

## A Greener CEDAW

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## 4. A greener CEDAW: Adopting a women's substantive equality approach to climate change

**Meghan Campbell**

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### INTRODUCTION

Climate change seriously inhibits women's ability to enjoy their rights and freedoms on a basis of equality with men. This repurposes the powerful opening sentence in the Committee on the Elimination of All Forms of Discrimination Against Women's (CEDAW Committee) landmark General Recommendation No. 19 on violence against women.<sup>1</sup> All peoples experience and are at risk of violence, but the great insight from General Recommendation No. 19 is that violence against women is entwined around their status as women. Similarly, women's experiences of climate change is deeply intermeshed with being a woman. There is an intuitive appeal to framing climate change in terms of a right to equality. The responsibility for climate change is not equally distributed. Nor are the consequences equally borne. The causes and effects of climate change inequalities fracture and intersect across multiple axes including sex, gender, race, disability, geography, socioeconomic status and generations. Due to gendered power relations and structures, the impacts of and responses (or lack thereof) to climate change are borne differently by women.<sup>2</sup> The shared conceptual roots and overlaps between the domination

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<sup>1</sup> Committee of the Convention on the Elimination of All Forms of Discrimination Against Women (hereafter CEDAW Committee), 'General Recommendation No. 19 on Violence against Women' (1992) CEDAW/C/GC/19 [1]; CEDAW Committee, 'General Recommendation No. 35 on Gender-Based Violence Against Women' (2017) CEDAW/C/GC/35.

<sup>2</sup> Rowena Maguire and Bridget Lewis, 'The Influence of Justice Theories on International Climate Policies and Measures' (2012) 8 *Macquarie Journal of International and Comparative Environmental Law* 16; Terry Geraldine, 'No Climate Justice Without Gender Justice: An Overview of the Issues' (2009) 17(1) *Gender and Development* 5.

of women and the domination of the environment further point towards approaching climate change as a matter of women's equality.<sup>3</sup> Legal regimes have struggled to account fully for the totality of and multiplicity of women's gendered experience of climate change.<sup>4</sup> In General Recommendation No. 37 on the gender dimensions of disaster risk reduction in the context of climate change,<sup>5</sup> the CEDAW Committee is breaking new ground by centring the role of women and adopting an intersectional, equality-based approach to the effects of climate change.<sup>6</sup> But what does this approach entail? Does addressing climate change require addressing women's inequality? Is eliminating women's inequality the key to tackling climate change? This chapter explores what it means to take seriously the relationship between climate change and discrimination against women.

Over the past years, the CEDAW Committee, the body that monitors the implementation of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>7</sup> has examined how women's right to equality can be conceptualized in response to the human rights violations perpetuated by climate change and disasters.<sup>8</sup> This culminated in General Recommendation No. 37. It is broad in scope, as it 'does not differentiate between disasters related to climate change and other disasters'.<sup>9</sup> General Recommendation No. 37 investigates the linkages between women's rights, human induced climatic changes and 'hazards, risks and disasters that do not appear to be directly linked to climate change'.<sup>10</sup> Although there are a range

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<sup>3</sup> Karen Warren, *Ecofeminism: Women, Culture, Nature* (Indiana University Press 1997); Karen Morrow, 'Tackling Climate Change and Gender Justice-Integral; Not Optional' (2021) 11(1) *Oñati Socio-Legal Series* 207, 214.

<sup>4</sup> Rowena Maguire, 'Gender, Climate and the UN Framework Convention on Climate Change' in Susan Harris Rimmer and Kate Ogg (eds), *Research Handbook on Feminist Engagement with International Law* (Edward Elgar 2019).

<sup>5</sup> CEDAW Committee, 'General Recommendation No. 37: Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change' (2018) CEDAW/C/GC/37.

<sup>6</sup> The other treaty bodies have released a short four-page joint statement on climate change and human rights broadly understood, see CEDAW Committee, Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Committee on the Rights of the Child and Committee on the Rights of Persons with Disabilities, 'Human Rights and Climate Change' (2019) HRI/2019/1.

<sup>7</sup> 1249 UNTS 13 (adopted 18 December 1979, entry into force 3 September 1981).

<sup>8</sup> See e.g., 'Statement of the CEDAW Committee on Gender and Climate Change' (2009) [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_STA\\_44\\_19855\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_STA_44_19855_E.pdf) accessed 9 November 2021.

<sup>9</sup> 'General Recommendation No. 37' (n 5) [13].

<sup>10</sup> *Ibid.*

of UN human rights treaty body accountability mechanisms that have engaged with the relationship between human rights and climate change,<sup>11</sup> the CEDAW Committee is the only one to release a General Recommendation on climate change. This is an important development as General Recommendations are authoritative, definitive and influential statements that signal to the human rights community the significance of women's equality in the context of climate change.<sup>12</sup> Furthermore, the CEDAW Committee consistently engages with states on women's equality, disasters and climate change in its Concluding Observations. Using the four-dimensional model of substantive equality,<sup>13</sup> this chapter analyses climate change as a matter of women's substantive equality under CEDAW. This analytical framework is enriched by drawing on a range of environmental, climate change and ecofeminist insights.<sup>14</sup> By acknowledging that climate change already has and will continue to operate as an obstacle to women's equality, the CEDAW Committee is able to spotlight how women's disadvantage exacerbates the burdens of climate change and disasters and clarify how attention to women's substantive equality can open new perspectives and viewpoints on how to respond to the climate crisis. The analysis in this chapter also reveals that there is space to engage more fully with the power hierarchies between humans and the natural world, and how those hierarchies are connected to and reinforce discrimination against women.

## 1. SHIPS IN THE NIGHT: CEDAW AND CLIMATE CHANGE

There are no references to the environment, disasters or climate in the text of CEDAW. This is not surprising, as the connections between the natural world and women's equality had not been established at the time of drafting and it would have been inconceivable to address environmental issues in a treaty on eliminating discrimination against women. This initial conceptual division has

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<sup>11</sup> Office of the High Commissioner of Human Rights, 'Human Rights Mechanisms Addressing Climate Change' <https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HumanRightsMechanisms.aspx> accessed 10 November 2021.

<sup>12</sup> Philip Alston, 'The Historical Origins of the Concept of "General Comments" in Human Rights Law' in Laurence Boisson de Chazournes and Vera Gowland Debbas (eds), *The International Legal System in Quest of Equity and Universality* (Martinus Nijhoff 2001) 763.

<sup>13</sup> Sandra Fredman, *Discrimination Law* (2nd edn, Clarendon 2011).

<sup>14</sup> There is a rich body of literature defining ecofeminism; see Chaone Mallory, 'What's in a Name? In Defense of Ecofeminism' (2018) 23(2) *Ethics & Environment* 11. For this chapter, ecofeminism is defined as a theoretical frame that sees the oppression of women, other marginalized groups, and the natural environment as deeply entangled.

now given way to a more sustained and integrated engagement. This section briefly sketches how the CEDAW Committee has brought the gender dimensions of climate change and disasters within the rubric of CEDAW, and how it defines these concepts.

### (a) The Legal Basis

Equality within CEDAW acts a bridge to permit the CEDAW Committee to address women's rights in the context of disasters and climate change. The starting point is to consider how the treaty understands discrimination and equality. Article 1 of CEDAW defines discrimination against woman as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

There are three key elements to this definition. First, the phrase 'purpose or effect' indicates that CEDAW prohibits both direct (explicit differential treatment) and indirect (neutral laws, policies or programmes that in application disadvantage women) discrimination.<sup>15</sup> Second, the CEDAW Committee has interpreted 'on the basis of sex' to include intersectional sex (biological) and gender (socioculturally constructed differences) discrimination.<sup>16</sup> And third, 'on a basis of equality' clarifies that equality is the evaluative frame for analysing whether a distinction on the basis of sex amounts to discrimination against women.<sup>17</sup> Beyond clarifying that CEDAW is premised on substantive equality, the CEDAW Committee has never offered a comprehensive or coherent definition of the concept. At various points, it has held that substantive equality requires differential treatment; an equal start; an enabling environment; redistribution of power and resources; the elimination of stereotypes, rigid gender roles and prejudices; and a 'real transformation of opportunities, institutions

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<sup>15</sup> CEDAW Committee, 'General Recommendation No. 28 on Core Obligations' (2010) CEDAW/C/GC/28 [16].

<sup>16</sup> *Ibid.*, [5]; Meghan Campbell, 'CEDAW and Women's Intersecting Identities: A Pioneering Approach to Intersectional Discrimination' (2015) 11(2) *Revista Direito GV* 459.

<sup>17</sup> Andrew Byrnes and Puja Kapai, 'Article 1' in Patricia Schulz, Ruth Halperin-Kaddari, Marsha Freeman and Beate Rudolf (eds), *CEDAW: Commentary* (2nd edn, Oxford University Press forthcoming).

and systems so they are no longer grounded in historically determined male paradigms of power and life patterns'.<sup>18</sup>

Drawing these three elements together, CEDAW seeks to ensure that all women are able to enjoy their human rights on a basis of *de jure* and *de facto* equality. To achieve this goal, it is imperative that equality and non-discrimination not remain static but evolve over time. As new understandings emerge on how gendered stereotypes, relations and structures are connected to the realization of women's rights, the open-textured concepts of equality and discrimination can be responsively employed. As the CEDAW Committee explains, these norms are meant to anticipate 'the emergence of new forms of discrimination that had not been identified at the time of drafting'.<sup>19</sup> CEDAW is a dynamic and living instrument.<sup>20</sup> The evolutionary approach to equality and non-discrimination has been used by the CEDAW Committee to address a range of issues that are not mentioned in the text of the treaty, most notably gender-based violence against women.<sup>21</sup>

In General Recommendation No. 37, the CEDAW Committee continues in this interpretative tradition, explaining that realities of climate change will negatively affect the realization of women's equal rights. At the outset, it observes that 'women, girls, men and boys are affected differently by climate change and disaster, with many women and girls experiencing greater risks, burdens and impacts'.<sup>22</sup> It then paints a vivid portrait noting, *inter alia*, women's increased risks of mortality, morbidity, and gender-based violence in situations of climate change and disasters. This vulnerability is not innate but connected to patterns of gender disadvantage that are 'economically, socially and culturally constructed'.<sup>23</sup> Gender stereotypes and structures mean that women have limited autonomy and less access to food, water, health care, employment opportunities, land, social protection, and other forms of economic resources. Women and girls are thus 'more likely to be exposed to disaster-induced risks' and they are 'less able to adapt to changes in climatic conditions'.<sup>24</sup> Discrimination against women can increase the likelihood and severity of climate change. A cluster of rights, including the rights to live

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<sup>18</sup> CEDAW Committee, 'General Recommendation No. 25 on Special Temporary Measures' (2004) CEDAW/C/GC/25 [8]–[9]; 'General Recommendation No. 28' (n 15) [16]–[22].

<sup>19</sup> 'General Recommendation No. 28' (n 15) [8].

<sup>20</sup> 'General Recommendation No. 25' (n 18) [3].

<sup>21</sup> 'General Recommendation No. 19 on Violence against Women' (n 1); 'General Recommendation No. 35 on Gender-Based Violence Against Women' (n 1).

<sup>22</sup> 'General Recommendation No. 37' (n 5) [2].

<sup>23</sup> *Ibid.*, [6].

<sup>24</sup> *Ibid.*, [3].

free from violence, and to education, work, social protection, health, adequate standard of living and freedom of movement, are undermined by the synergies between gender discrimination and the outcomes of disasters and climate change. The CEDAW Committee also warns that efforts to mitigate and adapt to climate change may unthinkingly replicate and exacerbate gender inequalities.<sup>25</sup> Although climate change may *prima facie* appear to be a great leveller, to grapple with the consequences of climate change it is necessary to appreciate women's disadvantaged position, and climate change must be conceptualized as an obstacle to women's equal enjoyment of rights. This gives the CEDAW Committee the legal basis to use the concepts of equality and non-discrimination to explore how the rights in the treaty need to be understood in light of climate change and disasters.

### (b) Defining Disasters and Climate Change

Before turning to evaluate how an equality-based approach to disasters and climate change plays out in the CEDAW Committee's monitoring work, it is helpful to consider how General Recommendation No. 37 defines these concepts. It takes a fluid approach that does not draw an analytical distinction between climate change and disasters.<sup>26</sup> Climate change is not explicitly defined, but General Recommendation No. 37 recognizes that human behaviour is changing the climate and is 'responsible for a large proportion of extreme weather events'.<sup>27</sup> Disasters, however, are defined. The CEDAW Committee draws on the UN Sendai Framework<sup>28</sup> and explains that disasters are 'small-scale and large-scale, frequent and infrequent, sudden and slow' hazards and risks.<sup>29</sup> The scale, speed, and regularity of the disaster are analytically irrelevant. This concept of disaster also moves beyond natural or weather-related disaster. General Recommendation No. 37 holds that disasters include 'environmental, technological and biological hazards ... as well as any other chemical, nuclear and biological hazards ... include[ing] testing and use

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<sup>25</sup> Ibid.

<sup>26</sup> 'General Recommendation No. 37' (n 5) [13].

<sup>27</sup> Ibid., [1].

<sup>28</sup> UN General Assembly, 'Sendai Framework for Disaster Risk Reduction 2015–2030' (2015) A/RES/69/283.

<sup>29</sup> Ibid.; see also UN Office for Disaster Risk Reduction, 'Disaster' <https://www.undrr.org/terminology/disaster> accessed 14 June 2021; Gabrielle Simm, 'Disaster and Gender: Sexing International Disaster Law' (2019) 2(1) *Yearbook of International Disaster Law Online* 144.

of all types of weapons'.<sup>30</sup> This chapter primarily focuses on climate change, but where relevant also considers disasters.

It is possible to detect how an equality framing shapes the definition of climate change and disasters in General Recommendation No. 37. Similarly to indirect discrimination, where the analytical fulcrum centres on the gendered effects of laws, policies or practices, and not on the motives or intentions of the discriminator,<sup>31</sup> General Recommendation No. 37 centres on impacts.<sup>32</sup> The CEDAW Committee does not seek to pin down a single causal element of the disaster or climate event. This has important consequences. Under CEDAW, states cannot avoid addressing women's inequalities by arguing that a disaster or climate event is natural or a force majeure.<sup>33</sup> States' obligations are not contingent on the origin of the disaster or climate events.<sup>34</sup> Simm worries that the refusal to typologize disasters and to include non-environmental disasters, such as weapon testing, is arbitrary and may weaken the normative force of General Recommendation No. 37.<sup>35</sup> However, eschewing definitional boundary drawing on the origins of the disaster or climate event and focusing on the effects on women's rights is consistent with an equality framing. Indirect discrimination focuses on the effects of systems, structures, biases and the status quo on disadvantaged groups.<sup>36</sup> Similarly, General Recommendation No. 37's analytical focus is on the effects of climate change and disaster, and their relationship to women's equality. This approach does not dilute the analytical precision of General Recommendation No. 37, nor open the flood-gates to include other rights-impinging events, such as war or poverty, under the umbrella of disaster, as these events would not meet the definition per the Sendai Framework. It also serves a strategic purpose. Given the continuing denial of climate change by powerful actors within the international community, the focus on the consequences bypasses this debate and clarifies that accountability under CEDAW is triggered when disaster or climate change

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<sup>30</sup> 'General Recommendation No. 37' (n 5) [13].

<sup>31</sup> Denise Réaume, 'Harm and Fault in Discrimination Law: The Transition from Intentional to Adverse Effect Discrimination' (2001) 2 *Theoretical Inquiries in Law* 349; Sandra Fredman, 'Is There Still a Divide?' in Tarunabh Khaitan and Hugh Collins (eds), *Foundations of Indirect Discrimination* (Hart 2018).

<sup>32</sup> 'General Recommendation No. 37' (n 5) [12].

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*, [13].

<sup>35</sup> Gabrielle Simm, 'Gender, Disasters and International Law' in Susan Harris Rimmer and Kate Ogg (eds), *Research Handbook on Feminist Engagement with International Law* (Edward Elgar 2019).

<sup>36</sup> *Essop v Home Office* [2017] UKSC 27 (UK Supreme Court); *Fraser v Canada* (Attorney General) (2020) SCC 28 (Canadian Supreme Court); *Nitisha v Union of India* (2021) Writ Petition (Civil) No 1109 of 2020 (Indian Supreme Court).



impedes on women's substantive equality. While General Recommendation No. 37 is unequivocal that the precise cause of the disaster or climate event is irrelevant, there is a clear acknowledgement of the role of human activity in precipitating extreme weather.<sup>37</sup> There is specific reference to human-induced floods, hurricanes, melting polar ice caps and glaciers, droughts and rising sea levels. The CEDAW Committee is not ignorant of the underpinning structural causes at stake in the context of climate change. The next section explores the steps the CEDAW Committee is recommending on modifications of human behaviours in light of climate change and disaster risks.

## 2. CLIMATE CHANGE AS A FORM OF WOMEN'S INEQUALITY

This section develops a more granular understanding of what it means to conceptualize the impacts of and responses (or lack thereof) to climate change as an obstacle to women's equality by analysing the monitoring practice of the CEDAW Committee. It specifically evaluates General Recommendation No. 37 which was released in 2018, and the Concluding Observations from the 63rd session in February 2016 to the 75th session in February 2020. The aim is to provide a nuanced and in-depth assessment of the CEDAW Committee's current approach to conceptualizing the repercussions of climate change as a matter of women's equality. Given the CEDAW Committee's fluidity with respect to climate change and disasters, this section also pays attention to how both of these phenomena impede women's equality. As mentioned above, the CEDAW Committee has not yet articulated an evaluative framework for assessing whether the state has failed to ensure women's human rights on the basis of equality. This section employs Fredman's four-dimensional model of substantive equality.<sup>38</sup>

The first dimension, redressing disadvantage, recognizes that equality cannot be achieved solely through identical treatment, but disadvantage must be fully accounted for, and differential treatment may be required. The second dimension, tackling misrecognition, seeks to eliminate stigma, stereotyping and prejudice, and promote the dignity and worth of women. The third dimension, accommodating difference and structural change, seeks to dismantle structures that have been constructed on dominant male norms and transform institutions so that gendered differences are not only accommodated but valorized. And the fourth dimension, participation, is directed towards enhancing social inclusion and political voice, and seeks to amplify women's voices in all

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<sup>37</sup> 'General Recommendation No. 37' (n 5) [13].

<sup>38</sup> Fredman (n 13).

decision-making spaces. Applying this framework reveals how women's substantive equality can not only enrich climate change discourse, but also how taking the consequences of climate change as a serious obstacle to women's rights positively contributes to the evolution of CEDAW, and ultimately open up new pathways for radical gender and ecological transformations. The CEDAW Committee is just in the beginning phases of creating a 'greener CEDAW', and this section marks out areas where a deeper engagement with the synergies between climate change and women's equality is required.

### **(a) Disadvantage**

All people are negatively affected by climate change and disasters. These burdens, however, are not equal. Women and girls are 'experiencing greater risks, burden and impacts'.<sup>39</sup> The realities of climate change are not neutral, they are gendered. Women are disproportionately affected by carbon emissions, drought, rising sea levels, storms, floods, avalanches, fires, and other weather-related disasters.<sup>40</sup> The reasons for the disproportionate effects on women are not inherent or inevitable, but are rooted in gendered norms, power relations and structures. Discrimination against women operates to heighten the negative repercussions of climate change.<sup>41</sup> The CEDAW Committee observes that 'the gender dimensions of disaster risk reduction and the impacts of climate change are often not well understood'.<sup>42</sup> It is seeking to correct this oversight by consistently drawing to states' attention, with a remarkable degree of detail, how gender inequalities interact with the effects of climate change to further disadvantage women and girls.

The gendered disadvantage of climate change can be extreme. General Recommendation No. 37 observes that 'women and girls have higher levels of mortality and morbidity in disaster situations'.<sup>43</sup> Beyond severe risks of death and injury, a range of natural, human or weather-related events also

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<sup>39</sup> 'General Recommendation No. 37' (n 5) [2].

<sup>40</sup> CEDAW Committee, 'Concluding Observations: Cook Island' (2018) CEDAW/C/COK/CO/2-3[45]; CEDAW Committee, 'Concluding Observations: Republic of Korea' (2018) CEDAW/C/KOR/CO/8 [14]; Karen Morrow, 'Changing the Climate of Participation: The Development of the Gender Constituency in Global Climate Change Regime' in Sherilyn MacGregor (ed), *Gender and Environment Handbook* (Routledge 2016).

<sup>41</sup> Elaine Enarson, 'Through Women's Eyes: A Gendered Research Agenda for Disaster Social Science' (1998) 22(2) *Disasters* 157.

<sup>42</sup> 'General Recommendation No. 37' (n 5) [39].

<sup>43</sup> *Ibid.*, [4]; Simm observes that this is generally true, but there are situations where men are at greater risk due to gendered masculine stereotypes ('Disaster and Gender' (n 29) 165).

negatively affect the livelihood of women. In focusing on the livelihood of women, the CEDAW Committee is continuing to develop socioeconomic rights as a crucial element of women's substantive equality, including rights that are not expressly protected in the treaty, nor well-developed within the UN treaty body system.<sup>44</sup> In Zimbabwe and Mozambique, Cyclone Idai increased women's food insecurity.<sup>45</sup> The 2015 earthquake also exacerbated the 'food insecurity and the ... housing, safe water and credit facilities for' Indigenous, Dalit, Madhesi, Tharu women, women of 'oppressed classes' and widows in the Hindu community in Nepal.<sup>46</sup> Due to gender norms within the family, in times of food scarcity, 'women are more likely to suffer from undernourishment and malnutrition'.<sup>47</sup> In assessing the gendered impact of climate change in Nauru, the CEDAW Committee notes that environmental challenges for 'future prospects for local food production' will have a negative impact on the health and well-being of women and girls (Art 12 of CEDAW).<sup>48</sup> Similarly, rural women in Haiti and Honduras have been devastated by intense droughts and resulting lost crops.<sup>49</sup> Making explicit connections between women, climate change and food is evidence of a future evolution of women's substantive equality in CEDAW that is starting to bubble to the surface.<sup>50</sup> As the CEDAW Committee continues to develop the links between women's equal right to food and climate change, it can positively draw on the works of the UN

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<sup>44</sup> Beate Rudolf, 'Article 13' in Marsha Freeman, Christine Chinkin and Beate Rudolf (eds), *CEDAW: Commentary* (Oxford University Press 2012) 342–343; Meghan Campbell, 'Like Birds of a Feather? ICESCR and Women's Socio-Economic Equality' in Rebecca Cook (ed), *The Frontiers of Gender Equality* (PUP Forthcoming).

<sup>45</sup> CEDAW Committee, 'Concluding Observations: Zimbabwe' (2020) CEDAW/C/ZWE/CO/6 [47]; CEDAW Committee, 'Concluding Observations: Mozambique' (2019) CEDAW/C/MOZ/CO/3-5 [43].

<sup>46</sup> CEDAW Committee, 'Concluding Observations: Nepal' (2018) CEDAW/C/NPL/CO/6 [40(c)].

<sup>47</sup> 'General Recommendation No. 37' (n 5) [69].

<sup>48</sup> CEDAW Committee, 'Concluding Observations: Nauru' (2017) CEDAW/C/NRU/CO/1-2 [34]; 'General Recommendation No. 37' (n 5) [66].

<sup>49</sup> CEDAW Committee, 'Concluding Observations: Haiti' (2016) CEDAW/C/HTI/CO/8-9 [37]; CEDAW Committee, 'Concluding Observations: Honduras' (2016) CEDAW/C/HND/CO/7-8 [42].

<sup>50</sup> The right to food in the context of climate change is anchored in a cluster of rights including core obligations (Art 2), the duty to modify discriminatory cultural patterns and stereotypes (Art 5), health (Art 12), rural women (Art 14) equality before the law (Art 15) and equality within marriage (Art 16); 'General Recommendation No. 37' (n 5) [71].

Special Rapporteurs, who have, for instance, identified the gendered climate change fallouts of large-scale agricultural practices and insecure land tenure.<sup>51</sup>

Oddly, in comparison with food, less attention has been paid to climate change, equality and water in CEDAW. There are only two examples in the Concluding Observations, both focusing on rural women. In Kiribati, seawater flooding has polluted wells, limiting rural women's access to water as well as food, firewood and medicinal plants.<sup>52</sup> The water sources for rural and Amerindian women in Guyana have been polluted by mining activities.<sup>53</sup> Going forward, the CEDAW Committee could consider more fully women's right to water under CEDAW in light of changing climate conditions.<sup>54</sup> The work of the UN Special Rapporteur on human rights and the environment, again, can prove instructive to the CEDAW Committee. The Special Rapporteur observes that women are excluded from water management, and the lack of access to clean water increases women's caring burdens and risk of violence.<sup>55</sup>

The CEDAW Committee also unearths the gendered health disadvantages precipitated by climate change and disasters. Carbon emissions particularly affect pregnant women and are connected to rising rates of maternal mortality in South Korea.<sup>56</sup> The CEDAW Committee pays specific attention to the health and the environmental impacts of nuclear power, reflecting its broad definition of disasters as including weapons testing. In the 1940–50s, the US conducted a series of nuclear testing programmes on the Marshall Islands. To this day, the CEDAW Committee observes that Marshallese women disproportionately 'suffer from thyroid and other cancers as well as other reproductive health problems that are a cause of the large number of stillbirths and congenital birth defects'.<sup>57</sup> Following the Fukushima accident in Japan, the CEDAW

<sup>51</sup> UN Special Rapporteur on human rights and the environment, 'Healthy and Sustainable Food' (2021) A/76/179 [67], [80]; UN Special Rapporteur on the right to food, 'Integrating a Gender Perspective' (2016) A/HRC/31/51 [56]–[85].

<sup>52</sup> CEDAW Committee, 'Concluding Observations: Kiribati' (2020) CEDAW/C/KIR/CO/1-3 [45(b)].

<sup>53</sup> CEDAW Committee, 'Concluding Observations: Guyana' (2019) CEDAW/C/GUY/CO/9 [43(c)].

<sup>54</sup> Stephanie Buechler and Anne-Marie Hanson (eds), *A Political Ecology of Women, Water and Global Environmental Change* (Routledge 2015); Bernadette Resurrección, 'Water Insecurity in Disaster and Climate Change Contexts' in Lisa Mason and Jonathan Rigg (eds), *People and Climate Change: Vulnerability, Adaption and Social Justice* (Oxford University Press 2019).

<sup>55</sup> UN Special Rapporteur on human rights and the environment, 'Human Rights and the Global Water Crisis' (2021) A/HRC/46/28 [48].

<sup>56</sup> 'Concluding Observations: Republic of Korea' (n 40) [14].

<sup>57</sup> CEDAW Committee, 'Concluding Observations: Marshall Islands' (2018) CEDAW/C/MHL/CO/1-3 [8].

Committee is critical of the decision to lift the evacuation zone designation as women are more sensitive to radiation than men.<sup>58</sup>

The consequences of climate change and disasters further increase the risk of gender-based violence, especially for women with disabilities.<sup>59</sup> There are higher incidences of domestic violence, early forced marriage, trafficking and forced prostitution in the wake of extreme weather events. The CEDAW Committee also demonstrates a sophisticated understanding of how gendered forms of disadvantage amplify each other. In General Recommendation No. 37, it observes that violations of socioeconomic rights – the restricted availability of food and water – exposes women and girls to sexual violence and exploitation.<sup>60</sup>

The impacts of climate change can also increase the gendered burdens of care. The damage to livelihoods coupled with the decimation of public health services resulting from extreme weather events and other disasters means the burden of providing basic necessities and care is borne by women.<sup>61</sup> In the Concluding Observations for Fiji, the CEDAW Committee observes there is an ‘increase of women’s engagement in unpaid work, [they] carry a particularly high care burden by being in charge of finding resources to sustain their family’.<sup>62</sup> This burden has multiple negative knock-on consequences. First, these disaster and climate-related caring burdens ‘leave less time [for women] to engage in economic activity or access ... information and education ... necessary for recovery and adaption’.<sup>63</sup> Second, these gendered responsibilities coupled with stereotypes, discriminatory laws and limited access to economic resources and social capital make it more difficult for women to ‘leave regions at high risk of disaster or to migrate in order to re-establish their lives in the wake of extreme climate events’.<sup>64</sup> The comparative ease with which men are able to migrate means that the women left behind are forced to take non-traditional economic and community leadership roles, roles for which they are often ill-prepared.<sup>65</sup> Along with increased survival burdens, women also tend to shoulder the responsibility for mitigation, recovery and adaption

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<sup>58</sup> CEDAW Committee, ‘Concluding Observations: Japan’ (2016) CEDAW/C/JPN/CO/7-8 [37].

<sup>59</sup> ‘General Recommendation No. 37’ (n 5) [5]; CEDAW Committee, ‘Concluding Observations: Fiji’ (2018) CEDAW/C/FJI/CO/5 [53].

<sup>60</sup> ‘General Recommendation No. 37’ (n 5) [5].

<sup>61</sup> *Ibid.*, [62].

<sup>62</sup> ‘Concluding Observations: Fiji’ (n 59) [53(a)].

<sup>63</sup> ‘General Recommendation No. 37’ (n 5) [62].

<sup>64</sup> *Ibid.*, [76].

<sup>65</sup> *Ibid.*, [77].

efforts while men continue to be ‘let off the hook’.<sup>66</sup> MacGregor refers to this additional burden as the ‘feminization of environmental responsibility’ which in practice amounts ‘to more unpaid work for women’.<sup>67</sup>

General Recommendation No. 37 adopts an intersectional perspective to the gendered disadvantage of climate change. It recognizes that burdens ‘may vary with different disasters and across geographical and socio-cultural contexts’.<sup>68</sup> While it flags a wide range of identities, the CEDAW Committee primarily focuses on three characteristics that are often ignored or perceived as controversial in many domestic discrimination frameworks: poverty, rurality and Indigenesness. Rural and Indigenous women and women who live in poverty are all signalled out as being particularly burdened by climate change.<sup>69</sup> Some of the examples above are also evidence of the Committee’s specific focus on rural women. These three identities or experiences often bleed into each other in the CEDAW Committee’s analysis. For example, it is concerned that the scarcity of arable land undermines the survival of poor, rural women and that the increase in droughts has affected harvests which in turn reduces the income of rural women.<sup>70</sup> This is also another example of the CEDAW Committee using climate change to pursue an evolutionary interpretation of CEDAW. Although Article 14 of the Convention explicitly protects the rights of rural women,<sup>71</sup> there is only a brief reference to race or poverty in the preamble of CEDAW. The increased attention to the vulnerability of Indigenous women and women in poverty to climate change and disasters is a welcome sign and indicates the CEDAW Committee’s ever-increasing awareness of how race and poverty act as obstacles to women’s equality. The narrow focus though on poor, rural and Indigenous women, however, does make the CEDAW

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<sup>66</sup> Bernadette Resurrección, ‘Persistent Women and Environmental Linkages in Climate Change and Sustainable Development Agendas’ (2013) 33 *Women’s Studies International Forum* 41.

<sup>67</sup> Sherilyn MacGregor, ‘Only Resist: Feminist Ecological Citizenship and Post-Politics of Climate Change’ (2014) 29(3) *Hypatia* 617.

<sup>68</sup> ‘General Recommendation No. 37’ (n 5) [6].

<sup>69</sup> *Ibid.*, [61], [70]; CEDAW Committee, ‘Concluding Observations: Cambodia’ (2019) CEDAW/C/KHM/CO/6 [42]; ‘Concluding Observations: Guyana’ (n 53) [41]; ‘Concluding Observations: Mozambique’ (n 45) [37]; CEDAW Committee, ‘Concluding Observations: Côte d’Ivoire’ (2019) CEDAW/C/CIV/CO/4 [47]; CEDAW Committee, ‘Concluding Observations: Norway’ (2017) CEDAW/C/NOR/CO/9 [14].

<sup>70</sup> ‘Concluding Observations: Haiti’ (n 49) [37]; CEDAW Committee, ‘Concluding Observations: Bhutan’ (2016) CEDAW/C/BHU/CO/8-9 [42].

<sup>71</sup> CEDAW Committee, ‘General Recommendation No 34 on the Rights of Rural Women’ (2016) CEDAW/C/GC/34.

Committee vulnerable to the critique that the ‘woman’ of climate change is collapsing into the poor, rural women of the Global South.<sup>72</sup>

The disadvantage dimension of the substantive equality approach demands remedial measures that fully account for the differential effects of disaster and climate change on women. Measures to mitigate and respond to the effects of disaster and climate change cannot be gender neutral. Building on its awareness of how gendered disadvantage can heighten the risks of disaster and climate change and how these phenomena can entrench gendered disadvantage, the CEDAW Committee recommends a series of remedial measures that states can pursue to address these synergies. As a central guiding principle, it holds that all measures that respond to disaster and climate change must give primary consideration to women’s rights and the needs of women, especially women with intersecting identities, must be prioritized.<sup>73</sup> It consistently advocates that states integrate an intersectional gender perspective into legislation, programmes, plans and policies on climate change.<sup>74</sup> The CEDAW Committee even goes a step further and pinpoints priority areas to eliminate gender discrimination: legal ownership, access and use of property, and land and natural resources. It also requires states to redress long-standing barriers to women’s equality in food, health, work and social protection that exacerbate the risks to which women are exposed from disaster and climate change.<sup>75</sup>

The CEDAW Committee is also building up a fine-grained best practice guide on the appropriate measures states can adopt. For instance, relief funding must be directed towards women’s economic empowerment.<sup>76</sup> It should be available and accessible to all women, including women in industries most affected by climate change, such as agricultural and fisheries.<sup>77</sup> In response to the multi-fold burdens that fall upon women, they should have access to training and opportunities that seek to mitigate and adapt to climate change.<sup>78</sup> The CEDAW Committee could consider stronger recommendations that emphasize that climate change and disasters should not increase the gendered burdens of care on women or add new environmental responsibilities or chores for

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<sup>72</sup> Geraldine (n 2).

<sup>73</sup> CEDAW Committee, ‘Concluding Observations: Antigua and Barbuda’ (2019) CEDAW/C/ATG/CO/4-7 [51].

<sup>74</sup> *Ibid.*, [25]–[26].

<sup>75</sup> ‘General Recommendation No. 37’ (n 5) [44], [57], [60], [64], [68], [72], [78].

<sup>76</sup> Maguire and Lewis (n 2) critique relief funds for failing to redress structures that underpin environmental degradation.

<sup>77</sup> ‘General Recommendation No. 37’ (n 5) [10]; ‘Concluding Observations: Marshall Islands’ (n 57) [45(c)].

<sup>78</sup> ‘General Recommendation No. 37’ (n 5) [57]; ‘Concluding Observations: Marshall Islands’ (n 57) [45(c)].

women.<sup>79</sup> For example, the CEDAW Committee recommends that Samoa use temporary special measures to encourage women to take courses ‘in the fields of disaster risk management and climate change, including in climatology, fishery and water management’.<sup>80</sup> Japan is encouraged to intensify medical services to women and girls affected by radiation, especially pregnant women in the Fukushima prefecture.<sup>81</sup> Nauru is recommended to take ‘special measures to address the health concerns of women resulting from phosphate mining’.<sup>82</sup> The disaster preparedness plans in Fiji should include ‘provision for setting up women-only shelters, where women can report cases of gender-based violence and obtain access to redress and rehabilitation’.<sup>83</sup> And lastly, Kiribati and Eritrea are urged to take measures ‘to address hunger and ensure food security for rural women in light of the effects of climate change’.<sup>84</sup>

## **(b) Recognition**

The CEDAW Committee carefully considers how the role of women should be conceptualized in grappling with climate change so as to avoid replicating gendered stereotypes. Efforts to mitigate and adapt to the realities of climate change can inadvertently perpetuate gender-based stereotypes that essentialize women as helpless, disempowered victims or as nurturing carers of the environment. This has been framed in the ecofeminist literature as the vulnerability or virtuousness of women.<sup>85</sup> The challenge is to recognize the gendered consequences of climate change without reducing women to stereotypical roles. The CEDAW Committee both avoids and falls into this trap. On the positive side, it uses the recognition dimension to champion women’s agency to redress climate change. It observes in General Recommendation No. 37 that categorizing women as ‘passive “vulnerable groups” in need of protection

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<sup>79</sup> Resurrección (n 66).

<sup>80</sup> CEDAW Committee, ‘Concluding Observations: Samoa’ (2018) CEDAW/C/WSM/CO/6 [42].

<sup>81</sup> ‘Concluding Observations: Japan’ (n 58) [37].

<sup>82</sup> ‘Concluding Observations: Nauru’ (n 48) [35].

<sup>83</sup> ‘Concluding Observations: Fiji’ (n 59) [54(b)].

<sup>84</sup> CEDAW Committee, ‘Concluding Observations: Eritrea’ (2020) CEDAW/C/ERI/CO/6 [50]; ‘Concluding Observations: Kiribati’ (n 52) [46(b)].

<sup>85</sup> Seema Arora-Jonsson, ‘Virtue and Vulnerability: Discourses on Women, Gender and Climate Change’ (2011) 21 *Global Environmental Change* 744; Rowena Maguire, ‘Feminist Approaches’ in Lavanya Rajamani and Jacqueline Peel (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press 2020). Resurrección (n 66) argues that to ensure gender is on the climate change agenda, these stereotypes may have been strategically deployed.



from disaster is a negative gender stereotype'.<sup>86</sup> However, in the Concluding Observations, there are a few instances where the CEDAW Committee slips into the language of vulnerability, and it could bring the insight from General Recommendation No. 37 on women's vulnerability and stereotyping more consistently to the periodic reporting process.<sup>87</sup>

Although women face a unique constellation of risks in the face of climate change, it is crucial to recognize that women are not powerless in the face of climate change. The victim narrative denies the important contribution that women can make and already are making to mitigating and adapting to climate change.<sup>88</sup> In moving away from seeing women exclusively as hapless victims, the CEDAW Committee does not extrapolate stereotypes of women's caring roles or loving natures in the home onto disaster and climate change policies. When crafting responsive measures, the state must engage with women as 'agents of change'<sup>89</sup> and recognize that women are a 'valuable source of community knowledge on climate change'.<sup>90</sup> In the Concluding Observation for Australia, the CEDAW Committee holds that the state must 'make women the central force for the development and implementation of activities in relation to climate change'.<sup>91</sup> Framing women as change-makers has the potential to be a transformative approach to climate change that simultaneously seeks to undo the legacies of patriarchy and the misuse, abuse and neglect of the environment.

At the same time, it is possible to conceptualize women's role in climate change with a higher degree of precision using the insights from ecofeminism and the recognition and other dimensions of substantive equality. Learning from the vulnerable-virtuous stereotypes, the CEDAW Committee could bring depth to women as 'agents of change'. It could caution against falling into essentialism and recognize that women may have competing perspectives on how best to be 'agents of change', and respond to the climate crisis depending on a constellation of intersecting factors including race, geography, disability and so on.<sup>92</sup> It is also important not to romanticize women's agency or place

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<sup>86</sup> 'General Recommendation No. 37' (n 5) [7].

<sup>87</sup> CEDAW Committee, 'Concluding Observations: Bahamas' (2018) CEDAW/C/BHS/CO/6 [47]–[48].

<sup>88</sup> Rebecca Pearse, 'Gender and Climate Change' (2017) 8 (2) *WIREs Clim Change* 1, 5–7.

<sup>89</sup> CEDAW Committee, 'Concluding Observations: Mauritius' (2018) CEDAW/C/MUS/CO/8 [35]; 'Concluding Observations: Cambodia' (n 69) [43].

<sup>90</sup> 'General Recommendation No. 37' (n 5) [40(d)].

<sup>91</sup> CEDAW Committee, 'Concluding Observations: Australia' (2018) CEDAW/C/AUS/CO/8 [31].

<sup>92</sup> Kate Wilkinson Cross, 'Comparing the Transformative Potential of FCCC and the CCD: An Ecofeminist Exploration' (2018) 30(1) *Denning Law Journal* 5, 18.

the burden of solving the climate crisis solely on women. Framing women as ‘agents of change’ must recognize the gendered power constraints on women’s autonomy. Neither should women as change-makers be used to deflect attention away from the exploitation and domination of the natural environment by humans.<sup>93</sup> At times, the CEDAW Committee subtly slips into the language that places on women the responsibility to solve the climate crisis.<sup>94</sup> In General Recommendation No. 37, the Committee holds that women’s equality ‘will reinforce the resilience of individuals and communities globally in the context of climate change and disasters’.<sup>95</sup> In the Concluding Observation for Fiji, women are described as ‘the best agents of change’.<sup>96</sup> These examples implicitly perpetuate ‘the feminization of responsibility’ and place saving the planet on the list of women’s chores.<sup>97</sup> However, these are isolated incidents and by-and-large the CEDAW Committee seeks to recognize women’s agency in response to climate change. Nevertheless, these slippages point towards the need for a more multidimensional application of substantive equality to the role of women in climate change. The recognition dimension must be aligned with the disadvantage dimension to ensure that the understanding of the role of women in climate change does not increase burdens on women, and aligned with the structural dimension so that women are not considered the band-aid solution, and attention is directed towards the root causes of the climate crisis.

There is one further element of the recognition dimension worth discussing. The CEDAW Committee is using it to carefully consider the role of women and knowledge on climate change. There is a perception that high-level scientific or technical expertise offers the keys to mitigating and adapting to climate change.<sup>98</sup> This operates to denigrate other forms of knowledge. However, in the 1990s and 2000s, ecofeminists pointed out that holding that women have ‘special’ forms of knowledge of the natural world only creates another essentialist pitfall. Portraying women as more sensitive, aware or connected to

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<sup>93</sup> Mary Mellor, ‘Feminism and Environmental Ethics: A Materialist Perspective’ (2000) 5(1) *Ethics and the Environment* 107.

<sup>94</sup> *Ibid.*

<sup>95</sup> ‘General Recommendation No. 37’ (n 5) [12].

<sup>96</sup> ‘Concluding Observations: Fiji’ (n 59) [53]; CEDAW Committee, ‘Concluding Observations: Suriname’ (2018) CEDAW/C/SUR/CO/4-6 [42]–[43].

<sup>97</sup> Seema Arora-Jonsson, ‘Forty Years of Gender Research and Environmental Policy: Where Do We Stand?’ (2014) 47 *Women’s Studies International Forum* 295, 301.

<sup>98</sup> Wilkinson Cross, ‘Comparing the Transformative Potential’ (n 92) 41; Greta Gaard, ‘Ecofeminism and Climate Change’ (2015) 49 *Women’s Studies International Forum* 20.

nature is replicating gendered caring stereotypes.<sup>99</sup> The CEDAW Committee does an exemplary job of navigating this essentialist precipice. It does so by stressing that women's knowledge is not innate but is a result of their geographic, social, political, cultural and economic positionality. It holds that:

local knowledge held by women in agricultural regions is particularly important ... as these women are well positioned to observe changes in the environment and to respond to these through different adaptive practices in crop selection, planting, harvesting, land conservations techniques and careful management of water resources.<sup>100</sup>

This seeks to bring to the fore and legitimize women's experiential sources of environmental knowledge and, in doing so, emphasizes the traditional and non-traditional skills that women hold to confront climate change. This also reflects Morrow's view that integrating gender into climate governance shifts from the 'current productive, economic and technical-fix dominated track, to a mixed approach that also looks to harnessing lived experience ... and to those activities that perpetuate and support life'.<sup>101</sup>

### (c) The Structural Dimension

There are two limbs to the structural dimension of women's equality in the context of climate change, each limb having a different starting point. First, the substantive gender equality limb seeks to redress long-standing gendered structural barriers that increase women's risks in the context of climate change and disasters. Drawing on its long history of engaging with these barriers, the CEDAW Committee consistently directs state parties to address structural inequalities that exacerbate the negative burdens of climate change through, inter alia, facilitating access to social goods and redistributing caring burdens.<sup>102</sup>

Second, the climate change limb seeks to transform structural power imbalances between the human and natural environment that operate to undermine women's equality. Ecofeminists have argued that this requires de-privileging the role of humans, recognizing that humans are only one part of the natural world and rejecting economic systems that exploit women, other marginalized

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<sup>99</sup> Val Plumwood, *Feminism and the Mastery of Nature* (Routledge 1993); Bonnie Mann, *Women's Liberation and the Sublime: Feminism, Postmodernism, Environment* (Oxford University Press 2006).

<sup>100</sup> 'General Recommendation No. 37' (n 5) [33].

<sup>101</sup> Morrow, 'Tackling Climate Change' (n 3) 215.

<sup>102</sup> 'General Recommendation No. 37' [64].

groups and the natural environment.<sup>103</sup> Adaptive measures such as ‘green economy’ or sustainable development have been critiqued for failing to transform patriarchal, neoliberal ideological patterns of unlimited growth, over-consumption and domination.<sup>104</sup> Perhaps reflecting the CEDAW Committee’s comparatively recent engagement with climate change, its approach oscillates between undoing all forms of environmental power hierarchies that trap women in oppressive structures and a more modest approach that does not challenge the underlying causes of the climate crisis. The following section homes in on pertinent themes that emerge from the CEDAW Committee’s monitoring work – energy policies, the private sector, and extraterritoriality – to understand how it addresses the structural factors that have precipitated the climate crisis and their interaction with women’s equality.

### (i) Energy policies

The CEDAW Committee is critical of environmentally degrading energy policies. In General Recommendation No. 37, states are encouraged to ‘limit fossil fuel use and greenhouse gas emissions and the harmful environmental effects of extractive industries such as mining and fracking’.<sup>105</sup> In the Concluding Observations, the CEDAW Committee is even more censorious of energy policies. It draws attention to the fact that Australia and Qatar have some of the highest per capita carbon emissions in the world.<sup>106</sup> Fracking in the UK, South Korea’s fuel and coal-based energy policies, and the expansion of the extraction of oil and gas in the Arctic by Norway are critiqued for resulting greenhouse gas and other emissions.<sup>107</sup> Drawing together the disadvantage and structural dimensions, all of these energy policies are identified as having a negative effect on women’s rights. For South Korea and Norway, the CEDAW Committee urges the state to review climate change and energy policies to ensure due weight is given to women’s substantive equality.<sup>108</sup>

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<sup>103</sup> Carolyn Merchant, ‘Ecofeminism and Feminist Theory’ in Irene Diamond and Gloria Orenstein (eds), *Reweaving the World* (Sierra Club Books 1990).

<sup>104</sup> Kate Wilkinson, ‘Payment for Ecosystem Service and the Green Economy’ (2014) 5(2) *Journal of Human Rights and the Environment* 168, 169; Martha Pskowski, ‘Is This the Future We Want? The Green Economy vs Climate Justice’ (2013) 78 *DifferenTakes* 1.

<sup>105</sup> ‘General Recommendation No. 37’ (n 5) [14].

<sup>106</sup> CEDAW Committee, ‘Concluding Observations: Qatar’ (2019) CEDAW/C/QAT/CO/2 [43]; ‘Concluding Observations: Australia’ (n 91) [29].

<sup>107</sup> ‘Concluding Observations: Republic of Korea’ (n 40) [14]; ‘Concluding Observations: Norway’ (n 69) [14]; CEDAW Committee, ‘Concluding Observations: UK’ (2019) CEDAW/C/GBR/CO/8 [53].

<sup>108</sup> ‘Concluding Observations: Republic of Korea’ (n 40) [15]; ‘Concluding Observations: Norway’ (n 69) [15].

For the UK, the CEDAW Committee takes a bold step and calls on the state to ‘consider introducing a comprehensive and complete ban on fracking’.<sup>109</sup> These recommendations are consistent with a transformative approach that challenges existing practices that have caused climate change to exceed the planetary boundary<sup>110</sup> and brought the world to an ecological threshold.<sup>111</sup>

**(ii) The role of private actors**

The due diligence obligations under CEDAW have largely been developed in the context of gender-based violence against women, but the CEDAW Committee is now developing a new perspective in regard to non-state corporate actors.<sup>112</sup> However, its understanding of corporate actors is ambiguous. General Recommendation No. 37 seems to welcome private actors as partners in combatting climate change. It holds that the private sector ‘can play an important role in disaster risk reduction, climate resilience and the promotion of gender equality’.<sup>113</sup> Public-private partnerships, it explains, ‘may provide necessary financial and technical resources’ to create new infrastructure and resilient livelihoods.<sup>114</sup> The CEDAW Committee recommends that states create environments for gender responsive investment in disaster and climate change, including through renewable energies, and encourage women’s entrepreneurship in these areas.<sup>115</sup> This endorsement of the private sector and advocacy for a sustainable or green economy assumes that climate change can be solved by science, technology or finance ‘without substantially transforming ideologies and economies of domination, exploitation and colonialism’.<sup>116</sup> The human behaviours and patterns of overproduction and overconsumption prevalent in the Global North remain intact. Moreover, advocating for corporate actors to develop climate resilient measures continues to see the natural environment as being in the service of humanity, and does not challenge ‘destructive human-nature relations’.<sup>117</sup>

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<sup>109</sup> ‘Concluding Observations: UK’ (n 107) [54].

<sup>110</sup> Stockholm Resilience Centre, ‘The Nine Planetary Boundaries’ <https://www.stockholmresilience.org/research/planetary-boundaries/the-nine-planetary-boundaries.html> accessed 9 November 2021.

<sup>111</sup> Maguire, ‘Gender, Climate and the UNFCCC’ (n 4).

<sup>112</sup> Andrew Byrnes and Eleanor Bath, ‘Violence Against Women, the Obligation of Due Diligence and the OP-CEDAW: Recent Developments’ (2008) 8(3) *Human Rights Law Review* 517.

<sup>113</sup> ‘General Recommendation No. 37’ (n 5) [47].

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*, [51].

<sup>116</sup> Gaard (n 98) 24.

<sup>117</sup> MacGregor, ‘Only Resist’ (n 67) 621.

On the other hand, in the Concluding Observations, the CEDAW Committee is much more critical of corporate actors. In Australia, Eritrea, Ethiopia and Guyana, it is concerned about the continuation and expansion of extraction industries: mining, oil and gas.<sup>118</sup> The CEDAW Committee is also worried that corporations, registered or domiciled within Australia and receiving public subsidies, are carrying out projects in Papua New Guinea and South Africa that perpetuate negative gendered and environmental impacts.<sup>119</sup> It urges that the state establish legal frameworks and monitoring mechanisms to ensure that agro-industrial projects and extractive industries do not undermine women's rights, even when the private actor operates outside the territory of the state.<sup>120</sup> It also recommends that free, prior and informed consent be obtained from local women whose land or resources will be affected by any project, that there be adequate benefit sharing arrangements and provision of adequate alternative lifestyles.<sup>121</sup> Arguably, there is space to focus the insights into the structural dimension of women's substantive equality more to bear on reconfiguring the role of private actors.<sup>122</sup> It may be strategic on the part of the CEDAW Committee to build buy-in and legitimacy by focusing on regulating or managing economic activity. The structural dimension of an equality approach to climate change, however, can be used to question assumptions on the sustainability of constant growth.<sup>123</sup> For instance, the CEDAW Committee could consider recommendations that eliminate and prohibit commercial activity that undermines women's equality and does serious damage to the natural environment.

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<sup>118</sup> 'Concluding Observations: Eritrea' (n 84) [43]; 'Concluding Observations: Australia' (n 91) [29]; CEDAW Committee, 'Concluding Observations: Ethiopia' (2019) CEDAW/C/ETH/CO/8 [45].

<sup>119</sup> 'Concluding Observations: Australia' (n 89) [29].

<sup>120</sup> *Ibid.*, [30]; 'Concluding Observations: Eritrea' (n 84) [44], 'Concluding Observations: Mozambique' (n 45) [40(b)]; 'Concluding Observations: Suriname' (n 96) [20]–[21].

<sup>121</sup> 'Concluding Observations: Australia' (n 91) [30]; 'Concluding Observations: Guyana' (n 53) [44]; Beth Goldblatt and Shireen Hassim, "'Grass in the Cracks": Lessons from Xolobeni for Gender Struggles for Climate Justice' in this volume; Lisa Chamberlain, 'The Value of Litigation to Women Environmental Human Rights Defenders in South Africa' in this volume.

<sup>122</sup> UN Special Rapporteur on extreme poverty and human rights, 'Privatization and Human Rights' (2018) A/73/396.

<sup>123</sup> Richard Douthwaite, *The Growth Illusion* (Green Books 1992) 286.

### (iii) Extraterritoriality

There are no textual provisions on the jurisdictional scope of CEDAW, and the exact extent of its extraterritorial reach is uncertain.<sup>124</sup> The CEDAW Committee is using climate change to explore the boundaries of the state's obligations. General Recommendation No. 37 observes that 'States have obligations both within and outside of their territories'.<sup>125</sup> States are urged to ensure that actions in their own territory do not cause gendered environmental damage in another state. They should 'limit fossil fuel, reduce transboundary pollution and greenhouse gas emissions and promote the transition to renewable energy'.<sup>126</sup> In the Concluding Observations, the CEDAW Committee is pinpointing specific states and actions. The US nuclear testing programme from the 1940s to 1950s is identified as causing ongoing gendered health problems in the Marshall Islands, and Saudi Arabia is brought to task for inflicting environmental damage in Yemen.<sup>127</sup>

The CEDAW Committee also draws attention to the global inequalities that underpin climate change. General Recommendation No. 37 observes that 'low-income, climate vulnerable countries face particular challenges' and do not have the resources to 'develop, implement, and monitor gender-responsive disaster risk and climate change policies'.<sup>128</sup> States that are particularly vulnerable to climate change such as Antigua and Barbuda are encouraged to 'continue to seek technical and financial assistance from the international community for post-disaster recovery programmes'.<sup>129</sup> While the CEDAW Committee acknowledges the global unequal consequences of climate change and their relation to women's rights, there is little discussion of the responsibility of states for climate change.<sup>130</sup> There is only one instance where the CEDAW Committee singles out a state from the Global North, Australia, for providing limited humanitarian assistance to surrounding small islands.<sup>131</sup> It

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<sup>124</sup> Andrew Byrnes and Meghan Campbell, 'Article 2' in Patricia Schulz, Ruth Halperin-Kaddari, Marsha Freeman and Beate Rudolf (eds), *CEDAW: Commentary* (2nd edn, Oxford University Press forthcoming).

<sup>125</sup> 'General Recommendation No. 37' (n 5) [43].

<sup>126</sup> *Ibid.*

<sup>127</sup> 'Concluding Observations: Marshall Islands' (n 57) [8]–[9]; CEDAW Committee, 'Concluding Observations: Saudi Arabia' (2018) CEDAW/C/SAU/CO/3-4 [53]–[54].

<sup>128</sup> 'General Recommendation No. 37' (n 5) [44].

<sup>129</sup> 'Concluding Observations: Antigua and Barbuda' (n 73) [10(d)].

<sup>130</sup> Sarah Mason-Case and Julia Dehn 'Redressing Historical Responsibility for Unjust Precarities of Climate Change in the Present' in Benoit Mayer and Alexander Zahar (eds), *Debating Climate Law* (Cambridge University Press 2021); OxHRH, 'Litigating for Climate Justice: Views from the Frontlines' <https://ohrh.law.ox.ac.uk/litigating-for-climate-justice-views-from-the-frontline/> (accessed 8 September 2021).

<sup>131</sup> 'Concluding Observations: Australia' (n 91) [29]–[30].

could go further and assess ‘differing contributions to global degradation’ and shine the spotlight on the ‘historic and moral responsibility of States’.<sup>132</sup> For instance, the CEDAW Committee could encourage developed states to contribute their fair share of aid to low-income countries to mitigate the gendered dimensions of climate change.<sup>133</sup>

#### **(iv) Participation**

Although there has been some progress, the global climate regime continues to be dominated by ‘white, wealthy, males’ and women are ‘ignored, silenced and excluded’.<sup>134</sup> The CEDAW Committee’s primary remedial approach to climate change is through enhancing women’s participation in decision making. The overwhelming impression from evaluating the General Recommendation No. 37 is that women must participate in all decision making on climate change and disaster risk reduction and must be active in ‘conceptualizing, developing and using disaster risk reduction and climate science technologies’.<sup>135</sup> In every Concluding Observation where the CEDAW Committee engages with climate change, it advocates for women’s participation. While this may appear simplistic, it is of vital importance as women’s voices are still excluded and marginalized in climate discourse.<sup>136</sup> For instance, Laos and Kiribati are critiqued for the limited participation of women in programmes and mitigation policies on climate change and disaster risk reduction.<sup>137</sup>

The CEDAW Committee is fleshing out the nuances of women’s equal participation. It requires that women’s participation be full, effective, influential active and meaningful.<sup>138</sup> Women’s participation must be guaranteed at all stages of formulation, preparation and implementation, at all levels of decision making, including in leadership positions and at the community, local,

<sup>132</sup> Wilkinson Cross, ‘Comparing the Transformative Potential’ (n 92) 46–47.

<sup>133</sup> UN Special Rapporteur on human rights and the environment, ‘Safe Climate’ (2019) A/74/61 [68].

<sup>134</sup> Morrow, ‘Tackling Climate Change’ (n 3) 218.

<sup>135</sup> ‘General Recommendation No. 37’ (n 5) [54(f)].

<sup>136</sup> Maguire, ‘Gender, Climate Change and UNFCC’ (n 4); Karen Morrow, ‘Gender in the Global Climate Governance Regime: A Day Late and a Dollar Short?’ in Gunnhildur Lily Magnúsdóttir and Annica Kronsell (eds), *Gender, Intersectionality and Climate Institutions in Industrialised States* (Routledge 2021); UN Frameworks for Climate Change, ‘Gender Composition’ (2019) FCCC/CP/2019/9.

<sup>137</sup> ‘Concluding Observations: Kiribati’ (n 52) [45]; CEDAW Committee, ‘Concluding Observations: Laos’ (2018) CEDAW/C/LAO/CO/8-9 [51].

<sup>138</sup> ‘General Recommendation No. 37’ (n 5) [7]; ‘Concluding Observations: Eritrea’ (n 84) [49]; CEDAW Committee, ‘Concluding Observations: Mexico’ (2018) CEDAW/C/MEX/CO/9 [44]; CEDAW Committee, ‘Concluding Observations: Chile’ (2018) CEDAW/C/CHL/CO/7 [43].



national, regional and international level.<sup>139</sup> The recognition dimension is used to strengthen the participation dimension of substantive equality. It is vital to emphasize that women are heterogeneous and their different experiences and identities will shape their views on how to respond to the climate crisis. States must ensure that women living in rural communities,<sup>140</sup> Indigenous women,<sup>141</sup> disabled and migrant women can participate.<sup>142</sup> Building upon the disadvantage and participation dimension, states must allocate sufficient resources to overcome barriers to women's participation.<sup>143</sup> States should develop programmes to build and facilitate women's leadership and support women's civil society organizations working in climate change with adequate resources, skills and authority.<sup>144</sup> The CEDAW Committee encourages states to use temporary special measures 'as one element of a coordinated and continuously monitored strategy to achieve women's equal participation'.<sup>145</sup>

Women's participation in climate discourse must not be tokenistic but meaningful in that it creates space for women to make changes and influence outcomes.<sup>146</sup> One of the current tools to redress the structural and participation elements of substantive equality is an entwined environmental-gendered impact assessment (EGIA).<sup>147</sup> All environmental impact assessments, climate and disaster policies must include a gender assessment.<sup>148</sup> These can be tools for women to participate and voice their concerns and ideas on women's equality and the natural environment. EGIA should be transparent, independent, recognize the leadership of women, particularly rural and Indigenous women, and be widely disseminated.<sup>149</sup> The CEDAW Committee warns states that EGIA should not be collapsed into a performative tick-box exercise, but should have a substantive influence on law and policy. It urges Guyana to amend its legislation to include a gender analysis in all environmental impact assessments

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<sup>139</sup> 'Concluding Observations: Zimbabwe' (n 45) [47]; 'Concluding Observations: Mexico' (n 138) [43]; 'Concluding Observations: Japan' (n 58) [44]; 'General Recommendation No. 37' (n 5) [36].

<sup>140</sup> 'Concluding Observations: Cambodia' (n 69) [42].

<sup>141</sup> CEDAW Committee, 'Concluding Observations: Congo' (2018) CEDAW/C/COG/CO/7 [45]; 'Concluding Observations: Antigua and Barbuda' (n 73) [51(b)]; 'Concluding Observations: Suriname' (n 96) [43].

<sup>142</sup> 'General Recommendation No. 37' (n 5) [78]

<sup>143</sup> *Ibid.*, [26].

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*, [36].

<sup>146</sup> Pearse (n 88); Ulrike Rohr, 'Gender Carbon Footprints: Gendered Mitigation Policy' (2012) UN Climate Change Conference (COP 18) cited in Gaard (n 98).

<sup>147</sup> 'General Recommendation No. 37' (n 5) [42(c)].

<sup>148</sup> *Ibid.*; 'Concluding Observations: Guyana' (n 53) [44].

<sup>149</sup> 'Concluding Observations: Ethiopia' (n 118) [46]; 'Concluding Observations: Australia' (n 91) [30].

and ‘to monitor the implementation of those assessments’.<sup>150</sup> The Concluding Observations on Belarus and the Bahamas urge the states to ‘ensure that the results of the gender assessment undertaken following the recent hurricanes are used in development and implementation of future policies and programmes on disaster risk reduction and climate change’.<sup>151</sup>

## CONCLUSION

Climate change and disasters precipitate and cement women’s inequality. The CEDAW Committee advocates that measures to respond to the climate crisis take account of women’s unequal position and structural gender barriers. Accounting for the synergies between climate change and discrimination against women also clarifies that the role of women in climate discourse is neither as vulnerable victims nor virtuous saviours. General Recommendation No. 37 frames women as agents of change who should participate in all decision making and can bring a wide range of valuable and experiential knowledge to the table. Climate change is also pushing forward the boundaries of CEDAW, prompting the CEDAW Committee to focus on aspects of women’s equality that it has previously ignored in its monitoring work, including the role of race and poverty, the right to food and water, corporate actors and extraterritoriality.<sup>152</sup> Going forward, as the CEDAW Committee continues to develop further an equality approach to climate change, it can, among other matters, examine stigma against migrant, lesbian, bisexual, trans, younger, older, and Global South women in climate change policies and discourse.<sup>153</sup> It can also interrogate the underlying root causes of ecological degradation. The CEDAW Committee can challenge dominant ideologies on endless economic growth and probe whether the climate crisis can be solved solely through technocratic solutions. It can emphasize the need to dismantle hierarchies between men and women and the human and natural world. The role of the state in leading these efforts should be centred, as well as the need for greater cooperation across territorial boundaries.

Climate change already acts as an obstacle to women’s equal human rights, and unless drastic action is taken, it will continue to perpetuate and reinforce

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<sup>150</sup> ‘Concluding Observations: Guyana’ (n 53) [44].

<sup>151</sup> ‘Concluding Observations: Bahamas’ (n 87) [48]; CEDAW Committee, ‘Concluding Observations: Belarus’ (2016) CEDAW/C/BLR/CO/8 [35].

<sup>152</sup> Campbell, ‘Birds of a Feather’ (n 44).

<sup>153</sup> Simm, ‘Disaster and Gender’ (n 29), critiques the lack of attention to sexual orientation and gender identity in General Recommendation No. 37; Cathi Albertyn, ‘Radical Connectedness? Reproductive Rights, Climate Justice and Gender Equality’ in this volume.

discrimination against women. Bringing a substantive equality lens to the climate crisis has a rich promise for ambitiously, positively and radically transforming the systems, value and ideologies that oppress women, other marginalized-groups, and the natural environment.

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