



Towards a Human Rights Framework for Feminist Climate Justice

Shreya Atrey

Feminist Climate Justice Think Pieces

No. 2

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1. Introduction

UN-Women proposes that its *Progress of the World's Women* report on gender equality and climate change will adopt Nancy Fraser's approach and the following four pillars in particular: redistribution, recognition, participation and reparation. While useful, this framework is inadequate in capturing (i) the true and complete nature of gender inequality; and (ii) the framework of justice needed to respond to gender inequality. The framework could be enhanced by including (i) intersectionality explicitly as part of the pillar of recognition (as has been done by the Committee on the Rights of Persons with Disabilities

in their four-part inclusive equality framework), including, axiomatically, an emphasis on priority (as has been done by the Committee on the Elimination of Discrimination Against Women); and replacing the pillar of reparation with (ii) transformation.

This paper proposes key principles for a framework of feminist climate justice. It is divided into two parts. The first part proposes two concepts which should inform the framework and the second part delineates the principles informing human rights obligations in particular.

2. Key concepts

2.1 Intersectionality

The concept

Intersectionality refers to the concept of interlocking systems of disadvantage.¹ Intersectional discrimination refers to discrimination which is based on a combination of one or more grounds of discrimination including gender, sexuality, gender identity, race, colour, ethnicity, nationality, disability, age, religion, class, language, etc.² Intersectionality theory, as developed by subaltern social movements and activists including Black feminists, Dalit feminists, Chicana feminists, etc., places emphasis on five key strands for understanding intersectionality or intersectional justice fully: (i) the focus on both shared and unique (ii) patterns of disadvantage across social groups (ii) as a whole (iv) and in their relevant context (v) with the purpose of transformation.³

Intersectionality and international human rights law

The case that intersectionality is integral to feminism and in turn gender equality is now well accepted in international law. The text of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) acknowledges intersectionality implicitly in its references to rural women, married women, pregnant women and mothers.⁴ Intersectionality was formally adopted in CEDAW jurisprudence for the first time in General Recommendation No. 28 which states that:

Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect

1 Patricia Hill Collins, *Black Feminist Thought* (2nd edn, Routledge 2009) 21; bell hooks, *Feminist Theory: From Margin to Center* (2nd edn, South End Press 2000) ch 2.

2 See the most recent definition adopted in human rights jurisprudence: Committee on the Rights of Persons with Disabilities, General comment No.6 on equality and non-discrimination (2018) CRPD/C/GC/6 [19].

3 Shreya Atrey, *Intersectional Discrimination* (Oxford University Press 2019) ch 2.

4 United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13. See arts 5(b), 7, 11(2), 14(1), and 16(1).

women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.⁵

With the recognition that “discrimination of women based on sex and gender is inextricably linked with other factors” comes the understanding that gender inequality is not based exclusively on gender and is co-constituted by other forms of discrimination and disadvantage associated with sexuality, gender identity, race, colour, ethnicity, nationality, disability, age, religion, class, language etc. Discrimination against women or gender inequality is thus intersectional in nature and as a corollary, frameworks for addressing gender inequality must reflect intersectionality.

Importantly, intersectionality is explicitly recognised as part one of the second of the four pillars of “inclusive equality” [redistribution, recognition, participation and accommodation] adopted by the Committee on the Rights of Persons with Disabilities in its General Comment No. 6 in its paragraph 11. A similar move, to make intersectionality expressly a part of and central to the pillar of recognition in the feminist climate justice framework, is recommended.

Intersectionality and climate change

Intersectionality is particularly significant in the context of climate change because climate itself is an intersectional issue and has been understood as such by the Intergovernmental Panel on Climate

Change (IPCC).⁶ In fact, the IPCC has preferred an intersectional approach “in great part thanks to collaborating feminist [IPCC] authors, and ever more NGOs have been operationalizing this approach on the ground”.⁷

The thrust of successive IPCC reports can be summarised with a dual emphasis on: “(i) the physical and social factors in bringing about climate change; and (ii) the multidimensionality of social factors such as race, class, gender, sexuality, dis/ability, age, and socio-economic status in producing and exacerbating the unequal impact of climate change”.⁸ Thus, the cause and effect of climate change has to be understood both in terms of its physical and also social, economic, political and cultural dimensions. Climate change, much like gender inequality, defies a mono-causal or even a multi-causal understanding and instead puts emphasis on understanding both cause and effect in intersectional terms: as fundamentally co-constituted by a range of factors.

Thus, intersectionality matters in understanding not only gender inequality but also climate change—their causes and effects—and in turn, what is necessary to address these phenomena. Intersectionality is an important policy tool for constructing effective responses to gender inequality and climate change. Key to its practical application is the idea of prioritisation.

Prioritarianism

Priority, as Kimberlé Crenshaw explains, can be understood as combating a “top-down approach to discrimination” and instead to focus efforts on:

Addressing the needs and problems of those who are most disadvantaged and

5 United Nations 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, 16 December 2010, CEDAW/C/GC/28.
6 IPCC, Climate Change 2014: Synthesis Report (RK Pachauri and LA Meyer (eds); IPCC, Global Warming of 1.5 °C: Special Report. See also OHCHR, “Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health” 6 May 2016, A/HRC/32/23 (see sections related to gender and intersectionality).
7 Noémi Gonda, “Re-politicizing the Gender and Climate Change Debate: The Potential of Feminist Political Ecology to Engage with Power in Action in Adaptation Policies and Projects in Nicaragua” (2019) 106 *Geoforum* 87.
8 Shreya Atrey, “The Inequality of Climate Change and the Difference it Makes” in Cathi Albertyn (eds), *Feminist Frontiers in Climate Justice: Gender Equality, Climate Change and Rights* (Edward Elgar 2023) 22.

with restructuring and remaking the world where necessary, then others who are singularly disadvantaged would also benefit. In addition, it seems that placing those who currently are marginalized in the center is the most effective way to resist efforts to compartmentalize experiences and undermine potential collective action.⁹

The thrust of prioritising and addressing the needs of women most vulnerable to disadvantage is that it serves them *and* also serves others who are disadvantaged. This is because those most vulnerable are often intersectionally disadvantaged and centering their needs involves centering the needs of all those disadvantaged by structures which in turn constitute intersectional disadvantage. As Sara Bernstein explains:

The intuitive idea is that in understanding black womanhood, we thereby understand blackness and womanhood. Being a black woman explains being black and being a woman; features of blackness and womanhood are at least partially explained by black womanhood. Intersectional explanations are more informative than explanations exclusively involving the individual identity constituents.¹⁰

The prioritarian emphasis of intersectionality is thus about inclusivity. This emphasis has been recently recognised in CEDAW jurisprudence especially General Recommendation No. 37.¹¹ Six of the nine introductory paragraphs mention priority in respect of intersectionally disadvantaged groups. Importantly, General Recommendation No. 37 adopts priority for intersectionally disadvantaged groups as the key to operationalising the right to equality and non-discrimination:

States parties should ensure that all policies, legislation, plans, programmes, budgets and other activities relating to disaster risk reduction and climate change are gender responsive and grounded in human rights-based principles, including the following:

(a) Equality and non-discrimination, **with priority being accorded to the most marginalized groups of women and girls**, such as those from indigenous, racial, ethnic and sexual minority groups, women and girls with disabilities, adolescents, older women, unmarried women, women heads of household, widows, women and girls living in poverty in both rural and urban settings, women in prostitution and internally displaced, stateless, refugee, asylum-seeking and migrant women;...¹²

The Committee acknowledges that it cannot provide “an exhaustive list of every group of right holders for which respect of their rights must be integrated into laws, policies, programmes and strategies on disaster risk reduction and climate change”.¹³ So the requirement is not to be exhaustive but exemplative about intersectional groups. The ultimate identification and redressal of the needs of intersectional groups has to be contextual and left to the states themselves. But a clear obligation on states to identify intersectionally disadvantaged groups of women and accord priority to their needs would be indispensable for a feminist framework for climate justice both from the standpoint of feminist theory and climate science as laid out by IPCC but also from the perspective of existing international law norms especially under CEDAW jurisprudence.

Finally, it is important that intersectionality be used in the “recognition” limb not only to underscore inter-se connections between forms of inequality but

9 Kimberlé W. Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” (1989) University of Chicago Legal Forum 1139, 167.

10 Sara Bernstein, “The Metaphysics of Intersectionality” (2020) 177 Philosophical Studies 321, 331.

11 Committee on the Elimination of Discrimination against Women, General Recommendation No. 37: Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change, 69th Sess, United Nations Doc CEDAW/C/GC/37 (2018). See also General Recommendation No. 28 (n 5) [26].

12 General Recommendation No. 37 (n 11) [37] (emphasis supplied).

13 *ibid.*

to emphasise that “gender” is diverse intra-se and itself co-constituted by gender identity, sexuality and sex characteristics.¹⁴ This would mean instating clear and upfront definitions of “sex”, “gender” and “women” which go beyond their biological, binarised, cis-heteronormative understanding that speak to a mainly western audience. A decolonial and intersectional reading of the category of sex/gender and women/girls would be all-inclusive in terms of its protectorate and not limit the subjects of feminist climate justice to biological cis-heteronormative women and girls.¹⁵ It would thus not be defined by status-identities or grounds in a narrow sense which distinguishes “in-groups” from “out-groups” but instead be firmly defined by the harms inflicted by structures of oppression such as sexism and patriarchy.¹⁶

Summary

Thus, designing laws and policies which centre intersectionality and its prioritarian emphasis would involve:

- An obligation to intersectionality as a key concept which helps understand the nature of gender inequality and gender discrimination as based on a combination of grounds including gender, sexuality, gender identity, race, colour, ethnicity, nationality, disability, age, religion, class, language, etc.
- An obligation to identify as many relevant intersectionally disadvantaged groups of women across all grounds.
- An obligation to understand their unique and shared needs.
- An obligation to make policy choices which attend to those needs and to prioritise the needs of the most disadvantaged groups.

2.2 Transformation

A focus on redressing redistributive and recognition harms, enabling participation and reparations, while important, does not itself lay down a template or vision for feminist climate justice. Likewise, the focus on adaptation and (to a lesser extent) mitigation moves us away from prevention and more importantly stalling or reversing global warming—which is the main cause of what we call “climate change”. In this vein, CEDAW Committee’s approach in General Recommendation No. 37, though a step in the right direction, may be considered too conservative in its focus on disaster risk management and in response, adaptation and mitigation.¹⁷ A less reactive and more forward-looking feminist approach to climate justice which is attentive to structural change and committed to transformation is thus advisable.

Transformation as a theory of justice or change

Transformation represents a broader theory of justice or change which represents a commitment to upturning the very structures which produce and reproduce disadvantage (“breaking the cycle of disadvantage”) and replacing them with structures which produce justice, fairness and equality.

While reparations can be transformative, they are a more limited idea, as they refer to a particular form of legal remedy and not an all-encompassing framework of justice or change. Importantly, reparations—whilst a good fit for addressing past wrongs—are not primarily forward-looking. In legal parlance, they are thus considered *ex post* rather

¹⁴ *Semenya v. Switzerland*, Application No. 10934/21, European Court of Human Rights (decided on 11 July 2023).

¹⁵ Silvia Tamale, *Decolonization and Afro-Feminism* (Daraja Press 2020).

¹⁶ See for the recommendation to move to a harms-based approach from a grounds-based approach in international law: Shreya Atrey, “Xenophobic Discrimination” (2023) *Modern Law Review*.

¹⁷ General Recommendation No. 37 (n 11) [3] (“While climate change mitigation and adaptation programmes may provide new employment and livelihood opportunities in sectors such as agricultural production, sustainable urban development and clean energies, failure to address the structural barriers faced by women in accessing their rights will increase gender-based inequalities and intersectional forms of discrimination”).

than *ex ante*. Again, while elements of reparation can be forward-looking, the argument is that they, semantically and legally, about redressing or repairing that which has already occurred and is deemed wrong. It is not a predictive or preventative framework per se. It is thus a poor fit for climate change which is not simply about repairing or addressing harm (adaptation) but about preventing and in fact stalling and reversing it (mitigation).

Transformation marks a shift from reactive redressal of injustice and incremental reform, to imaginatively and proactively replacing current institutional structures which are the root causes of all forms of injustice, including inequality, disadvantage and discrimination. It moves us away from the liberal model of change which focusses on building resilience in individuals and communities rather than preventing and upending the very sources of harm that threaten their wellbeing.¹⁸ Transformation is a broader concept and performance includes reparation to address past injustices but goes beyond and looks to the future for broader structural change for a just, fair and equal society.

Transformation and climate change

IPCC defines climate change adaptation as “adjustment in natural or human systems in response to actual or expected climate stimuli or their effects which moderates harm or exploits beneficial opportunities”¹⁹ Mitigation on the other hand refers to “human interventions to reduce the emissions of greenhouse gases by sources or enhance their removal from the atmosphere by sinks”.²⁰ The strategies for adaptation and mitigation may be distinct but often overlap. For example, a measure to enable women to move away from the use of traditional cook stoves or *chulhas* and towards sustainable cooking fuels is both an adaptive strategy as it is an adjustment to the traditional modes for cooking but also a mitigation strategy to reduce the levels of carbon emissions

resultant from traditional cook stoves. It is equally a measure which advances gender equality for women by supporting their economic capacity which is often limited in adopting sustainable and perhaps more expensive fuel; and a measure which directly impacts women’s health outcomes by preventing their exposure to harmful emissions. Yet, such measures are not transformative in that they do not reimagine an overhaul of social relations where women are relegated to cooking and responsible for feeding often large families with minimal resources. The result of this is that they often eat last and the least and with ingredients and products (both animal and plant based) which in turn are not sustainably produced or made scarce (such as water) due to extreme weather events such as droughts and floods. Transformative measures would require a broader and more integrated approach to climate justice to address both the biophysical dimensions of climate as well as gender inequality in cases such as these. They would thus go beyond adaptive cooking strategies and towards sustainable food production and consumption where gender roles are not pre-assigned.

Thus, in particular and in the context of climate change, a transformative feminist agenda would include three dimensions.

First and foremost, a commitment to transformative justice would require a radical insistence on not only lowering carbon emissions but committing to carbon neutrality.²¹ Feminist responses to climate justice have so far steered clear of committing to clear transformative goals which insist on stalling or reversing global warming the driver of which is primarily carbon emissions. CEDAW Committee’s approach in General Recommendation No. 37 is largely silent on major commitments in regard to carbon emissions making no link between gender inequality and the physical or scientific dimension of global warming. There is little said of the physical

18 Mark Pelling, *Adaptation to Climate Change: From Resilience to Transformation* (Routledge 2011); Jesse Ribot, “Vulnerability before Adaptation: Toward Transformative Climate Action” (2011) 21 *Global Environmental Change* 1160.

19 Intergovernmental Panel on Climate Change, “Impacts, Adaptation and Vulnerability” (2007).

20 United Nations, *Climate Change Conference, Fact Sheet: “The Need for Mitigation”*.

21 Mary Robinson and Tara Shine, “Achieving a Climate Justice Pathway to 1.5 °C” (2018) 8 *Nature Climate Change* 564.

causes of climate-related disasters and what can be done about them from a feminist perspective. This gap reflects a lack of an understanding of causal drivers of global warming. Without a clear statement of and commitment towards transformative change especially for stalling or reversing climate change and its chief causal factors, i.e., carbon emissions caused by unsustainable energy production and use of fossil fuels, feminist approaches will appear non-committal to climate justice per se. A collective approach to feminist climate justice which brings together sciences and social sciences and does not shy away from engaging with climate science and stating scientific priorities for transforming our physical and social world is necessary. Collaboration with scientists is key to this transformative approach.

Secondly, transformative justice would be expansive in its scope and cut across all areas of law and policy to do with health, housing, food, education, immigration, defence, etc. It would go beyond traditional and still significant women's rights issues, say, of reproductive justice and gender-based violence, and would make clear links with issues of climate-related displacement and migration especially in dangerous migration routes where reproductive justice and security of person are compromised. Equally, a feminist climate justice agenda should mount a more robust critique of existing law and policy on migration such as the Government of the United Kingdom's small boats bill and the Government of Italy's ban on search and rescue ships to look for boats in distress. What this means is that feminist climate justice would have to be imagined as a democratic and governance issue where feminist responses to major political debates which affect responses to climate change (such as migration) would have to be centralised both in feminist theory and praxis but also domestic and international politics.

Thirdly, transformative justice would demand climate justice to be framed centrally as a human rights issue. For example, the Climate Justice and Human Rights Task Force Report of the International Bar Association defines "climate justice" centrally in terms of human rights:

To ensure communities, individuals and governments have substantive legal and procedural rights relating to the enjoyment of a safe, clean, healthy and sustainable environment and the means to take or cause measures to be taken within their national legislative and judicial systems and, where necessary, at regional and international levels, to mitigate sources of climate change and provide for adaptation to its effects in a manner that respects human rights.²²

But neither the Paris Agreement nor COP-26 or COP-27 acknowledge human rights as a pillar for climate action. The Paris Agreement gave a nod to human rights in its preamble but did not engage with the content and scope of human rights obligations. In COP-26, human rights are mentioned once, with no particular significance, in urging states to "swiftly begin implementing the Glasgow Work Programme on Action for Climate Empowerment, taking into consideration human rights and gender".²³ Reticence in adopting a human rights framing reflects the disregard of substantive legal obligations of states on an international plane even where it is clear that climate change has a negative impact on the enjoyment of human rights.²⁴ The next section sets out the obligations which do exist currently in international human rights law and what remains aspirational still.

22 International Bar Association, "Achieving Justice and Human Rights in an Era of Climate Disruption", Climate Justice and Human Rights Task Force Report (July 2014).

23 See Decision 1/CP.26 (Version 10/11/2021) <https://unfccc.int/sites/default/files/resource/Overarching_decision_1-CP-26.pdf> [62].

24 See the recent Human Rights Committee jurisprudence esp Daniel Billy et al v Australia CCPR/C/135/D/3624/2019 (22 September 2022); Teitiota v New Zealand CCPR/C/127/D/2728/2016 (23 September 2020).

3. Key Obligations

The extant state obligations under international human rights law relating to gender inequality and climate change include three main clusters of obligations relating to the right to equality and non-discrimination, access to justice and participation. In particular, the CEDAW Committee has determined that the states parties have an obligation to “ensure that all policies, legislation, plans, programmes, budgets and other activities related to disaster risk reduction and climate change are gender responsive and grounded in human-rights based principles” including, the principle of equality and non-discrimination which accords priority to intersectionally disadvantaged groups of women and girls;²⁵ second, that there is a right to remedy for all women and girls whose rights have been directly and indirectly affected by disasters and climate change;²⁶ and third, that there is a right to participation for diverse groups of women.²⁷ These three clusters of state obligations are elaborated upon in sufficient length in General Recommendation No. 37.

This statement of state obligations in the context of climate-related gender inequality however is selective. It is confined to the context of disaster risk management and does not comprehensively address all rights guaranteed to women and girls under CEDAW or international human rights law more broadly. A comprehensive statement of state obligations would involve setting out obligations in respect of, at least, each of the rights enumerated in CEDAW: Right to vote and right to participation in public life (article 7) and in international organisations (article 8); right to nationality (article 9); right to education (article 10); right to work (article 11); right to health (article 12); right to family benefits, financial services, recreation and leisure (article 13); right of rural women to land (article 14); right to equality before law (article 15); rights related to marriage (article 16). The text of CEDAW does not however cover

rights related to health, water, housing, etc. directly and there is equally a need to expand the repertoire of rights which are understood to be part of the international human rights law conspectus including all social, economic and cultural rights and to outline state obligations in relation to this expansive set of rights. The gender-related impact of climate change on each right has to be examined individually and then in relation to other rights to formulate the specific obligations which arise in relation to each right. Only a broad approach would accord with the principle of interdependence and indivisibility of human rights.

This note concentrates on defining the general principles which should be incorporated as guiding all human rights obligations in the context of climate-related gender inequality rather than the particular obligations that should attach to different human rights.

3.1 Respect, protect and fulfil framework

The framework of “respect, protect and fulfil” should be replicated in the statement of state obligations in the context of gender inequality and climate change. This would entail breaking down the existing obligations in respect of say, the right to equality and non-discrimination, into specific obligations to respect, protect and fulfil that right:

The obligation to respect requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights. The obligation to protect requires that States parties protect women from discrimination by private actors and take steps directly

²⁵ General Recommendation No. 37 (n 11) [26a].

²⁶ *ibid* [26c].

²⁷ *ibid* [26b].

aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women. The obligation to fulfil requires that States parties take a wide variety of steps to ensure that women and men enjoy equal rights de jure and de facto, including, where appropriate, the adoption of temporary special measures in line with article 4, paragraph 1, of the Convention and general recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures.²⁸

Equally, states' due diligence obligations should be set out making clear the positive duties that states must discharge to prevent and redress climate change implications of private actors' acts and omissions which have a negative impact on gender equality. Importantly, impact assessment obligations should be placed on states and in turn private actors for ensuring that both climate implications as well as their link with gender inequality are considered before, during and after laws, policies, projects, plans and programmes are undertaken. Impact assessment obligations should attach not only to actors whose actions or omissions may directly cause greater carbon emissions but to all actors who owe human rights obligations in all contexts such as the right to housing, education, food, water, health, etc. For example, the preparedness of hospitals and healthcare services for responding to different kinds of climate disasters in attending to the needs of women and girls should be assessed both by themselves as well as by the states. Likewise, the obligations on education providers should include an assessment of the tools and technologies required for remote teaching and learning in areas where physical environment is assessed to be increasingly precarious and inhospitable. Again, what these examples also show is that obligations in respect of each right guaranteed by the international human

rights corpus should be delineated specifically and not lumped simply into "equality and non-discrimination" as an overarching principle or right. Great specificity, even if inexhaustive, is required in spanning the content and scope of each right and its relationship with gender inequality and climate change, to delineate the obligations that states must discharge. The lack of specificity and resort to generality in the statement of obligations would make principles and frameworks of feminist climate justice seem like empty rhetoric. A clear and detailed statement of human rights obligations would not only provide guidance to states in terms of what they are expected to do and refrain from doing; but also provide guidance to individuals and communities in holding those states accountable. The Human Rights Committee decision in *Daniel Billy et al v Australia*,²⁹ does this, for example, in respect of the rights enshrined in articles 17 and 27 of the ICCPR. The decision links the specific human rights obligations in those articles – on the right to privacy (17) and the right to culture (27) – to the context of climate change affecting vulnerable communities. Guidance on specific rights would thus improve both normative standards and monitoring and enforcement.

3.2 Temporal scope of obligations

Recent jurisprudence of the Human Rights Committee has made clear that negative impact of climate change must be addressed with immediacy and not when the worst possible outcomes, such as the loss of life, materialise. In *Daniel Billy et al v Australia*,³⁰ the Human Rights Committee found that:

With respect to the State party's position that article 6 (1) of the Covenant does not obligate it to prevent foreseeable loss of life from climate change, the Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures to protect the right to life.³¹

28 General Recommendation No. 28 (n 5) [9].

29 CCPR/C/135/D/3624/2019 (22 September 2022).

30 *ibid.*

31 *ibid.* [8.3] (citing *Teitiota v New Zealand* (CCPR/C/127/D/2728/2016) [9.4]; *Toussaint v Canada* (CCPR/C/123/D/2348/2014) [11.3]).

Thus, international human rights law now demands state action to respond to “reasonably foreseeable threats” which include “adverse climate change impacts ... environmental degradation, climate change and unsustainable development [which] constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”.³² For example, in the case of article 27, the Human Rights Committee in *Billy* found the delay in responding to climate change itself to be a violation of the cultural rights of indigenous peoples:

While noting the completed and ongoing seawall construction on the islands where the authors live, the Committee considers that the *delay in initiating these projects* indicates an inadequate response by the State party to the threat faced by the authors ... the Committee considers that the information made available to it indicates that the State party’s *failure to adopt timely adequate adaptation measures* to protect the authors’ collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State party’s positive obligation to protect the authors’ right to enjoy their minority culture.³³

This is in line with the suggestion of the first United Nations Special Rapporteur on human rights and the environment who recognised that although there may be “complications inherent in determining whether contributions to climate change may constitute violations of human rights obligations ... finding a human rights violation is not a prerequisite for addressing the damage suffered by those most vulnerable to climate change”.³⁴ Thus states parties to human rights treaties may be considered in a position for addressing climate-related impact or damage irrespective of whether such damage constitutes a human right violation per se. This is because the

responsibility to prevent and redress climate change impact ultimately rests on states under international human rights law. State responsibility is thus immediate rather than arising when climate change impact rises to the level of violations. States cannot thus wait to act upon their obligations under international human rights law and must perform their obligations with immediate effect to prevent and prepare for gender-based impact of climate change.

This is significant because it makes clear that human rights obligations related to gender inequality apply not only when disasters strike. The focus of the CEDAW Committee’s recent jurisprudence on “disaster risk management” elides this crucial point which must be unequivocally established with the use of the word “immediate” in describing the state obligations in the context of climate-related gender inequality.

3.3 Personal and territorial scope of obligations

While it is clear that climate change can be caused by state action or omission, it is also clear that its impact is not limited to state boundaries and to state citizens. It is thus important for obligations in respect of climate change to be expansive in their personal and territorial scope. That is, states are “responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory” and towards both “citizens and non-citizens, including refugees, asylum-seekers, migrant workers and stateless persons, within their territory or effective control, even if not situated within the territory”.³⁵ The territorial and personal scope of state obligations in the context of CEDAW must thus be reiterated from the perspective of climate change to emphasise that: (i) the damage occasioned by climate change does not respect state boundaries and state obligations for preventing and responding to such damage must thus extend beyond territorial boundaries of states;

32 *ibid.*

33 *ibid.* [8.14].

34 John Knox, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, Report to the Human Rights Council (Advance Edited Version) 37th session, agenda item 3, United Nations Doc A/HRC/37/59 (24 January 2018).

35 General Recommendation No. 28 (n 5) [12].

and (ii) that state obligations extend to both who are within and beyond territorial boundaries irrespective of the citizenship or nationality of individual and identifiable victims, so long as they are affected by state action or omission which contributed to climate change. Principles of common but differentiated responsibility, loss and damage framework, duty to cooperate with other states, etc., which have been developed in international environmental law guide the responsibility of states outside of human rights law already. But the personal and territorial scope of human rights obligations has not yet been determined and stated with clarity.

The advisory opinion of the International Court of Justice on state obligations in the context of climate change is expected to speak to human rights obligations in particular,³⁶ and will be an important resource for guiding obligations in the context of gender inequality as well. This expectation is justified in the context of the General Assembly resolution seeking the advisory opinion which sets the request for the determination of legal obligations for climate change in the context of “the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights ... the duty of due diligence...” References to human rights instruments make it clear that human rights obligations may be considered by the International Court of Justice. The human rights-emphasis of the referral is also clear in the questions posed, the last of which, seeks a determination of legal consequences for breach of obligations in respect of “peoples and individuals of the present and future generations affected by the adverse effects of climate change”.

3.4 Obligations of results

The extant statement of obligations in General Recommendation No. 37 is largely in the nature of obligations of means or conduct “to take effective measures to prevent, mitigate and respond to disasters and climate change”.³⁷ That is, the obligations are for the states to take steps towards the stated goals. But they are not in essence obligations of result or for the achievement of the goals. There is a lack of a clear sense of targets for feminist climate justice. These targets, such as those unequivocally stated in Sustainable Development Goals, could be incorporated in the feminist climate justice agenda with state obligations geared towards, for instance, ending poverty. This is important because ending poverty as a goal is inextricably linked to gender but also to climate change which impacts economic and social wellbeing of people drastically. Thus, stating the desired goals (“highest attainable standard of health”, “free and compulsory education for children until the age of 16 years” etc.) for different sets of obligations relating to different rights would be critical for obligations in the context of climate change where the presumption otherwise can be of lowering the standard of human rights compliance with increased climate degradation and precarity. Finally, it is important that these goals be linked in particular to climate justice goals relating to carbon emissions and temperature.

36 General Assembly Resolution Requesting International Court of Justice Provide Advisory Opinion on States’ Obligations Concerning Climate Change, 77th Session, 64th and 65th Meetings, GA/12497 (29 March 2023).

37 General Recommendation No. 37 (n 11) [15].

220 East 42nd Street
New York, New York 10017, USA

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