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## The Gendered Face of Climate Change: Exploring the Impact of Climate Change on Gender-Based Violence and the Role of State and Non-State Actors in Effecting Climate Justice

Hannah Wilson

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# THE GENDERED FACE OF CLIMATE CHANGE: EXPLORING THE IMPACT OF CLIMATE CHANGE ON GENDER-BASED VIOLENCE AND THE ROLE OF STATE AND NON-STATE ACTORS IN EFFECTING CLIMATE JUSTICE

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## I. INTRODUCTION

Climate change affects men and women differently.<sup>1</sup> While some individual women may be less vulnerable to climate change than some men, the global perpetuation of discrimination, inequality, patriarchal structures, and systematic barriers contribute to an overall higher risk of women experiencing harmful effects of climate change. International human rights law prohibits discrimination on the basis of gender.<sup>2</sup> However, in practice, systematic discrimination, harmful stereotypes, and social, economic and political barriers related to gender can lead to varied climate change impacts with respect to health, food security, livelihoods and human mobility, and more, which may significantly limit women's and girls' adaptive ability in the face of climate change.<sup>3</sup> Such barriers include limited or inequitable access to financial assets and services, education, land, resources and decision-making processes, among many others. This reality is even starker for women and girls who face multiple and intersecting forms of discrimination; particularly those of lower socio-

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1. See, e.g., *Analytical Study on Gender-Responsive Climate Action for the Full and Effective Enjoyment of the Rights of Women*, Rep. of the Off. of the U.N. High Comm'r for Hum. Rts. (OHCHR) on its Forty-First Session, ¶ 4, U.N. Doc. A/HRC/41/26 (May 1, 2019) [hereinafter *Analytical Study on Gender-Responsive Climate Action*]; U.N. Comm. for the Elimination of Discrimination Against Women, *General Recommendation No. 37 on Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change*, ¶ 2, CEDAW/C/GC/37 (Mar. 13, 2018) [hereinafter *General Recommendation No. 37*].

2. Convention on the Elimination of All Forms of Discrimination Against Women art. 2, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

3. *Analytical Study on Gender-Responsive Climate Action*, *supra* note 1, ¶ 4. See also David R. Boyd (Special Rapporteur), *Women, Girls and the Right to a Clean, Healthy and Sustainable Environment*, ¶ 13, U.N. Doc. A/HRC/52/33 (Jan. 5, 2023).

economic status, rural women and girls,<sup>4</sup> and older women.<sup>5</sup> As such, climate change perpetuates gender inequality. In turn, harmful gender stereotypes and entrenched forms of structural discrimination often significantly hinder women's ability to meaningfully participate in climate action.<sup>6</sup> Addressing climate change, including its gendered impacts, is therefore essential to the promotion and protection of the rights of women and girls.

While it is accepted that climate change has a significant impact on people's enjoyment of a range of fundamental human rights guaranteed under international and regional human rights law, including the right to food, water, and adequate housing,<sup>7</sup> less obvious and arguably less acknowledged is the effect of climate change in increasing the risks of sexual- and gender-based violence against women and girls. Aside from the immediate and devastating economic and social impacts on women and girls, it could also be said that climate change is an indirect catalyst for sexual- and gender-based violence, which is both a symptom of gender-inequality and a tool used to reinforce the inequitable status quo.<sup>8</sup> The Committee on the Elimination of Discrimination Against Women (CEDAW Committee) acknowledged in their *General Recommendation No. 37* that situations of disaster, degradation, and destruction of natural resources are factors that can put women and girls at a heightened chance of suffering violence;<sup>9</sup> so too, more recently, did the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.<sup>10</sup> Less visible, however, is the impact of the so-called slow-onset environmental

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4. *General Recommendation No. 37*, *supra* note 1, ¶ 2.

5. U.N. Comm. for the Elimination of Discrimination Against Women, *General Recommendation No. 27 on Older Women and Protection of Their Human Rights*, ¶ 25, CEDAW/C/GC/27 (Dec. 16, 2010) [hereinafter *General Recommendation No. 27*].

6. *Analytical Study on Gender-Responsive Climate Action*, *supra* note 1, ¶ 5.

7. *Id.* U.N. Off. of the High Comm'r for Human Rights, Submission to the 21st Conference of the Parties to the U.N. Framework Convention on Climate Change, *Understanding Human Rights and Climate Change*, at 2 (2015) [hereinafter *Understanding Human Rights and Climate Change*], <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf>.

8. *Analytical Study on Gender-Responsive Climate Action*, *supra* note 1, ¶ 16.

9. *General Recommendation No. 37*, *supra* note 1, ¶ 5.

10. Boyd, *supra* note 3, ¶ 49.

stressors.<sup>11</sup> As a result of these stressors, gender-based violence may be employed as a means of control, particularly as access to and enjoyment of land and natural resources becomes more challenging due to violence aimed at depriving women of their rights over and ability to access, control, manage and benefit from natural resources.<sup>12</sup>

Pervasive gender-based violence and environmental destruction impact the security and well-being of nations, communities and individuals, jeopardising progress towards developmental goals and contributing to the continuation of cycles of vulnerability at all levels.<sup>13</sup> Despite some progress identifying the intersections between gender-based violence and the environment, there remains a lack of focus on how environmental degradation, and climate change risks in particular, contribute to gender-based violence. States (as duty-bearers) have an affirmative obligation to take effective measures to prevent and redress these climate impacts, and as such, to mitigate the impacts of climate change, and to ensure that all human beings (as rights-holders) have the necessary capacity to adapt to the climate crisis.<sup>14</sup> There is therefore a pressing need for appreciation of the nexus between climate change and sexual and gender-based violence, not only in situations of disaster, but also in the context of slow-onset climate change effects across the world.

This article seeks to outline the need for States to develop integrated

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11. The term “slow onset climate change” is used in the 2018 Annual report of the United Nations High Commissioner, “[t]he slow onset effects of climate change and human rights protection for cross-border migrants,” to explain how climate change and, more importantly, the slow onset effects of climate change can have a devastating impact on a wide variety of human rights, interrupting the distribution of food supplies, affecting access to water, destroying livelihoods and heightening situations of poverty. The report is mainly focused, however, on the impact of slow onset effects of climate change on migration and does not specifically address the impact on violence against women and girls. Off. of the U.N. High Comm’r for Hum. Rts., *The Slow Onset Effects of Climate Change and Human Rights for Cross-Border Migrants*, ¶ 2, U.N. Doc. A/37/CRP.4 (Mar. 22, 2018).

12. ITZÁ CASTAÑEDA CAMEY ET AL., GENDER-BASED VIOLENCE AND ENVIRONMENT LINKAGES: THE VIOLENCE OF INEQUALITY 138 (Jamie Wen ed., 2020), <https://portals.iucn.org/library/sites/library/files/documents/2020-002-En.pdf>.

13. *Analytical Study on Gender-Responsive Climate Action*, *supra* note 1, ¶¶ 18–21.

14. *Understanding Human Rights and Climate Change*, *supra* note 7, at 2.

policies and practices to address gender-based violence within the context of climate change. Additionally, this article will address both existing and developing risk factors for all forms gender-based violence against women and girls within the context of climate-related disaster and risk reduction, and promoting women's participation and leadership in their development. By first examining the gendered impacts of climate change on women and girls, the article then examines the due diligence obligations on States to both mitigate climate change impacts and tackle violence against women and girls under international human rights law, highlighting the need for an integrated, gender sensitive approach to this issue and emphasising the important role of the international human rights mechanisms and, particularly, the U.N. treaty bodies in addressing this issue.

## II. THE NEXUS BETWEEN CLIMATE CHANGE AND GENDER-BASED VIOLENCE

As the CEDAW Committee and the U.N. Human Rights Committee, *inter alia*, have emphasized, humanitarian crises and extreme weather events, many of which triggered by changes in the climate, leave women and girls at a heightened risk of suffering gender-based violence.<sup>15</sup> In many areas of the world, women's dependence on natural resources and agriculture for their livelihoods and their families' nutrition, coupled with their lack of control and ownership over land and resources, as well as discriminatory norms, means that they are less able to respond to and recover from climate

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15. For example, in Haiti, where hundreds of cases of rape and sexual violence were recorded following the earthquake in January 2010. See AMNESTY INT'L, AFTERSHOCKS: WOMEN SPEAK OUT AGAINST SEXUAL VIOLENCE IN HAITI'S CAMPS 5, AI INDEX AMR 36/001/2011 (Jan. 6, 2011), <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr360012011en.pdf>. Additionally, Tafea Province, Vanuatu, in the South Pacific, a local women's counselling centre reported a 300% increase in new domestic violence cases after two tropical cyclones hit the area in 2011. Cases of gender-based violence also emerged in the Solomon Islands following a tsunami in 2007, where there were reports of men loitering around bath facilities used by women and girls in evacuation camps. U.N. WOMEN, TIME TO ACT ON GENDER, CLIMATE CHANGE AND DISASTER RISK REDUCTION: AN OVERVIEW OF PROGRESS IN THE PACIFIC REGION WITH EVIDENCE FROM THE REPUBLIC OF THE MARSHALL ISLANDS, VANUATU AND SAMOA 26 (Nov. 2016), <https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEA/Docs/Publications/2016/11/unw-time-to-act-r2-h.pdf>.

change and weather-related disasters, leaving them in a more vulnerable situation.<sup>16</sup> This is particularly relevant for women who live in rural areas, or women who live in poverty.<sup>17</sup> Due to gender-based economic inequalities, women, and particularly female-headed households, are more likely to live in poverty and in inadequate housing on low-value land that is more vulnerable to the impact of climate-related events such as floods, storms, avalanches, earthquakes, landslides and other hazards.<sup>18</sup> Women and girls also have higher levels of mortality and morbidity in situations of disaster; a direct result of the inequalities they face in access to health care, food and nutrition, water and sanitation, and technology and information.<sup>19</sup> When countries and communities are unable to cope with the impacts of weather-related disasters fuelled by climate change, compound stresses such as breakdowns in economic systems, infrastructure and social services can increase gender inequality and create conditions for an increase in gender-based violence.<sup>20</sup> These conditions are compounded in States that have failed to engage in gender-responsive disaster planning and implementation and have therefore neglected to incorporate the specific needs of diverse groups of women, including women with disabilities, older women and indigenous women, into protective facilities and infrastructures.<sup>21</sup>

Displacement during and after disasters can, in itself, lead to an increase in violence, and increase the visibility of pre-existing violence, due to overcrowded and unsafe accommodation in evacuation centres, temporary housing, and shelters.<sup>22</sup> In camps or in temporary settlements set up during or following disasters, the lack of

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16. *General Recommendation No. 37*, *supra* note 1, ¶ 3.

17. U.N. Comm. for the Elimination of Discrimination Against Women, *General Recommendation No. 34 on the Rights of Rural Women*, ¶¶ 10, 22, 53, 55, CEDAW/C/GC/34 (Mar. 4, 2016) [hereinafter *General Recommendation No. 34*].

18. *General Recommendation No. 37*, *supra* note 1, ¶ 4.

19. *Id.*

20. CAMEY ET AL., *supra* note 12, at 138.

21. *General Recommendation No. 37*, *supra* note 1, ¶ 4.

22. For example, in the United States, in the wake of Hurricane Katrina in 2005, the rape rate among women displaced to trailer parks was 53.6 times higher than the highest baseline rate for Mississippi in 2004, with intimate partner rape being 16 times higher than the U.S. yearly rate. INT'L FED'N OF RED CROSS & RED CRESCENT SOC'YS, WORLD DISASTERS REPORT: FOCUS ON DISCRIMINATION 123 (2007).

physical security, as well as the lack of safe and accessible infrastructures, including drinking water and sanitation, can further result in increased levels of gender-based violence.<sup>23</sup> Food insecurity, limited access to basic resources in informal settlements, and a lack of social protection schemes force women and girls to go outside shelters and camps to collect food, fuel and water.<sup>24</sup> This leaves them particularly exposed to the risk of gender-based violence as they attempt to access necessities for their family members and themselves.<sup>25</sup> Indeed, assessments show that the collection of basic necessities for themselves and for their families is one of the most dangerous moments for women and girls in terms of the risk of violence.<sup>26</sup> A study conducted by the Danish Refugee Council in Doro Refugee Camp in South Sudan, for example, showed that incidents of physical and sexual assault on women happen most often in firewood collection outside the camp, and sometimes at water points within the camp.<sup>27</sup> These results were mirrored by similar studies by *Médecins Sans Frontières* (MSF) in West Darfur<sup>28</sup> and *Women's Refugee Commission* (WRC) in Eastern Chad.<sup>29</sup>

Climate change is also fundamentally challenging the way in which

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23. See WOMEN'S LINK WORLDWIDE, TRAPPED IN EUROPE: DIGNITY DENIED 14 (Nov. 8, 2016), <https://www.womenslinkworldwide.org/en/files/1110/trapped-in-europe-dignity-denied.pdf> (discussing gender-based violence in camps and informal settlements in general).

24. *General Recommendation No. 37*, *supra* note 1, ¶ 5.

25. *Id.*; see also U.N. HIGH COMM'R FOR REFUGEES, ACTION AGAINST SEXUAL AND GENDER-BASED VIOLENCE: AN UPDATED STRATEGY 17 (June 2011), <https://www.unhcr.org/media/29736>.

26. *General Recommendation No. 37*, *supra* note 1, ¶ 5.

27. DANISH REFUGEE COUNCIL, A SEXUAL AND GENDER-BASED VIOLENCE RAPID ASSESSMENT: DORO REFUGEE CAMP, UPPER NILE STATE, SOUTH SUDAN 6–7 (July 2012), <https://www.refworld.org/pdfid/52401d804.pdf>.

28. This study indicated that 82% of the 297 rape cases treated at their clinics over a six-month period occurred while the women were performing daily tasks. MÉDECINS SANS FRONTIÈRES, THE CRUSHING BURDEN OF RAPE: SEXUAL VIOLENCE IN DARFUR 3 (Mar. 8, 2005), <https://www.msf.org/sites/default/files/2018-08/the-crushing-burden-of-rape%20.pdf>.

29. In Farchana, Chad, 91% of rapes occurred outside the camps when women were collecting firewood. WOMEN'S REFUGEE COMM'N, *Protection, in COOKING FUEL SAVES LIVES: A HOLISTIC APPROACH TO COOKING IN HUMANITARIAN SETTINGS* (2011), <https://www.womensrefugeecommission.org/wp-content/uploads/2020/04/Cooking-Fuel-Saves-Lives-Complete.pdf>.



societies access, benefit from and interact with natural resources and the environment.<sup>30</sup> In communities where climate change is limiting societies' access to, or ability to benefit from, land and natural resources, gender-based violence can be deployed as a method of control and a tool by which to re-affirm entrenched stereotypes within homes and communities, affirming male dominance over land and resources.<sup>31</sup> Gender-based inequalities are pervasive across the world, acting as barriers to equitable and sustainable access, use, control and benefits related to land and natural resources and increasing women's vulnerability to gender-based violence.<sup>32</sup> Even though women often bear numerous key responsibilities for managing natural resources,<sup>33</sup> statistics show that they represent the majority of the world's poor<sup>34</sup> and landless,<sup>35</sup> and women are often denied rights to or have limited rights in relation to land as a result of discriminatory laws, lack of harmonization of laws and ineffective implementation, as well as cultural attitudes and practices entrenched in gender-stereotypes.<sup>36</sup> In a cyclical fashion, many women, particularly in rural areas, continue to face discrimination and economic and social marginalisation because of their lack or limited access to land and natural resources.<sup>37</sup> On the other hand, when women do gain land rights in communities that are deeply influenced by traditional norms, gender-based violence increases, further reinforcing the idea that violence is used as a means

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30. CAMEY ET AL., *supra* note 11, at 136.

31. *Id.* at 24.

32. *Id.*

33. See, for example, the various case studies in U.N. ENV'T PROGRAMME ET AL., *WOMEN AND NATURAL RESOURCES: UNLOCKING THE PEACEBUILDING POTENTIAL 20* (2013), [https://wedocs.unep.org/bitstream/handle/20.500.11822/8373/-Women%20and%20natural%20resources\\_%20unlocking%20the%20peace%20building%20potential-2013Womenandnaturalresource\\_2013.pdf](https://wedocs.unep.org/bitstream/handle/20.500.11822/8373/-Women%20and%20natural%20resources_%20unlocking%20the%20peace%20building%20potential-2013Womenandnaturalresource_2013.pdf).

34. OXFAM, *Executive Summary*, in *AN ECONOMY THAT WORKS FOR WOMEN: ACHIEVING WOMEN'S ECONOMIC EMPOWERMENT IN AN INCREASINGLY UNEQUAL WORLD 2* (March 2017), [https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file\\_attachments/bp-an-economy-that-works-for-women-020317-en-summ.pdf](https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp-an-economy-that-works-for-women-020317-en-summ.pdf).

35. U.N. FOOD & AGRIC. ORG., *THE STATE OF FOOD AND AGRICULTURE: WOMEN IN AGRICULTURE, CLOSING THE GAP FOR GENDER DEVELOPMENT 46* (2011), <https://www.fao.org/3/i2050e/i2050e.pdf>.

36. *General Recommendation No. 34*, *supra* note 17, ¶¶ 55–56.

37. CAMEY ET AL., *supra* note 12, at 24–25.

to control gendered divisions of rights and roles.<sup>38</sup>

While the impact of climate change on the availability, accessibility, consumption, and production of food has been acknowledged,<sup>39</sup> the international community has said little about how this reality relates to gender-based violence. As climate change exacerbates land degradation,<sup>40</sup> affects food security, and causes a greater frequency of extreme weather events,<sup>41</sup> a powerful precedent for gender-based violence relating to the use of and control over land and natural resources may increase appears to be established.<sup>42</sup> Specific forms of gender-based violence such as land-grabbing<sup>43</sup> or property-grabbing,<sup>44</sup> and sexual extortion for access to land rights,<sup>45</sup>

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38. AMANDA RICHARDSON & LESLIE HANNAY, NORWEGIAN REFUGEE COUNCIL, VIOLENCE AGAINST WOMEN AND HOUSING, LAND AND PROPERTY IN MONROVIA 18 (2014), <https://www.nrc.no/globalassets/pdf/reports/violence-against-women-and-hlp-in-monrovia/violence-against-women-and-hlp-liberia.pdf>.

39. *Analytical Study on Gender-Responsive Climate Action*, *supra* note 1, ¶ 6.

40. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE AND LAND: AN IPCC SPECIAL REPORT ON CLIMATE CHANGE, DESERTIFICATION, LAND DEGRADATION, SUSTAINABLE LAND MANAGEMENT, FOOD SECURITY, AND GREENHOUSE GAS FLUXES IN TERRESTRIAL ECOSYSTEMS, SUMMARY FOR POLICYMAKERS ¶ A2.7 (Aug. 7, 2019), [https://www.ipcc.ch/site/assets/uploads/sites/4/2020/02/SPM\\_Updated-Jan20.pdf](https://www.ipcc.ch/site/assets/uploads/sites/4/2020/02/SPM_Updated-Jan20.pdf).

41. *Id.* ¶ A2.8.

42. CAMEY ET AL., *supra* note 12, at 24–25.

43. Katelyn Baker-Smith & Szocs Boruss Miklos Attila, *What Is Land Grabbing? A Critical Review of Existing Definitions*, in *ECO RURALIS* 2 (2016) (defining land grabbing as “the control (whether through ownership, lease, concession, contracts, quotas, or general power) of larger than locally-typical amounts of land by any persons or entities (public or private, foreign or domestic) via means (legal or illegal) for the purposes of speculation, extraction, resource control or commodification, at the expense of peasant farmers, agroecology, land stewardship, food sovereignty and human rights”).

44. This consists of forcibly evicting an individual from their home and land by other family members, traditional leaders, or neighbours, with the victim often being prevented from taking their possessions with them. *See* CAMEY ET AL., *supra* note 12, at 28. Research in Africa shows that women are disproportionately affected by this practice after the death of their husbands, which is often accompanied by other forms of violence.; *See* Koari Izumi, *Gender-Based Violence and Property-Grabbing in Africa: A Denial of Women’s Liberty and Security*, 15 *GENDER & DEV.* 11, 12 (2007).

45. It has been reported that, in order to access agricultural lands and gain access to land titles, women may face sexual extortion. For example, in an investigation undertaken by Transparency International in Sierra Leone, 8 percent of women surveyed and 5 percent of men surveyed reported that they had been asked for sex

will undoubtedly rise as the pressure to access increasingly limited land rises; particularly impacting poorer women and rural women.

Similar links between gender-based violence and climate change occur in relation to access to natural resources, particularly food sources and water.<sup>46</sup> The Committee on Economic, Social and Cultural Rights recognized that climate change is already having an impact on the rights to food, water and sanitation, and will continue to do so at an increasing pace in the future.<sup>47</sup> Climate change is having an impact on nutrition through changes in crop yields brought on by disrupted supplies of water and high temperatures that stress crops and promote algal blooms in reservoirs, while rising ocean acidification affects fisheries.<sup>48</sup> Under current circumstances, women and girls, particularly those in rural areas, risk facing multiple forms of violence while seeking food and water.<sup>49</sup> In many countries, tasks such as collecting water or firewood are seen as “women’s work”<sup>50</sup> and cases of women being physically or sexually assaulted when travelling to collect water are widely reported, as are cases of women being beaten, harassed, raped or even killed when collecting firewood by forest

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by local chiefs or land officials to resolve a land issue or knew someone who had. See HAJANIRINA PAULIN RANDRIA ARSON ET AL., WOMEN, LAND AND CORRUPTION: RESOURCES FOR PRACTITIONERS AND POLICY MAKERS 38 (Stephanie Debere et al. eds., 2018).

46. See CAMEY ET AL., *supra* note 12, at 136 (noting that emerging research may link increasing temperatures to increased gender-based violence).

47. See U.N. Comm. on Econ., Soc. and Cultural Rts., *Climate Change and the International Covenant on Economic, Social and Cultural Rights: Statement of the Committee on Economic, Social and Cultural Rights*, ¶ 4, U.N. Doc. E/C.12/2018/1 (Oct. 8, 2018).

48. *Id.*

49. CAMEY ET AL., *supra* note 12, at 136 (explaining that this violence impedes women and girls’ ability to carry out vital day-to-day functions).

50. A study by the World Health Organization, published in 2017, suggested that women and girls are responsible for water collection in eight out of ten households which do not have running water. See *Safely Managed Drinking Water: Thematic Report on Drinking Water*, WORLD HEALTH ORG. 30 (2017), <https://apps.who.int/iris/bitstream/handle/10665/325897/9789241565424-eng.pdf>. The disproportionate burden on women in the collection of water and the disposal of family wastewater was also identified by the Special Rapporteur on the right to health. Paul Hunt (Special Rapporteur), *Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, ¶ 84, U.N. Doc. A/62/214 (Aug. 8, 2007).

owners or guards,<sup>51</sup> or women being forced into sexual acts in exchange for food stuffs.<sup>52</sup> As climate changes make resources less accessible, women will be forced to travel further to access such resources, putting them at greater risk of suffering abuse while in transit,<sup>53</sup> and face greater risks of gender specific exploitation and abuse, when trying to access basic necessities.

While, as pointed out, women are more likely to suffer violence in situations of environmental degradation than men, women who suffer multiple and intersecting forms of discrimination are uniquely vulnerable to suffering violence and discrimination.<sup>54</sup> This is particularly the case for lesbian, gay, bisexual, transgender and intersex persons, who may not only be denied access to services and assistance following climate related disasters on discriminatory grounds,<sup>55</sup> they are often susceptible to harassment, abuse, and sexualised violence by security forces, violent groups and individuals, especially in environment such as informal settlements and refugee camps.<sup>56</sup>

Women and girls with disabilities may also face specific vulnerabilities to violence in such situations.<sup>57</sup> The ability of women

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51. See CAMEY ET AL., *supra* note 12, at 34 (highlighting that women face difficulty in obtaining survival resources because of this violence).

52. For example, the increased scarcity of fish has led the increased coerced use of “transactional” sex to obtain fish, known as “sex-for-fish,” has become so widespread in coastal areas in Africa that it has even been given a name, the “*Jaboya* system.” See *id.* at 52.

53. *Analytical Study on Gender-Responsive Climate Action*, *supra* note 1, ¶ 9.

54. For further discussion on the concept of intersectionality, see generally Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 159 (1989).

55. See *Analytical Study on Gender-Responsive Climate Action*, *supra* note 1, ¶ 17 (explaining that women face sexual violence and harassment in shelters post-natural disaster as law enforcement efforts are often strained during this time); see also J.C. Gaillard et al., *Sexual and Gender Minorities in Disaster*, 24 GENDER, PLACE & CULTURE 18, 19 (2017).

56. *Lost in the Chaos—LGBTI People in Emergencies Bangkok*, NEW HUMANITARIAN, (Aug. 14, 2014), <https://www.thenewhumanitarian.org/analysis/2014/08/14/lost-chaos-lgbti-people-emergencies> (noting that the stigma surrounding this harassment discourages survivors from reporting such abuse and skewing research numbers).

57. *General Recommendation No. 37*, *supra* note 1, ¶ 5 (attributing these

with disabilities to flee disasters may be compromised due to physical barriers, and family members may be unwilling to assist them, leaving them abandoned in their homes.<sup>58</sup> In cases where women with disabilities are able to reach support services, they may face discrimination based on physical limitations and barriers to communication, which could mean that they are denied assistance or not provided with appropriate assistance.<sup>59</sup> Older women, due to “physiological differences, physical ability, age and gender, as well as social norms and roles and an inequitable distribution of aid and resources relating to social hierarchies” are also particularly disadvantaged in the face of natural disasters.<sup>60</sup>

The nexus between climate change and gender-based violence is one that should attract the attention of the international human rights community. It is now important to consider the pre-existing obligations on both state and non-state actors in terms of human rights, the environment and violence against women.

### III. CLIMATE CHANGE, HUMAN RIGHTS, AND STATE RESPONSIBILITY

The development of human rights norms relating to a healthy environment has not relied primarily on the explicit recognition of the right to a “healthy” or “clean” environment by the international

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vulnerabilities to “physical limitations and barriers to communication and the inaccessibility of basic services and facilities” in times of natural disasters).

58. Women Enabled Int'l Comments on Draft CEDAW General Recommendation on Gender-Related Dimensions of Disaster Risk Reduction in a Changing Climate 2 (Jan. 30, 2017) (comments to the CEDAW Committee), <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/GenderRelated/WomenEnabledInternational.pdf> (explaining that due to gender and social norms, the ability of women with disabilities to flee disaster areas is compromised).

59. *Id.* at 1 (highlighting the barriers women with disabilities face after disasters as a result of discrimination and the lack of accessibility to these services); *General Recommendation No. 37*, *supra* note 1, ¶ 5 (explaining that women with disabilities may face increased barriers to receiving emergency aid after disasters because of physical limitations and barriers in communicating with those around them).

60. *General Recommendation No. 27*, *supra* note 5, ¶ 25 (“Climate change impacts differently on women, especially older women who, due to their physiological differences, physical ability, age and gender, as well as social norms and roles and an inequitable distribution of aid and resources relating to social hierarchies, are particularly disadvantaged in the face of natural disasters”).

community.<sup>61</sup> Indeed, while this right has previously been recognized, in various forms, at both the regional<sup>62</sup> and national level,<sup>63</sup> it was not until 2021, through a landmark resolution of the UN Human Rights Council, that the human right to a safe, clean, healthy and sustainable environment was recognised by a United Nations body;<sup>64</sup> this was followed by a resolution by the UN General Assembly in 2022.<sup>65</sup> Despite this recognition, this right has still not been adopted into any legally binding human rights agreement of global application<sup>66</sup> and

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61. John H. Knox (Special Rapporteur), *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, Sustainable Environment*, ¶ 11, U.N. Doc. A/HRC/C/37/59 (Jan. 24, 2018) (explaining that the right to a healthy is not currently recognized as a human right by global powers).

62. African Charter on Human and Peoples' Rights art. 24, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 [hereinafter Banjul Charter] ("All peoples shall have the right to a general satisfactory environment favorable to their development"); Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa art. 18, July 11, 2003 [hereinafter Maputo Protocol] (codifying the right of women to "live in a healthy and sustainable environment"); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights art. 11, Nov. 16, 1999, A-52 [hereinafter Protocol of San Salvador] (extending the right to basic public services and a healthy environment to all people); Arab Charter for Human Rights, art. 38, Sept. 15, 1994 (stating that all people may enjoy the right to a decent life and a healthy environment); State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Arts. 4(1) and 5(1) in Relation to Arts. 1(1) and 2 of the American Convention on Human Rights, Advisory Opinion OC-23/18, Inter-Am. Ct. H.R. (ser. A) No. 23 (Nov. 15, 2017) (emphasizing the right to a healthy environment as stipulated in the Protocol of San Salvador, *supra*); Association of Southeast Asian Nations Human Rights Declaration art. 28(f), Nov. 18, 2012 (guaranteeing "the right to a safe, clean, and sustainable environment").

63. At a national level, there are over 100 States whose constitutions explicitly incorporate the right to a healthy environment. See John H. Knox (Special Rapporteur), *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, ¶ 13, U.N. Doc. A/HRC/40/55 (Feb. 25, 2019).

64. Human Rights Council Res. A/48/L.23, U.N. Doc A/HRC/48/L.23/Rev.1, at 1 (Oct. 5, 2021) ("The Human Rights Council . . . recognizes the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights.").

65. General Assembly A/76/L.75, U.N. Doc A/76/L.75, at 1 (Jul. 26, 22) ("The General Assembly . . . recognizes the right to a safe, clean, healthy and sustainable environment as a human right.").

66. It should be noted that the Special Rapporteur on the issue of human rights

only one regional agreement (the African Charter on Human and People's Rights) provides for its interpretation in decisions by a review body.<sup>67</sup> However, the international community has, for some time, recognized the importance of a healthy environment for the full enjoyment of the human rights which are already enshrined in international treaties; importantly, in the Declaration of the United Nations Conference on the Human Environment the 1972 Declaration of the United Nations Conference on the Human Environment ("Stockholm Declaration") which confirmed that there is a "fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being,"<sup>68</sup> and proclaimed that the natural environment is "essential to . . . the right to life itself."<sup>69</sup> However, this instrument fell short of directly recognizing a standalone right to a healthy environment (and also lacks the force of a binding treaty).<sup>70</sup> Despite this, the Stockholm Declaration is important as it reflects, as the Office of the U.N. High Commissioner on Human Rights (OHCHR) noted, a "general recognition of the interdependence and interrelatedness of human rights and environment."<sup>71</sup>

While the right to a "healthy" environment may not have been recognized as a standalone right, international human rights law is,

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obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment has advocated for the recognition of this right in a global instrument. Knox, *supra* note 61, ¶ 14.

67. See Soc. and Econ. Rts. Action Ctr. v. Nigeria, Communication 155/96, African Commission on Human and Peoples Rights [Afr. Comm'n H.P.R.], ¶ 52 (1999–2000), [https://www.achpr.org/public/Document/file/English/achpr30\\_155\\_96\\_eng.pdf](https://www.achpr.org/public/Document/file/English/achpr30_155_96_eng.pdf) (confirming the right to a healthy environment and noting that governments bear the burden of ensuring this right by preventing pollution and promoting conservation).

68. Rep. of the U.N. Conference on the Human Environment, at 4, U.N. Doc A/CONF.48/14/Rev.1 (June 16, 1972) [hereinafter Stockholm Declaration].

69. *Id.*

70. John H. Knox (Special Rapporteur), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, ¶ 36, U.N. Doc. A/73/188 (July 19, 2018) (noting the gap between official legal recognition of the right to a healthy environment and actual implementation).

71. U.N. Off. of the High Comm'r for Hum. Rts. & Secretary-General, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights*, ¶¶ 17–18, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009).

*prima facie*, incredibly relevant to climate change because climate change significantly threatens the realization of a broad range of human rights (including, among others, the right to food, clean water, health, housing, culture, equality, self-determination, development, and even the right to life),<sup>72</sup> and as a result, States and private actors have extensive human rights obligations and responsibilities. At the same time, effective environmental protection often depends on the exercise of human rights that are vital to informed, transparent and responsive policymaking.<sup>73</sup>

Indeed, in recognizing the interrelated nature of human rights and environmental protection, the Stockholm Declaration arguably builds on language contained within the seminal human rights treaties, which seem to recognize the broad environmental implications related to the full enjoyment of civil, political, economic and social rights without identifying a freestanding right to a “healthy environment.”<sup>74</sup> This can be seen in the Universal Declaration on Human Rights, which provides that “everyone is entitled to a social and international order in which [their] rights and freedoms . . . can be fully realised.”<sup>75</sup> It is also particularly evident in the language of the International Covenant on Economic, Social and Cultural Rights, which recognizes the individual’s right to “the continuous improvement of living conditions,”<sup>76</sup> as well as to “the enjoyment of the highest attainable standard of physical and mental health,”<sup>77</sup> and commits states to protecting the right to health by positive measures, including, *inter alia*, “the improvement of all aspects of environmental and industrial hygiene.”<sup>78</sup> The linkage of these rights with the environment was further emphasised by the U.N. Committee on Economic, Social and

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72. U.N. Comm. on the Elimination of Discrimination Against Women et al., *Statement on Human Rights and Climate Change*, ¶ 3, U.N. Doc. HRI/2019/1 (May 14, 2020). [hereinafter *Joint Statement on Human Rights & Climate Change*].

73. *Id.*

74. See Stockholm Declaration, *supra* note 66, ¶ 1 (equating the enjoyment of one’s environment to the right to life itself).

75. G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 28 (Dec. 10, 1948).

76. International Covenant on Economic, Social and Cultural Rights art. 11, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 993 U.N.T.S. 3 [hereinafter ICESCR].

77. *Id.* art. 12.

78. *Id.*



Cultural Rights (CESCR) through their General Comments 14<sup>79</sup> and 15,<sup>80</sup> which give a broad interpretation to these articles.

Treaty bodies, regional tribunals,<sup>81</sup> special rapporteurs and other international human rights bodies have played an important role in further emphasizing the nexus between the environment and the enjoyment of rights protected by international human rights law by effectively ‘greening’ existing human rights law<sup>82</sup> by “recogniz[ing] the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing.”<sup>83</sup> The U.N. Human Rights Council has, in particular, issued a series of resolutions expressing concern about the immediate and wide-reaching impact of climate change on human rights, and has emphasised that the impacts of climate change will be felt more acutely by those who already live in vulnerable situations.<sup>84</sup>

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79. U.N. Comm. on Econ., Soc. & Cultural Rts., *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2000/4, ¶¶ 4, 11 (Aug. 11, 2000) (recognizing the need to interpret Article 12(2) of the Covenant in a broad manner and stipulates that the right to health embraces a wide range of socio-economic factors, including “a healthy environment,” and paragraph 11, which recognizes “environmental conditions” as being one of many “underlying determinants for health”).

80. U.N. Comm. on Econ., Soc. & Cultural Rts., *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2002/11, ¶ 8 (Jan. 20, 2003) (providing provides a definition of “environmental hygiene” and which emphasizes that this includes “taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions”).

81. *E.g.*, State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Arts. 4(1) and 5(1) in Relation to Arts. 1(1) and 2 of the American Convention on Human Rights, Advisory Opinion OC-23/18, Inter-Am. Ct. H.R. (ser. A) No. 23 (Nov. 15, 2017).

82. Knox, *supra* note 61, ¶ 12 (recognizing the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment).

83. U.N. Off. of the High Comm’r for Hum. Rts. & Secretary-General, Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights, ¶ 18, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009).

84. Human Rights Council Res. 7/23, U.N. Doc A/HRC/Res/7/23, at 1 (Mar. 28, 2008) (“climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights.”); Human Rights Council Res. 10/4, U.N. Doc. A/HR/Res/10/4, at 1 (Mar.

For their part, the human rights treaty bodies have increasingly<sup>85</sup> made valuable recommendations that emphasize the importance of the environment for the enjoyment of human rights through various statements, concluding observations, General Comments and General Recommendations, and emphasized the obligations of States to respect, protect and fulfil human rights apply in the environmental context no less than in any other.<sup>86</sup> In addition to the comments of the CESCR as mentioned above, the Committee on the Rights of the Child (CRC) also addressed the impact of climate change on rights in their

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25, 2009) (“reaffirming further that all human rights are universal, indivisible, interdependent and interrelated and that they must be treated in a fair and equal manner.”); Human Rights Council Res. 18/22, U.N. Doc. A/HR/Res/18/22, at 2 (Sept. 30, 2011) (“emphasizing that climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights, including, *inter alia*, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and the right to safe drinking water and sanitation.”); Human Rights Council Res. 26/27, U.N. Doc. A/HR/Res/26/27, at 2 (June 27, 2014) (addressing the adverse impact of climate change on the full enjoyment of human rights, and recalling its summary report thereon); Human Rights Council Res. 29/15, U.N. Doc. A/HR/Res/29/15, at 2 (July 2, 2015) (“emphasizing that the adverse effects of climate change have a range of implications, both direct and indirect, for the effective enjoyment of human rights.”); Human Rights Council Res. 32/33, U.N. Doc. A/HR/Res/32/33, at 2 (July 1, 2016) (“recognizing that climate change poses an existential threat for some, and recognizing also that climate change has already had an adverse impact on the full and effective enjoyment of human rights.”); Human Rights Council Res. 35/20, U.N. Doc. A/HR/Res/35/20, at 2, 5 (June 22, 2017) (“expressing concern that, while these implications affect individuals and communities around the world, the adverse effects of climate change are felt most acutely by those segments of the population that are already in vulnerable situations owing to factors such as . . . gender . . . [and] disability.”); Human Rights Council Res. 38/4, U.N. Doc. A/HR/Res/38/4, at 4–5 (July 5, 2018) (emphasizing “the urgent importance of continuing to address, as they relate to States’ human rights obligations, the adverse consequences of climate change for all”).

85. See David R. Boyd (Special Rapporteur), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, ¶ 61, U.N. Doc. A/74/161 (July 15, 2019) (noting the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the number of references to climate change in the concluding observations of treaty bodies increased from just 1 in 2008 to more than 30 in 2018).

86. Of particular note is the recent concluding observations of the UN Human Rights Committee following their first periodic review of Cape Verde, in which they specifically address the issue of climate change and the right to life. See *Concluding Observations on the Initial Rep. of Cabo Verde*, Hum. Rts. Comm., ¶¶ 17–18, U.N. Doc. CCPR/C/CPV/CO/1/Add.1 (Nov. 7, 2019).

*General Comment No. 15* on the right of the child to enjoy the highest attainable standard of health,<sup>87</sup> as did the Human Rights Committee in their *General Comment No. 36* on Article 6 of the International Covenant on Civil and Political Rights, on the right to life.<sup>88</sup> The Committee for the Elimination of Discrimination Against Women, however, is the real trailblazer in this field; not only has it released the first General Recommendation by a treaty body to specifically focus on the human rights impacts of climate change,<sup>89</sup> but it has also made climate-related recommendations to three-quarters of the States it has reviewed.<sup>90</sup>

Further emphasizing the importance of this topic, the treaty bodies have released joint statements regarding climate change and human rights. Notably, in 2019, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities issued a joint statement on “Human Rights and Climate Change.”<sup>91</sup> In the statement, the Committees re-stated the effects that climate change has on the enjoyment of human rights, particularly emphasizing that the risk of harm is particularly high for “those segments of the population already marginalised or in vulnerable situations or that, due to discrimination and pre-existing inequalities, have limited access to decision-making or resources, such as women, children, persons with disabilities, indigenous peoples and persons living in rural areas.”<sup>92</sup>

The intersection between human rights and the environment has been addressed extensively by the U.N. special mechanisms. In particular, the Special Rapporteur on the right to food,<sup>93</sup> the Special

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87. U.N. Comm. on the Rts. of the Child, *General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art. 24)*, ¶ 50, CRC/C/GC/15 (Apr. 17, 2013).

88. Hum. Rts. Comm., *General Comment No. 36, Article 6: Right to Life*, ¶ 62, CCPR/C/GC/36 (Sept. 3, 2019).

89. *General Recommendation No. 37*, *supra* note 1, ¶ 12.

90. Boyd, *supra* note 85, ¶ 63.

91. *Joint Statement on Human Rights & Climate Change*, *supra* note 72, ¶ 1.

92. *Id.* ¶ 3.

93. Hilal Elver (Special Rapporteur), *The Right to Food*, ¶ 3, U.N. Doc.

Rapporteur on the right to adequate housing,<sup>94</sup> the Special Rapporteur on the rights of indigenous peoples,<sup>95</sup> the Special Rapporteur on extreme poverty and human rights,<sup>96</sup> the Special Rapporteur on the human rights of internally displaced persons,<sup>97</sup> the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment<sup>98</sup> and the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment<sup>99</sup> have all drawn links between climate change and the enjoyment of human rights, and have emphasized that climate actions must be developed and implemented in accordance with human rights laws and norms. Special Procedures have also issued joint statements and reports on climate change and human rights, notably in 2014, when 27 special rapporteurs and independent experts issued a joint letter<sup>100</sup> which stated conclusively that “there can no longer be any doubt that climate

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A/70/287 (Aug. 5, 2015).

94. Raquel Rolnik (Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context), *The Right to Adequate Housing*, ¶ 12 U.N. Doc. A/64/225 (Aug. 6, 2009).

95. Report of the Special Rapporteur on the Rights of Indigenous Peoples, ¶¶ 7, 15, 22, U.N. Doc. A/GRC/36/46 (Nov. 1, 2017).

96. Special Rapporteur on Extreme Poverty and Human Rights, *Climate Change and Poverty*, ¶¶ 17, 25–26, U.N. Doc. A/HRC/41/39 (July 17, 2019).

97. Chaloka Beyani (Special Rapporteur on the Human Rights of Internally Displaced Persons), Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, ¶ 63, U.N. Doc. A/HRC/16/43 (Dec. 20, 2010); see also Chaloka Beyani (Special Rapporteur on the Human Rights of Internally Displaced Persons), *Protection of and Assistance to Internally Displaced Persons*, ¶¶ 18–19, U.N. Doc. A/66/285 (Aug. 9, 2011).

98. John H. Knox (Special Rapporteur), *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, ¶¶ 10, 51, U.N. Doc. A/HRC/31/52 (Feb. 1, 2016).

99. John H. Knox (Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), *Mapping Report*, ¶¶ 31–35, U.N. Doc. A/HRC/25/53 (Dec. 30, 2013).

100. U.N. Off. of the High Comm’r for Hum. Rts., Letter dated Oct. 17, 2014 from Special Procedures Mandate-Holders of the Human Rights Council to the U.N. Framework Convention on Climate Change, *A New Climate Change Agreement Must Include Human Rights Protections for All* 1, 4–8 (Oct. 17, 2014), [://www.ohchr.org/Documents/HRBodies/SP/SP\\_To\\_UNFCCC.pdf](http://www.ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf).

change interferes with the enjoyment of human rights recognised and protected by international law.”<sup>101</sup>

#### A. STATE OBLIGATIONS IN RELATION TO CLIMATE CHANGE

International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, protect and fulfil human rights.<sup>102</sup> Under the obligation to “respect,” States must refrain from interfering with or curtailing the enjoyment of human rights.<sup>103</sup> The obligation to “protect” requires States to protect individuals and groups against human rights abuses.<sup>104</sup> Finally, the obligation to “fulfil” means that States must take positive action to facilitate the enjoyment of basic human rights.<sup>105</sup>

Derived from international human rights treaties, States have a human rights obligation to adopt legal and institutional frameworks that protect against and respond to environmental harm that may interfere with the enjoyment of human rights, prevent the foreseeable adverse effects of climate change, and ensure that those affected by it have access to effective remedies and means of adaptation to enjoy lives of human dignity.<sup>106</sup> As emphasized by the Committee on Economic, Social and Cultural Rights in 2018, a failure by States to prevent foreseeable human rights harm caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of their obligation to respect, protect and fulfil universal human rights.<sup>107</sup>

As such, the foreseeable and potentially catastrophic effects of climate change on the enjoyment of a wide range of human rights

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101. *Id.* at 17. The obligations on States parties to respect, protect and fulfil all human rights of all peoples was specifically highlighted in the *Joint Statement on Human Rights & Climate Change*, *supra* note 70.

102. *E.g.*, U.N. Off. of the High Comm’r for Hum. Rts., *International Human Rights Law*, (last visited Oct. 17, 2022), <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>.

103. *Id.*

104. *Id.*

105. *Id.*

106. *See* Knox, *supra* note 99, ¶ 47.

107. U.N. Comm. on Econ., Soc. and Cultural Rts., *supra* note 47, ¶ 6.

gives rise to extensive duties of States to take immediate action to prevent such harms.<sup>108</sup> Further, to ensure compliance with their international human rights obligations, States should apply a rights-based approach to all aspects of climate action in an intersectional manner, specifically focusing on those most likely to be adversely affected by climate change and empowering people to become involved in designing and implementing solutions.<sup>109</sup>

Specifically relating to the climate change and gender, as noted above, discrimination on the basis of sex is specifically prohibited under international human rights law. As such, States have legal obligations to systematically integrate gender into climate change policies, ensuring that any measures are gender-responsive, empower women, protect their rights, and specifically address the gendered impacts of climate change.<sup>110</sup> These rights derive from international human rights treaties, particularly from Articles 2, 7, and 14 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Article 2 calls upon States, public authorities and institutions to refrain from engaging in any act or practice of discrimination against women; Article 7 guarantees women's right to public participation; and Article 14 calls upon parties to "take all appropriate measures to eliminate discrimination against women in rural areas," and to ensure their right to public participation.<sup>111</sup> These obligations were also firmly emphasized by the CEDAW Committee in its *General Recommendation No. 37*, which notes the urgency of mitigating climate change, provides guidance to States on their obligations under the CEDAW in relation to disaster risk reduction and climate change, and highlights steps needed to achieve gender equality and promote climate resilience.<sup>112</sup> These obligations were also reiterated in the recent report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, which notes the need for States to urgently tackle gender-based discrimination and environmental injustices with rights-based,

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108. See Boyd, *supra* note 85, ¶ 62.

109. See *id.*

110. *Analytical Study on Gender-Responsive Climate Action*, *supra* note 1, ¶ 31.

111. CEDAW, *supra* note 2, arts. 2(d), 7, 14(2)(f).

112. *General Recommendation No. 37*, *supra* note 1, ¶ 28.

gender-focused climate action.<sup>113</sup>

In addition to the CEDAW, the need for States to take a gender sensitive approach has also been emphasized in multiple international and regional human rights instruments, including the 2030 Agenda for Sustainable Development,<sup>114</sup> the Addis Ababa Action Agenda,<sup>115</sup> the Beijing Declaration and Platform for Action,<sup>116</sup> and the Sendai Framework for Disaster Risk Reduction 2015-2030.<sup>117</sup>

## B. UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

The United Nations Framework Convention on Climate Change (UNFCCC) was implemented in 1992 with a view to achieving “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>118</sup> The UNFCCC outlines principles by which

113. Boyd, *supra* note 3, ¶ 90.

114. Goal 5, which is cross cutting, requires Member States to “ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life,” and to end all forms of discrimination against women. Goal 13.b specifically calls on Member States to “promote mechanisms for raising capacity for effective climate change-related planning and management . . . including focusing on women.” G.A. Res. 70/1, ¶¶ 5, 13(b) (Oct. 21, 2015).

115. This calls for transparent methodologies, policy coherence and climate finance, as well as gender equality and women’s empowerment at all levels. G.A. Res. 69/313, ¶¶ 6, 60, 103 (July 27, 2015).

116. The Beijing Declaration calls for involving women actively in environmental decision-making at all levels, integrating gender concerns and perspectives in policies and programmes for sustainable development, and strengthening or establishing mechanisms at the national, regional and international levels to assess the impact of development and environmental policies on women. World Conference on Women, *Report of the Fourth World Conference on Women*, ¶¶ 253–58, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995).

117. This emphasises that a gender-sensitive approach should be integrated in all policies and practices, and women’s leadership should be promoted. G.A. Res. 69/283, ¶ 19(d) (June 3, 2015).

118. U.N. Framework Convention on Climate Change art. 2, May 9, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107 [hereinafter Convention on Climate Change]. As an aside, it should be noted that this goal has been significantly criticised for lacking specificity. RAYMOND J. KOPP, ISSUE BRIEF 11-03, THE CLIMATE HAS CHANGED—SO MUST POLICY 3 (2011), <https://media.rff.org/documents/RFF-IB-11-03.pdf>.

state parties should abide in Article 3, particularly that “Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects.”<sup>119</sup> It is important to note that, within the UNFCCC, it is implicitly accepted that countries and populations who have contributed the least to climate change, particularly developing countries, are especially vulnerable to the effects of climate change and that the introduction of the “common but differentiated responsibilities”<sup>120</sup> on developing and developed countries places the burden of reducing emissions on developed countries.<sup>121</sup>

As stated in the Preamble of the Paris Agreement, “parties should, when taking action to address climate change, respect, promote and consider the respective obligations on human rights . . . as well as gender equality,” and “empowerment of women.”<sup>122</sup> Further, under Article 7(5) of the Paris Agreement, Parties are asked to acknowledge the need for a “gender-responsive”<sup>123</sup> approach to climate adaptation action; and at Article 11(2), it is emphasised that capacity building should also be “gender-responsive.”<sup>124</sup>

### C. FRAMEWORK PRINCIPLES

With a view to facilitating the implementation of the human rights obligations of States in relation to the enjoyment of a safe, clean, healthy and sustainable environment,<sup>125</sup> in 2018, the Special Rapporteur on the issue of human rights obligations relating to the

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119. Convention on Climate Change, *supra* note 118, art. 3(3).

120. *Id.* art. 3(2).

121. See *id.* art. 4(2) for the specific commitments which fall on developed countries. Note that those Parties included as “developed countries” are specifically identified within Annex I of the Framework. *Id.* annex I.

122. Conference of Parties, *Adoption of the Paris Agreement*, at 1–2, U.N. Doc. FCCC/CP/2015/L.9 (Dec. 12, 2015).

123. United Nations Framework Convention on Climate Change, Paris Agreement art. 7.5, U.N. Doc. FCCC/CP/2015/10/Add.1, annex (Jan. 29, 2016).

124. *Id.* art. 11.2

125. See John H. Knox (Special Rapporteur), *Report of the Special Rapporteur on the Issue of Human Rights Obligations to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, ¶ 2, U.N. Doc. A/HRC/37/59 (Jan. 24, 2018) (stating the framework principles that are a culmination of this study). *But see* G.A. Res. 28/11, ¶ 8(a) (Apr. 7, 2015) (recognising the ongoing need to clarify some aspects of the human rights obligations).



enjoyment of a safe, clean, healthy and sustainable environment set out 16 framework principles on human rights and the environment.<sup>126</sup> As noted by the Special Rapporteur, not all States have formally accepted these norms and, while many of the obligations therein derive from treaties or binding decisions from human rights tribunals, others draw on statements from human rights bodies that have the authority to interpret human rights law, but not necessarily issue binding decisions.<sup>127</sup> Starting by acknowledging the interdependence of human rights and the environment by stating both that States should “ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights”<sup>128</sup> and that “States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment,”<sup>129</sup> the framework principles continue to clarify three categories of State obligations: procedural, substantive and special obligations towards those in vulnerable situations.<sup>130</sup>

#### D. PROCEDURAL OBLIGATIONS

As part of their procedural obligations, States must, *inter alia*, provide the public with accessible, affordable and understandable information about the causes and consequences of climate change,<sup>131</sup> ensure access to justice and access to an effective remedy,<sup>132</sup> assess the potential climate change and human rights impacts of all plans, policies and proposals,<sup>133</sup> and provide strong protection for environmental and human rights defenders.<sup>134</sup> The Special Rapporteur also specifically notes that States must pay attention to the rights of indigenous people in all climate actions, particularly their right to free, prior and informed consent.<sup>135</sup> Incorporating a gender perspective, the Special Rapporteur emphasized that States also have a duty to “ensure an inclusive, equitable and gender-based approach to public

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126. See Knox, *supra* note 125, ¶ 2.

127. *Id.* ¶ 8.

128. *Id.* annex, at 7

129. *Id.*

130. *Id.* annex, at 11.

131. *Id.*

132. *Id.* annex, at 13.

133. *Id.* annex, at 11–12.

134. *Id.* annex, at 9.

135. *Id.* annex, at 18.

participation in all climate-related activities,” and must focus particularly on “empowering the most affected populations;” with women being identified as one of these populations; and “integrate gender equality into all climate actions, enabling women to play leadership roles.”<sup>136</sup>

#### E. SUBSTANTIVE OBLIGATIONS

With respect to their substantive obligations, States have obligations to protect against environmental harm that interferes with the enjoyment of human rights and, as environmental harm may threaten a broad spectrum of human rights, the content of the States’ specific obligations therefore depends on the content of their duties with respect to the particular right threatened by the harm.<sup>137</sup> Broadly speaking, however, States must ensure that they do not violate the right to a safe environment through their own action, and they must implement legal frameworks to protect against, and respond to, any environmental harm that may infringe on enjoyment of human rights.<sup>138</sup> Furthermore, States must regulate private actors to protect the right to a safe environment from being violated by third parties, particularly businesses.<sup>139</sup> In relation to the obligation to protect human rights against the extraterritorial environmental effects of actions taken within their territory, States have an obligation of international cooperation with respect to human rights, which is contained in various international treaties including the International Covenant on Economic, Social and Cultural Rights<sup>140</sup> and even in the

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136. Boyd, *supra* note 85, ¶ 64.

137. As outlined by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the duties placed on States vary depending on the right, for example, States have general obligations to “respect and ensure rights” under the International Covenant on Civil and Political Rights (art. 2, para. 1), the Convention on the Rights of the Child (art. 2, para. 1) and the American Convention on Human Rights (art. 1), to “take steps towards the full realization” of the rights recognized in the International Covenant on Economic, Social and Cultural Rights, to “secure the rights” in the European Convention on Human Rights (art. 1), and to “recognize and give effect to the rights” in the African Charter (art. 1). See Knox, *supra* note 99, ¶ 45.

138. *Id.* ¶ 47.

139. *Id.* ¶ 46.

140. ICESCR, *supra* note 75, art. 2.1.

Charter of the United Nations itself.<sup>141</sup> Additionally, as noted by the Human Rights Council in the Rio Declaration, “States shall cooperate with the spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem.”<sup>142</sup> The fact that States Parties’ obligations to respect, protect and fulfil all human rights gives rise to extraterritorial obligations was also specifically noted in the Joint Statement on “Human Rights and Climate Change” released by five U.N. treaty bodies in 2019.<sup>143</sup>

#### F. SUBSTANTIVE OBLIGATIONS TO PROTECT AGAINST ENVIRONMENTAL HARM FROM PRIVATE ACTORS

As was emphasized by the Special Representative of the Secretary General on business and human rights, “the State duty to protect against non-State abuses is part of the very foundation of the international human rights regime. The duty requires States to play a key role in regulating and adjudicating abuse by business enterprises, or risk breaching their international obligations.”<sup>144</sup>

In terms of the climate change-related responsibilities on businesses, they should “reduce greenhouse gas emissions from their own activities and their subsidiaries; reduce greenhouse gas emissions from their products and services; minimize greenhouse gas emissions from their suppliers; publicly disclose their emissions, climate vulnerability and the risk of stranded assets; and ensure that people affected by business-related human rights violations have access to effective remedies.”<sup>145</sup> Further, businesses should support, rather than oppose, public policies intended to address climate change.<sup>146</sup>

Under the Guiding Principles on Business and Human Rights, States are required to, *inter alia*, “protect against human rights abuses

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141. U.N. Charter arts. 55–56.

142. Human Rights Council Res. 16/11, U.N. Doc. A/HRC/RES/16/11, at 2 (Apr. 12, 2011).

143. *Joint Statement on Human Rights & Climate Change*, *supra* note 73, ¶ 10.

144. John Ruggie (Special Representative of the Secretary-General on Hum. Rts. & Transnational Corps. & Other Bus. Enters.), *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*, ¶ 18, U.N. Doc. A/HRC/4/35 (Feb. 19, 2007).

145. Boyd, *supra* note 86, ¶ 72.

146. *Id.*

within their territory or jurisdiction by third parties, including business enterprises,” which requires “taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”<sup>147</sup> The State duty to protect is a standard of conduct; as such, States are not *per se* responsible for the human rights abuses committed by private actors.<sup>148</sup> However, States may breach their international human rights obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors’ abuse.<sup>149</sup>

Beyond the Guiding Principles, several human rights bodies have directly connected the duty on States to protect against human rights abuses by non-State actors to violations of rights caused by environmental harm. The Committee on Economic, Social and Cultural Rights has, for example, explicitly recognized that “corporate activities can affect the enjoyment of Covenant rights,” highlighting the harmful impact on the environment as one of these activities.<sup>150</sup> The Committee has also emphasized that State parties are under an obligation to “ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders are adequately protected in the context of corporate activities.”<sup>151</sup>

Regional bodies have also emphasised this link; for example, the African Commission, relying on the due diligence standard outlined by the Inter-American Court of Human Rights in *Velásquez Rodríguez v Honduras*,<sup>152</sup> stated in *Social and Economic Rights Action Center v. Nigeria* that “[g]overnments have a duty to protect their citizens not only through appropriate legislation and effective enforcement, but also by protecting them from damaging acts that may be perpetrated by private parties” and held that, in allowing private actors to

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147. Ruggie, *supra* note 144, annex, at 6.

148. *Id.* annex, at 7

149. *Id.*

150. *Id.*

151. U.N. Comm. on Econ., Soc. & Cultural Rts., *Statement on the Obligations of State Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights*, ¶ 1, U.N. Doc. E/C.12/2011/1 (July 12, 2011).

152. *Velásquez-Rodríguez v. Honduras*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 7920, ¶ 172 (July 29, 1988).

“devastatingly affect the well-being” of the local people, the State had “fallen short of the minimum conduct expected of governments.”<sup>153</sup> The Inter-American Commission on Human Rights has emphasized that “effective enforcement of the environmental protection measures in relation to private parties, particularly extractive companies and industries . . . is essential to avoid the State’s international responsibility for violating the human rights of the communities affected by activities detrimental to the environment.”<sup>154</sup> Finally, the European Court of Human Rights has held that, regardless of whether pollution is caused by private actors or by the Government, “the applicable principles are broadly similar,” in that States are obliged to take positive steps to protect against harm to the right to private and family life caused by environmental degradation.<sup>155</sup>

#### G. OBLIGATIONS RELATING TO MEMBERS OF GROUPS IN VULNERABLE SITUATIONS

In his 2013 report, the Special Rapporteur specifically examined State obligations relating to three groups identified as being particularly vulnerable to environmental harm: women, children and indigenous people.<sup>156</sup> He concluded that not only should States ensure that public participation in decision making includes the concerns and participation of women, but also, in relation to their substantive obligations, the Rapporteur highlights that the CEDAW Committee has called on States to ensure that the policies they develop and implement to protect human rights against environmental harm include a gender perspective and specifically protect women’s rights to health, property and to development.<sup>157</sup> Finally, the Special

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153. Soc. and Econ. Rts. Action Ctr. v. Nigeria, Communication 155/96, Afr. Comm’n H.P.R., ¶¶ 57–58 (1999–2000), [https://www.achpr.org/public/Document/file/English/achpr30\\_155\\_96\\_eng.pdf](https://www.achpr.org/public/Document/file/English/achpr30_155_96_eng.pdf).

154. Inter-Am. Comm’n on Hum. Rts., *Second Report on the Situation of Human Rights Defenders in the Americas*, ¶ 315, OEA/Ser.L/V/II Doc. 66 (Dec. 31, 2011).

155. López Ostra v. Spain, App. No. 1798/90, Eur. Ct. H.R., ¶ 51 (Dec. 9, 1994), <https://hudoc.echr.coe.int/FRE?i=001-57905>; see also *Hatton v. United Kingdom*, App. No. 36022/97, Eur. Ct. H.R., ¶ 98 (July 8, 2003), <https://hudoc.echr.coe.int/fre?i=001-61188> (stating that States have a responsibility to regulate private industry).

156. Knox, *supra* note 100, ¶ 69.

157. *Id.* ¶ 71.

Rapporteur also highlights the need for an intersectional approach, which considers the rights of those women who are particularly affected by climate change; for example, older women,<sup>158</sup> or women living in rural areas.<sup>159</sup>

#### IV. VIOLENCE AGAINST WOMEN AND GIRLS: INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is an extreme form of discrimination within the meaning of Article 1 of the CEDAW.<sup>160</sup> Under Article 2, all State parties to the CEDAW are obliged to condemn such discrimination in all its forms and to pursue a policy of eliminating discrimination against women.<sup>161</sup> While not specifically included in the CEDAW,<sup>162</sup> gender-based violence was defined by the CEDAW Committee in their *General Recommendation No. 19* as “violence that is directed against a woman because she is a woman or that affects women disproportionately.”<sup>163</sup> It includes acts that inflict physical, mental or sexual harm or suffering, threats of such

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158. This reality was also identified by the CEDAW in *General Recommendation No. 27*, *supra* note 5, ¶ 25.

159. *General Recommendation No. 34*, *supra* note 17, ¶ 10.

160. U.N. Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 19: Violence Against Women*, ¶ 7 U.N. Doc. A/47/38 (Jan. 30, 1992) [*General Recommendation No. 19*]; U.N. Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19*, ¶ 21, U.N. Doc. CEDAW/C/GC/35, (July 26, 2017) [hereinafter *General Recommendation No. 35*]. Under Article 1 of CEDAW, *supra* note 109, gender-based discrimination is defined as “any discrimination, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

161. CEDAW, *supra* note 2, art. 2.

162. For further analysis of the reasoning for the non-inclusion of violence in the initial drafting of the CEDAW, see MARSHA A. FREEMAN ET AL., THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 182–83 (Susan Kroworsch et al. eds., 2012).

163. *General Recommendation No. 19*, *supra* note 160, ¶ 6.

acts, coercion and other deprivations of liberty.”<sup>164</sup> They have also acknowledged that gender-based violence is “one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated,” and that this violence “is a clear obstacle to achieving substantive equality between women and men as well as to women’s enjoyment of human rights and fundamental freedoms.”<sup>165</sup> According to the CEDAW Committee’s *General Recommendation No. 35*, which was published in 2017 and served to update *General Recommendation No. 19*, the prohibition of gender-based violence against women has evolved into a principle of customary international law.<sup>166</sup> It also highlights that, while there have been many positive normative developments in this field, gender-based violence remains pervasive in all countries of the world, with high levels of impunity.<sup>167</sup>

At the regional level, three regional human rights systems have developed legally binding instruments and have set up mechanisms to address women’s human rights. In Europe, the Council of Europe Convention on the Prevention and Combatting Violence Against Women provides a comprehensive definition of “violence against women” at Article 3(a).<sup>168</sup> The Convention requires States to adopt comprehensive and coordinated policies that take a human rights approach to this issue, placing victims at the center of all measures and involving all relevant actors.<sup>169</sup> In Africa, both the African Charter on

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164. *Id.*

165. *General Recommendation No. 35*, *supra* note 163, ¶ 10.

166. *Id.* ¶ 2.

167. *General Recommendation No. 19*, *supra* note 160, ¶ 6.

168. Convention on Preventing and Combatting Violence Against Women and Domestic Violence, art. 3, May 11, 2011, C.E.T.S. No. 210 [hereinafter Istanbul Convention]. It is interesting to note that the Convention makes a key distinction between “violence against women” and “domestic violence,” the second of which is defined separately at Article 3(b). The definition of domestic violence focuses on “acts of physical, sexual, psychological or economic violence which occur within the family or domestic unit.”

169. *Id.* art. 7; *see also* Rashida Manjoo (Special Rapporteur), *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, ¶¶ 28–33, 40, U.N. Doc. A/HRC/29/27 (June 10, 2015) (providing a detailed report on the efforts taken by the Council of Europe Convention on the Prevention and Combating Violence Against Women to address gender discrimination).

Human and People's Rights (the Banjul Charter)<sup>170</sup> and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) call on States to combat all forms of discrimination against women.<sup>171</sup>

In the Americas, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém Do Pará) defines violence against women as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”<sup>172</sup> The Convention expressly recognizes the relationship between gender violence and discrimination,<sup>173</sup> indicating that such violence is a manifestation of historically unequal power relationships between women and men, and that women's right to a life free of violence includes the right to be free from all forms of discrimination and to be valued and educated free of, among others, stereotyped patterns of behavior.<sup>174</sup> Further, the Inter-American Commission has been instrumental in generating key legal standards addressing the right of women to live free from all forms of discrimination and violence. Notably, in the seminal case of *da Penha Maia Fernandes v Brazil*, in which the Commission applied the Convention for the first time and found that the State had failed to act with due diligence to prevent, punish and eradicate violence, and as

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170. Banjul Charter, *supra* note 62, art. 18(3) (“[States must] ensure the elimination of all forms of discrimination against women and ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.”).

171. The Maputo Protocol provides a comprehensive definition of the term “violence against women,” including all acts which could cause them “physical, sexual, psychological, and economic harm.” Under Article 3(4) of the Protocol, States are under obligations to “adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection from all forms of violence,” and at Article 4(2), as part of the rights to life, integrity and security of the person, States must also take action to prevent violence (particularly by adopting “such other legislative, administrative, social and economic measures as may be necessary”), protect women from violence, prosecute perpetrators and offer reparations to victims. Maputo Protocol, *supra* note 62, arts. 3(4), 4(2).

172. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women art. 1, June 9, 1994, 33 I.L.M. 1534 [hereinafter Belém Do Pará Convention].

173. *Id.* art. 6.

174. *Id.* pmb., art. 6.



such was responsible for the violence which had occurred.<sup>175</sup> Another important case to note is *González v. Mexico (Cotton Field)*, which emphasised the State's duty to act with due diligence in relation to violence against women, and provided a comprehensive analysis on the content of the duties to prevent, investigate and offer reparations in such cases; particularly focusing on what reparations should be from a gender perspective.<sup>176</sup>

#### A. DUE DILIGENCE OBLIGATIONS OF THE STATE IN RELATION TO VIOLENCE AGAINST WOMEN

Under International Human Rights Law, States have a due diligence obligation to take all appropriate measures to prevent, investigate, and punish instances of violence against women, and make reparation to victims, even when violence is committed by non-State actors or corporations, in cases where the State authorities knew or should have known of the risk of violence.<sup>177</sup> The duty of due diligence with respect to the acts of non-State actors is widely recognized. It has been

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175. See *da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm'n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20, ¶ 60 (2001) (holding Brazil violated the Belém Do Pará Convention by tolerating gender-based assault and attempted murder against the petitioner).

176. See *González v. Mexico [Cotton Field]*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009) (holding Mexico failed to implement the necessary provisions of the Belém Do Pará Convention and must harmonize its domestic standards with the standards established by the international community through annual reports).

177. See *da Penha Maia Fernandes*, Inter-Am. Comm'n H.R., Report No. 54/01, ¶¶ 55–57 (2001) (holding Brazil had a duty under the Belém Do Pará Convention to prosecute and prevent the violence committed against the petitioner); *Opuz v. Turkey*, App. No. 33401/02, Eur. Ct. H.R., 3 (June 9, 2009), <https://hudoc.echr.coe.int/fre?i=002-1449> (holding Turkish authorities did not demonstrate due diligence in their failure to provide protective measures to the petitioner after being repeatedly informed of the danger); *Goekce v. Austria*, Comm'n No. 5/2005, U.N. Comm. on the Elimination of Discrimination Against Women [CEDAW], ¶¶ 12.1.2–12.1.4, CEDAW/C/39/D/5/2005 (Aug. 6, 2007) (holding Austria violated its due diligence obligations to prevent the death of the petitioner upon knowledge of her safety at risk); *Yildirim v. Austria*, Communication No. 6/2005, CEDAW, ¶¶ 12.1.4–12.1.6, CEDAW/CEDAW/C/39/D/6/2005 (Oct. 1, 2007) (holding Austria failed to uphold its due diligence obligations and protect the petitioner's right to life despite prosecuting the perpetrator to the full extent of the law).

reiterated in treaty law;<sup>178</sup> in international declarations such as the Beijing Platform for Action;<sup>179</sup> by international bodies such as the CEDAW Committee,<sup>180</sup> the General Assembly,<sup>181</sup> and by the Commission on the Status of Women;<sup>182</sup> as well as by regional courts and bodies including the European Court of Human Rights,<sup>183</sup> the Inter-American Court of Human Rights<sup>184</sup> and the African Committee of Experts on the Rights and Welfare of the Child.<sup>185</sup> In 2017, the CEDAW Committee reiterated that “States parties will be held

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178. See Belém Do Pará Convention, *supra* note 172, art. 7 (specifying the State Parties’ duty to “apply due diligence to prevent, investigate and impose penalties for violence against women”); Istanbul Convention, *supra* note 168, art. 5 (“Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention.”).

179. See Fourth World Conference on Women, *Beijing Declaration and Platform for Action*, ¶ 124(b), A/CONF.177/20/Rev.1 (Sept. 15, 1995) (codifying the duty of Beijing to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women”).

180. See *General Recommendation No. 19*, *supra* note 160, ¶ 24 (recommending “States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act”); U.N. Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*, ¶¶ 9, 17, 37, U.N. Doc. CEDAW/C/GC/28, (Dec. 16, 2010) (specifying “States parties also have an obligation to ensure that women are protected against discrimination committed by public authorities, the judiciary, organizations, enterprises or private individuals”).

181. See G.A. Res. 48/104, art. 4 (Dec. 20, 1993) (recognizing states should “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women”).

182. See *Agreed Conclusions on the Elimination and Prevention of Violence Against Women and Girls*, Rep. of the Comm’n on the Status of Women on its 57th Session, ¶ 9, U.N. Doc. E/2013/27 (2013).

183. See *Opuz v. Turkey*, App. No. 33401/02, Eur. Ct. H.R., 4–5 (June 9, 2009), <https://hudoc.echr.coe.int/fre?i=002-1449> (holding Turkey did not uphold its duty of due diligence by failing to protect the petitioner from domestic violence).

184. See *Cotton Field*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 258 (Nov. 16, 2009) (holding Mexico must adopt additional measures to comply with its due diligence obligations under the Belém Do Pará Convention).

185. See *Husungule v. Uganda*, Communication 1/2005, Decision, African Comm. of Experts on the Rights and Welfare of the Child, ¶ 38 (Apr. 19, 2013), <https://acerwc.africa/wp-content/uploads/2018/07/decision-on-uganda-comment-edited.pdf> (holding Uganda has a duty of due diligence to protect its people’s right to life under The African Charter on the Rights and Welfare of the Child).

responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women.”<sup>186</sup>

Non-discrimination is a fundamental principle in the application of the due diligence standard. States “are required to use the same level of commitment in relation to prevention, investigation, punishment and provision of remedies for violence against women as they do with regards to the other forms of violence.”<sup>187</sup> Due diligence obligations must also be implemented in good faith, with a view to preventing and responding to violence against women.<sup>188</sup>

As outlined above, the due diligence standard essentially consists of four equally important obligations: prevention, protection, prosecution and provision of reparations, including compensation.<sup>189</sup> In relation to the gender-based violence suffered by women as a result of climate change, as part of their obligation to prevent violence, the Human Rights Council has emphasized that States are under an obligation to introduce “effective measures to address and prevent gender-based violence in the context of climate change,” with a particular focus on ensuring “women’s meaningful and effective participation in the design and implementation of humanitarian, migration and disaster risk reduction plans and policies.”<sup>190</sup>

As part of their *General Recommendation No. 37*, the CEDAW Committee has outlined specific obligations on States Parties relating to the right of women and girls to live free from gender-based violence

186. *General Recommendation No. 35*, *supra* note 163, ¶ 24(b).

187. Yakin Ertürk (Special Rapporteur on Violence Against Women, Its Causes and Consequences), *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, U.N. Doc. E/CN.4/2006/61, ¶ 35 (Jan. 20, 2006).

188. *Id.* ¶ 36.

189. *See General Recommendation No. 19*, *supra* note 160, ¶ 24; G.A. Res. 48/104, *supra* note 181, art. 4 (listing the necessary steps for states to ensure due diligence is maintained); *see also* U.N. Office of the High Commissioner for Human Rights, *Question of Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations and the Elimination of Violence Against Women*, ¶ 2, U.N. Doc. E/CN.4/RES/1994/45 (Mar. 4, 1994) (emphasizing the appropriate and effective steps for states to take to prevent violence against women).

190. *Analytical Study on Gender-Responsive Climate Action*, *supra* note 1, ¶ 19.

within situations of disaster and crises.<sup>191</sup> In agreement with the Human Rights Committee, they also specify that States should develop “policies and programmes to address existing and new risk factors for gender-based violence against women,” identifying in particular “domestic violence, sexual violence, economic violence, trafficking in persons and forced marriage,”<sup>192</sup> and highlighting the importance of the participation and leadership of women in their development.<sup>193</sup> States must also provide “accessible, confidential, supportive and effective mechanisms for all women wishing to report gender-based violence,”<sup>194</sup> ensure that disruptions to legal and justice services that may occur as a result of disasters and climate change are minimized and that women and girls who are victims of gender-based violence can continue to access justice<sup>195</sup> in line with the *General Recommendation No. 33*,<sup>196</sup> and should develop “a system for the regular monitoring and evaluations to prevent and respond to gender-based violence against women, within programmes relating to disaster risk reduction and climate change.”<sup>197</sup> Along with generally providing “training, sensitization and awareness raising for the authorities, emergency services workers and other groups on the various forms of gender-based violence that are prevalent in disasters and how to prevent and address them,”<sup>198</sup> the Committee makes specific recommendations in relation to early marriage, demanding that States “ensure that the minimum legal age of marriage is 18 years for both women and men,” and stating that States should “provide training on the prevalence of early marriage and forced marriage for all personnel involved in disaster response activities.”<sup>199</sup> The Committee also

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191. See *General Recommendation No. 37*, *supra* note 1, ¶ 8 (highlighting the importance of addressing gender discrimination during times of disaster and climate change).

192. *Id.* ¶ 57.

193. *Id.*

194. *Id.*

195. *Id.* ¶ 38.

196. See U.N. Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 33 on Women’s Access to Justice*, ¶ 19, U.N. Doc. CEDAW/C/GC/33, (Aug. 3, 2015) (ensuring women are provided access to remedies available inside and out of the court system).

197. CEDAW, *General Recommendation No. 37*, *supra* note 1, ¶ 57.

198. *Id.* ¶ 57(e).

199. *Id.* ¶ 57(b).

recommend that States adopt “long term policies and strategies to address the root causes of gender-based violence against women in situations of disaster.”<sup>200</sup>

It is interesting to note that the Committee does not address the obligation to provide effective remedies and/or compensation as part of their recommendations.<sup>201</sup> While it is understood that these recommendations should be read together with the general recommendations for States as provided in the Committee’s *General Recommendation No. 19*<sup>202</sup> and *No. 35*,<sup>203</sup> the failure to emphasize the importance of an effective remedy is unfortunate. As outlined by the former Special Rapporteur on Violence Against Women in her 2010 thematic report,<sup>204</sup> reparations can take various forms, including restitution, economic compensation, rehabilitation, and measures of satisfaction including, for example, verification of facts and public disclosure of the truth, and guarantees of non-repetition.<sup>205</sup> As violence against individual women generally feeds into patterns of structural discrimination and systematic marginalization, redress measures need not only to offer reparations to the individual, but also aspire to structural transformation.<sup>206</sup> Despite the importance of this obligation, both in terms of the individual victim and in terms of the potential structural change that effective remedies could produce, the implementation of the due diligence obligation to reparations remains

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200. *Id.* ¶ 57(f).

201. *Id.*

202. CEDAW, *General Recommendation No. 19*, *supra* note 160, ¶ 24 (recommending remedies such as compensation in the General Recommendations).

203. CEDAW, *General Recommendation No. 35*, *supra* note 163, ¶¶ 46–47 (specifying effective reparations such as monetary compensation or legal or health services to victims of gender-based violence in the General Recommendations).

204. Rashida Manjoo (Special Rapporteur), *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences*, U.N. Doc. A/HRC/14/22 (Apr. 23, 2010).

205. *Id.* ¶ 17 (requiring reparation in the form of restitution, compensation, “measures of rehabilitation,” “measures of satisfaction,” and guarantees of non-repetition”); *see* G.A. Res. 60/147, ¶¶ 18–22 (Mar. 21, 2006) (requiring reparation in the form of “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition”).

206. *See* Rashida Manjoo (Special Rapporteur on Violence against Women, its Causes and Consequences), *Advancement of Women*, ¶ 71, U.N. Doc. A/66/215 (Aug. 1, 2011) (predicting “measures of redress need to link individual reparation and structural transformation”).

“grossly underdeveloped”<sup>207</sup> in practice. This is particularly unfortunate in relation to women who suffer gender-based violence in situations of disaster or crisis, as transformative reparations in this context could potentially improve the adaptive ability of women and girls in the face of climate change in the future.

## V. CONCLUSION

Climate change is undoubtedly one of the most pressing human rights issues facing the world at the moment; and, as climate change increasingly challenges how communities and societies access, interact with and benefit from the environment, so too must human rights standards react to ensure that fundamental rights continue to be protected, respected and promoted.

Gender-based violence is an extreme and pervasive form of discrimination which undermines efforts to ensure gender equality and women’s empowerment. By failing to address the intersection between gender-based violence and environmental degradation within policies to adapt to and mitigate the impacts of climate change, States do not only leave individual women at risk; they fail in their obligations under international law to prevent violence, protect victims, prosecute perpetrators and offer reparations. Beyond this, from a practical perspective, by failing to acknowledge the reality faced by women and girls in relation to environmental degradation, potentially successful interventions in relation to environmental and sustainable development planning can be undermined, which in turn impacts on communities and eco-systems at large.

While there has been progress identifying the intersections between environmental degradation and gender-based violence, clearly, more needs to be done. To improve understanding of the gendered impacts of climate change, and to ensure that all climate actions are informed by the lived experiences of women and girls, it is vital that States take a rights-based, gender-responsive approach to climate action at local, national, and international levels. Rather than relying on gender stereotypes and classifying women as a “vulnerable group” in need of protection, States must acknowledge women’s agency in relation to

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207. *Id.* ¶ 70.

the environment and ensure that women, particularly those facing multiple and intersecting forms of discrimination, are able to participate meaningfully in informed and effective decision-making around climate-change adaptation and mitigation strategies.

Finalizing their recent Joint Statement, the CEDAW Committee, the CESR Committee, the CMW Committee, the CRC Committee and the CRPD Committee clearly stated their interest and willingness in continuing to review the impacts of climate change and climate-related disasters on the rights holders protected under their respective treaties and continue to develop guidance to States on how they can meet their obligations under these human rights treaties.<sup>208</sup> International human rights mechanisms, particularly the U.N. treaty bodies, have an important role to play in increasing the recognition of the intersections between environmental degradation and violence against women and girls; as noted above, the international human rights mechanisms have been instrumental in filling the lacunae in international human rights law in terms of a standalone “right to a healthy environment,” by construing this right as part of the legal obligations on States imposed by the seminal human rights treaties.<sup>209</sup> Using this important role that they have in interpreting the treaties, the treaty bodies will hopefully continue to examine the linkages between gender based violence and environmental degradation, building on *General Recommendation No. 37* of the CEDAW Committee to not only examine violence against women and girls in times of climate related disasters, but also considering the impact of slow-impact climate change effects on violence, and encourage States to take action to ensure the prevention of climate-change related violence against women, as well as the protection of victims, the prosecution of perpetrators and the provision of adequate and transformative reparations.

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208. *Joint Statement on Human Rights & Climate Change*, *supra* note 72, ¶ 18.

209. *See id.* ¶¶ 3, 10 (“[F]ailure to take measures to prevent foreseeable harm to human rights caused by climate change . . . could constitute a violation of States’ human rights obligations.”).