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The Gendered Nature of Climate Change and the Quest for Justice

Rights-Based Climate Litigation as a Pathway to Climate and Gender Justice

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ABSTRACT

The impacts of climate change are felt by everyone around the world, yet the effects are not experienced equally. Women and girls are more vulnerable due to deeply entrenched social norms and gender roles. However, women and girls are not a homogenous group in a changing climate. Their experiences are diverse, shaped by intersecting inequalities and oppression. This thesis aims to shed some light on the intricate connections between climate change, gender, and human rights, by specifically exploring how a rights-based approach to climate litigation can contribute to achieving climate and gender justice. The first chapters lay the groundwork by analyzing the gendered impact of climate change. The subsequent chapter focuses on the importance of integrating human rights principles into climate action to achieve climate and gender justice. It then discusses the potential of rights-based climate litigation in this context. Further, it argues that the recognition of ecocide as an international crime can enhance climate justice and gender justice efforts. Ultimately, the thesis concludes that while rights-based climate litigation is crucial, achieving true climate and gender justice requires a holistic re-evaluation of power dynamics and structural inequalities, advocating for a shift from an anthropocentric to an ecocentric perspective.

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LIST OF ABBREVIATIONS

ACHPR – African Charter on Human and Peoples’ Rights

ACHPR – African Commission on Human and Peoples’ Rights

ACtHPR – African Court on Human and Peoples’ Rights

AR5 – Fifth Assessment Report

AR6 – Sixth Assessment Report

AU – African Union

CEDAW – Committee on the Elimination of Discrimination against Women

CEED – Climate, Environment, Energy, and Disaster Risk Reduction

CESCR – Committee on Economic, Social and Cultural Rights

CJE – Court of Justice of the European Union

DETEC – Department of the Environment, Transport, Energy, and Communications

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

ESCR – Economic, Social and Cultural Rights

EU – European Union

IACHR – Inter-American Commission on Human Rights

IACtHR – Inter-American Court of Human Rights

ICC – International Criminal Court

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

ICJ – International Court of Justice

IPCC – Intergovernmental Panel on Climate Change

NGO – Non-governmental organisation

OAS – Organization of American States

OHCHR – Office of the United Nations High Commissioner for Human Rights

SDGs – Sustainable Development Goals

SFSC – Swiss Supreme Court

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNDP – United Nations Development Programme

UNESCO – United Nations Educational, Scientific and Cultural Organization

UNGA – United Nations General Assembly

UNGPs – United Nations Guiding Principles on Business and Human Rights

UNICEF – United Nations International Children's Emergency Fund

WASH – Water, Sanitation, and Hygiene

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INTRODUCTION

Climate, Gender, and Human Rights. These concepts may initially appear as unrelated issues. However, a deeper examination reveals how these seemingly distinct concepts, influence and shape each other. Climate change affects everyone, yet not everyone suffers its harms equally. Women and girls are among the vulnerable groups that bear a disproportionate burden (Sidun and Gibbons, 2024). Social norms and pre-existing disparities exacerbate the impacts of climate change on women, while climate change aggravates existing social inequalities, leading to a perpetuation of climate and gender injustice (Fruttero *et al.*, 2023). The gendered impacts of climate change go beyond environmental concerns, encompassing social and moral aspects and significantly affecting the human rights of women and girls (Abid *et al.*, 2018). Despite the critical intersections among climate change, gender, and human rights, there remains a notable gap in the comprehensive understanding of these relationships and their implications. By examining these linkages, this thesis aims to shed light on how the human rights framework can be employed to tackle gender and climate injustice, seeking to answer the following research question:

“Can rights-based climate litigation contribute to achieving climate and gender justice, especially considering the disproportionate impact of climate change on women and girls?”

In order to answer this quest, the following sub-questions must be explored a priori:

“How does climate change disproportionately affect women and girls?”

“Why a human rights-based approach to climate action is essential to address climate justice issues, particularly those affecting women and girls”

Responding to the aforementioned questions is an essential step toward offering a nuanced understanding of the research topic, enabling a critical assessment of the current complexities involved and providing a thorough analysis. Grounded in them, the thesis is structured around three main sections.

The first section of the thesis comprising two chapters, focuses on the impact of climate change on gender dynamics. Chapter One introduces the key concepts of climate change, climate justice, gender, and gender justice, laying the groundwork for the analysis that follows. The second chapter delves into the gendered impact of climate change, emphasizing domains where the disproportionate effects on women and girls are most profound.

The second section of the thesis focuses on the necessity of a human rights-based approach to climate action. Chapter Three examines the nexus between climate, gender, and human rights. It discusses how a human rights-based approach to climate action can contribute to achieving climate and gender justice. Followingly, it provides an overview of the international human rights framework. It moves on to present the obligations that the human rights agenda imposes on states and other actors, as well as the specific human rights obligations and responsibilities concerning gender and climate change. Lastly, the chapter highlights the human rights of women and girls that are at stake due to the climate change impacts.

The third section of the thesis, consisting of two chapters, explores the potential of rights-based climate litigation in advancing climate and gender justice. Chapter Four offers insight into the structure, jurisdiction, and functioning of international courts that may have jurisdiction over climate change and human rights issues. Further, it discusses how climate change litigation using human rights arguments and remedies can address climate and gender injustices. Finally, this chapter concludes with an analysis of emerging cases of women-led rights-based climate litigation that bring forward the application of human rights to women's vulnerability to the implications of climate change. The fifth chapter takes a look at the existing challenges of rights-based climate litigation and argues that the recognition of ecocide as an international crime against global peace can enhance climate justice and, therefore, gender justice efforts.

Ultimately, the thesis concludes that, albeit invoking human rights in climate litigation can play a crucial role, attaining climate and gender justice involves a holistic re-evaluation of existing power dynamics and structural inequalities. It calls for a fundamental shift from an anthropocentric to an ecocentric perspective, facilitating a transformation to a more sustainable and just society for all forms of life on this planet. The integration of ecocide into the international criminal justice system, informed by human rights principles, is seen as pivotal in embracing this ecocentric philosophy and catalyzing the necessary societal transformation.

METHODOLOGY

In order to answer the main research question on the potential of rights-based climate litigation in achieving climate and gender justice and portray the intricate connections between climate change, gender, and human rights, this study employs a multidisciplinary approach, combining literature review, legal analysis, case study examination and critical evaluation to achieve its objectives. Insights from international law, gender studies, environmental science, and human rights are synthesized to offer a comprehensive understanding of the research topic.

Throughout the study, the research questions will guide the analysis. Notably, the question regarding the gendered impact of climate change will be addressed through the literature review. The question with regard to the necessity of a human rights-based approach to climate action will be explored through legal analysis, while the principal research question on the role of rights-based climate litigation in advancing climate and gender justice will be investigated through legal analysis and case studies. A critical assessment will also be conducted, based on a literature review. This assessment will merge all aspects, providing a reflective overview of the methods used and their effectiveness.

The study commences with reviewing existing literature from academic journals, books, reports from international institutions such as the United Nations, and relevant case studies on climate change and gender studies. This literature review establishes a theoretical foundation concerning the disproportionate gendered impacts of climate change. Key documents and reports, including the Intergovernmental Panel on Climate Change (IPCC) reports, UN Women and United Nations Environment Programme (UNEP) publications, and works by leading scholars, will be central to this review.

Subsequently, a legal analysis of international human rights law is conducted, focusing on their application to the climate change and gender context. This includes international treaties, inter alia the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), declarations, such as the Universal Declaration on Human Rights (UDHR), legal statutes, including as the Rome Statute of the International Criminal Court, judicial decisions such as *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, and specific gender-related provisions within these frameworks.

The study then proceeds to a case study analysis to provide empirical evidence and practical examples of how rights-based climate litigation can advance gender and climate justice, with specific attention to women-led cases. Two prominent cases, *KlimaSeniorinnen v. Switzerland* and *Maria Khan v. Pakistan*, are chosen for detailed examination, as they underscore the gender-specific impacts of climate change, using human rights arguments.

Finally, it provides a critical evaluation of the effectiveness of a human rights-based approach in addressing climate and gender injustice. This involves identifying barriers to effective litigation and exploring potential breakthroughs that can compound climate litigation in achieving its goals.

I. CLIMATE CHANGE AS A GENDERED PHENOMENON

I.1. The Climate Crisis

One of the most pressing challenges of humanity today is combating climate change and addressing the challenges it brings about. To fully comprehend this issue, it is crucial to begin by exploring the nuances of climate change and its underlying causes.

To begin with, climate change is defined as the alterations in the state of the climate over extended periods, driven by natural or human-induced factors (IPCC, 2018). Throughout millions of years, the Earth has experienced fluctuations between warmer and colder climates. While these shifts can occur naturally, human activities have acted as catalysts in warming the climate (Calvin *et al.*, 2023).

Human activities have disrupted the natural balance by significantly increasing the concentration of greenhouse gases in the atmosphere, especially carbon dioxide and methane, driving climate change. The humankind is unequivocally to blame for global warming. In light of the Sixth Assessment Report (AR6) of the Intergovernmental Panel on Climate Change (IPCC), there is extensive evidence to suggest that the ongoing surge in global greenhouse gas emissions is attributed to anthropogenic activities concerning unsustainable energy use, land use, land-use changes and forestry, lifestyle choices, and consumption and production patterns. The burning of fossil fuels, the widespread deforestation, and the intensified industrial, transportation, agricultural, and building activities are among the primary contributors to the climate crisis (Calvin *et al.*, 2023).

Climate is changing faster than nature can adapt to it. The IPCC has underscored the immense challenge of limiting global warming to 1.5°C (IPCC, 2022b), an aim outlined in the Paris Agreement (United Nations Framework Convention on Climate Change, 2015). The significant increase in greenhouse gas emissions over the last decade has led to a rise in global surface temperatures to 1.1°C above pre-industrial levels during the period from 2011 to 2020. With each incremental rise in temperature, the risks escalate dramatically, resulting in the proliferation and intensification of extreme weather events, inter alia droughts, heatwaves, heavier rainfall, and tropical cyclones. Such weather extremes have detrimental impacts on ecosystems, human rights, and the livelihoods of people across all

regions of the world (Calvin *et al.*, 2023). Every person is affected by the climate emergency, yet not in the same way, arousing concerns about climate (in)justice.

1.2. Climate Justice

Climate justice is a response to the climate emergency caused by human actions impacting the planet. In the name of self-interest and profit, humanity has treated the Earth as an infinite bank of resources, leading to extensive environmental degradation. This instrumental exploitation has posed an existential threat to all forms of life on our planet, underscoring the imperative for climate justice (Arcaya and Gribkoff, 2022).

The asymmetries between the ones who possess the power to determine the trajectory of climate change and those who suffer the most from the consequences of their environmentally degrading actions, whose voices are typically silenced or marginalized, are a result of the age of Anthropocene. The Anthropocene is the new geological epoch that humanity has entered wherein human activity is the primary driver of climate change (Skillington, 2017). This era is characterized by the deeply rooted cosmivision of anthropocentrism; the belief that places humans at the center of the universe by considering humankind the utmost value. This perception implies that all other beings are solely viewed as a means, serving the ultimate purpose of benefiting humanity. This concept of human dominance over the ecosystem promotes a utilitarian approach to nature, where nature is seen primarily as a resource to be exploited for human interests. Nevertheless, this approach disregards the interconnectedness between humans and the natural world; human beings, as all beings on Earth, are dependent upon nature and are ultimately part of it (Kopnina *et al.*, 2018).

The climate emergency that humanity is called to confront is both an environmental and a social crisis, within which different manifestations of oppression intersect and interplay (Mikulewicz *et al.*, 2023). Acknowledging that climate change is a two-fold challenge, entailing both environmental and social justice aspects, the concept of climate justice interweaves the principles of environmental justice and fairness. Environmental justice asserts that all living beings have a natural right to resources that are necessary for their survival and the right to live free from harm (Aliozi, 2021), while fairness requires equitable treatment of individuals (IPCC, 2022a). This concept extends beyond considering climate

change as a mere environmental issue. It also encompasses ethical, equality, and rights-related concerns regarding the causes and impacts of the climate crisis, as well as efforts to address it (Aliozi, 2021).

Climate change is a matter of justice; the injustices of climate change extend to the full spectrum of human rights, disproportionately affecting those who have contributed the least. The most vulnerable countries to climate extremes are responsible for the smallest impact on global warming overall (Calvin *et al.*, 2023). Studies have shown that even though the Global North accounts for 14% of the world population, they are liable for 92% of historical carbon dioxide emissions (IPCC, 2014). This susceptibility derives from various factors, such as gender, poverty, geographical location, age, sex, (dis)ability, migration status, religion, race, and cultural or ethnic background. As a consequence, women, Indigenous communities, rural populations, farmers, migrants, minors, persons with disabilities, inhabitants of small island developing states and the Global South, and other people prone to be left behind are excessively at risk from the severe consequences of climate change (United Nations Human Rights Council, 2022).

Calling for climate justice means holding nations and powerful corporations, that have accumulated wealth through emitting the most greenhouse gases accountable for their actions and urging them to fulfill their climate debt obligations to the rest of the world (Arcaya and Gribkoff, 2022). It advocates for a human-centered approach that protects the rights of vulnerable populations, ensuring fairness in environmental decision-making, as well as the distribution of the burdens and benefits of addressing climate change and its impacts. By introducing the idea of allocating the responsibilities for combatting the climate crisis according to those contributing most to the problem (United Nations Development Programme, 2023), it seeks to relieve the disproportionate load carried on the backs of the disempowered and vulnerable individuals and peoples. Finally, climate justice constitutes an endeavor to combat the climate emergency by tackling the deep-rooted inequalities within development and power structures that both contribute to climate change and sustain injustice (Jafry, 2018). Thus, climate justice is a framework that offers a holistic approach to addressing climate change, incorporating the human rights paradigm that respects and upholds the dignity, well-being, and rights of all individuals and communities (Mandelli, 2022).

This thesis will specifically focus on examining the unequal implications of climate change on women and girls and the potential contribution of the integration of human rights into climate legal action to achieving climate and gender justice.

1.3. The Concept of Gender

Before expanding on the impacts of climate change on women, it is crucial to provide an overview of the concepts of gender and gender justice, setting the stage for probing the intersections between gender, human rights, and climate.

In the past, sex and gender were often used interchangeably. However, contemporary perspectives have suggested a distinction between these notions. Sex generally pertains to the classification of individuals based on their biological features, adhering to the traditional dichotomy of maleness and femaleness. Conversely, gender is typically linked to the socially constructed norms and behaviors associated with femininity and masculinity (Lips, 2020). There persists a tendency today to perceive gender as a binary category in which females and males, girls and boys are understood as two separate, antagonistic groups within society. Subsequently, all persons whose sex or gender identity does not meet social expectations are systematically disempowered and marginalized.

Gender is a more complex issue than solely a matter of gender identity, or what society teaches us regarding the way that boys and girls, women and men should or should not behave. Gender also serves as a mechanism for organizing power dynamics within society (Risman, 2018). According to Risman (2018), gender should be conceived as a social structure with implications at various levels, namely for individual selves, interactional expectations of others, and social institutions. The individual level concerns the way people do gender, in which gender socialization plays a central role; it encompasses personal beliefs, feelings, and experiences related to gender. The interactional level refers to societal expectations regarding how individuals should behave based on their perceived gender. Finally, the institutional level encloses the social structures and systems shaping gender relations, including legal systems and economic and political structures. Risman (2018) further distinguishes between the material elements, like the distribution of resources, and cultural processes, such as stereotypes, norms, and beliefs, within these levels. This gender structure is viewed as a system that produces and reproduces gender inequality in all aspects of life.

Gender issues are highly complicated and transcend the scope of this research. The objective of this thesis is to examine how the climate crisis disproportionately affects women and girls and how a rights-based approach in climate litigation could promote climate and gender justice. While the thesis primarily adopts a binary approach to gender, it does not overlook the concept of gender heterogeneity. Women and men are not two homogenous categories; other social and cultural aspects intertwine with

gender, shaping individuals' differing experiences of the implications of climate change (Walker *et al.*, 2019)

1.4 Gender Justice

As mentioned, gender operates as a system through which power is distributed within various social contexts. From family settings to broader societal structures, be it in political, economic, or religious fields, society is structured unequally, wherein men tend to be the favorable gender in whose hands social power is concentrated. This patriarchal structure leads to the marginalization of other gender groups who are deemed inferior or divergent from societal norms. The status quo contributes to their social exclusion and undervaluation, hindering progress toward a more equitable and just society wherein all individuals are treated with respect and have equal opportunities (Htun, 2018).

Gender equality implies that all people, irrespective of their gender, are granted equal opportunities to engage in the political, economic, and social spheres, and are regarded as autonomous beings with dignity and rights that enable them to flourish. It also emphasizes that no gender group experiences disadvantages or discriminatory treatment (Htun, 2018). Further, gender justice not only acknowledges the systemic gendered-based inequalities but also encompasses taking concrete actions to address and redress these disparities to achieve gender equality (Maitrayee Mukhopadhyay, 2007).

Gender and climate issues are intrinsically linked, as the effects of climate change vary by gender, due to social and cultural expectations and roles. Even though climate change is usually perceived as an Anthropocene, the implications of climate change are not uniform for every individual; some bear more responsibility than others; certain people wield greater power to shape climate change policies. These imbalances are highly gendered in every corner of the world. Ignoring this reality aggravates entrenched injustices and impedes efforts to tackle the environmental crisis (Perkins, 2018). Ecofeminist theories attribute the gender-differentiated impact to historic structures, cultural norms, and social dynamics that position women primarily as caregivers, providers, and collectors of the necessary resources for the household. These roles create direct connections to the environment, especially in the Global South, rendering women more susceptible to climatic and environmental changes. Moreover, ecofeminist scholars argue that the environment and women are two reflections of exploitation within the current political system and its patriarchal structures. As a result, environmental degradation is particularly

consequential for women, undermining their position of power within society and amplifying gender disparities (McKinney and Fulkerson, 2015). In response to these issues, social ecofeminism calls for climate justice that prioritizes women (Simon-Kumar *et al.*, 2017; Mary Robinson Foundation - Climate Justice, 2018).

Gender is the most significant facet of climate justice. Women, who bear the brunt of climate change, represent half of humanity. Acknowledging the unjust effects of the climate catastrophe on women underscores the urgency of mitigating these impacts as a matter of fairness and equity (Perkins, 2018). Feminist climate justice emphasizes the importance of integrating a gendered perspective into climate change discourse, which necessitates acknowledging the existing gender inequalities, and how climate change serves as an amplifier of these disparities (MacRae and Weiner, 2017). Over the past two decades, the frequency of climate hazards has nearly doubled, exacerbating the risks faced by women and girls. Due to gender inequalities women and girls are more susceptible to these climate hazards concerning both direct effects and their ability to recover in the aftermath (Turquet *et al.*, 2024). This reinforces the interdependency of climate justice and gender justice and the idea that the pursuit of one cannot be achieved without the other.

However, when considering the impacts of climate change on disadvantaged groups, such as women, the concept of intersectionality should not be disregarded. Originating from Black feminist activism, *intersectionality* was first conceived by Kimberlé Williams Crenshaw, an American critical race legal scholar, in 1989. Crenshaw used the term to describe the two-faceted discrimination Black women face from both racism and sexism. Notably, she defined intersectionality as “a metaphor for understanding the ways that multiple forms of inequality or disadvantage sometimes compound themselves and create obstacles that often are not understood among conventional ways of thinking” (Crenshaw, 2015, p. 149). Viewing women as a monolithic group carries the risk of essentialism—the overly simplistic idea that the experiences of one group, like white middle-class women, mirror the experiences of every woman. Intersectionality rejects this perception by exploring the distinct inequalities arising from different power dynamics based on gender, race, age, disability, etc. These axes of oppression intersect and shape one another, creating unique social experiences (Hefti, 2024). As Patricia Monture-Angus, a Mohawk lawyer and activist, put it, vividly illustrating intersectionality through her own lived experience:

“I am not just woman. I am a Mohawk woman. It is not solely my gender through which I first experience the world, it is my culture (and/or race) that precedes my gender. Actually, if I am object of some form of

discrimination, it is very difficult for me to separate what happens to me because of my gender and what happens to me because of my race and culture. My world is not experienced in a linear and compartmentalized way. I experience the world simultaneously as Mohawk and as woman” (Monture-Angus, 1995, p. 177).

Furthermore, gender equality has a dual imperative- it is not only a vital part of the Sustainable Development Goals (SDGs) but also a prerequisite for achieving sustainability (Singhal, 2022). Gender equality is core to the 2030 Agenda, acknowledged as a fundamental human right and deemed significant enough to be pursued as its own distinct goal, together with 16 other SDGs. Within this Agenda, gender equality serves as a cross-cutting theme in the implementation of the SDGs, while gender inequality is identified as a hindrance to progress (Leal Filho *et al.*, 2023). Therefore, by recognizing and addressing climate change through a gendered lens, societies can strive towards cultivating more equitable and sustainable futures for all. To attain this goal, utilizing the human rights framework in climate action can play a pivotal role, yielding benefits for both humanity and the planet.

While this thesis will primarily focus on gender equality and justice, in the context of climate change, in relation to women and men, it is crucial to acknowledge that the environmental crisis also presents unique challenges for members of the LGBTQIA+ community. Apart from the direct impacts of climate change, these people confront the additional burden of stigmatization, discrimination, and societal marginalization, which can exacerbate their susceptibility and constrain their capacity to manage environmental changes (Anschell, 2021). On the other hand, while the thesis recognizes the different effects of climate change on women, it does not assume that men are immune to the climatic effects. The impact of climate change surpasses gender lines, affecting individuals of all genders differently, to varying degrees.

II. IMPACT OF CLIMATE CHANGE ON GENDER

Power dynamics and socially constructed gendered norms can result in climate change impacting women and girls in an inequivalent way compared to men. This susceptibility overlaps with numerous forms of inequalities, including urban or rural location, class, income, disability, age, cultural or ethnic background, and sexual orientation, magnifying the challenges they may face in coping with climatic changes (UN Women, 2022). The intersectional gender perspective in understanding vulnerability to climate change examines how power structures within specific social contexts influence the experiences of individuals and communities (Kaijser and Kronsell, 2014). Climate injustice is gendered (Buckingham, 2010; McKinney and Fulkerson, 2015; Tuana, 2016; Robinson, 2019) and can be manifested in various ways, including agriculture, biodiversity, water and sanitation, health, personal safety, and decision-making. These areas are among the domains where gender disparities intersecting with environmental challenges caused by climate change are particularly pronounced, highlighting the multi-faceted nature of the phenomenon. Further exploration of each of these domains will be undertaken in the forthcoming subchapters. While this chapter predominantly examines the gendered impacts of climate change within the Global South, where women’s vulnerabilities to climate change impacts are heightened (Kibria, 2016) it also draws connections to the Global North, providing a broad perspective on how gendered climate issues unfold globally.

II.1 Agriculture

Across the globe, approximately 25 percent of employed women work in agriculture, forestry, and fishing, with agriculture remaining the primary sector of employment for women in low-income and lower-middle-income nations (Economic and Social Council, 2022). Women account for the majority of those who rely on natural resources for their sustenance, particularly in rural communities where occupational opportunities are limited. In the Global South, women farmers produce 45-80 percent of the total food production in these countries (Sidun and Gibbons, 2024). Approximately two-thirds of the female labor force in the Global South and about 90 percent in numerous African countries is engaged in the agriculture field (UN WomenWatch, 2009).

An increase in floods and droughts due to the environmental crisis has severe ramifications for traditional food sources. Climate change diminishes the predictability and scarcity of food sources, leading to income and harvest losses. For many women in rural areas globally, this can be catastrophic, as crops may be their sole source of sustenance and they are typically assigned with the responsibility of securing and providing food for their families. Furthermore, the subsequent surge in food prices stemming from the declined yields increases the risk of hunger, particularly for poor individuals and women, given that they represent most of the world's poor (UN WomenWatch, 2009). Besides, women and girls are found to be exceptionally prone to food insecurity during periods of food shortage (Turquet *et al.*, 2024). When climate-related poor harvests, lead to food scarcity, women are generally the ones who decrease their food intake, letting the rest of the family eat first (Kibria, 2016; United Nations Development Programme, 2022).

Agricultural susceptibility to climate change lies upon cropping methods, land access, and the utilization of farming resources and equipment, which is highly gendered, as women tend to be excluded from land access, resources, farming input, and sources of knowledge (Global Gender and Climate Alliance, 2016). Notwithstanding women predominate in world food production, they account for less than 13 percent of agricultural landholders globally (Economic and Social Council, 2022). In rural areas around the world, even when women do possess land rights, the land they control tends to be smaller in size and of inferior quality compared to that owned by men (Quisumbing, Kumar and Behrman, 2018; Food and Agriculture Organization of the United Nations, 2024). Additionally, within these communities, women tend to experience limited access to financial resources and agricultural inputs, such as seeds, fertilizer, and supplies of water for irrigation, which hampers their adaptation efforts and exacerbates their vulnerabilities to the perils of climate change. Apart from that, rural women and men have unequal access to farming knowledge and information regarding adaptation strategies, which in turn affects women's ability to cope with climate shocks (Global Gender and Climate Alliance, 2016). For instance, poor access to information on climate-smart agriculture practices that help farmers reduce the impact of climate risks, improve their agricultural productivity, and lower their field labor requirements, disproportionately affects women farmers (Bernier *et al.*, 2015; Chanana-Nag and Aggarwal, 2020). Consequently, women are more likely to resort to maladaptive practices like reducing food and water intake, making them more vulnerable to the effects of climate change (Segnestam, 2017).

Moreover, gender norms perpetuate wage and productivity gaps in agriculture. Across the globe, women are the main caregivers of children and spend a significant amount of time undertaking the

children's upbringing, as well as on unpaid domestic labor. On a global scale, women dedicate an average of 4.2 hours daily to household chores and care duties, while men spend 1.9 hours on similar tasks (Food and Agriculture Organization of the United Nations, 2024). This pattern of unequal caregiving responsibilities persists in both high- and low-income countries, with women experiencing lower rates of workforce participation, even in countries in the Global North (Detraz, 2023). As a result, they face time constraints for engaging in productive activities, including agricultural work, and they have fewer potential income sources since their job opportunities usually entail part-time, informal, low-paid, and precarious farming work (Habtezion, 2016). Climate change contributes to time poverty of women, as reduced yields mean an increased women's workload (Abid *et al.*, 2018) to cope with climate extremes, given that they often lack the necessary knowledge and equipment. The gendered division of labor and resource allocation also affects the types of farming activities that women are involved in. For instance, women often limit their agricultural pursuits to household use, unlike men who typically engage in commercial farming. This can result in lower monetary returns, aggravating existing gender gaps (Food and Agriculture Organization of the United Nations, 2024). Moreover, in times of climate extremes, which can result in crop failure and financial challenges, social and cultural norms often impede women's mobility. Women are more likely to stay behind to provide food and care for their families, while men can easily leave their homes to seek alternative employment opportunities (Afridi, Mahajan and Sangwan, 2022).

Whether it is in the Global South, where usually women opt to farm out of necessity to support their families with food and income, or in the Global North, where agriculture is often seen as a career opportunity for women, gender norms and biases continue to impact women farmers negatively. In both regions, women constitute the majority of low-income producers who are the ones affected the most by the climate extremes; albeit the extent of climate vulnerability varies due to economic disparities between the Global South and North. In the Global North, institutionalized practices and cultural norms ingrained in society, such as patriarchal laws and land transfer practices, have contributed to farming becoming a male-dominated occupation (Glazebrook, Noll and Opoku, 2020). As most farms operate as family enterprises in the North, inequalities in land access within families further compound the underrepresentation of women in agriculture and undermine their land and resources management options. Furthermore, discriminative practices and gender biases contribute to women's invisibility in national agriculture policies and their exclusion from farming knowledge exchange, like extension services, and positions of power in the farming community. In both areas, domestic economies lack

gender inclusivity and alignment with principles of gender justice, which marginalize women farmers and undermine their resilience to climatic changes (Glazebrook, Noll and Opoku, 2020).

II.2 Biodiversity

The fragmentation and complete disappearance of forests, wetlands, coral reefs, and other ecosystems imperil the variety of life on Earth and their habitats. Biodiversity degradation shrinks the productivity of ecosystems, thereby decreasing the range of goods and services they can provide and affecting the well-being of people reliant on the natural environment for their livelihoods. The differential impact of biodiversity degradation and loss on women is contingent upon how gender roles and relations shape the utilization, management, and preservation of biological diversity. Gender inequalities sway the needs, priorities, roles, responsibilities, and decision-making power of women concerning the utilization and management of biodiversity resources (UN Women, 2018).

In many rural areas, especially in poor communities, biomass, comprised of natural resources, serves as a primary energy source. Amidst these communities, the duty of collecting biomass typically falls to women and girls, who undertake this responsibility predominantly by walking. Due to the scarcity of natural resources caused by climate change, they are coerced to dedicate additional time to travel so as to gather these resources, which exacerbates their time poverty. This can lead to missed opportunities for beneficial activities, including pursuing education, seeking employment, acquiring skills, like reading, or simply resting, sustaining the circle of gender disempowerment (Habtezion, 2018).

As women, particularly those in rural communities in the Global South, heavily rely on the use and consumption of a wide range of natural resources for their livelihoods, they often encounter more challenges than men when these resources are damaged or depleted. Within these societies, women are traditionally assigned to manage the household, including putting food on the table and providing healthcare for their families. They largely handle tasks relating to managing seeds, and searching for food or medicinal herbs, whereas men assume roles in financial decision-making and resource management (UN Women, 2018). Hence, biological diversity is crucial for women's roles within these communities for both nutritional and therapeutical purposes. For instance, women may gather plants and other species to provide food for their families or use them as traditional healers, applying ancient medicinal knowledge to address their health and well-being needs.

In addition, Indigenous peoples maintain a profound connection with their natural environment, depending extensively on fauna, flora, and natural resources for their sustenance. Biodiversity decline, therefore, has remarkable repercussions for them, on the grounds that they rely on Mother Earth for nourishment, medicinal purposes, and preservation of their cultural heritage (International Labour Organization, 2017). Specifically, Indigenous women play a central role in conserving and utilizing biological diversity sustainably and are recognized as “guardians of their traditional and gender-specific knowledge” (Economic and Social Council, 2021, para. 38). Their unique agroecological knowledge is by and large distinct from that of men (UN Women, 2018) and encompasses a deep understanding of the original species of food, medicinal plants, domestic animals, and ecosystem functions. Through their engagement in care and productive activities, they ensure not only their dietary needs but also the realization of their economic, social, and cultural, rights (Catacora-Vargas, 2021). However, climate-induced biodiversity loss hinders tribal women’s endeavors to preserve and develop their ecological knowledge and productivity. This disruption undermines their symbiosis with the ecosystems and ultimately threatens their rights and livelihoods.

II.3 Water And Sanitation

Water is a sacred common good, essential for nurturing all life forms on this planet (UN Women, 2023b). Be that as it may, a fourth of humanity lacks access to safely managed drinking water services (Ritchie, Spooner and Roser, 2024). The repercussions of global warming, inter alia extreme rainfall, prolonged droughts, intense cyclones, and hurricanes, have harmed the balance between people and water resources and contributed to the global water crisis. The weight of this crisis falls heavily on women and girls, particularly those from persistently poor and systematically disadvantaged groups—such as refugee women, Indigenous women, and women with disabilities—where disparities in access to safe drinking water and safely managed sanitation are especially pronounced (Macura *et al.*, 2023; Schmidt, 2023; UN Women, 2023b).

Disparities in access, availability, and quality of drinking water have different effects between women and men. This stems not only from differing needs but also from diverse norms and roles associated with gender regarding service provision. Women and girls are frequently the primary users, providers, and managers of water supplies for their families. For example, they are more likely to take

on the responsibility of providing sufficient water for drinking, preparing food, cleaning, and looking after the children, the elderly, and persons with disabilities at a household level (United Nations Children's Fund and World Health Organization, 2023).

In the Global South women and girls are exposed to intense hardships regarding water carriage, since they are forced to walk longer distances to access water because of the climate-induced water scarcity (Kibria, 2016). Fetching water, besides being physically demanding and dangerous, can be extremely time-consuming, with women and girls spending an average of three to six hours daily on this task. Long journeys on foot impose time limitations on other activities, such as education and income generation (UN Women, 2023b). As Cecilia Sharp, UNICEF Director of Water, Sanitation and Hygiene (WASH) and Climate, Environment, Energy, and Disaster Risk Reduction (CEED), has averred “every step a girl takes to collect water is a step away from learning, play, and safety” (United Nations Children's Fund, 2023).

Access to safe drinking water and sanitation is closely tied to social inequality, particularly affecting women and girls, especially when gender and other social identities intersect (Macura *et al.*, 2023). The absence of these facilities in schools or workplaces, more prevalent in poorer societies in the Global South, presents a significant barrier for women and girls, leading to school absenteeism and reduced performance. Consequently, they may be excluded from the education system, which sets off a domino effect, as it limits their opportunities in the job market, thereby perpetuating poverty and deepening gender inequalities (Macura *et al.*, 2023).

Additionally, the lack of access to safely managed sanitation poses higher risks to the health and well-being of women. Women and girls have specific hygiene needs (World Health Organization, 2018) that give rise to concerns about privacy, dignity, and safety when using sanitation facilities. For instance, during menstruation, they may avoid using shared sanitation facilities, as they have a greater need to maintain their privacy in such situations, which can hamper their menstrual hygiene management. Moreover, in households with shared toilets, women are more likely to feel that their safety is in peril walking alone at night. Similarly, women and girls who have to leave their homes for defecation and urination after dark are more inclined to experience abuse, harassment, or other safety risks (United Nations Children's Fund and World Health Organization, 2023).

II.4 Health

Climate change can have numerous implications for human health. However, the consequences of the climate-related rise in weather extremes, including floods, hurricanes, heat waves, droughts, poor air quality, and salinity of water, are not evenly distributed; they are falling harder on women than men (World Health Organization, 2014).

Global warming leads to more intense and prolonged heatwaves, disproportionately impacting women's health, particularly elderly women, due to both physiological and social factors. Women tend to live longer than men, especially in the ageing societies in Europe, making them more susceptible to extreme heat as they age, which is correlated with higher mortality rates amidst heat waves (van Steen *et al.*, 2019). Additionally, differences in heat stress tolerance can be attributed to the lower sweating capacity of females due to general thermophysiological differences, potentially stemming from less muscle mass, higher body fat percentage, and possibly poorer acclimatization ability. Social-cultural factors further contribute to the vulnerability of elderly women (van Steen *et al.*, 2019). Among the elderly, women are more likely to be engaged in the performance of domestic chores than men, even in countries in the Global North, heightening the risk of heat-related illnesses and mortality. Moreover, the traditional role of women as caregivers contrasted with men as primary breadwinners, can play a role in enhancing the susceptibility of elderly women during heatwaves. As they may lack financial autonomy and rely on others for financial support, they often have less access to household amenities necessary for mitigating the effects of heatwaves, like adequate housing ventilation, fans, and air conditioning units. Notably, lower socio-economic status has been linked to increased mortality in temperature extremes in the Global North (van Steen *et al.*, 2019).

In many low- and middle-income countries, gender roles and norms adversely affect the health and well-being of women, especially in rural communities, where they typically are the main caretakers. The escalated frequency of weather hazards due to climate change impedes women's ability to collect food for their households, intensifying their susceptibility to food insecurity and resulting in nutritional deficiencies such as malnutrition and anemia (Desai and Zhang, 2021). Food insecurity is also likely to contribute to mental health issues among women, who may suffer from depression and anxiety when unable to ensure the food needs of their families are met (Global Gender and Climate Alliance, 2016). Additionally, the reliance on traditional biomass for cooking, driven by climate-induced limited access to renewable energy sources, poses further health risks. Particularly in rural areas, women are compelled to use inappropriate gases to prepare food for their families, exposing themselves to poor air quality, which increases the likelihood of respiratory conditions because of the inhalation of deleterious

substances (Desai and Zhang, 2021). Household air pollution because of indoor burning of solid fuels, namely biomass and coal, for cooking and heating, poses a major health risk concerning respiratory diseases, for women and girls worldwide, due to their traditional domestic role. This exposure is linked to around 4 million deaths annually, with most of them occurring in low-and middle-income countries among families living in severe poverty (Pinkerton *et al.*, 2015). Furthermore, being responsible for the psychological, emotional, and physical well-being of the family members can negatively impact their mental health when their loved ones are affected by climate-related hazards. The emotional labor usually falls on women's shoulders, since they are the ones who tend to be more concerned about the well-being of children, particularly in terms of the implications of climate change for their future (Detraz, 2023).

Moreover, morbidity and mortality resulting from inadequate access to safely managed water services have a greater impact on women and girls. The traditional role of women and girls in fetching water in most rural areas in the Global South, increases their vulnerability to infectious diseases, such as cholera, diarrhea, dysentery, hepatitis A, typhoid, and polio, due to frequent exposure to contaminated water. In addition to this, unsanitary water is associated with waterborne toxins, including heavy metals and chemicals (UN Women, 2023b). Furthermore, women, who usually bear the burden of collecting water at the household or community level, may experience psychological distress as a consequence of water scarcity (Global Gender and Climate Alliance, 2016).

As mentioned, the absence of water, sanitation, and hygiene services compromises the menstrual hygiene and reproductive health of women. The limited access of women and girls to safe sanitation and basic hygiene facilities can increase the risk of infections affecting the urinary and reproductive systems (UN Women, 2023b). These infections can potentially lead to infertility or birth complications. Besides, during pregnancy and postpartum periods, there is a greater demand for water and hygiene services, as hookworm infections can result in maternal anemia and premature births. Ensuring a hygienic environment is a *sine qua non* for the life and well-being of mother and child during labor and delivery (UN Women, 2023b).

The reproductive and maternal health of women is also affected by climate extremes, both directly and implicitly. Natural disasters related to climate change can hamper women's access to reproductive healthcare services, directly influencing their family planning decisions (Global Gender and Climate Alliance, 2016). Many women of childbearing age in the Global North consciously avoid having children out of fear of bringing them into the unsafe world of the climate emergency (Sidun and Gibbons, 2024). Further, climate disruptions, such as temperature extremes, are correlated to adverse maternal and

perinatal outcomes, inter alia gestational diabetes, hypertensive disorders of pregnancy, and pre-term birth (World Health Organization, 2023c). Pregnancy outcomes are also impacted by the rise in diseases highly affecting pregnant women, such as cholera, dengue fever, and malaria. The climate crisis broadens the spread of these diseases, to which pregnant women are more susceptible (Global Gender and Climate Alliance, 2016). Moreover, women during labor and the postpartum period are more exposed to food insecurity, especially during and in the aftermath of natural disasters. This vulnerability derives from heightened nutritional needs related to pregnancy and lactation (Office of the United Nations High Commissioner for Human Rights, 2020).

Furthermore, the implications of the climate catastrophe have deleterious effects on the mental health and well-being of women. Climate shocks are more likely to trigger mental health issues among women, as they increase the level of stress, anxiety, and depression, which are linked to adverse perinatal and maternal health outcomes (World Health Organization, 2023c). For example, heatwaves have been correlated with suboptimal pregnancy outcomes for women in labor, leading to a range of psychological challenges, spanning from postpartum depression to acute stress disorders (Rothschild and Haase, 2023). Additionally, exposure to air pollution presents a distinct threat to women's mental well-being. Women exposed to atmospheric pollution exhibit a higher prevalence of depressive symptoms compared to men. For older women, the likelihood of developing an adverse neuropsychiatric disease because of air pollution is heightened. Pregnant women also have an increased vulnerability to atmospheric pollution and they may suffer, in turn, from psychological distress that can result in adverse birth outcomes, such as preterm birth, stillbirth, and low birth weight (Rothschild and Haase, 2023). Women who experience stillbirth often struggle with complex emotions, including shame, inadequacy, and guilt. It is crucial to note that these mental health risks are particularly pronounced for women of lower socioeconomic status and those belonging to marginalized communities. However, climate change has lasting psychological impacts on women directly affected by natural catastrophes and those living thousands of miles away, both in the Global South and North (Sidun and Gibbons, 2024).

Lastly, studies indicate a potential connection between air pollution, a major environmental issue globally, especially in urban areas and industrial regions (Vallée *et al.*, 2024) and various diseases and conditions affecting women. Climate-induced deterioration of outdoor air quality can compound existing health challenges of women, who are already vulnerable due to exposure to indoor air pollution (Chen *et al.*, 2005). Accordingly, Chen *et al.* (2005) suggest that women might be more affected by air pollution than men, as they could experience a higher deposition of inhaled particles in their lungs, consequently

increasing their health risks. The authors also speculate that women may be more sensitive to airborne pollution, due to sex differences, since they have fewer red blood cells than men, rendering them potentially more susceptible to air pollutants. Furthermore, some studies have reported associations between air pollution and an increased risk of breast cancer, resulting from long-term exposure to chemicals with estrogenic potential that can be traced in air pollutants, particularly in urban and industrial areas. Recent research also hints at a possible connection between the accumulation of toxins with estrogenic potential and specific health conditions that are either exclusive to women or more commonly found in them, such as autoimmune diseases and endometriosis (Bryant, 1996). It should be emphasized that the influence of air pollution on the pathogenesis of endometriosis transcends immediate exposure, as airborne pollutants are able to traverse long distances, thereby impacting individuals residing even in areas with lower pollution levels (Vallée *et al.*, 2024).

II.5 Personal Safety

Climate, gender, and security are inextricably intertwined. The implications of climate change fuel conditions that threaten security. Livelihood losses, conflicts over scarce resources, poverty, political instability, human displacement, food insecurity, and political and economic instability intensify the feeling of insecurity among vulnerable communities. Power structures and societal expectations that define roles and behaviors shape how individuals experience and manage climate-related risks and insecurity (United Nations Environment Programme *et al.*, 2022). When viewed through a feminist lens, patriarchal norms and structural gender disparities hamper the coping capacity of climatic changes. In turn, their limited ability to adapt to climate change deepens existing inequalities, leaving women more susceptible to gender-based violence, including domestic violence, forced marriage, and sexual exploitation.

Climate hazards, which can harm agricultural crops and reduce available resources, and therefore reduce household income, are connected to a rise in instances of gender-based violence, especially in rural areas (Desai and Zhang, 2021). Moreover, due to food insecurity and poverty, parents in many households in Global South, resort to marrying off their daughters, who, subsequently, go to live with their husband's families, in an attempt to alleviate the financial challenges associated with climate change (United Nations Development Programme, 2022). In this region, economic instability also endangers

parents' ability to keep their children enrolled in school, rendering girls more susceptible to early and forced marriage (Kibria, 2016; United Nations Environment Programme *et al.*, 2022).

Meanwhile, in times of water shortage, the escalating competition for limited water resources often leads to higher rates of violence, posing a significant threat to women's safety both within and outside their homes (Abu, Bisung and Elliott, 2019). Furthermore, particularly in societies in the Global South, cultural expectations that assign women caregiving roles force them to travel long distances in search of safe water, increasing their exposure to physical or sexual assault (UN Women, 2023b). On top of that, women in these societies who are unable to fulfill their domestic roles, such as providing their families with adequate water or completing chores, are more likely to become victims of domestic violence (Pommells *et al.*, 2018).

In addition, personal safety is at elevated stake as climate change magnifies climate extremes, driving climate-related migration and displacement. The catastrophic effect of climate shocks on agriculture, water supply, and other income sources may prompt men to migrate from rural to urban areas for employment, leaving women behind (United Nations Environment Programme *et al.*, 2022). However, the migration of men can adversely affect the livelihoods of women, placing an additional burden on them to handle household responsibilities and make up for the loss of income provided by men. Such situations increase the vulnerability of women and girls to violence and sexual exploitation (United Nations Development Programme, 2022).

On the other hand, migrant and displaced women and girls, globally, are more likely to experience all forms of violence, including sexual and gender-based violence (Economic and Social Council, 2022). When safe and regular migration is not feasible, women and girls may resort to precarious irregular pathways, exposing themselves to increased risks of violence and exploitation by smugglers, human traffickers, law enforcement and border officials, intimate partners, and fellow migrants. In some cases, men collaborate with traffickers to sell their wives, family members, and even young girls, as a means of coping with challenges brought on by the climate crisis (UN Women, 2023a). Conversely, displaced women affected by disasters frequently find themselves residing in densely populated evacuation centers and informal settlements (Sidun and Gibbons, 2024). Being forced from their homes, they often come across various challenges and perils, among them violence, human trafficking, and sexual harassment (UN Women, 2023a).

II.6 Agency And Decision-Making

Women and girls bear the brunt of climate change, yet they are usually left out of the climate change conversations (Kruse, 2014; Pearse, 2017; Grillos, 2018; Alcobé and Harty, 2023). Patriarchal norms, which often associate women with nurturing and domestic roles, can be a hindrance in their ability to attain positions of power that are typically associated with men (Kabeer, 2005; Pearse, 2017; Tabassum and Nayak, 2024). Additionally, climate change increases their already heavy unpaid workload related to these roles (Pearse, 2017; Sarker and Puskur, 2022), curtailing the educational and economic opportunities of women and girls (UN Women, 2023c), and, consequently, their societal status. Due to cultural and institutional biases, women around the world encounter additional hardships in the social, economic, and political spheres, which, in turn, impede their participation and managing capacity in relation to climate change (Office of the United Nations High Commissioner for Human Rights, 2019b).

In sectors such as agriculture production, cultural norms and gender disparities in access to assets and resources discourage women from taking up leading positions and voicing their concerns across the globe. These challenges arise from structural inequalities within society, that prioritize men's needs and preferences, hindering women's endeavors to have a word on climate-related issues at different levels—within households, communities, and public spheres (Bryan *et al.*, 2024). Specifically, in poorer, agricultural countries with less democratic institutions, there is a link between climate extremes and restricted women's rights, such as inheritance laws favoring men, limited ownership and management of property, and constraints on women's ability to pursue occupations without the consent of a male. These discrepancies mirror the socially rooted inequalities that restrict women's decision-making power within their households and hold them back from engaging in civil society organizations (Fruttero *et al.*, 2023).

Furthermore, in some regions in the Global South, polygynous marriage practices are used as a coping mechanism against climate hazards, as polygyny usually results in larger families with greater labor capacity and increased income sources. However, polygyny is closely tied to the diminished bargaining power of women, resulting in their limited autonomy and influence over decision-making processes. This lack of empowerment can have far-reaching implications, extending to broader societal issues such as the underrepresentation of women in policymaking circles (Fruttero *et al.*, 2023).

At both the representation (Bonewit, 2015) and theoretical levels (Moosa and Tuana, 2014), policymaking roles are men-dominated, and feminist perspectives are frequently overlooked in policy

discussions (Nagel, 2015; Perkins, 2018). Therefore, climate change policy may neglect and undermine women's needs and interests (Perkins, 2018), as well as the specific difficulties they face. During the "Environmental Revolution" (Detraz, 2023, p. 42) era, which witnessed the global expansion of environmental policymaking and advocacy in the latter half of the twentieth century, there was a notable increase in environmental organizations. However, despite this growth, most of the influential organizations with a reach extending across national borders were founded by middle- and upper-class white men in the Global North, underscoring the persisting inequalities and biases embedded in society. Gender norms and expectations have historically obstructed women from undertaking leadership roles and decision-making positions within these organizations, limiting diversity and inclusivity and, thereby perpetuating inequalities (Detraz, 2023).

Lastly, on a global scale, environmental degradation sparks ecological movements and environmental activism, wherein women tend to lead or actively participate. In the words of Salman and Iqbal (2009, p. 857), what ties together women's environmental campaigns in the Global North and South is "their vulnerability to environmental problems and their lack of access to the centres of decision making which cause them". Nonetheless, their involvement in these movements comes with significant risks (United Nations Environment Programme *et al.*, 2022). Women activists defending land and environmental rights often put their physical integrity and lives in jeopardy. These women advocate for both the environment and their right to speak out. This is because they usually find themselves marginalized and disempowered in society, due to their limited participation in land ownership, natural resources management, and decision-making. Engaging in activism provides them with the opportunity to raise their voices and be heard. However, they confront gender-specific vulnerabilities including exposure to sexual violence and rape, especially when opposing extractive industries on indigenous lands (United Nations Environment Programme *et al.*, 2022). Many women even pay the ultimate price for their activism with their lives. Yet, sadly, their deaths remain by and large unseen and uninvestigated (Kyte, 2018).

III. HARNESSING HUMAN RIGHTS IN CLIMATE AND GENDER CONTEXTS

III.1 The Climate, Gender, And Human Rights Nexus – Why A Rights-Based Approach?

Climate change constitutes a human rights issue. The heating planet has calamitous consequences for the effective enjoyment of human rights, especially for the most vulnerable individuals and communities. It results in the infringement of fundamental rights, such as the right to life, development, food, water and sanitation, housing, and education. Notwithstanding, the most susceptible segments of the population experience the harshest impacts (United Nations Human Rights Council, 2019). Among them, women and girls unjustly and disproportionately suffer the harms of the environmental catastrophe, as discussed in the previous section, with severe ramifications for their human rights, which will be analyzed in this chapter.

Furthermore, as mentioned, humans are responsible for warming the climate. The AR5 by the IPCC states that “human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming” (Calvin *et al.*, 2023, p. 4). The agenda of human rights can be significantly beneficial concerning attributing responsibility to states, companies, or individuals for harming the environment, and, consequently, for human beings who are disproportionately impacted by environmental degradation. This is because the human rights framework promotes the idea of protecting people against actions or omissions that violate their fundamental freedoms and rights by holding those committing these acts accountable for their wrongdoing (Skillington, 2017). Hence, addressing climate-related issues through human rights accountability mechanisms holds the potential to enhance the protection of marginalized populations that are disproportionately affected by climate change, including women.

The climate emergency disproportionately impacts the rights of persons in vulnerable situations, emphasizing the importance of viewing these disparities through a human rights lens. Human rights principles aim to safeguard the most marginalized members of society, with equality and human dignity being core values. These principles ensure that all individuals are treated fairly and have equal opportunities to fulfill their rights and fully develop their personality, forming the foundation of global justice (Gómez Isa and Koen, 2009). Further, the principles of equality and non-discrimination in human rights call for efforts to rectify the injustices caused by climate change with the aim of promoting fairness

for all. As the persons who are least responsible for the climate crisis are the ones bearing its heaviest burden, concerns arise regarding climate justice, equality, and access to remedy. International human rights instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), affirm the right of all individuals who suffer human rights violations to access effective remedies (Office of the United Nations High Commissioner for Human Rights, 2015). This can play a crucial role in improving climate justice, which strives for emancipation through the principles of equality and fairness. Therefore, the agenda of human rights and its embedded principles provide avenues for those unjustly hit by climate change to seek justice and secure the enjoyment of their rights.

Additionally, within the human rights framework, states bear the responsibility to respect, promote, protect, and fulfill all human rights for every individual. This encompasses the obligation to prevent foreseeable damage, *inter alia* those resulting from global warming (Office of the United Nations High Commissioner for Human Rights, 2015). Human rights are legally protected and create specific obligations for states and state actors (Savaresi and Setzer, 2022). States are required to promote and protect human rights not only individually, but also through international cooperation. Environmental degradation poses threats that transcend national boundaries and present global challenges (Chen *et al.*, 2005). Since climate change is a global issue, requiring international partnership and collective efforts to be addressed, human rights can serve as a powerful tool with the potential to drive global-level change.

The linkages between climate change and human rights are also underscored in the 2030 Agenda for Sustainable Development (United Nations, 2015). This agenda puts the emphasis on people, the planet, prosperity, and cooperation, encapsulating 17 Sustainable Development Goals. It aims to “leave no one behind” and prioritize the inclusion of the most disempowered and marginalized individuals and peoples (Levy *et al.*, 2023, p. 5). By setting this objective, the agenda seeks to diminish existing inequalities and injustices, both domestically and internationally, while having a specific focus on fighting gender inequality. Notably, Goal 13 concerning climate actions explicitly acknowledges the intersection of climate change and inequality by suggesting placing particular emphasis on women and other marginalized groups in society. The commitment to “leave no one behind” aligns with a rights-based approach to climate justice (Levy *et al.*, 2023, p. 7), contributing to the amelioration of climate and gender injustices. Meanwhile, with women being more vulnerable to the effects of the climate crisis, their rights form a crucial human rights category, directly supporting Sustainable Development Goal 5 on achieving gender equality and empowering women (United Nations Environment Programme, 2023).

A significant milestone in the intersection between climate change and human rights occurred with the recognition of the right to a clean, healthy, and sustainable environment as a human right in 2021 by the UN Human Rights Council, followed by the UN General Assembly in 2022 (Teran and Rosales, 2022). This recognition underscores the fundamental role of environmental protection in safeguarding human well-being and ensuring the enjoyment of human rights, reiterating the interconnectedness of the right to a clean, healthy, and sustainable environment with other rights and established international laws. This landmark resolution also encourages states to implement policies for the realization of this right taking into consideration other human rights obligations, such as concerning gender equality, underlying the interplay between human rights, gender equality, and the environment (Human Rights Council, 2021; United Nations General Assembly, 2022). On top of that, this recognition holds the potential to catalyze climate lawsuits with a view to holding governments and corporations accountable for their human rights obligations and responsibilities, prompting a review and enhancement of legal frameworks and policies, and, ultimately, serving as a tool to advance the transformative and systemic changes (Boyd, 2024).

In addition, the human rights field offers a valuable foundation for handling climate-related challenges. It provides a well-established and practical framework of legal procedures and legal instruments that can be utilized in the pursuit of climate justice (Aliozi, 2021). Human rights serve not only as an ethical guide but also as a pragmatic infrastructure upon which societies can combat the complex issues arising from climate change and adopt strategies that promote environmental sustainability while upholding human dignity and equality. Therefore, the human rights framework plays a crucial role in guiding responses to the environmental challenges of the Anthropocene era (Skillington, 2017).

As enshrined in the Universal Declaration of Human Rights every human being is born equal and free, possessing inherent human rights and dignity, irrespective of gender (United Nations, 1948). However, climate change disproportionately affects individuals based on gender, leading to knock-on effects for gender equality, as explored in the first section of the thesis. Under international human rights law, states and other actors have obligations and responsibilities to manage the climate crisis with gender-responsive, equitable, and non-discriminatory actions, as will be further explained in this chapter. Numerous international human rights instruments, inter alia the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination against Women

(CEDAW), pay special attention to gender within the environmental context, highlighting the importance of integrating a gender perspective in addressing climate-related issues (Office of the United Nations High Commissioner for Human Rights, 2021). Thus, the existing human rights framework provides established principles and obligations that state parties are expected to adhere to. By framing gender inequality within the context of human rights violations, countries can be held accountable for the negative impacts of climate change and climate change policies on women's rights. Effectively dealing with the complexities of climate change necessitates adopting strategies that prioritize human rights, gender equality, and social justice (Nabulivou, 2015). Feminist climate justice envisions a world where “everyone can enjoy the full range of human rights, free from discrimination, and flourish on a planet that is healthy and sustainable” (Turquet *et al.*, 2024, p. 12). Therefore, the pursuits of gender equality, climate justice, and human rights are intrinsically correlated, each reinforcing the other in the quest for a more just, equitable, and sustainable world

III.2 The International Human Rights Framework

Before exploring the potential of rights-based climate litigation, a brief overview of international human rights law will be provided as an introduction to the subsequent examination of how these principles can be applied in the context of climate change and gender. The concept of human rights is grounded in the principle of human dignity and the idea of limiting the power of the state (Gómez Isa and Koen, 2009). They are universal legal guarantees safeguarding individuals and communities from actions and omissions that breach fundamental freedoms and rights. The universal nature of human rights is based on the belief that all people are endowed by virtue of their inherent dignity and common humanity with human rights (McInerney-Lankford, Darrow and Rajamani, 2011).

Internationally agreed-upon human rights treaties and declarations establish a framework of norms and standards on the human rights of individuals and peoples. The UDHR, adopted by the United Nations General Assembly (UNGA) in 1948, became the first universal and general international document regarding human rights (Gómez Isa and Koen, 2009). The UDHR, along with two international covenants, namely the ICCPR and the ICESCR, forms an integral component of the International Bill of Human Rights. These three human rights instruments constitute the basic international human rights code. Notwithstanding that the Declaration is not per se legally binding to states who are parties to it,

since it was adopted as a resolution by the UNGA, it is generally accepted that it has become a normative instrument, generating legal obligations for member states of the United Nations. It serves as a foundational document, incorporating both civil and political rights and economic, social, and cultural rights, which marked the initial step in the process of internationalizing human rights (Gómez Isa and Koen, 2009). Throughout this process, given the diverse array of human rights issues, the Declaration has been developed and expanded upon to shed light on human rights violations experienced by marginalized and vulnerable populations worldwide (Levy *et al.*, 2023).

Human rights treaties impose various obligations on their parties. The two foundational human rights treaties, the ICCPR and the ICESCR, both adopted in 1966, require states to respect, ensure, and protect the human rights recognized in the Covenants for all persons without discrimination. Specifically, Article 2(1) of the ICCPR (1966a) designates the negative nature of civil and political rights, signifying that states parties have the responsibility to abstain from impeding the enjoyment of these rights. Conversely, the obligation to ensure in the same article represents the positive nature of civil and political rights. This means that, akin to economic, social, and cultural rights, states must take affirmative actions to uphold the rights enshrined in the Covenant and enable individuals to enjoy them. In other words, states are not only required to refrain from direct violations but also to take positive steps to secure these rights. This responsibility implies that states must enact appropriate legislative or other measures to offer effective remedies for those whose human rights were infringed, as well as to institutionally protect specific rights. This duty also implicitly indicates that states are obligated to protect individuals against interference from private actors (Gómez Isa and Koen, 2009). As mentioned in General Comment 31 by the Human Rights Committee (2004, p. 3), the treaty body that monitors the implementation of the ICCPR:

“[t]he positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities”.

In light of Article 2 of the ICESCR (1966b), states parties undertake to take steps, individually and through international assistance and cooperation, particularly in financial and technical aspects, to the fullest extent of their resources, aiming to progressively achieve the full realization of the economic, social, and cultural rights. While acknowledging that economic, social, and cultural rights cannot be realized overnight, the Committee on Economic, Social and Cultural Rights (CESCR), the

implementation body of the ICESCR (2008) emphasizes that states must adopt deliberate, concrete, and targeted actions to progressively ensure the enjoyment of Covenant rights. The principle of progressive realization does not challenge the immediate nature of the various obligations placed on states parties. Furthermore, even though the CESCR interprets the obligation to use the maximum of available resources as a crucial qualifier to the obligation to take steps, it highlights that the immediacy of the obligation remains unchanged, and mere resource constraints cannot justify inertia (Kędzia, 2022). Even in cases where available resources are insufficient, the states are still required to make every effort within the current circumstances to guarantee the broadest feasible enjoyment of economic, social, and cultural rights (ESCR). This includes, on the one hand, the resources possessed by the state and, on the other hand, the assistance received from the international community. Moreover, the principle of non-retrogression plays a central role in the protection of ESCR, setting forth the bare minimum for the progressive realization of these rights (Kędzia, 2022).

Numerous General Comments of the CESCR have had an impact on the perception of the responsibilities of states in the human rights realm. Apart from the obligation to respect, requiring states to refrain from interfering with or curtailing the enjoyment of human rights, and the duty to protect the human rights of individuals from infringements by private actors, the CESCR has also added the duty to fulfill rights. The responsibility to fulfill embodies three sub-duties, namely the duty to facilitate, to provide, and to promote the human rights of all individuals (McInerney-Lankford, Darrow and Rajamani, 2011).

Although they have historically been treated differently from civil and political rights, economic, social and cultural rights are presently considered as equal members of the human rights family, entailing various obligations of both conduct and result on states parties, thereby reinforcing the idea of indivisibility, interrelatedness and interdependence of all human rights (Kędzia, 2022). Besides, the climate catastrophe endangers the effective enjoyment of both categories of human rights (Office of the United Nations High Commissioner for Human Rights, 2015; Aliozi, 2021), as will be demonstrated in this chapter.

Currently, there is a significant trend towards the internationalization of human rights. Human rights are not only upheld within domestic legal systems but are also recognized and promoted by international organizations at both international and regional levels (Gómez Isa and Koen, 2009). Regional international organizations, id est the Council of Europe, the Organization of American States, and the Organization for African Unity (now renamed the African Union) have remarkably contributed

to advancing international human rights protection (Gómez Isa and Koen, 2009). Within these areas, notable progress has been made in terms of regulatory frameworks with the establishment of regional human rights mechanisms, such as the European Convention on Human Rights (1950), the American Convention on Human Rights (1969) and the African Charter on Human and Peoples' Rights (1981). Each of these human rights instruments has at least a designated body charged with the responsibility of interpreting and assessing the compliance of states parties, especially the European Court of Human Rights, the Inter-American Commission and Court of Human Rights, and the African Commission and Court on Human and Peoples' Rights (McInerney-Lankford, Darrow and Rajamani, 2011). Therefore, there exist respective jurisdictional mechanisms within these regions to ensure the effective protection of human rights. These regional systems have become significant components of the global framework for human rights protection. The following section of the thesis will delve into these mechanisms, particularly in exploring the potential of human rights-based climate litigation as a tool to achieve climate and gender justice.

III.3 Human Rights Obligations Relating to Climate Change

Integrating an understanding of human rights obligations is imperative before delving into rights-based climate litigation to attain climate and gender justice. These obligations provide the legal basis for climate cases, by framing the legal arguments and justifying the accountability of states and other actors. The obligations of national governments to respond to the human rights implications of climate change based on international human rights law entail procedural obligations, substantive obligations, and obligations with respect to individuals belonging to particular groups. It is noteworthy that a state's legal obligations may fluctuate based on the treaties it has ratified, yet, some of these obligations may now be considered part of the customary international law, thus becoming binding on all states irrespective of treaty ratification status (Burger and Wentz, 2015).

The human rights framework mandates several procedural obligations on states regarding the environmental consequences of their actions. These obligations include ensuring access to information and conducting environmental assessments, facilitating public participation in environmental decision-making, and providing access to remedies for environmental harm (Burger and Wentz, 2015).

The right to gather and disseminate information, recognized in the ICCPR Art. 19 (1966a) and UDHR Art. 19 (United Nations, 1948), obligates states to provide public access to government information of public interest (Human Rights Committee, 2011). The International Court of Justice (ICJ) has affirmed that states are obligated under customary international law to conduct environmental impact assessments for activities that can pose significantly adverse impacts on the environment transnationally, as well as to disclose the findings to possibly affected states (*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, 2012). Access to information is largely considered essential for the enjoyment of other procedural rights concerning public participation and access to remedies, which are critical for upholding substantive human rights. Regional human rights courts have asserted states' duty to assess and disclose foreseeable environmental threats, as part of fulfilling their positive human rights obligations (Burger and Wentz, 2015).

The right of all persons to participate in their country's governance and public affairs is enshrined in Art. 21 of UDHR (United Nations, 1948) and Art. 25 of ICCP (1966a). Various human rights treaties have assured that states must enable individuals to be actively involved in environmental decision-making to safeguard their human rights from negative environmental impacts (Burger and Wentz, 2015).

Furthermore, UDHR (United Nations, 1948) and ICCPR (1966a, Art. 14) recognize the right to an effective remedy for human rights violations. Similarly, the Optional Protocol to the ICESCR (2009) also requires states to ensure that effective remedies are available for such infringements. The respective human rights bodies for these treaties have asserted that these remedies are also applicable to human rights violations stemming from environmental harms. This duty encompasses both procedural and substantive elements; obliging states to grant access to administrative and judicial proceedings to address human rights violations and ensure adequate compensation or redress for the victims (Burger and Wentz, 2015).

In addition to procedural obligations, states are also bound by substantive human rights obligations relating to climate change. These obligations, outlined in the Covenants of 1966, entail both negative and positive obligations (Savaresi and Setzer, 2022). In this context, at least five categories of obligations emerge; adaptation, domestic mitigation obligations, international cooperation obligations, transboundary mitigation obligations, and the obligation of ensuring that mitigation and adaptation efforts do not contribute to human rights violations (Burger and Wentz, 2015).

Concerning the adaptation obligations, states are required to enact legal and institutional frameworks to protect human rights against the perils of climate change. Consequently, states have the responsibility to establish frameworks to safeguard against environmental harm caused by climate change that can impede the enjoyment of human rights, especially for those most endangered by the negative impacts of climate change (Office of the United Nations High Commissioner for Human Rights, 2021). Moreover, these frameworks must also include measures to avert third parties from contributing to environmental degradation that infringes upon human rights (Burger and Wentz, 2015). For example, states must protect all individuals from human rights violations involving business enterprises, including through their contributions to climate change (Office of the United Nations High Commissioner for Human Rights, 2021).

Regarding mitigation obligations, states have the obligation to respond to the root cause of the climate crisis, and, therefore, regulate the sources of greenhouse gases in the atmosphere. Simply put, states are obligated to reduce the anthropogenic emissions driving global warming to safeguard the human rights of their citizens. For instance, the CESCR has noted that states parties to ICESCR should mitigate the impacts of climate change to ensure the protection of their economic, social, and cultural rights (Burger and Wentz, 2015).

Additionally, national governments must engage in international cooperation, as well as in international negotiations for an effective global climate agreement (Office of the United Nations High Commissioner for Human Rights, 2021). The ICESCR (1966b) mandates states to adopt measures both individually and through international assistance and cooperation to progressively achieve the full realization of the rights recognized in the Covenant. Likewise, the UDHR (United Nations, 1948) and ICCPR (1966a) require states to foster universal respect for and observance of human rights. Since climate change is a global issue, it requires global responses to be effectively addressed. States have the obligation to cooperate with other states, provide climate assistance and share resources, knowledge and technology to tackle climate change (Office of the United Nations High Commissioner for Human Rights, 2021).

The international cooperation duties are closely linked to the obligation of states to mitigate the implications of their actions on the human rights of individuals beyond their jurisdiction (Burger and Wentz, 2015). Today it is broadly recognized that states are duty-bound under international customary law to prevent and mitigate the risk of extraterritorial environmental harm (Office of the United Nations High Commissioner for Human Rights, 2021; Schmalenbach, 2023). Hence, states must demonstrate due

diligence, which entails the undertaking of sufficient measures to prevent and, when necessary, remediate harm that transcends national boundaries (Schmalenbach, 2023). In the case of *Pulp Mills* (2012), the ICJ clarified that particular attention is required when fulfilling obligations in environmental protection because of the potential irreversibility of certain environmental harm.

Lastly, as an aspect of the duty to respect human rights, states and other governmental actors are required to guarantee that human rights are protected in their efforts related to climate change mitigation and adaptation. This obligation extends to both specific projects and broader decisions (Burger and Wentz, 2015).

Apart from the general obligations, states bear specific human rights duties towards certain groups. The UDHR (United Nations, 1948, Art. 7), the ICCPR (1966a, Art. 26), and the ICESCR (1966b, Art. 2) incorporate provisions referring to the principles of equality and non-discrimination. These principles are also upheld in international treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), and the Convention on the Rights of the Child (1989). Therefore, states must ensure their climate change mitigation measures are implemented equitably and without discrimination, particularly towards the vulnerable segments of the population, like women, indigenous peoples, and children, who are disproportionately impacted by climate change (Burger and Wentz, 2015).

While the primary responsibility to respect, protect, fulfill, and promote human rights belongs to states, business enterprises also have duties and responsibilities to address the human rights implications of climate change. The core international human rights treaties do not explicitly delineate the obligations of private entities to respect human rights (Burger and Wentz, 2015). However, in 2011 the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights establishing them as the international standard of conduct applicable to both states and business enterprises concerning business activities and human rights (Human Rights Council, 2011a). This recognition provides victims of climate change, including women and girls, with greater access to justice to address climate injustices.

III.4 Human Rights Obligations And Responsibilities with Respect to Gender and Climate Change

The previous examination of the human rights obligations regarding climate change demonstrated that states, business enterprises, and other actors bear obligations and responsibilities under international human rights law to address environmental crises, including the climate emergency. In their endeavors, they must also prevent the gendered impacts of these crises on the enjoyment of human rights and guarantee their mitigation measures are gender-sensitive, equitable, non-discriminatory, and sustainable (United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and UN Women, 2021).

First and foremost, the human right to a safe, clean, healthy and sustainable environment was established in 2022 by a UNGA resolution (United Nations General Assembly, 2022). The recognition of this new environmental human right was a historic step expected to have far-reaching effects on environmental protection efforts globally, despite its formally legally non-binding nature (Mahmood Ranjha, 2024). The right to a safe, clean, healthy and sustainable environment has both substantive and procedural elements. Substantively, fulfilling this right necessitates guaranteeing a safe and stable climate, clean air, access to safe water and sufficient sanitation, healthy ecosystems and biodiversity, healthy and sustainable food, and non-toxic environments to live in. Procedurally, its realization requires ensuring access to information, participation in decision-making, access to justice and remedies, engaging in international cooperation, and recognizing cross-border accountability for human rights violations caused by environmental harm (United Nations Environment Programme, United Nations Development Programme and Office of the United Nations High Commissioner for Human Rights, 2023). Environmental protection is a fundamental prerequisite for the full enjoyment of human rights, which are granted to all persons without discrimination on sex or gender. In this context, states, in order to effectively protect this newly recognized human right, must give special attention to the needs of individuals and peoples disproportionately affected by environmental degradation, thus considering the gendered-differentiated impacts of environmental harm (United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and UN Women, 2021).

Many multilateral environmental agreements incorporate commitments to attain gender equality and women empowerment (United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and UN Women, 2021). Especially, the Paris Agreement (2016) dictates states, when undertaking measures to address climate change, take into account their human rights obligations, as well as the goal of gender equality and the empowerment of women. Therefore,

states must take gender-responsive measures to combat the climate crisis, in a manner that is conscious of gendered vulnerabilities with regard to climate change.

States are obligated to prevent gender-based discrimination in all domains, including in environmental matters, according to international human rights law (United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and UN Women, 2021). CEDAW requires state action to eliminate gender discrimination and gender-based violence against women in the climate change context (Mckernan *et al.*, 2020). As outlined in the general recommendations of the Committee on the Elimination of Discrimination against Women (2018), states should guarantee that the rights of women are a primary consideration in climate change policy and action with a particular focus on the needs of disadvantaged groups of women. Moreover, article 5 of CEDAW (1979) mandates that States take action aimed at eradicating notions of inferiority or superiority based on sex and all gender stereotypes. This obligation also applies to climate change and other environmental crises, wherein gender biases and stereotypes play a crucial role in women's vulnerability (United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and UN Women, 2021).

Due to entrenched gender roles and norms, women often face barriers when attempting to participate in environmental and climate change decision-making, as highlighted in the second chapter of the thesis. However, states bear the responsibility to ensure women's equal, free, active, meaningful, and informed participation in these processes (United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and UN Women, 2021). This right is protected by various international human rights instruments, such as the ICCPR (1966a, Art. 25), the UN Declaration on the Right to Development (1986, Art. 1), and CEDAW (1979, Art. 7). Consequently, states should undertake gender-responsive capacity-building awareness, and monitoring efforts to dismantle women's traditional barriers hindering them from participating in environmental decision-making at all levels (United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and UN Women, 2021).

Gender-based discrimination and biases may also result in the marginalization of women environmental human rights activists, who are often exposed to gender-based violence risks (see Chapter Two). The Declaration on Human Rights Defenders emphasizes the responsibility of states and non-state actors to protect those who defend human rights, including women environmental activists who often face significant threats (United Nations General Assembly, 1998). States have the obligation to safeguard

the human rights of these defenders, including freedom of expression and assembly and rights of redress and accountability in cases of threats or harm (United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and UN Women, 2021).

In addition, states have a general obligation to ensure gender-responsive access to justice and accountability for environmental harms. Under the ICCPR (1966a), states are duty-bound to guarantee equal access to justice and legal remedies for human rights violations for all persons, regardless of gender. Furthermore, Article 14 of CEDAW (1979) affirms states' responsibility to provide women with equal rights in legal proceedings. In the context of climate change, states should eliminate obstacles to accessing justice in environmental matters, including ensuring affordable or, in some instances, free access to legal services (United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and UN Women, 2021).

Moreover, within their territory and/or jurisdiction, states have the duty to protect individuals against the gendered impacts of business-related human rights violations, including those resulting from environmental harm. As outlined in the UN Guiding Principles on Business and Human Rights (UNGPs), all business enterprises must respect human rights, *inter alia* women's rights (Human Rights Council, 2011a). The UNGPs call on states to integrate the gender framework and guidance for the UNGPs. Accordingly, states should incorporate a gender perspective into their laws and policies related to business practices regarding climate change, ensuring that these practices are gender-transformative and address discrimination against women. They must also conduct gender-responsive human rights due diligence to identify, prevent, mitigate, and account for human rights infringements resulting from environmental damage (United Nations Development Programme and United Nations Working Group on Business and Human Rights, 2019).

Various human rights instruments impose on states the obligation to cooperate to guarantee the effective enjoyment of human rights and address transboundary harm, including the UN Charter (1945), the ICCPR (1966a), the ICESCR (1966b), and the Declaration on the Right to Development (United Nations, 1986). As previously noted, environmental issues, notably climate change, pose global human rights risks that transcend national boundaries. To fulfill their duty to mitigate transboundary environmental harms and ensure the full realization of human rights, states must cooperate internationally to promote gender-responsive environmental policy and action. Especially, concerning climate change, states must place gender at the center of climate change policy, considering the differential impact of the

climate crisis on gender and the related human rights in peril (United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and UN Women, 2021).

Besides these obligations and responsibilities, states also bear more specific duties regarding climate change and gender. For instance, they should adopt a gender-responsive approach to protecting the right to health, including sexual and reproductive health and rights in climate action (United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and UN Women, 2021). Additionally, states have the responsibility to recognize and address gender-based violence linked to environmental crises, inter alia by aligning legislation with international standards and enhancing services for victims. They should also combat child and forced marriage by enforcing minimum marriage age laws and establishing child-sensitive social protection policies. Among others, states should guarantee equal ownership to, access to, and benefits from resources for women, ensure the enjoyment of women's right to education concerning the natural environment and climate change and collect and utilize gender-disaggregated data regarding the human rights implications of environmental degradation (United Nations Environment Programme, Office of the United Nations High Commissioner for Human Rights and UN Women, 2021).

III.5 Human Rights in Peril in Gender and Climate Context

Leveraging rights-based climate litigation to advance climate and gender justice necessitates a prior assessment of the human rights of women at risk due to the climate crisis, as such litigation involves invoking human rights to pursue climate objectives (Savaresi and Setzer, 2022). The following analysis builds upon and reinforces the discussion in Chapter II of the thesis, providing a comprehensive view of how women and girls globally are disproportionately affected by the climate crisis. The impacts in specific domains outlined in the second chapter are manifestations of violations or threats to human rights that will be now discussed. These sector-specific discussions laid the foundation for understanding that climate change impacts women and girls across a wide spectrum of fundamental rights.

Climate change has severe repercussions for the full and effective enjoyment of human rights (Office of the United Nations High Commissioner for Human Rights, 2021). The implications of climate change are felt most acutely by women and girls, having distinct and disproportionate effects on their human rights (Abid *et al.*, 2018). Gender-based stereotypes, discrimination and disparities impede the

enjoyment of the right to a clean, healthy and sustainable environment, as well as the rights to life, health, adequate housing, food, water and sanitation, education, and cultural rights, among others (Human Rights Council, 2023). These specific rights are emphasized to illustrate the multifaceted impact of the climate crisis on women and girls' lives and well-being, particularly highlighting the gender-specific vulnerabilities that aggravate these impacts.

Right to life

Firstly, in light of the UDHR (UN, 1948, Art. 3), everyone is entitled to the right to life, liberty and security of person. The ICCPR (1966a, Art. 6) reaffirms that the inherent right to life of every human being is an absolute and fundamental right that cannot be derogated under any circumstances.

In its General Comment No. 36 on the right to life, the Human Rights Committee (2019, para. 62) declared that climate change is one of "the most pressing and serious threats to the ability of present and future generations to enjoy the right to life". Between 2030 and 2050, climate change is expected to result in approximately 250,000 additional deaths annually due to undernutrition, malaria, diarrhea, and heat stress alone (World Health Organization, 2023a). Women and girls are especially vulnerable to the effects of climate change, which threaten their right to life, health, and security. In the case of climate-related natural disasters, women and children are 14 times more likely to lose their lives compared to men. For instance, in the 2004 Indian Ocean Tsunami, women accounted for 70% of the casualties (Okai, 2022). Similarly, when Hurricane Katrina hit the USA in 2005, women had a higher mortality rate than men, with most victims coming from the most marginalized and economically disadvantaged sectors of society (Abid *et al.*, 2018).

Right to food

Furthermore, the right to adequate food is one of the rights most impacted by climate change. The right to food is recognized in Art. 25 of UDHR (United Nations, 1948) as an essential part of the right to an adequate standard of living, and enshrined in Art. 11 of ICCPR (1966a). The CESCR (1999), in its General Comment No. 12 on the right to adequate food, delineated the four aspects of this right, namely availability, accessibility, acceptability, and sustainability. Climate change threatens all four aspects of

food security, particularly in the poorest regions. The IPCC reiterated that climate change puts food security in jeopardy, having an impact on food access, utilization, and price stability, with disproportionate impacts on those who have contributed the least to the climate crisis and are most vulnerable to its adverse effects, including women, as detailed in the second chapter (Office of the United Nations High Commissioner for Human Rights, 2021). The Human Rights Council (2011b) has also underscored this concern, shedding light on the gender disparities that affect women's ability to exercise their right to food, particularly concerning access to land, property, and markets. Although women cultivate most of the world's food, they represent 70 percent of the world's hungry and suffer disproportionately from malnutrition, poverty, and food insecurity (Human Rights Council, 2011b).

Rights to water and sanitation

Albeit the right to water is not explicitly embedded in the ICESCR, the Committee on ESCR (2003, para. 2), in its General Comment No. 15, defines this right, declaring: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses”. Subsequently, the UNGA (2010) acknowledged the rights to water and sanitation as human rights, noting their essential role in the full enjoyment of all human rights. These rights are also mentioned in CEDAW (1979, Art.14), which calls on states to undertake measures to eliminate discrimination against women in order to ensure they have the right to adequate living conditions, including water supply and sanitation.

Climate change is already impacting the availability, quality, and quantity of water for basic human needs, thereby endangering the enjoyment of the human rights to water and sanitation (Office of the United Nations High Commissioner for Human Rights, 2021). Reduced access to water means disproportionate impacts on vulnerable persons, groups and peoples, including women. For example, limited access to water entails additional challenges for women and girls in the Global South, given that they usually bear the duty of fetching water for their families and have specific water and sanitation needs (see Chapter Two) (Office of the United Nations High Commissioner for Human Rights, 2015).

Right to health

The human right to health is mentioned in the UDHR (1948, Art. 25) as an aspect of the right to an adequate standard of living and is also articulated in Art. 12 of the ICESCR (1966b). The CESCR (2000), in its General Comment No. 14, declared that the right to health encompasses not only freedoms, such as control over one's health and body, including sexual and reproductive freedom and the right to be free from non-consensual medical treatment but also entitlements. These entitlements include the right to a health protection system that ensures equal opportunities for people to enjoy "the highest attainable level of health" (Committee on Economic, Social and Cultural Rights, 2000, para. 2). This notion takes into account various exogenous and endogenous factors that affect the health of individuals and communities, referred to as "underlying determinants of health" (Committee on Economic, Social and Cultural Rights, 2000, para. 4). These determinants include safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, healthy occupational and environmental conditions, health-related education and information, including on sexual and reproductive health, and gender equality (Office of the United Nations High Commissioner for Human Rights and World Health Organization, 2008).

Additionally, CEDAW (1979, Art. 12) refers to the right to health, requiring the elimination of discrimination against women in the field of healthcare, and guarantees of equal access to healthcare services for women and men. It further calls on states to ensure that women have appropriate services related to pregnancy, childbirth, and the post-natal period (*Convention on the Elimination of All Forms of Discrimination against Women*, 1979).

The impacts of climate change on the right to health are far-reaching, as confirmed by the Human Rights Council (2016) in its analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Specifically, climate change affects this right through three channels: directly through weather variables like heat and storms; indirectly through natural systems such as disease vectors; and through pathways mediated by human systems, inter alia undernutrition (IPCC, 2014). As discussed in the second chapter of this thesis, it exacerbates gender disparities in health risks, threatening women's right to health, especially in vulnerable communities in the Global South. For example, the climate crisis contributes to the transmission of vector-borne diseases, such as malaria, particularly affecting pregnant women, who encounter increased risks of birth complications (Sarkar and Sharma, 2024). Climate-related conflicts and migration also heighten risks of gender-based violence, such as sexual harassment and domestic

violence, adversely impacting women's health rights (Committee on Economic, Social and Cultural Rights, 2000).

Right to adequate housing

Article 11 of the ICESCR (1966b) provides that all individuals have the right to an adequate standard of living for themselves and their families, including adequate housing. According to the CESCR's General Comment No. 4 (1991) on the right to adequate housing, the protection of this human right plays a central role in the enjoyment of all economic, social, and cultural rights.

The effects of the climate crisis pose a threat to the right to adequate housing, as extreme weather events can devastate residences and make areas uninhabitable, leading to the displacement and migration of millions of people (Office of the United Nations High Commissioner for Human Rights, 2021). This impact is particularly severe for low-income groups and residents of countries lacking resources, infrastructure, and capacity to protect their populations. Women are among those disproportionately affected, facing numerous challenges with regard to tenure and property rights, and often being overlooked in reconstruction and rebuilding efforts (United Nations General Assembly, 2009). This is because women, primarily responsible for the upbringing of children and domestic tasks, face increased burdens post-disaster, including challenges in obtaining food, fuel, and water. Concurrently, they grapple with limited opportunities for personal security, land rights, housing, employment, decision-making power, autonomy, and participation in reconstruction efforts (Moser and Satterthwaite, 2008). Gender discrimination and inequality in housing are profound, with women and girls being more likely to live in insecure, undignified, and unsafe conditions, and at greater risk of homelessness during natural disasters. During the 1991 Bangladesh Cyclone, the majority of fatalities came from women living in poor communities, whose bamboo or thatch homes could not withstand the storm (Harwood, Nielsen and Razwani, 2022).

Right to education

The UDHR (UN, 1948, Art. 26) and the ICESCR (1966b, Art. 13) both guarantee the right to education for all individuals. Furthermore, CEDAW (1979, Art. 10) mandates the elimination of discrimination against women and requires equal educational opportunities for both women and men.

Climate change has detrimental effects on the right to education, particularly for girls (Atkinson and Bruce, 2015). This is because it increases their domestic workload and time poverty, curtailing their educational opportunities (Plan International, 2023). As also mentioned in the second chapter of the thesis, during weather shocks, vulnerable families may face financial constraints that can lead them to withdraw children from school, often starting with girls, as a coping strategy (Sidun and Gibbons, 2024). As resources deplete, girls assume increased workloads by fetching water, caring for their families and assisting their communities (Heimpel, 2021). By 2025, the climate crisis is expected to significantly contribute to school absenteeism for at least 12.5 million girls annually (Malala Fund, 2021).

Cultural rights

Article 15 of the ICESCR (1966b) recognizes the right of every person to take part in cultural life. Similarly, Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples establishes that Indigenous peoples are entitled to “maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, and knowledge of the properties of fauna and flora” (United Nations, 2007). Cultural rights do not protect culture and cultural heritage per se, but rather the conditions that enable all individuals, without discrimination, to have access to, take part, and play a role in cultural life through ongoing development (United Nations General Assembly, 2020).

Climate change poses an existential threat to cultures and cultural rights worldwide, endangering many significant areas for cultural interactions, including natural environments, and the continuity of ways of life (United Nations General Assembly, 2020). The cultural rights of Indigenous people are particularly at risk due to climate-induced damage to culture and cultural heritage. For Indigenous communities, connections to place, land, and landscape, as well as relationships with animals, plants, habitats, and ecosystems, are crucial in shaping heritage, laws, cosmologies, practices, and identity (Norton-Smith *et al.*, 2016). The cultural losses caused by the climate emergency also have gendered dimensions, as Indigenous women often have specific responsibilities for land stewardship and gathering resources for traditional foods and medicines (see Chapter 2), making them especially affected (United Nations General Assembly, 2020).

Right to a clean, healthy and sustainable environment

Resolutions from the Human Rights Council (2021) and the General Assembly (2022) added the right to live in a clean, healthy, and sustainable environment to the pantheon of internationally recognized human rights. These historic resolutions acknowledge that sustainable development is contingent upon the gender-transformative realization of this right. They also emphasize the importance of gender equality and gender-responsive action in addressing the planetary environmental crisis (United Nations General Assembly, 2022; Human Rights Council, 2023). The right to a clean, healthy, and sustainable environment encompasses the entitlement to clean air; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments to live, work, study, and play; healthy biodiversity and ecosystems; and a safe climate (United Nations Environment Programme, United Nations Development Programme and Office of the United Nations High Commissioner for Human Rights, 2023). Additionally, it is closely tied to the rights to information, participation in decision-making, and access to justice (United Nations Environment Programme, United Nations Development Programme and Office of the United Nations High Commissioner for Human Rights, 2023).

This right is imperiled by the interconnected global issues of pollution, climate change, and biodiversity loss, which constitute the “greatest human rights challenge of our era,” according to the UN High Commissioner for Human Rights, Michelle Bachelet (Office of the United Nations High Commissioner for Human Rights, 2022). Climate change, coupled with gender biases, discrimination, and disparities, profoundly restricts women and girls' enjoyment of the right to a clean, healthy, and sustainable environment (United Nations Environment Programme, United Nations Development Programme and Office of the United Nations High Commissioner for Human Rights, 2023). For instance, millions of women and girls die prematurely every year due to indoor air pollution from solid-fuel cooking (Chen *et al.*, 2005; World Health Organization, 2023b). Moreover, lack of access to safe water causes the death of around 800,000 women and girls per year. One in three women and girls do not have access to safely managed sanitation services. Biodiversity degradation also increases the time poverty of women and girls, coercing them to travel longer distances or repeat activities such as replanting agricultural crops. Furthermore, they often have less access to environmental and climate information, are left out of climate decision-making processes, and do not have access to justice and effective remedies when their rights are infringed (Human Rights Council, 2023).

To conclude this chapter, acknowledging the rights in peril in the climate and gender nexus and the related human rights obligations is essential for fostering accountability and promoting equitable

climate action. With this foundational understanding, the following chapter will focus on how rights-based climate litigation can contribute to achieving climate and gender justice, exploring how legal avenues can be employed to enforce these critical human rights protections and drive transformative change.

IV. RIGHTS IN ACTION: LITIGATION FOR CLIMATE AND GENDER JUSTICE

A human rights-based approach to climate action incorporates a wide range of techniques for applying human rights principles and laws to address the pressing issue of climate change. At its most legalistic form, this approach envisions climate change victims using human rights laws and institutions to pursue claims against those responsible for warming the climate when it results in alleged violations of their legally protected human rights (Lewis, 2018). By interpreting and enforcing human rights treaties, these institutions contribute to the protection of fundamental rights and provide accountability, including in climate-related areas. In the complex terrain of climate justice, international human rights courts can play a crucial role in bridging the intertwined concepts of climate change and human rights. This section explores how a rights-based approach can be applied in adjudication efforts to confront the climate emergency and uphold climate and gender justice. To establish a solid foundation, the chapter begins with an overview of the structure, jurisdiction, and functioning of international human rights courts that may have jurisdiction over climate change issues. Providing this overview is imperative for comprehending their role in adjudicating climate cases, ensuring accountability, setting legal precedents, and promoting justice and equality.

IV.1 International Human Rights Courts: Overview

What is an international human rights court? *Stricto sensu*, an international human rights court is an international court whose jurisdiction *ratione materiae* is linked to a binding international human rights instrument (Romano, Alter and Shany, 2015). Typically, dedicated international human rights courts are established with the specific purpose of overseeing the enforcement and implementation of their respective human rights treaties. Consequently, these courts are exclusively tasked with adjudicating human rights violations based on specific human rights treaties. Currently, as noted in the previous chapter, three such courts exist, each corresponding to distinct geographic regions: the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples' Rights (Romano, Alter and Shany, 2015).

The European Court of Human Rights

In Europe, the principal instrument for human rights protection is the European Convention on Human Rights (ECHR) (1950), an international treaty to safeguard fundamental rights and freedoms. The ECHR applies to all 46 member states of the Council of Europe and recognizes an extensive spectrum of civil and political rights (Didi, 2023). The body responsible for interpreting and applying the Convention and its Protocols thereto is the European Court of Human Rights (ECtHR), located in Strasbourg, France.

The Court addresses human rights issues within the framework of the ECHR, providing a legal avenue for individuals and states to seek redress for human rights violations. Notably, the ECtHR allows for both individual and inter-state complaints. This means that any person, non-governmental organization, or group claiming to be a victim of a violation by a state party to the ECHR, has the capacity to file a complaint before the ECtHR, and any member state can refer to the Court any alleged breach of the ECHR by another state (Gómez Isa and Koen, 2009). The judgments of the Court are binding on the member states concerned. Consequently, a state found to have committed a violation has the obligation to rectify the damage suffered by the applicant and remedy any consequences of the violation. The state must also ensure that no similar violation occurs in the future, preventing others from becoming victims of the same violation (European Court of Human Rights, 2020). In practice, this often requires states to amend legislation and administrative practices (Bond, 2018).

The ECHR lacks a specific provision or additional protocol concerning environmental protection, notwithstanding the clear recognition over the years of a correlation between human dignity, human rights, and the environment. The primary objective of the Convention is to safeguard individual human rights, rather than general aspirations or needs of the community as a whole. Accordingly, the Convention is not specifically designed to offer general protection of the environment per se. The Court will only adjudicate cases related to environmental harm if they are intricately linked to infringements of individual human rights (European Court of Human Rights, 2020). Moreover, the ECtHR (2020) has interpreted the provisions of the Convention in a dynamic fashion, reiterating its nature as a living instrument, with many of its provisions now pertaining to circumstances that were not foreseeable at the time of its adoption, including those regarding environmental issues. For instance, in the *KlimaSeniorinnen* (2024) case, which concerned the unequal impacts of climate change on older women, the Court considered, for the first time, the substantive interrelation between the rights outlined in the ECHR and climate change. The verdict determined that Switzerland had a responsibility under the Convention to mitigate climate

change effectively so as to safeguard the human rights of its citizens (Dawson and Burnett, 2024). This case will be examined in greater detail in a subsequent chapter of this section.

The Inter-American Court of Human Rights

Human rights protection in the Americas is overseen by the Organization of American States (OAS), an international organization comprising 35 member states in the region. The predominant human rights instrument in the Inter-American system is the American Convention on Human Rights (1969), also known as the Pact of San José, which empowers two bodies, the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR) to make sure that states adhere to the human rights enumerated in the instrument (Pasqualucci, 2013). Especially, the American Convention on Human Rights embodies a list of civil and political rights and two-tier supervision machinery, the IACHR, which functions as a quasi-judicial organ, and the IACtHR, based in San José, Costa Rica, which serves as the ultimate interpreter of the Convention with contentious and advisory jurisdiction (Gómez Isa and Koen, 2009).

Only states and the IACHR are entitled to submit a case before the IACtHR (*American Convention on Human Rights*, 1969). The Court has jurisdiction to hear cases, referred by the Commission, or a state party, claiming that another state party has breached the American Convention, on the condition that it has accepted the contentious jurisdiction of the IACtHR (Gómez Isa and Koen, 2009). Therefore, individuals cannot file a complaint directly to the Court. For individual petitions, the IACHR has the authority to adjudicate communications for alleged violations of the rights outlined in the Convention filled by any person, group of persons, or non-governmental organization (NGO) recognized in at least one of the OAS member states (Gómez Isa and Koen, 2009). When the state is found accountable for the human rights violation, the Court may order the state to make reparations (Pasqualucci, 2013). The judgments of the IACtHR are legally binding on the condemned state and, besides the reparation aspect, generally include the obligation to conduct an investigation and punish the perpetrators of the violation (Cerna, 2004).

The Inter-American Court of Human Rights (2017) has acknowledged the interdependent relationship between the protection of the environment and the realization of other human rights, noting that environmental harm and the adverse effects of climate change undermine the effective enjoyment of human rights. In its Advisory Opinion on the Environment and Human Rights, the Court issued the first

legal pronouncement by an international human rights court that comprehensively considers environmental law. It firmly asserted that environmental rights are integral to fundamental rights that are justiciable under the Convention (Sobenes, Mead and Samson, 2022). Furthermore, the IACtHR (2017) affirmed that Article 26 of the Convention on the right to progressive development safeguards an autonomous, actionable right to a healthy environment, obligating states to ensure its protection. This Advisory Opinion, along with the Judgement in the case of *the Indigenous Communities of the Lhaka Honhat Association* (2020) confirmed that climate change unequivocally interferes with the right to a healthy environment, thus requiring states to reduce harmful greenhouse gas emissions to protect this right (Barrett, Risk and Pasternak, 2023). In this case, the IACtHR first recognized the right to a healthy environment as justiciable under the Convention, where Indigenous peoples in Salta, Argentina, claimed that state inaction towards environmental degradation stemming from logging and grazing livestock had jeopardized their cultural identity and Indigenous way of life (Sobenes, Mead and Samson, 2022). Moreover, the IACtHR (2023) is in the process of deliberating an advisory opinion sought by Colombia and Chile to elucidate the scope of states' obligations concerning the climate crisis under international human rights law. Their request highlights the unjust impact of climate change, particularly on the Andean region and vulnerable populations. As their application emphasized, these phenomena “reveal the need for an urgent response based on the principles of equity, justice, cooperation and sustainability, with a human rights-based approach” (Inter-American Court of Human Rights, 2023, p. 1). The forthcoming publication of this advisory opinion is expected to invigorate existing climate lawsuits and potentially serve as a foundation for future climate litigation (Kaminski, 2024).

The African Court of Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (ACHPR) (1981), also known as the Banjul Charter, is the key regional human rights instrument in Africa, adopted by the African Union (AU) (Deutsche Gesellschaft für Internationale Zusammenarbeit, 2022). It is widely recognized as the first international human rights treaty to protect the three generations of human rights—civil and political rights, economic, social, and cultural rights, and group and peoples' rights—within a sole instrument, treating them equally concerning justiciability and implementation (Ssenyonjo, 2011). It also imposes duties on both states and individuals (Gómez Isa and Koen, 2009). The Charter established the African Commission on Human and Peoples' Rights (ACHPR) or the Banjul Commission, an institution mandated to promote, protect and interpret the Charter (Deutsche Gesellschaft für Internationale

Zusammenarbeit, 2022). The Commission is a quasi-judicial body that ensures states' compliance with the entitlements enumerated in the Charter through several mechanisms, one of them being inter-state and individual communications. Regarding individual communications, any individual or NGO can bring a complaint before the Commission against a state that has ratified the Charter. A communication can be filed by victims or by others on their behalf, without needing their explicit consent (Center for Human Rights, 2021). The African human rights system permits public interest litigation (Hefti, 2024).

The African Court on Human and Peoples' Rights (ACtHPR), established under the Protocol on the African Court on Human and Peoples' Rights to the African Charter (1998), complements the protective mandate of the Commission. Based in Arusha, Tanzania, the Court holds both contentious and advisory jurisdiction. By ratifying the Protocol, states agree that the Commission and the States concerned can refer cases to the ACtHPR for legally binding decisions. Individual complaints can be submitted to the Court only with regard to States that have made an additional declaration accepting the Court's competence to hear cases directly (Gómez Isa and Koen, 2009). In the absence of such a declaration, individuals and NGOs may approach the Court indirectly, by first filing a complaint to the Commission. Regarding the Court's findings, in instances of a breach of a human or peoples' right, the ACtHPR is obligated to make suitable orders for redress, which may include fair compensation or reparation (Gómez Isa and Koen, 2009).

The Charter also protects the right to a 'satisfactory environment' among other group rights, including the right to freely dispose of wealth and natural resources, and the right to economic, social, and cultural development (Deutsche Gesellschaft für Internationale Zusammenarbeit, 2022). In this regional human rights system especially women and girls are granted extensive protection with respect to a healthy and sustainable environment, requiring states that have ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (1998), also known as the Maputo Protocol, to adopt necessary measures to, inter alia, ensure women's active involvement in environmental planning and sustainable resource use, promote research and investment in renewable energy and technology with women's participation, and protect Indigenous women's knowledge systems. Hence, as opposed to other regional human rights courts, the ACtHPR can be requested to directly review a state's adherence to its duty to respect and protect the human right to a healthy environment, which incorporates aspects related to climate change (Suedi and Fall, 2023).

The African Commission pioneered the protection of the environment in relation to the rights enshrined in the African Charter, particularly the right to a healthy environment (Sobenes, Mead and

Samson, 2022). In the landmark case of *the Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) vs Nigeria* (2002) the Ogoni people alleged that the Nigerian government had violated their right to a clean or healthy environment by failing to avert pollution and facilitating oil corporations' operations in Ogoniland (Suedi and Fall, 2023). The Commission underscored that this right imposes on states the obligation to adopt reasonable measures to prevent pollution and environmental degradation, promote conservation, ensure sustainable development and use of natural resources, and conduct environmental impact assessments (Sobenes, Mead and Samson, 2022). While climate change was not explicitly mentioned in the parties' pleadings or the Court's judgment, the case indirectly correlates to the climate crisis as oil are significant contributing factors to greenhouse gas emissions (Suedi and Fall, 2023).

Regarding the ACtHPR, the *Ogiek* (2017) case marked the first instance where the Court had to address environmental protection claims. The case concerned the eviction of the Ogiek, an indigenous people from the Mau Forest in Kenya's Rift Valley. The Court ruled that the Kenyan government had violated the Ogiek community's rights, determining that the genesis of the environmental degradation was traced in the actions of the government and not in the practices of the Ogiek, as alleged to justify the eviction (Sobenes, Mead and Samson, 2022). Nonetheless, there is a notable absence of explicit climate change cases before the African Human Rights System to date.

Besides these human rights courts, there exist international courts that also have jurisdiction over human rights issues, alongside their broader mandates in various domains of international law. This encompasses the Court of Justice of the European Union, the International Court of Justice, as well as the International Criminal Court.

The European Court of Justice

The European Court of Justice (ECJ) has an indirect link to international human rights law (Kadelbach, Rensmann and Rieter, 2019). As a part of the Court of Justice of the European Union, the ECJ is tasked with interpreting the Treaties of the European Union and secondary legislation enacted under those Treaties. It also reviews the legality of this secondary legislation to oversee both the institutions and the member states of the European Union (Sobenes, Mead and Samson, 2022). The European Union (EU) has developed its own system for the protection of fundamental rights (Didi, 2023).

Safeguarding these rights is a core value of the Union, according to the Treaty of Lisbon (2007, Art. 2). At the heart of EU fundamental rights protection is the EU Charter of Fundamental Rights (2012), which became legally binding with the Lisbon Treaty and holds the same legal status as the founding Treaties (Didi, 2023). Since the Charter's elevation to primary EU law, the ECJ primarily relies on it as the standard for judicial review of secondary EU legislation (Kadelbach, Rensmann and Rieter, 2019). Nevertheless, the Charter's application at the national level is limited; it applies to EU institutions, agencies, and bodies, and to member states only when implementing Union law (Didi, 2023).

The European Court of Justice, situated in Luxembourg is not directly accessible to individuals. Instead, access is limited to cases initiated by the European Commission after a preliminary procedure or by an EU member state (Treaty of Lisbon, 2007, Art. 258, 259). Yet, a case initiated by an individual may indirectly be brought before the ECJ if the national court requests a preliminary ruling concerning the interpretation of EU law (Treaty of Lisbon, 2007, Art. 267).

The Charter (2012, Art. 37) incorporates a specific provision in relation to the environment which mandates that a “high level of environmental protection and the improvement of the quality of the environment” must be integrated into the Union's policies. However, the Court is maintaining a very formalistic approach towards climate change justice, while the individual access in environmental disputes in front of the ECJ is limited (Bouveresse, 2023).

The International Court of Justice

The International Court of Justice (ICJ), based in The Hague, Netherlands, is the principal judicial organ of the United Nations. The ICJ's mandate includes adjudicating legal disputes between states in accordance with international law and providing advisory opinions on legal questions referred by authorized UN organs and specialized agencies (International Court of Justice, no date). The Court can only decide on disputes if the state parties involved have accepted its jurisdiction over the specific dispute or a relevant class of disputes. While all UN members have access to the ICJ, only a limited number of states recognize its “compulsory jurisdiction”, which is the pre-accepted authority of the ICJ to adjudicate certain disputes without a specific agreement for each case (Thirlway, 2016, p. 3). This means that any state that has recognized the compulsory jurisdiction of the Court can bring one or more other states, which have accepted the same obligation, before the Court by submitting an application to initiate

proceedings (*Statute of the International Court of Justice*, 1945, Art. 36). Individuals do not have direct access to the ICJ (Crook, 2004).

As already mentioned, the ICJ also serves an advisory role. Through its advisory opinions, the Court has made substantial contributions to human rights processes (Crook, 2004). In March 2023, the UN General Assembly, led by efforts from the Republic of Vanuatu, requested the ICJ to provide an advisory opinion on states' legal obligations in respect of climate change. This request seeks clarification on states' responsibilities under international law—including international human rights law—to protect the climate from anthropogenic greenhouse gas emissions, and the legal ramifications for states, peoples, and individuals adversely impacted by climate change. The Assembly's request referenced the UN Charter, key human rights treaties, the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, alongside the fundamental principles of international environmental law (Kosolapova, 2024). Although the ICJ's advisory opinions are not legally binding, they set a standard and precedent that guide the evolution of international law (ClientEarth, 2024).

The Court's contentious function has also played a crucial role in developing and clarifying international law regarding environmental protection (Sobenes, Mead and Samson, 2022). For instance, in the *Certain Activities* (2018) and the *Construction of Road* (2015) cases, the Court clarified the state of customary international law in relation to transboundary environmental harm. Notably, the Court confirmed that international law imposes both procedural and substantial obligations on states engaged in activities within their jurisdiction that could possibly harm the environment of another state, as discussed in the previous chapter (Sobenes, Mead and Samson, 2022).

The International Criminal Court

The International Criminal Court (ICC) is a permanent international tribunal, established by the Rome Statute, with the view to prosecute individuals responsible for the most serious international crimes (Lourenco Calling, 2023). The ICC's jurisdiction encompasses genocide, crimes against humanity, war crimes, and the crime of aggression (*Rome Statute of the International Criminal Court*, 1998, Art. 5). Proponents of the ICC argue that prosecuting individuals for breaches of international law can deter them from committing mass human rights violations (Scharf, 1997; Akhavan, 2009; Schabas, 2011). Beyond its deterrent effect, the ICC ensures accountability for human rights violators and aims to break the cycle of impunity by bringing perpetrators of grave human rights abuses to justice. Moreover, the ICC plays a

crucial role in interpreting and applying international law, thereby shaping the scope of human rights protections and reinforcing the framework for safeguarding human rights (Lourenco Calling, 2023). Additionally, in light of the Rome Statute (1998, Art. 75), states are obligated to fully cooperate with the Court in its investigation and prosecution of crimes falling under the Court's jurisdiction. This cooperation fortifies the international dedication to human rights and cultivates a shared responsibility in addressing and preventing large-scale atrocities. Lastly, the Court emphasizes restorative justice by recognizing the harm inflicted and ensuring justice and reparations for victims (Lourenco Calling, 2023).

The seat of the Court is in the Hague, Netherlands (*Rome Statute of the International Criminal Court*, 1998, Art. 3). The ICC can assert its jurisdiction over the aforementioned crimes under the following circumstances: when a crime is alleged to have occurred on the territory of a state party to the Rome Statute; when a national of a state party is accused of committing a crime; when the United Nations Security Council refers a situation where crimes committed to the ICC Prosecutor; or when a non-state party submits a declaration accepting the Court's jurisdiction over the specific crime by with the ICC Registrar. It must be noted that these crimes necessitate both a “physical component” (actus reus) and a “mental component” (mens rea) (Sobenes, Mead and Samson, 2022, p. 166).

The Rome Statute (1998, Art. 8 (2)) explicitly refers to the “natural environment” within the context of armed conflict, recognizing the following act as a war crime:

“Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated”.

As can be observed, this provision sets a high threshold for the level of environmental harm that must be met to be considered a crime. The high damage thresholds and the narrow circumstances under which the provision can be applied present substantial legal hurdles, which in practical terms, seem nearly insurmountable, thereby hindering effective prosecution. It requires evaluating the proportionality of environmental damage in relation to the specific military contingencies of the actions, adding to the uncertainty, subjectivity, and complexity in applying the provision (Sobenes, Mead and Samson, 2022). Hence, this provision appears inadequate and insufficient to address major environmental issues like the climate emergency.

In response, there has been a growing body of literature examining the intersection of international criminal law and environmental protection, proposing the establishment of new ecocentric crimes such as ecocide (Neyret, 2015; Gillett, 2017; Greene, 2019; Aliozi, 2021). Be that as it may, ecocide remains a topic of theoretical discussion. This idea will be further explored in a subsequent chapter, which will discuss how incorporating ecocide into the international criminal law framework could complement existing climate litigation efforts and advance climate and gender justice.

IV.2 Rights-Based Climate Litigation for Climate and Gender Justice

Climate ambition across the globe continues to fall short of tackling the climate emergency. Climate change impacts are escalating year by year as the climate crisis deteriorates, as explained in the first chapter. In response, more and more people are resorting to legal avenues to address related inadequate responses by national governments and the private sector. Women, among others, are playing an increasingly prominent role in initiating these cases and driving climate change governance reform in an expanding number of countries worldwide (United Nations Environment Programme, 2023).

Climate litigation typically refers to lawsuits brought before international or domestic judicial or quasi-judicial bodies, addressing legal or factual issues pertaining to climate science, climate change mitigation, or adaptation (de Vilchez and Savaresi, 2021). As improvements in legal frameworks for climate action at both national and international levels have established new rights and imposed new obligations, litigation questioning their facial validity or specific application has emerged. Moreover, litigation can also seek to pressure legislators and policymakers to be more ambitious and meticulous in their climate change mitigation efforts, or aim to bridge the gaps left by legislative and regulatory inaction (Burger and Gundlach, 2017). Climate justice campaigns by transnational civil society organizations are progressively acknowledging the importance and effectiveness of using litigation, turning to the courts to challenge insufficient climate policies, hold governments and corporations accountable for their contributions to the climate crisis, and seek remedies for those unjustly affected by environmental harm (Patt *et al.*, 2022).

Gradually, climate lawsuits have invoked human rights, either wholly and directly, or partially in a peripheral way (de Vilchez and Savaresi, 2021). An increasing number of rights-based climate lawsuits have been lodged before human rights bodies, striving to fill the accountability and enforcement gaps

within international and national climate change laws (Savaresi and Setzer, 2022; Didi, 2023; Levy *et al.*, 2023). As of July 2024, the Sabin Centre for Climate Change Law at Columbia Law School, one of the world's most established climate litigation databases, listed 151 out of 2430 cases that relied wholly or partly on human rights (Sabin Center for Climate Change Law, no date). Chronologically, the trend of using human rights arguments and remedies in the courts to promote climate action is relatively recent, with this “wave” of climate change litigation starting to feature more prominently after the adoption of the Paris Agreement in 2015 (Didi, 2023, p. 13). Since 2018, however, the number of climate lawsuits based on human rights has risen at a significantly accelerated pace and is anticipated to continue growing in the forthcoming years (Savaresi and Setzer, 2022). Geographically, since 2015, rights-based climate cases have been predominantly lodged in Europe, even though in general climate litigation the vast majority of cases have been brought in the US. This can be attributed to the fact that Europe is endowed with the ECtHR, a human rights body historically sympathetic to the use of human rights claims for pursuing environmental objectives (Didi, 2023).

Numerous instances of climate change litigation integrating human rights elements have emerged before national and international courts (Aristova and Lim, 2024). Amidst these, the *Urgenda* (2015) case in the Netherlands stands out as a landmark climate case. The case was filed against the Dutch government in 2013 by the Urgenda Foundation, a Dutch environmental citizens' platform, on behalf of 886 Dutch citizens. In their claims, it was argued that the government is obliged, among others, on the basis of human rights law, to take action to reduce greenhouse gas emissions. It was the first case in the world where citizens established that their government has a legal duty to prevent dangerous climate change (Urgenda Foundation, no date). The Urgenda case set a significant precedent for climate litigation worldwide, with its international significance highlighted by the UN High Commissioner for Human Rights, Michelle Bachelet (2019a), who stated that “the decision confirms that the Government of the Netherlands and, by implication, other governments have binding legal obligations, based on international human rights law, to undertake strong reductions in emissions of greenhouse gases”.

In its AR6, the IPCC underscored the significance of climate litigation noting that “outside the formal climate policy processes, climate litigation is another important arena for various actors to confront and interact over how climate change should be governed” and that it has the potential to “affect the stringency and ambitiousness of climate governance” (Patt *et al.*, 2022). It represents an innovative approach to shifting the dynamics of the struggle against the climate crisis (United Nations Environment Programme, 2023). Rights-based climate change litigation can serve as an avenue for challenging

unequal power structures and a proxy for political participation for those who face the disproportionate and intersectional impact of climate change, including women. Through human rights-based litigation, women can address the climate inequalities that adversely affect them. This approach holds the promise to counteract their exclusion from climate politics and offer them a participatory space for contributing to climate laws and policies (Hefti, 2024). In essence, a “rights turn” in climate litigation (Peel and Osofsky, 2018) harbors the potential to alleviate climate and gender disparities, thereby advancing climate and gender justice.

IV. 3 Litigating for Change: Emerging Gender-Based Climate Litigation Cases

Building on this understanding, an analysis of prominent women-led rights-based climate litigation cases is followed. These cases exemplify how a rights turn in climate litigation can contribute to addressing the unequal impacts of climate change on women and girls, unveiling its potential in achieving climate and gender justice.

Climate litigation is gradually acknowledging the vulnerability of specific groups to the extensive effects of climate change (United Nations Environment Programme, 2023). Nevertheless, only a few climate-related cases have effectively addressed or emphasized the gendered impacts of the climate crisis or the intersectional oppressions that render women particularly susceptible to climatic changes. As a crucial pathway for climate action, climate litigation emerges as a powerful tool for responding to gender-differentiated impacts, embedding meaningful gender definitions into states’ climate strategies, and engaging with women and girls regarding their specific needs and aspirations (Lupin, Tigre and Urzola Gutiérrez, 2024).

Given the limited presence of gender-based arguments in climate litigation thus far, *Klimaseniorinnen v. Switzerland* (2024) stands out as a conspicuously groundbreaking case. This case sought to bring a gender perspective, focusing specifically on the intersectional nature of gendered identities and vulnerabilities (Lupin, Tigre and Urzola Gutiérrez, 2024). The Court’s decision was historic and unprecedented, establishing that states bear a positive obligation to adopt measures to mitigate the climate crisis under the right to family and private life (Article 8 ECHR) (Arntz, Krommendijk and Krommendijk, 2024). Another important women-led climate case that can pave the way for a new approach in rights-based climate litigation, is *Maria Khan et al. v. Federation of Pakistan*

et al. This petition was brought forward to challenge the lack of climate mitigation action in Pakistan, arguing that climate change impacts disproportionately affect women due to social constraints limiting their opportunities compared to men. Although the case is still pending before the Supreme Court of Pakistan, a favorable ruling for the petitioners could be groundbreaking in focusing on climate adaptation policies in a Global South country (Ohdedar, 2021). The subsequent discussion will shed more light on these significant cases at the nexus of climate and gender issues.

Verein Klimaseniorinnen Schweiz and Others v. Switzerland

In 2016, the association KlimaSeniorinnen, a group of senior women, along with four individual women, lodged a complaint before the Swiss Federal Department of the Environment, Transport, Energy, and Communications (DETEC), the Federal Office for the Environment, and the Federal Office for Energy. They argued that the Swiss authorities' planned CO₂ reductions were inadequate to limit global warming to 1.5°C above pre-industrial levels and demanded immediate action to meet the Paris Agreement goals and adhere to international climate commitments (Hirsiger, Bretscher and Nacht, 2024). The petitioners claimed the Swiss government violated Articles 10 (right to life), 73 (sustainability principle), and 74 (environmental protection) of the Swiss Constitution, as well as Articles 2 (right to life) and 8 (right to family and private life) of the ECHR. Specifically, they submitted evidence that their demographic group (older women) is particularly vulnerable to heatwaves, leading to severe health impacts and excess mortality risks (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024). The petition was dismissed by DETEC in April 2017, citing a lack of standing because their request sought general policy reforms to reduce CO₂ emissions, rather than addressing an infringement of specific rights, and lacked victim status under the ECHR (Sabin Center for Climate Change Law, 2024).

Subsequently, the applicants filed an appeal against this judgment with the Swiss Federal Administrative Court (SFAC) in May 2017. This appeal was rejected in November 2018, as the Court held that women over 75 years were not uniquely impacted by climate change (Sabin Center for Climate Change Law, 2024). An appeal to the Swiss Supreme Court (SFSC) in January 2019 was also dismissed in May 2020, as the Court found that the case represented an *actio popularis* and the remedy required political, not legal, solutions (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024).

Having exhausted all available domestic remedies, in November 2020, they decided to challenge the SFSC's judgment before the European Court of Human Rights. The application centered on three

main complaints: Firstly, Switzerland's insufficient climate policies violated older women's rights to life and health under Articles 2 and 8 of the ECHR. Secondly, the SFSC dismissed their case on arbitrary grounds, thus breaching their right to a fair trial under Article 6. Thirdly, the Swiss authorities and courts failed to address the substance of their complaints, violating their right to an effective remedy under Article 13 (Sabin Center for Climate Change Law, 2024). It is noteworthy that the case saw a remarkably high number of third-party interventions for the ECtHR, amounting to 23, inter alia the International Commission of Jurists (ICJ), the Sabin Center for Climate Change Law, and eight states. On April 9, 2024, the ECtHR declared the case admissible for the association and found violations of the right to respect for private and family life (Article 8) and access to court (Article 6 § 1) (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024).

More specifically, the Court emphasized its duty to protect human rights amid pressing contemporary conditions, including climate change. It acknowledged that while the legislative and executive branches are primarily responsible for handling climate issues, the necessity of tackling climate change involves various conflicts and is complemented by judicial oversight by the Court (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024). Furthermore, the Court reiterated that human-induced climate change poses a serious threat to human rights enshrined in the ECHR, that states are aware of this peril and have the capacity to implement effective measures in response. Additionally, it noted that despite the absence of an explicit right to a healthy environment in the ECHR, the crucial element is whether environmental harms interfere with the Convention's rights (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024).

Regarding admissibility, the ECtHR assessed whether the four individuals and the association had the victim status, which requires a high intensity of exposure to the adverse effects of the climate crisis and a pressing need for individual protection, as *actiones populares* are excluded. The individual applicants did not meet these criteria and thus lacked standing to bring their complaint, according to Court's ruling. Conversely, the standing of the association was affirmed by the Court, recognizing that climate change, being a common concern of humanity, as well as the need for intergenerational burden-sharing, justify the standing of associations before the ECtHR in climate cases (Hirsiger, Bretscher and Nacht, 2024).

In terms of the merits of the case, the ECtHR ruled that Switzerland violated Article 8 of the Convention which encompasses states' obligation to protect individuals from the negative effects of climate change on life, health, and well-being. The Court explained that the Swiss authorities did not

fulfill their positive obligations under the Convention with regard to climate change and did not comply with its greenhouse gas emissions reduction goals. As stressed, notwithstanding states enjoy a wide margin of appreciation, Switzerland had not taken timely and adequate action to implement necessary measures (Sabin Center for Climate Change Law, 2024). As for the claims under Article 2, the ECtHR found that the Article 2 and 8 positive obligations are largely similar. The Court also determined that there was a violation of Article 6 § 1 ECHR, as the Swiss courts did not provide compelling justifications either for not examining the merits of the complaints or for their dismissals. Concerning procedural rights, it underscored the crucial role of domestic courts in climate litigation and the importance of guaranteeing access to justice in this context (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024).

The *KlimaSeniorinnen* (2024) case has significant implications for all 46 member states of the Council of Europe (Hirsiger, Bretscher and Nacht, 2024). In its judgment, the ECtHR introduced a new paradigm for rights-based climate litigation (Seghers, 2024). The Court examined substantial evidence indicating that older women are particularly vulnerable to rising temperatures and heatwaves, revealing empirical proof that this demographic group suffers and dies because of these conditions. For example, the Court considered OHCHR's finding that gender discrimination and unequal access to power and resources make older women more vulnerable to climate change impacts due to their gender and age, as they are more likely to live alone, face higher levels of poverty, and experience greater health risks (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024, para. 185). However, its ruling did not explicitly refer to this issue or impose any duty on states to mitigate these gendered impacts (Lupin, Tigre and Urzola Gutiérrez, 2024).

Maria Khan et al. v. Federation of Pakistan et al.

In 2018 a coalition of women submitted a constitutional petition on their behalf, as well as on the behalf of future generations against the Federation of Pakistan, the Ministry of Climate Change, the Ministry of Energy, the Alternative Energy Development Board, and the Central Power Purchasing Agency. The petitioners argued that the respondents breached their right to a clean and healthy environment and a climate capable of sustaining human life- a right recognized in *Asghar Leghari v. Federation of Pakistan* (2015)- by failing to implement climate mitigation measures, particularly in renewable energy resources and the transition to a low-carbon economy (*Maria Khan et al. v. Federation*

of *Pakistan et al.*, 2019). They also claimed that Pakistan's inaction in combatting climate change infringed upon their fundamental rights under Articles 4 (inalienable rights), 9 (right to life), 14 (right to privacy), and 25 (equality of citizens) of the Constitution of Pakistan. Specifically, they brought forward the argument that, since climate change has a disproportionate impact on women, the Pakistani government's failure to mitigate climate change constituted discrimination based on sex, violating their right to equal protection (Sabin Center for Climate Change Law, no date b).

Furthermore, the plaintiffs noted that despite Pakistan's ratification of the Paris Agreement and submission of its Intended Nationally Determined Contribution (INDC), committing to a 20% reduction in projected greenhouse gas emissions by 2030, the government had not initiated any renewable energy projects. According to their petition, the respondents violated the public trust doctrine, inter-generational and intra-generational equity, and climate justice. Additionally, in their claims, they explained that being women and mothers of future generations, they are particularly vulnerable to the climate crisis owing to social constraints, supported by scientific research and international reports (*Maria Khan et al. v. Federation of Pakistan et al.*, 2019).

Lastly, petitioners sought several remedies, including recognition of the violation of their fundamental rights and Pakistan's failure to meet its commitments under the Paris Agreement; a declaration that the respondents have a positive obligation to promote and support renewable energy projects, to decrease greenhouse gas emissions and address climate change impacts; and an order requiring the Pakistani government to fully enforce the Paris Agreement and implement an integrated policy for climate-resilient development (Climate and Human Rights Litigation Database, 2021).

This case remains pending; nevertheless, it presents a critical challenge for the Supreme Court of Pakistan. A favorable ruling for the petitioners in *Maria Khan et al. v. Federation of Pakistan et al.* could be revolutionary, in several aspects, particularly in addressing wide-ranging mitigation policy in a Global South country (Alogna, Bakker and Gauci, 2021). Moreover, it signifies that climate lawsuits are a crucial avenue for women to access justice, contributing profoundly to the fight against climate and gender injustices.

V. RIGHTS-BASED CLIMATE LITIGATION: BARRIERS AND BREAKTHROUGHS

V.1 Navigating the Complexities of Climate Litigation

Leveraging judicial avenues for advancing climate and gender justice can be highly impactful, as highlighted in the previous chapter, yet it also presents inherent challenges. Action through the courts encounters various hurdles, inter alia, barriers to access to justice, complexities in handling scientific evidence, and the reluctance of many courts to address controversial policy issues (Peel and Osofsky, 2020). With respect to rights-based climate change litigation, additional hurdles arise, such as the causality challenge, the cross-temporal challenge, and the extra-territorial challenge (Ziebarth, 2023).

Access to justice centers upon the unequal relationship of law with various segments of society, some of whom struggle to effectively engage with legal systems. This concept embodies the principle that all persons, irrespective of financial or social obstacles, should have the ability to seek and obtain justice (McGowan and Coverdale, 2017). A significant aspect of this principle is the provision of legal aid and free legal assistance to those experiencing poverty, disadvantage, and marginalization. Broadly understood, it encompasses broader social justice issues, like the fair distribution of welfare, resources, and opportunities. The interaction between the legal system and societal institutions significantly influences individuals' access to justice. Barriers include the cost of legal services, the complexity of court procedures, delays in legal processes, the relatively slow pace of seeking justice, and challenges related to rural and remote locations. Additionally, structural barriers deeply rooted in social and institutional norms, including racism, sexism, classism, and cultural stereotypes, further impede access (Federation of Community Legal Centres Victoria, 2023).

These challenges are particularly pronounced for women, who encounter economic, social, and cultural constraints in accessing justice. The CEDAW Committee (2015) has highlighted gender stereotypes, stigma, patriarchal norms, and gender-based disproportionately hamper women's access to justice compared to men. These obstacles are compounded by intersecting factors, such as nationality, race, indigenous or minority status, color, socioeconomic background, language, age, geographical location, and disability. These overlapping forms of discrimination create additional hurdles, making it

exceptionally difficult for women from marginalized societal groups to attain justice (Committee on the Elimination of Discrimination and against Women, 2015).

In this regard, in rights-based climate litigation, a significant barrier for many individuals seeking justice is the absence of a regional human rights system, and consequently, a human rights court. The Asia-Pacific region is the only major area in the world without a regional human rights commission or court (Gibney and Mihr, 2014). This absence presents a substantial drawback for individuals and groups seeking justice beyond domestic avenues, hindering them from using human rights arguments and remedies in courts to promote climate action.

Moreover, integrating science and expertise into climate litigation presents significant challenges. Establishing a causal link between specific sources of greenhouse gas emissions and climate-related impacts is particularly demanding. The difficulty of this task is reflected in the dismissal of numerous climate cases due to lack of standing or because courts deemed the issues non-justiciable. Furthermore, judges often face hardships in comprehending and effectively utilizing scientific evidence in their decisions, given that the complexity of climate science involving technical scientific material can be daunting and outside their usual expertise (Setzer and Vanhala, 2019).

Another challenge to climate change litigation is the conservatism of courts in confronting contentious policy issues (Peel and Osofsky, 2020). Many courts exhibit a reluctance to engage with controversial policy matters, avoiding addressing issues that involve significant political or societal debates in their decisions. This approach often arises from concerns over judicial overreach and venturing into areas managed by legislative or executive branches. For instance, ECtHR's ruling in the *KlimaSeniorinnen* (2024) case has faced sharp criticism, with accusations that the Court overstepped its judicial role. Notably, as Claire Coutinho, the Energy Secretary of the United Kingdom, stated: "How we tackle climate change affects our economic, energy, and national security. Elected politicians are best placed to make those decisions". Similarly, one of the 17 judges in this case expressed a dissenting opinion, contending that the majority's approach to the ECHR had exceeded "the permissible limits of evolutive interpretation" (Lawne, Luke and Patrick, 2024).

Climate litigation faces significant challenges in establishing a clear causal link between actions contributing to climate change and resulting harm, particularly when human rights are invoked (Ziebarth, 2023). The "causality challenge" refers to the difficulty in linking a state or company's greenhouse gas emissions and a state's failure to implement adaptation policies with the resulting impacts and their

subsequent implications for human rights (Yoshida and Setzer, 2020, p. 147). In essence, for rights-based climate lawsuits, plaintiffs must demonstrate that a party's actions have not only contributed to climate change but also infringed on certain human rights protections and can be directly attributed to that party (Ziebarth, 2023).

A further obstacle encountered in rights-based climate litigation involves the “cross-temporal challenge” (Yoshida and Setzer, 2020, p. 147). This challenge pertains to the temporal or time gap between the claim of rights being breached and the actual impact or harm experienced by the affected party. Climate change is a long-term process, and its effects often take a significant time to manifest after environmental harm occurs (Ziebarth, 2023). Human rights claims are typically filed after actual harm has emerged, while environmental law, through the precautionary principle, considers future-oriented impacts and potential harms (Yoshida and Setzer, 2020). Temporal spaces can impede successful litigation, as the directness and severity of the harm might be perceived as diminished or nonexistent (Ziebarth, 2023).

The significant global impact of climate change on human rights underscores the necessity for human rights law to extend beyond national borders to address climate-related injustices effectively. A human rights-based approach to climate change must include extraterritorial application to be meaningful since states causing significant environmental harm are not the ones most affected by it, as illustrated in the first chapter (Lewis, 2018). However, the legal principles of jurisdiction and territoriality may hinder successful claims of human rights violations related to climate change. The traditional state-centric model of territorial jurisdiction could complicate climate litigation invoking human rights, given that such cases usually entail a complex array of transnational effects and actors (Ziebarth, 2023). This challenge represents the difficulty of expanding the rules regarding extraterritorial responsibility for human rights to hold state and non-state actors accountable for transboundary environmental nuisance (Lewis, 2018). In this context, Eric Posner has pointed out that domestic courts might be ineffective in handling climate change issues because climate change constitutes a global public good and these courts have limited jurisdiction over foreign corporations. Consequently, this limitation diminishes the possibility of domestic courts providing effective remedies for international human rights violations caused by climate change (Ziebarth, 2023).

Lastly, in order to meet the victim requirement in rights-based climate litigation, applicants need to demonstrate a direct link between the actor's actions or omissions and the violation of their human rights. The violation must be real, personal and significant, or pose a direct and immediate risk. Although

this requirement is standard for all individual communication procedures, the level of strictness varies among institutions (Luporini and Savaresi, 2022). This presents a significant challenge, especially for women trying to prove disproportionate impacts from climate change. Since climate-related harm typically affects entire populations, it is particularly difficult for those disproportionately impacted to prove they are directly affected by climate change implications (Hefti, 2024). Hence, the narrow threshold for victim status can hamper many climate plaintiffs from accessing justice. The universal approach, which overlooks the unique vulnerabilities of historically marginalized groups, including women, adds further obstacles to seeking justice and remedies for climate inaction or inadequate action (Lupin, Tigre and Urzola Gutiérrez, 2024).

To conclude, litigation is not a panacea. Notwithstanding the aforementioned challenges in using human rights claims in climate change litigation, the rights-based approach still provides a number of instrumental benefits. Many of its advocates argue that it remains the most impactful method for addressing the human impacts of climate change (Lewis, 2018). Crucially, it can provide a platform for those disproportionately affected by the climate emergency, like women and girls, who are excluded from climate decision-making, giving them the opportunity to influence laws and policies, and, therefore, to reshape unjust power dynamics (Hefti, 2024). While litigation is not flawless, it is essential for driving social change (Cummings and Rhode, 2009). In the *KlimaSeniorinnen* case (2024), the older Swiss women made an impact beyond their lifetime, achieving a victory for all generations, and empowering younger women and girls in the battle against climate change. Yet, litigation should not be viewed as the sole mechanism for effecting climate policy and behavioral changes. Litigation alone cannot redress all the complex facets of social and climate issues. Effective climate action requires that litigation be integrated with broader political and social engagement efforts, including policy advocacy and social campaigns (Peel and Osofsky, 2020). This multi-faceted approach ensures that litigation is supported by and supports broader political and social dynamics, leading to comprehensive policy reform and social transformation.

There is a call for gender-sensitive and gender-responsive approaches to climate change, alongside a focus on gender mainstreaming in climate policy. The mere inclusion of women in patriarchal systems does not necessarily lead to substantial changes. Achieving a climate-resilient, gender-responsive metamorphosis requires transforming systems that perpetuate disparities to tackle broader structural inequalities. Gender and climate justice will be realized when the root causes of global and

structural inequalities are confronted, challenging unethical power dynamics and the unacceptable exploitation of power that benefits the powerful and elite (Prakash *et al.*, 2022).

V.2 From Litigation Obstacles to Ecocide Solutions: A Pathway to Enhanced Climate and Gender Justice

Having discussed the challenges encountered by rights-based climate litigation, it becomes evident that while such legal avenues can play a crucial role, they alone may not suffice in addressing the systemic injustices perpetuated by anthropocentric practices. Therefore, transitioning to a more comprehensive approach is essential—one that not only holds perpetrators accountable but also sparks broader societal transformations towards sustainable and just practices. In this context, the concept of ecocide emerges as a promising pathway.

Climate justice is increasingly recognized as an integral component of the international human rights system (Aliozi, 2021). The international human rights regime, along with human rights institutions and courts, has contributed to deepening the recognition of the interwoven nature of human rights and environmental protection and to clarifying the responsibilities of states and non-state actors in this regard. While safeguarding the environment is a necessary enabling condition for the effective realization of human rights, upholding human rights can play a role in protecting ecosystems, averting severe environmental harm, and mitigating climate change impacts (Oldring and Mackintosh, 2022). The recognition of ecocide as a new international crime reflects the appreciation of these interconnections, integrating environmental concerns into a legal framework traditionally focused on protecting human life and dignity. Adding ecocide to the gravest crimes that concern the entire international community acknowledges the climate crisis, and its potentially catastrophic ramifications for the environment, as one of the greatest perils to human rights in our era (Oldring and Mackintosh, 2022).

A human rights perspective enhances our understanding of how ecocide disproportionately impacts vulnerable and marginalized communities. Viewing ecocide through this lens can help foster the development of legal frameworks that deliver genuine climate justice, unraveling accountability gaps that the new crime of ecocide aims to bridge (Oldring and Mackintosh, 2022). Thus, the recognition of ecocide as the fifth international crime against peace (Mehta and Merz, 2015) can complement existing

climate litigation by providing a means to hold states and corporations accountable for significant environmental degradation that contributes to climate change, thereby advancing climate justice efforts.

Specifically, enacting a crime of ecocide into international law can provide liability on a global scale for actions resulting in severe environmental damage, paralleling how international criminal law has established individual accountability for grave human rights violations (Oldring and Mackintosh, 2022). This approach can ensure effective prosecution, guarantee that states take measures, engage in international cooperation, and offer a higher level of protection to the people suffering the most from the implications of climate change, inter alia women and girls, by holding the perpetrators responsible and eradicating their impunity.

Possibly even more significant is the social expressive function of recognizing ecocide: reframing massive environmental wrongdoing as one of the gravest crimes warranting international concern (Robinson, 2022). Including ecocide among international crimes acknowledges that extensive environmental harm poses a threat comparable to existing international crimes such as genocide, crimes against humanity, war crimes, and aggression. Ecocide threatens global peace, security and well-being, which are crucial aspects for the recognition of international crimes (*Rome Statute of the International Criminal Court*, 1998). It meets the hallmarks of other international crimes: the damages are severe, the consequences transcend borders, and domestic regulations are inadequate to address the crisis (Robinson, 2022).

Green criminologists have examined how this approach could enhance environmental protection and shift societal perceptions of severe environmental harm (Glasgow, 2015; Stahn, 2020). Notwithstanding international criminal law is often criticized for disproportionately focusing on individuals in the Global South, proponents of ecocide note that ecocidal acts are usually perpetrated by affluent elites in the Global North, with the resulting harms predominantly borne by vulnerable communities, particularly in the South. Therefore, ecocide can help address this imbalance, by shedding light on “crimes of the powerful” and contributing to the “decolonization of international law” (Robinson, 2022, p. 318).

In an endeavor to enrich the pantheon of the international criminal justice system, the Independent Expert Panel for the Legal Definition of Ecocide, comprised of 12 lawyers from around the world (2021, sec. 2) provided the legal definition of ecocide as the “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to

the environment being caused by those acts”. Yet, this concept was not entirely novel, as it was initially coined by biologist Arthur Galston in the 1970s (Palarczyk, 2023) and later revived and expanded by Polly Higgins (2015, p. 63), a British barrister, who defines ecocide as “extensive damage to, destruction of, or loss of ecosystem(s) of a given territory [...] to such an extent that peaceful enjoyment by the inhabitants of that territory has been or will be severely diminished”. The proposals put forth over a span of decades for recognizing the crime of ecocide convey a gradual shift in the world's perception of its reliance on ecosystems (Moribe, Pereira and França, 2023).

The term ecocide, derived from the Greek word ‘oikos’ (home) and the Latin word ‘cadere’ (to destroy, kill), *lato sensu*, describes the destruction of the natural environment (Mehta and Merz, 2015). Unequivocally, there is an ecocentric aspect to this word. Ecocentrism values elements of the environment for their own sake; it views them as protected values *per se*, opposing the instrumental perspective of Mother Nature, which characterizes anthropocentrism (Medlock and White, 2022). In the Anthropocene, as explained in the first chapter of the thesis, humans act with myopic self-interest at the cost of all life on Earth, waging war against the planet which, in turn, disrupts the equilibrium of natural habitats and the well-being of various species, including humans. Recognizing ecocide as a new crime against world peace would legally recognize the symbiotic relationship and mutual reliance between ecosystems and humans, thereby embracing an ecocentric cosmology. This idea not only emphasizes the interconnectedness of human rights and the environment but also complements a human rights approach, shifting away from anthropocentrism (Oldring and Mackintosh, 2022).

Although the establishment of ecocide as the fifth international crime in the Rome Statute remains a theoretical discussion, as noted in the previous chapter, several states have already integrated this green crime into their domestic legal systems, including Belgium, Chile, Ecuador, France, Russia and Ukraine. Moreover, an increasing number of other countries are considering similar legislative measures (Ecocide Law, 2024), underscoring the global trend toward recognizing and addressing severe environmental harm through legal mechanisms.

Concluding, a shift from the outdated anthropocentric role of law to an ecocentric understanding of climate justice is needed (Aliozi, 2021). Using a human rights lens to interpret ecocide underscores how environmental destruction, including climate change, adversely affects the most vulnerable and marginalized sectors of society in unequal ways. This perspective stresses the importance of legal prosecutions that comprehensively acknowledge and reflect these impacts. Jurisprudence can play a pivotal role in enhancing climate justice and providing redress for affected communities, promoting

fairness and equity (Oldring and Mackintosh, 2022). Ultimately, the introduction of an international crime of ecocide, grounded in human rights principles, has the potential to generate protection for all victims of climate change, inter alia women and girls who bear the brunt of the climate crisis. By providing redress and accountability for climate injustices and recognizing the gendered nature of climate change, this approach can be a significant step forward toward attaining climate and gender justice at a global level.

In the epoch of the Anthropocene, some of these aspirations might seem overly optimistic, or even utopian. However, in light of the philosophical insights of Sartre and Marcuse, a concept may initially appear remote or unimaginable, yet it can serve as a critical tool for praxis that leads to meaningful and practical change in today's world (Tally, 2010). Besides, utopian thinking has been the driving force of change in history.

CONCLUSION

The impacts of climate change are being felt by each and every person around the world, albeit not in an equal manner. Climate change is inherently a gendered phenomenon; power dynamics and socially constructed gendered norms influence the experiences of individuals and communities in distinct ways. As a threat multiplier, it exacerbates existing gender inequalities and injustices. Climate change is not just an ecological crisis; it is a matter of justice, prosperity, and gender equity, intricately connected to and swayed by structural inequalities and oppressions. Pursuing climate justice means acknowledging the unequal distribution of climate change impacts on vulnerable individuals and populations, *inter alia* women and girls, who have contributed the least to the problem, and seeking to address social injustices, including gender injustices. This concept sets the principle of equity and human rights at the epicenter of climate action.

Gender inequalities amplify vulnerability to climate change impacts, thereby undermining the significant progress achieved in women's rights. To effectively confront these inequalities and ensure equitable protection for all a rights-based approach to climate change is essential. This approach can provide a holistic, inclusive and intersectional framework for climate action that holds the potential to meaningfully reinforce climate justice and gender equality. Gender equality, climate justice, and human rights are inextricably interwoven and axiomatic in envisaging a world where justice, equity, and sustainability converge.

The human rights framework obliges states and other actors to mitigate the climate crisis with gender-responsive, fair, and non-discriminatory actions. It also offers mechanisms to hold them accountable for their contributions to the climate crisis, offering legal avenues to challenge inadequate climate policies and seek remedies for those unjustly affected. As ambitions for climate action remain insufficient, rights-based climate litigation can pave the way toward climate and gender justice. In recent years, an increasing number of climate change litigation integrating human rights elements have emerged and come to fruition. A rights turn in climate litigation can give climate victims a voice and empower them to contribute to climate laws and policies, and, therefore, reform unjust power dynamics. In the climate and gender nexus, women are increasingly being seen at the forefront of climate change litigation. Specifically, the *KlimaSeniorinnen v Switzerland* and the *Maria Khan vs Pakistan* cases can inspire victims of climate change to employ human rights frameworks in climate litigation efforts globally to

address the intersectional impacts of the climate crisis. Climate litigation is a necessary means for responding to gender-specific impacts, integrating substantive gender considerations into state climate strategies, and actively involving women and girls in shaping policies that meet their distinct needs and aspirations.

While litigation alone may not suffice to resolve climate and gender injustices, it represents a critical starting point, by providing a platform for climate victims such as women and girls to seek justice and redress. This was exemplified by the *KlimaSeniorinnen* case, which set a crucial legal precedent in the European Court of Human Rights and led the way in the fight for climate and gender justice.

Effective climate action involves integrating litigation with broader efforts in politics and society. Achieving climate and gender justice necessitates systemic transformations that address the genesis of structural inequalities and unethical allocation of power. In this regard, the integration of ecocide in the pantheon of the international criminal justice system, informed by human rights law and practice, holds the potential to enhance climate litigation efforts and advance climate and gender justice. The concept of ecocide embodies an ecocentric form of climate justice that transcends anthropocentrism, challenging the individualistic and utilitarian philosophy of contemporary society. This approach can serve as a tool in transitioning from the Anthropocene to a more sustainable and just society, ensuring climate justice for all beings, particularly the most vulnerable, including women and girls. It introduces a paradigm where empathy replaces exploitation, orienting humanity towards investing in nature through a lens of compassion. Embracing this ecosophy can cultivate a profound empathy, nurturing a symbiotic relationship between humans, irrespective of gender, and the natural world, and, ultimately, enabling the harmonious coexistence and flourishing of all forms of life on Earth. However, changing the deeply rooted anthropocentric values of contemporary society is a long-time process requiring a coordinated and sustained effort at all levels of society. This endeavor may face resistance, especially from powerful corporations and political entities with vested interests in preserving the status quo, as such societal transformations threaten their profitability and power. Overcoming this challenge will be arduous; yet an awakened and engaged citizenry, guided by visionary ambition and ideological clarity, has the potential to surmount these obstacles and achieve the desired metamorphosis.

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