standards, national policies and commitments towards gender equality and women's empowerment to inform a socially inclusive Green Economy and environmental legal frameworks and policies and their implementation;
- k) centre Green Economy goals on equity, gender equality, poverty eradication and overall human development;
- l) mandate and promote improved quantitative and qualitative sex-disaggregated data collection and analysis when implementing programmes and projects;
- m) make firm political commitments for new and additional financial resources for gender mainstreaming in Green Economy and ensure that these funds are available, accessible and beneficial to women;
- n) implement participatory and gender-responsive budget initiatives in all Green Economy sectors at all governance levels.

- o) use appropriate tools and resources for gender mainstreaming, including gender audits, participatory needs assessments, sex-disaggregated data and gender-based monitoring and evaluation in Green Economy sectors and related mechanisms and funds;

## **5.2 Labour Policies**

This thesis has demonstrated that the full realization of the double dividend requires that adequate attention be given to the employment and social dimensions of the shift towards a socially inclusive Green Economy. Governments must therefore put in place effective labour market and social policies, coupled with well-designed education policies that will be crucial to smooth the transition for workers. This can be done in various ways including through the development of new socially inclusive labour policies or through reinforcing and tailoring existing active and passive labour market policies. Reinforcing existing policies may simply require augmenting the existing suite of active labour market programmes such as job-search assistance, job counseling, training and improved labour market information which would reinforce the adaptive capacity of the labour market.

Secondly, there is need for well-designed income replacement and social protection measures. Such measures have the potential to cushion the negative effects implied by a green transition, while at the same time boosting future employment opportunities. In particular, income support can be provided to families to take care of the household's basic needs until employment is found. However such income support measures must be accompanied by other measures such as training, which will improve employability by keeping workers tied to the labour market and prevent skills erosion.

## **5.3 Green Economy Policies**

Ultimately, countries must put in place robust policy measures that will facilitate and sustain socially inclusive green economies. A number of options exist and can be distinguished by: type of instrument, the level at which they are applied (e.g. macro-economy or sector/industry level); and the policy objective. This range of options which include the following, will be useful to Countries and should be adopted to suit their unique circumstances.<sup>142</sup>

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<sup>142</sup>Efttec (2004) A Compendium of Economic Instruments for Environmental Policy; [efttec@efttec.co.uk](mailto:efttec@efttec.co.uk) ; [www.efttec.co.uk](http://www.efttec.co.uk)

- i. Regulations: includes norms implemented and enforced by Government institutions to directly influence the behaviour of economic agents. In the context of environment protection, regulations usually refer to some type of direct waste and pollution control, energy consumption restrictions, and limitation or prohibition of natural resource exploitation, but also mandates such as minimum recycling rates or share of renewable energy production. Regulations can also be designed to increase transparency and environmental awareness of consumers. For example, mandatory ecolabels on products can inform consumers about the environmental impact of their consumption decision.
  - ii. Tax instruments: tax approaches aim to assign correct prices to environmental resources through quantity or value taxes. Environmental taxes can target consumption and production (and inputs in production). They generally increase the prices of natural resources or emissions and lead thereby to a more efficient resource use and allocation. This can also include subsidies, as for example in the case of feed-in-tariffs that are heavily used to promote the transition of the energy sector.
  - iii. Trading systems: based on a certain quantity of acceptable pollution (such as CO<sub>2</sub> emissions), which is first broken down into smaller amounts and then securitized and traded on a market. Potential polluters pay for the right to pollute by buying a certain quantity of certificates through a trading system. The market price of the certificate allocates a value to the right to pollute and therefore creates an incentive to avoid pollution.
  - iv. Public investment and procurement: public funds directed into green applications. Governments can influence the market and encourage the private sector towards a green transition and overcome the problems of missing private price signals. In this sense, public investment plays a complementary role to larger market-based mechanisms. Governments can shift public investments from “brown” capital to “green” capital. Countries can directly invest in the areas where the private industry is hesitant or
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unwilling to exert efforts, such as renewable energy projects, green infrastructure or other low-carbon-intensive activities, especially for several high-polluting sectors, like transport, energy or construction.

Finally, having concluded that the devolved system of Government presents the opportunity for putting in place all these enabling conditions, it is also recognized that the implementation of constitutional and legal provisions that are the key to making the transition to a socially inclusive Green Economy is not guaranteed. As such both Government and non-Governmental institutions, particularly those charged with oversight, must monitor the relevant Government institutions to ensure that they do not derogate from constitutional and legal provisions and obligations. Vigilance from the general public is also key to the successful transition to a socially inclusive Green Economy in Kenyan Counties.



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#### **5.4.1 List of Statutes**

The Constitution of Kenya, 2010

The Transition to Devolved Governments Act, 2012

Urban Areas and Cities Act, 2011

The Public Finance Management Act, 2012

The County Governments Act, 2012