

Gender and REDD+ Governance in Malawi: Enhancing Women's Right to Participation



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Abbreviations

ADC	Area development committees
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic Social Culture Rights
COP	Conference of the Parties
DEC	District Executive Committee
DESC	District Environment Subcommittee
DFO	District Forestry Officer
DoF	Department of Forestry
EMA	Environment Management Act
ESCR	Economic social and cultural rights
FRIM	Forestry Research Institute of Malawi
GHG	Greenhouse gases
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MRP	Malawi REDD+ Program
MRRP	Malawi REDD+ Readiness Programme
NEP	National Environmental Policy
NFP	National Forest Policy
REDD+	Reducing emissions from deforestation and forest degradation
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change

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USAID	United States Agency for International Development
VDC	Village Development Committees
WFR	Warsaw Framework for REDD+

1 Introduction

Gender equality and women's participation are crucial in forest protection and use. The difference between women and men in reliance on forests for their livelihoods, knowledge, skills, and experience are vital for successful forest management and conservation.¹ Forests and trees play a crucial function as carbon sinks and they contribute to the fight against climate change. Despite the small contribution to factors causing global climate change including anthropogenic emissions of greenhouse gases (GHG), Malawi is particularly vulnerable to climate change due to its unique and fragile ecosystems.² Malawi is ranked as the 39th most vulnerable and 21st least ready to adapt to climate change.³ This is a result of many factors including Malawi's high reliance on natural resources, high dependence on rain-fed agriculture, poverty, reliance on biomass energy, deforestation, population growth, and environmental degradation.⁴ Malawi is committed to contributing towards global efforts to reduce GHG emissions in key sectors of forestry, agriculture, and energy.⁵ Malawi is also a member to the United Nations Framework Convention on Climate Change (UNFCCC) and is implementing the mechanism developed for reducing emissions from deforestation and forest degradation (REDD+).⁶ According to the Malawi REDD+ Programme plan, two main mitigation options being pursued in the forestry sector are protection and conservation (of existing forests), and afforestation (covering tree planting, as well as natural and assisted regeneration).⁷ Malawi seeks

¹ See Colfer et al. (2016), generally.

² Missanjo and Kadzuwa (2021), p. 2.

³ Irish Aid Malawi Climate Action Report For 2016 <https://www.irishaid.ie/media/irishaid/allwebsitemedia/30whatwedo/climatechange/Malawi-Country-Climate-Action-Reports-for-2016.pdf> World Bank Profile, Malawi Dashboard (2014); http://sdwebx.worldbank.org/climateportal/home.cfm?page=country_profile&CCode=MWI&ThisTab=Dashboard UNDP climate change profile for Malawi: <http://www.geog.ox.ac.uk/research/climate/projects/undpcp/index.html?country=Malawi&d1=Reports>.

⁴ Missanjo and Kadzuwa (2021), pp. 3–4.

⁵ Missanjo and Kadzuwa (2021), p. 4 stating that it is due to unsustainable use of fuelwood and charcoal (97% of Malawians rely on biomass energy for cooking fuel), and poor agricultural practices, resulting in a high rate of deforestation and forest.

⁶ UN General Assembly, *United Nations Framework Convention on Climate Change (UNFCCC): resolution/adopted by the General Assembly*, 20 January 1994, A/RES/48/189.

⁷ Government of Malawi, *Intended Nationally Determined Contribution* (2015), p. 2. Available at <https://www.climatelearningplatform.org/republic-malawis-intended-nationally-determined-contribution-indc>.

to slow and eventually reverse GHG emissions from deforestation and forest degradation and increase removals through afforestation.⁸

There has been a growing focus on forests in Malawi over the past two decades and recognition of the need to remedy deforestation.⁹ Community participation has been recognised as key in decentralised decision-making in natural resource management including in forest governance,¹⁰ however, this has not always resulted in real power or benefit to the people, especially women.¹¹ This chapter investigates gender and governance of the REDD+ project in Malawi with a focus on the legal guarantees and institutional arrangements including platforms of participation for women. The chapter is divided into four Sections. After the introduction, Sect. 2 examines the role of gender and participation from a human rights perspective with a focus on women in REDD+ governance. This is followed by Sect. 3 which interrogates REDD+ governance in Malawi by focusing on the legal and institutional framework and how it promotes gender and participation. Section 4 is the conclusion.

2 REDD+ Governance: Gender and Participation as an Agency

This section analyses REDD+ governance from a gender perspective with focus on participation of women as a human right guaranteed in human rights instruments.

2.1 REDD+ Governance

REDD+ is an international mechanism introduced by parties to UNFCCC during the Eleventh Conference of the Parties (COP) in 2005. The mechanism is designed to prevent or reduce climate change-inducing forest-based emissions through incentives for governments, companies or owners of forests in developing countries.¹² The COP negotiated for over a decade with varying preliminary outcomes on international efforts to address the crisis of forest destruction.¹³ Under Article

⁸Government of Malawi, *Intended Nationally Determined Contribution* (2015), p. 6.

⁹See Government of Malawi (GoM) National Forestry Policy (2016) Available at <https://www.dof.gov.mw/storage/app/media/Policies%20and%20Strategies/National%20Forest%20Policy%202016.pdf>.

¹⁰Forest Act No. 11 of 1997.

¹¹Forest Act No. 11 of 1997.

¹²Article 5 of Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, T.I.A.S. No. 16-1104.

¹³See Young (2017), p. 14.

12 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol), the basis is established for developed countries to pay developing countries for the carbon emissions avoided through a reduction in forest loss.¹⁴ In 2013, the COP created a framework called Warsaw Framework for REDD+ (WFR) to guide activities to reduce human pressure on forests that result in greenhouse gas emissions.¹⁵ WFR has the methodological and financing guidance for implementing REDD+ activities. In 2015, there was further recognition of REDD+ in the Paris Agreement with calls for the enhancement of forest carbon stocks in developing countries through the implementation of REDD+ activities.¹⁶

According to Lederer, 'REDD+ is not just about keeping carbon in the forest, it is about how the world's forests are governed'.¹⁷ Lederer further argues that the future success of REDD+ depends less on technical issues than it does on the governance of the mechanism.¹⁸ Brockhaus defines REDD+ governance broadly as encompassing 'a range of institutions, organisations, principles, norms, mechanisms and decision-making procedures'.¹⁹ With a focus on political actors, Brockhaus investigates three main aspects of REDD+ governance, namely the policy domain where REDD+ strategies emerge, mechanisms in coalition building and organisations or structures in which they operate.²⁰ They argue that the relationship between these three key aspects of REDD+ governance is essential for fostering the power of agency, that is the ability of actors to influence decisions and policy outcomes.

Aquino and Guay define REDD+ governance more specifically as 'the institutions, processes, decision-making mechanisms that enable the country to channel resources from the international level to measures on the ground that address the drivers of deforestation'.²¹ Brockhaus et al. state that legitimacy is achieved by

¹⁴Kyoto Protocol to the United Nations Framework Convention on Climate Change, (1997) 2303 UNTS 162 adopted at COP 3 in Kyoto, Japan, on 11 December 1997.

¹⁵The Warsaw Framework for REDD+ consists of the following UNFCCC COP decisions: Decision 9/CP.19, Work Programme on Results-based Finance to Progress the Full Implementation of the Activities Referred to in Decision 1/CP.16, paragraph 70; Decision 10/CP.19, Coordination of Support for the Implementation of Activities in Relation to Mitigation Actions in the Forest Sector by Developing Countries, Including Institutional Arrangements; Decision 11/CP.19, Modalities for National Forest Monitoring Systems; Decision 12/CP.19, The Timing and the Frequency of Presentations of the Summary of Information on how all the Safeguards Referred to in Decision 1/CP.16, Appendix I, are being Addressed and Respected; Decision 13/CP.19, Guidelines and Procedures for the Technical Assessment of Submissions from Parties on Proposed Forest Reference Emission Levels and/or Forest Reference Levels; Decision 14/CP.19, Modalities for Measuring, Reporting and Verifying; Decision 15/CP.19, Addressing the Drivers of Deforestation and Forest Degradation, UN Doc. FCCC/CP/2013/10/Add.1, 31 January 2014.

¹⁶Paris Agreement, Article 5.

¹⁷Lederer (2012), p. 107.

¹⁸Lederer (2012), p. 107.

¹⁹Brockhaus et al. (2013), p. 1.

²⁰Brockhaus (2013), p. 1.

²¹Aquino and Guay (2013), p. 2.

obtaining the consent of the governed.²² In their view, an ideal governance structure must achieve legitimacy together with effectiveness and efficiency. They explain that legitimacy is the acceptance of structures by multiple stakeholders including local communities engaged in REDD+ and the transparency and accountability, distribution of power and wealth of REDD+ financial flows.²³ Effectiveness is about the capacity to raise funds and deliver on reduced emissions through addressing causes of deforestation and forest degradation. There must be forest conservation and restoration as a result of challenging and transforming existing structures.²⁴ Efficiency is the ability to deliver cost-efficient REDD+ results including co-benefits.²⁵ To achieve legitimacy, Somorin et al. argue that effectiveness and efficiency, the interaction between state and non-state actors and institutional context is crucial.²⁶ They further opine that REDD+ governance is about collective decision-making.²⁷ REDD+ governance must ensure meaningful participation of actors in forming institutional structures that create values, rules and norms that in turn influence REDD+ actions, processes and outcomes.²⁸ The capacities and responsibilities of multiple actors and the institutional rules of how they interact with each other for collective decision-making and collaboration will determine the success or otherwise of REDD+.²⁹

Participation emerged as a central concept when global trends moved away from strong centralised state 'government' to more decentralised and democratic 'governance'.³⁰ According to Stoker, this shift from a strong central government to decentralised and democratic governance removed the government as the single source of decision-making authority.³¹ In governance, the government adopted a new governing style where multiple actors interact and influence each other.³² These actors were often drawn from, but also beyond, the government. The initial idea was to bring people closer to the government and the government closer to the people so that the principles of democracy and inclusivity could be more easily applied.³³ On natural resources, the focus fell on people and the social and natural environment on which they depend. New relationships of people, power, and politics resulted from this shift, moving away from the command-and-control approach that was relied on

²² Brockhaus (2013), p. 2.

²³ Aquino and Guay (2013), p. 2.

²⁴ Brockhaus (2013), p. 3.

²⁵ Brockhaus (2013), p. 3.

²⁶ Somorin et al. (2014), p. 89.

²⁷ Somorin et al. (2014), p. 89.

²⁸ Somorin et al. (2014), p. 89.

²⁹ Vatn and Vedeld, P. 'Getting ready! A study of national governance structures for REDD+' Noragric Report No. 59 April 2011, p. 3.

³⁰ Stoker (1998), p. 21.

³¹ Stoker (1998), p. 21.

³² Stoker (1998), pp. 17 and 19.

³³ Goldin (2010), pp. 195–212.

initially for participatory approaches.³⁴ An example is co-management in environmental governance, involving the sharing of power and responsibilities between the state and communities or user groups. The goal is to ensure that the people most affected by environmental decisions or problems take part in such decisions. Therefore, platforms at the lowest level, possible like the village, were formed and the people were trained and provided with an opportunity for knowledge sharing. Biermann et al. have argued that environmental problems are inherently political, hence they require effective voice and choice for local communities; for them to choose policies that they see as both equitable and effective.³⁵ This increases the legitimacy of decisions made, and when coupled with greater transparency and information disclosure, empowers individuals and communities to hold the government accountable.³⁶

2.2 *Participation as a Human Right*

It was Chambers and his contemporaries who cemented participation during the 1990s within the development pantheon.³⁷ Introducing phrases such as ‘putting the last first’, Chambers and others emphasised the need for new approaches to ensure the voices of the poor in development practice. Unfortunately, although the participation of people was ideally meant to empower poor communities through opportunities to take place in decision-making, in reality, it became a liberal co-optation mechanism where the people were brought into ‘governance’ without the intention of hearing and responding to their voices and demands. For instance, in water governance in Malawi, women together with their communities ‘participated’ through labour contributions, maintenance works, and/or the collection of fees for water use.³⁸ The collected fees were then misappropriated by politicians resulting in the disconnection of water supply.³⁹ Participation became a means to facilitate the illegitimate or unjust exercise of power that perpetuates structures of inequality and oppression.⁴⁰ Hence, at the end of the 1990s, scholars such as Cooke, Kothari, and Williams, concluded that participation had become ‘tyrannical’.⁴¹

The recognition of development as a human right and, thus, the approach to participation from a human rights-based perspective offered a better framework for

³⁴ Department for International Development (DFID) (2007), p. 6.

³⁵ Biermann et al. (2012), p. 17.

³⁶ Biermann et al. (2012), p. 16.

³⁷ Chambers (1983), Cernea (1985), Salmen (1987) and Nici and Wright (1995).

³⁸ Kwaule F. ‘Piped Supplies for Small Communities (PSSC) Project Malawi’ (1993), p. 3.

³⁹ WaterAid *Managing communal water kiosks in Malawi: experiences in water supply management in poor urban settlements in Lilongwe* (2008), p. 6.

⁴⁰ Cooke and Kothari (2002), p. 4; Leal (2010), p. 75; Midgley (2011), p. 178.

⁴¹ See generally Cooke and Kothari (2002); Williams (2004), pp. 557–578.

placing people first.⁴² The insistence on the primacy of people and their well-being as a central focus of development means that community participation was not to be valued only as an instrument to achieve a particular end, but as an end in itself—one valued for its intrinsic value. This is different from the other forms of participation discussed above. Gready points out that a human right-based approach re-politicises development work ‘as being based on rights rather than on benevolence or charity (or needs-based or involving essentially technical assistance)’ and re-claims key concepts such as participation from domestication.⁴³

Participation as a human right is guaranteed in several global and regional human rights instruments. On global instruments, the International Covenant on Civil and Political Rights (ICCPR) guarantees this right in Article 25.⁴⁴ According to the Human Rights Committee (HRC), the human right to participate lies at the core of democratic government based on the consent of the people.⁴⁵ The HRC also links the human right to participate to political self-determination which entails freedom of choice, whether regarding political status or government or pursuing development.⁴⁶ The International Court of Justice defines the right to self-determination as ‘the need to pay regard to the freely expressed will of peoples’⁴⁷ and explains that it ‘requires a free and genuine expression of the will of the peoples’.⁴⁸ The HRC established that taking part in public affairs is exerting influence or choice. It explains that this could be through public debates with freely chosen representatives or directly through organisations or associations with others. In *Marshall v Canada*, the HRC stated that the human right to participate ‘cannot be understood as meaning that any directly affected group, large or small, has the unconditional right to choose the modalities of

⁴²See UN General Assembly, Declaration on the Right to Development: resolution/adopted by the General Assembly, 4 December 1986, A/RES/41/128 that formally brought human rights to development. Development itself is recognised as an inalienable human right in Article 1.

⁴³Gready (2008), pp. 737–138.

⁴⁴United Nations International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. Adopted on 16 December 1966 and entered into force on 23 March 1976.

⁴⁵See United Nations Human Right Council General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service. 12/07/96.CCPR/C/21/Rev.1/Add.7 para 1 (GC 25).

⁴⁶See GC 25 para 2; The right to self-determination is provided for in the Art. 1 ICCPR, United Nation *Charter of the United Nations* (UN Charter) 24 October 1945, 1 UNTS XVI, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 16 December 1966, A/RES/2200. Adopted on 13 December 1996 and entered into force on 3 January 1976. ICESCR, Art. 1 provides as follows:

All peoples have the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

⁴⁷*Western Sahara*, Advisory Opinion, (1975) ICJ Reports 12, para 33.

⁴⁸*Western Sahara* (1975), para 32.

participation in the conduct of public affairs'.⁴⁹ The HRC established that in a democratic state, representatives may be relied on in the conduct of public affairs where matters affect the interests of large segments of the population or the population as a whole.⁵⁰ However, when matters affect the interest of more specific groups of society, this should be accompanied by prior consultations, such as public hearings with these specific groups.⁵¹ The HRC emphasises that the essence of the human right to participate is the exercise of power or choice.⁵²

In addition to the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises a right to participate specifically in cultural life.⁵³ In interpreting this right, the Committee on Economic Social Culture Rights (CESCR) has stated that to participate means the right to act freely or to choose.⁵⁴ Freedom of choice and influence are recognised as central tenets of the human right to participate. Article 13 of the ICESCR establishes education as an important element enabling people to participate effectively. The CESCR confirmed that education is an empowerment right, 'the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities'. Participation as a mechanism for agency and empowerment is a means through which otherwise excluded vulnerable and marginalised groups can assert their rights in resources for equitable distribution. The CESCR recognises participation as an empowerment right to challenge inequality.⁵⁵

The human right to participate emphasises the need to eliminate discrimination in opportunity to participate and requires the state to ensure legislative and other measures towards this goal.⁵⁶ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵⁷ guarantees the right of women to participate by obliging states to address the problem of discrimination against women. Discrimination undermines the opportunity to participate and influence decisions. Article 14 of the CEDAW makes specific guarantees to women in the rural areas as they face not only gender discrimination, but also discrimination based

⁴⁹ *Marshall v Canada* Communication No. 205/1986, U.N. Doc. CCPR/C/43/D/205/1986 at 40 (1991) para 5.5.

⁵⁰ *Marshall v Canada* (1991), para 5.5.

⁵¹ *Marshall v Canada* (1991), para 5.5.

⁵² GC 25, para 6–8.

⁵³ ICESCR, Art. 15(1).

⁵⁴ CESCR, General Comment on the Right to Take Part in Cultural Life as recognised in Article 15 of the Covenant, 11 December 1992, UN Doc. E/C.12/1992/SR.17 (1992) para 14 & 15(a).

⁵⁵ See for instance Committee on Economic, Social and Cultural Rights (CESCR) *General Comment No. 15 The right to water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)* 20 January 2003, E/C.12/2002/11 para 24 (GC 15).

⁵⁶ See ICCPR, Arts. 2 & 25.

⁵⁷ Articles 7, 8, 13 & 14 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13. Adopted on 18 December 1979 and entered into force on 3 September 1981.

on geographic location. CEDAW obliges states to 'take into account the particular problems faced by rural women' as well as the 'significant roles that rural women play in the economic survival of their families'.⁵⁸

Participation is constitutive of dignity as it is based on the recognition of every human being's inherent capacity to help themselves and to make decisions that affect their everyday lives.⁵⁹ In *Law v Canada*, the Supreme Court of Canada held that dignity is harmed when individuals and groups are marginalised, ignored, or devalued and denied their full place in society.⁶⁰ Writing on participation in realising economic social and cultural rights (ESCR), Chenwi argues that participation ensures that people 'are active stakeholders rather than just passive recipients of socio-economic goods and services'.⁶¹ She explains that the lack of participation results in development plans and services that are not relevant to local needs and conditions.⁶² She further points out that the lack of participation undermines democratic accountability which is essential for the effective enforcement of economic social and cultural rights.⁶³ The type of participation is not simply nominal participation but genuine participation, based on the opportunity for disadvantaged and marginalised people to have their needs reflected in policies and laws. The focus is to empower have-nots in society to effect social change and share in the benefit of society by voicing their needs.⁶⁴ CEDAW promotes substantive equality in terms of the requirement for equality in the opportunity to participate but also equality in results by requiring benefits as a result of participation.⁶⁵

In the African human rights system, the meaning of participation as opportunity and influence is evident in the case of the *Centre for Minority Rights Development and Others v Kenya (Endorois case)*.⁶⁶ The applicants alleged that there was a lack of participation in crucial decisions affecting their lands. They explained that the government had refused to register their welfare committee, a representative body of the Endorois community, thereby denying them the right to fair and legitimate consultation. The government only consulted with individuals they handpicked to lend their consent 'on behalf' of the community.⁶⁷ They, therefore, alleged that

⁵⁸ See Article 14, CEDAW.

⁵⁹ Nussbaum (2000) (2011), p. 12. See *Minister of Health NO v New Clicks South Africa (Pty) Ltd (Treatment Action Campaign as Amicus Curiae)* 2006 (1) BCLR 1 (CC) para 627. See also *Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC) where Sachs J discussing dialogue and mediation between disputing parties wrote that this promotes respect for human dignity and underlines the fact that we all live in a shared society.

⁶⁰ *Law v Canada (Minister of Employment and Immigration)* (1999) 1 SCR 497.

⁶¹ Chenwi (2011), p. 129.

⁶² Chenwi (2011), pp. 128–129.

⁶³ Chenwi (2011), pp. 128–129.

⁶⁴ Special Rapporteur Report on Poverty, para 14; GC 15, paras 16, 24 & 37(f).

⁶⁵ CEDAW, Arts. 4, 7 and 14 (2).

⁶⁶ *Centre for Minority Rights Development and Others v Kenya (Endorois case)* (2009) AHRLR 75 (ACHPR 2009) 289.

⁶⁷ *Endorois case* (2009), para 20.

consultations that took place were not in good faith or with the objective of achieving agreement or consent.⁶⁸ On participation, the African Commission on Human and Peoples' Rights (African Commission) held that the consultations undertaken with the community were inadequate and, thus, did not constitute effective participation.⁶⁹ The African Commission found that giving illiterate people documents to read was unreasonable and not helpful in ensuring their participation on the basis of equality. The African Commission stated that the 'community members were informed of the impending project as a *fait accompli*, and not given an opportunity to shape the policies or their role in the Game Reserve'.⁷⁰

The African Commission went on to establish that participation must be active, free, and meaningful, as established in the UN Declaration on Development.⁷¹ This would require fair and legitimate consultation with the affected parties through legitimate representatives of their choice, who are informed or enabled to appreciate the matters and consequences of different decisions.⁷² Finally, there must be opportunities for choice and influence of decisions. Concerning the communication that took place, the African Commission held that the consultation by the government of Kenya with the Endorois people was not sufficient.⁷³ The consultations were not conducted in a manner that effectively involved the Endorois people, leaving them 'feeling disenfranchised from a process of utmost importance to their life as a people'.⁷⁴ The government of Kenya had manipulated the Endorois people, hence ensuing confusion as to their rights or resentment that their consent had been wrongfully gained.⁷⁵ Empowerment is the ultimate goal of participation from a human rights perspective.⁷⁶ A human right to participate ensures that participation is not extractive or instrumental, but that it builds capacity, social capital, confidence, rights awareness and knowledge.⁷⁷ Participation as empowerment is closely inter-related to agency, which represents the processes by which choices are made and put into effect.⁷⁸

Furthermore, the African Commission held in the *Jawara v The Gambia* case that the right to participation is linked with the right to self-determination (following the position of the HRC).⁷⁹ The complainant was a former president of the Gambia who

⁶⁸ *Endorois* case (2009), para 274.

⁶⁹ *Endorois* case (2009), para 281.

⁷⁰ *Endorois* case (2009), para 281.

⁷¹ *Endorois* case (2009), para 283. See U.N. *Declaration on the Right to Development*, U.N. Doc. A/RES/41/128 (1986), Art. 2.3.

⁷² *Endorois* case (2009), para 282 & 292.

⁷³ *Endorois* case (2009), para 290.

⁷⁴ *Endorois* case (2009), para 297.

⁷⁵ *Endorois* case (2009), para 297.

⁷⁶ Special Rapporteur Report on Poverty, para 71.

⁷⁷ Special Rapporteur Report on Poverty, para 71.

⁷⁸ Kabeer (2005), p. 14.

⁷⁹ *Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000), para 73.

argued that the military coup had violated the right to self-determination for the people of the Gambia.⁸⁰ The African Commission agreed with the complainant that the military taking over power by force, albeit peacefully, had undermined peoples' right to freely choose and determine their political stance. The African Commission explained that the ballot was the means of exercising political choice.⁸¹

The human right to participate is recognised in several of the African human rights instruments including the African Charter on Human and Peoples' Rights (African Charter)⁸² and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Women's Protocol).⁸³ The Women's Protocol provides for women's right to participate in all decision-making processes without any form of discrimination. It calls on states to ensure that discrimination in participation is prohibited and redressed through affirmative action so that women are equal partners with men at all levels including development, implementation of policies, and decision-making.⁸⁴ The African Commission in *Legal Resources Foundation v Zambia* stated that excluding people from participation is discrimination and this violates the right to participate as stipulated in the African Charter.⁸⁵ Government should not handpick individuals to act on behalf of the people or introduce modes of participation that result in excluding relevant stakeholders from meaningfully participating as stated by the African Commission in the *Endorois* case.⁸⁶ Culturally appropriate modes and terms of engagement are particularly important in ensuring that women who have been excluded in decision-making processes are able to take part and have their voices heard. Effective representation and participation of women at all levels of decision-making on an equal basis with others provides real power in affecting the outcome of decisions. In

⁸⁰ *Jawara v The Gambia* (2000), para 72.

⁸¹ *Jawara v The Gambia* (2000), para 72–73.

⁸² African Charter on Human and Peoples' Rights (1981) Adopted on 27 June 1981 and entered into force on 21 October 1986, Art. 13.

⁸³ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2000). Adopted on 13 September 2000 and entered into force on 25 November 2005, Arts. 9 & 19 (b) (Women's Protocol).

⁸⁴ Women's Protocol, Art. 12.

⁸⁵ *Legal Resources Foundation v Zambia* (2001) AHRLR 84 (ACHPR 2001) (*Legal Resource Foundation* case).

⁸⁶ The *Endorois* case is comparable to the case of *Saramaka People v Suriname* before the Inter-American Court of Human Rights (IACHR), IACHR Series C No. 185 (2008). The case involved the Saramaka people, descendants of self-liberated African slaves who lived in a traditional way, fishing, hunting and woodworking in their traditional territory in Suriname. The Suriname government granted mining and logging concessions on their lands, without their full and effective consultation. On participation, the IACHR established that the state must ensure the effective participation of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan ... within Saramaka territory. The IACHR incorporated the right to effective and culturally appropriate participation into the right to development.

relation to this, the African Charter for Popular Participation in Development and Transformation (African Charter on Participation) defines participation as:

[I]n essence, the empowerment of the people to effectively involve themselves in creating structures and in designing policies and programmes that serve the interests of all.⁸⁷

Participation is a continuous transparent process, whereby the state provides opportunities to disadvantaged and marginalised people to take part in the formulation and implementation of policies. In this continuous process, citizens can hold the government accountable to ensure that their interest is the government's primary consideration. It is a two-way process that must be approached in good faith, void of top-down approaches, allowing for individual and collective participation with an emphasis on disadvantaged groups enabled to equally influence decisions and government being transparent. Participation must entail equity in accessing decision-making processes with specific attention on enabling women, equity in the ability to influence decisions, and equity must also be reflected in outcomes. Participation as a human right is an expression of dignity, equality, and self-government (democracy) and is grounded in the recognition of humans' inherent capacity to help themselves and to make decisions that affect their everyday lives.

It may be noted that different terms are relied on to support the type of participation discussed above. The terms used to qualify participation include, 'genuine', 'meaningful', or 'effective', which represent participation which fosters opportunities to take part or act in an empowered way as well as influence, which is the power or political force in determining decisions.⁸⁸

In summary, not all participation is equal, only real or genuine participation is power. Participation is power where the primacy concern is people specially providing a means to hear the voices of the marginalised and disadvantaged people and finding equitable solutions to enhance their ability to flourish. Participation as a human right guaranteed in international law at the global and regional level aims to empower people. The human right to participate recognises people as agents who must have power to affect outcomes through genuine participation. Participation from a human rights perspective is not extractive or instrumental, but a two-way process in good faith, void of top-down approaches but one that builds capacity, social capital, confidence, rights awareness and knowledge with specific attention on enabling women and other discriminated groups to challenge inequality.

⁸⁷ UNECA The African Charter for Popular Participation in Development and Transformation adopted in February 1990 at the International Conference on Popular Participation in the Recovery and Development Process in Africa, para 11.

⁸⁸ Chenwi (2011), pp. 129–130.

2.3 *Participation and Gender in REDD+*

Besides the human rights basis, women's participation in environmental management and gender equality, specifically in climate change and REDD+, can also be traced through international environmental law instruments. Participation is recognised in the Rio Declaration on Environment and Development (Rio Declaration) as essential for all environmental issues in Principle 10.⁸⁹ The Rio Declaration identifies three key elements to participation: access to information, opportunity to participate in decision-making processes, and effective access to judicial and administrative proceedings.⁹⁰ Besides this non-binding instrument, participation in environmental matters is recognised in several treaties such as the UNFCCC,⁹¹ the Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa,⁹² and the Convention on Access to Information, Public Participation and Decision Making and Access to Justice in Environmental Matters (Aarhus Convention).⁹³ The Cancun Safeguards under the UNFCCC identify participation as a crucial aspect of REDD+ by requiring that states implement 'full and effective participation of relevant stakeholders in particular indigenous peoples and local communities'.⁹⁴

Community participation is considered central to combatting degradation and deforestation; it is indispensable in ensuring that community needs are considered in REDD+ initiatives and in improving forest conditions.⁹⁵ Participation enables knowledge sharing and is central to ensuring better and more informed decisions.⁹⁶ Persons with interests in the utilisation, enjoyment, and valuation of resources must be included in decision-making to avoid negatively impacting the livelihoods which are dependent on forest resources. Decision-making, thus, contributes to whether a stakeholder will benefit from initiatives or not.⁹⁷ Further, and as already alluded to there is gendered use of forest resources.⁹⁸ Social variables are large determinants of levels of participation in forest and natural resources management.⁹⁹ The outcome of community participation is influenced by the social-economic dynamics of the

⁸⁹Rio Declaration on Environment and Development, 31 ILM 874 (1992).

⁹⁰See Duvic-Paoli (2012), pp. 80–105 writing that access to information is a prerequisite to meaningful participation in environmental decision-making while access to justice is a means to having decisions reviewed.

⁹¹Article 6.

⁹²33 ILM 1328 (1994), Preamble, Article 3 (a).

⁹³38 ILM 517 (1999).

⁹⁴UNFCCC, Cancun Decision 1/CP.16.

⁹⁵Macqueen et al. (2011). See also Chinangwa et al. (2017), pp. 338–367.

⁹⁶Nagoli et al. (2019), p. 3.

⁹⁷Thompson (2013), p. 5.

⁹⁸Marin and Kuriakose (2017).

⁹⁹Dubois and Lowore (2000).

communities themselves.¹⁰⁰ Accompanying any form of community participation in forest management is the fact that there are entrenched power differences. Typically, within community groups, power dynamics, including gendered structures, are prevalent.¹⁰¹ Women, in particular, experience societal, economic, and cultural inequalities, and legal impediments within the forest sector to fully and effectively participate on an equal basis with men.¹⁰² Their exclusion from participation and forest and land tenure means that initiatives do not benefit from their knowledge and perspectives; concurrently, the women do not benefit from the initiatives. A United States Agency for International Development (USAID)-funded study found that Malawian women's ability to participate meaningfully is impeded due to time constraints, weak community leadership, and limited access to and control of resources including education and land.¹⁰³ The USAID study further indicated that the lack of gender considerations in REDD+ puts women at risk of suffering higher workloads without compensation, displacement or denial of access to forests, denial of a fair share of benefits, and the widening of knowledge gaps.¹⁰⁴

Gender equality is not mentioned in the UNFCCC but through COP and different initiatives, it has subsequently been accorded special focus.¹⁰⁵ Kabaseke states that although there has been subsequent slight redress to the omission by COP and the establishment of the Women and Gender Constituency (WGC) to ensure that women's voices are captured into the UNFCCC, this has not borne many fruits.¹⁰⁶ Failure to mainstream gender in the main framework is a weakness as climate change affects livelihoods and particularly affects the livelihoods of women, especially those in rural areas, more severely due to gender. For instance, climate change may increase tensions within families, and it may increase gender-based violence. Effects of drought and flooding cause food insecurity and push women and girls into further poverty, transactional sex in exchange for goods, being trafficked into commercial sexual exploitation, and being in child and forced marriages.¹⁰⁷ Further, because of gendered forest and land use, environmental changes may increase gender disparities.¹⁰⁸ Owing to differences in roles, rights, and responsibilities, as well as use and knowledge, women and men have different experiences in relation to forests and land. Women rely more on natural resources for their livelihoods whereas

¹⁰⁰ Chinangwa et al. (2017), pp. 338–367.

¹⁰¹ Dubois and Lowore (2000).

¹⁰² James et al. (2021), pp. 860–867.

¹⁰³ United States Agency for International Development 'Protecting Ecosystems and Restoring Forests in Malawi (PERFORM) Gender Analysis and Plan' (2015), p. 4.

¹⁰⁴ PERFORM (2015), pp. 16–17.

¹⁰⁵ See Kabaseke, p. 296 providing an explanation of why gender equality was not mainstreamed in the UN FCCC and how there have been mechanisms instituted or subsequent instrument to address the initial gap; see UNFCCC CP 'Gender and climate change' FCCC/CP/2016/10/Add.2 Decision 21/CP.22.

¹⁰⁶ Kabaseke.

¹⁰⁷ Njikhho (2020), pp. 17–23.

¹⁰⁸ Njikhho (2020).

men tend to focus on profitable forest products.¹⁰⁹ These, in turn, translate into differences in the way women and men contribute to and benefit from REDD+. Accordingly, REDD+ can enhance gender equality in several ways. First, REDD+ can contribute towards mitigating the impacts of climate change, which will consequently lead to the mitigation of the effects of climate change on exacerbating gender disparities.¹¹⁰ Second, REDD+ initiatives that are designed to specifically include both women and men can address the specific needs of both women and men, resulting in the operation of programmes to mitigate the gendered impacts of climate change.¹¹¹ Third, the implementation of REDD+ can enhance gender equality when policies specifically target women because the evidence reveals that women tend to contribute less to forest management and decision-making on the use of forest resources.¹¹² By specifically targeting women, the implementation of REDD+ can improve gender equality in forest decision-making, participation, and management. This may be done, for instance, through the recognition of women as stakeholders in REDD+ policy-making on an equal basis with men, and the creation of spaces and capacities for them to engage in the design and implementation of REDD+ policies and projects.¹¹³ Further, REDD+ mechanisms must recognise the differentiated gender roles, rights, responsibilities, and knowledge between women and men as they participate. Sustainable Development Goal 5 is to 'achieve gender equality and empower all women and girls'.¹¹⁴ Full and effective participation of women, including equal opportunities for leadership in all aspects of life, is recognised as one of the key ways of achieving the goal.¹¹⁵

3 Malawi REDD+ Governance

Malawi's vulnerability to climate change is perhaps the basis for its commitment to preparing for and implementing REDD+. REDD+ Malawi's activities can be traced back to 2006 and to two organisations: Forestry Research Institute of Malawi (FRIM) and Leadership for Environment and Development (LEAD) Southern Africa.¹¹⁶ The first REDD+ pilot projects with two sites were commenced in 2008. The projects were funded by United States Agency for International Development (USAID) to benefit from carbon finance as motivation for forest protection

¹⁰⁹ Marin and Kuriakose (2017), p. 2.

¹¹⁰ Marin and Kuriakose (2017).

¹¹¹ Marin and Kuriakose (2017).

¹¹² Marin and Kuriakose (2017).

¹¹³ Setyowati (2012), p. 59.

¹¹⁴ UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1: <https://www.refworld.org/docid/57b6e3e44.html>.

¹¹⁵ Goal 5.5.

¹¹⁶ Troell and Banda (2016), p. 3.

and scaling up and/or more co-management agreements.¹¹⁷ The agreement was made between the Department of Forestry (DoF) and communities surrounding Mkuwazi Forest Reserve and Thazima Gate of the Nyika National Park. The purpose was to ensure community participation in the protection, control, and sustainable utilisation of forest resources.¹¹⁸ Several projects have since been undertaken. In 2012, the Malawi REDD+ Readiness Programme (MRRP) was established with support from USAID, and the United States Forest Service (USFS) which partnered with the government.¹¹⁹ The MRRP has three primary objectives: Malawi's membership into the multilateral REDD+ body, the development of a draft REDD+ Strategy, and building capacity in relevant institutions. In 2014, Malawi became a partner of the UN-REDD+ Programme, which assists governments in their preparation for REDD+ activities. To date, the MRRP has developed a REDD+ action plan, established the Malawi REDD+ Programme (MRP) and a REDD+ governance framework among other things.¹²⁰

Although REDD+ is still in its formative stages, the work it has carried out so far based on legal, policy, and institutional arrangements (besides the implemented projects) gives insight into governance architecture.¹²¹ The following discussion considers the legal and institutional framework with a focus on whether women are guaranteed both opportunity and voice to ensure legitimacy and equity.

3.1 *Legal and Policy Framework*

Treaties ratified by Malawi after the adoption of the Constitution on 18 May 1994 become binding on Malawi after being domesticated by an Act of Parliament.¹²² This requirement establishes Malawi as a dualistic state where international law does not automatically become part of the binding law domestically.¹²³ However, the Constitution provides a different rule on agreements entered into before the adoption of the Constitution. Such agreements, according to Section 211 (2), automatically became binding on Malawi unless otherwise provided for by an Act of Parliament.¹²⁴

¹¹⁷ Kafumbata et al. (2014).

¹¹⁸ Kafumbata et al. (2014).

¹¹⁹ Troell and Banda (2016), p. 4.

¹²⁰ Troell and Banda (2016), p. 4.

¹²¹ Zelli et al. (2019), p. 12 stating that REDD+ pilot projects are part of national REDD+ programmes.

¹²² Constitution of Malawi 1995, Section 211 (1).

¹²³ *Chihana v Republic* MSCA Criminal Appeal No. 9 of 1992 (unreported) stressing that a treaty ratified by Malawi requires domestication through an Act of Parliament to become binding domestically. See also Brownie I *Principles of Public Law* 7th ed (2008).

¹²⁴ Constitution of Malawi 1995, Section 211(2) considers domesticated all ratified international agreement before the commencement of the Constitution whether they were actually domesticated by an Act of Parliament or not. See Maluwa T *International Law in Post-Colonial Africa* (1999)

International agreements ratified prior to 1994 include ICCPR,¹²⁵ ICESCR,¹²⁶ CEDAW,¹²⁷ and the Africa Charter.¹²⁸ Because these instruments form part of domestic law, they can all be invoked during litigation and have the same status as any other domestic legislation passed by Parliament.¹²⁹ Malawi has undertaken to realise the rights guaranteed in these instruments. As discussed above, the human right to participate is entrenched in these instruments and requires equality between men and women in opportunity, access, and influence of the outcomes of participation. Furthermore, the UNFCCC is part of the law in Malawi as it was ratified before the 1994 Constitution.¹³⁰ Malawi has also ratified the Kyoto Protocol and Paris Agreement.¹³¹

A commitment to gender equality and the human rights to participate and to develop in an environmentally sustainable manner can further be seen through the guarantees in the Constitution of the Republic of Malawi, the supreme law of the land.¹³² The right to gender equality is enshrined in Section 20 of the Constitution, which upholds the principle of equal rights for men and women and prohibits any discrimination against all persons. Gender equality is also recognised as a fundamental principle and a goal for the nation in Section 13 which provides that gender equality is achieved when there is full participation of women on an equal basis with men in all spheres of life. The section recognises the lack of parity in participation as a major manifestation of gender discrimination affecting women. Furthermore, the right to development provides a firm basis for REDD+ in Malawi besides the recognised right to a healthy environment in Section 13. Kapindu has argued that the right to development in the Constitution provides a basis for many ESCR not explicitly recognised in the catalogue of human rights included in the Bill of Rights in the Constitution.¹³³ Further, the case of *Gable Masangano v Attorney General* established principles of national policy as being of great importance in enforcing ESCR as they can be relied on to explain the content of the ESCR guaranteed in the Bill of Rights.¹³⁴

chap. 6 on protecting human rights in the constitution of Malawi (specifically 153–159). See also *S Kalinda v Limbe Tobacco Limited* Civil Case No. 542 of 1995 (unreported) Mwaungulu J.

¹²⁵Acceded to on 22 December 1993.

¹²⁶Acceded to on 22 December 1993.

¹²⁷Ratified on 12 March 1987.

¹²⁸Ratified on 17 November 1989.

¹²⁹In *S Kalinda v Limbe Tobacco Limited*, the court held that international law human rights are not supreme over the Constitutional guaranteed rights. This is because the Constitution is the supreme law of the land and the international agreement became part of the domestic law at the same level of other Acts of Parliament. See Section 48(2) of the Constitution, providing for primacy of an Act of Parliament over all other forms of law, but subject to the Constitution.

¹³⁰21 April 1994.

¹³¹Ratified on 26 October 2001.

¹³²Constitution of Malawi 1995, Section 5. See also Sections 15–42 (Chap IV).

¹³³Kapindu (2013), p. 125.

¹³⁴Constitutional Case No. 15 of 2007.

The Constitution provides for the establishment of a local government system for the promotion of local democracy, transparency, accountability, and participation.¹³⁵ The local government system entails having decentralised political and administrative authorities, primarily to democratise state power and ensure participatory democracy and decision-making at the grassroots level.¹³⁶ In this system, decisions must be made at the lowest level possible to ensure that democratic principles of accountability, transparency, and participation of all people in decisions and development processes become a reality while promoting legitimacy, effectiveness, efficiency, and equity.¹³⁷ The Guidebook on the Local Government System in Malawi specifically states that the main role of citizens in local government is ‘to participate in policy formulation, to take part in the implementation of development activities and to demand transparency, accountability and services from their council’.¹³⁸ It prescribes that women and men equally participate in the different platforms and even requires that there should be 50:50 representation in leadership positions in some platforms at lower levels of local government.¹³⁹

There are various sectoral laws and policies which are also relevant to REDD+ and require community participation. In the review that follows, the focus is on the most relevant laws and policies providing a basis for REDD+, community participation, and gender equality. REDD+ is specifically mentioned in the National Forest Policy 2016 (NFP)¹⁴⁰ and the National Climate Change Management Policy.¹⁴¹ It is regarded as a mechanism for climate change mitigation that provides incentives to communities through access to carbon financing. Besides these two policies, the Forestry Act,¹⁴² the National Environment Policy (NEP)¹⁴³ and the Environment Management Act (EMA),¹⁴⁴ among other regulatory frameworks, provide a strong basis in terms of provisions, principles, and goals that support REDD+.

Community participation is the emphasised approach in all the statutes and policies as regards the environment, generally, and natural resources and forest management, specifically. The Forestry Act, in Sections 25 and 55, establishes

¹³⁵ Constitution of Malawi 1995, Section 146. The National Decentralisation Policy of 1998 and the Local Government Act No. 42 of 1998 operationalised the constitutional provision.

¹³⁶ Local Government Act s 3. See also Chasukwa and Chinsinga (2013), p. 357.

¹³⁷ National Decentralisation Policy (2000), p. 2.

¹³⁸ Government of Malawi (2013) Guidebook on the Local Government System in Malawi, the Ministry of Local Government and Rural Development, p. 28.

¹³⁹ Government of Malawi (2013), p. 38.

¹⁴⁰ National Forestry Policy (2016), p. 32.

¹⁴¹ GoM National Climate Change Management Policy (2016) 11. Available at <https://reliefweb.int/sites/reliefweb.int/files/resources/NCCM-Policy-Final-06-11-2016.pdf>.

¹⁴² Forestry Act No. 4 of 1997. The Act provides for the participatory management and conservation of forestry resources in Malawi.

¹⁴³ GoM *National Environment Policy* (2004). Available at <http://extwprlegs1.fao.org/docs/pdf/mlw169499.pdf>.

¹⁴⁴ Environment Management Act No. 19 of 2017 providing for the protection, conservation, sustainable utilisation and management of the environment and natural resources.

community participation and, particularly, co-management of forest resources. The objective is the promotion of communities' empowerment for sustainable management, conservation, and utilisation of forest resources and benefit sharing.¹⁴⁵ The communities must participate in making rules and regulations for the forest at both the local and national levels.¹⁴⁶ Similarly, the NFP emphasises local community participation in forest conservation and management.¹⁴⁷ The community participation envisaged is one where there are partnerships of communities with the private sector, government, and civil society and incentives for community-based forest management. Community participation is recognised as crucial for improved protection, conservation, management, and sustainable utilisation of Malawi's natural resources.¹⁴⁸ Although the NEP recognises the instrumental value of participation, it does put in place strategies to ensure meaningful participation that guarantees taking part in decision-making processes and ensuring substantial benefit goes to communities.¹⁴⁹ The EMA recognises the right to participate in the management of the environment and natural resources and also guarantees equitable sharing of benefits and costs of sustainable use of the environment and natural resources.¹⁵⁰ The Act also mandates the Environmental Protection Authority to establish guidelines and regulations to realise the right to participate in environmental management.¹⁵¹ Furthermore, all duty-bearers in the field of environmental management are mandated to promote public participation in the development and implementation of environmental policies.¹⁵²

Gender equality is promoted in the Gender Equality Act which proscribes all forms of gender discrimination in both public and private spheres as criminally sanctionable behaviour.¹⁵³ The NFP recognises gender discrimination in the forest sector but does not specifically provide guidance on how to deal with it or how to ensure the participation of women. Further, the NEP addresses gender discrimination by requiring that gender be mainstreamed into all environmental planning levels and that women be considered key stakeholders in the sustainable use of natural

¹⁴⁵ See Rule 3 of Forest (Community Participation) Rules 2001.

¹⁴⁶ See also Rule 9 of Forest (Community Participation) Rules requiring that communities must be consulted where regulations or subsidiary legislation under the Forestry Act are to be made or amended except where it is unnecessary or impractical to have such a requirement.

¹⁴⁷ National Forestry Policy (2016), pp. 15 & 32.

¹⁴⁸ National Environment Policy (2004), paras 2.2.7, 2.3(h), 4.6 (b). Also, it states that public participation in environmental decision-making helps to build consensus and strengthen public support for environmental decisions and programmes.

¹⁴⁹ National Environment Policy (2004) para 4.1(i) stating that local communities that are dependent on natural resources must take a leading role in identifying, planning, implementing and benefiting from sustainable management of natural resources. See also para 4.6(b).

¹⁵⁰ See EMA, Sections 3(i) and 5(1)(a).

¹⁵¹ EMA, Section 5(2).

¹⁵² EMA, Section 3(2) €.

¹⁵³ Gender Equality Act No. 3 of 2013, see Sections 4 and 5.

resources.¹⁵⁴ It provides for gender training and gender analysis methodologies and tools in environmental and natural resources management. Other strategies provided for include public awareness campaigns, facilitation of women's participation in environmental decision-making, resource ownership and management, collaboration with institutions responsible for gender and collecting gender-disaggregated data. The EMA also mandates mainstreaming gender into environmental programmes but the Forestry Act is silent on gender.

Overall, the legal framework broadly provides for norms that promote the establishment of the REDD+ programme and recognition and guarantees for participation and gender equality that are essential for REDD+ governance, especially for legitimacy and equity. Equity as a requirement, especially starting with mainstreaming gender equality by consistently recognising all laws and policies, would strengthen the commitment and implementation in the different sectors and spheres of life. The emphasis on community participation and recognition that this is for empowerment to influence decisions at the different levels including policy formulation and implementation is in line with human right to participate. Laws, policies and guidelines recognises people especially women as agents that must be have opportunity to participate and influence outcomes that benefit them. The legal framework is sufficient for REDD+ governance that promotes women's participation and equitable outcomes.

3.2 Institutional Arrangement: Opportunity to Participate and Power to Influence

Troell and Banda hold that the existence of institutions should be to ensure that rights are allocated and protected in an equitable and accountable manner and that rights holders have meaningful avenues for addressing challenges to their rights through formal and/or informal dispute resolution mechanisms.¹⁵⁵ Overall, there are multiple institutions in Malawi relevant to the REDD+ programme with some created seemingly haphazardly outside regulatory frameworks and with inadequate and inappropriate arrangements posing a challenge to the promotion of legitimacy and equity.¹⁵⁶

The structure for REDD+ in Malawi has been established primarily within the Department of Forestry (DoF), which is housed in the Ministry of Natural Resources, Energy and Mining (MNREM).¹⁵⁷ The DoF is originally and primarily responsible for managing and protecting Malawi's forest¹⁵⁸ and it now houses the REDD+ secretariat and is designated as the REDD+ focal point under UNFCCC.

¹⁵⁴National Environment Policy (2004) paras 2.3(d), 4.8 (a) and 4.8.2.

¹⁵⁵Troell and Banda (2016), p. 10.

¹⁵⁶Troell and Banda (2016), p. 24.

¹⁵⁷Troell and Banda (2016).

¹⁵⁸See the Forestry Act.

The REDD+ programme has taken a top-down approach in its development as it starts at a national scale as opposed to starting at the subnational level and then gradually expanding. This is because of the country's largely centralised government structure and relatively small size. Since becoming the REDD+ secretariat in 2012, the DoF has led in the development of relevant documents and measures (including initial drafts of the national REDD+ action plan.), as well as in the identification of targets and the prioritisation of key activities. With funding from USAID and the International Program of the United States Forest Service (USFS-IP), a three-year Malawi REDD+ Readiness Programme (MRRP) was established to support the Malawi REDD+ Programme. A REDD+ experts Group (RExG) consisting of government, civil society, donors, and private sector representatives oversaw and guided the REDD+ secretariat and three technical working groups on communications and awareness, governance and policy, and, science and technology.¹⁵⁹ These structures, although in the DoF, were found wanting in terms of being integrated into general decision-making and management structures of the DoF and other government planning and implementing processes.¹⁶⁰ The RExG reports to the National Technical Committee on Climate Change (NTCCC) and the NTCCC, in turn, reports to National Steering Committee on Climate Change (NSCCC). Both the NTCCC and NSCCC are technical forums that have specialists from the government. The roles and responsibilities of these and other institutions, as well as the internal arrangements for collaboration and meaningful participation, directly or through representatives, are not clear as pointed out by Troell and Banda.¹⁶¹

Besides the DoF, there are two other main institutions at national level which are relevant to forestry and REDD+. The first is the Forest Management Board which was established by the Forestry Act to provide advice to the minister on all matters related to forestry and tree management.¹⁶² It consists of technocrats (principal secretaries and directors) from government agencies, parastatals, and various stakeholders as additional members appointed by the Minister of MNREM. According to Troell and Banda writing in 2016, the Board was conceived as a multi-stakeholder mechanism for oversight and coordination but it has not operated as such as it rarely met since its establishment and when it did, it was concerning issues of finance through the Forest Management and Development Fund.¹⁶³ The second other main institution is the Forest Research Institute of Malawi (FRIM) under the DoF, which conducts operational forestry and stakeholder-oriented research on sustainable management, utilisation, and conservation of trees and forests. The goal of FRIM is to contribute to improving the welfare of the people of Malawi by generating usable technologies and providing information.¹⁶⁴

¹⁵⁹Troell and Banda (2016), p. 10.

¹⁶⁰Troell and Banda (2016), p. 21.

¹⁶¹Troell and Banda (2016), p. 21.

¹⁶²Section 15 of the Forestry Act.

¹⁶³Troell and Banda (2016), p. 22.

¹⁶⁴<http://www.sdn.org.mw/frim/>.

Notably there is no cross-sectoral coordination between REDD+ agencies and the Ministry of Gender, Children Disability and Social Welfare responsible for gender mainstreaming. Gender mainstreaming would ensure inclusion of gender-sensitive safeguards in the development of national REDD+ programmes and a gender-transformative strategy for the advancement of gender equality and safeguarding women's rights.¹⁶⁵ The gender profile for personnel in the above-named institutions illustrates that the role of women in decision-making is still very limited. First, in government males generally dominate, taking up to 75% of decision-making positions and 63% of non-decision-making positions.¹⁶⁶ The NSCCC had only 30% females as members with both co-chairs being males in 2020.¹⁶⁷ This is similarly the position at the global level as studies have found that women are generally less likely to be in positions of power in governments and organisations tasked with planning for and responding to climate change.¹⁶⁸ It is believed that women leaders are often more likely than their male colleagues to act for women or women's interests.¹⁶⁹ Poor representation of women, lack of responsible gender mainstreaming personnel or focal point would impede concern for gender issues and implementation of gender strategies among the national REDD+ institutions. The national level institutions and their composition therefore does not provide a strong indication for women's opportunity and voice in REDD+ Malawi.

There are also several institutions at district and local level. The first is the District Executive Committee (DEC) which provides policy and programming guidance to the District Commissioner and the District Assembly. It consists of technical personnel from the District Council, sectoral departments, and civil society organisations. One subcommittee of DEC is the District Environment Subcommittee (DESC). DESC membership consists of sectoral district officers, including district forestry officers (DFOs). The DESC is responsible for situational analysis and the production of action plans for natural resources and environmental management, provision of technical advice to the district council, awareness raising, and capacity development for sustainable resource management. There are three regional forestry offices and DFOs in all designated districts to support, advice, plan, and implement forestry activities for conservation and sustainability. The DFOs are also specifically responsible for supporting and corroborating with traditional leaders, civil society, and community groups and institutions in conserving and managing forests and the environment.

The traditional authority level has area development committees (ADCs) and village development committees (VDCs). The ADCs are composed of traditional

¹⁶⁵ See Gama et al. (2016), p. 4.

¹⁶⁶ Government of Malawi *Periodic Report on the Africa Charter on Human and People's Rights and the Maputo Protocol* (2019), pp. 9–90.

¹⁶⁷ National Steering Committee on Climate Change (NSCCC), Minutes of the 22nd NSCCC, Lilongwe 2020.

¹⁶⁸ Beaumier et al. (2015), pp. 550–559; Sultana (2018), pp. 17–33.

¹⁶⁹ Angevine (2017), pp. 98–110.

leaders at all levels (the traditional authority, village head-persons, and sub-traditional authorities), members of Parliament, councillors, and district council representatives. The ADCs are responsible for forming working groups within VDCs and identifying environmental and natural resources issues to be addressed. VDCs are responsible for community and resource mobilisation for natural resource management to lead environmental action planning. Besides these institutions, there are also village natural resource management committees (VNRMCs) which are the institutional mechanism for managing village forest areas (VFAs) as established under the Forestry Act. Members of the community are elected into the VNRMCs and they are responsible for managing and utilising VFAs. This is meant to be done through an agreement with the Director of Forestry who may specify practices, the roles of the DoF, or the expenditure of revenue provided. Without this agreement, the VFA may be managed by the DoF.¹⁷⁰ The VNRMCs are envisioned as a mechanism for participatory forest management. Development partner-funded programmes also introduce institutional structures such as local forestry organisations (LFOs) under the European Union funded Integrated Forest Management and Sustainable Livelihoods Programme (IFMSP). An LFO consists of a group of individuals, households, families or communities who have come together with a common interest in managing trees, forests, and forest resources.¹⁷¹ Such institutions are deemed as community initiatives envisaged under the Forestry (Community Participation) Rules (2001), although they are not necessarily an initiative by the communities themselves. Troell and Banda find that institutions created outside legislation have the potential to undermine consistency and accountability toward the established goals in their establishment and functioning.¹⁷² The Environmental Affairs Department (EAD), under MNREM, has primary responsibility for the supervision and coordination of matters relating to the environment pursuant to the National Environmental Policy and the EEMA. At both district and sub-district levels, the EAD has local institutions that oversee the implementation or management of environmental and natural resources.¹⁷³

The many platforms at the local level are an opportunity for individual and collective agency to advance community needs in decision-making processes for REDD+ and related initiatives. There are multiple levels of institutions for community participation and to influence the development and implementation of policies and projects. The link between these local government institutions and national government is through DoF which is the REDD+ secretariat and focal point under UNFCCC. Chiweza and Hussein establish that there is higher women's participation and influence of decisions at the lowest level institutions such as VDCs and

¹⁷⁰Troell and Banda (2016), p. 24.

¹⁷¹Troell and Banda (2016), p. 24.

¹⁷²Troell and Banda (2016), p. 24.

¹⁷³It also has village, area, and district environmental committees for the management of environment and natural resources, in accordance with the National Decentralization Policy and the Local Government Act, 1998 and the EMA.

ADCs.¹⁷⁴ These platforms provide opportunity to practice and learn how to articulate issues and organise for common causes and interests. These institutions also have more women represented in leadership positions and in the members because of government's prescriptions on the composition of the committees. Although women leadership, does not automatically translate to greater action or influence towards the promotion of women's rights, the institutional arrangement for equal representation and leadership offers women opportunity to participate and use position for influence. The women's actual empowerment and representation of women's issues in these participatory spaces and leadership positions is however influenced by many other factors and motivations.¹⁷⁵ At the high levels of local government institutions, women's participation is limited like at the national level institutions. Besides the employed members, the elected members who are not subject to any gender quota are dominated by males.¹⁷⁶ In 2014, a total of 17.4% of women contested in local government elections leading to minimal representation of women as only 13.4% got elected.¹⁷⁷ In 2019, 22.6% of local council candidates were female and 23% are now elected members of local government candidates are women. A human right to participate and gender equality would require that measures including legal prescriptions for gender quotas and also appropriate capacity and support be put in place for meaningful participation for women at all levels.

Too many local institutions for community participation, as opined by Troell and Banda, may result in the participation fatigue of local-level stakeholders who are faced with multiple institutions working on natural resource issues.¹⁷⁸ There are overlaps of mandate, duplication of efforts, and investments that are not targeted and effective.¹⁷⁹ There are no clear mechanisms established in the institutional structures for ensuring linkages and accountability in the local and national institutions. Their overreliance on experts and their technical knowledge in the MRP at the top and the lack of proper mechanisms in managing and guaranteeing that there is input from the local level point to limited opportunity to exercise choice, although there are many platforms for participation. The formulation and establishment of these forums and their lack of clear guidance or regulation risk promotion of participation that serves only to ensure its instrumental function and not legitimacy through opportunity to influence decisions and secure equitable outcomes for the communities. Such institutional architecture will undermine women's agency to gain power through participation and challenge inequalities experienced in society, specifically within REDD+, if there is no change in the current approach.

¹⁷⁴ Chiweza, AL, Entry points for gender and local governance, (Draft final Report for UN Women, Lilongwe, 2015) and Hussein (2021), pp. 961–962.

¹⁷⁵ Chiweza (2021, 2015).

¹⁷⁶ Chiweza (2021, 2015); Hussein (2021), pp. 958–960.

¹⁷⁷ The commonwealth (2019) Malawi election is big win for women, says gender expert. Available at <https://thecommonwealth.org/news/malawi-election-big-win-women-says-gender-expert>.

¹⁷⁸ Troell and Banda (2016), p. 27.

¹⁷⁹ Troell and Banda (2016), p. 28.

Opportunity to participate and power to influence are undermined by the above-mentioned institutional weaknesses. Women's meaningful participation that affirms dignity and equitable outcomes due to real opportunity to have interests and needs considered when there is voice and influence is not guaranteed. The community platforms do not always result into voice and influence into national processes as there is poor coordination and linkages with national platforms that have preference to experts and technical knowledge resulting into top down solutions or designs and implements of REDD+ in Malawi. Institutional arrangements must be reviewed and provided with proper internal and external mechanisms and coordination to realise meaningful participation that guarantees voice and influence.

4 Conclusion and Recommendations

Governance of the Malawi REDD+ programme based on gender equality and the human right to participate has the potential to impact women's lives positively. Women are most affected by climate change and the depletion of natural resources such as forests or trees that they rely on for livelihoods and survival. Their recognition as crucial stakeholders and their effective participation through gender-sensitive mechanisms that guarantee their influence in decision-making processes and benefit from outcomes must be among the guiding principles for REDD+ governance. Adopting this approach in REDD+ governance would contribute to the success of the programme because of legitimacy and equity which are important components for the successful implementation of REDD+.

Malawi's legal and institutional framework recognises the important role of community participation and specifically women's participation and voice for legitimacy and equitable results. The legal environment addresses gender discrimination and requirements for women's opportunity to, access, and equitable outcomes in participatory platforms. The institutional framework, however, bears a great risk to realising women's participation in REDD+ governance due to a lack of adherence to regulatory frameworks resulting in multiple and uncoordinated platforms established in a top-down manner. The institutional landscape reveals the potential of perpetuating participation void of its power and, thus, undermining legitimacy and equity, and ultimately, women's right to participate in REDD+ governance.

As a way forward for realising women's right to participate in REDD+ governance, I recommend institutional review and coordination for real opportunity to influence decisions and gendered outcomes. There should be a system of participatory modalities that guarantee wide participation accompanied with mechanisms that ensure that the voice of the women is heard. Gender must be mainstreamed throughout all processes and institutional arrangement that are coordinated and consistent monitored and supported with all relevant financial and capable human resource. Promoting genuine participation will also require a necessary institutional frame that links the different relevant local government institutions and central government with clear mechanisms for accountability so that there is an incentive for government

to act. There must also be strategic litigation campaigns based on the justiciable rights to equality and participation. The chapter has established that both these rights exist in Malawian law and must thus be used by people as a basis for strategic litigation campaign. I recommend that NGOs actively pursue this possibility. With the right community that has suffered from lack genuine participation in implementing or benefiting from REDD+ projects or policies within a specified context of processes must challenge the inadequacies of the participation that offers no real power to affect outcomes.

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