



Women's Human Rights and Climate Change: State Obligations and Standards

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Introduction

The year 2020 is a significant year for women's human rights. It marks the 20th anniversary of UN Security Council Resolution 1325 on Women, Peace and Security and 25 years since the Beijing Declaration and Platform for Action. These anniversaries have led to significant mobilisation by women's movements around the globe to implement the rights set out therein and to advocate for the Sustainable Development Goals (SDGs) which are at their half way point. However, the anniversary marking 40 years of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) - the UN's blueprint for the advancement of women's human rights - has passed, relatively speaking, under the radar. With this in mind, this briefing paper provides an overview of some of the CEDAW Committee's most recent work since the opening of the Convention for adoption by States in Copenhagen in 1980.

The purpose of the briefing paper is to alert readers to the significant work that the CEDAW Committee has undertaken in relation to the gender-related dimensions of disaster-reduction and climate change. As CEDAW Committee member Nahla Haidar has commented, the CEDAW Committee first issued a statement on natural disasters and climate change in 2009, 11 years ago.¹ Despite this the important standards set by the Committee in relation to state obligations under the Convention and how they relate to disasters and climate change remain relatively unknown.

What is CEDAW?

CEDAW was adopted by the United Nations General Assembly on 18 December 1979 and came into force on 3 September 1981. In 2020 it has 189 states parties; it is a landmark international human rights treaty with legally binding obligations on state parties with respect to gender equality.² The purpose of CEDAW is to

eliminate discrimination on the basis of sex and gender by any person, organisation or enterprise,³ including discriminatory stereotypes.⁴ It thus seeks to eradicate inequality between women and men and to urge states to adopt measures which are emancipatory.⁵ The CEDAW Committee is a geographically diverse and expert UN treaty body responsible for overseeing the implementation of the Convention.

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1 Committee on the Elimination of Discrimination against Women, "Statement of the CEDAW Committee on Gender and Climate Change, Adopted during the 44th session," https://www2.ohchr.org/english/bodies/cedaw/docs/Gender_and_climate_change.pdf. Accessed: 11 February 2020. Climate change is defined in the United Nations Framework Convention on Climate Change (UNFCCC) in Article 1 as 'a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.' The UNFCCC (adopted 9 May 1992, entered into force 19 June 1993) is a *lex specialis*. *United Nations Framework Convention on Climate Change: Resolution / Adopted by the General Assembly, FCCC/INFORMAL/84, 1992*. Its relationship to human rights is comprehensively explored in Margaretha Wewerinke-Singh, *State Responsibility, Climate Change and Human Rights under International Law* (Oxford: Hart, 2018).

2 On the history of the adoption of the Convention see Marsha Freeman, Christine Chinkin, and Beate Rudolf, *The UN Convention on the Elimination of all Forms of Discrimination against Women: A Commentary* (Oxford: Oxford University Press, 2012), Chapter One. On the history of women's rights as human rights see Arvonne S. Fraser, "Becoming Human: The Origins and Development of Women's Human Rights," *Human Rights Quarterly* 21 (4) (1999): 853-906.

3 *Convention on the Elimination of All Forms of Discrimination Against Women*, Treaty Series, vol. 1249, p. 13, 1979. Article 2 (e).

4 CEDAW, Article 5 (a).

5 See for example CEDAW, Article 3; Committee on the Elimination of Discrimination against Women, *General Recommendation on Women's Access to Justice*, CEDAW/C/GC/33, 2015, Para 2: 'Effective access to justice optimizes the emancipatory and transformative potential of the law.'

Through its General Recommendations the CEDAW Committee provides authoritative guidance on state obligations under CEDAW⁶ and elaborates and explains legal standards specifically in relation to women's equality, empowerment and justice. General Recommendations are important legal instruments since they also ensure that the Convention is a living, dynamic instrument.⁷ Many of the global standards that we have on women's rights have been developed through the adoption of the CEDAW Committee's General Recommendations that form a core part of its work in clarifying, developing and interpreting the rights set out in the Convention.⁸ The General Recommendations are crafted by experts on gender equality for women (and largely by women) and often address topics that are underdeveloped by other treaty bodies.

CEDAW and Climate Change

On the 7 February 2018, the CEDAW Committee adopted the first General Recommendation by any UN human rights treaty body on climate change and the gendered impact of disasters: General Recommendation No. 37 (GR 37) on the gender-related dimensions of disaster risk reduction in the context of climate change.⁹ The adoption of GR 37 follows a number of programmes and statements which have called on states to mainstream gender into all areas and elements of climate action.¹⁰ It also intersects with other policy frameworks such as the SDGs and the Sendai Framework for Disaster Risk Reduction.¹¹ GR 37 links the climate crisis to other root causes of women's oppression, including but not limited to violence against women. It also confirms women and girls as leaders and vital participants in disaster relief and solutions to the climate crisis. This means that it is important to understand the climate crisis through an

intersectional lens, which locates both women's rights and the environment within interlocking systems of oppression and opportunity.

GR 37 is shaped by three key general principles – equality and non-discrimination, participation and empowerment, and accountability and access to justice – as fundamental to ensuring that all interventions related to disaster risk reduction in the context of climate change are implemented in accordance with the Convention.¹² The objective of GR 37 is:

to underscore the urgency of mitigating climate change to highlight the steps that need to be taken to achieve gender equality as a factor that will reinforce the resilience of individuals and communities globally in the context of climate change and disasters. The general recommendation also seeks to contribute to coherence, accountability and the mutual reinforcement of different international agendas on disaster risk reduction and climate change adaptation by focusing on the impact of climate change and disasters on women's human rights.¹³

The introduction to GR 37 explains the gendered impact of disasters on women and girls, stating that:

- Women, and children are affected differently by climate change and disasters, with many women and girls experiencing greater risks, burdens and impacts.
- As a result of the limited control women have over decisions governing their lives, they are more likely to be exposed to disaster induced risks and losses related to their livelihoods and they are less able to adapt to changes in climatic conditions.

6 *Ahmadou Sadio Diallo* (Republic of Guinea v Democratic Republic of the Congo) 2010 ICJ Reports, 639. Para 66.

7 Committee 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*, CEDAW/C/GC/28, 2010, Para 1.

8 Freeman, Chinkin, and Rudolf, CEDAW: A Commentary, 24; Andrew Byrnes, "The Convention on the Elimination of All Forms of Discrimination against Women," in *The Human Rights of Women: International Instruments and African Experiences*, ed. Wolfgang Benedek, Esther M. Kisaakye, and Gerd Oberleitner (London: Zed Books, 2002): 119-72, 119, 22-23.

9 Keina Yoshida and Lina Cespedes, "Climate Change is a Women's Human Rights Issue," LSE Centre for Women, Peace and Security, <https://blogs.lse.ac.uk/wps/2019/07/04/climate-change-is-a-womens-human-rights-issue/>. Accessed: 11 February 2020.

10 Lima Work Programme on Gender, adopted in 2014 by the UNFCCC and the 2017 Bonn Gender Plan of Action (GAP). Also recognised in the Paris Agreement.

11 Christine Chinkin, Keina Yoshida, and Gema Fernández Rodríguez de Liévana, "Sexual Slavery: Linda Loaiza López Soto v Venezuela," *LSE Centre for Women, Peace and Security Blog*, 29 January 2020, <https://blogs.lse.ac.uk/wps/2020/01/29/sexual-slavery-linda-loaiza-lopez-soto-v-venezuela/>. Accessed: 11 February 2020; Keina Yoshida, Gema Fernández Rodríguez de Liévana, and Christine Chinkin, "Inter-American Court Reaches Landmark Decision on Torture and Sexual Slavery," *ibid.*, 6 December 2018, <https://blogs.lse.ac.uk/wps/2018/12/06/inter-american-court-reaches-landmark-decision-on-torture-and-sexual-slavery/>. Accessed: 11 February 2020.

12 GR 37, Para 27.

13 GR 37, Para 12.

- Women and girls have higher levels of mortality and morbidity than men in situations of disaster. Gender-based economic inequalities mean that women, and female-headed households in particular, are at higher risk of poverty and more likely to live in inadequate housing in urban and rural areas of low land value that are vulnerable to the impact of climate related events such as floods, storms, avalanches, earthquakes, landslides and other hazards.
- Women and girls in conflict situations are particularly exposed to risks associated with disasters and climate change.
- The failure to engage in gender-responsive disaster planning and implementation means that protective facilities and infrastructures such as early warning mechanisms, shelters, and relief programmes have frequently neglected the specific accessibility needs of diverse groups of women, including women with disabilities, older women and indigenous women.
- Women and girls also face heightened risk of gender-based violence during and following disasters.

The categorisation of women and girls as passive ‘vulnerable groups’ in need of protection from the impact of disasters is a negative gender stereotype that fails to recognise the important contributions to disaster risk reduction, post disaster management and climate change mitigation and adaptation strategies that women are already making.

GR 37 provides an intersectional approach to disaster reduction. It states that situations of crisis exacerbate pre-existing gender inequalities and compound intersecting forms of discrimination. The Committee recommends that states parties should ensure that all policies, legislation, plans, programmes, budgets, and other activities are grounded in human rights based principles including equality and non-discrimination, “with priority being accorded to the most marginalized

groups of women and girls”.¹⁴ This is evidenced throughout the text in key recommendations addressing discrimination in relation to the ownership, access, use, disposal and inheritance of land. The Committee also draws attention to other barriers impeding the exercise by women of their full legal capacity and autonomy in relation to freedom of movement and equal access to economic, social and cultural rights.

Significantly, GR 37 makes it clear that any measures to combat climate change, including limiting fossil fuel use and greenhouse gas emissions and the harmful environmental effects of extractive industries such as mining and fracking, must comply with human rights. The GR makes it clear that climate mitigation should instead contribute to empowerment.¹⁵ This speaks to the Committee’s pronouncement that gender equality is a pre-condition for the realisation of the SDGs.¹⁶ This means, amongst other things, that gender equality cannot be sacrificed in the name of green capitalism.¹⁷

GR 37 cements the Committee’s work on the right to a healthy environment, the need for states to take into account indigenous and traditional knowledge, and its previous guidance on rural women.¹⁸ It emphasises states’ extra territorial obligations and builds on GR 35 and concluding observations which have drawn attention to the negative impacts of extractive industries. It is a vital and transformative instrument which recognises how climate change is exacerbating risks and disasters and has differential gender consequences, but which also recognises women as leaders in designing risk reduction strategies and climate change initiatives.

14 GR 37, Para 26(a).

15 GR 37, Para 14.

16 GR 37, Para 7, Goal 5 Achieve Gender equality and empower all women and goals.

17 The term ‘green violence’ has been defined as ‘the deployment of violence instruments and tactics towards the protection of nature.’ Bram Büscher and Maano Ramutsindela, “Green Violence: Rhino Poaching and the War to Save Southern Africa’s Peace Parks,” *African Affairs* 115 (458) (2016): 1-22. The term ‘green militarism’ is also used to describe the use of military tactics to patrol protected environmental areas.

18 GR 37, Para 33.

GR 37 lists a number of areas of specific concern including: the right of women and girls to live free from gender-based violence, rights to education and information, rights to work and social protection, right to health, right to an adequate standard of living and right to freedom of movement. The Committee has made a number of recommendations to States parties including:

- Participation and empowerment: through the adoption of effective processes and the allocation of necessary resources to ensure that diverse groups of women have opportunities to participate in every stage of policy development, implementation and monitoring.
- Participation at each level of government from the local to the national, regional and international levels.
- Accountability and access to justice, which require the provision of appropriate and accurate information and mechanisms to ensure that all women and girls whose rights have been directly and indirectly affected by disasters and climate change are provided with adequate and timely remedies.
- Creation of effective mechanisms to guarantee that the rights of women and girls are a primary consideration in devising measures on disaster risk reduction and climate change at the local, national, regional and international levels. Measures must be taken to ensure that quality infrastructure and critical services are available, accessible and culturally acceptable, for all women and girls on a basis of equality.
- Strengthen national gender and women's rights institutions, civil society and women's organizations and provide them with adequate resources, skills, and authority to lead, advise, monitor and carry out strategies to prevent and respond to disasters and mitigate the adverse effects of climate change.
- Engagement in a comprehensive gender audit of policies and programmes across different sectors and areas (including climate, trade and investment, environment and planning, water, food, agriculture, technology, social protection, education and employment) in order to identify inconsistencies with a view to reinforcing efforts aimed at disaster risk reduction and climate change.
- Gender impact assessments during the design, implementation and monitoring phases of disaster risk reduction and climate change plans and policies
- The taking of effective steps equitably manage shared natural resources, particularly water, and limit carbon emissions, fossil fuel usage, deforestation, nearsurface permafrost degradation, soil degradation and transboundary pollution, including dumping of toxic waste, and all other environmental, technological and biological hazards and risks that contribute to climate change and disasters which tend to have disproportionate effects on women and girls.

Importantly, GR 37 forms part of growing awareness on the need for bold and creative change. Those who are currently on the frontline trying to protect land, water, species and ecosystems are too often targeted and killed. As the report on the Office of the United Nations High Commissioner for Human Rights noted in May 2019: "Women defending these ecosystems often pay a high price".¹⁹ In other words, gender-justice and climate-justice are interrelated.²⁰ This intersection means that empowering women also requires taking a stand for environmental rights.²¹

19 Human Rights Council, *Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women*, A/HRC/41/26, 2019.

20 Mary Robinson, *Climate Justice: Hope, Resilience and the Fight for a Sustainable Future* (London: Bloomsbury, 2018).

21 UNEP, "Empowering women means taking a stand for environmental rights," UNEP, 1 March 2019, <https://www.unenvironment.org/news-and-stories/story/empowering-women-means-taking-stand-environmental-rights>. Accessed: 12 February 2020.

Why is Climate Change a Women's Rights Issue

GR 37 comes amidst growing recognition that the climate emergency affects women and girls differently and disproportionately. It also forms part of the greening of human rights law described by John Knox, the former UN Special Rapporteur on Human Rights and the Environment. Local communities, indigenous peoples and environmental activists have been at the forefront of pushing for the development of international legal norms which reflect the reality of how environmental degradation affects human rights, especially peoples whose livelihoods are particularly intertwined with nature. At the same time, women's groups have been calling for legal recognition of how environment rights intersect with women's human rights.

These intersections operate in a number of ways. For example, the climate crisis exposes girls who fetch water for their households to greater risks of sexual violence as droughts mean that girls have to travel greater distances. Climate insecurity is therefore now recognised as a threat to international peace and security and is included within the Women, Peace and Security agenda as a facet which intersects with conflict to heighten women's vulnerabilities to violence. Despite developments on the right to access information and to participation (so-called procedural environmental rights), women and girls are often excluded from participation or accessing justice on environmental justice due to cultural norms and gender stereotypes.

Environmental rights and climate justice form part of the roots of the struggle for women's rights and gender justice.²² Despite this, there has been little attention to how and why environmental protection is a gendered issue within the literature on women's human rights law. This lack of attention is reflected at policy level and in the current climate change negotiations. As Rowena Maguire and Bridget Lewis have argued the 2015 Paris

Agreement, adopted by states parties to the United Nations Framework Convention on Climate Change (UNFCCC), contained only scant references to human rights and no coverage of women's substantive rights.²³ Even where gender is included into environmental or climate change programmes, scholars have argued that this inclusion is vapid or paradoxical. In the context of Colombia, Felipe Jaramillo has explained that the incorporation of gender into climate policies remits to Law 51 of 1981 ratifying CEDAW and yet, 'a void of content follows the persistence of the inclusion of the term "gender"' and that the term gender 'is included at the end of a sentence without any concrete explanation of what this insertion implies'.²⁴

This makes CEDAW's guidance in this area to states parties all the more important. This includes attention to how gender-based discrimination, harmful stereotypes and economic, social and political barriers create obstacles to women's participation in climate change related discussions and also in relation to their adaptive capacity. Additionally, an analysis of the concluding observations of the Committee demonstrates an increasing understanding of gender justice and climate justice as intersecting human rights concerns.²⁵

According to the Global Initiative for Economic, Social and Cultural Rights, in 2018 the Committee made climate recommendations to 75% of the states it reviewed.²⁶ For example, the Committee has expressed concern over the gendered consequences of extreme weather and natural disasters, emissions reductions, fossil fuels, deforestation, climate adaptation and (to a lesser extent) climate mitigation. In addition to natural disasters, the Committee has drawn attention to how ecological degradation is an impediment to the full implementation of the Convention and noted extremely negative health impacts suffered by women and girls as a consequence. The Committee has considered the impact of industrial accidents, drought, lack of natural resources, contamination and pollution, the effect of fertilizer and pesticides on the health of rural women,

22 Mary Robinson, *Climate Justice: Hope, Resilience and the Fight for a Sustainable Future*, Bloomsbury Publishing, 2018.

23 While providing an important analysis of the need for a gender perspective in the context of the United Nations Framework Convention on Climate Change (UNFCCC) their work provides no substantive analysis of CEDAW and its intersection with climate change and environmental rights. See R Maguire and B Lewis 'Women, human rights and the global climate regime' *Journal of Human Rights and the Environment*, vol. 9, No. 1 March 2018, p. 53.

24 Felipe Jaramillo Ruiz et al 'The Post-Political Link Between Gender and Climate Change: The case of the nationally determined contributions support programme' *Contexto Internacional*, vol 41(2) August 2019, 336.

25 Mary Robinson, *Climate Justice: Hope, Resilience and the Fight for a Sustainable Future* (Bloomsbury Publishing 2018).

26 CIEL and the Global Initiative for Economic, States' Human Rights Obligations in the Context of Climate Change: CEDAW (2019 Update).

and food insecurity. In other words, the Committee has drawn attention to how environmental harm and pollution affect a web of rights including socio-economic rights protected by the Convention.

A number of common themes and obligations can be found in the Committee's general recommendations and concluding observations beyond the impact of environmental harm on women's health, hygiene and food security/sovereignty.²⁷ These include an emphasis on the rights and unique situation of rural women who have an explicit and stand-alone right under Article 14 of the Convention, the obligations on states to protect human rights defenders, including environmental rights defenders, and increasing attention to the extraterritorial obligations of states with respect to women's rights and environmental harms. Most recently, in its Concluding Observations to the United Kingdom, the Committee called on the UK to ban fracking demonstrating its attention to ecological degradation as an issue in and of itself.

Conclusion

GR 37 is a good example of how the CEDAW Committee continues to listen to women from around the world. Climate insecurity and disasters have specific gendered repercussions, particularly in relation to the gendered roles and responsibilities that many women have around the world, such as rural women, in relation to livelihoods and food production. Many women have testified that pollution, environmental and ecological degradation has had disastrous effects on their lives, the lives of their children and on their communities. As the climate emergency intensifies the GR therefore provides a vital tool for states, clearly setting out their obligations and providing concrete recommendations to assist them when formulating policy and programmes. GR 37 also reinforces the Sustainable Development Goals leading to a transformative future for all.

²⁷ Helen Keller and Leena Grover 'General Comments of the Human Rights Committee and their Legitimacy' in Helen Keller and Geir Ulfstein (eds) *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press, 2012).



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Together with H. Charlesworth, she won the American Society of International Law, 2005 Goler T. Butcher Medal 'for outstanding contributions to the development or effective realization of international human rights law'.

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Keina is researching the links between the environment, nature, sustainable development goals, the gendered causes and impacts of violence against women, and structural inequalities in the context of international legal conceptions of peace and security. She has a particular interest in CEDAW with respect to these themes and also writes and researches on cinema, feminism and law about which she wrote her PhD.

Keina is barrister at Doughty Street Chambers where she also forms part of the Doughty Street International team. Keina has taught on graduate and postgraduate courses, including short courses for professionals in a number of universities. She is a member of the editorial board of Feminist Legal Studies.

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