

**The Relation Between Access to Water, Poverty, and Patriarchy: The Case Of
Women Slum Dwellers in Kibera, Kenya.**

**A Thesis Submitted in fulfillment of the requirement of an award of The
Degree of Doctor of Laws (LLD) in the Faculty of Law at The University of
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DECLARATION

I declare that this thesis is my own original work. Where other people's work has been used (either from a printed source, internet or any other source), this has been properly acknowledged and referenced in accordance with departmental requirements.

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DEDICATION

This dissertation is dedicated to my lovely daughters, Sharon, Nicole, and my son Andrew Odeny who would always call me to find out how far I was with my writing. I thank you all for being my support system. May God bless you, abundantly.

To my husband, Dr. Cyprian Agumba Odeny, who encouraged me to soldier on to enable me to achieve my dream. Thank you, Cyprian, for your love, wisdom, and support.

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ABBREVIATIONS AND ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
COHRE	Centre on Housing Rights and Evictions
CRPD	Convention on the Rights of Persons with Disabilities
ECOSOC	Economic and Social Council
GDN	Global Development Network
GOK	Government of Kenya
GWP	Global Water Partnership
HIV	Human Immune Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IRC	International Rescue Committee
ILO	International Labour Organization
IRIN	Integrated Regional Information Networks
IWRM	Integrated Water Resources Management
KDHS	Kenya Demographic Health Survey
MDGs	Millennium Development Goals
NGOs	Non-Governmental Organization
ODF	Open Defecation Free
NWSS	National Water Services Strategy
SDGs	Sustainable Development Goals
SIDA	Swedish International Development Cooperation Agency
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational Scientific and Cultural Organization
UN-HABITAT	United Nations Human Settlements Programme
UNICEF	United Nations International Fund for Children
UNSGAB	United Nations Secretary General's Advisory Board on Water
WASH	Water, Sanitation and Hygiene
WSP	Water Service Provider.
WHO	World Health Organization
WATSAN	Water Supply and Sanitation WB World Bank
WSSD	World Summit on Sustainable Development
WWSSCC	World Water Supply and Sanitation Collaborative Council

CHAPTER ONE

Introduction

1.1 Research Problem

The lack of access to adequate, safe, close, and affordable water and sanitation in Kenya motivates this thesis. The main research problem that I investigate is the position of women slum dwellers in Kibera, Kenya, concerning access to water and sanitation and how access to water is affected by their status as impoverished women. I aim to unearth the relation between access to water, poverty, and patriarchy to underscore the impact of inadequate access on women slum dwellers of Kibera and the coping mechanisms employed to alleviate the problem.

1.2 Assumptions

The assumptions that informed this study are as follows:

1. Poverty, together with gender inequality and power relations in families and households, play a role in the vulnerability of women slum dwellers in realizing the right to water and sanitation.
2. An investigation of the daily burdens and coping strategies of women slum dwellers in Kibera could assist in understanding the relation between access, poverty, and patriarchy.
3. Feminist theories can best guide the analysis of women's access to water and sanitation in Kibera.
4. Despite the existence of a legal and policy framework intended to ensure access to water and sanitation for women slum dwellers in Kenya, they still do not enjoy sufficient access to water and sanitation.

1.3 Research Questions

1. How do gender inequality, poverty, and power relations in families and households play a role in the vulnerability of women slum dwellers in realizing the right to water and sanitation in Kibera?
2. What are the daily practices and coping strategies of women slum dwellers in Kibera concerning access to water and sanitation?

3. What feminist theory/theories would best reflect and guide the analysis of access to water and sanitation for women in Kibera?
4. To what extent does the legal and policy framework enable adequate access to water and sanitation for women slum dwellers in Kenya, with specific reference to Kibera?

1.4 Motivation of the Study

The motivation of this study is that women face specific problems concerning water and sanitation due to the fact that they are women. Water is essential for human survival and has been acknowledged worldwide as a “limited natural resource and a public good fundamental for life and health.”¹ The absence or presence of an adequate supply of water in societies has had various implications for people in both divides, with women slum dwellers falling on the divide where there is a lack of adequate supply. According to Wendland *et al*, in a report on gender and sanitation issues, lack of water and sanitation explicitly affects women and girls disproportionately due to their biological makeup, gender-related differences, cultural and social factors.²

It is also a fact that women are often the most vulnerable to the effects of poor sanitation partly because of their biological makeup (e.g., menstruation and pregnancy) and partly due to their lower social and economic status and are less likely to have access to proper sanitation and hygiene.³ When women lack adequate access to water and sanitation, the resultant effect is that it compromises their survival in terms of health, education, safety, dignity, nutrition, and access to economic activities. Inadequate access to water and sanitation makes women and girls vulnerable because they are women, which leads to further marginalisation.

¹ *The Right to Water: 26/11/02.CESCR General Comment No.15*, <http://www.unhchr.ch/html/mcnu2/6/gc.doc> (accessed on 10 April 2017).

² Wendland, *et al*. 2017. Gender and Sanitation Issues. In JB Rose and B.Jiménez-Cisneros (eds.). 2017. *Global Water Pathogens Project*. <http://www.waterpathogens.org/book/gender-and-sanitation> (accessed on 13 June 2018).

³ COHRE, WaterAid, SDC and UN-HABITAT.2008. *Sanitation: A human rights imperative*. <https://www.sswm.info/.../COHRE%202008%20Sanitation%20a%20human%20rights> (accessed on 24 June 2018).

It is documented that in Kibera, the largest slum situated in the capital city of Kenya Nairobi, open sewer lines empty effluent in front of people's houses. Open sewer lines is a common phenomenon where people defecate into polythene bags known as "flying toilets"⁴ and then dispose of them haphazardly into the distance.⁵ A 2013 report by Integrated Regional Information Networks (IRIN) titled "Human Waste Woes in Slums" further states that Kibera slums, which is home to hundreds of thousands of impoverished citizens, have only 1000 public toilets according to Nairobi City Council.⁶ These problems on sanitation and access to water is also a motivating factor in this study.

Similarly, in a 2008 UNEP report, Kenya was ranked as a water-scarce country with limited renewable water supply hence the challenges in water provision with erratic weather patterns in the past few years, causing droughts and water shortages.⁷ According to the Joint Monitoring Programme's 2012 report, "access to safe water supplies throughout Kenya is 59 percent, and access to improved sanitation is 32 percent".⁸ These kinds of figures make the study relevant to understand how they are representative of the marginalized segments of the society who are in most cases women and, more particularly, women living in the slums.

The Special Rapporteur on Water and Sanitation stated that lack of improved sanitation results in a large portion of the population practicing open defecation, which is not only an absolute denial of the right to sanitation but also a severe threat to public security for women and girls

⁴ "Flying Toilets" is a facetious name for the use of plastic bags for defecation, which are then thrown into ditches, on the roadside, or simply as far away as possible. Flying toilets are particularly associated with slums surrounding Nairobi, Kenya, especially Kibera. The phenomenon is very common in Kibera slums which has made it gain "public notoriety" if you like.

⁵ IRIN. 2013. *Human Waste Woes in Kenya's slums*. www.thenewhumanitarian.org/feature/2012/12/27/human-waste-woes-kenyas-slums (accessed on 28 February 2017).

⁶ IRIN. 2013. *Human Waste Woes in Kenya's slums*. www.thenewhumanitarian.org/feature/2012/12/27/human-waste-woes-kenyas-slums (accessed on 28 February 2017). The flying toilets are sometimes flung onto the rooftops of the slum dwellers' houses.

⁷ UNEP 2008. The UN has ranked Kenya as having one of the lowest water replenishment rates in the world.

⁸ The WHO/UNICEF Joint monitoring Programme (JMP) for water supply and sanitation is the official United Nations Mechanisms tasked with monitoring progress towards the MDGs relating to drinking water and sanitation.

who have to walk into the bush at night.⁹ She further indicated that this situation exposes women and girls to daily risks due to a lack of proper sanitation.¹⁰ The problem of inadequate drinking water supplies is inextricably linked with poverty and is one of the greatest threats facing marginalized populations like women slum dwellers. This seems to make Kenyans holders of the right to safe water and sanitation on paper only, and this should be the time to make them a reality.¹¹ This statement by the Special Rapporteur on the human right to water and sanitation speaks loudly to the status of the realization of these rights for the people of Kenya. Without access to this basic necessity, economic development, poverty reduction, and healthcare improvements are next to impossible. Inadequate access to water and sanitation will also affect the achievement of the Sustainable Development Goals which are integrated and recognize the fact that action in one area will affect outcomes in the others.

The limited access to water and sanitation has resulted in developing countries facing many problems which have led to the elevation of water to the level of a 'right' as explained by Kok and Langford.¹² The promotion of water as a direct and express human right has an effect of speaking to the poor and marginalized who in most cases have no voice to raise their concerns. art. 2 of the International Covenant on Economic Social and Cultural Rights (CESCR) imposes on states the obligation to take steps to achieve the full realization of the right to water progressively.¹³ It further envisages a situation where the concept of 'progressive realization'

⁹ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina De Albuquerque, on her visit to Kenya. 2014. <http://borgenproject.org/chlorinr-dispensers-cut-water/> (accessed on 12 June 2017).

¹⁰ The UN Special Rapporteur on Human Right to Water and Sanitation opined that the lack of such basic services is linked to poverty which affects the marginalized population. UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina De Albuquerque, on her visit to Kenya. 2014. <http://borgenproject.org/chlorinr-dispensers-cut-water/> (accessed on 12 June 2017).

¹¹ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina De Albuquerque, on her visit to Kenya. 2014. <http://borgenproject.org/chlorinr-dispensers-cut-water/> (accessed on 12 June 2017). - At the end of a seven day official visit to Kenya, the UN Special Rapporteur on the human right to safe drinking water and sanitation, Catarina De Albuquerque, called on the Government of Kenya to transform the Constitutional rights to water and sanitation into reality for the millions of Kenyans who do not enjoy these fundamental human rights.

¹² Kok & Langford 2005: 191

¹³ *International Covenant on Economic Social and Cultural Rights*: Art 2(1). See also *General Comment No. 15*: para 17.

constitutes a recognition of the fact that full realization of all economic, social, and cultural rights will generally not be achieved in a short period.¹⁴

General Comment No. 15 proposes that “States have immediate core obligations to meet, including non-discrimination and the guarantee of a minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease (enough to prevent dehydration and disease).”¹⁵ It is significant to note that such a realization should include the creation of a supportive institutional, legal, and political framework to cushion women slum dwellers in their quest to access water and sanitation. Even though the creation of such structures might be seen as necessary for the realization of the right to access water, it is imperative to note that there are limitations, especially concerning women, which stem from gender inequality, stereotypes, poverty, and patriarchy.

Water scarcity and inadequate sanitation have made it an exciting subject area for academic researchers to explore various dimensions concerning the right. In a research report in 2017 by Geere, which looked at the burden of fetching water and the implications for water security in urban and rural areas, it was established that the burden of carrying water disproportionately falls on women.¹⁶ The uneven burden in water and sanitation that women and girls bear should be recognized and addressed in policies to alleviate this problem. Insufficient supply of safe water poses risks and challenges for women and girls, which denies them opportunities to engage in gainful employment, leisure, and education. This burden is worsened by the fact that women are the caregivers in the family, from carrying pregnancies, giving birth and taking care of the children and the whole family¹⁷. This is a burden that has a gender dimension that should

¹⁴ *General Comment No. 3*. <https://www.refworld.org/pdfid/4538838e10pdf> (accessed on 20 July 2017)

¹⁵ *WaterLex Toolkit: Integrating the Human Right to Water and Sanitation in Development Practice*. 2014 <https://www.waterlex.org/waterlex-toolkit/> (accessed on 30 June 2017).

¹⁶ Geere *et al.* .2018. *Carrying Water May be a Major Contributor to Disability from Musculoskeletal Disorders in Low Income Countries: A Cross-sectional Survey in South Africa, Ghana and Vietnam* <https://www.ncbi.nlm.nih.gov/pubmed/> (accessed on 10 March 2019).

¹⁷ Geere *et al.* .2018. *Carrying Water May be a Major Contributor to Disability from Musculoskeletal Disorders in Low Income Countries: A Cross-sectional Survey in South Africa, Ghana and Vietnam* <https://www.ncbi.nlm.nih.gov/pubmed/> (accessed on 10 March 2019).

be considered as it leans disproportionately on women's shoulders. The responsibility should no longer be ignored in this day and age.

The heavy loads of water that women carry often are from distances away from home. We should note that fetching water, which is the responsibility of most women, especially in the developing world, does not discriminate whether you are pregnant or not; the burden still lies on the women to ensure that families have water for drinking, cooking, washing, and bathing. This burden also comes with a fair share of other risks for women and girls, which include sexual violence, health complications that can lead to miscarriage due to heavy loads and long distances, diseases due to contaminated water, and the use of unhygienic toilets. Despite the acknowledgment that women squarely shoulder the burden of water provision, very little has been done to correct this anomaly in the implementation of the right to water.

According to a 2012 UNICEF report, women account for over 71 percent of household labor used to fetch water from sources outside the home, which is not only time-consuming but also a laborious exercise.¹⁸ The deprivation of adequate and safe water and sanitary facilities, which is a cause of waterborne diseases, is a significant concern for slum dwellers. A comprehensive approach to water and sanitation access is necessary for addressing water scarcity in slums because just having clean drinking water is not enough to alleviate the issue. The lack of sanitation additionally poses security and health risks for women and girls.

One of the hindrances to the realization of other human rights is the lack of adequate, safe, close, and affordable water and sanitation facilities for everyone and more particularly for women slum dwellers.¹⁹ There is no surviving or thriving without water. While legal and institutional frameworks that govern water and sanitation may be in place, the question is whether women slum dwellers can benefit from their implementation. There may be various possible causes of lack of access to water and sanitation, which may include the absence of a women-centered approach in drafting policies and legal frameworks, conceptual problems of poverty and patriarchy, weak implementation and enforcement mechanisms, lack of

¹⁸ UNICEF (United Nations International Children's Fund) and WHO (World Health Organization). 2012. *Progress on drinking water and sanitation: 2012 Update*. www.unicef.org/media/files/JMPreport2012.pdf (accessed on 18 February 2018).

¹⁹ UN Water *Human Rights to Water and Sanitation*. <https://www.unwater.org/water-facts/human-rights/> (accessed on 18 February 2018).

availability of space and dense population amongst others, but the primary culprit would be gender inequality.

The drafting of legal and policy frameworks, together with their implementation, in Kenya lack a woman-centered approach, which takes women's concerns and contributions into consideration. Lack of women-centered strategy in the drafting of policies and the application is worsened by patriarchy and poverty, which denies women a voice and participation in the formulation of policies and laws that affect them. Inadequate access to water and sanitation is not only a big problem in Kibera and Kenya, but it is indeed an acute problem for women, which is linked to their vulnerable nature as forming the bulk of the poor. Women's vulnerability is further exacerbated by patriarchy, which reinforces gender inequality, which in turn motivates the investigation in this thesis. In the next section, I discuss the approach and methodology used in analyzing Kibera women's access to water and sanitation.

1.5 Approach/Methodology

The overall approach that I employ in this study is a women's law approach, which takes women as the starting point. "Women's law is a discipline that explores the reality of women's lives and experiences to explain, understand, and critically analyze women's legal rights to improve their legal position in society."²⁰ It interrogates and investigates the law in all its pluralities as it affects women. This approach uses perspectives from 'below' and 'above' and assumes that there are problems beyond law reform, which need to be addressed, and this can only be done by carrying out research.

Dahl and other Scandinavian Scholars pioneered women's law as a new legal discipline at the University of Oslo to reconstruct the top-down approach to bottom-up approach that takes women as the starting point and embrace their lived experiences. The women's law approach as was analyzed by Joanne Conaghan stated that "the object is not just to reconceptualize law in ways which would make it more receptive to women's needs and concerns but to generate new knowledge about what those needs and concerns were and how the law could respond to them."²¹ This makes it a useful approach to investigate access to water and sanitation using women as the starting point. What are their experiences and concerns? Are the structures and

²⁰ Dahl 1987.

²¹ Nielsen & Christina 2012:99. [retfaerd.org > wp-content > uploads > 2014/08 > Retfaerd_3_2012_7](http://retfaerd.org/wp-content/uploads/2014/08/Retfaerd_3_2012_7) (accessed on 13 June 2018).

the laws in place working for them? If not, is there anything that can be done to reconceptualize the laws, institutional structures to alleviate their situation.

Water scarcity affects both men and women across the board, although women bear the most significant burden due to their triple roles. In this study, I focus on women slum dwellers, but it is essential to note that the inclusion of men is necessary to analyze the full picture and the impact of the scarcity. This approach is useful because it helps provide an insight into women's and men's issues of access to water and sanitation, but the emphasis is on women slum dwellers.

A women's law approach to research requires examining all the relevant social, economic, and cultural influences. The approach helps interrogate the possible causes and barriers to women's lack of realization of the right to water and sanitation. This approach also incorporates a gender and sex analysis to explore whether gender inequality and power relations play a role in the vulnerability of women slum dwellers. The socially constructed gender roles disadvantage women and therefore perpetuate their subordinate position, hence vulnerability. The gender division of labour puts the burden of fetching water and caring for the family on women, therefore lessening their productive time. The caregiving role of women essentially reduces their chances of being absorbed in the paid labour market to compete favourably with their male counterparts.

Patriarchy and poverty have also made women be the face of poverty, hence the phenomenon of feminization of poverty, in which women represent disproportionate percentages of the world's poor. Chant, in a report in 2006, described the term "feminization of poverty" as not only a consequence of lack of income but also the result of deprivation of opportunities and gender biases present in both societies and government.²² She, however, took issue with the lack of adequate specification and substantiation of aspects that are most relevant to women. This means that a blanket lumping of women as the face of poverty without proper categorization and specification is a flawed concept.

I also use a women's law approach to analyze women slum dwellers' access to water and sanitation and how they navigate and negotiate access. Since I seek to unearth the relation

²² Chant S. 2006. *Re-thinking the Feminization of Poverty in relation to aggregate gender indices*. eprints.lse.ac.uk › Re-thinking_the_feminisation_of_poverty_(LSERO) (accessed on 7 December 2016).

between women's access to water, poverty, and patriarchy, it is vital to understand and recognize how such phenomena impact their lives, livelihoods, and well-being. Kaiser argues in a report on water, sanitation, and gender that it appears that women's concerns are rarely addressed due to societal barriers that often restrict their involvement in decision making as regards water and sanitation and other relevant issues that affect them.²³ This is why I employ a feminist legal theory approach to show how the law has historically contributed to the subordination of women in the past and my argument is that the same law can be reworked to change the status of women through law reform. It further identifies the pervasive influence of patriarchy on legal structures, demonstrates its effects on the material condition of women and girls, and develops reforms to correct gender injustice, exploitation, or restriction.²⁴

Apart from the women's law approach, I also use Africana feminism,²⁵ which is a feminist epistemology that explores African women's lived experiences and oppressions. These experiences include how the social, political, and cultural ways impact on women and how women challenge the inequalities they face. These two feminist theories best reflect and guide the women's access to water and sanitation in Kibera. I focus on a specific area, namely Kibera, in Nairobi, Kenya which is the biggest slum in Africa and one of the largest in the world. It is an illustration of the problems of poverty and inequality faced by slum dwellers and, more particularly, by women.

1.6 Thesis Structure

²³ Kaiser S. *Water, Sanitation and Gender*. archive.sswm.info/...8-water-and-sanitation...challenges/module-8-water-and-sanit-21 (accessed on 8 January 2017).

²⁴ Francis L. 2009. *Feminist Philosophy of Law* (*Stanford Encyclopedia of Philosophy*)

<https://plato.stanford.edu/entries/feminism-la> (accessed on 8 January 2017).

²⁵ Africana Feminism was an innovation of African Women to specifically address the conditions and needs of African women in the African continent. There are different segments of African feminism vocalized by various authors like Motherism, Femalism, Snail-sense Feminism, Womanism/women palavering, Nego-feminism, Satanism, and African Womanism. It should be noted that even though there are other Africana feminisms in Africa, the more pronounced presence was in Nigeria West Africa. Some of the renowned feminists in Nigeria are Frances Abigail Olufunmilayo Ransome-Kuti, Lady Kofoworola Aina Ademola, Catherine Acholonu, Omolara Ogundipe-Leslie, Obioma Nnaemeka, Chioma Opara. Akachi Adimora-Ezeigbo. There are other feminists from the other parts of the continent like Sylvia Tamale of Uganda who have contributed to the Africana feminism discourse.

This thesis is divided into six chapters. Chapter one is introductory.

In chapter two, I describe and explain why Kibera is the study area of this thesis and go further to give a brief history of Kibera Slum and its characteristics. I provide the map of Kibera to show where it is located and its significance in this study on access to water and sanitation for women slum dwellers.

I further focus on the gender dimensions of access to water and sanitation and specifically discuss how gender inequality and power relations in families/households play a role in the vulnerability of women slum dwellers in the realization of this right. I elaborate on the relationship between poverty, patriarchy, and access to water and sanitation for women slum dwellers.

I examine the factors contributing to gender inequalities in access to water and sanitation and the burdens and effects of fetching water. Finally, I also look at the socio-economic, cultural, and political, policy and institutional challenges women face in access to water and sanitation. Kibera is one of the largest slums in Africa and houses a population of almost 1 million people in an area of approximately 2.5 km.²⁶ Kibera is also Kenya's largest slum, and it is situated in Nairobi, the capital city of Kenya.

Kibera has been over-researched by many scholars due to the presence of the characteristics of slum-dwelling as defined by UNHABITAT, which I look at in detail in chapter two. The other reason for the interest in Kibera as a study area is due to the unique coping strategies for survival in a slum dwelling, like what is popularly known as the use of "flying toilets" as human waste disposal in polythene bags. Limited access to water and sanitation and the vulnerability of Kibera women slum dwellers due to poverty and gender inequalities is also a reason for an interest in carrying out the study.

A report by Amnesty International in 2010 stated that women and girls in Nairobi's slums are living under the constant threat of sexual violence, which often leaves them too scared to leave

²⁶ Umande Trust Kibera. 2010. See in general the Umande Trust's website: <http://www.umande.org>. See also Otsuki K. *What Sanitation Means in Nairobi Slums*. *Solutions Journal* 4(5), 2013 <http://www.thesolutionsjournal.com/node/24010> (accessed on 4 July 2017).

their houses to use communal toilet and bathroom facilities and puts their health in danger.²⁷ This has an effect of making them prisoners in their own homes due to lack of adequate water and sanitation facilities. There are many conditions that affect women slum dwellers in their quest to access water and sanitation, namely poverty, gender inequality, patriarchy, and unequal opportunities to participate in political and economic decision making. These compound the plight of women slum dwellers in access to water and sanitation. The legal, institutional and political barriers are also to blame as factors contributing to lack of expansion of water access more than the monetary or technical challenges especially in poor urban communities like Kibera.²⁸

In a paper on discourses on illegality and exclusion on when water access matters, it is found that the problems concerning water provisioning within Nairobi slums are less about water scarcity and more about unequal distribution and the marginalization of slum areas in development plans. This uneven distribution and marginalization work against the women slum dwellers due to their vulnerable position in society. Why is there an unequal distribution of basic services like water and sanitation, and yet these are rights that should be accessed and enjoyed without discrimination? Are there policies in place to ensure that such uneven distribution is not perpetrated against the marginalized in the society? If so, is the implementation monitored to ensure that the services reach the intended or targeted populations? These questions are answered below either in the affirmative or the negative with reasons for the same.

There are distinct responsibilities when it comes to the use and management of water systems between men and women. Women are more vulnerable when access is limited.²⁹ When water is privatized, there is a likelihood that women living in slums will be adversely affected due to gender inequality and other social differentiation that divide the rich and the poor.

²⁷ Amnesty International. 2010. *Insecurity and indignity: women's experiences in the slums of Nairobi, Kenya*. <https://www.amnesty.org/en/documents/AFR32/002/2010/en/> (accessed on 2 March 2018).

²⁸ Subbaraman R & Murthy SL. 2015. *The right to water in the slums of Mumbai, India*. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4622161/> (accessed on 4 March 2018).

²⁹ IFAD. 2012. *Gender and Water: Securing Water for Improved Rural Livelihoods: The Multiple-uses System Approach*. www.ifad.org/.../Gender...Water++Security+water...rural+livelihoods...multiple-uses+ (accessed on 4 March 2019).

Stereotypical attitudes and practices which are ingrained in most societies, work to the disadvantage of women and girls in families and institutions.

It is documented in previous research that gendered-neutrality of poverty statistics masks the structural and systemic gender inequalities between women and men as a dimension of poverty, with poor African women being particularly disadvantaged.³⁰ This explains why it is women who experience the effects of poverty and further operate as shock absorbers of poverty for others.³¹ This overburdens women in families with the task of providing for the scarce resource and ensuring that the families have access to the precious commodity.

In order to cope with the situation of lack of adequate water and sanitation, women slum dwellers have devised specific strategies to enable them to manage. According to Chipeta Lucy in her paper on “Water Crisis in the City of Blantyre and the Impact on Women”, she states that some of the strategies are precarious and expensive which include storing water in large 50 - 100 litres containers, buying water from privately owned taps, drawing water from wells and nearby rivers. She further states that sometimes households have to recycle the water and reduce the number of bathing times which strategies have advantages and disadvantages. The coping strategy devised by the slum dwellers may be advantageous to them in the short term as a stop-gap measure, but in the long run, it might have adverse effects on their health. For example, the storing of water in large containers, while it helps to have a reserve of water, renders water vulnerable to pollution during storage and use.³² The other downside of storing too much water is that there is a possibility of using too much water since it is readily available. The other strategy which has advantages and disadvantages is the recycling of water. This may involve water for washing dishes or using the same water for bathing several children. This is an unhygienic way of coping with problems of water. Related to this coping strategy is skipping a bath, which may not be very hygienic to girls and women who require frequent baths

³⁰ Devina NP. 2011. *Women's socio-economic [in]equality and gender [in]justice: Feminist reflections on the right of access to water in Mazibuko and Others v City of Johannesburg and Others [2009] ZACC 28* 10.1080/10130950.2011.575991 (accessed on 9 February 2018).

³¹ Mendoza R. 2009. *Aggregate Shocks, Poor Households and Children*.

<https://journals.sagepub.com/doi/pdf/10.1177/1468018109106885> (accessed on 2 February 2019).

³² Chipeta L. 2009. *The Water Crisis in Blantyre City and its Impact on Women: The Cases of Mabyani and Ntopwa, Malawi*. https://www.researchgate.net/.../280926727_The_water_crisis_in_blantyre_city_and_its_impact_on_women..the_cases_of_mabyani_and_ntowa,malawi (accessed on 3 March 2017).

especially during menstruation. Similarly, it may not be suitable for children and may lead to hygiene-related diseases like scabies.³³

Women slum dwellers are forced to use Hirschman's³⁴ 1970 framework of 'exit' and 'voice' whereby those who do not have any service are in effect have no choice but to 'exit' and make their own arrangements, especially in access to water and sanitation.

In chapter three, I analyze the theoretical approach used in the study, which is a women's law approach and Africana feminism. I also briefly look at other feminist theories but deal in depth with the women's law approach and Africana feminism as the guiding theory of the study to help in the analysis of women's access to water and sanitation in Kibera. I further look at how the two feminist theories can be combined for analysis. The guiding research question in this chapter is what feminist theory/theories would best reflect and guide the study of women's access to water and sanitation.

The choice of women's law approach and Africana feminisms is informed by the fact that they both explore women's experiences and lived realities to find solutions. The two theories can be used to interrogate women's social, political, cultural and economic experiences and challenges. Women's law approach just like the Africana feminist proponents, take women as a starting point and are anti-patriarchy. This can be used to analyze how access to water and sanitation affects the experiences of women holistically by looking at how they negotiate access and at what cost. Is the cost in terms of time spent fetching water, distances, the effect of limited time to engage in other income-generating activities, or limited time to attend school and leisure time? All these, if computed in monetary terms, then it can give the real picture of how much women lose when engaging in unpaid caregiving and fetching water or the degree of women's contribution in unpaid work.

Apart from the women's law approach, it is essential to look at the emergence of various waves of feminism and their characteristics. The bottom line is that the first, second, third and fourth waves are concerned with women's emancipation and empowerment. The use of feminist

³³ Chipeta L. 2009. *The Water Crisis in Blantyre City and its Impact on Women: The Cases of Mabyani and Ntopwa, Malawi*. https://www.researchgate.net/.../280926727_The_water_crisis_in_blantyre_city_and_its_impact_on_women..the_cases_of_mabyani_and_ntowa,malawi (accessed on 3 March 2018).

³⁴ Hirschman A O. 1970. *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*. <https://quod.lib.umich.edu/cgi/t/text/text-idx?c=acls;cc=acls;view=toc;idno> (accessed on 3 March 2019).

theories for analysis presents an opportunity to internalize the prevailing assumptions of gendered water inequality and access to sanitation services and possible solutions to the problems.

In chapter four I examine the legal framework on the right to water and sanitation emanating from international, regional, and domestic law. I further highlight the Kenyan legal and institutional frameworks on water and sanitation with specific reference to the constraints and opportunities in realizing the right to water and sanitation within the current legal and institutional frameworks for women slum dwellers. An analysis of the national policies and implementation of the right to water and sanitation is done in this chapter. I also review the current practices and identify the critical features of the legal and institutional framework needed to enhance the realization of the right to water and sanitation for women slum dwellers. In this chapter, I also examine the limitations of legal and institutional frameworks in addressing the realization of the right to water and sanitation for women slum dwellers.

The Kenyan government ratified CESCR and therefore is under an obligation to ensure that every person within her territory is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. Similarly, everybody is entitled to access to adequate and affordable sanitation in or near their homes as well as schools, hospitals, and places of work.³⁵ This means that Kenya has an obligation to respect, protect and fulfill the human right to water and sanitation,³⁶ adhering to the human rights principles of non-discrimination, the inclusion of vulnerable groups, participation, and empowerment, transparency, and accountability.³⁷

It is imperative to put the obligations under three headings: to respect (refrain from interfering with the enjoyment of the right), to protect (prevent others from interfering with the enjoyment of the right) and to fulfill (adopt appropriate measures towards the full realization of) economic, social and cultural rights in order to clarify the meaning of states' obligations.³⁸

The government must refrain from interfering with the obligation to respect requires that governments refrain from interfering directly or indirectly with any person's right to water or

³⁵ *General Comment No. 15*: para 29.

³⁶ Art. 21(1) Constitution of Kenya

³⁷ Art. 10(2) Constitution of Kenya

³⁸ *General Comment No. 15*:para. 24; *Sub-Commission Guidelines*: s. 2.3 (d)-(e).

sanitation without proper justification. There would be no appropriate justification for interfering with a person's right to water and sanitation and if so then this has to be interrogated further to see whether any circumstances fall under this category. The obligation to protect requires that governments should ensure that no private individual or organization interfere with any other person's right to water and sanitation. This requirement in most cases is frequently abused by individuals or organizations that arbitrarily interfere with other persons' right to water and sanitation. Governments are required to establish a regulatory system for service providers that include mechanisms to ensure genuine public participation, independent monitoring and compliance with regulations.³⁹ The involvement of communities is enshrined in the Constitution and should, therefore, be implemented for the benefit of all stakeholders without discrimination.

The obligation to fulfill requires that a government take steps, within its maximum available resources, to assist people in securing their right to water and sanitation, including through the provision of education and public services.⁴⁰ The obligation to fulfill and ensure that people get access to water and sanitation has been lagging as governments have always given excuses that there are no adequate resources for the progressive realization of the right. In implementing the right, governments can legitimately expect that users will also do their part in ensuring access to water and sanitation for all, for example, by paying for water and sanitation to the extent that it is affordable.⁴¹ The government of Kenya has had challenges stemming from the legal, institutional and weak implementation of enforcement mechanisms. The question is whether everyone can pay for the government set water tariffs and if they are not able to pay, is there a way of subsidizing the tariffs for the poor and marginalized.

The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies.⁴² In most slum dwellings, random disconnections and contaminations are common leading to waterborne diseases and limited access to water. This

³⁹ *General Comment No. 15*:para. 24; *Sub-Commission Guidelines*: s. 2.3 (d)-(e).

⁴⁰ *General Comment No. 15*:para. 24; *Sub-Commission Guidelines*: s. 2.3 (d)-(e).

⁴¹ *General Comment No. 15*:para 27.

⁴² *General Comment No. 15*.

is not out of choice but due to their inability to afford the tariffs set and lack of proper water and sanitation infrastructure coupled with low-income levels.

The 1948 Universal Declaration of Human Rights excluded water as an explicit right. However, the Convention states that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care and necessary social services.” This is further affirmed in the 1966 CESCR under arts. 11 and 12 which provides for the right to an adequate standard of living and right to health, respectively. It can be inferred from these articles that the right to water and sanitation is implied within the content of these rights.⁴³

General Comment No 15 on the arts. 11 and 12 on the right to water, adopted in November 2002 by the Committee of the Covenant of Economic, Social, and Cultural Rights. Since water is fundamental to human survival, it was necessary and was included as a right. The general Comment agreement was ratified by 145 countries that are “obliged to progressively ensure that every person has access to safe drinking water, equally and without any discrimination.” This obligation requires that all parties adopt the necessary measures to guarantee the right to drinking water. It explicitly recognized that water is a fundamental human right. It states expressly under art. 1.1 that “the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights” The right to water has been consistently addressed by the Committee during its consideration of States parties reports, under its revised General Guidelines regarding the form and content of reports to be submitted by states parties under the arts. 16 and 17 of CESCR and its general comments.⁴⁴

General Comment No. 15 also defined the right to water as the right of everyone to sufficient, safe, acceptable, and physically accessible and affordable water for personal and domestic uses.⁴⁵ The United Nations Human Rights Council adopted Resolution 64/292 and clarified the foundation for the recognition of the right and the associated legal obligations.⁴⁶ It is therefore clear that the human right to water and sanitation is accepted under international law as

⁴³ Kirschner A J (2011) The Human Right to Water and Sanitation. [www.mpil.de › files › pdf3 › mpunyb_10_Kirschner_151](http://www.mpil.de/files/pdf3/mpunyb_10_Kirschner_151) (accessed on 10 February 2020)

⁴⁴ *Official Records of the Economic and Social Council, 1991, Supplement No.3 (E/1991/23-E/C.12/1990/8), annex IV.*

⁴⁵ *Resolution A/Res/64/292 United Nations General Assembly July 2010.*

⁴⁶ *UN Human Rights Council 2010.*

fundamental human rights, which should be made a reality for all by putting measures in place for actualization.

The right to water is explicitly mentioned in three international treaties, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979),⁴⁷ the Convention on the Rights of the Child (CRC, 1989),⁴⁸ and the Convention on the Rights of Persons with Disabilities (CRPD, 2006).⁴⁹ The CRPD is intended as a human rights instrument with an explicit, social development dimension. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced. Art. 28 (2) a, obliges state parties to ensure access by persons with disabilities to clean water services and to ensure access to appropriate and affordable services, devices, and other assistance for disability-related need.⁵⁰ It is important to note that the provisions of this treaty can be invoked to protect women slum dwellers with disabilities in their quest to access clean, appropriate and affordable water services.

Art. 14 (2) h, CEDAW, it is established that rural women's health depends on adequate and non-discriminatory access to water and that:

⁴⁷ *United Nations Convention on the Elimination of All Forms of Discrimination against Women* (Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979).

⁴⁸ *United Nations Convention on the Rights of the Child* (Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49).

⁴⁹ The *Convention on the Rights of Persons with Disabilities* and its *Optional Protocol* (A/RES/61/106) were adopted on 13 December 2006 at the United Nations Headquarters in New York, and opened for signature on 30 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the Convention. This is the highest number of signatories in history to a UN Convention on its opening day. It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations. The Convention entered into force on 3 May 2008.

⁵⁰ Available at: <http://www.un.org/esa/socdev/enable/documents/tccconve.pdf> (accessed on 10 March 2018).

“State parties to ensure that rural women enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport, and communications.”

CEDAW forms the most significant human rights framework for promoting women’s access to water and participation in water management.

Art. 24 (2) c of CRC requires state parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking water.” According to a study by IRIN, poverty and institutional challenges are compounding already high drought-related child malnutrition levels in parts of Kenya.

At the regional level, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, stipulates in art. 15(a) of that:

“State parties shall ensure that women have the right to nutritious and adequate food taking appropriate measures to provide women with access to clean drinking water, sources of domestic fuel, land, and a means of producing nutritious food.”

This article reiterates the provisions of CRC, which requires state parties to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water. Further, the International Water Conference on Freshwater (Bonn, Germany) establishes that water policies and water management systems must be sensitive to gender issues.⁵¹ Any issues linked to water must deal with the division of labour – with or without remuneration – between men and women. It is imperative for men and women to participate in the management of sustainable water resources exploitation and the distribution of benefits in similar conditions. Women’s participation must be strengthened and broadened in water issues. The sustainable management of water resources should include all people of all cadres including women slum dwellers who are severely affected by the lack of inclusion.

⁵¹ ICF 2001. *International Conference of Freshwater. Bonn 3-7 December 2001, conference report.* <http://www.water-2001.decade> (accessed on 10 March 2019).

According to UN-HABITAT,⁵² approximately a quarter of the world's urban population live in slums. In Africa, over half of the urban populations (62 percent) live in slums.⁵³ It is useful to understand what the term slum dwellers mean. UN HABITAT'S⁵⁴ operational definition for slum dwellers describes a 'slum household' as " a group of individuals living under the same roof lacking one or more of the following conditions:

- (a) access to improved water,
- (b) access to improved sanitation facilities
- (c) sufficient living area - not overcrowded
- (d) structural quality/durability of dwellings
- (e) Security of tenure.

These five conditions represent the five deprivations negatively affecting the lives of slum dwellers,⁵⁵ with Kibera slums being no exception. These deprivations affect women slum dwellers more as they represent one of the strongest forces for the development of millions of urban families living in poverty, as stated by the 2013 UN-HABITAT report. They take care not only of different household members but often are also the breadwinners. More often than not it is the women who take care of the sick in the families. Slums are prone to cholera outbreaks and other infectious diseases, which may require a lot of clean water to contain. The government of Kenya has been promoting handwashing practice, which requires water to avert infections. This is only possible if a concerted effort to ensure the accessibility of water to all and specifically to the marginalized and vulnerable slum dwellers.

⁵² UN HABITAT. 2013. *Global Activities Report 2013: Our Presence and Partnerships*. <https://unhabitat.org/un-habitat-global-activities-report-2013-our-presence-and-partnerships/> (accessed on 5 January 2019).

⁵³ UN HABITAT. 2013. *Global Activities Report 2013: Our Presence and Partnerships*. <https://unhabitat.org/un-habitat-global-activities-report-2013-our-presence-and-partnerships/> (accessed on 5 January 2019).

⁵⁴ UN HABITAT. 2002. *The Challenge of Slums: Global Report on Human Settlements* https://unhabitat.org/wp-content/.../07/GRHS_2003_Chapter_01_Revised_2010.pdf (accessed on 5 January 2019).

⁵⁵ See UN HABITAT. 2013. *Planning and Design for Sustainable Urban Mobility*. <https://unhabitat.org/.../planning-and-design-for-sustainable-urban-mobilityglobal-rep> (accessed on 6 February 2019).

A 2010 Global Report on Human Settlements described what constitutes a slum as having the following as the major characteristics of slums: lack of basic services; substandard housing or illegal and inadequate building structures; overcrowding and high density; unhealthy living conditions and hazardous locations; insecure tenure; irregular or informal settlements; poverty and social exclusion; and minimum settlement size.⁵⁶ This description has an effect of compromising the slum dwellers' access to water and sanitation as they are basic services for human survival and living in dignity.

The World Health Organization (WHO)⁵⁷ in its Guidelines for Drinking-Water Quality assumes an adult requires a minimum of 20 litres of water per day. In normal circumstances, an individual requires 50-100 litres of water in a day. This is way beyond what most Kenyans can afford or access, especially the women slum dwellers who buy water from water Kiosks and vendors or go without when they cannot afford the precious commodity.

UN Secretary General's Advisory Board on Water and Sanitation (UNSGAB) stated that the sanitation MDG target, to halve the proportion lacking access to improved sanitation, is among the most off-track of all MDGs.⁵⁸ In this regard, UNSGAB's recommended that the world should recognize water challenges as a serious obstacle for sustainable development and consider them a top priority.⁵⁹ In the post-2015 development Agenda, water and sanitation managed to secure a dedicated goal no. 6, which seeks to ensure availability and sustainable management of water and sanitation for all by 2030. Sustainable development goal (SDG)no. 5 also aims to achieve gender equality and empower all women and girls. It is important to note that the fact that water and sanitation secured a standalone goal in the Sustainable Development

⁵⁶ Bezerra LMD. 2010. *Global report on human settlements 2009: planning sustainable cities*.

<https://www.tandfonline.com › doi › abs › 17535069.2010.481379> (accessed on10 February 2018).

⁵⁷ WHO. 2003. *Guidelines for drinking water quality*

https://www.who.int/water_sanitation_health/publications/gdwq3rev/en/ (accessed on10 January 2017).

⁵⁸ *Hashimoto Action Plan III: Strategies and objectives through 2015*. www.unsgab.org (accessed on10 January 2019).

⁵⁹ *Hashimoto Action Plan III: Strategies and objectives through 2015*. www.unsgab.org (accessed on10 January 2019).

Goals is a statement that shows the importance of water and sanitation in the lives of human beings.

The Kenyan Constitution⁶⁰ recognizes the right to water under art. 43(1) d. It provides that 'every person has a right to clean and safe water in adequate quantities.' This article must be read together with art. 21(2), which calls on the state to take a legislative, policy and other measures, including the setting of standards to achieve the progressive realization of the right to water. The phrase 'progressive realization' has been interpreted to mean an obligation on states' to move as effectively and expeditiously as possible to secure its ultimate goal and should not be misinterpreted as depriving the obligation of all meaningful content'.⁶¹

In 2007, the National Water Services Strategy (NWSS)⁶² came into place to actualize the provisions in the Kenyan Water Act 2002⁶³ that focused on the development, management, and monitoring of water and sewerage services.

With regard to the targets set by the NWSS of reaching up to 50 percent of the underserved urban population with safe and affordable water by 2015 (MDGs) and thereafter, move to access to all by 2030 (SDGs) and as well reach out through sustainable waterborne sewage collection, treatment and disposal systems to 40 percent of urban and 10 percent of rural populations, very little progress has been recorded.

There is extensive literature on the human right to water and sanitation from various studies that have been carried out all over the world.⁶⁴ Women slum dwellers are burdened by poverty, which is compounded by lack of basic services and in other cases cultural and social factors. The patriarchal relations operates through the gender division of labour in families which

⁶⁰ *Constitution of Kenya 2010*.

kenyalaw.org/.../kenyalex/Kenya/The%20Constitution%20of%20Kenya/.../Constitutionofkenya2010.. (accessed on 13 December 2018).

⁶¹ *General comment No 3*: para 1.

⁶² <https://wasreb.go.ke/national-water-services-strategy/> (accessed on 13 December 2018).

⁶³ *Water Act 2002* kenyalaw.org/.../kenyalex/Kenya/Legislation/.../Acts%20and%20Regulations/.../Water. (accessed on 13 December 2018).

⁶⁴ Even though a lot has been written about the gender dimensions of the right to water and sanitation, not much has focused on poverty and patriarchy in relation water access and women slum dwellers.

overburden the women slum dwellers further since they are poor and in some cases in female-headed household.

In instances where there is rigidity in the gender division of labour, there is a reinforcement of vulnerability. This may be due to their marginalized position in society and a lack of interest in dealing with their plight and vulnerability. Therefore this creates a gap for research for the current study, which will be able to add to the scholarship in the area of the right to water and sanitation, especially for women slum dwellers. The study will further contribute to increased understanding of the need for inclusion of gender perspectives to water and sanitation for women slum dwellers. This includes using a gender lens in the formulation of policies and legislation concerning water and sanitation together with their implementation.

Most of the literature on water security and sanitation in the developing world, especially Africa, includes the impact of gender inequity.⁶⁵ This calls for more significant gender equity concerning access to clean and affordable water and sanitation. Women and girls have the burden and responsibility of collecting water for cooking, cleaning, health, and hygiene and in most cases, take care of the sick suffering from waterborne diseases. The burden of fetching water inhibits women and girls from engaging in other productive activities such as education, income generation, cultural and political involvement, rest and recreation.⁶⁶ It is, therefore, vital for women and girls to be involved in the water and sanitation services to enable their voices to be heard to ensure equitable access.

The definition of slum dwellers and the presence of the five deprivations, as seen above, are worsened in the case of women slum dwellers by their triple role, as stated by Caroline Moser⁶⁷ that they play in reproductive, productive and community management. The triple role in this

⁶⁵ *Gender in Water and Sanitation - Water and Sanitation*

Program <https://www.wsp.org/sites/wsp/files/publications/WSP-gender-water-sanitation.pdf> (accessed on 15 December 2019).

⁶⁶ Öman *et al.* 2007. *Strengthening Capacity for Water Resources Research in countries with Vulnerable Scientific Infrastructure Report*, International Foundation for Science. Presented at the Water and Sanitation in International Development and Disaster Relief (WSIDDR) International Workshop Edinburgh, Scotland, UK, 28–30 May 2008”. <https://doi.org/10.1016/j.desal.2008.05.116> (accessed on 5 February 2019).

⁶⁷ Moser C. 1988. *Gender planning in the third world: Meeting practical and strategic gender needs*. https://www.academia.edu/28265102/Gender_planning_in_the_third_world_Meeting_practical_and_strategic_gender_needs (accessed on 18 January 2019).

respect means women's reproductive work which includes (domestic work, child caring and rearing, adult care, caring for the sick, water and fuel-related work, health-related work), the productive work which includes (work for income and subsistence, including work in informal sector enterprises either at home or the neighborhood, formal employment) and finally community managing work that includes activities that are undertaken by women at the community level around the provision of items of collective consumption⁶⁸. This is work that is tedious and in most cases not considered as remunerative work as would be for the male counterparts.

In July 2014, the United Nations Special Rapporteur on the Human Right to Water and Sanitation in an official visit to Kenya welcomed the explicit recognition of the right to water and sanitation in the 2010 Constitution but was alarmed by the fact the over 80 percent of the population in Turkana County practice open defecation. She stated that this is not only an absolute denial of the right to sanitation but also a severe threat to public health and security of women and girls who have to walk into the bush at night.⁶⁹ The situation witnessed by the Special Rapporteur in Turkana County is not different from Kibera slums, which might be worse due to the overcrowding and high population without basic services like access to water, sanitation, and electricity. In June 2015, there was an outbreak of cholera in Kibera slums, and many people died from this preventable disease.⁷⁰ This is an indication that the lack of access to water and sanitation has negative impacts on the Kibera slums population.

The UN Special Rapporteur on the Human Right to Water and Sanitation has written several reports and guidelines on the right to water and sanitation. In 2009, she wrote a report on human rights obligations related to access to safe drinking water and sanitation. The independent expert Catarina de Albuquerque asserts that there is clear human rights obligation related to

⁶⁸ Zibani T. 2016. *The Triple burden and triple role of women*. <https://www.empowerwomen.org › Home › Community: Discussions>. (accessed on 4 March 2019).

⁶⁹ Catarina de Albuquerque is the first UN Special Rapporteur on the right to safe drinking water and sanitation. She was appointed by the Human rights Council in 2008. Ms. de Albuquerque is a Professor at the Law faculties of the Universities of Braga, Coimbra and the American University's Washington College of law. She is a senior legal Advisor at the Prosecutor General's Office, a Portuguese independent institution.

⁷⁰ The WHO reported that since December 2014, the Republic of Kenya has been experiencing continuous large outbreaks of cholera, with a cumulative total of 17 597 cases reported (10 568 cases reported in 2015 and 6448 in 2019).

sanitation because it is inextricably linked to, and indispensable for the realization of many other human rights. She outlines the definition of sanitation in human rights terms and explains the human rights obligations related to sanitation as well as the content of those obligations.⁷¹ This is very useful in the analysis and measurement of whether a country is adhering to the guidelines and obligations set. She also wrote a handbook in 2014 on the realization of the human right to water and sanitation.⁷² Access to water and sanitation has a high potential of providing significant benefits to society, and a gender approach is central to the sustainable management of water resources and sanitation.

My study has focused on the relation between access to water, poverty, and patriarchy and also on the legal and institutional frameworks, to ascertain whether they can enhance or hinder the realization of the right to water and sanitation for women slum dwellers in Kibera, Kenya. It is instructive to note that the realization of the right to water and sanitation cannot only be achieved through the legal frameworks. The legal frameworks also have their limitations, which have to be analyzed. There have to be other extra-legal measures in which this issue can be addressed. Kenya promulgated her Constitution in 2010, which recognized the right to water and sanitation and hence, it would be essential to look at the steps that have been taken to realize these rights through implementation.

Kenya adopted a progressive law and policy framework for water that is based upon the Constitutional recognition of the right of access to water.⁷³ Most states including Kenya, have been slow to take reasonable steps to progressively fulfill socio-economic rights with an excuse for lack of resources.⁷⁴

⁷¹ De Albuquerque 2009.

⁷² De Albuquerque C. 2014 *Realizing the Human Right to Water and Sanitation: A handbook by the UN Special Rapporteur*. <https://unhabitat.org/.../realizing-the-human-rights-to-water-and-sanitation-checklists/> (accessed on 10 August 2019).

⁷³ *Water Act 2016*. <https://wasreb.go.ke/downloads/Water%20Act%202016.pdf> (accessed on 15 March 2019).

⁷⁴ The issue of progressive realization of socio-economic rights was well discussed in the Kenyan Case of *Mitubell Welfare Society vs. The Attorney General & 2 Others* Petition No. 164 of 2011, where Justice Mumbi Ngugi held that "The argument that socio-economic rights cannot be claimed at this point two years after the promulgation of the Constitution ignores the fact that no provisions of the Constitution is intended to wait until the state feels it is ready to meet its constitutional obligations. Article 21 and 43 require that there should be "progressive realization" of socio- economic rights, implying that the state must be seen to be taking steps, and I must add to be seen to

In Kenya, a petition was filed on behalf of 1,122 persons (the Petitioners) who were evicted from areas referred to as the ‘Medina Location’ in Garissa. This case involved people living in an informal settlement who were forcibly evicted, resulting in, among other things, being cut off from access to water and sanitation. The court found a violation of constitutionally protected social right as informed by international human rights law. The Court referred sanitation and water as essential for human dignity, recognizing the indivisibility and interdependence of human rights as well as the basis for locating the rights to water and sanitation within the right to an adequate standard of living and the overarching rights of human dignity, freedom, and equality.⁷⁵ This case illustrated that water is essential for human dignity for all without discrimination. Slum dwellers like the petitioners are marginalized and poor. The poverty aspect denied them access to water and sanitation as if they had the financial resources they could have sought for alternative means of accessing water and sanitation.

The court held that the Petitioners were entitled to the fundamental rights to accessible and adequate housing and to reasonable standards of sanitation, health care, clean and safe water in adequate quantities and education’ as guaranteed by art. 43 of the Constitution and international treaties, and according to art. 47 were entitled to be given written reasons regarding the evictions (para. 12). Citing art. 21(3) of the Constitution⁷⁶, the Court also held that ‘it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights’ and held further that the forced eviction ‘grossly undermined their right to be treated with dignity and respect’

take steps towards realization of these rights.....Granted also that these rights are progressive in nature, but there is a constitutional obligation on the state, when confronted with a matter such as this, to go beyond the standard objection....Its obligation requires that it assists the court by showing if, and how, it is addressing or intends to address the rights of citizens to the attainment of the socio-economic rights, and what policies, if any it has put in place to ensure that the rights are realized progressively and how the Petitioners in this case fit into its policies and plans."

⁷⁵ *Ibrahim Sangor Osman v Minister of State for Provincial Administration & Internal Security*

eKLR [2011] High Court (Embu) Constitutional Petition no 2 of 2011 <http://www.escri-net.org/usr_doc/Decision_Garissa.pdf> (accessed on April 2019).

⁷⁶ *The Constitution of Kenya, 2010*. <http://www.kenyaembassy.com/pdfs/The%20Constitution%20of%20Kenya.pdf> (accessed on 7 May 2019).

The fact that many cases are being filed, heard, and determined in courts nationally, regionally, and internationally⁷⁷ shows that there is some level of judicial activism and that judges are willing to apply human rights instruments in their judgments. This gives hope for litigants whose rights may be violated by the lack of putting steps to progressively realize certain socio-economic rights. A Bombay High Court decision in December 2014,⁷⁸ underscored the fact that legal, institutional and political barriers are often greater obstacles to expanding water access than monetary or technical challenges, especially for poor urban communities.

In chapter five, I present a summary and conclusion of the study. This is where I summarize what I have discussed in all the chapters and conclude that there is a direct relationship between access to water, poverty, and patriarchy. Gender inequalities often stem from deeply entrenched customs and behaviors that tend to limit women's participation in social and economic development. The feminization of poverty has exacerbated the situation where most households are female-headed. Gender relations play a significant role in social relations in access to water and sanitation. It is also evident that social limitations, which are created by the gender inequalities amongst families, are to blame for the limited access to water and sanitation for women, more so poor women living in the slums.⁷⁹ Further, the gender division of labour that influences access to water and sanitation is aggravated by the fact that women are tasked with the responsibility of collecting water and caring for the family, therefore robbing them of time to engage in income-generating activities and attending school.

I further look at the coping strategies that women slum dwellers in Kibera employ in the quest to access water and sanitation. I also analyze Hirschman's 1970 framework of 'exit' and 'voice' to explain the various strategies used when women do not have services and are forced to make

⁷⁷ WaterLex and WASH United compiled a selection of national, regional and international caselaw on human rights to water and sanitation in courts worldwide. [hrbportal.org > wp-content > files > Human-rights-to-water-and-sanit..](http://hrbportal.org/wp-content/files/Human-rights-to-water-and-sanit..) (accessed on 10 February 2020)

⁷⁸ *Public Interest litigation No.10 of 2012 Geneva: International Environmental Law Research Centre 2014.* <http://www.ielrc.org/content/e1407.pdf>.2015Aug 19] (accessed on May 2017).

⁷⁹ *Gender in Water and Sanitation - Water and Sanitation*

Program <https://www.wsp.org/sites/wsp/files/publications/WSP-gender-water-sanitation.pdf> (accessed on 15 December 2019).

alternative arrangements. I argue that the strategies used have pros and cons which might expose the users to risk.

I make recommendations from the discussions and conclude that there should be a paradigm shift in water and sanitation governance. Policies and strategies for improving access to water and sanitation for women living in the informal settlement should focus on the provision of services taking into account the gendered nature and the underlying power relations which have played a role in their inadequate access. I suggest that there should be a holistic approach in dealing with water and sanitation access to unlock what is bedeviling the sector.

Finally in chapter six I address the recommendations in respect of the gaps in the institutional, policy and legislative framework, transformation of gender inequality and power relations, gender sensitization & empowerment, capacity development, political will, public-private partnerships, coping mechanisms, monitoring and evaluation and further research to inform the changing situations in water and sanitation sector.

In the next chapter, I look at the gender, patriarchy and poverty dimension in access to water and sanitation for women slum dwellers in Kibera. I explain the reason for choosing Kibera as a study site, the emergence of Kibera as a slum, the current conditions, and its characteristics. This is where I examine how gender and patriarchy operate in Kibera and how they hinder access to water and sanitation for women including the challenges. I also look at the burdens and effects of lack of access to water and sanitation.

CHAPTER TWO

The Gender, Patriarchy and Poverty Dimension in Access to Water and Sanitation for Women Slum Dwellers in Kibera

2.1 Introduction

In this chapter, I examine the position of women slum dwellers in Kibera, Kenya, concerning access to water and sanitation and how access to water is affected by their status as impoverished women. The guiding research question in this chapter is how gender inequality and power relations in families and households play a role in the vulnerability of women slum dwellers in realizing the right to water and sanitation in Kibera. The broader research problem that I address in this thesis is to investigate the link between poverty, patriarchy, and access to water and sanitation for women slum dwellers in Kibera.

The analysis of the gender dimensions of water and sanitation with specific reference to how poverty together with gender inequality and power relations in families and households play a role in the vulnerability of women slum dwellers in realizing the right to water and sanitation is intended to illustrate how gender inequality can have adverse outcomes for the marginalized and how the gender gap can be transformed for positive effects.

In the next section, I describe and explain why Kibera is the study area of this thesis and go further to give a brief history of the emergence of Kibera as a slum, its characteristics, and the current conditions. I provide the map of Kibera to show where it is located and its significance in this study on access to water and sanitation for women slum dwellers. I then explore in depth the broader issues and factors that contribute to gender inequality in access to water and sanitation for women slum dwellers in the study and the role that poverty and patriarchy plays. I finally look at the burdens and effects of access to water and sanitation on women slum dwellers.

2.2 Choice of Kibera as a Study Area, its Emergence, and its Characteristics.

Kibera slum in Nairobi Kenya is one of the largest slums in Africa, which I chose as a study site to illustrate the problems of poverty and inequality faced by slum dwellers and, more particularly, by women in access to water and sanitation. I also chose Kibera due to its vast nature and diversity in ethnic composition and non-homogeneity. One aspect of slum-dwelling, which is also present in Kibera slum is the fact that the population is usually heterogeneous as

stated above, with people from various ethnic and religious groups with differences ingrained in varying social relations settling there. It is estimated that about a quarter of households are headed by women as single parents,⁸⁰ which makes it further an interesting site for investigation on how they navigate access to water and sanitation, including other basic services.

The area as a whole is an informal settlement comprising of thirteen villages namely, Lindi, Kisumu Ndogo, Kambimuru, Soweto East and West, Makina, Kianda, Raila, Mashimoni, Silanga, Gatwekera, Laini Saba, and Kichinjio,⁸¹ with most residents being casual labourers employed in informal sectors or low paying jobs in industrial area in Nairobi with unreliable sources of income.⁸²

Kibera slum stands on 2.5 square kilometers and is roughly five kilometers away from the city center. In 1912, Kibera was a settlement in a forest outside Nairobi; as a result of World War I, it became a resettlement area for Nubian soldiers returning from service.⁸³ The word Kibera derives from a Nubian word *Kibra*⁸⁴ which means forest or jungle. The demobilized Nubian soldiers took advantage of the influx of people from the rural areas who were in search of work hence the mushrooming of temporary structures. This further led to the construction of mud and tin structures which came in handy for the high demand for housing subletting to the newcomers. The colonial government then allowed settlements to grow and opened gates to other tribes from across the country making the population of Kibera grow steadily to date.

⁸⁰ *Livelihoods & Gender in Sanitation: Hygiene and Water Services among the Urban Poor. Environmental Sanitation Field update 2005.*

<https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications...files/3347.pdf> (accessed on 3 April 2017).

⁸¹ Umande Trust, Centre on Housing Rights and Evictions and Hakijamii Trust, 2007 *The Right to Water and Sanitation in Kibera, Nairobi, Kenya.*

https://issuu.com/cohre/docs/cohre_righttowatersanitationkenya_kenya. (assessed on 3 February 2018).

⁸² Umande Trust, Centre on Housing Rights and Evictions and Hakijamii Trust, 2007 *The Right to water and Sanitation in Kibera, Nairobi, Kenya.*

https://issuu.com/cohre/docs/cohre_righttowatersanitationkenya_kenya. (assessed on 3 February 2018).

⁸³ Mutysia & Yarime. 2011:201 <http://TuEngr.com/V02/197-213.pdf>, (accessed on 30 April 2018).

⁸⁴ Parsons. 1997: 91. <http://www.jstor.org/stable/221547>. (accessed on 20 June 2019).

The lack of basic facilities in Kibera has a link to the emergence of Kibera as a slum as the demobilized Nubian Soldiers were considered as foreigners who had no right to own the land that they had settled on Taya in 2004 in a report stated that the land was categorized as belonging to the state hence the occupants were issued with Temporary Occupation Licenses (TOL) by the provincial administration, and therefore the structures were not recognized by the government.⁸⁵ This in effect, demotivated the occupants from building decent permanent structures as they could be demolished at any time without compensation.

The other reason for the emergence of Kibera slums is as Wegelin-Schuinga *et al* put it that the rents chargeable did not include the provision of basic infrastructures such as water and sanitation facilities,⁸⁶ and where water and electricity were provided the tenants complained that the bills were excessive. This explains why the structures mushroomed regardless of the absence of basic facilities. It is documented that the pressures of large scale rural-urban migration constitute a significant factor in the creation and sustenance of slums, which drives up the living costs making it unaffordable for many people who are caught in the trap.⁸⁷ The Nairobi City Council and the government were also to blame for neglecting Kibera slum by not giving priority to the provision of basic services. The slum dwellers cannot be wished away as they are here to stay; and this is common in many slum dwellings world over.

Kibera is known to lack basic services and infrastructure, such as adequate access to water, sanitation, solid waste management, roads and footpaths, storm drainage, electricity, and public lighting. Housing units are semi-permanent, and often reflective of the high population densities.⁸⁸ This makes it an attractive and vibrant site for many researchers to investigate

⁸⁵ Taya. 2004:17 <http://www.iss.co.za/pubs/Monographs/No95/Chap3.htm> (accessed on 2 August 2018).

⁸⁶ Wegelin-Schuinga & Kodo. 1997. *Tenancy and sanitation provision in informal settlements in Nairobi: revisiting the public latrine option, in Environment and Urbanization*. <http://eau.sagepub.com>(accessed on 7 June 2018).

⁸⁷ Wegelin-Schuinga & Kodo. 1997. *Tenancy and sanitation provision in informal settlements in Nairobi: revisiting the public latrine option, in Environment and Urbanization*. <http://eau.sagepub.com>(accessed on 7 June 2018).

⁸⁸ Muhele M. 2016. *“Factors Influencing Sanitation Practices in Kibera Urban Informal Settlements in Nairobi”*. Unpublished Masters dissertation at the University of Nairobi.

erepository.uonbi.ac.ke/.../Muhele_Factors%20influencing%20sanitation%20practices (accessed 4 February 2018).

various issues including factors that lead to gender inequality in access to basic services like water and sanitation.

Kibera as a site has been over-researched on different aspects of the slum dwellings ranging from issues of housing, environmental health, and hygiene, water, and sanitation, economic vulnerability of the slum dwellers, slum upgrading,⁸⁹ but the link of access to water and sanitation to poverty and patriarchy by women slum dwellers has not been investigated. The studies have failed to capture the degree and extent of gender-based disparities, how women's lived realities with access to water and sanitation fit into different development agendas to address gender equality in the accessibility of these rights. Women slum dwellers' poverty is further exacerbated by patriarchy and gender inequality⁹⁰.

Skifter Andersen, in his book titled "Urban sores, the interaction between segregation, urban decay, and deprived neighbourhoods" states that slums are the visible results of interactions between social inequality in cities and spatial inequality produced by social segregation.⁹¹ The social inequality is not only manifested in the area of housing but also in access to basic services like water and sanitation which is gendered therefore reinforcing inequality between the sexes. He further states that slums and deprived neighbourhoods can be seen as excluded places in the city, which the majority of the population deselected, and nobody wants to invest. This is true to most slum dwellings, including Kibera, which are shunned by investors, including governments in terms of serious developments and provision of essential basic services.

Slums the world over have had negative attributes and many factors have been linked to the growth of slums. These factors relate to poor urban governance and ill-designed housing

⁸⁹ UN HABITAT. 2013. *Kibera Integrated Water, Sanitation and Waste Management Project Post- project intervention Evaluation*. <https://unhabitat.org/.../kibera-integrated-water-sanitation-and-waste-management-project>. (assessed on 8 May 2018).

⁹⁰ Chant, S (2014) Exploring the "feminisation of poverty" in relation to women's work and home-based enterprise in slums of the Global South. *International Journal of Gender and Entrepreneurship*, 6 (3). pp. 296-316. <http://eprints.lse.ac.uk/64510/> (accessed on 8 February 2020)

⁹¹ Andersen, H .2019. *Urban sores: On the interaction between segregation, urban decay and deprived neighbourhoods*. 10.4324/9781315191980 at pg 4. <https://www.crcpress.com> › Andersen › book. (accessed on 26 August 2019)

policies, poverty, poor infrastructure, and social inclusion and insecure property rights.⁹² The abovementioned elements link the emergence and mushrooming of slum dwellings to socio-cultural, economic, and physical factors. Slums do not happen in a vacuum; there must be underlying factors that feed the growth.

According to UN Committee on Economic, Social, and Cultural Rights, slum dwellers should not be denied equal rights in the context of the right to water⁹³ as this is a human right that should be enjoyed by everyone without discrimination. To illustrate the importance of access to water and sanitation for slum dwellers, Satterthwaite in 2012 stated in a report that “all people including informal human settlements, and homeless persons, should have access to properly maintained water facilities and that no household should be denied the right to water on the grounds of their housing or land status”⁹⁴ This is the optimal situation but it is not currently the situation on the ground. A lot has to be done to realize this for all persons.

Figure 1. Map of Kibera showing the villages

⁹² Mahabir, Crooks, Croitoru & Agouris. 2016. *The study of slums as social and physical constructs: challenges and emerging research opportunities*.10.1080/21681376.2016.1229130. (accessed on 20 April 2018).

⁹³Office of the United Nations High Commissioner for Human Rights. “*The Right to Adequate Housing*.” https://www.ohchr.org › Documents › Publications › FS21_rev_1_Housing_en (Accessed on 8 July 2018).

⁹⁴ Satterthwaite, D. 2012. *Upgrading Informal Settlements*. https://www.researchgate.net › publication › 288162949_Upgrading_Inform...(accessed on 3 July 2019).



Source: Map Kibera Project: Maps and Statistics.(2012)⁹⁵

The above map is an illustration of the 13 villages which comprise of Kibera. A report by UN-Water in 2013 established that water and sanitation progress does not always benefit the intended recipients who are in most cases the poor and marginalized who live in informal settlements or the ones that are discriminated upon on the grounds of gender and other grounds.⁹⁶ The situation described above affects many people living in informal settlements the world over as most informal settlements are not adequately provided with basic services like running water and hygienic sanitation. As mentioned above, poverty is one of the drivers for the growth of slums, and similarly, Ortiz *et al.* stated that discrimination can also both cause poverty and be a hurdle in poverty alleviation.⁹⁷ It should be acknowledged that access to water is crucial for sustainable development and poverty alleviation in developing countries.

Several factors contribute to gender inequality in access to water and sanitation. Gender inequality has been seen as one of the root causes of women's subordination and related problems such as poverty. Tisdell *et al* in a working paper series on social economics, policy, and development, discuss the main indicators, trends, and limitations in gender inequality, poverty, and human development in Kenya. He states that the patriarchal nature in most

⁹⁵ Marras S. 2012. *GIS, web, and 3D.Tools for Holistic and Shareable Knowledge. The Eperience of the Map Kibera Project.* mapkiberaproject.yolasite.com/maps-and-statistics.php (accessed on 17 May 2018).

⁹⁶ UN Water. 2013, *Eliminating Discrimination and Inequalities in Access to Water and Sanitation.* www.unwater.org/app/uploads/2015/05/Discrimination-policy.pdf (accessed on 17 May 2018).

⁹⁷ Ortiz, Fajth, Yablonski, & Rabi. 2010. *Social Protection: Accelerating the MDGs with Equity.* http://www.unicef.org/socialpolicy/files/Social_Protection_Accelerating_... (accessed on 2 April 2017).

developing countries contributes to a lack of enjoyment of equal rights between men and women and that the allocation of resources is based on gender.⁹⁸

The manifestation of gender inequality is seen in various aspects of life like in unequal rights for women's "access to basic social services such as education and health; unequal opportunities for participation in political and economic decision-making, nationally and at the household level; unequal rights for equal work; unequal protection under the law; preference for male children; higher poverty rates for female-headed households; violence against women"⁹⁹ just to mention a few examples. When such inequality is not stemmed, then it leads to one division of the population being left without basic rights like the right to water, which is a source of livelihood.

Academics and policymakers have given gender inequality and decision-making powers within the household attention. Devoto *et al* in a report on piped water adoption in Morocco emphasize that a woman's say in household decisions as one component of her well-being and thus an end in itself, but states that the keen interest in female empowerment stems largely from the belief that it is a means of improving children's outcomes.¹⁰⁰ This resonates well with the drive for women to enhance the livelihoods of their families. Most women work in the quest to uplift their status and that of their children.

The human right to water entitles everyone without discrimination to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use; which includes water for drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene.¹⁰¹ Likewise, the human right to sanitation entitles everyone

⁹⁸ Kiriti & Tisdell. 2003. *Gender Inequality, Poverty and Human Development in Kenya: Main Indicators, Trends and Limitations*. <https://ageconsearch.umn.edu/bitstream/105587/2/WP%2035.pdf> (accessed on 8 May 2018).

⁹⁹ It should be noted that from the above report that gender inequality is not perpetuated exclusively through differential access to and control over material resources but they are reinforced by stereotypes that restrict the behaviors of men and women leading to inequality.

¹⁰⁰ Devoto, Duflo, Dupas, Pariente, Pons. 2012. *Happiness on tap: piped water adoption in urban Morocco*. <https://web.stanford.edu/~pdupas/MoroccoWaterConnections>. (accessed on 10 August 2018).

¹⁰¹ UN Water. 2010. *The human right to safe drinking water was first recognized by the UN General Assembly and the Human Rights Council as part of binding international law in 2010 and the human right to sanitation was explicitly recognized as a distinct right by the UN General Assembly in 2015*. <https://www.unwater.org/water-facts/human-rights>. (accessed on 4 May 2017).

without discrimination to physical and affordable access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, which provides for privacy and ensures dignity.¹⁰² Domestic chores based on assigned gender roles on women and girls in most societies is contributory to the discrimination and inequalities that they experience in the enjoyment of the human rights to water and sanitation.

According to the Kenya National Slum Upgrading and Prevention Policy 2014, slum dwellers face many challenges, which include social, political, and economic exclusion and constitute a significant cause of inequality. The exclusion of slum dwellers is a direct manifestation of the current unequal power relations, which is also rampant in Kibera slums.¹⁰³ The policy further states that the unequal power relations have been institutionalized by the existence of rules, structures, institutions, authorities, and procedures and processes that do not confer any formal recognition of the poor as key actors in governance.¹⁰⁴ The power dynamics in the society drive the rules and structures which entrench the operations and are further influenced by the gender relations in families. This makes it difficult for the marginalized to benefit from the basic services that they are entitled to.

The traditional structure of the household unit in African societies makes the males the dominant gender in all spheres of life and reinforces gender inequality. These conventional roles spill to organizational policies and practices to maintain women's marginalized work roles¹⁰⁵ and become entrenched in a gender-bias organizational culture.¹⁰⁶ This explains why

¹⁰² Winkler I. 2016. *The Human Right to Sanitation*. <https://scholarship.law.upenn.edu/jil/vol37/iss4/5> (accessed on 3 May 2017).

¹⁰³ *The National Slum Upgrading and Prevention Policy (NSUPP) Government of Kenya, 2014* <https://hakijamii.wordpress.com/2017/08/23/the-national-slum-upgrading-and-prevention-policy-reclaiming-housing-as-a-universal-right/> (accessed on 4 May 2017).

¹⁰⁴ *The National Slum Upgrading and Prevention Policy (NSUPP) Government of Kenya, 2014* <https://hakijamii.wordpress.com/2017/08/23/the-national-slum-upgrading-and-prevention-policy-reclaiming-housing-as-a-universal-right/> (accessed on 4 May 2017).

¹⁰⁵ Bobbitt-Zeher, D. 2011. *Gender discrimination at work: connecting gender stereotypes, institutional policies and gender composition of the workplace*. <http://dx.doi.org/10.1177/0891243211424741> (accessed on 5 May 2017).

¹⁰⁶ Prescott, & Bogg, 2011a. *Career Attitudes of Men and Women Working in the Computer Games Industry. Journal for Computer Game Culture*. <https://www.eludamos.org/index.php/eludamos/article/view/html2> (accessed on 5 May 2017).

so much sensitization has been done on women's empowerment and gender equality but little has been achieved especially on the issue of access to water and sanitation.

The other factor, which is a manifestation of gender inequality for slum dwellers, is marginalization, which results in material and resource deprivation. This is relevant because if the slum dwellers are deprived of resources, then they are not able to fend for themselves in the quest for access to clean water and hygienic sanitation where the government does not avail services. This would require additional measures to be taken by the slum dwellers to buy water for domestic use, and when the resources are not available, they resort to unorthodox means for survival. Related to this are the issues of deprivation, underemployment, and insecurity, which affect women slum dwellers in their bid to access water and sanitation.

Poverty is also a factor that denies people access to basic rights, such as water, sanitation, and hygiene, and women and girls are the most affected when such denial occurs.¹⁰⁷ Similarly, poverty is a significant contributor to gender inequality which is in the areas of income, employment, human capabilities that come with access to entitlements in education, health care and nutrition, access to assets, and economic resources such as land and housing.¹⁰⁸ It also includes access to basic services such as water and sanitation and perceptions of poverty and powerlessness and voicelessness.¹⁰⁹ Likewise, there is a need to address the gender analysis in poverty reduction strategies which continue to take the household as the basic unit of analysis assuming the household to be gender-neutral in the intrahousehold allocation of resources as seen in UNHBITAT report on navigating gender in development in water and sanitation in

¹⁰⁷ UN Office of the High Commissioner for Human Rights, 2006. *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*. <https://www.refworld.org/docid/46ceaf92.html> (accessed on 15 February 2018).

¹⁰⁸ WaterAid. 2018. *Closing the Gender Gap: Access to Water and Toilets is a Justice Issue for Women*. <https://washmatters.wateraid.org/.../closing-the-gender-gap-access-to-water-and-toilets>. (accessed on 30 August 2018).

¹⁰⁹ WaterAid. 2018. *Closing the Gender Gap: Access to Water and Toilets is a Justice Issue for Women*. <https://washmatters.wateraid.org/.../closing-the-gender-gap-access-to-water-and-toilets>. (accessed on 30 August 2018).

urban areas.¹¹⁰ This gives the analysis a skewed approach which does not result in appropriate outcomes.

Most women are affected by structural changes in the world economy which has necessitated a global concern to promote gender equality.¹¹¹ “Access to safe drinking water is a fundamental human right and essential for achieving gender equality, sustainable development, and poverty alleviation.”¹¹² In order for women to devote more time in pursuit of education, income generation and even the construction and management of water and sanitation facilities, they must be provided with physically accessible clean water and sanitation.¹¹³ There is, therefore, a need to engender human rights, which must take into account the power relations in which rights are exercised and adequate allocation of resources in water and sanitation.

Carruso in a report titled “Women still carry most of the world’s water” associates fetching water with many burdens and risks on women’s overall wellbeing. He states that an insufficient supply of safe and accessible water poses extra risks and challenges for women and girls.¹¹⁴ “The new UNICEF/WHO report states that 263 million people worldwide have access to water sources that are considered safe but need to spend at least 30 minutes walking or queuing to collect their water.” It further states that another 159 million get their water from surface sources that are considered to be the most unsafe, such as rivers, streams, and ponds, and are

¹¹⁰ UN HABITAT. 2006. *Navigating Gender in Development of Water and Sanitation in Urban areas. A Rapid Gender Assessment of the Cities of Bhopal, Gwalior, Indore and Jabalpur in Madhya Pradesh, India.* mirror.unhabitat.org/downloads/docs/6745_9802_Navigating_Gender.pdf. (accessed on 16 February 2018).

¹¹¹ Gender Water and Sanitation, UN Water Policy Brief, This policy brief was developed by the Inter-agency Task Force on Gender and Water (GWTF), a sub-programme of both UN-Water and the Interagency Network on Women and Gender Equality (IANWGE) in support of the International Decade for Action, ‘Water for Life,’ 2005–2015. https://www.un.org/waterforlifedecade/pdf/un_water_policy_brief_2_gender.pdf (accessed on 8 March 2018).

¹¹² See Gender, Water and Sanitation Policy Brief. https://www.un.org/waterforlifedecade/pdf/un_water_policy_brief_2_gender.pdf (accessed on 8 March 2018).

¹¹³ The UN Water Policy brief on Gender, Water and Sanitation argues that in order for women to have time to engage in other activities including income generating ones, they must be provided with clean and physically accessible water and sanitation.

¹¹⁴ Caruso B. 2017. *Women still carry most of the world’s water*, <https://theconversation.com/women-still-carry-most-of-the-worlds-water-81054> (accessed on March 2018).

likely to require over 30 minutes to collect.¹¹⁵ This increases the burden on women in water collection which makes it a gender issue.

According to research conducted in Nairobi informal settlements,¹¹⁶ the dynamics of water provisioning in informal settlements are complex as water queues are the order of the day in the slum area. The slum dwellers depend on particular water points whereby water vendors operate hand-drawn carts and ferry water from questionable sources such as, sewers and ditches.¹¹⁷ The research further indicates that water shortage forces the residents to avoid bathing or washing, further aggravating disease, and infection.¹¹⁸ Most residents often resort to harvesting rainwater or collecting water from broken pipes, which is dangerous to their health due to contamination.¹¹⁹

The burden of carrying water over long distances leads to curved spines, pelvic deformities, and numerous other injuries in women and children. Women have been reported to suffer from health complications as a result of carrying heavy water loads.¹²⁰ Asaba *et al* also described how women carrying water by hand led to chest pain, headache, muscle aches and sometimes nosebleeds.¹²¹ These complications cannot be said to be specific to women of a particular location as the burdens of fetching water are similar in most developing countries where women still shoulder the same. Therefore this also applies to Kibera, where fetching water is the norm as there is inadequate piped and safe water for the slum residents.

¹¹⁵ UNICEF /WHO. 2017. *Progress on Drinking Water, Sanitation and Hygiene*. https://www.unicef.org/publications/index_96611 (accessed on 7 June 2018).

¹¹⁶ Muggah, R. 2011. *Urban Resilience in Situations of Chronic Violence Case Study of Nairobi, Kenya*. https://www.academia.edu/Urban_Resilience_in_Situations_of_Chronic (accessed on 30 October 2017).

¹¹⁷ Muggah R. 2011. https://www.academia.edu/Urban_Resilience_in_Situations_of_Chronic (accessed on 30 October 2017).

¹¹⁸ Use of unclean water or less water is a recipe for further problems. These are some of the pros and cons of the coping strategies of the slum dwellers in access to water and sanitation.

¹¹⁹ See Gender, Water and Sanitation Policy Brief. https://www.un.org/waterforlifedecade/pdf/un_water_policy_brief_2_gender.pdf (accessed on 8 March 2018).

¹²⁰ Geere, Bartram, Bates, Danquah, Evans, Fisher & Hunter. 2018. *Carrying Water May be a Major Contributor to Disability from Musculoskeletal Disorders in Low Income Countries: A Cross-sectional Survey in South Africa, Ghana and Vietnam*. <https://www.ncbi.nlm.nih.gov/pubmed/> (accessed on 10 March 2019).

¹²¹ Asaba, Fagan, Kabonesa, & Mugumya. 2013. *Beyond Distance and Time: Gender and the Burden of Water Collection in Rural Uganda*. <https://repository.upenn.edu/vol2/iss1>. (accessed on 8 May 2017).

UNICEF estimated that women spent 16 million hours collecting water each day in a study that was conducted in 25 countries in sub-Saharan Africa, and further that “women in a recent study in Kenya reported spending an average of 4.5 hours fetching water per week, causing 77 percent to worry about their safety while fetching and preventing 24 percent from caring for their children.”¹²² Women generally carry the main responsibility for fetching water; however, in many countries and in particular in urban areas, men also take on a considerable share of this work.

Women have been forced to use unorthodox means to access the water by trading sexual favors to either gain access to water or to jump the water queue. The trading of sex for water is usually done by women experiencing poverty.¹²³ Violence occurring between women at the water points is also as a result of the scarcity. The burdens explored above are a manifestation of the daily lives of women slum dwellers in Kibera who have to contend with the hardships due to lack of gender equality in access to water and sanitation and other basic services.

In the next section, I look at the challenges Kibera women slum dwellers face with access to water and sanitation. The reason for the discussion of the problems is to highlight the difficulties in attaining the five standards that are provided for in the General Comment No. 15 for measuring the right to water and sanitation being availability, accessibility, quality, acceptability, and affordability. The five standards cut across the areas of challenges that I discuss being economic, socio-cultural, political, legal and institutional in access to water and sanitation.

2.3 Challenges Women Slum Dwellers Face in Access to Water and Sanitation

When looking at the challenges that women slum dwellers face in respect to lack of access to water and sanitation in Kibera, it is crucial to refer to UN General Comment No. 15 that provides for 5 standards for measuring the right to water and sanitation being availability,

¹²² Carruso ,B, 2017. *Women Still Carry Most of the World's Drinking Water*. <https://qz.com/1033799/women-still-carry-most-of-the-worlds-water/> (accessed on 5 February 2018).

¹²³ Pommells, M. 2015. *Water, Sanitation, and Hygiene as a Gender Based Violence Risk: How Inadequate Access To Clean and Reliable Water Increases Rates Of Violence Against Women in East Africa*. Master's Thesis in Social Work, McMaster University. https://macsphere.mcmaster.ca/bitstream/bitstream/11362/44441/1/Pommells_Morgan_S_FinalSu... (accessed on 20 March 2017).

accessibility, quality, acceptability, and affordability.¹²⁴ The Committee emphasizes that water must be adequate for human dignity, life, and health. The Committee further states that adequacy should not be interpreted narrowly, and the factors of availability, quality and accessibility must always be part of the assessment of adequacy.¹²⁵ Access to water and sanitation must comply with human rights principles of non-discrimination and equality, which implies meaningful participation in decision-making and empowerment that requires accountability and transparency.¹²⁶ The imperative of non-discrimination in all aspects is important for ensuring that access to water and sanitation is guaranteed for all without denying one gender the right.

The human rights criteria with respect to accessibility requires that water supply and sanitation facilities must be accessible within, or in the immediate vicinity of each household, educational institution, workplace and public place and the time necessary to fetch 20 litres of water should typically not exceed 30 minutes (including waiting times), and the distance should be less than one kilometer (both ways).¹²⁷ WHO guidelines on the criteria on availability requires that at least 20 litres per person per day, and basic sanitation facilities open for use at all times. On the issue of quality, water must be free from substances hazardous to human health and toilets must be hygienic and environmentally safe and ensure privacy.¹²⁸ In respect of affordability, the requirement is that the costs for water and sanitation services should not exceed 5 percent of a

¹²⁴ General Comment No. 15 para:12.

¹²⁵ The interpretation should be holistic without leaving other components of the assessment.

¹²⁶ The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (art. 2, para. 2), and equally between men and women (art. 3), pervades all of the Covenant obligations. The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water.

¹²⁷ See also General Comment No. 4. 1991. Para. 8 (b), General Comment No. 13. 1999, para. 6 (a) and General Comment No. 14. 2000, paras. 8 (a) and (b). Household includes a permanent or semi-permanent dwelling, or a temporary halting site.

¹²⁸ See Bartram & Howard 2002. *Domestic water quantity, service level and health: what should be the goal for water and health sectors*. WHO, 2002. See also P.H. Gleick, 1996. *Basic water requirements for human activities: meeting basic needs*.

household's income. Finally, on acceptability, the water provision and sanitation facilities must be culturally acceptable.¹²⁹

The questions that we must ask ourselves are whether water and sanitation services are available within or in immediate vicinity; whether the water is free from microbes and parasites, chemical substances and radiological hazards that constitute a threat to a person's health; whether the sanitation services are hygienically and technically safe to use; and whether the water is affordable.¹³⁰ The other issue that is of importance is whether the access is equitable without discrimination leading to the exclusion of the poor, vulnerable and marginalized groups of the society.

Howard and Bartram argue that it is important to understand the dimension of the definition of access to water by underscoring the separation between improved and unimproved water sources, which has been discussed above in respect of quality, quantity, and proximity.¹³¹ Kibera slums rarely meet the definition of improved water sources, which are inside house connections, standpipes, protected wells, and pumps. Most of the slum dwellers in Kibera would fall under the category of unimproved water sources that are acquired from vendors and water trucks, as well as the water is drawn from streams or unprotected wells. This category would not be fit to be counted as having access to water.¹³²

Summary of the requirement for water service level to promote health

Service level	Distance/time	Likely volumes of water collected	Needs met	Intervention priority
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¹²⁹ Sanitation involves privacy of an individual and even if systems are properly designed, they may not be appropriate when social and cultural factors affecting sanitation and hygienic practices of the community members are not considered. This involves consultation and consensus with the beneficiaries to ensure that certain aspects of their culture are incorporated in the projects.

¹³⁰ Albuquerque 2014. *Realizing the human rights to water and sanitation: A Handbook by the UN Special Rapporteur Catarina de Albuquerque*.

¹³¹ Howard & Bartram. 2003. *Domestic water quantity, service level and health / Guy Howard and Jamie Bartram*. World Health Organization. <https://apps.who.int/iris/handle/10665/67884> (accessed on 6 April 2018).

¹³² UNDP 2006, *Human Development Report, Beyond Scarcity: Power, Poverty and the Global Water Crisis*. [hdr.undp.org › content › human-development-report-2006](http://hdr.undp.org/content/human-development-report-2006) (accessed on 9 May 2018).

No access	More than 1 kilometre/more than 30 minutes	Very low (often below 5 litres per capita per day)	Consumption cannot be assured Hygiene practice compromised Basic consumption may be compromised	Very high Provision of basic level service
Basic access	Within 1 kilometre/within 30 minutes round trip	Average unlikely to exceed approximately 20 litres per capita per day	Consumption should be assured Hygiene may be compromised Laundry may occur off-plot – i.e., away from home	High Hygiene education Provision of intermediate level of service
Intermediate access	Water provided on plot through at least one tap (yard level)	Average of approximately 50 litres per capita per day	Consumption assured Hygiene should not be compromised Laundry likely to occur on-plot – i.e., within the confines of the household	Low Hygiene promotion still yields health gains Encourage optimal access
Optimal access	Supply of water through multiple taps within the house	Average of 100-200 litres per capita per day	Consumption assured Hygiene should not be compromised Laundry will occur on-plot	Very low Hygiene promotion still yields health gains

(Source: Howard and Bartram, 2003)¹³³

The table above gives an illustration of access levels, time taken to access water, and security of the water collected from different sources. This implies whether access is categorized as improved or unimproved water sources. The unimproved water sources come with their share of challenges to the users.

A 2004 UN report on the obstacles faced by developing countries in meeting water and sanitation needs, indicates that “factors can be related to health, poverty, weak governance, government inefficiency, water wastage, ineffective water management, inadequate infrastructure and poor policies on water distribution.”¹³⁴ The report further highlights other

¹³³ See Howard & Bartram. 2003:22.

¹³⁴ United Nations. 2004. *Obstacles Faced by Developing Countries in Meeting Water, Sanitation needs highlighted in Sustainable Development Commission*. <https://www.un.org/press/2004/envdev767.doc.htm>. (accessed on 15 June 2017).

challenges to meeting water and sanitation needs and sustainable development as a lack of resources, lack of political will, and little policy coherence in the sector.¹³⁵ These factors contribute immensely to women slum dwellers' challenges in conforming to the 5 standards enumerated in General Comment No. 15 for measuring access to water and sanitation.

Findings from research carried out in 2008 on Sanitation and Hygiene in Kibera Slums, Nairobi established that there are seven sanitation and hygiene concerns that women experience, that is, toileting, water, poverty, problems caused by poor sanitation, infectious diseases, insecurity, and gender inequality.¹³⁶ We should also note that some of the barriers are due to a disability, age, and ethnicity amongst the slum dwellers.

Mahatma Gandhi, while leading a non-violent movement for India's independence from the British in 1947 said that sanitation is more important than political independence.¹³⁷ This was about the need to improve hygiene and cleanliness in the country. This was said many decades ago, but the same is still relevant not only to India but also to other parts of the world that are still facing challenges with water and sanitation issues Kibera included. How can you say that you are independent and yet you lack the most basic services like water and sanitation that are personal?

Some of the challenges that Kibera women slum dwellers face are, queuing for long hours to fetch water, living in unhygienic conditions, defecating in the open or use of "flying toilets" risk of sexual violence, overburdened with non-income generating activities, poverty, voice poverty and gender inequality amongst others.¹³⁸ Further, a 2006 UNDP report states that one

¹³⁵ United Nations. 2004. *Obstacles Faced by Developing Countries in Meeting Water, Sanitation needs highlighted in Sustainable Development Commission*. <https://www.un.org/press/2004/envdev767.doc.htm>. (accessed on 15 June 2017).

¹³⁶ Karanja & N'gan'ga. 2008. *Sanitation and Hygiene in Kibera Slums. Women's Concerns and Nurse's promotional tools*. <https://www.semanticscholar.org/paper/Hygiene-in-Kibera-Slums,-Nairobi...> (accessed on 3 March 2018).

¹³⁷ Mahatma. 1947.

¹³⁸ Maili Saba Research Report. 2005. *Livelihoods and Gender in Sanitation Hygiene Water Services among Urban poor*. <https://www.odi.org/sites/odi/assets/publications-opinion-files>. (accessed on 21 June 2018).

in three people living in Kibera slums identified “flying toilets” to be a primary mode of excreta disposal available to them. This is further complicated when the plastic bags used as flying toilets block the drainages or pile up with no proper collection system either by the County government or the local communities.¹³⁹ Currently, Kenya has banned the use of plastic bags, which the Kibera slum dwellers use as an alternative to solve their toileting issues. This has further exacerbated their plight. It is for that reason that providing physically accessible clean water is essential to enable women and girls to achieve sustainable development.¹⁴⁰

I therefore discuss the economic, socio-cultural, political, legal, and institutional challenges that Kibera women slum dwellers face and the coping strategies that they have devised to help them access water and sanitation.

Fonjong, on the challenges of the water crisis on women’s socio-economic activities in a Cameroon Municipality, states that the economic cost of water crisis can be very severe for low-income societies whose activities revolve around water, ranging from domestic to economic needs.¹⁴¹ Women slum dwellers like the ones in Kibera are mostly at the bottom of the pile with low incomes for survival. The rising cost of water, therefore, creates an economic challenge, as they are not able to afford the prices set or buy the water from the water vendors in the quantities and quality that they require.¹⁴² The cost of water in urban areas is not affordable for the poor who are likely to pay much more than the middle-class in urban areas of Kenya, thus inhibiting their enjoyment of the right to water.¹⁴³ This in effect, contributes to the challenges women slum dwellers face not only concerning access to water and sanitation but also in their day to day activities.

¹³⁹ UNDP. 2006. *Human Development Report 2006: Beyond Scarcity: Power, Poverty and the Global Water Crisis*. <https://www.undp.org › undp › library › corporate › HDR › 2006 Global HDR> (accessed on 2 April 2017).

¹⁴⁰ United Nations. 2005. *Women 2000 and Beyond: Women and Water*. <http://www.un.org/womenwatch/daw/public/Feb019> (accessed on 10 June 2019).

¹⁴¹ Fonjong & Ngekwi. 2014:122.

¹⁴² This speaks to the issue of affordability and accessibility of water by the poor and marginalized.

¹⁴³ Uwazi. 2010. *It’s Our Water Too. Policy brief 09/2010, Uwazi, Nairobi*. https://www.twaweza.org › uploads › files › Its our water too_English. (accessed on 9 April 2019).

Women have inadequate access to water points, which are far from their houses/and face problems with water accessibility, cost, and quality. Amuyunzu, in a 2004 report, states that the landlords also ration water such that it is only available on specific days of the week and at particular times.¹⁴⁴ This forces women to look for alternative water storage that comes at an extra cost of buying storage containers. The expense of bulk water storage tanks makes them unaffordable to the poor, and the tenure insecurity of semi-permanent dwellings discourages the installation of infrastructure such as large water tanks.¹⁴⁵ The assumption is that the women slum dwellers have the money to buy the water and the storage containers and finally a safe place to store the water without interference and contamination. This might not be the case as the structures they live in have limited space as per UN- HABITAT's¹⁴⁶ operational definition for slum dwellers, which describes a 'slum household' as "a group of individuals living under the same roof lacking one or more of the following conditions:

- (a) access to improved water,
- (b) access to improved sanitation facilities
- (c) sufficient living area - not overcrowded
- (d) structural quality/durability of dwellings
- (e) Security of tenure.”

In the case of Kibera slums, the five conditions that describe slum households are a reality to the slum dwellers. Would they have enough space to erect tanks or many containers for water storage when they lack sufficient living area and security of tenure of the land they live on? The ones who have the space use one corner, wall or under-table space of each ten foot by ten foot, mud wall in tin-roof dwelling to store multiple containers in which water can be saved.¹⁴⁷ With uncertain access to water, each household has to store water within the house for fear of other people taking advantage of and using it without permission.

¹⁴⁴ Amuyunzu-Nyamongo & Taffa. 2004. The Triad of Poverty, Environment and Child Health in Nairobi Informal settlements. <https://www.theseus.fi/bitstream/handle/Sanitation+and+Hygiene+Kib...> (accessed on 20 June 2019).

¹⁴⁵ UNDP 2011. *Small-Scale Water Providers in Kenya: Pioneers or Predators?* https://www.undp.org/home/environment-energy/water_governance (accessed on 5 May 2019).

¹⁴⁶ See UNHABITAT 2002. *operational definition of slums*.

¹⁴⁷ Crow & Odaba. 2009. *Scarce, Costly and Uncertain: Water Access in Kibera, Nairobi*. <https://escholarship.org/content> (accessed on 2 May 2017).

The other problem is that women resort to various forms of formal and informal means of water provision to their families, but they have little means of verifying the quality supplied to them by mobile vendors. Sometimes, even fixed-point vendors may be offering water that has been diverted illegally from the piped network via substandard pipes.¹⁴⁸ This speaks to the issue of quality and accessibility of water as per the standard in the General Comment No. 15. Women slum dwellers face complex challenges that have far-reaching effects including denying them the benefits of living in an urban area, which in most cases should have the basic amenities and services.

Chant argues that when time burden is not shared equitably between men and women, it leads to women not benefitting from the services that are offered in the urban areas.¹⁴⁹ This further makes the cost of living to be unaffordable, where basic services are not availed to the slum dwellers. Some Kibera women slum dwellers are employed as domestic workers in the upmarket suburbs where they walk long distances to their workplace. They also use water and sanitation facilities at their workplace during the day but are forced to resort to their usual strategies of “flying toilets” at night in the slums.¹⁵⁰ The work that the women might engage in, in most cases, is labour intensive and time consuming with little pay, which is not commensurate to the job done. The issue boils down to access to resources and survival for the fittest. Poor, elderly and disabled women cannot compete favourably with the younger and able-bodied ones in regards to access to safe water and sanitation. They may compromise standards to survive. The elderly and disabled women in Kibera slums suffer more due to their condition and disability more so with access to sanitation. If measures are not put in place, then their plight worsens.

Women do not always have financial resources to pay for the government set water tariffs which keep rising throughout the world and primarily determined by government intervention

¹⁴⁸ With the diversion and use of substandard pipes there is a likelihood of contamination through leakage and mixing the water with sewage and garbage.

¹⁴⁹ Chant S. 2011b. *Gender and the prosperity of cities, Final draft of lead chapter prepared for UN-Habitat .State of Women in Cities 2012/13*. [mirror.unhabitat.org › pmss › getElectronicVersion](http://mirror.unhabitat.org/pmss/getElectronicVersion) (accessed on 4 May 2017).

¹⁵⁰ This is a reality for survival for the women who engage in extra work to get something on the table for their families.

in terms of subsidies, demand and cost of supply.¹⁵¹ Governments have in the past implemented the phenomenon of water privatization which in effect has further marginalized the women who form the bulk of the poor who cannot afford the privatized services. This increases not only the cost of water but also other services like health, which may be necessary due to the impacts of using water whose quality has not been verified.

The Interagency Task Force on Gender and Water highlights that “a majority of the world’s poor, women are significantly affected when water services are privatized and that when the price of water increases, the burden on women as caregivers and household and economic providers also increases.”¹⁵² UNDP, GWA, IRC, Cap-Net and GWP highlight further that “for women, privatization means an increase in water user rates and thus affects poor people negatively, particularly poor women and female-headed households and, furthermore, that privatization of water and sanitation fails to take into account community water management experiences from a gender perspective”.¹⁵³

That is why Rodgers *et al* argue that when water is treated purely as an economic good, in reality, it threatens a fundamental human notion that water is so elemental to life that it deserves a unique status in our societal system.¹⁵⁴ The water pricing should be considered according to the use and further affirmative action put in place for the poor and the marginalized who cannot afford the market price set.

Kibera informal settlements suffer from a host of challenges as the residents live under mass poverty leading to a collection of sustainability challenges. Mutisya and Yarime, in a research conducted in 2011 in Kibera, established that access to clean water, improved sanitation,

¹⁵¹ Clark E 2007. “Water Prices Rising Worldwide,” <http://www.earth-policy.org/Updates/2007/Update64.htm>. (accessed on 20 June 2018).

¹⁵² UN Interagency Task Force on Gender and Water. 2005. ‘A Gender Perspective on Water Resources and Sanitation,’ <https://www.unwater.org/publications/gender-perspective-water-resourc..> (accessed on 12 February 2018).

¹⁵³ UNDP, GWA, IRC, Cap-Net and GWP, 2006. ‘Resource Guide: Mainstreaming Gender in Water Management,’ <https://www.undp.org/dam/IWRMGenderResourceGuide-English-200610> (accessed on 10 March 2018).

¹⁵⁴ Rogers *et al* 2000. *Water as a Social and Economic Good: How to Put the Principle into Practice.* https://www.researchgate.net/publication/42765746_Water_as_a_Social_... (accessed on 20 June 2018).

suitable housing, solid waste management, proper health care, security, and energy are some of the most fundamental challenges faced by slums dwellers.¹⁵⁵ They further found out that the massive pollution of Kibera with human refuse, garbage, soot, dust, human and animal feces, and all sorts of wastes is worsened by open sewage and lack of drainage systems. The inadequacy of drainages also plays a role in increasing the health challenges for the residents. Where the drainage systems do not exist or are blocked, children are more vulnerable to disease transmission due to direct contact with the contaminated water.

Further, the stagnant waters are breeding grounds for mosquitoes and other vector-borne diseases. These challenges come with the added cost of treating infections caused by the use of unclean water and sanitation facilities. Does this meet the set standards of availability, acceptability, quality accessibility and affordability? The answer would be in the negative.

Women in Kibera have to contend with many challenges in accessing water as some pipes pass through flowing sewage or broken sewer pipes and, therefore, may contaminate the water.¹⁵⁶ This has adverse health effects on them. There are also illegal water vendors who disconnect water pipes resulting in a lack of water for some days in the week.¹⁵⁷ This is in a bid to create a shortage to make money from the slum dwellers that have no choice but to buy the water from them. In the same study, it was established that the challenges faced by women concerning water and sanitation come with additional economic costs in monetary terms and time poverty. Some of the attendant problems listed were that hygiene standards went down because some people could neither take a bath nor wash their clothes for many days.

Further that buying water was expensive as some would hire porters to carry the water from the long distances.¹⁵⁸

¹⁵⁵ Mutysia & Yarime. 2011. *Understanding the Grassroots Dynamics of Slums in Nairobi: The Dilemma of Kibera Informal Settlements*. <http://www.TuEngr.com>, <http://go.to/Research> (accessed on 1 August 2017).

¹⁵⁶ Walubwa. 2010. *Kenya Slum Upgrading Programme. An Analysis of Kibera Integrated Water, Sanitation and Waste Management Project*. MA Thesis, Department of Geography and Environmental Studies, University of Nairobi, Kenya. [erepository.uonbi.ac.ke › bitstream › handle › Walubwa_Kenya_slum_upgr..](http://erepository.uonbi.ac.ke/bitstream/handle/Walubwa_Kenya_slum_upgr..) (accessed on 6 November 2018).

¹⁵⁷ See *Kenya Slum Upgrading Programme in Kibera*.

¹⁵⁸ See *Kenya Slum Upgrading Programme in Kibera*.

A case study in Kibera revealed that very few people have toilets less than 15 meters from the house, and women feel insecure at night when they go to the toilets. It further established that toilets within 1-5 meters of reach pose lousy odour due to poor construction, insufficient cleaning, and ventilation and that the bad smell attracts flies, which spread diseases through food and water contamination.¹⁵⁹ This in effect, increases the disease burden on the residents, further depleting the little income that they have for survival. Research has documented that women and girls may delay urination and defecation, but it is not possible to stop menstrual flow. The lack of facilities also exacerbates anxiety and stress during menstruation and increases their vulnerability.¹⁶⁰ Insecurity is also a significant concern for women regardless of the distance of the toilet from the house. Insecurity should also be looked at in economic terms as it leads to unforeseen repercussions. The insecurity can cause physical pain due to economic uncertainty not knowing where to get your next meal or how to deal with providing basic services for yourself and your family.

Adequate and hygienic sanitation is essential in women's and girls' lives as it is stated that "on average, a woman menstruates 3,500 days of her life, yet little attention is given to her menstrual hygiene needs."¹⁶¹ Many girls are forced to use unhygienic sanitary methods, such as rags, dirt, ashes or newspaper to collect menstrual fluid as other methods are unaffordable, unavailable or unknown due to stigma and taboo. Menstruation which is a specific reproductive biological process for women is also expensive as women and girls have to buy sanitary pads, water for cleaning and find restrooms to relieve themselves. Kagiri blames access to water and sanitation on poverty, unemployment, poor governance and overcrowding in Kibera.¹⁶² The

¹⁵⁹ Karanja & N'gan'ga. 2008. *Sanitation and Hygiene in Kibera Slums. Women's Concerns and Nurse's promotional tools*. <https://www.semanticscholar.org/paper/Hygiene-in-Kibera-Slums,-Nairobi...> (accessed on 3 March 2018).

¹⁶⁰ Sommer *et al* 2016. *Managing Menstruation in the Workplace: An Overlooked Issue in low- and middle-income Countries*. <http://doi.org/10.1186/s12939-016-0379-8> (accessed on 7 September 2019).

¹⁶¹ WSSCC, Highlights Report 2013. *Celebrating Womanhood: Menstrual Hygiene Management*. http://www.wsscc.org/sites/default/files/content/Research_article_files/mhm_8_march_highlights_report.pdf. (accessed on 4 June 2019).

¹⁶² Kagiri, E. 2007. *Integrating Environmentally Sustainable Methods to Upgrade Basic Sanitation: Case Study of Soweto East Kibera Slum*. Master's Thesis University of Jyväskylä Faculty of Science Department of Biological and Environmental Science. citeseerx.ist.psu.edu/viewdoc/download (accessed on 13 February 2018).

correlation between poverty and access to water and sanitation runs through the lives of Kibera slum dwellers.

The manifestations of poverty include hunger and malnutrition, limited access to education and other basic services, social discrimination, and exclusion, as well as the lack of participation in decision-making. It is more than the absence of income and resources to ensure a sustainable livelihood. Its manifestations¹⁶³ are that impoverished people living in urban slums like Kibera are forced daily to significantly compromise their long-term well-being to meet their short-term survival needs.¹⁶⁴ This is to cope with the pressures of fending for their families. Does it mean the poor must pay the penalty to survive or suffer silently for their plight, which they might have or have no choice?

Mendoza explains that the concept of the poverty penalty refers to “the relatively higher cost shouldered by the poor, when compared to the non-poor, in their participation in certain markets.”¹⁶⁵ In the report where he explores why the poor pay more, he argues that the poor are exposed to higher expenditure due to their disadvantaged position in the water, which leaves them with no choice but to rely on unprotected water sources at no monetary cost that carries severe health risks.¹⁶⁶ The irony is that those who do not have are the ones who suffer the penalty of paying more for the water and sanitation services.

The poor suffer disproportionately as they are not able to access proper sanitation and further that they are likely to experience the adverse effects of lack of adequate sanitation.¹⁶⁷ This situation puts the poor and marginalized who live in the slums between a rock and a hard place.

¹⁶³ UN Sustainable Development Goals 2015. https://www.undp.org/corporate/brochure/SDGs_Booklet_Web_En. (accessed on 13 May 2017).

¹⁶⁴ IRIN 2013. *The hidden crisis in urban slums*. www.irinnews.org/node. (accessed on 2 May 2017).

¹⁶⁵ Mendoza 2008. *Why do the poor pay more? Exploring the poverty penalty concept*. <https://onlinelibrary.wiley.com/doi/abs/10.1002/jid>. (accessed on 15 May 2017).

¹⁶⁶ The concept of penalty poverty describes the phenomenon that poor people tend to pay more to eat, buy, and borrow than the rich. The term became widely known through a 2005 book by C. K. Prahalad, *The Fortune at the Bottom of the Pyramid*. https://en.wikipedia.org/wiki/Poverty_penalty (accessed on 23 March 2017).

¹⁶⁷ WSP. 2012, *Economic Impact of Poor Water and Sanitation in Africa, Kenya*. <https://www.zaragoza.es/contenidos/medioambiente/onu/825-eng-v6>. (accessed on 5 April 2017).

They have to choose between looking for food to put on the table and looking for access to sanitation, whereby both come at a cost. As earlier alluded to, women are robbed of time that they could use to engage in income-generating activities while fetching water for the family and caregiving. This contributes to their low levels of income compared to their male counterparts.¹⁶⁸ The time- poverty, if calculated in monetary terms, would show the amount of money women lose when tasked with the responsibility of fetching water. This is also relevant to access to hygienic sanitation that is not readily available in informal settlements.

A significant barrier for accessing utility-piped water is the cost of connection, which includes the fees paid and the materials to be used in the connection. It may also be that the household is located far from any suitable point of connection to the often underdeveloped water networks in developing countries, a factor further adding to the cost.¹⁶⁹ The monthly bills that are envisaged with the connection are also a challenge to Kibera women slum dwellers that do not have steady incomes.

A finding from research carried out in Kibera established that most of the residents of Kibera get their water from water vendors while a significant number of residents get their water from boreholes, which are hardly available.¹⁷⁰ In essence, this means that they have to budget for water purchase, amongst other basic services that come at a cost. Brocklehurst *et al* noted in research in Kibera in 2005 that “in addition to the rationing of water, there is a long history of neglect of the utility, a lack of pumping capacity and a tendency to divert available water to neighbouring high-income areas where both political influence and revenue collection are greater.”¹⁷¹ The neglect of the maintenance of the pipes in Kibera slums is an indication where the priority lies, does it lie with the slums or the low-density suburbs who can pay for the water tariff set.

¹⁶⁸ *Gender Water and Sanitation for Urban Poor*. 2017. <https://www.wsup.com/themes/gender/> (accessed on 17 March 2018).

¹⁶⁹ UNDESA. 2007. *Providing Water to the Urban Poor in Developing Countries: The Role of Tariffs and Subsidies*. <https://sustainabledevelopment.un.org/content/documents>. (accessed on 17 September 2017).

¹⁷⁰ ITDG - Practical Action. 2005. *Livelihoods & Gender: Sanitation and Hygiene and Water Services among the Urban Poor*. <https://www.odi.org/sites/odi/assets/publications-opinion-files>. (accessed on 2 June 2017).

¹⁷¹ Brocklehurst *et al*. 2005. *Rogues No More? Water Kiosk Operators Achieve Credibility in Kibera*. <https://www.irewash.org/resources/rogues-no-more-water-kiosk-operat...> (accessed on 12 September 2017).

Further, a study done by WSP in Kenya found that open defecation costs more per person than any other type of unimproved sanitation; the additional costs are mainly due to the time taken to find a safe, private location for defecation.¹⁷² The costs of poor sanitation are inequitably distributed with the highest economic burden falling disproportionately on the poorest. The average cost associated with poor sanitation constitutes a much greater proportion of a poor person's income than that of a wealthier person.¹⁷³ With the feminization of poverty with a significant number of female-headed households in the slums, women bear the brunt where there is inequality in access to water and sanitation.

The Sustainable Development Goals (SDGs) are the blueprint for achieving a better and more sustainable future for all. They address the global challenges including those related to poverty, inequality, climate, environmental degradation, prosperity, peace, and justice. SDG goal No. 1 is about ending poverty in all its forms everywhere. Inadequate sanitation facilities also impact on access to education, economic productivity, and personal safety and dignity, in particular for girls and women.¹⁷⁴ It is therefore imperative to accelerate the distribution of improved sanitation facilities. The SDGs not only highlight the need to speed-up access but involves ensuring access to water and sanitation for all by 2030, as well as halving the proportion of untreated wastewater¹⁷⁵ With the achievement of the SDGs especially Goals 5 on gender equality and Goal 6 on water and sanitation for all, the world will never be the same for women and men as they will enjoy equal rights in all spheres of life. I therefore further discuss the socio-cultural challenges/burdens that Kibera women slum dwellers face with a lack of access to water and sanitation.

¹⁷² Water and Sanitation Program 2012 estimates that Kenya loses KES 27 Billion due to poor sanitation. See Economic impact of poor water and sanitation in Africa, Kenya. <https://www.zaragoza.es › contenidos › medioambiente › onu › 825-eng-v6> (accessed on 14 March 2018).

¹⁷³ WSP on economic impact of poor water and sanitation. 2012. <https://www.zaragoza.es › contenidos › medioambiente › onu › 825-eng-v6> (accessed on 14 March 2018).

¹⁷⁴ Mara *et al* 2010. *Sanitation and Health*. <https://journals.plos.org › plosmedicine › article › journal.pmed.1000363> (accessed on 8 August 2018).

¹⁷⁵ United Nations. 2015. *Transforming Our World: the 2030 Agenda for Sustainable Development*. <https://sustainabledevelopment.un.org> › ... (accessed on 10 August 2018).

Apart from considering technical and financial aspects of water and sanitation projects, it is crucial to incorporate all elements, which include political, economic, environmental, psychological or anthropological.¹⁷⁶ Capturing the socio-cultural aspects would also allow for tailor-made interventions that are acceptable to the host community and takes into account the issue of sustainability. Further, it can assist in understanding the challenges looking at the different issues like power relations, hidden interests, patronage and corruption and discrimination based on gender, political, religious or sexual orientation.¹⁷⁷ The inclusion of socio-cultural aspects of access to water and sanitation can be beneficial in unearthing the gender inequality in access to the services.

The responsibility of fetching water in practice prevents women and girls from engaging in other meaningful activities, including going to school, running a business, taking care of other personal responsibilities, or having time left over for rest and recreation. The collection of water must take priority over other activities. As such,¹⁷⁸ women's responsibility for fetching water and caring for the family has been there since time immemorial and has continued unabated. This is due to the perceived gender roles and gender division of labour. "Over time, this detrimentally affects women's health and wellbeing, their ability to access education and their ability to earn a livelihood."

Moreover, because of their domestic roles and responsibilities women are also the ones in the most critical physical contact with contaminated water and human waste.¹⁷⁹ This fact alone exposes them to a host of biological pathogens and chemical hazards, which negatively affect

¹⁷⁶ International Federation of Red Cross and Red Crescent Societies. 2013. *Sociocultural Assessment Tool for Water, Sanitation and Hygiene Programmes Geneva*. <https://www.ifrc.org> › Health › water-and-sanitation › gwsi-brochure-en. (accessed on 15 January 2018).

¹⁷⁷ International Federation of Red Cross and Red Crescent Societies. 2013. *Sociocultural Assessment Tool for Water, Sanitation and Hygiene Programmes Geneva*. <https://www.ifrc.org> › Health › water-and-sanitation › gwsi-brochure-en. (accessed on 15 January 2018).

¹⁷⁸ IFAD. 2010 *Desertification and Gender: Expanding Roles for Women to Restore Dryland Areas*. <https://www.ifad.org> › web › knowledge › publication › asset. (accessed on 6 July 2018).

¹⁷⁹ UN-Water. 2006. *Gender, Water and Sanitation: A Policy Brief*. www.unwater.org › publications › gender-water-sanitation-policy-brief. (accessed on 17 March 2017).

health, including when disposing of their own family's waste.¹⁸⁰ Some of the socio-cultural challenges place a heavy burden on women especially women slum dwellers who are marginalized and poor.

The excerpt below describes the non-homogeneity of women and the challenges they face as individual women struggling to fend for themselves and their families. Women form a highly heterogeneous urban group:¹⁸¹

“Urban women, while generally sharing specific gender interests arising from a common set of responsibilities and roles, constitute a fairly diverse group. There are older women, working women, and women whose major responsibility is in the domestic sphere. Some women balance multiple roles at the same time. Poor women living in slums and low-resource areas face disadvantages that are very different from those faced by women from middle-class families. Slum-dwellers also experience an unequal level of service, women are doubly disadvantaged from poor access. Cities, especially large urban areas, also have more numbers of women-headed households, single women living by themselves, professional women who need to travel...”¹⁸²

Women slum dwellers, as stated above, are more disadvantaged from poor access especially to water and sanitation than their well to do counterparts who can access the services at a cost. The challenges that they face stem from the socio-cultural norms and beliefs that tie them to the labour provision in the domestic sector of caring.

Inadequate access to sanitation and hygiene services disproportionately affects poor women and girls, as they are often faced with additional challenges related to menstrual hygiene, personal safety, sexual harassment, and violence.¹⁸³ Women and girls are trapped in their homes when

¹⁸⁰ Nwachukwu *et al.* 2013. <https://www.intechopen.com/books/current-topics-in-public-health/he..> (accessed on 2 February 2018).

¹⁸¹ Khosla R. 2009. *Addressing Gender Concerns in India's Urban Renewal Mission*. <http://data.undp.org.in/dg/pub/AddressingGenderConcerns.pdf>, (accessed on 19 March 2018).

¹⁸² Khosla R. 2009. *Addressing Gender Concerns in India's Urban Renewal Mission*. <http://data.undp.org.in/dg/pub/AddressingGenderConcerns.pdf>, (accessed on 19 March 2018).

¹⁸³ SIDA. 2015. *Women, Water, Sanitation and Hygiene, Gender Tool Box Brief*. <https://www.sida.se/contentassets/women-water-sanitation-and-hygiene>. (accessed on 2 September 2017).

there are no accessible latrines. A SIDA gender brief in 2015 described the situation as being forced to be ‘prisoners of daylight’ who wait for the night as their privacy. The darkness which they use for privacy also has challenges of being exposed to the risk of physical attack and sexual violence.¹⁸⁴ Most toilet blocks in Kibera are often unlit, which further makes them a danger for the women and girls to use with human predators lying in wait to attack.¹⁸⁵ This is a risk that they are forced to take to relieve themselves. The women and girls in Kibera are further forced to ignore their natural bodily functions out of fear, which not only causes discomfort but also increases the risk of being affected by health problems such as urinary tract infections, chronic constipation, and mental stress.¹⁸⁶

Further, it should be noted that water is not an easy substance to transport. It is heavy, unstable, and energy-intensive to move. Women and girls must travel great distances and carry heavy loads. Evidence suggests that women and girls carry water equaling up to 20 kilograms (or slightly over 44 pounds, which is the weight of 20 liters of water).¹⁸⁷ The UN department of information argues that repetitively, this kind of chronic exertion can lead to back and joint problems, as well as an acute injury such as sprains and fractures from falls. In some countries, spending three, four or five hours each day, every day, collecting water is not unusual.¹⁸⁸ Some women go to fetch water with their small children and stay the whole day waiting for their turn in sometimes harsh weather and the scorching sun. In effect, this affects their children who might not be in their natural environment.

¹⁸⁴ See note 174 on the Gender tool Box.

¹⁸⁵ Scouten & Mathenge. 2010. *Communal sanitation alternatives for slums: a case study of Kibera, Kenya* https://www.researchgate.net/publication/223438536_Communal_sanit... (accessed on 15 July 2018).

¹⁸⁶ Scouten & Mathenge. 2010. *Communal sanitation alternatives for slums: a case study of Kibera, Kenya*. https://www.researchgate.net/publication/223438536_Communal_sanit...(accessed on 15 July 2018).

¹⁸⁷ United Nations Department of Public Information. 2012. *Fact Sheet: The Future We Want – Water and Sanitation*, . <https://sustainabledevelopment.un.org/content/documents/733Future...>(accessed on 12 March 2017).

¹⁸⁸ UN Interagency Task Force on Gender and Water .2005 ‘A Gender Perspective on Water Resources and Sanitation’, <https://www.unwater.org/publications/gender-perspective-water-resour...> (accessed on 4 June 2018).

It is further estimated by UN-Water that in Africa women spend forty *billion* working hours, or 25 percent of household time each year carrying water¹⁸⁹ and that for these working hours, it is overwhelmingly women who are performing the work of which most is unpaid, a dimension that is not often investigated or discussed.¹⁹⁰ There is a need to quantify the time spent by women in ensuring that they meet the daily needs of water and sanitation, including the shocks that are associated with climate change, the AIDS pandemic, and economic structural adjustments.¹⁹¹ If this were to be done, then it would take off some proportionate burden from the women.

The former UN Special Rapporteur on Water and Sanitation Catarina de Albuquerque similarly raised concerns within the context of her field missions about the fact that women and girls are overwhelmingly tasked with collecting water and must spend an excessive amount of time searching for water.¹⁹² She also raised concern over the fact that, while collecting water, women and girls are physically and sexually threatened, abused and assaulted.

“The WHO recommends 20-50 liters of water per person per day for drinking, cooking, and washing¹⁹³ that amounts to hauling between 44 and 110 pounds of water daily for use by each

¹⁸⁹ UN- Water. 2006. *Gender, Water and Sanitation: A Policy Brief*, <https://www.unwater.org/publications/gender-water-sanitation-policy-b>. (accessed on 16 May 2018).

¹⁹⁰ UN- Water. 2006. *Gender, Water and Sanitation: A Policy Brief*. <https://www.unwater.org/publications/gender-water-sanitation-policy-b>. (accessed on 16 May 2018).

¹⁹¹ UNFPA. 2013. *Gender Equality: Women's Work and Economic Empowerment*. <http://www.unfpa.org/gender/empowerment1.htm>. (accessed on 15 August 2018).

¹⁹² Catarina de Albuquerque, ‘Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation: Addendum - Mission to Egypt,’ UN Doc. A/HRC/15/31/Add.3, 5 July 2010. See also: Catarina de Albuquerque, UN Special Rapporteur on the human right to safe drinking water and sanitation, ‘Integrating non-discrimination and equality into the post-2015 development agenda for water, sanitation and hygiene,’ UN Doc. A/67/270, 8 August 2012.

¹⁹³ WHO. 1997. *Guidelines for Drinking Water Quality, Surveillance and Control of Community Supplies*. http://www.who.int/water_sanitation_health/publications/small-water-supplies-guidelines/en/. (accessed on 18 August 2018).

household member.¹⁹⁴ “Women and girls need privacy and a lot of water especially during menstruation, which in most cases is lacking in slum dwellings.¹⁹⁵ This convenience should be taken into consideration to allow women to achieve their full potential by enjoying equal rights as guaranteed in the Constitution.

Women and especially slum-dwelling women are affected by socio-cultural challenges whereby they are either required by societal norms to adhere to or those that they have individually imposed upon themselves. Research conducted in Kibera in 2017 reported that there were taboos, beliefs, and cultures that were being practiced within Kibera that affected the water quality and sanitation measures put in place. Some of the cultural norms were that a mother in law or father in law could not share or use the same toilet with a son in law which makes access a compounded issue.¹⁹⁶ This is a phenomenon that is common amongst many Kenyan communities who practice such norms as a sign of respect for the parties involved. The report further highlighted the other cultural beliefs and taboos that affect water quality and sanitation which posed challenges were that God blesses drinking water and therefore, it cannot cause infections.¹⁹⁷ This is a challenge that can cause more problems in terms of the use of contaminated water leading to diseases requiring medical attention.

Similarly from the same findings in Kibera, there were people who believed that children’s feces are not infectious and therefore there would be no need washing hands after changing the baby and further that garbage should not be disposed of at night as this will mean that the

¹⁹⁴ WHO. 1997. *Guidelines for Drinking Water Quality, Surveillance and Control of Community Supplies*. http://www.who.int/water_sanitation_health/publications/small-water-supplies-guidelines/en/. (accessed on 18 August 2018).

¹⁹⁵ UNHRC. 2011. *Women and girls and their right to sanitation*. <http://www.ohchr.org/EN/NewsEvents/Pages/Womenandgirlsrighttosanitation.aspx>. (accessed on 10 September 2018).

¹⁹⁶ Aketch C.2017. *The Burden of Water, Sanitation and Hygiene on People Living with HIV/AIDS in Kibera Slum*. MSc in Public Health Thesis, Jomo Kenyatta University of Agriculture and Technology. [ir.jkuat.ac.ke › handle › CHARLES AKETCH_Msc_PUBLIC HEALTH 2017](http://ir.jkuat.ac.ke/handle/CHARLES%20AKETCH_Msc_PUBLIC%20HEALTH%202017) (accessed on 2 June 2018).

¹⁹⁷ See Aketch on burden of water and sanitation and hygiene. [ir.jkuat.ac.ke › handle › CHARLES AKETCH_Msc_PUBLIC HEALTH 2017](http://ir.jkuat.ac.ke/handle/CHARLES%20AKETCH_Msc_PUBLIC%20HEALTH%202017) (accessed on 2 June 2018).

household blessings are being disposed of.¹⁹⁸ This kind of beliefs in a setting where there is inadequate access to water and sanitation cause more challenges to women and children. There is no space for practicing these cultural beliefs, especially in an informal settlement where there is limited access to such services.

Many traditional practices or beliefs consider menstruation as unclean or impure.¹⁹⁹ Menstruation for women is a biological process that should not be put on the back burner due to stigma and socio-cultural issues. If both men and women were menstruating or men alone menstruating, would it have been treated the same way, or would it have been given priority with the allocation of resources to boot to ease the sanitation problems? The socio-cultural challenges concerning water and sanitation in Kibera would need a lot of sensitization on the residents on the need for attitudinal change on best hygiene practices.

According to the UNDP, the Gender and Water Alliance, the International Water and Sanitation Centre, Cap-Net and the Global Water Partnership, “women are also acutely affected by the absence of sanitary latrines for the following reasons: 1) When women have to wait until dark to defecate and urinate in the open they tend to drink less during the day, resulting in all kinds of health problems such as urinary tract infections (UTIs); 2) Hygienic conditions are often poor at public defecation areas, leading to worms and other water-borne diseases, which women often have to deal with because of their caregiving roles; and 3) Girls, particularly after puberty and after the onset of menses, miss school due to lack of proper sanitary facilities.”²⁰⁰

Research in Kibera found that toilets located beyond 15 meters from the house make women feel insecure for themselves and the safety of the entire family, especially children. Also, there is a tendency to waste time when a person visits the toilets, and there are long waiting periods

¹⁹⁸ See Note 187 on burdens on water, sanitation and hygiene on people living with HIV in Kibera.

¹⁹⁹ Office of the High Commissioner for Human Rights.2013. *Eliminating discrimination and inequalities in access to water and sanitation*. <https://ohchr.org> › Documents › Issues › Water › DiscriminationPolicy (accessed on 13 March 2017).

²⁰⁰ UNDP, GWA, IRC, Cap-Net and GWP 2006. ‘*Resource Guide: Mainstreaming Gender in Water Management*,’ <https://www.undp.org> › dam › (accessed on 10 June 2017). See also Erin Kelly, ‘Water and Women’s Empowerment: More Closely Tied Than You May Think,’ Women Thrive Worldwide, 4 September 2012. Reports indicate that about 1 in 10 school-age African girls will not attend school during menstruation or drop out at puberty because of the absence of clean and private sanitation facilities in schools.

due to many users, which leads to incontinence.²⁰¹ It has also been established in the above research that long distances to the toilet lead to people relieving themselves in buckets and plastic bags, otherwise known as “flying toilets.”

Lusambili Adelaide, in her study on the flying toilets of Kibera slums, describes it as a method for disposing of waste used by the urban poor. She defines it as ‘a socially and environmentally based practice where the urban poor struggling with the everyday challenges of accessing basic sanitation relieve themselves, put the waste in a polythene bag, and throw the bag on the street, on roofs, or over the next neighbour’s door at night ‘who in turn throws it next door, until the bag reaches a drainage canal already full of garbage. She states that the process is informal and residents do not discuss it openly. The process is dirty and unhygienic, yet organized, solving the problem of waste disposal for the majority of slum dwellers.²⁰² This explains the challenges that Kibera women have with a lack of adequate sanitation.

The challenges are further compounded by the fact that women are much more facilities dependent than men who may be able to urinate discreetly in open spaces outside latrines. Women’s physiological makeup and cultural norms make them more dependent on using more private facilities to relieve themselves than their male counterparts who are not very restricted. Inadequate or no access to sanitation affects women and girls in the following ways: Unhygienic (public) toilets and latrines threaten the health of women and girls who are prone to reproductive tract infections caused by poor sanitation.²⁰³ In the absence of sanitary facilities, factors such as cultural norms of female modesty mean that women often have to wait until dark to go to the toilet. To avoid the need for such frequent toilet use, women regularly drink

²⁰¹ Karanja, & Ng’ang’a . 2008. *Sanitation and Hygiene in Kibera Slums. Women’s Concerns and Nurse’s promotional tools*. <https://www.theseus.fi/handle/> (accessed on 5 October 2017).

²⁰² Lusambili, A. 2011. ‘*It is our Dirty Little Secret*’: *An Ethnographic Study of the Flying Toilets in Kibera Slums, Nairobi*. <https://steps-centre.org/publication/it-is-our-dirty-little-secret-an-ethnog...> (accessed on 3 November 2018).

²⁰³ Phillips-Howard *et al.* 2011. *Water and Sanitation Issues in Relation to Sexual and Reproductive Health Across the Female Lifespan*. [https://esaro.unfpa.org/sites/default/files/pub-pdf/UNFPA Review ...](https://esaro.unfpa.org/sites/default/files/pub-pdf/UNFPA%20Review%20on%20Water%20and%20Sanitation%20Issues%20in%20Relation%20to%20Sexual%20and%20Reproductive%20Health%20Across%20the%20Female%20Lifespan.pdf) (accessed on 10 October 2018).

less, causing severe health impacts (urinary tract infections, chronic constipation, and other gastric disorders).²⁰⁴

The other challenge related to the socially constructed roles of women is the responsibility of cleaning the sanitation facilities. Who are the people tasked with ensuring that sanitation facilities are clean and well maintained? Apart from fetching water for the family, women in most cases are also tasked with the responsibility of cleaning the latrines which are another burden on their shoulders.²⁰⁵ The reports further established that children and older people suffer from water and sanitation-related diseases, especially diarrhea.” Women usually take care of them, have to stay home and cannot follow productive activities.”²⁰⁶ Apart from the local beliefs, traditions, and practices, generational differences also play a role in creating stumbling blocks to the planning and operating of water and sanitation projects.²⁰⁷ Different age groups might want water and sanitation projects planned or operated in a particular way, which, if they do not come to a consensus, might collapse due to lack of public participation.

Social barriers also arise through interaction with other people and result from cultural beliefs or practices of exclusion of a particular age group or ethnic community. The cultural biases similarly play a role in the exacerbation of the challenges with access to water and sanitation. As earlier stated above from the findings of a research conducted in Kibera that some people might not be comfortable sharing toilet facilities with people from a particular gender or community.

Religious beliefs can also act as a challenge in access to water and sanitation. Kibera, as a site, has a heterogeneous population with the Nubians who claim to be the legitimate occupants of Kibera, having been demobilized after the First World War. The Nubians who were initially

²⁰⁴ Wendland *et al* 2017. *Gender and Sanitation Issues*. In: J.B. Rose and B. Jiménez <http://www.waterpathogens.org>. (accessed on 18 August 2018).

²⁰⁵ See Owino’s article on *Burden of fetching water falls on rural women and girls*. <https://reject.awcfs.org/article/burden-of-fetching-water-falls-on-rural-...> (accessed on 4 April 2019).

²⁰⁶ See Owino’s article on *Burden of fetching water falls on rural women and girls*. <https://reject.awcfs.org/article/burden-of-fetching-water-falls-on-rural-...> (accessed on 4 April 2019).

²⁰⁷ SSWM .*Water, Sanitation and Culture*. 2019. <https://sswm.info/further-resources-sustainability-relation-water-sanitation> (accessed on 21 August 2019).

from Sudan are of the Islamic faith, and many other people from all over Kenya adhere to various religious denominations. Jenssen *et al.* argue that religions vary considerably in addressing excreta and that the Bible only mentions the act of elimination of excreta once, and it does not address the subject of using excreta for agricultural purposes.²⁰⁸ This makes it a challenge for the different religious groups to apply innovative technologies to adopt such use. They further stated that the Koran, however, prescribes strict procedures to limit contact with fecal material, including its use in agriculture, because excrement is considered impure.²⁰⁹ Muhele carried out research in Kibera on factors that influence sanitation practices whereby she recommended that Kibera residents should uphold community initiatives to ensure that they promote sanitation practices in the households, campaigns on sanitation practice to consider the different cultures and socioeconomic status of the residents.²¹⁰ This shows that culture and religion, which go hand in hand, play an essential role in adapting or hindering hygienic sanitation practices.

In order to give a comparative position of the rampant cultural practices in respect to access to water and sanitation, I looked at a cross-sectional study in rural Tanzania on understanding the challenges of improving sanitation and hygiene outcomes in a community based intervention that found out that some households disposed children's feces in latrines while others left them (feces) for the dogs to "clean up" (eat) and that the inappropriate disposal of feces was rooted in a traditional belief that barred women from disposing of children's feces in the pit latrines as this would lead to the children having retarded growth.²¹¹ This is an indicator

²⁰⁸ Jenssen *et al.* 2004. *Ecological Sanitation and Reuse of Wastewater. A Thinkpiece on Ecological Sanitation.* http://www.dep.no/filarkiv/204575/ecosan_thinkpiece_final3.pdf (accessed on 7 June 2018).

²⁰⁹ Jenssen *et al.* 2004. *Ecological Sanitation and Reuse of Wastewater. A Thinkpiece on Ecological Sanitation.* http://www.dep.no/filarkiv/204575/ecosan_thinkpiece_final3.pdf (accessed on 7 June 2018).

²¹⁰ Muhele M. 2016. *Factors Influencing Sanitation Practices in Kibera Urban Informal Settlements in Nairobi.* Unpublished Masters dissertation at the University of Nairobi. erepository.uonbi.ac.ke/.../Muhele_Factors%20influencing%20sanitation%20practices (accessed on 4 February 2018).

²¹¹ Kamara *et al.* 2017. *Understanding the Challenges of Improving Sanitation and Hygiene Outcomes in a Community Based Intervention: A Cross-Sectional Study in Rural Tanzania.* <https://www.ncbi.nlm.nih.gov/pubmed> (accessed on 22 August 2019).

that more needs to be done to deal with the behavioral and attitudinal change of the residents to achieve positive results.

Evidence from reviewed material shows that girls and women stay at home during menstruation if the school or workplace does not provide adequate water and sanitation conditions. It is also a fact that pregnant women commonly have greater urgency of urination and need high-standard sanitation facilities to meet their needs.²¹² Inadequate school sanitation in slums can force adolescent girls to miss school to avoid the indignity of public bleeding, finding a private place to change a sanitary napkin, and ridicule by peers when forced to share toilets with boys.²¹³ Furthermore, the pit latrines are covered with rough-hewn planks of wood, with a sizeable squat hole in the centre.

The findings of research carried out in Kibera established that there was one sanitation block that served a population of about 71,000 residents and that the monthly subscription for using this toilet is Kshs150 for households with ten or fewer members and Kshs 3 per use for non-members with children not being charged.²¹⁴ The overcrowding and the limited number of sanitation facilities put more pressure on the residents. This pressure is worsened by the residents themselves who want to earn an extra shilling in selling water by interfering with the little available water pipes that would benefit the slum dwellers.

People with disabilities are disproportionately represented among those that do not enjoy their rights to water and sanitation, as public water and sanitation facilities are often not designed to meet their needs,²¹⁵ further limited water supplies may mean that women are unable to bathe,

²¹² Women need a lot of water during menstruation which is not readily available in the slums.

²¹³ Freeman *et al* 2012. *Assessing the impact of a school-based water treatment, hygiene and sanitation programme on pupil absence in Nyanza Province, Kenya: a cluster-randomized trial*. <https://www.ncbi.nlm.nih.gov/pubmed> (accessed on 4 June 2018).

²¹⁴ Joshi *et al* 2004. *Sanitation for the urban poor: whose choice, theirs or ours?* <https://www.gov.uk> (accessed on 2 February 2017).

²¹⁵ UN Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Joint Report on the mission to Bangladesh, A/HRC/15/55, 2010, para 21.

leaving them to cope with the embarrassment and discomfort of soiled and smelly clothes.²¹⁶ Society expects a woman to be clean, and a dirty woman forced by circumstances may be frowned upon or shunned. There is growing evidence that is regularly carrying heavy loads on the head, typical of water carriage in Sub-Saharan Africa, is associated with musculoskeletal pain and disability.²¹⁷

According to a study on sanitation and hygiene in Kibera slums, most sewage ditches in Kibera slums are so shallow that when it rains, they fill up and overflow to Nairobi River, which is usually the residents' source of water, thus polluting the water. Due to the lack of water, the slum dwellers are forced to use the polluted water for basic needs leading to diseases, which can lead to the loss of thousands of lives.²¹⁸ When this happens, it impedes the realization of the right to water and sanitation and the achievement of the SDGs.

Sustainable Development Goal No. 5 is about the achievement of gender equality and the empowerment of all women and girls by 2030. Gender equality is not only a fundamental human right but a necessary foundation for a peaceful, prosperous, and sustainable world.²¹⁹ Gender discrimination is a significant cause of skewed development and access to essential services like water and sanitation, especially for women slum dwellers. Issues of patriarchy and gender division of labour are culprits in overburdening women with unpaid work and collection of water. Equality for all is everything if we have to achieve sustainable development.

Apart from SDG Goal 5, Goal 6 on ensuring access to water and sanitation for all is at the heart of this thesis. The major problem is that there is water scarcity, poor water quality and inadequate sanitation which are caused by several reasons. Water and sanitation require

²¹⁶ Chrichton *et al* 2013. *Emotional and Psychosocial Aspects of Menstrual Poverty in Resource-Poor Settings: A Qualitative Study of the Experiences of Adolescent Girls in an Informal Settlement in Nairobi*. <https://www.ncbi.nlm.nih.gov/pubmed> (accessed on 3 May 2017).

²¹⁷ *Public Health and Social Benefits of at-house Water Supplies, 2013. Final report*. University of Leeds. UK. Leeds <https://www.gov.uk/research-for-development-outputs>. (accessed on 20 March 2017).

²¹⁸ Amnesty International Report. 2009. *Kenya the Unseen Majority: Nairobi's Majority: Nairobi's Two Million Slum Dwellers*. <https://www.refworld.org/pdfid>. (accessed on 5 May 2017).

²¹⁹ SDG Goal 5. United Nations Sustainable Developments Goals.

substantial infrastructural investments with proper maintenance and access without discrimination but this, in most cases, is not readily available.

Finally, on the issue of the socio-cultural challenges, it is not all doom and gloom as there are bright spots in the innovative environmental technology which are bringing cheap energy to Kibera slum in Kenya. It makes smart use of human waste and is also helping to improve neighborhood sanitation and public health.²²⁰ Umande Trust, a local NGO, has set up communal toilets to replace latrines and is turning human excreta from the new flushing toilets into biogas, which is a cheaper alternative to the use of charcoal. The question is whether the slum dwellers would reject the use of biogas because it is generated from human excreta, which is culturally impure? In the next segment, I discuss the legal and institutional challenges bedeviling access to water and sanitation for Kibera women slum dwellers.

Kenyan water policies are designed to prevent discrimination and to foster equitable access to water supply and sanitation. The national strategy details how to reach the urban poor, the marginalized, and vulnerable groups in society.²²¹ Even though the policies are well-intentioned, they have always hit a brick wall due to several challenges, ranging from lack of adequate resource allocation and capacity to implement the pro-poor policies to benefit the most vulnerable in the informal settlements like Kibera.

The institutional setup of the water services sector also provides for a unique basket funding mechanism to improve the situation of the poorest in urban and rural areas through the Water Services Trust Fund, whereby water service providers are encouraged to apply for funding to extend their services to informal urban settlements.²²² This is a noble idea, but very few providers would want to invest in the informal settlements due to land tenure issues, infrastructure and security issues. Informal settlements do not provide low hanging fruits to

²²⁰ Umande Trust | *Innovative Solutions: Sustainable Communities* .2018. <https://umande.org> (accessed on 17 January 2019). The Umande Trust has established 19 bio-centres in Kibera since their founding in 2004. These bio-centres are located within schools and community centres.

²²¹ Levin *et al* 2009. *The Human Right to Water and Sanitation. Translating Theory into Practice*. <https://www.ircwash.org/resources/human-right-water-and-sanitation-tran>. (accessed on 6 November 2018).

²²² WSTF Brief - *Water Sector Trust Fund*. 2019. <https://www.waterfund.go.ke/brief> (accessed on 8 August 2019).

entice investors. This in effect, is a challenge, as very little will be done to implement the policies that require the progressive realization of the right to water and sanitation for all.

Government policies also discourage the provision of basic services to the urban poor living in informal settlements. This is due to the illegal tenure that limits the availability of support from outside and insecurity of tenure and poverty undermine personal initiatives to improve sanitary facilities. Kibera residents have contested tenure rights, and in the past, the government did not recognize the slum dwellers' occupation and were always threatened with eviction. Prohibitive policies should be removed to enable urban poor to be recognized as legitimate customers that are willing to pay for improved water and sanitation services and treated as such.²²³ This is currently not the situation as the provision of water and sanitation services has been left mainly to NGOs and community-based organizations even though this is a duty bestowed upon the government.

The policies concerning basic services should envisage where governments no longer prohibit service delivery within informal settlements and enable utilities and other service providers to extend services to the urban poor. The institutional arrangements might be in place, but due to the overcrowding of the Kibera slums, sometimes access to deliver the services might require interfering with the *status quo*, meaning evictions may occur to create the needed access. Given this situation, most slum settlements have no public toilets, solid waste collection, drainage, or paving.²²⁴ Does it mean that the government has turned a blind eye to the informal settlements in respect of the provision of water and sanitation or is it doing too little too late? This creates a significant challenge in access to water and sanitation.

Many challenges face Kibera slum dwellers concerning water and sanitation which range from policy to institutional frameworks. A paper on achieving the SDG targets for water and sanitation for all in Kenya stated that there needs to be clear separation and clarification of roles of different institutions and structures for coherence and implementation of their

²²³ Mukami, K .2016. *Vision21 - WSS for the Urban Poor - Water Sector Trust Fund*. <https://waterfund.go.ke › watersource › Downloads › 041. WSS for the Ur..> (accessed on 3 June 2017).

²²⁴ *The Kenya Informal Settlements Improvement Programme.2014*. <documents.worldbank.org › Site Map › Index › FAQ › Contact Us> (accessed on 15 September 2017).

mandate.²²⁵ The challenge is that women are not adequately represented in the decision making structures and further that even if they are described, they hold positions that do not add their voices to the central policy and implementation of the resolutions passed. The other issue, which is also a significant challenge, is the low levels of illiteracy among women, which is compounded by poverty and lack access to resources. What measures are being put in place to alleviate these issues?

The right to water and sanitation services for Kenyans is enshrined in art. 43 (1) of the Constitution of Kenya, 2010. The responsibility for delivering this Constitutional guarantee primarily rests with the institutions set up by the Water Act 2002, which was repealed and replaced by the Water Act 2016 to reflect the newly devolved structures of Kenya's political framework. WSPs are now the responsibility of the new County Governments, which are granted licenses by the national water regulator, the Water Services Regulatory Board (WASREB)²²⁶

Hellum *et al*²²⁷ in their book “Water is Life, Women’s Human Rights in National and Local Water Governance in Southern and Eastern Africa,” state that women interact with a plurality of institutions in their quest to access water from multiple sources and for various uses. They further argue that the majority of institutions range from customary water governance systems and local government institutions to humanitarian agencies, NGOs, and private water vendors.²²⁸ The pluralities of the actors and structures that the women slum dwellers in Kibera interact within their quest to access water and sanitation makes it problematic due to their low literacy levels and domestic chore burdens. The intervening situation creates challenges in understanding which institution or actor to deal with and hold accountable for their problems.

There is also a gap between the international and constitutional right to water and sanitation, which is based on the affordability principle that contrasts with the existing laws and policies

²²⁵ Kenya- Sanitation and Water for all. 2017. *Achieving the SDGs targets for water, sanitation and hygiene*. sanitationandwaterforall.org › uploads › 2017 Kenya Overview_final (accessed on 7 November 2018).

²²⁶ *Understanding the Kenya 2016 Water Act*, <https://www.2030wrg.org/wp.../2016/.../Understanding-the-Kenyan-Water-Act-2016>. (accessed on 4 June 2017).

²²⁷ Hellum *et al*. 2015:20.

²²⁸ Hellum *et al*. 2015:20.

which are based on the cost recovery principle.²²⁹ Are the set tariffs affordable to the general populace, or are they meant for people who can afford piped water within their homes? The principle of affordability is one of the five human rights criteria in the General Comment No. 15 that must be adhered to. The affordability principle is crucial to the realization of the human right to water and sanitation, but in most cases, it is not given the attention that it deserves. That is why Kibera slum women are still facing challenges with access to water and sanitation.

On the other hand, the cost recovery principle which exists in our policies and water legislations is hinged on the necessity to ensure financial sustainability, efficient and equitable use of water. This principle is also driven mainly by the Dublin Principles²³⁰ especially the fourth principle that recognizes that “water is a public good and has a social and economic value in all its competing uses.”²³¹ When consumers are used to free or subsidized water services, the application of cost recovery on water charges becomes a very thorny issue to deal with in order to achieve the objective of supplying water to the residents. This requires striking the right balance between availability and affordability as pricing policies and affordability mechanisms play a fundamental role in ensuring sustainability and maintenance of the infrastructure. If this is not done, then you find that consumers in unserved areas like Kibera use unorthodox ways to access the water by interfering with the water pipes.

WHO states that “there are consequences for poor cost recovery which include the inability to operate and maintain existing supplies properly with consequent increased of leakage, water supply interruption and likely deterioration in both the quality and quantity of the water supplied.”²³² This further results in the inability to extend water supplies to unserved areas, thus continuing a cycle of inequitable access to water supplies, especially to the marginalized like the women slum dwellers of Kibera. This, therefore, explains the two dimensions which

²²⁹ Helling et al. 2015:20.

²³⁰ United Nations Conference on Economic Development. 1992. The Dublin Statement on Water and Sustainable Development. [www.wmo.int > pages > prog > hwrp > documents > english > icwedece](http://www.wmo.int/pages/prog/hwrp/documents/english/icwedece) (accessed on 8 June 2018).

²³¹ See Dublin Principles.

²³² WHO Cost Recovery Session Objectives -. [www.who.int > water_sanitation_health > dwq](http://www.who.int/water_sanitation_health/dwq). (accessed on 28 August 2019).

the government is faced with when dealing with affordability and cost recovery principles for the realization of the right to water and sanitation for all.

The other issue on institutional and policy challenges with access to water and sanitation is that policymakers usually consider pricing as an essential tool for cost recovery, affordability and water conservation to address water scarcity²³³ issues but effective implementation of the set tariffs is a challenge due to many factors which include lack of structures and corruption.

It is also imperative to underscore the obstacles that were implementing actors and structures face the enforcement of gender policies, which are a requirement in water and sanitation programmes and projects. The policymakers who tend to populate the water sector institutions with men have a limited effect on attitude changes.²³⁴ The attitudinal and behavioral change is vital in reorienting the mindset of both women and men to embrace gender equality in all aspects of life, including the persons charged with the implementation of the laws and policies in the water and sanitation sector.

Such issues restrict effective water and sanitation interventions by preventing the implementation and monitoring of targeted policies and programmes from reducing the disproportionately substantial costs on women's well-being, associated with poor access to safe water and sanitation services. There has to be inclusivity and representation of women from design to implementation of the policies and projects that affect them for optimum results and sustainable development.²³⁵

The emergence of slums did not envisage the current challenges that urbanization has created with runaway population growth and poverty levels increasing. Several issues have contributed to the mushrooming of slums unabated. Fox argues that the policies have their genesis in the 1950s and 1960s, a time when the urbanization was viewed as positive, with immense labour

²³³ Olumana, M. 2018. *Safe Drinking Water: Concepts, Benefits, Principles and Standards, Water Challenges of an Urbanizing World*. <https://www.intechopen.com/books/water-challenges-of-an-urbanizing-world/safe-drinking-water-concepts-benefits-principles-and-standards> (accessed on 21 August 2019).

²³⁴ African Development Bank. 2018. *Addressing gender issues in urban water and sanitation*. <https://blogs.afdb.org/post/addressing-gender-issues-in-urban-water-an...> (accessed on 20 October 2018)

²³⁵ See Note 224 on addressing gender issues on urban water and sanitation.

forces needed to fuel economic growth in cities.²³⁶ Governments ended up not putting in place interventions concerning slums, which led to the widespread growth of slums.²³⁷ As was earlier discussed that most slums in the world including Kibera, were considered illegal hence were not factored into policies for the provision of basic services like water and sanitation. Fox further argues that there is an inconsistency between policy, planning, and practice in the urban sanitation sub-sector²³⁸ which issues compound the challenges that women face in the water and sanitation sector. The unplanned, crowded housing and lack of infrastructure have led to acute drainage and sanitation problems in Kibera.²³⁹ There are positive and negative attributes to slum dwelling for the slum dwellers who also reap from their situations, but the negatives outweigh the positives which are in most cases exploited by outsiders who do not reside in the slums like the politicians and the absentee landlords.

Many governments and regional and international non-government organizations have put in place legislation or systems recognizing the need to protect and improve the lives of slum dwellers,²⁴⁰ but what is lacking is the implementation from a gender perspective to ensure that the marginalized and the poor benefit from the policies and laws. Women slum dwellers in Kibera continue to endure the daily struggles with poor conditions that exist in slums. These challenges have been recognized as a global and ethical challenge in studies that have been carried out all over the developing world.

To elaborate on the issue of policy challenges that Kibera women slum dwellers face is important to note that these people are considered to be staying illegally in the spaces that they

²³⁶ Fox, S.2014. *The Political economy of slums: Theory and evidence from Sub-Saharan Africa*. <https://www.sciencedirect.com › science › article › pii> (accessed on 8 May 2017).

²³⁷ United Nations Human Settlements Programme. 2003. *The Challenge of Slums*. <https://unhabitat.org › wpdm-package › the-challenge-of-slums-global-rep...> (accessed on 3 April 2018).

²³⁸ United Nations Human Settlements Programme. 2003. *The Challenge of Slums*. <https://unhabitat.org › wpdm-package › the-challenge-of-slums-global-rep...> (accessed on 3 April 2018).

²³⁹ Akatch *et al* 2002. *Informal Settlements and the Role of Infrastructure: The case of Kibera, Kenya. Discovery and Innovation*. <erepository.uonbi.ac.ke › handle>. (accessed on 9 April 2017).

²⁴⁰ MHUPA. 2013. *Rajiv Awas Yojana (2013-2022)*. New Delhi, India: Ministry of Housing and Urban Poverty Alleviation, Government of India. <http://mhupa.gov.in/writereaddata/RAYGuidelines.pdf> (accessed on 6 February 2018).

occupy. UNHABITAT report in 2003 stated that because the slums are not captured on maps and the slum dwellers do not pay taxes, therefore, public services are not provided to them, forcing them to be trapped in an informal and illegal world.²⁴¹ This presupposes that to the policymakers, the slum dwellers do not exist as they are not captured in the tax bracket. The irony is that during the electioneering period, their vote counts to the politicians, but that is far that they go. With the branding of illegal residents, the slum dwellers are at the mercy of the government and well-wishers like NGO's to supply them with the services that they need, otherwise, they are on their own. This should not be the case as it is the government's responsibility to ensure that everyone accesses the right to water and sanitation.

The UN-HABITAT report mentioned above also states that the majority of the slum dwellers are not able to access most of the formal institutions of society and lacking a legal address they are often unable to access social services such as subsidized health care or education, which are used mainly by the more affluent.²⁴² It further states that governments, in many cases, refuse to provide them with services because their settlements are not legal, even though these may have been in place for over 50 years and comprise a majority of the population.²⁴³ Kibera has been in existence for more than 5 decades and the situation in the slum has grown from bad to worse, with the people in the slum increasing steadily.

The government of Kenya, in collaboration with UN-HABITAT and other stakeholders, initiated the Kenya Slum Upgrading Programme (KENSUP) in 2004 with an objective to improve lives and livelihoods of people working and living in slums through various initiatives and interventions and to address national aspirations as envisaged in Vision 2030 and in the Bill of Rights of the Constitution.²⁴⁴ The government flagship project of slum upgrading had a great objective but after some apartments were constructed, many Kibera residents who were given apartments through the programme saw a business opportunity and rented their flats to

²⁴¹ United Nations Human Settlements Programme. 2003. *The Challenge of Slums*. <https://unhabitat.org/wpdm-package/the-challenge-of-slums-global-rep...> (accessed on 3 April 2018).

²⁴² See Note 231 on challenge of slums.

²⁴³ See *Challenge of Slums*.

²⁴⁴ Kenya Slum Upgrading programme(KENSUP) is a Government of Kenya project in collaboration with UN-HABITAT and other stakeholders which was initiated in 2004. https://issuu.com/unhabitat/docs/2462_alt (accessed on 15 March 2018).

middle-class tenants at four and five times the subsidized rate, while they moved back to the slum with extra money in their pocket.²⁴⁵

This kind of situation where there is resistance to the government's commitment to improving the lives and livelihoods of slum dwellers requires going back to the drawing board to see where the problem is. Why is the uptake so low? Does this call for sensitization and awareness-raising on behavioral change of slum dwellers to accept their new status? Is there something wrong with the programme design, was there public participation before rolling out, were both genders involved or consulted on the suitability of the programme? These are pertinent questions that need answers before such programmes are rolled out.

The slum-upgrading approach has been criticized at four significant levels: failed financial commitment, negative socio-economic impacts, non-replicability of best practices and insecurity of tenure.²⁴⁶ These are major issues that might be the reason why there is low acceptability of the slum upgrade by slum dwellers in Kibera, where residents rent out their houses and move back to the slums. Most of the slum dwellers in Kibera do not own the land that their shacks are erected on; therefore, they would not be interested in improving their temporary circumstances. This approach relies heavily on the assumption that most slum dwellers owned the dwelling in which they lived. However, this is not the case, as most slum dwellers do not own the houses they live in²⁴⁷, and this remains the plight of many slum dwellers today.

Gulyani *et al.* in a study carried out in 2010 stated that the institutions that are failing slum dwellers are not just those of government and law, but also the private and commercial

²⁴⁵ This information is from a 2013 Seattle Global list in 2013 and interview with a resident of Kibera slums on why they are rejecting new housing plans.

²⁴⁶ Fekade, W. 2000. *Deficits of formal urban land management and informal responses under rapid urban growth, an international perspective*. <https://www.academia.edu> › Deficits_of_formal_urban_land_management.. (accessed on 6 September 2017).

²⁴⁷ Mahabir *et al* 2016. *The study of slums as social and physical constructs: challenges and emerging research opportunities*. <https://www.tandfonline.com> › doi › full › 21681376.2016.1229130 (accessed on 3 October 2018).

systems.²⁴⁸ This speaks to Kibera slums where private entities are scrambling for a piece of the pie in different sectors, including water and sanitation, to try out their innovations. Some individuals are also taking advantage of the lack of basic services to make a profit from an unfortunate situation. Institutional barriers include policies and institutions within the Water Sanitation and Hygiene (WASH) sector that overlook the needs of marginalized people who include women slum dwellers or prevent their participation in the design and delivery of WASH programmes.

Comparative research carried out on sanitation for the urban poor in India, Bangladesh and Kenya, revealed that sanitation policies and practices neither recognize adequately the heterogeneity of the urban poor nor the different constraints that they face. Joshi found that there is a lack of public spending on sanitation for the urban poor, for example, in Kenya.²⁴⁹

Hunt, in a report in 2001, described sanitation as the ‘Cinderella of the water sector’ as a comparatively lower priority is given by agencies responsible for delivering and managing water and sanitation services.²⁵⁰ When there is no adequate budgetary allocation and investment in the sanitation infrastructure, it becomes challenging for women to access the services that are very personal in their daily lives. This adds to their burdens.

Even though the Constitution provides for equality between women and men, this does not automatically translate into rights as inequalities are often deeply rooted in social structures. The Constitution, legislation, and policies provide for equality for all, but the implementation of these principles is a far cry. Women’s responsibility in fetching water and caring for the family must be weighted and given the recognition that it deserves; otherwise, they will still be

²⁴⁸ Gulyani *et al* 2010. *Poverty, living conditions, and infrastructure access: A comparison of slums in Dakar, Johannesburg, and Nairobi*. <https://elibrary.worldbank.org> › doi › abs › 1813-9450-5388 (accessed on 7 May 2018).

²⁴⁹ Joshi. 2014. *Sanitation for the urban poor: whose choice, theirs or ours?* <https://assets.publishing.service.gov.uk> › media › R8028-FTR (accessed on 10 April 2017).

²⁵⁰ Hunt, C. 2001. *How Safe is Safe? A Concise Review of the Health Impacts of Water Supply, Sanitation and Hygiene*. <https://www.semanticscholar.org> › paper › How-safe-is-safe:-a-concise-revie... (accessed on 13 June 2017).

left out of the economy and the share of national resources, which should be enjoyed by all. This amounts to a denial of rights.

The SDGs aim to provide access to improved sanitation and improved water sources to all by 2030.²⁵¹ This can only be achieved if everyone is put on board to enable them to access the services without discrimination or hardships that can be avoided. WHO report indicates that “the main issue regarding the right to water is not the physical lack of water resources;²⁵² the problem is that the poor and the marginalized are systematically excluded from access by their poverty, by their limited legal rights or by public policies that limit access to the infrastructure that provides for water for lives and livelihoods.”²⁵³ Kibera women slum dwellers also fall under these categories that are excluded due to poverty and limited investment in infrastructure concerning water and sanitation and further because they are women.

Finally, on the political challenges of access to water and sanitation, real progress towards gender-inclusive water, sanitation, and hygiene will not be possible without political will and explicit commitment from service providers to institutionalize the principles of gender equity. Women have always agitated for political empowerment, which can give them decision-making powers and allow them to be able to influence development efforts.²⁵⁴

The lack of political will to understand the challenges faced by the urban poor and the lack of mechanisms to monitor and evaluate slum development processes imply that local politician

²⁵¹ United Nations, 2015. *Transforming our World: the 2030 Agenda for Sustainable Development*. <https://sustainabledevelopment.un.org/content/documents> (accessed on 4 July 2018).

²⁵² World Health Organization & UNICEF. 2017. *Progress on drinking water, sanitation and hygiene: 2017 update and SDG baselines*. World Health Organization. <http://www.who.int/iris/handle/10665/258617>. (accessed on 5 September 2018).

²⁵³ Arachichi, N. M. 2017. *Right to Water and Sanitation of Slum-Dwellers in Sri Lanka. Proceedings of Academicsera 9th International Conference, Seoul, South Korea, 19th -20th October-2017*.

²⁵⁴ Muylwijk, J. 2006. *A Gender Approach to sanitation for empowerment of Women, Men and Children. Gender and Water Alliance*. genderandwater.org/international-and-global-profile/at_download/file (accessed on 2 May 2018).

control who gets access to officially allocated services for the poor.²⁵⁵ The 2014 Kenya National Slum Upgrading and Prevention Policy defines a slum as ‘a human settlement characterized by dilapidated housing structures, overcrowding, abject poverty and unemployment, high insecurity incidences, insecure land tenure, exclusion of physical development, inadequate infrastructural services and often located in an unsustainable environment’.²⁵⁶ It further recommends that “durable housing of a permanent nature that protects against extreme climate conditions should be put in place; sufficient living space, which means no more than three people sharing the same room; easy access to safe water in sufficient amounts at an affordable price; access to adequate sanitation in the form of a private or public toilet shared by a reasonable number of people and security of tenure that prevents forced evictions.”²⁵⁷ If the above is implemented then it would alleviate the burdens that slum dwellers face on a day to day basis.

In the next section, I discuss how gender relations influence the social relations in access to water and sanitation for women slum dwellers in Kibera. This is in a bid to emphasize the significant role that gender relations play in shaping the choices that people make or the lack of options due to voice poverty and decision-making powers.

2.4 How Gender Relations Influence Social Relations in Access to Water and Sanitation

Cook describes gender relations to refer to “complex culturally and historically specific social systems that organize and regulate interactions between women and men, as well as their relative social value.”²⁵⁸ As earlier discussed in the intervening sections on the challenges in access to water and sanitation, gender inequality features as a factor; therefore, gender relations play a significant role in social relations in access to water and sanitation.

These social limitations created by the gender inequalities within families are primarily to blame for the limited access to water and sanitation for women, more so poor women living in

²⁵⁵ Joshi. 2014. *Sanitation for the urban poor: whose choice, theirs or ours?* [https://assets.publishing.service.gov.uk › media › R8028-FTR](https://assets.publishing.service.gov.uk/media/R8028-FTR) (accessed on 10 April 2017).

²⁵⁶ The National Slum Upgrading and Prevention Policy (NSUPP) Government of Kenya, 2014.

²⁵⁷ See National slum upgrading programme.

²⁵⁸ Cook, N. 2007. *Gender relations in global perspective*. [https://www.canadianscholars.ca › books › gender-relations-in-global-pers...](https://www.canadianscholars.ca/books/gender-relations-in-global-pers...) (accessed on 2 May 2018).

the slums. Narayan *et al* argue that “power relations built around gender and are located in the family where children learn about gender roles.”²⁵⁹ It is within the family that values, norms and structures are learned and adapted to guide the institution. It is, therefore, essential to take a close look at what gets ingrained in the children at an early age. The dos and don’ts and cultures which may be positive or negative are learned within the family set up.

Like other women, the women of Kibera are also required to adhere to certain norms, beliefs that they have been socialized to uphold over a long period in respect of gender roles that govern them as individuals in the society. They have to adhere to the role that they are required to be responsible for fetching water and ensuring that the family has adequate water for their basic needs. The traditional role of women in society, particularly concerning the management of the home and women’s role as carers, means that they often have a greater need in terms of access to water and sanitation services compared to men.²⁶⁰

According to Agarwal,²⁶¹ “gender relations influence access to and control over water resources in three ways namely, the gender division of labor, the control of productive asset ownership and the intra-household allocation of resources according to gender.” This, in essence, determines how access is structured. In most African countries, the gender division of labour disadvantages women in that they are tasked with the collection of water, which in most cases involves walking for long distances to get the precious commodity.²⁶² In urban areas like slums, which are poorly connected to water and sanitation, women and girls spend a lot of time

²⁵⁹ Narayan D *et al* 2000. *Voices of the Poor. Can Anyone Hear Us?* ,
<http://documents.worldbank.org/curated/en/131441468779067441/Voices-of-the-poor-can-anyone-hear-us>.
(accessed on 14 September 2018).

²⁶⁰ Albuquerque *et al* 2016. *Women and WaSH: The Human Rights to Water and Sanitation*.
<https://www.thesolutionsjournal.com › article › women-wash-human-rights...> (accessed on 17 June 2017).

²⁶¹ Agarwal, Bina. 1997b. *Environmental Action Gender Equity and Women’s Participation*.
https://www.researchgate.net › publication › 229669704_Environmental_Ac... (accessed on 10 September 2017).

²⁶² Khosla *et al* 2003. *Untapped Connections: Gender, Water and Poverty – Key Issues, Government Commitments and Actions for Sustainable Development*. <https://www.ircwash.org › resources › untapped-connections-gender-water>. (accessed on 4 November 2018).

in long queues waiting to fetch water for their families.²⁶³ This robs them of the time to engage in paid work and other income-generating activities.

Thomson *et al* argue that because of the gendered and age-based division of labour, women, and girls play a primary role in household water management.²⁶⁴ This is not different from what happens in Kibera slum, where the task is also worsened by the fact that piped water is not readily available and, when available, is often available only through water vendors that comes at a prohibitive cost.

The gender relations influence with respect of control of productive asset ownership in water and sanitation is that it provides direct and indirect benefits when individuals own assets like land, housing, and security, which can be used as collateral. It is also documented that assets are essential for poverty reduction.²⁶⁵ Doss and Deere further argue that women in many countries are far less likely than men to have ownership or control of productive assets, similarly that they may not receive the benefits of assets held by men, even when they live in the same household.²⁶⁶ This shows the importance of women having control and owning productive assets to enable them to be empowered to take control of their own lives and those of their families. With this kind of scenario, women are forced to be dependent on their male counterparts who are in charge of productive assets. Research has also established that there is a relationship between asset accumulation and economic and political power.²⁶⁷ Moncrieffe further argues that relations of power underpin inequality and are among the critical variables that cause and keep people in poverty. She states that it is therefore vital to integrate ‘power’

²⁶³ United Nations, OHCHR, UN-HABITAT, WHO. 2010. *The Right to Water, Fact Sheet No. 35*. <http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>. (accessed on 5 July 2018).

²⁶⁴ Thompson *et al* .2017. *Embodied intersections: Gender, water and sanitation in Cameroon*. <https://www.tandfonline.com › doi › abs> (accessed on 4 September 2018).

²⁶⁵ Doss *et al* 2008. *Gender and Asset Ownership*. <https://elibrary.worldbank.org › doi › abs> (accessed on 7 January 2018).

²⁶⁶ Doss *et al* 2008. *Gender and Asset Ownership*. <https://elibrary.worldbank.org › doi › abs> (accessed on 7 January 2018).

²⁶⁷ Moncrieffe, J. 2004. *Power Relations, Inequality and Poverty: A Concept Paper for Empowerment Team, Poverty Reduction Group World Bank*. <https://gsdrc.org › document-library › power-relations-and-poverty-reducti...> (accessed on 5 July 2017).

into analyses of inequality and poverty²⁶⁸ which is the gist of this thesis concerning access to water and sanitation for women slum dwellers of Kibera who are marginalized.

The household is the focal point for decision making, and intrahousehold allocation is affected by several factors, which include gender bias and culture. This also shapes gender relations, which further determine who accesses what and in what proportions. It further plays a role in access to water and sanitation within the household. A study on intrahousehold resource allocation in Kenya in 2011 found that the household as an institution affects the welfare of an individual given the complex economic and social interactions that take place within its framework.²⁶⁹ Omollo further argued that how responsibilities and goods are allocated within the household may leave individual members more vulnerable than others, and as a result, the intended benefits from a development policy project may be lost between the household and the targeted individual. This is dependent on the social relations created which are influenced by gender and culture.

To further elaborate on the issue of how gender relations influence social relations concerning access to water and sanitation, Joke Muylwijk, the Executive Director of the Gender and Water Alliance,²⁷⁰ states that there are lots of reasons why water points and toilets which have been constructed are not used. Sometimes they are abandoned after they have become filthy, and no one feels responsible for cleaning them. In urban situations, especially in slums, taps and toilets are very scarce, but when constructed, the problems about cleaning and maintenance begin. If a keeper is appointed with the responsibility, he or she needs to be paid. Users have to pay per month or per time they use taps, and the poorest are left out because they can't afford the

²⁶⁸ Moncrieffe, J. 2004. *Power Relations, Inequality and Poverty: A Concept Paper for Empowerment Team, Poverty Reduction Group World Bank*. <https://gsdrc.org/document-library/power-relations-and-poverty-reducti...> (accessed on 5 July 2017).

²⁶⁹ Omollo, M. 2011. *Intra household Resource Allocation in Kenya. AERC Research Paper 220 African Economic Research Consortium, Nairobi January 2011*. <https://aercafrica.org/wp-content/uploads/2018/07> (accessed on 10 October 2018).

²⁷⁰ The Gender and Water Alliance (GWA) was established at the Second World Water Forum (WWF) in March 2000 to promote women's and men's equitable access to and management of safe and adequate water, for domestic supply, sanitation, food security and environmental sustainability. GWA believes that equitable access to and control over water is a basic right for all, as well as a critical factor in promoting poverty eradication and sustainability. See GWA website www.genderandwater.org (accessed on 14 February 2017).

costs.²⁷¹ Women are the most affected by the dirty toilets and the lack of water due to their biological makeup, especially during menstruation when they need a lot of water for proper hygiene.²⁷² Kibera women are also not left out in the above scenario.

There are strong linkages between access to water, sanitation and hygiene, and gender equality. A gender approach to water and sanitation services refers to assuring that all people, regardless of gender, benefit from, and are empowered by improved water and sanitation services, and hygiene practices.²⁷³ This explains the relation between gender and access to water and sanitation and the influence that gender exerts in access to water and sanitation, which in most cases, disadvantages women.

According to a Health report entitled *Young Women and Girls in the Slums of Kenya*,²⁷⁴ “Kibera alone has nearly one million people crammed into tiny plots, literally one on top of another. Women in Kibera consider the lack of sanitation as a significant challenge in their lives, but they have to live with the problem and devise ways of overcoming the challenge. The report further states that the issues are that first, there is no space for latrines as the compounds are built up to capacity, and available empty spaces are becoming encroached.”

The report further states that latrines are considered the responsibility of the landlord in this area, and because the landlord usually does not live in the area, he is not interested in improving the latrine situation. Ensuring proper sanitation is the responsibility of the women as they are mostly at home doing the household chores. Also, the lack of toilet facilities may trigger the tenants to construct a latrine for them, but they fear to do so as the landlord might increase their

²⁷¹ Muylwijk J. 2006. Gender Mainstreaming in Integrated Water Resource Management: Gender, Efficiency and Sustainability. <https://www.undp.org › dam › IWRMGenderResourceGuide-English-200610> (accessed on 6 November 2018).

²⁷² Kaur *et al* (2018). *Menstrual Hygiene, Management, and Waste Disposal: Practices and Challenges Faced by Girls/Women of Developing Countries*. <https://www.ncbi.nlm.nih.gov › pubmed> (accessed on 3 February 2019).

²⁷³ SIDA. 2015. *Gender tool Box Brief, Women, Water, Sanitation and Hygiene*. <https://www.sida.se › contentassets › women-water-sanitation-and-hygiene> (accessed on 20 September 2019).

²⁷⁴ Harris, S. 2011. *Young Women and Girls in the Slums of Kenya*. <https://www.slideshare.net › StacyHarris1 › ficcs-health-report>. (accessed on 16 March 2018).

rent.²⁷⁵ This also complicates the situation for women living in the slums as they would not want the landlord to increase rent if a latrine is constructed to ease their sanitation issues.

Gender inequalities often stem from deeply entrenched customs and behaviors that tend to limit women's participation in social and economic development. Using the lens of women's rights, and human rights more generally, helps to understand, highlight, and correct inequalities in the access to water and sanitation experienced by women and girls.²⁷⁶ Gender relations inside and outside households may influence social practices. Cultural or social norms at the local and national level, affect how and to whom water is allocated within communal water management regimes.²⁷⁷

Kibera slums have also not been left out from the cultural and social norms that structure the relations. Research has shown that some communities do not perceive children's feces as harmful. They touch children's stool giving the impression that children's stool is clean. Some people see safe, hygienic practices as a rich people's affair, and other people prefer to defecate in the bush because they are afraid of sharing toilets to avoid being bewitched.²⁷⁸ These are beliefs that are not easy to change, but with awareness-raising on proper hygiene practices, there can be positive outcomes.

For example, in India, there is often discrimination regarding who is allowed to use public water and sanitation services. Women and girls of lower caste or women who are menstruating may not be permitted to use the same well as higher caste women or must wait for others to

²⁷⁵ See a 2015 research on lessons in Urban Community Led Total Sanitation from Nakuru, Kenya also reaffirmed the challenges the tenants in urban slum areas face with sanitation. The project sought ways to address these challenges, by collectively mobilizing and empowering both the tenants as well as the plot owners and by working in partnership. [www.communityledtotalsanitation.org > sites > files > PracticalAction_Less..](http://www.communityledtotalsanitation.org/sites/files/PracticalAction_Less..) (accessed on 20 June 2017).

²⁷⁶ Albuquerque *et al* 2016. *Women and Wash: The Human Rights to Water and Sanitation*. (<https://www.thesolutionsjournal.com/article/women-wash-human-rights-water-sanitation/> (accessed on 2 May 2018).

²⁷⁷ Kabeer, N. 1994. *Reversed Realities: Reversed Realities in Development Thought*. [https://www.versobooks.com > books > 728-reversed-realities](https://www.versobooks.com/books/728-reversed-realities) (accessed on 3 February 2018).

²⁷⁸ See Note on *Factors Influencing Sanitation Practices in Kibera Urban Informal Settlements in Nairobi*. [https://pdfs.semanticscholar.org >](https://pdfs.semanticscholar.org). (accessed on 3 February 2018).

finish using the well before they can fetch water.²⁷⁹ Indian slums compare well with Kenyan Kibera slums as their problems with water and sanitation are almost similar.

Within the slums, there are tribal groupings that adhere to certain norms that have been practiced over a while. These norms are binding on the persons and, as such, hinder the women from unshackling themselves from the gender division of labour and expectations of what duties women and girls are to do. These include fetching water and taking care of the family. The other issue that works against women is that men look at menstruation issues as preferably personal women issues that are filthy and should not be talked about by decent people.²⁸⁰ This was as per the findings of research conducted in Kibera on sanitation and hygiene. Some communities make it a taboo to discuss menstruation issues, therefore making women suffer in silence.

Family and kinship are potentially relevant to gender inequality in varied ways. Women and men are unequal within families, and it is clear that sometimes, the family organization contributes to and is influenced by gender inequality beyond the family institution.²⁸¹ The cultural norms are such that women find it hard to venture out to look for work or, in certain traditions, to mix with men. This is exacerbated by gender roles between men and women, which overburden women in terms of the three roles of reproduction, production, and community. Triple role and triple burden of work are the terms used to describe the amount of workload among women who are not only involved in economic activities but are also burdened by the unequal share of unpaid domestic labour.²⁸²

Gender studies around the world have established that most societies, low-income women undertake all three roles, while men primarily undertake productive and community politics

²⁷⁹ Gosling, L 2013. *Wateraid response to Special Rapporteur on the Rights to Water and Sanitation Consultation on stigmatisation and wash*. <https://www.ohchr.org> › ContributionsStigma › CSociety › STIGMA_WASH (accessed on 20 June 2017).

²⁸⁰ Karanja , 2008. *Sanitation and Hygiene in Kibera Slums, Nairobi*. <https://core.ac.uk> › download › pdf (accessed on 3 April 2018).

²⁸¹ Robert. 2018. *What causes gender inequality*. <http://www.nyu.edu/classes/jackson/causes.of.gender.inequality>. (accessed on 13 August 2018).

²⁸² Ban, A . 2018. *Triple burden of women: Conflicting gender norms*. <https://thehimalayantimes.com/.../triple-burden-women-conflicting-gender-norms/> (accessed on 2 April 2019).

activities, which usually generate a payment, status, or power²⁸³ to the detriment of the women. The reproductive role of women includes the care and maintenance of the actual and future workforce of the family (childbearing responsibilities and domestic tasks). The productive role of women relates to work performed by women and men for pay in cash or kind (market production, informal production, home production, subsistence production). The community managing role of women includes work mostly related to the care and unpaid work, and provision of collective resources such as water and healthcare.²⁸⁴ The women's triple role and burden should be made lighter. Feminists argue that men should be encouraged to share household responsibilities with women to overcome the hardships women are facing.

Caroline Moser²⁸⁵ has developed a framework for gender and development that recognizes the triple roles that women play, as mentioned above. This framework focusses on gender relations, which is essential in understanding the factors that influence access to water and sanitation for women and men and the different roles that they play. "The Moser Framework includes gender roles identification, gender needs assessment, disaggregating control of resources and decision making within the household, planning for balancing the triple role, distinguishing between different aims in interventions and involving women and gender-aware organizations in planning."²⁸⁶ The framework acknowledges a political element to gender planning and assumes that the process will have to deal with conflicts.²⁸⁷

One of the strengths of Moser's framework concerning women's access to water and sanitation is that it conceptualizes planning as aiming to challenge unequal gender relations and support women's empowerment. It further distinguishes between types of gender needs, those that relate to women's daily lives but maintain existing gender relations (practical gender needs)

²⁸³ *Women's triple role* | European Institute for Gender Equality. <https://eige.europa.eu › thesaurus › terms>. (accessed on 18 May 2018).

²⁸⁴ Zibane T. 2016. *The Triple burden and triple role of women, Empower women*. <https://www.empowerwomen.org › Home › Community: Discussions>. (accessed on 19 July 2018).

²⁸⁵ Moser C. 1993. *Gender planning and development: theory, practice, and training*. <https://searchworks.stanford.edu › view>. (accessed on 2 April 2017).

²⁸⁶ Van Marle, K. 2006. *Sex, gender, becoming: post-apartheid reflections*.

²⁸⁷ *Gender Analysis Framework (3) – Moser's Framework*. <https://www.agrilinks.org › sites › default › files › resource › files › ING I...> (accessed on 3 November 2018).

and those that potentially transform existing gender relations (strategic gender needs).²⁸⁸ Access to water and sanitation, especially for women living in the slums, is characterized by time poverty, where they spend much time queuing for the scarce commodity and are left with no time to engage in other income-generating activities.²⁸⁹

Even though Moser's framework is lauded as one that can transform women's lives, it is also criticized as one that has potential limitations, which can obscure the notion of gender relationships and which can give false impressions of natural order and equality. We need to understand those gender roles are shaped and influenced by social systems and structures, values, and norms, and without having an in-depth understanding of these, any gender analysis will not be complete and biased. Thus, in any gender analysis framework, the role of social, psychological, and cultural capital and influences must be considered.²⁹⁰ The Moser framework is also criticized for not mentioning other forms of inequality, such as class, race, or ethnicity.²⁹¹

The social relations are shaped in family structures that determine how assets, power, and labor are allocated, which are ascribed according to gender. Although varying across different class and social groupings, the rules and practices governing marriage, procreation, inheritance, and parenting all combine to ensure that, in much of the world, the care and nurture of the family is seen primarily as women's responsibility, while entitlement to material resources is mainly invested in men; hence the 'monotonous similarity' of women's oppression in different parts of the world as Kabeer describes it.²⁹²

²⁸⁸ International Labour Organization .1998. *A conceptual framework for gender analysis and planning*. South-East Asia and the Pacific Multidisciplinary Advisory Team. <https://www.ilo.org/region/asro/mdtmanila/training/unit1/rsrbcnft> (accessed on 12 July 2017).

²⁸⁹ United Nations Human Settlements Programme. 2003. *The Challenge of Slums*. <https://unhabitat.org/wpdm-package/the-challenge-of-slums-global-rep...> (accessed on 3 April 2018).

²⁹⁰ Kumar A. 2016. *Complementing Gender Analysis Methods*. <https://www.tandfonline.com/doi/abs> (accessed on 4 February 2018).

²⁹¹ See conceptual framework for gender analysis and planning by ILO.

²⁹² Kabeer, N.1994.*Reversed Realities: Gender Hierarchies in Development Thought*. <https://www.ids.ac.uk/publications/reversed-realities-gender-hierarchies...> (accessed on 15 May 2017).

Cultural norms and unwritten rules and gender stereotypes govern women's and men's access to water and sanitation. This is further entrenched by stigma.²⁹³ Culture is a barrier to development because it perpetuates traditionally sanctioned biases against women and provides excuses for men. Kiriti argues that cultural biases operate at all levels ranging from the national institutional level, government policy, community level, household, and individual levels.²⁹⁴ This in effect, influences the social relations in families concerning access to water and sanitation. Water collection is a cultural and gender-related activity for women; hence, the burden squarely lies on them to ensure that their families have enough water for cooking, bathing and washing clothes.

It is estimated that the average distance travelled by African or Asian women is 6 kilometres, and they do so while carrying 20-litre containers on their heads. In Africa, the time spent by women and girls searching for water exceeds 40 billion hours per year, which time could have been spent in their personal development, in their health or prospects.²⁹⁵

Women's sanitation needs are often not considered, particularly concerning menstrual hygiene management, where taboos deter women from voicing their needs and prohibit their active involvement in decision-making and planning processes.²⁹⁶ The taboo and stigma surrounding menstruation contribute to the lack of attention to this natural function. When households share facilities, women and girls may be required by social norms of privacy to use toilets only after dark, thus risking their safety. In other instances, it might not be socially acceptable for them to venture out after dark, limiting their access to sanitation facilities.²⁹⁷ This is the reality that

²⁹³ Cantos M. 2013. *Women Water Woes: Privatization and Reinforcement of Gender Inequality*.

<https://www.e-ir.info> > 2013/08/02 > womens-water-woes-privatization-an... (accessed on 14 February 2016).

²⁹⁴ Kiriti, et al, 2003b. *Gender Inequality, Poverty and Human Development in Kenya: Main Indicators, Trends and Limitations*. <https://ageconsearch.umn.edu> > bitstream (accessed on 4 February 2017).

²⁹⁵ *Water and sanitation for gender equality 2018*. <https://www.wearewater.org> > water-and-sanitation-for-gender-equality_29... (accessed on 21 October 2018).

²⁹⁶ WSSCC 2013. *Celebrating Womanhood: Menstrual Hygiene Management*, March 2013. http://www.wsscc.org/sites/default/files/content/Research_article_files/mhm_8_march_highlights_report.pdf (accessed on 10 July 2018).

²⁹⁷ Winkler et al 2014. *Measuring What We Treasure and Treasuring What We Measure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector*. <https://www.northeastern.edu> > law > pdfs > academics > phrge > winkler (accessed on 6 Februar 2018).

faces women slum dwellers in Kibera due to a lack of access to hygienic sanitation facilities. It has made them resort to unorthodox means to relieve themselves by using what is popularly known as “flying toilets”.

The reality behind these flying toilets is the inaccessibility of toilet facilities especially during late hours due to uneven distribution and lack of convenience resulting in insecurity. Most toilets and pit latrines are owned and managed by community groups and also individual businessmen who charge Kshs. 5 per person per visit.²⁹⁸ This is how gender relations have influenced social relations in respect of access to water and sanitation. The women are on their own when it comes to navigating through the demanding situations of limited access to safe water and hygienic sanitation.

According to a report by Amnesty International, which states that besides the high prevalence of sexual and other forms of gender-based violence that women and girls face in their homes and settlements, their vulnerability to violence is increased because of the scarcity of essential services. This is particularly the case concerning the absence of adequate sanitation in all the informal settlements. The report further illustrates that apart from the long distances women and girls have to travel to reach toilets and other sanitation facilities, the most apparent impact of poor sanitary conditions is the high incidence of diseases and infections.²⁹⁹ Lack of adequate sanitation also hurts women’s security and their right to freedom from gender-based violence. Amnesty International report findings also stated that a high number of women and girls who had experienced rape and other forms of violence directly as a result of their attempt to find or walk to a toilet or latrine some distance away from their houses.³⁰⁰

Women, especially the slum dwellers, are far more excluded than any other group in society. We should not fail to mention that women slum dwellers with disabilities suffer double jeopardy due to their disability and poverty. For instance, if you are a woman living with disability and you live in Kibera slums where there is no proper sanitation and access to safe

²⁹⁸ See Mutisya & Yarime 2011. *on understanding the Grassroots Dynamics of Slums in Nairobi: The Dilemma of Kibera Informal Settlements*. <https://www.semanticscholar.org › paper › Understanding-the-Grassroots-Dy...> (accessed on 3 June 2018).

²⁹⁹ Amnesty International. 2010. *Insecurity and Indignity: Women’s Experiences in the slums of Nairobi, Kenya*. <https://www.amnesty.org › documents › AFR32 › 2010> (accessed on 3 March 2018).

³⁰⁰ Amnesty International. 2010. *Insecurity and Indignity: Women’s Experiences in the slums of Nairobi, Kenya*. <https://www.amnesty.org › documents › AFR32 › 2010> (accessed on 3 March 2018)

water, it would be difficult for you to use the unorthodox methods of survival in the harsh conditions.

Governments often refuse to provide services to these areas for fear of appearing to formalize and legalize informal settlements.³⁰¹ Persons in informal settlements, in turn, are always reluctant to claim water and sanitation services fearing harassment and eviction. They would rather avoid interference with the government.³⁰²

In the next section, I discuss the relation between poverty, patriarchy, and access to water and sanitation for women slum dwellers in Kibera to underscore how they operate to hinder or enhance access. The reason for the discussion is to link poverty to patriarchy and deconstruct the relationship together with the many unwritten rules and cultural biases that govern women and men in access to water and sanitation.

2.5 The Relation between Poverty, Patriarchy, and Access to Water and Sanitation for Women Slum Dwellers

Women and men experience poverty differently, and different aspects of poverty (deprivation, powerlessness, vulnerability, its seasonality) have gender dimensions.³⁰³ A 1996 World Bank report indicates that because traditions give women and children less decision-making powers over assets, they are more likely to be vulnerable than men because of a lack of income-generating activity opportunities.³⁰⁴ Most women who live in slums face poverty and are thus susceptible which leads to insecurity, lack of or low self-esteem, and defenselessness.³⁰⁵ This explains why women lack access to safe water and sanitation when the same has to be paid for at a cost beyond their means.

³⁰¹ UN Water. 2015. *Eliminating discrimination and inequalities in access to water and sanitation*. www.unwater.org › app › uploads › 2015/05 › (accessed on 15 September 2017).

³⁰² UN Water 2015. *Eliminating discrimination and inequalities in access to water and sanitation*.

³⁰³ World Bank. 1996. The World Bank annual report.

<http://documents.worldbank.org/curated/en/357461468137379235/The-World-Bank-annual-report-1996> (accessed on 8 May 2018).

³⁰⁴ World Bank. 1996. The World Bank annual report.

<http://documents.worldbank.org/curated/en/357461468137379235/The-World-Bank-annual-report-1996> (accessed on 8 May 2018).

³⁰⁵ See 1996 World Bank Annual Report.

The UN Report on the State of World Population³⁰⁶ shows that “the consequences of gender inequality, including poor health, illiteracy, inadequate schooling, social exclusion, powerlessness and gender discrimination, all contribute to poverty.” The report suggests that the critical solution to these problems is reducing the gender gap. This speaks to the need to address the women slum dwellers’ vulnerability to poverty, which hinders them from accessing adequate, safe water and sanitation. There is a direct relationship between access to water and poverty, and water management has the potential to be a critical factor in many aspects of poverty reduction and sustainable development beyond water supply and sanitation.³⁰⁷

In order to understand the link between poverty and access to water, it is imperative to look at the meaning of the term “feminization of poverty” which was coined by Diana Pearce in a 1978 article in *Urban and Social Change Review* where she argued that poverty was “rapidly becoming a female problem” and that women accounted “for an increasingly large proportion of the economically disadvantaged”.³⁰⁸ Pearce further noted that in 1976, two of three poor adults were women; that female-headed families were increasing rapidly, and that the number of poor female-headed families doubled between 1950 and 1974.³⁰⁹ This statistical analysis was based on the United States of America during that period, but it later got prominence in international agenda and debates.

Chant also argues that although people often refer to ‘feminization of poverty’ without any elaboration, three of its most common tenets are that women represent a disproportionate percentage of the world’s poor, that this trend is deepening, and that women’s increasing share

³⁰⁶UNDP .1995.*The Human Development Report*. [hdr.undp.org > content > human-development-report-1995](http://hdr.undp.org/content/human-development-report-1995) (accessed on 1 August 2018).

³⁰⁷ WHO 2015. *Linking Poverty Reduction and Water Management*. [https://www.who.int > water_sanitation_health > publications > povertyred](https://www.who.int/water_sanitation_health/publications/povertyred). (accessed on 2 October 2017).

³⁰⁸ Pearce, D 1978.*The Feminization of Poverty: Women, Work and Welfare*. [https://www.semanticscholar.org > paper > The-Feminization-of-Poverty:-W](https://www.semanticscholar.org/paper/The-Feminization-of-Poverty:-W). (accessed on 4 September 2018).

³⁰⁹ Pearce, D 1978.*The Feminization of Poverty: Women, Work and Welfare*.[https://www.semanticscholar.org > paper > The-Feminization-of-Poverty:-W](https://www.semanticscholar.org/paper/The-Feminization-of-Poverty:-W). (accessed on 4 September 2018).

of poverty is linked with a rising incidence of female household headship.³¹⁰ Several researchers have critiqued the concept of feminization of poverty on the basis that women are either presented as a homogenous mass or are differentiated solely on the grounds of household headship. A second criticism is that monetary poverty seems to be the main criterion.³¹¹

Even though income poverty should be considered, Fukuda-Parr cautions that the ‘feminization of poverty’ is not ‘just about lack of income.’³¹² She challenges the use of poverty incidence among female-headed households, whereby she proposes that it should be looked at in terms of human outcomes concerning choices and opportunities and not on incomes.³¹³ This gives an alternative to looking at women who are often the face of poverty in a positive way in terms of the choices that are available to be utilized to alleviate poverty. The eradication of the feminization of poverty calls for a specific focus on the status of women in society.³¹⁴ The feminization of poverty has gained traction in the international discourse³¹⁵, with some researchers arguing that feminized policy interventions might in themselves be playing a role in the re-feminization of poverty.

The overuse of the term feminization of poverty brings to fore the questions concerning data that is used to determine the poverty levels that sustain this term and whether the data is disaggregated by sex. The term should not be used to generalize women's poverty without proper data to support the assertion. This might lead to misleading outcomes.

³¹⁰ Chant, S. 2006. *Revisiting the Feminization of Poverty and the UNDP Gender Indices: What Case for a Gendered Poverty Index?* <https://www.semanticscholar.org/paper/Revisiting-the-feminisation-of-po..> (accessed on 15 February 2018).

³¹¹ Chant S, 2006, *Re-Thinking The ‘Feminization of Poverty in Relation to Aggregate Gender Indices.* <https://ideas.repec.org/taf/jhudca/v7y2006i2p201-220> (accessed on 6 July 2017).

³¹² Fukuda-Parr, S. 1999. *What Does Feminization of Poverty Mean? It Isn't Just Lack of Income.* https://www.researchgate.net/publication/24081164_What_Does_Femini. (accessed on 5 July 2018).

³¹³ Fukuda-Parr, S. 1999. *What Does Feminization of Poverty Mean? It Isn't Just Lack of Income.* https://www.researchgate.net/publication/24081164_What_Does_Femini. (accessed on 5 July 2018).

³¹⁴ Veeran, V. 2000. *Feminization of Poverty.*

https://www.researchgate.net/publication/268506084_FEMINIZATION. (accessed on 17 August 2016).

³¹⁵ Bieri, S. 2014. *New ruralities – old gender dynamics? A reflection on high-value crop agriculture in the light of the feminization debates.* https://www.researchgate.net/publication/307808147_New_ruralities_-_o... (accessed on 18 November 2018).

Sulley M. Rosa argues that if we are going to understand and account for all experiences of water poverty properly, we need to change the way we think about gender, women, and water.³¹⁶ This is due to the intertwined relationship of access to water, gender equality, and poverty. We cannot achieve any of the three without tackling the underlying issues holistically. Within scholarship and policy on water poverty, it is now commonly thought that women are the most vulnerable due to their socio-economic conditions and responsibilities for domestic water provision and management.³¹⁷

Poverty statistics are masked by the structural and systemic gender inequalities between women and men, with poor African women being particularly disadvantaged. It is the poor women and not men who are likely to experience the general effects of poverty as they operate as shock absorbers of poverty for others.³¹⁸ This overburdens women especially those living in slums with the task of providing for the scarce resource and ensuring that the families have access to the precious commodity.

Poverty is gendered and the comparison of access to water and sanitation between women and men is a conversation that has been ongoing amongst feminists. This has led to the marginalization of women in almost every sphere of life in developing countries.³¹⁹ In order to appreciate the gendered nature of water and sanitation, it is important to understand the conceptual and structural issues underpinning it. The patriarchal structures that women interact with disadvantage them concerning water and sanitation access further reflect the underlying power struggles and broader politics.³²⁰ Therefore, these should be considered when

³¹⁶ Sulley M. 2017, *Women' and water inequality: why we need to look deeper into 'gender' to overcome water inequality*. <https://blogs.ucl.ac.uk> › The Bartlett Development Planning Unit » (accessed on 16 May 2018).

³¹⁷ Buechler *et al.* 2015. *Introduction: Towards a feminist political ecology of women, global change, and vulnerable waterscapes*. <https://arizona.pure.elsevier.com> › publications › a-political-ecology-of-wo... (accessed on 4 July 2018).

³¹⁸ Devina N. 2011. *Women's socio-economic [in]equality and gender [in]justice: Feminist reflections on the right of access to water in Mazibuko and Others v City of Johannesburg and Others [2009] ZACC 28* 10.1080/10130950.2011.575991 (accessed on 9 February 2018).

³¹⁹ Chulu 2015. *A Feminist Perspective that Poverty is Gendered: Do Women Have Lesser Access to Resources in Comparison with Men?* <https://ssrn.com/abstract=2663381> (accessed on 19 May 2018).

³²⁰ Salimi, K 2015. *Gender Dimensions of Community-managed Water Systems: Gender-water Realities in*

deconstructing the power dynamics that manipulate water access, rights and control.³²¹ The power relations in families play a role in the allocation of resources including access to water and sanitation services. This also is determined by the income levels of the individuals within the family.

The connection between gender and poverty is not about whether women suffer more from poverty than men. It is rather to highlight how gender differentiates the social processes that ultimately exacerbate women's experiences with access to water and sanitation compared to men.

According to UNESCO, poverty is defined in either relative or absolute terms. Absolute poverty measures poverty concerning the amount of money necessary to meet basic needs such as food, clothing, and shelter. When analyzing the concept of absolute poverty, the UNESCO report suggests that we should look at the broader quality of life issues together with the overall inequality levels in society as a whole.³²² This is in a bid to capture the nuances and linkages of poverty, patriarchy, and gender.

Social scientists have critiqued the definition absolute poverty as it does not take into account social and cultural needs which therefore led to the concept of relative poverty which is sometimes described as “relative deprivation” because the people falling under this category are not living in total poverty, but they are not enjoying the same standard of life as everyone else in the country³²³. Kibera slum dwellers could be falling under the category of absolute poverty or relative poverty. The slum dwellers might not be enjoying the “optimum” standard of living where they have all basic services like water and sanitation, but it would be essential

Peri-urban Cochabamba, Bolivia. M.A. Thesis in International Development and Globalization. School of International Development Studies, Faculty of Social Sciences University of Ottawa. <https://ruor.uottawa.ca/handle/> (accessed on 4 September 2018).

³²¹ Salimi, K 2015. *Gender Dimensions of Community-managed Water Systems: Gender-water Realities in*

Peri-urban Cochabamba, Bolivia. M.A. Thesis in International Development and Globalization. School of International Development Studies, Faculty of Social Sciences University of Ottawa. <https://ruor.uottawa.ca/handle/> (accessed on 4 September 2018).

³²² UNESCO, Poverty | United Nations Educational, Scientific and Cultural organization, Learning to live together. www.unesco.org/new/unesco/events/learning-to-live-together. (accessed on 18 October 2019).

³²³ HABITAT FOR HUMANITY 2018. *Relative vs Absolute Poverty: Defining Different Types of Poverty*. <https://www.habitatforhumanity.org.uk/blog/2018/09/relative-absolut...> (accessed on 4 December 2018).

to take into account their socio-cultural circumstances while defining their poverty levels. Relative poverty can either be permanent, persistent or changeable depending on the economic growth of the country. There are Kibera slum dwellers whose circumstances have changed and wangled their way out of poverty, which has given other slum dwellers hope.

We should note that poverty, to a large extent, is related to social exclusion, which is exacerbated by gender inequality. Poverty should also be understood in cultural, social and political terms to explain certain deprivations of people of a particular gender, cadre, and in some cases caused by targeted policies and political decisions. The deprivations can take the dimension of ethnicities, religions, tribes, disability statuses and locations, to mention a few.³²⁴ When a government does not put in place policies to actualize the realization of the human right to water and sanitation, especially for the most vulnerable, it can be mistakenly be viewed as political and targeting a particular community or tribe, especially in Kenya where ethnic politics is rampant.³²⁵

The high poverty rates among women can be linked to their odd situation in the labor market, their lack of voice and participation in decision-making in the family/household, and other institutions and because gender disparities persist in access and control of human, economic, and social assets.³²⁶ Previous studies indicate that Kibera is one of the largest slums in Africa, with an estimated population of more than nine hundred thousand people who live in extreme poverty and earning less than \$1.00 per day with high unemployment rates.³²⁷

The Kenya demographic and health survey in 2010 estimated that between 60 and 93% of slum households are dependent on water vendors for their water supply.³²⁸ Women slum dwellers The experience of slum-dwellers starkly illustrates that people living in poverty not only face

³²⁴ HABITAT FOR HUMANITY 2018. *Relative vs Absolute Poverty: Defining Different Types of Poverty*. <https://www.habitatforhumanity.org.uk › blog › 2018/09 › relative-absolut...> (accessed on 4 December 2018).

³²⁵ Meier *et al* . 2014. *Translating the human right to water and sanitation into public policy reform*. *Science and Engineering Ethics*. <https://www.ncbi.nlm.nih.gov › pubmed>. (accessed on 22 June 2018).

³²⁶ Meier *et al* . 2014. *Translating the human right to water and sanitation into public policy reform*. *Science and Engineering Ethics*. <https://www.ncbi.nlm.nih.gov › pubmed>. (accessed on 22 June 2018).

³²⁷ See Umande Trust website.

³²⁸ Kenya Demographic and Health Survey - KDHS (2010). Kenya Demographic and Health Survey 2008-09. <https://dhsprogram.com › pubs › pdf>.(accessed on 16 January 2017).

deprivation but are also trapped in poverty, because of exclusion from the rest of the society, denied a voice to participate in the affairs that affect them and are further threatened with violence and insecurity.³²⁹

According to UN ECOSOC, poverty in Kibera slums is evident through the structures of the houses the residents live in, which are often constructed of cardboard, corrugated tins, mud, thatch, and plastics.³³⁰ They are mostly single rooms, which are about six feet by nine feet and are partitioned by only a curtain. This single room is used as a living room, kitchen, bathroom, as well as a bedroom where both parents and children share. People living in poverty are the most overcrowded because of the cost of housing and large family sizes.³³¹ The housing conditions of Kibera slum dwellers are not by choice but by lack of better options, which come with an added cost.

In 2007, COHRE analyzed the right to water and sanitation in Kibera to collect baseline data on availability, adequacy, affordability, and accessibility of basic services. Particular emphasis was laid on sanitation, water, and garbage collection and in assessing the extent of the implementation by the central and local government of their duties under human rights law to the people of Kibera. It revealed that there was an acute shortage of basic services in Kibera and that the residents were paying Kshs. 100-150 per cubic meter of water, ten times more than the price charged by the Nairobi City Water and Sewerage Company. The waste and sanitation services were also inadequate for the ever-increasing population, with up to 150 people sharing the same toilet facility.³³²

There are direct and indirect connections between lack of access to water and poverty. Direct links are those associated with control over water. Indirect connections between water and

³²⁹ Amnesty International Report 2009: *The State of the World's Human Rights*. <https://reliefweb.int › report › world › amnesty-international-report-2009-s>. (accessed on 2 April 2017).

³³⁰ United Nations Economic and Social Council 1997. *World Water Vision*. Results of the gender mainstreaming project. <www.un.org › womenwatch › osagi › pdf › GenderWaterSanitation15CaseSt.> (accessed on 8 February 2018).

³³¹ United Nations Economic and Social Council 1997. *World Water Vision*. Results of the gender mainstreaming project. <www.un.org › womenwatch › osagi › pdf › GenderWaterSanitation15CaseSt.> (accessed on 8 February 2018).

³³² COHRE. 2007. *The Right to Water and Sanitation in Kibera, Nairobi, Kenya*. https://issuu.com › cohre › docs › cohre_righttowatersanitationkenya_k. (accessed on 2 April 2017).

poverty are those associated with access to safe water.³³³ A person who has access to adequate amounts of safe water does not suffer from illness due to waterborne disease and thus can attend school and perform labor. When a person has secured access to a reliable and nearby water source, she gains the value of the marginal time-savings of water collection.

UNDP Report 2006, acknowledges the multidimensional context in which poverty, malnutrition, water and sanitation, economic development, and health are connected and dependent on each other.³³⁴ This means that when coming up with interventions, they must address all the issues that are interconnected to enable a lasting and effective solution. The response must also use a multidimensional approach to deal with poverty, water, sanitation, health and economic empowerment especially for women and the marginalized.

In many countries, the law significantly contributes to women's poverty and inequality, through express legal limitations and endorsements of cultural or customary discrimination.³³⁵ Poverty is not only constituted by direct laws; but also indirectly, by a lack of proper enforcement of existing laws concerning women.³³⁶ The repeal of discriminatory laws that perpetuate gender inequality is one step, but the analysis of policies using a gender lens and effective implementation of the laws is very important in the realization of gender equality and poverty reduction. This also calls for an audit of the policies, laws, administrative and regulatory structures concerning water and sanitation.

Roy *et al* are of the view that there is evidence of a relationship between water supply coverage and poverty levels for countries in the global South and that there is also a relationship between levels of female school enrolment, access to water, and poverty.³³⁷ Water as a resource is key to achieving the other human development goals, such as eradicating malnutrition and extreme

³³³ Roy & Crow. 2004. *Gender Relations and Access to Water: What We Want to Know About Social Relations and Women's Time Allocation*. <https://escholarship.org/uc/item/0m5033gv>. (accessed on 4 May 2018).

³³⁴ United Nations Development Programme Human Development Report 2006. [hdr.undp.org › sites › default › files › reports › hdr06-complete](http://hdr.undp.org/sites/default/files/reports/hdr06-complete) (accessed on 7 September 2017).

³³⁵ Fredman S. 2016. *Women and Poverty – A Human Rights Approach*. [https://www.eupublishing.com › doi › abs › ajicl.2016.0170](https://www.eupublishing.com/doi/abs/ajicl.2016.0170) (accessed on 17 April 2018).

³³⁶ Fredman S. 2016. *Women and Poverty – A Human Rights Approach*. [https://www.eupublishing.com › doi › abs › ajicl.2016.0170](https://www.eupublishing.com/doi/abs/ajicl.2016.0170) (accessed on 17 April 2018).

³³⁷ See Note 323 on gender relations and access to water. <https://escholarship.org/uc/item/0m5033gv>. (accessed on 4 May 2018).

poverty. Extreme poverty is a reality for women slum dwellers in Kibera who try to eke out a living from the dilapidated housing without basic services like water and sanitation.

According to Owuor and Foeken, many of the water utility systems in Kenya are characterized by high water losses, insufficient revenues to cover operating costs, dilapidated and poorly functioning infrastructure, and lack of investments, low billing and collecting efficiency, chronic water shortages and failure to meet the existing demand, low coverage and corruption.³³⁸

It is, therefore, necessary to understand how women and families are coping with growing poverty and whether this has led to an increase in gender inequality. Recognizing the importance of women concerning water can elevate the status of women while providing all members of society with an essential resource.

On the issue of how patriarchy relates to access to water and sanitation for Kibera women, it is vital to understand the meaning of patriarchy. Patriarchy refers to male domination both in public and private spheres³³⁹. In this way, feminists use the term ‘patriarchy’ to describe the power relationship between men and women as well as to find out the root cause of women’s subordination.³⁴⁰ Sultana further argues that patriarchy is the prime obstacle to women’s advancement and development, and despite differences in levels of domination the broad principles remain the same, which recognizes men to be in control. She also states that the nature of this control may differ and that is why it is necessary to understand the system, which keeps women dominated and subordinate, and to unravel its workings to work for women’s development systematically.

³³⁸ Owuor *et al* 2011. *Water reforms and interventions in urban Kenya and its impact on the livelihood of the urban poor*. <https://profiles.uonbi.ac.ke/samowuor/publications> (accessed on 13 August 2018).

³³⁹ Engels, F. 1884. *Origin of the Family, Private Property, and the State*. *Marx/Engels Selected Works*. <https://www.marxists.org/archive/marx/works/download/pdf/ori...> (accessed on 10 July 2018).

³⁴⁰ Sultana, A 2011. *Patriarchy and Women’s Subordination: A Theoretical Analysis*. <https://www.banglajol.info/index.php/AFJ/article/view>. (accessed on 2 May 2018).

Patriarchy has been identified by many researchers as a contributing factor to women's subordinate position in societies³⁴¹. It has also denied women an opportunity to enjoy equal rights in certain aspects with the men all in the name of preservation of culture.

Some scholars also argue that patriarchy and male domination as a social construction can be deconstructed and allow for the exploration of a better understanding of the basics of patriarchy and inequalities.³⁴² They, therefore, conclude that it is necessary to conduct a political and critical deconstruction of patriarchy as a system.³⁴³

Camille Bruneau argues that the fact that patriarchy is anchored on male domination, there can be no equality if such power is not dismantled since it is reproduced through culture and economic mechanisms.³⁴⁴ She also states that as long as we will not consider women and men, and all human beings as equal, then there will be no real emancipation due to stereotypes imposed by the dominants reflected in our behaviours, actions, and institutions.³⁴⁵ This calls for behavioral change to achieve gender equality in access to water and sanitation.

Max and Engels defined patriarchy as the rule or control of the father over the women of the family.³⁴⁶ Engels maintained that the disparities of power between men and women were not based on their inherent natures but were the result of social and historical circumstances, rooted in antiquity.³⁴⁷ Maria Mies extends the definition of patriarchy by saying that today, male dominance goes beyond this rule of the father to include husbands, male bosses, and ruling

³⁴¹ Kassa S .2015. *Challenges and Opportunities of Women Political Participation in Ethiopia*.

<https://www.omicsonline.org › open-access › challenges-and-opportunities>. (accessed on 16 March 2017).

³⁴² Bruneau, C. 2018. *How do patriarchy and capitalism jointly reinforce the oppression of women?* www.cadtm.org/How-do-patriarchy-and-capitalism-jointly-reinforce-the-oppression-o... (accessed on 17 May 2019).

³⁴³ Bruneau, C. 2018. *How do patriarchy and capitalism jointly reinforce the oppression of women?* www.cadtm.org/How-do-patriarchy-and-capitalism-jointly-reinforce-the-oppression-o... (accessed on 17 May 2019).

³⁴⁴ See note 332 on patriarchy and capitalism.

³⁴⁵ See note 332.

³⁴⁶ Engels , F. 1884. *Origin of the Family, Private Property, and the State. Marx/Engels Selected Works*. <https://www.marxists.org › archive › marx › works › download › pdf › ori...> (accessed on 10 July 2018).

³⁴⁷ Engels , F. 1884. *Origin of the Family, Private Property, and the State. Marx/Engels Selected Works*. <https://www.marxists.org › archive › marx › works › download › pdf › ori...> (accessed on 10 July 2018).

men in most societal institutions and politics and economics. She contends that historically, patriarchal systems were developed at a particular time, by specific people in particular geographical regions.³⁴⁸ This explains why even after many years of women's movements for emancipation and empowerment, the issue of patriarchy is still rearing its ugly head in the agenda for equality between the sexes.

Patriarchy, as an institution, also enforces gender roles and responsibilities thereby leading to unequal power relations between men and women along the life cycle. These unequal power relations extend to the community level and within governing institutions, a scenario often reflected in institutional policies and practices.³⁴⁹ Gender relations are not formed only within the intimate relations of the family; they are constructed within the public sphere as well.³⁵⁰ Patriarchy does not only reign in the rural areas but is also ingrained in the urban settings, which in essence affects the gender relations between men and women in access to essential services like water and sanitation.

In the predominantly patriarchal societies in which women and girls' primary responsibilities and roles are within the confines of the domestic sphere, the daily tasks include cooking, cleaning, washing clothes, and providing child and elderly care, all of which require varying amounts of clean and potable water.³⁵¹ Regardless of the critical role that women play in water collection and its management within the household, patriarchal ideologies, and community structures shape those gendered divisions of labor and are evident in men and women's relations with water.³⁵²

³⁴⁸ Mies M. 1986. *Patriarchy and Accumulation on world scale: Women in the International Division of Labour*. <https://we.riseup.net › assets › Patriarchy+Accumulation+on+a+World+Scale> (accessed on 3 August 2018).

³⁴⁹ *Gender and Power Analysis in Nairobi Informal Settlements, 2015* <https://europa.eu › iesf › document › gender-and-power-analysis-report-ke...> (accessed on 19 April 2018).

³⁵⁰ *Gender Inequality chapter 15 . 2009*. <https://www.ssc.wisc.edu › ~wright › ContemporaryAmericanSociety › Ch.> (accessed on 4 June 2018).

³⁵¹ Cantons M. 2013, *Women's Water Woes: Privatization and Reinforcement of Gender Inequality*. <https://www.e-ir.info › 2013/08/02 › womens-water-woes-privatization-an...> (accessed on 2 September 2017).

³⁵² Sultana, F. 2006. *Gendered Waters, Poisoned Wells: Political Ecology of the Arsenic Crisis in Bangladesh*. In *Fluid bonds: Views on gender and water*, https://www.researchgate.net › publication › 277776065_Gendered_Waters_... (accessed on 18 June 2018).

Mies argues that patriarchy had a specific beginning in history and thus will also have an end.³⁵³ Many researchers say that it is necessary and possible to question the patriarchal systems fundamentally to achieve gender equality as there can never be gender equality as long as male domination is still encouraged. Women in Kibera will still be affected by the adverse effects of poverty and patriarchy in access to water and sanitation if nothing is done to ensure that there is gender equality.

2.6 Conclusion

In conclusion, it is evident from the discussion above that Kibera, as a study site, is one of the largest slums in Africa with attendant problems of poverty and inequality concerning access to water and sanitation. Gender inequality, cultural beliefs, patriarchy, and perceptions influence the gender relations and social relations of access to water and sanitation.

Similarly, Kibera women slum dwellers face myriad challenges in access to water and sanitation which I categorize as economic, socio-cultural, legal, institutional and political. I use these categories to interrogate the five standards that are provided for in General Comment No. 15 on availability, accessibility, quality, acceptability, and affordability.

I also established that the social limitations which are created by the gender inequalities amongst families are to blame for the limited access to water and sanitation for women, more so poor women living in the slums. The limitations are further compounded by the gender division of labour, which tasks women with collection of water that, in most cases, involves walking for long distances in search of the scarce commodity. Time spent by women collecting water robs them of opportunity to engage in income-generating activities, and some cases cost girls their education.

Finally, it is further evident that there is a link between patriarchy, poverty, and access to water and sanitation that disadvantages women, who are the face of poverty in most slums. Poverty and the lack of influence that goes with poverty lead to limited voice over the provision of water. Further discrimination can both be a cause of poverty and a hurdle in poverty alleviation. Water is crucial for sustainable development and poverty alleviation.

³⁵³ Mies M. 1986. *Patriarchy and Accumulation on world scale: Women in the International Division of Labour*. <https://we.riseup.net › assets › Patriarchy+Accumulation+on+a+World+Scale> (accessed on 3 August 2017).

There has to be a concerted effort to bridge the gender gap to achieve equality in access to water and sanitation. The voices of the women slum dwellers must be heard and targeted policies and programmes put in place to enable them to realize the right to water and sanitation. The government must have goodwill and political will to implement laws and policies aimed at the realization of access to water and sanitation.

In the next chapter, I look at the feminist perspectives on the right to water and sanitation, where I analyze the theoretical approaches used in the study. I focus on two approaches, namely, the women's law approach and African feminism. I also briefly discuss other feminist perspectives to see how they are related to the two theories chosen for analysis.

CHAPTER THREE

Feminist Perspectives on the Right to Water and Sanitation

3.1 Introduction

In this chapter, I analyze the theoretical approaches used in the study, which are the women's law approach³⁵⁴ and Africana feminism.³⁵⁵ I also briefly look at the definition and history of feminism together with waves of feminist theories but deal with the women's law approach and Africana feminism as the guiding theory of the study to help in the analysis of women's access to water and sanitation in Kibera. I further examine how the two feminist theories can be combined for analysis. The guiding research question in this chapter is what feminist theory/theories would best reflect and guide the study of women's access to water and sanitation.

The use of feminist perspectives in the analysis of water and sanitation access for women is vital to enable us to understand the root causes of women's subordination and the possible strategies for emancipation leading to equality of the sexes in all spheres of life. The argument is further bolstered by Lyn Smith, who states that feminist approaches to legal research differ from standard approaches in that they are informed by the understanding that our legal systems and the language, discourse, and arguments are patriarchal in origin and spirit.³⁵⁶

To understand the relation between women's access to water, poverty, and patriarchy, I use the women's law approach and Africana feminism, which are feminist theories, to help examine how gender inequality impacts women's lives, livelihoods, and well-being.³⁵⁷ Women's concerns are rarely addressed, as societal barriers often restrict women's involvement in

³⁵⁴ Dahl, 1987:20.

³⁵⁵ Goredema, R. 2010. *African feminism: the African woman's struggle for identity*. africanrhetoric.org › pdf › Yearbook Section 4 Goredema (accessed on 2 May 2017).

³⁵⁶ Benston, M. *The Effects of Feminist Approaches on Research Methodologies*. Calgary Institute on Humanity. Chapter 4 by Lyn Smith on What is Feminist Legal Research. Pp.72.

³⁵⁷ United Nations 2014. *The World Survey on the Role of Women in Development, on the theme of gender equality and sustainable development*, was first issued by the United Nations in 2014 as a Report of the Secretary-General (A/69/156) <https://sustainabledevelopment.un.org/content/documents/1900unwo...> (accessed on 17 September 2018).

decision making as regards water and sanitation and other relevant issues that affect them.³⁵⁸ This is why the use of a feminist theoretical approach as a conceptual framework is necessary to show how the law has historically subordinated women and how the same law can be reworked to change the status of women through reform.

In the next section, I look at the definition of feminism, a brief history, and different waves of feminism and relate them to women's access to water and sanitation in Kibera. This is in a bid to examine how women's access to water and sanitation is shaped by legal and social biases, including various intersections of age, ethnicity, and disability, and gender relations.

3.2 Definition of Feminism, and the Emergence of Different Waves.

Black's Law Dictionary 8th edition defines feminist jurisprudence as "a branch of jurisprudence that examines the relationship between women and law, including the history of legal and social biases against women, the elimination of those biases in modern law, and the enhancement of women's legal rights and recognition in the society."³⁵⁹ Feminist scholars have shown that many areas of law are fundamentally structured around men's perspectives and experiences, often subordinating or excluding women.

Mary Anne Case describes feminist jurisprudence as a profoundly normative area of the law which asks what, from a feminist perspective is wrong with the world; how much does the law have to do with creating, reinforcing and maintaining what is wrong; what would the ideal world look like; and how can law help us to get to that ideal.³⁶⁰ These are the questions that must be interrogated and answered concerning why women slum dwellers of Kibera are not able to access adequate water and sanitation without discrimination. What role do the laws and policies play in creating, reinforcing and maintaining this situation and how can the law help in rectifying this wrong.

³⁵⁸ Masgon & Gensch . 2009. *Water, Sanitation and Gender*. <https://sswm.info> > further-resources-sustainability-relation-water-sanitation. (accessed on 3 August 2019).

³⁵⁹ Black's Law Dictionary 8th edition. <https://www.pdfdrive.com> > blacks-law-dictionary-8th-edition-e40394506 (accessed on 3 June 2017).

³⁶⁰ Case M. 1994. *Of Richard Epstein and Other Radical Feminists*. <https://pdfs.semanticscholar.org> >(accessed on 20 October 2018).

The definition of the term feminism can be challenging, as many scholars have elaborately defined it by listing its characteristics. The authors of an article titled “History and Theory of feminism”³⁶¹ describes it as a political, cultural or economic movement aimed at establishing equal rights and legal protection for women. The article further states that feminism involves political and sociological theories and philosophies concerned with issues of gender difference, as well as a movement that advocates gender equality for women and campaigns for women's rights and interests.³⁶² Gender and Water Network (GWANET)³⁶³ further explains in an article that feminism encompasses work in a variety of disciplines, including anthropology, sociology, economics, women's studies, literary criticism, art history, psychoanalysis, and philosophy.³⁶⁴

Obaidur Ovi while writing on waves of feminism described feminism as “a culture in which women, because they are women, are treated differently than men, and that, in that difference of treatment, women are at a disadvantage.”³⁶⁵ He further states that feminism assumes that such treatment is cultural and thus possible to change and not merely “the way the world is and must be.”³⁶⁶ There are several types of feminism, but the bottom line is that they have the same objective, which is to advocate for equality between the sexes which can be achieved through social and political reforms and legal means.

Karen Offen, in her book *Defining Feminism: A Comparative Historical Approach*, states that “everyone seems to have different answers to the questions on what feminisms is? Who is a feminist? How do we understand feminism across national boundaries, cultures, and centuries

³⁶¹ History and Theory of feminism, www.gender.cawater-info.net/knowledge_base/rubricator/feminism_e.htm (accessed on 12 May 2019).

³⁶² History and Theory of feminism, www.gender.cawater-info.net/knowledge_base/rubricator/feminism_e.htm (accessed on 12 May 2019).

³⁶³ Gender and Water Network (GWANET) in Central Asia Republic’s objective is to improve gender awareness among the water sector stakeholders at regional, national and local levels, and strengthen their capacity in incorporating gender issues into the decision-making process. [www.gender.cawater-info.net > index_e](http://www.gender.cawater-info.net/index_e) (accessed on 16 May 2017).

³⁶⁴ History and Theory of Feminism, Gender and Water Network publication.

³⁶⁵ Obaidur O. 2017. *Waves of feminism*. [https://www.academia.edu > Waves_of_feminism](https://www.academia.edu/Waves_of_feminism) (accessed on 3 May 2018)

³⁶⁶ See Obaidur above.

and that every answer to the questions is infused with political and emotional change”.³⁶⁷ That is why it is vital to examine the issue of access to water and sanitation for women slum dwellers of Kibera holistically, including a political angle that envisages goodwill and political will to change the current situation. This also allows for the different divergent views of feminists from different cultures and national boundaries to express what feminism means in their context.

The analysis of the feminist literature further allows for the disaggregation of who suffers from water and sanitation inequality in the informal settlements of Kibera.³⁶⁸ It also presents an opportunity to internalize the prevailing assumptions of gendered water inequality and access to sanitation services and possible solutions to the problems. Feminists do not think alike, and therefore the labels also help mark the range of different approaches, perspectives, and frameworks a variety of feminists have used to shape both their explanations for women’s oppression and their proposed solutions for its elimination.³⁶⁹

The emergence of feminism was a reaction to the fact that women were suppressed over centuries with their rights neglected as human beings and their roles restricted to household chores and caregiving. This continued oppression raised many voices and collectively led to a concept of feminism, which started the most prolonged movement in history which continues.³⁷⁰

The history of feminism is divided into three waves of feminism, with a fourth wave emerging in the 21st century. The first wave came into being in the 19th and early parts of the 20th century. This wave was mainly concerned with issues of women suffrage, contractual rights, property

³⁶⁷ Offen, K. 1988. *Defining Feminism: A Comparative Historical Approach*. <https://www.jstor.org> > stable (accessed on 1 November 2018).

³⁶⁸ Sulley 2018. *Re-Conceptualising Gender and Urban Water Inequality Applying a Critical Feminist Approach to Water Inequality in Dhaka*. <https://www.ucl.ac.uk> > development > sites > bartlett > files > wp195_sulley. (accessed on 8 June 2019).

³⁶⁹ Tong R. 2009. *Feminist Thought: A More Comprehensive Introduction*. 3rd ed. Boulder, CO: Westview Press; 2009. p. 284-9. <https://www.amazon.com> > Feminist-Thought-Comprehensive-Introductio..(accessed on 13 April 2018).

³⁷⁰ Srivastava *et al* 2017. *Misogyny, feminism, and sexual harassment*. <http://www.industrialpsychiatry.org/text.asp?2017/26/2/111/236186>. (accessed on 17 April 2018).

rights, and opposition to chattel marriage.³⁷¹ The second wave of feminism was during the period of the 1960s and 1980s, where women's demands included reproductive rights, legal inequalities, domestic violence, sexual liberation, childcare, health, welfare, education, work, marital rape, and divorce law.³⁷² This primarily refers to the women's liberation movement for equal legal and social rights.³⁷³ The second wave feminists explicitly campaigned against social and cultural stereotyping of the female gender and therefore advocated for equal rights for both women and men to pursue a career of their choice.³⁷⁴

The third wave began in the 1990s, and it is a continuation of the agitations of the second wave and is a reaction to the perceived failures of second-wave feminism.³⁷⁵ Claire Snyder³⁷⁶ argues that the third wave feminism makes three significant tactical moves that respond to a series of theoretical problems within the second wave. She states that firstly, it responds to the collapse of the category of "women" and focusses on personal narratives that illustrate an intersectional and multi-perspectival version of feminism. Third-wave feminism also embraces diversity and individuality. It is essential to understand the history of feminism to locate the arguments for women's emancipation and the quest for gender equality.

The fourth wave feminism, which is a 21st-century development, is characterized by the use of technology, particularly Facebook, twitter, YouTube, Instagram and other forms of social media, to share its messages. The fourth wavers use social media to build links among women, creating networks of mutual support and strengthening their awareness of social and legal rights

³⁷¹ Humm, M. 1995. *The Dictionary of Feminist Theory*. <https://www.amazon.com> › DICTIONARY-FEMINIST-THEORY-MAGGI.. (accessed on 4 September 2018).

³⁷² Burkett E. *Women Movement*. *Britannica Online Encyclopedia*. <https://www.britannica.com/topic/womens-movement>. (accessed on 9 August 2019).

³⁷³ Drucker, S. 2018. *Betty Friedan: The Three Waves of Feminism*. *Ohio Humanities Blog*. www.ohiohumanities.org › betty-friedan-the-three-waves-of-feminism. (accessed on 21 August 2019).

³⁷⁴ Waves of Feminism by Betty Freidan.

³⁷⁵ See Waves of Feminism.

³⁷⁶ Snyder, C. 2008. *What Is Third-Wave Feminism? A New Directions Essay*. <https://www.researchgate.net> › publication › 263538274_What_is_Third_.. (accessed on 12 November 2017).

and also highlight issues that concern them.³⁷⁷ Their main aim is to expose sexist and oppressive behavior publicly, bringing attention to instances of injustice to initiate change.³⁷⁸ Munro argues that fourth-wave feminists advocate for more excellent representation of marginalized groups in politics and business, and contend that society would be more equitable if policies and practices incorporated the perspectives of all people.³⁷⁹

McAfee Noelle³⁸⁰ argues that feminist philosophical scholarship begins with the attention to women, their roles, and locations. She states that feminist scholars start to ask the following questions, “What are women doing? What social/political locations are they part of or excluded from? How do their activities compare to those of men? Are the activities or exclusions of some groups of women different from those of other groups, and why? What do the various roles and locations of women allow or preclude? How have their roles been valued or devalued? How do the complexities of a woman’s situatedness, including her class, race, ability, and sexuality, impact her locations? Have any of the women’s experiences or problems been ignored or undervalued? How might attention to these transform our current methods or values? How is the feminine instantiated and constructed within the texts of philosophy? What role does the feminine play in forming, either through its absence or its presence, the central concepts of philosophy?”³⁸¹ These questions by McAfee are pertinent as they can be applied across the board by feminists to problematize various issues that affect women including access to water and sanitation which is fundamental to all human beings’ survival. This, therefore, locates feminist approaches as a tool for analysis relevant in this study.

³⁷⁷ Munro, E. 2013. *Feminism: A fourth wave? Political Insight*. <https://journals.sagepub.com> › doi (accessed on 19 February 2018).

³⁷⁸ Feminism and Women's Movements - Course Hero. <https://www.coursehero.com> › introduction-to-sociology › feminism-and-... (accessed on 7 September 2018).

³⁷⁹ Feminism and Women's Movements - Course Hero. <https://www.coursehero.com> › introduction-to-sociology › feminism-and-... (accessed on 7 September 2018).

³⁸⁰ McAfee, N. 2018. *Feminist Philosophy*. <https://plato.stanford.edu/archives/fall2018/entries/feminist-philosophy/>. (accessed on 5 June 2019).

³⁸¹ McAfee, N. 2018. *Feminist Philosophy*. <https://plato.stanford.edu/archives/fall2018/entries/feminist-philosophy/>. (accessed on 5 June 2019).

This thesis is concerned with third wave feminism, which is a continuation of the second wave which campaigned for the legal and social rights of women. Tong argues that third wave feminists are particularly eager to understand how gender oppression and other kinds of human abuse co-create and co-maintain each other.³⁸² Gender inequality marginalizes Kibera women slum dwellers in respect to access to water and sanitation. Judith Butler posits that third-wave feminism possesses an understanding that the category of women is “produced and restrained by the very structures of power through which emancipation is sought”³⁸³ The third wave feminist approach is a fusion of the various feminist theories whereby it takes what suits their purpose and discards what does not serve them. It should also be appreciated that this wave emphasizes on personal empowerment approach as a starting point for societal change,” which has a ripple effect for the empowerment of other people around them hence defying stereotypical gender identities and shattering the idea of gender norms.³⁸⁴

The reason I choose to use the third wave feminism as a tool for analysis in this thesis is that third wavers want their version of feminism that addresses their different social contexts and the particular set of challenges that they face.³⁸⁵ The other reason is that a lot of third-wave literature emphasizes the importance of cultural production and critique³⁸⁶, which is relevant to the current study that looks at the role of patriarchy, gender inequality, and poverty in access to water and sanitation.

Access to basic services like water and sanitation are social rights which are also categorized as human rights. Amanda Lotz argues that the one realization by the third wave feminism was that the second wave “feminist theory was not sufficiently complex to understand or explain how oppression can be experienced differently within the broad category described as

³⁸² Supra Note 360 at p. 271.

³⁸³ Butler, J. 2009. *Gender Trouble*. Feminism and the Subversion Identity. [https://philpapers.org › rec › BUTGTF](https://philpapers.org/rec/BUTGTF) (accessed on 2 June 2017).

³⁸⁴ Definition of Third-wave Feminism, Gender&LitUtopiaDystopia wiki [https://genderlitutopiadystopia.fandom.com › wiki ›](https://genderlitutopiadystopia.fandom.com/wiki/).

³⁸⁵ Feminism and Women's Movements - Course Hero. [https://www.coursehero.com › introduction-to-sociology › feminism-and-...](https://www.coursehero.com/introduction-to-sociology/feminism-and-...) (accessed on 7 September 2018).

³⁸⁶ See note 373.

‘women.’³⁸⁷ The reason for a continuation of the agitation by feminists and like-minded individuals for gender equality is due to the non-optimal achievement of the desired results, which is equality between the sexes.

I elaborate a little on the above listed feminist theories but later concentrate on the women’s law approach and Africana feminism to problematize the lived realities of women with access to water and sanitation in Kibera slums. This is in a bid to identify which feminist theoretical approach the women’s law approach is situated. Scales posits that feminist jurisprudence seeks to explain ways in which the law played a role in women's former subordinate status, and secondly, it is dedicated to changing women's status through a rework of the law and its approach to gender.³⁸⁸ This is why it is necessary to interrogate how the law can be reworked to impact women concerning access to water and sanitation positively.

The description above positions the current thesis, which aims to understand the relation between patriarchy, poverty, and access to water and sanitation for women slum dwellers in Kibera. Would discriminatory or skewed allocation of resources amount to lack of access to water and sanitation for the women slum dwellers in Kibera? Does power relations between men and women play a role in access to water and sanitation? Is there stereotyping, oppression, and patriarchy in access to water and sanitation for women? These are some of the questions that need to be answered to come up with solutions to gender equality in respect of access to basic services without discrimination based on gender, race, sex, disability, age, religion, or marital status.

Juliet Mitchell, in her two books *Woman’s Estate*³⁸⁹ and *Psychoanalysis and Feminism* capture the underlying concepts in feminist theories as follows:³⁹⁰

³⁸⁷ Lotz, D. 2002. *Communicating Third-Wave Feminism and New Social Movements: Challenges for the Next Generation*. https://www.albany.edu/womensstudies/journal/kryger_3 (accessed on 15 May 2017).

³⁸⁸ Scales, A 2006. *Legal Feminism: Activism, Lawyering, and legal Theory*. <https://www.questia.com/library/legal-feminism-activism-lawyering-and-l...> (accessed on 21 June 2017).

³⁸⁹ Mitchell, J. 1972. *Women’s Estate*. <https://www.marxists.org/authors/mitchell-juliet/womens-estate>. (accessed on 20 May 2017).

³⁹⁰ Mitchell, J 1974. *Psychoanalysis and feminism, Freud, Laing and Women*. <https://www.jstor.org/stable>. (accessed on 2 October 2017).

“Women’s condition is over-determined by the structures of production (from Marxist feminists), reproduction and sexuality (from radical feminists), and the socialization of children (from liberal feminists). Woman’s status and function in all of these structures must change if she is to achieve anything approximating full liberation....woman’s interior world (her psyche) must also be transformed (as emphasized by psycho-analytic feminists), for without such a change, improvements in her exterior world will not liberate her from the kind of patriarchal thoughts that undermine her confidence (as emphasized by existentialist feminists).”

The above summarizes the underlying concepts of the feminist theories which advocate for the full liberation of women. This requires a transformation of a woman’s inner world to enable change to occur in her exterior world.³⁹¹ In my view, the transformation and change must start with the women themselves before they look for allies in their quest for equality. There is no way women can expect a change in situations where the women themselves do not believe that there is a need for difference in how they are treated concerning access to basic services like water and sanitation. The patriarchy that always brings down women should be interrogated to enable women to come up with solutions to their quest for gender equality.

In a patriarchal society where men hold power and make many of the decisions, girls’ and women's gender subordination is often not questioned, and access to water and sanitation is severely compromised due to the absence of women and girls’ participation.³⁹² Thabile states that gender equality can be enhanced by giving women a voice and by putting them in positions of decision making.³⁹³ This is true to the debate on water and sanitation which affects women as a constituency who are tasked with the responsibility of carrying the burden of fetching water and, more so, the vulnerable women slum dwellers.

Hofmann and Allen contend that women’s trajectories in and out of urban water poverty are located at varying intersections of class, citizenship, age, ethnicity, and other social categories

³⁹¹ Mitchell, J 1974. *Psychoanalysis and feminism, Freud, Laing and Women*. <https://www.jstor.org/stable>. (accessed on 2 October 2017).

³⁹² Agenda: Empowering Women for Gender Equity ? <https://www.jstor.org/journal/agenda>. (accessed on 17 April 2018).

³⁹³ Thabile M. 2011. *Addressing girls’ challenges of water and sanitation in a rural schooling context in Swaziland*. <https://www.tandfonline.com/doi/abs/10.130950.2011.575995>(accessed on 15 May 2018).

and identities.³⁹⁴ They further state that the discussion shows how gender cannot be understood in isolation, and as a practice, it intersects with issues of urban life to create gendered trajectories that explain why and how some women can escape water poverty and activate their right to water while others cannot. Intersectionality suggests that it is all of these different identities and relations and how they come together in different ways, which are essential for determining how someone experiences (water) inequality and poverty.³⁹⁵

Looking at gender in isolation without appreciating other factors that play a role in relationships might give a false indicator of what should be done to achieve gender equality. Women can negotiate their spaces depending on their circumstances and the relations they have created within those spaces. This explains the issue of non-homogeneity of women as a gender whereby there can be different experiences with water and sanitation for specific categories of women including those in Kibera slums. The water and sanitation access issues in Kibera slums needs a feminist perspective. It is not a matter of building more toilets but building better hygienic toilets with adequate water that works for women. In the next section, I briefly discuss liberal feminist theory concerning access to water and sanitation.

3.3 Liberal Feminist Theory and Access to Water and Sanitation.

Judith Lorber asserts that Liberal feminists scholars claim that gender differences are not based in biology, and therefore that women and men are not all that different, that their common humanity supersedes their procreative differentiation.³⁹⁶ It is also a common contention by liberal feminists that the equality of men and women can be achieved through political and legal reform. Susan Okin³⁹⁷ argues that liberal feminists are of the view that there has to be enabling conditions and social arrangements to allow women to exercise their autonomy. If these enabling conditions are lacking, then it would be difficult to achieve any progress as

³⁹⁴ Allen & Hoffman. 2017. *Relational Trajectories of Urban Water Poverty in Lima and Dar es Salaam*. <https://www.springerprofessional.de › relational-trajectories-of-urban-water>. (accessed on 2 April 2018).

³⁹⁵ Allen & Hoffman. 2017. *Relational Trajectories of Urban Water Poverty in Lima and Dar es Salaam*. <https://www.springerprofessional.de › relational-trajectories-of-urban-water>. (accessed on 2 April 2018).

³⁹⁶ Lorber, J. 1997. *The Variety of Feminisms and their Contribution to Gender Equality*. https://eige.europa.eu › library › resource › GIB_VUF13113genderbib. (accessed on 30 June 2018).

³⁹⁷ Okin, S. 1989. *Justice, Gender and the Family*. [https://www.academia.edu › \(accessed on 3 August 2019\)](https://www.academia.edu › (accessed on 3 August 2019)).

autonomy deficits are due to gender system or the patriarchal nature of inherited traditions and institutions, and that the women's movement should work to identify and remedy them.³⁹⁸

Liberal feminism is also seen as an individualistic form of feminism which focuses on women's ability to show and maintain their equality through their actions and choices.

And further that it uses the personal interactions between men and women as the place from which to transform society.³⁹⁹ According to liberal feminists, all women are capable of asserting their ability to achieve equality; therefore change can happen without altering the structure of society.⁴⁰⁰ This is a reason why women slum dwellers must agitate for change to enable them to access basic services including water and sanitation.

Issues that are important to liberal feminists include reproductive and abortion rights, sexual harassment, voting, education, "equal pay for equal work", affordable childcare, affordable health care, and bringing to light the frequency of sexual and domestic violence against women⁴⁰¹. Women, especially women slum dwellers are caught in the web where they are overburdened by the responsibility of fetching water for their families. The quest for water and sanitation, as has been documented, comes with risks of sexual and domestic violence, which liberal feminists argue that with equality of women and men through legal and political reform should be a thing of the past.

John Stuart Mill, in his 1869 book, *The Subjection of Women*,⁴⁰² discussed the issue that women should be given the same legal rights as males. He further believed that 'both sexes should have equal rights under the law and that "until conditions of equality exist, no one can assess the natural differences between women and men, distorted as they have been."⁴⁰³

³⁹⁸ Okin, S. 1989. *Justice, Gender and the Family*. <https://www.academia.edu> › (accessed on 3 August 2019).

³⁹⁹ Okin, S. 1989. *Justice, Gender and the Family*. <https://www.academia.edu> › (accessed on 3 August 2019).

⁴⁰⁰ See history and theory of feminism. Note 358.

⁴⁰¹ Walker, R. 1992. *Becoming the Third Wave*. <https://www.jstor.org> › stable (accessed on 12 February 2018).

⁴⁰² Mill, J. S. 1869. *The subjection of women*. <https://oll.libertyfund.org> › titles › mill-the-subjection-of-women-1878-ed (accessed on 7 March 2017).

⁴⁰³ Mill, J. S. 1869. *The subjection of women*. <https://oll.libertyfund.org> › titles › mill-the-subjection-of-women-1878-ed (accessed on 7 March 2017).

Liberal feminist theory is relevant in this analysis due to its visible focus on gender discrimination and fights for individual equality. Even though liberal feminism theory has limitations due to its individualistic nature, it provides an appropriate platform to explore how social constructions surrounding gender in Kibera slums contribute to the subordination of women. Furthermore, a liberal feminist theory also suggests that, through providing women the same civil liberties and economic opportunities as men, women can assume their development and growth throughout spheres both inside and outside of the domestic realm.⁴⁰⁴

Critics of liberal feminism argue that its individualist assumptions make it difficult to see how underlying social structures and values disadvantage women. They further contend that even if women are not dependent upon individual men, they are still reliant on a patriarchal state.⁴⁰⁵ Other critics such as black feminists and postcolonial feminists assert that mainstream liberal feminism reflects only the values of middle-class, heterosexual, white women and has largely ignored women of different races, cultures, or classes. I elaborate this in the next section that deals with Africana feminism.

These critics believe that institutional changes, like the introduction of women's suffrage are insufficient to emancipate women. The emancipation agenda for gender equality is still a struggle; otherwise, we would not be talking about the problems that women face with access to water and sanitation in the 21st century. The SDGs would not have had stand-alone goals on access to water for all and gender equality. This calls for a concerted effort in developing strategies to address gender inequality in all spheres of life.

As John Stuart Mill⁴⁰⁶ put it on the difference between women and men, it should be appreciated that women have special needs and are uniquely different from men. Their difference is pronounced in how they use water and sanitation services. If their difference continues to be ignored by the legislature, women will continue to be subordinated in society. Therefore the law can be used to improve the situation of women slum dwellers in Kibera to

⁴⁰⁴ Parpart *et al* 2000. *Perspectives on Gender and Development*. [https://www.idrc.ca › sites › default › files › openebooks](https://www.idrc.ca/sites/default/files/openebooks). (accessed on 3 September 2019).

⁴⁰⁵ Tong, R.1989. *Feminist Thought: A Comprehensive Introduction..* [https://archive.org › stream › Feminist Thought: A More Comprehensive Intr...](https://archive.org/stream/FeministThought:A%20More%20Comprehensive%20Intr...) (accessed on 3 June 2019).

⁴⁰⁶ Mill, J. S. 1869. *The subjection of women*. [https://oll.libertyfund.org › titles › mill-the-subjection-of-women-1878-ed](https://oll.libertyfund.org/titles/mill-the-subjection-of-women-1878-ed) (accessed on 7 March 2017).

access water and sanitation if it acknowledges the gender dimensions in accessing the services as a right.

Anne Hellum summarizes the gender differentiation by stating that “overlooking social and gender differentiation concerning allocation and uses of water, the seemingly neutral laws and policies may easily be to the effect that existing social and gender inequalities are reinforced and increased.” The gender differentiation must be appreciated in water and sanitation as women and men use water in different ways for example, during menstruation. In the next section, I discuss the Marxist and socialist feminist theory concerning water and sanitation.

3.4 Marxist and Socialist Feminist Theory and Access to Water and Sanitation

I look at the Marxist feminist theory, which is a segment of feminist theory that concentrates on the idea that patriarchy is ever-present in society.⁴⁰⁷ Patriarchy is a term that is used to describe the control that men have over women, especially within the household.⁴⁰⁸ Marxist feminists believe that many of the social problems involving women originate from patriarchal controls.⁴⁰⁹ The reason for analyzing these feminist theories is to look at whether there are commonalities, contradictions and whether they interrelate or complement each other. The feminist theories are essential in exploring the intersection between poverty, patriarchy, and access to water and sanitation and locating which strategies would work best for bridging the gender inequality gap that exists.

Marxist feminism adds gender to the analytical concerns of the Marxist perspective and argues that even though a hierarchy exists among men through a system of class, men as a group dominate and control women as a group through a system of gender. Marxist feminism is thus concerned with women’s double oppression of both class and sex.⁴¹⁰ The women slum dwellers

⁴⁰⁷ Attom *et al* 2018. *Areas of male Dominance : Experiences of Married Women in the Mozono Community Ghana*. www.eajournals.org › journals › vol-6-issue-4-april-2018 › areas-of-male-... (accesssed on 5 July 2019).

⁴⁰⁸ ⁴⁰⁸ Attom *et al* 2018. *Areas of male Dominance : Experiences of Married Women in the Mozono Community Ghana*. www.eajournals.org › journals › vol-6-issue-4-april-2018 › areas-of-male-... (accesssed on 5 July 2019).

⁴⁰⁹ Attom *et al* 2018. *Areas of male Dominance : Experiences of Married Women in the Mozono Community Ghana*. www.eajournals.org › journals › vol-6-issue-4-april-2018 › areas-of-male-... (accesssed on 5 July 2019).

⁴¹⁰ Seneviratne, P. 2018. Marxist Feminism Meets Postcolonial Feminism in Organizational Theorizing: Issues, Implications and Responses. <https://www.researchgate.net> › publication › 323277450_Marxist_feminism_.. (accesssed on 26 May 2019).

in Kibera, therefore, suffer double jeopardy as poor women who are marginalized due to poverty and lack of a voice to air their grievances on their right to basic services. Would the Marxist feminist approach capture the broader gender inequality envisaged in access to water and sanitation for women slum dwellers in Kibera whose plight is compounded by poverty and patriarchal issues?

In all these theoretical approaches, there are critics of their strengths and weaknesses. The Marxist feminist approach comes under criticism for being too focused on ideological differences and academic arguments, to the detriment of its practical application.⁴¹¹ Also that its proposed remedies to social inequalities are thought to be naive and utopic unless they are accompanied by significant revolutionary social changes that are unlikely to take place at this present moment in history.⁴¹² Some contributors have criticized these traditional Marxist ideas for being mostly silent on gender oppression except to subsume it underneath broader class oppression.⁴¹³

Social-Marxist feminism provides a proper understanding of how a woman's domestic work can reinforce her secondary status and contribute to her vulnerability. From the above discussion, it shows that the women's law approach would be compatible with the Marxist-socialist feminist theory as it seeks to explore the reality of women's lives and experiences to explain, understand and critically analyze women's legal rights to improve their legal position in society⁴¹⁴. The Marxist feminist approach must be combined with other approaches to understand the oppression and discrimination on the grounds of sex and class suffered by women. The gender inequality in access to water and sanitation is more than class oppression. Using a feminist approach in access to water and sanitation requires analysis of the issues of

⁴¹¹ Calas, & Smircich. 1992. *Re-writing Gender into Organizational Analysis: Directions from Feminist Perspectives*. <https://www.isenberg.umass.edu/sites/default/files/Documents/Smi>. (access on 27 March 2018).

⁴¹² Calas, & Smircich. 1992. *Re-writing Gender into Organizational Analysis: Directions from Feminist Perspectives*. <https://www.isenberg.umass.edu/sites/default/files/Documents/Smi>. (accessed on 27 March 2018).

⁴¹³ Calas, & Smircich. 1992. *Re-writing Gender into Organizational Analysis: Directions from Feminist Perspectives*. <https://www.isenberg.umass.edu/sites/default/files/Documents/Smi>. (accessed on 27 March 2018).

⁴¹⁴ Dahl 1987. *Women's law. An introduction to feminist jurisprudence*, Norwegian University Press, Oslo.

women's struggles to access the resource and the underlying debates on equal access to basic services as a right without discrimination.

Does Marxist– socialist feminist theory take into account other factors like age, where a person lives, and whether women slum dwellers suffer the same problems with access to water and sanitation in Kibera slums? Would they have the same solutions to targeted empowerment for women? The Marxist feminist theory does not account for other causes of lack of access to water and sanitation, such as gender inequality, social exclusion, poverty, landlessness and negative ethnicity which are rampant in informal settlements.

Taking into account that Marxist feminist theory is about class struggles, it has failed to account for the gender inequality amongst the slum dwellers themselves, being that they belong to the same class. This explains the belief that Marxists have that the existence of class structures in society creates a conducive environment for the exploitation of one class by another. This is also true in Kibera slums, where the landlords and politicians exploit the slum dwellers for rent and votes. The landlords hike rents with no commensurate services like water and sanitation while the politicians use them for their votes with empty promises of improved social amenities and services.

Socialist feminists agree with Marxist feminists that capitalism is the source of women's oppression, and with radical feminists, that patriarchy is the source of women's oppression. Therefore, the way to end women's oppression, in socialist feminists' estimation, is to kill the two-headed beast of capitalist patriarchy or patriarchal capitalism.⁴¹⁵ Motivated by this goal, socialist feminists seek to develop theories that explain the relationship between capitalism and patriarchy⁴¹⁶. The use of this theory is vital in locating the areas of women's oppression in access to water and sanitation. What is constant in Marxist feminism is that it believes that the root cause of women's problems is patriarchy, which cuts across most approaches. In the next section, I discuss Africana feminism, which is one of the main approaches that I use in this study to analyze Kibera women's access to water and sanitation.

⁴¹⁵ Tong .R. 1994. *Feminist Thought: A Comprehensive Introduction*. <https://www.taylorfrancis.com> › books (accessed on 14 June 2018).

⁴¹⁶ Tong .R. 1994. *Feminist Thought: A Comprehensive Introduction*. <https://www.taylorfrancis.com> › books (accessed on 14 June 2018).

3.5 Africana Feminism and Access to Water and Sanitation

Goredema defines Africana feminism as a feminist epistemology that explores African women's lived experiences and oppressions. These experiences include how the social, political, and cultural ways impact on women and how women challenge the inequalities they face.⁴¹⁷ Goredema also states that the fact that Africana feminism is cultural is crucial because it allows for an analysis that is grounded in African culture and thus centers the lived experiences of African and African diaspora women and their children.⁴¹⁸ Gatwiri *et al* argue that the term 'African feminism' is in itself controversial because it does not encapsulate every African woman's need and can be seen as essentialist; therefore, the social and economic complexity between the African nations must also be acknowledged⁴¹⁹ and interrogated.

It is essential to understand the meaning of Africana feminism, the proponents and their views on how it can be used as a tool for analysis of women's subjugation. Different scholars have written about Africana feminism and one such scholar Filomena Chioma Steady⁴²⁰ who viewed African feminism as an epistemology that empowers many African women to understand their gendered status in society. Nnaemeka⁴²¹, however, regards it as a school of thought that implies their strength and their multiple identities amid the challenges that threaten them.

Davies *et al* summarized the meaning of African feminism as follows:

“that it is a political philosophy that recognizes a common struggle with African men for the removal of the yokes of foreign domination and European/American exploitation. It is not antagonistic to African men but challenges them to be aware of certain salient aspects of women's subjugation, which differ from the generalized oppression of all African peoples. It recognizes that certain inequities and limitations existed/exist in traditional

⁴¹⁷ Goredema, R. 2010. *African feminism: the African woman's struggle for identity*. <https://www.tandfonline.com> › doi › full (accessed on 23 May 2018).

⁴¹⁸ Goredema, R. 2010. *African feminism: the African woman's struggle for identity*. <https://www.tandfonline.com> › doi › full (accessed on 23 may 2018).

⁴¹⁹ See Goredema of Africana feminism.

⁴²⁰ Steady, F.1987. *African feminism: A worldwide perspective*. <https://www.coursehero.com> › ... › ECON › ECON 201 (accessed on 25 April 2018).

⁴²¹ Steady, F.1987. *African feminism: A worldwide perspective*. <https://www.coursehero.com> › ... › ECON › ECON 201 (accessed on 25 April 2018).

societies and that colonialism reinforced them and introduced others. It acknowledges its affinities with international feminism but delineates specific African feminism with certain specific needs and goals arising out of the concrete realities of women's lives in African societies. It examines African societies for institutions, which are of value to women, rejects those, which work to their detriment, and does not simply import Western women's agendas. Thus, it respects African woman's status as a mother but questions obligatory motherhood and the traditional favoring of sons. It respects African woman's self-reliance and the penchant to cooperative work and social organization. It understands the interconnectedness of race, class, and sex oppression."⁴²²

The above excerpt on the meaning of African feminism comprehensively captures what it entails and what it is not and gives it a comparative approach to other feminist theories. It starts with its emergence, the characteristics, and the nuances which are relevant in positioning women slum dwellers who suffer poverty and gender inequality. What makes any theory particularly feminist is that it is derived from female experience, from the point of view contrary to the dominant male perception of reality. Zerai states that the Africana feminism theory derives from the experiences of African females and other black females in the diaspora,⁴²³ which can provide a critique on multiculturalism and religion that also play a role in gender stereotyping and assignment of roles.

Africana feminism is also an anti-patriarchy of which women have been resisting to unshackle themselves from bondage through movements and strategies for their voices to be heard to attain gender equality in all spheres of life. The issue of gender inequality in access to water and sanitation is a matter that should be given serious attention, as it affects the enjoyment of other rights like the right to life and health.

Using the Africana feminism lens as a theoretical framework helps in the understanding of why women in the 21st century who have agitated for gender equality for decades are still not able

⁴²² Gatwiri, K. 2018. *African Womanhood and Incontinent Bodies: Kenyan Women with Vaginal Fistulas*. <https://www.goodreads.com › book › show › 43735216-african-womanho..>(accessed on 2 June 2019).

⁴²³ Zerai, A. 2014. *Hypermasculinity, state violence, and family well-being in Zimbabwe : an Africana feminist analysis of maternal and child health*. https://www.researchgate.net › publication › 291522172_Zerai_Assata_2014... (accessed on 10 April 2017).

to access water and sanitation in the slums. The framework is women-centered and encompasses perspectives of women's experiences with various issues.

Africana feminism also provides a more in-depth insight into how access to safe water and sanitation affects households in East Africa for women, not only in terms of “what they do and how they do it” but also more holistically, capturing a multidimensionality of time frames, levels of analysis, identity and reality, relational and dynamic contexts, comparative methods, oral and life histories.⁴²⁴ This speaks to what the women in Kibera do to access water and sanitation, how they do it and the impact on their everyday lives. How much time and money do they spend while fetching the water and is this exacerbated by the poverty levels in the slums? Are the women slum dwellers safe while they seek alternative sanitation due to the inadequacy of safe toilets? Does this come with other burdens and risks of sexual violence and waterborne diseases?

A recent study using an Africana feminist approach on water and sanitation found out that failures in reaching and serving women affected by poor water and sanitation, and gender inequalities lead to poor health, gender-based violence, inadequate educational experience and outcomes, and limited necessary socioeconomic gains for women.⁴²⁵ The study suggested that there is a need for gender mainstreaming to ensure access to all since the policy and practice governing access to clean water and safe sanitation operate in an institutional blind spot in East Africa.⁴²⁶ The relevance of this theory is that it helps in identifying the factors contributing to gender inequality in access to water and sanitation and the effects thereof. By using this theory for analysis, it can also be used to offer solutions on what can be done to enable women in Kibera access water and sanitation.

It is crucial to consider the contributions of an Africana feminist analysis as it can unveil inequities in the distribution of resources and explore the realities of the lives of women and girls who are responsible for fetching water in their families. As African women confront

⁴²⁴ Nnaemeka, O. 1998. *Introduction: reading the rainbow*. <https://www.jstor.org/stable>. (accessed on 27 June 2017).

⁴²⁵ Rombo, D et al. 2017. *Water and Sanitation in East Africa: Perspectives from Africana Feminism*. *Africology*: www.jpanafrican.org/docs/vol10no5/10.5-11-Rombo.pdf (accessed on 30 November 2018).

⁴²⁶ Rombo, D et al. 2017. *Water and Sanitation in East Africa: Perspectives from Africana Feminism*. *Africology*: www.jpanafrican.org/docs/vol10no5/10.5-11-Rombo.pdf (accessed on 30 November 2018).

unprecedented economic and political challenges, they are also questioning, and, in some instances, redefining, individual and societal orthodoxies of gender and family roles.⁴²⁷

Arku Frank in research carried out in 2010 on time savings on easy access to water argues that Africana feminism “recognizes the intersectionality, differential outcomes between men and women in rural areas or slums around issues like water usage, time costs for water access, legal distinctions between public, state-owned, and private water entities, organizational advantages and gaps in NGO and grassroots activism on behalf of these issues, as well as conflicts between national neoliberal economic policies and ethical frameworks intended to offset those policies lose clarity or become otherwise intractable”.⁴²⁸ The distinctions and the differential outcomes are vital in informing policy and legal reform in access to water and sanitation. This can give disaggregated data on several issues listed above.

The emergence of Africana feminism is partly as a result of the criticism of northern-based feminism as representing the insular and essentialist perspective of white middle-class feminists from the West.⁴²⁹ This criticism should go further to blame elite African women who purport to speak on behalf of illiterate and disempowered women. The elite women form NGOs or movements where they purport to champion the plight of the poor urban and rural women, but in effect, they are in business looking for donor funding for their activities. Do all these NGOs work for the betterment or uplifting the living conditions of the poor?

Critics of Africana feminism argue that in many cases, it is riddled with an internal illogicality.⁴³⁰ A movement that seeks to deny the universality of female experiences constantly seeks to do so by claiming the same for all African females when historical and cultural facts suggest otherwise. Oyekan summarizes that Africana feminists would achieve more by insisting on a universal characterization in place of a superimposed western definition instead

⁴²⁷ Mikell, G.1997. *Introduction to African Feminism : The Politics of Survival in Sub-Saharan Africa*. <https://www.amazon.com> › African-Feminism-Politics-Survival-Sub-Saharan(accessed on 3 September 2018).

⁴²⁸ Arku, F. 2010. *Time savings from easy access to clean water Implications for rural men’s and women’s well-being*. <https://www.researchgate.net> › publication › 258174686_Time_savings_fro...(accessed on 3 November 2018).

⁴²⁹ Banda, F. 2003. Global Standards: Local Values, 17 INT’L J.L. POL’Y & FAM. 1, 14-15 (2003).

⁴³⁰ Oyekan, O. 2014. *African Feminism: Some Critical Considerations*.Lagos State University, Nigeria. <https://www.academia.edu> › AFRICAN_FEMINISM_SOME_CRITICAL_CO...(accessed on 4 July 2018).

of withdrawing into the shell of culture and categories of meaning that hardly help her cause. She argues further that such engagement recognizes and insists on the recognition of the multi-dimensional nature of the feminist challenge in a manner that harnesses all available resources for the emancipation of the female gender from all inhibitions—whether natural or man-made, global or local.⁴³¹ The contestations and the differentiation in the definitions and approaches should focus on one goal which is the achievement of gender equality.

Susan Arndt argues that black women are victims of "triple oppression"- oppression that conflates gender, race, and class, which is a common theme articulated in the black diaspora/north-south feminist debates.⁴³² To respond to the triple oppression to which African women are subjected, a feminist inquiry must address "women's uneven and unequal participation in development and their exclusion from the benefits of socio-economic, cultural, and political gains" if it seeks to be a relevant project.⁴³³ The Africana feminist theory is appropriate in the analysis of women's access to water and sanitation in Kibera because the unequal distribution of resources and the gender inequality must be interrogated to correct the anomaly which has subjected women to exclusion from the benefits of socio economic, cultural and political developments. This theory is also holistic in that it explores the lived realities, experiences, and oppression of women, which is a factor in the analysis of access to water and sanitation of the current study.

Akihire Josephine argues that in order to reenergize African feminism, there is a need to reclaim language, for instance, to reverse the tendency of reducing key political concepts into buzzwords. She suggests that this can be done through a conscious effort to re-popularize the use of the concepts of power and gender relations, to problematize, analyze and contextualize terms like "engendering", "gender mainstreaming", "empowerment", and "gender-

⁴³¹ Oyekan, O. 2014. *African Feminism: Some Critical Considerations*. Lagos State University, Nigeria. https://www.academia.edu › AFRICAN_FEMINISM_SOME_CRITICAL_CO...(accessed on 4 July 2017).

⁴³² Arndt, S. 2000. *The Dynamics of African Feminism: Defining and Classifying African Feminist Literatures*. https://www.researchgate.net › publication › 265712749_The_Dynamics_of... (accessed on 5 February 2018).

⁴³³ Becky L 2011. *Unbound by Theory and Naming: Survival Feminism and the Women of the South African Victoria Mxenge Housing and Development Association*. <https://scholarship.law.berkeley.edu/bgj> (accessed on 17 May 2018).

sensitive.”⁴³⁴ The reclaiming of the use of positive language for empowerment is necessary for a change of the perceptions on how gender relations general and in the slum areas are conceptualized for a better outcome. In the next section, I discuss women’s law approach and access to water and sanitation.

3.6 Women’s Law Approach and Access to Water and Sanitation

Stang Dahl, a proponent of women’s law approach, defines women’s law as a discipline that explores the reality of women’s lives and experiences to explain, understanding and critically analyze women’s legal rights to improve their legal position in society.⁴³⁵ It interrogates and investigates the law in all its pluralities as it affects women. This approach uses perspectives from ‘below’ and ‘above’ and assumes that there are problems beyond law reform, which need to be addressed.⁴³⁶ The approach asks the question of whether the law has taken the values and experiences of women into account in the way in which it operates and, if not, then how it can be changed to incorporate them.

Joanne Conaghan, while reviewing a book on Scandinavian women’s law in the 21st Century stated that “the object of women’s law was not just to reconceptualize law in ways which would make it more receptive to women’s needs and concerns but to generate new knowledge about what those needs and interests were and how law could respond to them.”⁴³⁷ She further posits that the woman-centered approach of women’s law was quickly identified as a critical methodological tool of feminist legal scholarship while standpoint theory, the epistemology underpinning women’s law, continues to be an essential focus of feminist theory more generally.⁴³⁸

⁴³⁴ Ahikire, J. 2008. *Vulnerabilities of Feminist Engagement and the Challenges of Developmentalism in the South: What Alternatives?* <https://www.coursehero.com> › Hunter College, CUNY › WGS › WGS 100.00 (accessed on 19 March 2017).

⁴³⁵ Dahl T.S.1987. *Women’s law. An introduction to feminist jurisprudence*, Norwegian University Press, Oslo.

⁴³⁶ Bentzon *et al* 1998. *Pursuing Grounded Theory in Law: South-North Experiences in Developing Women’s Law*. <https://searchworks.stanford.edu> › view (accessed on 4 June 2017).

⁴³⁷ Nielsen & Tvarnø. 2012. Joanne Conaghan. Reviewed By Joanne Conaghan Professor of law Kent Law.. <https://research-information.bristol.ac.uk> › persons › joanne-a-f-conaghan(...(accessed on 19 May 2018).

⁴³⁸ Conaghan book review above.

Standpoint theory was coined by Sandra Harding,⁴³⁹ an American feminist who argued that it is easy for those at the top of social hierarchies to lose sight of real human relations and the true nature of social reality and thus miss critical questions about the social and natural world in their academic pursuits. Standpoint theorists namely, Sandra Harding, Nancy Hartsock,⁴⁴⁰ Dorothy Smith,⁴⁴¹ Patricia Hill Collins,⁴⁴² Alison Jaggar, *et al.* are of the view that the people at the bottom of the social hierarchies are at a better position as a starting point with their views and experiences taken into consideration in research. They further argue that although such people are often ignored, their marginalized positions make it easier for them to define essential research questions and explain social and natural problems.⁴⁴³ When interrogating the difficulties that women slum dwellers face concerning water and sanitation in Kibera, it is imperative to take them as a starting point to define and explain their lived realities and experiences. Taking them as a starting point also allows them to establish their solutions to their problems and challenges to enable them to own the implementation.

The women's law approach is an approach that is underpinned on the standpoint theory, which takes women as a starting point and encompasses the three principle issues that standpoint feminists believe in. The standpoint theorists argue that knowledge is socially situated, that marginalized groups are socially situated in ways that enable them to be aware of their situations and ask questions that would not be asked by the non- marginalized, and finally that research on power relations should begin with the lived realities and experiences of the

⁴³⁹ Borland, E. *Standpoint Theory*. *Encyclopedia Britannica*. <https://www.britannica.com/topic/standpoint-theory> (accessed on 20 April 2017).

⁴⁴⁰ Hartsock, N. 2004. *The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism*. https://www.researchgate.net/publication/227254803_The_Feminist_St... (accessed on 28 February 2017).

⁴⁴¹ Smith, D. 2004. *Women's Perspective as a Radical Critique of Sociology*. home.ku.edu.tr/~mbaker/CSHS503/Smith (accessed on 24 April 2017).

⁴⁴² Collins, P.1990. *Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment*. <https://uniteyouthdublin.files.wordpress.com/2015/01/black-feminist-th..> (accessed on 21 August 2016).

⁴⁴³ Collins, P.1990. *Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment*. <https://uniteyouthdublin.files.wordpress.com/2015/01/black-feminist-th..> (accessed on 21 August 2018).

marginalized.⁴⁴⁴ The theory allows for a starting point for the women to reflect on their identities as human beings within a particular space and start challenging the identities planted on them by cultural stereotypes. This is a relevant point to this study as it involves power relations in families of the marginalized Kibera women slum dwellers concerning access to water and sanitation.

Stang Dahl speaks in terms of a women's justice that will evolve, eventually permeating law at the levels where she perceives law operating in women's lives-primarily in the administrative and regulatory spheres. She argues that the way to modify the existing law is to focus upon legislation and legal practice, bringing to bear methods of social science in their formulation.⁴⁴⁵ This helps with the interrogation of the institutional, policy, and legal framework in respect to water and sanitation. Are there gender-sensitive policies and administrative structures put in place to cater for marginalized women like the women slum dwellers of Kibera? Are the actors and structures envisaged in the water and sanitation legislation responsive to the needs of the people that they serve?

Women's law approach is essential as a tool enabling an analysis of the gaps in the Kenyan water laws and policies, including an examination of the provisions in the Constitution that guarantee the right to water and sanitation for all without discrimination. Do the laws and policies concerning water and sanitation resonate well with the lived realities and experiences of women slum dwellers or are they a pale reflection of what the women go through? The approach was useful in that a look at the Water Act, and the institutional framework does not take into account the representation of the marginalized groups like the women slum dwellers. There should be a participatory approach to water and sanitation, which empowers women. It also espouses the principles of looking at water as an economic good, which in effect plays a role in the limited access to water and sanitation for the slum dwellers.

Stang Dahl further argues that women's concerns and needs should inform the development of new areas of law or at least the reclassification of existing categories, including birth law, paid-

⁴⁴⁴ *Feminist Standpoint Theory*, *Internet encyclopaedia of philosophy*. <https://www.iep.utm.edu/fem-stan> (accessed on 26 April 2018).

⁴⁴⁵ Dahl, S. T. 1986. *Taking Women as a Starting Point: Building Women's Law*, *INT'L J. OF Soc. OF LAW* 239.

work law, housewives' law, and money law.⁴⁴⁶ Nordic scholars have emphasized the centrality of women's law, but critics like Eva-Maria Svensson see it as problematic because it suggests that issues of law and gender concern women alone.⁴⁴⁷ The women's law approach takes women as the starting point but recognizes the fact that men are also important and therefore, should not be left behind as they may be part of the solution to women's empowerment.

Bentzon *et al*⁴⁴⁸ argue that an actor and structure perspective may be useful in understanding how human actors through their activities can change the legal norms and structures. The actors behind the structures involved in water and sanitation can either play a decisive role or impede access for the vulnerable women of Kibera. We must look at all these perspectives in order not to miss out on a possible strategy to slay patriarchy and any impediment to gender equality⁴⁴⁹

It should be noted that feminist jurisprudence of law identifies the pervasive influence of patriarchy on legal structures, demonstrates its effects on the material condition of women and girls, and develops reforms to correct gender injustice, exploitation, or restriction.⁴⁵⁰ That is why the actors and structures must be interrogated for purposes of targeted change. The problem of gender inequality or lack of adherence to the laid down policies and laws might be either with the actors or the structures that are not responsive to the needs of the targeted individuals.

Apart from the women's law approach, it is essential to look at the African feminism approach on water and sanitation to contextualize the gender dimensions of access concerning women slum dwellers. The women's law approach helps in moving beyond the traditional legal research methods and making it possible to look at issues from the standpoint and experiences

⁴⁴⁶ Svensson et al 2004. *Nordic Equality at a Crossroads: Feminist Legal Studies Coping with Difference*.

<https://www.routledge.com> › Svensson › book (accessed on 13 April 2017).

⁴⁴⁷ Svensson et al 2004. *Nordic Equality at a Crossroads: Feminist Legal Studies Coping with Difference*.

<https://www.routledge.com> › Svensson › book (accessed on 13 April 2017).

⁴⁴⁸ Bentzon, et al 1998. *Pursuing Grounded Theory in Law: South-North Experience in Developing Women's Law*. <https://searchworks.stanford.edu> › view (accessed on 16 June 2017).

⁴⁴⁹ Bentzon, et al 1998. *Pursuing Grounded Theory in Law: South-North Experience in Developing Women's Law*. <https://searchworks.stanford.edu> › view (accessed on 16 June 2017).

⁴⁵⁰ Francis et al 2017. *Feminist Philosophy of Law*. <https://plato.stanford.edu/archives/win2017/entries/feminism-law/> (accessed on 2 September 2018).

of women. Women's law approach is an open theory that applies traditional legal theory and empirical data since it belongs to both feminist and legal science. Being both a "cross-disciplinary and pluralistic" methodology, it enables one to "see both law, reality and morality from women's point of view"⁴⁵¹ by analyzing women's perspectives from 'below.' The fact that women's law approach is multidisciplinary which allows it to explore other fields like social sciences, legal history psychoanalysis, psychology, and philosophy makes it a meaningful framework. We must incorporate the lived realities and experience of women into the critique of the gender inequality access to water and sanitation.

Incorporation of women's lived realities and experience as a starting point in research was well captured by Sandra Harding whereby she stated thus: "Starting research from women's lives will generate less partial and distorted accounts not only of women's lives but also of men's lives and the whole social order."⁴⁵² The lived realities of women in research is the cornerstone of women's law approach.

Women's law approach has been employed by many researchers in the region who are products of Southern and Eastern African Regional Centre for women's law at the University of Zimbabwe.⁴⁵³ The course aims at facilitating the evolution of appropriate investigative, methodological, and analytical techniques for mapping the barriers to women's equitable access to resources and generating grounded understandings of the lived conditions of women of the region. This enables an understanding of the interplay between law and life and how this influences women's lives and the choices that they make.

The women's law approach as a tool of analysis helps in mapping of the barriers to women's equitable access to resources and generating grounded understandings of the lived conditions of women. The women have to look for solutions themselves and get out of their situation. The approach uses a bottom-up approach where the women's lived realities are taken on board and not bringing solutions and imposing on the people using a one fits all strategy. The women

⁴⁵¹ Francis *et al* 2017. *Feminist Philosophy of Law*. <https://plato.stanford.edu/archives/win2017/entries/feminism-law/> (accessed on 17 September 2018).

⁴⁵² Harding, 1993: 56.

⁴⁵³ SEARCWL is a Regional Centre housed within the Faculty of Law University of Zimbabwe. The goal of SEARCWL is to improve women's legal and social status in Eastern and Southern Africa and to cooperate with similar centres and institutions internationally and within the Eastern and Southern African regions.

must be involved in coming up with the solutions which they will own and implement to their benefit.

In the next section, I discuss the interface between Africana feminism and women's law approach in access to water and sanitation.

3.7 The Interface between Africana Feminism and Women's Law Approach in Access to Water and Sanitation.

Africana feminism is similar to the women's law approach in some aspects as the framework supports exploring social, political, and economic contexts and conditions that persons and peoples reside in, to address and improve women's experiences, livelihood and their human rights. The women's law approach goes further to interrogate and investigate the law in all its pluralities as it affects women. This, in essence, can be used to rework or reform the law to enable women to attain gender equality in respect of access to water and sanitation. These feminist theories can be combined in an analysis of gender inequality bedeviling access to water and sanitation in a bid to come up with strategies to solve the problems of access to water and sanitation.

Africana feminism and women's law approach can be used to analyze gender-neutral laws, which in many instances, result in discrimination. Stang Dahl points out that

“As long as we live in a society where women and men follow different paths in life and have different living conditions, with different needs and potentials, rules of law will necessarily affect men and women differently. The gender-neutral legal machinery meets the gender-specific reality.”⁴⁵⁴

The existence of laws that recognize equal rights for men and women does not necessarily amount to the achievement of equality. The analysis of how patriarchy, poverty, and gender inequality operate in an environment where basic services are lacking is pertinent. The experiences of the women and their voices on what solutions can be effective must come from their lived realities. Women's law approach envisages other approaches, which may include the application of legal pluralism, which describes a system where the tiered and interactive

⁴⁵⁴ See Dahl on women's law and feminist jurisprudence.

systems operate within a framework either inside or outside the formal legal state system.⁴⁵⁵ Beckman also states that it refers to a situation characterized by the coexistence of multiple normative systems, all of which are valid.⁴⁵⁶

Kameri Mbote argues that legal pluralism may be divided into two, namely, juristic and diffuse, whereby juristic legal pluralism arises in situations where the conventional legal system recognizes several other legal orders and sets out to determine which norms of these legal orders will apply.⁴⁵⁷ She further points out that the formal legal system provides an operating environment for plural legal orders such as the Constitution, which provides for the operation of specific religious or customary laws for particular ethnic or religious groups. However, juristic legal pluralism, which is state law, is the ultimate authority, and it dominates other plural legal orders. She finally argues that diffuse legal pluralism arises where a group has its own rules regulating social behaviour whose operation is neither sanctioned nor emanates from state law.⁴⁵⁸

The diffuse legal pluralism is relevant in that in patriarchal societies where there are unwritten rules of engagement concerning various issues including water and sanitation access. The rules are either culturally or religiously based which have to be adhered to. This is seen in situations where the slum dwellers are further affected by the self-imposed/ cultural norms and rules which limit access to sanitation for women and girls.

⁴⁵⁵ Griffiths J. 1986. *What is legal pluralism?* *Journal of Legal Pluralism* 24:1-55. <https://www.tandfonline.com/doi/abs/07329113.1986.10756387> (accessed on 16 November 2018).

⁴⁵⁶ Von Benda-Beckman K. 1997. *Water rights and policy*, in J. Spietz and M.G. Wiber, *The role of law in natural resources management*, repository.unam.edu.na › bitstream › handle › mapature2009 (accessed on 4 June 2017).

⁴⁵⁷ Mbote, K.2005. *The land has Its Owners: gender issues in Land Tenure Under Customary law*. UNDP-International Land Coalition Workshop: Land Rights for African Development: From Knowledge to Action Nairobi, October 31 – November 3, 2005 (Proceedings: <http://www.undp.org/drylands/lt-workshop-11-05.htm>) (accessed on 20 August 2018).

⁴⁵⁸ Mbote, K.2005. *The land has Its Owners: gender issues in Land Tenure Under Customary law*. UNDP-International Land Coalition Workshop: Land Rights for African Development: From Knowledge to Action Nairobi, October 31 – November 3, 2005 (Proceedings: <http://www.undp.org/drylands/lt-workshop-11-05.htm>) (accessed on 20 August 2018).

Kibera women slum dwellers like most Kenyans live in a pluralistic legal environment that also embraces customary laws. From the analysis of the Kenyan Water Act, it is evident that it does not recognize this concerning access to water and sanitation for women. What channels or procedures for complaints or disputes resolution are in place in water and sanitation access?

The fusion of women's law approach and Africana feminism as a conceptual framework for analysis for Kibera women's access to water and sanitation has aided in the conceptualization of feminization of poverty, patriarchy that encompasses all forms of male dominance that creates gender inequality. It has to be understood that male domination over women is created by a system of socio-cultural relations fueled by patriarchy and power relations.

3.8 Conclusion

In conclusion, the history of feminism and characterization of different feminist approaches have a similar objective to establish equal rights and legal protection for women. The feminist waves may be of a different time, space and format but the bottom line is that they have the same agenda to achieve equality. From the analysis above using the Africana and women's law feminist theories, it is apparent that the two approaches reflect the tools of analysis of inequality in women's access to water and sanitation. Through the approaches, you can interrogate the lived realities of the women slum dwellers in respect of the oppressions they undergo, the challenges they face with access to resources, gender inequality, and lack of decision making powers in economic and political spheres, poverty and voicelessness.

There are possible strategies that women have put in place to create spaces and deal with their plight of limited access to water and sanitation. The two feminist theories are also compatible to be used in combination whereby one covers where the other has a shortfall. For example, the women's law approach, apart from looking at the lived realities and experiences of women, concentrates on explaining, understanding, and critically analyzing women's legal rights to improve their legal position in society. Does it only look at law and women's legal status in society or pluralities across disciplines?

This makes it a suitable approach as it makes it possible to engage the actors and structures in the water and sanitation sectors for purposes of reform in how they implement their policies. Further the women's law approach is a flexible theory which allows one, when doing research, to deal with emerging themes as you progress. Finally, it also looks at the lived realities of both

men and women and the interplay of the law in trying to analyze the factors or forces that control women's lives.

In Chapter four I examine the legal framework on the right to water and sanitation emanating from international, regional, and domestic law. I further highlight the Kenyan legal, policy and institutional frameworks on water and sanitation with specific reference to the constraints and opportunities in realizing the right to water and sanitation within the current framework for women slum dwellers.

CHAPTER FOUR

The Legal Framework on the Right to Water and Sanitation

4.1 Introduction

Lack of access to adequate, safe, close, and affordable water and sanitation in Kenya is the core concern of this thesis. The main research problem that I investigate is the position of women slum dwellers in Kibera, Kenya, with respect to access to water and sanitation and how their impoverished position as women exacerbates such lack of access. I also analyze the relation between access to water, poverty, and patriarchy to highlight the limitations of the legal and institutional frameworks governing the right to water. This is to enable me to build the foundation for my central thesis, linking access to water with poverty and patriarchy.

In this chapter, I consider the extent to which the Kenyan legal and policy frameworks enable adequate access to water and sanitation for women slum dwellers in Kenya, with specific reference to Kibera. In answering this research question, I explore interrelated sub-questions that deal with the opportunities and obstacles at the international, regional, and national level for the implementation of the right to water and sanitation. I further examine the limitations of the legal and institutional frameworks for women slum dwellers in Kenya.

To understand the importance of the human right to water and sanitation, it is necessary to look at the development of the legal framework emanating from international, regional and domestic law. The conversation on the historical development of the human right to water and sanitation at the international, regional and domestic arena gives a road map to the discussion on their efficacy and constraints in access to water for women and what can be done to enhance their access. The reason for looking at the historical development of the right to water is to show the long route the recognition of the human right to water and sanitation has taken and highlighted the substantive content of the right to water, including the state obligations. The other reason is that the right to water is a socio-economic right in international law, and the enjoyment of this right depends on its translation within domestic constitutional and legal systems. However, some countries have a monist system where international law does not need to be translated into national law. This means that ratifying an international treaty immediately incorporates it into the national law and customary international law is treated as part of national law as well. In the next section I look at the human right to water and sanitation in the international arena and this is followed by the right to water and sanitation in the regional level and finally at the domestic sphere.

4.2 The Human Right to Water and Sanitation in the International Arena

4.2.1 Introduction

In this section, I examine the historical development of the right to water and sanitation in the international arena. This is to locate the road map to the recognition of the human right to water and sanitation and its current status. In looking at the emergence of the right to water and sanitation, I principally highlight the framing of the right and what it portends for women slum dwellers in their quest for its realization. I argue that water is central to human survival; hence its recognition as a right is essential. The human right to water and sanitation has evolved from soft to hard international law, where it is now considered as a distinct, composite human right.⁴⁵⁹ I further discuss the evolution of the right to water and sanitation at the international level, the African region, and the domestic level in the succeeding sections. I also discuss the normative content and the obligations of the right to water and sanitation.

In the chapter, I also discuss the various soft and hard law instruments and indicate the hierarchy of norms in the ranking of their importance. I also define the human right to water and as a right that entitles everyone to be sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic (household) use.⁴⁶⁰ The UN Special Rapporteur also defined sanitation “as a system for the collection, transport, treatment, disposal, or reuse of human excreta and associated hygiene. The human right to sanitation entitles everyone to sanitation services that are safe, socially and culturally acceptable, secure, hygienic, physically accessible and affordable, and that provides privacy and ensure dignity.” This is the working definition that runs through the thesis.

To understand the emergence of the right to water and sanitation, it is crucial to give a brief chronology of how it started until 2010 when the recognition came into effect. I, therefore, embark on the path to recognition.

4.2.2 Universal Declaration of Human Rights and the Right to Water and Sanitation

⁴⁵⁹ Meier *et al* 2012. *Implementing an evolving human right through water and sanitation policy*. https://papers.ssrn.com › Delivery.cfm › SSRN_ID2246132_code1177533 (accessed on 18 May 2018).

⁴⁶⁰ Definition from the 2014 UN Special Rapporteur’s *Realizing the Rights to Water and Sanitation: A Handbook*, 2014.

The Universal Declaration of Human Rights (UDHR) of 1948⁴⁶¹ did not explicitly recognize the right to water and sanitation as a human right. Although not binding, it is an important document with many of its provisions considered to be customary international law and reasserted in many international legal instruments. It was probably not explicitly mentioned as a right due to its nature as a resource for basic survival and the fact that the world population had not increased substantially to compete for the resource. The other reason may be that the drafters assumed that water was so essential to life that it was redundant to recognize it as a right.⁴⁶² The following year in 1949, a humanitarian law concerning the protection of civilians and combatants during armed conflict recognized an individual right to water. This is very significant even though the humanitarian law does not have the same weight as human rights principles⁴⁶³, but it forms a basis for the protection of the right to water.

McCaffrey wrote that water is essential for life, crucial for relieving poverty, hunger, and disease and critical for economic development.⁴⁶⁴ He links to access to water to alleviating poverty. With the world population increasing and the resources being depleted by human activity, together with the advent of climate change, it was necessary to protect the resource and give effect to the fact that the right to water is fundamental in the realization of other rights, as they are interrelated and indivisible. The right to water traces its steps or roots from art — 25 of UDHR.

Noting that the UDHR was non-binding, states continued to negotiate in the ensuing years to develop specific legal obligations under two separate human rights covenants, enacting in 1966 the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which documents were adopted

⁴⁶¹ UNGA Universal Declaration of Human Rights, 10 December 1948, 217 A (III). <https://www.un.org › universal-declaration-human-rights> (accessed on 15 March 2018).

⁴⁶² See Gleick, (“A detailed review of international legal and institutional agreements relevant to these questions supports the conclusion that the drafters implicitly considered water to be a fundamental resource.”); Stephen C. McCaffrey, *A Human Right to Water: Domestic and International Implications*, 5 GEO. INT’L ENVTL. L. REV. 1 (1992-93).

⁴⁶³ See Winker IT. *The Human Right to Water: Significance, Legal Status and Implications for Water Allocation* (2012) 62 -64 on the differences of humanitarian law and human rights.

⁴⁶⁴ McCaffrey SC (1992-1993) 5. Gleick PH (1999) 488; WHO *The Right to Water* (2003) 6-7, http://www.who.int/water_sanitation_health/en/righttowater.pdf. (accessed on 17 February 2017).

by the UN General Assembly and referred to collectively as the “International Bill of Human Rights”. These documents form the normative basis of the human rights system from which rights to water and sanitation would develop and evolve under international law.⁴⁶⁵

The human right to water is like a conjoined twin of the right to life, health, and food. The recognition of the right to water has a long history, starting from the most important international instrument, which is the 1948 UDHR.

Art. 25 of the UDHR provides for the right to an adequate standard of living. It specifically provides that:

1. *Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*
2. *Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.*

The right to a standard of living as envisaged in this article encompasses many rights that require the availability of water and proper sanitation to realize them. In my view, this article covers most of the rights that are mentioned as specific rights, either in this covenant or other treaties. Water is a common denominator in the achievement of most rights. There is no way a person can have food, clothing, medical care, and other social services without water. This shows how this right is at the heart of survival and development. The use of the word “including” in the article indicates that the categories of rights are not exhaustive, and other rights can also be inferred from the same.

The article further brings in the dimension of motherhood and childhood and related to that, that mothers and children are entitled to special care and assistance. This is central because, in issues of water and sanitation, women and children bear the brunt when there is a lack of water and adequate sanitation. Motherhood, in this respect, could mean the process of birthing that requires a lot of water or nurturing and taking care of the family, which is usually solely in the

⁴⁶⁵ See Winker IT. *The Human Right to Water: Significance, Legal Status and Implications for Water Allocation*. 2012. 62 -64 on the differences of humanitarian law and human rights.

hands of women. It is instructive to note that even though the right to water was not explicitly mentioned in the UDHR, without water, other rights like a right to a standard of living adequate for the health and wellbeing of the family cannot be achieved. The instruments considered water as a vehicle to guarantee other rights. The interpretation of all international agreements is guided by the Vienna Convention on the Law of Treaties (Vienna Convention), which permits an inference of implied rights as long as this is done in good faith, based on both the text and object of the treaty.⁴⁶⁶

4.2.3 The International Covenant on Economic Social and Cultural Rights and International Covenant on Civil and Political Rights

The International Covenant on Economic Social and Cultural Rights (CESCR) of 1966⁴⁶⁷ also did not explicitly mention the right to water, but the two instruments are critical in the development and eventual recognition of these rights. Arts. 11 and 12 of the CESCR of 1966 are the foundation of the right to water.

Similarly, art. 6 of the UN Covenant on Civil and Political Rights also guarantees the right to life. Arts. 11 and 12 of the CESCR guarantee an adequate standard of living. This is a follow up from the UDHR art. 25. However, it goes further to recognize the fundamental right of everyone to be free from hunger and urges state parties to take measures, individually and through international co-operation, to give effect to this right. These measures may include specific programmes that ensure disadvantaged and marginalized groups have equitable access to water and sanitation without discrimination, amongst others. The absence of an explicit reference to a right to water in the CESCR is, therefore not a sufficient argument to deny access to water the status of an independent human right.⁴⁶⁸ Alston stated that “one of the most striking

⁴⁶⁶ *Vienna Convention on the Law of Treaties (Vienna Convention) Adopted 29 May 1969 and entered into force 27 January 1980 art 31.* https://legal.un.org › texts › instruments › english › conventions › 1_1_1969. (accessed on 7 June 2018).

⁴⁶⁷ *United Nations 1966. International Covenant on Economic, Social and Cultural Rights.* <https://www.ohchr.org › professionalinterest › pages › cescr> (accessed on 23 March 2018).

⁴⁶⁸ Riedel 2004. *The Human Right to Water and General Comment Number 15.* <https://www.refworld.org › pdfid>. (accessed on 7 May 2018).

features of the Covenant is the vagueness of the normative implications of the various rights it contains.”⁴⁶⁹

4.2.4 Mar del Plata Conference of 1977 and Notable Declarations concerning Right to Water and Sanitation.

The first official debate on the right to water occurred in 1977 at the Mar del Plata Conference in Argentina, where the Conference concluded that all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs.⁴⁷⁰ Although the debate on the right to water can be traced to this Conference as it provided a basis for the ongoing discussion on this right, it should be noted that there were two previous United Nations conferences - one on food supply and the other on human settlements - which gave this Conference impetus. The Conference pointed out that the water concerns were not only about food supply and potable water for human settlements but involved a range of other water-related issues. Following the Mar del Plata Action Plan, the period between 1981 and 1990 was declared the International Drinking Water Supply and Sanitation Decade. States committed themselves to improve water supply and sanitation in their jurisdictions.⁴⁷¹ This was significant as it paved the way for states to commit themselves to the adoption of policies and programs that would focus on universal access to water and sanitation.

It is imperative to mention that several plans of action have also referred to water and sanitation as a human right. Agenda 21, adopted at the United Nations Conference on Environment and Development (UNCED) in 1992 states that “the commonly agreed premise was that ‘all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs’”⁴⁷² Agenda 21 includes a separate chapter (Chapter 18) on freshwater resources. It also

⁴⁶⁹ Alston. 1987. *Out of the Abyss: The Challenges Confronting the New UN Committee on Economic, Social, and Cultural Rights*. <https://www.jstor.org/stable> (accessed on 28 February 2018).

⁴⁷⁰ United Nations. 1977. *Report of the United Nations water conference, Mar del Plata 14–25 March 1977*, UN Pub. EE77 II A 12. <http://www.ielrc.org/content/e7701.pdf>. (accessed on 2 May 2018).

⁴⁷¹ United Nations 1977. *Report of the United Nations Water Conference, Mar del Plata 14-25 March 1977*, UN Pub. EE77 II A 12, available at <http://www.ielrc.org/content/e7701.pdf>. (accessed on 2 May 2018).

⁴⁷² *Earth Summit, Agenda 21, The United Nations Programme of Action from Rio*, U.N. ISBN 92: 92-1-100509-4; Sales No. E.93.1.11, 166 (United Nations Publication 1993).

emphasizes that women are a vital user group that should participate in the decision-making, allocation, management, and use of water resources.

The other important Conference worth mentioning is the International Conference on Water and the Environment, which was held in Dublin, Ireland, in January 1992. The Dublin Statement on Water and Sustainable Development was issued there, Principle 4 of which proclaims that “water has an economic value in all its competing uses and should be recognized as an economic good.”⁴⁷³ The Statement also clarified that within this principle, “it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price.” The recognition of a basic right to all human beings to have access to clean water and sanitation at an affordable price did not mean that the water would be free of charge. However, the Dublin Principles do not explain the concept of “affordability,” nor do they suggest means through which its content and meaning could be determined.⁴⁷⁴ The lack of definition of what is affordable poses challenges in water pricing, especially in the slum areas. Affordability is relative and will vary from person to person and the geographical location of the resource. Principle 3 of the Dublin Statement is relevant to this study as it states that women play a central part in the provision, management, and safeguarding of water.

Further, the Programme of Action of the International Conference on Population and Development (1994), affirms that all people have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water, and sanitation.⁴⁷⁵ This is in line with art. 11 of the CDESCR.

The other recognition of safe drinking water and sanitation as a human right worth mentioning was by the former United Nations Secretary-General Kofi Annan, who emphasized that access

⁴⁷³ The other three principles state: (i) fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment, (ii) water development and management should be based on a participatory approach, involving users, planners, and policy makers at all levels, and (iii) women play a central part in the provision, management, and safeguarding of water.

⁴⁷⁴ Salman & McInerney-Lankford. 2004. *The human right to water: Legal and policy Dimensions*. <https://www.amazon.com › Human-Right-Water-Dimensions-Development> (accessed on 8 September 2017).

⁴⁷⁵ United Nations Report of the International Conference on Population and Development, Cairo, September 5–13, 1994. <http://www.un.org/popin/icpd/conference/offeng/poa.html>. (accessed 4 November 2018).

to safe water is a fundamental human need and, therefore, a basic human right.⁴⁷⁶ The next important convention was 1979, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

4.2.5 Convention on the Elimination of All Forms of Discrimination Against Women

The right to water is explicitly mentioned in two international treaties, CEDAW and the Convention on the Rights of the Child (1989). The preamble to CEDAW explains that, despite the existence of other instruments, women still do not have equal rights with men.⁴⁷⁷ Discrimination against women continues to exist in every society. This is the reason why it was considered necessary to have a separate legal instrument for women. Art. 14(2)(h) of CEDAW recognizes that rural women's health depends on adequate and nondiscriminatory access to water and that states parties must:

*'... ensure that rural women enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport, and communications.'*⁴⁷⁸

This article also recognizes the right to enjoy adequate living conditions, particularly concerning sanitation and water supply. CEDAW obliges states to cater to the specific needs of rural women and to ensure them the right to enjoy adequate living conditions, particularly concerning access to water. This provision is also augmented by art. 24, which enjoins states parties to adopt necessary measures at the national level aimed at achieving the full realization of the rights recognized in CEDAW. In essence, states are under an obligation to adopt appropriate legislative, administrative, judicial and other measures geared towards the full realization of the right to water for women. This goes to the core of my thesis to see how the Kenyan state has responded to this to ensure women slum dwellers realize the human right to water and sanitation.

⁴⁷⁶ Annan K. 2001. *United Nations Secretary General Statement at the UN Headquarters*, <https://www.un.org/content/speeches/2001-09-24/address-secretary...>(accessed on 4 February 2018).

⁴⁷⁷ See preamble of Convention of the Elimination of All Forms of Discrimination Against Women. United Nations (1979).

⁴⁷⁸ United Nations. 1979. *Convention on the Elimination of All Forms of Discrimination Against Women*. <https://www.ohchr.org/documents/professionalinterest/cedaw> (accessed on 17 June 2018).

CEDAW forms the most important human rights framework for promoting women's access to water and their participation in water management. It recognizes their needs and the significant roles they play in the economic survival of their families. Even though CEDAW focuses explicitly on rural development and refers to "water supply" in general, rather than focusing only on drinking water and other domestic uses, it is still a potent instrument in support of women's access to water and sanitation. It is instructive that CEDAW does not create new rights but gives emphasis on the need to address or eliminate discrimination in areas already guaranteed by pre-existing human rights.⁴⁷⁹

CEDAW imposes several different obligations on states that include substantive obligations relating to the prohibition of discrimination as well as procedural obligations, which are of a reporting nature. The instrument further obliges public authorities and institutions to act in conformity with the obligation of non-discrimination against women. Substantive obligations can also be classified between those subject to immediate realization and those subject to progressive realization, like the right to water and sanitation.

The Committee on the Elimination of Discrimination against Women confirmed in its General Recommendation No. 24 that states parties must provide adequate water supply,⁴⁸⁰ as women and girls are often most affected by the lack of water accessibility, availability, and safety, especially in developing countries, rural areas, and traditional communities. This recommendation has a bearing on the acknowledged challenges that affect women and girls, especially those living in slum dwellings like Kibera, who are not able to access water adequate water and sanitation. The next important instrument which came ten years after CEDAW is CRC.

4.2.6 Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC) under art. 24(2) (c) requires states parties:

⁴⁷⁹ Winkler 2012, & Bulto 2014 pointing out other than the indication of an existing human right to water, the CEDAW has limited value as regards its implication on addressing general access to water for other groups due to its restriction in personal and substantive scope.

⁴⁸⁰ U.N. *Convention on the Elimination of Discrimination Against Women (CEDAW)*, CEDAW General Recommendation No. 24: Art. 12 of the Convention (Women and Health), 28, U.N. Doc A/54/38/ Rev.1 (May, 2, 1999).

*(c) To combat disease and malnutrition, including within the framework of primary health care, though, among other things, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;*⁴⁸¹

This Convention mentions explicitly the provision of clean drinking water as a condition for combating disease and malnutrition but not as a stand-alone recognition of the right to water. As previously stated, access to water was seen as an enabling tool for achieving other rights. Art. 24 of CRC is reinforced by art. 27, which recognizes the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.⁴⁸²

“The close connection between access to safe drinking water and sanitation and a range of other human rights is implicitly addressed in various treaties, notably in relation to the right to life, the prohibition of torture, the right to health, the right to education, the right to adequate housing, the right to food and the right to an adequate standard of living”.⁴⁸³ This is an indication that the right to water is interlinked with the other rights that encompass a right to an adequate standard of living.

In its General Comment No. 7, the Committee on the Rights of the Child stated that, in light of art. 24, states have a responsibility to “ensure access to clean drinking water and adequate sanitation.”⁴⁸⁴ The CRC which deals explicitly with the rights of the child rides on the existing human rights but emphasizes the rights of the child.

The earliest instruments on the right to water and sanitation that have a binding nature are CEDAW and CRC, even though they are faulted for having a limited scope as they target women and children, respectively. They are further critiqued for the content of the right

⁴⁸¹ United Nations. 1989. *Convention on the Rights of the Child*. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 in 1989. Entry into force: 1990. United Nations.

⁴⁸² United Nations. 1989. *Convention on the Rights of the Child*. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 in 1989. Entry into force: 1990. United Nations.

⁴⁸³ OHCHR 2007 report on the scope and the content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments.

⁴⁸⁴ Committee on the Rights of the Child, General Comment No. 7, 27(a), U.N. Doc. CRC/C/GC/7/Rev.1 (Sept. 20, 2006).

guaranteed to be mostly undefined under the instruments.⁴⁸⁵ When there is a lacuna, then the interpretation is left to the rules of interpretation, which can go either way.

4.2.7 Other Notable Instruments on the Right to Water and Sanitation

The UN General Assembly also committed itself in 2000 to Millennium Development Goals (MDG's). MDG7 C aimed to halve the proportion of people without sustainable access to safe drinking water and basic sanitation by 2015. This commitment was a step towards the realization of the right to water. Even though the goal was not met in most developing countries, progress and the will to implement were reported.⁴⁸⁶

It is also imperative to refer to the 2006 Convention on the Rights of Persons with Disabilities (CRPD), which requires under art. 28(2) (a) that:

“States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures to ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs.”⁴⁸⁷

This Convention brought to fore the need to recognize equal access by persons with disabilities to clean water and other essential services. This is crucial as persons with disabilities, particularly women and children, face many challenges. The provisions of this Convention can be invoked to protect women slum dwellers with disabilities in their quest to access clean, appropriate and affordable water services.

⁴⁸⁵ See Woodhouse M ‘Threshold, reporting, and accountability for a right to water under International Law’ (2004-2005) 8 University of Denver Water Law Review 171, 173 stating that both the CEDAW and the CRC lack explicit definition regarding States’ obligations. See also Cahill A (2005) 122 & Winkler IT (2012) 56 arguing that art. 24(2)(c) does not provide for an independent right to water but rather that the right to health guarantees positive obligations regarding access to water as an underlying determinant to health.

⁴⁸⁶ *The Millennium Development Goals Report 2015*. [https://www.un.org › 2015_MDG_Report › pdf › MDG 2015 rev \(July 1\) \(accessed on 18 May 2017\)](https://www.un.org › 2015_MDG_Report › pdf › MDG 2015 rev (July 1) (accessed on 18 May 2017).).

⁴⁸⁷ Art. 28(2) (a) of *The Convention on the Rights of Persons with Disabilities (CRPD) 2006*.

In 2007 the United Nations High Commissioner for Human Rights made a report on the scope and the content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments. The report was a result of views and written submissions from various stakeholders, including States, intergovernmental organizations, national human rights institutions, non-governmental organizations (NGOs), experts, and representatives of the private sector. It highlighted the various concerns and issues concerning water and sanitation globally and came up with recommendations going forward.

The Human Rights Council, through Resolution 7/22 in March 2008, decided to appoint for three years an independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation. The highlights and the recommendation by the Human Rights Council show the growing concerns about the importance of putting the right to water and sanitation on the international agenda. In September 2008, Catarina de Albuquerque was appointed the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. This further fortified the importance of engaging in the international and local forums with the issue of water and sanitation. The Independent Expert presented her first annual report in 2009 to the Human Rights Council. For the first time, the HRC recognized that States have an obligation to address and eliminate discrimination concerning access to sanitation, and urged them to address inequalities in this area effectively.⁴⁸⁸

These milestones were very significant for the recognition of the human right to water and sanitation. The Human Right to Water and Sanitation (HRWS) was recognized as a human right by the United Nations (UN) General Assembly on 28 July 2010 through Resolution 64/292.⁴⁸⁹ This right has been recognized in international law through human rights treaties, declarations, and other standards, which I have discussed in the preceding sections. The right to water and sanitation was formally recognized, and it was acknowledged that clean drinking water and sanitation are essential to the realization of all human rights. Before this, the right to water was mentioned in international instruments like General Comment No. 15 adopted in

⁴⁸⁸ 2009 Report of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation.

⁴⁸⁹ United Nations 2010. Resolution on Human Right to Water and Sanitation, UN General Assembly Res. A/64/292.

November 2002 by the Committee of the Covenant on Economic, Social, and Cultural Rights.⁴⁹⁰

The Resolution calls upon States and international organizations to provide financial resources and to provide capacity-building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all.⁴⁹¹ This was a momentous step in international human rights law in recognizing the human right to water and sanitation.

In September of the same year, Human Rights Council Resolution A/HRC/RES/15/9 affirmed that the rights to water and sanitation are part of existing international law and confirmed that these rights are legally binding upon States. The Human Rights Council also calls upon States to develop appropriate tools and mechanisms to achieve progressively the full realization of human rights obligations related to access to safe drinking water and sanitation, including in currently unserved and underserved areas.⁴⁹² This declaration of a human right to water and sanitation created an international political consensus to implement this right through water and sanitation policy.

In furtherance of the recognition of the human right to water and sanitation, the Human Rights Council decided to extend the mandate of the current mandate holder as a Special Rapporteur on the human right to safe drinking water and sanitation for three years. The HRC further:

“encouraged the Special Rapporteur, in fulfilling his or her mandate... to promote the full realization of the human right to safe drinking water and sanitation by, inter alia, continuing to give particular emphasis to practical solutions with regard to its implementation, in particular in the context of country missions, and following the criteria of availability, quality, physical accessibility, affordability, and acceptability”⁴⁹³.

The UN Human Rights Council passed a new resolution on 28th September 2011 that “takes the human right to safe drinking water and sanitation a step further. The Council welcomed the submission of the compilation of good practices in the right to water and sanitation in which

⁴⁹⁰ General Comment No.15.

⁴⁹¹ July 2010 UN General Assembly Resolution A/RES/64/292.

⁴⁹² United Nations Human Rights Council. (2010). Resolution A/HRC/15/L.14. United Nations.

⁴⁹³ April 2011 Human Rights Council Resolution A/HRC/RES/16/2.

the Special Rapporteur put particular emphasis on practical solutions concerning the implementation of the human right to safe drinking water and sanitation. The resolution calls on States to ensure enough financing for sustainable delivery of water and sanitation services”.⁴⁹⁴

Human rights play a significant role in the normative framework for public policy. With the passing of the resolution on the human right to water and sanitation by the UN General Assembly, international organizations, national governments, and non-governmental organizations are moving forward to implement the resolution. The question is how far the implementation is and how committed the governments are to ensure that the right to water and sanitation is realized for the general populace and, more particularly, the vulnerable/marginalized women in the slums.

In September 2015, the UN agreed on the SDGs to include a commitment to provide universal access to sanitation and drinking water services by 2030. Targets 6.1 and 6.2 on drinking water and sanitation will measure safely managed services, which includes closing the sanitation loop to include treatment and reuse, and making safe drinking water available when needed. The inclusion as a stand-alone goal for water and sanitation signifies the importance of this right. The new SDGs program is based on the findings of the MDGs assessment. This MDG assessment was produced each year between 2013 and 2015 and confirms that significant progress has been made in the water and sanitation sector, although there remains much room for improvement.⁴⁹⁵

Apart from SDG No. 6 on water and sanitation, other SDGs have a bearing on water and sanitation. SDG No. 1 Poverty eradication, target 1.4 states that States Parties must ensure that all men and women, in particular, the poor and vulnerable, have access to basic services. Likewise, 11.b and 13.1 require that cities be built with access to water and sanitation and resilience to disasters (floods, storms, droughts).⁴⁹⁶ These are relevant to the attainment of the right to water and sanitation for the women slum dwellers in Kibera. There is a specific mention of the poor and vulnerable who should not be left behind.

⁴⁹⁴ *April 2011 Human Rights Council Resolution A/HRC/RES/16/2.*

⁴⁹⁵ *WASH Services in the Sustainable Development Goals 2006.*

⁴⁹⁶ *UN Sustainable Development Goals.*

Murthy states that access to vital natural resources and services that have public health implications would benefit from the use of the concept of a human right to water and sanitation as a vehicle to raise awareness to communities and voice their concerns on the real and perceived inequalities.⁴⁹⁷ This statement speaks to many communities in the developing world who are not able to assert their right to access water and sanitation as a human right.

The above chronology of the emergence of the human right to water and sanitation is vital to show how this right has evolved, and the time it took to enable it to be an international agenda. The description is also to help in the discussion of the right and the normative content of the right to water and sanitation. The right has progressed through international soft law, covenants, declarations, resolutions and national laws. The recognition of the right to water and sanitation was a momentous milestone in the advancement of international law that heralded new hope for the realization of this right. In the next section, I briefly discuss the soft and hard instruments mentioned above and their hierarchy.

4.2.8 Hierarchy of Norms and Instruments in Water and Sanitation

The right to water and sanitation is anchored in international human rights law, international humanitarian law, and international water law. This right, as discussed above, has evolved in international practice and legal belief, which is the source of customary international law.⁴⁹⁸ In the hierarchy of norms and instruments, treaties rank higher in the chain as they contain commitments that state parties are bound by law to fulfill. The three fundamental treaties that expressly refer to specific aspects of the right to water and sanitation are discussed in the preceding section are the 1979 Convention CEDAW, the 1989 Convention CRC; and the 2006 Convention on the Rights of Persons with Disabilities (“CRPD”). The above treaties described have binding legal obligations on state parties to fulfill.

⁴⁹⁷ Sharmila L. 2013. *The Human Right(s) to Water and Sanitation: History, Meaning, and the Controversy Over-Privatization*, (accessed on 2 August 2017).

⁴⁹⁸ Cavallo , G.2012.*The Human Right to Water and Sanitation: From Political Commitments to Customary Rule?* <https://core.ac.uk › download › pdf> (accessed on 20 September 2019).

It is important to note that legally binding international instruments explicitly recognize some critical elements of the normative content of the human right to water and sanitation, in particular, accessibility and availability of clean water and sanitation services.⁴⁹⁹

International declarations and resolutions enshrine the political commitments of states within the international community. Although they are formally non-binding, they can be used as interpretative guides concerning states' treaty obligations. It is argued that the value of international statements, final declarations, and plans of action in international law is that these instruments reflect states' political commitment and practice, which offers further evidence of the process towards an independent human right to water and sanitation through the emergence of a customary rule.⁵⁰⁰ These declarations and statements guide the implementation of the right to water and sanitation.

The right to water and sanitation enjoys an increasing recognition in soft international law, mainly due to the work of the United Nations' Human Rights Council and General Assembly, which has elaborately been described above. Soft laws are legally non-binding instruments that are utilized for a variety of reasons, including to strengthen member commitment to agreements, reaffirm international norms, and establish a legal foundation for subsequent treaties. The soft laws are moral obligations arising from commitments or motivations which have no legal sanctions if there is non-compliance.

In a study conducted by Professor Shelton on the role of International Soft Law, she found out that soft law was a supplement and not an alternative to binding law. Further that soft law was used to fill in gaps within hard law instruments or to supplement hard law instruments with new norms and that there were few examples of stand-alone soft law agreements that were not in some way intertwined with hard law.⁵⁰¹ These findings are relevant in the international soft law instruments in respect of the evolution of the right to water and sanitation. Some of the

⁴⁹⁹ Cavallo , G.2012.*The Human Right to Water and Sanitation: From Political Commitments to Customary Rule?* [https://core.ac.uk > download > pdf](https://core.ac.uk/download/pdf/) (accessed on 20 September 2019).

⁵⁰⁰ Cavallo , G.2012.*The Human Right to Water and Sanitation: From Political Commitments to Customary Rule?* [https://core.ac.uk > download > pdf](https://core.ac.uk/download/pdf/) (accessed on 20 September 2019).

⁵⁰¹ Shelton, D. 1999 *Commitment and Compliance: What Role for International Soft Law?* [https://carnegieendowment.org > 1999/11/22 > commitment-and-compliance...](https://carnegieendowment.org/1999/11/22/commitment-and-compliance...) (accessed on 20 September 2019).

declarations and instruments were as a result of a follow up to the previous commitments in terms of reaffirmation of the international norms and standards.

The other important finding of the study by Professor Shelton is that it established that with the growing multiplicity of international actors on various issues, soft law permits their participation in the international arena. Soft law allows more actors to get involved in the law-making process than conventional binding law.⁵⁰² The importance of soft law in the human rights area is that it can be used to develop a consensus of norms between members of an agreement that could later be codified through binding law. The other issue is that the soft law agreed on after a treaty is necessary for fleshing out the defined principles in a treaty. The norms and standards inform and guide the implementation of rights and measure compliance. The other significance of the soft law instruments is that they help in defining the legal principles which can be used to balance the systems and support in the implementation. In the next section, I deal with the normative content on the right to water and sanitation.

4.3 General Comment No. 15 on the Right to Water

4.3.1 Introduction

The General Comment No. 15 on the right to water that was adopted by the UN Committee on Economic, Social and Cultural Rights at its Twenty-Ninth Session in November 2002,⁵⁰³ The General Comment is an essential framework through which to define the normative content of the right to water and sanitation as it provides guidelines for states on the interpretation of the right to water under two articles of the CESCR – art. 11 (the right to an adequate standard of living) and art. 12 (the right to health). It also affirms that:

“The human right to water entitles everyone to be sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”

The General Comment further notes that the right to water has been recognized in a wide range of international documents and reaffirms the fundamental importance of the right stating that:

⁵⁰² Ibid.

⁵⁰³ See *General Comment No. 15*.

“The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights “.

In this section, I describe and analyze the normative content on the right to water and sanitation and the obligations of state parties concerning the realization of the right.

4.3.2 Normative Content of the Right to Water and Sanitation

General Comment No. 15 on the Right to Water by the UN Committee on Economic, Social, and Cultural Rights focuses on defining the roles and responsibilities of State parties concerning water, taking into account the need for access to sanitation. More recent expert reports have addressed sanitation as a right along-side water, precisely the Guidelines on the realization of the right to drinking water and sanitation (adopted in the 2006 Sub-Commission on the Promotion and Protection of Human Rights)⁵⁰⁴ and the 2007 *Report of the UN High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to drinking water and sanitation*. However, the guidelines do not define what sanitation means.

The General Comment clarifies the normative content of the right to water by articulating the individual elements of the right, such as ‘availability’, ‘quality’ and ‘accessibility’ Even though General Comment No. 15 did not cover access to sanitation, as it only clarified the need for safe sanitation to ensure water quality, all is not lost as the omission was cured by the inclusion of sanitation in other instruments after General Comment. The incorporation of human rights principles like availability, safety, and affordability in the 2015 Sustainable Development Goals (SDGs)⁵⁰⁵ water and sanitation target is evidence of the recognition of the right to sanitation.

The other recent notable political declarations explicitly recognizing the human right to sanitation include the 4th and the 5th South Asian Conference on Sanitation (SACOSAN), held in 2011 and 2013, respectively; and the Ng’ or Declaration on Sanitation and Hygiene

⁵⁰⁴ United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, (2006) UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, www.ohchr.org (accessed on 3 February 2018).

⁵⁰⁵ See Goal 6 SDGs and the targets.

adopted at the Fourth African Conference on Sanitation and Hygiene, held in 2015.⁵⁰⁶ Amongst the commitments which are relevant to the marginalized communities were that the governments would focus on the poorest, most marginalized, and unserved aimed at progressively eliminating inequalities in access and use and implement national and local strategies with an emphasis on equity and sustainability. The other commitment is in respect of mobilization of resources at the highest political level and prioritizes sanitation and hygiene in national development plans. These commitments though not binding, can have positive results if there is goodwill on the part of the governments to ensure implementation. The commitments are entered into voluntarily, and State parties can choose not to be part of the process, but when they opt to sign the declarations, then they should act according to the aspirations of the declarations.

The normative content of the right to water further contains both freedoms and entitlements.⁵⁰⁷ The freedoms include the right to maintain access to existing water supplies necessary for the right to water and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies.⁵⁰⁸ General Comment No. 15 stipulates the “entitlements to include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water. Water should be treated as a social and cultural good, and not primarily as an economic good.”⁵⁰⁹ When water is treated primarily as an economic good, many marginalized people are not able to afford the set tariffs, therefore, fall on the wayside. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.⁵¹⁰ In addition to the “affirmative” obligations, the General Comment stipulates

⁵⁰⁶ *The N'gor Declaration on Sanitation and Hygiene (2015)* https://www.ircwash.org › default › files › ngor_declaration_print_version (accessed on 13 August 2019). This Declaration was adopted by the African Ministers responsible for sanitation and hygiene on 27 May 2015 at AfricaSan.

⁵⁰⁷ Elliot C. 2010. *Water Scarcity and the Recognition of the Human Right to Safe Freshwater*, <https://scholarlycommons.law.northwestern.edu › cgi › viewcontent> (accessed on 10 September 2018).

⁵⁰⁸ *General Comment No.15 2002 note 4, Para. 10.*

⁵⁰⁹ *The Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 1992.*

⁵¹⁰ For a definition of sustainability, see the Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 1992, Declaration on Environment and Development, principles 1, 8, 9, 10, 12 and 15; and Agenda 21, in particular principles 5.3, 7.27, 7.28, 7.35, 7.39, 7.41, 18.3, 18.8, 18.35, 18.40, 18.48, 18.50, 18.59 and 18.68.

that violations must also be considered, which include violations ensuing from acts of commission or omission, violations related to elements of the minimum core content of the right, and discrimination.⁵¹¹ The violations in respect of the lack of access to water and sanitation for the women slum dwellers may most likely fall on the omission side than the commission. The commission may be in respect of the failure to adhere to the non-discrimination obligation while the omission may be due to failure to take steps to ensure that there is a progressive realization of the right.

The General Comment also stresses that States are obliged to ensure that the right to water is enjoyed without discrimination and based on equality between men and women. General Comment sets the tone for further discussion of water and sanitation in the international arena. It clarifies the normative framework and the guidelines for the implementation of a human right to water within the tenets of the International Covenant on Economic, Social and Cultural Rights.

Article 11 and 12 provide for the elements of the right to water that states that water must be adequate for human dignity, life, and health.⁵¹² The interpretation of adequacy might vary from country to country, but the elements of availability, quality and accessibility must apply in all circumstances.

Box 1.0 Core Obligations of the Right to Water.

<ul style="list-style-type: none">• To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease.
<ul style="list-style-type: none">• To ensure the right of access to water and water facilities and services on a nondiscriminatory basis, especially for disadvantaged or marginalized groups.
<ul style="list-style-type: none">• To ensure physical access to water facilities or services that provide sufficient, safe, and regular water, that have a sufficient number of water outlets to avoid prohibitive waiting times, and that is at a reasonable distance from the household.

⁵¹¹ In Part IV of the Outline, the Committee also addresses the obligations of other relevant actors, other States Parties, Economic and Social Council, other United Nations Organizations, the relevant Specialized Agencies (Articles 2.1, 2.3, 18, 19, 20, 21, and 23 of the Covenant), and Civil Society.

⁵¹² ICESCR note 62 Art. 11(1) and 12.

<ul style="list-style-type: none"> • To ensure personal security is not threatened when having to access to water physically.
<ul style="list-style-type: none"> • To ensure equitable distribution of all available water facilities and services.
<ul style="list-style-type: none"> • To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups.
<ul style="list-style-type: none"> • To monitor the extent of the realization, or the non-realization, of the right to water.
<ul style="list-style-type: none"> • To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups.
<ul style="list-style-type: none"> • To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation (CESCR, 2003).⁵¹³

Accessibility includes; physical, economic, accessibility without discrimination, and access to information on water-related issues. According to the Committee on Economic, Social and Cultural Rights in its 29th session, where it discussed the substantive issues arising in the implementation of the International Covenant on Economic Social and Cultural rights, water supply for each person must be sufficient and continuous for personal and domestic uses that ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. It further stated that the quantity of water available for each person should correspond to the World Health Organization (WHO) guidelines.⁵¹⁴ According to WHO, between 50 and 100 litres of water per person per day is needed to ensure that most basic needs are met and few health concerns arise. It also recommends that the clean water

⁵¹³ General Comment No. 15, para. 37.

⁵¹⁴ Bartram & Howard, 2002 .*Domestic water quantity, service level and health: what should be the goal for water and health sectors*. WHO, 2002. See also P.H. Gleick, (1996) “Basic water requirements for human activities: meeting basic needs”, *Water International*, 21, pp. 83-92.

should be from a source of less than 1 kilometer from their home.⁵¹⁵ However, this is not the case in most developing countries, worst still in informal settlements. On the issue of quality, the Committee stated that the water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances, and radiological hazards that constitute a threat to a person's health.⁵¹⁶ The water should also be of acceptable colour, odour, and taste for each personal or domestic use. On the acceptability of the color and taste of the water, as recommended by the committee, it might not be realized in certain areas where the water is either from contaminated rivers, boreholes or wells which have discolored or salty water. This is relative, and the individuals might resign themselves to what is available.⁵¹⁷

The accessibility of water and water facilities and services to everyone deals with four aspects of accessibility, as mentioned above. Water and water facilities and services have to be accessible without discrimination. The four limbs of accessibility according to the Committee, are:

(i) Physical accessibility: water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe, and acceptable water must be accessible within or in the immediate vicinity of each household, educational institution, and workplace. All water facilities and services must be of sufficient quality, culturally appropriate, and sensitive to gender, lifecycle and privacy requirements. Physical security should not be threatened during access to water facilities and services. The issue of accessibility speaks to the plight of women slum dwellers in Kibera as their security is often threatened during water facilities and services.

(ii) Economic accessibility: Water, and water facilities and services must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable and must not compromise or threaten the realization of other Covenant rights; Economic accessibility is also a significant challenge to the many people but more particularly the

⁵¹⁵ World, Health Organization 2000. Global Water Supply and Sanitation Assessment Report| Web site World, Health Organization,http://www.who.int/water_sanitation_health/monitoring/jmp2000.pdf (accessed on 20 April 2018).

⁵¹⁶ See paragraph 12 (b) of General Comment No. 15.

⁵¹⁷ See General Comment No.15.

vulnerable women living in the slums as they are not able to afford the water charges leading to limited access of the resource.

(iii) *Non-discrimination*: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and fact, without discrimination on any of the prohibited grounds; and

(iv) *Information accessibility*: accessibility includes the right to seek, receive and impart information concerning water issues.⁵¹⁸ Access to information is important, and persons have a right to request and receive information on water-related issues. Various Constitutions across the world including Kenya, recognize access to information in their bill of rights.

Howard posits that the definition is missing clarification concerning several issues such as what is affordable and how the state should guarantee that its inhabitants can afford a daily supply of water, especially the low-income inhabitants who may face these difficulties. Moreover, essential details concerning what exact level of quality the water should contain are missing.⁵¹⁹ He further states that strict and clear provisions of what the right should entitle individuals to and how it should be managed should make the implementation easier and more effective. This complicates the right holders' quest to hold states accountable, especially women slum dwellers and the marginalized who do not have a voice.⁵²⁰

It was the Committee's view that core obligations concerning the right to water should be of immediate effect. The implementation of these core obligations on the right to water needs prioritization by governments to ensure progressive realization. Although the existence of human rights is not dependent on recognition by individual states, to become legally enforceable every human right depends on the commitment of individual states through

⁵¹⁸ The section on accessibility is adapted from the 29th Session of the Committee on Economic, Social and Cultural Rights 29th session whereby it discussed the substantive issues arising in the implementation of the International Covenant on Economic Social and Cultural rights, Geneva, 11-29 November 2002.

⁵¹⁹ Howard, D. 2012. *A Modest Proposal: A Dialogue To Implement The Human Right To Water*. Seattle: sustainability symposium. https://sustainabledevelopment.un.org/content/documents/25212016_h...(accessed on 7 March 2017).

⁵²⁰ *Marginalized Minorities in Development Programming, A UNDP Resource and guide toolkit 2010* [https://www.ohchr.org/Issues/Minorities/UNDP Marginalised Minorities](https://www.ohchr.org/Issues/Minorities/UNDP%20Marginalised%20Minorities). (accessed on 3 May 2017).

policies, laws, and customs.⁵²¹ These commitments should be respected and complied with even though they are not legally binding.

General Comment outlines the associated state obligations and certain international obligations. These obligations emanate from article 2 of the CESCR. The General Comment further elaborates on several what it terms “specific legal obligations” that the Committee classified in three categories of obligations. These include obligations to:

- 1) Respect the right to water by refraining from interfering directly or indirectly with the enjoyment of the right.
- 2) Protect the right to water by preventing third parties from interfering in any way with the enjoyment of the right to water.
- 3) Fulfill the right to water by adopting the necessary measures directed towards the full realization of this right.

Under international human rights law, an obligation to respect the right to water requires that “states refrain from actions that interfere with individuals realizing their right to water, denying or limiting equal access for all people’s the right to water and disconnection of water services.”⁵²² It further emphasizes the obligation of the state to ensure that no infringement or interference of the right of third parties in the enjoyment of the right to water occurs.⁵²³ This obligation includes, among other things, the adoption of necessary and useful legislation and other measures to restrain, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources.⁵²⁴ The obligations for states parties are critical to the right holders for demanding accountability on what measures have been put in place in furtherance to the realization of the right to water and sanitation.

Although General Comments are not binding *per se*, because the Committee has no authority to establish *new* obligations under the CESCR, it has been argued that General Comments provide a critical mechanism for developing a normative and contextualized understanding of

⁵²¹ McGraw, G. 2010. *Water for Life: The Challenge Posed by the Un-codified Human Right to Water in International Law*. <https://lawecommons.luc.edu/cgi/viewcontent> (accessed on 8 May 2018).

⁵²² *General comments No.15 Para, 25 see General Comment No. 14 para. 34.*

⁵²³ *General comment No.15 para.23, see also Maastricht Guidelines, para 6.*

⁵²⁴ *General comment No.15 para.23, see also Maastricht Guidelines, para 6.*

the provisions of the CESC. ⁵²⁵ It is instructive to note that General Comment No 15 does not create new obligations for state parties, but expounds on the nature of the existing obligations.

We should appreciate that the General Comment starts from the premise that failure to act in good faith to take the necessary and feasible steps toward the realization of the right to water amounts to a violation of this right. However, keeping in mind the provisions of art. 2 of the CESC, the General Comment distinguishes between the inability and the unwillingness of a State Party to comply with its obligations concerning the right to water. A State Party that is unwilling to use the maximum of its available resources for the realization of the right to water violates its obligations under the CESC. ⁵²⁶ Salman states clearly that if a state party has resources and it is proven that it is unwilling to use such resources in the realization of the obligations on the right to water, then it amounts to a violation.

This would help in positioning the current study in the relation between access to water, poverty, and patriarchy for women slum dwellers in Kibera, Kenya. The international instruments that recognize water and sanitation as a right are a basis for the national laws that have been promulgated to address the right. Where state parties have ratified/acceded to the treaties, they are under an obligation to respect, protect, and fulfill such international obligations. This has implications for water resources legislation and policy regulation in the governance of the water industry. The human right to water requires a look at all water laws, policies, and strategies through a human rights lens and to measure them against human rights criteria, particularly concerning non-discrimination. ⁵²⁷ In the next section, I discuss the right to water and sanitation in the African regional arena and further highlight the hard law and soft law and their significance.

4.4 Right to Water and Sanitation in the African Regional Human Rights System

In this section, I discuss the right to water and sanitation at the regional level with specific reference to the African region. We cannot talk about the emergence of the human right to

⁵²⁵ Salman, & McInerney-Lankford. 2004. *The human right to water: Legal and policy dimensions*. <https://www.amazon.com › Human-Right-Water-Dimensions-Development> (accessed on 12 June 2018).

⁵²⁶ Salman, & McInerney-Lankford. 2004. *The human right to water: Legal and policy dimensions*. <https://www.amazon.com › Human-Right-Water-Dimensions-Development> (accessed on 12 June 2018).

⁵²⁷ Kerstin M. 2016. *Groundwater Governance: The Role of Legal Frameworks at the Local and National Level—Established Practice and Emerging Trends*. <https://www.mdpi.com › pdf> (accessed on 25 March 2018).

water in the African region without mentioning the African Convention on the Conservation of Nature and Natural Resources of 1968 (Convention on Nature).⁵²⁸ The Convention on Nature provides that utilization and development of natural resources must be for the best interests of people and further requires states to establish national policies that guarantee for their populations a sufficient and continuous supply of suitable water⁵²⁹. The right to water in the African regional human rights system can be traced back to this Convention.

Under the African regional human rights framework, the right to water is implicitly provided for under the African Charter on Human and Peoples' Rights⁵³⁰ but expressly provided for under the African Charter on the Rights and Welfare of the Child and the Protocol on the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.⁵³¹ It is important to laud the positive aspect of the African Charter on Human and People's Rights (African Charter) in that it provided for both civil and political rights on the same level as social and economic rights.⁵³² The African Commission on Human and Peoples' Rights invoked the provisions in the Charter in the case of *Sudan Human Rights Organization and Center on Housing Rights and Evictions (COHRE) V Sudan*⁵³³ where it was found that the Sudanese government was complicit in the destruction of wells and poisoning of water sources in the Darfur region, and ruled that this exposed the victims to serious health risks and therefore was a violation of their right to the highest attainable mental and physical health as provided for under art. 16 of the African Charter on Human and Peoples' Rights

One of the crucial guarantees to have eluded the list of the African Charter on Human and Peoples' Rights is the right to drinking water and water for sanitation. Lacking comprehensive legal protection in the main regional instrument, the human right to water creates a hierarchy

⁵²⁸ African Convention on the Conservation of Nature and Natural Resources (Convention of Nature) Adopted 15 September 1968 and entered into force 16 June 1969.

⁵²⁹ The African Convention on the Conservation of Nature and Natural Resources (Revised Version) adopted 11 July 2003. Article VII.

⁵³⁰ See art. 16(1) guaranteeing the right to the highest attainable mental and physical health.

⁵³¹ See art. 15 (a).

⁵³² Organization of African Unity,(OAU), African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981 CAB/LEG/67/3 rev.5,21 I.L.M.58 (1982).

⁵³³ *Sudan Human Rights Organization and Center on Housing Rights and Evictions (COHRE) V Sudan* 279/03-296/05.

within a hierarchy, as it sits on the lowest rung of the already-marginalized socio-economic rights. The African Charter does not define the comprehensive legal basis and scope of the human right to water and attendant state obligation under the Charter.⁵³⁴ “The right has found its way into regional jurisprudence only by dint of innovative interpretation of the Charter by its monitoring and enforcement mechanism, the African Commission on Human and Peoples' Rights (African Commission). While this is a step in the right direction, the African Commission approached the right from an overly narrow normative basis and failed to elaborate its normative content.”⁵³⁵

Bulto further argues that “the effects of the absence of an explicit and comprehensive protection of the human right to water in the African Charter on Human and Peoples' Rights have been somewhat mitigated by the African Commission on Human and Peoples' Rights' purposive approach to the interpretation of other guarantees of the African Charter in a manner that envelopes the right to water”⁵³⁶.

The African Charter on Human and People's Rights, for example, includes a right to a satisfactory environment favorable to people's development, which is unattainable without access to water and sanitation.⁵³⁷ This is how far the Charter goes to recognize the importance of water and its interlinked nature with other rights. According to UNESCO, considering water as a cultural good should indeed be understood as the recognition of the diverse socio-cultural dimensions of people's engagement with water, such as identity, heritage, and sense of belonging. Africa is a culturally diverse continent, the issues of accessibility and culturally acceptable quality and quantity of water for different uses are essential.

At the regional level, African countries have also not been left behind in the debate on the human right to water and sanitation. The African Charter on the Rights and Welfare of the

⁵³⁴ Takele S 2011 *.Towards rights –duties congruence extraterritorial application of the human right to water in the African human rights system* . <https://papers.ssrn.com › sol3 › papers> (accessed on 5 August 2017).

⁵³⁵ Tekele S. *The human right to water in the corpus and jurisprudence of the African human rights system*. . <https://papers.ssrn.com › sol3 › papers> (accessed on 5 August 2017).

⁵³⁶ Tekele S. *The human right to water in the corpus and jurisprudence of the African human rights system*. . <https://papers.ssrn.com › sol3 › papers> (accessed on 5 August 2017).

⁵³⁷ Art. 24, African Charter on Human and People's Rights.

Child⁵³⁸ and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa include specific provisions on access to water. Art. 15(a) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol) obliges States parties to ensure that women have the right to nutritious and adequate food, taking appropriate measures to provide women with access to clean drinking water, sources of domestic fuel, land and a means of producing nutritious food.⁵³⁹

The Maputo Protocol that is also referred to as the African Women's Protocol and which obliges state parties to provide women with access to clean drinking water, is also silent on the quantity to be provided to ensure the realization of the right to water and sanitation. These are loopholes in the instrument that can be used to defeat the noble intention of the drafters. However, we should look at the positive side to enable implementation. States parties should also be aware of the need to realize the right to water and sanitation progressively. The phrase 'progressive realization' has been interpreted to mean an obligation on states to move as effectively and expeditiously as possible to secure its ultimate goal and should not be misinterpreted as depriving the obligation of all meaningful content.⁵⁴⁰

The African Charter on the Rights and Welfare of the Child provides that state parties are required to take measures to ensure the provision of adequate nutrition and safe drinking water. This provision has been criticized on the grounds that it is limited to children and merely regulates the quality of available water. It also does not state the amount of water that the state should provide to children. A state can successfully argue that it has ensured safe drinking water even if it is not enough.

Apart from the explicit recognition of the human right to water and sanitation in the African regional human rights instruments, it is instructive to note that there is room for positioning this right by interpreting other rights like the right to life and health in a broader way to infer the right to water. The African Commission should also lend credence to this right through its wider interpretation when called upon to adjudicate on matters dealing with violations on the

⁵³⁸ Adopted on 11 July 1990 and entered into force on November 1999.

⁵³⁹ Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000), *entered into force* Nov. 25, 2005.

⁵⁴⁰ *Free Legal Assistance Group and Others v Zaire African Commission on Human and Peoples' Rights Commission No. 25/89, 47/90, 56/91, 100/93 (1995) [47]*.

right to water and sanitation. The African Commission has, in the recent past, handled matters dealing with the government's failure to provide basic services like safe drinking water. The Commission found that the failure of the Zaire Government to provide safe drinking water was held to constitute a violation of art. 16 of the Charter.⁵⁴¹ The production of clear jurisprudence on this area of socio-economic rights can be beneficial to the domestic courts who can use them as precedents in the justiciability of these rights.

The African Commission has gone ahead to include the right to water in several other persuasive but non-binding documents. In 2011, the African Commission adopted State Party Reporting Guidelines for Economic Social and Cultural Rights in the African Charter, in which it emphasized state parties' obligation to report on the measures taken to realize the right to water and sanitation⁵⁴². The African Commission, in art. 45, is mandated to promote and protect the rights guaranteed under the African Charter. Under this mandate, the African Commission has several functions, such as to set standards and formulate principles and rules aimed at solving legal problems relating to human and peoples' rights and freedoms.⁵⁴³

Further, the Commission under art. 60 provides that the African Commission:

“shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights, as well as from the provisions of various instruments adopted within the specialized agencies of the United Nations of which the parties to the present Charter are members”⁵⁴⁴.

⁵⁴¹ *Free Legal Assistance Group and Others v Zaire African Commission on Human and Peoples' Rights Commission No. 25/89, 47/90, 56/91, 100/93 (1995) [47].*

⁵⁴² Content of Individual Rights' State Party Reporting Guidelines for Economic Social and Cultural Rights in the African Charter on Human and Peoples' Rights adopted by the African Commission on Human and Peoples' Rights 24, October 2011 Guideline 7.

⁵⁴³ African Charter arts. 5,16, 24 See Bulto TS (2014)70.

⁵⁴⁴ Art. 60.

The above article is significant in aiding the interpretation using laid down international principles on the right to water and sanitation. Where there are ambiguities, the same can be used to draw inspiration from international law for guidance.

Similarly, as discussed in the international arena, the African regional human rights system also has hard law and soft law on the right to water and sanitation. Some of the hard laws in the African Region are the African Charter, The African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa also popularly known as the Women's Protocol and the African Convention on the Conservation of Nature and Natural Resources of 1968 (Convention on Nature)

The African region is also not left out on the existence of soft laws in respect of the right to water and sanitation. One of the soft laws is the Ng'or Declaration on Sanitation and Hygiene adopted at the Fourth African Conference on Sanitation and Hygiene, held in 2015, which dealt with the need to mobilize resources to ensure the marginalized and underserved realize the human right to water and sanitation without discrimination. The Ng'or Declaration is also significant as it is Africa's implementation platform for SDG6, which seeks to commit African countries to update national water and sanitation management policies, regulatory frameworks and programmes, as well as preparing national strategies and action plans for achieving SDG6.⁵⁴⁵ African countries are also urged to adopt innovative mechanisms to manage demand and improve efficiency in the production, supply, and utilization of water in all sectors, including the marginalized like people living in underserved slum areas.

The other notable declaration on water and sanitation is the Abuja Declaration which was adopted at the First Africa-South America Summit (ASA) in Abuja, Nigeria, on 30 November 2006, whereby 53 African and 12 South American States committed to "promote the right of our citizens to have access to clean and safe water and sanitation within our respective jurisdictions."⁵⁴⁶

In the next section, I describe the Kenyan legal and institutional framework on the right to water and sanitation.

⁵⁴⁵ See Ng'or Declaration.

⁵⁴⁶ See Abuja Declaration. <https://www.cancilleria.gob.ec/wp-content/uploads/2014/10/Abuja-> (accessed on 20 September 2019).

4.5 A Description of the Kenyan Legal and Institutional Framework on the Right to Water and Sanitation

4.5.1 Introduction

In this section, I describe the Kenyan legal and institutional framework on the right to water and sanitation. I look at the provisions on the right to water and sanitation in the Constitution of Kenya, the Water Act, which provides for the regulatory and the institutional framework. I further analyze the current, and the previous regulatory framework which was amended by the reforms brought about by the 2010 Constitution to ensure alignment with the principles of the constitution. The reason for looking at the pre-2010 framework is to help in the understanding of the gaps and challenges that the current institutional and regulatory framework were meant to address and see whether it has succeeded in reforming the water sector. I, therefore, look at the right to water and sanitation as provided for in the Kenyan Constitution in the next section.

4.5.2 Right to Water and Sanitation under the Kenyan Constitution

Kenya is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC). Arts. 2 (5) and (6) of the Constitution of Kenya recognizes international law as part of the country's legal system. It states that:

“2 (5) The general rules of international law shall form part of the law of Kenya.

*(6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution”.*⁵⁴⁷

The import of the above article of the Constitution as read together with sect. 14 (4) (e) of the Treaty Making and Ratification Act, 2012 (Rev 2014) is that it gives effect to art. 2 (5) of the Constitution of Kenya 2010 which provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya. Before the promulgation of the 2010 Constitution, Kenya had a dualist system, which meant that upon ratification of a treaty, domestic legislation had to be enacted to enable the provisions therein to be applicable in the country. There was a fundamental shift in this position after the promulgation of the 2010 Constitution.

⁵⁴⁷ *Constitution of Kenya, 2010.*

This discussion is important to situate the international treaties that Kenya has ratified after the promulgation of the 2010 constitution and analysis of how to deal with the treaties and conventions that were ratified earlier. Does the provision act retrospectively? The answer to this is that the general principle is that other than for procedural and merely declaratory pieces of legislation, all others “are prima facie prospective.”⁵⁴⁸ A statute is not to be given a retrospective effect unless, from its express words or necessary implication, retrospectivity appears to be the intention of the legislature.

Even though the Constitution envisages a monist system where once ratification of a treaty is done it automatically becomes applicable as municipal law without enacting any enabling legislation, the Treaty Making and Ratification Act has elaborate provisions that subjects the same to parliamentary scrutiny and approval before it can become law. Does it mean that this amounts to a hybrid system where both dualist and monist values are incorporated? What happens if the treaty-making and ratification scrutiny by parliament reject the implementation of the law? Art. 2(5) of the Constitution, however, does not give any supremacy to international law.

My thesis is not to discuss the different schools of thought and theories on dualism and monism but just to highlight the importance of constitutional article that fundamentally makes Kenya a monist system in the application of international principles that are envisaged in the ratified treaties especially on the human right to water and sanitation which is the subject of this thesis.

The Kenyan Constitution recognizes the right to water and sanitation under art. 43(1) (b) and (d). This article essentially deals with economic and social rights as provided for under the CESC. It provides that “every person has a right to accessible and adequate housing, and to reasonable standards of sanitation”. It further provides under sub-art. (d) for a right to clean and safe water in adequate quantities. This article must be read together with art. 21(2), which provides for the implementation of rights and fundamental freedoms in the bill of rights.⁵⁴⁹ The article calls upon the state to take a legislative, policy and other measures, including the setting of standards to achieve the progressive realization of the rights guaranteed under art. 43, which includes the right to water and sanitation. The Constitution also gives every person the right to

⁵⁴⁸ *Samuel Kamau Macharia & Another v. Kenya Commercial Bank & 2 Others, Civil Application No. 2 of 2011 [Supreme Court of Kenya], at par. 61.*

⁵⁴⁹ *Art. 43 Constitution of Kenya 2010.*

institute court proceedings when his/her rights to sanitation have been denied, violated, infringed or threatened.⁵⁵⁰ It is thus primarily the government's responsibility to ensure that the human rights of all persons under the state's jurisdiction are realized. The legal framework must guarantee access to water and sanitation, including a basic minimum for human consumption provided at affordable costs for all. The provisions in the Constitution on the right to water and sanitation stems from the principles enunciated in the CESCR and the CRC. Kenya also enacted the Children's Act to domesticate the CRC before it became a monist system by virtue of the 2010 Constitution.

Kenya, like many other African countries, did not previously recognize the right to water and sanitation in her constitution, even though it could be inferred from the right to life. The promulgation of the 2010 Constitution, which has been heralded as a progressive one, recognized the right to water and sanitation.

Other key provisions in the constitution that touch on the water include affirmative action programs to ensure water for marginalized groups, the responsibility of the national government for management of the use of international waters and water resources, and definition of national versus county public works⁵⁵¹. This is provided for under the Fourth Schedule Part 1 (2) of the constitution that enumerates the distribution of functions between the national government and the county government. It provides for the responsibility of the national government to manage the use of international waters and water resources, water protection, securing sufficient residual water, hydraulic engineering and the safety of dams, and national public works. On the other hand, the county government is tasked with the responsibility of county public works and services, including stormwater management systems in built-up areas; and water and sanitation services. This in effect, gives that county government the mandate to ensure that citizens get water and sanitation services. Even though the county government has the mandate to provide for water and sanitation services, the national government still has an obligation to ensure that the rights are progressively realized. It is the national government that reports on these obligations, and therefore, it cannot abdicate the role. The national government must ensure that it disburses funds for the implementation of the devolved functions.

⁵⁵⁰ Art. 22(1) of the Constitution of Kenya

⁵⁵¹ *Fourth Schedule Part 1 (2) of the Constitution of Kenya.*

Art. 56 (e) of the constitution provides that: “The state shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups have reasonable access to water, health services and infrastructure.” This article obliges the state to ensure that marginalized groups like women living in slums have reasonable access to water and other essential services. It is incumbent upon the state to implement the provisions of the constitution to the benefit of its citizenry.

The Kenyan 2010 Constitution also brought in changes in devolving governance, which created forty- seven (47) counties. This, in effect, devolved key water and sanitation functions to the county level. With the changes envisaged in the constitution and the County Government Act, fundamental realignments in the water and sanitation sector had to be done to be in line with the constitution. The legislative framework for the water sector also had to be reviewed to reflect this new dispensation. This culminated in the enactment of the Water Act 2016, which repealed the Water Act of 2002 that was the previous legislative framework for the water sector.

To understand the Kenyan legislative and institutional framework of water and sanitation, it is imperative to look at the pre-2010 set-up in the water sector to situate the challenges that the current Water Act intended to address. In the next section, I analyze the pre- 2010 legal and institutional framework in the water and sanitation sector and the challenges that led to the reforms and whether the reforms have borne fruit in the sector.

4.5.3 Pre- 2010 Legal and Institutional Framework for Water and Sanitation in Kenya

The regulatory framework for water was governed by the Water Act, 8 of 2002. This Act repealed the Water Act (Chapter 372) of the Laws of Kenya and specific provisions of the Local Government Act and was intended for related purposes.⁵⁵² It provided for the management, conservation, use, and control of water resources and for the acquisition and regulation of rights to use water; and for the regulation and management of water supply and sewerage services. The Water Act 2002 also separated policy formulation, regulation, and service provision. It further defined clear roles for sector actors and a decentralized institutional framework that provided for the management, conservation, use, and control of water resources

⁵⁵² *Preamble of the Water Act 2002, Act no 8 of 2002.*

and for the acquisition and regulation of rights to use water; and for the regulation and management of water supply and sewerage services⁵⁵³.

The broad objective of the reforms was to improve equitable access to sustainable and safe water and sanitation services and enable resource management at an affordable cost. The main aim of the Act was to harmonize the institutional roles and improve on quality and coverage of services. This Act became operational in 2003. It brought with it radical changes to the legal framework for the management of the water sector in Kenya. The question that we need to ask is whether these drastic changes translated into the much-needed access to water and sanitation more so for the vulnerable women in the informal settlements.

The overall power for control of every body of water was exercised by the minister in charge of water sector in Kenya. The Act vested all water resources in the country in the state, centralized control of water resources, and subjected the right to use water to a permit. It made it an offense to use water without a permit. Therefore community-managed systems had to obtain a license to continue providing water to their members. It is also important to note that permits run with the land. Section 34 of the Act requires that a permit specify the particular portion of land to which the permit is to be attached to. Permits are given for a specified period.⁵⁵⁴ The authority is given the power to impose a charge for the use of water, which may comprise both an element of the cost of processing the permit application as well as a premium for the economic value of the water being used.⁵⁵⁵ The element of cost has an impact on access to water for the vulnerable and the marginalized who, in most cases, might not afford the amounts charged.

The Water Act 2002 also established two autonomous public agencies, namely the Water Resources Management Authority, whose duty is to regulate the management of water resources and the Water Services Regulatory Board, which regulates the provision of water and sewerage services. The principles that can be lauded in this Act are that it differentiated the roles of various actors in the water sector, for example, the government, public, private

⁵⁵³ *Water Act 2002*.

⁵⁵⁴ *See Sec. 34 of the Act*.

⁵⁵⁵ Mumma A. 2005. Kenya's new water law: an analysis of the implications for the rural poor, International workshop on 'African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa', 26-28 January 2005, Johannesburg, South Africa. [projects.nri.org > waterlaw > AWLworkshop > MUMMA-A](http://projects.nri.org/waterlaw/AWLworkshop/MUMMA-A). (accessed on 4 May 2018).

sector, water resource management, and water services and supply.⁵⁵⁶ The Act also entrenched public participation and involvement in water services and water resources management. It has a robust pro-poor focus, which is relevant to the marginalized and the vulnerable who cannot access water and sanitation. Implementation of the provisions to benefit the target population was however a challenge.

Although the right to water and sanitation was not explicitly provided for in the Water Act 2002, the right to water and sanitation has been formally recognized in a number of national water sector policies: the National Water Services Strategy, the National Water Resources Management Strategy,⁵⁵⁷ the WASREB tariff guidelines and a pro-poor implementation plan.⁵⁵⁸ In implementation of this, the government has developed and adopted a pro-poor implementation plan aimed at providing safe water and sanitation to the poor (urban & rural).

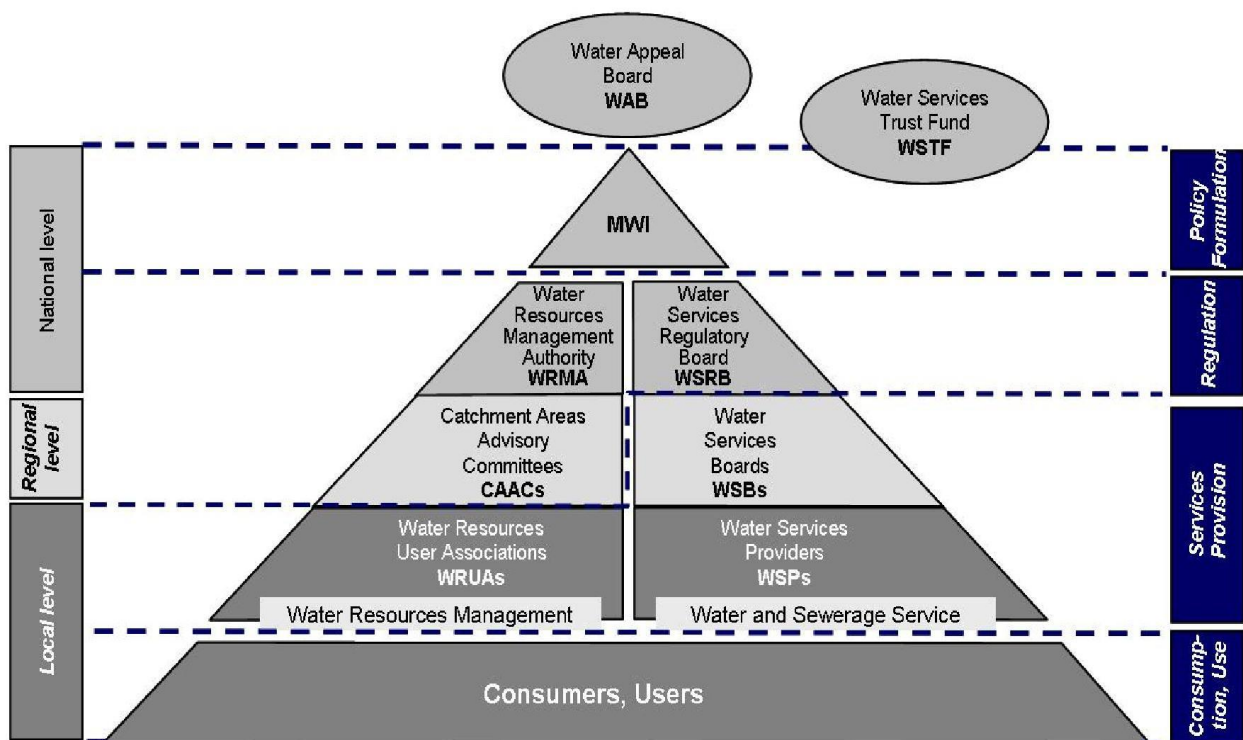
Before the reforms in 2002 in the water sector, water was regulated by the Water Act (Cap 372) (now Repealed). There were more than 26 Acts of Parliament, which had a bearing on water. The Acts of Parliament had conflicting provisions. This posed challenges in implementation. Different institutional frameworks were created by the Acts, which had mandates to implement specific activities, but ended up on a collision course with other ministries or departments. For example, the Agriculture Act chapter 318 defines watercourses and catchment areas concerning food production and related activities. The Ministry under the Water Act had the mandate to handle policy, regulation and service provision. However, it did not distinguish between water resource management, development, and service provision. This is what led to the quest for reforms in the water sector to improve on quality and service delivery.

A schematic representation of the institutional framework for the water sector under the Water Act 2002 follows below:

⁵⁵⁶ Water Act 2002.

⁵⁵⁷ Kenya National Water Resources Management Strategy 2006 -2008.

⁵⁵⁸ The Pro-Poor Implementation Plan for Water Supply and Sanitation (PIIP – WSS) October 2007.



Source: The National Water Services Strategy (NWSS)(2007 – 2015)

The roles and responsibilities of each institution are also illustrated in the table below.

Institution	Roles and responsibilities
Ministry of Water and Irrigation (MWI)	Development of legislation, policy and strategy formulation, sector coordination and guidance, and monitoring and evaluation Overall sector investments planning and resource mobilization
Water Services Regulatory Board (WASREB)	Regulation and monitoring of service provision (Water Services Boards and Providers) · Issuing of licenses to Water Services Boards · Setting standards for the provision of water services · Developing guidelines (water tariffs etc.) Efficient and economical provision of water services
Water Services Boards (WSBs)	Developing water and sewer facilities, investment planning and implementation

	Rehabilitation and replacement of infrastructure Applying regulations on water services and tariffs Procuring and leasing water and sewerage facilities Contracting Water Service Providers (WSPs)
Water Service Providers (WSPs)	Provision of water and sanitation services, ensuring good customer relation and sensitization, adequate maintenance of assets and reaching a performance level set by regulation
Water Services Trust Fund (WSTF)	Financing provision of water and sanitation to disadvantaged groups (pro-poor) as water poverty fund
The Water Appeals Board (WAB)	Arbitration of water-related disputes and conflicts between institutions and organizations
National Water Conservation and Pipeline Corporation (NWCPC)	Construction of dams and drilling of boreholes
Kenya Water Institute (KEWI)	Training and research

Source: The National Water Services Strategy (NWSS) (2007 – 2015)

The graphic illustration of the institutional framework of the Kenyan sector gives a clear picture of the various structures and their roles and responsibilities in the implementation of the human right to water and sanitation.

It should be noted that before the reforms, water and sanitation services were the responsibility of local authorities and the National Water Conservation and Pipeline Corporation (NWCPC), a state corporation established under the State Corporations Act. This did not translate to access to water and sanitation. The obtaining institutional framework led to many challenges in the water sector, in turn leading to poor performance in the delivery of services.

The challenges can be categorized in the areas of policy formulation, regulation, and service provision. The water sector reforms report listed the following as some of the problems that led to the water sector reforms. Under policy formulation, it listed poor coordination in the water sector, poor policy accountability and inadequate attention to water resource management as the major bottlenecks. It further went ahead to list under regulation the lack of clear regulatory frameworks, lack of performance monitoring and evaluation and poor

management of water undertakers. Lastly, under service provision, the report found out that there was poor management of water resources (quality and quantity), failure to attract and retain skilled human resources, poor service delivery, inadequate allocation of resources, low coverage, inability to attract investments, and dilapidated infrastructure.⁵⁵⁹ The challenges continue to persist even after the reforms were undertaken to devolve the services, although there is light at the end of the tunnel.

With proper implementation of the provision in the Water Act together with the articles in the constitution recognizing the right to water and sanitation, women in the slum can also enjoy these rights. The Act has a pro-poor focus, which can help in alleviating the situation in Kibera slums, which has high poverty levels. In the next section, I discuss the provisions of the new Water Act 2016 to see whether the reforms are in line with the Constitution and the international human rights principles on the right to water and sanitation further, whether the institutional frameworks provided for can enhance the realization of the right to water for the marginalized like the women slum dwellers of Kibera.

4.5.4 Water Act 2016

The Water Act 2002 was repealed, and a new Water Act 2016 was enacted to ensure alignment with the Constitution 2010 and incorporate the aspects of devolution, which provides that water and sanitation are devolved services. This is the current legal and institutional framework for water and sanitation in Kenya. Save for a few amendments to align the Water Act 2016 with the Constitution; there is not much difference with the repealed Water Act 2002 apart from the new institutions and requirements to be in line with the 2010 Constitution which provides for devolution. Sect. 63 of the Water Act 2016 provides that:

63. Every person in Kenya has the right to clean and safe water in adequate quantities and to reasonable standards of sanitation, as stipulated in Article 43 of the Constitution.

The Water Act, 2016 echoes the provisions of the Constitution on the right to water and sanitation. The Act also obliges the Cabinet Secretary to formulate a water services strategy following public participation, within one year of the commencement of the Act and every five years after that. It states that the object of the Water Strategy shall be to provide the

⁵⁵⁹ *National Water Services strategy 2007 - 2015.*

government's plans and programs for the progressive realization of the right of every person in Kenya to water⁵⁶⁰.

The Act also provides for the content of the water strategy which shall among other things, have details of existing water services; the number and location of persons who are not provided with a basic water supply and basic sewerage services; standards for the progressive realization of the right to water; and a resource mobilization strategy for the implementation of the plans.⁵⁶¹

It further recognizes that water-related functions are a shared responsibility between the national government and the county government. It also gives priority to the use of abstracted water for domestic purposes over-irrigation and other uses.

The Act creates a new Water Tribunal, which includes more members and is present in more locations to deal with disputes than the repealed Water Act.⁵⁶² Does the expansion of the membership of the Tribunal echo any relief to the marginalized in possible representation or access to redress in case of a violation? This is an issue that has to be interrogated further to see whether it can serve the marginalized in access to water and sanitation services.

The Water Sector Trust Fund Source of funds for the WSTF mandate has been expanded to include funds from the national budget, county government, equalization fund, donations, and grants, among others. This is to enable the national government and the county government to expand on the water infrastructure. It further creates a National Water Storage Authority, which is responsible for the development and management of national public waterworks for water resource management and flood control.

A relevant creation by the Act is the Water Services Regulatory Board (WASREB). With the constitutionally guaranteed right to water and the need to protect consumers, it provides a strong basis for the national regulation and monitoring of water and sewerage services. This is critical to protect the interests and rights of consumers from exploitation and to set minimum

⁵⁶⁰ See sec. 64 (1) and (2) of the Water Act 2016.

⁵⁶¹ See Sec. 64 (3) of the Water Act 2016.

⁵⁶² See Water Act 2016.

national standards. As such, the functions of WASREB have been maintained in the 2016 Act.⁵⁶³

WASREB holds the mandate to approve tariffs, monitor and enforce water services standards and issue licenses to Water Service Providers.⁵⁶⁴ This is a critical monitoring institution to ensure that standards are adhered to, and cartels in the water sector do not exploit consumers. This is critical in the urban areas where water cartels have overrun the sector in the quest to make quick money. The institution must be vigilant to ensure that all people benefit from the standards set without discrimination. It is also significant to note that should a utility make plans to change the tariff, they have to make the application to WASREB for review and approval, and part of the process involves informing the public. This brings in the element of public participation which is a constitutional imperative, but the main issue is at what stage the public participation is undertaken. Is it at the stage before the tariff is being reviewed for the public to give their input or are they just informed of the reviewed tariff without consultation? If so, then is it meaningful participation or just a rubber stamp to enable tick boxes? If the above is not done then this does not amount to meaningful public participation.

The other important inclusion in the Act is the role of the Water Service providers. WSPs are now the responsibility of county governments who have the mandate to provide water services. WSPs are responsible for the provision of water services within the area specified in their licenses and development of county assets. Currently, WSBs sign service level agreements with WSPs, and the regulator issues licenses to WSB. Under the Act, WSPs must apply again for new licenses to WASREB.

In Kibera, which falls under the Nairobi County, water is supposed to be supplied by the Nairobi Water and Sewerage Company Limited. I say it is “supposed to” because more often than not, the infrastructure for water provision is either dilapidated or not in place. This leaves the responsibility of water and sanitation provision to NGOs and water vendors. The county government should stand up and be counted in the provision of adequate water and sanitation to its residents without discrimination of any nature. The service provision for water and sanitation for the underserved in the slum or informal settlements should be top on the County government’s agenda.

⁵⁶³ See *Water Act 2016*.

⁵⁶⁴ See *Sec. 72 of the Act that provides for the powers and functions of the Regulatory Board*.

The roles and responsibilities for different institutions are earmarked in the Act, and the Constitution of Kenya mandates service provision of water and sanitation to the county governments. Citizens have a right to water and sanitation services, and if the same is not provided, they have recourse to the courts. Every Water Service Provider is supposed to establish a mechanism for handling customer complaints, which meets the standards set by the regulatory board as per the Act.

The Act, which was passed to reflect constitutional reforms, has been challenged by the county governments questioning its validity due to the overlaps of responsibilities between Water Service Boards and county governments. “Other relevant legislation for the sanitation sector includes the Environment Management Act and Coordination Act (1999),⁵⁶⁵ which regulates the discharge of effluents, and the Urban Areas and Cities Act (2011), which provides for the classification and management of urban areas as well as arrangements for service provision (including through Public-Private Partnerships)”⁵⁶⁶. In the next section, I outline a summary of the human rights principles in the Kenyan Legal framework on the right to water and sanitation to access the applicability and implementation of the principles.

4.5.5 Summary of Human Rights Principles in the Kenya Legal Framework

The following is a summary of the human rights principles of access to water and sanitation in the Kenyan legal framework. They are availability, acceptable quality, access, affordability, sustainability, non-discrimination, participation and empowerment, and transparency and accountability.

Availability	Kenya National Water Services Strategy, 2007–2015 Kenya, Model Water Services Regulations 2002 Vision 2030 National Health Policy Framework 2012-2030 Water regulatory guidelines (2006) Water services standards (2016) Sanitation strategic framework(2016 – 2020) Water Act 2016 Public Health Act 2012 State Corporation’s Act 2012
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⁵⁶⁵ *Environment Management Act and Coordination Act (1999).*

⁵⁶⁶ *Urban Areas and Cities Act .2011.*

Acceptable quality	Public Health Regulations 2017 Water quality regulations 2006 KEBS standards Water Safety Plans Sanitation safety Plans Kenya Environmental Sanitation and Hygiene Policy (KESHP) 2016-2030
Access	Kenya National Water Services Strategy, 2007–2015, Water Act 2016 National Water Policy 2012
Affordability	Water service regulation Water rules-subsiary Regulation-Legal NO.137 of 2012 County government Public Finance Management Act County government Management Act
Sustainability	Water Act 2016 Vision 2030 National Water Policy 2012 The National Water Master Plan 2030
Non-discrimination	National gender policy 2000 Public Finance Management Act 2012
Participation and empowerment	County Government Act 2012 Public Finance Management Act 2012 National Citizen Participation guidelines
Transparency and accountability	Public Finance Management Act 2012 County Government Act 2012

From the above table, it is evident that Kenya has enacted laws and policies for the implementation of the right to water and sanitation. The question that begs an answer is the level of the implementation to ensure that the marginalized benefit from such implementation without discrimination on any basis. Apart from the water sector institutions that implement the right to water and sanitation it should be noted that it is the mandate of the independent Kenya National Human Rights and Equality Commission⁵⁶⁷ to promote, in several ways, respect for, and develop a culture of, human rights, not only public but also private, institutions. It also has the mandate of ensuring that Kenya complies with human rights treaties that Kenya has ratified. This further gives the institution powers to investigate whether public and private institutions observe human rights and that people are free to make complaints when violations occur and putting measures in place for remedies.

⁵⁶⁷ Kenya National Human Rights and Equality Commission. www.khrc.or.ke (accessed on 7 February 2020)

In the next section, I analyze the policies and current practices concerning water and sanitation in Kenya. This is in a bid to find out whether the policies enhance the realization of the right to water and sanitation for women generally and, more specifically, women slum dwellers in Kibera.

4.5.6 Analysis of the Policies and the Current Practices

The water and sanitation sector have policies that guide the implementation of various aspects of the right to water and sanitation. The critical policies in the water sector are anchored on the constitutional principles and the international human rights principles concerning access to water and sanitation. Art. 10 of the Kenyan Constitution provides for the national values which include participation, non-discrimination and protection of the marginalized.⁵⁶⁸ It is in this spirit that the rights must be protected across the board without discrimination. When a segment of the population is not involved in decision-making processes, there is a risk of violating the principles of equality and non-discrimination, and this contributes to the perpetuation of social exclusion and poverty. Participation, as provided for in the constitution, is related to other human rights principles that must be guaranteed, including access to information and transparency in the effective implementation of the right to water and sanitation. The core obligations of the right to water require that specific minimum standards must be adhered to. The government must ensure access to the minimum essential amount of water, which is sufficient and safe for personal and domestic uses to prevent disease. The issue of non-discrimination concerning water and water facilities and services especially for disadvantaged or marginalized, is emphasized, but its implementation is wanting especially in the slum areas.⁵⁶⁹ The women slum dwellers of Kibera must be facilitated to access water and sanitation services without discrimination.

Clark argues that community participation is essential to bring society's marginalized and vulnerable groups into the political sphere and, thereby to enable them to voice their demands

⁵⁶⁸ *Constitution of Kenya 2010, Art. 10.*

⁵⁶⁹ UN Water. 2015. *Eliminating discrimination and inequalities in access to water and sanitation.* [www.unwater.org › app › uploads › 2015/05 › Discrimination-policy](http://www.unwater.org/app/uploads/2015/05/Discrimination-policy). (accessed on 20 September 2019).

for more equitable and inclusive services and public policies.⁵⁷⁰ The participation must be meaningful and targeted to the relevant groups which are intended to benefit from the services.

Translating international human rights norms into national laws, policies, and programs, national governments bear the principal responsibility for implementing the human right to water and sanitation.⁵⁷¹ This responsibility must be accompanied by the political will to implement; otherwise, it will just be on paper without action to ensure its execution.

While the policy responses expressed a clear intention to enhance private sector participation in water provision and sanitation, the implementing legislation may considerably hinder such participation.⁵⁷² As earlier alluded to, participation must be meaningful to enable people's voices to be considered in the planning, management, and provision of water and sanitation services.

Kenya previously did not have a concrete water policy. The journey started with a Sessional Paper Number 1 of 1999 on national policy on water resources management policy and development. The Water Policy identified the problems which had constrained the development of the water sector as including: the shortage of funds for development, operation and maintenance of water supplies and management of water resources; over-centralization of decision making; fragmentation of water resource management responsibilities; lack of proper coordination of the various actors in the sector; and, lack of appropriate inter-linkages with other water-related sectors.⁵⁷³

The Water Policy established four specific principles that would guide efforts to address these problems, namely: (a) the sustainable, rational and economical allocation of water resources; (b) the supply of sufficient quantities of water of good quality while ensuring safe disposal of

⁵⁷⁰ Clark C. 2012. *The centrality of community participation to the realization of the right to water*. https://www.researchgate.net/publication/303248801_The_centrality_of_... (accessed on 5 June 2017).

⁵⁷¹ Staddon *et al* 2012. *A right to water? Geographico-legal perspectives*. https://www.researchgate.net/publication/303248801_The_centrality_of_... (accessed on 5 June 2017).

⁵⁷² Akech J 2007. *Governing Water and Sanitation in Kenya: Public Law, Private Sector Participation and the Elusive quest for a Suitable Institutional Framework*, www.ielrc.org/activities/workshop_0704/content (accessed on 5 June 2018).

⁵⁷³ Republic of Kenya, The National Policy on Water Resources Management and Development, Sessional Paper No. 1 of 1999 [Hereinafter, Water Policy].

wastewater and environmental protection; (c) the establishment of an efficient and effective institutional framework; and (d) the development of a sound and sustainable financing system for effective water resources management, water supply and sanitation development.⁵⁷⁴

Although the intention of the water policy was good, it achieved little, owing in part to limited financial resources, lack of skilled human resources on the part of the local communities, the country's weak and flawed environmental and land policies, poor governance, and limited investment in new water projects.⁵⁷⁵ The government had good intentions, but the policy suffered from lack of adequate budgetary allocation. Policies must be accompanied by the allocation of financial resources for implementation.

The Water Policy acknowledged the inextricable link between water supply provision and wastewater disposal and expressed the government's intention to develop effluent discharge standards and desire to make water abstraction, and disposal permits dynamic and economic instruments for water pollution control.⁵⁷⁶ With this awareness of the challenges facing the water sector, the government was in a good footing to address the ailing water sector to enable the delivery of services to the people.

The 2002 Water Act was in line with Kenya's adoption of the IWRM policy based on the cost-recovery principle, resulting in high water tariffs, which made water unaffordable for the poor.⁵⁷⁷ Most of the informal settlements were not able to afford the high tariffs, therefore, resorting to alternative means of getting water, including from the water vendors.

With the high tariffs, water services might inevitably suffer disconnection due to late payment. The fact that access to safe drinking water and sanitation has a close nexus with the right to life, health, an adequate standard of living, and the protection of human dignity implies a need

⁵⁷⁴ See Water Policy.

⁵⁷⁵ Basin", in "Research Towards Integrated Natural Resources Management (R.R. Harwood & A.H. Kassam eds., 2003); Victor Orindi & Chris Huggins, "African Centre for Technology Studies, The Dynamic Relationship Between Property Rights," in *Water Resource Management and Poverty in the Lake Victoria Basin* (2005), <http://www.acts.or.ke/prog/energy/reports/ORINDI-V.pdf> (accessed on 7 February 2018).

⁵⁷⁶ See fn 562.

⁵⁷⁷ Hellum *et al* 2015. *Water is Life. Women's human rights in national and local water governance in Southern and Eastern Africa*. https://www.researchgate.net/publication/316492096_Water_is_life_Wo... (accessed on 5 September 2018).

for procedural safeguards in case of water and sanitation disconnections. “Procedures for interruption of water and sanitation services must comprise: (a) timely and full disclosure of information on the proposed measures; (b) reasonable notice of the proposed action; (c) legal recourse and remedies for those affected; (d) legal assistance for obtaining legal remedies. Disconnections for non-payment should not result in a person being denied access to a minimum amount of safe drinking water where that person proves that he or she is unable to pay for these basic services.”⁵⁷⁸ Even though these procedures might be in place, more often than not, we find that the staff of the water service providers does not adhere to them. Sometimes bills are not sent in good time, or the notices for the disconnections are not adequate.

While human rights obligations in relation to access to safe drinking water and sanitation do not prohibit disconnections, they require that States respect commonly agreed on principles of due process, take into account a person’s capacity to pay, and do not deprive an individual who is unable to pay off the minimum essential level of water and basic sanitation. “Accordingly, the quantity of safe drinking water a person can access may be reduced, but full disconnection may only be permissible if there is access to an alternative source that can provide a minimum amount of safe drinking water needed to prevent disease. In this respect, there is a strong presumption that disconnections of institutions serving vulnerable groups, such as schools, hospitals, and refugee camps, are prohibited”⁵⁷⁹ There is also rationing of water supply, especially when the dams have less water due to drought. When such occurs, priority should be given to essential institutions like hospitals and schools.

One of the key guiding principles of the National Water Strategy, which is relevant to this study, states that water is a social and economic good. Water and sanitation service provision for the poor shall be enabled by social tariffs (minimum 20litres of water per person/day), and users shall pay according to consumption – user-pays principle.⁵⁸⁰ However, this is below the WHO guidelines that provide for 50 litres per day.

⁵⁷⁸ Human Rights Council Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, 27th session 30th June 2014, A/HRC/27/55.

⁵⁷⁹ COHRE, AAAS, SDC and UN-HABITAT, 2007. *Manual on the Right to Water and Sanitation for implementing the human right to water and sanitation.*

⁵⁸⁰ Ministry of Water and Irrigation National Water Services Strategy. 2007 – 2015.

The policies in the water and sanitation sector are in place, but the implementation of these policies is still lagging. It should be acknowledged that most governments are good at formulating policies and enacting legislation to streamline sectors with good intentions, but they end up facing challenges due to limited financial resources, lack of skilled technical staff, and poor governance.

The government has, therefore partnered with development partners and NGOs in a bid to implement the water and sanitation sector policies. For example, the water and sanitation provision in Kibera slums is the responsibility of the Nairobi County, but it has primarily been offered by NGOs who work in the area. The NGOs have realized that to have an impact on whatever interventions they are working on, be it health or empowerment programmes, it is crucial to ensure that the people have water and sanitation services. The county government is also trying its best to provide the much-needed services, but the Kibera slums have many challenges like land tenure security, overcrowding with no proper water and sanitation infrastructure, and poverty. This has led to difficulty in the implementation of the policies.

The Kenyan government had mainstreamed the MDGs in the country's Vision 2030, a policy blueprint launched in 2008 that seeks to transform Kenya into a middle-income economy by the year 2030. "Alongside the Constitution, the overarching policy framework for urban sanitation is set by Kenya Vision 2030 and the Kenya Environmental Sanitation and Hygiene Policy (KESHP) 2016-2030.⁵⁸¹ Kenya Vision 2030 aims for universal sanitation by 2030. KESHP sets the ambition to increase public investment in sanitation from 0.2 percent to 0.9 percent of the GDP by 2030. The policy promotes the adoption of low-cost technologies in peri-urban and slum areas, and explicitly refers to a range of technologies, ranging from sanplats and cartridge-based toilets to conventional sewerage. It emphasizes the need for sustainable systems for the collection and safe disposal of solid waste from residential and commercial areas.⁵⁸² It further aims to declare Kenya 100% of ODF by 2030 and to ensure that at least 55% of urban households have access to improved sanitation facilities.⁵⁸³ In essence, the policy as it is very ambitious and, if implemented well can help in the realization of the

⁵⁸¹ Kenya Environmental Sanitation and Hygiene Policy (KESHP) 2016-2030.

⁵⁸² Mansour, *et al* 2017. *Situation analysis of the urban sanitation sector in Kenya*. <https://www.wsup.com › content › uploads › 2017/09 › Situation-analysis-...>(accessed on 21 May 2018).

⁵⁸³ See Kenya Environmental Sanitation and Hygiene Policy (KESHP) 2016-2030.

right to sanitation for all and more so to the women slum dwellers of Kibera who are forced to practice ODF by circumstances beyond their control.

The National Environmental Sanitation and Health Policy (NESHP) (2016–2030) also has one of its key purposes the need to enhance the existing legal and institutional framework to encourage the active private sector, civil society and community participation in the planning, implementation, and ownership of environmental sanitation health services. It targets property owners and developers to invest in and construct suitable sanitation facilities for tenants and home buyers.⁵⁸⁴ Engagement in public-private partnerships in the provision of water and sanitation services in a structured way can help in the realization of the right to water and sanitation.

The National government has also tried the slum upgrading project in Kibera by building permanent houses for the slum dwellers with water and sanitation facilities, but some of the beneficiaries of the upgraded houses rent them to other persons and move back to the shacks. The government has further installed water points and communal toilets for the slum dwellers in Kibera, but this is not adequate.

To establish whether the policies are being implemented effectively for the realization of the rights, there has to be disaggregated data for purposes of monitoring. This is also important for shaping policy, informing decision making and allocation of resources for the implementation of projects. Liko in a paper on *Monitoring Water and Sanitation to Reduce Inequalities in Kenya* states that in order to accelerate the realization of the Targets in Kenya, the Ministries of Water, Health, and Devolution, and the Kenya National Commission on Human Rights and Equality, “ have developed a monitoring framework on the rights to water and sanitation specific to Kenya in partnership with civil society organizations like Hakijamii, a national organization that works with marginalized groups in helping them claim their economic, social and cultural rights including the right to water and sanitation”.⁵⁸⁵

Liko further argues that the framework largely borrows from the global indicators outlined in the SDGs, but it localizes targets and sets its indicators, ensuring that they fit into the Kenyan

⁵⁸⁴ See Kenya Environmental Sanitation and Hygiene Policy (KESHP) 2016-2030.

⁵⁸⁵ Liko, C, 2018. *Monitoring Water and Sanitation to Reduce Inequalities in Kenya*. <https://socialprotection-humanrights.org › expertcom › monitoring-water-a...> (accessed on 20 September 2019).

context which is aimed at ensuring that with the current dispensation of devolution, the national and county government work together to enable more efficient data collection and reporting.

Further that it is designed to measure policy effectiveness, resource allocation and utilization, and five main components of the rights to water and sanitation, including affordability, availability, accessibility, quality, and safety.⁵⁸⁶ This framework addresses inequalities by taking into consideration the diverse needs of people living in poor urban areas with no access to water and sanitation and recognizes the importance of their participation in the monitoring process.⁵⁸⁷ This speaks to the women slum dwellers of Kibera who need policies that deliver water and sanitation services for them.

In conclusion, it is safe to say that the government has put the legal and institutional frameworks in place to help in the implementation of the water and sanitation services, but more needs to be done to ensure that the right to water and sanitation is realized for everyone. Meaningful engagement with the beneficiaries is key to the implementation of projects that affect them; otherwise, the beneficiaries might be a stumbling block leading to failure. In the next section, I analyze the gaps in the legal and policy framework that regulates women's access to water and sanitation in Kibera.

4.6 Gaps in the Legal and Policy Framework that Regulates Women's Access to Water and Sanitation in Kibera

In this section, I identify and analyze the gaps in the legal and policy framework that regulates women's access to water and sanitation in Kibera. The gaps that I identify stem from the constitutional provisions and the water sector legislation and policies. The analysis is guided by the women's law approach and African feminism, which had been discussed elaborately in Chapter 3. The gaps identified are in respect of the disconnect between guaranteed rights in the constitution and the implementation, poverty, gender discrimination/gender gap and inequality, lack of enforcement of affirmative action policies, lack of adequate resources for water and sanitation infrastructure development, representation of marginalized groups in decision making, linking water entitlements to land tenure.

⁵⁸⁶ See Liko, C, 2018. *Monitoring Water and Sanitation to Reduce Inequalities in Kenya*, <https://socialprotection-humanrights.org › expertcom › monitoring-water-a...> (accessed on 20 September 2019).

⁵⁸⁷ See Kenya Environmental Sanitation and Hygiene Policy (KESHP) 2016-2030.

The Kenyan Constitution recognizes the right to water and sanitation under art. 43(1) (b) and (d). This article essentially deals with economic and social rights as provided for under the CESC. It provides that “every person has a right to accessible and adequate housing, and to reasonable standards of sanitation”. It further provides under (d) for a right to clean and safe water in adequate quantities. This article must be read together with art. 21(2), which provides for the implementation of rights and fundamental freedoms in the bill of rights.⁵⁸⁸ The article calls upon the state to take the legislative, policy and other measures, including the setting of standards to achieve the progressive realization of the rights guaranteed under art. 43, which includes the right to water and sanitation.

The constitution also gives every person the right to institute court proceedings when his/her rights to sanitation have been denied, violated, infringed, or threatened. It is thus primarily the government’s responsibility to ensure that the human rights of all persons under the State’s jurisdiction are realized. The legal framework must guarantee access to water and sanitation, including a basic minimum for human consumption provided at affordable costs for all.

It is evident from the discussion that the provisions of the constitution on the guaranteed right to water and sanitation for all without discrimination have not been adhered to enable women to access the right in Kibera. The women still lag due to poverty and lack of basic services. The constitution provides for equality between women and men and prohibits discrimination based on gender. The provisions are well documented, but if not implemented, then no gender equality can be achieved in access to water and sanitation as envisaged.

Looking at the gaps through a lens of feminist perspective, it is essential to note that women’s access to water and sanitation as guaranteed in the constitution should be analyzed from the perspective of the lived realities of women who face challenges when the gaps are not addressed to enable them to realize the right to water and sanitation. Do the Constitution and the sectorial laws and policies acknowledge the need to ensure that measures are put in place for the marginalized to realize the right to water and sanitation?

The women’s law approach interrogates whether women’s concerns and needs are incorporated to inform the development of new areas of law or the reclassification of existing categories. Were the concerns of women slum dwellers incorporated in the new Water Act 2016, which is a reclassification of the repealed Act? The answer is a resounding no because the institutional

⁵⁸⁸Art. 43 Constitution of Kenya 2010.

framework under the Act does not take into account the representation of the marginalized groups like the women slum dwellers. There should be a participatory approach to water and sanitation, which empowers women.

Further, the laws and regulatory framework on the right to water and sanitation were interrogated to see how it affects the women of Kibera. The areas of interrogation were the constitutional provisions in respect of rights, especially on participation, gender equality, legal rights, and right to access to water and sanitation specifically but generally on the bill of rights since they are universal, indivisible, interdependent, interrelated and inalienable.

There is a gender gap in access to water and sanitation where women slum dwellers are at the bottom of the pile in terms of access to the services. Feminist scholars across the board have always agitated for equality of the sexes and that the difference between women and men should be appreciated in that women have special needs in terms of how they use water and sanitation services and are uniquely different from men. In order to bridge the gender gap, the Constitution of Kenya provides for affirmative action programs to ensure water for marginalized groups, the responsibility of the national government for management of the use of international waters and water resources, and definition of national versus county public works.⁵⁸⁹ The Kibera women slum dwellers fall under this category of marginalized groups who should benefit from affirmative action programs put in place by the government. The question is whether such programs are in place for the benefit of needy women. If the programs are in place, then are the actors and structures ensuring that they are implemented to the benefit of the targeted population who are marginalized, or are they riddled with corruption and bad governance?

The women's law approach and Africana feminism ask questions about why women are subjugated and the fact that they should be empowered to understand their gendered status in the society which pigeon hole them as water carriers, performing productive, reproductive and community roles without pay or recognition. Why women are the face of poverty, is it because the cultural norms that overburden them with house chores living them with no time to engage in paid productive work and education? Is it because of the patriarchal systems that subjugates them? These are the issues that the Africana feminist theory seeks to address as it recognizes that some certain inequities and limitations existed/exist in traditional societies and that

⁵⁸⁹ *Fourth Schedule Part 1 (2) of the Constitution of Kenya.*

colonialism reinforced them and introduced others that must be dealt with to achieve gender equality. With the women's law approach, it allows the examination of all relevant social, economic, and cultural influences which affect either the formulation of policies or implementation of the legislation as all this does not occur in a vacuum.

The formulation of policies and implementation is influenced by social, economic, cultural, and political underpinnings. The actors and structures are also affected by patriarchal influences, which should not be ignored in analysis to establish why the women continue to be marginalized in the water sector despite the Constitution guaranteeing rights. Societal barriers also restrict women's concerns from being addressed in the water and sanitation sector because they lack representation and decision making powers. The question that the feminist perspective deals with this thesis are to look at how much does the law and policies have to do with the creation, reinforcement, and maintenance of what is wrong and what is to be done to achieve the ideal and through what means. Women being a fundamental segment of the society should not be ignored, there should be law reform and the institutional structures to enable the concerns of women to be incorporated.

Although the county governments are tasked with the provision of water and sanitation services, the buck still stops with the national government in ensuring that there is the progressive realization of the right to water and sanitation. The county and national governments have a concurrent mandate on water issues at different levels. The national government must ensure that it disburses funds for the implementation of the devolved functions. The description of feminist theory envisages a situation where attainment of equal rights and legal protection of women must be dealt with through political, cultural and economic mechanisms. If the rights cannot be realized as guaranteed, then there must be agitation for the realization of the rights through a structured process.

Article 56 (e) of the constitution provides that: "The state shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups have reasonable access to water, health services and infrastructure." This article obliges the state to ensure that marginalized groups like women living in slums have reasonable access to water and other essential services. It is incumbent upon the state to implement the provisions of the constitution to the benefit of its citizenry.

The legal and institutional framework for water and sanitation was also amended to be in line with the Constitution 2010. The Water Act 2002 which was recently repealed and a new one

enacted in 2016, separated policy formulation, regulation, and service provision. It further defined clear roles for sector actors and a decentralized institutional framework that provided for the management, conservation, use, and control of water resources and for the acquisition and regulation of rights to use water; and for the regulation and management of water supply and sewerage services.⁵⁹⁰

The broad objective of the reforms was to improve equitable access to sustainable and safe water and sanitation services and enable resource management at an affordable cost. The main aim of the Act was to harmonize the institutional roles and improve on quality and coverage of services. From the discussion that we have had on the issue of access to water and sanitation for women slum dwellers in Kibera, it is apparent that the reforms have not resulted in equitable access to water and sanitation for them. There has not been any improvement in the quality and coverage of the services as envisaged.

The other critique of the legal and institutional framework on water and sanitation is that it has not contributed to the transformation of gender relations in that the structures are not gender-responsive in terms of representation. The Act entrenched public participation on paper, but from research that has been carried out in Kibera, it shows that no meaningful public participation or representation of the marginalized has been done. Clark argues that community participation is essential to bring society's marginalized and vulnerable groups into the political sphere and, thereby, voice their demands for more equitable and inclusive services and public policies.⁵⁹¹

Further, the composition of the institutional framework does not accommodate a wide range of representations to enable the inclusion of the vulnerable and marginalized groups. When an institution within the water sector requires the representation of the marginalized, the selection might be biased and give the positions to cronies who will not question the legitimacy of specific actions. Furthermore, the institutions created by the Act are too technical for the illiterate woman slum dweller.

The other significant gap in the legal and institutional framework that impedes achieving gender equality in the water and sanitation sector as provided for in the Water Act 2016 is that

⁵⁹⁰ *Water Act 2002.*

⁵⁹¹ Clark C. 2012. *The centrality of community participation to the realization of the right to water.* https://www.researchgate.net/publication/303248801_The_centrality_of_... (accessed on 2 May 2018).

water entitlements are linked to land tenure, which compromises water access for people living in slums like Kibera. The permit system is connected to land ownership, and most people in the slums neither have secure land tenure nor own the land. This is a drawback in the transformation of gender relations in the achievement of gender equality. The issue of access to land has always been a thorny one in most African countries including other parts of the world. Even though the Constitution provides for equality including right to hold land, the reality on the ground is different. Both sexes are entitled to equal rights under the law, and until conditions of equality exist, no one assesses the differences between women and men as Stuart Mill put it. Neutral laws and policies can quickly reinforce and increase gender inequalities in water and sanitation allocation.

In the next section, I discuss the opportunities and obstacles that exist in the international and national level for the implementation of the right to water and sanitation.

4.7 What Opportunities and Obstacles exist at the International and National Level for the Implementation of this Human Right?

There are several opportunities and obstacles in the implementation of the right to water and sanitation both at the international and national arena. The constraints arise from the ambiguity or lack of knowledge on what the human right to water and sanitation is and what it is not.

It is frequently asked what the right to water and sanitation entitles individuals to and who bears the responsibility to provide those facilities. Several misconceptions and misunderstandings continue around the questions of what the rights imply and what they do not imply. For that reason, the right is facing issues towards, for instance, privatization, which signifies that states are relying on third actors and shift over the responsibility to companies.⁵⁹²

Another obstacle is poverty among the global inhabitants that may cause non-access to water. If companies provide water and water services, one consequence is that less privileged inhabitants may not afford the vital substance, or on the contrary, those companies do not want to invest in areas with poor inhabitants, as they know that the profit margins in such areas will be relatively low. It is argued that water as a human right should not be dependent on the market and profits for companies. The barrier to the realization of the right to water and sanitation

⁵⁹² Robert B *et al.* 2016. *Manual on the Human Right to Safe Drinking Water and Sanitation for Practitioners*. https://www.iwapublishing.com › sites › default › files › ebooks › Bos_0 (accessed on 4 February 2018).

should not be ascribed to the lack of participation, but the lack of regulation of the conduct of private landowners and landlords.⁵⁹³

Human rights instruments offer little guidance as to the scope and content of the term “sanitation.”⁵⁹⁴ The Sub-Commission of Economic Social Council guidelines refer to a right to sanitation, defined as the right of everyone to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment. Accordingly, sanitation and sanitation facilities should be physically accessible, affordable, of sufficient and culturally acceptable quality, and in a location where physical security can be ensured. Even though the human rights instruments refer to various concepts to describe the kind of sanitation facilities people should have access to, they do not elaborate upon the specific requirements these various concepts carry. This leaves a lot of second-guessing by the duty bearers and the implementers as to what kind of facilities they should put in place to meet the standards.

The Sub-Commission’s guidelines alternatively refer to adequate, basic, acceptable, and appropriate sanitation of culturally acceptable quality without clearly defining what these various requirements mean and encompass and what the differences between these terms are. CESCR General Comment No. 15 refers to adequate sanitation and safe sanitation services, without defining these two terms and clarifying whether they carry different obligations.⁵⁹⁵

The definition of a right to sanitation is ambiguous or varied, for that matter creating misconceptions. For example, under article 2 of the Water & Health Protocol to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992,⁵⁹⁶ it provides that:

⁵⁹³ Hall & Lobina . 2012. *Financing water and sanitation: public realities*. <https://www.world-psi.org/sites/default/files/documents/research>. (accessed on 17 May 2018).

⁵⁹⁴ Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments. 2007.

⁵⁹⁵ See Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments. 2007.

⁵⁹⁶ Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992, www.unece.org/env/water/text/text_protocol.htm. (accessed on 16 March 2017).

‘Sanitation’ means the collection, transport, treatment, and disposal or reuse of human excreta or domestic wastewater, whether through collective systems or by installations serving a single household or undertaking.

The Sub-Commission on the Protection and the Promotion of Human Rights guidelines use the following 5 expressions: *adequate, basic, safe, acceptable, and appropriate sanitation* without explaining what they each mean or what the differences are between them. This is not surprising since these various concepts are not clearly defined and differentiated in official international documents.⁵⁹⁷

The different basic components of sanitation in the international instruments make it difficult to have basic standards for the implementation. It should be noted that sanitation is not only the availability of toilets or latrines. It is more than that, as it involves solid and liquid waste together with contamination from neighbours, to mention a few.

The right to sanitation is complicated, as it encompasses individual dignity and public health issue. Proponents of the right acknowledge that sanitation is mostly a matter of individual responsibility but argues that states have a significant role to play in creating an environment that enables individuals to practice adequate sanitation as well as in ensuring public health.⁵⁹⁸

The other obstacle to the implementation of the human right to water and sanitation is the issue of enforcement of the right, as General Comment 15 did not allude to legal weight created by this right as put by Bluemel.⁵⁹⁹

In Kenya, high poverty levels remain one of the biggest challenges facing Kenya today in the quest for realization of various rights, including water and sanitation. This is coupled with the feminization of poverty with many instances of female-headed households, especially in the informal settlements. The lack of proper gender-disaggregated data on access to water and sanitation is also a challenge to monitoring progress. The other major problem is inadequate capacity in terms of staff numbers and skills, together with insufficient sector funding. The

⁵⁹⁷ Payen & Van Waeyenberge. *The need to Define the Right to Sanitation in order to Promote its implementation.*

⁵⁹⁸ Winkler T: *The Human Right to Sanitation, University of Pennsylvania Journal of International Law*, Vol. 37, Iss. 4 [2016], Art. 5.

⁵⁹⁹ Bluemel, 2005. *The Implications of Formulating a Human Right to Water.* <https://ssrn.com/abstract=1367759> (accessed on 7 September 2018).

characteristics of informal settlements also play a role as an obstacle in that they are densely populated and, therefore, inaccessible for sewer systems and exhausters.

The right to water and sanitation provides a clear set of principles and goals to guide policy development, but it does not define a specific policy or framework for implementation. This needs to be developed by applying the right to the prevailing conditions in each country, as well as by taking into account technological and other solutions.⁶⁰⁰

The Constitution requires county governments to further decentralize sanitation functions to urban areas and cities, and other lower-level units such as community/village units. However, this decentralization process has yet to materialize. The devolution of water and sanitation services has seen the county governments grappling with the issue of capacity in terms of staff numbers and skills that are not adequate to meet the needs of the sector. At the national level, there should be clear roles and responsibilities of the duty bearers and the right holders allocated for ease of implementation. The beneficiaries should also know that rights come with responsibilities.

It is not only gloom in the area of the human right to water and sanitation. The recognition of the right alone was a momentous milestone for the implementation of this right. The fact that it is now on the international agenda with a special rapporteur appointed to monitor and report the progress of the implementation of the right to water and sanitation is an opportunity that should not be taken lightly.

The SDGs also recognized it by acknowledging it in a stand-alone goal with eight targets. Apart from the goal of water and sanitation, several other goals have a bearing on the right to water, including the eradication of poverty.

The most important opportunity is concerning the universality, indivisibility, interdependentness, and interrelation of human rights. This gives it a universal application.

At the regional and national levels, many African countries have recognized the right to water and sanitation in their constitutions and enacted legislation and policies for its implementation. Kenya is one of such African countries. In the next section, I discuss the limitations of the legal and institutional framework for women slum dwellers on the right to water and sanitation.

⁶⁰⁰ UN HABITAT *Manual on the Right to Water and Sanitation*.

4.8 Limitations of the Legal and Institutional Frameworks for Women Slum Dwellers on the Right to Water

From the analysis above, there are limitations on the legal and institutional framework on the right to water and sanitation. Kenya has had water reforms to enable them to be aligned with the Constitution 2010 and to address the bottlenecks that were caused by the previous sector legislations. The reforms in the water and sanitation sector have been ongoing for an extended period. There has been a criticism of the limitations of the old water and sanitation legal and institutional framework. This led to the reforms that were to address the challenges. Even though the reforms in the Kenyan water and sanitation sector have been lauded as pro-poor, the implementation has not achieved the pro-poor objective. When water pricing is undertaken, it does not look at the poor differently. Likewise, when it comes to disconnections, the Nairobi Water Sewerage Company does not have separate guidelines for disconnections for informal settlements.

The other major limitation of the legal and institutional framework in the water and sanitation sector, as provided for in the Water Act 2016, is that water entitlements are linked to land tenure, which compromises water access for people living in slums like Kibera, Nairobi. The permit system is linked to land ownership, and most people in the slums neither have secure land tenure nor own the land. This effectively does not allow them to apply for a water connection without the consent of the landlords. Apart from the legal limitations, there are also political barriers that hinder the implementation of the right to benefit the women slum dwellers. The slums are densely populated, and this is a campaigning ground for politicians during national elections who prey on their misfortune or plight.

The composition of the institutional framework does not accommodate a wide range of representations to enable the inclusion of the vulnerable and marginalized groups. When an institution within the water sector requires the representation of the marginalized, the selection might be biased and give the positions to cronies who will not question the legitimacy of specific actions. Furthermore, the institutions created by the Act are too technical for the illiterate woman slum dweller as earlier indicated in the diagram on the institutional framework.

Financing of the infrastructure to provide water and sanitation requires enormous sums of money, which may not be directed to the slums. This kind of investment is dependent on

implementing institutions and whether they can get returns and revenue generation. It would not be easy for such institutions bet their money on the slums.

Legal, institutional, and political barriers are often more significant obstacles to expanding water and sanitation access than monetary or technical challenges especially poor urban communities like Kibera, as was stated in a Bombay High Court decision in 2014. There is a need to audit policies, laws, administrative and institutional regulatory structures concerning water and sanitation to see whether they are responsive to the needs of the slum dwellers of Kibera.

4.9 Conclusion

It is clear from the discussion that the explicit recognition of the human right water and sanitation in the international, regional, and national arena has laid a basis for the realization of this right, more particularly for women slum dwellers. This is very important for the rights holders as well as the continuous expansion of the human right to water jurisprudence. Although the recognition of the right to water has taken many years to be where it is now with the Constitution and other relevant legislation explicitly acknowledging it as a right, it should be lauded as a positive step to the eventual realization of the right. The human right to water and sanitation implies momentous state responsibility and action. The vulnerable and disadvantaged sectors of the world's population are the most affected by lack of safe, quality and affordable access to drinking water and sanitation services.⁶⁰¹ women slum dwellers in Kibera included. This is due to their impoverished position and the limitations of the legal and institutional frameworks emanating from the international, regional and national levels.

It is necessary to point out that the existence of the legal and institutional frameworks does not necessarily guarantee the realization of the human right to water and sanitation for all and, more particularly, the marginalized. This is dependent on a non-discriminatory and a comprehensive implementation framework. The other obstacle is the lack of adequate financial resources leading to low budgetary allocation for infrastructure and services in the water and sanitation sector

⁶⁰¹ Sutherland. *et al* 2014. *Water and sanitation provision in eThekweni Municipality: a spatially differentiated approach*. <https://journals.sagepub.com › doi › full> (accessed on 15 May 2017).

Although the progressive realization of the human right to water is accepted, states parties have an immediate obligation to meet the minimum essential requirements of water for human survival and dignity for everyone. The state has an obligation to efficiently utilize all available resources at its disposal to implement this right. Further, human rights language regarding water and sanitation is increasingly being brought to judicial spheres at international, regional, and national levels to elaborate on the right where violations occur. This has increased awareness of the right and the need to apply international standards in the quest for the implementation of the right.

I argue that the emergence of the human right to water and sanitation at the international, regional and domestic level has created a favorable atmosphere for the implementation of the right with a difference, taking into consideration new approaches to service delivery with a human perspective.

While there is no single policy framework that can be applied across the board for all countries, it should be noted that there are many countries which have included the right to water and sanitation in their constitutions, enacted legislation aiming to expand and improve water and sanitation services and pursued innovative policies that seek to realize the right to water while making water management more effective and sustainable.⁶⁰²

The legal and institutional framework can either be a vehicle for realizing the right to water and sanitation or a hindrance. This depends on the interpretation and the implementation of the policies in place together with the financial resources availed to the implementers. Further, the policies and laws in relation to water and sanitation must be gender-responsive for them to have a positive effect on the women slum dwellers.

In the next chapter which is the final chapter, I present the summary, conclusion, and recommendations of the study.

⁶⁰² Realizing the human rights to water and sanitation: A Handbook by the UN Special Rapporteur Catarina de Albuquerque.

CHAPTER FIVE

Summary and Conclusion

In this chapter, I present the summary and conclusion of this thesis. I conclude the discussions in the previous chapters concerning the relation between access to water, poverty, and patriarchy. This thesis is guided by three research questions, namely: 1. how do gender inequality and power relations in families and households play a role in the vulnerability of women slum dwellers in realizing the right to water and sanitation in Kibera? 2. What are the daily practices and coping strategies of women slum dwellers in Kibera concerning access to water and sanitation? 3. What feminist theory/theories would best reflect and guide the analysis of access to water and sanitation for women in Kibera. 4. To what extent does the legal and policy framework enable adequate access to water and sanitation for women slum dwellers in Kenya, with specific reference to Kibera?

In this thesis, I examine and analyze the position of women slum dwellers in Kibera, Kenya, with respect to access to water and sanitation and how their impoverished position as women exacerbates such lack of access. I look at the relation between access to water, poverty, and patriarchy to highlight the limitations of the legal and institutional framework governing the right to water. As stated above the argument is premised on three research questions which interrogates the role that gender inequality and power relations in the households play in access to water and sanitation, the extent to which the legal and policy framework provides adequate access and finally the burdens and coping strategies women slum dwellers have put in place to deal with lack of access.

The assumptions that informed the thesis are that poverty together with gender inequality and power relations in families and households play a role in the vulnerability of women slum dwellers in realizing the right to water and sanitation and the investigation of the coping strategies that women slum dwellers employ in access to water and sanitation. Feminist theories can best guide the analysis of women's access to water and sanitation in Kibera. I give a brief description of the feminist theories and the different waves of feminism but concentrate on the theoretical framework of the women's law approach and Africana feminism as a tool for analysis.

The other assumption is that despite the existence of a legal and policy framework intended to ensure access to water and sanitation for women slum dwellers in Kenya, they still do not enjoy

sufficient access to water and sanitation. In this regard, I address the legal and institutional framework, the gaps, opportunities, and limitations.

In Chapter 1, I set out the research problem/ thesis statement, which runs through all the chapters for guidance, the assumptions, research questions, motivation of the study, approach/methodology, and thesis structure/chapter/breakdown. The chapters are guided by the research questions and the assumptions which are woven in the whole study for coherence and clarity.

In Chapter 2, I discuss how gender inequality and power relations in families and households play a role in the vulnerability of women slum dwellers in realizing the right to water and sanitation in Kibera, that is manifested in the way gender relations influence the social relation in access to water and sanitation. According to Agarwal,⁶⁰³ gender relations influence access to and control over water resources in three ways: 1. the gender division of labor, 2. the control of productive asset ownership, and 3. the intra-household allocation of resources according to gender. In most African countries, the gender division of labour disadvantages the women in that they are tasked with the collection of water which in most cases involves walking for long distances to get the precious commodity.

I establish that there is a direct relationship between access to water and poverty and that gender inequalities often stem from deeply entrenched customs and behaviors that tend to limit women's participation in social and economic development. I underscore the fact that poverty, to a large extent, is related to social exclusion, which is exacerbated by gender inequality. Patriarchy as an institution also enforces gender roles and responsibilities thereby leading to unequal power relations between men and women along the life cycle. These unequal power relations extend to the community level and within governing institutions, a scenario often reflected in institutional policies and practices. This in effect contributes to the vulnerability of women in their quest to access water and sanitation. It is therefore, paramount to bridge the gender gap to stem the gender inequalities by putting in place interventions that are all-inclusive in nature and non-discriminatory.

I further discuss challenges that women face with access to water and sanitation and the coping strategies of women slum dwellers in Kibera in respect to access to water and sanitation, women slum dwellers have many burdens and challenges in their quest to access water and

⁶⁰³ Agarwal, 1997b: 23.

sanitation. They have to develop coping strategies to deal with these challenges. I categorize the obstacles and burdens referring to UN General Comment No. 15 that provides for 5 standards for measuring the right to water and sanitation being availability, accessibility, quality, acceptability, and affordability. Since the five standards cut across the areas of challenges, I sub-categorize them as economic, socio-cultural, political, legal and institutional in access to water and sanitation.

In respect of the coping strategies employed by women slum dwellers, I look at the exit and voice strategies. Exit coping strategy is a situation where residents decide to abandon the system by looking for alternative sources of water and sanitation services, which may be at an extra cost or through compromised services. Some households are forced to recycle the water and reduce the number of bathing times and storing water in large containers for an extended period. These strategies have advantages and disadvantages. For example, the saving of water in large containers, while it helps to have a reserve of water, is vulnerable to pollution during storage and use.⁶⁰⁴

The other downside of storing too much water is that there is a possibility of using too much water and wasting it since it is readily available. The other strategy which also has advantages and disadvantages is the recycling of water. This may involve water for washing dishes or using the same water for bathing several children. This is an unhygienic way of coping with problems of water. Related to this coping strategy is skipping a bath which may not be very hygienic to girls and women who require frequent baths especially during menstruation, similarly, it may not be good for the children and may lead to hygiene-related diseases like scabies.⁶⁰⁵

Women employ coping strategies in access to water and sanitation in the slums by waiting until dark to bath or use the bush. The disadvantage of this is that women are vulnerable to sexual abuse and attack. For women, lack of sanitation is not only a question of lack of privacy and dignity, but also one of physical insecurity and vulnerability.

Women suffer from time burden which they use in long queues to collect water for their family's needs. This in effect denies them various opportunities to advance themselves. In order to circumvent this, women sometimes resort to short cuts of getting water from water sources which might not be biologically and chemically safe necessary for drinking and personal

⁶⁰⁴ Chipeta L2009.

⁶⁰⁵ Chipeta L2009.

hygiene. This may lead to other problems like diarrheal diseases, trachoma, intestinal worm infections, children and numerous other deleterious outcomes from chemical contaminants like arsenic and lead.⁶⁰⁶ The limited access to water and sanitation for women slum dwellers in Kibera has also made them develop bad habits which degrade the environment and therefore making them more vulnerable to health problems. The use of open defecation sites is also a consequence of a lack of access to water and sanitation as a last resort. The residents are in a catch 22 situation where they are forced to choose the better evil with fewer consequences for survival.

The other strategy is the voice strategy, which is broadly construed as an individual or collective expression of dissatisfaction to management or higher authority of service/product provider through complaints, general protests.⁶⁰⁷ I argue that Kibera residents have both used the voice coping strategy at an individual level and as a collective to complain about the lack of services to their leaders. The women slum dwellers may complain to their landlords at an individual level who can decide to take action or not. The collective action might be more effective than an individual, but this depends on the circumstances of the case.

In Chapter 3, I discuss the theoretical and conceptual framework employed in the study. The overall guiding principle in this study is the women's law approach, which takes women as the starting point. Women's law is a discipline that explores the reality of women's lives and experiences to explain, understand, and critically analyze women's legal rights to improve their legal position in society. It interrogates and investigates the law in all its pluralities as it affects women. This approach uses perspectives from 'below' and 'above' and assumes that there are problems beyond law reform, which need to be addressed, and this can only be done by carrying out research.

This is the chapter in which I discuss the feminist perspectives on the right to water and sanitation and argue that the application of feminist theory is significant in understanding how the insubordination of women contributes to denying them equal access to water and sanitation and other opportunities for survival. Clougherty notes that feminists use feminist legal methods

⁶⁰⁶ Bethany C. 2016. *To empower women, give them better access to water*, <https://news.emory.edu> › 2016/03 › er_courso_conversation › campus (accessed on 7 June 2018).

⁶⁰⁷ Bethany C. 2016. *To empower women, give them better access to water*, <https://news.emory.edu> › 2016/03 › er_courso_conversation › campus (accessed on 7 June 2018).

in three ways namely; to expose bias against women in traditional legal methods; to build decision making by including the woman's point of view and to convince decision-makers to employ feminist methods as a means to identify and perhaps to legitimately justify bias inherent in their decision making.⁶⁰⁸ This calls for a holistic approach to water and sanitation including the right to participation in water governance by women. I use the women's law approach and Africana feminist theory as a tool for analysis and look at how they interrelate to each other as a foundation of study.

In chapter 4, I provide the legal framework on the right to water and sanitation where I present the emergence of the human right to water and sanitation at the international, regional and domestic level and argue that it has created a favorable atmosphere for the implementation of the right with a difference, taking into consideration new approaches to service delivery with a human perspective. This is where I discuss General Comment No. 15. On the Right to Water, which is a blueprint that guides the implementation of the right to water. I further look at the normative content of the Right to Water and Sanitation, together with the Kenyan legal and Institutional Framework on the Right to Water and Sanitation. This was also important in looking at the limitations and opportunities that such a legal and policy framework provides for the women slum dwellers under the study.

It is not all gloom as we must also look at the brighter side of the reforms in the water sector. The devolution of water services to the County governments in Kenya has also been a positive step, although they have been grappling with capacity and skills issues. This has taken the services closer to the people where they can hold their county governments accountable.

The Kenyan legal and policy framework concerning access to water and sanitation has undergone several reforms with the recent recognition of the right to water and sanitation in the Kenyan Constitution 2010. This has been lauded as a progressive Constitution which, if implemented to the letter and spirit, would be a step towards the realization of the right to water and sanitation. Article 21(2), provides for the implementation of rights and fundamental freedoms in the bill of rights and it calls upon the state to take legislative, policy and other measures, including the setting of standards to achieve the progressive realization of the rights guaranteed under Article 43, which includes the right to water and sanitation. The Water Act

⁶⁰⁸ Clougherty, L 2018. *Feminists Should Abandon the Belief that Feminist Goals in Law Must Be Obtained Exclusively Through Feminist Methods*. <https://pdfs.semanticscholar.org> › (accessed on 20 November 2019).

2002 was repealed, and a new Water Act 2016 enacted to be in line with the provisions of the Constitution on the right to water and fit in the devolved government system.

Other key provisions in the Constitution that touch on the water include affirmative action programs to ensure water for marginalized groups, the responsibility of the national government for management of the use of international waters and water resources, and definition of national versus county public works.

I highlight in the thesis the limitations of the legal and institutional framework for women slum dwellers in Kibera on the right to water and sanitation. Even though the reforms in the Kenyan water and sanitation sector have been lauded as pro-poor, the implementation has not achieved the pro-poor objective. This is because the legal and institutional framework in the water and sanitation sector, as provided for in the Water Act 2016, is that water entitlements are linked to land tenure, which compromises water access for people living in slums like Kibera, Nairobi. Land tenures issues are involved in the slum area as the slum dwellers do not own the land that they shack on. As earlier stated, the permit system is linked to land ownership, and most people in the slums neither have secure land tenure nor own the land. This effectively does not allow them to apply for a water connection without the consent of the landlords. This, therefore, faults the legal and institutional framework, which does not work effectively for the women slum dwellers.

Further, the composition of the institutional framework does not accommodate a wide range of representations to enable the inclusion of the vulnerable and marginalized groups. The slums are also densely populated and are campaigning grounds for politicians who take advantage of their vulnerability and give false promises on alleviation of their plight. It is necessary to point out that the existence of the legal and institutional frameworks does not necessarily guarantee the realization of the human right to water and sanitation for all and, more particularly, the marginalized. The legal and institutional frameworks can either be a vehicle for realizing the right to water and sanitation or a hindrance. This depends on the interpretation and the implementation of the policies in place, together with the financial resources availed to the implementers.

There is a great deal of evidence demonstrating the relation between access to water, poverty, and patriarchy in respect of women slum dwellers in Kibera. The feminization of poverty has exacerbated the situation where most households are female-headed. Gender relations play a significant role in social relations in access to water and sanitation. It is also evident that social

limitations that are created by the gender inequalities amongst families are to blame for the limited access to water and sanitation for women, more so poor women living in the slums. Further, the gender division of labour that influences access to water and sanitation is aggravated by the fact that women are tasked with the responsibility of collecting water and caring for the family, therefore, robbing them of time to engage in income-generating activities and attending school.

Inadequate water supply and sanitation facilities can seriously compromise the safety and dignity of women and girls. Without sanitation facilities, they may be forced to wait until nightfall to relieve themselves in private, thus making them vulnerable to physical or sexual assault in secluded areas. With the provision of appropriate toilets, women and girls can use them at any time, in private, without shame, embarrassment, or fear.⁶⁰⁹

The coping strategies employed by women may relieve the burdens of lack of access to water and sanitation temporarily, but they may have some health repercussions or a dent on their already dented pockets. The government should take responsibility and ensure that all realize the right to water and sanitation without discrimination. The government should further allocate adequate resources for the progressive realization of the right to water and sanitation and reach the underserved like the women slum dwellers in Kibera.

Women's law approach and Africana feminism provide a comprehensive theoretical framework for analysis for Kibera women slum dwellers' access to water and sanitation. The fact that they emphasize on taking women as a starting point and taking into account their lived realities and experience is important. It is established that if women's needs, interests, and perspectives are placed at the center of decisions about water supply, sanitation, and hygiene promotion programmes and activities, then positive effects can be realized in many aspects of women's lives. These include the opportunity for greater privacy and personal dignity, better all-round health (including during pregnancy and childbirth), increased educational opportunities, better personal safety, and more possibilities for earning income discourses and for feminist projects to situate their analysis in the current water reforms:

⁶⁰⁹ WSSCC Resource Pack on the Water and Sanitation Millennium Development Goals. WSSCC, Geneva, 2004. See <http://www.wsscc.org/home.cfm?CFIDZ1056840&CFTOK ENZ62467993> for further details.(accessed 10 September 2018).

The right to water and sanitation has had a long journey to recognition. In the international arena, even though the UDHR of 1948 and the CESCR of 1966 did not explicitly recognize the right to water and sanitation as a human right, the two instruments are critical in the development and eventual recognition of these rights.

The right to water is explicitly mentioned in two international treaties, CEDAW (1979) and CRC (1989). CEDAW gives a gender dimension to the right to water obliging States parties to adopt necessary measures at the national level aimed at achieving the full realization of the rights recognized in CEDAW. Further, we should not forget to mention the other important milestone which is General Comment No. 15 on the right to water that was adopted by the UN Committee on Economic, Social and Cultural Rights at its Twenty-Ninth Session in November 2002.⁶¹⁰ The Comment provides guidelines for states on the interpretation of the right to water under two articles of the International Covenant on Economic, Social and Cultural Rights – Article 11 (the right to an adequate standard of living) and Article 12 (the right to health). General Comment No. 15 is very important as it elaborates on the States obligations to respect, protect, and fulfill the right to water. These are in essence, incorporated in the national obligations in the realization to the right to water.

It should also be noted that one of the crucial guarantees to have eluded the list of the African Charter on Human and Peoples' Rights is the right to drinking water and water for sanitation. However, all is not lost as it has found its way into regional jurisprudence by dint of innovative interpretation of the Charter by its monitoring and enforcement mechanism, the African Commission on Human and Peoples' Rights (African Commission).

The Kenyan Constitution recognizes the right to water and sanitation under Article 43(1) (b) and (d). This article primarily deals with economic and social rights as provided for under the International Covenant on Economic, Social and Cultural Rights (ICESCR). It ensures that “every person has a right to accessible and adequate housing, and to reasonable standards of sanitation.” It further provides under (d) for a right to clean and safe water in adequate quantities. The recognition of the right to water and sanitation in the Constitution is a positive step in the realization of this right.

Even though the government of Kenya has tried to put in place policies and frameworks in the fresh water and sanitation reforms, more needs to be done in the implementation of the right to

⁶¹⁰ See *General Comment No. 15*.

water and sanitation for all. The availability of clean water and adequate sanitation is a great challenge as the slum dwellers are left with no option but to use unorthodox means of “flying toilets” and dirty water for survival. The option of buying water from water vendors and paying for the use of latrines is also unaffordable for people who live below the poverty line .In the final chapter I make recommendations stemming from the study.

CHAPTER SIX

Recommendations

6.1. Introduction

The main research problem analyzed in this thesis is the lack of access to water and sanitation by women slum dwellers in Kenya. In this chapter, I make some recommendations to address their plight. There is a need for a paradigm shift in water and sanitation governance. Policies and strategies for improving access to water and sanitation for women living in the informal settlement should focus on the provision of services taking into account the gendered nature and the underlying power relations which have played a role in their inadequate access. The solution to access to water and sanitation for women slum dwellers in Kibera should include both technical and social elements. A holistic approach to dealing with water and sanitation access is necessary to unlock what is bedeviling the sector. The recommendations are in respect of addressing the gaps in the institutional, policy and legislative framework, gender inequality and power relations, gender sensitization and empowerment, capacity development, political will, public-private partnerships, monitoring and evaluation, and further research to inform the changing situations in water and sanitation sector.

6.1.1. Recommendations to Address Gender Inequality in Access to Water and Sanitation

This is the elephant in the room, as it has eluded many in addressing it with long-lasting impacts. There is a need for involvement of all members, particularly women and girls, at all stages of planning water and sanitation programmes as they bring valuable perspectives, capabilities, and contributions which will eventually affect them during implementation. Gender balance and active involvement of women and men in decision-making in the provision of safe and appropriate water, sanitation and hygiene are important for the achievement of practical solutions.

The other issue that needs attention is to bridge the gender inequality gap through legislative, policy, and institutional reform. This must be coupled with concerted effort for sensitization of behavioral change and power relations in the families, starting with the leaders and elders who are the gatekeepers who, in most cases, are pro maintenance of status quo. Involving men

as champions of change in gender and power relations at the household and community level is necessary for changing their perspective. Addressing gender inequality should include a redress of cultural practices and strengthening the legal framework. Women who are critical stakeholders must be involved and not sidelined in these processes.

I dare to suggest that men should be encouraged to share household responsibilities with women to ease the burden women are facing, especially in patriarchal societies like Kenya. The gradual change of the concept of the gender division of labour is necessary to reduce women's workload in a bid to help bridge the gender inequality gap. Special needs of women slum dwellers should be adopted to deal with the psychosocial stress-related to water and sanitation problems that they face on a day to day basis.

There is also a need to carry out a gender and power analysis to map the existing legislation and policies that seek to address gender and inequalities in Kenya and impeach the laws and policies that discriminate based on gender. Apart from the mapping, there has to be serious efforts put in their implementation and not just having a checklist to be ticked. It should be noted that despite the positive strides that Kenya has made in ensuring that it achieves gender equality, gender inequalities still exist in various sectors including in water and sanitation.

Mechanisms for conflict resolution, accountability and access to remedy must be in place, as well as free, active, and meaningful participation. The human rights to water and sanitation including the human rights principles of non-discrimination and equality, must be carefully implemented at the national level, and strong monitoring frameworks must track progress in realizing these rights.⁶¹¹

It is vital to transform gender relations to achieve gender equality in access to water and sanitation through a multifaceted approach. To more effectively address gender inequality while also alleviating poverty, policy interventions sensitive to women's multiple, time-consuming responsibilities and obligations are paramount. Measures are needed for strengthening sanitation policies and effective implementation of programmes to address

⁶¹¹ UN Water 2013, Eliminating discrimination and inequalities in access to water and sanitation.

gender power relations and familial relationships that influence access to water and sanitation for women.

The scarcity at the heart of the global water crisis is rooted in power, poverty, and inequality, not in physical availability.⁶¹² The provision of adequate water and sanitation is not enough to change the gendered social relations. Water and sanitation without proper attention to gendered power relations cannot solve these problems. There has to be a paradigm shift on the gendered power relations in access to resources and priority given to equitable planning and distribution of resources.

6.1.2. Empowerment/Gender Sensitization

There is a need for awareness-raising forums on gender and power relations using multi-pronged approaches that help individuals drop harmful practices and pick up those that support gender equality agenda. Women play a crucial role in influencing the hygiene behaviours of young children, and men can also, and should serve as role models for good habits. Access to and effective use of water and sanitation facilities will depend on the involvement of both women and men in selecting the location and technology of such facilities.⁶¹³

First and foremost, men's perception of women's role as water collectors must change to achieve gender equity in the household and families. To unburden women with household chores, men should be encouraged to share household responsibilities. This does not make them lesser men if they share family responsibilities. Women must be empowered with income-generating activities and give them a voice to participate meaningfully in all spheres of life. The Constitution guarantees equal participation of both genders in political, social and economic spheres and the same should be implemented without discrimination. The feminization concept where the female is the face of poverty should be a thing of the past.

Women need to be empowered economically and psychologically and socially to respond to the problems they face as women. Women's confidence and self-esteem can only increase

⁶¹² UNDP 2006. Human Development Report 2006. Beyond scarcity: Power, poverty and the global water crisis. Published for the United Nations Development Programme (UNDP).

⁶¹³ UN Water (2005 to 2015) Gender, Water and Sanitation: A Policy Brief.

when they have more excellent knowledge, economic assets, and income-earning capacity. This will make them more likely to participate in both private and public decision making

Affirmative actions should be put in place to right the wrongs that have made women be the face of poverty. Harmful cultural practices that discriminate women should be highlighted and shamed. This will need the concerted effort of all stakeholders, the actors, and structures that are pro-status quo and the champions of change to spearhead the process. Ensuring that no one is left behind requires additional and different types of investments aimed at the hardest-to-reach people and groups.

6.1.3. Capacity Development

To achieve access to water and sanitation and bridge the gap of gender inequality, capacity development will be a significant component in the realization. This will involve the development of human and technical resources. The human resource does entail not only skills development but also the social and behavioral change in the attitudes of the policymakers and the stakeholders. There is also a need to strengthen the financial capacities for the implementation of the programmes that are put in place to enable the government to achieve its mandate under the Constitution on the right to water and sanitation.

Capacity development should not only target the implementers of the policies but also target both men and women to understand the gender implications for unequal access to water and sanitation to the family as a whole for the purpose of empowering women in their day to day activities. This includes the acquisition of skills to ensure efficiency in their decision-making role in water management issues, development of skills in financial management, decision-making, community participation, leadership, confidence building, and communication. Investing in women would be an added advantage as there is evidence that they interact with water a lot due to their responsibilities as carers.

Hygiene awareness and promotion are recent inclusions in water and sanitation interventions, in recognition that service delivery needs to build on the beliefs and perceptions of users. Hygiene promotion is claimed to make hardware supply more effective. Awareness and promotion also need to consider the realities of what can be practiced given the contexts of the lives of the whole range of urban poor as well as what is ‘possible and feasible’ to deliver

within project limits. However, promoting positive hygiene behavior requires complementary and significant infrastructure provision⁶¹⁴ this usually includes comprehensive drainage, safe excreta disposal, piped water, and reliable waste disposal systems. Thus any attempt to promote improved sanitation must consist of both hardware and software but must start with the beneficiary viewpoint on what is appropriate.⁶¹⁵

The solution to access to water and sanitation should consist of both technical and social elements. There needs to be an investment in building human capacity in-country to be able to construct, operate, manage and maintain water and sanitation services.

6.1.4. Gaps in Institutional, Policy and Legislative Framework

Kenya has made strides in the implementation of decentralization of water and sanitation services vide the Constitution 2010, which introduced devolved governance to the county governments. Water and sanitation services are a mandate of the respective county governments, but as a new establishment, they are bound to have teething challenges of human and financial resources to meet the extent of their obligations. This has led to a lack of optimal basic service provision as expected for the citizens.

The county governments also inherited outdated infrastructure, which was a result of low investments, weak and unenforced legislation and poor governance.⁶¹⁶ Kenya has embraced slum upgrading programmes which is a positive step in the right direction, but the same should overhaul the water and sanitation infrastructure in the informal settlements, if any, and invest in proper systems to serve the needy. Proper monitoring systems must be put in place backed by polices incorporating maintenance and sustainability.

⁶¹⁴ Joshi, D. 1998.

⁶¹⁵ Joshi, D. 1998.

⁶¹⁶ Otieno P, 2015. *Ways to realize the human rights to water and sanitation. 2015 UN. Water Annual International Zaragoza Conference.*

Urban sanitation policy based on technical solutions alone will not result in access to modern sanitation for all.⁶¹⁷ In addition to technical and infrastructural issues, unequal social relations, including gender inequality, must be addressed holistically as they lead to a lack of access for a segment of the population. There is a need for greater coordination of the provision of water and sanitation services. The county governments can learn from best practices from within or other countries to enable them to upscale their services.

Kenya recently repealed the Water Act 2002 and enacted Water Act 2016, which still does not ensure that the vulnerable women slum dwellers have access to water and sanitation as it states that water permits run with ownership of land and that the permits are not transferable. There is a need to recognize the pluralistic legal framework of Kenyan society so that it can cater to the poor and women who are not able to own land.⁶¹⁸ Further, the institutional framework should be more representative to allow the vulnerable women's voices to be heard. The water law and policies should be enforced. Africa should not fit the description attributed to it by Kwabena⁶¹⁹ who says that Africa is suffering from the disease of public implementation failure.

The adoption of new technology for water and sanitation sometimes involves significant investments that require local institutional and legal arrangements. Slum-dwellers often live in houses with insecure property rights. This could weaken their incentive to make long-term capital investments or to use their property as collateral to secure loans for capital investments.⁶²⁰ Strengthening property rights in urban slums has been shown to have a

⁶¹⁷Action Aid 2013. *Women and the City II: Combating Violence Against Women and Girls in Urban Public Spaces – The Role of Public Services*, http://www.actionaidusa.org/sites/files/actionaid/women_and_the_city_ii_1.pdf (accessed on 3 April 2018).

⁶¹⁸Odeny M. 2006. *Privatization, commercialization of water services and its implication for women's access to and control of water: a case study of Njoro community water project*, Master's thesis in Women's Law, SEARCWL, University of Zimbabwe. 2006.

⁶¹⁹Kwabena. 2009.

⁶²⁰J-PAL. 2012. "J-PAL Urban Services Review Paper." Cambridge, MA: Abdul Latif Jameel Poverty Action Lab.

significant effect on residential investment, primarily due to the threat of eviction being reduced.⁶²¹

A radical shift in the implementation of policies concerning access to sanitation for women slum dwellers should be done. There should be positive discrimination aimed at alleviating the position of women who have suffered the burden of being responsible for water collection in families. The strict implementation of international standards for the realization of the right to water and sanitation taking into account the State's obligation to respect, protect and fulfill these rights. Kenya should also take legislative, policy and other measures, including the setting of standards to achieve the progressive realization of the right to water. This includes setting aside budgetary allocation and resources for implementing the right. The government should put policies that are attractive and beneficial to the underserved to allow for investment in the water and sanitation sector by other players.

Apart from the policy and the legislative reform, the implementation of the reforms must be done in a gender-sensitive manner. The administrators who are charged with the duty of operationalizing the Act need to be trained on how to integrate gender concerns into water policies and come up with gender-sensitive policies in water-related areas. The training should target policymakers and implementers on the concepts and tools of gender analysis to understand women's concerns and individual needs with respect to water and sanitation.⁶²² Women slum dwellers should not be treated as a liability but as citizens who have something to contribute to society.

The study established that there is a gap between policy and practice, where the law and policies provide for guidelines for the implementation of the right to water and sanitation without discrimination for all but what is on the ground speaks of either lack of understanding or weak governance structure. The gap between the policies and practice may occur due to lack of adequate budgetary allocation, weak policy and institutional framework, old infrastructure, lack of technical capacity to deal with the issues of water and sanitation, rapid

⁶²¹ -PAL. 2012. "J-PAL Urban Services Review Paper." Cambridge, MA: Abdul Latif Jameel Poverty Action Lab.

⁶²² PAL. 2012. "J-PAL Urban Services Review Paper." Cambridge, MA: Abdul Latif Jameel Poverty Action Lab.

growth in the slums and lack of political will to address water and sanitation issues in the informal settlements just to mention a few.

Therefore interventions that target the water and sanitation sector, especially for poor women living in the slums, should take into account gender issues and the livelihoods of the people. The livelihood interventions should go hand in hand with the water and sanitation provision to deal with poverty alleviation of the women slum dwellers.

The study established that women slum dwellers use alternative sources to access water through the water vendors who sell the water at exorbitant prices, and some get their water from questionable sources. There should be policies to regulate the water vendors who are the leading suppliers of water in the informal settlements including Kibera. They need to work together with the county government to ensure they fill the gap in a coordinated manner and not as cartels out to fleece the residents.

At the international level, so much has been done to guide in the implementation of the right to water and sanitation by putting in place guidelines, standards, and best practices that can be tailor-made to suit situations in different countries. There would be no need to reinvent the wheel, but if there are specific best practices that can be emulated with slight adaptation, then that would be welcome.

“The duty to take steps imposes on States parties an obligation to adopt a national strategy or plan of action to realize the right to water. The policy must: (a) be based upon human rights law and principles; (b) cover all aspects of the right to water and the corresponding obligations of States parties; (c) define clear objectives; (d) set targets or goals to be achieved and the time-frame for their achievement; (e) formulate adequate policies and corresponding benchmarks and indicators. The strategy should also establish institutional responsibility for the process; identify resources available to attain the objectives, targets, and goals; allocate resources appropriately according to institutional trust, and develop accountability mechanisms to ensure the implementation of the strategy. When formulating and implementing their right to water

national strategies, States parties should avail themselves of technical assistance and cooperation of the United Nations specialized agencies.”⁶²³

The formulation and implementation of national water strategies and plans of action should respect, among other things, the principles of non-discrimination and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment held by public authorities or third parties.⁶²⁴

If countries adhere to the above strategies and allocate adequate resources for the implementation, then they would be able to realize the right to water and sanitation for all. The SDGs 5 and 6 can also be achieved if a concerted effort is put to address gender inequality.

6.1.5. Public-Private Partnerships

Sustainable Development Goal 6 on Clean Water and Sanitation, by 2030, sets stringent targets, namely; to achieve universal and equitable access to safe and affordable drinking water for all; achieve access to adequate and equitable sanitation and hygiene for all and substantially increase water-use efficiency across all sectors. For governments to meet SDG No. 6 which requires massive investment, most have turned to public-private partnerships (PPPs) that can be a mechanism (among others) to help governments fund much-needed investment and bring technology and efficiency that can improve the performance and financial sustainability of the water sector.⁶²⁵

⁶²³ Organisation for Economic Co-operation and Development.2015. Governance challenges and suggested tools for the implementation of the water-related Sustainable Development Goals. www.un.org › pdf › Governance_OECD_Tool_paper_final (accessed on 2 May 2017).

⁶²⁴ See General Comment No.15.para.25.

⁶²⁵ World Bank Group, Legal Issues on Water & Sanitation PPPs,PUBLIC-PRIVATE-PARTNERSHIP LEGAL RESOURCE CENTER.

When the government is entering into these public-private partnerships (PPPs), it should be aware of the critical challenges and learn from best practices from other countries that have implemented similar projects. A report from the World Bank mentioned above states that a critical problem in the sustainability of the sector is customer tariffs.⁶²⁶ Water utilities have difficulty investing in infrastructure and maintaining it when they cannot rely on revenue streams that cover the costs of operation and investment. While subsidies and grants from the government continue to play an essential role in financing water and wastewater infrastructure, a stable revenue stream is more dependable and allows utilities to carry out business and asset planning.⁶²⁷

For the PPPs to work, there must be a proper regulatory framework, and the PPP contract must outline the responsibilities of government authorities and the operator. It should also ensure that there is a water company that can be held accountable for the operation and maintenance of the water and sanitation system.

A well-designed PPP means that public institutions can harness business innovation to meet their mandates to extend equitable and sustainable services, while the private partner can reduce their costs and exposure to risk.⁶²⁸

In Kenya, six Water service providers (WSPs) were selected in 2013 to pilot public-private partnerships (PPP) models to increase County-level water supply. This was in a bid to fulfill their role of giving every citizen their right to clean and safe water in adequate quantities and to reasonable standards of sanitation, as stipulated in Article 43 of the Constitution of Kenya (2010).

⁶²⁶ See World Bank Group, Legal Issues on Water & Sanitation PPPs, PUBLIC-PRIVATE-PARTNERSHIP LEGAL RESOURCE CENTER.

⁶²⁷ See World Bank Group, Legal Issues on Water & Sanitation PPPs, PUBLIC-PRIVATE-PARTNERSHIP LEGAL RESOURCE CENTER.

⁶²⁸ WSUP, 2015, Promoting collaboration between private enterprises and public institutions.

Apart from the achievement of the SDGs, the government also has to realize the vision 2030 water objectives, which require massive funding in investment in infrastructure. The PPPs can help in the realization of access to water and sanitation for the urban poor.

6.1.6. Political Will

The government must have the political will to ensure that there is meaningful engagement on the issue of the realization of the right to water and sanitation for all without discrimination. The elected representatives should not use the plight of the slum dwellers as a campaign tool, promising goodies and delivering nothing.

Concerning political will, the government should recognize informal settlements as legal parts of the city and support comprehensive development programmes and projects in slums as they had done in the slum upgrading programmes, but the same should be improved in the design and implementation. This can be done by supporting the programme holistically by ensuring that the water and sanitation services are provided at a subsidized rate so that the slum dwellers not to abandon their houses and go back to the shacks.

The county government must have a minimum standard to access to sanitation facilities and a budgetary commitment and allocation for its implementation. It should also be noted that the provision of a public or private toilet is not enough; there should be provision for its maintenance. The use of a dirty toilet without water or proper lighting for women is a death trap for insecurity and disease. Therefore the county government must ensure there is adequate, clean water and toilets that can be used for free by the residents of Kibera. Further, the government should also provide for its maintenance, cleaning, and safety of the residents while using the facilities.

The critical bottlenecks to overcome include: weak sector governance at the county level; financing and integrity, particularly the lack of separation of oversight from service provision; a heavy reliance on public financing and absorption challenges; human resource constraints; lack of a review mechanism to assess progress on a regular basis; limited multi-year funding agreements from partners which limits predictability of planning; over-dependence on

development partners to fund rural sanitation and insufficient tracking of WASH finances. If these are not resolved, progress will remain slow, and the SDGs will be missed.⁶²⁹

It is evident from various studies that water supply does not receive the priority that should be attached to it. It, therefore, does not receive adequate budgetary allocation like the security sector. This calls for a paradigm shift to give it more prominence as it should be.

6.1.7. Monitoring and Evaluation

In the implementation of the water and sanitation programmes there must be monitoring and evaluation supported by sex-differentiated statistics and more coherent control at national (and global) levels that allows tracking the equality of services. Water and sanitation projects must include monitoring and evaluation components from inception through implementation and follow-up, and the metrics should reflect the need, design, implementation, use, impact, efficiency, and sustainability of the project/program.⁶³⁰ Agencies often measure success by the number of wells or latrines installed, rather than the quantity used or the number still operational five years later. The results of the monitoring and evaluation and lessons learned need to get back to the decision-makers so that the findings can inform policy.⁶³¹

Riedel argues that to assist the monitoring process, “the right to water indicators should be identified in the national water strategies or plans of action. The indicators should be designed to monitor, at the national and international levels, the State party's obligations under articles 11, paragraph 1, and 12”.⁶³²

He further states that “the indicators should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability, and physical accessibility), be disaggregated by the prohibited grounds of discrimination, and cover all persons residing

⁶²⁹ Kenya Overview: Water, sanitation and hygiene. Achieving the SDGs targets for water, sanitation and hygiene.

⁶³⁰ Achieving Water and Sanitation Services for Health in Developing Countries 2009.

⁶³¹ See Achieving Water and Sanitation Services for Health in Developing Countries 2009.

⁶³² See E. Riedel, *New bearings to the State reporting procedure: practical ways to operationalize economic, social and cultural rights – The example of the right to health*. in S. von Schorlemer (ed.), *Praxishandbuch UNO* (2002), pp. 345-358.

in the State party's territorial jurisdiction or under their control. States parties may obtain guidance on appropriate indicators from the ongoing work of WHO, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Centre for Human Settlements (Habitat), the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP) and the United Nations Commission on Human Rights and set appropriate right to water indicators and benchmarks in relation to each indicator".⁶³³

I would suggest that a "gender-sensitive approach to evaluation be taken. This will look into the gender inequities and power relations in families and households that marginalize women. We have to focus on women's lived realities to reverse the inequities and empower them with knowledge and resources. This can be done through participatory means to bring about awareness-raising, capacity building and using the evaluation process to effect change".⁶³⁴

Although there is a lot of evidence that women are deprived in the sanitation sector, gender-disaggregated data is currently mostly absent or significantly incomplete. It is important to collect disaggregated data by women and men in the different population groups (e.g. rich/poor; urban/rural) and monitoring the difference in the rate of change between women and men in each group and the general population.⁶³⁵

6.1.8. Further Research

Many scholars have researched access to water and sanitation for women but certain issues have never been clear. For example, the Kenyan Slum Upgrade programme was meant to improve access to water and sanitation, housing, and living conditions but the same did not achieve much. If this programme was supposed to improve the living conditions of the slum dwellers, why would they rent the improved houses and go back to live in the shacks? Is there

⁶³³ See E. Riedel, *New bearings to the State reporting procedure: practical ways to operationalize economic, social and cultural rights – The example of the right to health*, in S. von Schorlemer (ed.), *PraxishandbuchUNO* (2002), pp. 345-358.

⁶³⁴ Odeny M. 2006. *Privatization, commercialization of water services and its implication for women's access to and control of water: a case study of Njoro community water project*, Master's thesis in Women's Law, SEARCWL, University of Zimbabwe. 2006.

⁶³⁵ United Nations 2008. *Gender-disaggregated Data on Water and Sanitation*.

an addiction to living in the slums? Is it an easy way of living, or they are just jinxed? Could someone find out why a person would be offered a house out of the slum with facilities and later rent it out to go back to the slum?

The other area of research is how we can reverse the phenomenon of feminization of poverty, which has gained traction in the global arena. There should be an answer as to why women are still the face of poverty in the 21st century. I have learned of a new concept of feminization of responsibility and obligation, which stems from the feminization of poverty. Chant posits that although women are often income-poor, and this needs to be addressed, we must also take into account gender differences in inputs to household livelihoods to a higher degree, as well as their outcomes for women's lives.

Policy and academic debates around the human right to water and sanitation tend to engage in the political, legal and gender dimensions mostly. They do not directly engage with the material conditions of water access and their implications for the wellbeing and lived realities of the marginalized groups. That is the significance of poor women slum dwellers' daily lives as they interact with access to water and sanitation.

There is a need for additional longitudinal research to identify approaches that are sustainable technically, financially, and environmentally with an emphasis on gender differentiation and outcomes concerning the use of water and sanitation.

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