

Women's Rights, Gender and Climate Change Law in Africa: Advancing an Equity Agenda

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Abstract

The consequences of climate change are not only disproportionately felt by the most vulnerable and poorest populations, there are also disparities along gender lines. The connections between climate change, gender equality and women's rights are not only complicated but also multidimensional. In contrast, most existing studies on gender and climate change action offer a narrow conception of what gender equality and women's rights mean in the context of climate change action. Considering these thorny linkages between climate change, gender equality and women's rights in Africa, this article examines the intersection between gender equality, women's rights and climate change action by focusing on African Union law and the climate change legislative and policy responses from Kenya, Zimbabwe and South Africa. The article adopts a doctrinal method and two analytical approaches – the human rights-based approach and insights from feminist approach to law – to argue that since human-rights law places the protection and fulfilment of fundamental human rights and group interests at its core, its legal threshold demands that all actions which can have an impact on human rights, including climate change responses, are bound by its rules. The article argues that gender equality and women's rights are guaranteed in international and regional law in Africa and therefore provide a legal basis for the integration of gender equality and the protection of women's rights in national climate change action. By emphasising the protection of vulnerable women's rights and gender equality, the international climate change regime and the African human rights system provide foundation

for conceptualising gender-responsive and human rights-based approaches to climate action.

Keywords: African human rights system; climate change action; gender equality; human rights law; women's rights

Introduction

The warming of the globe and the signs of a changing climate are evident. It challenges everything human beings know and care about, from well-being and individual rights to social structure, development, environmental sustainability and ecological equilibrium (Mayer 2018, 1). The adverse effects of climate change pose a challenge to the international community and every state, both developed and developing, not necessarily only due to its environmental impacts, but also as a result of its far-reaching economic and social effects (Atapattu 2016, 2). The 2007 Human Development Report of the United Nations Development Programme (UNDP) observed that “climate change is the outlining human development issue of this generation” (United Nations Development Programme 2007, 7). The adverse effects of climate change can threaten and are already threatening the sustainable development gains achieved so far, such as improvements in the rights to health, adequate food and water. Climate change not only interferes with sustainable development and the right to development; it also undermines the enjoyment of other human rights such as the rights to life and security of the person, health, adequate food and water, shelter and property (Rajamani, Darrow and McInerney-Lankford 2011, 145). For many developing regions and vulnerable countries, dealing with the adverse effects of climate change has become a mammoth and daunting task. Climate change is an international issue; however, its impact varies depending on the geography and locality, especially in terms of effects, exposure and adaptation (Addaney and Cobbinah 2019, 4). Most African countries and populations are facing different challenges due, among other factors, to the effects of climate change, which continue to threaten critical infrastructure systems, agriculture and biodiversity, energy and industrialisation as well as urban and rural livelihoods (Addaney 2019).

The adverse effects of climate change are not only disproportionately felt by the most vulnerable populations and the poorest; there are also disparities along gender lines. Conversely, most of the existing scholarship on gender and climate change law and policy offer a very narrow conception of what gender equality and women's rights mean in the context of climate change action – law, policy and programmatic initiatives. This article therefore examines the intersection between gender equality, women's rights and climate change law from an African perspective. Essentially, the article relies on a legal analysis of the existing literature on gender, human rights and climate change in contributing to this debated treatise. Accordingly, this article adopts two essential approaches to law in its attempt to explore the interconnections between gender, women's rights and climate change, especially in seeking a legal construction of the basis for gender equality in climate change action.

First, it uses a human rights-based approach to establish that women as human beings have inherent rights and that these rights must be incorporated into the relevant laws and policies on climate change. Secondly, it adopts the feminist approach to law to show that the difference in the socio-political and cultural structures between men and women substantially influences and perpetuates the differing consequences of climate change on women.

Following this introduction, the article discusses the relationship between gender, human rights and climate vulnerability in Africa, focusing on the principles of non-discrimination and equality as well as participation and inclusion. Section three explores the concept of gender equality in climate change agreements, focusing particularly on human rights law in Africa and selected African countries. Section four summarises the discussion and concludes the article.

Gender Equality, Women's Rights and Climate Change: Human Rights as a Conceptual Framework

International law on climate change is expected to guarantee an equitable and all-encompassing framework that delivers global temperatures below 1.5 °C, supports a fair climate action, is human rights compliant and guarantees gender equality at its core as the guiding principle (Mayer 2018). Nonetheless, it is critical to examine how the international action on climate change and international human rights law are being integrated and implemented to ensure gender-responsive climate solutions at the regional and national levels. This section discusses the concept of gender equality in climate change law from a human rights standpoint. It discusses the intersectionality between gender, women's rights and climate change action, emphasising how climate change worsens existing gender inequalities.

Gender, Women and Climate Vulnerability from an African Perspective

The adverse effects of climate change are not felt equally. Vulnerable and marginalised populations such as women, children and minorities often bear the brunt of the impact of climate change. Nagel (2015, 5) observes that differences in gender influence the vulnerability of men and women to the impact of climate change in accessing resources related to recovery from climate-induced disasters, approaches to climate risks and involvement in the political processes that shape adaptation and mitigation activities. The different roles between the genders in domains such as the economy, the family, political rights, education and health affect men and women in more or less the same way, making them equally vulnerable to the adverse effects of climate change. Women across the world are prone to poverty in comparison to men as a consequence of uneven access to economic resources, finance and decision-making. Women, without contestation, experience the adverse effects of climate change differently as they are more reliant on climate-sensitive sectors such as agriculture (Skinner 2011, 2). In

Africa, comparable extreme climatic events such as a heat waves, floods or drought have distinctive gendered effects.

Many factors have been attributed to the distinctive vulnerability of women to the impact of climate change. For example, the UNDP has underscored that women in developing countries experience unequal access to resources and decision-making processes, with constrained agility in rural areas; and therefore it is important to recognise gender-just climate solutions (UNDP 2011). The strain associated with access to economic and social resources, combined with prevailing discriminatory practices such as excluding women from decision-making processes regarding resources and the environment are considered to be the leading factors for the amplified exposure of women to the impact of climate change. Integrating gender issues and women's rights into climate change adaptation, mitigation, finance and capacity-building will amount not only to good practice but also the advancement of inclusive development, as observed in the UN Sustainable Development Goals (SDGs). The concept of gender equality has been enshrined in international human rights law and was also the first reference made in the international law on climate change (Bali Action Plan 2007). This underscores the significance of the concept of gender equality in climate change law.

Women, Climate Change and Human Rights Law

The existence of strong linkages between climate change, gender and human rights and the need to guarantee that states incorporate gender and human rights into climate change law, policy and programmes has become conventional in academic and policy circles (Ferreira 2016, 1). The compelling consensus on the conceptual and practical linkages between climate change, gender and human rights has led both state and non-state actors to argue for human rights approaches to international climate change action, particularly during the negotiation of the Paris Agreement in 2015. The proponents of gender-responsive human rights approaches to climate change are yet to express how it can be adopted to establish legal obligations or a functional response to climate change. Various actors have begun to examine the potential of using human rights mechanisms to develop a more equitable and effective response to climate change due to the growing recognition that the effects of climate change undermine the enjoyment of fundamental human rights (Koivurova, Duyck and Heinämäki 2013, 287). Some UN bodies, international tribunals, scholars and non-governmental organisations (NGOs) assert that state parties have binding obligations under international human rights law to respect, protect and fulfil in good faith the rights guaranteed by international human rights law (Rajamani 2010, 391). Despite the broad support and its solid grounding in existing international law, there are apparent practical and conceptual challenges that may prevent the human rights-based approach from being used as a complement to the wide-ranging international-law response to climate change. The challenges such as causality, apportioning liability and international politics problematise the adoption of a strictly legal application of a human rights-based approach to climate change action.

The principle of equity and non-discrimination implies that human rights are to be enjoyed by every human being without any form of discrimination on the grounds of race, birth, ethnic group, colour, sex, language, religion, political or any other opinion, national origin, fortune, birth or any other status (The World Bank 2006, 27). Therefore, this principle is critical to examining the compatibility of the law and policy governing climate change action at the regional and national level in Africa. As the climate crisis is exacerbated, there is scientific evidence that poorer countries and vulnerable populations in those countries and regions will be the hardest hit (Intergovernmental Panel on Climate Change 2007, 8). Owing to their discrimination, vulnerable groups and populations such as women and minority groups are marginalised and are in reality categorised as the poorest (Wachira 2010, 289). International human rights law provides a normative basis for dealing with issues of equality and non-discrimination in the international, regional and national action on climate change. Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the appropriate human rights norms which can be relevant to safeguarding the rights of vulnerable groups such as women include rights to anti-discrimination, work, decent living, social security, the right to an adequate standard of living and the right to health. Other substantive international human rights instruments provide a persuasive basis for the concept of equality and non-discrimination, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). At the regional level, the African Charter and its protocols guarantee the right to equality and non-discrimination. The equality and non-discrimination clauses have also been recognised by the institutions of the African Union (AU).

Under the principle of participation and inclusion, international and regional human rights law entitles every person to active, free and meaningful participation in, contribution to and enjoyment of civil, political, economic, social and cultural development through which guaranteed rights can be fulfilled. The principle of participation entails certain norms which the emerging law on climate change should embody; an omission of which will make it challenging to ground certain claims of marginalised populations, including the need for women to participate actively in climate change responses and negotiations at the national level. The principle of participation provides a basis for ensuring that climate change action allows for the active involvement of women and other marginalised populations. Furthermore, Article 25 of the ICCPR provides that citizens shall have the right without unreasonable hindrance to “participate in the conduct of public affairs and in accessing public service in a given State”. The “conduct of public affairs” has been interpreted by the Human Rights Committee (HRC) to include exercising political power and especially exercising legislative, executive and administrative powers, expanding to the development and implementation of public policy at the national, regional and international levels (Human Rights Committee 1995, 5). At the regional level, some instruments including the African Charter guarantee the right to participate in public

decision-making. Therefore, gendered and human rights-based approaches to climate change action offer appropriate mechanisms for responding to the weaknesses inherent in the laws and policies adopted by states to deal with the adverse effects of climate change.

Notwithstanding the various barriers, human rights approaches to climate change remain valuable. Human rights derive much of their persuasive force from natural law and enjoy near-universal acceptance by societies and governments around the world. As a result, in terms of rhetorical value, the human rights approaches should not be inhibited by existing legal instruments and associated standards, norms and principles. They are based on the notions of justice and the protection of minority and vulnerable groups. This rhetoric may not necessarily lead to the codification of these rights in hard law. However, they create an awareness of the plight of the vulnerable groups who are the least responsible for the adverse effects of climate change and consequently bring to the fore the climate change problem in relation to other global environmental issues (Hall and Weiss 2012, 344). Furthermore, humanising climate change promotes a sustained discourse to build and produce the requisite political and social will towards an appropriate and just resolution of the climate change crises (Hunter 2009, 331). Moreover, establishing a legal and conceptual link between climate change, gender and human rights creates a space for historically disadvantaged actors in the international and domestic climate change dialogue. Simon (2009, 459) argues that the attention given to the predicament of vulnerable populations by the reports, declarations and resolutions adopted by the UN and its bodies attest to this fact.

According to Fox (2015), legally connecting climate change, gender and human rights with the imposition of corresponding legal obligations on states may help to ensure that climate change responses are compatible with human rights standards, norms and principles. Consequently, human rights approaches to climate change action may justly facilitate the evolution of a cohesive gender-responsive and rights-protective international legal framework (OHCHR 2012). Human rights approaches can enable affected populations to pursue legal remedies for their own states' human rights violations associated with climate change. Instead of claiming states' extraterritorial obligations to mitigate the impacts of climate change, communities and individuals can also hold their own states responsible for failing to adopt human rights approaches to climate change action. Hall and Weiss (2012, 314) argue that such claims may be more successful than those relating to extraterritorial mitigation, since they present fewer legal challenges regarding causation and of asserting liability. In addition, connecting human rights principles to climate change action is underpinned by principles such as indivisibility, interdependence and inter-relatedness, non-discrimination and equality, participation and inclusion, accountability, and universality and inalienability – which are fundamental tools for appraising climate change action. These principles are specifically guaranteed in group-specific and general human rights instruments (Alfredsson 2010, 147). Concerning gender and women's rights in particular, principles

such as non-discrimination and equality as well as participation and inclusion are essential in international, regional and national action on climate change.

Gender Equality and Women’s Rights in International and Regional Law on Climate Change in Africa

In 2014, the IPCC’s Fifth Assessment Report (AR5) indicated that by 2020:

about 75 to 250 million people are estimated to be exposed to increased water stress; yields from rain-fed agriculture could be reduced by up to 50 percent in some regions; agricultural production including access to food, may be severely compromised; enhanced summer monsoon precipitation in West Africa; increased short rain in East Africa due to the pattern of Indian Ocean warming; increased rainfall extremes of landfall cyclones on the east coast (including Madagascar).

The significant regional impacts of climate change on physical, natural and human systems in Africa identified include:

increased heat-related illnesses and death caused by heat extremes and heat waves; expansion of the range of mosquitoes transmitting diseases such as West Nile virus, Lyme disease, malaria, and dengue fever; increased allergies, asthma, and other lung diseases from more pollen and mold associated with longer growing seasons; increased flooding in coastal areas damaging property and water and sanitation systems (National Institute of Environmental Health Sciences 2013, 18).

The degree and scope of the climatic changes occurring are overwhelming. These issues have been raised at the level of the UN and the AU, influencing emerging legal discourse on environmental law and climate change policy. The foundation of the international climate change regime is the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement. The UNFCCC, adopted at the Rio Earth Summit in 1992, provides the key legal framework that articulates the general principles and objectives governing mitigation and adaptation, and these are being refined and developed through subsequent decisions (Ruhl 2010, 363). It is worth mentioning that gender issues have not been broadly considered in the international climate change process, especially in the formulation of climate change law and policy (Mayer 2016, 6). In the UNFCCC and the Kyoto Protocol, the words “gender” and “women” are not mentioned at all, resulting in little consideration of gender issues in international climate action discourse (Atapattu 2016, 53). Conversely, most prevailing characteristics that are making people susceptible to climate change – such as a heavy dependence on local natural resources and a lack of alternative livelihoods – reflect the lived characteristics of women living in societies of extreme poverty. In many African rural societies, communities and individuals interact with their physical environment in a gender-differentiated way (Addaney 2018). Despite this, the AU and most African countries are not translating their national and international human rights commitments into practice in the context of climate change action.

At the regional level, the rights of women are recognised and guaranteed by regional human rights instruments. For instance, Article 13 of the African Charter on Human and Peoples' Rights provides for the right of everyone

to the enjoyment of the rights and freedoms recognised and guaranteed in the charter without distinction of any kind such as gender, race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

The African Charter further contains provisions relating to the rights and freedoms of women, including the right to information and the right to a generally satisfactory environment. However, the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is the *lex specialis* when it comes to promoting and protecting the rights of women in Africa. The Maputo Protocol, in Article 2(1), obliges all state parties to combat all forms of discrimination against women through the adoption of appropriate legislative, institutional and other measures. It consequently tasks state parties to “integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life”. It further obligates state parties to eradicate discrimination against women in their respective jurisdictions.

In the area of participation and inclusion, Article 18(2a) of the Maputo Protocol obliges state parties to take all appropriate measures to:

a. ensure the active participation of women and the inclusion of their points of view in the planning, management and preservation of natural resources, including forests, water and animals; b. search for new energy sources. This applies directly to finding new sources of energy for cooking without firewood.

When implemented together with the right to participation in environmental decision-making, this provision can enhance the bridging of the gender equality gap and safeguard the rights of women in the context of climate action. Relating to women's sustainable development, Article 19 of the Maputo Protocol provides for women to enjoy fully their right to sustainable development. State parties are consequently obliged to consider the needs of women in development planning activities; to enhance women's access to and control over productive resources and to safeguard their right to property; and also to strengthen women's access to credit, training, skills development and extension services in both rural and urban areas. This implies that during the designing and implementation of specific climate change policies, state parties are to ensure that the impact of such policies on women is duly considered and mitigated.

Despite the progress made by international and regional law and policy in the area of gender equality, women's rights and climate change in Africa, bottlenecks such as deep-rooted sociocultural and religious beliefs hinder women's access to economic and

energy resources. For instance, Harper (2017) notes that many women in Africa cannot afford modern energy. It can therefore be argued that, although gender and women's rights are largely guaranteed by the relevant laws and policies at the regional level in Africa, prevailing social practices hinder their effective implementation. Furthermore, the SDGs (2015) seek to realise the human rights of all through achieving gender equality and the empowerment of all women and girls by ensuring that human rights norms and standards such as access to justice, access to information and non-discriminatory laws and policies are being implemented across the world. The incorporation of gender-sensitivity and human rights into the SDGs and indirectly into the Paris Agreement has significant legal and policy implications at the regional and national levels.

National Action on Climate Change, Gender Equality and Women's Rights in Kenya, South Africa and Zimbabwe

In Zimbabwe, climate change and variability are one of the most evolving catastrophes facing the population. More specifically, the impacts in Zimbabwe have been observed in those sectors of the economy that are climate-sensitive (Minister of Environment, Water and Climate 2016, Preface). For example, in agriculture, which is mostly rain-fed, climate change has resulted in food insecurity for the smallholder farmers' constituency of the population, especially women and children who are highly vulnerable. The effect has been to create new dimensions of poverty and to slow the socio-economic development of the country as a whole. It has generally been established that women, especially those in less-developed countries, disproportionately suffer the effects of climate change in comparison to their male counterparts (Alam, Bhatia and Mawby 2015, 12). Considering that Zimbabwe's demographic data show that more women than men are poor and live in the rural areas, livelihoods are closely linked to the exploitation of natural resources that are susceptible to climate change (Ministry of Environment, Water and Climate 2014, 53). As such, women, already vulnerable and marginalised, experience the greatest impacts of climate change and at the same time have limited capacity and opportunity to adapt to the negative impacts of climate change.

In its founding values and principles, the Constitution makes provision for the recognition of the equality of all human beings and gender equality (the Constitution of Zimbabwe Amendment 20 of Act 2013). Furthermore, section 17 states that the state must encourage a full gender balance by promoting the broad participation of women in all spheres on the basis of equality with men and that both genders must be represented equally in all institutions and agencies of government at every level. These sentiments are also echoed in section 56 under the Bill of Rights, which renders gender discrimination of any kind illegal. Therefore, the Constitution is unequivocal about its non-tolerance of any form of gender inequality and seeks to foster the inclusion of women in all sectors and at all levels (Moyo and Dhlakama 2018, 10). This being the

case, the Constitution and all subsidiary legislation should ensure that the voices of women and girls are included in climate change discourse.

Translating these constitutional and human rights commitments into the country's response to climate change, the Zimbabwe's Climate Change Response Strategy, formulated in 2014, incorporates both equity and gender equality. The strategy provides for each sector to have its own project proposals and appropriate funding mechanisms for adaptation and mitigation (Ministry of Environment, Water and Climate 2014, iii). In ensuring that vulnerable groups are included in the strategy, one of the strategic objectives is to mainstream gender, children and youth, people living with HIV and AIDS, and other groups into all climate change interventions. Gender mainstreaming is acknowledging the differential impacts of climate change on men and women and hence taking the differential impacts into consideration when formulating responses. The Constitution also establishes the Zimbabwe Gender Commission. This is an independent Chapter 12 institution mandated to monitor and ensure gender equality, conduct research into issues relating to gender and social justice, and to recommend changes to laws and practices which lead to discrimination based on gender. Furthermore, the institution must secure appropriate redress where rights relating to gender have been violated, and to do everything necessary to promote gender equality (sections 245–246 of the Constitution of Zimbabwe). However, the functions of the commission are not explicit with regard to the mainstreaming of gender into decision-making processes; nor does the strategy itself establish any institution to ensure that there are gendered climate change responses and programmes.

To address these concerns, the strategy recommends the following:

- (a) Mainstream climate change in policies for the vulnerable groups with their active participation at every level; (b) Strengthen the adaptive capacity of the vulnerable groups; and (c) Enhance provision of early warning systems on droughts, floods and disease outbreaks to vulnerable groups and ensure a coordinated approach in providing them with emergency services.

Although, the strategy addresses some of these concerns, the question becomes one of adequacy. The recent Cyclone Idai highlighted the huge gap between policy and practice in this regard (*Business Day* 2019). Not only did the incident show uncoordinated emergency relief services to the vulnerable groups in society; it also showed how weak early-warning systems are and this resulted in the loss of 268 lives and an estimated nearly 60 000 displaced people in Chipinge, Chimanimani, Buhera and Mutare (Chipudza 2019). Therefore, it is important to note that the strategy is not explicit about consulting women in decision-making processes where climate change is concerned, which is contrary to the constitutional provisions of inclusiveness where gender is concerned at all levels of decision-making. The mere acknowledgement that women and girls fall into vulnerable groups and that there is a need to mainstream climate change

policies is a step in the right direction, but it must be complemented by programmatic initiatives to this effect.

The Climate Policy offers a holistic attempt at mainstreaming climate-related concerns in all sectors of the country's economy. These sectors include agriculture, energy, waste, industrial processes, forestry and land use. This approach is meant to provide meaningful input in helping the country to meet its nationally determined contributions (NDCs) under the Paris Agreement (Minister of Environment, Water and Climate 2016, 1). The vision of the policy is to climate-proof all socio-economic sectors and in so doing significantly reduce the country's vulnerability to climate-related disasters. The Climate Policy comes at a critical time when the country sets in motion measures and strategies to align national policies to their international obligations. In the aftermath of COP 21 and the implementation phase of the SDGs, the Climate Policy presents an opportunity to ensure the strategic implementation of mitigation and adaptation efforts. The guiding principles of the Climate Policy are said to be aligned with Article 7 of the Paris Agreement, which stipulates that adaptation efforts must be

country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.

However, throughout the whole Climate Policy, gender empowerment is very limited, almost as though women's existence is acknowledged but their role in the fight against the effects of climate change is cast by the wayside.

Under Goal 3, the Climate Policy (2016) observes the need to understand the impacts of climate change on women, children, youths and people living with disabilities and to create an environment that prevents harm to these groups from the pressure of such impacts. The gendered impacts of climate change are well documented and also referenced in the National Climate Change Response Strategy (NCCRS) to include flooding, deforestation, access to clean water, health and sanitation among other considerations. Goal 4.10 notes the need to promote research, development, adoption and deployment of robust, gender-sensitive, sustainable green technologies (through removal of tax and trade barriers). The Climate Policy prioritises climate change education as a major driver in raising climate awareness. Therefore, it pledges to support the development and dissemination of basic meteorological and agro-meteorological information for the benefit of farmers, women and people living with disabilities. These goals portray a nod in the direction of gender-sensitivity in the implementation of mitigation and adaptation efforts but with no practical measures for achieving them. In a country striving for gender equality, a deliberate acknowledgement of women as equal

partners in the fight against climate change would, at the very least, have necessitated one goal dedicated at the inclusion of women in mitigation and adaptation efforts. Although the Zimbabwe Climate Policy is a positive step towards honouring international and regional climate-related obligations, its biggest shortcoming is its lack of practical measures to encourage the inclusion of women in the fight against climate change.

Similarly, in Kenya, like most African countries, with the advent of climate change, the country has experienced erratic weather patterns that have resulted in prolonged droughts and frequent floods (Ongugo 2014, viii). The impact of climate change, which is a combination of climate variability and the deterioration of forest cover in watersheds, has resulted in the loss of human life and of livestock, damage to infrastructure, poor crop yields, famines, wildlife migrations, and human migrations and displacements as a result of major flooding events, all of which have had adverse impacts on livelihoods and the national economic performance. These have been more pronounced for marginalised communities and vulnerable groups such as women and children. Ongugo (2014, 10) postulates that where legislative and policy responses are concerned in the context of climate change, these do not adequately address the vulnerability of communities, their exposure, resilience and adaptive capacity to the impacts of climate change.

In the Constitution of Kenya, Article 69(1e) provides that “the state shall encourage public participation in the management, protection and conservation of the environment”. This means that everyone, including women and girls, must have a say in environmental governance issues, which include climate change responses. The NCCRS (2010, 10) provides a framework that guides the incorporation of climate concerns into development priorities, government planning and budgeting. The NCCRS points out various measures for adaptation to and mitigation of the impacts of climate change in every sector of the economy. It promotes the diversification of livelihoods, the adaptation of agricultural technologies and the enhancement of early-warning systems with drought monitoring and seasonal forecasts to improve food security. However, the strategy does not dedicate many of its provisions to specifically including women in the discourse on a response to climate change. The National Climate Change Action Plan (NCCAP) (2013, 24) brings into operation the NCCRS by providing the analytical and enabling mechanisms to implement it successfully. Specifically, the NCCAP:

- sets out a vision for a low-carbon climate-resilient development pathway;
- summarises analysis of mitigation and adaptation options;
- recommends an enabling policy and regulatory framework, and

- sets out steps for knowledge management and capacity development, technology requirements, a financial mechanism and a national performance and benefit measurement system.

Although noble, it is imperative to note that the NCCAP does not provide particular recommendations for countering gender inequality. Such recommendations to mainstream climate change in vulnerable sectors and among vulnerable groups include considering gender in the design of adaptation and mitigation strategies and programmes and engaging women, youths and vulnerable groups in climate change decision-making processes. It is worth noting that Kenya is the first African country to go beyond climate change response strategies and policies to promulgate the Climate Change Act of 2016. The Act provides for the formulation of the National Climate Change Action Plan, which is to be informed by “the socio-economic well-being of any segment or part of the population, international law and policy relating to climate change” (section 4 of the Climate Change Act). Like the Climate Change Framework Policy, the Act ensures a gendered response and the inclusion of women in climate change responses. The provisions in this Act have not only been termed progressive but also as ensuring that the needs of the most vulnerable groups of society are taken into consideration (Addaney 2018, 199).

Being a signatory to the UNFCCC (1992), the Kyoto Protocol (1998) and the Paris Agreement (2015), South Africa recognises the Sustainable Development Goals (SDGs 2015). This is a clear display of its commitment to making a meaningful contribution to the global effort to address climate change (Jegede and Mokoena 2019, 338). In addition, South Africa has put in place key domestic documents on climate change, including the National Climate Change Response White Paper (2011), the National Adaptation Strategy (2016) and reports such as the South Africa’s 2nd Annual Climate Change Report. The 2016 report on climate change underscored that the socio-economic and ecological impacts of drought events are burdensome in that they converge with increasing water demand and issues of social vulnerability (Department of Environmental Affairs 2016, 6). Furthermore, there have been substantial agricultural losses: in worst-hit areas, thousands of livestock have died from a lack of food or water, severely threatening food security for many vulnerable communities.

Regarding legal responses, enshrined in the Constitution of the Republic of South Africa (1996) is the Bill of Rights, which is the cornerstone of democracy in South Africa. It places emphasis on values such as human dignity, equality and freedom (section 7 of the Constitution). Most importantly, section 9 notes that equality includes the full and equal enjoyment of all rights and freedoms. The state is accordingly prohibited from discriminatory practices on the basis of gender in all matters. This essentially means that women cannot be side-lined in any matters, including any decision-making processes relating to climate change. The NCCRS for South Africa to address Climate Change (2004) also outlines the measures that must be adopted by the government and other role-players at the national, provincial and local levels in responding to climate

change. Several principles guided the formulation of the strategy, among them being poverty alleviation, access to basic amenities, job creation, rural development, foreign investment, human-resource development and improved health. These principles are directly geared towards achieving sustainable development that places the needs of people including women at the centre of planning and policies, in the face of a changing climate. Although the NCCRS is a response to climate change challenges, it also contains provisions that include the participation of women in decision-making processes. Despite these measures, the proposed Climate Change Bill should endeavor to incorporate gender-responsive human rights principles and norms to ensure that the needs and sensitivities of women are fully recognised and guaranteed.

Conclusion

This article used human rights-based and feminist approaches to law to examine the connection between gender equality, women's rights and climate change action from an African perspective, with insights from three African countries. By confirming existing scholarship, it underscored that women in African countries experience unequal access to resources and decision-making processes, which constrains those based in rural and vulnerable areas. This affects their adaptability and resilience in the face of climate change. The article further established that the difficulty in accessing economic and social resources coupled with prevailing discriminatory practices that exclude women from environmental and resources decision-making processes amplify women's exposure to the impact of climate change in Africa. Therefore, the article connects human rights principles such as non-discrimination and equality and participation and inclusion to international and regional climate change action.

Based on these findings, the article argues that by adopting comprehensive human rights instruments at the regional and national level, the development and the implementation of climate change policies and strategies in Africa can benefit from the application of principles and gender-sensitive standards established by human rights law. It consequently, argued that the regional and national action on climate change in Africa should incorporate gender perspectives as well as integrate the environmental rights of women, such as participation in environmental decision-making, the right to health, an adequate standard of living, and access to environmental information. The enhanced participation of women in climate change in the areas of decision-making, development and implementation of programmes will boost their effectiveness and sustainability. In this regard, stakeholders should consider human rights obligations and gender requirements when designing and implementing climate change policies and projects. In addition, to address the historical, political and socio-economic constraints faced by many women in Africa, gender-based criteria should be developed for climate-based development project identification, design and performance objectives. Because of women's unique vulnerabilities, women's rights and gender equality should be at the centre of international, regional and national efforts to respond to climate change.

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