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# **Gender and Climate Change**

**An Empirical Legal Study of Gender Responsiveness in Kenyan Climate  
Change Response Documents**

**Minor Field Study Spring 2017**

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## **Abstract**

Climate change, also referred to as global warming, is affecting every continent of the world, affecting lives and causing significant impacts on the environment as well national economies. Kenya and neighbouring countries in East Africa are some of the countries hardest hit by the impacts of climate change. A major challenge in these countries is also the unequal and gendered dimension of climate change impacts. As the first country in Africa, and one of few countries worldwide, Kenya enacted a climate change law in 2016. Along with different climate change action plans and strategies, the Climate Change Act aims to challenge climate change impacts and to promote climate resilient development in Kenya.

This thesis examines the implementation of the legislation and policies on climate change response, applying a gender policy analysis based on a theoretical framework developed by Carol Bacchi. The thesis is divided in two analytical sections. The first part is a textual gender analysis of the Kenyan legal framework on climate change response. The second part comprises a study of the implementation of the legal documents, based on an analysis of interview data. The stakeholders include representatives from different environmental organisations and institutes working with gender and climate change response on different levels.

One result from the analysis is that the legal framework recognises the gendered dimension of climate change and reveals a shift towards more gender responsiveness in climate change governance generally. Many documents are, however, too vaguely formulated regarding concepts such as gender and equality, which complicates the implementation process. This is explained by the lack of awareness and knowledge regarding gender. Another explanation to the implementation issue is that there is a gap between the policy makers and the communities at the grassroots level. There is a need to create more awareness as well as a better exchange of existing knowledge and expertise. The current focus on legal measures as an efficient means of climate change response is also questioned. Alternative or complementing approaches and strategies are suggested in order to fill the gaps which legislative measures are unable to solve.

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## **Terms and abbreviations**

AWGGCC - African Working Group on Gender and Climate Change

CBO - Community-Based Organisation

CBDR-RC - Common But Differentiated Responsibilities and Respective Capabilities

CIDP - County Integrated Development Plan

COP22 - 22nd session of the Conference of the Parties to the UNFCCC

CSO - Civil Society Organisation

ECOSOC - Economic and Social Council

GAD - Gender and Development

GDP - Gross Domestic Product

GHG - Greenhouse Gas

INDC - Intended Nationally Determined Contribution

MENR - Ministry of Environment and Natural Resources in Kenya

NAP - National Adaptation Plan

NCCAP - National Climate Change Action Plan

NCCRS - National Climate Change Response Strategy

NDC - Nationally Determined Contribution

NGO - Non-Governmental Organisation

PA - Paris Agreement

UN - United Nations

UNFCCC - United Nations Framework Convention on Climate Change

UNDP - United Nations Development Program

WID - Women in Development

WPR - What's the Problem Represented to Be?

# 1 Introduction

## 1.1 Climate change and gender responsiveness

Climate change refers to an alteration of the composition of the global atmosphere causing weather-related disasters. It is attributable directly or indirectly to human activity (anthropogenic climate change) in addition to natural causes (natural climate variability). Changes in climate have caused negative impacts on human and natural systems, which have been observed on all continents in recent decades. Uneven development processes often generate multidimensional inequalities between people, which result in differences in vulnerability and exposure to the effects of climate change. Social processes, such as discrimination on the basis of gender, class, ethnicity, disability and age, are part of the cause of heightened vulnerability.<sup>1</sup>

In documents from the United Nations (UN) women are often referred to as being more vulnerable than men<sup>2</sup>. In the UN documents on climate change women are described as a particularly vulnerable group to the detrimental effects of climate change. The vulnerability thesis has, however, been challenged by many feminist scholars<sup>3</sup>. Pastoralist groups in low income countries are often reliant on natural resources that are threatened by the climate change. In many communities women have the responsibility of being in charge of securing fuel, water and food for heating and cooking in the households. Thus, climate change particularly affects these traditionally female tasks since they are heavily dependent on local natural resources.<sup>4</sup> As mentioned above, women who also face discrimination and social and economic inequalities are often disproportionately affected by the impacts of climate change.

Since the effects of the environmental and humanitarian crises caused by climate change are not gender-neutral, the strategies identified to respond to them consequently, must be gender-sensitive. It is, however, important to recognise women as effective agents and actors in relation to both climate change mitigation and adaptation as to avoid emphasising a misleading notion of women as a homogenous group of vulnerable victims within the

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<sup>1</sup> IPCC (2014) Fifth Assessment Report, p.54, <http://www.ipcc.ch/report/ar5/syr/> (Date accessed February 22d 2017)

<sup>2</sup> Charlesworth, H. (2008), p. 351

<sup>3</sup> See Charlesworth, H. (2008), Kapur, R. (2002) and others.

<sup>4</sup> ECOSOC (2016), 60th session of the Commission on the Status of Women, <http://undocs.org/E/2016/27> (Date accessed February 22d 2017)

development discourse. Many women have the main and traditional responsibility for the household and its resources and often have important expertise and critical knowledge that can be of value in adapting sustainable strategies to face changing environmental realities. A strategy holding a contextual perspective, that equally reflects men's and women's different realities and recognizes their respective concerns, constitutes a gender-responsive strategy.<sup>5</sup> According to feminist scholars within international relations, the depiction of women being essentially more vulnerable than men results in fixating gender with sex, which maintains a deterministic perception of human nature.<sup>6</sup>

## **1.2 The Kenyan context**

Climate change is one of the most critical development challenges in Kenya since the Kenyan economy is highly dependent on climate sensitive areas such as tourism, agriculture and energy.<sup>7</sup> Of Kenya's total landmass, more than 80 % consist of arid or semi-arid land with poor infrastructure and several developmental challenges. The main climate change impacts threatening the country are floods and droughts, which have caused losses estimated at 3 % of Kenya's Gross Domestic Product (GDP).<sup>8</sup> The Kenyan economy and environment have also been affected by the heavy migration from neighbouring countries, increasing the vulnerability to drought and pressures on rural as well as urban infrastructure.<sup>9</sup>

Energy security and reduction in energy demand are important elements in climate change mitigation strategies since energy use is one of the key drivers of existing and future climate change, generating anthropogenic greenhouse gas emissions<sup>10</sup>. Like many countries in sub-Saharan Africa, Kenya is an energy poor country with no gas, oil or coal. The dominant source of primary energy in Kenya is biomass, including charcoal and fuelwood.<sup>11</sup> Approximately 85 % of the whole population have neither electricity nor access to alternative sources of energy. This particularly affects women in rural areas, since both the access and the use of energy are unequally distributed between men and women.<sup>12</sup> It is therefore

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<sup>5</sup> ECOSOC (2016), 60th session of the Commission on the Status of Women <http://undocs.org/E/2016/27> (Date accessed February 22d 2017)

<sup>6</sup> Charlesworth, H. (2008), p. 349

<sup>7</sup> National Climate Change Action Plan (2013), p.4

<sup>8</sup> Kenya's Intended Nationally Determined Contribution (INDC) to the UNFCCC (2015), p.1

<sup>9</sup> IOM (2015), pp.158-160

<sup>10</sup> IPCC (2014) Fifth Assessment Report, p.78 <http://www.ipcc.ch/report/ar5/syr/> (Date accessed February 22d 2017)

<sup>11</sup> Okidi et al. (2008) p. 372

<sup>12</sup> Malonza, R. & Lumayo Fedha, M. (2015) p. 137



important that Kenyan strategies and policies on climate change response and energy security apply a gender-sensitive perspective in order to correspond to the environmental context in which they are enforced and to the needs of the most afflicted citizens.

The concepts of gender mainstreaming and gender-responsiveness have been used in policy and legislative processes in Kenya, but mainly in relation to sectors with traditionally strong association to women, such as health, agriculture and education. Yet little focus has been given to gender mainstreaming within the environmental sector, such as within the energy sector.<sup>13</sup> The Kenyan environmental legal and policy regimes are areas of development for promoting gender-responsive perspectives considering the close linkage between climate change response and nationally important areas such as the energy insecurity.

## **2 Theoretical Framework and Methodology**

### **2.1 Theoretical framework and concepts**

This study is based on the basic assumption that the law has a normative effect on how people act and perceive their abilities and opportunities in life. It is therefore important to look at the law within its concrete context and understand that it is neither neutral nor constant, but is interpreted differently in different contexts.<sup>14</sup> As for the concepts of gender and law they are used in line with the definitions within gender legal studies. Gender research implies analysing how gender is being socially and culturally constructed and how this affects individuals and the organisation of society.<sup>15</sup> Law is understood as a changing process where conceptions of what constitutes law are manifested by the way regulations are applied, complied, perceived and communicated. In the same way as gender plays a role in the formulation of regulations; law contributes to different constructions of gender.<sup>16</sup> Without taking into account the prevailing gendered context of the legal subjects, laws that aim to promote equality might contrarily result in generating substantial inequality.<sup>17</sup> A gender perspective on jurisprudence assumes that all legal research and legal application apply some kind of perspective whereby no researcher or practicing jurist can claim to be objective.<sup>18</sup> In order to answer the research questions and appropriately address the gendered dimension of

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<sup>13</sup> Malonza, R. & Lumayo Fedha, M. (2015) p.141

<sup>14</sup> Svensson, E-M. in Korling, F. & Zamboni, M. (Eds.) (2013) p. 278

<sup>15</sup> Svensson, E-M. & Gunnarsson, Å. (2009) p. 134

<sup>16</sup> Svensson, E-M. & Gunnarsson, Å. (2009) p. 30

<sup>17</sup> Kameri-Mbote, P. (2006) pp. 43-44

<sup>18</sup> Svensson, E-M. & Gunnarsson, Å. (2009) p. 109

climate change response, the study therefore employs a gender perspective throughout its discussion and analysis.

As for the concept of vulnerability<sup>19</sup>, this study applies the approach that it should be viewed as a complex process rather than something categorising people as fixed characteristics. Vulnerability is thus understood as a condition caused by historic and cultural inequalities in power and access to resources and not as an intrinsic property associated to a group or an individual, like “being a woman”.<sup>20</sup> This also applies to concepts such as “agency”, and “empowerment”, recurrently used in the field of gender research and policies. In line with applying a gender perspective, understanding these concepts as changing processes is necessary to explore in what way women and men are affected differently by regulations as well as by changes in climate and therefore are perceived and categorised as differently vulnerable. It opens up for a contextual understanding of the realities of legal practice by acknowledging law’s normative and discursive character. This, in contrast to applying a traditional legal-dogmatic perspective, which is based on self-observation of the legal system and does not address the intentional or unintentional effects of law and its application<sup>21</sup>. Such a traditional and internal legal perspective risks reproducing conceptions of gender as fixed roles and of people being equal legal subjects since it does not reflect on its own normative character.

### **2.1.2 A gender analysis approach**

The approaches to gender analysis in the developing field have varied historically, with the main important shift being that from the approach of the Women in Development (WID) approach to the Gender and Development (GAD) approach. The WID approach was developed in the 1970s, as a result of the demands from women’s movements to start including women in the development discourses. It was, however, later criticized for its inability to recognize unequal gender relations in various social and economic contexts since it focused on women as an isolated group, promoting “women’s issues”. As a reaction, the GAD approach was developed, calling for an integrated perspective on gendered power relations in order to enable more women to participate on equal terms and to promote self-

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<sup>19</sup> Vulnerability is a recurring notion in the legal documents on climate change generally referring to women or children as being particularly vulnerable to climate change.

<sup>20</sup> Resurrección, B.P. (2013) p. 39

<sup>21</sup> Dalberg-Larsen, J. (2002) p. 9

empowerment.<sup>22</sup> The GAD approach started to influence institutions, research, development agencies and organisations after the 1985 UN World Conference on Women held in Nairobi.<sup>23</sup> GAD was from then on also adopted in Kenya as an approach to challenge inequalities between women and men, focusing on the empowerment of women in policy formulation and implementation.<sup>24</sup> Advocates of the GAD approach emphasize the need to challenge social, economic and political institutions that are main producers of culture, involved in the shaping of gender relations through policies, laws and customs that might perpetuate inequalities.<sup>25</sup> In order to study the existence and necessity of gender-responsive climate change strategies in the Kenyan context the GAD approach will be used combined with a gender analysis.

A gender analysis is a type of socio-economic analysis that provides specific information, relevant to the different problems targeted in policy-making. The purpose of a gender analysis is to show the link between gender relations and the development problem that needs to be solved.<sup>26</sup> In this study the development problem is, as previously presented, the challenge of climate change. The attempts to find a solution to this development problem are exemplified with the legal documents and commitments formulated on climate change response that will be analysed, and with an analysis of the interview data.

In one of its training resources<sup>27</sup>, the United Nations Development Program (UNDP) has presented the following definition of what constitutes a gender analysis:

- *An intrinsic dimension of policy analysis*
- *Identifies specifically how public policy affects women and men differently*
- *Demonstrates that policy and implementation cannot be gender neutral in gendered societies*
- *Is supported by specific analytic tools*<sup>28</sup>

The analytic tool used in this study is the WPR approach to policy analysis, further defined in section 2.2.4.

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<sup>22</sup> UNDP (2001) p. 70

<sup>23</sup> Nyamo, C.I. in Dowd, N. & Jacobs, M.S (Eds.) (2003) p. 176

<sup>24</sup> Malonza, R. & Lumayo Fedha, M. (2015) p. 139

<sup>25</sup> Nyamo, C.I. in Dowd, N. & Jacobs, M.S (Eds.) (2003) p. 182

<sup>26</sup> UNDP (2001) p. 11

<sup>27</sup> An informative training document from the UNDP, Gender in Development entitled *Learning and Information Pack - Gender Analysis*, UNDP (2001),

<sup>28</sup> UNDP (2001) p. 11

Examining variables such as control over and access to resources, gender needs and interests and division of labour, the gender analysis approach reveals inequalities that might be embedded or normalised in different social contexts. It is a relevant approach in this study since it provides an understanding of how policies and legislation can have different impacts on men and women and why these differences might exist.<sup>29</sup> Identifying the causes and the contributory factors to inequalities that exist between women and men is essential to find strategies to counter them. The aim of this study is to provide answers to the research questions by applying a gender analysis as defined above, through the theoretical method on analysing the legal documents and the interview data.

### **2.1.3 Challenging gender mainstreaming**

Gender mainstreaming has become a globally accepted strategy to promote the GAD approach in aiming gender equality. It was defined by the UN in the Economic and Social Council (ECOSOC) agreed conclusions 1997/2 as:

*“[...] the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.”*

Gender mainstreaming is described as a strategy to achieve gender equality. Preventing inequality between women and men is reinforced through institutional measures and entails a process of incorporating a gender perspective throughout all planning, implementation and monitoring of policies and legislation. Depending on the subject, the activity as well as the area of concern, the strategy of implementing gender mainstreaming has to be adapted correspondingly in order to be effective. Every context needs its specific analytic approach in order for the strategy to be implemented appropriately. While there is no universal formula to be applied to every situation, a common understanding is that the process entails attention to equality between women and men being brought into the “mainstream” of activities rather than considered as a supplement.<sup>30</sup>

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<sup>29</sup> Malonza, R. & Lumayo Fedha, M. (2015) p. 139

<sup>30</sup> United Nations, OSAGI (2002), p. 2

The efficiency of gender mainstreaming has been heavily contested considering that its global adoption and implementation over the years have not necessarily resulted in greater gender equality.<sup>31</sup> One explanation for the shortcoming of using gender mainstreaming to achieve substantial change in gender/power relations is presented in Bacchi and Eveline's work on *Mainstreaming politics*. They call for a reconceptualization of gender mainstreaming policies as creative and constitutive processes, in the sense that they shape and give meaning to the very problems that they mean to address. Bacchi and Eveline argue, consequently, that a problem can not be fully addressed unless we understand what the problem actually is. This is the approach that forms Bacchi's method of reflective and critical policy analysis called "What's the Problem Represented to Be?" (the WPR approach).<sup>32</sup> To challenge the way gender mainstreaming policies risk reproducing inequalities between women and men when they present themselves as solutions to prevailing problems the WPR approach suggests viewing gender as a verb rather than a noun. Accordingly, the gender mainstreaming policy practices should be described as *gendering* since they constitute on-going processes that play a role in constructing and shaping gender relations.<sup>33</sup> In order to identify whether gender mainstreaming policies perpetuate or break down inequalities the WPR approach suggests posing certain questions; what are the factors creating unequal gender and power relations? how are men and women being perceived in this specific context? and what are the particular gendered experiences?<sup>34</sup> This approach correlates with the previously mentioned gender and contextual legal perspectives that are used in the study.

As for the field of climate change response, the same kind of arguments on the inefficiency of gender mainstreaming have been raised by the African Working Group on Gender and Climate Change (AWGGCC) within the African Union Commission. At the 22nd UN Conference of the Parties (COP22) in Marrakech the AWGGCC presented a gender analysis of the Paris Agreement on climate (PA) in Africa, expressing regret that the agreement has not more explicitly addressed the gendered dimension of climate change so far. They argue for a move from gender mainstreaming to gender integration as an implementation strategy of the PA. They mean that this would better ensure that women are equally involved at all levels

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<sup>31</sup> Alston, M. (2013), p. 289

<sup>32</sup> Bacchi, C. & Eveline, J. (2010), p. 111

<sup>33</sup> Bacchi, C. & Eveline, J. (2010), p.120

<sup>34</sup> Bacchi, C. & Eveline, J. (2010), pp. 117, 337

of planning and implementation, rather than just mainstreaming targeted and gender specific needs in strategies and policies.<sup>35</sup>

## 2.2 Aim of the study

The purpose of this thesis is to look at strategies that could be used to effectively promote gender-responsiveness in implementing the legal documents on climate change response in Kenya. The aim is to study the strategies to promote gender responsiveness in the legal regime of climate change response in Kenya.

The understanding of the term effectiveness in this master's thesis is the capacity of the legal documents on climate change to identify the gender differentiated needs and experiences in order to efficiently promote their stated objectives of achieving gender equality. The term legal document used in the thesis involves laws, international commitments and policies as well as implementation strategies. A further definition of the concept "legal documents" will be given in section three.

Following questions will have to be answered in order to address the aim of the study:

- What roles do the current legal documents and commitments play in addressing the gendered dimension of climate change?
- What gaps and weaknesses/challenges can be identified in the existing climate change documents in terms of promoting gender responsiveness?
- What relevant experiences and practical knowledge of women's rights and climate change advocates could be included and acknowledged in order to promote gender responsiveness more effectively?

Of the many important concepts related to the topic of promoting gender perspectives on climate change, this study will focus on "*gender mainstreaming*" and "*promotion of gender equality*", which often recur in the purposes and objectives of the legal documents.

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<sup>35</sup> African Development Bank Group (2016) <https://www.afdb.org/en/news-and-events/the-african-working-group-on-gender-and-climate-change-calls-for-a-move-from-mainstreaming-to-integration-16367/> (Date accessed March 3rd 2017)

### **2.2.1 Methodology**

To address the research questions, a minor field study was conducted in Nairobi, Kenya in 2017, in order to obtain information and learn about the Kenyan legal context on climate change response and gender. This empirical study is mainly based on a review, followed by a policy analysis of relevant legislation and legal documents. The methodology used is based on Carol Bacchi's approach to policy analysis, the WPR approach, explained in section 2.2.4. The WPR-approach is generally used as a research method within political science and public administration. However, the relation between law and politics is inseparable, considering that law is the political instrument to influence society. The method is therefore as relevant in conducting research within legal studies as it is within political science, especially when applying a gender perspective on law.

The legal and policy analysis is complemented by data gathered through interviews with different stakeholders. The information obtained from the interviews is relevant to exemplify the context and the practical implications of the legal documents. The interviews are also important to fill the relatively large gap of updated research on the subject, due to the very recent development of Kenyan climate change legislation. The purpose of the study is to obtain data providing an illustrative example of the issue and not to purport presenting a statistically generalizable conclusion.

This section on methodology contains a review of the theoretical framework used in the thesis. The legal framework is thereafter presented in section three. Section four contains the legal and policy analysis and is then followed by a presentation of the findings, in section five. Sections six and seven provide analysis and conclusions.

### **2.2.2 Previous research**

The topics of climate change and gender have been extensively researched over the past decade. It has, however, mainly been studied within the fields of natural and political science and not as much within the field of jurisprudence. This thesis employs an interdisciplinary perspective. This means studying a given problem by using the knowledge and experiences presented by other disciplines than one's own; integrating theoretical and methodological approaches from different academic disciplines, sharing a common subject matter<sup>36</sup>. As for previous research on gender aspects in the Kenyan legal regime on climate change, the

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<sup>36</sup> Sunnemark, F. & Åberg, M. (Eds.), (2004), pp. 11-12

majority of the documents date back several years. This is mainly due to the country's very recent legal development on climate change response. This study is based on the existing research on gender, but with a further analysis of the most recent legal documents on climate change. The recently published research conducted on gender and climate change response policies in Kenya referred to in the thesis are not expressly legal academic articles. They do, however, provide relevant data by holding a gender perspective on the legal development on climate change response that is applicable to this study. The need to complement the study with data that is representative of the current legal context and application highlights the necessity of making the methodological choice of conducting interviews with relevant stakeholders working in the Kenyan climate change sector.

### **2.2.3 Legislation**

Considering the recent nature of the Kenyan climate change legislation, there is, thus far, no case law available, relevant to this study. The most important sources of reference are therefore the primary law sources combined with related climate change policies, strategy plans and frameworks. The primary focus of the study will be on the most recent legal documents and international commitments in order to analyse how the concept of gender is being portrayed in relation to climate change. This approach, as well as the choice of relevant legislation to study, was identified through discussions with lawyers and researchers at the Centre for Advanced Studies in Environmental Law and Policy (CASELAP) at the University of Nairobi in Kenya. The relevant legal documents examined will be further presented in the section three.

### **2.2.4 Gender policy analysis**

In order to address the research questions on how gender responsiveness could be more effectively promoted in light of the current climate change response framework in Kenya, the study employs a gender analysis of the legal documents. This entails a review of the laws, policies and strategies on climate change response in order to see how aspects such as inequality between women and men, differential gendered experiences and women's empowerment, are addressed. As mentioned above, the study applies the Bacchi's WPR-approach. It starts from the premise that policies create or embody particular representations and perceptions of social problems, community stakeholders and power relations, but consequently exclude other representations<sup>37</sup>. The first step of this method is to ensure that

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<sup>37</sup> Bacchi, C. & Eveline, J. (2010), p. 155



the context of the policy is fully understood, and from there work “backwards” in order to identify in what way the “problem” is represented in the actual policy. That entails examining how the problem is discursively constituted or what meaning it is given by the way it is formulated in the policy. Thus, the approach helps reveal the policy’s eventual limitations as well as its usefulness, depending on the different implications of the policy, related to how the problem is depicted. It brings to light how problem representations may contribute to challenge or to preserve hierarchical and unequal power relations.<sup>38</sup> The method is relevant to the gender perspective on law, employed in the thesis. The WPR method presents a suggestion of six questions in which to analyse the policy; this study will make use of four of the questions. The choice of questions was made in the light of available data and with regard to which are the most relevant in order to answer the research questions.

- *What is the “problem” represented to be in the policy/legislation?*
- *What assumptions underlie and influence this representation of the “problem”?*
- *Can the “problem” be thought about differently, if something is left unproblematic?*
- *How could the representation be questioned or replaced?*<sup>39</sup>

This type of method, which involves precise questions, can be used in a variety of textual analysis and can be combined with causal questions in order to examine the effects of the problem formulation<sup>40</sup>. Legal and policy analysis assist in providing strategies for a successful application of laws, in terms of reaching their intended purposes in an effective way. This is what motivated the methodological choices in this study, since the purpose of the thesis is to examine strategies that could be the most effective in order for Kenyan climate change policies to be gender responsive.

The theoretical framework of the gender analysis applied in the study will be developed further in section 2.1. The study will look at the level of gender responsiveness in the current legal documents on climate change response by applying the gender analysis approach presented above. This to identify whether there is a need for a strategy update, or an improvement in relation to the monitoring and implementation of the current legal regime in Kenya. The recent legal documents on climate change will be examined in the light of the

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<sup>38</sup> Bacchi, C. & Eveline, J. (2010), pp. 114-115

<sup>39</sup> Bacchi, C. & Eveline, J. (2010), p. 117

<sup>40</sup> Esaiasson et al. (2017), p. 218

WPR approach and gender policy analysis mentioned, in order to see what could be used or improved for an updated and more effective strategy.

### **2.2.5 Interviews**

The purpose of conducting interviews is to complement the legal and policy analysis with information of how the current gender promotion strategies in climate change response are handled and implemented in practice. Focus has been on contacting a limited number of well-connected informants with relevant knowledge and expertise, rather than conducting a large number of repetitive interviews. The interview data serves as a supplement to the other sources of information and methodology choice, review and textual analysis of the legal documents. The lack of research on the application of the most recent legislation requires another way of illustrating its practical context and effects. This motivates the interview study, so as to obtain the additional information required.

The individuals interviewed have the methodological role of informants since the interview data is meant to provide an illustration of practical “facts” and to clarify the “reality” of the legal framework studied<sup>41</sup>. The use of conversational and semi-structured interviews is motivated by the fact that they provide a way of generating new and hopefully interesting ideas in this research field. Using interviews as a complement to previous research is a common method of interview practice.<sup>42</sup> In this way, the interviews in the study serve as to complement the previous research on gender and climate change legislation and the textual analysis of the legal documents.

A total of 11 interviews have been conducted with persons working with climate change response and/or gender and environmental policy issues in Kenya. Seven of the informants are representatives from non-governmental organisations and institutes, one works for a state- and university-funded environmental partnership project and three are representatives from civil society organisations (CSOs) working at the community level. Some of the organisations are big, international actors whereas others are smaller, working with community-based projects at the grassroots level. The interviews lasted between 30-60

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<sup>41</sup> According to Esaiasson et al. there is a distinction to be made in the terminology of the individuals interviewed, in that they either constitute respondents or informants, depending on the purpose of the interviews. Since the aim of the interviews in this master’s thesis is to study the gendered effects of Kenyan climate change legislation in practice, the persons interviewed are thereby called informants. Esaiasson et al. (2017), p. 235

<sup>42</sup> Esaiasson et al. (2017), p. 266

minutes and they were all conducted through meetings with the informants in Nairobi, or over the telephone or Skype. All of the interviews except three were recorded and transcribed<sup>43</sup>. One informant answered the questions via e-mail correspondence, due to lack of time for scheduling a meeting.

#### **2.2.5.1 Selection**

A useful sampling technique to find people with the relevant knowledge and experience in a new environment and an unexplored legal field is so-called snowball sampling. In this technique the sample is made by the help of one relevant informant who suggests other individuals with similar competence and experience that could be of value for the study. These informants subsequently propose additional individuals in their network or field of work.<sup>44</sup> An important aspect in choosing informants to interview is the sampling principle of centrality, which usually consists of reaching out to the individuals considered to be “centrally located sources”. Contact with the individuals is then made, based on an initial idea of who might be relevant to interview, regarding the research field. The initial selection might then have to be completed with other additional informants, who can then be found through the use of snowball sampling.<sup>45</sup> An important element and inherent bias to consider with this type of sampling is that the final selection risks becoming one-sided, consisting of a particular set of a relatively limited group of individuals with somewhat similar backgrounds. This has been taken into account in the analysis of the interview data and has been recognized by comparing the data with applicable information on views of other actors that are not represented in the selection.

The interview data gives a comprehensive view of the current implementation of Kenyan climate change response policies and legislation since it includes both perspectives from the international, national as well as the grassroots level. Together with the textual analysis, the interviews add a contextual understanding to the study.

#### **2.2.5.2 Interview structure**

In order to conduct the interviews in accordance with the theoretical framework of the study, the setup of the interviews was conversational and semi-structured. It is a flexible method

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<sup>43</sup> These three interviews were however noted and documented. The reason for these interviews not being recorded was because they were the briefest ones. The detailed notes were considered to be sufficient enough to get the relevant information and to be representative of the discussions held at the meetings.

<sup>44</sup> Esaiasson et al. (2017), p. 190

<sup>45</sup> Esaiasson et al. (2017), p. 267

that enables the informants to present their views on a specific subject matter.<sup>46</sup> With relatively open questions, although guided by the theoretical approach on the subject, the interviews help provide a more complete picture of the matter studied. The theoretical framework has shaped the formulation of the questions and directed the interviews to be in line with the perspective of the legal gender analysis of the study. All of the informants were asked to give their view on the current Kenyan development of climate change policies as well as its level of promoting gender responsiveness. Depending on the role of the informant and his/hers specific area of expertise, the interviews were adjusted in order to provide the most relevant information to the study. In some interviews, more detailed questions were asked, as to capture the informant's view on the concept of gender mainstreaming as a means to effectively promote gender equality in Kenyan policies and legislations on climate change.

#### **2.2.5.2 Interview situation**

The views represented in the interview data might have been influenced by the methodological choice of using snowball sampling, where one informant suggests other informants. This is an aspect that must be acknowledged in analysing the interviews as how and by whom the informant is contacted can affect the answers given in the interview<sup>47</sup>. The suggestions of the first informant might for example be individuals sharing the same opinions or points of view on the subject matter. This could be at the expense of other views, held by persons in the field, who would have provided other answers or opinions.

The answers in the different interviews, however, varied to a fairly great extent. This could probably be explained by differences in background, education, field of work and role at the respective organisation or institute. This could also be related to the fact that the settings of the interviews varied. The answers might differ depending on whether the interviews were performed at the informant's office, in a café or restaurant, over the telephone or via e-mail correspondence.

The informants were generally very outspoken on the issues discussed. Some informants answered in a more detailed and precise way than others, who gave more general and explanatory answers. This might have to do with the fact that some of the questions were quite open, giving the informants the opportunity to elaborate their answers in the direction of

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<sup>46</sup> Kvale, S. & Brinkmann, S. (2014) p. 165

<sup>47</sup> Esaiasson et al. (2017), p. 277

their choice. Other questions were more precise, depending on the area of expertise of the informant. The openness of the informants might also relate to the fact that the topic discussed is not very controversial, at least not the general questions on climate change response. Being a foreign student conducting a short field study in the country might also be of relevance to the way the informants answered, particularly the answers that were more descriptive. One must also consider the fact that the interviews were conducted during the election year 2017, which influenced every actor working with the national and/or county governments, regardless of the role of the respective organisation in Kenya. However, no one showed signs of adjusting their answers in any significant way. The questions became more accurate and improved with each interview as the interviews were based on the results of the previous ones, providing more information and raising new questions.

### **2.3 Delimitations**

The research questions of the study were changed several times successively during the course of the field study in Kenya. This was due to deeper insight and understanding of the legal and political context, acquired through discussions and meetings with lawyers and researchers at the University of Nairobi as well as through the meetings with the informants. The initial setup of the study was then found to be too wide and complex in relation to that which was considered feasible and reasonable in terms of time as well as scope of the study, which resulted in the present formulation of the research questions.

The selection of informants was also narrowed down because of the limited period of time to contact individuals relevant to the study. There are no interviews representing the view of the government or authorities working with climate change response. Contact was made with persons working at the Climate Directorate at the Ministry of Environment and Natural Resources (MENR), but no interviews were possible to be scheduled during the period of two months of field study in Kenya. This is a factor that must be taken into account in terms of the validity and the generalizability of the interview data. Several of the informants are however working with state and government actors, either directly within the national climate change action processes, or indirectly by policy influencing or by close collaboration with the MENR in Kenya. The selection of informants therefore still covers most of the main actors within climate change response governance in Kenya.

### 3 Legislation on Climate Change

In response to the challenges of climate change Kenya has developed and ratified several action plans and legal documents in order to undertake necessary mitigation and adaptation measures. As mentioned in the section 2.2.1 on methodology, the term “legal documents” comprises legislation, international treaties, policies and implementation strategies.<sup>48</sup> These plans and policies are in line with Kenya’s sustainable development blueprint, Vision 2030<sup>49</sup>, and set out a low carbon climate resilient development pathway. The following sections will present the Kenyan legislation and policies on climate change that are relevant to this study.

#### 3.1 International Treaties

In addition to international treaties on the environment in general, Kenya is party to the specific treaties on climate change, such as the 1997 Kyoto Protocol and its parent the United Nations Framework Convention on Climate Change (UNFCCC). In April 2016 Kenya also signed the Paris Agreement that entered into force in January 2017. Building on the UNFCCC, the central aim of the Agreement is to strengthen countries ability to deal with the negative impacts of climate change as well as to strengthen the global response to the threat of climate change<sup>50</sup>. The treaty states that the adaptation actions should follow a participatory and gender-responsive approach, taking into consideration vulnerable groups<sup>51</sup>. Like the reporting system within the UNFCCC where the Parties were invited to communicate their Intended Nationally Determined Contributions (INDCs) the PA calls for monitoring and reporting of commitments. According to Article 4 the Parties are required to present their best efforts through Nationally Determined Contributions (NDCs) and continue to strengthen these efforts progressively. This mitigation system however is built on a soft bottom-up approach in contrast to the top-down targets of the Kyoto Protocol<sup>52</sup>. In other words, the PA

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<sup>48</sup> The deliberate choice of using the same term for documents with different authorities is explained by their interconnectedness and the fact that they all play important roles in promoting climate change response and gender responsiveness in Kenya. The Constitution and the Climate Change Act are of course closest to the term legal document, being primary legislation. They are followed by the delegated legislation, created under the Parliamentary authority but being subsidiary to the Act. In the analysis of the documents and their potentials for effective promotion of gender responsiveness it is however important to make a distinction of their different roles and legal character. The distinction is made by using two groups: those named “legal documents” (the Paris Agreement, the Constitution and the Climate Change Act) and the other ones called “policy and strategy documents” (the NCCRS, the NCCAP, the NAP).

<sup>49</sup> “*The Kenya Vision 2030 is the national long-term development policy that aims to transform Kenya into a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment.*” Government of Kenya, 2017, <http://www.vision2030.go.ke/about-vision-2030/> (Date accessed March 1st 2017)

<sup>50</sup> Paris Agreement (2015), Article 2

<sup>51</sup> Paris Agreement (2015), Article 7

<sup>52</sup> Paris Agreement (2015), Articles 3-4

constitutes an international agreement including sovereign, national commitments monitored by the UN. It is based on the principle of “*common but differentiated responsibilities*,” acknowledging the countries “*respective capabilities and their social and economic conditions*” articulated in the UNFCCC<sup>53</sup>.

### **3.2 The Constitution**

Kenya’s new constitution was enacted after a constitutional referendum in 2010. It marked an important step in Kenyan environmental policy development as it gave constitutional recognition to environmental management. With the adoption of the Constitution, Kenya has moved from being a strict dualist state to a position where international treaties are merely required to be ratified in order to be applicable in Kenya<sup>54</sup>. Although the notion of climate change does not expressly appear in the Constitution, the concept of sustainability is a recurrent notion, first occurring in the preamble that notes that the environment should be sustained for the benefit of future generations<sup>55</sup>. The achievement of sustainable development is recognized as a fundamental national value and principle of governance for the implementation of the Constitution<sup>56</sup>.

An important section in the Bill of Rights is that the right to a clean and healthy environment is defined as a constitutionally guaranteed right. Article 42 (a) declares “*the right to have the environment protected for present and future generations through legislative and other measures*”. There is a strong constitutional emphasize on public participation<sup>57</sup>, including in environmental issues. Chapter 5 of the Constitution is entirely dedicated to land and environment. Article 69 states the obligations placed on the State to encourage public participation and on the other hand the duty for citizens to cooperate with the State in environmental management, protection and conservation<sup>58</sup>. The promotion of gender equality, equity in general and the coordination and facilitation of gender mainstreaming in national development is given constitutional recognition through the establishment of the Kenya National Human Rights and Equality Commission<sup>59</sup>.

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<sup>53</sup> UNFCCC (1992), preamble

<sup>54</sup> Odote, C. (2013) p. 808

<sup>55</sup> Constitution of Kenya (2010), Preamble

<sup>56</sup> Constitution of Kenya (2010), Article 10 (2) (d)

<sup>57</sup> Constitution of Kenya (2010), Article 10 (2) (a)

<sup>58</sup> Constitution of Kenya (2010), Article 69

<sup>59</sup> Constitution of Kenya (2010), Article 59 (2) (b). An act of Parliament later restructured the Commission to establish the independent Kenya National Commission on Human Rights and the National Gender and Equality Commission

Article 10 (2) in the Constitution provides the national values and principles of governance where principles such as equity, social justice, inclusiveness, equality, non-discrimination are included<sup>60</sup>. Article 27 is the equal rights and non-discrimination clause that states the right to equal treatment and opportunities between men and women as well as freedom from discrimination based on grounds such as sex, marital status, pregnancy, ethnic and social origin etc.<sup>61</sup> In order to realise the rights, the State shall take legislative and other measures, such as affirmative action programmes and policies aimed to redress any disadvantages suffered because of past discrimination.<sup>62</sup> According to article 27 (8), the State shall implement the two-thirds gender principle of members of appointive or elective bodies, meaning that not more than two-thirds shall be of one gender.

### **3.3 The National Climate Change Response Strategy**

In 2010 Kenya published the National Climate Change Response Strategy (NCCRS). It was the first Kenyan policy to directly and exclusively address climate change. The strategy paper outlines a number of actions that need to be mainstreamed into national development plans, such as the establishment of climate change legislation and a climate change secretariat to monitor and ensure its effective implementation.<sup>63</sup> The document was developed through a participatory process where both parliamentarians, government officials, the private sector and different civil society organisations were involved. The document constitutes the main government climate change agenda guide and its recommendations are meant to be translated into policies on climate change response. It also recommends big public awareness campaigns “*so that the public can be sensitised and mobilised to adapt to and mitigate against impacts of climate change*”.<sup>64</sup> Within the description of action plans, the Strategy mentions gender mainstreaming as a specific activity in environment and forestry and in engagement with stakeholders such as community-based organisations (CBOs) and non-governmental organisations (NGOs).<sup>65</sup>

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<sup>60</sup> Constitution of Kenya (2010), Article 10 (2) (b)

<sup>61</sup> Constitution of Kenya (2010), Article 27 (1), (3), (4)

<sup>62</sup> Constitution of Kenya (2010), Article 27 (6)

<sup>63</sup> National Climate Change Response Strategy (2010), p. 22

<sup>64</sup> National Climate Change Response Strategy (2010), p. 3

<sup>65</sup> National Climate Change Response Strategy (2010) p. 110



### **3.4 The National Climate Change Action Plan**

The National Climate Change Action Plan 2013-2017 (NCCAP) was developed in order to encourage low carbon climate resilient development through the implementation of the NCCRS mentioned above. The aim of the NCCAP is to set up implementation mechanisms and provide the analysis in order to enforce the NCCRS. A cross-sectoral Climate Change Taskforce, composed of representatives from the civil society, governmental agencies on environment, the private sector and the academia, has guided the development of the Action Plan by giving technical input.<sup>66</sup> In order to provide institutional mechanisms for addressing the impacts of climate change, the Action Plan calls for the establishment of a Climate Change Secretariat and a National Climate Change Council.<sup>67</sup> It emphasizes on the link between climate change action and the pursuit to achieve sustainable development. In line with the Kenya Vision 2030, people-centred development is a priority and there is a focus on the concepts of adaptation and mitigation.<sup>68</sup> The Action Plan underlines that technology development has to be based within the communities in order to cope with climate variability in an effective way. Since it is the people that will have to adopt and use the necessary technologies to respond to climate change and reduce vulnerability to climate change impacts, the Action Plan states that strategies on climate change have to be people-centred. In that regard, NGOs and CBOs play an important role in developing as well as diffusing climate change technologies to their actual users at the community level.<sup>69</sup> The Action Plan recognizes the gender vulnerability of climate change impacts by referring to the fact that women are disproportionately affected due to discrimination and the extra socio-economic burden that they have in their communities.<sup>70</sup>

### **3.5 Kenya National Adaptation Plan and Intended Nationally Determined Contribution**

The National Adaptation Plan (NAP) was approved in November 2015. It was developed with support from international development agencies and through a consultative and cooperative process including the Government, the civil society and the private sector.<sup>71</sup> Together with the INDCs, the NAP is part of a process of commitment by the Parties to the UNFCCC. The aim of the NAP is to assist the government in mainstreaming climate change adaptation into planning and action, in line with the Vision 2030 goals, as well as to assist the

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<sup>66</sup> National Climate Change Action Plan (2013), p. 9

<sup>67</sup> National Climate Change Action Plan (2013), p. 102

<sup>68</sup> National Climate Change Action Plan (2013), p. 25

<sup>69</sup> National Climate Change Action Plan (2013), p. 115

<sup>70</sup> National Climate Change Action Plan (2013), p. 50

<sup>71</sup> Kenya National Adaptation Plan: 2015-2030, Government of Kenya, (2016), p. III

national and county governments in implementing the NCCAP. Building on the previous documents, the NCCRS and the NCCAP, the objective is *“to consolidate the country’s vision on adaptation supported by macro-level adaptation actions that relate with the economic sectors and county level vulnerabilities to enhance long term resilience and adaptivity capacity<sup>72</sup>.”*

The Adaptation Plan refers to the influential role of the civil society in Kenya, as an agent of advocacy on important socio-economic issues such as climate change. The role of civil society in capacity building and gender mainstreaming in climate change response is highlighted as a key factor in the implementation of the NAP.<sup>73</sup>

Kenya’s INDC was submitted to the UNFCCC in July 2015 and includes actions of both mitigation and adaptation. The INDC describes plans on reducing greenhouse gas (GHG) emissions<sup>74</sup> but places significant priority on adaptation actions and measures. This relates to the principle of the UNFCCC which states that the Parties need to undertake mitigation based on “common but differentiated responsibilities and respective capabilities”. Kenya’s contribution to the global emission of GHG is minimal but it is one of the countries facing the most severe natural and humanitarian losses due to climate hazards, which reflects in the country’s focus on adaptation rather than mitigation. The ambition of the INDC is set quite high, with Kenya stating “to continue playing a leadership role in addressing climate change by communicating a fair and ambitious contribution”. In the planning process, the INDC points out the importance of ensuring gender mainstreaming, in line with the Constitution and the Climate Change Act.<sup>75</sup>

### **3.6 The Climate Change Act**

Kenya’s Climate Change Act 2014 was signed into law in 2016, and is the first law on climate change to be established in an African country. This establishment of a legal framework to address climate change issues marks a major milestone in Kenya’s climate change agenda, which is captured in the Act’s preamble:

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<sup>72</sup> Kenya National Adaptation Plan: 2015-2030, Government of Kenya, (2016), p. 1

<sup>73</sup> Kenya National Adaptation Plan: 2015-2030, Government of Kenya, (2016), p. 13

<sup>74</sup> The total amount of GHG emissions in Kenya is already relatively low. But since the Kenya strives to reach the economic level of a newly industrialised middle-income country by 2030, the country has put a lot of emphasize on the use of clean and renewable energy in the expected development.

<sup>75</sup> Kenya’s Intended Nationally Determined Contribution (2015)

*“AN ACT of Parliament to provide for a regulatory framework for enhanced response to climate change; to provide for mechanism and measures to achieve low carbon climate development, and for connected purposes”.*

An important provision is that the Act provides public litigations where citizens can file lawsuits against GHG polluters<sup>76</sup>. With a more lenient requirement to prove liability it is now enough for the complainant to prove that the corporation or other defendant is not doing enough to address climate change, without having to show loss or injury.<sup>77</sup> A National Climate Change Council is established to coordinate all efforts made on climate change in the country. It consists of governmental representatives as well as representatives from the civil society, the private sector and marginalised groups.<sup>78</sup> Within its objectives and purposes the Act points out the need to mainstream gender equity in all aspects of climate change responses<sup>79</sup>.

#### **4 Promoting gender responsiveness in Kenyan climate change response documents**

The following sections will present the textual gender analysis of the legal documents, using four of the questions from Bacchi’s WPR approach mentioned.

##### **4.1 What is the “problem” represented to be in the policy/legislation?**

The main problem represented in the documents is climate change and its detrimental humanitarian and environmental effects. The follow up problem representation studied in this thesis is the gender-differentiated effects of climate change. In all of the documents analysed, the concept of “gender” appears. It either occurs in relation to terms such as “gender equality”, “gender mainstreaming”, as a term in research indicators and adaptation strategies or when referring to population groups.

In the policy documents and strategies<sup>80</sup> the term gender mainly occurs in presentations of strategies, such as “gender mainstreaming” or when mentioning groups that are considered particularly affected by climate change. Gender is then generally linked to words like

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<sup>76</sup> Climate Change Act (2016), Article 23

<sup>77</sup> Climate Change Act (2016), Article 23 (3)

<sup>78</sup> Climate Change Act (2016), Articles 5-12

<sup>79</sup> Climate Change Act (2016), Article 3 (2) (e)

<sup>80</sup> NCCRS (2010), NCCAP (2013), NAP and INDC (2015)

“women” and “vulnerable groups” and “youth/children”<sup>81</sup>. When presenting gender mainstreaming strategies the documents use terms like “gender based response strategies”, “gender focal points”, “vulnerability indicators” and “gender considerations” often referring to words like “women and other vulnerable groups”, “women groups” and “empowered youth and women”.<sup>82</sup>

The legal documents<sup>83</sup> mention gender in relation to concepts of value and principles of governance such as “gender equality”, “empowerment of women”, “gender and intergenerational equity”.<sup>84</sup> Gender is also used in describing adaptation actions, capacity-building activities, public education awareness strategies and climate change education that the documents state should be “gender-responsive”, “cross-cutting” and “gender and intergenerational responsive”.<sup>85</sup> Article 7 (6) in the Climate Change Act makes reference to “the two thirds gender principle”, found in the Constitution. In the same way as in the policy documents, the term gender is repeatedly combined with words like “vulnerable groups” and “empowerment of women”<sup>86</sup>.

According to the WPR approach it is important to look at what the policies propose as interventions in order to identify the way that the issue is being thought about by the policy makers.<sup>87</sup> Bacchi gives an example on how to identify what the policy produces as the problem that it intends to “solve”:

*“If training courses are offered to women as part of a policy to increase their representation in better paid occupations or in positions of influence, the ‘problem’ is represented to be women’s lack of training.”*<sup>88</sup>

As described above, the legal documents call for “mainstreaming of gender and intergenerational equity in all aspects of climate change responses” and that all adaptation actions should be “gender-responsive” and should take into consideration “vulnerable

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<sup>81</sup> NCCRS (2010) pp. 57, 117, NCCAP (2013), pp. 11, 27, 38-39, 41, 52, 166, NAP (2015), pp. 33, 35, 58, the INDC (2015), p. 5

<sup>82</sup> NCCRS (2010) p. 57, NCCAP (2013), p. 136, NAP (2015), p. 33

<sup>83</sup> Paris Agreement (2015), Constitution of Kenya (2010), Climate Change Act (2016)

<sup>84</sup> Paris Agreement (2015), preamble, Constitution of Kenya (2010), Article 59 (2) (b), Climate Change Act (2016) Article 3 (2) (e)

<sup>85</sup> Paris Agreement (2015), Article 7, pt. 5, Article 11, pt. 2, Climate Change Act (2016), Article 6 (d)

<sup>86</sup> Paris Agreement (2015), preamble, Article 7, pt. 5, Constitution of Kenya (2010), Article 21 (3)

<sup>87</sup> Bacchi, C. (2009), p. 2

<sup>88</sup> Bacchi, C. (2009), p. x

groups” as a part of responding to the gender differentiated effects of climate change<sup>89</sup>. There is no definition of the use of the concept “gender”, but it is predominantly used in terms of representation. The “problem” in the documents is thus represented to be gender inequality, principally in relation to representation of women, and that women constitute a more vulnerable group than men to the detrimental effects of climate change.

The policy documents also suggest “mainstreaming gender” in climate change response strategies, with priority adaptation actions for “vulnerable groups”, “especially women and children”<sup>90</sup>. The problem representation is in line with the one in the legal documents, asserting that women in general, are particularly vulnerable, at times widening the category to also include children in the same group. The solution to the represented problem is again developing specific strategies, where the allegedly vulnerable group is targeted.

#### **4.2 What assumptions and influences underlie this representation of the “problem”?**

The way that the documents understand the issue of gender differentiated climate change effects is presented by the way the term “gender” is used. The term is repeatedly used when referring to women and not in the way of understanding gender as a socially constructed process that influences and imposes on the lives of both men and women. This mix up between gender and sex is also recurrent in international legal depictions of women, like in many UN documents, as the Paris Agreement shows sign of in this study<sup>91</sup>. This type of wording, where gender is practically used as a synonym for women, suggests that gender is unconnected from men and masculinity<sup>92</sup>. The problem representation in the documents appears to be built on the assumption that gender-responsive strategies should not primarily include or target men since the term gender is almost exclusively used when referring to women in the texts.

The documents also assert that women are vulnerable to the effects of climate change, implicitly understood as being *more* vulnerable than men, or other people categories. This homogenous categorisation of “women” into a “vulnerable group” is furthermore extended to also include “children/youth”.

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<sup>89</sup> Constitution of Kenya (2010), Article 21 (3), Climate Change Act (2016), Article 3 (e), Paris Agreement (2015), Article 7, pt. 5

<sup>90</sup> NCCAP (2013), p. 11, NCCRS (2010), p.110

<sup>91</sup> Paris Agreement (2015), preamble

<sup>92</sup> Charlesworth, H. (2008), p. 352

Bacchi states that the creation of people categories is an important element of how governing and policy-making take place. It also has significant effects for the way that individuals come to perceive themselves and others.<sup>93</sup> Bacchi's social constructionist view implies that the *content* of the category is determined by the specific cultural, historical and social context of the policy-making process. Presuppositions about the nature and development of the individual form the discourse of policies and governmental decision-making.<sup>94</sup>

Formulations like "vulnerable groups, especially women and children", "women and other vulnerable groups"<sup>95</sup>, "vulnerable groups (women, orphans and vulnerable children, the elderly, and persons with disability)"<sup>96</sup> in the policy documents have a discursive effect on shaping governmental rationality. It also affects the way that "women" are perceived as a homogenous group and how "they" perceive themselves when taking part of the documents.

Homogenising women and attributing fixed characteristics implies that the problem representation is based on the presupposition that women constitute the "problem" in the gender differentiated climate change effects, and this because of women's presumed vulnerability. Fixing gender to biology, to women in particular, further demonstrates an assumption that gender is not about the social and cultural processes shaping both the roles of men and women, but that it is rather something unchangeable and natural, mainly concerning women. The solution to such problem representation is therefore presented through policy strategies that require women to change and adapt, but not men.<sup>97</sup> It does not capture the relational aspect of gender, nor the power relations or social norms that contribute in shaping the understanding and meaning of terms like "vulnerability".<sup>98</sup> It also assumes that men are not vulnerable to the detrimental effects of climate change, at least not to the same extent as women. This interpretation of gender and vulnerability entails an individualistic focus on biological characteristics that concentrates on locating differences between men and women<sup>99</sup>.

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<sup>93</sup> Bacchi, C. (2009), p. 9

<sup>94</sup> Bacchi, C. (2009), p. 58-59

<sup>95</sup> NCCAP (2013), pp. 11, 41

<sup>96</sup> NAP (2015), p. 35

<sup>97</sup> Charlesworth, H. (2008), p. 359

<sup>98</sup> Bacchi, C. & Eveline, J. (2010), p. 114

<sup>99</sup> Bacchi, C. & Eveline, J. (2010), pp. 50-51

### 4.3 Can the “problem” be thought about differently, if something is left unproblematic?

There are no further definitions of the cited concepts used and referred to in any of the documents. The gender analysis is therefore made on the basis of how the concepts are being used in the texts. The binary representation of concepts, discussed in the previous section, entails a simplification of experiences that are much more complex. This leads to certain perspectives being silenced or certain issues being misrepresented.<sup>100</sup> Even though the concept of “gender equity” is present throughout the documents, there is no further definition of the concept. There is neither any mentioning of men being affected nor having a role to play in climate change response. When repeatedly stating that women are particularly vulnerable and presenting an ontological position on gender, the problem presentation fails to problematize the roles and experiences of men in relation to climate change. The documents are differentiating women from men when they assert that women constitute a “vulnerable group” and when they do not mention men’s relation to climate change impacts.

This presentation fails to recognise issues like power and gender relations and is also unable to acknowledge the underlying process leading up to the claimed disparity, being differences in vulnerability in this case. Bacchi argues that it is necessary to focus on the practices that differentiate women in order to challenge the norms that favour men and perpetuate inequality between women and men:

*“Women are ‘different’ only if someone says they are, or if they claim to be. A person is ‘different’ only in relation to someone else.”<sup>101</sup>*

“Difference” should therefore be understood as a relational concept, where individuals or groups are either labelled as “different” by others, or they claim themselves to be “different” from others. This is related to the fact that people who are involved in shaping norms and policies are likely to give them the meaning that reflects their own lives and experiences.<sup>102</sup>

The problem representation states there is a difference in vulnerability but does not disclose or elaborate on the reason why women are considered to be a particularly vulnerable group; neither does it explain in what way the vulnerability to climate change impacts differ between women and men. In the NCCAP there is an attempt to develop the contextual reasons behind the supposition that women are more vulnerable:

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<sup>100</sup> Bacchi, C. (2009), p. 13

<sup>101</sup> Bacchi, C. & Eveline, J. (2010), p. 51

<sup>102</sup> Bacchi, C. (2009), pp. 185-186

*"Women in Kenya have been observed to be disproportionately affected by drought because pre-existing gender discrimination exposes them to higher rates of poverty and insecurity and because of the extra socio-economic burden they have meeting the needs of households, children, vulnerable and the elderly."*<sup>103</sup>

This is however the only section in all of the documents that gives a further clarification of the use of the concept of vulnerability. Nevertheless, this depiction of vulnerability to climate change also leaves out the position of men. Instead of explicating and focusing on the structures and politics that contribute to gender discrimination, this problem representation only establish that women, as one homogenous group, are disproportionately affected because of the socio-economic burden that "they have". This simplification of the issue of gender discrimination reveals an analysis based on stereotypical and deterministic assumptions of gender roles. Only mentioning women in this section indirectly implies that men do not have a role to play in dealing with "the needs of households, children, vulnerable and the elderly". When focusing on one targeted group (women), this presentation comprises a "disadvantage discourse" that makes it difficult to acknowledge and confront the power position and social advantages of other groups (men in this case)<sup>104</sup>. The "disadvantage discourse" connects to the previous section that discusses the effects of incorrectly fixating gender with sex. It also relates to the issue of discursively homogenising individuals by referring to "women" as one group.

When mentioning women in the documents there is no further clarification of which groups of women are being referred to, in terms of class, ethnicity, sexual orientation, ability or geographic location. Every individual's life situation and opportunities are affected by at least one of the influences mentioned<sup>105</sup>. When generalising and categorising individuals by using the same pronoun "women", the problem representation contributes to silencing the differences and power relations that exist between women. This representation therefore fails to recognise the diversity among women and impacts like ethnicity and class that affect women's experiences and lives differently.

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<sup>103</sup> NCCAP (2013), p. 50

<sup>104</sup> Bacchi, C. (2009), p. 67

<sup>105</sup> Bacchi, C. & Eveline, J. (2010), p. 27



#### 4.4 How could the representation be questioned or replaced?

However, targeting groups does not always lead to stigmatisation or perpetuating inequalities. It depends on who is in the position of doing the targeting, on who is being targeted and on the forms of treatment that are being considered relevant to the aimed purpose.<sup>106</sup> When it comes to policies claiming to deal with specific concepts, such as “gender equality”, it is important to examine the interpretations attached to the term. The purpose of the WPR approach used in this analysis is thus to identify how policies create perceptions of what the “problem” with “gender inequality” entails.<sup>107</sup>

The previous sections indicate that the problem representation in the legal documents contribute to reinforce and reproduce fixed people categories, like “men” and “women”. The representation of the problem implies a simplification and misrepresentation of the very complex causes generating structural inequalities between men and women. For that reason, it is relevant to say that the policies are gendering since they play a role in constituting gender relations through their discursive practices<sup>108</sup>.

Recognising that policies influence and shape people’s conceptions of themselves and others requires a reflexive introspection by the policy makers. The problem representation assumes fixed categories and “differences” that contribute in reinforcing stereotypes and perpetuating inequalities between people. Instead of homogenising individuals into categories like “men”, “women”, “children” and attributing characteristics such as “vulnerable”, problem representations need to move beyond identity categories and groups in order to capture and adopt a broader understanding of people’s complex identities<sup>109</sup>. Rather than talking about “women” as one homogenous group that is “more vulnerable” to climate change, a more legitimate and intersectional approach is to talk about *which* groups of women who are implied, as well as clarifying the circumstantial consequences of climate change impacts and the reasons causing the inequalities between people. In this way, differences and inequalities not related to gender can be made visible as well, in an attempt to give a more accurate depiction of the “reality”, where the policies will be applied eventually.

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<sup>106</sup> Bacchi, C. (2009), p. 189

<sup>107</sup> Bacchi, C. & Eveline, J. (2010), p. 112

<sup>108</sup> Bacchi, C. & Eveline, J. (2010), p. 112

<sup>109</sup> Bacchi, C. & Eveline, J. (2010), p. 323

A deeper understanding of intersectionality theory provides a wider approach to policy development by addressing the multiplicity of connections of inequality that exist simultaneously.<sup>110</sup> Such problem representation is not limited by an ontological and binary understanding of gender, since it enables recognising men's situation in specific areas or socio-economic groups who are particularly affected by climate change impacts. If the problem representation is formulated with a gender sensitive perspective and takes into account existing power relations and structures, the application of the policies in practice would be more effective. Instead of formulating strategies suggesting that women are the ones who need to change, the problem could be addressed accurately by displaying the underlying causes of the inequalities the policy aims to solve.

## **5 Monitoring and implementing**

The following sections will present and analyse the interview data in relation to the research questions and the foregoing policy analysis of the legal documents. The outline of the sections is based on the answers from the informants relative to the research questions. The aim of the interview data analysis is to complete the policy analysis with practical inputs and information about the development and implementation of the climate change response documents. The aim of this section is to explore the theoretical assumption that policies produce “problems” that have further “shaping effects” for social relations and subjects<sup>111</sup>.

### **5.1 What roles do the current legal documents and commitments play in addressing the gendered dimension of climate change?**

A majority of the informants expressed mainly positive opinions when discussing the legal documents on climate change in general, and how they address gender in particular. They indicated that most of the documents take into account the crosscutting nature of climate change and acknowledge that its impact affects people differently. A recurring view was, although the documents are very well formulated and look good “on paper”, there are generally problems occurring at the implementation level. Capacity building and awareness creation seem to be important parts still required in order to meet the inadequate implementation of gender responsiveness according to the informants.

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<sup>110</sup> Bacchi, C. & Eveline, J. (2010), p. 232

<sup>111</sup> Bacchi, C. & Eveline, J. (2010), p. 114

One of the NGO representatives stated that most of the documents have shifted from being completely gender blind to being somewhat gender sensitive. The representative, however, reiterated that there is still a lack of gender awareness and knowledge of how to actually enforce and carry out the objectives of the documents in the field:

*“‘The how’ is the issue.”*

All of the documents mention the word gender in relation to mainstreaming or equality, but there is no breaking down of the concepts or how these ambitions set forth are going to be achieved more specifically. Many informants expressed that the relevant information and knowledge on gender responsiveness seem to exist in the establishing process of the documents, but there needs to be more progress in translating and bringing gender responsiveness and awareness all the way down to the county and grassroots level.

A representative from one of CSOs defined the implementation of the documents as being hindered by the overlapping of sectoral mandates of different ministries and by the fact that little consideration is being paid on promoting synergy between the environmental sectors. In practice this results in uncoordinated processes where different environmental sectors work separately but with the same overhanging purpose of responding to climate change. Gender mainstreaming and responsiveness have been captured in the Constitution and in a lot of institutional policies. In some cases this has been done in a thorough and conscious way while in other cases the gender perspective has only been incorporated for the sake of ensuring that the policies comply with previously established requirements. This results in the ultimate inclusion in implementation programmes ending up being arbitrary, depending on the respective individual lobbying strategies used.

Most of the informants brought up the recent nature of the climate change response documents as an important factor in not yet being fully able to determine the effectiveness of their implementation. Many pointed out the fact that it takes time to recognise the effects and actual impacts of newly enacted laws and policies. This was, however, also a recurrent aspect in remarks made regarding a lack of predictability in knowing the outcome of the proclaimed gender mainstreaming documents. Irrespective of the newness of the documents, legal certainty, rule of law, predictability and avoidance of arbitrariness are important principles of law and governance that need to be recognised<sup>112113</sup>. The rigidity of the climate change

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<sup>112</sup> Constitution of Kenya (2010), preamble, Articles 52, 191, UNFCCC (1992), Article 4

governance was a repeated matter of concern and implied frustration all through the interviews. One informant expressed this sentiment as following:

*“[...] the climate change is not waiting for all those documentations to take the bureaucracy. So we’d like to see it spot on, we want to respond to climate change now!”*

Several informants expressed that the promotion of gender responsiveness in climate change response might not really be a matter to be handled at a legal level, but that it should rather be viewed as a cultural issue. Even though fairly gender sensitive legal frameworks have been developed, there is still a challenge in terms of social and cultural traditional values and norms within the societal context of implementing the documents. Many informants brought up traditionally patriarchal structures as an obstacle in effectively implementing gender sensitive policies. They expressed it as a question of sensitising both women and men about traditionally fixed gender roles that perpetuate inequality between men and women and hinder women’s empowerment. Several informants emphasised the importance of including and promoting the participation of men in advocating for women’s empowerment and equality between men and women:

*“[...] when it comes to empowerment, it’s not really training the women, but it starts with the ability of men making transitions.”*

Even though many women often are traditionally the ones taking responsibility for the major part of the household chores, men are most often the ones being in charge of the final decision-making in terms of the household economy. Regarding community meetings and participation, many women are unable to attend these meetings because of cultural norms that require the permission of their husbands. Even if some women do manage to attend the community meetings, there are strong cultural norms restraining them from speaking up against men, or addressing certain issues in public. Many women’s latitude, especially in the rural communities, is also limited due to the heavy and unequal workload traditionally imposed on them, forcing them to stay at home, taking care of the livestock, children or relatives. The rigid division of household chores is a problem known to a lot of women, particularly in the rural areas. One informant stated that the issue of cultural and traditional norms hampering gender responsiveness is not dealt with in the legal documents. They are rather focused on harmonising with the objectives on climate change adaptation and mitigation that are established at the international level. According to the informant, this

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<sup>113</sup> Lundberg, K. et al. (2015), p. 526

could mainly be explained by political and economic interests. The governmental institutions are aligning themselves with the international requirements such as the Paris Agreement. These requirements are notably imposed by nations who, in addition to being world leaders, also constitute important development partners to Kenya. This is an aspect that could influence the policy makers when formulating national climate change response policies.

## **5.2 What gaps and weaknesses/challenges can be identified in the existing climate change documents in terms of promoting gender responsiveness?**

A recurrent issue brought up by the informants was the dominant focus on representation and linking gender to numbers and percentage within the Kenyan climate change governance and policymaking. Many informants talked about the need for a deeper understanding of the term gender since there is a tendency to make gender mainstreaming about numbers, in terms of merely counting how many representatives are women. There is a lot of focus on formal representation, but almost no addressing of the actual participation or of the practical outcome of the gender mainstreaming strategies. One of the NGO representatives expressed the problem as being linked to a general misinterpretation of the term gender. There is a lack of understanding of gender roles and of structural causes behind inequalities between individuals, which leads to an attitude of assuming that gender is about women. This assumption is passed on to the legal documents that assert to be mainstreaming gender:

*“As long as it’s ‘thrown in there’ - that the word ‘gender’ is somewhere - it’s supposed to be gender sensitive, gender-responsive etcetera.”*

Another NGO representative specified this view by referring to the Climate Change Act as an example of how the word gender is used without further elaboration in the legal documents. Terms like “gender equity” and “intergenerational equity” are frequently used, but are left without any further definitions<sup>114</sup>. According to the informant, this implies a simplified approach to the concepts common within the climate change governance. Gender is often used as a “fashionable umbrella term” included in various policy formulations, but it is not further analysed or articulated into concrete and achievable goals. This is also an issue within the international documents, like the Paris Agreement and its national INDCs. The informant pointed out the criticism of the unsatisfactory outcome that was expressed after the Paris climate change conference. Many gender and women’s rights advocacy groups expressed disappointment with the PA’s inadequacy to address the gender dimension of climate change.

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<sup>114</sup> Climate Change Act (2016), Article 3 (2) (e)

The document ended up having only two references to gender-responsive approaches, appearing in the sections on capacity-building and adaptation actions<sup>115</sup>. Many informants mentioned this criticism, implying that this type of portrayal of the gender concept contributes to obscuring the role that many women play in climate change mitigation and adaptation, in terms of agency and traditional knowledge. It rather reinforces the notion of women as vulnerable and victims in need of support. One NGO representative implied that the reason why concepts like “gender” and “gender mainstreaming” are so popular and commonly used in policy-making is because they do not challenge any established political rhetoric. This relates to the misinterpretation of the concept of gender mainstreaming as being about representation, mentioned earlier. The informant exemplified this misrepresentation of different concepts like the following:

*“If you say ‘gender’, everybody agrees that it is something good; ‘Yes, it’s about women being represented.’ But when you say ‘feminism’, they’re like; ‘Why do you say feminism? Do you hate men?’”*

The informant stated that there is a need for a stronger feminist movement in the Kenyan political discourse in general, and in the environmental governance in particular. Being a feminist advocate today is seen as radical and is often met with opposition in Kenya.

Another question brought up was the ineffectiveness of the documents to address the actual challenges faced at the community level. One of the CSO representatives described this as being due to a disconnection between the policy makers and the persons working directly with the communities at the grassroots level. Kenya’s decentralisation into county governments has however contributed to some improvement in this regard, by bringing the government closer to the people. Environmental government was one of the areas devolved to the county level. The informant expressed that even though there has been some improvement connected to the devolution, the CSOs and grassroots organisations still have to face the same fights in trying to communicate and pass on the challenges of the communities to the county governments instead of the national. There is a particular focus on mitigation issues in the climate change documents as opposed to recognising the specific climate change impacts that the respective counties are facing. The disconnection between the governmental and the community level leads to difficulties in implementing the policies. Emphasising on mitigation actions rather than adaptation actions contributes to a misrepresentation of reality,

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<sup>115</sup> Paris Agreement (2015), Article 7, pt. 5, Article 11, pt. 2

particularly regarding the rural communities, who contribute very little to the total national GHG emission. This contradicts the UNFCCC principle of CBDR-RC (Common But Differentiated Responsibilities and Respective Capabilities), which calls for a contextual understanding that acknowledges specific capabilities as well as social and economic conditions in the member states<sup>116</sup>. The informant gave the following example to further illustrate the difficulties to implement the documents at the community level:

*“[...] when I’m telling someone there [at the community level] that burning charcoal is contributing to climate change, and then look at how much CO2 is coming from charcoal comparing to how much is coming from vehicles, and how much is coming from industries - then you begin to lose the person.”*

This illustrates the perception presented by several informants. There is a gap between what needs to be done at the community level, and how the policy makers are addressing it. It entails an imbalance between the policies and the needs expressed both by the focus and emphasis put on mitigation, and by the general targeting of rural communities in terms of implementation. One informant further commented on this asymmetry as being the result of political strategies:

*“[...] should the policy really focus on aligning itself with the international activities, or should we be focusing more on responding to the needs of people? Because at the end of the day, we may have the best policies, the best action plans on climate change, but if the communities are not feeling that impact, then it’s not helping particularly.”*

Several informants expressed that the principle of common but differentiated responsibility is not quite met in the eventual formulation and implementation of the documents. Considering the actual challenges Kenya is facing because of climate change, there should be a greater focus on adaptation. However, the Kenyan climate change documents are aligned with the commitments made at the international level rather than the challenges faced at the community level, which leads to a disproportionate focus on mitigation.

Some of the representatives work closely with state and governmental actors and have contributed with gender expertise in developing some of the climate change documents. They expressed that even though their inputs and comments were acknowledged at an early stage of the process, they noticed a successive adjustment of the content. The result was a discrepancy between the final outcome and what was being discussed initially in terms of gender responsiveness. One example is the Climate Change Act, where the representatives

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<sup>116</sup> UNFCCC (1992), preamble, NCCAP (2013), p. 9

had discussions with the Climate Change Directorate. The informants pointed out the use of words like “gender and intergenerational equity”<sup>117</sup> as examples of how the document ended up not being very well articulated in terms of gender responsiveness. One informant explained this as being the result of the Directorate appointing a consultant and alleged “gender expert” in charge of putting the inputs together and finalising the document. As a result, the document ended up neither representing the gender aspects nor capturing the inequalities of climate change impacts very well. According to the informant, this is the effect of the “gender expert” being a person not well conversed in gender issues and therefore no expert. The consultant *thus* overlooks and leaves out important aspects and does not elaborate on concepts such as “gender” and “intergenerational equity”, repeated throughout the document but left unexplained.

Some informants talked about the problem of electoral tactics influencing the climate change governance in Kenya. There is a perception of some issues being too sensitive to carry into effect considering specific political and economic interests and considering the forthcoming Kenyan general election of 2017. Gender mainstreaming and representation are issues made more visible during the election year as political parties are to a greater extent focused on having a good gender balance in order to get good nominations and go ahead to the elections. Several informants expressed that this tactical and occasional focus is problematic since it implies that there is a lack of deeper understanding of the issues related to inequalities between men and women. There is no further development of how concepts, such as “gender equity”, are going to be handled or achieved other than focusing on the Parliament and political parties having a balanced representation between men and women. Many informants asserted that issues like balanced representation and community-based climate change response actions are given quite a lot of attention before and during the election campaigns but are generally disregarded and ultimately neglected when the elections are over. One informant explained this problem of political interests as being the reason of the discrepancy between policy formulation and implementation:

*“This scenario is dictated by the government-in-office where each government in power establish ministries dictated by political affiliation rather than the need. There has been very high turnover of ministerial alignment based on political interest.”*

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<sup>117</sup> Climate Change Act (2016), Article 3 (2) (e), Article 25 (5) (e)



The implementation of climate change response strategies needs to be prioritised, coherent and well monitored even after the elections. In order to promote legal predictability, political measures and strategies for implementation should be based on the needs of communities, liberated from political interests.

### **5.3 What relevant experiences and practical achievements of women's rights and climate change advocates could be included in order to promote gender responsiveness more effectively?**

One issue mentioned by the informants was the challenge of reduced funding for climate change and gender projects. The competition for funds between organisations is a struggle that many informants brought up. One NGO representative described the problem as funding now being diverted into separate sectors that are indirectly addressing climate change, but there is a lack of coordination. Instead of funding projects that expressly work with climate change response, funds are directed to projects dealing with more general issues, such as energy security. The objective of climate change response is handled as a secondary focus. These projects also claim to include women's empowerment as an indirect objective, which coincides with other requirements for the funding available. The informants expressed concern that these kinds of projects outcompete other projects, which have a more holistic approach of recognising the crosscutting dimension of climate change. In order for the projects to be successfully implemented the informants emphasised the necessity of addressing climate change as an issue by itself, and not regarding it as a separate or additional aspect in each different environmental sector.

The idea of recognising the crosscutting aspect of social and climate challenges was a recurrent issue in the interviews. There is a need to develop the concept of gender mainstreaming and acknowledge that gender is one of many cross-cutting issues that affect all members of society, rather than looking at it as only referring to women. Some informants described how different women's rights groups and environmental grassroots organisations rather talk about "gender justice" and "climate justice" instead of using concepts like gender mainstreaming or climate change response. This type of discourse seeks to address the cross-cutting element of climate change and to challenge underlying power relations perpetuating inequalities between men and women as well as between urban and rural areas, in terms of climate change impact. Rather than using words like vulnerability and gender mainstreaming, this approach focus on the main issue of inequality. Advocating for gender and climate

justice implies a problem representation where injustice and unequal power relations are considered the problems to be resolved. Many informants requested more focus on poverty alleviation, since many of the challenges due to climate change are related to inequalities in income. One CSO representative, working at the grassroots level, mentioned that a majority of the negative environmental activities, such as deforestation and charcoal burning, is a result of poverty. Regulations such as banning charcoal burning and tree cutting or focusing on mitigation actions are not enough. The primary roots of these environmental issues are not being dealt with properly. As poverty is a main contributing factor to activities having negative climate impacts, several informants advocated providing other income generating alternatives. There is a conflict of interest for people, often women, who are highly dependent on firewood for their livelihood; and, at the same time, need to comply with the climate change mitigation strategies set by the State. In order for people to not perceive climate change response as something negative, interfering with their traditional livelihoods, alternative livelihoods should be considered.

Some informants pushed for more synergy and coordination of the different environmental sectors working with climate change response at the national level. Instead of having different groups working separately with the same issue, there should be more of a unified way of working within the field of climate change response. In that way, the different sectors could complement each other with their area of expertise, which would eventually lead to a more uniform and efficient implementation process. This need for coordination also applies for the various NGOs and CSOs within the field. Organisations who are currently struggling for funding because of higher competition could benefit from cooperating with each other since a lot of them are applying for projects with the common and ultimate goal of responding to climate change.

There was also a call for better sensitisation in the communities regarding actions at the international, national and regional levels, in terms of climate change response. This awareness creation is also important conversely, in the sense that there are a lot of existing, traditional adaptation strategies to be taken into account at the national level. The need to recognise and learn from traditional and indigenous knowledge of climate change adaptation was a recurrent remark made by the CSO representatives working at the grassroots level. They emphasised the benefits observed from projects where they have combined pastoralist and indigenous knowledge of responding to climate change with modern meteorological

technology and information. Several informants also talked about the positive impacts of exchanging experiences, not only vertically, between the national and the grassroots level, but also horizontally, sharing knowledge and experiences between the communities affected by, and adapting to climate change in various ways. In this matter several informants stated that the devolution in Kenya has contributed in a positive and constructive way, particularly in terms of climate change interventions. One informant expressed the positive effects of the devolved government in the following manner:

*“One of the most visible advantages with the county government that we’ve seen was that the government got closer to the people.”*

The environment is one of the areas that have been devolved and resources are being decentralised to the budgets of the county governments, working closer to their needs. This could be beneficial as the rural communities are most affected by climate hazards. The county governments may be more efficient than the national government in allocating resources to the areas where the need for intervention is more pressing.

However, all of the informants stressed that there are still many challenges remaining in order for the county governments to be able to address the gendered effects of climate change efficiently. There is still some overlap between the national and the county governments in terms of separation of power and responsibilities. There should be more awareness creation of the roles of these new county governments. This to ensure that people are able to distinguish them from the national government and to recognise the participatory function of the County Integrated Development Plans (CIDPs) which call for community participation and public participation forums. There is also a need for sensitisation within the county governments themselves in order for them to consider and prioritise the needs of the public in the development and management of their CIDPs and annual budgets. Several informants called for the national and county governments to make better use of the wide range of knowledge and capacity building that already exist within CSOs and NGOs in Kenya, in terms of sensitisation and awareness creation. This was an opinion particularly emphasized by the representatives from grassroots organisations working at the community level, trying to influence the policy makers.

## 6 Concluding discussions

When it comes to generalising the results presented in the qualitative data analysis, Esaiasson et al state that one factor to consider is the theoretical saturation. This saturation is achieved once it is possible to state that all relevant remarks, views and approaches to the problem can be found in the results deriving from the selected population. The moment the informants start to repeat what previous informants have stated, and no new aspects of the problem are presented, the theoretical saturation can be asserted.<sup>118</sup> All through the analysis of the interview data, there has been a tendency of the informants to repeat comments and present similar approaches to the problem giving slightly different perspectives, depending on their different roles and experiences. This is the result of the contrasting selection of informants, made at the initial stage of formulating the method of the thesis.

Before presenting the conclusions that can be drawn in relation to the research questions, it is important to scrutinise and consider in what way the theoretical premises of the thesis constitute problem representations themselves. According to the WPR approach applied, the methodological choices and theoretical framework in the thesis are inevitably based on underlying assumptions that affect how the problem is represented in the formulation of the research questions.<sup>119</sup> This further affects the types of results considered relevant to the demonstration of the legal and policy analysis, interview data and ultimately, how the concluding discussion is presented. This remark serves to proclaim a degree of transparency regarding the introductory assertion that every attempt to address an issue, legal or other, can merely end up constituting a representation of the problem; it can never be an unbiased depiction of “facts” or objective “answers”. As stated in the section 2.2.1 on methodology, the purpose of the thesis is not an attempt to present a generalizable conclusion from the relatively limited scope of the study, but an attempt to provide an illustration of the issue by applying a relevant gender perspective.

One major challenge identified through the review and analysis of the legal documents and of the interview data is the gap between policy formulation and implementation. This has been explained partly by the documents being too vaguely formulated due to a lack of knowledge and understanding of concepts like gender and inequality between men and women. Another view presented is that there is a disconnection between the policy makers and the

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<sup>118</sup> Esaiasson et al. (2017), p. 167

<sup>119</sup> Bacchi, C. (2009), p. 270

communities at the grassroots level. This results in significant difficulties, in terms of implementation, because of the gap between the actual needs and the issues that the legal documents ultimately address. The informants called for a better exchange of experiences and knowledge between the national and county governments and the communities in order for the policies to correlate with the needs of the communities in terms of better responding to climate change. Many of the CSOs and grassroots organisations have acquired a lot of useful know-how and established contacts with the communities regarding how to address climate change hazards. This includes important indigenous and pastoralist knowledge that has been found useful in climate change strategies, particularly combined with modern, meteorological information and technology.

There was also a call for better understanding and more awareness creation on how a gender perspective could be efficiently applied in order for the legal documents to be implemented more properly. It is necessary for a better gender awareness in general for the whole procedure to be more consequential, from formulation to implementation of the documents. Even though all of the informants generally gave positive comments regarding the fact that the documents address the gendered dimension of climate change in various ways, there was likewise a recurring criticism of the documents being ultimately too vague and imprecise. The incomplete policies initially had a conscious intention of being gender sensitive, but gradually became diluted due to a lack of knowledge in gender issues. Many informants called for the policy makers to better acknowledge and make use of the existent expertise, found in many of the NGOs and CSOs, who have great experience working with these gender issues. The issue of misinterpreting concepts does not only result in vaguely formulated policies, but also leads to a lack in predictability which is fundamental in every state governed by the rule of law, such as Kenya. In order to meet the central legal requirements of certainty and predictability there is thus a need for more sensitisation and awareness creation on how to properly apply a gender perspective on climate change response policies.

In line with the WPR approach, one conclusion drawn from the policy analysis is that the legal documents contain inherent representations of the “problem” they seem to address. When asserting to apply a gender perspective on climate change impacts they represent the problem as being mainly related to women, who are additionally depicted being a homogenous and vulnerable group of people. This generates a distorted and simplified depiction of the actual context of both women and men confronting climate change. It also

implies an individualistic and biological fixation of the concept of gender being related to sex. Instead of trying to address the actual and very diverse challenges the different communities are facing, this problem representation perpetuates an approach of establishing differences between men and women. It also contributes to obscuring differences existing between many women, which are of significance when discussing how the climate change affects people unequally. There are clearly differences connected to how men and women are affected by climate change in general; however, it is important to not generalise in such a manner as stereotypes and misrepresentations risk being perpetuated. Homogenising and stating that “women” suffer more leads to a misrepresentation and simplification of a much more complex issue. Such problem representation could end up counterproductive as it perpetuates generalising assumptions. It is, therefore, necessary to clarify what groups of people are being referred to, taking into account factors such as socioeconomic status, gender and regional differences in climate change vulnerability. Recognising the consequences of such crosscutting elements is fundamental for the overall goal of achieving equality. There is a need to apply a more intersectional focus when addressing issues such as gendered impacts of climate change.

A general conclusion can be drawn, mainly from the interview data, that legislation and policies are insufficient as instruments to successfully counter the gendered and unequal climate change impacts. Only by recognising and addressing the actual differences and systematic and structural social inequalities that exist between groups of people, strategies and action plans can efficiently respond to the challenge of climate change. Underlying causes to these inequalities, such as poverty and discrimination, rooted in cultural and traditional attitudes and practices, are not essentially legal issues. The responding strategies can, therefore, not be solely legal, and must be complemented by additional measures. This could include sensitisation and awareness creation on human and constitutional rights ensuring non-discrimination and equality between men and women. The national strategies on climate change response could additionally benefit from a closer cooperation with grassroots organisations working with women’s rights, gender, democratisation and poverty alleviation, having valuable expertise and knowledge to share. It is still early to properly evaluate the results of the implementation of the currently enacted documents on climate change response documents. This would be an interesting subject to examine as a follow-up study to this thesis. It could also be relevant to study the role of general principles of equality and non-discrimination, stated in the Constitution, in promoting and influencing the more

specific laws and strategies on sustainable development and climate change in Kenya. Another interesting study to carry out could be to compare the Kenyan legal framework on climate change with corresponding measures developed in another country, facing different kinds of climate change challenges. A contrasting example could be to compare with Sweden, who has set to bring in climate change legislation by 2018. As a proclaimed feminist Government, and being a high-income country, it could be of particularly interest to examine the level of gender responsiveness, in relation to the contrasting situation in Kenya.

## 7 References

### Articles and books

Alston, M. 2013, *Gender mainstreaming and climate change*, Women's Studies International Forum, vol. 47, pp. 287-294, Published online: 21 March 2014 at ScienceDirect by Elsevier

Bacchi, C. 2009, *Analysing Policy: What's the Problem Represented to Be?*, Pearson, French Forest, New South Wales

Bacchi, C. & Eveline, J. 2010, *Mainstreaming politics: gendering practices and feminist theory*, University of Adelaide Press, Adelaide, Barr Smith Library The University of Adelaide South Australia

Charlesworth, H. 2008, *Are Women Peaceful? Reflections on the Role of Women in Peace-Building*, Feminist Legal Studies, 16:347–361 Published online: 22 October 2008 at Springer Science+Business Media B.V.

Dalberg-Larsen, J. 2002, *A Sociological Perspective on Environmental Law*, 9-22, Retsvidenskabeligt Tidsskrift

Esaiasson, P. Gilljam, M. Oscarsson, H. Towns, A. & Wängnerud, L. 2017, *Metodpraktikan – konsten att studera samhälle, individ och marknad*, 5 ed, Wolters Kluwer, Stockholm

Kapur, R. 2002, *The Tragedy of Victimization Rhetoric: Ressurecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics*, Harvard Human Rights Journal, vol. 15, pp. 1-38

Kameri-Mbote, P. 2006, *Women, Land Rights and the Environment - the Kenyan Experience*, International Environmental Law Research Center, 49(3) *Development*, 43-48, Society for International Development 1011-6370/06

Kvale, S. & Brinkmann, S. 2014, *Den ,kvalitativa forskningsintervjun*, 4 ed, Studentlitteratur, Lund

Lundberg, K. Schüldt, J. Rother-Schirren, T. Lagerstedt, A. Calleman, C. Nordell, P.J. Persson, H. A. Radetzki, M. Zila, J. (2015), *Juridik - civilrätt, straffrätt, processrätt*, 3 ed, Sanoma utbildning, Stockholm

Malonza, R. & Lumayo Fedha, M. 2015, *An Assessment Of Gender And Energy In Kenya: The Underlying Issues*, International Journal of Scientific & Technology Research, vol. 4, Issue 9, Published online: 9 September 2015

Nyamo, C.I. in Dowd, N. & Jacobs, M.S (Eds.) 2003, *Feminist Legal Theory: an Anti-essentialist Reader*, New York University Press



Odote, C. 2013, *Public Interest Litigation and Climate Change, An Example from Kenya*, Climate Change: International Law and Global Governance, pp. 805-830, Nomos Verlagsgesellschaft mbH & Co. KG

Okidi, C. O, Kameri-Mbote, P & Akech, M, 2008, *Environmental Governance in Kenya - Implementing the Framework Law*, 1 ed, East African Educational Publishers Ltd, Nairobi

Resurrección, B.P. 2013, *Persistent women and environment linkages in climate change and sustainable development agendas*, Women's Studies International Forum, vol. 40, pp. 33-43, Published online: 25 May 2013 at ScienceDirect by Elsevier

Sunnemark, F. & Åberg, M. (Eds.), 2004, *Tvärvetenskap: fält, perspektiv eller metod*, Studentlitteratur, Lund

Svensson, E-M. in Korling, F. & Zamboni, M. (Eds.) 2013, *Juridisk metodlära*, 1 ed, Studentlitteratur, Lund

Svensson, E-M. & Gunnarsson, Å. 2009, *Genusrättsvetenskap*, 1 ed, Studentlitteratur, Lund

### **Official publications**

ECOSOC, 2016, *60th session of the Commission on the Status of Women*, UN, New York

IPCC, 2014, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Geneva

IOM - International Organization for Migration, 2015, *Migration in Kenya - A country Profile*, Nairobi

UN, OSAGI, 2002, *Gender Mainstreaming - an Overview*, Office of the Special Adviser on Gender Issues and Advancement of Women, UN, New York

UNDP, 2001, *Learning and Information Pack - Gender Analysis*, UNDP Learning Resources Centre OHR/BOM, New York

### **Legal documents**

Government of Kenya, 2016, *Climate Change Act*, Ministry of Environment and Mineral Resources, Nairobi

Government of Kenya, 2010, *Constitution of Kenya*, Nairobi

Government of Kenya, 2015, *Kenya's Intended Nationally Determined Contribution*, Ministry of Environment and Mineral Resources, Nairobi

Government of Kenya, 2016, *Kenya National Adaptation Plan: 2015-2030*, Ministry of Environment and Mineral Resources, Nairobi

Government of Kenya, 2013, *National Climate Change Action Plan*, Ministry of Environment and Mineral Resources, Nairobi

Government of Kenya, 2010, *National Climate Change Response Strategy*, Ministry of Environment and Mineral Resources, Nairobi

UN, 2015, *Paris Agreement*, 21st Conference of the Parties of the UNFCCC, Paris

UN, 1992, *United Nations Framework Convention on Climate Change*, Earth Summit, Rio de Janeiro

### **Other articles and online resources**

African Development Bank Group 2016, *The African Working Group on Gender and Climate Change calls for a move from mainstreaming to integration*, Published online: 11 November 2016, <https://www.afdb.org/en/news-and-events/the-african-working-group-on-gender-and-climate-change-calls-for-a-move-from-mainstreaming-to-integration-16367/>

Government of Kenya, 2017, *About Kenya Vision 2030*, published online: 2017 <http://www.vision2030.go.ke/about-vision-2030/>

### **Interviews**

Representative from environmental, non-governmental institute, Nairobi, 13/3 – 2017

Representative from environmental NGO one, Nairobi, 23/3 – 2017

Representative from women's rights NGO, 27/3 – 2017

Representative from environmental NGO two, Nairobi, 28/3 – 2017

Representative from environmental and indigenous people's rights NGO, Nairobi, 28/3 – 2017

Representative from state-funded project on climate change response and women's empowerment, Nairobi, 29/3 – 2017

Representative from CSO one, Nairobi/Skype, 31/3 – 2017

Representative from grassroots organisation/CSO, Nairobi, 31/3 – 2017

Representative from climate change and women's rights NGO, Nairobi/telephone, 4/4 – 2017

Representative from environmental NGO three, Nairobi, 4/4 – 2017

Representative from CSO two, Nairobi/e-mail, 29/4 – 2017

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