



# **The Gender-Climate Change Nexus**

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## **A critical study of a gender-transformative approach to the international climate change regime**

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## **Foreword**

This thesis was done for my Master programme in environmental law. The topic of gender inequalities and women's rights has always been very important to me. I am happy I was able to combine it with my passion for the protection of the environment. I have learned a lot in the process.

I am deeply grateful to my supervisor for their expertise and guidance, providing me support to conduct my research. I would like to extend my gratitude to my classmates and friends who shared their experiences and insights and supported me throughout the research and writing processes.

## **Abstract**

This thesis aims to shed some light on the gender-climate change nexus. Indeed, climate governance might appear gender-neutral, but climate changes impacts aggravate existing gender inequalities. Because of this, gender and women's considerations have been first ignored, and once they were taken into account, they were misunderstood. Therefore, the full and meaningful integration of gender and women's considerations when addressing climate change concerns is critical for achieving climate justice and gender equality as it would provide for gender-transformative climate action. This paper explores the incorporation of such considerations within the climate regime and the role of feminist advocacy in this evolution. It is observed that the climate regime largely aims at a gender-responsive content but it is not achieved in practice in all areas of climate action. From this foundation, this paper then argues that the overarching strategy of gender mainstreaming, widespread within the climate regime, might not be sufficient to achieve gender-transformative climate governance. The adoption of a rights-based approach to climate governance, as a catalyst for systemic change, is then suggested in order to achieve a gender-transformative climate change regime.

## Table of content

<b>FOREWORD</b> .....	<b>II</b>
<b>ABSTRACT</b> .....	<b>III</b>
<b>TABLE OF CONTENT</b> .....	<b>IV</b>
<b>LIST OF FIGURES</b> .....	<b>VI</b>
<b>LIST OF ABBREVIATIONS</b> .....	<b>VII</b>
<b>CHAPTER 1 – INTRODUCTION</b> .....	<b>1</b>
1.1 Background.....	1
1.2 Research questions.....	4
1.3 Methodology.....	5
1.4 Limitations.....	5
1.5 Structure.....	6
<b>CHAPTER 2 – THE INTEGRATION OF A GENDER DIMENSION WITHIN THE CLIMATE REGIME UNDER THE UNFCCC</b> .....	<b>7</b>
2.1. The progression of mainstreaming gender in the UNFCCC.....	7
2.1.1 The role of feminist advocacy in climate negotiations.....	8
2.1.2 From the lack of gender to a Gender Action Plan.....	10
2.2 The climate regime’s focus on adaptation, at the expense of the others climate action areas.....	17
2.2.1. Mitigation.....	18
2.2.2. Other climate action areas.....	22
<b>CHAPTER 3 – GENDER MAINSTREAMING: A MERE DIVERSION FROM A NECESSARY PARADIGM SHIFT?</b> .....	<b>26</b>
3.1 What is gender mainstreaming?.....	26
3.2 Gender mainstreaming within the international climate regime?.....	28
3.2.1 Legal instruments and tools for gender mainstreaming.....	29
3.2.2 Gender mainstreaming: a ticking box exercise.....	35
<b>CHAPTER 4 – A RIGHTS-BASED APPROACH TO CLIMATE GOVERNANCE</b> .....	<b>39</b>
4.1 A necessary shift from the (deeply rooted) status quo.....	39
4.2 Women’s rights are human rights.....	41
4.2.1 The legal basis for the rights-based approach.....	41

4.2.2 The potential of the rights-based approach .....	43
<b>CHAPTER 5 – CONCLUSIONS .....</b>	<b>50</b>
<b>LIST OF REFERENCES .....</b>	<b>51</b>

## List of figures

Figure 1: Reference to gender in nationally determined contributions (Synthesis Report on NDCs)<sup>1</sup>

Figure 2: Percentage of women as heads of delegation (per year)<sup>2</sup>

Figure 3: The different stages of the gender mainstreaming cycle, according to EIGE <sup>3</sup>

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<sup>1</sup> Ibid. p. 22.

<sup>2</sup> WEDO (2022), p.2.

<sup>3</sup> European Institute for Gender Equality, “What is gender mainstreaming”, <<https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>> (last accessed 18 May 2023).

## **List of abbreviations**

CBD – Convention on Biological Diversity

CDM – Clean Development Mechanism

CEDAW – Committee on the Elimination of Discrimination against Women

CIF – Climate Investments Funds

CTCN – Climate Technology Centre and Network

CVF – Climate Vulnerable Forum

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

ECOSOC – Economic and Social Council

EIGE – European Institute for Gender Equality

EU – European Union

GAP – Gender Action Plan

GCF – Green Climate Fund

GHG – Greenhouse Gas

GIA – Gender Impact Assessment

HRC – Human Rights Council

IDLO – International Development Law Organization

IPCC – Intergovernmental Panel on Climate Change

LWPG – Lima Work Programme on Gender

MDB – Multilateral Development Bank

NAMA – Nationally Appropriate Mitigation Action

NDC – Nationally Determined Contribution

REDD+ - Reducing Emissions from Deforestation and Degradation

SDG – Sustainable Development Goal

TEC – Technology Executive Committee

UN – United Nations

UNCCD – United Nations Convention to Combat Desertification

UNESCO – United Nations Educational, Scientific and Cultural Organization

UNFCCC – United Nations Framework Convention on Climate Change

UNHRC – United Nations Human Rights Council

UNGA – United Nations General Assembly

WEDO – Women’s Environment and Development Organisation

WGC – Women & Gender Constituency

WHO – World Health Organization

# Chapter 1 – Introduction

## 1.1 Background

Gender is the central concept of this thesis. As it is particularly complex, it is critical to clearly define and outline gender.

First of all, gender, although being closely related to it, differs from sex, which is defined by the World Health Organization as “the different biological and physiological characteristics of females, males and intersex persons, such as chromosomes, hormones and reproductive organs”.<sup>4</sup> Whereas gender, in line with constructivist feminist theory, is a social construct,<sup>5</sup> that imposes on individuals “norms, behaviours and roles associated with being a woman, man, girl or boy”.<sup>6</sup>

Gender also establishes hierarchical power relations between hegemonic constructions of masculinity and femininity.<sup>7</sup> Those power relations are founded on a specific power order: patriarchy.<sup>8</sup> This system creates deeply rooted inequalities that intersect with other power relations such as ethnicity, class, geographic location, sexual orientation, age, (dis)ability, etc.<sup>9</sup> This diversity of interlinked factors of discrimination is critical to take into account when addressing gender concerns, and is referred to as *intersectionality*.

Moreover, gender has traditionally been limited to a binary perspective: only two genders exist, which are male and female. However, this obsolete perspective has been challenged in order to include gender-diverse people. Gender is now recognized as a spectrum rather than a simplistic two-faced coin.

When addressing the consequences of a global threat like climate change, one might wonder how gender is relevant.

Although climate change impacts everybody, it does it unevenly. This is the core idea behind the concept of climate justice, which acknowledges that not everybody evenly contributed to

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<sup>4</sup> World Health Organization, “Gender and Health” < [https://www.who.int/health-topics/gender#tab=tab\\_1](https://www.who.int/health-topics/gender#tab=tab_1) > (last accessed 20 May 2023).

<sup>5</sup> Kronsell (2017), p. 15.

<sup>6</sup> World Health Organization, “Gender and Health” < [https://www.who.int/health-topics/gender#tab=tab\\_1](https://www.who.int/health-topics/gender#tab=tab_1) > (last accessed 20 May 2023).

<sup>7</sup> MacGregor (2010), p. 224.

<sup>8</sup> Kronsell (2017), p. 4.

<sup>9</sup> Ibid.

and is impacted by climate change. Climate justice is defined by its intersectionality inasmuch as “pursuing climate justice means combating social injustice, gender injustice, economic injustice, intergenerational injustice and environmental injustice”.<sup>10</sup>

Even though it has not always been obvious, it is now recognized that climate change is not gender neutral as it exacerbates existing gender inequalities.<sup>11</sup> Indeed, women, due to such inequalities, tend to have lower adaptive capacity than men, making them more vulnerable to climate change, especially in developing countries. This vulnerability has been recognized by the United Nations (UN) as it states that “women experience greater financial and resource constraints, lower levels of access to information, and less decision-making authority in their homes, communities and countries”.<sup>12</sup> Therefore, women have been put under the category of “vulnerable people” regarding climate change impacts, alongside Indigenous people, elderly people, children, people of colours, etc.<sup>13</sup> However, it is essential to recognize that “[women’s] vulnerability is not innate; rather it is a result of inequities produced through gendered social roles, discrimination, and poverty”.<sup>14</sup>

The climate regime started out as completely gender-blind because of the lack of any reference to gender or women within the United Nations Framework Convention on Climate Change (UNFCCC),<sup>15</sup> considered as the backbone of the climate regime. The term “gender-blind” is usually used to characterize “policies and programs [that] recognize no distinction between the sexes [leading to] assumptions [incorporating] biases in favour of existing gender relations and so [tending] to exclude women”.<sup>16</sup> A gender-blind climate regime is problematic as it creates a risk for perpetuating and aggravating the existing inequalities and injustices of climate change.<sup>17</sup> Hence the importance of integrating gender and women’s considerations within the international climate change regime, beyond the ethical argument and the legal

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<sup>10</sup> UNICEF (2022), “Climate Justice Roundtable: An online discussion with activists and experts (Recap and Reflections)”, accessible at < <https://www.unicef.org/globalinsight/media/2866/file>> (last accessed 22 May 2023), p. 6.

<sup>11</sup> Kameri-Mbote (2013), p. 326 ; see also UNHR (2019), p. 34, para. 73.

<sup>12</sup> UNHR (2019), p. 23

<sup>13</sup> UNHR (2019), p. 23, para. 45.

Vulnerability is a central concept when assessing the impacts of climate change on nature and human systems. It can be defined as “the propensity or predisposition to be adversely affected and encompasses a variety of concepts and elements, including sensitivity or susceptibility to harm and lack of capacity to cope and adapt” See in IPCC (2022), p. 5.

<sup>14</sup> Gaard (2015), p. 23.

<sup>15</sup> United Nations Framework Convention on Climate Change (UNFCCC) (adopted 9 May 1992, in force 21 March 1994) (1992), United Nations Treaty Collection, CHAPTER XXVII, 8.

<sup>16</sup> Gender Climate Tracker, “Gender Mandates in Climate Policy” < <https://genderclimatetracker.org/gender-mandates/introduction>> (last accessed 19 May 2023).

<sup>17</sup> Lander Svendsen (2022), p. 5 ; IDLO (2022), p. 12.

obligation of non-discrimination based on gender, notably from the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).<sup>18</sup>

The integration of gender and women’s considerations within policy, programme, report, legislation, etc. can usually be categorized in four different levels, from gender-blind to gender-transformative; the latter being the more “gender-minded”. Indeed, following “gender-blind”, there is “gender-sensitive” that refers to “an approach/strategy/framework that supports policies, programs, administrative and financial activities, and organizational procedures to: differentiate between the capacities, needs and priorities of women and men; ensure the views and ideas of both women and men are taken into account; consider the implications of decisions on the situation of women relative to men; and take actions to address inequalities or imbalance between women and men”.<sup>19</sup>

Then, “gender-responsive” refers to “an approach/strategy/framework that includes planning, programming and budgeting that contributes to the advancement of gender equality and the fulfilment of women’s rights [; this] advancement will involve changing gender norms, roles and access to resources as a key component of project outcomes”.<sup>20</sup> The climate regime has evolved through the years, notably due to feminist advocacy and activism, from being gender-blind to aiming to achieve gender-responsive climate action.

However, in the recent years, the UN <sup>21</sup> seemed to have caught up with the literature <sup>22</sup> by realizing that aiming for a gender-responsive climate regime might not be enough to achieve gender equality<sup>23</sup> and climate justice; a gender-transformative approach to the climate governance appears to be necessary. Indeed, “gender-transformative” refers to “an approach/strategy/framework that encourages critical awareness of gender roles and norms among men and women, challenges the distribution of resources and allocation of duties between men and women, and promotes the position of women while addressing power

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<sup>18</sup> Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (adopted 18 December 1979, in force 3 September 1981) (1979), United Nations, Treaty Series, vol. 1249, p. 13.

<sup>19</sup> Gender Climate Tracker, “Gender Mandates in Climate Policy” < <https://genderclimatetracker.org/gender-mandates/introduction> > (last accessed 19 May 2023).

<sup>20</sup> Ibid.

<sup>21</sup> UNGA (2023 a).

<sup>22</sup> Rainard (2023); and IDLO (2022).

<sup>23</sup> “Gender equality refers to the equal rights, responsibilities and opportunities of women, men, girls and boys. Equality does not imply sameness but that the rights of women and men will not depend on the gender they were born with. Gender equality implies that the interests, needs and priorities of all genders are taken into consideration, recognizing the diversity of different groups. Gender equality is **not a women’s issue** but should concern and fully engage all genders while recognizing that neither all men nor all women are a homogenous group” See in UN Women (2022), p. 11.

relationships between women and others in the community. This approach focuses on deconstructing hierarchical gender norms, constructing new concepts of masculinity and femininity and thereby transforming underlying power relations”.<sup>24</sup>

Moreover, it appears essential to define the complex concept of climate governance. First and foremost, governance can be defined as the “steering of actor’s behaviour through the setting of rules, standards and guidelines, or through targeted support, toward a common or shared goal”.<sup>25</sup> Those actors establish international institutions that, in turns, establish “systems or rules and practices that prescribe behavioural roles, constrain activity and shape actor expectations”.<sup>26</sup> Therefore, climate change governance encompasses and steers the international climate change regime towards worldwide decarbonization.<sup>27</sup> Thus, applying a gender-transformative approach to climate governance would allow it to steer the international climate change regime towards gender-transformation.

## 1.2 Research questions

This paper is intended to bring gender and women’s considerations in relation to climate change into focus, by analysing the international climate change regime through the prism of feminism, in order to answer the following research question: to what extent does the international climate change regime provide a framework for gender-transformative climate action?

This analysis is driven by the following sub-questions:

- (a) to what extent does the international climate regime take into account gender and women's considerations? ;
- (b) is gender mainstreaming a sufficient strategy to achieve a gender-transformative climate change regime? ;
- and (c) to what extent can a rights-based approach to climate governance provide momentum for the necessary shift toward a gender-transformative climate change regime?

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<sup>24</sup> Gender Climate Tracker, “Gender Mandates in Climate Policy” < <https://genderclimatetracker.org/gender-mandates/introduction>> (last accessed 19 May 2023).

<sup>25</sup> Oberthür (2021), p. 2.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid, p. 1.

### **1.3 Methodology**

The overall methodology of the research conducted for this thesis will be based on the legal doctrinal research as it will provide an analysis of primary sources of law, i.e. the international climate regime. This research will first provide an understanding of the state of play of the gender and women's considerations within international climate laws and policies.

Then, the analysis of the strategy used throughout the climate regime and the evaluation of the potential of a rights-based approach will be conducted through an inclusive feminist perspective. Indeed, a feminist perspective is based on feminist theory which provides "an alternative view of the world".<sup>28</sup> Using a feminist perspective to conduct the legal doctrinal analysis will allow to evaluate the potential of the climate regime to achieve gender equality and climate justice. Moreover, it appears critical to specify that the feminist perspective will be "inclusive" as it must be understood that gender concerns go beyond the women's rights and empowerment as it relates to power relations and the overall power order.

Furthermore, throughout the thesis, the analysis will be supported by academic literature on the gender-climate change nexus. It will also rely on grey literature, notably various reports from institutions such as the UN.

### **1.4 Limitations**

A recurrent criticism within the literature on the gender-climate change nexus appears to be that gender and women are often considered as synonyms.<sup>29</sup> This confusion is problematic as gender concepts does not necessarily equal women concepts. Indeed, gender is a "relational term" that requires critical attention to power relations which encompass female's, male's and gender-diverse people's concerns.<sup>30</sup> Whereas "women" refers to women's rights, women's empowerment, etc.

Gender and women are complementary. It is the line of argumentation used by the Women and Gender Constituency (WGC) in its adoption of an "inclusive feminist approach",<sup>31</sup> by not only promoting the integration of women's considerations within the climate regime but also gender considerations which are broader. Therefore, the analysis conducted within this thesis will be

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<sup>28</sup> Bunch (2005), p. 13.

<sup>29</sup> Flavell (2023) ; and Arora-Jonsson (2017).

<sup>30</sup> Flavell (2023), p. 113.

<sup>31</sup> Ibid, p. 76.

based on gender and women's considerations, as it appears to be the most inclusive approach to the gender-climate change nexus.

Furthermore, considering that this thesis is subjected to length limitations, its scope must be narrowed. The focus will be limited to the international level. Indeed, the analysis will be based on the international level of the climate change regime. It can be defined as the global framework, developed under the UNFCCC, that aims at the regulation of climate related activities and behaviours. Therefore, it encompasses climate change laws and policies. This entails the UNFCCC itself, as well as the various instruments and protocols adopted under its umbrella such as the Paris Agreement,<sup>32</sup> the Lima Work Programme on Gender (LWPG) and its Gender Action Plan (GAP). Moreover, the analysis will also rely on international human rights law.

## **1.5 Structure**

This analysis conducted in this thesis is threefold, as each chapter provide an answer for one of the sub-questions of the research.

The first chapter will describe the evolution of the integration of gender and women's considerations within the international climate regime and highlight the role of feminist advocacy and activism in such evolution.

The second chapter will provide an analysis of the gender mainstreaming strategy used within the climate regime to achieve gender equality.

From this foundation, the third chapter will then evaluate the potential of a rights-based approach to achieve a gender-transformative climate regime.

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<sup>32</sup> Paris Agreement under the United Nations Framework Convention on Climate Change (adopted 12 December 2015, in force 4 November 2016) (2015).

## **Chapter 2 – The integration of a gender dimension within the climate regime under the UNFCCC**

This first chapter will be providing a snapshot of the international climate regime and how it takes into account gender and women’s considerations in order to attempt to answer the following sub-research question: to what extent does the international climate regime take into account gender and women’s considerations?

To do so, it appears essential to explore the evolution of such considerations in the UNFCCC (2.1). After such analysis, the second section of this chapter will foreground the fact that, out of the five main climate action areas under the UNFCCC, gender considerations are prominently present in relation to climate adaptation (2.2).

### **2.1. The progression of mainstreaming gender in the UNFCCC**

The year 1992 is widely considered a landmark year in environmental law as the Earth Summit, which took place in Rio, resulted in the adoption of three major multilateral environmental agreements (MEAs): the UNFCCC, the Convention on Biological Diversity (CBD)<sup>33</sup> and the United Nations Convention to Combat Desertification (UNCCD).<sup>34</sup> The CBD and the UNCCD explicitly recognize in their preambles the role of women in environmental protection and the importance of their full participation in decision-making.

As for the UNFCCC, the lack of reference to gender or women is astonishing. The climate regime under the UNFCCC remained gender-blind until its first “gender” decision in 2001 on “Improving the Participation of women in the representation of Parties established under the UNFCCC or the Kyoto Protocol” (36/CP.7).<sup>35</sup> Indeed, the adoption of the Kyoto Protocol highlighted the lack of women’s participation in negotiations and their large absence from bodies under the UNFCCC. For instance, the Civil Society Organizations (CSO) highlighted the total lack of women in the Clean Development Mechanism (CDM) executive board, the Working Group chairs or the Bureau of the COP.<sup>36</sup> Therefore, decision 36/CP.7 “urges Parties

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<sup>33</sup> Convention on Biological Diversity (adopted 5 June 1992, in force 29 December 1993), United Nations Treaty Collection, Chapter XXVII, 8.

<sup>34</sup> United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (adopted 14 October 1994, in force 26 December 1996), United Nations Treaty Collection, Chapter XXVII, 10.

<sup>35</sup> UNFCCC (2001) Decision 36/CP.7.

<sup>36</sup> Flavell (2023), p. 72.

to take the measures necessary to enable women to participate fully in all levels of decision making relevant to climate change”.<sup>37</sup>

Including the 2001 decision, there are roughly eight COP decisions particularly important for the integration of gender within the UNFCCC concerns. Although COP decisions are usually not legally binding, they provide an overall direction for the implementation of the convention. Considering that the convention itself is gender-blind, the wording within those COP decisions is critical to allow the climate regime under the UNFCCC to grow and adapt to the circumstances.

Until Joanna Flavell’s book, “Mainstreaming gender in global climate governance”,<sup>38</sup> there was a major gap on the history of feminist advocacy and activism in the UNFCCC in the literature relating to gender and climate change. Indeed, in the fourth chapter, titled “From Zero Gender to GAP, Foregrounding Gender in UNFCCC History”, Flavell explores in parallel the progression of gender within the UNFCCC and the work of feminist advocacy and lobbying for a feminist approach to climate action.<sup>39</sup> The following section will be largely based on the data she collected and her analysis, and will therefore follow a chronological order of the UNFCCC’s COP decisions and their resulting agreements. However, it appears essential to first bring into focus the efforts of feminist advocates and grassroots activists and their role in the integration of gender in such decisions.

### *2.1.1 The role of feminist advocacy in climate negotiations*

Flavell explains that the UNFCCC bodies and institutions have been slow to grasp the importance of integrating gender in climate policy, which was not the case for feminist activists who were advocating for a “feminist approach to climate politics”.<sup>40</sup>

Since the nineties, feminist activists have been lobbying for the integration of gender perspective within climate policy, for funding for environmental programmes and the participation of women at all levels.<sup>41</sup> They kept getting more organized and gained recognition over the years. In 2006, the Women’s Caucus (name of groups waiting for the constituency status) applied as the Women and Gender Constituency.

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<sup>37</sup> UNFCCC (2001) Decision 36/CP.7, Preamble.

<sup>38</sup> Flavell (2023).

<sup>39</sup> Ibid, “From Zero Gender to GAP: Foregrounding Gender in UNFCCC History”, p. 67-101.

<sup>40</sup> Flavell (2023), p. 71.

<sup>41</sup> Arora-Jonsson (2017), p. 292.

They did not gain constituency status until 2009, but it did not hamper their work put into advocacy during negotiations and kept pushing for the recognition that “women are not just vulnerable victims to the effects of climate change, but they are also powerful agents of change”.<sup>42</sup>

The structural organization of the UNFCCC is based on a system dividing civil society into constituencies to “facilitate coordination and interaction”, notably during the intergovernmental negotiation processes.<sup>43</sup> Being affiliated with a constituency offer multiple benefits for observers, from access to the Plenary floor to invitation to limited-access meetings and workshops. Nowadays, there are nine constituencies (commonly named the Major Groups, which are identified as stakeholder in the Agenda 21):

a) Business and industry non-governmental organizations (NGOs) (BINGO); b) Environmental NGOs (ENGO); c) Farmers and agricultural NGOs (Farmers); d) Indigenous people’s organizations (IPO) and Local government and municipal authorities (LGMA); e) Research and independent NGOs (RINGO); f) Trade union NGOs (TUNGO); g) Children and youth NGOs (YOUNGO); h) and since 2009, Women and gender constituency (WGC).

Although there is some overlapping between constituencies, each one defends different interests and goals. The WGC’s goal is to “formalize the voice of the women’s and gender civil society organizations present and regularly active in UNFCCC processes, and to develop, streamline and advocate common positions”.<sup>44</sup>

The use of the term “gender” in the name of the constituency illustrates the intention of using a “more inclusive feminist approach to climate action”.<sup>45</sup> This choice of word also departs from the oversimplistic and common use of gender as synonymous of women in conversation on the gendered impacts of climate change. Indeed, the WGC aims at two separate but interlinked objectives: ensuring women’s rights and ensuring gender justice within the UNFCCC.<sup>46</sup>

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<sup>42</sup> Flavell (2023), p. 74.

<sup>43</sup> Kuyper and Bäckstrand (2016), p. 67.

<sup>44</sup> Women & Gender Constituency, “About us”, <https://womengenderclimate.org/about-us/> (last accessed 7 April 2023).

<sup>45</sup> Flavell (2023), p. 76.

<sup>46</sup> Ibid.

### 2.1.2 From the lack of gender to a Gender Action Plan

First and foremost, in 2006, the COP12 represented a shift in discourse as the focus went from climate mitigation to adaptation. Feminist activists used this shift to bring gender in the conversation by highlighting the key role of women in the development and implementation of adaptation measures.<sup>47</sup> Besides this interesting shift, between 2001 and 2012, the UNFCCC's COPs remained largely gender-blind, despite opportunities to include gender in the conversation. For instance, the Bali Action Plan (BAP), adopted under the COP13 in 2007, could have been a platform for shifting from techno-scientific focus to more holistic and socially aware climate politics.<sup>48</sup> Unfortunately, once again, neither women nor gender were mentioned in the BAP. Similar situation with COP15 which aimed at the adoption of a “comprehensive agreement for tackling global climate change”.<sup>49</sup> While the draft did include references to gender, most did not make the final agreement.<sup>50</sup>

However, in 2010, the COP16 can be seen as a departure from the trend of putting gender equality as a non-priority issue behind more techno-scientific and economic concerns, especially as the WGC was advocating for a rights-based approach.<sup>51</sup> Indeed, the resulting Cancún agreements addressed women and gender issues in various areas and UNFCCC bodies, from climate finance with the Green Climate Fund (GCF) to forestry with the Reducing Emissions from Deforestation and Degradation (REDD) instrument.<sup>52</sup>

The former is considered as a major step forward as it is the first climate finance mechanism to mainstream “gender perspectives from the outset of its operations as an essential decision-making element for the deployment of its resources”.<sup>53</sup> Indeed, the GCF aims to promote gender mainstreaming<sup>54</sup> and gender equality within all its projects. It also adopted a Gender policy in order to guide Accredited Entities towards gender-minded project planning, preparation and

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<sup>47</sup> Flavell (2023), p. 74.

<sup>48</sup> Ibid, p. 78.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid, p. 79.

<sup>51</sup> Morrow (2017).

<sup>52</sup> Flavell (2023), p. 80.

<sup>53</sup> Green Climate Fund, “Gender” <<https://www.greenclimate.fund/projects/safeguards/gender#gender-action-in-practice>> (last accessed 21 May 2023).

<sup>54</sup> Gender mainstreaming has been defined by the Economic and Social Council (ECOSOC), in its 1997 Agreed Conclusions, as “the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated”. See in ECOSOC (1997).

development stage.<sup>55</sup> The crucial role of gender in climate action recognized by the CGF is essential, especially as finance is an area of climate action that was traditionally gender-blind, as this paper will address later on.

Furthermore, the latter, which focuses on climate mitigation, aims at ensuring the conservation of tropical forests and their carbon sink abilities. Tovar-Restrepo describes it concisely as “a framework through which developing countries are rewarded financially for any emissions reductions achieved associated with a decrease in the conversion of forests to alternate land uses”.<sup>56</sup> REDD+ foregrounds as an explicit ambition and cross-cutting theme, among others, gender.<sup>57</sup>

Then, in 2012, the decision 23/CP.18 on “Promoting gender balance and improving the representation of women in the UNFCCC negotiations and in the representation of Parties in bodies established under the Convention or the Kyoto Protocol” established gender balance as a standing item on the COP agenda.<sup>58</sup> This allowed the recognition of gender in climate change matters as a cross-cutting issue requiring resources and funding.

As significant as this decision is, it has been criticized because of the watering down of the wording, notably by the WGC.<sup>59</sup> Indeed, the use of “gender balance” allows to eschew the substantive and fundamental changes of the differentiated power dynamics that would be required under the use of “gender equality”. According to the definitions provided by the Gender Climate Tracker organization, gender balance “indicates agreed text that mandates efforts to enhance the representation of women in decision-making, some with the explicit goal of achieving gender balance on decision-making boards and bodies”, while gender equality “indicates agreed text that mandates actions and policy developments aim to achieve gender equality”.<sup>60</sup> From these definitions, it is clear that setting gender equality as an objective is more demanding than gender balance, which solely aims at the improvement of women’s representation and not an actual equal number of both men and women. Unfortunately, the use of such “weaker” terms is a recurrent trend in the climate regime. Indeed, Morrow considers that the use of such vague term as “gender balance”, “in a seemingly deliberate departure from

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<sup>55</sup> Green Climate Fund, “Gender” <<https://www.greenclimate.fund/projects/safeguards/gender#gender-action-in-practice>> (last accessed 21 May 2023).

<sup>56</sup> Tovar-Restrepo (2017), p. 413.

<sup>57</sup> Westholm (2017), p. 3.

<sup>58</sup> UNFCCC (2012 a), Decision 23/CP.18, Para. 9.

<sup>59</sup> Flavell (2023), p. 81.

<sup>60</sup> Gender Climate Tracker, “Gender Mandates in Climate Policy” <https://genderclimatetracker.org/gender-mandates/introduction> (last accessed 19 May 2023).

the recognized lexicon [i.e. gender equality] gives pause for thought and could [...] indicate avoidance of key aspects of the established gender regime”.<sup>61</sup>

In 2014, the COP President and Minister of Environment of Peru stated that the prerogative of COP20 was to build on progress in advancing gender-responsive climate policy.<sup>62</sup> Consequently, COP20 resulted in the landmark decision 18/CP.20 establishing the two-year Lima Work Programme on Gender (LWPG).<sup>63</sup> The objective of such a programme is to promote “gender balance and achieving gender-responsive climate policy, developed for the purpose of guiding the effective participation of women in the bodies established under the Convention”.<sup>64</sup> Notwithstanding the important step that this programme represents in the integration of gender in climate law and policy, it does not meet the expectations of the WGC as it, once again, hides behind “gender balance”.

Therefore, WGC, alongside many Parties to the UNFCCC, was hoping for language on gender equality to be included in the Paris Agreement<sup>65</sup> as it was expected to cover all areas of climate matters (i.e. adaptation, capacity-building, mitigation, finance and technology).<sup>66</sup> However, the resulting agreement was disappointing,<sup>67</sup> since gender was only mentioned three times, including once in the non-binding Preamble.

In the eleventh paragraph of the Preamble, gender equality and empowerment of women are mentioned as factors to take into account by Parties when taking action to address climate change.<sup>68</sup> In a way, it recognizes the climate vulnerability of women and their absence from decision-making processes. The second mention of gender is under Article 7 on adaptation, which should follow a gender-responsive approach.<sup>69</sup> Gender-responsive adaptation identifies and acknowledges the different needs of women and men. Finally, Article 11 on capacity building which should be a gender-responsive process is the last mention of gender in the whole Paris Agreement.<sup>70</sup>

With only three mentions of gender, the Paris Agreement is far from the expectations of seeing gender mainstreamed throughout the five main areas of the climate regime. Indeed, gender is

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<sup>61</sup> Morrow (2017), p. 18.

<sup>62</sup> Flavell (2023), p. 83

<sup>63</sup> UNFCCC (2014), Decision 18/CP.20.

<sup>64</sup> Ibid, preamble.

<sup>65</sup> Paris Agreement (2015).

<sup>66</sup> Flavell (2023), p. 85

<sup>67</sup> Ibid.

<sup>68</sup> Paris Agreement (2015), Para. 11.

<sup>69</sup> Ibid, Article 7.

<sup>70</sup> Ibid, Article 11.

neither mentioned in articles on mitigation, on finance nor on technology. The absence of explicit reference to gender is leading to a lack of incentive for Parties to address gender issues in their Nationally determined contributions (NDCs) and of taking a gender-responsive approach to climate action.

According to the IUCN on gender integration in the revised NDCs, from 2021, “countries have altogether increased their attention gender [...] still, roughly a quarter of NDCs are entirely gender-blind”.<sup>71</sup> Indeed, 69 out of the 89 revised NDCs analysed in this study include at least one mention of gender and/or women. Whereas, in its 2022 synthesis report on NDCs, the UNFCCC Secretariat states that while 75% of the Parties “provided information related to gender in their NDCs”, only 39% “affirmed that they will take gender into account in implementing them”.<sup>72</sup> Moreover, only 38% “highlighted the importance of providing capacity-building, finance and technology for gender-specific action and of these means of implementation being gender-responsive”. Although the report states that gender is increasingly taken into account within NDCs, Figure 1 shows that this is not a linear progression.

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<sup>71</sup> IUCN (2021), p. 5.

<sup>72</sup> UNFCCC (2022 a), p. 21.

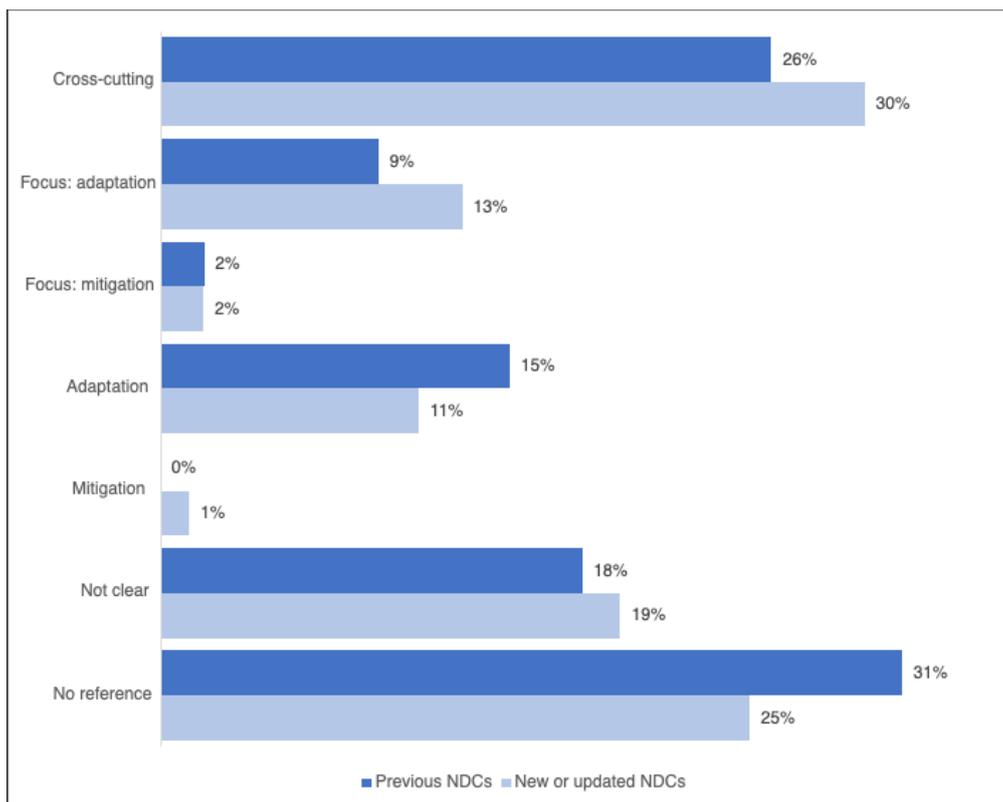


Figure 1: Reference to gender in nationally determined contributions (Synthesis Report on NDCs)<sup>73</sup>

Furthermore, Rainard, Smith and Pachauri highlight the fact that “gender within NDCs is predominantly framed using gender-sensitive approaches rather than gender-responsive or gender-transformative approaches”.<sup>74</sup>

The COP22 held in Marrakech focused on the implementation of the Paris Agreement but the negotiations also concerned the enhancement and extension for three more years of the LPWG.<sup>75</sup> It also required UNFCCC constituted bodies to integrate the progression of the inclusion of gender considerations in their reporting. in their Decision 21/CP.22 aimed at improving “women’s full and equal participation in the UNFCCC process and strengthening gender- responsive policies in all activities concerning adaptation and mitigation as well as finance, technology development and transfer and capacity building”.<sup>76</sup> However, the efficiency of the programme was hampered by the absence of details on the financing issue, resulting in the lack of incentive to provide proper financial resources to support its implementation.<sup>77</sup>

<sup>73</sup> Ibid. p. 22.

<sup>74</sup> Rainard et al. (2023), p. 12.

<sup>75</sup> Flavell (2023), p. 86

<sup>76</sup> Ibid, p. 87.

<sup>77</sup> Ibid, p. 89.

After such a series of disappointments, the WGC distanced itself from the UNFCCC mainstream and positioned itself as a “protest Constituency”. This was enhanced during COP23, in 2017, in which the objective was the adoption of the Gender Action Plan (GAP) to improve the implementation of gender decisions under the UNFCCC. The GAP was adopted under the framework of the LWPG. Its objective was to monitor and report on gender-disaggregated climate change impacts in five priority areas: a) capacity-building, knowledge management and communication; b) gender balance, participation and women’s leadership; c) coherence in the implementation of gender-related mandates and activities; d) gender-responsive implementation and means of implementation; and e) monitoring and reporting.<sup>78</sup>

According to Flavell, the negotiation process was hectic to say the least. Indeed, it was essential that the GAP was adopted during the COP23 as the COP24 was supposed to focus on the adoption of the Rulebook on the implementation of the Paris Agreement, which would have outshined any gender issues.<sup>79</sup> Therefore, the negotiations on the GAP were closed to observers, even WGC members. However, this strategy did not fully work as the GAP was under the Gender Agenda item and would therefore be side-lined from “real negotiations”.<sup>80</sup>

In 2019, in the Decision 3/CP.25, the Parties agreed to enhance and extend the LWPG and its GAP for five additional years (2019-2024).<sup>81</sup> The LWPG and its GAP have been enhanced in the sense that their scope has expanded. Indeed, the GAP includes more activities within the five priority areas and the activities have greater breadth and depth. This enhancement allowed the LWPG and its GAP to move towards a more comprehensive, systematic approach to the gender-climate change nexus.

Two years ago, the COP26 was held in Glasgow, and was widely considered as the “whitest and most privileged ever”.<sup>82</sup> The UNFCCC civil society and feminist activists were deeply disappointed with the way the negotiations were carried out. As the result of the COP26, the UNFCCC parties adopted the Glasgow Climate Pact.(United Nations 2021a)

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<sup>78</sup> UNFCCC (2022 b).

<sup>79</sup> Flavell (2023), p. 89-90.

<sup>80</sup> Ibid.

<sup>81</sup> UNFCCC (2019 a), Decision 3/CP.25.

<sup>82</sup> The Guardian (2021) <https://www.theguardian.com/environment/2021/oct/30/cop26-will-be-whitest-and-most-privileged-ever-warn-campaigners> (last accessed 7 April 2023). See also Asia Pacific Forum on Women, Law and Development (APWLD) (2022) “Feminist reflection on Glasgow climate talks: Climate chaos and the urgency to right the wrongs and survive on a boiling planet!”, Wattimena Miranda Patricia <https://apwld.org/feminist-reflection-on-glasgow-climate-talks-climate-chaos-and-the-urgency-to-right-the-wrongs-and-survive-on-a-boiling-planet/> (last accessed 7 April 2023).

Aside from the mention of gender in the Preamble, similar to the one in the Paris Agreement's preamble, the advanced unedited version of the Glasgow Climate Pact refers to gender under the section on "Collaboration" in which it urges and encourages Parties to promote gender equality and enhance gender-responsive climate action implementation.<sup>83</sup> It also calls upon Parties to "strengthen their implementation of the enhanced Lima work programme on gender and its gender action plan".<sup>84</sup>

Last year, COP27 was engaging in a substantive review on the implementation of the GAP. Following the various meetings, WGC deplores the superficiality of the actions proposed under the GAP and the altogether lack of progress on gender-responsive implementation.<sup>85</sup> Moreover, the monitoring of the GAP is expected to be particularly complex inasmuch as it does not include progress indicators or metrics of success, apart from the "completion of certain outputs or deliverables".<sup>86</sup>

The next review of the LWPG and its GAP is planned for COP30, a year before the presentation of future updated NDCs. This will offer the opportunity for Parties to "reflect and present how they are progressively addressing gender equality and women's empowerment in their implementation actions".<sup>87</sup>

In retrospect, although important steps have been taken in recognizing the importance of gender-responsive climate laws and policies and gender equality within decision-making bodies, gender and women's considerations seem to always be relegated to the background. "Gender" as a political issue only seemed to become one of real importance in a year when little else of note was taking place".<sup>88</sup> Moreover, it appears that gender and women's considerations in climate law and policy are largely absent from climate action areas apart from adaptation.

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<sup>83</sup> UNFCCC (2021), Decision -/CP.26.

<sup>84</sup> Ibid, para. 69.

<sup>85</sup> Women Gender Constituency (2022) "No Gender Justice in the Gender Action Plan (GAP)" Bidga, Lindsay <<https://womengenderclimate.org/no-gender-justice-in-the-gender-action-plan-gap/>> (last accessed 17 April 2023).

<sup>86</sup> Ibid, p. 4.

<sup>87</sup> IUCN (2021), p. 2.

<sup>88</sup> Flavell (2023), p. 94.

## **2.2 The climate regime's focus on adaptation, at the expense of the others climate action areas**

The COP13 provided a forum for a shift in the climate negotiations. Indeed, the focus went from exploring how to combat climate change to how to adjust to its harmful impacts.<sup>89</sup> This change in priority was strengthened with the adoption of the Cancún Adaptation Agreement. Indeed, during COP16 in Cancún, Parties agreed that “[a]daptation must be addressed with the same priority as mitigation”.<sup>90</sup>

This shift from mitigation to adaptation was not harmless as it foregrounded the position of women as vulnerable victims. Indeed, early on, literature on the gender-climate change nexus was mainly addressing women's consideration in relation to vulnerability to climate change effects. The link between gender and adaptation became more relevant than with other climate action areas, and policy makers followed that trend.<sup>91</sup>

However, focusing on adaptation was seen by the WGC as an entry point for gender in climate negotiations, especially as the deflection from mitigation brought the attention to the Global South. Indeed, WGC presented the experience of vulnerable women from the Global South as a “universal experience”.<sup>92</sup> As stated previously, women are genuinely disproportionately vulnerable to climate change impacts. Therefore, gender-responsive adaptation and implementation is essential to ensure that these vulnerabilities are taken into account and balanced in the climate response. Nevertheless, this depiction of women as vulnerable victims became the prominent narrative in the climate regime. Women were seldom represented as agents of change, beyond their mythical, special connection as nurturing and caring beings.

The reality behind this misconception of women's role in combating climate change is slowly being recognized with attempts of moving away from it, notably through the GAP that includes a call for more gender considerations in other areas than adaptation.

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<sup>89</sup> Flavell (2023), p. 109.

<sup>90</sup> UNFCCC (2010), para. 2.

<sup>91</sup> Flavell (2023), p. 110.

<sup>92</sup> *Ibid*, p. 111.

### 2.2.1. Mitigation

Although adaptation is essential to address in relation to the gender and climate change nexus, it is critical to also address mitigation as both climate action areas are considered as the core areas of climate action. Yet, mitigation is the area with the lowest number of gender or women references.<sup>93</sup>

The UNFCCC defines the mitigation activities as “limiting [the Parties’] anthropogenic emissions of greenhouse gases and protecting and enhancing [the Parties’] greenhouse gas sinks and reservoirs”.<sup>94</sup> Since the convention itself is gender-blind, this section will consider the UNFCCC’s instruments relating to mitigation.

The Kyoto Protocol is the first UNFCCC treaty to aim at reducing global emissions but does not contain any reference to gender or women. As mentioned above, the decision 36/CP.7,<sup>95</sup> adopted during COP7, aimed at improving the representation participation of women in bodies established notably under the Kyoto Protocol. It is therefore relevant to explore if the mechanisms under the Protocol take into account gender and/or women’s considerations.

Article 12 of the Kyoto Protocol provides that the CDM allows Annex I countries (industrialized countries) to receive carbon emission reduction credits for projects they funded and/or developed in non-Annex I countries in order to reach their reduction commitments.<sup>96</sup> The implementation of the CDM depends on various methodologies that, without being designed explicitly with gender-sensitive characteristics, can benefit women. For instance, the CDM Project 2711 on *Efficient fuel wood stove for Nigeria* aims to replace fuel stoves that not only make use of firewood (which is costly and time consuming) but that are also health hazards for the people cooking, which are traditionally and therefore primarily women and girls.<sup>97</sup> In addition, the COP Decision 2/CMP.5, adopted in 2009, which aims at providing guidance for the CDM, promotes gender balance and encourages the nomination of women in the Executive Board of the CDM.<sup>98</sup>

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<sup>93</sup> WEDO, p. 6.

<sup>94</sup> UNFCCC (1992), Article 4.

<sup>95</sup> UNFCCC (2001), Decision 36/CP.7.

<sup>96</sup> Kyoto Protocol (1998), Article 12.

<sup>97</sup> UNFCCC (2012 b), p. 11.

<sup>98</sup> UNFCCC (2017), p. 35.

Under Article 6 of the Kyoto Protocol, the Joint Implementation allows the same offset mechanism provided by the CDM but between two Annex I countries.<sup>99</sup> Moreover, Article 17 provides for the implementation of emission trading systems allowing countries to sell “unused” emission units to other countries that have exceeded their emission targets.<sup>100</sup> The literature seldom addresses those two mechanisms. Indeed, they are largely gender-blind and no COP decision addresses gender consideration in relation to them, apart from the general Decision 36/CP.7 mentioned above.<sup>101</sup>

Another instrument relevant to address in this section is the Nationally Appropriate Mitigation Actions (NAMAs). Pursuant to Bali Action Plan (COP18 in Doha), developing Parties are to take NAMAs, which are gathered in a specific registry. In the compilation from 2015 of the UNFCCC Secretariat on the NAMAs, there is no reference of gender and women are only referenced twice: once in the NAMAs submitted by Burkina Faso, in a section on the co-benefits of mitigation, notably the improvement of living conditions, “particularly of women”<sup>102</sup>; and once in a section in Gambia’s NAMAs which states that the NAMAs were developed through a consultative process involving notably “women’s group”.<sup>103</sup>

Regarding the Paris Agreement, as mentioned previously, there is no reference to gender or women in the articles 4, 5 and 6 relating to mitigation.<sup>104</sup> Therefore, it is essential that Parties include gender references within the mitigation section of their NDCs to ensure that climate mitigation actions do not remain gender blind.

According to the study conducted in 2021 by the IUCN on 89 NDCs, only 16 countries stated that gender will be “considered or addressed in their mitigation actions/measures”.<sup>105</sup> Out of those 16, only six planned on conducting a gender analysis to inform their mitigation measures, while only 3 already conducted such analysis. Moreover, eleven out of the 16 have “standalone gender objectives in their mitigation section”.<sup>106</sup>

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<sup>99</sup> Kyoto Protocol (1998), Article 6.

<sup>100</sup> Ibid, Article 7.

<sup>101</sup> UNFCCC (2001), Decision 36/CP.7.

<sup>102</sup> UNFCCC (2015), p.12.

<sup>103</sup> Ibid, p. 28.

<sup>104</sup> Paris Agreement (2015), Article 4, 5 and 6.

<sup>105</sup> IUCN (2021), p. 43.

<sup>106</sup> Ibid, p. 54.

REDD+ is one of the mitigation instruments of the climate regime which can be considered as the most gender-sensitive instruments. Indeed, REDD+ recognizes gender equality as a cross-cutting issue and strives for systematic integration of gender considerations within its programmes. It also promotes a gender-responsive approach by supporting actions that advance gender equality and women's empowerment.<sup>107</sup>

In order to monitor the implementation of such commitment, a Gender Marker Rating System was developed. This system assesses programme actions on the basis of the four following criteria: a) mainstreaming gender in context through a gender analysis; b) integrating a gender approach in implementation; c) developing gender-responsive monitoring and reporting; and d) utilizing gender budget, expertise and/or tools. Then the assessment is established through a three-point rating scale:<sup>108</sup>

- GEN-0 meaning the programme is considered gender-blind (“output not likely to contribute to gender equality and does not meet any of the four criteria”);
- GEN-1 meaning gender partially mainstreamed within the programme (“only some of the activities of the output address gender. This means the output meets one or more of the four criteria but not all”);
- GEN-2 meaning the programme is considered gender-responsive (“gender is fully mainstreamed within the output. This means the output meets all of the four criteria”).

In addition, UN-REDD Programme put in place in 2009 the REDD+ Social and Environmental Standards (REDD+SES), which is an initiative aiming at providing support for government-led REDD+ programmes. The REDD+SES provides an action checklist that can be used for evaluating and monitoring the incorporation of gender consideration in the development and implementation of a REDD+ program. The project will be evaluated on five specific aspects: a) “gender-differentiated relationships with forests, specifically, use and control of forest resources”; b) “gender inequalities women face in issues related to forest conservation strategies”; c) “challenges, best practices and opportunities identified in REDD+ pilot projects”; d) “women's knowledge, capacities, and networks”; and e) “risks and opportunities for women in REDD+”.<sup>109</sup>

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<sup>107</sup> Tovar-Restrepo (2017).

<sup>108</sup> UN-REDD Programme (2019), p.2.

<sup>109</sup> Tovar-Restrepo (2017), p. 418-419.

Finally, it is relevant to address in this section the Sharm el-Sheikh mitigation ambition and implementation work programme.<sup>110</sup> In 2021, during COP26, the Parties adopted a decision to establish a “work programme to urgently scale up mitigation ambition and implementation in this critical decade”.<sup>111</sup>

The following year, the Parties agreed on a work programme and an implementation plan was adopted. In the advanced unedited version of the implementation plan, the preamble specifies that under the work programme, Parties should respect, promote and consider, among other things, gender equality and women’s empowerment.

Gender and women are mentioned further in the decision under the “enhancing implementation: action by non-Party stakeholders” section, in which Parties are encouraged to “increase the full, meaningful and equal participation of women in climate action and to ensure gender-responsive implementation and means of implementation, including by fully implementing the Lima work programme on gender and its gender action plan, to raise climate ambition and achieve climate goals”.<sup>112</sup> The Parties are also invited to support the implementation of the GAP in developing countries.<sup>113</sup>

As the Sharm el-Sheikh work programme is very young, it is impossible to determine whether it will improve the integration of gender within the area of climate mitigation action. However, the absence of reference to gender or women in any of the sections on climate action areas, including the mitigation section is not encouraging. Indeed, although the aim itself of the programme is to have more ambitious climate mitigation, the mentions on gender-responsiveness and women’s empowerment are not more ambitious than what was already stated under the LWPG and its GAP.<sup>114</sup>

Apart from the REDD+ programmes, it seems that gender and women’s considerations are not often addressed in relation to climate mitigation action, especially in comparison to the climate adaptation area. Although this imbalance is regularly recognized in the literature, its reason is seldom explored within the literature on the gender-climate change nexus. A personal speculation from the author would be based on the fact that climate mitigation action largely

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<sup>110</sup> United Nations Climate Change, “Sharm el-Sheikh mitigation ambition and implementation work programme” < <https://unfccc.int/topics/mitigation/workstreams/mitigation-work-programme> > (last accessed 23 April 2023).

<sup>111</sup> UNFCCC (2021), Decision -/CP.26, para. 27.

<sup>112</sup> UNFCCC (2022 c), para. 85.

<sup>113</sup> Ibid, para. 86.

<sup>114</sup> United Nations Climate Change, “Sharm el-Sheikh mitigation ambition and implementation work programme” < <https://unfccc.int/topics/mitigation/workstreams/mitigation-work-programme> > (last accessed 23 April 2023).

relies nowadays on scientific, technological solutions. Yet, a study conducted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) showed that the gender gap in Science, Technology, Engineering and Mathematics (STEM) education is important. Indeed, “in higher education, only 35% of all students enrolled in STEM-related fields are female”<sup>115</sup> and nowadays “only 28% of all of the world’s researchers are women”.<sup>116</sup> Therefore, as a male-dominated sector, the lack of women’s representation and representation of their needs and interests might explain why gender and women’s considerations are largely absent from climate mitigation action.

### 2.2.2. *Other climate action areas*

Mitigation is not the only area of climate action that did not include any reference to gender or women’s considerations under the Paris Agreement. Indeed, article 11 of the Paris Agreement provides for the obligation of developed country Parties to cooperate and provide support to enhance the capacity and ability to respond to the adverse effects of climate change.<sup>117</sup> It consists of various types of supports provided to countries and individuals that have the least capacity to respond or that are the most vulnerable, i.e. developing countries, small island developing States, but also Indigenous People, women, minorities, etc.

However, this article contains no mention of gender or women. Therefore, considering that the support required under the capacity-building obligation can be financial or of technological nature, it appears relevant to explore the gender-responsiveness of climate legislation and policy in relation to climate finance and climate technology development and transfer.

#### 2.2.2.1 Climate finance

As mentioned previously, climate finance started out largely gender-blind but significant improvements over the years. Gender-responsive climate finance is essential and, as the United Nations General Assembly (UNGA) states in its study on gender-responsive climate action, “has the potential to enhance climate resilience, reduce emissions, and advance women’s enjoyment of human rights and gender equality”.<sup>118</sup> Moreover, when gender-blind climate

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<sup>115</sup> UNESCO (2022) “New UNESCO report sheds light on gender inequality in STEM education” <<https://www.unesco.org/en/articles/new-unesco-report-sheds-light-gender-inequality-stem-education>> (last accessed 23 April 2023).

<sup>116</sup> Ibid.

<sup>117</sup> Paris Agreement (2015), Article 11.

<sup>118</sup>UNGA (2019), p. 14.

finance instruments risk exacerbating discrimination against women, which would violate women's rights under the CEDAW, which was adopted by the majority of recipients and contributors to climate finance.<sup>119</sup>

Yet, the Paris Agreement does not include any gender or women reference within its article 9, stating the obligation for developed countries to financially support developing countries Parties in their endeavour to meet their obligations under the Agreement, with respect to both adaptation and mitigation.

Under the UNFCCC climate finance umbrella, three major funds have been established and will be rapidly reviewed in this section.

The Green Climate Fund mentioned earlier started out well as it was the first multilateral climate fund establishing a “comprehensive gender-approach to its operations”.<sup>120</sup> Moreover, its gender policy requires that a gender action plan must be undertaken for every project or funding proposal, no matter which funding area. However, the gender policy's scope is fairly limited as it only addressed gender through a binary lens and does not acknowledge its intersectionality.<sup>121</sup>

Then, regarding the Kyoto Protocol Adaptation Fund, although the efforts were uneven, the initial project proposals to the Adaptation Fund included a gender analysis. A 2019 Assessment Report on Progress in the Implementation of the Adaptation Fund's Gender Policy and Gender Action Plan acknowledged the efforts made but also highlighted the lack of recognition of the intersectionality of gender.<sup>122</sup> In response to this assessment, the Adaptation Fund adopted a gender policy explicitly acknowledging the importance of the intersectional approach to gender mainstreaming in climate action. This will be the first policy to do so.<sup>123</sup>

Finally, the World Bank, in collaboration with the regional multilateral development banks (MDBs) implemented the Climate Investments Funds (CIFs) which “aims to accelerate climate action in low- and middle-income countries by empowering transformations through their programs”.<sup>124</sup> The third phase of its Gender Action Plan (2021-2024) was adopted in 2020. It is intended to continue and improve its Gender Program, which aim at “mainstreaming gender

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<sup>119</sup> Schalatek (2022), p.3.

<sup>120</sup> Ibid, p. 5.

<sup>121</sup> Ibid, p. 6.

<sup>122</sup> Adaptation Fund Board (2019).

<sup>123</sup> Ibid, p. 5.

<sup>124</sup> Climate Investment Funds, “Climate Investment Funds Programmes” < <https://www.cif.org/cif-programs> > (last accessed 21 April 2023).

in CIF policies and programs and deepening knowledge, learning and technical support on gender in the CIF, while undertaking more scaled-up efforts in [...] capacity building, institutional development [...] and support to women’s climate leadership, as well as efforts in systematic sector-wide learning and dissemination”.<sup>125</sup> Significant improvements are made by the CIFs, however Schalatek considers that the efforts made remain uneven.<sup>126</sup>

Throughout the years, the various climate finance instruments built up their gender policy in order to improve the gender-responsiveness of the projects they funded. This is particularly commendable as even the Paris Agreement does not encompass any gender consideration within the climate finance section.

Nevertheless, the LWPG invites public and private entities to “increase the gender-responsiveness of climate finance”.<sup>127</sup> In addition, more efforts towards a more intersectional approach seems to be the next step for improving the gender-responsiveness of climate finance. Especially considering that during COP26, climate finance donors committed \$130 trillion to reduce global carbon emissions; and only 3% of this sum would be dedicated to advance gender equality.<sup>128</sup>

#### 2.2.2.2 Climate Technology

The objectives of climate technologies vary depending on whether they are used for climate adaptation or mitigation. Indeed, climate technologies are used to reduce GHGs but also to adapt to the adverse effects of climate change. When addressing climate technologies, the climate regime also addresses technology transfer which relates to the technological support developed countries are required to provide to developing countries, alongside financial support.

Two complementary bodies have been established under the UNFCCC in relation to climate technologies: the Technology Executive Committee (TEC), in charge of the policies and recommendations, and the Climate Technology Centre and Network (CTCN) which is in charge of the implementation of the technology projects and programmes.

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<sup>125</sup> Climate Investments Funds (2020), p. 4.

<sup>126</sup> Schalatek (2022), p. 6.

<sup>127</sup> UNFCCC (2019 a), Decision 3/CP.25, p. 7.

<sup>128</sup> IDLO (2022), p. 14.

When assessing the climate technology sector through the gender lens, two aspects must be taken into account and they have been highlighted in a concept note on the integration of gender in the work of the TEC in 2019: “There is a bidirectional relationship between gender and climate technology. On the one hand, women and men often have different needs and priorities when accessing and using technology, and on the other hand, a technological solution can positively or negatively impact members of a community differently, including due to gender”.<sup>129</sup> As the TEC acknowledges the importance of integrating gender in its work, it highlights the work done by the CTCN towards this objective. Indeed, among other efforts, in line with the LWPG and its GAP, the CTCN appointed a gender focal point, established a gender policy and action plan, and collaborates regularly with WGC with regards to capacity-building events and for the creation of the Gender Just Climate Solutions Award. Nevertheless, the TEC’s concept note explores the ways climate technology mechanisms and institutions can go further and implement a general and systematic approach in order to mainstream gender: from enhancing collaboration through a network of gender expertise, to organizing inclusive events with gender as a substantive topic.<sup>130</sup>

In conclusion, although commendable efforts have been made to improve the integration of gender and women’s considerations within the climate regime, it appears that it has not been done in a homogenous manner throughout the regime. In addition, when gender and women’s considerations are integrated, it is not necessarily done in a meaningful way as the goal is sometimes to merely achieve gender-sensitive, or at best gender-responsive, climate law and policy. Therefore, it appears relevant to explore the strategy used within the climate regime to achieve such goals and evaluate whether it could be efficient to go further, towards a gender-transformative climate regime.

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<sup>129</sup> Technology Executive Committee (2019), p. 2.

<sup>130</sup> Ibid, p. 6-8.

## **Chapter 3 – Gender mainstreaming: a mere diversion from a necessary paradigm shift?**

When addressing gender and women’s considerations within the international climate change regime, gender mainstreaming appears to be a ubiquitous element. Therefore, providing a clear description of what gender mainstreaming is (3.1), is essential to properly understand its place within the climate regime and how this strategy might not be sufficient to achieve gender equality (3.2). This chapter will therefore attempt to answer the following sub-research question: is gender mainstreaming a sufficient strategy to achieve a gender-transformative climate change regime?

### **3.1 What is gender mainstreaming?**

The UN organized four World Conferences on Women. The fourth conference held in Beijing in 1995 is widely considered as a “roadmap for the achievement of gender equality”<sup>131</sup> and a “blueprint for women’s empowerment”.<sup>132</sup> The Beijing conference is considered as a key moment as it marks the beginning of shift in the way gender inequality was perceived and addressed.<sup>133</sup> Indeed, it called on stakeholders to not view gender equality as a “women’s only issue” that has to be addressed in a separate vacuum-sealed agenda, but as an “everybody’s issue” that must be addressed in all areas of policy and practice in order to deconstruct the inherent and structural biases against women.

The conference resulted in the unanimous adoption of the Beijing Declaration and Platform for Action.<sup>134</sup> This key policy document consolidated the advances made during previous conferences, notably the Nairobi Forward-looking Strategies for the advancement of Women adopted during the conference held in Nairobi, ten years prior.

The Beijing Declaration and Platform for Action identifies strategic objectives and actions in twelve critical areas of concern, that are still relevant today: a) women and poverty, b) education and training of women, c) women and health, d) violence against women, e) women and armed conflict, f) women and the economy, g) women in power and decision-making, h) institutional

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<sup>131</sup> UN Women (2015), p. 7.

<sup>132</sup> UNGA (2019), para. 42.

<sup>133</sup> UN Women, “World Conferences on Women” <<https://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women>> (last accessed 11 May 2023).

<sup>134</sup> Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women (adopted 27 October 1995) (1995), United Nations.

mechanism for the advancement of women, i) human rights of women, j) women and the media, k) women and the environment, and l) the girl-child.<sup>135</sup> Moreover, for the 20<sup>th</sup> anniversary of the Beijing Declaration and Platform for Action, governments gathered at the Special session of the General Assembly to reaffirm their commitments. Indeed, more than 20 years after its adoption, the Declaration still provides strong and relevant guidance, especially as the goals and commitments have not been fully implemented yet.<sup>136</sup>

The Beijing Declaration establishes gender mainstreaming as a major strategy for enhancing gender equality and women's rights and empowerment. Gender equality is a key concept enshrined in international agreements and commitments, such as the CEDAW<sup>137</sup> or the Sustainable Development Goal (SDG) 5.<sup>138</sup> The UN Women Training Centre glossary provides a clear definition of gender equality and states that it “refers to equal rights, responsibilities and opportunities of women, men, girls and boys [and it] implies that the interests, needs and priorities of all genders are taken into consideration, recognizing the diversity of different groups”.<sup>139</sup>

To achieve gender equality and women's rights and empowerment, gender mainstreaming is a major global strategy. Although, the term “gender mainstreaming” might not be always used, intergovernmental mandates can require action to “integrate, incorporate, or embed gender equality issues into development processes and procedures and outcomes”,<sup>140</sup> which in the end relates to the gender mainstreaming mandate. Such language variation can be seen when policy documents are referencing to “gender-responsive” or “gender-transformative” processes or outcomes for instance.

Based on the definition of gender mainstreaming provided by the ECOSOC,<sup>141</sup> gender mainstreaming is not an end in itself but a strategy to eliminate gender-based inequalities,

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<sup>135</sup> UN Women, “World Conferences on Women” <<https://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women>> (last accessed 11 May 2023).

<sup>136</sup> UN Women (2015), p. 206.

<sup>137</sup> Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (adopted 18 December 1979, in force 3 September 1981) (1979), United Nations, Treaty Series, vol. 1249, p. 13.

<sup>138</sup> UN (2015), *Transforming our world: The 2030 Agenda for Sustainable Development*, A/RES/70/1, Available at <https://sdgs.un.org/fr/goals> (last accessed 16 May 2023).

<sup>139</sup> UN Women Training Centre eLearning Campus, “Gender Equality Glossary”, <<https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G&sortkey&sortorder&fullsearch=0&page=-1>> (last accessed 13 April 2023).

<sup>140</sup> UN Women (2022), “Handbook in Gender Mainstreaming for Gender Equality Results”, Available at <<https://www.unwomen.org/en/digital-library/publications/2022/02/handbook-on-gender-mainstreaming-for-gender-equality-results>> (last accessed 21 May 2023), p. 14.

<sup>141</sup> ECOSOC (1997).

discrimination and exclusion in order to achieve gender equality and women's rights and empowerment.

The strategy of gender mainstreaming has a dual dimension. Indeed, besides requiring equal representation of women and men in a given policy area, gender mainstreaming also requires the content of policies to integrate gender perspectives.<sup>142</sup>

Furthermore, it is recognized that the most effective implementation of the gender mainstreaming strategy can be done through the “twin-track” or “dual-track” strategy. This strategy allows to use both targeted and integrated strategies in a complementary manner.<sup>143</sup> The former consists of implementing targeted interventions focusing on a specific aspect of gender equality. In the “Handbook on gender mainstreaming for gender equality results”, the UN Women specifies that the targeted approach should be based on sex- and age-disaggregated data in order to properly identify the “underlying structural causes that need to be addressed”.<sup>144</sup> Whereas, the integrated approach has a broader scope as it is based on the concept of mainstreaming itself, which means that it promotes gender equality in all sectors, policy areas and programmes, and in a systematic manner.<sup>145</sup>

Since the Beijing Conference, gender mainstreaming has faced a rapid diffusion across the globe, even within states with a “poor record on gender equality”.<sup>146</sup> It is therefore relevant to explore its diffusion within the climate regime.

### **3.2 Gender mainstreaming within the international climate regime?**

Gender mainstreaming seems to have been widely adopted in a variety of policy areas, and climate change law and policy is no exception to this trend. Therefore, this section will explore the way the climate regime utilizes the gender mainstreaming strategy (3.2.1) and whether it is sufficient to achieve gender-responsive climate law and policy (3.2.2).

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<sup>142</sup> European Institute for Gender Equality, “What is gender mainstreaming” <<https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>> (last accessed 18 May 2023).

<sup>143</sup> UN Women (2022), p. 18-19.

<sup>144</sup> Ibid, p. 20.

<sup>145</sup> Ibid.

<sup>146</sup> Alston (2014), p.288.

### 3.2.1 Legal instruments and tools for gender mainstreaming

#### 3.2.1.1 The LWPG and its GAP

It appears that, with the adoption of the LWPG, the first strategy adopted within the climate regime was an integrated strategy. Indeed, the LWPG strives for the advancement of “gender balance, [the promotion of] gender sensitivity in developing and implementing climate policy and [the achievement] gender-responsive climate policy *in all relevant activities under the Convention*”<sup>147</sup> (emphasis added). In other words, the LWPG aims to have gender and women’s considerations widespread throughout the climate regime, under the UNFCCC.

The integrated strategy was then complemented by the adoption of the GAP, under the framework of the LWPG. The GAP seems to be following the logic of the targeted interventions under the “twin-track” strategy to gender mainstreaming. Indeed, as mentioned in the previous chapter, five areas of focus have been established for the activities undertaken under the GAP. This narrower focus allows the GAP to pinpoint important areas of action for gender equality and provide relevant “information, research and expertise” accessible to stakeholders.<sup>148</sup>

In order to achieve gender equality, gender mainstreaming aims at two objectives: gender representation and gender responsive content. This is the dual dimension of gender mainstreaming.<sup>149</sup>

Before going into the analysis of the gender representation dimension, it appears relevant to observe the statistics on the topic, notably from the WEDO “Women’s Participation in the UNFCCC: 2022 Report”.<sup>150</sup> The report states that women made up for 38% of the national delegations during the climate negotiations, in 2021, compared to 30% in 2009.<sup>151</sup> In 2021, 13% of Heads of Delegation were women in 2021, for 10% in 2009.<sup>152</sup> Indeed, WEDO observes a rising trend of women’s leadership in climate change policymaking. However, this increase is not exponential as the following figure illustrates. It also shows how far we are from achieving

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<sup>147</sup> UNFCCC (2014), Decision 18/CP.20, para. 1.

<sup>148</sup> UNFCCC (2022 b)

<sup>149</sup> European Institute for Gender Equality, “What is gender mainstreaming”, <<https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>> (last accessed 18 May 2023).

<sup>150</sup> WEDO (2022).

<sup>151</sup> Ibid, p. 1.

<sup>152</sup> Ibid.

proper gender parity, especially when the informal gender equality quotas usually aim for 40-60 ratio.<sup>153</sup>

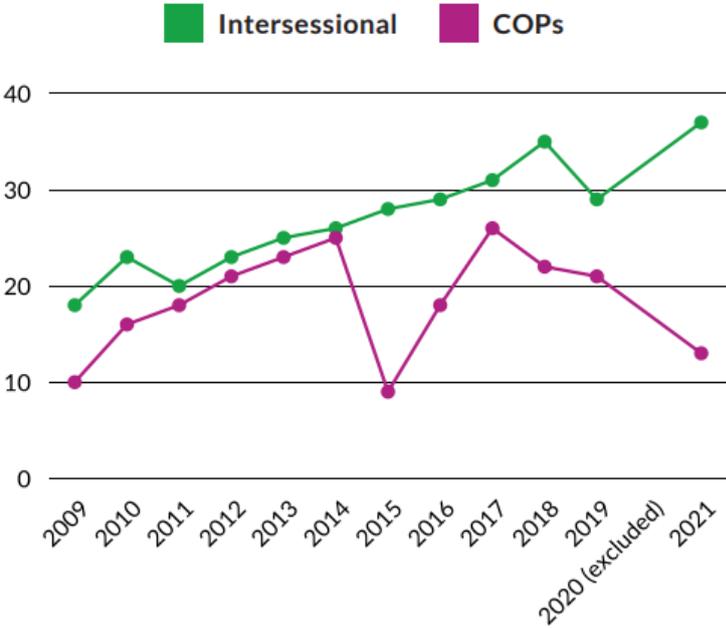


Figure 2: Percentage of women as heads of delegation (per year)<sup>154</sup>

This lagging in gender composition has been acknowledged by the enhanced LWPG as it takes notes of the “persistent lack of progress in and the urgent need in improving the representation of women in Party delegations and constituted bodies”.<sup>155</sup> Indeed, the UNFCCC Secretariat states that the lack of women’s participation in climate change related activities constitutes an overarching challenge in relation to the integration of gender considerations within climate law and policies.<sup>156</sup>

When addressing the issue of gender representation within the climate regime, there is an implicit assumption that “women’s presence will lead to a different kind of politics”.<sup>157</sup> This is the argument supported by the liberal feminist perspective, as explained by Kronsell.<sup>158</sup> Indeed, she contends that such a perspective considers that efforts towards equal rights, access and opportunities are not only beneficial for women’s agency but are also essential in the strengthening of democratic values and systems. Furthermore, this approach is supported by

<sup>153</sup> Kronsell (2017), p. 12.  
<sup>154</sup> WEDO (2022), p.2.  
<sup>155</sup> UNFCCC (2019 a), Decision 3/CP.25, para. 2.  
<sup>156</sup> UNFCCC (2016), p. 30.  
<sup>157</sup> Kronsell (2017), p. 12.  
<sup>158</sup> Ibid.

the enhanced LWPG and its GAP as they recognize that “the full, meaningful and equal participation and leadership of women in the climate regime, at international, national and local level is *essential to achieve long-term climate goals*” (emphasis added).<sup>159</sup> The LWPG was adopted in order to provide guidance “toward effective participation of women in bodies established under the UNFCCC”.<sup>160</sup> Moreover, gender balance is part of the areas of focus of the GAP.

The effective participation of women allows them to be agents of change, and to be recognized as such.<sup>161</sup> Nevertheless, in relation to gender balance and the potential impact women’s presence can have on climate policy-making, the literature prominently refers to two specific studies, one conducted by Ergas and York in 2012<sup>162</sup> and another conducted by Magnusdottir and Kronsell in 2015.<sup>163</sup> The former study, based on quantitative analysis, explores the correlation between carbon dioxide (CO<sub>2</sub>) emissions per capita and women’s contribution to climate policy and decision-making.<sup>164</sup> Their analysis resulted in the finding that the CO<sub>2</sub> emissions per capita are lower in countries where women’s representation is higher. The study conducted by Magnusdottir and Kronsell is based on Erga and York’s findings. It explores the link between “critical mass” (“equal descriptive representation”) and “critical acts” (“substantive representation”).<sup>165</sup> In other words, the study aims to determine whether there is a correlation between equally gendered representation in decision-making bodies and the gender-sensitivity of the climate policy making. The findings of the study established no such straightforward correlation.

It is critical to highlight that both studies recognize that other factors must be taken into account when assessing such correlations and that assuming from these results that women are just more environmentally-friendly than men would be a wrong oversimplification. However, both studies show that simply achieving gender parity in decision-making bodies does not automatically lead to gender sensitive law and policy. Therefore, gender representation is not enough to achieve the overarching goal gender equality.

In a 2008 background paper which informed Magnusdottir and Kronsell’s study, Röhr et al. contend that as important as it is to have equal representation of women and men in decision

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<sup>159</sup> UNFCCC (2019 a), Decision 3/CP.25.

<sup>160</sup> (United Nations 2014) Decision 18/CP.20, Para. 3

<sup>161</sup> (UNFCCC Secretariat 2016) P. 5

<sup>162</sup> Ergas and York (2012).

<sup>163</sup> Magnusdottir and Kronsell (2014).

<sup>164</sup> Ergas and York (2012), p.1.

<sup>165</sup> Magnusdottir and Kronsell (2014), p.1.

making bodies, it is not sufficient to guarantee “[gender] justice in institutional orientation”.<sup>166</sup> Indeed, to achieve meaningful participation of women, properly addressing underlying power relations and their differential impacts that hamper the true integration of women within decision making is critical.

Gender mainstreaming also aims to achieve gender responsive content in climate law and policy. The evolution of the integration of gender considerations within the climate regime has been reviewed in the previous chapter. Indeed, it was observed that, although searing, its expansion was not homogenous as certain climate action area were still relatively hermetic to gender concerns, notably climate mitigation. Moreover, the UNFCCC Secretariat published in 2019 a report on the progress in integrating a gender perspective in constituted body processes,<sup>167</sup> which indicated an increased number of UNFCCC constituted bodies reporting on gender.<sup>168</sup> The report invited the constituted bodies to strengthen their efforts.<sup>169</sup>

Furthermore, it appears relevant to specify that this aspect of gender mainstreaming, i.e. the integration of gender considerations within the UNFCCC and its constituted bodies, relates to the GAP’s priority area on coherence.

### 3.2.1.2 “Five steps” for gender mainstreaming

In 2016, during the COP20, the UNFCCC Secretariat was asked to prepare a document providing guidance for integration gender considerations into climate change related activities undertaken under the Convention.<sup>170</sup> The Secretariat reviewed various guidelines and other tools and identified five steps and approaches for achieving effective gender mainstreaming.<sup>171</sup> These five steps and approaches can fit within the gender mainstreaming cycle, showed in the figure 3, provided by the European Institute for Gender Equality (EIGE) in order to integration gender considerations throughout the all process of decision-making.<sup>172</sup>

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<sup>166</sup> Röhr (2008), p. 17.

<sup>167</sup> UNFCCC (2019 b).

<sup>168</sup> UNFCCC (2022 d), para. 3, p. 3.

<sup>169</sup> Ibid.

<sup>170</sup> UNFCCC (2016), *Guidelines or other tools for integrating gender considerations into climate change related activities under the Convention*, FCCC/TP/2016/2, UNFCCC Secretariat.

<sup>171</sup> Ibid, p. 6-13.

<sup>172</sup> European Institute for Gender Equality, “What is gender mainstreaming”, <<https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>> (last accessed 18 May 2023).

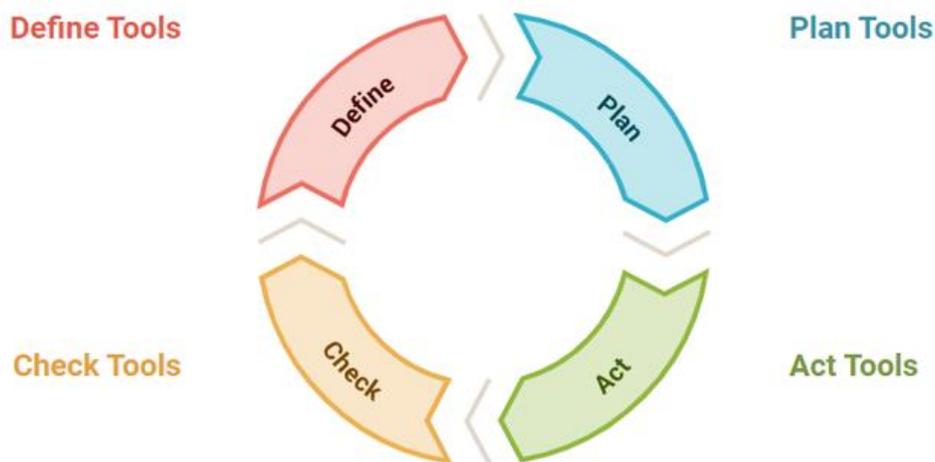


Figure 3: The different stages of the gender mainstreaming cycle, according to EIGE <sup>173</sup>

Firstly, the gender mainstreaming cycle starts with the “define” stage which consists of assessing the needs that must be addressed.<sup>174</sup> This assessment can be done through a gender analysis, which is considered as the “cornerstone of gender mainstreaming”<sup>175</sup> as it allows to understand the gendered differential impacts of climate change and of the policy/programme/project. It can also reveal certain institutional, cultural and/or political barriers to gender equality.

Secondly, the planning stage aims at identifying the objectives and the relevant means to achieve them.<sup>176</sup> Two steps from the Secretariat’s guidelines can be placed within this phase: the design and preparation of policies, programmes and projects, and gender-responsive budgeting.<sup>177</sup> The design and preparation step encompasses the inclusion of staff with gender expertise; the development of “gender goal”; the identification of the specific groups targeted and potential partners and stakeholders, including the gender focal points.<sup>178</sup> Regarding gender-responsive budgeting, the technical paper acknowledges that “adequate financial resource allocation” is one of the biggest challenge in gender mainstreaming.<sup>179</sup> Therefore, it is advised

<sup>173</sup> European Institute for Gender Equality, “What is gender mainstreaming”, <<https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>> (last accessed 18 May 2023).

<sup>174</sup> Ibid.

<sup>175</sup> UNFCCC (2016), p. 6.

<sup>176</sup> European Institute for Gender Equality, “What is gender mainstreaming”, <<https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>> (last accessed 18 May 2023).

<sup>177</sup> UNFCCC (2016), p. 9-11.

<sup>178</sup> Ibid, p. 9-10.

<sup>179</sup> Ibid, p. 11.

that the cost of gender mainstreaming activities should be not only identified in the initial gender analysis but also identified in the overall budget of the policy/programme/project.<sup>180</sup>

Thirdly, the “act” phase relates to the implementation of the policy/programme/project.<sup>181</sup> For ensuring that the implementation is in line with gender mainstreaming, the technical paper suggests the involvement of multisectoral and multidisciplinary teams to better understand gender inequalities; it also highlights the importance of the establishment of training and capacity-building to address the barriers hampering women’s access to services provided and/or activities undertaken by the policy/programme/project.<sup>182</sup> Moreover, the paper contends the importance of ensuring that the gender-responsiveness of the activities undertaken will be continued after the policy/programme/project has been implemented.<sup>183</sup>

Finally, the “check” phase is a follow up phase through the monitoring of the on-going work.<sup>184</sup> During this phase, the Secretariat’s technical paper distinguishes between monitoring and evaluating: “Monitoring is described as a process that is ongoing over the course of the life cycle of the intervention, whereas evaluation occurs periodically, usually at the end of the life cycle”.<sup>185</sup> For both monitoring and evaluation, the technical paper recommends the development of gender-responsive indicators as a baseline for the measurement of the progress of the policy/programme/project.<sup>186</sup>

Although gender mainstreaming appears as a promising strategy to achieve gender equality within the climate regime, criticisms arise in the literature as it is often considered as a mere “box to tick”.<sup>187</sup>

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<sup>180</sup> Ibid.

<sup>181</sup> European Institute for Gender Equality, “What is gender mainstreaming”, <<https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>> (last accessed 18 May 2023).

<sup>182</sup> UNFCCC (2016), p. 12-13.

<sup>183</sup> Ibid.

<sup>184</sup> European Institute for Gender Equality, “What is gender mainstreaming”, <<https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>> (last accessed 18 May 2023).

<sup>185</sup> UNFCCC (2016), p. 13.

<sup>186</sup> Ibid, p. 14.

<sup>187</sup> Rainard (2023), p. 5.

### 3.2.2 Gender mainstreaming: a ticking box exercise

#### 3.2.2.1 The insider vs outsider debate

COP16 and the resulting Cancún Agreements provided a framework for foregrounding gender and women's considerations in various climate action areas. Indeed, until then and despite feminist advocacy efforts to push forward gender and women's considerations, there has been a paucity of institutional response. However, between 2007 and 2013, feminist advocacy has been increasingly organized, notably through the creation of coalitions and efforts put toward gaining the constituency status.

Flavell contends that this transition from outsider to insider strategy allowed a “shift towards a deliberate gender-mainstreaming effort”.<sup>188</sup> The debate on those two strategies has been theorized by Bretherton,<sup>189</sup> and Flavell represents it as an opposition between *radical outsiders* and *pragmatic insiders* based on “whether it is better to work within existing political institutions and agitate for reform, or if it is more effective for activists to remain outside of those dominant political systems with an aim of more fundamental structural change in how society works”.<sup>190</sup>

This duality of strategies is relevant when assessing the effectiveness of the gender mainstreaming strategy inasmuch as the “pragmatic insiders”, or those who support the insider strategy, are acutely aware of the concrete reality of institutional and structural barriers hampering the transformational changes needed to achieve gender equality. Therefore, they are doing the utmost with the little leeway they have, which Flavell translates as a focus on “insertion of words and phrases in international agreements”.<sup>191</sup> While, on the other hand, the radical outsiders, with a theoretical and academic point of view, are unsatisfied with the “soft” measures implemented and criticize the lack of advancement in gender and women's concerns.<sup>192</sup>

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<sup>188</sup> Flavell (2023), p. 80.

<sup>189</sup> Bretherton (1998).

<sup>190</sup> Flavell (2023), p. 26.

<sup>191</sup> Ibid, p. 36.

<sup>192</sup> Ibid, p. 31-37.

### 3.2.2.2 The radical potential paradox

Gender mainstreaming is the object of the discrepancy among feminist academics on the gender mainstreaming's merits or lack thereof. Although, it seems that the majority of the literature on gender mainstreaming and the climate change regime tends to fall in the category of those who challenge the effectiveness of the strategy. Indeed, because of its “global diffusion”,<sup>193</sup> gender mainstreaming could be seen as a “success story” if it was not for its failure to achieve widespread gender equality within the climate regime. Even feminist academics that champion gender mainstreaming for its “radical potential to provide transformative changes in gender relations”,<sup>194</sup> concur with the criticisms made by the rest of the literature.

The failure of gender mainstreaming is addressed by various feminist academics, notably by Wittman who refers it as the “radical potential paradox”.<sup>195</sup> Alston catalogues five over-lapping explanations to the radical potential paradox and therefore to the failure of gender mainstreaming.(Alston 2014)

Firstly, although, gender mainstreaming was developed at transnational level by feminist advocacy and lobbying groups, its implementation is done at local level where its “original feminist conceptualization” might be in conflict with “national contextual realities”.<sup>196</sup>

Secondly, Alston highlights the lack of clarity about the goal of gender mainstreaming by posing the following question: “is the goal about integrating women into male normative systems or about transforming those systems to achieve radical change?”.<sup>197</sup> In other words, is gender mainstreaming attempting to achieve sameness, difference or transformative actions? Those three different goals have been identified and explained by Daly<sup>198</sup> as the following: a) sameness is about promoting the integration of women in male-dominated domains, b) difference is about ensuring that the “differencing contributions of women and men are valued in gendered societies”,<sup>199</sup> and c) transformative actions are about addressing biases underlying the gender relations (through “redefining social norms, power structures, and attitudes”<sup>200</sup>).

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<sup>193</sup> True and Mintrom (2001), p. .27.

<sup>194</sup> Alston (2014), p. 1.

<sup>195</sup> Wittman (2010).

<sup>196</sup> Alston (2014), p. 289.

<sup>197</sup> (Alston 2014) P.290

<sup>198</sup> Daly (2005).

<sup>199</sup> Alston (2014), p. 290.

<sup>200</sup> MacArthur et al. (2022), p. 1.

The first two has been operationalized under the umbrella of the UNFCCC,<sup>201</sup> particularly the goal of sameness, notably through the pursuit of gender balance like under the LWPG and its GAP. However, it appears that the transformative aspect of gender mainstreaming is largely absent within climate laws and policies.

Thirdly, there seems to be a misunderstanding of the concept of gender itself which can hinder the efforts undertaken towards gender equality. Bacchi and Eveline contend that policies tend to reinforce gender inequalities when the issue of gender is not properly defined.<sup>202</sup>

Fourthly, according to Alston, at state levels, stakeholders tend to focus on procedural processes, such as delivering gender-disaggregated data, gender auditing and budgeting, rather than on substantive, structural and radical changes.<sup>203</sup>

Finally, gender mainstreaming is implemented within “institutional structures that have traditionally supported male privilege”, based on conservative and patriarchal values and male norms. This context can only provide incentive for “soft” measures like the procedural processes mentioned above, and hamper any effort towards transformational changes.

In sum, the “radical potential paradox” of gender mainstreaming signifies that the “intent, implementation and institutionalization” of bureaucratic processes constitute a barrier to the transformational potential of gender mainstreaming.<sup>204</sup> In those instances, Prügl highlights the risk of gender mainstreaming reinforcing patriarchal oppression rather than combatting it as it was originally intended.<sup>205</sup> As such, Wittman considers gender mainstreaming as inherently deradicalizing as it is unable to challenge gender power relations.<sup>206</sup> Zalewski goes slightly further by describing gender mainstreaming as a “faux-feminism”.<sup>207</sup>

Morrow, alongside other feminist academics like Alston, considers that gender mainstreaming, if reconfigured, could “foster a more profound enculturation of gender at an institutional and societal level”.<sup>208</sup> However, nowadays, gender mainstreaming is “evolutionary

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<sup>201</sup> Flavell (2023), p. 36.

<sup>202</sup> Bacchi and Eveline (2010).

<sup>203</sup> Alston (2014), p. 290.

<sup>204</sup> Ibid.

<sup>205</sup> Prügl (2010), as cited in Alston (2014), p. 290.

<sup>206</sup> According to radical feminist theory, the oppression of women comes from the social norms and institutional structures established by the patriarchy. Therefore, this “deradicalization” means that the strategy of gender mainstreaming falls short of radical feminist theory’s objective to achieve fundamental change and social justice by dismantling patriarchal structures and systems that hamper gender equality.

<sup>207</sup> Zalewski (2020), p. 25.

<sup>208</sup> Morrow (2017), p. 9.

not revolutionary”.<sup>209</sup> Indeed, it is “less radical than agenda-setting” as it merely adds on gender considerations rather than calling for a “full-scale re-orientation of policy agendas”<sup>210</sup> Moreover, when gender mainstreaming is undertaken in a context that does not question power dynamics and embedded patriarchal values, gender mainstreaming loses its transformational potential and because a mere procedural requirement: a box to tick. As Bretherton contends, the “added-on nature” of gender and women’s considerations as a separate agenda does not provide for a reconsideration of existing “value systems or power structures”.<sup>211</sup>

In conclusion, one can concur that gender mainstreaming has a great transformational potential but is not sufficient, in itself, to achieve gender-transformative climate policy and attain gender equality within the climate regime, unless a profound paradigm shift is undertaken.

In this context, feminist academics, regarding the strategies available to fully integrate gender considerations in climate policy, pose the following question: “how can feminists ensure gender is embedded throughout global climate change policy without resorting to a tick-box approach to including gender concerns?”<sup>212</sup>

Gender mainstreaming is a good strategy when the objective is to achieve gender-responsive climate law and policy. However, this only addresses the consequences rather than the root cause of gender inequalities, hence the importance of a gender-transformative approach to climate law and policy. Gender equality can never be fully achieved unless the structural and institutional biases creating gender inequalities are eliminated.

The current international climate regime might lack what it needs to provide for gender-transformative climate law and policy. However, the use of a rights-based approach to climate governance, founded in international human rights law, appears to have the potential to achieve the paradigm shift necessary to produce gender-transformative climate law and policy.

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<sup>209</sup> Ibid.

<sup>210</sup> Ibid.

<sup>211</sup> Bretherton (1998), p. 98.

<sup>212</sup> Flavell (2023), p. 37.

## **Chapter 4 – A rights-based approach to climate governance**

There is a growing body of scholars and activists that is advocating for gender-transformative approach to climate change responses. Indeed, the current economic system is heavily criticized for valuing growth and domination of nature,<sup>213</sup> and exploiting both the planet and people.

Moreover, the Special rapporteur contends that adopting a gender-transformative, rights-based approach when addressing climate change impacts constitutes a legal obligation for states.<sup>214</sup> Indeed, the report states that “the rights-based approach clarifies the obligations of States towards women and girls, catalyses ambitious action and prioritizes the most disadvantaged”.<sup>215</sup> The rights-based approach would provide a holistic and intersectional aspect to climate governance, which would allow to steer the climate regime toward a gender-transformative nature.

This chapter aims at answering the following question: to what extent can a rights-based approach to climate governance provide momentum for the necessary shift toward a gender-transformative climate change regime?

Therefore, in order to answer this question, this chapter will first provide an overview of the current status quo (4.1). Then it will explore the potential of the rights-based approach to climate governance to steer the climate regime toward gender-transformation (4.2).

### **4.1 A necessary shift from the (deeply rooted) status quo**

The literature addressing climate change responses through a feminist perspective tend to agree that climate change responses have been framed in a masculinist, techno-scientific way. For instance, Gaard contends that “climate change has been most widely discussed as a scientific problem requiring technological and scientific solutions without substantially transforming ideologies and economies of domination, exploitation and colonialism”.<sup>216</sup> Yet, climate change is still considered as a human, gender-neutral crisis affecting everyone equally;

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<sup>213</sup> UNGA (2023 a), p. 2, para. 5

<sup>214</sup> Ibid, p. 14, para. 64.

<sup>215</sup> Ibid.

<sup>216</sup> Gaard (2015), p. 24.

and “‘man’ is supposed to mean ‘everyone’”.<sup>217</sup> This can be explained by the way male bias are usually disguised as gender neutrality in our society.<sup>218</sup>

It is recognized that climate change, alongside biodiversity loss and pollution (the triple planetary crisis), has been primarily driven by the Global North economic system that is “largely designed, led and controlled by men”.<sup>219</sup> Moreover, the techno-scientific focus is driven by an economically lucrative incentive,<sup>220</sup> and translated into the prioritization of climate mitigation. Climate mitigation action relates to sectors that are usually male-dominated, such as energy, transport, water, waste management.<sup>221</sup>

The current economic system is one of the sources of gender discrimination, especially as women represent 70% of the world’s poor and receive 20% lower wages than men for the same work.<sup>222</sup> Moreover, by solely focusing on such economic and technical goals, gender, alongside other discrimination factors, such as ethnicity, socioeconomic status, localization, sexual orientation, etc., are put on the side-line or even blatantly ignored. This almost gender-blind approach to climate change responses is deeply problematic, especially when climate law and policy tend to merely aim for gender-sensitive, or gender-responsive at best, content by merely acknowledging the need for gender equality and women’s empowerment. This can lead to a risk of perpetuating gender roles and gender inequalities.<sup>223</sup>

Furthermore, when gender and women’s considerations are taken into account in climate change response, shortcomings can be observed notably because of the restricting discursive framing gender and women in relation to climate change responses. Indeed, as mentioned in Chapter 2, there was a trend in climate governance that represented women as either vulnerable victims or as virtuous, more environmentally conscious beings. The focus on this restrictive, duality is dangerous as it might exacerbates existing gender inequalities. This dichotomy is complemented by gender essentialism, which can be defined as the “use of common identities of the strategic or political purposes of oppositional movements and use of ‘masterwords’”.<sup>224</sup> In the context of climate change law and policy, the common identity used is usually the poor rural women from the Global South.<sup>225</sup> This homogeneous representation of

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<sup>217</sup> Ibid, p. 24.

<sup>218</sup> Criado Perez (2019), p. 270.

<sup>219</sup> UNGA (2023 b), p. 3, para. 6.

<sup>220</sup> MacGregor (2010), p. 230.

<sup>221</sup> Buckingham (2017), p. 390.

<sup>222</sup> UNGA (2023 a), p. 3, para. 7.

<sup>223</sup> MacGregor (2010), p. 224.

<sup>224</sup> Flavell (2023), p. 27.

<sup>225</sup> Ibid, p. 22.

women also ignores a critical element when addressing gender and women's consideration in relation to climate change responses: intersectionality.

In conclusion, the current status quo, founded on biases and discrimination, can only lead to maladaptive climate governance. It is therefore essential to explore the potential of a gender-transformative, rights-based approach to provide a shift from this status quo.

## **4.2 Women's rights are human rights**

This section will provide an analysis the potential of the advocated rights-based approach to climate governance. To do so, it is essential to first determine the legal basis of such approach (4.2.1) in order to determine its "added value" to climate governance (4.2.2).

### *4.2.1 The legal basis for the rights-based approach*

In order to align with the majority of the literature advocating a rights-based approach to climate governance, the legal basis explored here will focus on the CEDAW and the internationally recognized human rights.

There is a growing consensus on the central role human rights can and should play in climate governance.<sup>226</sup> Indeed, the immediate threat that poses climate change to the full enjoyment of human rights has been recognized by the UN Human Rights Council (UNHRC) in 2008.<sup>227</sup> This link between human rights and climate change was also acknowledged by the Paris Agreement, in its preamble.<sup>228</sup> This recognition at international, regional transnational and domestic levels is the result of the advocacy efforts of Indigenous Peoples, small island states, and activists.<sup>229</sup>

The rights-based approach, in relation with gender and women's considerations, has been advocated recently within scholars and grey literature. However, unlike the plethora of literature on climate change and human rights, the study of the rights-based approach for gender and

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<sup>226</sup> Jodoin et al. (2021), p. 45.

<sup>227</sup> UNHRC (2008).

<sup>228</sup> "Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity" See in Paris Agreement (2015), Preamble.

<sup>229</sup> Jodoin et al. (2021), p. 45.

women's considerations is still relatively scarce. Therefore, exploring such approach could provide insightful knowledge on the gender-climate change nexus.

The CEDAW can be considered a relevant legal basis for the rights-based approach. Indeed, the Convention has been considered as the “most comprehensive articulation of the right of women to equality”.<sup>230</sup> The Special Rapporteur Boyd contends that the obligation to take all appropriate measures to prohibit and eliminate discrimination against women and girls, under the CEDAW implies the implementation of gender-transformative measures and the combat against the “root causes of gender-based discrimination”.<sup>231</sup> Moreover, the obligation of non-discrimination is of immediate effect<sup>232</sup>, and therefore cannot be implemented through progressive realization. The immediate nature of that obligation reflects the urgency of the matter and should put the necessary pressure on states to take action. The same obligation also requires an intersectional approach in order to acknowledge and take into account that women, along with LGBT+ people, are a heterogenous group with a variety of experiences.

Although the UNFCCC does not refer to human rights, the Paris Agreement acknowledges that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights [...]”.<sup>233</sup> Indeed, it has been recognized that climate change threatens, or even violates, human rights, such as the right to life, right to health, right to food, water and sanitation, right to adequate standard of living, right to housing, right to property, right to self-determination, right to development and culture, and right to a healthy environment.<sup>234</sup>

In 2022, the UNGA adopted a landmark resolution recognizing the right to a safe, clean, healthy and sustainable environment (hereafter right to a healthy environment) as a universal human right.<sup>235</sup> In the preamble of the resolution, the UNGA also recognizes “the importance of gender equality, gender-responsive action to address climate change and environmental degradation, the empowerment, leadership, decision-making and full, equal and meaningful participation of

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<sup>230</sup> UNGA (2023 a), p. 14, para. 61.

<sup>231</sup> Ibid.

<sup>232</sup> As the obligation of non-discrimination is of immediate effect, States are obliged to immediately consider and take into account the de jure and de facto situation of women and girls in order to take measures to fully eliminate discrimination against women and girls. See in UN (2010).

<sup>233</sup> Paris Agreement (2015), Preamble.

<sup>234</sup> UNHR (2019), p. 18, para. 26.

<sup>235</sup> UNGA (2022 a).

women and girls, and the role that women play as managers, leaders and defenders of natural resources and agents of change in safeguarding the environment”.<sup>236</sup>

According to a list prepared by the Special Rapporteur on Human Rights and the environment, in 2019, 156 out of the 193 Member States to the legally recognize the right to a safe, clean, healthy and sustainable environment, in national constitutions, legislations and/or regional treaties.<sup>237</sup>

#### 4.2.2 *The potential of the rights-based approach*

The remainder of this chapter will explore how the rights-based approach could allow climate governance to steer the climate regime towards gender-transformation.

In addition to the obligations prescribed under the climate regime, the rights-based approach emphasizes obligations for states and private actors to take appropriate measures to ensure that climate change impacts and responses do not hinder the full enjoyment of human rights. Indeed, there are procedural and substantive State obligations stemming from the right to a healthy environment in relation to gender and women’s considerations.<sup>238</sup>

The report on women and girls right to a healthy environment identifies five procedural obligations. First, states shall take appropriate measures to empower women and girls through access to information and education.<sup>239</sup> With a gender-transformative approach, this obligation entails notably that states must ensure that women and girls are provided with “accessible, affordable, accurate, understandable information and comprehensible environmental education at all levels”.<sup>240</sup>

Second, states have the obligation to ensure gender-transformative, meaningful, informed, inclusive and equitable participation.<sup>241</sup> The respect of such obligation would allow to reinforce the gender representation dimension of gender mainstreaming strategies and provide them with better chances to achieve gender equality.

Third, states shall ensure affordable and timely access to justice and effective remedies.<sup>242</sup> In combination with the previous obligation, the respect of these obligations can ensure a fair,

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<sup>236</sup> Ibid. p. 2.

<sup>237</sup> UNGA (2023 b), p. 4, para. 10.

<sup>238</sup> UNGA (2023 a), p. 15-17.

<sup>239</sup> Ibid, p. 15, para. 65.

<sup>240</sup> Ibid, p. 15, para. 66.

<sup>241</sup> Ibid, para. 68.

<sup>242</sup> Ibid, p. 16, para. 70.

transparent and inclusive climate governance.<sup>243</sup> Moreover, a gender-transformative approach to the right of access to justice is particularly important and relevant nowadays considering the rising trend of climate litigation, which will be explored further in this section.

Fourth, states are obligated to provide strong protections for environmental human rights defenders.<sup>244</sup> Although every environmental human rights defender must be protected by states actors, women and girls environmental human rights defenders must be provided with heightened protection, especially when their “identity intersects with other vulnerable groups”.<sup>245</sup> Indeed, women and girls are facing risks that are common to all environmental human rights defenders, but they are also facing additional danger because of their gender, i.e. gender-specific violence, including sexual violence.<sup>246</sup> Unfortunately, gender-transformative good practices are lacking in regard to this obligation, alongside the obligation of ensuring access to information and public participation.<sup>247</sup>

Finally, in order to better understand and therefore properly tackle gender- and age-based differences in exposure to an unsafe environment, states are obligated to produce and monitor sex- and gender-disaggregated data.<sup>248</sup> As important as gender- and sex-disaggregated data is to properly understand the gender- and sex-differentiated impacts of climate change and climate responses have, it is critical to keep in mind that it usually lacks the depth needed to comprehend the complexity of gender inequalities with regard to climate change.<sup>249</sup>

Regarding the substantive obligations states have in relation to the right to a healthy environment, the report provides a list of obligations to achieve the elimination of deeply rooted, systemic discrimination against women and girls in all aspects of their lives.<sup>250</sup> Indeed, the report suggests that, to achieve gender equality and ensure the respect of women’s and girls’ right to a healthy environment, states must employ “whole-of-government”, gender-transformative approaches in their actions to eliminate discrimination against women and girls.<sup>251</sup>

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<sup>243</sup> Jodoin et al. (2021), p. 45.

<sup>244</sup> UNGA (2023 a), p. 16, para. 72.

<sup>245</sup> Ibid.

<sup>246</sup> UNGA (2019), p. 8, para. 25.

<sup>247</sup> UNGA (2023 b), p. 56, para. 248.

<sup>248</sup> UNGA (2023 a), p. 17, para. 73, 74.

<sup>249</sup> Rainard et al. (2023), p. 7-8.

<sup>250</sup> UNGA (2023 a), p. 17-19, para. 75-80.

<sup>251</sup> Ibid. p. 18, para. 77.

The list of substantive and procedural obligations in relation to women's and girls' right to a healthy environment provided by the Special rapporteur can be considered as a guideline for visualizing how widespread and systemic change must occur to achieve a gender-transformative climate regime.

Furthermore, the rights-based approach to climate change governance allows to hold accountable actors beyond states, notably businesses and corporations. Indeed, they are often responsible for polluting the environment (air, water, soil), promoting overconsumption and commodification of nature, abusing human rights, etc.<sup>252</sup> This also means that they have an important role to play in the paradigm shift toward gender-transformative practices.

The Special rapporteur on human rights and the environment lists five main responsibilities of businesses in relation to climate change, i.e. “reduce greenhouse gas emissions from their own activities and their subsidiaries; reduce GHG emissions from their products and services; minimize GHG emissions from their suppliers; publicly disclose their emissions, climate vulnerability and the risk of stranded assets; ensure that people affected by business-related human rights violations have access to effective remedies”.<sup>253</sup> Moreover, climate litigation is also targeting businesses. This can be illustrated by the landmark *Shell* case, in which the Dutch Court recognized corporate actors' obligations in addressing climate change impacts as an obligation under human rights law.<sup>254</sup>

Despite being ruled inadmissible, the 2005 Inuit Petition to the Inter-American Commission on human rights, contending the violation of Inuit's human rights and of the Male' Declaration of the Human Dimension of Global Climate Change, is considered as a catalyst for climate action.<sup>255</sup> Although it is primarily at national or regional level, when addressing the rights-based approach to the climate regime, it is essential to bring attention to the trend of climate litigation based on the claim of violation of human rights from the inaction of states against climate change impacts. The plethora of climate litigation cases started after the adoption of the Paris Agreement,<sup>256</sup> and a growing number of such cases are based on human rights. Indeed, in May 2019, the Sabin Centre and the Grantham Institute listed 29 human rights climate litigation cases.<sup>257</sup> Today, the Sabin centre counts 122 human rights-based climate cases

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<sup>252</sup> UNGA (2023 a), p. 20, para. 87.

<sup>253</sup> UNHR (2019), p. 32, para. 72.

<sup>254</sup> The Hague District Court, *Milieudefensie and Others v. Royal Dutch Shell PLC and Others*, C/09/571932 (2021)

<sup>255</sup> UNHR (2019), p. 27, para. 56.

<sup>256</sup> Savaresi and Auz (2019), p. 1.

<sup>257</sup> *Ibid*, p. 3.

brought against governments (without counting those in the US). One of the landmark cases worth mentioning here to illustrate the importance of human rights-based climate litigation is the *Urgenda* case,<sup>258</sup> in which the Dutch District Court recognized the Dutch government's inaction regarding its failure to reduce its GHG emissions as a violation of Articles 2 (right to life) and 8 (right to private life, family life, home, and correspondence) of the European Convention on Human Rights (ECHR).<sup>259</sup>

Based on the same two ECHR articles is the *KlimaSeniorinnen v Switzerland* case.<sup>260</sup> In November 2020 and after exhausting all national remedies, a Swiss association of senior women, Senior Women for Climate Protection Switzerland, took the Swiss government to the European Court of Human Rights (ECtHR), on the foundation of three main complaints: "Switzerland's inadequate climate policies violate the women's right life and health under Articles 2 and 8 of the ECHR; the Swiss Federal Supreme Court's rejected their case on arbitrary grounds, in violation of the right to a fair trial under Article 6; and the Swiss authorities and courts did not deal with the content of their complaints, in violation of the right to an effective remedy in Article 13".<sup>261</sup> The first claim is based on the argument that senior women's lives and health are particularly threatened by the big spike in heat waves, which are caused by climate change. Therefore, the Swiss government's inaction to reduce its GHG emissions and to participate in the prevention of the increase of global temperature above 1.5°C above pre-industrial levels hinder senior women's full enjoyment of their human rights. In April 2022, based on Article 30 of the ECHR,<sup>262</sup> the Chamber of the ECtHR relinquished jurisdiction in favour of the Grand Chamber of the Court as the case raises a serious question affecting the interpretation of the Convention.<sup>263</sup>

This case is all the more important as it is the first climate litigation case brought before the ECtHR and that women's considerations are a fundamental part of the claim it is based on. As it is still pending, one can only assume that the outcome of the case, like other cases brought before the ECtHR, can be powerful tools for incentivizing climate action, notably because of the legally binding nature of the court's decisions. However, it can also mean that a negative

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<sup>258</sup> Dutch Supreme Court (Hoge Raad), *Urgenda Foundation v. the Netherlands*, No. 19/00135 (2019).

<sup>259</sup> *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14* (ECHR) (adopted 4 November 1950, in force 3 September 1953) (1950), Council of Europe.

<sup>260</sup> ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, Communicated Case (2021) relinquishment to the Grand Chamber on 26 April 2022.

<sup>261</sup> *Ibid.*

<sup>262</sup> (Council of Europe 1953) Article 30

<sup>263</sup> ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (2021).

outcome in terms of climate change or human rights issue can lead to the establishment of a “minimum standard of care” or worse, i.e. severing the link between climate change and human rights.<sup>264</sup>

Furthermore, out of the 122 human rights-based climate cases listed by the Sabin Center, 32 of them are based on the right to a healthy environment.<sup>265</sup> In this context, the *Maria Khan vs Pakistan* case<sup>266</sup> is worth mentioning. Indeed, in 2018, a women’s coalition filed a lawsuit on their behalf and on behalf of future generations against the Federation of Pakistan, and their claim is twofold.<sup>267</sup> First, they contend that the Pakistani government’s failure to take action against climate change, by not prioritizing clean energy projects, constitutes a violation of their fundamental right to a clean, healthy environment and a climate capable of sustaining human life;<sup>268</sup> a right that was recognized in *Asghar Leghari v. Federation of Pakistan*.<sup>269</sup> Second, the plaintiffs argue that the Pakistani government is “discriminating against them based on their sex and is violating their right to equal protection by systematically refusing to address climate change and its disproportionate impacts on women”.<sup>270</sup>

Similarly to the *KlimaSeniorinnen v Switzerland* case, as the *Maria Khan vs Pakistan* case is still pending, one can only ponder the consequences of the various potential outcome of the case. If the Lahore high Court concludes in favour of the plaintiffs’ claim, it could constitute a great precedent for the use a combination of the right to a healthy environment and the right to not be discriminated against based on the sex or gender in order to push governments to consider moving toward gender-transformative climate laws and policies.

These two cases are also worth mentioning beyond the fact that they are bringing forward the application of human rights to women’s vulnerability to climate change impacts and states’

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<sup>264</sup> (Karlsson Niska 2020) P. 339.

<sup>265</sup> Climate Case Chart, “Global Climate Change Litigation”, < <http://climatecasechart.com/non-us-climate-change-litigation/> > (last accessed 18 May 2023).

<sup>266</sup> High Court of Lahore, Pakistan, *Maria Khan et al. v. Federation of Pakistan et al.* (2019), Misc. Writ 8960/19.

<sup>267</sup> Climate Case Chart, “Maria Khan et al. v. Federation of Pakistan et al.” < <http://climatecasechart.com/non-us-case/maria-khan-et-al-v-federation-of-pakistan-et-al/> > (last accessed 22 May 2023).

<sup>268</sup> Ibid.

<sup>269</sup> The Lahore High Court, *Asghar Leghari vs. Federation of Pakistan*, (2015), W.P. No. 25501/2015.

<sup>270</sup> Our Children’s Trust, “Pakistan - Maria Khan et al. v. Federation of Pakistan et al.” < <https://www.ourchildrenstrust.org/pakistan-global-summary> > (last accessed 18 May 2023).

inaction. Indeed, they appear to be part of a bigger trend, that of women-lead climate litigation, as women are increasingly seen at the forefront of climate cases.<sup>271</sup>

This overarching of obligation of non-discrimination is critical to take into account when addressing climate change impacts,<sup>272</sup> especially when it is combined with the concept of intersectionality, and therefore take into account gender considerations, and women as a heterogeneous group.

Despite appearing as a very promising solution to the lack of gender-transformative character to the current climate regime, the rights-based approach might face some challenges.

One of the challenges of such approach is the incompatibility of climate response measures with the protection of certain human rights.<sup>273</sup> For instance, the report on the promotion and protection of human rights of 2022 recognizes that forest-based mitigation actions can hinder the exercise of human rights, particularly the rights related to land and land tenure, for people and communities whose livelihoods depend on such lands.<sup>274</sup> These mitigation actions are even more threatening for women whose land rights are still too insecure.<sup>275</sup>

Furthermore, thus far, this rights-based approach appears to be limited in scope. Indeed, an apparent focus on women's rights hinders the integration of gender-diverse people's considerations and rights. For instance, even though the annex to the report on women's and girls' right to a healthy environment<sup>276</sup> addresses gender inequality issues in relation to climate change and the right to a healthy environment, the focus is on women's and girls' rights. Only a short paragraph states that "while the focus of the annex is on women and girls, the Special rapporteur emphasizes that gender-transformative laws and policies should not be limited to a binary approach to gender".<sup>277</sup> It further acknowledges the scarcity of documented good practices that support LGBT+ persons' right to a healthy environment.

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<sup>271</sup> Federal Court of Ottawa, *Cecilia La Rose v Her Majesty the Queen*, (2020) T-1750-19, FC 1008.; First Senate of the Federal Constitution Court, Germany, *German Bundesverfassungsgericht (Neubauer, et al. v. Germany)*, (2022), 1 BvR 188/22.

<sup>272</sup> UNGA (2023 a), p. 14, para. 63.

<sup>273</sup> Jodoin et al. (2021), p. 49.

<sup>274</sup> UNGA (2022 b), p. 6, para. 19.

<sup>275</sup> United Nations Human Rights, Office of the High Commissioner, "Insecure land rights for women: a threat to progress on gender equality and sustainable development" < <https://www.ohchr.org/en/special-procedures/wg-women-and-girls/insecure-land-rights-women-threat-progress-gender-equality-and-sustainable-development#:~:text=As%20established%20by%20international%20standards,%2C%20control%2C%20and%20Own%20land.>> (last accessed 18 May 2023).

<sup>276</sup> UNGA (2023 b).;

<sup>277</sup> Ibid, p. 8, para. 30

Finally, the adoption of a rights-based approach to address gender equality is not unanimously advocated among scholars. For instance, when addressing the gender-public international law nexus, Charlesworth and Chinkin contend that it is a simplistic approach as “rights on paper do not translate to rights in practice”;<sup>278</sup> which, in the end, can be applied to all area of law.

In conclusion, the widely advocated rights-based approach to climate governance could provide the necessary momentum to move toward a gender-transformative climate regime. As the Special rapporteur Boyd states: “Human rights [...] can and should be a catalyst for needed systemic changes”.<sup>279</sup> Indeed, by looking at climate change impacts and responses through a human right lens, it allows to recognize that climate change governance is founded on deeply rooted discrimination based on gender and sex. Therefore, in order to comply with the obligation of non-discrimination, States should revise the norms that generate such discrimination and achieve gender equality within climate governance.

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<sup>278</sup> Maguire (2021), p. 205.

<sup>279</sup> UNGA (2023 a), p. 4.

## Chapter 5 – Conclusions

Due in large part to the work of feminist advocates and activists during climate negotiations, one can observe the slow but commendable evolution of the integration of gender and women's considerations within the international climate change regime. Such integration is not homogeneously spread across the regime. Indeed, while climate adaptation is more gender-minded, other areas are lagging behind, notably climate technology and climate mitigation.

In general, the climate regime mostly aims at achieving gender-responsive climate action. To achieve such goal, it has adopted the overarching strategy of gender mainstreaming. Although such strategy has a great transformative potential, it has so far failed to meet the expectations set by such potential. Indeed, climate laws and policies seem to ignore the need for fundamental change of the power relations and power order to achieve gender equality and climate justice. This “deradicalization” of gender mainstreaming seems to match a general tendency in climate governance to water down what is considered “extreme”.<sup>280</sup>

Therefore, when attempting to answer the research question of this thesis (to what extent does the international climate change regime provide for gender-transformative climate action?), much work lies ahead to achieve gender-transformative climate action.

To remedy this, the solution that is being increasingly advocated, is that to apply a rights-based approach to climate governance in order to steer the climate regime towards gender-transformative climate law and policy; and therefore achieve gender equality and climate justice. Indeed, the rights-based approach can provide for a holistic, inclusive and intersectional framework for climate action. Although it might encounter challenges, this approach can steer the climate governance away from techno-scientific perspective towards a more human-oriented climate action.

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<sup>280</sup> Rainard (2023), p. 10.

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