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## The land rights, climate justice and gender equality conundrum

### Human rights strategies and practice

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#### **ABSTRACT**

*Climate change-related threats and land insecurities are increasingly impacting upon disadvantaged communities, especially women. In the context of evolving land policy discourse and priorities, intertwined land tenure, climate change, and gender equality require reference to global normative human rights and development frameworks. Human Rights treaties, the Paris Agreement, the United Nations' Sustainable Development Goals (SDGs) and the New Urban Agenda, among others have strategic policy implications. While professionals focus on land use planning, management, administration policy tools, climate change activists rely on a range of advocacy, mobilization and 'justice' approaches. For example, women's rights and community groups have increasingly sought accountability through global human rights standards, environmental targets and enforceable gender equality norms. This article outlines how human rights play a vital role in these debates, seeking to mediate the tensions and synergies between competing approaches to land, climate and gender, despite gaps and inconsistencies which often frustrate their outcomes. Through human rights-based approaches (HRBAs) offer advocates for land rights, gender equality and climate action a hybrid, innovative and pragmatic platform to develop creative alliances with social justice and development partners to deliver incremental but tangible gender-responsive land and climate rights.*

#### **Keywords:**

*Climate change, human rights, land human rights, Land policy, Gender equality, social justice,*

## **1. Introduction**

Among the multiple global crisis globally, climate change and land rights impact communities directly or indirectly, especially women. With rising sea levels and erratic weather patterns in many parts of the world, climate change affects human health and wellbeing, depletes biodiversity and the natural environment, affecting land, food and water security, as well as socio-economic development and livelihoods (Kitamori et al., 2012). In addition, the 'land use-climate change-energy nexus' is altering the productivity, suitability, and distribution of land uses and survival of human settlements (Dale et al., 2011). Women often encounter higher risks and increased burdens from the impacts of climate change owing to their social status and gender discrimination, specific economic and domestic responsibilities, limited access to relevant resources and mobility, as well as general exclusion from climate change decision-making (Glemarec et al., 2016).

Arora-Jonsson (2011) argues, these environmental, socio-economic and other impacts of climate change on women require a gender-responsive land and climate rights approach. As the Intergovernmental Panel on Climate Change (IPCC) notes, both mitigation and adaptation to climate change requires extensive changes in land use patterns globally to reduce green-house gas (GHG) emissions, and for environmental conservation, sustainable natural resource management, and socio-economic outcomes. These interconnecting streams of research and policy have implications for theory and practice behind land use policy decisions (Watson et al., 2000).

Since the 1970s, the global environmental movement has sought action on climate change. At the community level, gender and climate justice intersect to make common cause (Terry, 2009). Yet, at the international level, the United Nations Framework Convention on Climate Change (UNFCCC) sets off political and ideological positions between actors, shaping priorities and choices of the climate movement. The 'language of rights' has been critical to discourse on equality, environment and development through socio-legal perspectives, mediating the relationship between the state, individuals and society (Nussbaum, 1997).

The language of rights can be complex with land, property and housing rights being cross-cultural and asserted within every socio-economic and political system, and dependent on relations between different parts of society (Sait and Lim, 2006). For Sen (1990), justice is about 'fairness in society' and enjoyment of freedoms emerging from various philosophical, social, political, economic, and legal traditions. Climate rights raise scientific, moral and efficiency questions and debates over women's equality often engage with issues of diversity and intersectionality also inherent in Human Rights Based Approaches (Caney, 2012; Gauri and Gloppen, 2012).

In this context, this article explores the divides between different stakeholder and interest groups with varied and complex notions of the objectives and role of land use policy. Reviewing and connecting three strands of literature: (i) climate rights, (ii) land rights, and (iii) gender equality, it examines how these present competing policy objectives work out among land policy makers, practitioners and external stakeholder groups, including women's rights and grassroots activists and community organizations. In particular, it emphasises the socio-legal underpinnings of land use policy in the context of global human rights norms and treaties. It concludes by focusing on the potential utility of wider 'human rights based approaches' (HRBA) to resolve and mediate the

different needs and priorities of marginalized groups through equitable and effective land use policy interventions.

## **2. Materials and Methods**

### **2.1. Research Questions**

This study offers broad theoretical and applied analysis on the role of climate justice, land rights and gender equality within the global human rights and development framework, linking it with key debates over the objectives of land use policy. The overall aim is to identify different and competing perspectives used by groups of land use policy stakeholders – practitioners and professionals, climate change activists, and women’s rights and community groups (Zevenbergen et al., 2015)– seen through the common prism of ‘human rights and development’. Human rights is used in this article to refer acknowledged norms and principles – codified in ‘normative instruments’ such as international human rights treaties, political declarations, and plans of action. It investigates how human rights, its surrounding discourse, and reception of international instruments. In addition, it also considers how the weakness of human rights has affected local interventions and delivery of different types of gender, land and climate ‘rights’.

Particularly, how human rights provisions generate substantive meaning, scope, and content, and therefore aid co-creation of gender-responsive, climate action that utilises land rights, gender equality and climate justice toward achieving the objectives of gender-responsive land and climate rights. Thus it answers three main research questions:

1. How do human rights norms impact on land use policy perspectives linked to themes of gender equality, climate justice, and land rights?
2. What ethical, political, developmental, and other key considerations inform choices among social actors in framing their attitude towards land use policy?
3. What is the potential of combining human rights based approaches, development goals and social justice in programme implementation and practice for sustainable outcomes?

### **2.2. Use of Human Rights Perspectives**

Human Rights frameworks include a plethora of political declarations, and plans of action, some emerging from state practice and others from soft law from communities and non-governmental actors. These are significant markers as states not only contribute to their drafting but often choose to incorporate them into national laws and policy. In turn, international committees, courts, commissions, and legal experts determine whether state obligations to ‘promote, protect and fulfil’ have been realized (Fitzmaurice, 2013). These generate principles and standards for communities of practice in relation to human rights obligations of states and non-state actors (Chilton, 2014). Using these instruments or principles creatively, human rights organisations serve as powerful conduits for creating awareness on domestic issues and help shape public opinion on key societal challenges (Davis et al., 2012).

The question of effectiveness and appropriate methods for analysing human rights problems requires not just law or policy perspectives, but also multi- and inter-disciplinary outlook. Without this interrogation, the human rights research methods end up being discussed only in an implicit

manner in most cases (Coomans et al., 2010). However, since human rights commentators are often former human rights activists and policy thinkers who believe in the intrinsic importance of human rights, they often attempt to validate and conceptualise real world experience to human rights rationale rather than the other way around (Patel, 2012). Though not elaborated, there are a range of theoretical approaches offering different pathways to understanding the use and application of human rights, which are understood to include naturalist, positivist, liberal, cosmopolitan, feminist, critical and postmodern theoretical perspectives on human rights (Andreassen et al., 2017; Smith and McConnell, 2018).

While not all human rights instruments and norms are binding, as the UN common understanding indicates (Silva, 2003), they can be effective in providing accountability in the ideal circumstances. For example, in 'socio-legal interpretations', human rights connect both states and end-users (rights holders) and other actors i.e. non-governmental organisations and community groups. Methodologically, these treaties and documentation can be useful as a dialectic tool for critical engagement with, and use of, normative instruments as well as protocols to observe and respond to human rights in practice (McClintock, 2011). In connecting these arguments to land issues, legal scholars have often relied too heavily on normative approach to 'rights' without considering their multi-faceted nature – and associated questions of language, accessibility and ownership (Forsythe, 2009). These instruments remain vital reference as they aid observation and understanding human rights obligations (Davies, 2019).

While human rights scholarship is often rooted in legal methodologies, its methods interact substantially with those of other fields (Rehman, 2003). The research is informed by the general responses, choices and practice of different groups of land stakeholders and actors, for example typified by the Global Land Tool Network (GLTN, 2021), co-created by the author while on sabbatical to UN-Habitat in 2005-06. The author relies on experiences as coordinator of the GLTN cluster and dozens of policy consultations/trainings he has organised or participated at the United Nations, the World Bank, African Union, Arab League and various global conferences and for between 2010 and 2020. Thus observations are of a broad construction, verified through systematic literature review on these themes.

### **3. Findings: Linking climate, land and gender dimensions through human rights**

There are several distinct findings of this research article, described in this section across the three thematic areas of climate rights, land rights, and gender equality (below). Together these emphasise both synergies and potential conflicts in contemporary and evolving debates – alongside influence of land on core objectives and decision-making processes. The findings are summarised in five main points:

1. It highlights debates over the concepts and ideals of improving land rights and land tenure security, both formally and informality, with linkages to property rights regimes.
2. It reemphasises the broad relevance of the SDGs, connecting policy areas and setting the global agenda, but also exposes the fault-lines between competing points of view and policy agendas.

3. It recognises the vital importance of women's rights through multi-dimensional perspectives, linked to ideals of non-discrimination, exposing wider societal inequality.
4. It reiterates the impact of climate change on global land use policy discourse, framed through environmental and human rights debates; and
5. It finds the global human rights discourse has continuing relevance for land use policy through its principles, normative instruments, national obligations and use by various actors.

### **3.1. Climate Rights**

Human rights are now considered as condition precedent and methodology for achieving environmental goals, and in turn environmentally sustainable outcomes are considered necessary for the enjoyment of many human rights. Yet, environmental or climate change rights are not contained in any single human rights treaty but dispersed across human rights and development frameworks. The nature and scope of “the human right to a safe, clean, healthy and sustainable environment” (Chatterton et al., 2013) emerges from the human rights discourse. Environmental rights are understood to include substantive rights such as right to life, physical and mental health, adequate food, affordable housing, land tenure, clean water, sanitation, living and working conditions, and cultural life through inclusive development (Knox, 2017). It also includes procedural rights relating to participative and inclusive climate governance (United Nations Human Rights, 2019a).

The 1948 Universal Declaration of Human Rights (UNGA, 1948) merely referred to health as part of the right to an adequate standard of living (Article 25) from which the right to environment was inferred. Specific rights and obligations toward environmental protection and gender equality emerged in the 1960s and 1970s when the women's and green movements were intensifying. The Declaration of the United Nations Conference on the Human Environment, (i.e. the Stockholm Declaration) (UN, 1972), Principle 1 noted the “fundamental right for man to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being”. Since then, even in the absence of a dedicated human rights climate change treaty, the relationship between human rights and climate change is assumed to be well established (Atapattu, 2015). The UN Human Rights Council worked to clarify aspects of the human rights obligations relating to the environment, and generated the framework principles on human rights and the environment (UNHCHR, 2018).

The momentum toward tackling climate change came through the negotiations leading to the United Nations Framework Convention on Climate Change (UNFCCC, 2015) resulting in the 2015 Paris Agreement. The preamble of the Paris Agreement asks parties “to address climate change, respect, promote and consider their respective obligations on human rights”. The Paris Agreement thus became the first international environmental treaty to explicitly mention states' obligations under human rights law (Savaresi, 2019). The preamble refers to human rights in this context of ‘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’. Yet, in December 2018 at COP24 in Katowice, Poland, adopted rules for implementation of the Agreement that failed to reflect human

rights commitments to climate governance, with guidelines making only brief references human-rights. Since then, the COP25 Madrid, and COP26 Glasgow have further showcased tensions between global climate ambitions through human rights and the slow pace of policy change on climate action – and hence the challenges associated with implementing climate action.

Land use was widely referred to and debated by states during COP21 but surprisingly the word ‘land’ did not appear in the final text, perhaps due to concerns over mitigation obligations on agricultural land that could impact food security. For example, Adelman (2018) notes that an earlier draft of the Paris Agreement called for respect for ‘customary and sustainable land-use systems and the security of indigenous peoples’ and local communities’ land tenure’, but this was omitted from the final version, thereby failing to recognize and protect cultural ties to land and forest resources. While the UNFCCC recognises agriculture and forestry in climate change mitigation, it does not have a coherent set of requirements and incentives for reducing emissions from the land use sector as a whole – also referred to as the agriculture, forest and other land use (AFOLU) sector. While land-use is acknowledged to be vital in climate responses, the UNFCCC deals with it in a fragmented manner and with a limited GHG emissions focus, leading to policy gaps that render mitigation and adaptation actions having limited social and environmental impact. Hence, the Paris Agreement cannot be seen as the sole framework for dealing with land and climate issues.

The 2030 Agenda for Sustainable Development (UN, 2015), through the Sustainable Development Goals (SDGs), adopted an underpinning human rights approach in its commitment to ‘leaving no one behind’, making all SDGs interdependent. Thereby effective climate action (SDG 13) influences all other goals including gender equality (SDG 5), which is cross cutting. Goal 13 explicitly calls upon Member States to “promote mechanisms for raising capacity for effective climate change-related planning and management... including focusing on women”. In addition, Goal 16 (peace, justice and strong institutions) and Goal 17 (means of implementation) are call inclusive, participatory and representative decision-making at all levels, including adequate finance. Still it is the more specific agreements that provide obligations with the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Lee and Abbot, 2003) elaborates on rights to the environment also encompassing participatory rights – including gender equality.

The multiplicity of human rights instruments in these areas throws up potential entry points as well as frustrating gaps for human rights defenders and environmentalists. From the Sendai Framework for Disaster Risk Reduction 2015–2030 (UNDRR, 2015) to the New Urban Agenda (UN-Habitat, 2016), the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) (UN Food Agriculture Organisation, 2020), and the Addis Ababa Action Agenda on Financing for Development (2015), which all contain relevant human rights norms. However, mere existence of an increasing number of human rights mentions or action plans is not sufficient to ensure compliance with human rights or gender equality. The dilemma for activists on climate change, gender equality or land rights is how to exert necessary pressure on governments to fulfil their obligations. The nature of the human rights framework compels actors to rely on human rights methods, but not exclusively – with awareness, social structures, political will, capacity and domestic laws and policies all affecting climate action.

### **3.2. Land Rights**

Despite the significance of land in the development, climate change and gender discourse, no treaty or declaration refers to an international human right to land. Though, 'land rights' is a term widely used in development literature as a reference to human rights to land, it does not always encompass equitable access to, use of and control over land for a range of users. When parasitic on the doctrine of property rights, land rights are used to narrowly define land, merely privileging those with existing formal titles or deeds, overlooking other forms of tenure such as other customary or Islamic models, excluding those with undocumented, secondary or collective rights (Sait and Lim, 2006). The 'land as property' approach does not easily countenance tenure rights over land, such as gathering and grazing rights, which are livelihoods for marginalised communities at risk from climate change. The right to property as enshrined in human rights instruments serves as protection of existing property arrangements, for example the European Convention on Human Rights (European Court of Human Rights, 2020), Protocol 1, Article 1 states "no one shall be deprived of his possessions". Yet, land as property rights overlooks the multi-dimensional nature of land rights.

The emphasis on property as an inalienable human right predated both the American founding fathers and the (first) French Declaration of the Rights of Man from 1789 which states that "property is an inviolable and sacred right." Property right entailed a largely a "negative" obligation of the State not to interfere in private property in terms of protection against arbitrary expropriation and regulation of private property (Robinson, 1899). The modern legal understanding of property ownership is expressed as a "bundle of rights" or a "bundle of sticks" and refers to the components of the right to property. Neoclassical development economists argue promoting secure property rights increases land-related investment, augments land values, reduces likelihood of conflict, and spurs economic participation, while addressing poverty alleviation and gender equality. The influential thesis of De Soto (2000) relies on formal titles to facilitate development and financial markets, but overlooks land tenure types and claimants. However, evidence shows though land titling does secure property, links with positive development outcomes are not well established (Ellickson, 1993).

Land rights includes the rights to possess, occupy, enjoy and use land and resources, restrict or exclude the access of others to land; transfer, sell, purchase, grant or lend land, mortgage or secure credit with land, inherit and bequeath land, develop or improve land, rent or sublet land, and benefit from improved land values or rental income. It is not exclusively about ownership but accommodate different sets of rights from use, occupation and other arrangements such as leasehold or grazing. Many national laws refer to a "right to land", to purchase land or be protected from adverse possession, though in some cases all land belongs to the state. Recently, there have been shifts from thinking of individual ownership to collective arrangements (Payne et al., 2015). In October 2010, the UN Special Rapporteur on the Right to Food (De Schutter, 2010) discussed the unequal distribution of land as a threat to the right to food, advocating "communal ownership systems" rather than focus on "strengthening the rights of landowners" through a "Western concept of property rights".

Gilbert (2013) shows that land rights have emerged either as an issue of property rights or as specifically important rights for indigenous peoples; as an ingredient for gender equality and in

response to unequal access to food and housing. Land rights can be derived from, inter alia, the rights to hold property, earn a livelihood, work, exercise self-determination, and enjoy freedom of movement as well as racial equality in access, ownership and governance of land. For example, land rights are inferred rights to an adequate standard of living and for his or her family, including food, housing and water, and to the continuous improvement of living conditions. Such formulations are seen Universal Declaration of Human Rights, art. 25, (UNGA, 1948) and International Covenant on Economic, Social and Cultural Rights, art. 11.1 (UNHCHR, 1966a). (See also general comments No. 4, para. 8, No. 12, para. 12, No. 14, para. 27, and No. 15, para. 16 (d)) (UNHCHR, 1991; 1999; 2000a; 2002).

An example of progressive interpretation comes in the area of women's equal rights in relation to land and property. The UN Committee on Economic, Social and Cultural Rights (UNHCHR, 2009), in its general comment No. 20, includes property status, such as landownership or tenure, or lack of it, as one of the prohibited grounds of discrimination (para. 2). Under general comment No. 16 (UNHCHR, 2005), the Committee requires that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so. Similarly, the UN Human Rights Committee (UNHCHR, 2000b) in its general comment No. 28, states that "the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground". In its general recommendation No. 21 (UNHCHR, 1994), the Committee on the Elimination of Discrimination against Women underlines with respect to article 16 (h), "in countries that are undergoing a programme of agrarian reform or redistribution of land amongst groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed" (para. 27).

The United Nations have framed land rights as part of the Housing, Land and Property (HLP) rights stream (United Nations High Commissioner for Refugees, 2020). This permits consideration of land issues as part of human rights even where not explicitly mentioned. For example, the 1951 Convention relating to the Status of Refugees includes provisions on the rights of refugees to residence, property, housing and freedom of movement. The human rights discourse uses HLP to recognise their housing, land and property rights refugees and displaced persons. The UN Special Rapporteur on adequate housing (UNHCHR, 2017) argued on land as a component of the right to an adequate standard of living, referring to non-discrimination as well relevant guiding principles on security of land tenure for the urban poor. Without prospect of creation of a new land treaty or insertion of land in existing instruments, the UN High Commissioner for Human Rights (UNHCHR, 2015) submitted a report on land related issues in July 2014 to the General Assembly offering a human rights analysis of land-related issues, in particular on land management, States' obligations and other actors' responsibilities. In particular, it lays out the criteria that States should apply when considering land and human rights issues in relation to specific groups and existing human rights. Para 73 of the report makes a case for land rights:

Para 73. Growing global concerns about food security, climate change, rapid urbanization and the unsustainable use of natural resources have all contributed to renewed attention to how land is being used, controlled and managed. The access to, use of and control over land directly



affect the enjoyment of a wide range of human rights. At the same time, disputes over land are often the cause of human rights violations, conflicts and violence. The human rights dimensions of land-related issues are directly connected to development, peacebuilding and humanitarian assistance, as well as disaster prevention and recovery. (UNHCHR, 2015)

While land-use is acknowledged to be vital in climate responses, the UNFCCC deals with it in a fragmented manner, leading to policy gaps that render mitigation actions with limited social and environmental impacts. Yet, the SDGs, through its 8 land-related targets and 12 indicators across the SDGs 1, 2, 5, 11 and 15, recognise multiple land dimensions, providing indicators for intervention on land issues, bringing together environmental, women's and other groups in order to provide monitoring and promote responsible land governance. This provides a starting point for coalition building to address intersecting climate and land issues.

### **3.3. Gender Equality**

A gender-responsive approach to environmental and land rights relies on a range of women's rights and gender equality to support women's empowerment, viewing women as powerful change agents in addressing climate change at scale, playing a crucial role in adaptation and mitigation efforts (Glemarec et al., 2016). Women and girls are not a homogeneous group; some may live in high risk areas facing drought, landslides, floods and hurricanes or living or working in poor informal settlements, especially those who are further disadvantaged being older, disabled, indigenous, pastoralist, nomads, hunters and gatherers or displaced due to conflict or health (Arora-Jonsson, 2011). Only through coordinated community based, gender responsive and human rights-based climate action can sustainable development outcomes be achieved.

All major human rights treaties prohibit discrimination, including gender discrimination, challenging any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, with the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms (Sano, 2020). For example, the International Covenant on Economic, Social and Cultural Rights (UNHCHR, 1966a), article 2.2; the International Covenant on Civil and Political Rights (UNHCHR, 1966b), articles 2.1 and 26; International Convention on the Elimination of All Forms of Racial Discrimination (UNHCHR, 1965), articles 2 and 5; the Convention on the Rights of the Child (UNHCHR, 1989), article 2; and the Convention on the Rights of Persons with Disabilities (UNHCHR, 2006), article 5.

Specifically, the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (UNHCHR, 1979), article 2, has similar effect as an illustrative structure for not only the wide prohibition of discrimination against women, but also positive obligations to ensure women's participation at an equal level to that of men in political, social, economic and cultural development. Article 7 promotes women's political participation, and in both formulation and implementation of government policies on equal terms, while Article 14 calls upon parties to ensure rural women participate in and benefit from rural development at all levels. It underpins the Commission on the Status of Women's (UN Women, 2020) conclusions on gender mainstream and women's participation in environmental management, mitigation of natural disasters and climate change, including

decision-making processes. A UNHCHR (2019b) analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women, drawing on responses received from states and other stakeholders identifies 7 key gendered impacts of climate change as a human rights issue. These include food security and land tenure, health, sexual health and reproductive rights, sexual, gender-based violence and discrimination, livelihoods and decent work, cultural impacts, human mobility.

In 2015, the UNFCCC (Aguilar et al., 2015) formally recognised the intersection of climate change and gender equality, empowerment of women, and realisation of their rights. The preamble of the Paris Agreement (UNFCCC, 2015) asks parties “to address climate change, respect, promote and consider their respective obligations on human rights ... as well as gender equality...and the empowerment of women”. Article 7(5) of the Paris Agreement refers to need for gender-responsive climate adaptation; Article 11(2) calls for gender-responsive capacity-building. In practice, there have been more than 60 UNFCCC decisions addressing gender (UN Women, 2018). Meanwhile, UN-Habitat’s approach (Mitchell and McEvoy, 2019) to climate action and urban environment in cities is broad based, integrating energy, transport, public spaces and spatial inequality, from a gender perspective but a review of the key priorities needs to be carried out to see what its strengths are, and where it needs to reach out to other UN agencies and partners.

Gender equality (SDG 5), is cross-cutting theme with the need to “ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life” and to end all forms of discrimination against women. Goal 13 explicitly calls upon Member States to “promote mechanisms for raising capacity for effective climate change-related planning and management... including focusing on women” (Sustainable Development Solutions Network, 2020). In addition, Goal 16 (peace, justice and strong institutions) and Goal 17 (means of implementation) are call inclusive, participatory and representative decision-making at all levels, including adequate finance. The Sendai Framework also seeks a gender perspective in recognizing women’s participation, and providing adequate capacity-building measures for women’s empowerment.

There is no dearth of human rights on women, on climate change or land rights. Climate rights appears to have has played particular attention to women’s specific experiences and needs. In the case of land rights, not elaborated as a standalone right, women seem to have developed their range of rights sufficiently. However, these have not translated into noticeable improvement for poor disadvantaged women (Reggers, 2019). Over time, women’s movements have identified and responded to two broad concerns. The first is that human rights do not address structural inequalities triggering climate vulnerabilities; this requires alliances with social justice and civil rights actors, and environmental networks. The second is that gender equality, and even women’s empowerment, should focus on diversity among women instead of assuming all women in all climate contexts are at a disadvantage (Kaijser and Kronsell, 2014).

#### **4. Discussion**

The main challenge for land practitioners and experts in relation to the ‘collision’ of these climate, land and gender-based perspectives is in the mediation of different stakeholder and governance

relationships both at the grassroots and local levels, but also regional, national and international scales. Therefore, this discussion focuses on five praxes: (i) normative frameworks to social movements; (ii) climate action to climate government; and (iii) gender equality to women's empowerment; (iv) land tenure to land rights; and (v) human rights to human rights based approaches.

#### **4.1. Normative Frameworks to Social Movements**

While human rights treaties and development frameworks reflect the arduous process of drafting and negotiation largely between states, the resulting instruments are far from conclusive (Becker, 2012). Just as the Millennium Development Goals (MDGs) gave way SDGs, the Paris Agreement turns is only one step in long-standing climate negotiation. The narrative of human rights and development has evolved especially with respect to climate, land and gender. While human rights treaties have appeared textually rigid, they are continuously being challenged, expanded and enhanced through formal interpretive opportunities by states, national courts and legislatures, as well as a range of global, regional and local reflections on the nature and scope of gendered land and climate rights (Jerneck, 2018). In the case of the GLTN (2021), its eighty-odd partners regularly resort to human rights advocacy as part of their focus, but not exclusively. While the network secretariat recently adopted a pronounced human rights perspective with "land rights for all", the partners met this with a hesitant but willing posture. While aware of limited elucidation of land rights in the global framework, most GLTN partners sought to reconstruct it through their practice or grassroots experience, thus generating fresh perspectives in a long standing historical struggle.

Analysis of environmental responses offer a demonstrative account of how common normative regimes have generated numerous, even opposing campaigns. From the history of consciousness and concerns about the planet in the 1950s, into the environmental activism of the 1970s onward, the juggernaut of broader environmental movement has brought together scientific, political, legal, social, cultural spheres into its expanding scope. At a simplistic level, environmentalism has grown from being a cross cutting sustainability issue to a central human-rights through advocacy and interpretation of the development agenda, but equally through visible grassroots campaigns. Thus, a range of methodologies and trajectories seek to harness the potential of human rights for achieving environmental goals, explicitly or indirectly and through persuasion or protest. As such, climate action has taken the form of broad and visionary alliances – which continue resonate within the sphere of land use policy.

#### **4.2. Climate Action to Climate Justice**

The term 'climate action' is used with reference to SDG 13 – "Take urgent action to combat climate change and its impacts" also has implications for land use policy (Islam and Winkel, 2017). As a reference to responses required by the obligations created under Paris Agreement, which entered into force on 4 November 2016 it also refers to specific 'nationally determined contributions' to tackling climate change. However, the dilemma for climate change strategies has been how to balance science-driven initiatives (such as reducing greenhouse emissions) aimed at planetary protection, with the impacts on society through prioritisation of the most vulnerable communities, including disadvantaged groups of women. The right to a healthy environment was seen as a modest goal, and

by 1989 the concept of 'climate justice' had entered the academic literature, mobilised to deal with numerous environmental concerns (UNHCHR, 2020).

However, the shift to 'climate rights' (see Caney, 2012) renders HRBA as a people centred approach unclear as the content, scope and nature of these rights is undefined; through referenced in the preamble to the Paris Agreement. Some emphasise 'socio-economic and cultural rights' while others focus on 'civil and political rights' relating to the environment. Chatterton et al. (2013) note the discursive struggles that played out at UN climate conferences such as the COP17 in Durban 2011, COP 19 in Warsaw 2013, and COP 20 in Lima 2014 in the lead up to the Paris Agreement, highlighting the shifting ways in which climate governance has been imagined and enacted. Since its first summit in 2000, around COP6 in The Hague, the climate justice movement has gathered momentum by shifting arguments from focus on the damage caused by GHG emissions, to emphasising vulnerabilities of poor urban, rural and coastal communities and indigenous communities. Summits in Bali 2002, and Durban 2004 to Cochabamba 2010, helped develop climate justice in response to frustration over minimalist state and private-sector responses. At the Durban, Warsaw and Lima meetings, climate justice was manifest in protests, direct action, and demonstrations inside and outside the negotiation venues (Bäckstrand and Lövbrand, 2019).

The Mary Robinson Foundation (2021) principles construct 'climate justice' as based on (i) respect and protection of human rights; (ii) supporting for the right to development; and (iii) sharing the benefits and burdens equitably, through: (iv) ensuring that decisions on climate change are participatory, transparent and accountably; (v) highlighting gender equality and equity; (vi) harnessing the transformative power of education for climate stewardship; and (vii) using effective partnerships to secure climate justice. This has been part of the shift from focus on prevention and mitigation to wider social justice relating to the inequitable impacts of climate change on vulnerable communities, concentrating on both prevention and adaptation. Seeking community-led solutions for indigenous peoples and global poor, climate justice weaved biodiversity into human rights and dignity. Climate justice movements critique climate rights as being state-centred and seek bottom up approaches (Bond, 2012), simultaneously attacking modern capitalism and envisaging a fairer society and sustainable climate futures. In confronting the commodification of land and environment, climate justice enters in the realm of divisive politics and ideological debate (Terry, 2009; Hadden, 2015).

### **4.3. Gender Equality to Women's Empowerment**

A third lens for land use policy experts is linked to gender equality. Among the key concerns of the climate rights movement has been empowerment of women at particular risk from climate change environmental impacts. However, gender issues raised by the feminist lobby barely registered with the UNFCCC and the Kyoto Protocol (UN, 2005). This was in contrast to the 1995 Beijing Platform for Action, where Women and the Environment, Gender Equality and Climate Change (area K) were among 12 critical areas of concern (UN Women, 2014). In the backdrop of increasing evidence of women being disadvantaged, the Beijing Platform formulated three strategic objectives for government action on the environment. These included involving women actively in decision-making at all levels, integrating concerns and perspectives into policies and programmes, and establishing ways of assessing impact of policies on women.

Rather than speak of women's vulnerability, women's rights advocates pointed out deep-rooted unequal gender relations where women's reduced power rendered them less able to mitigate and cope with climate change. Gender dynamics within households, communities, countries and the global community in the context of climate change came under scrutiny (Tschakert, and Machado, 2012). The social justice and climate justice agenda forged together a transformative agenda for gender and development, where gender equality was the goal (Cornwall and Rivas, 2015). At the same time, the critical feminist theory developed an intersectional approach that debunked the simplistic male/female binary of gender identity. Instead, it was argued that gender was not a stand-alone marker of social distinction, but as a social category that is determined through its time- and place-specific interplay with other social constructions (Thompson-Hall et al., 2016; Quan and Dyer, 2008). While the women's climate change movement was already divided on whether to mobilise women or adopt a gender lens, the assertion of differences within gender categories has prompted a deeper rethinking of women's rights proposals.

Both climate justice and human rights approaches rightly acknowledge that men and women experience vulnerability to climate variability and change distinctly and/or differentially, but often make the assumption that all women are invariably most vulnerable. Though patriarchy and power structures create disadvantages, case studies demonstrate women's agency which challenge gender discrimination and renegotiate space in the context of climate change (Barbier et al., 2009). Women's roles and responsibilities often influence their ability to deal with climate-induced and other stressors through intersection of diverse identity categories, including but not limited to gender, age, seniority, ethnicity, marital status, and livelihoods, which need to be recognised and responded to by land use policy proposals.

#### **4.4. Land tenure to Land Rights**

Furthermore, climate change is often a result of land related issues and leads to impacts on land tenure security, which creates uncertainty in the longer-term and affects forward-looking decisions – from investment in farming methods to livelihoods, therefore increasing community vulnerability (Brown et al., 2011). Climate change impacts affect climate, soils and topography and biophysical limitations– requiring dynamic spatial analysis to understand changing capacity for agricultural land uses and aspects such as changing drought or flood risks (Deininger, 2003). Mitigating and adapting to climate change also impacts land rights and creates competition for land (Stehfest and Bellarby, 2010), which can trigger scarcity affecting poverty alleviation efforts. Land reforms are major tool for improving access to land and use rights for marginalised groups (Foley et al., 2005).

Participatory solutions through local planning can help change land use patterns and strengthen both mitigation and adaptation strategies (Pizarro, 2009). The shift from 'complementarity' to 'synergy' requires attitudinal shifts towards land rights as well as evolving urban form. In particular, land reform needs to target and assist groups such as smallholder farmers whose livelihoods depend on rural agriculture and whose needs conflict with emission reduction commitments (Boone, 2007; Di Greorio et al., 2016). However, since de-colonisation land tenure reform strategies have sought to redistribute land as well as ameliorate conflict and inequality (Boone, 2007). Climate response therefore requires comprehensive and integrated approaches to deal with land related challenges. Since Pearce's 1978 formulation of 'feminization of poverty' (Pearce, 1978), it has been realised that

seeing women as always comprising a majority of the poor and most vulnerable in society is a problematic categorisation. While there is evidence of increasing feminization of poverty in some parts, including in the context of land and climate change, Chant (2011) reflects on how theorisation, measurement and representation of the diverse connections between gender and poverty, requires contemplation of how gendered poverty is affected – and potentially redressed – by policy and grassroots interventions.

Dah-gbeto and Villamor (2016) reflect on gender differentiated impacts of climate change in Benin and West Africa noting that although women are equally-aware of climate variability and share similar coping strategies with men, there are distinct gendered land use strategies, preferences and motivations. Paying attention to gender-specific land-use community responses can augment efforts to improve adaptability and resilience among rural subsistence farmers, including women. HRBA helps formulate gendered perspectives but often demands political action and policy implementation, for example land reforms in Kenya, Mozambique, South Africa, Tanzania and Zimbabwe were all seen a falling short of human rights standards (Ik Dahl et al., 2005). There are a number of landmark legal cases such as 2004 Bhe case from South Africa (Bhe v. Magistrate Khayelitsha and Ors., 2005), upholding gender equality principle in inheritance based on the Constitution, but gender equality jurisprudence on land rights is patchy. However, land rights issues bring together a wider range of actors relying on human rights but campaigning for wider social reform, through women's land, property and housing rights and more meaningful participatory governance – for example, international coalitions such as GLTN.

#### **4.5. Human Rights to Human Rights Based Approaches**

Human Rights norms also need to be fitted into or form part of effective strategies. Strengthening women's land and climate rights has most often taken place through women's and climate change lobby groups. This has led to increase in climate litigation with mixed successes, for example the 2012 Kivalina case in the United States (Native Village of Kivalina v ExxonMobil, 2012), and in the Inter-American Court of Human Rights (Yakye Axa Indigenous Community v Paraguay, 2005), especially with regards to indigenous land rights (Pasqualucci, 2009) as well as climate change in the Inuit Petitions (Wagner and Goldberg, 2004). In October 2018, the Court of Appeal of the Hague in the Netherlands, upheld the District Court's decision in the case of Urgenda, thus confirming the obligation of the Netherlands to reduce GHG emissions by at least 25% by 2020 (Urgenda Foundation (on behalf of 886 individuals) v The State of the Netherlands, 2018; see Mater, 2019)

Lawsuits holding governments responsible for anthropogenic GHG emissions in breach of Paris Agreement obligations (Quirico, 2018), supplement policy debates about climate change mitigation and adaptation, relating to enforceable obligations of states. The proliferation of climate change cases relies on both human rights and climate action standards – with the Paris Agreement providing that States 'should respect, promote and consider their respective obligations on human rights' in 'taking action to address climate change' (Setzer and Vanhala, 2019). Though the Paris Agreement said very little about human rights, apart from in its preamble, by being set the task of addressing the risk of climate change, monitoring global temperatures or GHG emissions, it has weaponised climate rights (Boyle, 2018). From merely recognizing the right to the enjoyment of a safe, clean, healthy and

sustainable environment, climate rights now give all actors a voice in state-centred dialogue that was previously considered scarcely possible.

However, the main challenge lies in creating practical ‘human rights based approaches’ (HRBA) that can be used to assess and hold to account stakeholders based on the use of human rights principles in a meaningful manner. HRBAs, conceived as part of wider ecosystem of implementing human rights, are remarkably making a comeback in tackling climate change as well as gender inequality for women’s empowerment toward balancing sustainable and inclusive ecosystem and people focused responses.

The Paris Agreements and the Geneva human rights treaty monitoring infrastructure seeks to integrate the conservation of biodiversity and ecosystems to support the rights, livelihoods and well-being of communities from Nairobi to Dhaka through universal principles and equal opportunities. HRBA is more than human rights and climate justice principles – forging links with good governance requirements, including protection of procedural rights such as inclusive decision making, access to justice and accountability of all actors.

## **5. Conclusions**

The conundrum of land, climate and gender relates to the promise and confusion created by the volatile relationships between the three human rights areas. Instead of encountering a cohesive human rights platform, social actors face more uncertainty about the normative, procedural and strategic import of the human rights construction of gender responsive land and climate rights. As a result, activists straddle different development, climate and land platforms to reconciling competing approaches of human rights, social justice and development.

In response, partners in the Global Land Tool Network adopt a flexible continuum of land and women’s rights constructing climate action, climate rights and climate justice roles and strategies. This innovation and fluidity permits activists to dip in and out of human rights while providing versatile even if improvised and inconsistent quilt of agency and mobilisation. Thus, normative human rights gaps are plastered with operational human rights based approaches which are an amalgam of human rights, development goals and social platforms. In doing so, such coalitions have forged a better understanding of social (gender responsive), legal (tenure) political (governance), environmental (land use planning) and economic (financing) dimensions of law.

There are three broad conclusions from this study. The first relates to the adequacy of the human rights framework that can serve as a fulcrum among the fields and deliver on climate and land rights for poor women and disadvantaged women in mitigation and adaptation strategies. The second conclusion is a reflection on how various civil society groups choose to straddle between human rights, development goals and social justice platforms.

The final thought is about human rights itself and its future with regard to aspirations on environmental sustainability, land security and women’s empowerment. Far from presenting a coherent, consistent and comprehensive account of accessible norms and mechanisms, human rights is a patchwork of uneven and sometimes incomplete offerings often frustrating the development of a persuasive unified architecture of gender, land and climate rights. While there have been a profusion of human rights and development frameworks – including the SDGs and New Urban

Agenda – reinforcing or contradicting social initiatives, there are obvious gaps undermining confidence in their ability to deliver change. The climate rights movement in particular is ambitious but poorly defined within the international human rights system.

The Paris Agreement expected to take over the climate change project but after hesitation on human rights it has fallen short of a credible climate rights game plan. Land rights appear to be of particular concern with a rather modest and tentative appeal through the SDGs yet to be translated into land security gains. Women in particular have had breakthroughs in negotiating human rights formulations, but are encountering limited success with implementation of land or climate rights. Global concern about environment, gender equality and unsustainable land practices has never been higher. Yet, beyond the incomplete words of the treaties and agreements, there is little for civil society to cheer. Human rights are largely absent from the Paris Agreement implementation which does not acknowledge the significance of human rights to land and plays mostly lip service to gender equality, while unequal structures and significant hurdles regularly frustrate their lives, livelihoods and wellbeing.

Human Rights defenders have been faithful to use the reasoning of rights because they seek accountability. Overlooking the limitations of the human rights norms and obligations, these protagonists increasingly deploy HRBAs and general principles which cohabit development programmes through technocratic solutions offering piecemeal progress on the social justice agenda, demanding political mobilisation to confront systemic inequalities. For example, women fighting for a gender inclusive climate justice strategies argue incorporating women's lived experiences and choices is necessary while being alert to the intersectional realities in their communities. The choices activists and ordinary people face with regard to access to land, mitigation and gender equality is a commentary on human rights itself. Nearly 75 years after its modern reincarnation, human rights still offer some hope, but no guarantees. The HRBAs move onward from merely declaring principles to now co-creating pathways of innovative and hybrid strategies to achieve pragmatic objectives.

Human Rights has shed its inhibitions of working on development, environmental and business fronts and has embraced governance, sustainability and pandemics as real priorities. The obduracy of sovereignty and political opaqueness which denies obligations or accountability remains the primary obstacle. Yet, the multi-channel approach of social movements is intended to spook the opaque governments.

Another area of progress is the increased utilisation of national courts to convert human rights expectations into justiciable norms and enforceable objectives. Yet, here to there has been a melange of strategies in and out of the politico-legal for a. Finally, human rights still hold out idealist posture with no plan for consistent delivery or performance guarantees. From case to case battles of human rights litigation, human rights based approaches are building human rights indicators for monitoring, resources for delivery and capacity for scaling up. The endeavour of the various partners in the fields is to plot how women and those without land rights or in a climate crisis can find the workable cocktail of human rights, development and social justice arguments that will persuade states to uphold human rights obligations.



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## 9. Key terms and definitions

**Human Rights framework:** a plethora of political declarations, and plans of action, some emerging from state practice and others from soft law from communities and non-governmental actors.

**Land right:** a reference to human rights to land, it does not always encompass equitable access to, use of and control over land for a range of users. When parasitic on the doctrine of property



rights, land rights are used to narrowly define land, merely privileging those with existing formal titles or deeds, overlooking other forms of tenure such as other customary or Islamic models, excluding those with undocumented, secondary or collective rights.

**A gender-responsive approach to environmental and land rights:** a range of women's rights and gender equality to support women's empowerment, viewing as women as powerful change agents in addressing climate change at scale, playing a crucial role in adaptation and mitigation efforts (Glemarec et al., 2016).