

**THE LEGAL ASPECTS OF ECOFEMINISM AS A VEHICLE FOR IMPLEMENTING
SUSTAINABLE DEVELOPMENT IN KENYA: RURAL WOMEN'S INTERACTIONS
WITH SELECTED ENVIRONMENTAL RESOURCES**

BY MONDAY BUSINGE

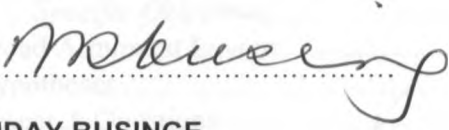
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**SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF
THE MASTER OF LAW DEGREE OF THE UNIVERISITY OF NAIROBI, KENYA.**

DECLARATION

I, Monday Businge, hereby declare that this Project Paper is my original work and that it has not been submitted and is not currently being submitted for a degree in any other university.

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DEDICATION

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ABBREVIATIONS

| | |
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| ACTS: | African Centre for Technology Studies. |
| AIDS: | Acquired Immune Deficiency Syndrome. |
| AJIL: | American Journal of International Law. |
| APFM: | Associated Programme on Flood Management. |
| ASALs: | Arid and Semi-Arid Lands. |
| AWF: | African Wildlife Fund. |
| AWID: | Association for Women's Rights in Development. |
| CBS: | Central Bureau of Statistics, Ministry of Planning and National Development, Kenya. |
| CFCs: | Chlorofluorocarbons. |
| DNA: | Deoxyribonucleic acid. |
| DRSRS: | The Department of Resource Surveys and Remote Sensing, Ministry of Environment and Natural Resources, Kenya. |
| DPP: | Director of Public Prosecutions. |
| EAWLS: | East African Wildlife Society. |
| EMCA: | Environmental Management and Coordination Act (No. 8 of 1999). |
| ESD: | Environmentally Sustainable Development. |
| EU: | European Union. |
| FAO: | Food and Agricultural Organisation. |
| FGM: | Female Genital Mutilation. |
| FPE: | Free Primary Education. |
| GAD: | Gender and Development. |
| GBM: | Green Belt Movement. |
| GDI: | Gender-Related Development Index. |
| GDP: | Gross Domestic Product. |
| GEM: | Gender Empowerment Measure. |

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| GNP: | Gross National Product. |
| GoK: | Government of Kenya. |
| HIV: | Human Immunodeficiency Virus. |
| IAS: | Institute of African Studies, University of Nairobi. |
| ICCPR: | International Covenant on Civil and Political Rights. |
| ICESCR: | International Covenant on Economic, Social and Cultural Rights. |
| ICJ: | International Court of Justice. |
| IJMED: | International Journal of Mass Emergencies and Disasters. |
| ILO: | International Labour Organisation. |
| IMF: | International Monetary Fund. |
| IPRs: | Intellectual Property Rights. |
| IUCN: | World Conservation Union. |
| IWRM: | Integrated Water Resources Management. |
| JIFP: | Joint Implementation Forestry Projects. |
| KEFRI: | Kenya Forestry Research Institute. |
| KFWG: | Kenya Forests Working Group. |
| KIFCON: | Kenya Indigenous Forest Conservation Programme. |
| KHRC: | Kenya Human Rights Commission. |
| KWS: | Kenya Wildlife Service. |
| LPG: | Liquefied Petroleum Gas. |
| MDGs: | Millennium Development Goals. |
| MFI: | Microfinance Institutions. |
| MNCs: | Multinational Corporations. |
| MWRMD: | Ministry for Water Resources Development and Management, Kenya. |
| NEMA: | National Environmental Management Authority, Kenya. |
| NGOs: | Non-governmental Organisations. |
| OWC: | Ogiek Welfare Council. |

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| PAR: | Participatory Action Research. |
| RBOs: | River Basin Organisations. |
| SAPs: | Structural Adjustment Programmes. |
| TRIPs: | Trade Related Aspects of Intellectual Property Rights Agreement. |
| UDHR: | Universal Declaration of Human Rights. |
| UoN: | University of Nairobi. |
| UN: | United Nations. |
| UNDP: | United Nations Development Programme. |
| UNEP: | United Nations Environment Programme. |
| UNIFEM: | United Nations Development Fund for Women. |
| US: | United States of America. |
| WCED: | World Commission on Environment and Development. |
| WED: | Women, Environment and Development. |
| WHO: | World Health Organisation. |
| WID: | Women in Development. |
| WMO: | World Meteorological Organisation. |
| WRMA: | Water Resources Management Authority. |

CHAPTER ONE: INTRODUCTION

1.1 Introduction

The term *ecofeminism* was coined by French scholar Françoise d'Eubonne in 1974 to signify the conjoining of ecological and feminist¹ thinking because of similarities between the treatment of women, blacks and the underclass on one hand, and of non-human nature on the other.² As such, ecofeminism extends familiar critiques of isms of domination such as sexism, racism, classism, elitism, ethnocentrism, ableism, ageism and neocolonialism to naturalism, which is the unjustified exploitation of nature. Thus it is arguable that the term 'ecofeminism' is a misnomer insofar as it aims to do away with all isms of domination, not just those against the environment and women as its phraseology suggests. And as Salleh contends, it encompasses four revolutions in one: it is a feminism inasmuch as it offers a critique of patriarchy from a *womanist* (as opposed to an elitist feminist) perspective; it is a socialism because it honours the underclass; it is an ecology because it integrates humanity with nature and it is a postcolonial discourse because it aims to deconstruct Eurocentric domination.³ It draws on feminism, environmentalism, and philosophy⁴ in its bid to create an egalitarian world devoid of discrimination on the basis of *inter alia* species, sex, creed and colour. Ecofeminists therefore include women and *men* who, irrespective of whether they are avowed ecofeminists, believe that the isms of domination and environmental destruction are intrinsically linked and thus strive to simultaneously emancipate women, blacks, animals, plants, water, air, et cetera. Nevertheless, this paper focuses on women-nature connections and as articulated by Salleh:

The basic premise of ecofeminist political analysis is that the ecological crisis is the inevitable effect of a Eurocentric capitalist patriarchal culture built on the domination of nature, and domination of Woman as 'nature.' Or to turn the subliminal Man/Woman=Nature equation around the other way, it is the inevitable effect of a culture constructed on the domination of women, and the domination of Nature as 'feminine.'⁵

¹ Feminism may itself be defined as a belief that women suffer discrimination because of their sex and that women have specific needs which remain negated and unsatisfied and that meeting these needs would require a revolution in the social, economic and political order.

² Warren, Karen: "Taking Empirical Data Seriously: An Ecofeminist Philosophical Perspective," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, p.3.

³ Salleh, Ariel (1997): *Ecofeminism as Politics: Nature, Marx and the Postmodern*, Zed Books, London, p. 192.

⁴ Warren, Karen (2000): *Ecofeminist Philosophy: A Western Perspective on What it is and Why it Matters*, Rowman and Littlefield Publishers Inc, Lanham, Boulder, New York, Toronto, Oxford, p. 21.

⁵ Salleh, *supra* note No. 3, pp. 12-13.

The first contemporary ecofeminist is believed to have been Rachel Carson, who in her 1962 classic, *Silent Spring*,⁶ passionately protested the degradation of the environment and called upon women to lead an ecological revolution to restore planetary health. Taking a cue from Carson, housewives at Love Canal demanded action from New York state offices over an outbreak of birth defects and miscarriages in a locality built on a former hazardous chemical dump. Other renowned ecofeminists are Kenya's Green Belt Movement (GBM)⁷ and India's Chipko Movement, whose members literally hugged trees in order to halt market lumbering.

The concept of sustainable development was popularised by the World Commission on Environment and Development (WCED), popularly known as the Brundtland Commission, in their report titled *Our Common Future*⁸ and was confirmed as a legal term by the International Court of Justice (ICJ) in the *Case Concerning the Gabcikovo-Nagymaros Project*.⁹ However, owing to its numerous shortcomings enumerated in Section 2.4.4, there is need to problematise this concept and its components parts and come up with a reconceptualised notion of sustainable development.

To avoid the risk of spreading this paper too thin, it will concentrate on rural Kenyan women's interfaces with selected forestry, wildlife and water resources. Although rural Kenyan women are not a homogeneous lot, because they share a common nationality and history, and because they are invariably subjected to patriarchal cultures as well as inequitable gender and environmental laws and policies, it is arguable that the rural women's interfaces with these resources are a microcosm of rural Kenyan women's interactions with the environment in a generic sense.

1.2 Background to the Problem

The paper discusses whether ecofeminism is an apposite model for ensuring meaningful sustainable development in Kenya. Focusing on ecofeminism is particularly relevant because of the rising profile of environmental issues on one hand, and the connection between environmental deterioration and

⁶ Carson, Rachel (1962): *Silent Spring*, Mariner Books; Reprint edition (1994).

⁷ See Maathai, Wangari (2004): *The Green Belt Movement: Sharing the Approach and the Experience*, Lantern Books, New York, for a comprehensive coverage of GBM, its history, goals, achievements and constraints.

⁸ WCED (1987): *Our Common Future*, Oxford University Press, Oxford and New York.

⁹ 1997 ICJ Reports 7. See also Sands, Phillippe (2003): *Principles of International Environmental Law*, Cambridge University Press, pp. 11 and 476 on the ICJ's recognising sustainable development as a legal term.

women's role as environmental managers on the other. Indeed, Africa's environment is deteriorating purportedly due to anthropocentrism, patriarchy, a rapidly rising population, an inapposite concept of sustainable development and inapt environmental laws as discussed in Chapter Two.

1.3 Statement of the Problem

Although existing environmental laws and policies are ostensibly couched as gender-neutral, in reality, they do not reflect rural Kenyan women's role as environmental managers and as such, they inadvertently exacerbate environmental destruction. These laws and policies therefore need to be amended to mitigate the latter adverse effect by echoing the fundamentals of ecofeminism.

1.4 Conceptual Framework

The conceptual framework that underpins the study consists of feminist, environmentalist and the sustainable development theories. Feminism is a movement committed to the elimination of sexism and all the major feminist theories namely; liberal, radical, socialist and Marxist believe that sexism exists, is wrong and ought to be eradicated. Feminism also encompasses predecessor themes such as women in development (WID), women, environment and development (WED) and gender and development (GAD). The detailed conceptual framework is discussed in Chapter 2.

1.5 Literature Review

A detailed literature review is contained in Chapter 2 and is structured along the manifestations of women's interfaces with the environment, the current major environmental issues, the causes of environmental degradation and its effects on women and the multifarious solutions to the ecocrisis that have been proposed by the different authors. While all the literature reviewed makes an important contribution to the body of knowledge on the issue, as discussed in Section 2.7, there are still glaring gaps in the literature which this paper seeks to fill. These include the inadequate treatment of women's subordination, the failure to link ecofeminism and sustainable development in Kenya, the lack of a legal angle to ecofeminism, the dearth of an African perspective and, the fact that the existing literature is somewhat dated, anecdotal and ideological.

1.6 Research Objectives

1.6.1 Main Objective

To map the role of ecofeminism and the attendant law and assess their appropriateness as tools for ensuring meaningful sustainable development in Kenya.

1.6.2 Specific Objectives

- To ascertain the manifestations of ecofeminism in rural Kenya;
- To assess the suitability of national legal instruments and policies governing women's interfaces with the environment;
- To explore whether ecofeminism can in fact change the way in which the Kenyan society articulates the relationship between men, women and the environment so as to ensure meaningful sustainable development in Kenya;
- To make recommendations on how ecofeminist principles can be integrated into national laws and policies and Kenyan cultures.

1.7 Broad Argument Layout

Ecofeminism as currently formulated and interpreted is a Western construct and as such, it is an abstract concept to rural Kenyan women. Further, the existing environmental laws and policies do not recognise the role of rural Kenyan women as environmental managers.

1.8 Hypotheses

- Ecofeminism is an appropriate model for ensuring sustainable development in Kenya;
- The recognition of the critical interface between women and the environment (as managers) is indispensable to Kenya's meaningful sustainable development;
- An appropriate legal framework for meaningful sustainable development in Kenya must be informed by and take into account women's interests, values and indigenous knowledge;
- The inadequacy of the current formulation and interpretation of the concept of sustainable development compounds the marginalisation of rural Kenyan women.

1.9 Research Questions

- Is ecofeminism an appropriate model for ensuring sustainable development in Kenya?

- Is the recognition of the critical interface between women and the environment indispensable to Kenya's implementation of the concept of sustainable development?
- Must an appropriate legal framework for meaningful sustainable development in Kenya be informed by and take into account women's interests, values and indigenous knowledge?
- Does the current formulation and interpretation of the concept of sustainable development compound the marginalisation of rural Kenyan women?

1.10 Research Methodology

The research primarily entailed a desk review of the relevant literature as well as that of the applicable international and national policies and laws. Primary data for the project comprised international conventions (for instance the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), the Universal Declaration on Human Rights (UDHR) national legislation (such as the current and draft Constitutions, EMCA, Forest, Wildlife and Water Acts), case law and statistical information from various international and national bodies as well as NGOs. Besides internet research, the following libraries were visited: University of Nairobi (UoN) at Parklands, Main Campus and Institute of African Studies (IAS), United Nations Environmental Programme (UNEP), African Centre for Technology Studies (ACTS), Kenya Wildlife Service (KWS), East African Wildlife Society (EAWLS), the Forestry Department at Karura and the Central Bureau of Statistics (CBS).

1.11 Limitations

A major limitation of the study was the virtual absence of literature on the triangular law-ecofeminism-sustainable development nexus and the sparse literature available on the various topics of the study. This was compounded by resource and time constraints which meant that field research could not be carried out. The paper is therefore written from a theoretical perspective.

1.12 Chapter Breakdown

Chapter One: Introduction

This mostly consists *inter alia* of the recast research proposal, sets out the hypotheses, statement of the problem, methodology and chapter breakdown as already seen.

Chapter Two: Literature Review and Conceptual Framework

- 2.1 Introduction;
- 2.2 Women's Interactions with the Environment;
- 2.3 The Current Major Environmental Issues;
- 2.4 Underlying Causes of Environmental Degradation;
- 2.5 Effects of Environmental Degradation on Women;
- 2.6 Proposed Solutions;
- 2.7 Lacunae in the Literature Reviewed;
- 2.8 Conceptual Framework;
- 2.9 Conclusion.

Chapter Three: Law and Rural Kenyan Women's Interfaces with Selected Forest, Water and Wildlife Resources

- 3.1 Introduction;
- 3.2 Kenyan Women's Status;
- 3.3 Women and Forests: Ogiek Women and the Mau Forest Complex;
- 3.4 Women and Wildlife: Nyeri Women and Mount Kenya National Park;
- 3.5 Women and Water: The Recurrent Inundation of Budalangi;
- 3.6 Conclusion.

Chapter Four: Towards Ecofeminism as a Tool for Environmentally Sustainable Development in Kenya

- 4.1 Introduction;
- 4.2 Conclusions;
- 4.3 Recommendations;
- 4.4 Conclusion.

CHAPTER TWO: LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

2.1 Introduction

This chapter delineates the current state of knowledge on the key issues of ecofeminism and consequently identifies the gaps which the paper will seek to fill in the latter chapters. It highlights women's multifarious interactions with the environment, the manifestations of the unfolding ecocrisis and its effects on women and, and critiques the repeatedly stated causes and proposed solutions to environmental degradation. The chapter then outlines the lacunae in the literature reviewed and posits the paper's theoretical framework before making concluding remarks.

2.2 Women's Interactions with the Environment

Women's role as gatherers of food, fuel and fodder, as collectors of water and as consumers and producers (in order to cater for their families¹⁰) brings them in close contact with the environment.¹¹ According to Thomas-Slayter and Rocheleau, access to and control of resources are inextricably linked to the positioning of people by gender, race, ethnicity and class.¹² Chiuri and Nzioki argue that women's role in ensuring sustainability of these resources turns them into environmental managers¹³ although Kameri-Mbote argues that this role is largely unrecognised.¹⁴ Sigot attributes this to the fact that women are ignored in statistical accounting and in the policies of government and other institutions.¹⁵ However, as Warren argues, ecofeminists disagree about both the essence of woman-nature connections and whether they are potentially liberating or reinforce harmful stereotypes about

¹⁰ Chiuri, Wanjiku and Nzioki, Akinyi: "Invisible Managers of Natural Resources," in Khasiani, Shanyisa (ed.) (1992): *Groundwork: African Women as Environmental Managers*, ACTS, Nairobi, p. 19.

¹¹ Kanogo, Tabitha: "Women and Environment in History," in Khasiani, Shanyisa (ed.) (1992): *Groundwork: African Women as Environmental Managers*, ACTS, Nairobi, p. 7.

¹² Thomas-Slayter, Barbara and Rocheleau, Dianne (1995): *Gender, Environment and Development in Kenya: A Grassroots Perspective*, Lynne Rienner, Boulder and London, p. 8.

¹³ Chiuri and Nzioki, *supra* note No. 10, p. 20.

¹⁴ Kameri-Mbote, Patricia (ed.) (1992): *African Women as Environmental Managers*, ACTS, p.1. In the same publication, Nzioki, Akinyi: "Women: Invisible Managers of Natural Resources," at p. 7, contends that women's management role is invisible in the sense that it is not recognised by the relevant laws.

¹⁵ Sigot, Asenath: "Discourse on Gender and Natural Resource Management," in Sigot, Asenath *et al.* (eds.) (1995): *Towards Common Ground: Gender and Natural Resource Management in Africa*, ACTS, Nairobi and World Resource Institute, Washington DC, p. 2.

women.¹⁶ While Shiva stresses the feminine principle based on women's innate empathetic and nurturing capacities,¹⁷ Braidotti *et al.* argue that women's close contact with the environment and by extension their subjugation is socially constructed¹⁸ as both are objectified as 'the other' of a patriarchal, dominant and supposedly rational order.¹⁹ Women are thus trapped in a gender-based division of labour although the continued rural-urban migration of men has made this division hazy as women have begun to assume traditionally male roles.²⁰ However, Salleh posits that women are not closer to nature than men in any ontological sense as both are 'in/with/of nature' although this is regarded as incompatible with prototypical masculinity.²¹ In any event, as Curtin argues, some women contribute to environmental degradation even though women's praxis involves caring.²²

2.2.1 Gatherers of Food, Fuel and Fodder

According to FAO, women gather fruit and nuts for nourishment, bark for medicines, resins for chemicals, roots for flavourings, fibres for making ropes and clothes, twigs for kindling, wood for burning, branches for thatch, and poles for building and fencing.²³ In addition, they collect herbs, fungi, honey and beetle larvae²⁴ which supplement the basic diet particularly during famine.²⁵ Omosa asserts that in Kenya, because over 93 percent of the rural household energy needs are met by fuelwood, there is concern that the use of fuelwood is far outstripping its renewal.²⁶ Although the 1999 census report puts this figure at 88.4 percent,²⁷ it is still too high although the authors seem to gloss over the fact that fossil-fuel based substitutes such as paraffin and liquefied petroleum gas (LPG) are more deleterious of the ozone layer.

¹⁶ Warren, *supra* note No. 4, p. 21.

¹⁷ Shiva, Vandana (1989): *Staying Alive: Women, Ecology and Development*, Zed Books, London, pp. 38-42.

¹⁸ Braidotti, Rosi *et al.* (1994): *Women, the Environment and Sustainable Development: Towards a Theoretical Synthesis*, Zed Books, p. 7.

¹⁹ *Ibid.*, p. 7.

²⁰ Project Reach: "Gender and Sustainable Development in Katheke, Kenya," in Sigot, Asenath *et al.* (eds.) (1995): *Towards Common Ground: Gender and Natural Resource Management in Africa*, ACTS, Nairobi and World Resource Institute, Washington DC, pp. 93, 99 and 100.

²¹ Salleh, *supra* note No. 3, p. 13.

²² Curtin, Deane: "Women's Knowledge as Expert Knowledge: Indian Women and Ecodevelopment," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, p.88.

²³ See e.g. FAO (1987): *Restoring the Balance: Women and Forest Resources*, FAO and SIDA, Rome, p. 1.

²⁴ Rodda, Annabel (1991): *Women and the Environment*, Zed Books Ltd., London and New Jersey, p. 49.

²⁵ Thomas-Slayter and Rocheleau, *supra* note No. 12, pp. 65 and 67.

²⁶ Omosa, Mary: "Women and the Management of Domestic Energy," in Khasiani, Shanyisa (ed.) (1992): *Groundwork: African Women as Environmental Managers*, ACTS, Nairobi, p. 41.

²⁷ GoK (CBS) (2002): *The 1999 Population and Housing Census: The Popular Report*, CBS, Nairobi, p. 43.

2.2.2 Water Collectors

In the domestic setting, water is, *inter alia*, used for food preparation, personal hygiene and farm work. Chiuri and Nzioki assert that women in developing countries play a vital role as both water collectors and managers as they possess vital knowledge about the location, reliability and quality of local water resources.²⁸ Women walk long and often treacherous distances to reach clean water sources and the water is itself heavy. Besides, as Nzioki argues, pollution leads to deterioration of water quality which further burdens women as they have to purify it or find farther alternative sources²⁹ otherwise the contaminated water causes disease.³⁰ While women use their heads, backs and shoulders to ferry water, men utilise more convenient wheelbarrows and handcarts.³¹

2.2.3 Consumers

Rodda argues that women constitute the largest proportion of consumers and that by assessing products on their environmental implications alongside the more conventional features of performance and cost, they are able to influence industry to adopt environmentally safe production practices³² with the emergence of ecolabelling attesting to this. Women are also encouraged to reduce, repair, reuse and recycle items³³ and rural Kenyan women are particularly adept at this.³⁴

2.2.4 Producers

Women account for 70 percent of food production in Africa³⁵ resulting in 'the feminisation of agriculture.'³⁶ Although they were traditionally confined to growing food crops such as sweet potatoes and millet, they are now increasingly cultivating cash crops owing to male rural-urban

²⁸ Chiuri and Nzioki, *supra* note No. 10, p. 22.

²⁹ Nzioki, Akinyi: "Women: Invisible Mangers of Natural Resources" in Kameri-Mbote, Patricia (ed.) (1992): *African Women as Environmental Managers*, ACTS, p. 8.

³⁰ Thomas-Slayter and Rocheleau, *supra* note No. 12, p. 29.

³¹ Project Reach, *supra* note No. 20, p. 91. However men rarely engage in the exercise and they mostly do it for money.

³² Rodda, *supra* note No.24, p. 55.

³³ Russell Scofield, Julia: "The Evolution of an Ecofeminist," in Diamond, Irene and Orenstein, Gloria (eds.) (1990): *Reweaving the World: The Emergence of Ecofeminism*, Sierra Club Books, San Francisco, p. 229.

³⁴ See e.g. Chandler, D. J. and Wane, Njoki: "Indigenous Gendered Spaces: An Examination of Kenya," *A Journal of Culture and African Women Studies*, 2002. They argue that Embu women use empty soda bottles to store paraffin, sugar, cooking oil and salt, that metallic tins are converted to cups and that butcheries use newspapers to wrap meat.

³⁵ Rodda. *supra* note No.24, p. 59.

³⁶ Warren, *supra* note No. 4, p. 10.

migration. This is despite the fact that women own only 5 percent of the registered land in Kenya³⁷ which is however doubtful given that the comparable worldwide figure is 1 percent.³⁸ Further, women are forced onto marginal lands which are steep, dry, vulnerable to pests and diseases³⁹ and infertile.⁴⁰ This sorry state of affairs is partly attributable to the fact that customary inheritance law – which in practice supersedes statutory law – bestows land inheritance rights only on the male progeny⁴¹ but as Thomas-Slayter and Rocheleau argue, it illuminates the contradiction between women as producers and non-owners and men as non-producers and owners.⁴²

2.3 The Current Major Environmental Issues

The multifaceted ecocrisis manifests itself in biodiversity loss, deforestation, biotechnology, water scarcity and contamination and, climate change. Although these are discussed discretely below, they are in fact inextricably linked and even though these issues are interrogated without specific reference to women as such, the section is considered to be an important precursor to the subsequent discourse on rural Kenyan women's interactions with specific environmental resources.

2.3.1 Biodiversity Loss

Article 2 of the 1992 Convention on Biological Diversity (CBD) defines biodiversity as "the variability among living organisms from all sources including *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part [and] includes diversity within species, between species and of ecosystems." None of the literature reviewed attempts to estimate how many species inhabit the earth although Spretnak and Swimme assert that approximately 10,000 species are lost per year⁴³ on account of pollution and destruction of habitats to make way

³⁷ Kenya Land Alliance: "The National Land Policy In Kenya: Critical Gender Issues and Policy Statements," Issues Paper 1/2004, p. 6.

³⁸ Dankelman, Irene and Davidson, Joan (1988): *Women and Environment in the Third World: Alliance for the Future*, Earthscan Publications, London, p. 8.

³⁹ *Ibid*, p. 8.

⁴⁰ Sontheimer, Sally (ed.) (1991): *Women and the Environment: Crisis and Development in the Third World*, Earthscan Publications, London, Introduction.

⁴¹ Thomas-Slayter and Rocheleau, *supra* note No. 12, p. 165.

⁴² *Ibid*, p. 81.

⁴³ Spretnak, Charlene: "Ecofeminism: Our Roots and Flowering," and Swimme, Brian: "How to Heal a Lobotomy," both in Diamond, Irene and Orenstein, Gloria (eds.) (1990): *Reweaving the World: The Emergence of Ecofeminism*, Sierra Club Books, San Francisco, pp. 14 and 15.

for farming, industrialisation and urbanisation. Rodda holds the latter factor responsible for the decimation of the world's tropical forests, which cover less than one-tenth of the earth's land surface but are home to 40 percent of the planet's terrestrial species.⁴⁴ However, Cullet and Kameri-Mbote appear to challenge the veracity of this claim, arguing that it is in fact the North which lost most of its forest cover during industrialisation.⁴⁵ Moreover, hunting, fishing, whaling and lumbering with increasingly sophisticated tools has also led to species loss and even extinction. Although Rodda argues that biodiversity loss leads to the concomitant loss of natural resources such as food, timber, waxes, fibres and chemicals⁴⁶ this view ought to be problematised for its blatant anthropocentrism.

2.3.2 Deforestation

Forests serve a number of crucial roles such the prevention of soil erosion, maintenance of soil fertility, the protection of water catchment areas and acting as wildlife habitats.⁴⁷ They also provide fuelwood, traditional medicine and food to local communities and cater for timber, biotechnology and pulp industries. At the global level, forests help in carbon sequestration.⁴⁸ The growing realisation of the role of forests was demonstrated by the award of the world's arguably most prestigious accolade, the Nobel Peace Prize, to Kenyan environmentalist Prof. Wangari Maathai in 2004, principally on account of the fact that the Green Belt Movement has thwarted attempts to grab Uhuru Park (in order to construct a 62-storey building)⁴⁹ and Karura Forest and has planted more than 30 million trees since its inception in 1977. Indeed the connection between peace and environmental protection is clear as scarcity of natural resources is often a recipe for conflict⁵⁰ and as the Noble Peace Laureate herself remarked, without peace, there can be no sustainable development.⁵¹

⁴⁴ Rodda, *supra* note No. 24, p. 16.

⁴⁵ Cullet, Philippe and Kameri-Mbote, Patricia (1998): "Joint Implementation in Forestry Projects and Climate Change: Conceptual and Operational Fallacies," in *The Royal Institute of International Affairs*, Vol. 74, No. 2, Apr. 1998, p. 399.

⁴⁶ Rodda, *supra* note No. 24, p. 16.

⁴⁷ Okowa-Bennun, P. N. and Mwangi, A. M.: "Land Tenure and Forest Resource Management," in Juma, C. & Ojwang, J. B. (eds.) (1996): *In Land We Trust: Environment, Private Property and Constitutional Change*, ACTS, p. 175.

⁴⁸ Cullet and Kameri-Mbote *supra* note No. 45, pp. 398-399.

⁴⁹ Even though in the legal action *Wangari Maathai v Kenya Times Media Trust* (HCCC No. 5403 of 1989), the court dismissed the suit, holding that the plaintiff had no *particular* interest in the case and therefore no *locus standi*.

⁵⁰ "The Nobel Peace Prize 2004: Presentation Speech by Professor Ole Danbolt Mjøs, Chairman of the Norwegian Nobel Committee," accessed at <http://nobelpeace.org/peace/laureates/2004/presentation-speech.html>.

⁵¹ "The Nobel lecture given by the Nobel Peace Laureate 2004, Wangari Muta Maathai (Oslo, 10th December 2004) accessed at <http://nobelprize.org/peace/laureates/2004/maathai-lecture-text.html>.

Feminists are divided on the main causes of deforestation. While Chiuri and Nzioki, and Thomas-Slayer and Rocheleau attribute it to the increasing Third World⁵² food and energy needs to cater for a rapidly rising population,⁵³ Braidotti *et al.* blame it on commercial tree felling and the extension of commercial agriculture into forest land.⁵⁴ The latter position is supported by Dankelman and Davidson who postulate that women rarely collect entire trees as they take only twigs and dead wood⁵⁵ and therefore, as Agarwal argues, the link between deforestation and domestic fuelwood consumption is a very tenuous one.⁵⁶ Moreover, Cullet and Kameri-Mbote corroborate this argument empirically, contending that, compared to a 3.9 percent decline for tropical forests since industrial times, temperate and the boreal forest areas have declined by more than 20 percent in the same period and that the unwarranted preoccupation with the 'destruction' of tropical forests has led to ill-conceived ventures such as the joint implementation forestry projects (JIFPs) – which are provided for in Article 4(2)(a) and (d) of the 1992 Framework Convention on Climate Change – in the tropics.⁵⁷

2.3.3 Biotechnology

Article 2 of the CBD defines biotechnology as “[a]ny technological application that uses biological systems, living organisms, or derivatives thereof to make or modify products or processes for specific use.” While biotechnology is touted as the wonder cure for the crises of hunger,⁵⁸ poverty, pollution and climate change,⁵⁹ Kollek urges caution arguing that that the ecological risks of genetic engineering cannot be precisely determined⁶⁰ with the implication that scientists are opening a

⁵² Harcourt, Wendy, “Introduction,” in Harcourt, Wendy, (ed.) (1994): *Feminist Perspectives on Sustainable Development*, Zed books, London and New Jersey, p. 2, prefers the expression ‘Two-Thirds World’ to ‘Third World.’

⁵³ Thomas-Slayer and Rocheleau, *supra* note No. 12, p. 26 and Chiuri and Nzioki, *supra* note No. 10, p. 21.

⁵⁴ Braidotti, Rosi *et al.*, *supra* note No. 18, p. 84.

⁵⁵ Dankelman and Davidson *supra* note No. 38, p. 46.

⁵⁶ Agarwal, Bina: “Under the Cooking Pot: The Political Economy of the Domestic Fuel Crisis in Rural South Asia,” in Sontheimer, Sally (ed.) (1991): *Women and the Environment: Crisis and Development in the Third World*, Earthscan Publications, London, p. 102.

⁵⁷ Cullet and Kameri-Mbote, *supra* note No. 45 generally where the authors debunk the premise of JIFPS.

⁵⁸ For an assessment of agricultural biotechnology, see e.g. Levidow, Les: “Whose Ethics for Agricultural Biotechnology?” in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London and New Jersey, p. 175, generally.

⁵⁹ Moser, Ingunn, “Introduction: Mobilising Critical Communities and Discourses on Modern Biotechnology,” in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London and New Jersey, pp. 1-2.

⁶⁰ Kollek, Regine, “The Limits of Experimental Knowledge: A Feminist Perspective on the Ecological Risks of Genetic Engineering,” in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London and New Jersey, p. 95.

Pandora's box of transgenic organisms which could detonate an ecological time bomb.⁶¹ In this sense, biotechnology is according to Von Weizsacker, counterproductive⁶² and may according to Shiva, cause underdevelopment and 'colonisation of the seed' which, through unfair intellectual property regimes (IPRs), shifts control over biological diversity from local farmers to multinational corporations (MNCs) as self-regenerative seed is replaced by inert and non-reproducible⁶³ germplasm. A case in point is the lawsuit filed by Monsanto against Canadian farmer Schmeiser where court held the farmer liable for illegally using Monsanto's patented gene on his canola crop although this was a result of cross pollination from adjacent farms.⁶⁴ No consideration was given to the fact that Monsanto's seed may have contaminated Schmeiser's crop causing him to lose his status as an organic farmer.

2.3.4 Water Scarcity and Contamination

The indispensable role of water is reflected in the aphorism 'water if life.' Indeed, water has multiple uses namely; nutritional, domestic, industrial, agricultural, power generation, recreational, navigational, waste disposal and ecological as it is a habitat for living and non-living organisms. It also embodies symbolic and cultural value. Its unique significance is highlighted by the fact that it has no known substitute. Yet despite this central role, freshwater accounts for only 6 percent of all water on earth. Water scarcity is attributable to drought while Chiuri and Nzioki attribute water pollution to fertiliser and pesticide application to soils.⁶⁵

2.3.5 Climate Change

Climate change refers to the response of the planet's climate system to altered concentrations of 'greenhouse gases,' such as carbon dioxide, methane, nitrous oxide and chlorofluorocarbons

⁶¹ Levidow, Les and Tait, Joyce, "The Greening of Biotechnology: GMOs as Environment-Friendly Products," in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London and New Jersey, p. 123.

⁶² Von Weizsacker, Christine, "Error-Friendliness and the Evolutionary Impact of Deliberate Release of GMOs," in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London and New Jersey, p. 113.

⁶³ Shiva Vandana, "Biotechnological Development and the Conservation of Biodiversity," in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London and New Jersey, at p. 199- 212.

⁶⁴ The decision was upheld on appeal: *Schmeiser & Schmeiser Enterprises Ltd v Monsanto Canada Inc.* (2004 SCC 34).

⁶⁵ Chiuri and Nzioki, *supra* note No. 10, p. 23.

(CFCs) in the atmosphere.⁶⁶ Climate change leads to extreme and unpredictable weather patterns such as intense and frequent floods and droughts, spread of water- and insect-borne diseases and substantial loss of biodiversity and natural resources. The potential effects are so broad and severe that it is believed that this is the most significant environmental challenge facing the planet.

2.4 Underlying Causes of Environmental Degradation

Even though the factors responsible for environmental degradation are inextricably linked, an attempt is made to discuss them individually.

2.4.1 Anthropocentrism

This promulgates the utilitarian value of nature for ensuring the survival of humankind and the intrinsic worth of the non-human environment is immaterial. Haraway however argues that anthropocentrism is in fact a euphemism for phallogocentrism as the prototypical human is male.⁶⁷

2.4.2 Patriarchy

Patriarchy denotes the totality of oppressive and exploitative relations which affect women⁶⁸ *qua* women. Fox-Genovese argues that women remain fundamentally alienated from a patriarchal culture which casts them as objects⁶⁹ although Zimmerman argues that both men and women have been distorted by the effects of patriarchy⁷⁰ while Mies asserts that women are equally guilty of complicity in the resultant system of oppression and exploitation.⁷¹ Braidotti *et al.* posit that androcentrist epistemological frameworks account for antagonistic and hierarchical conceptions of self, society and the cosmos.⁷² However, as Fox-Genovese argues, to group all forms of dominance under the single rubric of patriarchy is to fall into the similar trap of homogenising all forms of male

⁶⁶ Hunter, David *et al.*: *International Environmental Law and Policy*, 2nd Ed, 2002, Foundation Press New York, p. 589.

⁶⁷ Haraway, Donna, "Otherworldly Conversations, Terran Topics, Local Terms," in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London, p. 70.

⁶⁸ Mies, Maria (1998): *Patriarchy and Accumulation on a World Scale: Women in the International Division of Labour*, Zed Books, London and New York, p. 37.

⁶⁹ Fox-Genovese, Elizabeth (1991): *Feminism Without Illusions: A Critique of Individualism*, University of North Carolina Press, Chapel Hill and London, p. 4.

⁷⁰ Zimmerman, Michael: "Deep Ecology and Ecofeminism: The Emerging Dialogue," in Diamond, Irene and Orenstein, Gloria (eds.) (1990): *Reweaving the World: The Emergence of Ecofeminism*, Sierra Club, San Francisco, p. 154.

⁷¹ Mies, *supra* note No. 68, p. 1, and Razak, Arisika: "Toward a Humanist Analysis of Birth," in Diamond, Irene and Orenstein (eds.) (1990): *Reweaving the World: The Emergence of Ecofeminism*, Sierra Club, San Francisco, p. 165.

⁷² Braidotti *et al.*, *supra* note No. 18, p. 162.

domination and thereby obscuring their specific characteristics.⁷³ As such, we need to problematise a system which treats men as the omnipotent enemy because this necessarily perceives man as an undifferentiated category yet men, like women, come in many cultural forms and not all men wield legal power.⁷⁴ Mies adds the adjective 'capitalist' to the term 'patriarchy' arguing that:

If feminism [is] ... to abolish women's exploitation and oppression, it will have to transcend capitalist-patriarchy as one intrinsically interconnected system ... beginning with the man-woman relation, to the relation of human beings to nature, to the relation between metropolises and colonies. It cannot hope to reach its goal by concentrating on one of these relations because they are interrelated.⁷⁵

However, in apparent disagreement, Kanogo alludes to the fact that patriarchy operated in pre-colonial Kenya⁷⁶ and indeed some of the widespread practices then such as female genital mutilation (FGM) were downright degrading to women, the absence of capitalism notwithstanding. Nevertheless sexist language⁷⁷ and imagery have contributed to the resilience of patriarchy.⁷⁸

2.4.3 Exponential Population Growth

The discourse on this issue is aptly summarised by Thomas-Slayter and Rocheleau:

The lines [are] drawn on a North-South fracture. The South proclaims that the North, with 20 percent of the world's population, consumes 80 percent of the world's resources in blatant over consumption, whereas the North accuses the South of alarming population growth rates leading to extraordinary pressures for natural resources.⁷⁹

Neo-Malthusians⁸⁰ associate poverty and the 'resultant' environmental degradation with population growth in developing countries although Sen argues that this stance disregards anthropological debates about carrying capacity and the inconclusiveness of empirical evidence linking the two.⁸¹ Moreover, the argument ignores other causes of environmental degradation such as Structural Adjustment Programmes (SAPs),⁸² the North's overconsumption⁸³ and unfair international trade practices lending credence to accusations that the predominantly Western authors are playing the

⁷³ Fox-Genovese, *supra* note No. 69, p. 143.

⁷⁴ Man of the Law, p. 18.

⁷⁵ Mies, *supra* note No. 68, p. 38.

⁷⁶ Kanogo, *supra* note No. 11, p. 13.

⁷⁷ Griffin, Susan: "Ecofeminism and Meaning," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, p. 220.

⁷⁸ D'Souza, Kumar Corrinne, "The South Wind: Towards New Cosmologies," in Harcourt, Wendy (ed) (1994): *Feminist Perspectives on Sustainable Development*, Zed Books, London and New Jersey, p. 93.

⁷⁹ Thomas-Slayter and Rocheleau, *supra* note No. 12, p. 30.

⁸⁰ Malthus argued that while population increases exponentially, food production only increases arithmetically.

⁸¹ Sen, Gita, "Women, Poverty and Population," in Harcourt, Wendy, (ed.) (1994): *Feminist Perspectives on Sustainable Development*, Zed books, London and New Jersey, at p. 220.

⁸² Braidotti *et al.*, *supra* note No. 18, p. 18.

⁸³ Amalric, Franck, "Finiteness, Infinity and Responsibility: The Population-Environment Debate," in Harcourt, Wendy, (ed.) (1994): *Feminist Perspectives on Sustainable Development*, Zed books, London and New Jersey, p. 234.

'blame the victim' game by accusing poor women of inundating the world with their progeny.⁸⁴ Sadly, this reasoning is also echoed by Southern authors such as Nzomo who asserts that Kenya has one of the highest population growth rates in the world⁸⁵ and Sunny, who blames deforestation on the unsustainably high demand for fuelwood that overpopulation causes.⁸⁶ Ironically, procreation in the North is encouraged as the progressively longer life expectancy there implies that the younger generation will not be able to adequately cater for the old. Although Thomas-Slayter and Rocheleau appear to offer a balanced argument, arguing that neither overdevelopment in the North nor Africa's population growth rates are the main culprits as indeed, a fundamentally unjust global economy is,⁸⁷ they ultimately show their Eurocentric bias by concluding that the rapidly growing population is bound to stretch Africa's resources in the coming decades.⁸⁸ Thus the North may not be committed to tackling HIV-AIDS and the recurrent famines in Africa as they see these as nature's timely solutions to the population problem.⁸⁹ And as Amalric movingly notes:

It is a cruel irony to interpret environmental degradation as a consequence of population growth, for it leads to closing the world by restraining the behaviour of those who already face limits in all directions: limited access to resources, limited power, limited education, limited health and limited voice.⁹⁰

2.4.4 III-Conceived Notion of Sustainable Development

The concept of sustainable development, touted as a comprehensive governing philosophy for the twenty-first century, was popularised by the WCED who defined it as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs."⁹¹ Its objective is to balance the two seemingly irreconcilable needs for development and environmental protection. Striking an equilibrium continues to be elusive owing to the various limitations of the concept. The first relates to the terminology used and it is here relevant to

⁸⁴ Nelson, Lin: "The Place of Women in Polluted Places," in Diamond, Irene and Orenstein, Gloria (eds.) (1990): *Reweaving the World: The Emergence of Ecofeminism*, Sierra Club, San Francisco, p. 182.

⁸⁵ Nzomo, Maria: "Policy Impacts on Women and Environment," in Khasiani, Shanyisa (ed.) (1992): *Groundwork: African Women as Environmental Managers*, ACTS, Nairobi, p. 111.

⁸⁶ Sunny, Grace: "Women's Role in the Supply of Fuelwood" in Khasiani, Shanyisa (ed.) (1992): *Groundwork: African Women as Environmental Managers*, ACTS, Nairobi, p. 56.

⁸⁷ Braidotti *et al.*, *supra* note No. 18, p. 25.

⁸⁸ Thomas-Slayter and Rocheleau, *supra* note No. 12, p. 30.

⁸⁹ Smith, Andy: "Ecofeminism Through an Anticolonial Framework" in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, p.25.

⁹⁰ Amalric, *supra*, note No. 83, p. 235.

⁹¹ WCED (1987): *Our Common Future*, Oxford University Press, Oxford and New York, p. 8.

problematise the definition of 'development', which is an integral component of 'sustainable development'.⁹² In particular, it is justifiable to question the rationale of defining this term solely using economic indicators like GNP per capita,⁹³ to the exclusion of social, political, cultural and gender aspects⁹⁴ (with the consequence that women's productive and reproductive role is devalued)⁹⁵ as is done by the World Bank and the International Monetary Fund (IMF). In any case, economic growth is merely a means to achieve human development and is not an end in itself.⁹⁶

Besides, development in its present context posits Western values and lifestyles as the universal goal.⁹⁷ Mies and Shiva argue that development goals predicated on 'catching-up' are unattainable because economic progress in the 'model' affluent societies of the North cannot be held static⁹⁸ and that given that homelessness, criminality, drug addictions and pollution are on the increase in the North, this lifestyle should not be a model for the South.⁹⁹ They further argue that development is the flipside of underdevelopment and the North's progress must of necessity be based on the concomitant regression of the colonies and thus development is not an evolutionary process from a lower to a higher stage but a polarising process in which some get richer because they make others poorer.¹⁰⁰ Although the authors are here guilty of totalising and misrepresenting the heterogeneity of the North as not all 'Western' development is retrogressive, there is merit in the argument that because the earth's resources are finite, pursuing unlimited economic growth will inevitably outreach the planet's ecological limits.

⁹² Carmen, Raff, "The Logic of Economics vs. the Dynamics of Culture," in Harcourt, Wendy (ed) (1994): *Feminist Perspectives on Sustainable Development*, Zed Books, London and New Jersey at p.64 interestingly argues that the 'sustainable' prefix is itself a qualification of the conventional development paradigm to which dissenters resort.

⁹³ Abramovitz, Janet, "Biodiversity and Gender Issues: Recognising Common Ground," in Harcourt, Wendy, (ed.) (1994): *Feminist Perspectives on Sustainable Development*, Zed books, London and New Jersey, at p. 208 argues that GNP neither accounts for women's unpaid labour nor calculates the loss arising from natural resource degradation.

⁹⁴ Harcourt, Wendy, "Negotiating Positions in the Sustainable Development Debate: Situating the Feminist Perspective," in Harcourt, Wendy (ed) (1994): *Feminist Perspectives on Sustainable Development*, Zed Books, London and New Jersey, p. 11.

⁹⁵ Mies, *supra* note No. 68, p. 45.

⁹⁶ Braidotti *et al.*, *supra* note No. 18, p. 19.

⁹⁷ Sachs, Wolfgang (ed.) (1992): *The Development Dictionary: A Guide to Knowledge and Power*, Zed Books, London and New Jersey, generally.

⁹⁸ Mies, Maria and Shiva, Vandana (1993): *Ecofeminism*, Zed Books, London and New Jersey, p. 60.

⁹⁹ *Ibid*, pp. 61-63.

¹⁰⁰ *Ibid*, p. 251 and Braidotti *et al.*, *supra* note No. 18, p. 25.

Moreover, the glaring absence of the term 'environment' in the concept's phraseology is telling as it effectively elevates development at the expense of the former. After all, 'sustainable' or its derivatives are not a synonym for 'environment.' Hence, an appropriate development framework must, for psychological reasons, include 'environment' or its offshoot in its terminology. Besides, sustainable development is a journey rather than a destination as unlike development where the North is the point of reference, no country can, by definition, be 'sustainably developed' and it is arguable that this thus relegates the notion to an unattainable Utopia with the corollary that it is of limited practical significance as a philosophy for addressing critical environmental issues.

Besides, a key component of the concept is that of intergenerational equity with Edith Weiss arguing that it focuses on the relationship that a generation has to the subsequent ones in using the common patrimony of the planetary resources.¹⁰¹ This reasoning informed the Filipino Supreme Court's ruling, in *Oposa v Factoran*,¹⁰² that the petitioners had *locus standi*; namely the right to act so as to guard against the danger that future generations inherited "nothing but parched earth incapable of sustaining life." Further, catastrophic accidents such as Chernobyl and Bhopal, where innocent post-accident generations continue to suffer congenital defects, enhance the potency of the argument although they are blatantly anthropocentric. However, the concept is unduly preoccupied with inter- at the expense of intra-generational equity owing to the developed countries' reluctance to re-allot the world's resources through, for instance, eliminating agricultural subsidies. Thus, developing countries are financially unable to ensure social justice leading to an alarming prevalence of HIV-AIDS, malaria, malnutrition and deplorable living conditions. These threaten the very existence of future generations because, where the basic survival of the current generation is continually threatened, it follows that their progeny is not assured precisely because the dead cannot procreate. Hence, the 'common future' (in the singular) envisaged by the WCED may prove illusory because there's no place for a multiplicity of futures, for differences and for a plurality of cultures.¹⁰³ The inter-

¹⁰¹ Weiss, Brown Edith (1989); *In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity*, The UN University, Tokyo, p. 21.

¹⁰² G.R. No. 101083, 30th July 1993 reproduced in the UNEP Compendium of Judicial Decisions on Matters Related to the Environment, National Decisions, Vol. I, p. 22.

¹⁰³ D'Souza, *supra* note No. 78, p. 97.

gender equity question should also be addressed as locking half the world's population out of the development process cannot be optimal as it translates into increased poverty and disease and higher mortality and illiteracy rates.¹⁰⁴ There's also need for intra-women equity. Moreover, Taylor rhetorically faults the notion on its coherence:

If the choice to draw down resources is held exclusively by future generations, then are we not some previous generation's "future" generation? Why is the present generation bereft of that right?¹⁰⁵

2.4.5 Consumerism

Thomas-Slayter and Rocheleau argue that the North are avid consumers determined to maintain a high level of industrialisation and consumerism despite evident social, economic, environmental and health costs to both the North and the South¹⁰⁶ and despite the finiteness of natural resources.¹⁰⁷

2.4.6 Reductionist Science and Technology

Whereas mainstream science is portrayed as universal and value-free,¹⁰⁸ its purported universalism is, according to Haraway, no more than "white capitalist heterosexist patriarchy"¹⁰⁹ while Braidotti *et al.* dub it "an ideological expression of white, male, supremacist hegemonic thinking."¹¹⁰ Keller pins science's reductionism on its shift from playing an observational role to an experimental one at the end of the nineteenth century.¹¹¹ Central to the above paradigm is the arbitrary barrier between knowledge and ignorance although Mies and Shiva argue that by treating indigenous knowledge (for example on terracing and crop rotation¹¹²) as ignorance, science displays its own ignorance.¹¹³ However, it is too sweeping to totally negate the validity of Western science and modernity as we cannot turn back the clock.¹¹⁴ More importantly, positive and negative elements exist in both

¹⁰⁴ UNEP (2004): *Women and the Environment*, UNEP, pp. 14-15.

¹⁰⁵ Taylor, Jerry (1998): "Sustainable Development: Common Sense or Nonsense on Stilts," accessed at <http://www.libertyhaven.com/politicsandcurrentevents/environmentalismorconservation/sustainabledeve.shtml>.

¹⁰⁶ Thomas-Slayter and Rocheleau, *supra* note No. 12, p. 18.

¹⁰⁷ Braidotti *et al.*, *supra* note No. 18, p. 25.

¹⁰⁸ Merchant, Carolyn (1980): *The Death of Nature: Women, Ecology and the Scientific Revolution*, Harper, p. 290.

¹⁰⁹ Haraway, *supra* note No. 67, p. 80.

¹¹⁰ Braidotti *et al.*, *supra* note No. 18, p. 30.

¹¹¹ Keller, Fox Evelyn, "Fractured Images of Science, Language and Power: A Post-Modern Optic or Just Bad Eyesight?"

in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London and New Jersey, pp. 54-55.

¹¹² Dankelman and Davidson, *supra* note No. 38, p. 115 and Kanogo, *supra* note No. 11, p.7.

¹¹³ Mies and Shiva, *supra* note No. 98, p. 23.

¹¹⁴ Braidotti *et al.*, *supra* note No. 18, p. 112.

modernity and tradition and the level of grand theorising exhibited by Mies and Shiva diminishes their genuine criticisms of science.

2.4.7 *Biological Determinism*

Hubbard defines biological determinism as a form of reductionism that explains the behaviour of individuals in terms of biology with the social and behavioural differences between women and men being attributed to hypothetical genes that favour mathematical ability and competitiveness in men and domesticity and nurturance in women.¹¹⁵ She further posits that the ongoing fascination with DNA and the human genome will strengthen the biodeterminism argument.¹¹⁶ However, Fox-Genovese argues that biological differences are a reality and are essential to the society's survival.¹¹⁷ However, in reality, while biological *and* environmental factors affect an organism, the organism also simultaneously changes the environment¹¹⁸ and so these factors are interconnected.

2.4.8 *Inappropriate Environmental Laws*

Kabeberi-Macharia argues that environmental laws and policies contribute to environmental degradation and accentuate women's poverty because they are colonial in orientation, scattered, sectoral, remedial and gender-blind.¹¹⁹ This is compounded by a patriarchal land tenure system¹²⁰ which denies women access to historically communal resources such as land for fuelwood¹²¹ which was declared *terra nullius* by the colonialists, vested in the crown¹²² and subsequently parcelled out to individuals with the high potential land being allotted to European settlers. The resulting land shortage implied that soil conservation practices such as fallowing could not be practised and steep

¹¹⁵ Hubbard, Ruth, "Human Nature," in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London and New Jersey, p. 28.

¹¹⁶ Hubbard, Ruth, "Genes as Causes," in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London and New Jersey, p. 51.

¹¹⁷ Fox-Genovese, *supra* note No. 69, pp. 244 and 252.

¹¹⁸ Hubbard, *supra* note No. 115, pp. 33, 36.

¹¹⁹ Kabeberi-Macharia, Janet: "Women and Environmental Law in Kenya," in Khasiani, Shanyisa (ed.) (1992):

Groundwork: African Women as Environmental Managers, ACTS, Nairobi, p. 98.

¹²⁰ Chiuri and Nzioki, *supra* note No. 10, p. 22. They argue that this leads to marginalisation of women and food shortage owing to the fact that cash crops, which are controlled by men, are allocated more land than food crops.

¹²¹ Kanogo, *supra* note No. 11, p. 10.

¹²² Okoth-Ogendo, H. (1991): *Tenants of the Crown: Evolution of Agrarian Law and Institutions in Kenya*, ACTS, p. 11.

slopes were utilised for cultivation.¹²³ Further, as Omasa argues, women are reluctant to participate in tree planting owing to uncertainty about property rights as they do not own land.¹²⁴ Moreover, despite the dizzying multiplicity of environmental laws, they have not incorporated women as participants and beneficiaries for example, the Agriculture Act¹²⁵ targets male landowners rather than the female land users while the Forest Act¹²⁶ rather than enhancing protection of forests, is fixated with providing sanctions for offenders although these are themselves paltry.¹²⁷

2.5 Effects of Environmental Degradation on Women

Kameri-Mbote posits that women are the first casualties of environmental degradation¹²⁸ while Mies and Shiva argue that women are disproportionately affected by ecocrises.¹²⁹ Diamond and Orenstein echo the latter stance:

[B]ecause of women's unique role in the biological regeneration of the species, our bodies are important markers, the sites upon which local, regional, or even planetary stress is played out. Miscarriage is frequently an early sign of the presence of lethal toxins in the biosphere.¹³⁰

Besides, Starhawk argues that women bear the brunt of caring for the sick and dying.¹³¹ This, together with the similarities between women's oppression and wanton ecological annihilation should ideally justify the fact that women are often the first to protest against environmental harm and to work to remedy it. But Braidotti *et al.* are wary of this reasoning:

The strategies [women] employ to counter this crisis, are indeed gender specific, but their position as women alone does not qualify them to manage the environment better than anyone else ... neither women nor any other concerned group can assume a monopoly on providing valid solutions to the crisis [because they] should be critical of how they themselves reproduce patterns of domination in their own struggles.¹³²

Besides, the authors believe that involving women in environmental conservation adds to their responsibilities and overburdens them.¹³³ While this reasoning has some merit, it is arguable that this increased workload in, say, afforestation projects in the short-term is more than cancelled out by

¹²³ Kanogo, *supra* note No. 11, p. 10-12.

¹²⁴ Omasa, *supra* note No. 26, p. 52.

¹²⁵ Cap. 318, Laws of Kenya.

¹²⁶ Cap. 385, Laws of Kenya.

¹²⁷ Kabebere-Macharia, Janet: "Women and Environmental Law in Kenya," in Kameri-Mbote, *supra* note No. 14, p. 19.

¹²⁸ Kameri-Mbote, *supra* note No. 14, p.1.

¹²⁹ Mies and Shiva, *supra* note No. 98, p. 3.

¹³⁰ Diamond, Irene and Orenstein, Gloria (eds.) (1990): *Reweaving the World: The Emergence of Ecofeminism*, Sierra Club Books, San Francisco, p. x.

¹³¹ Starhawk: "Power, Authority and Mystery: Ecofeminism and Earth-based Spirituality," in Diamond and Orenstein, *supra* note No. 130, p. 83.

¹³² Braidotti *et al.*, *supra* note No. 18, p. 8.

¹³³ Kabebere-Macharia, *supra* note No. 119, p.5.

the long-term benefits such as the dramatically reduced time gathering fuelwood and, as the Green Belt Movement experiences demonstrate, because they can be vital sources of income, they promote an environmental ethic, empower and inspire grassroots women and stem soil erosion.¹³⁴ This is of course provided the men do not appropriate the benefits of the women's labour by for instance using the grown trees for poles¹³⁵ or selling them.

2.6 Proposed Solutions

2.6.1 Population Control

Population control is proposed because population pressure is held out as the single most culpable cause of environmental degradation.¹³⁶ Yet this argument is erroneous because it is palpably patriarchal and ethnocentrist. It is patriarchal because, first, as Spretnak, and Mies and Shiva argue, population control programmes brutally invade women's bodies exposing them to risks of infertility and sterility which are conveniently understated.¹³⁷ Second, polygamy and children are in fact signs of a man's virility in Africa. It is ethnocentrist in its failure to recognise that African children provide the family with a labour pool¹³⁸ and are an insurance in old age¹³⁹ although Sen argues that even here, the costs of bearing and rearing children are inordinately borne by women.¹⁴⁰ Further, African women shun family planning owing to the high infant mortality rate arising from poverty and as such, population control is not a sufficient condition for raising standards of living. Is it not therefore better to address the root cause of the problem, which is the exploitative world market system? In any event, development policies that otherwise ignore or exploit poor women, while making them the main target of population control programmes, are highly questionable.¹⁴¹

¹³⁴ Maathai, *supra* note No. 7, pp. 37-40.

¹³⁵ Rocheleau, Dianne and Edmunds, David (1997): "Women, Men and Trees: Gender, Power and Property in Forest and Agrarian Landscapes," *World Development*, Vol. 25. No. 8, p. 1356.

¹³⁶ Spretnak, Charlene: "Ecofeminism: Our Roots and Flowering," in Diamond and Orenstein, *supra* note No. 130, p. 12 and Khasiani, Shanyisa: "Introduction," in Khasiani, Shanyisa (ed.) (1992): *Groundwork: African Women as Environmental Managers*, p. 1.

¹³⁷ Spretnak, *supra* note No. 136, p. 12 and Mies and Shiva, *supra* note No. 98, p. 138.

¹³⁸ Thomas-Slayter and Rocheleau, *supra* note No. 12, p. 125.

¹³⁹ Mies and Shiva, *supra* note No. 98, p. 280.

¹⁴⁰ Sen, Gita, "Women, Poverty and Population," in Harcourt, Wendy, (ed.) (1994): *Feminist Perspectives on Sustainable Development*, Zed books, London and New Jersey, at p. 218.

¹⁴¹ *Ibid*, p. 218.

2.6.2 *Alternative Paradigms of Development*

Mies and Shiva advocate alternative development strategies based on self-reliance, food self-sufficiency, re-ruralisation and participatory democracy¹⁴² because development according to the World Bank model is neither desirable nor possible. However, Braidotti *et al.* problematise this thesis, arguing that this alternative development model is predicated on its universal validity and is therefore just as guilty of universalism as the dominant development model.¹⁴³ Therefore, there is need for multiple development models as the totalising vision of development from the perspective of Third World women could lead to a mere reversal of hierarchies rather than their transcendence. Besides, women's subjugation does not necessarily imbue them with a superior vision.

2.6.3 *Higher Performance Technology*

Khamati, for instance, champions the use of more efficient cooking stoves to replace the wood-consuming 3-stone open cooking places.¹⁴⁴ However, if deforestation results more from commercial felling and large-scale agriculture, these improved stoves will have only a marginal effect on it, if at all. Solar stoves have also been found to be inapposite in Africa because:

[M]eals are prepared in the morning or evening when the sun has not yet risen or has already set. Furthermore: which cook wants to stand in the scorching sun? Finally, the nightly fire also [plays] a social function.¹⁴⁵

2.6.4 *Reforestation and Afforestation*

Sunny advocates planting multipurpose species such as Gum Arabic (*Acacia Senegal*) which fixes nitrogen in the soil and is used to manufacture confectionaries, beverages and pharmaceuticals. A key limitation is that, as Warren argues, men are the primary recipients of forestry training and are the major decision makers yet local women know more about trees than men and outside 'experts'.¹⁴⁶ Thomas-Slayter and Rocheleau contend that in choosing tree species, men and women have different priorities and while men are preoccupied with timber for home use and for sale;

¹⁴² Mies and Shiva, *supra* note No. 98, p. 302-304.

¹⁴³ Braidotti *et al.*, *supra* note No. 18, p. 108.

¹⁴⁴ Khamati, B: "Women's Role in the Supply of Fuelwood" in Kameri-Mbote, Patricia (ed.) (1992): *African Women as Environmental Managers*, ACTS, p.14.

¹⁴⁵ Mylenbusch, Helmut, "Appropriate Technology – Fashionable Term, Practical Necessity, or New Social Philosophy?" excerpt in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana Univ. Press, p. 9.

¹⁴⁶ Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, p. 9.

women are interested in fuelwood and soil fertility.¹⁴⁷ In any case, the exotic species such as pine and eucalyptus propagated in projects are unsuitable for domestic use due to their pungent smells.

2.6.5 Deconstruct Dominant Epistemologies

It has been suggested that feminism should continue to challenge the contemporary binary thinking which rests on difference as the foundation of all knowledge and therefore promotes hierarchy. And, given that thinking is highly contextualised,¹⁴⁸ women should be encouraged to train as extension workers,¹⁴⁹ planners, researchers and field staff.¹⁵⁰ Kameri-Mbote also suggests that the agriculture curriculum should be made more gender-sensitive, that women's contribution to the environment should be quantified through gender data disaggregation and indigenous knowledge documented and stored in a national repository¹⁵¹ such as an encyclopaedic compendium.¹⁵²

2.6.6 Consumer Liberation

Mies and Shiva promote consumer liberation and eloquently propound the need to return to a subsistence lifestyle of the kind that existed in pre-capitalist India.¹⁵³ In so doing, they validly question the West's insatiable consumption lifestyle. But as Braidotti *et al.* argue, this romantic past may have never existed given that history shows that the agricultural system was violently introduced in India upon the Asian invasion and that on the sub-continent, there are many people today who are not integrated into society and thus Mies and Shiva's model fails to account for highly exploitative structures along the axes of class and caste in India.¹⁵⁴ Moreover, it does not explain why widow burning, female infanticide and honour killings are still prevalent in India. In any case, how viable is the subsistence option in the densely populated countries of Europe and even India for example?

¹⁴⁷ Thomas-Slayter and Rocheleau, *supra* note No. 12, pp. 62, 64, 88.

¹⁴⁸ Braidotti *et al.*, *supra* note No. 18, p. 30.

¹⁴⁹ Nzomo, *supra* note No. 85, p. 112.

¹⁵⁰ Thomas-Slayter and Rocheleau, *supra* note No. 12, p. 203.

¹⁵¹ Kameri-Mbote, Patricia (ed.) (1992): *African Women as Environmental Managers*, ACTS, p. 23.

¹⁵² Thomas-Slayter and Rocheleau, *supra* note No. 12, p. 70.

¹⁵³ Mies and Shiva, *supra* note No. 98, pp. 10 and 253-254.

¹⁵⁴ Braidotti *et al.*, *supra* note No. 18, p. 95.

2.6.7 *Respect the Intrinsic Value of Nature*

The leading proponent of this thesis is Christopher Stone who, in his seminal essay "Should Trees Have Standing? – Toward Legal Rights for Natural Objects"¹⁵⁵ postulates that trees – which he uses as a metaphor for the non-human natural environment – should be accorded legal rights in their own right. He argues that although this may initially appear untenable, with sustained discourse, natural object rights will become conventional in the same way the circle of rights which initially only covered men widened to include women, children, the disabled, blacks and intangible entities such as nation-states and corporations.¹⁵⁶ The greatest merit of his thesis is that it calls for a radical departure from the dominant anthropocentric view to an appreciation of the intrinsic worth of nature with the corollary that all life forms should be allowed to fulfil their evolutionary destinies. However, assuming, as Stone does, that women's emancipation is complete and using this analogy as a basis for making the case for the environment's rights is problematic in Africa where women are anything but liberated. Moreover, the tree rights advocated are the parallels of human rights which principally postulate that an individual's life and dignity must be respected. This perspective is well-illustrated by the worldwide furore that followed the Abacha government's hanging of Ken Saro Wiwa and 8 other Ogoni activists in 1995 because they objected to the environmental degradation caused by Shell's oil exploitation in the Niger Delta. If, as Stone himself states, he is not advocating that no tree should be cut down – which if uprooted would be the equivalent of murder, the ultimate human rights violation, as it would lose its regenerative capacity – what threshold of environmental degradation should trigger the alarm bell signalling that the natural objects' rights have been infringed?

Admittedly, it is easy to determine when mammals are in pain and the cruelty argument has been used to successfully campaign for a ban on fox hunting using hounds in the UK, for a moratorium on whaling and is being used to lobby for an end to clubbing and shooting seals particularly in Canada. In comparison, trees' 'pain' is not easily decipherable with the effect that it would be more difficult to

¹⁵⁵ (1972), Heinonline, 45 S. Cal. L. Rev. 450.

¹⁵⁶ With the position that a company is a separate legal entity, distinct from its members being authoritatively laid down in the celebrated English case of *Salomon v Salomon and Co. Ltd* (1897 AC 22).

prove damages for this life form in court.¹⁵⁷ In any case, given its vital ecological role, the environment's health may be priceless in the sense that no amount of damages can adequately atone for its harm. Stone's thesis that damages should *inter alia* be based on making the 'environment whole' is superfluous in instances where its degradation has rendered species extinct as these genera are lost forever. Further, Stone's damages argument may unwittingly contribute to ecological degradation by giving pre-eminence to the 'pollute-and-pay' principle.

2.6.8 Collapse Hierarchies

This is premised on the belief that the subordination of one person to another is morally unacceptable. Fox-Genovese argues that rather than thinking in terms of dichotomies such as white versus black, male versus female, we must learn to think with pluralism and indeterminacy.¹⁵⁸ Some feminists portray women as inherently virtuous and men as innately vicious but as Eisler argues, there is a risk here of replacing patriarchy with matriarchy.¹⁵⁹ Indeed, women with power can be as ruthless as their male counterparts with the regimes of Margaret Thatcher, Indira Gandhi and Gloria Arroyo bearing out this claim. Therefore, the lives of both men and women are as much determined by class, ethnic and national issues as by their sex. But hierarchies between humans and nature need to be tackled as well. The rationale of this is well put by Christ:

There are no hierarchies among beings on earth. Yes we are different from the swallows that fly, from the many faceted stones on the beach, from the redwood trees in the forest. We may have more capacity to shape our lives than other beings, but you and I will never fly with the grace of a swallow, live as long as a redwood tree, nor endure the endless tossing of the sea like a stone. Each being has its own intrinsic beauty and value.¹⁶⁰

¹⁵⁷ Indeed, D'Amato, Anthony and Chopra, Sudhir, in their 1991 article, "Whales: Their Emerging Right to Life," Vol. 85, *AJIL*, p.21 base their call for a permanent ban on whaling on the fact that whales have higher-than-human intelligence and that they perceive acute pain (associated with harpooning) to an even greater degree than humans owing to the fact that they have a "far wider range of skin sensations apparently registered by [their] complex cerebral cortex" (p. 25).

Further, Hoffmeyer, Jesper, "Biosemiotics and Ethics," in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London and New Jersey, at p. 151, also make a spirited case for ascribing inherent value to "at least mammals."

¹⁵⁸ Fox-Genovese, *supra* note No. 69, pp. 4 and 241.

¹⁵⁹ Eisler, Riane: "The Gaia Tradition and the Partnership Future: An Ecofeminist Manifesto," in Diamond and Orenstein, *supra* note No. 130, p. 23.

¹⁶⁰ Christ, Carol: "Rethinking Theology and Nature," in Diamond and Orenstein, *supra* note No. 130, p. 66.

2.6.9 Amendment of Environmental Laws and Policies

Kabeberi-Macharia and Nzomo advocate amendment of environmental laws to take account of women's role in environmental management.¹⁶¹ There is therefore need for more women Members of Parliament to influence legislation¹⁶² and to identify laws and policies that should be revised in order to make them consistent with the role of women as environmental managers.¹⁶³ However, law is neither a panacea nor an end in itself. This is because most women have limited knowledge of their legal rights¹⁶⁴ owing to lower literacy levels among them.¹⁶⁵ As MacKinnon observes:

To most women, law is a foreign country with an unintelligible tongue, alien mores, secret traps, uncontrollable and unresponsive dynamics, obscure but rigid dogmas, barbaric and draconian rituals, and consequences as scary as they are incomprehensible... The people who can and do make the law work for them, who designed it so it could work for them as if they were the whole world, are men – specifically, white upper-class men.¹⁶⁶

Thus, there is a growing disjuncture between the growing workload for women and their legal status.

2.7 Lacunae in the Literature Reviewed

2.7.1 Treatment of Women's Subordination not Exhaustive

In the context of this paper, ecofeminism is predicated on the realisation that both women and nature are treated unfairly by patriarchal systems. To that extent, there is need to exhaustively document the ways in which the discrete exploitation of each of these is manifested. While several ecofeminists have recorded the wanton destruction of the environment for instance species loss and deforestation, they only mention the subjugation of women *qua* women in passing. On the other hand, there is considerable literature on the interfaces between women and the environment but insofar as this phenomenon is rooted in the oppression of women, failure to accord adequate treatment to the latter issue as a precursor to a discussion of these woman-nature interactions is a major weakness.

¹⁶¹ Kabeberi-Macharia, *supra* note No. 119, p. 92 and Nzomo, *supra* note No. 85, p.101.

¹⁶² Nzomo, *supra* note No. 85, p. 114 and Thomas-Slayter and Rocheleau, *supra* note No. 12, p. 11. In addition, under Section 116(2)(2) of the Draft Constitution, 30% of all MPs must be women although no formula for attaining this figure is spelt out lending credence to charges that the provision is mere rhetoric.

¹⁶³ Kameri-Mbote, *supra* note No. 14, p. 2.

¹⁶⁴ Thomas-Slayter and Rocheleau, *supra* note No. 12, pp. 12 and 39.

¹⁶⁵ Thrupp, Lori Ann and Green, Jennifer: "Reflections on Gender in Natural Resource Management," in Sigot, Asenath *et al.* (eds.) (1995): *Towards Common Ground: Gender and Natural Resource Management in Africa*, ACTS, Nairobi and World Resource Institute, Washington DC, p. 107.

¹⁶⁶ MacKinnon, Catherine (2005): *Women's Lives, Men's Laws*, Harvard University Press, Cambridge Massachusetts and London, p. 32.

2.7.2 No Link between Ecofeminism and Sustainable Development in Kenya

There is virtually no literature linking ecofeminism and sustainable development in Kenya. Loer attempts to link ecofeminism and development in Kenya¹⁶⁷ while Wacker focuses on sustainable development and women¹⁶⁸ in general and in both cases, a key angle is conspicuously absent.

2.7.3 Lack of Legal Angle to Ecofeminism and Sustainable Development

The existing literature has not examined the nexus between ecofeminism and sustainable development from a legal perspective. The closest anyone comes is Carol Smart who argues that because law and masculinity share mutual resonances,¹⁶⁹ law is ill-suited to address the core concerns of feminism (and by extension ecofeminism). Accordingly, there's need to deconstruct the discursive power of law and to problematise its supposedly legitimate place in the order of things and she proposes that rather than being preoccupied with legal reform, feminism should construct an alternative reality to the version manifested in the archetypically androcentric legal discourse.¹⁷⁰ This is because despite legal reform, women are not vested with complete civil standing given that legally, the public person remains a man although ironically, the ideal man of law is a myth as the concept fails to reflect real men's inconsistencies and complexities.¹⁷¹

2.7.4 Different Ideologies of Contributing Authors

Many of the texts reviewed are anthologies and while the multifarious authors offer a refreshing multitude of multidisciplinary perspectives on ecofeminism, they often enunciate contradictory ideologies. So, while Merchant touts socialist feminism as more appropriate for dismantling domination,¹⁷² in the same publication, King asserts that this category of feminism has not

¹⁶⁷ Loer, Joseph: "Ecofeminism in Kenya: A Chemical Engineer's Perspective," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana Univ. Press, pp. 279-289.

¹⁶⁸ Wacker, Corrine, "Sustainable Development Through Women's Groups: A Cultural Approach to Sustainable Development," in Harcourt, Wendy (ed.) (1994): *Feminist Perspectives on Sustainable Development*, Zed Books, London and New Jersey.

¹⁶⁹ Smart, Carol (1989): *Feminism and the Power of Law*, Routledge, London and New York, p. 86. She argues that the adversarial style of many legal systems replicates masculine aggressive verbosity and machismo.

¹⁷⁰ Ibid, pp. 5, 12 and 160.

¹⁷¹ Man of Law, pp. 7 and 23.

¹⁷² Merchant, Carolyn: "Ecofeminism and Feminist Theory" in Diamond and Orenstein, *supra* note No. 130, p. 100.

sufficiently addressed the domination of nature.¹⁷³ And while Apffel-Marglin and Simon chide 'experts' for ignoring women's indigenous knowledge,¹⁷⁴ Hausler still advocates a crucial role for them arguing that they "can provide inroads into dismantling the Western framework of thinking."¹⁷⁵

2.7.5 *Dearth of Literature by African Authors*

Besides the works by Khasiani and Kameri-Mbote, most of the literature is written by whites. Hence, Fox-Genovese writes about the "United States Declaration of Independence" and of the "quintessential American self" while Merchant alludes to women struggling to free themselves from subordination to men in *American* society.¹⁷⁶ Mies is German while Smart is British. A consequence of this is that this literature is, from the African context, largely abstracted and the issues dealt with, such as pornography, paedophilia, surrogacy and homosexuality are not of immediate relevance to rural Kenyan women.¹⁷⁷ While Western women are concerned about spraying of chemicals, careless disposal of toxic wastes and seepage from nuclear power plants, Third World women have more immediate worries such as walking long distances in search of water¹⁷⁸ and fuelwood and may find it impossible to identify with a movement that they perceive as impervious to their needs. Hence the dominant strand of ecofeminism is ethnocentric and there is a real danger that it can reproduce the very dualism it purports to deconstruct.¹⁷⁹ Western feminism also tends to homogenise all Third World women yet as King argues, these have historically divergent life situations.¹⁸⁰

Even those pieces which cover relevant issues are written by non-Africans. Thus, Braidotti *et al.* acknowledge that they occupy "privileged positions as white academic women"¹⁸¹ while Dankelman

¹⁷³ King, Ynestra: "Healing the Wounds: Feminism, Ecology and the Nature-Culture Dualism," in Diamond and Orenstein, *supra* note No. 130, p.114.

¹⁷⁴ Apffel-Marglin, Frederique and Simon, Suzanne: "Feminist Orientalism and Development," in Harcourt, Wendy (ed.) (1994): *Feminist Perspectives on Sustainable Development*, Zed Books, London and New Jersey, p. 34.

¹⁷⁵ Hausler, Sabine: "Women and the Politics of Sustainable Development," in Harcourt, Wendy (ed.) (1994): *Feminist Perspectives on Sustainable Development*, Zed Books, London and New Jersey, p. 153.

¹⁷⁶ Merchant, *supra* note No. 108, p. xix.

¹⁷⁷ E.g., Africans are labelled 'backward' and 'intolerant' when they frown upon homosexuality and the consecration of avowed homosexual Gene Robinson as bishop of the New Hampshire Episcopal Church in the US rocked the very foundation of the Anglican Church with both the African clergy and laity threatening to break away.

¹⁷⁸ Diamond and Orenstein *supra* note No. 130, p. x.

¹⁷⁹ Braidotti *et al.*, *supra* note No. 18, p. 51.

¹⁸⁰ King, *supra* note No. 173, and Quinby, Lee: "Ecofeminism and the Politics of Resistance," both in Diamond and Orenstein, *supra* note No. 130, pp.111 and 126.

¹⁸¹ Braidotti *et al.*, *supra* note No. 18, p.13.

and Davidson admit that it is "impossible to adequately convey the drudgery and suffering so many Third World women must face in their daily struggle to survive" and that "Northern women, writing about life in the South, can do little more than try to give some voice to the voiceless."¹⁸² Similarly, Moss points out that her "reflections are those of a white, urban, intellectual Norwegian mother in her thirties"¹⁸³ while Salleh speaks from the complex position of "a white adopted child of Irish-German-Jewish extraction and single mother of mixed race Malay-Muslim children."¹⁸⁴ The closest we come to Third World authors is Shiva who is Indian. Given its level of development, however, critics have questioned the wisdom of classifying India as a Third World country.¹⁸⁵ Therefore, there is a fear that ecofeminism will be hijacked by Western women who will continue to patronise the marginalised women. Indeed as Carol Smart aptly reasons:

Just as 'white feminism' has argued that men should become aware that they are gendered beings who benefit from the gendered order, so 'black feminism' argues that white women and men should become aware of the privileges that accrue to them arising from being 'white' and the oppression of black people.¹⁸⁶

Similarly, Fox-Genovese argues that black women have reason to fear oppression by whites as much as or more than oppression by black men. This challenges the notion of a universal female experience as oppressed women see privileged women as their oppressors or at least as beneficiaries of their oppression.¹⁸⁷ Accordingly, there is merit in the charge that, as currently conceived, ecofeminism does not adequately consider the unique experiences of women of colour.¹⁸⁸ Thus, there is need to decentre ecofeminism's whiteness so as to tackle ills such as racism which exclusively affect non-white people and unless we construct African critiques of patriarchy, African women will remain 'natural resources' for white ecofeminists rather than becoming partners in the struggle.¹⁸⁹

¹⁸² Dankelman and Davidson, *supra* note No.38, preface.

¹⁸³ Moss, Helga, "Consumption and Fertility," in , in Harcourt, Wendy (ed.) (1994): *Feminist Perspectives on Sustainable Development*, Zed Books, London and New Jersey, p. 238.

¹⁸⁴ Salleh, *supra* note No. 3, p. xiv.

¹⁸⁵ According to Goldman Sachs: "Dreaming with the BRICs: The Path to 2050," *Global Economics Paper No. 99*, 1st October 2003, India is poised to become an economic powerhouse, along with Brazil, China and Russia by 2030 with its GDP topping US\$ 27.8 trillion in 2050.

¹⁸⁶ Smart, *supra* note No. 169, p. 2.

¹⁸⁷ Fox-Genovese, *supra* note No. 69, pp. 18-19.

¹⁸⁸ Taylor, Dorceta: "Women of Colour, Environmental Justice and Ecofeminism," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, p.62.

¹⁸⁹ Sturgeon, Noel: "The Nature of Race: Discourses of Racial Difference in Ecofeminism," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, p. 272.

2.7.6 Existing Literature Dated

The existing literature on women and environment in Kenya is somewhat dated and while most of it remains relevant as women continue to be treated as second-class citizens, it does not take into account new legislative developments such as the 1999 Environmental Management and Coordination Act,¹⁹⁰ the 2002 Water Act,¹⁹¹ 2005 Forest Bill and the Draft Constitution. This paper discusses these new laws and their implications for ecofeminism.

2.7.7 Existing Literature Anecdotal and Ideological

The existing literature is anecdotal and discusses ecofeminism from an ideological perspective yet in reality, Kenyan women do not see it as ideology, they merely go about their lives using their commonsense understanding of everyday needs and if they happen to implement ecofeminist principles, they do so unwittingly. In any event, most rural women do not speak the language of development and research.¹⁹² There is therefore the danger that the grand-sounding notion of ecofeminism as presently constructed will lose sight of the daily realities of people's lives. This disjuncture exists because ecofeminism should be a grassroots movement as rural women are the ones who most interact with the environment yet feminists are largely urban women. To bridge the gap between theory and reality, the paper draws on the gender-specific relationships with the environment from rural women's experiences in diverse regions of Kenya. There is therefore need to link theory with what is happening on the ground so that each can validate the other. There is also need for a holistic approach. As Braidotti *et al.* observe:

A poor Third World woman's first environment is her body. If her child is dying, it is useless to talk to her about trees.¹⁹³

2.8 Conceptual Framework

The above consists of feminism, environmentalism and a reconceptualised concept of the sustainable development. The conceptual framework also includes precursor themes such as

¹⁹⁰ Act No. 8 of 1999.

¹⁹¹ Act No. 8 of 2002.

¹⁹² Chandler and Wane, *supra* note No. 34.

¹⁹³ Braidotti *et al.*, *supra* note No. 18, p. 119.

women in development (WID) and women, environment and development (WED) and gender and development (GAD), which although much discredited,¹⁹⁴ still have a lot to offer.

2.8.1 *Ecofeminism and Feminist Theory*

While ecofeminism has roots in the wide variety of feminisms, what makes it distinct is that nonhuman nature and naturalism are feminist (or womanist) issues and as such, ecofeminists take empirical data on women-nature connections very seriously.¹⁹⁵ The major feminist theories are liberal, radical, socialist and Marxist in orientation.¹⁹⁶ Liberal feminism is consistent with the objectives of reform environmentalism to alter human relations with nature through the passage of new laws and regulations.¹⁹⁷ Radical feminism posits that women and men's interests are irreconcilably different¹⁹⁸ and therefore its offshoot, radical ecofeminism, analyses environmental problems from within its critique of patriarchy and offers alternatives that could liberate both women and nature while socialist ecofeminism (itself a derivative of socialist feminism) grounds its analysis in capitalist patriarchy and would totally restructure, through a socialist revolution, the domination of women and nature inherent in the market economy's use of both as resources.¹⁹⁹ Marxist feminism on the other hand, links women's oppression to the forms of capitalist exploitation of labour and analyses women's paid and unpaid work in the context of the capitalist economy and postulates that there are inextricable links between race, class and gender oppression and accordingly considers capitalism, imperialism and sexism as inseparable. Adherents of this school therefore advocate the eradication of all forms of oppression rather than being preoccupied with advancing the interests of women. Like other schools of thought which share Marxism as a common denominator, Marxist feminism uses dialectical materialism in analysing sources of gender oppression.²⁰⁰

¹⁹⁴ See e.g. Apffel-Margin and Simon, *supra* note No. 174, who at p. 32 argue that the WID discourse is predicated on the same colonial perception of the victimisation of women and Wells and Wirth, *infra* note No. 411, who at p.303 posit that it is preoccupied with biological differences rather than social relationships. See also Sigot, *supra* note No. 15, pp. 2 to 4 for a concise discussion of the evolution and critique of the 3 concepts.

¹⁹⁵ Warren, *supra* note 2, pp. 4-5.

¹⁹⁶ Kameri-Mbote, Patricia (2003): "Gender Considerations in Constitution Making: Engendering Women's Rights in the Legal Process," *University of Nairobi Law Journal*, Vol. 1, 2003, p. 158.

¹⁹⁷ Merchant, *supra* note No. 172, p. 100.

¹⁹⁸ Kameri-Mbote, *supra* note No. 196, p. 161.

¹⁹⁹ Merchant, *supra* note No. 172, p. 100.

²⁰⁰ Kameri-Mbote, *supra* note No. 196, pp. 158, 159-160.

However, as Braidotti *et al.* argue, there is need to be wary of zooming in on one of the above feminisms, partly because the attendant labelling exercise could distort and oversimplify the views of the movement leading to fragmentation and divisiveness.²⁰¹ In any case, diversity should be a source of strength as it enables women to challenge patterns of domination from various perspectives simultaneously. Besides, it is distinguishing enough to talk of feminist theory without going further to 'split hairs' as the latter will cause unwarranted schisms among ecofeminists. After all, as Merchant admits, all the strands of feminism have contributed to the ecofeminist perspective in different ways:

[A]lthough the ultimate goals of liberal, radical and socialist feminists differ as to whether capitalism, women's culture or socialism should be the ultimate objective ... there is more unity than diversity in women's common goal of restoring the natural environment and quality of life for people and other living and non-living inhabitants of the planet.²⁰²

Therefore ecofeminism cannot be a monolithic homogeneous ideology, and there can be no right or wrong feminist perspectives on sustainable development.²⁰³ In any case, while ecofeminism builds on existing feminist theories, these are in turn challenged to make sense of the ecological crisis²⁰⁴ and to resonate with Third World and indigenous knowledges. Moreover, as ecofeminism is a holistic approach to all isms of domination, it is not a particularistic campaign for women's own advancement as feminism is.²⁰⁵

2.8.2 *The Concept of Environmentally Sustainable Development (ESD)*

As already argued, both the anatomy and interpretation of the concept of sustainable development are fundamentally flawed. There is therefore need to review the notion in order to take into account the competing needs of environmental protection and development hence coining the term 'Environmentally Sustainable Development' (ESD) which is preferable to sustainable development whose phraseology and construal are blatantly skewed in favour of economic development as already argued. Further, ESD de-emphasises economic indicators as the sole instruments for gauging development and encompasses unquantifiable but nonetheless vital notions as social,

²⁰¹ Braidotti *et al.*, *supra* note No. 18, p. 60.

²⁰² Merchant, *supra* note No. 172, p. 105.

²⁰³ Harcourt, *supra* note No. 52, p. 7.

²⁰⁴ Salleh, *supra* note No. 3, pp. 104 and 107.

²⁰⁵ *Ibid.*, p. 109.

cultural and political aspects. Hence development should besides, inter-generational equity mean intra-generational equity, inter and intra-gender equity, secure livelihoods, ecological sustainability, upholding non-retrogressive cultures and political participation.

2.9 Conclusion

The preceding literature review and conceptual framework have set the stage for the discussion of whether ecofeminism is an appropriate model for ensuring environmentally sustainable development in Kenya. In this context, the components of the conventional notion of sustainable development have been problematised and deconstructed to make them more relevant to rural Kenyan women's situation. Indeed, the threat of a global environmental holocaust makes imperative a fundamental rethinking of the premises on which the dominant model of development is based. It has been seen that due to their different experiences and discrete gendered spaces and interactions with the environment, Western and even non-African women cannot really claim to speak for Kenyan or indeed Third World women, however laudable their personal commitment. As already argued, there's need to remedy the dearth of truly African literature on Kenyan ecofeminism and this paper is a modest endeavour to develop a triangulated analysis of ecofeminism, sustainable development and law in Kenya.

CHAPTER THREE: LAW AND RURAL KENYAN WOMEN'S INTERFACES WITH SELECTED FOREST, WATER AND WILDLIFE RESOURCES

3.1 Introduction

This Chapter interrogates the rural Kenyan women's interactions with selected natural resources namely; the Mau Forest Complex, Mt. Kenya National Park and the perennial floodwaters of Budalangi. Admittedly, even though it has been justifiably contended that women are not a monolithic homogeneous group owing to their vast cultural, social and economic differences, these interfaces are arguably a microcosm of rural Kenyan women's interaction with nature because they share poverty, are bound together by their tremendous work burden²⁰⁶ and they are invariably oppressed by the patriarchal ordering of society. The latter is *inter alia* manifested in the various laws that govern both women's lives and the environment. The Chapter begins with a juxtaposition of Kenyan women's *de jure* and *de facto* statuses with the latter resonating with the ongoing wanton environmental degradation discussed in the paper.

3.2 Kenyan Women's Status

3.2.1 The Legal Framework: De Jure Rights and De Facto Discrimination

3.2.1.1 Global Instruments

The key global instruments are the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1952 Convention on the Political Rights of Women and the 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Article 2 of UDHR stipulates that everyone is entitled to all the rights and freedoms set forth thereunder without distinction of *inter alia*, sex. Article 3 of the ICCPR provides for the equal rights of men and women to enjoy civil and political rights while Article 3 of the ICESCR provides for equal enjoyment by men and women of all economic, social and cultural rights which are enumerated under the instrument such as the right to work (Article 6), the right to social security

²⁰⁶ Dankelman and Davidson, *supra* note No. 38, p. 3.

(Article 9) and the right to education (Article 13). The Convention on the Political Rights of Women aims to ensure equal participation of men and women in public life and women are granted the right to vote and to be eligible for election to public office. In Article 3, CEDAW obliges state parties to take all appropriate measures, including legislation, to ensure full development of the rights of women so as to guarantee them the enjoyment of human rights and fundamental freedoms on an equal basis with men. Unfortunately, Kenya has not yet domesticated this treaty lending credence to assertions that feminists should not expect too much from international law as the conventions which recognise the role and rights of women are the most disregarded by the international community.²⁰⁷

3.2.1.2 Regional Treaties

Women-specific regional instruments include the 1981 African Charter on Human and Peoples' Rights (ACHPR) and the 2003 African Protocol on the Rights of Women (APRW). Article 18(3) of the ACPHR obliges state parties to ensure the elimination of discriminations against women and the protection of the rights of women as stipulated in international declarations and conventions. Article 2 of APRW, on the other hand, stipulates that states parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.

3.2.1.3 National Legal Framework

At the domestic level, Kenya has a plethora of laws touching on the status of women with the most important being the Constitution and even though this is predicated on the notion of equality of all citizens regardless of gender, the fact that it is replete with discriminatory provisions renders this presumed equality to be mere rhetoric. It, for example, permits gender discrimination with respect to adoption, marriage, divorce, burial, inheritance and matters of personal law.²⁰⁸ Further, a person born outside Kenya after 11th December 1963 can only become a Kenyan citizen if the father was a citizen at that date.²⁰⁹ A similarly-worded provision was the issue in the landmark Botswana case of

²⁰⁷ Connelly, Frances, "Feminism and Political Change," in Harcourt, Wendy, (ed.) (1994): *Feminist Perspectives on Sustainable Development*, Zed books, London and New Jersey, p. 193.

²⁰⁸ Section 82(4)(b) of the Kenya Constitution.

²⁰⁹ Section 90 of the Kenya Constitution. However, it should be pointed out that this is remedied in Section 16(2) of the Draft Constitution, which confers citizenship on a person born outside Kenya if either parent is a citizen.

Unity Dow v Attorney General of Botswana.²¹⁰ Ms. Dow persuaded the Court of Appeal that national laws which allowed only a father or an unmarried mother to pass Botswana citizenship to his or her children born both within Botswana and abroad was in contravention of the Constitution because it discriminated against a Botswana woman married to a foreigner as her children were deemed to be non-citizens even if born in the country. This case is significant because nationality not only provides individuals with a sense of belonging, it governs the exercise of many political, economic, social and cultural rights such as the right to vote.²¹¹

An instance where statutory law is blatantly discriminatory is the Employment Act,²¹² Section 7(2) of which provides that a woman taking two months' maternity leave is not entitled to annual leave that year. This effectively reduces maternity leave to only 5 weeks which is well below the international standard of 12 weeks.²¹³ This is particularly unfair because women are hardly on holiday here as it is a hectic time with the mother extremely exhausted from the demanding care she has to continually accord the newborn(s).

Case law is also replete with instances of discrimination against women with the celebrated case of *Wambui Otieno v Ochieng Ougo and Omolo Siranga*²¹⁴ illustrating this. Court here used customary law as a pretext for denying the appellant her prayer to bury her husband in Upper Matasia, Nairobi holding that the deceased, SM Otieno, would be buried in Nyalgunga, Siaya according to Luo customs. The judges rejected the argument that since the deceased's lifestyle was essentially cosmopolitan, his personal law had ceased to be Luo customary law. This reasoning is questionable given that personal law can in fact change through change of religion or citizenship. Although culture should ideally evolve, this case is testament that if it metamorphoses at all, it does so too slowly and is thus virtually fossilised, to the detriment of women.

²¹⁰ 1992 LRC (Const. 623).

²¹¹ This is however remedied by the Draft Constitution, Section 17 of which provides that a person is a citizen by birth, if either the *mother* or father of that person was a citizen at the date of that person's birth.

²¹² Cap 226, Laws of Kenya.

²¹³ As per ILO Convention No. 103 Concerning Maternal Leave, ILO, 1952.

²¹⁴ Court of Appeal at Nairobi (Nyarangi, Platt, Gachuhi JJA) 13th February 1987, Civil Appeal No. 31 of 1987.

Another area where women have been discriminated against is in sharing matrimonial property upon dissolution of a marriage. In *Kimani v Njoroge*,²¹⁵ it was held that the wife's share in property acquired during coverture would be proportionate to her direct or indirect contribution to its acquisition. This ruling was in spite of unequivocal precedents like *Kivuitu v Kivuitu*²¹⁶ and *Nderitu v Nderitu*²¹⁷ where courts held that matrimonial property is presumed to be held by the husband and wife in equal shares. Rape is another area where the law is prejudicial to women as courts invariably require corroboration of the victim's evidence²¹⁸ even though these crimes are typically committed in secret. It took the groundbreaking case of *Mukungu v R*²¹⁹ for this onerous requirement to be dropped with the court here holding that requiring such corroboration was unconstitutional as it discriminated against women.

3.2.2 Kenyan Women's Multiple Discrimination

Banda and Chinkin argue that most anti-discrimination laws place people within a single category, identified through such characteristics as race, sex, religion or ethnicity which fails "to take account of the reality that people have multiple, interlocking identities that shape their lives."²²⁰ Kenyan women have to continually confront at least 3 of the following discriminations; as Third World people, black Kenyans, indigenous people and women which amalgamate to qualify the Third World woman as the true Fanonian 'wretched of the earth' as she is located at the intersection of all these circles of oppression. Crucially, these multiple discriminations do not operate independently but intersect with and reinforce each other with cumulative adverse consequences for the enjoyment of human rights.²²¹ Nevertheless, the paper attempts to engage the discrete effects associated with each of these forms of discrimination.

²¹⁵ 1997 LLR 553 CAK.

²¹⁶ 1985 LLR 1411 CAK.

²¹⁷ 1998 LLR 2731 CAK.

²¹⁸ E.g. *Njuguna Wangurimu v R* (1953) EACA 196 and *Maina v R* (1970) EA 370. In the latter case, Mwendwa CJ and Madan J justified the need for corroboration by implying that women are pathological liars. However Smart, *supra* note No. 169, p. 46, argues that dropping the requirement for corroboration will not raise the rate of convictions unless "the nightmare of the Kafkaesque trial" is tackled.

²¹⁹ Court of Appeal at Mombasa (Kwach, Bosire and O'Kubasu JJA) 30th January 2003.

²²⁰ Banda, Fareda and Chinkin, Christine (2004): "Gender, Minorities and Indigenous Peoples," Minority Rights Group International, p. 3.

²²¹ *Ibid*, p. 11.

3.2.2.1 As Third World People

Third World people are marginalised by an inequitable world economic order which is manifested by a skewed international trade regime and unfair 'development' policies. Unfavourable terms of trade forced upon African countries ensure falling commodity prices with the attendant low income earned used to pay for dear imports such as oil²²² leading to substantial trade and budget deficits which in turn lead to high levels of indebtedness. This implies that most of the income is used to repay international donors rather than diversify the economy which in turn ensures that these countries continue to export low value commodities and thus the vicious cycle continues perpetually. Further, it has been contended that the World Bank and IMF's policies particularly its SAPs have resulted in increased malnutrition, environmental degradation, incidence of disease, currency devaluation and falling per capita income in Africa lending credence to assertions that these institutions are not alleviating poverty but institutionalising it. More recently, enforcement of the TRIPs regime has ensured that the North extracts steep royalties for their inventions leading to considerable resource outflows particularly to the US, EU and Japan²²³ while concomitantly obtaining virtually free access to the biological resources of the South²²⁴ which are not covered under traditional patent systems. At the June 2005 Gleneagles summit, the G8 leaders pledged to increase *aid* to Africa by US\$ 10 billion to US\$ 30 million annually by 2010 yet what is really needed is fairer trade.

3.2.2.2 As Black Kenyans

In comparison to Uganda and Tanzania, there's a considerable white citizenry in Kenya, although it is estimated that this comprises less than 1 percent of the country's population.²²⁵ Okoth-Ogendo attributes the virtual absence of a settler community in Uganda to less favourable eco-climatic factors and early missionary alliances with existing indigenous political institutions.²²⁶ Even though

²²² Although a barrel of US light crude currently trades for US\$ 57.45 in August 2005, it hit an all time high of US\$ 67.

²²³ Hobbelink, Henk, "Biotechnology and the Future of Agriculture," in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London and New Jersey, p. 227.

²²⁴ See e.g. Fowler, Cary, "Biotechnology, Patents and the Third World," in Shiva, Vandana and Moser, Ingunn (eds.) (1995): *Biopolitics: A Feminist and Ecological Reader on Biotechnology*, Zed Books, London and New Jersey, p. 220.

²²⁵ Ochieng, Zachary (2005): "Warden's Murder Fuels Racial Tension," accessed at

www.newsfromafrica.org/newsfromafrica/articles/art_10321.html

²²⁶ Okoth-Ogendo, *supra* note No. 122, p.3.

racial superiority has a feeble basis in biology,²²⁷ that whites are considered racially superior in Kenya is evident from their 'enviable' economic status, the selective application of the law in cases involving them²²⁸ and their position as owners of massive tracts of land leased to them for 999 years.²²⁹ The Draft Constitution's proposal, in Section 83(1), to convert lease periods of land held by non-citizens to a maximum of 99 years is superfluous as these whites are in fact Kenyans. In addition, in Kenya, Asians hold considerable economic power.

3.2.2.3 As an Indigenous People

Indigenous people are defined by Article 1(b) of the 1989 ILO Convention on Indigenous and Tribal Peoples (c.169) and the term is often used to describe communities with aboriginal stature such as the Maori of New Zealand, the Aborigines of Australia and the San 'people' of Southern Africa. Typically, they are a minority group that has a pre-colonial link with a territory, they have been dispossessed of their ancestral land, are economically marginalised and they see their native culture as threatened and want cultural integrity, autonomy and survival as opposed to cultural assimilation.²³⁰ The UDHR does not explicitly cater for minority communities presumably because the UN felt that they would best be protected as individuals guaranteed the right to be free from discrimination on the basis of race, sex, language, political or other opinion, national origin, property, birth or other status as stipulated in Article 2. This stance is reiterated by Articles 2 and 26 of the ICCPR, Article 2 of the ICESCR as well as regional treaties such as the ACHPR (Article 2).

3.2.2.4 As Women

In his "Song of Ocol," Ugandan poet Okot p'Bitek poignantly summarises the plight of African women which is of course applicable to rural Kenyan women:

²²⁷ Fox-Genovese, *supra* note No. 69, p. 161.

²²⁸ For a discussion of the recent Thomas Cholmondeley saga, see *infra* section 3.4.1.1.

²²⁹ Huge white landowners include the Delamere family, which owns a 50,000 acre farm in Naivasha-Nakuru, Rea Vipingo, Kakuzi, Del Monte and Basil Criticos, a Kenyan of Greek extraction, who owns a 47,000 acre sisal farm in Taveta. In August 2004, the Maasai in Laikipia demanded restitution of 'their' land arguing that the controversial 1904 Anglo-Maasai pact executed by the 'illiterate' Laibon Olonana ole Mbatian and 18 clan heads and Donald Stewart, then Commissioner of the East African Protectorate where the Maasai purportedly ceded their land to British settlers for 99 years had lapsed. Unbeknown to the Maasai, their ancestors had in fact been duped into signing 999-year leases.

²³⁰ See e.g., Steiner, Henry and Alston, Philip (2000): *International Human Rights in Context: Law, Politics, Morals*, Oxford University Press, Oxford and New York, pp. 237 to 316.

Woman of Africa
Sweeper
Smearing floors and walls
With cow dung and black soil
Cook, ayah, the baby on your back ...
Washer of dishes,
Planting, weeding, harvesting
Storekeeper, builder
Runner of errands
Cart, lorry, donkey ...
Woman of Africa
What are you not?²³¹

Women are also discriminated against in laws and their interpretation, in unconscionable cultural practices such as wife inheritance, FGM, child marriages, polygamy and at workplaces where they are confronted with 'glass ceilings' associated with stereotypes about their ability. Besides, the education of the Girlchild is often considered a waste of meagre family resources.²³² Therefore, in the words of Salleh, "a stereotypical gender dualism is imposed over everyday happenings, only to become a highly repressive social apparatus."²³³ According to UNDP, Kenya's gender empowerment measure (GEM) was a dismal 0.421 in 2004, reflecting a male bias in positions of power and decision making in Kenya as women accounted for 4.1 percent of parliamentarians, 6.1 percent of ambassadors, 13.3 percent of permanent secretaries and 15.9 percent of deputy secretaries while there was 1 woman provincial commissioner and 4 women cabinet ministers.²³⁴

3.3 Women and Forests: Ogiek Women and the Mau Forest Complex

3.3.1 Ogiek Women's Quadruple Discrimination

Ogiek women are arguably confronted with quadruple discrimination; as Third World people, as black Kenyans, as indigenous people and as women. The section engages the specificities of the latter two categories of discrimination as the first two have already been discussed.

²³¹ Okot p'Bitek (1972, 1989): "Song of Ocol," in *Song of Lawino and Song of Ocol*, East African Educational Publishers, Dar es Salaam, Kampala and Nairobi, p. 133.

²³² Although this has somewhat been rendered somewhat superfluous by the introduction of the Free Primary Education Programme (FPE).

²³³ Salleh, *supra* note No. 3, p. 36.

²³⁴ UNDP (2005): *Fourth Kenya Human Development Report: Linking Industrialisation with Human Development*, UNDP, Nairobi, Kenya, p. 8.

3.3.1.1 As Ogiek (i.e. a Minority Tribe)

The Ogiek, who number between 10,000 to 20,000,²³⁵ are arguably the largest hunter-gatherer community in Kenya and are considered by anthropologists to be the autochthonous inhabitants of Kenya with archaeological evidence suggesting that inhabitation of the Mau escarpment dates back more than 5 millennia.²³⁶ They do not have centralised leadership institutions like chieftaincies or political councils and the *oret* (clan) is the most important social unit.²³⁷ They are discriminated against by other tribes in Kenya who derogatorily refer to them as *Dorobo*,²³⁸ and government where responsibility for Ogiek issues is fragmented between various ministries; bee keeping is under the ambit of the Ministry of Agriculture, forests are under the Ministry of Environment and Natural Resources while cultural issues are under the Ministry of Gender, Sports, Culture and Social Services.²³⁹ No one-stop-shop department has therefore been created to address indigenous minority issues as these are perceived as retrogressive and must therefore be annihilated. In the case of the Ogiek, this takes the form of periodic evictions from the Mau Forest Complex. This parochial view was given legal effect in *Francis Kemai and Others v The AG and Others*²⁴⁰ where Oguk and Kuloba JJ upheld government's eviction of the Ogiek arguing that their traditional way of life had been superseded by the modernity that the community had embraced:

One matter sharply illustrates the clear change from the traditional cultural way of life to a ... modern lifestyle ... [The] traditional shelters contrast sharply with the modern houses of corrugated iron-sheet roofs and glass windows ... While the Ogiek of ... yonder past were bound by honey, those of today ... are bound by the spirit of the Church. So, whilst in their undiluted traditional culture the Ogiek knew their environment best and exploited it in the most conservational manner, they have embraced modernity which does not necessarily conserve the environment ... Therefore, for the applicants to tell the court as they did that they lead a life which is environmentally conservational, is to [speak] of a people of a by-gone era, and not of the present.

This contempt for indigenous culture demonstrates that judges invariably 'stand on inarticulate premises' and echoes the rulings of New Zealand courts where in *Kotuku Parks Ltd v The Kapiti Coast District Council*²⁴¹ and *Robert Te Kotahi Mahuta and others v Waikato Regional Council*,²⁴²

²³⁵ Towett, Kimaiyo (2004): *Ogiek Land Cases and Historical Injustices 1902-2004*, OWC, Nakuru. Kenya, p. 7.

²³⁶ Jackson A. J. H. and McCarter, P. S. (1994): "A Profile of the Mau Forest Complex," KIFCON, Nairobi, p. 48.

²³⁷ "Kenya's Castaways: The Ogiek and National Development Processes," accessed at www.ogiek.org.

²³⁸ This is a corruption of the Maasai word *iltorobo*, which means paupers and more specifically in the Maasai context, connotes people who own no cattle.

²³⁹ Towett, *supra* note No. 235, p.13.

²⁴⁰ Civil Case No. 238 of 1999.

²⁴¹ Decision No. A73/2000 reproduced in the UNEP Compendium of Judicial Decisions on Matters Related to the Environment, National Decisions (UNEP National Decisions Compendium), Vol. II, p. 196. The Maori opposed the sub-

they disregarded the Maori cultural rights when sanctioning the proposed investments arguing that they had no 'perceptible adverse environmental effects.' The same reasoning was applied in the Australian case of *Yanner v Eaton*²⁴³ where court held that the customary right of Aborigines to hunt and eat juvenile crocodiles had effectively been extinguished by a new legislative provision. Interestingly, the fact that culture is an integral part of development was recognised in the Tanzanian case of *AG v Lahoy Akonaay*²⁴⁴ where the Court of Appeal held that a new law which purported to extinguish customary land rights but also prohibited payment of compensation was null and void as it violated the Constitution which provided for the payment of compensation where persons were deprived of their property.

3.3.1.2 As Women

Ogiek women are considered to be perpetual minors and as Mr. Taptich, an Ogiek elder stated:

Women in the community are children. What can children discuss with me? I do not see why we should bother them with issues of importance like land.²⁴⁵

It is analogous to an Eritrean proverb to the effect that just as there is no donkey with horns, there is no woman with brains.²⁴⁶ In addition, FGM is still practised by the community although Western feminists dismiss it as outright backward. Admittedly, while this may be true insofar as the practice brutalises girls and women, the Westerners lose sight of the fact that the ritual is a rite of passage into adulthood and that while the genital mutilation component should doubtlessly be eradicated, it is vital for the 'coming of age' element, such as that described by Swantz,²⁴⁷ to be retained.

division of land at the mouth of the Waikanae River for residential development on the ground that it would adversely affect their spiritual and cultural rights with regard to use of the river.

²⁴³ Decision No. A91/98 reproduced in the UNEP National Decisions Compendium, Vol. II, p. 214. The Appellants sought to have the resource consents granted to Anchor Products Limited – which wished to expand the capacity of its dairy factory and to install a new gas fired cogeneration plant to supply energy to the expanded plant – revoked on the grounds *inter alia*, that the project would have adverse effects on the Waikato River as contaminants would be discharged into it which would interfere with the cultural and spiritual relationship between the Maoris and the river.

²⁴⁴ [1999] HCA 53, reproduced in the UNEP National Decisions Compendium, Vol. II, p. 310.

²⁴⁵ High Court Misc. Civil Cause No. 1 of 1993, reproduced in the UNEP National Decisions Compendium II, p. 340.

²⁴⁶ Kameri-Mbote, Patricia and Oduor, Anyango Jacinta: "Following God's Constitution: The Gender Dimensions of the Ogiek Claim to the Mau Forest Complex," *Women's Human Rights and Legal Pluralism: Linking Laws and Realities* (Forthcoming), p. 17.

²⁴⁷ Quoted in Salleh, *supra* note No. 3, p. 36.

²⁴⁸ Swantz, Marja-Liisa, "Woman/Body/Knowledge," in Harcourt, Wendy (ed.) (1994): *Feminist Perspectives on Sustainable Development*, Zed Books, London and New Jersey, at p. 104 describes the *mwali* puberty rites practised by the Makonde and Yao of Southern Tanzania where girls are secluded for a up to a fortnight and given traditional teachings on sexual behaviour which has helped stem teenage pregnancies and the spread of HIV-AIDS.

3.3.2 Ogiek Women's Interactions with the Mau Forest Complex

3.3.2.1 The Mau Forest Complex

The Mau Forest Complex is situated in the Rift Valley Province, 250 km Southwest of Nairobi and straddles Kericho, Nakuru, Bomet, Transmara and Narok Districts.²⁴⁸ It covers a combined area of over 290,000ha making it the largest remaining near-continuous block of montane indigenous²⁴⁹ forest in East Africa.²⁵⁰ It forms the upper catchment of the Nzoia, Yala, Nyando, Sondu and Mara rivers which drain into Lake Victoria and is the main catchment of the critical lakes in the Rift Valley such as Baringo, Nakuru, Naivasha, Natron and Turkana²⁵¹ qualifying it as one of Kenya's water towers. The complex comprises seven forest blocks namely; South West Mau, East Mau, Transmara, Mau Narok, Western Mau, Southern Mau and Maasai Mau although the latter has not been gazetted as a forest.²⁵² It is rich in biodiversity and hosts flora and fauna species with the former including *Acacia spp.*, and *Bamboo spp.* Fauna found in the forest include the giant forest hog, buffalo, colobus monkey, impala, yellow backed duiker, leopard, elephant, the potto, the spotted necked otter, and the striped hyena with the latter three being endemic to it. The forest is also said to represent the richest montane avifauna in Eastern Africa with 173 bird species.²⁵³

The Complex was gazetted as a forest by the colonial government in 1932 and successive attempts were made by this and post-colonial governments to evict the Ogiek under the pretext that they were degrading the forest yet ironically, it is charcoal burning, logging, tea and flower farming by non-Ogiek which led to loss of 60 percent of forest cover over the past two decades.²⁵⁴ These evictions are carried out without compensation²⁵⁵ and as argued in Chapter Two, it is justifiable to

²⁴⁸ Kamau, John (2001): *The Ogiek: The Ongoing Destruction of a Minority Tribe in Kenya*, RFS, p. 10.

²⁴⁹ However, Kamau, *ibid* at pp.10 and 23, argues that the indigenous trees were systematically replaced by exotic conifer plantations which to the Ogiek were "totally sterile, unproductive and useless for either bees or wildlife."

²⁵⁰ Towett, Kimaiyo (2002): *Mau Forest Complex on the Spotlight: The Many Reasons for Ogiek's Opposition to the Forest Excision Scheme*, Ogiek Welfare Council, p. 3.

²⁵¹ KFWG and DRSRS (2004): "Changes in Forest Cover in Kenya's Five 'Water Towers': 2000-2003," accessed at www.kenyaforests.org

²⁵² Towett, *supra* note No. 250, p. 3.

²⁵³ Obare, Lynette and Wangwe, J. B.: "Underlying Causes of Deforestation and Forest Degradation in Kenya," accessed at www.ogiek.org

²⁵⁴ Kameri-Mbote and Oduor, *supra* note No. 245, p. 3.

²⁵⁵ However, Towett, *supra* note No. 235, at p. 110 argues that pecuniary compensation alone would not have been enough as it would not have guaranteed the survival of the indigenous culture.

problematise the conventional definition of sustainable development which is preoccupied with economic indicators to the exclusion of social and culture aspects especially for indigenous peoples who are, by definition, only partially integrated into the cash economy, if at all.

Ogiek women are responsible for fuelwood gathering with the species collected depending on availability and the wood's qualities such as burning when green, ease of lighting, smokiness, duration of burning and calorific value. The popular species are *Iugomeito* (*Macaranga capensis*) and bamboo (*Arundinaria alpina*) whose local name is *tegat*.²⁵⁶ Ogiek women also collect medicines such as *Sakawaita* (*Fagara macrophylla*) bark to treat coughs, *seet* (*Albizia gummifera*) bark for constipation, *kibirgorokiet* roots to treat venereal diseases, *lemeywet* (*Syzygium guineense*) bark to treat diarrhoea and grass called *tegek* (*Arundinaria alpina*) which hosts a fungi *bundet* which is used to treat malaria.²⁵⁷ With no healthcare facilities within the Mau Forest, the importance of traditional medicine cannot be overemphasised.²⁵⁸ Ogiek women also collect the following wild food from the forest: *lilikwet* nuts, *nukiat* and *agaimamiet* (*Rubus spp*) fruits, *iterimiat*, *kelechek*, *isakiat*, *simot* and *soywot* leaves, *miteiwet* roots²⁵⁹ and berries. In this respect, forests are spatial or temporal gendered spaces for the Ogiek women and are critical to women's efforts to meet their personal, household and community responsibilities.²⁶⁰ Thus the following statement by Ruth Lilongula from the Solomon Islands is equally applicable to the Ogiek women:

Our environment is many things, a classroom, a pharmacy and a supermarket.²⁶¹

3.3.2.2 Environmental Law Applicable

3.3.2.2.1 Land Tenure Laws

Four systems of land tenure are operational in Kenya namely; private, communal, government and trust lands. Private tenure is governed by the Registered Land Act²⁶² and the Transfer of Property

²⁵⁶ Jackson and McCarter, *supra* note No. 236, p. 60.

²⁵⁷ Lubanga, M (1991): "The Use of Indigenous Forest Plants by Forest Dwellers in South West Mau," KIFCON, p. 17.

²⁵⁸ Jackson and McCarter, *supra* note No. 236, p. 61.

²⁵⁹ Lubanga, *supra* note No. 257, p. 22.

²⁶⁰ Rocheleau and Edmunds, *supra* note No. 135, p. 1355.

²⁶¹ Quoted in Dankelman, Irene (2005): "No Hope without Gender Equality," in *Environment and Poverty Times*, Vol. 4, September 2005, UNEP, p. 15.

²⁶² Cap. 300, Laws of Kenya.

Act. Save for the residual power of the state to exercise eminent domain and police power, the individual owner has near-absolute proprietorship.²⁶³ Communal tenure is regulated through the Land (Group Representatives) Act²⁶⁴ and it applies to mostly arid and semi-arid lands (ASALs). It has been argued that this tenure system is predicated on patriarchal norms²⁶⁵ which are unlikely to benefit women. State ownership of land is governed by the Government Lands Act (GLA)²⁶⁶ while trust lands are governed by the Trust Lands Act²⁶⁷ and are vested in statutory trustees (county councils) by virtue of Section 115 of the Constitution rather than in the occupants and, unalienated land, remains, by virtue of the GLA, the private property of the government and is hence but curiously not subject to the doctrine of public trust.²⁶⁸ Therefore, despite various land-specific commissions of inquiry such as the 1999 Njonjo-chaired and the 2003-4 Ndungu-led ones, Kenya's land policy continues to be reminiscent of its colonial counterpart owing in part to the ingenious insistence by the settler community, during the pre-independence Lancaster negotiations, that the legal status quo be preserved so as to safeguard their interests when self-rule became imminent.²⁶⁹

Excised portions of the Mau Forest Complex were issued under the Registered Land Act, Sections 27 and 28 of which stipulate that registration of title shall be proof of ownership while Section 147 provides that first registrations, even though effected by fraudulent means, are not challengeable. This implies that where land has been registered in the husbands' names, women have no ownership rights irrespective of how hard they work it.²⁷⁰ Further, the fact that any Kenyan can own land anywhere in the country has led to 'invasion' and 'grabbing' of the forest by more powerful tribes compounding the marginalisation of the Ogiek as a minority people and pushing the Ogiek women a further rung down the societal hierarchy.

²⁶³ Okowa-Bennun, P. N. & Mwangi, A. M.: "Land Tenure and Forest Resource Management," in Juma, C. & Ojwang, J. B. (eds.) (1996): *In Land We Trust: Environment, Private Property and Constitutional Change*, ACTS, p. 180.

²⁶⁴ Cap. 287, Laws of Kenya.

²⁶⁵ Kameri-Mbote and Oduor, *supra* note No. 245, p. 12.

²⁶⁶ Cap. 280, Laws of Kenya.

²⁶⁷ Cap. 288, Laws of Kenya.

²⁶⁸ Okoth-Ogendo, H. W. O.: "Land Policy Development in East Africa: A Survey of Recent Trends," a paper presented at the DFID Workshop on 'Land Rights and Sustainable Development in Sub-Saharan Africa' held at Sunningdale Park Conference Centre, Berkshire, England, 16th to 19th February 1999, p. 4.

²⁶⁹ Okoth-Ogendo, *supra*, note No. 226, p. 155.

²⁷⁰ Kameri-Mbote and Oduor, *supra* note No. 245, p. 12.

3.3.2.2.2 *Environmental Management and Coordination Act (EMCA)*

Under Section 44 of the EMCA,²⁷¹ the National Environmental Management Authority (NEMA) is mandated, in consultation with lead agencies, to develop, issue and implement regulations and guidelines for the sustainable use of *inter alia*, forests such as those concerning harvesting of forests products. Section 46 provides for the reforestation and afforestation of hill slopes and mountainous areas. By Section 49(d), NEMA is to encourage the planting of trees and woodlots by individual land users, institutions and community groups. The above provisions are gender-neutral and do not specifically address the needs of indigenous communities. The closest the Act comes to addressing the latter is in Section 48(2) which stipulates that NEMA shall not take any action which is prejudicial to the traditional interests of the local communities customarily resident within or around a forest. This offers indigenous communities, such as the Ogiek, phantom protection because it does not debar other agencies of government from taking these actions. Indeed the Ministry of Lands has recently revoked title deeds issued on Mau forest land and said that the Ogiek will not be allowed back into the complex and has even issued them with 12,000 subsidised title deeds in Nakuru.

3.3.2.2.3 *Forest Act*

Upon its gazettelement as a forest in 1932, the Mau Forest Complex became the property of government. The principal operative law is the Forest Act²⁷² whose overarching objective is to provide for the establishment, control and regulation of forests. Rather than concerning itself with conservation of forests, the Act is preoccupied with licensing, offences and penalties, presumably to avert the 'tragedy of the commons' so eloquently propounded by Hardin²⁷³ but which has been much criticised.²⁷⁴ As such, under Section 8, it is an offence to fell, cut, burn or remove any forest produce, erect any building or cattle enclosure, start a forest fire, depasture cattle, cultivate, kill any animal or

²⁷¹ Act No. 8 of 1999.

²⁷² Cap. 385, Laws of Kenya.

²⁷³ Hardin, Garrett (1968): "The Tragedy of the Commons," *Science*, Vol. 162, p. 1243.

²⁷⁴ See e.g. Ogolla, Bondi and Mugabe, John: "Land Tenure System and Natural Resource Management," in Juma, C. & Ojwang, J.B. (Eds) (1996): *In Land We Trust: Environment, Private Property and Constitutional Change*, ACTS, who at p.96 argue that Hardin confused situations of 'open access' with 'common property regimes.'

collect honey²⁷⁵ in the forest unless one is licensed by the Director of Forestry. By Legal Notice Number 4 of 1961, part of the Mau Forest was declared to be a nature reserve within the meaning of Section 6 of the Forest Act with the effect that fauna and flora therein are given additional protection. As such, hunting, fishing and disturbance of the relevant fauna are, according to Section 6(3) prohibited unless permitted by the Director of Forestry.

The above prohibitions together with the fact that hunting in Kenya was banned in 1977 under the Wildlife (Conservation and Management) (Prohibition on Hunting of Game Animals) Regulations²⁷⁶ naturally constitute a stranglehold over the Ogiek way of life. This is first, because, the licensing requirements curtailed the erstwhile free and unfettered access to forest produce lending credence to charges that the law is tree- rather than people-oriented.²⁷⁷ Besides, the poverty prevalent among the Ogiek (and especially among the women) implies that they can barely afford to pay the requisite fees. Hence in *Francis Kemai and Others v The AG and Others*, court repeatedly referred to the need for the Ogiek to obtain the required licences if they wanted to continue carrying out their traditional activities in the forest. But the requirement for licensing acts as a double-edged sword because while it locks out the impecunious Ogiek women, it opens the floodgates to moneyed loggers such as Panafrican Paper Mills (PPM), Raiply Timber, and Timsales, who have been identified as the major culprits for the deforestation of the forest complex. Hence, the *real* tragedy of the commons results from proscribing customary usage of former commons and as Amalric remarks:

Thus, almost overnight, the guardians of the forest were transformed into poachers and destroyers.²⁷⁸

This has led Barrow *et al.* to conclude that what is happening to the Ogiek is a classic example of "political expediency in land and forest Management."²⁷⁹ Indeed, the Mau Forest has curiously been

²⁷⁵ Yet Jackson A. (1992): "The Utilisation of Honey in South West Mau and Transmara Forest Reserves: Management Issues, KIFCON, at p. 28 argues that wild honey gathering (as opposed to beekeeping) is a totally non-consumptive use of the forest resources as it requires neither the felling of trees for the construction of hive logs nor the removal of bark to make protective covers for the hives and that introducing closed seasons is preferable to banning the activity.

²⁷⁶ However, Clarke J. (1992): "Evaluation of the Environmental Benefits of the Mau Pilot Project Area," KIFCON, at p. 21 argues that although hunting is illegal, it persists with the favourite animals being blue duicker, bushbuck and porcupine and they guesstimate that 22,000 animals are taken each year.

²⁷⁷ Agarwal, *supra* note No. 56, pp. 102 and 107.

²⁷⁸ Amalric, *supra* note No. 83, p. 234.

touted as an excellent tourist site with potential for trekking, ornithology, angling, mountain biking, rafting, horse riding and game viewing hides, caving and educational trips.²⁸⁰ Ogiek women are disproportionately affected by these statutory prohibitions on one hand and the forest resource depletion occasioned by logging activities on the other because, given the gendered division of labour, they are the ones who have to walk farther in search of fuelwood, wild foods and herbs and it is they who must carry these heavy loads over longer distances adversely affecting their health. In addition, because these products are not readily available outside the forests, they have to engage in agriculture in a bid to provide an alternative source of food. This is in light of the fact that women play a major role in the agricultural sector and provide the bulk of the labour required in weeding, harvesting and processing agricultural produce.²⁸¹ Therefore, it is they who suffer most through the predation of wild animals particularly elephants and monkeys.²⁸² Besides, the ripple effects of deforestation such as soil erosion and more aridity inordinately affect women. Further, trees and forests are a feminist issue for conceptual reasons as some key assumptions of orthodox forestry are male-biased. These include the supposition that women's indigenous technical knowledge is irrelevant and that activities which fall outside the boundaries of commercial fibre production and forests' ecological role are of little or no importance.

3.3.2.3 Ecofeminism, Forests, ESD and Ogiek Women

The above discussion has shown that both the Ogiek women and the Mau Forest complex are downtrodden partly due to gender-blind laws. However, whereas derogatory practices such as FGM are carried out in a patriarchal setting controlled by the Ogiek men, the degradation of the Mau Forest Complex is in fact carried out by non-Ogiek companies. However, there is need for caution as valorisation of the ecological elements of Ogiek culture creates a conceptual paradox in which ecological solutions are seen to reside in hunter-gatherer societies which is problematic when

²⁷⁹ Barrow *et al.* (2002): *Analysis of Stakeholder Power and Responsibilities in Community Involvement in Forest Management in Eastern and Southern Africa*, IUCN, Forest and Social Perspectives in Conservation No. 9, p. 50.

²⁸⁰ See e.g. Marshall C. N. and Staubo, C. (1992): "An Economic Assessment of Tourism Development in the Mau Forest," KIFCON, Nairobi, generally.

²⁸¹ Kanogo, Tabitha: "Women and Environment in History," in Khasiani, Shanyisa (ed.) (1992): *Groundwork: African Women as Environmental Managers*, ACTS, Nairobi, p. 7.

²⁸² Clarke, *supra* not No. 276, p. 30.

crafting solutions for complex contemporary ecological problems.²⁸³ Since we cannot all return to a hunting-gathering culture, the challenge for ecofeminists is inspire people to take action in their non-indigenous environments. A starting point would here be to begin perceiving nature as including urban and constructed landscapes.

Ogiek women and the Mau Forest Complex are particularly relevant to the current study because trees, forests and forestry are ecofeminist issues as they are inextricably linked to rural and household economies governed by women in Third World countries²⁸⁴ so debarring local communities from forests is about women because in developing countries, women are more dependent than men on forest products. However, it is arguable that in its present form, ecofeminism is an abstract concept from the Ogiek women's perspective because it does not pay sufficient attention to the peculiarities of these aboriginal women. Admittedly, even though ecofeminist literature abounds with women's interactions with trees and forests, as is evident from the repeatedly recounted experiences of GBM and Chipko, the emphasis is on afforestation and reforestation. As such, the more intimate relationship of forests and indigenous women such as the Ogiek is virtually unexplored. Moreover, as already seen, some ecofeminists blame Third World women for deforestation purportedly due to unsustainable population growth yet this is not borne out by the empirical data which attributes the deforestation in Mau Forest Complex to licensed logging, illegal commercial felling and encroachment by large-scale agriculturalists onto forest land.

3.4 Women and Wildlife: Nyeri Women and Mount Kenya National Park

3.4.1 Nyeri Women's Multifarious Discriminations

The focus is on Nyeri women because nearly 95 percent of Mt. Kenya National Park is located in Nyeri District.²⁸⁵ The district comprises Kieni, Tetu, Nyeri Town, Mukurueni, Mathira and Othaya Divisions and has a population of 661,156, 51.2 percent of which are women.²⁸⁶ Nyeri women are

²⁸³ Sturgeon, Noel: "The Nature of Race: Discourses of Racial Difference in Ecofeminism," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, p. 272.

²⁸⁴ Warren, *supra* note 2, pp. 5 and 7.

²⁸⁵ KWS (1993): "Mount Kenya National Park Five Year Management Plan: 1993-1998," KWS, p. 24.

²⁸⁶ www.kenyaconstitution.org/docs/kieni.htm#socioecon

arguably confronted with triple discrimination; as Third World people, as black Kenyans and as Kikuyu women. As the first type has already been discussed, the section will dwell on the latter two.

3.4.1.1 As Black Kenyans

Although the Cholmondeley saga had no direct connection with Mt. Kenya National Park, it demonstrates the racial overtone in wildlife management in Kenya. There was profound public outrage when in May 2005, the state *nolle prosequed* murder charges against Thomas Cholmondeley, scion of one of Kenya's pioneer settlers, Lord Delamere, for killing a KWS ranger, Samson Ole Sisina with the Attorney General and the Director of Public Prosecutions (DPP) being accused of selective application of the law.²⁸⁷ As Seenoi Sisina, widow of the slain ranger poignantly remarked:

The farmer's release is a clear indication that there is a law for the poor and a law for the rich. I have asked myself what would have happened if it was my husband who had shot the farmer. Would he have been accorded the same treatment?²⁸⁸

The government's over-reliance on aid implies that donors have a stranglehold over the country's wildlife resources. In addition, the top executive position in KWS has traditionally been reserved for whites such as Leakey and Western and most of the honorary wardens, provided for under Section 4 of the Wildlife (Conservation and Management) Act²⁸⁹ and expert conservationists are whites.²⁹⁰ Besides, although all wildlife is vested in the state, in May 2005, eyebrows were raised, when 4 black rhinos died of pneumonia after being translocated from Nairobi National Park to the privately owned Laikipia West Ranch. Moreover, most of the 'world class' tour companies and facilities which are the main beneficiaries of tourism are owned by whites and black Africans are only secretaries, cooks, and drivers²⁹¹ so there is a nuanced racial question in wildlife management in Kenya.

²⁸⁷ See e.g. KHRC (2005): "Justice under Siege," accessed at www.khrc.or.ke/news.asp?ID=31

²⁸⁸ Ochieng, *supra* note No. 225.

²⁸⁹ Cap. 376, Laws of Kenya.

²⁹⁰ Bonner, Raymond (1993): *At the Hand of Man; Peril and Hope for Africa's Wildlife*, Random House USA Inc, New York and Western *et al.* (1998): "Wildlife Conservation in Kenya," *Science*, Vol. 280, 1998, p. 1508. These are corroborated by the fact that most of the national park study reports in the KWS library are authored by Westerners.

²⁹¹ Shikwati, James: "Protecting People and Wildlife in Kenya: Right Now, Locals are Out of the Loop," accessed at http://www.perc.org/publications/percreports/march2003/perc_march3.php. He further argues that out of the US\$ 26 million spent in the Maasai Mara National Reserve in 1988, only 1% went to the local people. In comparison, tour firms accounted for 45%, hotels 35% while Narok County Council, taxes and shops each accounted for 5% of the earnings.

3.4.1.2 As Women

Although within the household, gender-based division of labour is becoming increasingly flexible as both men and women undertake productive and household responsibilities, men tend to continue controlling the resources, while women, in the case of land, work it.²⁹² This is largely due to the fact that under Kikuyu customary law, only sons can inherit land from their parents although the Succession Act²⁹³ grants married women the right to inherit their husband's property and it accords female and male, married or unmarried children equal property sharing rights where their father dies intestate.²⁹⁴ However, within a polygamous household, each wife heads a matricentric unit composed of her *nyumba* (house), children, *migunda* (garden)²⁹⁵ and granary. Polygamy is prevalent and a man may divorce his wife because of barrenness, witchcraft, theft and desertion.²⁹⁶ Nyeri's close proximity to Nairobi and the fact that it is the President's hometown implies that the inhabitants enjoy relatively easy access to clean water, better health, education and communication facilities. The area boasts a gender-related development index (GDI) of 0.616, which is close to Nairobi's score of 0.629 and well above the national average of 0.538.²⁹⁷

3.4.2 *Nyeri Women's Interactions with Mount Kenya National Park*

3.4.2.1 Mount Kenya National Park

Mount Kenya is an imposing extinct volcano dominating the landscape of the Kenyan highlands. It lies 140 kilometres northeast of Nairobi with its northern flanks across the Equator and has 2 peaks, Batian and Nelian. The park includes a variety of habitats ranging from higher forest, bamboo, alpine moorlands, glaciers, tarns and glacial morains. The park, which was designated by UNESCO as World Heritage Site in 1997 and is also a Biosphere Reserve, covers an area of 715 square kilometres.²⁹⁸ It straddles Embu, Meru, Kirinyaga and Nyeri districts. It was gazetted as a national park in 1949 and its popularity leapt after the hoisting of the national flag on its Lenana peak in

²⁹² Thomas-Slayter and Rocheleau, *supra* note No. 12, p. 77.

²⁹³ Cap. 160, Laws of Kenya.

²⁹⁴ Part V of the Succession Act.

²⁹⁵ Wacker, *supra*, note No. 168, p.131.

²⁹⁶ Kenyatta, Jomo (1938, 1978): *Facing Mount Kenya*, Kenway, Dar es Salaam, Kampala and Nairobi, pp. 13 and 183.

²⁹⁷ UNDP, *supra* note No. 234, pp. 8 and 46.

²⁹⁸ www.kws.org

1963.²⁹⁹ Surrounding the park is Mount Kenya National Forest Reserve with an area of approximately 2,095 square kilometres. The gradient of Mt. Kenya leads to an unusually varied range of ecosystems in a relatively small area.³⁰⁰ Special interest species include the leopard, mountain buzzard, suni, long eared and Mackinder's eagle owls, elephants, rhinos, zebras and white colobus. It has been argued that the wilderness in the park is particularly 'pristine' given that the altitude and terrain ensure that people have never and will never go there for settlement, agriculture or industry as the park is completely surrounded by a buffer zone of forest reserve.³⁰¹ The park is an important catchment area supplying the Tana and Ewaso Nyiro rivers and it is a source of commercial timber although logging is illegal.³⁰² Wildlife is an ecofeminist issue because it is, like women, down trodden and, given the gendered division of labour, it is women who incommensurately bear the burdens of wildlife deprecations.

3.4.2.2 Nyeri Women's Interfaces with Wildlife

3.4.2.2.1 As Users and Managers of Wildlife

If one adopts the broad definition of wildlife namely; all life forms that are wild, Nyeri women interact with myriad forms of wildlife in multifarious ways. Although men were traditionally the hunters of large mammals, anthropologists overlooked the women's role in sighting and tracking large mammals and in capturing insects, fish, reptiles, birds, tortoises, bats, and rodents³⁰³ and this observation remains valid today because although outlawed, hunting clandestinely persists.³⁰⁴ Indeed, census results indicate that some wildlife populations declined by half between 1975 and 1993.³⁰⁵ Women prepare the bush meat when it is brought home and they normally collect wild birds' eggs for their families' consumption. Further, gathering wild plants for food, medicine and generating income is an important aspect of the economic systems of Nyeri women. As both users and

²⁹⁹ KWS (1981): "Mt. Kenya National Park Baseline Survey: Quarterly Report July-September 1981," KWS, p.1.

³⁰⁰ KWS, *supra* note No. 285, pp. 26-27.

³⁰¹ See e.g. *Ibid*, pp. 20, 29 and 65.

³⁰² *Ibid*, p. 21.

³⁰³ Hunter, Malcolm *et al.* (1990): "Women and Wildlife in Southern Africa," *Conservation Biology*, Vol. 4, No. 4, December 1990, p. 448-449.

³⁰⁴ Although instructively, hunting is one of the consumptive wildlife utilisation forms provided for under the operative Wildlife Management Policy, Sessional Paper No. 3 of 1975, p.14.

³⁰⁵ GoK (1999): *Environment and Development Policy*, Sessional Paper No. 6 of 1999, p. 35.

managers of the natural resource base, Nyeri women have extensive knowledge of their environment as they can often predict the location and yields of wild products, and by using a variety of species, they promote sustainable utilisation.

3.4.2.2 Impacts of Living in the National Park Vicinity

National Parks have some positive impacts on women because as members of adjacent communities, they benefit from expanded economic activity such as curio shops, modern infrastructure such as roads, mobile telephony and from the provision of community services such as schools, clinics and wells. However, for the most part, men benefit disproportionately from these developments while women bear the burdens associated with living adjacent to national parks. First, the presence of high mammal populations limit women's access to other natural resources because they are afraid to travel far from their homes to gather these. Women are particularly susceptible to animal attacks when fetching water and collecting fuelwood.³⁰⁶ Second, the increased demand for fuel to cook game meat decreases the availability of fuel for normal home consumption and forces women to walk farther to collect firewood.³⁰⁷ Moreover, when fuel is scarce, fewer meals are cooked and there is a shift to less nutritious but faster cooking foods.³⁰⁸ Third, the mere presence of wild animals perpetuates the oppression of women because both are objectified and hierarchised on the basis of their perceived beauty. The megafauna are romanticised while little thought is spared for 'lesser' animals such as warthogs. Fourth, protected areas are closed off at the behest of a leisure class although this displaces local livelihoods as disturbances from tourists especially during critical periods such as breeding and migration adversely affect wildlife conservation.³⁰⁹ Further, tourism leads to degradation of park ecosystems due to the concentration of lodges and tented camps³¹⁰ while off-road four wheel drive vehicles cause significant soil erosion, destroy tree roots, crush

³⁰⁶ Wacker, *supra* No. 168, p. 135.

³⁰⁷ Hunter *et al.*, *supra* note No. 303, p. 449.

³⁰⁸ Maathai, *supra* note No. 7, p. 35 and Dankelman and Davidson, *supra* note No. 38, p. 71.

³⁰⁹ Buckley, Ralf: "Impacts of Ecotourism on Terrestrial Wildlife," in Buckley, Ralf (ed.) (2004): *Environmental Impacts of Ecotourism*, CABI Publishing, Oxford, UK and Massachusetts, USA, p. 212.

³¹⁰ Kameri-Mbote, Patricia: "Land Tenure, Land Use and Sustainability in Kenya: Towards Innovative Use of Property Rights in Wildlife Management," in Chalifour, N. *et al.* (Forthcoming 2005): *Land Use for Sustainable Development*, Cambridge University Press, New York, p. 16.

vegetation, animals, nests and burrows and cause physiological damage through noise pollution.³¹¹ Consequently, tourism may adversely affect the availability of wild foods and medicine for women. Fifth, living adjacent national parks inevitably results in human-wildlife conflicts which have been defined as situations where humans and wildlife affect each other adversely.³¹² These conflicts manifest themselves in the form of encroachment, poaching, excessive use of the protected areas' resources³¹³ and outright sabotage.³¹⁴ Thus most of the local communities view wildlife as an inordinate burden placed on them by the state and from which they reap no benefits.³¹⁵ The animal component of wildlife 'retaliates' through crop-raiding, killing humans and domestic animals, transmitting diseases and competing for pasture with the problem animals in Mt. Kenya National Park being buffaloes and elephants.³¹⁶ Thomson estimated in 1993, that along the south-western side of Mount Kenya, the average farm damage per household caused by wildlife was Kshs. 36,200 (US\$ 531)³¹⁷ with 90 percent of this value relating to crops and the rest to livestock and fences.³¹⁸ This implies that given that women account for 80 percent of agricultural production,³¹⁹ it is they who are most physically and sentimentally affected by these crop raids. At the physical and financial level, these raids translate into double work and double costs for the women as they have to retille the land, buy another set of inputs and replant, weed and generally tend the crops.³²⁰ As family food providers, they also have to forage for food until these replanted crops are harvestable. This is compounded by the facts that compensation for the depredations occasioned by wildlife is grossly

³¹¹ Buckley, Ralf: "Environmental Impacts of Motorised Off-highway Vehicles," in Buckley, Ralf (ed.) (2004): *Environmental Impacts of Ecotourism*, CABI Publishing, Oxford, UK and Massachusetts, USA, generally.

³¹² Eriksen *et al.*: "Land Tenure and Wildlife Management," in Juma, C. and Ojwang, J.B. (Eds) (1996): *In Land We Trust: Environment, Private Property and Constitutional Change*, ACTS, p. 209.

³¹³ *Ibid*, p. 209.

³¹⁴ Pimbert, M. and Pretty, J. (1995): "Parks, People and Professionals: Putting Participation into Protected Area Management," Discussion Paper No. 57. Geneva, UNRISD, p. 1. At p. 6, the authors argue that the establishment of the Amboseli National Park blocked off access by Maasai pastoralists to dry season grazing lands and watering points. The Maasai revenged by spearing lions and rhinos to the extent that the black rhino faced the risk of extinction.

³¹⁵ Kameri-Mbote, P.: *Property Rights and Biodiversity Management in Kenya*, ACTS, 2002, p. 124.

³¹⁶ Ochieng, D. (1993): "Damage Caused by Forest Animals to the Farms Adjacent to the South Western Side of Mt. Kenya Forest Reserve," KIFCON and KEFRI, Nairobi, p. 22.

³¹⁷ According to GoK (CBS) (1997): *Economic Survey 1997*, p. 123, 1 US\$= Kshs. 68.1630 on 31st December 1993.

³¹⁸ Thomson, Mike (1993): "Economic Analysis of Farm Damage Caused by Wildlife Along the South-Western Side of Mount Kenya," KIFCON.

³¹⁹ Dankelman and Davidson, *supra* note No. 38, p. 4.

³²⁰ Wacker, *supra* note No. 168, p. 131.

inadequate (Kshs. 30,000 for death and Kshs. 15,000 for injury and none for property destruction³²¹) and that it is paid by the extremely bureaucratic Treasury.³²²

The underlying causes of these conflicts are neglecting the needs of local communities and incoherent land use policies. The present conservation paradigm is premised on the Yellowstone Model which is inherently isolationist as it seeks to 'protect' the national parks and reserves from local communities adversely affecting their food security and livelihoods due to the criminalisation of the activities essential to their survival.³²³ This is compounded by the fact that this model is top-down,³²⁴ centralised, under-funded and ad hoc which is itself aggravated by the professionals' disregarding indigenous knowledge owing to ignorance or a superiority complex.³²⁵

An increasingly popular way of diffusing the above conflict in agricultural and urban areas is to erect electric fences around the protected areas as has been done around the Mt. Kenya, Nairobi and Aberdare National Parks. However, they block women's access to resources such as herbs. They also traumatise the animals and exacerbate environmental degradation by confining animals to a small area leading to overpopulation³²⁶ and consequently to inhumane culling. Wildlife survives on an ecological area that goes well beyond the boundaries of the protected areas and sealing these off turns them into zoos writ large. Another attempt to mitigate the conflict is translocation which involves moving animals from overpopulated to sparsely populated areas. However, this involves sedating the animals and hauling them into cages in helicopters or lorries and when they arrive at their destinations, they get so disorientated owing to cultural shock that most of them die shortly after relocation as was the case with the rhinos translocated to Laikipia.

³²¹ Personal communication with James Ole Perrio, KWS' Human-Wildlife Conflict Resolution Coordinator.

³²² Kameri-Mbote, *supra* note no. 315, pp. 171-172.

³²³ Pimbert and Pretty, *supra* note No. 314, pp. 5, 7 and 8.

³²⁴ Kameri-Mbote, *supra* note No. 315, p. 155.

³²⁵ However, Loer, *supra* note No. 167, at pp. 280-281 blames the inferiority complex of the locals as Westerners' opinions carry a lot of weight and thus these 'experts' have to fully integrate the locals into projects.

³²⁶ Eriksen *et al.*, *supra* note No. 312, p. 211.

3.4.2.3 Environmental Law Applicable

3.4.2.3.1 Land Tenure Laws

Land tenure regimes have a direct bearing on the conservation and management of wildlife.³²⁷ All wildlife wherever situated (both *in situ* and *ex situ*) is owned by the state and is under the custodianship of the Kenya Wildlife Service (KWS).³²⁸ Although from a policy position, wildlife in Kenya is supposed to be confined in protected areas, in reality its animal component spends 65 to 80 percent of its time outside these protected areas.³²⁹

3.4.2.3.2 EMCA

Under Section 50 of EMCA, NEMA is mandated to prescribe measures necessary for the conservation of biodiversity, to identify potential threats to biodiversity and devise measures to mitigate these. Again here, the tone of the Act is indicative of government's preoccupation with preserving wildlife rather than addressing the concerns of stakeholders such as women who cultivate the lands adjacent the national parks. This is also echoed in Section 51 which authorises NEMA to prescribe measures for the conservation of biological resources *in situ*.

3.4.2.3.3 *The Wildlife (Conservation and Management) Act*

Although the Wildlife (Conservation and Management) Act places protection, and conservation (and management) on the same pedestal in the bold-faced objective of the Act, these 2 terms are not synonymous in conservation parlance because protection is preservationist while conservation (and management) represent a system in which fauna and flora are utilised by human beings in a controlled and sustainable manner. That the tone of the Act is preservationist is affirmed by the criminalisation of hunting, possessing a weapon, explosive or trap, entering or residing in the park, cutting or setting fire to any vegetation, collecting honey or bees wax, being in possession of any wild animal or trophy, introducing any vegetation or animal into the park, disturbing or stampeding

³²⁷ For a more elaborate discussion of the land tenure systems pertaining in Kenya, see Section 3.3.2.2.1.

³²⁸ S. 3A of the Wildlife (Conservation and Management) (Amendment) Act (Act No. 16 of 1989).

³²⁹ Eriksen *et al.*, *supra* note No. 312, p. 210.

any animals, cultivating and fishing within the park.³³⁰ Again here, although the law purports to be gender-neutral, criminalising activities such as cultivation disproportionately affects women given that this is their role in the gendered division of labour.

These protected areas are preserved for non-consumptive utilisation particularly tourism. This preservationist ideology is symbolised by the fact that national parks and reserves fall under the mandate of the Ministry of Tourism and Wildlife. Granted that tourism is a major foreign exchange earner³³¹ but it is particularly sensitive to local politics (such as land clashes), international travel advisories and there is therefore need to diversify the use of these protected areas. In any event, the aesthetic value of wildlife is not generally appreciated by black Kenyans. Further, only KWS and large tour firms such as Abercrombie and Kent, multinational banks such as Standard Chartered and Barclays and franchise car rentals (such as Hertz) benefit directly from tourism. Private land owners who provide a critical ecological service by hosting this wildlife are totally marginalised and are left to benefit indirectly through curio shops for example. Moreover, wildlife's intrinsic value³³² and ecological role are invaluable and should take precedence over its contribution to the national coffers. These latter incalculable functions validate arguments that these national parks should fall under the Ministry of Environment and Natural Resources.

By Sections 6 and 7, the Minister of Tourism and Wildlife has the power to gazette and degazette national parks. Remarkably, no provision is made for consulting local communities which are most affected by such gazettements even though, by Section 6(1)(a), the National Assembly's prior approval must be obtained.

3.4.2.3.4 *Physical Planning Act*

This Act provides for the preparation and implementation of physical development plans. Lack of a coherent land use policy has encouraged people to encroach onto protected areas and wildlife

³³⁰ Section 13.

³³¹ According to Gok (CBS) (2005): *Economic Survey 2005*, p. 194, because of aggressive marketing and reversal of the UK travel advisory, tourism earnings, the largest proportion of which are on account of wildlife, increased significantly by 51.9% from Kshs. 25.8 billion (US\$338,854,383) in 2003 to Kshs. 39.2 (US\$506,824,023) in 2004.

³³² Well enunciated in paragraph 1 of the CBD preamble and Article 2 of the IUCN Draft International Covenant on Environment and Development and which concept pervades the entire draft covenant.

migratory paths. Conflicts are exacerbated by the fact that the land around protected areas is not homogenous in land use categorisation as it varies from rangeland, agricultural, residential to industrial. While rangelands are capable of accommodating wildlife, the latter 3 are inherently incompatible with wildlife management³³³ yet they exist around Mt. Kenya, Aberdare and Nairobi National Parks and the Maasai Mara and Amboseli National Reserves. This could have been thwarted through zoning by prohibiting the incongruous land uses in the areas immediately adjacent to the national parks. Wildlife predations are gender-differentiated because it is women who suffer most when their crops are destroyed and who have to care for family members injured by animal raids. Moreover, women lose their traditional rights of access to resources such as land when their husbands are killed by these wild animals.

3.4.2.4 Ecofeminism, Wildlife, ESD and Nyeri Women

Whereas men are the ones who draft, pass and implement wildlife laws and policies, it is the women who suffer most if these laws and policies are inappropriate because they fail to take account of their specific needs. Hence, not only are the women and environment exploited by a patriarchal system in their capacities as such, the degradation of the environment further increases the women's already heavy workload. This implies that the ESD concept is potentially applicable to their situation. For ESD to be relevant to the Nyeri women, there is need both for a consumptive utilisation approach in the management of wildlife and for a paradigm shift in ecofeminism as its key tenets are abstract from these Nyeri women's viewpoint. This is because the peculiarities of their interaction with wildlife are hardly explored by ecofeminist literature. This is admittedly because not many wild animals are left in the West and Westerners have to come to Kenya and other African destinations for wildlife safaris and to this extent, they do not experience wildlife depredations as their Nyeri counterparts do. Further, the megafauna are romanticised in the West, by KWS and the tour firms yet this view is not shared by the local communities, particularly women, who live in close proximity to these innately dangerous animals. However, it is not enough to apply general ecofeminist principles to the Nyeri women's specific interactions with wildlife for example, highlighting the need to respect the

³³³ Kameri-Mbote, *supra* note No. 315, p. 124.

intrinsic worth of all nature should not concomitantly translate into de-emphasising the physical and psychological devastation that this wildlife wreaks on the diverse gendered spaces.

3.5 Women and Water: The Recurrent Inundation of Budalangi

Budalangi Division is located in Busia District, Western Province. It comprises Bunyala North, East, West, South and Central and covers an area of 186.5 square kilometres. Because Kenya's natural endowment of fresh water is limited to 647 cubic metres per capita which is projected to fall to 245 cubic metres by 2025, the country is classified as *chronically* water scarce.³³⁴ Yet despite this grim fact, no effective conservation techniques (such as damming) have been harnessed and annual floods continue to wreak havoc in the country particularly in Tana and Budalangi. Therefore, benefits such as the deep fertile alluvial soil of floodplains supporting high yield crops and fish spawning and, flushing debris, sediment and salt³³⁵ are outweighed by the disadvantages. The existing literature on women and water often looks at this interface from the perspective of scarcity. Hence Millennium Development Goal (MDG) 7, target 10 aims to halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation. This section interrogates the consequences of flood disasters on rural women because researchers and authorities have ignored these.³³⁶ Even though water scarcity and surfeit are seemingly discrete phenomena, they are in fact related with failure to conserve water resulting in scarcity. Besides, flooding and scarcity are paradoxically present simultaneously as the former invariably leads to a dire shortage of safe water. Further, the underlying causes of water scarcity, such as large-scale deforestation, are also responsible for flooding as lack of forest cover implies that there's no buffer to hold back the torrents. The section begins with a discussion of the multiple oppressions of Budalangi women, the causes and effects of flooding on women and the applicable law.

³³⁴ World Bank (2005): "Towards a Water Secure Kenya," accessed at www.worldbank.org

³³⁵ APFM (2003): "Integrated Flood Management – Concept Paper," APFM Technical Document No. 1, pp.7 and 13.

³³⁶ See e.g. Khondker, Habibul Haque (1996): "Women and Floods in Bangladesh," *IJMED*, Vol. 14 No. 3, p. 282.

3.5.1 *Budalangi Women's Triple Discrimination*

Budalangi has a population of 53,356, 52.5 percent of whom are women.³³⁷ Luhya³³⁸ women are faced with triple discrimination as Third World people, black Kenyans, and women. As the first two have been discussed, the section engages the specific oppressions of Budalangi women *qua* women.

3.5.1.1 *As Women*

Women in Budalangi are treated like chattels for instance, a man can reclaim dowry if his wife dies without leaving children, sons are preferred to daughters and only they can inherit land and cattle and, wife inheritance,³³⁹ wife beating³⁴⁰ and *okhubaila* (marriage by capture)³⁴¹ are prevalent in the area. The notorious 'double day' where women have dual roles in the cash and domestic economies is present there as well. Age and in polygamous households, order of marriage, are important factors in determining women's rights and responsibilities with older widows having considerably more decision making power than the younger ones.³⁴² Although, FGM is not practised in the community,³⁴³ the cumulative adverse effects of the above factors contribute to a GDI of 0.391 for Busia District, the seventh lowest countrywide.³⁴⁴

3.5.2 *Women and Flooding in Budalangi*

3.5.2.1 *The Deluges of Budalangi*

River Nzoia experienced severe floods in 1963, 1975 and 1977 while in recent years, major floods occurred in 1997-1998, 2002 and 2003.³⁴⁵ Although the river causes extensive flooding in Urunga, Ukwala, Karemo and Ugunda Divisions of Siaya District and Kwanza Division of Trans Nzoia

³³⁷ www.kenyaconstitution.org/docs/budalangi.htm#profile

³³⁸ Although it is argued that the term 'Luhya' was a creation of the colonialists and people referred to as such would rather refer to themselves as either Maragoli, Bukhusu, Samia or in the case of people from Budalangi, as Banyala.

³³⁹ Wagner, G. (1949): *The Bantu of North Kavirondo*, Oxford University Press, pp. 52-53.

³⁴⁰ Huntingford, G. W. B. (1944): *The Eastern Tribes of the Bantu Kavirondo*, Nairobi, p. 13.

³⁴¹ Were Gideon and Soper, Robert (1986): *Socio-Cultural Profiles of Busia District*, GoK and IAS, p. 140.

³⁴² Rocheleau and Edmunds, *supra*, note No. 135, p. 1356.

³⁴³ www.irinnews.org/webspecials/FGM/45979.asp

³⁴⁴ UNDP, *supra* note No. 234, p. 47.

³⁴⁵ WMO, MWRMD and APFM (2004): "Strategy for Flood Management for Lake Victoria Basin, Kenya," pp. 5-6.

District, Budalangi is clearly the worst hit³⁴⁶ arguably qualifying it as 'the little Bangladesh of Kenya.' Floods are an ecofeminist issue because it is women who have to wade through pools of unsanitary water in order to perform their traditional domestic chores.

3.5.2.2 Causes of Flooding

Budalangi is deluged by riverine floods³⁴⁷ which are attributed to heavy and concentrated rainfall in the upper catchments of River Nzoia, particularly Mt. Elgon and Cherengany Hills³⁴⁸ causing it to burst its banks, submerging downstream areas instead of flowing into lake Victoria. The underlying causes are urbanisation, destructive agricultural practices and climate change.³⁴⁹ These are compounded by inappropriately framed legislation, weak enforcement of relevant laws and lack of rural communities' participation in flood prevention and mitigations projects.³⁵⁰

3.5.2.3 Effects of Flooding on Women

Adverse impacts of floods include loss of life and property, displacement of people, environmental degradation, and a shortage of food, energy and other basic needs,³⁵¹ disruption of economic activities³⁵² and an upsurge in waterborne or related diseases such as malaria, bilharzia, amoebiasis, diarrhoea and cholera.³⁵³ Because women are in constant contact with polluted water in a bid to perform their domestic chores,³⁵⁴ they are more vulnerable to these diseases³⁵⁵ such as diarrhoea which, according to the World Health Organisation, accounts for 1.7 million deaths a year, virtually all of which are in developing countries.³⁵⁶ Even though floods affect people of all statures, they have differentiated class and gender impacts as the rich avoid living in disaster-prone areas

³⁴⁶ According to WMO *et al*, *supra* note No. 345, p. 46, the 2003 floods killed 119 people and displaced 30,000 people in Budalangi alone compared to a total of 12 deaths and 14,400 displacements in the districts of Nyando and Migori.

³⁴⁷ In contradistinction to coastal ones such as the ones recently caused by hurricanes Katrina, Rita and Wilma in New Orleans, Texas and Florida respectively.

³⁴⁸ www.meteo.go.ke/ranet/INFO/disaster2.html

³⁴⁹ APFM (2004): "Legal and Institutional Aspects of Integrated Flood Management," APFM, p. 1.

³⁵⁰ Wacker, *supra* note No. 168, p. 129.

³⁵¹ APFM, *supra* note No. 349, p. 1.

³⁵² WMO *et al*. *supra* note No. 345, p. 5.

³⁵³ Were and Soper, *supra* note No. 341, p. 15.

³⁵⁴ *Ibid*, pp. 46-47.

³⁵⁵ INSTRAW: "Women, Water and Sanitation," in Sontheimer, Sally (ed.) (1991): *Women and the Environment: Crisis and Development in the Third World*, Earthscan Publications, London, p. 119.

³⁵⁶ WHO (2002): *The World Health Report 2002: Reducing Risks, Promoting Healthy Life*, WHO, Geneva, p. 9.

and if they do, they live in flood-proof brick houses³⁵⁷ thereby minimising the loss of life and assets. Moreover, the affluent have the economic capacity to withstand the attendant losses. In contrast, floods sweep away the crops and mud and thatch houses of the poor most of whom are rural women who also lack information on how to avoid, withstand or recover from the increasingly ferocious floods. And, relief food is grossly inadequate as its distribution is carried out by men and influenced by politics yet women are marginalised in this arena as well. Pollution of wells and the fact that the chlorine tablets used to treat water are expensive means that women have to collect extra firewood to boil the water³⁵⁸ or look for farther cleaner sources which adds to their workload. On the other hand, using contaminated water leads to disease and the burden of caring for the sick falls on women who have to ignore their own morbidity because cultural norms about the sanctification of motherhood and self-sacrifice lead them to continually put their interests last. Sexual abuse of women in relief camps and the criterion of distributing relief supplies to family units encourages child marriages,³⁵⁹ both of which lead to a high prevalence of AIDS with the result that women have to juggle caring for the sick, doing their own work and that of the ill or deceased relatives.³⁶⁰ Besides, relief is inherently short-termist and does nothing to reduce the vulnerability of the affected communities to future floods³⁶¹ by say, building dykes. In addition, women have no time for other pursuits such as education, business³⁶² and leisure³⁶³ further enmeshing them in the poverty trap.

3.5.2.4 Environmental Law Applicable

3.5.2.4.1 Land Tenure Laws

Kenya does not have a national land policy and therefore, vital issues such as land administration, and land use planning are inadequately addressed with this lacuna precipitating floods which, as we

³⁵⁷ Khondker, *supra* note No. 336, p. 286.

³⁵⁸ Thrupp and Green, *supra* note No. 165, p. 107.

³⁵⁹ WMO *et al.*, *supra* note No. 345, p. 46.

³⁶⁰ UNEP, *supra* note No. 104, p. 64.

³⁶¹ Khondker, *supra* note No. 336, p. 290.

³⁶² UNEP, *supra* note No. 104, p. 63.

³⁶³ Fox, Karen: "Leisure: Celebration and Resistance in the Ecofeminist Quilt," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, p.155.

have seen, inordinately affect women. Sections 27 and 28 of the Registration of Land Act³⁶⁴ for instance, provide that a registered land proprietor of land enjoys absolute ownership of the land together with all rights and privileges appurtenant thereto and free from all other claims whatsoever with the effect that the existing customary rights are extinguished.³⁶⁵ As women do not own land, this makes their task of collecting water and fuelwood more arduous because they are confined to obtaining these from 'the commons' or 'open access areas.' Although Mumma argues that despite registration of land in the names of private individuals, customary land use and access rights remain resilient,³⁶⁶ in fact, this aggravates the women's predicament as customs have inbuilt discrimination which may curtail women's access to key environmental resources.³⁶⁷ Further, this raises situations of internal conflict of laws and confusion in case law.³⁶⁸

3.5.2.4.2 EMCA

EMCA has elaborate provisions for protection and conservation of the environment for instance Section 42(4) empowers NEMA to issue guidelines for the management of the environment of lakes and rivers in consultation with relevant agencies while Section 30 of the Act requires Provincial and District Environmental Committees to prepare district environmental action plans every five years, taking into consideration the relevant sectoral interests. However, there is need to go further to address the environmental impacts of floods and of flood management options.

3.5.2.4.3 Water Act

Under the Water Act,³⁶⁹ the state appropriated ownership of water which, under common law, was *res communes*. Hence under Section 3 of the Act, every water resource³⁷⁰ is vested in the state and by Section 5, the right to use water is *prima facie* vested in the Minister (for Water Resources

³⁶⁴ Cap. 300, Laws of Kenya.

³⁶⁵ Bowman, Cynthia and Kuenyehia, Akua (2003): *Women and Law in Sub-Saharan Africa*, Sedco, Accra, p. 155.

³⁶⁶ Mumma, Albert (2005): "Kenya's New Water Law: An Analysis of the Implications of Kenya's Water Act 2002 for the Rural Poor," a paper presented at the International Workshop on 'African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa,' 26th to 28th January 2005, Gauteng, South Africa, p. 8.

³⁶⁷ UNEP, *supra* note No. 104, p. 65.

³⁶⁸ Bowman and Kuenyehia, *supra* note No. 365, p. 129.

³⁶⁹ Act No. 8 of 2002.

³⁷⁰ S. 2 of the Act defines water resource to include any lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of flowing or standing water whether above or below the ground.

Management and Development). Section 15 obliges NEMA to develop a catchment management strategy to specifically cater for the protection of catchment areas (defined by Section 14 as areas from which rainwater flows into a watercourse). This is a significant enabling provision which has the potential to reduce flood hazards and, the Water Resources Management Authority (WRMA) regional offices (provided for under Section 10 of the Act) and River Basin organisations (RBOs) can be important vehicles for attaining this objective. Section 18 of the Act stipulates that the national water resources management strategy shall provide for collection, analysis and dissemination of data on watercourses. Interpreted broadly, this provision could ensure timely dissemination of flood forecasts to the local populace of flood prone areas provided the appropriate institutional capacity is in place. In addition, flood mitigation measures should be explicitly provided for.

The current absence of comprehensive provisions on flood management implies that flood events are managed on an ad hoc basis rather than in an integrated manner and is attributable to the absence of a national policy on flood management as the issue is not adequately addressed in the 1999 National Policy on Water Resources Management and Development.³⁷¹ The Act is therefore wanting in the area of flood prevention and management as it only cursorily provides for state schemes to control and manage floodwater in Section 19(2)(d) although the relevant provisions of the Forest Act and the land laws need to be amended in order to facilitate land acquisition for these schemes. As such, there is currently no systematic maintenance of dykes, making them susceptible to breaches even during floods of lower magnitude than those that the dykes are designed to withstand. The Act also fails to provide for women's participation in training and in planning for flood mitigation, relief and rescue operations.³⁷² Other failings of the Act are that it is predicated on both state centrism and a uniform legal system yet in reality, the majority of Kenyans live in a legally pluralistic environment where customary norms are more relevant and effective than statutory laws.³⁷³ However, women lose out either way as on one hand, specific flood-prone community needs

³⁷¹ GoK (1999): *National Policy on Water Resources Management and Development*, Sessional Paper No. 1 of 1999. At pp. 19-20 for instance, it states that because major water projects e.g. dams and flood control schemes have negative effects on the environment and human life, there is need for a comprehensive impact assessment.

³⁷² Rodda, Annabel (1993): "Women in the Humid Tropics," IHP Humid Tropics Series No. 6, UNESCO, Paris, p.26.

³⁷³ Mumma, *supra* note No. 366, p. 5.

do not influence national laws and on the other, patriarchal customary law is overtly discriminatory against women and would certainly not cater for the gendered dimensions of flood disasters.

3.5.2.4.4 Agriculture Act

Agricultural practices may have deleterious effects on the downstream flood situation and the Agriculture Act is important because it ensures soil conservation.³⁷⁴ The law also provides for a buffer along river and stream banks to protect the watercourse from erosion and pollution³⁷⁵ although in reality, this is not respected, leading to soil erosion, floods and loss of life and property.³⁷⁶ Sections 100 to 109 make general provision for review of annual programmes of production of “essential” crops in Kenya although flood-resistant crops such as certain cultivars of rice and sorghum,³⁷⁷ and cropping patterns are not expressly encouraged. Neither does the Act address the special agricultural research needs of flood-prone areas such as Budalangi. Although Parts IV and V provide for the preservation of soil and its fertility, in reality, there is no mechanism for promoting appropriate agriculture practices in flood prone areas or indeed anywhere else.

3.5.2.4.5 Forest Act

Large-scale deforestation in the watershed areas leads to serious degradation of the water resource base, reduced river carrying capacity due to excessive siltation of the riverbed and shifting of watercourses causing breaching of dykes.³⁷⁸ The Act needs to be enforced in order to protect the water towers and, there is need to debunk the notion of a forest as a legal construct³⁷⁹ and the 2005 Forest Bill attempts to address this concern with Section 3 defining a forest as “any land containing a vegetation ... dominated by trees of any size, whether exploitable or not, capable of producing wood or other products, potentially capable of influencing climate, exercising an influence on the soil, water regime and providing habitat for wildlife, and includes woodlands.”

³⁷⁴ S. 48 of the Agriculture Act.

³⁷⁵ Rule 6 of the Agriculture (Basic Land Usage) Rules prohibits cultivation, soil destruction, or cutting down any vegetation or depasturing livestock within 2 metres of a watercourse.

³⁷⁶ Torori, C.O. *et al.*: “Land Tenure and Water Resources” in Juma, C. and Ojwang, J. B.: *In Land we Trust: Environment, Private Property and Constitutional Change*, ACTS, 1996, p. 163.

³⁷⁷ Adams, William (2001): *Green Development: Environment and Sustainability in the Third World*, Routledge, p. 230.

³⁷⁸ WMO *et al.*, *supra* note No. 345, p. 13.

³⁷⁹ Even if the tree cover has been eroded, an area remains a ‘forest’ provided the gazettelement has not been revoked.

3.5.2.4.6 *Physical Planning Act*

Failure to enforce the Act has led to human encroachment onto vulnerable areas such as steep slopes. Further, building plans are not subjected to flood-risk assessment. However, effective physical planning is predicated on registration of all parcels of land but the attendant prohibitive money and time costs together with the bureaucracy and corruption at the land registry militate against this. Moreover, it would be absurd for a peasant to expend his meagre financial resources on obtaining title when this is not necessary for purposes of either succession or ensuring access. Thus, as Migot-Adholla *et al.* argue, access to land in rural areas is not governed by title deeds but by traditional systems for instance, if a titled household head dies, the children merely subdivide the land without obtaining the Land Control Board's consent³⁸⁰ and consequently, the Board cannot ensure that the minimum land allotments provided for by law are adhered to. Even where proof of land ownership is necessary, use of parallel non-title documents such as parcel cards and purchase agreements is prevalent in areas such as Kakamega³⁸¹ because these are cheaper and easier to obtain. Therefore, in a situation where traditional resource use systems govern access, the land registry is virtually rendered moribund and the Physical Planning Act superfluous.

3.5.2.5 *Ecofeminism, Floods, ESD and Budalangi Women*

It has been shown that the recurrent deluges in Budalangi result from unsustainable environmental practices and that they disproportionately affect women. Herein lies the potential for both ecofeminism and ESD. By taking a firm stand against environmental degradation upstream, the Budalangi women can address the resultant heavier workloads and the sexual exploitation they are subjected to in the relief camps. Good agricultural and forestry practices and adherence to the Physical Planning Act will not only ensure that the relevant natural resources are preserved for posterity, lifting the flood-induced burden from them will ensure a measure of inter-gender equity. This will however call for a broadening of the ecofeminist philosophy to encompass the specific experiences of Third World women (such as the Budalangi ones) and floods because while there is

³⁸⁰ Migot-Adholla *et al.*(1990): "Security of Tenure and Land Productivity in Kenya," Unpublished Paper, pp. 120, 127.

³⁸¹ *Ibid.*, p. 132.

a plethora of ecofeminist literature on how women traverse long and harsh terrains in search of safe water, the peculiarities of women and floods from an ecofeminist perspective have barely been interrogated. Further, because floods are becoming increasingly vicious and unpredictable largely due to climate change, there is need for a holistic ecofeminist perspective on their causes, such as worldwide deforestation and use of ozone layer-depleting substances, which is currently lacking. There is therefore need to expand the man-women-nature nexus in order to remedy this weakness.

3.6 Conclusion

In light of the preceding discussion, it can be justifiably contended that Ogiek, Nyeri and Budalangi women and the environment are wantonly exploited by a patriarchal system even though the major layers of oppression vary from three to four among these societies. The worse the environmental degradation, the heavier the women's workload thereby validating the fundamental premise of the ecofeminist philosophy that women and nature's subjugation are inextricably linked. However, it is not a case of a vicious cycle where oppression of women leads them to degrade the environment and the argument that women are paradoxically both environmental managers and destroyers is not borne out empirically. Patriarchy ensures that women are oppressed at 2 levels; directly *qua* women (for instance, through FGM and wife inheritance) and indirectly through destruction of the natural resources they rely on to fulfil their traditional roles which consequently places excessive work burdens on them. It has also been argued that to the extent that it does not take account of the specificities of developing country rural women's interfaces with forest, wildlife and floods, the ecofeminist philosophy is fundamentally flawed and needs to be reviewed. The totality of the above implies that in such a scenario, it follows that there can be no ESD because these are the very antitheses of the concept's component parts namely; environmental sustainability and both inter- and intra-generational and gender equity. Of course, law – although conveniently couched as gender-neutral on the basis of the presumed equality of the sexes – is also culpable although, as argued in Chapter Four, legal reform alone cannot be a panacea for the twin issues of women's oppression and the irreparable destruction of the environment.

CHAPTER FOUR: TOWARDS ECOFEMINISM AS A TOOL FOR ENVIRONMENTALLY SUSTAINABLE DEVELOPMENT IN KENYA

4.1 Introduction

The previous chapters have enunciated how men's superiority to women and nature pervade the legal, economic and chivalrous discourses worldwide thereby highlighting the potential of ecofeminism as a vehicle for attaining a reconceptualised notion of sustainable development. This Chapter draws some conclusions from the preceding chapters, sets forth some recommendations on actualising both ecofeminism and Environmentally Sustainable Development (ESD) in Kenya before making some concluding remarks.

4.2 Conclusions

4.2.1 Lacunae in the Existing Literature

There are considerable lacunae in the existing literature. These are first, that the treatment of women's subordination *qua* women is not exhaustive and most of the authors have dwelt on the interfaces between women and the environment yet this is a logical consequence of the former. Second, no link has been drawn between ecofeminism and sustainable development in Kenya and third, the existing literature has not examined the legal aspects of ecofeminism and sustainable development. Further, because most of the texts are anthologies, the ideologies of many of the contributing authors are diametrically opposed. Moreover, there is a dire shortage of literature by African authors and most of the existing literature is dated and does not take account of recently enacted legislative instruments such as the 1999 EMCA and the 2002 Water Act. Besides, the existing literature is anecdotal and ideological yet women do not see their role as environmental managers as ideological and if they happen to implement ecofeminist principles as they perform their gendered roles, they do so inadvertently.

4.2.2 Ecofeminism an Abstract Western Construct

Partly owing to the dearth of writings by Africans, ecofeminism continues to be perceived as an abstract western construct with little relevance to the rural Kenyan woman. This is compounded by

the fact that these Western authors cover issues such as pornography, paedophilia and surrogacy which, while being topical issues in the West, are of little relevance to rural Kenyan women.

4.2.3 Need for a Reconceptualised Version of Sustainable Development

The paper has also challenged the anatomy and interpretation of the current notion of sustainable development. In particular, it has problematised it on the grounds that it conspicuously lacks the term 'environment' or its offshoots in its phraseology, that it is inherently Utopian, that development as currently conceived is in fact maldevelopment and that the concept of intergenerational equity is blatantly anthropocentric, fails to address the more immediate issue of intra-generational equity and that it is illogical as propounding that natural resources be preserved for 'future generations' in perpetuity fails to recognise that each generation, including the present one, is in fact a 'future generation' of a previous one. To remedy these considerable flaws, an alternative concept of environmentally sustainable development (ESD) has been proposed. In addition to incorporating the necessary diction of 'environmentally' in its terminology, it de-emphasises economic indicators as the paramount measure of development and incorporates vital aspects such as social, cultural and political ones. In this sense, ESD is a radically restructured version of its predecessor in the sense that besides inter-generational equity, it encompasses intra-generational equity, inter and intra-gender equity, secure livelihoods, ecological sustainability, upholding non-retrogressive cultures and political participation.

4.2.4 Women Continue to be Oppressed

The overall treatment of women remains pathetic. Despite representing at least half of the world's population and accounting for two-thirds of all working hours, women receive only one-tenth of the world's income and own less than 1 percent of the world's property.³⁸² Further they produce well over half of the world's food and they comprise a growing proportion of heads of households³⁸³ so when women are denied equitable access to resources, the effects reach far beyond women.

³⁸² United Nations (1980): *Report of the World Conference of the UN Decade for Women: Equality, Development and Peace*, UN, New York.

³⁸³ GoK, *supra* note No. 27, p. 48, in 1999, 37% of the households were headed by females, up from 35% in 1989.

Indeed, locking half the population out of the development (as opposed to maldevelopment) process cannot be optimal because, in the words of Mwalimu Julius Nyerere:

One does not walk very fast or very long on one leg; how can we expect to develop our nation with only half the population?³⁸⁴

However, while it is accepted that women worldwide are invariably oppressed, it is also recognised that this oppression takes on different specificities regarding both form and magnitude. Hence, while white women are subjugated *qua* women, rural Kenyan women are in addition discriminated against on account of being Third World, black and indigenous people, and their respective tribal affiliations. Thus, the recommendations must take account of the multiple oppressions and peculiarities.

4.2.5 *Wanton Destruction of the Environment Continues*

The environment continues to be plundered at unsustainable levels with this being manifested by *inter alia* ozone layer depletion, climate change and rapidly encroaching desertification. Because of the gendered division of labour, rural Kenyan women have close interactions with the environmental and are thus disproportionately suffer fallout from its degradation.³⁸⁵ While it is tempting to blame environmental degradation, such as deforestation, on women, the facts that women invariably lack the technological means to engage in this and that they have the least motivation to destroy the environment as this worsens their already heavy workload does not bear out this widespread claim. So, while women loggers and poachers probably exist, they are in comparison to the other women, statistically insignificant. Therefore, rather than being environmental destroyers, women are largely victims and managers as they try to cope with an increasingly depleted environment.

4.2.6 *Causes of Environmental Degradation*

Even though this sorry state of affairs has been attributed to a myriad of factors such as anthropocentrism, consumerism, reductionist science and gender-blind laws, the thesis of this paper is that patriarchy, while not being wholly responsible, is in fact the common denominator in most of these issues. Thus, while a multi-pronged strategy can help whittle away each of these injustices,

³⁸⁴ Quotation in van Ingen *et al.* (2002): "Gender Equity in Coastal Zone Management: The Experience from Tanga, Tanzania," *IUCN and Tanga Coastal Zone Conservation and Development Programme*, p. 1.

³⁸⁵ UNEP, *supra* note No. 104, p. 62.

ultimately, it is patriarchy which must be tackled head-on. Therefore, because environmental laws are patriarchal – even though they are couched as gender-neutral – they do not recognise women's role as environmental managers leading to their virtual invisibility in this arena. Thus women's indigenous knowledge remains an unacknowledged treasure trove. Inability to see women's contribution has been called a 'patriarchal conceptual trap'³⁸⁶ of orthodox environmentalism. Moreover, there is need to debunk the myth that exponential population growth is responsible for environmental destruction. Third world women it has been argued are inundating the world with their progeny and while Kenya's population is admittedly growing,³⁸⁷ it is not responsible for extravagant lifestyles of the North which require more ozone-layer-depleting fossil fuels. There is therefore need to problematise the usefulness of population control as a solution to environmental destruction.

4.2.7 Trees, Wildlife and Floods are Ecofeminist Issues

The empirical data presented above suggest that trees,³⁸⁸ wildlife and water are ecofeminist issues although as argued in Chapters Two and Three, the dominant Western strand of ecofeminism does not interrogate the specificities of Third World women's encounters with these environmental resources. It is therefore perceived as an abstract philosophy with little relevance to rural Kenyan women and it therefore needs to be radically recast to take account of these peculiarities in order to be of practical significance to this large constituency of women who have, by virtue of the nature of their domestic chores, close interactions with these resources and thus their degradation disproportionately affects them. Yet women's indigenous environmental knowledge is rendered epistemologically insignificant and gender dimensions are overlooked while drafting environmental laws resulting in their initiating grassroots activities to protect nature. However as already argued, the fact that women suffer incommensurately from environmental destruction does not imply that only they can save the earth although even cross-gender environment protection initiatives must be informed by these inescapable empirical connections between women and nature.

³⁸⁶ Dobson Gray, Elizabeth (1982): *Patriarchy as a Conceptual Trap*, quoted in Warren, *supra* note No. 2, p. 7.

³⁸⁷ UNFPA (2005): *State of the World Population*, p. 111, estimates Kenya's growth rate for 2005 at 2.4%.

³⁸⁸ Although, as argued in Section 3.3.2.1, the gendered space in the trees varies spatially, temporally and even by product type for instance, women's dead wood versus men's live trees or women's fuelwood versus men's charcoal.

4.2.8 How a Kenyan Ecofeminism can contribute to ESD

A Kenyan ecofeminism must necessarily be informed by Kenyan rural women's concerns *qua* women and with regard to their interface with environmental resources. The philosophy that women and nature must be simultaneously loosed from patriarchy's bondage is predicated on the logic that the intrinsic worth of non-human nature cannot be valued if intra-human chauvinism is not transcended. Hence, the Ogiek women's 'Love Canal' is the twin issue of the degradation of the Mau Forest Complex by licensed loggers and their systematic exclusion from the forest by the state. The Nyeri women's 'Bhopal' consists of the threats posed by ecotourism and the frequent wildlife predations while the Budalangi women's 'Hurricane Katrina' comprises the recurrent deluges that sweep away their lives, families, property and livelihoods. But a Kenyan ecofeminism must necessarily call for intra-gender equity specifically between Kenyan ecofeminists and their Western counterparts. If Kenyan ecofeminism is cumulatively realised by progressively freeing women and nature from patriarchal and ethnocentric shackles through implementing the recommendations set forth in the proceeding section, a conducive environment for ESD will have been established. This is because *real* development will be *truly* sustainable as due regard will be paid to its social, positive cultural, political as well as the economic aspects. Further, the attained intra- and inter-gender and intra-species equity will chain off a series of actions which will collapse all hierarchies leading to intra- and inter-generational equity, secure livelihoods and ecological sustainability.

4.3 Recommendations

4.3.1 Gender Mainstream Laws and Policies

Gender mainstreaming is the holistic process of institutionalising gender analysis and equity principles in problem identification, planning and implementation of development plans and laws for the benefit of girls, boys, women and men and other disadvantaged groups.³⁸⁹ Within the context of this paper, Kenya should ratify and domesticate key conventions such as CEDAW, ICCPR and ICESCR and equity should be built into the Constitution and statutes. This would arguably help

³⁸⁹ UNDP, UNIFEM and GoK: "Guidelines for Tracking Progress Made in Gender Mainstreaming," UNDP and UNIFEM, p. 42.

alleviate the harmful environmental and health conditions under which women live and work and would increase their capacity to fight environmental degradation. Equity is here used advisedly as emancipation propagated by equality-feminists arguably enhances patriarchy³⁹⁰ because it is 'equality' on the latter's terms. In any case, since men themselves are not equal in a white supremacist capitalist patriarchal class structure, which men do feminist women want to be equal to? In the environmental arena, the gender-blindness of the laws must be done away with as, in their current form, they do not integrate ecofeminist philosophy and as such cannot be a vehicle for implementing ESD. Hence, the Agriculture Act must be reviewed to address the users (women) rather than the owners (men) of land and the Forest Act should decriminalise activities such as honey gathering, herbs and fuelwood collection in forests as these form the basis of rural women's livelihoods. Of course, like Smart, we need to be wary of the law's over-inflated view of itself, its totalising theory, its malevolence and the depth of its resistance to women's concerns³⁹¹ because law created by men cannot adequately articulate the interests of women. This is compounded by the fact that access to justice is time-consuming and costly, virtually making it inaccessible to rural women, the majority of whom are poor. Further, if law is to help in the women's liberation struggle at all, there is need for more radical changes (such as an overhaul of the legal culture) rather than the ameliorative changes that have been effected to date. However, despite their limitations, legal amendments can still help by making bold statements that trampling down on women is no longer the accepted norm. Besides, there's also need to recognise law's unique role in regulating human conduct given that the alternative is chaos. And as Kabeberi-Macharia argues, environmental law allocates natural resources, regulates their exploitation and prescribes standards and sanctions to control the impact of human activity on the environment.³⁹² Therefore, rather than dismiss law offhand, it is preferable to try and change the culture of law and its interpreters who, as already argued, 'stand on inarticulate premises.' However, law cannot be a panacea to the twin subjugation of women and nature and this measure needs to be supplemented with those below.

³⁹⁰ Salleh, *supra* note No. 3, p. 114.

³⁹¹ Smart, *supra* note No. 169, pp. 2, 3 and 163.

³⁹² Kabeberi-Macharia, *supra* note No. 127, pp. 18 and 19.

4.3.2 Recast the Ecofeminist Philosophy

As argued throughout the paper, ecofeminism as currently couched is, from the perspective of Third World rural women, perceived as an alien abstract concept. There is therefore need to reformulate it in order to broaden its range to more meaningfully interrogate the specificities of these marginalised women's interactions with the multifarious environmental resources from their own perspective as these are currently either crowded out by Western ecofeminist concerns, are documented from the outlook of Western ecofeminists or are simply uncharted.

4.3.3 Introduce Consumptive Utilisation Forms

There is need to introduce a consumptive utilisation approach in the management of forestry and wildlife. In the forestry arena, this will admittedly be addressed when the 2005 Forest Bill, whose objective is "to provide for the establishment, development and sustainable management ... of forest resources," is enacted into law because it *inter alia*, provides for community participation in forest management (Part IV), grants user rights, including hunting,³⁹³ to communities which live adjacent forests (Sections 22 and 47(2) and encourages farm forestry (Section 25) which will lessen the pressure on gazetted forests in the long-run. The provisions of the Bill are predicated on the 2005 Forest Policy whose goal is "to enhance the contribution of the forest sector in the provision of economic, social and environmental goods and services"³⁹⁴ with the ambitious aim of attaining a forest cover of at least 10 percent within the next decade.³⁹⁵ The nascent legislation should thus decriminalise the quintessential Ogiek lifestyle³⁹⁶ although the resettlement of the Ogiek in Nakuru may render these provisions superfluous to them. The Bill went through the crucial second reading in July 2005 and is at committee stage where the MPs' proposals are being incorporated. The law should also permit hunting and cropping of wild animals and allow local communities to keep the proceeds of their sale. However, it would need to be regulated through issuance of community quotas. These approaches have been used in South Africa, Namibia, Botswana and Zimbabwe with

³⁹³ This is implicit in the proviso to S. 54(3) although a licence or permit issued under the Wildlife (Conservation and Management) Act (Cap. 376) is a condition precedent for this activity.

³⁹⁴ GoK (2005): *Forest Policy*, Sessional Paper No. 9 of 2005, p. 2.

³⁹⁵ *Ibid*, p. 1.

³⁹⁶ Kamau, *supra* note No. 248, p. 10.

remarkable success although they would call for disaggregating resource tenure from land tenure³⁹⁷ and require investment into abattoirs and tanneries. Of course, for biodiversity to be maintained, there would be need for reliable data on animal populations by carrying out annual censuses. The law could also provide for game farming³⁹⁸ and sale of live animals to both internal and overseas markets.³⁹⁹ The latter would require the appropriate legislation on quarantine and export requirements to be in place. Kameri-Mbote also proposes revenue sharing schemes, tax credits to landowners on whose land wildlife resides, servitudes and transferable development rights⁴⁰⁰ although there is a danger that, given their socio-economic and political status, women would not benefit from these measures without land tenure reform.

4.3.4 Use Participatory Approach

Ensuring participation of women and local communities in the policy, law and decision making processes as well as project implementation is critical if their concerns are to be addressed and these laws and policies are to be informed by local knowledge. There is therefore need to move beyond the state and individuals as loci for wildlife management in order to ensure that stakeholders' opinions are incorporated in decision making processes.

4.3.5 Recognise the Intrinsic Value of all Nature

As advocated by Stone, there is need to propagate a non-anthropocentric ethic which values the intrinsic value of all nature. After all, the concept is the fabric of the universe and exists independently of our conceptual schemes, linguistic frameworks and attitudes.⁴⁰¹ Moreover, regard should be had of the folly of human judgment – which designates value to life forms – but which is itself based on limited knowledge as mosquitoes could, for instance, become useful to humans in future. Therefore, ecofeminists must, under the guardianship model proposed by Stone, speak for

³⁹⁷ Eriksen *et al. supra* note No. 312, p. 210.

³⁹⁸ Currently practised in the form of crocodile farming for which the Mamba Villages in Nairobi and Mombasa are famous and Ostrich farming in Karen and Kitengela.

³⁹⁹ Gichere, S. (1995): "Wildlife Utilisation Study," Report No. 5, Policy and Institutional, pp. 15 and 16. However, the recent 'donation' by Kenya of 175 wild animals to Thailand has caused public outrage.

⁴⁰⁰ Kameri-Mbote, *supra* note No. 310, pp. 21-25.

⁴⁰¹ Gruen, Lori: "Revaluing Nature," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, p. 357.

nature because when it speaks – such as through climate change – it is not heard.⁴⁰² However, while the guardianship proposition may be apposite for organisations like Greenpeace and the Green Belt Movement which have established solid track records of altruistic caring for the environment, it is liable to abuse as unscrupulous individuals can pose as environmental guardians and use awarded damages for self-aggrandisement especially in Africa where widespread poverty can be an overwhelming temptation and ecofeminists must be wary of this danger.

4.3.6 Educate the Girlchild

It is important to provide equitable education opportunities for the Girlchild as alluded to in the third MDG as it is the cause rather than the result of meaningful development.⁴⁰³ Moreover, four of the other MDGs: reduction of child mortality and disease, including HIV-AIDS, and improvements in maternal health and environmental stability will be severely hindered without progress in girls' education. The Free Primary Education programme (FPE) introduced in Kenya in January 2003 is an important first step in this direction although other issues, such as onerous domestic chores and cultural practices such as FGM and early child marriages continue to conspire to keep girls out of school. In promoting the education of the Girlchild, particular emphasis should be placed on drafting in minority communities such as the Ogiek. In addition, inability to afford sanitary towels (despite government's waiving duty on them) means that girls use old rags and even leaves which do not adequately contain the menstrual flow, are unhygienic and negatively affect the girls' confidence.⁴⁰⁴ This, compounded by pathetic school sanitary facilities means a large number of rural girls skip school during their menstrual cycles which cumulatively add up to 2 months per annum. This calls for a rethink of the FPE programme and instead of only paying school fees, government would be well-advised to consider investment in school sanitary towel production facilities to be as important as classroom construction. Girls should also be encouraged to pursue sciences courses which are currently dominated by males so that they can challenge the dominant but false conceptions of

⁴⁰² Plumwood, Val: "Androcentrism and Anthropocentrism: Parallels and Politics" in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, p. 350.

⁴⁰³ Kane, Eileen (2005): "So Much Yet to Learn about Girls' Education," in *Environment and Poverty Times*, Vol. 4, September 2005, UNEP, p. 14.

⁴⁰⁴ www.awid.org/go.php?stid=1493

women and nature that expose them to ceaseless exploitation and marginalisation. In the long-run, this would replace science's ideological claims to universalism with diversity. However, because the socio-cultural impediments continue to militate against girls' qualifying for these courses, affirmative action should be introduced to remedy these injustices. However, because this is an inherently temporary measure,⁴⁰⁵ it would be useful for say, a gender commission to establish benchmarks and to periodically audit its effectiveness. Girls should also be encouraged to acquire advocacy skills so that they can effectively lobby for change to social constructions.

4.3.7 Increase Women's Access to Resources

It has been seen that women continue to be marginalised partly because they do not own the conventional factors of production. There is need to support policies and laws to increase women's economic opportunities, including credit so that women can acquire land⁴⁰⁶ and harness *appropriate* technology such as ploughs, rain-harvesting water tanks, boreholes and solar power. Several microfinance institutions (MFIs) specifically targeting women such as Kenya Women Finance Trust have sprung up and their high success rate presents a unique opportunity for women to utilise the facilities offered to drastically lessen their work burden and then progressively better their lot.

4.3.8 Contribution of the Academia

There is need for a sensitised academic intelligentsia to facilitate grassroots struggles by conducting parallel struggles inside educational institutions against the way knowledge is produced.⁴⁰⁷ More specifically, there is need to recast theories such as those on conventional sustainable development and to problematise computations of GNP and GDP in order to controvert the myth that women do not engage in productive work. To this end, gender-disaggregated data needs to be gathered and systematised in order to specify the gender roles and duties otherwise women's role in development and natural resource management will continue to be overlooked.⁴⁰⁸ There is also need for new epistemologies to bring rural Kenyan women's concerns from the periphery to mainstream in ESD

⁴⁰⁵ This position is confirmed by Article 4(1) of CEDAW.

⁴⁰⁶ Bowman and Kuenyehia, *supra* note No. 365, p. 131.

⁴⁰⁷ Salleh, *supra* note No. 3, p. 184.

⁴⁰⁸ See e.g. Kameri-Mbote, *supra* note No. 14, p.23 and Thrupp and Green, *supra* note No. 165, p. 114.

policies. Further, the academia should remedy the dearth of literature on ecofeminism in Kenya by thoroughly researching the area. The research must be informed by participatory action research (PAR) methods in order to elicit shifts in thinking among bureaucrats and the local people and to draw upon local knowledge. Loer alludes to the need for an interdisciplinary perspective; between scientists, philosophers, feminists, policymakers and environmentalists⁴⁰⁹ and this may be worth trying as it will certainly lead to more comprehensive and antireductionist findings.

The academia can also help to deconstruct oppressive conceptual frameworks which are characterised by value hierarchical dualisms "up-down disjunctive pairs in which the disjuncts are seen as oppositional rather than complementary and exclusive rather than inclusive and which place higher value on one of the disjuncts and a logic of domination."⁴¹⁰ They can also play a key role of chronicling the triumphs of Kenyan and African ecofeminists so that these can act as role models to the Girlchild who typically so desperately lacks inspiration.

4.3.9 Harness Indigenous Knowledge

It is essential for policy makers to realise the importance of indigenous knowledge and non-retrogressive traditional systems. Until such knowledge is acknowledged and valued as sophisticated rather than primitive and as an important alternative to 'modern' information, the environment, those who depend on it and posterity are in jeopardy. Nevertheless, there is need to guard against the danger of appropriating this knowledge without benefit to the local people.⁴¹¹ The extremophiles case where KWS has launched a claim for a share of the proceeds accruing to the US multinational giant Procter and Gamble and Genencor International BV of the Netherlands from the sale of Tide Alternative beach detergent for stonewashing denim is a case in point. Genencor discovered the extremophiles enzymes in Lake Bogoria in Kenya and without KWS' permission, cloned and sold them to Procter and Gamble, which used them as critical ingredients in the manufacture of the detergent. The case is significant both because of the colossal amount involved,

⁴⁰⁹ Loer, *supra* note No. 167, p. 287.

⁴¹⁰ Kurth-Schai, Ruthanne: "Ecofeminism and Children," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, pp.195 and 196.

⁴¹¹ Wells, Betty and Wirth, Danielle: "Remediating Development Through an Ecofeminist Lens," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana Univ. Press, pp. 302.

but also because it could stem the illegal extraction of Kenya's biological resources when these are deemed to have huge industrial potential.⁴¹²

4.3.10 Sensitise Men and Women on Gender and Environmental Issues

The oppression of women is so deeply embedded in our societies and psyches that it continues to be invisible.⁴¹³ Patriarchy pervades both our personal and political lives hence the ecofeminist cliché 'the personal is political.' Gender stereotypical roles are enforced through familial, religious, economic and educational institutions. There is therefore need to raise the consciousness of both men and women on the need to promote a more egalitarian society as true development suffers where half the population is shut out of the 'mainstream' economy. Sensitisation would also help men develop a consciousness against developing an acquisitive streak and learn to see themselves as stewards rather than proprietors. Women's sensitisation is warranted because they are unwittingly guilty of complicity in their own oppression because, as mothers and teachers, they, for generations, condition children from a formative age to treat females as subservient human beings. As such, there is merit in Mies' stunning contention that women, like men "are accomplices in the system of exploitation and oppression that binds women and men together."⁴¹⁴ Further, ecofeminists should work to create a consciousness that goes beyond nature/culture and male/female dualisms towards valuing biological and cultural diversity.⁴¹⁵ This requires unravelling conceptual frameworks that justify the logic of domination, that make 'male' traits morally superior to 'female' attributes.⁴¹⁶ Carrying out environment- and gender-sensitivity training for women and men (particularly policy-makers, politicians and institutional leaders)⁴¹⁷ will help them discard their stereotypical perceptions of nature and women as well as retrogressive cultural practices such as FGM and wife inheritance.

⁴¹² "KWS Seeks Millions from Procter and Gamble," *The East African* 23rd August 2004.

⁴¹³ Kelly, Petra: "Women and Power," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, p.112.

⁴¹⁴ Mies, *supra* note No. 68, p. 1.

⁴¹⁵ Diamond and Orenstein, *supra* note No. 130, p. x.

⁴¹⁶ Zabinski, Catherine: "Scientific Ecology and Ecological Feminism: The Potential for Dialogue," in Warren, Karen (ed.) (1997): *Ecofeminism: Women, Culture, Nature*, Indiana University Press, Bloomington and Indianapolis, p. 315.

⁴¹⁷ Thrupp and Green, *supra* note No. 165, p. 113.

4.3.11 Global Women Alliances

Despite the different accents ecofeminism must take in order to account for geographical specificities, it is an irrefutable fact that patriarchy pervades the globe. And, the most pernicious of all patriarchal tactics is to keep women divided.⁴¹⁸ Women should therefore form 'global sisterhoods' to share experiences and learn from their counterparts around the world. The tales of India's Chipko women hugging trees in order to protect them, of Kenya's Green Belt Movement engaging in afforestation and thwarting excision of forest land, of US' Love Canal tragedy which led housewives to demand remedial action demonstrate that women across the spectrum have stories to tell. Grassroots women who have achieved seemingly impossible feats can act as role models and spur the determination and creativity of women and the Girlchild around the globe. Nevertheless, Third World women must be wary of having the liberation struggle hijacked by their Western counterparts, replicating the scenario in George Orwell's *Animal Farm*⁴¹⁹ where the 'revolutionary liberators' end up being more exploitative of the common people than their 'autocratic' predecessors.

4.3.12 Areas for Further Research

Owing to the limitations outlined in Section 1.11, this paper has been largely written from a theoretical perspective. In the specific context of the areas covered, there is therefore need to carry out field research in order to test the veracity of the claims made herein and to verify the impact of recent developments. These include the degazattement of Amboseli National Park by Legal Notice Number 120 of 2005 and a key issue is whether this will incite other communities, particularly those adjacent the Mount Kenya National Park to demand the degazattement of that national park and how this is likely to affect the women's interactions with wildlife, if at all. Another significant development is the resettlement of 12,000 Ogiek in Nakuru⁴²⁰ and there is need to investigate whether this will lead them to irrevocably give up their claim to the Mau Forest Complex. The effects of floods on women in Kenya is a virtually uncharted territory and there is therefore urgent need to

⁴¹⁸ Kelly, *supra* note No. 413, p. 115.

⁴¹⁹ Orwell, George (2005): *Animal Farm*, UBS Publishers, New Delhi, generally.

⁴²⁰ See e.g. Siele Simon and Masibo, Kennedy: "President Hands out 12,000 Deeds Despite Court Order," Nation Newspaper, 16th October 2005.

carry out research, preferably in Budalangi, which is reputed to be the most flood-prone area of the country, in order to verify the assertions made in this paper.

4.4 Conclusion

As far as liberating both nature and women are concerned, the present magnitude of their degradation and oppression respectively implies that there can be no quantum leap. Change is likely to initially be infinitesimal and accelerate as the numbers of women in decision-making positions reach a critical mass. The underlying thesis is therefore that there can be no ESD where women are continually oppressed or where the environment is progressively degraded with impunity with the attendant *short-term* environmental costs being externalised to women and other vulnerable groups such as children. However, it is also in the men's self interest to preserve the environment and as articulately put by Chief Seattle:

[T]he earth does not belong to *man*: *man* belongs to the earth ... All things are connected like the blood which unites the family ... whatever befalls the earth, befalls the *sons* of the earth. *Man* did not weave the web of life: *he* is merely a strand in it. Whatever *he* does to the web, *he* does to *himself*.⁴²¹ [Emphases added].

With regard to its specific objectives, this paper has detailed the manifestations of ecofeminism in Kenya and has assessed the relevant national legal regime and found that, even though most of these instruments are couched as gender-neutral and are preservationist, they in fact perpetuate the twin exploitation of women and the environment. It has also been argued that given the abstract nature of Western ecofeminism insofar as it is preoccupied with 'Western' issues such as nuclear and radioactive waste disposal, there is dire need for a black Kenyan-accented ecofeminism to 'heal the wounds' and consequently ensure ESD. This is of course not to argue that black Kenyan women are monolithic and there must be community-specific ecofeminisms that cater for the peculiar needs of different societies. Nevertheless, black Kenyan women share certain important commonalities such as nationality, a colonial history, analogous patriarchal cultures as well as inequitable gender and environmental laws and policies that can be used as a rallying point for a Kenyan ecofeminism praxis from which the aforementioned area-specific ecofeminisms can spring as offshoots. The recommendations outlined in the preceding section can act as catalysts to ensure that ecofeminism

⁴²¹ Letter from Chief Seattle, leader of the Duwamish and Suquamish Indians of Puget Sound to US President Franklin Pierce in 1855. Excerpt in Weiss, *supra* note No. 101, p. 1.

acts as a vehicle for ensuring ESD provided there is a concerted and immediate effort to implement them. And, to borrow Stone's argument, even though a Kenyan ecofeminism may initially appear to be untenable and even ludicrous, with sustained discourse, it can become conventional in the same way the circumference of the circle of *de jure* rights which initially only covered men, widened to include women, children, blacks, the disabled and intangible entities such as partnerships, corporations and states although admittedly, the emancipation of the former category remains incomplete. And, just as racism was formally eradicated from South Africa in 1994, gender, species, class and ableism apartheid can be wiped off the face of the earth and a well-thought out ecofeminism which redresses the flaws in the philosophy as currently couched can achieve this Herculean task.

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