

Engendering the Legal Framework for Environmentally Sustainable Development: Some Reflections

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Abstract. The idea of “sustainable development” was first recognized in 1972 at the U.N. Conference on the Human Environment held in Stockholm. The Conference did not make reference to the concept explicitly but recognized that the concepts of “*sustainability*” and “*development*” that were previously addressed separately could be addressed together to create more benefits. The Conference recognised the importance of environmental management for the purposes of sustainable development. In the years that followed the 1972 conference, terms such as “environment and development,” “development without destruction,” “eco-development,” and “environmentally sound development” became common in publications and the works of the United Nations. This article examines the international legal framework on sustainable development and evaluates the extent to which these laws ensure environmentally sustainable development. The article argues that although the legal framework on environmentally sustainable development is quite extensive and steps are being made to engender them, there is still need to move beyond formal equality and substantive equality to transformative equality. The paper draws on feminist perspectives and calls for engendering the legal framework so as to make environmental sustainability a reality.

Keywords: Environment, sustainable development, engendering, sustainability, equality

1. Introduction

The idea of sustainable development has become popular in the 21st century, with every aspect of growth and development being associated with sustainability. The concept of “sustainable development” emerged as a result of the negative consequences of economic development.¹ The sustainable development concept envisions a favorable future for the earth and those who inhabit it, including human beings.² Given that society is continuously developing, the concept of sustainable development is a continuum; it is an ongoing process that responds to the

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1 Gary Hayward and Kathy Garvin, ‘CHAPTER 1 - The International Regulatory, Social, and Political Framework’ in Kandi Brown and others (eds), *Sustainable Land Development and Restoration* (Butterworth-Heinemann 2010) <<https://www.sciencedirect.com/science/article/pii/B9781856177979000010>> accessed 18 September 2023.

2 Hirdan Katarina de Medeiros Costa and others, ‘Chapter 18 - Sustainable Development and Its Link to Carbon Capture and Storage (CCS) Technology: Toward an Equitable Energy Transition’ in Hirdan Katarina de Medeiros Costa and Carolina Arlota (eds), *Carbon Capture and Storage in International Energy Policy and Law* (Elsevier 2021) <<https://www.sciencedirect.com/science/article/pii/B9780323852500000098>> accessed 18 September 2023.

needs of society and the changes in technology.³ Throughout history several scholars have attempted to define what sustainable development means and what it constitutes.

2. The Concept of Sustainable Development

The World Commission on Environment and Development in *Our Common Future* defines sustainable development as “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁴ Campbell on the other hand argues that sustainable development is “the long-term ability of a system to reproduce”.⁵ Berke and Manta go further to state that sustainable development is “a dynamic process in which communities anticipate and accommodate the needs of current and future generations in ways that reproduce and balance local social, economic, and ecological systems, and link local actions to global concerns.”⁶ For Justice Mensah, “development that can be continued either indefinitely or for the given time period”.⁷ Indeed as Kariuki Muigua argues sustainable development “is development which considers the long term perspectives of the socio-economic system, to ensure that improvements occurring in the short term will not be detrimental to the future status or development potential of the system.”⁸

In essence, “Sustainable development is a commitment to “improving the quality of human life while living within the carrying capacity of supporting ecosystems.”⁹ In elaborating the principles of sustainable development, UN ESCAP, *Transformations for Sustainable Development: Promoting Environmental Sustainability in Asia and the Pacific* notes that “Sustainable development means that the needs of the present generation should be met without compromising the ability of future generations to meet their own needs. [...] It is about safeguarding the earth’s capacity to support life in all its diversity and is based on the principles of democracy, gender equality, solidarity, the rule of law and respect for fundamental rights, including freedom and equal opportunities for all. It aims at the continuous improvement of the quality of life and wellbeing on earth for present and future generations. To that end it promotes a dynamic economy with full employment and a high level of education, health protection, social and territorial cohesion and environmental protection in a peaceful and secure world, respecting cultural diversity.”¹⁰

This article examines the international legal framework on sustainable development and evaluates the extent to which these laws ensure environmentally sustainable development. The article argues that although we have many laws and treaties on sustainable development, implementation remains a challenge because of the failure to connect to the realities on the ground. The paper calls for decolonizing, greening and engendering the legal framework so as to ensure environmental sustainability. The paper is divided into four main parts. The first part is the introduction. The second part provides a history of the concept of sustainable development while the third part explores the conceptual framework for understanding environmentally sustainable development. The fourth

3 Lacey M Raak, ‘Chapter 9 - Think Globally, Act Locally, and Plan Nationally An Evaluation of Sustainable Development in Indonesia at National, Regional, and Local Levels’ in Woodrow W Clark (ed), *Global Sustainable Communities Handbook* (Butterworth-Heinemann 2014) <<https://www.sciencedirect.com/science/article/pii/B9780123979148000096>> accessed 18 September 2023.

4 World Commission on Environment and Development, *Our Common Future* (Oxford University Press 1987).

5 Scott Campbell, ‘Green Cities, Growing Cities, Just Cities?: Urban Planning and the Contradictions of Sustainable Development’ (1996) 62 *Journal of the American Planning Association* 296.

6 Philip Berke and Maria Manta, ‘Defining Sustainable Development’ (Lincoln Institute of Land Policy 1999) <<https://www.jstor.org/stable/resrep18489.4>> accessed 7 September 2023.

7 Justice Mensah, ‘Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review’ (2019) 5 *Cogent Social Sciences* 1653531 <<https://doi.org/10.1080/23311886.2019.1653531>> accessed 7 September 2023.

8 Kariuki Muigua, *Nurturing Our Environment for Sustainable Development*, vol 2 (Glenwood Publishers Limited 2016) <<http://kmco.co.ke/wp-content/uploads/2018/08/Nurturing-Our-Environment-for-Sustainable-Development-3rd-MAY-2017.pdf>> accessed 9 January 2024.

9 UN ESCAP, *Transformations for Sustainable Development: Promoting Environmental Sustainability in Asia and the Pacific* (United Nations 2016).

10 Maria Lee, ‘Sustainable Development in the Eu: The Renewed Sustainable Development Strategy 2006’ (2007) 9 *Environmental Law Review* 41.

part examines the legal framework. The fifth part documents feminist perspectives that call for engendering sustainable development while the sixth part concludes.

3. Evolution of Sustainable Development Discourse

The evolution of the concept of sustainable development may be examined from the vantage point of the pre-Stockholm period, the Stockholm period to the Brundtland Report, and the post-Brundtland Report.

3.1. Pre-Stockholm Period

While the term sustainable development has become a buzzword in today's legal world, the concept has its roots in economics. The discussion on whether the earth will continuously have the necessary support for the needs of the people was popular in the 1800s due to the Malthusian population theory.¹¹ As early as 1789, Malthus had predicted that the human population grew in a geometric progression and that the natural resources grow in an arithmetic progression, meaning that with time, the needs of the population would be too great to be satisfied by the natural resources.¹² David Ricardo (1772–1823) also agreed with Malthus and explained that economic growth also stagnates at some point, given that the supply of natural resources is not infinite; at some point, the natural resources are depleted. According to David and Malthus, some resources, such as land, have a fixed limit. The arguments act as a precursor to the concept of sustainable development as it is known today.¹³ While Malthus's assertions were from an economic point of view, there were also religious perceptions of sustainable development that formed part of the basis of the concept as we know it today.¹⁴ According to Judeo-Christian teachings, man must live in harmony with nature. Living in harmony with nature is one of the tenets of sustainable development.

The years before the Stockholm Conference on Environment and Development in 1972 was also marked by publications on how human activities severely impact the planet and the living organism on it, including human beings themselves. Some of the publications include: Rachel Carson's *Silent Spring* (1962), Garret Hardin's *Tragedy of the Commons* (1968), the *Blueprint for Survival* by the *Ecologist* magazine (1972), and the *Club of Rome's Limits to Growth Report* (1972).¹⁵

b. From Stockholm to Brundtland Report

The concept of sustainable development received direct and deserved recognition for the first time in 1972 at the U.N. Conference on the Human Environment held in Stockholm.¹⁶ The U.N. conference did not make reference to the concept explicitly but recognized that concepts of sustainability and development that were previously addressed separately could be addressed together to create more benefits.¹⁷ The Conference recognised the importance of environmental management and showed major growth in sustainable development. When the conference was going on, a group of concerned people, including prominent scientists, met in Rome and produced a detailed report on the state of the natural environment.¹⁸ The Report noted that industrial development

11 Justice Mensah, 'Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review' (2019) 5 *Cogent Social Sciences* 1653531 <<https://doi.org/10.1080/23311886.2019.1653531>> accessed 7 September 2023.

12 Desta Mebratu, 'Sustainability and Sustainable Development: Historical and Conceptual Review' (1998) 18 *Environmental Impact Assessment Review* 493 <<https://www.sciencedirect.com/science/article/pii/S0195925598000195>> accessed 9 September 2023.

13 Desta Mebratu, 'Sustainability and Sustainable Development: Historical and Conceptual Review' (1998) 18 *Environmental impact assessment review* 493 <<https://www.sciencedirect.com/science/article/pii/S0195925598000195>> accessed 7 January 2024.

14 Mebratu (n 13).

15 Sustainable Development Commission, 'History of SD · What Is Sustainable Development · Sustainable Development Commission' <https://www.sd-commission.org.uk/pages/history_sd.html> accessed 9 September 2023.

16 Björn-Ola Linnér and Henrik Selin, 'The United Nations Conference on Sustainable Development: Forty Years in the Making' (2013) 31 *Environment and Planning C: Government and Policy* 971 <<http://journals.sagepub.com/doi/10.1068/c12287>> accessed 11 January 2024.

17 Günther Handl, 'Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration on Environment and Development, 1992' (2012) 11 *United Nations Audiovisual Library of International Law* <<https://www.globalhealthrights.org/wp-content/uploads/2014/06/Stockholm-Declaration1.pdf>> accessed 11 January 2024.

18 Hulse JH, *Sustainable Development at Risk: Ignoring the Past* (IDRC 2007)

will someday push ecological limits and deplete natural resources. In the years that followed, terms such as “environment and development,” “development without destruction,” “eco-development,” and “environmentally sound development” became common in publications and the works of the United Nations.¹⁹ The International Union for the Conservation of Nature (IUCN) made a major breakthrough in 1980 in integrating development and environmental conservation. While the term sustainable development did not appear in the IUCN report titled *Living Resource Conservation for Sustainable Development*,²⁰ the Report diffused the concept. Then came the Brundtland Commission in 1987²¹, which explicitly mentioned sustainable development and defined the concept. The definition marked the political coming of age of the concept of sustainable development.²² The commission linked sustainable development to poverty alleviation, social equitability, and environmental improvement. It stated that critical global environmental problems were primarily the result of the enormous poverty of the South and the non-sustainable patterns of consumption and production in the North.²³

c. *Post Brundtland Report*

Since the commission’s definition, there have been major developments in the application of the concept. The Rio Earth Summit (1992) elevated the importance of the concept, the Millennium Development Goals (2000) integrated the concept into the world’s development goals, the Sustainable Development Goals (2015) further elaborated the concept and provided a framework for the realization of the concept under the mantra ‘Leave No One behind’, and the Paris Agreement (2015) created the link between conservation of the environment and human well-being.

3.2. *Conceptualizing Environmentally Sustainable Development*

The questions that beg answering from the discussion above are: What is environmentally sustainable development? What does it entail? What does it constitute? According to Nooten (2007), environmentally sustainable development is the development process that meets the needs of the present and future generations while protecting the environment and natural resources. Environmentally Sustainable Development entails several elements including environmental conservation, economic viability, long term perspectives among others. According to Dryzek et al. (2011), the first element of environmentally sustainable development is environmental conservation. When it comes to protecting the environment, the authors argue that we need to prioritize the responsible use of natural resources such as clean air, water, fertile soil, biodiversity, and ecosystems.²⁴ They mention economic viability as the second element of environmentally sustainable development, asserting that there is a need to promote economic growth and development that is both efficient and equitable without overexploiting resources or causing environmental harm.²⁵ Social equity that ensures that the benefits of development are distributed fairly among all society members, addresses social justice and poverty reduction issues while allowing access to basic services like healthcare and education.²⁶

According to Barbier (2011), another element of environmentally sustainable development is the long term perspective. Barbier (2011) asserts that it is important to make decisions considering actions’ long-term impacts and consequences.²⁷ Further, there is also an interconnectivity among the environmental, economic,

19 Vijandra Kumar, *Modern Methods of Teaching Environmental Education* (Sarup & Sons 2005); Maria Ivanova, ‘The Untold Story of the World’s Leading Environmental Institution’ (2021) 5 *Development* 70 <<https://direct.mit.edu/books/oa-monograph/chapter-pdf/2088608/9780262363242.c000500.pdf>> accessed 11 January 2024; Linnér and Selin (n 37).

20 Dembach JC and Cheever F, ‘Sustainable Development and Its Discontents’ (2015) 4 *Transnational Environmental Law* 247

21 Baker S, *Sustainable Development* (Routledge 2015)

22 Ivanova (n 19).

23 Kousar S and others, ‘Impact of Economic and Green Growth on Poverty, Income Inequalities, and Environmental Degradation: A Case of South Asian’

24 John S Dryzek, Richard B Norgaard and David Schlosberg, *The Oxford Handbook of Climate Change and Society* (OUP Oxford 2011).

25 *Ibid.*

26 *Ibid.*

27 Edward Barbier, ‘The Policy Challenges for Green Economy and Sustainable Economic Development’, *Natural resources forum* (Wiley Online Library 2011).

and social systems.²⁸ There must therefore be a recognition of the interdependence of environmental, economic, and social systems and an understanding that changes in one area can affect the others.²⁹ Schmidt et al. (2012), on the other hand, argue that environmentally sustainable development must also have a global perspective. Environmental challenges and solutions are often global in nature, and we need to cooperate with other nations to address issues like climate change and biodiversity loss. Schmidt et al. (2012),³⁰ also explain that adaptive management, conservation and efficiency, and community participation are also elements of environmentally sustainable development. Adaptive management entails the stakeholders being flexible and adaptive in the face of uncertainty, learning from experience, and adjusting strategies and policies as new information becomes available.³¹ Conservation and efficiency entail the stakeholders promoting energy and resource efficiency, waste reduction, recycling, and the use of clean and sustainable technologies. Community participation, on the other hand, entails the involvement of local communities and stakeholders in decision-making processes to ensure that development initiatives align with their needs and aspirations.³²

According to Mensah (2019), sustainability is a concept of positive change that is anchored on economic, social, and environmental factors.³³ Taylor (2016) asserts that the main issues in sustainable development are social equality, environmental protection, and economic growth.³⁴ Taylor (2016) asserts that the three pillars of sustainable development include economic sustainability, environmental sustainability, and social sustainability. According to Lobo et al. (2015), economic sustainability entails a system of production that satisfies the needs of the present generation without compromising the needs of future generations.³⁵ The authors aver that natural resources used in production are not infinite and must be used in a way that does not lead to their depletion. According to Kumar et al. (2014), social sustainability, on the other hand, entails notions of equity, empowerment, accessibility, participation, cultural identity, and institutional stability.³⁶ The concept of social sustainability emphasizes the fact that people matter as development is about them. According to the author, the concept of social sustainability entails issues such as poverty alleviation. It entails the development of communities in a meaningful manner by providing the right conditions for everyone to realize their needs. According to Brodhag & Talière (2006), environmental sustainability is about the environment and how it remains resilient and productive to support the needs of human beings.³⁷ It entails the natural resources being sustainably used. Brodhag & Talière (2006) explain that the environmental sustainability therefore means that the natural resources should not be used at a rate that is faster than they can be regenerated.³⁸ These definitions of sustainability require inclusion of diverse actors and perspectives. The failure to include women in framing sustainable development interventions has, for instance, been criticized given the critical roles that women play in this regard.³⁹

28 *Ibid.*

29 *Ibid.*

30 Otto Schmidt, Susanne Padel and Les Levidow, 'The Bio-Economy Concept and Knowledge Base in a Public Goods and Farmer Perspective' (2012) 1 *Bio-based and applied economics* 47.

31 *Ibid.*

32 *Ibid.*

33 Justice Mensah, 'Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review' (2019) 5 *Cogent Social Sciences* 1653531 <<https://www.tandfonline.com/doi/full/10.1080/23311886.2019.1653531>> accessed 31 December 2023.

34 SJ Taylor, 'A Review of Sustainable Development Principles: Centre for Environmental Studies' [2016] South Africa: University of Pretoria.

35 María-Jesús Lobo, Emmanuel Pietriga and Caroline Appert, 'An Evaluation of Interactive Map Comparison Techniques', *Proceedings of the 33rd annual ACM conference on human factors in computing systems* (2015).

36 Suresh Kumar, A Raizada and H Biswas, 'Prioritising Development Planning in the Indian Semi-Arid Deccan Using Sustainable Livelihood Security Index Approach' (2014) 21 *International Journal of Sustainable Development & World Ecology* 332.

37 Christian Brodhag and Sophie Talière, 'Sustainable Development Strategies: Tools for Policy Coherence', *Natural Resources Forum* (Wiley Online Library 2006).

38 *Ibid.*

39 See e.g. Kameri-Mbote & Nkatha Kabira, Gender Equality and Climate Change in Plural Legal Contexts: A Critical Analysis of Kenya's Law & Policy Framework, Edward Elgar, (2022); Kameri-Mbote, 'Achieving the Millennium Development Goals in the Drylands: Gender Considerations' *Annals of Arid Zones*, Vol 46 (2007) and Kameri-Mbote, "Law, Gender and Environmental Resources: Women's Access to Environmental Justice", in Jonas Ebbesson & Phoebe Okowa, *Environmental Law and Justice in Context* (Cambridge University Press, Cambridge 2009) PP. 390-407.

4. Feminist Perspectives on Sustainable Development

Sen & Tinker (1990) assert that women should be empowered enough to ensure that they participate in the realization of sustainable development.⁴⁰ According to them, women in society have historically been disenfranchised. Policies and practices in society are responsible for the exclusion of women from participating in sustainable development. Dryzek et al. (2011), on the other hand, explain that environmental degradation has a gendered impact on society. According to them, environmental degradation affects women and men differently, with women being more negatively affected. Indeed, environmental degradation is not gender neutral, and it further acts to amplify the existing gender inequalities in society.⁴¹ Stern (2017) argues that reproductive healthcare goes together with sustainable development and that family sizes determine whether more natural resources are used.⁴² The bigger the family sizes, the more natural resources are needed to meet their needs. Merchant (1990) argues that the suppression of women and the overexploitation of resources are connected and that the two can be corrected through sustainable development.⁴³ Crenshaw (2021), on the other hand, asserts that sustainable development efforts must address the intersecting inequalities that groups such as women suffer from.⁴⁴

Feminists argue that the current legal framework is not gender responsive and does not recognize women's place in promoting sustainable development.⁴⁵ Chalifour (2010) for instance argues that the current legal framework does not consider the gendered impact of climate change⁴⁶ and Estévez-Saá & Lorenzo-Modia (2018), aver that the current legal framework does not connect the oppression of women to the overexploitation of natural resources.⁴⁷

From the western perspective, the connection between feminism and the environment is traced to urbanization and industrialization. The first feminist to make the connection between gender and the environment was Ellen Swallow, who was also the first female instructor at the Massachusetts Institute of Technology. Ellen is credited with founding ecology in the 1870s.⁴⁸ Ellen argued that because women have intimate knowledge of care and the use of resources such as water, they are the ones who should be trusted with environmental management.⁴⁹ Swallow was instrumental in the development of the modern-day urban planning ethos. The French activist and writer Françoise d'Eaubonne provides the contemporary connection between feminism and the environment. Françoise d'Eaubonne, in her article titled "A Time for Ecofeminism", coined the phrase *ecoféminisme*.⁵⁰ According to Françoise d'Eaubonne, the new concept of ecofeminism is a platform where female power can be used to combat environmental challenges that are caused by male dominance in society.⁵¹ According to Françoise d'Eaubonne, women are more morally outraged by the destruction of the environment than their male counterparts. Further, the fact that women give birth makes them more conscious

40 Sen A and Tinker I, 'Persistent Inequalities: Women and World Development' (Oxford University Press 1990) <<http://www.gbv.de/dms/hbz/toc/ht003617993.41>

41 Dryzek JS, Norgaard RB and Schlosberg D, *The Oxford Handbook of Climate Change and Society* (Oxford University Press 2011) <<https://books.google.>>

42 David I Stern, 'The Environmental Kuznets Curve after 25 Years' (2017) 19 *Journal of Bioeconomics* 7.

43 Carolyn Merchant, 'The Death of Nature: Women, Ecology and the Scientific Revolution, Rev. Ed' [1990] New York: HarperOne.

44 Kimberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (2021) 108 *Droit et société* 465.

45 Alex O Awiti, 'Climate Change and Gender in Africa: A Review of Impact and Gender-Responsive Solutions' [2022] *Frontiers in Climate* 101.

46 Nathalie J Chalifour, 'A Feminist Perspective on Carbon Taxes' (2010) 22 *Canadian Journal of Women and the Law* 169.

47 Margarita Estévez-Saá and María Jesús Lorenzo-Modia, 'The Ethics and Aesthetics of Eco-Caring: Contemporary Debates on Ecofeminism (s)' (2018) 47 *Women's Studies* 123 <<https://www.tandfonline.com/doi/full/10.1080/00497878.2018.1425509>> accessed 3 February 2024

48 *Ibid.*

49 *Ibid.*

50 Barbara T Gates, 'A Root of Ecofeminism: Ecoféminisme' [1996] *Interdisciplinary studies in literature and environment* 7; Danielle Roth-Johnson, 'Back to the Future: Françoise d'Eaubonne, Ecofeminism and Ecological Crisis' (2013) 10 *The international journal of literary humanities* 51; Laila Fariha Zein and Adib Rifqi Setiawan, 'General Overview of Ecofeminism' (2017) 10 *OSF Preprints*.

51 *Ibid.*

about the future.⁵² According to Françoise d'Eaubonne, male dominance over the community's female members is to blame for the overpopulation in society. Therefore, the overconsumption of natural resources in the society is a result of male dominance over the female members.

In the late 60s, women became aware of the fact that as long as men remain dominant in society, neglect of gender issues in environmental management will continue.⁵³ The women during this period also determined that it was important to combine their political agenda with their environmental movement agenda.⁵⁴ In the 1970s and 1980s, the eco-feminism movement split into liberal, social, cultural, socialist, spiritual, and postmodern ecofeminism.⁵⁵ Liberal ecofeminism focuses on the equality approach to environmental problems; cultural ecofeminism is based on women's natural connection to the environment and natural processes; the socialist approach is based on Marxist teachings; spiritual ecofeminism is founded on the relationship between women's spirituality, and the environment is; and the postmodern ecofeminism that questions women and environment as social constructs that are representation of the cultural and historical contexts in the society. In addition, African Feminists such as Wangari Maathai and others have for decades championed the rights of the environment. While all these feminist perspectives have over the years championed equality for men and women in so far as environmental governance and sustainable development is concerned, liberal feminist approaches that focus on formal equality seem to have triumphed over equality approaches that call for transformative equality that take into account the plural realities that women find themselves facing in Africa and other parts of the developing world.⁵⁶

5. Legal framework for Sustainable Development

In this section, we look at select international and regional legal regimes with a view to identifying efforts at engendering sustainable development law.

5.1. International Legal Framework

The United Nations Framework Convention on Climate Change (UNFCCC) is one of the conventions concluded in Rio in 1992. Its objective is the prevention of dangerous human interference with the climate system.⁵⁷ Among the principles of the Convention are inter- and intra-generational equity; common but differentiated responsibilities with developed countries taking the lead in combating climate change and its effects; sustainable development and the precautionary principle.⁵⁸ Under its 1997 Kyoto Protocol, developed countries committed to the reduction of greenhouse gases, while developing countries had no set commitments⁵⁹ in line with the principle of common but differentiated responsibilities. The 2015 Paris Agreement requires all parties to put in place Nationally Determined Contributions to avert climate change⁶⁰, marking a departure from the previous situation where only developed countries had commitments. It is instructive to note that the Paris Agreement reiterates the principle of common but differentiated

52 Gates (n 50); Roth-Johnson (n 50); Zein and Setiawan (n 50).

53 Alyssa Banford and Cameron Kiely Froude, 'Ecofeminism and Natural Disasters: Sri Lankan Women Post-Tsunami' (2015) 16 *Journal of International Women's Studies* 170; Kate Rigby, 'Women and Nature Revisited: Ecofeminist Reconfigurations of an Old Association' [2018] *Feminist Ecologies: Changing Environments in the Anthropocene* 57.

54 Manisha Rao, 'Ecofeminism at the Crossroads in India: A Review' (2012) 20 *Dep* 124.

55 Karen Warren and Nisvan Erkal, *Ecofeminism: Women, Culture, Nature* (Indiana University Press 1997).

56 See Kameri-Mbote P and Kabira N, 'SDG 5: Achieve Gender Equality and Empower All Women and Girls' in Ellen Hey and Jonas Ebbesson (eds), *The Cambridge Handbook of the Sustainable Development Goals and International Law* (Cambridge University Press 2022) <<https://www.cambridge.org/core/books/cambridge-handbook-of-the-sustainable-development-goals-and-international-law/sdg-5-achieve-gender-equality-and-empower-all-women-and-girls/BCA3D0BC8345F87FDD5772CA5AA29562>> accessed 23 September 2023.

57 UN General Assembly, United Nations Framework Convention on Climate Change : resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189, available at: <https://www.refworld.org/docid/3b00f2770.html> [accessed 9 January 2024]

58 Article 3 of UNFCCC

59 Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162

60 Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

responsibilities in the preamble. It also takes into account the needs of least developed countries with regard to funding and transfer of technology; just transition among others. These are equity principles that seek to ensure that no one is left behind. The UNFCCC has a Gender Action Plan⁶¹ to *advance women's full, equal and meaningful participation and promote gender-responsive climate change interventions.*

The Convention on Biological Diversity (CBD), which provides a framework for sustainable use of biological resources⁶² also contains provisions that provide pathways for equity.⁶³ The Kunming Montreal Global Biodiversity Framework (KMGBF) concluded in 2022 has Targets 22 and 23 on gender equality, which embed a gender-responsive approach in which all women and girls have equal opportunities and capacity to contribute to the Framework's objectives. Additionally, the CBD adopted a Gender Action Plan in 2022 to support and promote the gender-responsive implementation of the KMGBF. The Action Plan has 3 main expected outcomes: All people in particular all women and girls, have equal opportunity and capacity to contribute to the three objectives of the Convention; Biodiversity policy, planning and programming decisions address equally the perspectives, interests, needs and human rights of all people, in particular of all women and girls; Enabling conditions are created to ensure gender responsive implementation of the post-2020 global biodiversity framework.⁶⁴

The United Nations Convention to Combat Desertification (UNCCD) promotes sustainable management of land⁶⁵ and has potential to foster equity in land management. Similarly, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) ensures sustainable trade practices for wildlife⁶⁶ and is one of the older environmental treaties has also recently endorsed a decision⁶⁷ to prepare a gender action plan aiming to prevent and respond to gender-based violence in wild flora and fauna international trade chains; promote gender equality and increase and strengthen the participation and leadership of women at all levels of decision-making and participation in processes related to international wild flora and fauna trade; and enhance the full, equal and meaningful participation and leadership of all genders, in particular women, in the implementation of the Convention, including through the engagement of civil society organizations, women's groups and women delegates, and provide opportunities for building their capacities.

Developments under the treaties discussed above are testament to the growing recognition of gender imperatives in environmentally sustainable development. More treaties are likely to take steps to put in place gender action plans. For instance the Minamata Convention on Mercury⁶⁸ has included gender equality in its programme of work. These efforts are amplified by the United Nations 2030 Agenda on Sustainable Development and the Sustainable Development Goals (SDGs) No Poverty (SDG 1): Aims to end poverty in all its forms, ensuring equal access to resources and opportunities.⁶⁹ Zero Hunger (SDG 2): Seeks to achieve food security, improved nutrition, and sustainable agriculture.⁷⁰ Good Health and Well-being (SDG 3): Aims to ensure healthy lives and

61 Arunima Hakhu, 'Gender and Climate Change: Assessing the Evolution of Gender Mainstreaming Tools' [2019] Energy and Resources Institute (TERI). New Delhi, India <<https://www.teriin.org/sites/default/files/2019-12/Gender%20and%20Climate%20Change%20Report.pdf>> accessed 15 January 2024.

62 United Nations Environment Programme, 'Convention on Biological Diversity, June 1992' <<https://wedocs.unep.org/20.500.11822/8340>>

63 Articles 8 j and 10 c of the Convention on Biological Diversity

64 Derek Armitage and others, 'Governance Principles for Community-Centered Conservation in the Post-2020 Global Biodiversity Framework' (2020) 2 *Conservation Science and Practice* e160 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/csp2.160>> accessed 15 January 2024; UN Women, 'Towards a Gender-Responsive Implementation of The Convention on Biological Diversity' <<https://hdl.handle.net/10568/112464>> accessed 15 January 2024.

65 UN General Assembly, *Implementation of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa*, 18 February 1999, A/RES/53/191, available at: <https://www.refworld.org/docid/3b00f52f2.html> [accessed 9 January 2024]

66 Convention on International Trade in Endangered Species of Wild Fauna and Flora, March 3rd, 1973, 993 U.N.T.S. 243.

67 Decisions 19 : 51 to 19 : 53 at the meeting of the 19th Meeting of the Conference of Parties held in Panama in 2022.

68 Gavin Hilson, Yanfei Hu and Cynthia Kumah, 'Locating Female "Voices" in the Minamata Convention on Mercury in Sub-Saharan Africa: The Case of Ghana' (2020) 107 *Environmental Science & Policy* 123 <<https://www.sciencedirect.com/science/article/pii/S1462901119314236>> accessed 15 January 2024.

69 SDG FUND, 'Sustainable Development Goals' [2015] Available at this link: <https://www.un.org/sustainabledevelopment/inequality> <<https://documents1.worldbank.org/curated/en/106391567056944729/pdf/World-Bank-Group-Partnership-Fund-for-the-Sustainable-Development-Goals-Annual-Report-2019.pdf>> accessed 9 January 2024.

70 *Ibid.*

promote well-being for all at all ages.⁷¹ Quality Education (SDG 4): Focuses on inclusive and equitable quality education, promoting lifelong learning opportunities for all.⁷² Gender Equality (SDG 5): Aims to achieve gender equality and empower all women and girls.⁷³ Clean Water and Sanitation (SDG 6): Seeks to ensure availability and sustainable management of water and sanitation for all.⁷⁴ Affordable and Clean Energy (SDG 7): Aims to ensure access to affordable, reliable, sustainable, and modern energy for all.⁷⁵ Decent Work and Economic Growth (SDG 8): Focuses on promoting sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all.⁷⁶ Industry, Innovation, and Infrastructure (SDG 9): Aims to build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation.⁷⁷ Reduced Inequality (SDG 10): Seeks to reduce inequality within and among countries. These goals, along with the remaining SDGs, collectively address the interconnected dimensions of economic, social, and environmental sustainability, promoting a holistic and integrated approach to development. The SDGs recognize the need for global collaboration and a commitment to leaving no one behind in the pursuit of a more sustainable and equitable world.⁷⁸

5.2. Regional Legal Framework

At regional levels, the African Union Agenda 2063 provides for the social-economic transformation framework includes sustainable development, environmental conservation, and climate resilience aspirations.⁷⁹ Gender is an issue of great concern to the African Union.⁸⁰ The Organization of the African Union African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources, (2000) recognizes that women play a crucial role in generating, conserving, and sustainably utilizing biological diversity and associated knowledge and technologies. Therefore, it is essential to enable their full participation in all aspects of policy-making and implementation related to biological diversity and associated knowledge and technologies. The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) (2003), stresses the significance of integrating gender equality and mainstreaming in all aspects. It recognizes the distinct roles, requirements, and contributions of women in environmental concerns. The Protocol advocates for policies that rectify gender gaps and promote equality across all spheres of life. Moreover, it acknowledges women's entitlement to a healthy and sustainable environment. It emphasizes the need to ensure environmental conditions that facilitate the overall well-being and health of women and their communities. This is also elaborated in the African Union Declaration on Land Issues and Challenges in Africa (2009). The declaration notes that it is important to make sure that land laws allow for fair access to land and resources for everyone, including young people and those who do not own land, as well as those who have been displaced. Additionally, we should focus on improving land tenure security for women who may need special consideration in this area.

6. Engendering Environmentally Sustainable Development

While feminists, for many years, have been concerned with issues of the environment, Stockholm was a pivotal moment for thinking about the concept sustainable development and how it relates to women. Feminism is

71 'SDGs .. Sustainable Development Knowledge Platform' <<https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals>> accessed 9 January 2024.

72 *Ibid.*

73 U Sdg, 'Sustainable Development Goals' (2019) 7 The energy progress report. Tracking SDG 805 <https://www.unsiap.or.jp/e-learning/el_material/3.Population/3.4_edu/1810_EDU_KOR/1.2_Monitoring%20of%20SDG4%20Global%20and%20Regional%20Level.pdf> accessed 9 January 2024.

74 SDG Funds (n 69).

75 'SDGs .. Sustainable Development Knowledge Platform' (n 71).

76 SDG Funds (n 69).

77 'SDGs .. Sustainable Development Knowledge Platform' (n 71).

78 SDG Fund (n 69).

79 African Union (2014). Agenda 2063, the Africa We Want (Popular Version).

80 Ashleigh Rumbidzai Tesa Shangare, 'How Does the Women Gender and Development Directorate of the African Union Promote Its Gender Agenda?' <<https://repository.up.ac.za/handle/2263/65605>> accessed 15 January 2024.

a critical-visionary paradigm, and as such, the feminist work on sustainable development and its policies and regulations is often a critique and presentation of gender-sensitive alternatives.⁸¹ According to feminist theory, the state is often viewed as a structure that is predominantly male-centric and operates in a way that prioritizes male interests. Feminist legal scholars argue that law has historically been biased towards men, with gendered norms that exclude women from their rightful roles.⁸² Feminist scholars also assert that the law is gendered, not just locally, but also globally in policies related to gender equality and several areas relating to the environment such as climate change.⁸³ As noted above, Alex O Awiti⁸⁴ has argued that the current legal frameworks are not gender responsive and do not recognize women's place in promoting sustainable development.⁸⁵ This concern is echoed by Nathalie J Chalifour with regard to argues that the current legal framework does not consider the gendered impact of climate change. According to Margarita Estévez-Saá and María Jesús Lorenzo-Modia⁸⁶, the current legal frameworks does not connect the oppression of women to the overexploitation of natural resources.

Several treaties seek to engender sustainable development. They include treaties such as The African Union Agenda 2063 (2015) for instance emphasizes the importance of achieving gender equality and women's empowerment. This involves recognizing and addressing the specific challenges women face, including in the environmental sector, and promoting policies and actions that support their participation and leadership in sustainable development. The East African Community Strategic Plan for Gender, Youth, Children, Persons with Disability, Social Protection and Community Development (2012) aims to promote gender equality, equity, and empowerment of women and girls as the norm in EAC partner states. It seeks to do this incorporating gender into all strategic interventions and sectors of the community, promoting women's participation in socio-economic development and business, and encouraging citizen participation in EAC processes. To achieve this, an enabling policy and legislative framework for gender equality and equity will be provided, relevant assessments on the status of gender equality in the EAC will be conducted, and initiatives to promote economic security for women will be undertaken.

The United Nations Convention on Biological Diversity (1992) also emphasizes the importance of integrating gender considerations into policies related to biodiversity and environmental conservation. It advocates for the mainstreaming of gender to ensure that women's unique roles, needs, and contributions are taken into account.⁸⁷ In addition, the Stockholm Convention on Persistent Organic Pollutants (2004). The convention emphasizes the importance of integrating gender considerations into policies related to persistent organic pollutants. It advocates for the mainstreaming of gender to ensure that women's unique vulnerabilities, needs, and contributions are taken into account. Moreover, the United Nations Convention to Combat Desertification (1996) highlights the pivotal role of women in sustainable land management and conservation efforts.⁸⁸ It recognizes women as significant stakeholders in land use planning, decision-making, and implementing sustainable land management practices. Additionally, the Rio Declaration on Environment and Development (1992) stresses the significance of gender

81 Sherilyn MacGregor, 'Feminist Perspectives on Sustainability' (2005) <<http://eolss.net/sample-chapters/c13/E1-45-05-12.pdf>> accessed 3 February 2024.

82 Patricia Kameri-Mbote and Nkatha Kabira, 'SDG 5: Achieve Gender Equality and Empower All Women and Girls' in Ellen Hey and Jonas Ebbesson (eds), *The Cambridge Handbook of the Sustainable Development Goals and International Law* (Cambridge University Press 2022) <<https://www.cambridge.org/core/books/cambridge-handbook-of-the-sustainable-development-goals-and-international-law/sdg-5-achieve-gender-equality-and-empower-all-women-and-girls/BCA3D0BC8345F87FDD5772CA5AA29562>> accessed 23 September 2023.

83 Patricia Kameri-Mbote and Nkatha Kabira, 'Gender Equality and Climate Change in Plural Legal Contexts: A Critical Analysis of Kenya's Law and Policy Framework' [2023] Chapters 165 <https://ideas.repec.org/h/elg/eechap/21595_7.html> accessed 23 September 2023.

84 Alex O Awiti, 'Climate Change and Gender in Africa: A Review of Impact and Gender-Responsive Solutions' [2022] *Frontiers in Climate* 101.

85 Nathalie J Chalifour, 'A Feminist Perspective on Carbon Taxes' (2010) 22 *Canadian Journal of Women and the Law* 169.

86 Margarita Estévez-Saá and María Jesús Lorenzo-Modia, 'The Ethics and Aesthetics of Eco-Caring: Contemporary Debates on Ecofeminism (s)' (2018) 47 *Women's Studies* 123 <<https://www.tandfonline.com/doi/full/10.1080/00497878.2018.1425509>> accessed 3 February 2024.

87 Itza Castaneda, Cintia Aguilar and Allison Rand, 'Measurement and Reporting: Important Elements of Gender Mainstreaming in Environmental Policies' (2012) 22 *Cornell Journal of Law and Public Policy* 667 <<https://heinonline.org/HOL/Page?handle=hein.journals/cjlp22&id=687&div=&collection=>> .

88 Atieno Mboya Samandari, 'Gender-Responsive Land Degradation Neutrality' (Global Land Outlook working paper United Nations Convention to Combat).

equality and the necessity for women to actively participate in environmental decision-making processes at all levels. It supports the involvement of women in policy development, implementation, and monitoring concerning environmental sustainability. Also, the Rome Declaration on World Food Security (1996) acknowledges the pivotal role of women in agriculture, food security, and nutrition.⁸⁹ It stresses the importance of empowering women in agriculture by granting them equal access to resources, credit, education, and technology to maximize their contribution to food production and food security.

Several other women's rights treaties such as the Beijing Platform for Action (1995) acknowledge the crucial role of women in environmental sustainability, including their contributions to environmental management, natural resource conservation, and sustainable development.⁹⁰ The Millennium Development Goals - MDGs (2000), in particular, MDG 3 focus on promoting gender equality and empowering women.⁹¹ It acknowledges the significance of providing women with equal opportunities in education, employment, and decision-making, which ultimately affects their involvement in environmental sustainability. The MDGs view women as essential agents of change in achieving the goals.⁹² Educated, healthy, economically empowered, and involved women can significantly contribute to sustainable development and environmental preservation. Additionally, the Plan of Action from the International Conference on Population and Development (1994) highlights the importance of empowering women and promoting gender equality. It acknowledges women's crucial role in sustainable development and urges equal participation in decision-making processes concerning environmental issues.⁹³

The Nairobi Forward Looking Strategies (1985) too emphasized the empowerment of women and gender equality as fundamental principles. It recognized the importance of addressing gender disparities in various spheres, including environmental policies, to ensure women's active participation and rights. Moreover, the Istanbul Declaration on Human Settlements, The United Nations Conference on Human Settlements (Habitat II), Istanbul, (1996) highlights the significance of gender equality and women's empowerment in human settlements.⁹⁴ It acknowledges that sustainable urban development can only be achieved by addressing gender disparities and ensuring that women have an equal say in shaping urban policies and practices.

Also, the United Nations Environment Programme Fourth session Resolution adopted by the United Nations Environment Assembly on 15 March 2019 Nairobi, *Promoting gender equality and the human rights and empowerment of women and girls in environmental governance* UNEP/EA.4/Res.17.⁹⁵ The resolution acknowledges the fundamental significance of gender equality in environmental governance. It highlights that integrating gender perspectives and ensuring women's active participation are crucial for effective environmental policies and sustainable development.⁹⁶ Additionally, the United Nations Framework Convention on Climate Change (UNFCCC) Decision 23/CP.18 (2012): *Promoting gender balance and improving the participation of women in UNFCCC negotiations and in the representation of Parties in bodies established pursuant to the Convention or the Kyoto Protocol*.⁹⁷ The recent decision highlights the importance of having a balanced representation of both genders in the UNFCCC and Kyoto Protocol bodies. It urges efforts to promote and ensure the fair participation of women in these crucial organizations.

89 Rome Declaration on World Food Security and World Food Summit Plan of Action; World Food Summit, 13-17 November 1996, Rome, Italy. Rome, FAO

90 María Nieves Rico, 'Gender, the Environment and the Sustainability of Development' <<https://hdl.handle.net/11362/5886>> accessed 15 January 2024.

91 Lucy Ferguson, 'Promoting Gender Equality and Empowering Women? Tourism and the Third Millennium Development Goal' (2011) 14 *Current Issues in Tourism* 235 <<https://doi.org/10.1080/13683500.2011.555522>> accessed 15 January 2024.

92 *Ibid.*

93 Caren Grown, Geeta Rao Gupta and Aslihan Kes, *Taking Action: Achieving Gender Equality and Empowering Women* (Earthscan 2005).

94 Dorothy Reeves, 'Putting Women and Gender in the Frame – A Consideration of Gender in the Global Report on Human Settlement Planning Sustainable Cities 2009' <<https://researchspace.auckland.ac.nz/handle/2292/26428>> accessed 15 January 2024.

95 BH Desai and M Mandal, 'Role of Climate Change in Exacerbating Sexual and Gender-Based Violence against Women: A New Challenge for International Law' [2021] *Environmental Policy and Law* 137 <<https://doi.org/10.3233/EPL-210055>> accessed 15 January 2024.

96 Ginette Azcona and Antra Bhatt, 'Inequality, Gender, and Sustainable Development: Measuring Feminist Progress' <<https://oxfamilibrary.openrepository.com/handle/10546/620997>> accessed 15 January 2024.

97 Sherilyn MacGregor, *Routledge Handbook of Gender and Environment* (Taylor & Francis 2017).

The United Nations Framework Convention on Climate Change (UNFCCC) Decision 36/CP.7 (2001): *Improving the participation of women in the representation of Parties in bodies established under the United Nations Framework Convention on Climate Change and the Kyoto Protocol*.

This decision highlights the significance of having gender equality in the representation of Parties in UNFCCC and the Kyoto Protocol bodies. It stresses the importance of increasing the number of women in these important bodies to promote more inclusive and diverse participation.⁹⁸

Moreover, CEDAW General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change. (CEDAW/C/GC/37).⁹⁹ The recommendation emphasizes the importance of understanding how disasters and climate change affect women and girls differently based on gender roles, socio-economic factors, and cultural norms. In addition, the CEDAW General Recommendation no. 30 on women in conflict prevention, conflict and post-conflict situations (2013): The recommendation acknowledges that women are particularly affected by armed conflict and post-conflict situations in terms of their role in the environment.¹⁰⁰ It recognizes that environmental degradation and the consequences of armed conflict on natural resources pose specific vulnerabilities for women. Furthermore, the Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forests in the Context of National Food Security, under the auspices of the FAO Committee on World Food Security, in May 2012.¹⁰¹

The guidelines acknowledge the importance of respecting and protecting women's legitimate land, fisheries, and forest tenure rights. Such recognition is crucial in ensuring gender equality and promoting sustainable environmental practices. Additionally, the UN Environment policy and strategy for gender equality and the environment (2015).¹⁰² The policy stresses the importance of incorporating gender into the planning, execution, supervision, and assessment of environmental projects and regulations.¹⁰³ This methodology guarantees that gender factors are taken into account throughout the entire process to cater to the unique needs and experiences of women in the environmental sphere.

7. Conclusion

This article has examined the international legal framework on sustainable development and evaluated the extent to which these laws ensure environmentally sustainable development. It appears that despite the fact that the legal framework on environmentally sustainable development is quite extensive and steps are being made to engender them, there is still a long way to go beyond formal equality and substantive equality to transformative equality. It is crucial to engender the legal framework in earnest so as to ensure environmental sustainability.

98 Rowena Maguire, 'Gender, Climate Change and the United Nations Framework Convention on Climate Change', *Research Handbook on Feminist Engagement with International Law* (Edward Elgar Publishing 2019) <<https://www.elgaronline.com/edcollchap/edcoll/9781785363917/9781785363917.00012.xml>> accessed 15 January 2024.

99 Monika Mayrhofer, 'Gender (In)Equality, Disaster and Human Rights – the Cedaw Committee and General Recommendation No. 37' (2019) 1 Yearbook of International Disaster Law Online 233 <https://brill.com/view/journals/yido/1/1/article-p233_233.xml> accessed 15 January 2024.

100 UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 1 November 2013, CEDAW/C/GC/30, available at: <https://www.refworld.org/docid/5268d2064.html> [accessed 15 January 2024]

101 UN Food and Agriculture Organization (FAO), Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, 2012, ISBN 978-92-5-107277-6, available at: <https://www.refworld.org/docid/5322b79e4.html> [accessed 15 January 2024]

102 UN Environment, 'UN Environment Policy and Strategy for Gender Equality and the Environment (2015)' (*UNEP - UN Environment Programme*, 6 October 2017) <<http://www.unep.org/resources/policy-and-strategy/un-environment-policy-and-strategy-gender-equality-and-environment>> accessed 15 January 2024.

103 *Ibid.*