# Attaining Gender Equity for Inclusive Development in Kenya

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***Abstract***

*This paper critically examines the concept of gender equity and the role it can play in achievement of inclusive development in Kenya. Despite its importance and constitutional recognition, gender equity is an ideal that is yet to be realized. Arguably, the country's efforts towards achieving sustainable development require the concerted efforts of both men and women. This is because the two groups have different but complementary needs that any efforts towards inclusive national development must address. If this is to be achieved effectively, then there is need for evaluating the role of gender equity in the development discourse. This discussion makes a case for enhanced role of gender equity for the realisation of meaningful and participatory national development through proposing ways of promoting empowering both gender for the same.*

## 1. Introduction

The role of gender in the national development discourse and particularly sustainable development in Kenya is pertinent. The current Constitution of Kenya 2010 places great emphasis on the equality of both gender and their participation in the country's development agenda.[1] However, gender equity is an ideal that is yet to be fully realized owing to various factors that are discussed in this paper. The author herein examines the legal and institutional framework on gender equity and human rights with a view to making a case for the practical empowerment of both gender for national development.

Arguably, this cannot be achieved without the cooperation of both gender. This paper makes both a legal and moral argument in support of the need for full participation of both gender in the sustainable development efforts. Thus, the author does not only advocate for the empowerment

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[1] Article 1 of the Constitution emphasizes that all sovereign power belongs to the people while Article 10 sets out democracy and participation of the people and inclusiveness as some of the national values and principles of governance in Kenya; Article 27 prohibits either the State or any person from discriminating against any person on any of these grounds including: race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth; Article 59 thereof establishes the Kenya National Human Rights and Equality Commission whose functions include *inter alia* promoting gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development. Article 69(2) also obligates every person to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources. Further, Article 175 (c) provides that one of the principles of principles of devolved government is that no more than two-thirds of the members of representative bodies in each county government should be of the same gender; See also Article 197.

of men and women as an end in itself but as a means of ensuring that there is cooperation between them in achieving inclusive development in Kenya.

**2. Gender Equity and Equality**

The term "gender" is used to refer to the set of social norms, practices and institutions that regulate the relations between women and men (also known as "gender relations").[2] It has also been defined as a social construct that ascribes different qualities and rights to women and men regardless of individual competence or desires.[3] It is noteworthy that gender does not mean 'women' or 'girls' – although the word is frequently (mis)used as shorthand for women, women's empowerment, women's human rights, or, more broadly, for any initiative that is geared towards girls or women.[4]

Gender equity is used to denote the equivalence in life outcomes for women and men, recognising their different needs and interests, and requiring a redistribution of power and resources.[5] According to the European Commission, gender equity entails the provision of fairness and justice in the distribution of benefits and responsibilities between women and men, while recognising that women and men have different needs and power and that these differences should be identified and addressed in a manner that rectifies the imbalances between the sexes.[6] Equity is generally regarded as a state of fairness and justness and it requires that the specific needs of particular groups are considered separately and acted upon accordingly.[7]

From the foregoing, it is noteworthy that gender equity strives towards ensuring that the different gender are not only included in development but also that their special needs that may be

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[2]United Nations, "The Role of Men and Boys in Achieving Gender Equality," *Women 2000 and Beyond,* December 2008. p.4. Available at http://www.unwomen.org/~/media/headquarters/media/publications/un/en/w2000menandboysweb.pdf [Accessed on 03/04/2015].

[3] G. J. Latham, "A study on gender equality as a prerequisite for sustainable development," *Report to the Environment Advisory Council*, Sweden 2007:2, p. 17. Available at http://www.uft.oekologie.uni-bremen.de/hartmutkoehler_fuer_studierende/MEC/09-MEC-reading/gender%202007%20EAC%20rapport_engelska.pdf [Accessed on 03/04/2015].

[4] UNICEF, "Promoting Gender Equality: An Equity-Focused Approach to Programming," *Operational Guidance Overview*. p. 10. Available at http://www.unicef.org/gender/files/Overarching_Layout_Web.pdf [Accessed on 03/04/2015].

[5] H. Reeves and S. Baden, "Gender and Development: Concepts and Definitions," *Prepared for the Department for International Development (DFID) for its gender mainstreaming intranet resource*. Institute of Development Studies, Report No 55, February 2000, p. 10.

[6] European Commission, *Gender equality – glossary*, available at http://ec.europa.eu/justice/gender-equality/glossary/index_en.htm[Accessed on 19/05/2015].

[7] NSW Health Department, 'Gender Equity in Healthcare,' *State Health Publication No: (HSP) 000015,* April 2000. p.2. Available at http://www0.health.nsw.gov.au/pubs/2000/pdf/gender_equity.pdf [Accessed on 19/05/2015]; See also Canadian Association for the Advancement of Women and Sport and Physical Activity (CAAWS), "What is Gender Equity?" Available at http://www.caaws.ca/gender-equity-101/what-is-gender-equity/ [Accessed on 19/05/2015].

attributed to inevitable differences are also adequately addressed. Equity is thus important since it ensures that even where both gender are afforded equal opportunities, the enjoyment and benefits accruing from those opportunities effectively address the needs and desires of each group.

Efforts to introduce gender-sensitive approaches to national development have not been quite successful because even as legislative measures are put in place, they fail to address the underlying norms and customs that define gender relations and power dynamics in the society. The power imbalance that defines gender relations influences women's access to and control over resources, their visibility and participation in social and political affairs, and their ability to realize their fundamental human rights.[8]

Gender inequality has been defined as the differential treatment and outcomes that deny women the full enjoyment of the social, political, economic and cultural rights and development. It is the antithesis of equality of men and women in their human dignity, autonomy and equal protection.[9] Gender equality is however not a 'women's issue' but refers to the equal rights, responsibilities and opportunities of women and men, girls and boys, and should concern and fully engage men as well as women.[10] It is also used to refer to the equal participation of women and men in decision-making, equal ability to exercise their human rights, equal access to and control of resources and the benefits of development, and equal opportunities in employment and in all other aspects of their livelihoods.[11]

It is noteworthy that gender equity has been defined differently in diverse contexts. However, this paper adopts a definition that describes it as the presence of a gender perspective in decision-making of all kinds and those women's interests are given the same consideration as men's in terms of rights and the allocation of resources to fully address their specific needs and desires.[12] In the Kenyan context, this definition encompasses what the Bill of Rights in the Constitution of Kenya 2010 provides for.[13] The Constitution provides for equality of all persons and prohibits any

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[8] R. Strickland and N. Duvvury, "Gender Equity and Peacebuilding," *From Rhetoric to Reality: Finding the Way*, International Center for Research on Women Discussion Paper, 2003. p. 5. Prepared for the Gender Equity and Peacebuilding Workshop with a grant from the International Development Research Centre (IDRC), Ottawa, Canada. Available at http://www.icrw.org/files/publications/Gender-Equity-and-Peacebuilding-From-Rhetoric-to-Reality.pdf [Accessed on 16/05/2015].

[9] N. Baraza, 'Lost Between Rhetoric and Reality: What Role for the Law and Human Rights in Redressing Gender Inequality?' *Kenya Law Reform* Vol. II [2008-2010] page 1. http://www.kenyalaw.org/klr/index.php?id=874 Accessed on 15/05/2015].

[10] See generally 'Universal Declaration of Human Rights - In six cross-cutting themes' Available at<http://www.ohchr.org/EN/UDHR/Documents/60UDHR/Stories_on_Human_Right_PressKit_en.pdf> [Accessed on 1/04/2015]

[11]FAO Training Guide, "Gender and Climate Change Research in Agriculture and Food Security for Rural Development," 2nd Ed., 2013, p.9. Available at http://www.fao.org/docrep/015/md280e/md280e.pdf

[12] G. J. Latham, *op cit,* p. 17.

[13] Chapter 4 (Articles 19-59).

form of discrimination on any ground, including sex.[14] It provides that equality includes the full and equal enjoyment of all rights and fundamental freedoms.[15] Further, it states that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.[16]

The Constitution envisages a society where women and men participate equally and competitively in national development. It is important to note that the national values and principles of governance as envisaged in the current Constitution of Kenya bind all State organs, State officers, public officers and all persons whenever any of them––applies or interprets the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.[17] The most significant of these values and principles are participation of the people, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.[18] Indeed, some of these are captured in the Preamble to the Constitution which provides that one of the pillars of the current Constitution is the recognition of the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.

Gender equality is seen as a shared vision of social justice and human rights and one that requires concerted efforts from all to achieve.[19] The effect of this is that the foregoing values and principles ought to inform any development deliberations and move towards achievement of gender equality in Kenya.

## 3. International Framework on Gender Equity and Equality

### 3.1 Universal Declaration of Human Rights, 1948

The *Universal Declaration of Human Rights*, 1948(UDHR) recognizes that the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.[20] Further, it provides that all are equal before the law and are entitled without any discrimination to equal protection of the law.[21]The Universal Declaration of Human Rights acknowledges that men and women are not the same but insists on their right to be equal before the law and treated without discrimination.[22] To this end, the Declaration recognises the important role of equity in ensuring that all persons are not only

[14] Article 27(4).
[15] Article 27 (2).
[16] Article 27 (3).
[17] Article 10 (1).
[18] Article 10(2) (b) (c).
[19] See generally, *Beijing Declaration and Plat form for Action Beijing+5 Political Declaration and Outcome,* United Nations 1995.
[20] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Preamble. Article 1 thereof also emphasizes on equality of all.
[21] Article 7.
[22] Article 2

afforded equal opportunities but are also able to take advantage of such opportunities in a fair manner.

The Declaration thus requires that all persons, men and women, should enjoy the human rights equally and also demands that all should be protected by law from any form of discrimination. In light of the foregoing, the current Constitution of Kenya provides for equality of all persons and non-discrimination on any ground as well as equal protection of the law.[23]

The Declaration is important not only for pushing for the promotion of the rights of all persons but also for correction of any violation of the said rights.[24] The UDHR thus forms the benchmark against which many laws on human rights around the world are pegged. The universal acceptance of its values and principles means that every state, Kenya included, should work towards achieving the ideal world of equity and equality as contemplated in the Declaration. It is noteworthy that the Declaration recognises the equal dignity of all human beings, both men and women. Arguably, this is one of the main ways of ensuring that both men and women can meaningfully pursue the aspirations of freedom, justice and peace in the world. This is in fact captured in the Constitution of Kenya which states that the purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.[25] The focus is therefore on the humanity as a whole where efforts go towards ensuring that all persons are fully empowered to realise their potential and consequently promote national development.

**3.2 1995 United Nations World Conference in Beijing**

The Governments participating in the Fourth World Conference on Women in Beijing China declared *inter alia,* that women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace.[26] They went further to state that equal rights, opportunities and access to resources, equal sharing of responsibilities for the family by men and women, and a harmonious partnership between them are critical to their well-being and that of their families as well as to the consolidation of democracy.[27]

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[23] Article 27.
[24] For instance, Article 22(1) of the Constitution of Kenya gives every person the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened; See also Article 70 thereof.
[25] Constitution of Kenya, Article 19(2).
[26] United Nations, *Report of the Fourth World Conference on Women*, Beijing, 4-15 September 1995, A/CONF.177/20/Rev.1. para. 13 Annex I.
[27] Para. 15.

It is noteworthy that this Conference came at a time when women were still oppressed and its outcome has gone a long way in boosting the empowerment efforts for the female gender. It is however worth mentioning that the Conference was not all about women but it was an effort towards achieving gender equity. This is reflected in their deliberations as captured above where the participants stated that equal rights, opportunities and access to resources, equal sharing of responsibilities for the family by men and women, and a harmonious partnership between them are critical to their well-being and that of their families as well as to the consolidation of democracy. The outcome of the Conference should therefore not be seen as an effort towards emancipation of one gender at the expense of the other but should be used to promote gender equity for inclusive national development.

### 3.3 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The *Convention*[28]notes in its Preamble that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.

Further, it requires that States Parties should condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake *inter alia*: to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.[29] The Convention is thus an effort towards ensuring that women and men participate meaningfully and productively in the national development discourse.

The Convention thus advocates for the active participation of both men and women in an equal manner in the political, social, economic and cultural life of their countries. The Convention arguably provides the basis for realizing equity between women and men through ensuring women's equal access to, and equal opportunities in, political and public life -- including the right to vote and to stand for election -- as well as education, health and employment.[30] To this end, Kenya has performed impressively as far as framework laws are concerned, considering that the principles of non-discrimination, social equity and equality, amongst others feature prominently in the Constitution. The Constitution also obligates the State to take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights

[28] UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.
[29] Article 2 (a).
[30] Articles 10 & 11.

guaranteed under Article 43.[31] What is now required is ensuring that this is actually done and it does not remain in text, so as to ensure that both men and women meaningfully participate in national development and especially in realizing the country's development blueprint, Vision 2030.

### 3.4 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The *Convention on Economic, Social and Cultural Rights*[32] was adopted in 1966, but it entered into force 1976. It commits states parties to promote and protect a wide range of economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress. It obliges states parties to respect and ensure that all individuals subject to their jurisdiction enjoy all the rights included in the ICESCR, without discrimination.

ICESCR provides a framework for creating gender sensitive indicators for measuring government accountability for commitments adopted under the ICESCR, and the extent to which women's full participation is reflected in decision making in the legal, political, economic, social, and familial spheres. Article 3 of the ICESCR promotes equal rights to men and women. The Covenant thus promotes gender equity and inclusive enjoyment of the human rights. The Constitution of Kenya reflects the spirit of this Covenant as it provides for economic and social rights of all persons.[33] Indeed, it goes further to state that the state should give priority to ensuring the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances, including the vulnerability of particular groups or individuals.[34]

## 4. Regional Framework Gender Equity and Equality

### 4.1 The African Charter on Human and Peoples' Rights

The *African Charter on Human and Peoples' Rights* (Charter)[35] guarantees that all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.[36] In its Preamble, the Charter *inter alia* reaffirmed, in light of the Charter of the Organization of African Unity, that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples.

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[31] Article 21(2). Article 43 provides for economic and social rights of every person in Kenya.
[32] UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.
[33] Article 43.
[34] Article 20(5) (b).
[35] African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.
[36] Article 22(1).

The Charter also reiterates that every individual is entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.[37] This provision thus prohibits any form of discrimination on either men or women in all spheres of life. The Charter also guarantees every individual's right to receive information and the right to express and disseminate their opinions within the law.[38] In the context of this discussion, this right would include the right to receive and share information which would facilitate participation of all persons in sustainable development efforts. As such, in a bid to achieve gender equity for an all inclusive approach to national development, states should also promote other rights which would facilitate enjoyment of the foregoing rights and this would include ensuring that all the citizens are empowered.

The Charter further guarantees every individual's right to work under equitable and satisfactory conditions, and receive equal pay for equal work.[39]It has been acknowledged that poverty hampers achievement of sustainable development. One of the ways of addressing poverty is economic empowerment of both women and men which can be done by way of promoting the right to work for all in order to give them a source of income.[40] It is also important to note that all peoples have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. States have the duty, individually or collectively, to ensure the exercise of the right to development.[41] Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.[42] Gender equity comes in to ensure that all benefit fairly in exploitation of the available opportunities.

### 4.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol)

The Maputo Protocol[43] reaffirms in its Preamble the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union as well as the New Partnership for Africa's Development, relevant Declarations, Resolutions and Decisions, which underline the commitment of the African States to ensure the full participation of African women as equal partners in Africa's development.

[37] Article 2.
[38] Article 9.
[39] Article 15.
[40] Article 41(1) of the Constitution of Kenya guarantees every person's right to fair labour practices.
[41] Constitution of Kenya, Article 22.
[42] Constitution of Kenya, Article 27(3).
[43] African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11 July 2003.

The Protocol provides that States Parties should combat all forms of discrimination against women through appropriate legislative, institutional and other measures.[44] In this regard, it requires that they should integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life.[45]Further, as a corrective measure, it obligates States Parties to commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men. The Protocol reaffirms that women and men are equal before the law and should have the right to equal protection and benefit of the law.[46]

In addition to the foregoing, the Protocol states that States Parties are to take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that *inter alia*, women are equal partners with men at all levels of development and implementation of State policies and development programmes.[47] In a move that reflects the foregoing, the Constitution of Kenya provides that all State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.[48] Indeed, it goes further to state that the State shall enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.[49] These provisions create opportunity for the country to adopt international's best practices for realisation of gender equity and also mobilising all persons to promote gender equity for inclusive national development in Kenya.

With regard to Right to Sustainable Development, the Protocol provides that women have the right to fully enjoy their right to sustainable development.[50] To facilitate this, the Protocol provides for several measures. It requires the States Parties to introduce the gender perspective in the national development planning procedures. They are also to ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes. They are also to promote women's access to and control over productive resources such as land and guarantee their right to property. Further, they are to

[44] Article 2(1).
[45] Article 2(1) (c).
[46] Article 8. This is also captured under Article 27 of the current Constitution of Kenya.
[47] Article 9(1) (c).
[48] Constitution of Kenya, Article 21(3).
[49] Constitution of Kenya, Article 21(4).
[50] Article 19.

promote women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women. In addition to the foregoing, they are to take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes. The Protocol also requires States Parties to ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.[51]

Further, the Protocol requires that women should have the right to live in a healthy and sustainable environment.[52]In order to facilitate this, the Protocol requires that States Parties should take all appropriate measures to *inter alia*, ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels.[53]

In Kenya, this can be achieved through full implementation of the values and principles of governance in development matters in the country. If properly effected, the Maputo Protocol can go a long way in ensuring gender equity for inclusive development.

**4.3 Declaration on Gender Equality in Africa**

The *Declaration*[54] in its preamble takes cognizance of the adverse impact of gender inequality on the economic growth of Africa and the fact that African women bear a disproportionate burden of poverty. It also affirms the fact that extreme poverty cannot be addressed without concerted efforts to improve women's access to resources and that access to resources increases the level of spending, especially on food and children's education. The Declaration advocates for women's literacy and improved girls' education as this spins off a wide range of benefits including improving the welfare of the family and the quality of the labour force, increasing the tax base, and boosting levels of agricultural output. The overall benefit would be the realisation of all inclusive and beneficial development for all.

In order to achieve the foregoing, the participating states agreed to carry out a number of initiatives which included but not limited to strengthening the gender machineries in their countries and provide them with enough human and financial resources to enable them to carry out their responsibility of promoting and tracking gender equality. The Constitution of Kenya adopts this recommendation especially with regard to social and economic rights. It provides that in applying any right under Article 43, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not

[51] Ibid.
[52] Article 18(1).
[53] Article 18(2).
[54]Adopted at the Third Ordinary Session of AU Assembly in Addis Ababa, Ethiopia, from 6-8 July 2004.

available.[55] States are thus expected to demonstrate their genuine efforts towards achieving these rights for all persons.

**5. Sustainable Development**

Sustainable Development was defined by the *Brundtland Commission* as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.[56] It has been observed that sustainable development, although a widely used phrase and idea, has many different meanings and therefore provokes many different responses. In broad terms, the concept of sustainable development is an attempt to combine growing concerns about a range of environmental issues, socio-economic issues to do with poverty and inequality and concerns about a healthy future for humanity. It strongly links environmental and socio-economic issues.[57]A key feature of sustainable development is that it comprises three elements: Environment, Society and Economy.[58] There are different approaches to sustainability and sustainable development which include environmental sustainability, economic sustainability, and social sustainability.

Although reference has been made to the other elements of sustainability due to their intertwining nature, this discussion mainly focuses on the social aspect. Gender equity is a fundamental element of sustainable development. A socially sustainable system must achieve fairness in distribution and opportunity, adequate provision of social services including health and education, gender equity, and political accountability and participation.[59]This argument is concerned with the social component of sustainable development with a view to ensuring that both men and women are empowered and effectively participate in the achievement of all the other aspects of sustainable development. Arguably, social sustainability will not be achieved in a society where one gender is treated as superior to the other. It is therefore important to promote social justice and gender equity so as to achieve an inclusive and socially sustainable development.

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[55] Constitution of Kenya, Article 20(5) (a).
[56] *Our Common Future*, Report of the World Commission on Environment and Development, 1987 (Brundtland Report).
[57] B. Hopwood, *et al*, "Sustainable development: mapping different approaches." *Sustainable Development* Volume 13, Issue 1, pp.38–52, February 2005.p.39. Available at doi: 10.1002/sd.244 [Accessed on 3/04/2015].
[58] Shell Livewire, "Elements of Sustainable Development: Environment, Society and Economy," available athttp://shell-livewire.org/business-library/employing-people/management/sustainable-development/Sustainable-development/ [Accessed on 3/04/2015].
[59] J.M. Harris, "Sustainability and Sustainable Development," International Society for Ecological Economics Internet Encyclopaedia of Ecological Economics, February 2003, p. 1.Available at http://www.isecoeco.org/pdf/susdev.pdf [Accessed on 20/04/2015].

### 5.1 Rio+20 - The United Nations Conference on Sustainable Development, Rio de Janeiro, Brazil, June 2012

At the Rio+20 Conference, world leaders, participants from governments, the private sector, NGOs and other groups, deliberated on how they can reduce poverty, advance social equity and ensure environmental protection.[60]

According to the Rio+20 outcome document,[61] member States agreed that sustainable development goals (SDGs) must *inter alia*: be based on *Agenda 21* and the Johannesburg Plan of Implementation; fully respect all the Rio Principles; contribute to the full implementation of the outcomes of all major summits in the economic, social and environmental fields; focus on priority areas for the achievement of sustainable development, being guided by the outcome document; address and incorporate in a balanced way all three dimensions of sustainable development and their inter inter-linkages; be coherent with and integrated into the United Nations development agenda beyond 2015; not to divert focus or effort from the achievement of the Millennium Development Goals; and include active involvement of all relevant stakeholders, as appropriate, in the process.[62] It is worth noting that one of the main outcomes of the Rio+20 Conference was the agreement by member States to launch a process to develop a set of Sustainable Development Goals (SDGs), which will build upon the Millennium Development Goals and converge with the post 2015 development agenda.[63] Further, the sustainable development goals focus on inequalities, economic growth, decent jobs, cities and human settlements, industrialization, energy, climate change, sustainable consumption and production, peace, justice and institutions.[64]

Indeed, it has been affirmed that people are at the centre of sustainable development and, in this regard, Rio+20 delegates promised to strive for a world that is just, equitable and inclusive, and committed to work together to promote sustained and inclusive economic growth, social development and environmental protection and thereby benefit all, in particular the children of the world, youth and future generations of the world without distinction of any kind such as age, sex, disability, culture, race, ethnicity, origin, migratory status, religion, economic or other status.[65] This is an all-inclusive approach that does not create any distinction between male and female but focuses on humanity as a whole.

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[60] United Nations Conference on Sustainable Development, available at http://www.uncsd2012.org/about.html [Accessed on 17/05/2015].
[61] The Rio+20 Outcome Document, The Future We Want (Resolution 66/288, July 2012).
[62] United Nations Department of Economic and Social Affairs, Division for Sustainable Development.
[63] United Nations Department of Economic and Social Affairs, "Sustainable development goals," available at https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals [Accessed on 20/05/2015].
[64] United Nations General Assembly, "The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet," *Synthesis Report of the Secretary-General on the post-2015 Sustainable development agenda*. A/69/700. para.45.
[65] United Nations, "Open Working Group proposal for Sustainable Development Goals," *op cit.*

**5.2 2002 World Summit on Sustainable Development**

The 2002 World Summit on sustainable Development in Johannesburg adopted a plan of implementation reiterating the Rio principles and establishing poverty eradication, sustainable consumption and production patterns and protection of the natural resource base for economic and social development as the three prime objectives (Johannesburg Plan).

It has been contended that that human needs cannot be sufficiently met just by providing an ecologically stable and healthy environment, but that - if a society is indeed committed to sustainability - the equally legitimate social and cultural needs ought to be taken care of as well. Economic, social, and cultural conditions, efforts, and values are deemed to be resources that also need to be preserved for future generations. It has been opined that sustainable development, as defined in the *Brundtland Commission* Report, includes human development.[66] One of the ways of addressing poverty is focusing on human development which empowers people, both men and women, to contribute positively towards eradication of poverty without solely relying on the Government to do so. This Summit thus helped demonstrate the link between sustainable development and social development and showing that they must be mutually inclusive if development is to be considered effective. It is also important to point out that poverty affects males and females in varying ways and as such, any efforts geared towards its eradication should bring on board on the affected parties in order to come up with effective mechanisms that will not only reflect and address the needs of all but will also facilitate participation of all. This is also important as it helps generate social acceptance of the government's policies.

**5.3 UN Conference on Environment and Development, Agenda 21**

The Agenda 21[67]under chapter 23 calls for full public participation by all social groups, including women, youth, indigenous people and local communities in policy-making and decision-making. It is in recognition of the fact that unless all these groups are equitably and meaningfully involved in the decision making policies, especially those on sustainable development then the Government efforts would either fail or prove inadequate. This recognition of the important roles of various groups is important as it creates a chance for the government to appreciate and address the needs of these groups be they males or females.

**5.4 Rio Declaration on Environment and Development**

The United Nations Conference on Environment and Development, met at Rio de Janeiro from 3 to 14 June 1992, to reaffirm the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972, and sought to build upon it.[68] They agreed on a number of Principles on environment and development.

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[66] V. Costantini and S. Monni, "Measuring Human and Sustainable Development: an integrated approach for European Countries," *Working paper n. 41*, 2004. p. 8.
Available at http://host.uniroma3.it/dipartimenti/economia/pdf/WP41.pdf [Accessed on 15/04/2015]
[67] United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992.
[68] UN General Assembly, Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972, United Nations publication. A/CONF.151/26 (Vol. I).

Principle 1 thereof states that human beings are at the centre of concerns for sustainable development and are as such entitled to a healthy and productive life in harmony with nature. This means that apart from addressing the human needs, human beings must actively participate in the sustainable development agenda if the same is to be achieved. It is noteworthy that Principle 1 does not discriminate against men or women as it contemplates a society where both gender participate in the sustainable development efforts for a healthy and sustainable environment for everyone.

This implies that both should equally participate in sustainable development discourse. As a demonstration of this point, Principle 5 calls for all States and all people to cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world. It therefore seeks to improve the living standards of all persons without marginalization of men or women. Instead, it requires all to cooperate in efforts towards achieving sustainable development through such means as addressing the problem of poverty. This is affirmed in Principle 20 which states that women have a vital role in environmental management and development and their full participation is therefore essential to achieve sustainable development. The youth also form part of the community and Principle 21 agitates for their participation by providing that the creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all. These Principles thus advocate for the equal and meaningful participation of all persons in promotion of sustainable development agenda.

**5.5 Declaration on the Right to Development**

The Declaration[69] in its preamble partly states that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. The Declaration also states that right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.[70]

It is noteworthy that the foregoing statement does not discriminate against women or men and it contemplates the equal and active and meaningful participation of *all individuals* (emphasis added). The Declaration is particular about equality of all and requires that States should undertake, at the national level, all necessary measures for the realization of the right to development and should ensure, *inter alia*, equality of opportunity for all in their access to basic

[69] A/RES/41/128.
[70] Article 1.

resources, education, health services, food, housing, employment and the fair distribution of income. Specifically, it states that effective measures should be undertaken to ensure that women have an active role in the development process. As such, it advocates for appropriate economic and social reforms to be carried out with a view to eradicating all social injustices.[71] Elimination of social injustices entails promoting gender equity as a way of ensuring that both men and women get fair opportunities for the realisation of their right to self determination and contribution towards national development.

**6. Gender and Development-The Interface**

The term 'development' is perceived differently by different people and countries and thus defined differently. It has been argued that in addition to improvements in incomes and output, it typically involves radical changes in institutional, social, and administrative structures as well as in popular attitudes and, in many cases, even customs and beliefs.[72] If this assertion is anything to go by, then development would also include attitudes towards gender and particularly stereotyped roles of men and women in any society. Any tangible development should also strive towards achieving gender parity in a given society. It has been observed that Gender equality, centered in human rights, is both a development goal on its own and a vital tool to accelerating sustainable development and unless women and girls are able to fully realize their rights in all spheres of life, an all-inclusive human development will not be advanced.[73]

The social dimension of sustainable development is a neglected area in such analyses and often, this places women at a disadvantage, since the social dimension affects gender-based rights and social position, which are key factors in determining women's access to resources, decision-making and the like.[74] For instance, gender equality is considered a critical element in achieving decent work for all women and men, in order to effect social and institutional change that leads to sustainable development with equity and growth.[75] As such, *gender equity, which goes beyond equality*, is necessary (emphasis added). It is noteworthy that the term 'development' is perceived differently by different people and countries and thus defined differently. That is probably the reason why there exists the 'developed' and 'developing' countries classification. There is therefore no single agreed definition of the concept of development. However, development has various angles to it and may be classified as economic development, human development, *inter alia*. However, development is not an exclusively economic phenomenon but encompasses financial as well as reorganization and reorientation of entire economic and social systems. It has

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[71] Article 8(1).
[72] M. Todaro, 'Economic Development' chapter 3, (2000, 7th ed.).
[73]UNDP, *Gender equality*, available at http://www.africa.undp.org/content/undp/en/home/ourwork/gender-equality/overview.html [Accessed on 02/04/2015].
[74]*Ibid*.
[75] International Labour Organisation, *Gender and Development,* available at http://www.ilo.org/global/topics/economic-and-social-development/gender-and-development/lang--en/index.htm [Accessed on 02/04/2015].

been argued that in addition to improvements in incomes and output, it typically involves radical changes in institutional, social, and administrative structures as well as in popular attitudes and, in many cases, even customs and beliefs.[76]

The dimensions of development are extremely diverse, including economic, social, political, legal and institutional structures, technology in various forms, the environment, religion, the arts and culture.[77] Development has been described as the upward movement of the entire social system, which encloses, besides the so-called economic factors, all non-economic factors, including all sorts of consumption by various groups of people; consumption provided collectively; educational and health facilities and levels; the distribution of power in society; and more generally economic, social, and political stratification."[78]

The *1987 Brundtland Report* observed in the foreword that "what is needed now is a new era of economic growth – growth that is forceful and at the same time socially and environmentally sustainable." The implication of this is that even as sustainable development efforts focus on economic development, regard has to be had on the aspects of environment and social development so as to ensure that economic development is not achieved at the expense of all these.

Thus, despite the differences in status or any other ground, the focus is on achieving some level playing ground for all in the form of gender equity, that appreciates the contribution of every man and woman in development of the country and ultimately satisfying the needs of every person. The goal of gender equity is considered to be moving beyond equality of opportunity by requiring transformative change with the recognition that women and men have different needs, preferences, and interests and that equality of outcomes may necessitate different treatment of men and women.[79] An equity approach implies that all development policies and interventions need to be scrutinized for their impact on gender relations and potential advantages or otherwise on men or women.[80]

Food and Agricultural Organisation (FAO) affirms that women manifest an impressive resilience and multifaceted array of talents, but they also face a range of constraints – particularly in their access to productive resources such as land, inputs, training and financial services – which prevent them from becoming equally competitive economic players, capable of creating better lives for themselves and their families, and contributing fully to the growth of their communities

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[76] M. Todaro, 'Economic Development' chapter 3, *op cit.*
[77] Sumner, 'What is 'Development'?' p. 11, available at http://www.sagepub.com/upm-data/18296_5070_Sumner_Ch01.pdf
[78] G. Myrdal, 'What Is Development?' *Journal of Economic Issues*, Vol. 8, No. 4 (Dec., 1974), pp. 729-736, pp. 729-730. Association for Evolutionary Economics, Available at http://www.jstor.org/stable/4224356
[79] H. Reeves and S. Baden, "Gender and Development: Concepts and Definitions," *op cit*, p.10.
[80] *Ibid*.

and countries.[81] Gender equity approach can address these challenges thus enabling men and women to participate equitably, competitively and meaningfully in the development agenda.

The centrality of equity in sustainable development can be best understood when one looks at the Kenyan constitution which provides that the State should ensure the sustainable exploitation, utilization, management and conservation of the environment and natural resources and ensure equitable sharing of the accruing benefits.[82] Understandably, the equity referred to means that it is not only the intergenerational that is pursued but also intragenerational equity. These components, namely intergenerational and intragenerational equity are part of sustainable development as popularly defined. To explore intragenerational equity, under which gender equity arguably falls, this paper conceptualizes sustainable development in terms of the satisfaction of economic, social, and security needs of both men and women now and in the future without undermining the natural resource base and environmental quality on which life depends on.[83] It has been argued that for development to be sustainable, the environment should be protected, people's economic situation improved, and social equity achieved.[84] It is important to point out that the discussion herein mainly concentrates on the social equity aspect of sustainable development.

## 7. Barriers to Gender Equity for Inclusive Development in Kenya

### 7.1 Uneven access to resources

With regard to protection of vulnerable groups, *Agenda 21* provides that the general objectives of protecting vulnerable groups are to ensure that all such individuals should be allowed to develop to their full potential (including healthy physical, mental and spiritual development); to ensure that young people can develop, establish and maintain healthy lives; to allow women to perform their key role in society; and to support indigenous people through educational, economic and technical opportunities.[85]

With restrained or limited access to resources including land based resources, it is hard or even impossible for women to participate actively and qualitatively in national development and ultimately sustainable development. The net effect is that women are denied the chance due to lack of capacity and resources to participate in national development. Further, left with limited resources with which to perform their critical role in society, they essentially become part of the

[81] Food and Agriculture Organization of the United Nations, "FAO Policy on Gender Equality: Attaining Food Security Goals in Agriculture and Rural Development," Rome, 2013. *op cit* p. v.
[82] K. Muigua & F. Kariuki, "Sustainable Development and Equity in the Kenyan Context," p.4. Available athttp://www.kmco.co.ke/attachments/article/104/A%20Paper%20on%20Sustainable%20Development%20and%20Equity%20in%20the%20Kenyan%20Context.pdf
[83] *Ibid*.
[84] Chapter 7, "The Sociology of Sustainable Development," p. 225.
[85] Agenda 21, Objective 6.23

problem instead of the solution in the fight against poverty. They are consequently relegated to a dependent position instead of becoming partners in the development efforts.[86]

**7.2 Poverty**

Poverty eradication has been marked as the greatest global challenge facing the world today and an indispensable requirement for sustainable development.[87] The Rio+20[88] outcome reiterated the commitment to freeing humanity from poverty and hunger as a matter of urgency.[89] Problems of environment and development are closely linked; degradation of ecosystem services harms poor people.[90] Indeed, among the poor there are those marginalised groups who suffer most thus adding to their misery. The Constitution of Kenya 2010 classifies women among the marginalised groups of people who may need affirmative action.[91] It has been argued that the lifestyles of women and men are rooted *inter alia* in economic conditions, power positions and gender, which inform people's perceptions of what welfare represents – and which in turn determine what people can and wish to consume.[92] It is also observed that the gender disparities in economic power-sharing are an important contributing factor to the poverty of women.[93]It has also been documented that the heavy burden of poverty falls disproportionately on women especially female-headed households whose proportion is increasing.[94]The contribution of rural women in Africa is critical in development. With poverty abounding amongst the economically challenged women, the role of women in achieving sustainability and sustainable development is thus undermined and even defeated. It has been recognized that women make crucial contributions in agriculture and rural enterprises and they play a key role in rural economies, where the fight against hunger and poverty is most pressing, as this is where the large majority of the world's

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[86] For instance, a recent study established that in the ongoing coal mining deliberations in Mui, Kitui Kenya, women have been left out and are often not consulted. Daily Nation Newspaper, 19 May 2015.

[87] United Nations, "Open Working Group proposal for Sustainable Development Goals," available at https://sustainabledevelopment.un.org/sdgsproposal [Accessed on 15/04/2015]

[88] United Nations Conference on Sustainable Development (UNCSD) (Rio 2012, Rio+20 or Earth Summit 2012).

[89] United Nations, "Open Working Group proposal for Sustainable Development Goals," op cit.

[90] W.M. Adams, "The Future of Sustainability: Re-thinking Environment and Development in the Twenty-first Century," *The World Conservation Union Report of the IUCN Renowned Thinkers Meeting, 29-31 January 2006*. p. 7. Available at http://cmsdata.iucn.org/downloads/iucn_future_of_sustanability.pdf [Accessed on 15/04/2015]

[91] Constitution of Kenya 2010, Article 260.

[92] G. J. Latham, *op cit*, p. 44.

[93] "Women and Poverty", *The United Nations Fourth World Conference on Women*, Beijing, China – September 1995, *Action for Equality, Development and Peace*.
Available at http://www.un.org/womenwatch/daw/beijing/platform/poverty.htm [Accessed on 15/04/2015]

[94] United Nations Economic Commission for Africa, *1990, Abuja Declaration on Participatory Development: The role of women in Africa in the 1990s*. Chapter 3.25. Adopted by the Fifth Regional Conference on Women, held at Dakar from 16 to 23 November 1994, E/CN.6/1995/5/Add.2 Distr. GENERAL, 29 December 1994.

poor live.[95] They are also central to family food security and nutrition, as they are generally responsible for food selection and preparation and for the care and feeding of children.[96]

**7.3 Lack of Education**

The right to education is a human right having major implications both for the individual as well as for social and economic development.[97] Indeed, it has rightly been pointed out that apart from its intrinsic value as a crucial development goal, education is also central to one's ability to respond to the opportunities that development presents.[98] The African [Banjul] Charter on Human and Peoples' Rights guarantees every individual's right to education.[99] Further, it provides for every individual's right to freely, take part in the cultural life of their community.[100] This is especially significant considering that community participation in development is envisaged under Principle 22 of the Rio Principles which states that indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States are to recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

It has in fact been argued that failing to meet the goal of gender equity in education will not only hurt the girls who lose an opportunity for an education, but also impose societal costs in terms of lower growth, higher fertility, child mortality, and malnutrition.[101] As such, promoting female education to close these gaps is not only intrinsically valuable for the girls who would benefit and would further an important aspect of gender equity in developing countries, but it would assist in the overall development of these countries as well.[102] Education promotes realization of environmental justice for all persons. Broadly defined, environmental justice entails the right to have access to natural resources; not to suffer disproportionately from environmental policies,

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[95] Food and Agriculture Organization of the United Nations, "FAO Policy on Gender Equality: Attaining Food Security Goals in Agriculture and Rural Development," Rome, 2013. p. v.
Available at http://www.fao.org/docrep/017/i3205e/i3205e.pdf [Accessed on 12/05/2015].
[96] *Ibid*.
[97]United Nations, *African Platform for Action*, E/CN.6/1995/5/Add.2. Adopted by the Fifth Regional Conference on Women, held at Dakar from 16 to 23 November 1994. Chapter 3.30.
[98] D.A. Ghaida and S. Klasen, "The Costs of Missing the Millennium Development Goal on Gender Equity," *Munich Economics Discussion paper* 2003-01, p.2.
Available at http://www.ungei.org/infobycountry/files/univmunich_0301_klasen.pdf [Accessed on 16/05/2015]
[99] Article 17(1).
[100] Article 17(2).
[101] D.A. Ghaida and S. Klasen, "The Costs of Missing the Millennium Development Goal on Gender Equity," *op cit,* p.21.
[102] *Ibid*, p.22.

laws and regulations; and the right to environmental information, participation and involvement in decision-making.[103]

The *Aarhus Convention* establishes a number of rights of the public (individuals and their associations) with regard to the environment. The Convention provides for *inter alia*: the right of everyone to receive environmental information that is held by public authorities ("access to environmental information"); the right to participate in environmental decision-making ("public participation in environmental decision-making"); and the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general ("access to justice").[104]

It is important to note that it is not possible to enjoy the foregoing rights as envisaged by the *Aarhus Convention* without the basic education and knowledge.[105] Lack of basic education therefore means that women are left out in the sustainable development agenda and do not subsequently enjoy the right to environmental justice. *Aarhus Convention* is a powerful tool that can be used to promote citizenry education and consequently deal with the barrier of lack of or inadequate education. Its main pillars have been captured in the Bill of Rights in the Constitution of Kenya under the right to information,[106] right of access to justice[107] and obligations of state and individuals in relation to the environment.[108] Under these provisions both men and women can play a great and synergetic role in realisation of the national development agenda.

**7.4 Negative Cultural Practices and Beliefs**

The Constitution of Kenya recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.[109] It goes further to state that every person has the right to use the language, and to participate in the cultural life, of the person's choice.[110] It nevertheless provides that any law, including customary law, which is inconsistent with the Constitution, is void to the extent of the inconsistency, and any act or omission in

[103] R. Ako, 'Resource Exploitation and Environmental Justice: the Nigerian Experience,' in F.N. Botchway (ed), Natural Resource Investment and Africa's Development, (Cheltenham, UK: Edward Elgar Publishing, 2011), pp. 74-76.
[104] *Aarhus Convention,* Articles 4, 5, 6 & 9. Although the *UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, or Aarhus Convention,* is a European region legal instrument, its provisions have gained international recognition and approval especially considering the fact that it reflects Principle 10 of the Rio Declaration on Environment and Development.
[105] Articles 4 and 5 of the *Convention* concern environmental information.
[106] Constitution of Kenya, Article 35.
[107] *Ibid,* Article 48.
[108] *Ibid,* Article 69.
[109] *Ibid,* Article 11(1).
[110] *Ibid,* Article 44(1).

contravention of this Constitution is invalid.[111] The Constitution also states that a person should not compel another person to perform, observe or undergo any cultural practice or rite.[112]
The foregoing provisions were enacted in recognition of the fact that some of the cultural practices are oppressive on one gender, mostly women, while elevating the other, in most if not all cases men. It is noteworthy that that due to various reasons which include negative cultural beliefs, women in some communities have not been able to fully enjoy the benefits of education as girls are kept away from classrooms.

It is noteworthy that many men still have the rather stereotyped culturally defined role of women as the children's caretaker. This is supported by many community's culture as well as some of the major religions which view one gender as superior to the other. Thus, most women especially within the poor population struggle to fend for their families by way of gathering fuel (mostly firewood) to prepare food for the whole family and also walk long distances to look for water particularly in arid and semi-arid areas.[113] They mostly rely on resources that they do not control or own and more often than not they do not even have the means or incentive to improve them.[114] Thus environmental degradation mostly affects these women who are not even given a chance to participate in deliberations on how best to achieve sustainability and sustainable development in Kenya. With women left out of the discourse, it then becomes harder for the country to achieve sustainable development since it is impossible to tell them to practice sustainable utilization of resources while some of them barely have access to basic resources for survival.

On the other hand, it has been observed that gender differences can, however, also result in men being disadvantaged in certain societies, although presently, in most parts of the world, it is above all women that are victims of discrimination.[115] It is argued that although women are more likely to be disadvantaged and marginalised, the negative impact that gender inequality can have on men as well should not be ignored.[116] For example, it has been observed that societal norms

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[111] *Ibid,* Article 2(4).
[112] *Ibid,* Article 44(3).
[113] IRIN, *Kenya: Women Weighed Down by Culture,* available at
http://m.irinnews.org/report/87063/kenya-women-weighed-down-by-culture#.VVutT9pRXFo [Accessed on 19/05/2015].
[114] See P. K. Mbote, "Women, Land Rights And The Environment: The Kenyan Experience," 49(3) *Development*
(2006), p. 43-48, available at http://www.ielrc.org/content/a0605.pdf [Accessed on 20/05/2015]; See also generally R.M. Dick, *et al,* "Property Rights for Poverty Reduction," *2020 FOCUS BRIEF on the World's Poor and Hungry People,* October 2007.
Available at http://www.ifpri.org/sites/default/files/publications/beijingbrief_meinzendick2.pdf [Accessed on 20/05/2015]. It has also been documented that only 3% of women have title deeds in Kenya. UNDP-Kenya, Millennium Development Goals in Kenya-Ten Years of Implementation and Beyond: The Last Stretch Towards 2015, UNDP-Kenya, Nairobi, 2010, p.33.
[115] UNESCO, "Gender Equality and Equity," A summary review of UNESCO's accomplishments since the Fourth World Conference on Women (Beijing 1995), May, 2000. p.7.
Available at http://unesdoc.unesco.org/images/0012/001211/121145e.pdf [Accessed on 19/05/2015].
[116] "Difference between Gender Equality and Gender Equity,"

regarding the appropriate behaviour for men tend to put them under pressure as regards the need to provide materially for their family, and also deny them opportunities of being more nurturing towards their children and wife.[117] Therefore, it is true to say that although women still suffer on a larger scale than men, both gender are susceptible to discrimination in the various spheres of development thus justifying the push for gender equity for inclusive national development.

**8. Way Forward-Enhancing Role of Gender in Sustainable Development in Kenya**

One of the national values and principles of governance as envisaged by the current Constitution of Kenya is sustainable development. Further, the country's national long-term development blue-print, *Vision 2030,*[118]advocates for equality of citizens and states that Kenya shall be a nation that treats its women and men equally without discriminating any citizen on the basis of gender, race, tribe, religion or ancestral origin.[119] The development of a nation should be carried out in partnership with the women and men and no one gender should be seen as either the senior or junior partner in the relationship.[120]

Gender equality is an essential component of sustainable economic growth and poverty reduction.[121] Some of the basic rights guaranteed in the Constitution of Kenya 2010 include the economic and social rights of every person. These rights include the right—to the highest attainable standard of health, which includes the right to health care services, including reproductive health care; to accessible and adequate housing, and to reasonable standards of sanitation; to be free from hunger, and to have adequate food of acceptable quality; to clean and safe water in adequate quantities; to social security; and to education.[122] The World Bank observes that greater gender equality can enhance productivity, improve development outcomes for the next generation, and make institutions more representative.[123]

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available at
http://vcampus.uom.ac.mu/soci1101/432_difference_between_gender_equality_and_gender_equity.html [Accessed on 19/05/2015].

[117] *Ibid.* See also Daily Nation Newspaper Editorial, "Rescue the Boy Child," Tuesday, 10 May 2015, p.12.

[118] Government of the Republic of Kenya, 2007.

[119] Vision 2030, p. 22.

[120] General Ibrahim Badamati Babangida, President of the Federal Republic of Nigeria, 'Extracts From the Opening Speeches,' *Abuja Declaration on Participatory Development: The Role of Women in Africa in the 1990*, United Nations Economic Commission for Africa. P.3. Adopted by the African Regional Conference on the Integration of Women in Development, Abuja, Nigeria, 6-10 November 1990 (4th meeting).

[121] Food and Agricultural Organization of the United Nations, *et al,* "Gender dimensions of agricultural and rural employment: Differentiated pathways out of poverty," Rome, 2010. p. x.
Available at http://www.fao.org/docrep/013/i1638e/i1638e.pdf [Accessed on 13/5/2015].

[122] Constitution of Kenya 2010, Article 43 (1).

[123] World Bank Group, *World Development Report 2012: Gender Equality and Development*, p. xx.
Available at
http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1315936222006/Complete-Report.pdf [Accessed on 13/5/2015].

It is noteworthy that the foregoing rights affect both men and women and some arguably affect women more than men thus placing women in a strategic position that requires them to participate in decision making. It has been noted that equitable access to more and better jobs in rural areas enable rural women to become effective economic actors and engines of growth; as well as to produce or acquire the food, water, fuel and social services their families need.[124] Indeed, the quality of the care mothers are able to give to their children and other household members contributes to the health and productivity of whole families and communities and improves prospects for future generations.[125]

Due to the central position occupied by women in society, the realization of these rights which mostly fall within the social sustainability pillar of sustainable development requires active participation of women in order to achieve effectiveness. It has been correctly argued that the realization of the right to food has a direct impact on the right to an adequate standard of living and the right to health, and presupposes the existence of a clean and safe environment conducive to the sustainable development of food resources.[126]

Equitable gender participation in sustainable development efforts calls for empowerment of both gender which should include participation by people in decisions and processes shaping their lives; participating in the market economy; challenging inequality and oppression; the liberation of both men and women; and empowerment as bottom-up process which cannot be bestowed from the top-down.[127]

One of the ways of achieving sustainability as provided for by *Agenda 21*[128] is empowering communities. The Rio Conference participants agreed that sustainable development must be achieved at every level of society. Peoples' organizations, women's groups and non-governmental organizations are important sources of innovation and action at the local level and have a strong interest and proven ability to promote sustainable livelihoods.[129]As such, *Agenda 21* requires that Governments, in cooperation with appropriate international and non-governmental organizations, should support a community-driven approach to sustainability, which would include, *inter alia*: Empowering women through full participation in decision-

[124] Food and Agricultural Organization of the United Nations, *et al,* "Gender dimensions of agricultural and rural employment: Differentiated pathways out of poverty," *op cit,* p.x.
[125] *Ibid*.
[126] United Nations Non-Governmental Liaison Service (NGLS), "Human Rights Approaches to Sustainable Development," *NGLS Roundup* 90, May 2002. p.5. Available at http://www.un-ngls.org/orf/pdf/ru90hrsd.pdf [Accessed on 17/04/2015]
[127] Chapter 2: *Development, Empowerment, and Participation*, available at http://www.google.com/search?ie=ISO-8859-1&q=Chapter=2%3A=development%2C=empowerment=and=participation=&btnG=Search [Accessed on 15/05/2015].
[128] United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992.
[129] *Ibid*, Objective 3.7.

making; and giving communities a large measure of participation in the sustainable management and protection of the local natural resources in order to enhance their productive capacity.[130]

It also requires that Governments should, with the assistance of and in cooperation with appropriate international, non-governmental and local community organizations, establish measures that will directly or indirectly implement mechanisms for popular participation - particularly by poor people, especially women - in local community groups, to promote sustainable development.[131] Education empowers individuals for full development of human personality, and participation in society though acquisition of knowledge, human values and skills. The right to education has close linkage with the right to development, and is a powerful tool in poverty reduction strategies.[132] The right to education entails some basic elements without which it cannot be fully enjoyed. These include: availability of education - ensuring free and compulsory education for all children; accessibility of education - education accessible to anyone irrespective of race, gender, nationality, ethnic or social origin (elimination of discrimination); and acceptability of education - the quality of education should be guaranteed; adaptability of education - education that responds and adapts to the best interests of each child.[133]

Governments' obligations on the right to education are thus defined along these elements.[134] With regard to availability, they are to ensure compulsory and free education for all children in the country. To guarantee accessibility, they are to eliminate exclusion from education based on any grounds of discrimination (race, colour, sex, language, religion, opinion, origin, economic status, birth, social status, minority or indigenous status, disability).[135] The education must also be acceptable in that governments must define the minimum standards for education, including the medium of instruction, contents and methods of teaching, and to ensure their observance in all educational institutions. In relation to adaptability, governments must design and implement education for children precluded from formal schooling.[136] This would include children belonging to nomadic pastoralists and others who may not be able to access formal institutions of learning for one reason or the other. Education is key in eradication of poverty in communities. This is especially so in the dire case of the pastoralist communities who entirely rely on environment for their livelihood. With education, it is possible to have these communities

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[130] *Ibid*.
[131] Ibid, Objective 3.8(i).
[132] UNESCO (2008), 'The Right to Education', p.2.
[133] Human Rights Education Associates, 'Right to Education',
available at *http://www.hrea.org/index.php?doc_id=402#top* [Accessed on 14/05/2015].
[134] K.Tomasevski, 'Manual on rights-based education: global human rights requirements made simple'. Bangkok: UNESCO Bangkok, 2004. Collaborative project between the UN Special Rapporteur on the right to education and UNESCO Asia and Pacific Regional Bureau for Education. p.8. Available at http://www.hrea.org/erc/Library/display_doc.php?url=http%3A%2F%2Fwww.hrea.org%2Ferc%2FLibrary%2Fmanual_rightsbased.pdf&external=N [Accessed on 14/05/2015].
[135] Ibid, p. iv.
[136] Ibid, p. v.

empowered to participate meaningfully in the development of their locality and this extends to enabling them actively participate in reversing or mitigating the adverse effects on the environment in these areas.[137] Principles of public participation in governance and environmental democracy as envisaged in the current Constitution of Kenya becomes easier to implement.[138]

Principle 8 of the *Rio Principles* states that to achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies. Further, Principle 10 thereof states that environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual is to have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. In order to realise this, States are to facilitate and encourage public awareness and participation by making information widely available as well as provide effective access to judicial and administrative proceedings, including redress and remedy. Arguably, this can only be achieved with the active and meaningful participation of all community members including men and women.

*The National Gender and Equality Commission Act, 2011*[139]establishes the National Gender and Equality Commission as a successor to the Kenya National Human Rights and Equality Commission pursuant to Article 59(4) of the Constitution.[140] The Act seeks to achieve gender mainstreaming. Gender mainstreaming means ensuring that the concerns of women and men form an integral dimension of the design of all policies, laws and administrative procedures including budgeting and budget implementation, and the monitoring and evaluation of programmes implementing such policies, laws and administrative procedures in all political, economic and societal spheres; so as to ensure that women and men benefit equally, and that inequality is not perpetuated.[141] Its main aim is thus to facilitate realisation of a just and equitable society where both men and women are treated fairly and equally.

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[137] See A.Y. Abdi, Education, 'Conflict and Development: The Case of Northern Kenya', *Chapter 5: Analysis -The Role of Education in enhancing Development in Northern Kenya*, A dissertation submitted in partial fulfillment of the requirement for the degree of Masters of Arts (MA) in Education and International Development. Institute of Education, University of London, December 4, 2012.
Available at *http://www.bsix.ac.uk/staff/research/ECD%20%20DissertationvFinalFinal.pdf* [Accessed on 16/05/2015].

[138] Article 69 of the Constitution obligates the State to *inter alia* encourage public participation in the management, protection and conservation of the environment. This obligation is reinforced by placing a duty on every person to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

[139]Act No. 15 of 2011, Laws of Kenya.

[140] Preamble; s. 3.

[141] *National Gender and Equality Commission Act, 2011*, s.2; s.8.

This Commission can indeed go a long way in promoting gender equality in the country and facilitating active participation of both men and women in the country's agenda on achieving sustainable development. The right to equality means that both men and women should be empowered to effectively participate in the country's development. With regard to poverty eradication, the *Report of the Fourth World Conference on Women in Beijing China* states that eradication of poverty based on sustained economic growth, social development, environmental protection and social justice requires the involvement of women in economic and social development, equal opportunities and the full and equal participation of women and men as agents and beneficiaries of people-centred sustainable development.[142] The Conference also affirmed that there is need to encourage men to participate fully in all actions towards equality.[143] This is in recognition of the fact that gender equity requires the combined efforts of all persons if it is to be achieved.

The above is further supported by calls to ensure women's equal access to economic resources, including land, credit, science and technology, vocational training, information, communication and markets, as a means to further the advancement and empowerment of women and girls, including through the enhancement of their capacities to enjoy the benefits of equal access to these resources, *inter alia*, by means of international cooperation.[144] Under the current Constitution of Kenya, some of the Principles of land policy that should be upheld in order to ensure that land is held, used and managed in a manner that is equitable, efficient, productive and sustainable, include equitable access to land, security of land rights, and elimination of gender discrimination in law, customs and practices related to land and property in land.[145] If fully implemented, these principles can go a long way in facilitating achievement of equitable access, use and control of natural resources by all persons for national development and self actualisation.

In a bid to ensure empowerment through education for active and meaningful participation of both gender, the *Beijing Conference* affirmed the need to promote people-centred sustainable development, including sustained economic growth, through the provision of basic education, life-long education, literacy and training, and primary health care for girls and women.[146] This is reinforced by goal four of the *Sustainable Development Goals* which calls for inclusive and equitable quality education and promote lifelong learning opportunities for all.[147] Further, goal eight requires states to promote sustained, inclusive and sustainable economic growth, full and

[142] United Nations Report of the Fourth World Conference on Women Annex I, op cit, para. 16.
[143] *Ibid*, para. 25.
[144] *Ibid*, para. 35.
[145] Article 60(1).
[146] *Ibid*, para. 27.
[147] United Nations Department of Economic and Social Affairs, "Open Working Group proposal for Sustainable Development Goals," available at https://sustainabledevelopment.un.org/sdgsproposal [Accessed on 20/05/2015].

productive employment and decent work for all.[148] These goals are synergetic since it is arguably not possible to implement goal 8 without ensuring that goal four is achieved for purposes of capacity building. Kenya should not be left behind in implementation of these goals as they will go a long way in facilitating achievement of an equitable society.

There is need for affirmative action[149] where necessary to ensure gender equity for development in Kenya. It is significant that this is already provided for under Article 27 relating to equality and freedom from discrimination. It provides that to give full effect to the realisation of the rights guaranteed under the Article, the State should take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.[150] Any measure taken under clause (6) should adequately provide for any benefits to be on the basis of genuine need.[151] In addition to the measures contemplated in clause (6), the State is to take legislative and other measures to implement the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender.[152] In particular, the State is to put in place affirmative action programmes designed to ensure that minorities and marginalised groups—participate and are represented in governance and other spheres of life; are provided special opportunities in educational and economic fields; are provided special opportunities for access to employment; develop their cultural values, languages and practices; and have reasonable access to water, health services and infrastructure.[153] These efforts should be geared towards ensuring that gender equity in national development matters becomes a reality in Kenya. There is however need to

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[148] *Ibid*.

[149] Article 260 of the Constitution of Kenya defines "affirmative action" to include any measure designed to overcome or ameliorate an inequity or the systemic denial or infringement of a right or fundamental freedom

[150] Article 27(6).

[151] Article 27(7).

[152] Article 27(8); Article 81 of the Constitution provides that one of the general principles for the electoral system is that not more than two-thirds of the members of elective public bodies shall be of the same gender. Article 91(1)(f) goes further to state that one of the basic requirements for political parties is that they must respect and promote human rights and fundamental freedoms, and gender equality and equity. Under Article 175 which provides for principles of devolved government, County governments must ensure that no more than two-thirds of the members of representative bodies in each county government shall be of the same gender. Article 177(1) (b) provides that a county assembly consists of *inter alia* the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly is of the same gender. Under Article 197, County assembly should ensure that not more than two-thirds of the members of any county assembly or county executive committee are of the same gender. These provisions have been a subject of debate as to the mode of actualizing what has come to be known as the One Third Gender Rule. The Courts have even been invited to give their opinion on the matter as recorded in *The Matter Of The Principle Of Gender Representation In The National Assembly And The Senate*[2012]eKLR. The argument has been whether it should be progressive realisation of the same or immediate implementation. What however remains clear is that there is need for the implementation of these provisions so as to create a level playing ground that enables men and women to participate fairly in the development agenda of the country.

[153] Article 56.

protect the boy child even as the girl child is uplifted. A balance should be struck so as to ensure that again the one gender is not empowered at the expense of the other because the main objective of affirmative action and all other efforts towards gender equity and equality is to facilitate fair participation of both gender in national development. The foregoing efforts facilitate *inter alia* gender equity for all and this can give people greater opportunities for protecting their fundamental human rights and fully participate and contribute towards achievement of national goals in development.

**9. Conclusion**

It is not in dispute that gender inequality is one of the greatest problems of our time. Gender inequality remains embedded in the structures, instrumentalities and relations within the family, society, and the state. However, sustainable development in Kenya has to take cognizance of gender. Women and men are entitled to equity in the development agenda. Sustainable development will not be possible without the meaningful participation of both gender. Attaining gender equity for inclusive development in Kenya is possible. It is an ideal worth pursuing.

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