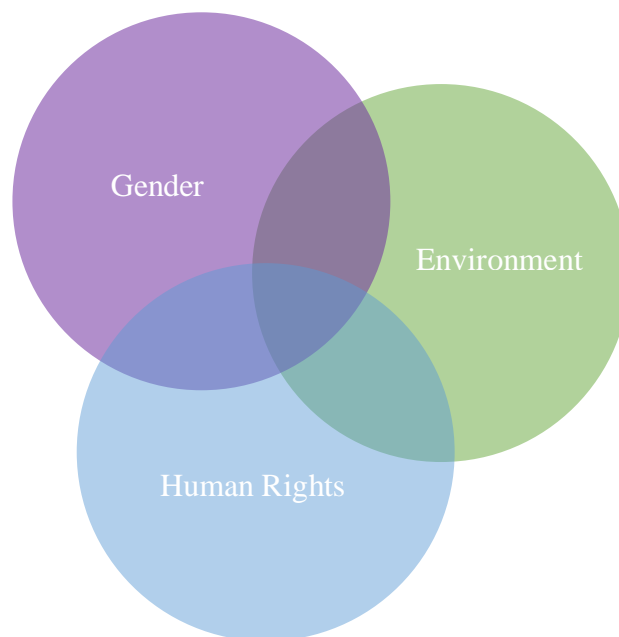


University of Montpellier

European Master's Degree in Human Rights and Democratisation
A.Y. 2016/2017

Gender, the Environment and Human Rights: A Study of Their Interconnectedness Within the EU



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Abstract

This thesis answers the question: “How can a gender-sensitive approach to the EU’s framework on human rights and the EU’s framework on the environment be beneficial, both legally and from a political perspective?” A literature review of existing literature on the topic of gender, human rights and the environment concludes that these topics are irrevocably connected, and within the EU all three topics have an important role, albeit it mostly separated in the literature. This thesis’ analysis has found that the extent to which gender plays a role is more or less constant in both frameworks on the environment, where gender plays a minimum role. In the legal framework on human rights, the role of gender is larger, but still not prominent. In the policy framework on human rights, the role of gender is highly prominent, showing a large degree of gender mainstreaming. Using a gender-sensitive approach to these EU frameworks has thus shown that there is a basis of EU recognition that gender, the environment and human rights are interlinked. By acknowledging the interconnectedness between these issues, the complete nature of the issues is recognized and no aspects are ignored, which benefits EU efforts for these issues individually.

Table of Contents

Abstract.....	2
List of Abbreviations	4
Introduction.....	5
1. Literature review on the importance of gender in the environment and human rights.....	8
1.1 Weak links in the discussion on the gender-environment-human rights nexus.....	8
1.1.1 Gender and the environment.....	9
1.1.2 Human rights and the environment.....	11
1.1.3 Prevalent issues within the gender-human rights-environment nexus.....	13
1.2 The ambivalent importance of using human rights language	15
1.3 The meaning of this body of literature for the research of this thesis.....	19
1.3.1 EU legal and political positions on gender, the environment and human rights	19
1.3.2 Pertinence of the literature, including the gender-sensitive approach	26
2. Comparison of the role of gender in the EU legal framework on human rights and the EU legal framework on the environment	28
2.1 Remaining need to increase the role of gender in the EU legal framework on human rights	28
2.2 Severely underestimated role of gender in the EU legal framework on the environment	35
2.3 Roots for convergence between the two frameworks	38
2.3.1 Points of convergence and difference	38
2.3.2 Benefits of further convergence in the legal frameworks.....	41
3. Comparison of the role of gender in the EU policy framework on human rights and the EU policy framework on the environment.....	44
3.1 Comprehensive gender mainstreaming in EU policy framework on human rights.....	44
3.2 Lack of gender mainstreaming in the EU policy framework on the environment.....	52
3.3 Highly differing degree of gender mainstreaming in the two frameworks.....	56
3.3.1 Points of convergence and difference	56
3.3.2 Benefits of further convergence.....	58
Conclusion	59
Bibliography	64
Annex – Legal and Policy Texts	68

List of Abbreviations

ACJ	Advisory Council of Jurists
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFREU	Charter of Fundamental Rights of the European Union
CFSP	Common Foreign and Security Policy
CSO	Civil Society Organisation
EC Treaty	Treaty Establishing the European Community
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
EEA	European Environment Agency
EEAS	European External Action Service
EU	European Union
FRA	(European Union) Agency for Fundamental Rights
LGBTQI+	Lesbian, Gay, Bi, Transsexual, Queer/Questioning (both are used), Intersex etc.
LIFE	Programme for the Environment and Climate Action
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
SDG	Sustainable Development Goals
SEA	Single European Act
SIDS	Small Island Developing States
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNECE	United Nations Economics Commission for Europe
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council

Introduction

1. The field of human rights and the environment has been gaining more and more pertinence over the past years as the human rights implications of environmental challenges such as climate change become more and more evident. Increasingly, it is recognized that these implications have gender aspects. In particular, the United Nations has acknowledged this. Nonetheless, the advancement of the nexus between gender, the environment and human rights is much more limited at the level of the European Union. While the field of human rights and environment started quite early in the EU and saw progress with the Aarhus Convention and consequent directives, it since has not progressed much.¹ On the contrary, at the UN level the field of the environment and human rights has continued to advance.

2. That is why this thesis will delve into the gender-environment-human rights nexus at the EU-level. In fact, this thesis aims to compare the framework of human rights within the EU and the framework on the environment in the EU to demonstrate how both frameworks could benefit from each other. This comparison will be done from a gender perspective, to answer the following research question: “How can a gender-sensitive approach to the EU’s framework on human rights and the EU’s framework on the environment be beneficial, both legally and from a political perspective?” No such research has been carried out before. While the role of gender in the EU framework on human rights and the EU framework on environment have been researched separately, nobody has thought of comparing the two. So, the question remains, why is it relevant to carry out this research?

3. First, the definition of a gender-sensitive approach needs to be clarified. While the exact definition will be discussed in section 1.3.2, the general idea is that a gender-sensitive approach means that all aspects of an issue are considered in terms of gender, and the distinct causes, consequences, impact etc. are considered for men and women. More gender identities are often not taken into account. Nevertheless, this research defines a true gender-sensitive approach as inclusive of all gender identities. However, the expectation is that during this research only the classical distinction between male/female will be found, particularly in its framework on environment. This will therefore be sufficient for the definition of a gender-sensitive approach for the purposes of the comparison of this research, all the while remembering that a true gender-sensitive approach includes all gender identities.

¹ See section 1.3.1

4. A gender-sensitive approach has proven important for human rights, but also for the environment.² To better understand human rights and environmental problems, it is important to consider the gendered aspects that are inherent to both fields. A gender-sensitive approach will thus help highlight these aspects of human rights and environmental issues, and improve the understanding of these issues. Ignoring the gender aspects will without a doubt result in measures for human rights or the environment being less effective. If these problems are different between genders, the measures taken to solve these issues should take these gender aspects into account to be truly effective.

5. On UN level, gender has already been incorporated on numerous occasions in their reports linking environmental issues and human rights, and is increasingly mainstreamed. The EU does not have such a focus on human rights nor the environment as the UN does, and is therefore not (yet) as progressive as the UN on the issue. It will therefore be fascinating to research the extent of this development within the EU, where these issues are less central to the organisation, but nonetheless important. Gender, human rights and the environment are separately all issues of importance for the EU, but how do these issues connect within the organization? The conclusions of this research could thus contribute to the EU's efforts in promoting gender inclusiveness, protecting the environment and ensuring human rights, because through this interconnectedness the efforts for one of the three causes will positively impact all three causes. This will improve efforts not just of the EU, but also of civil society, national governments and other international organisations in a mutually reinforcing way. The latter can use the idea that increased interconnectedness will help all three causes to lobby for improved interconnectedness within the EU, and increased interconnectedness within the EU can improve both efforts and funding for the causes within civil society, national governments and other international organisations.

6. A preliminary assessment of resources available shows that within the frameworks on the environment, while human rights implications are clearly implied, the terminology of human rights is scarcely used. Reversely, in the human rights framework, there seems to be less hesitance to speak of environmental issues and climate changes. This raises an interesting question to be raised throughout the course of this research, because in order to find out how the human rights and environmental frameworks can benefit each other, it needs to be considered if there are any substantial obstacles that arise out of the comparison for the two frameworks to interconnect. This has several implications. First, in the literature review needs

² The relations between gender, human rights and the environment will be examined in depth in section 1.1.

to be included what the EU's position on human rights, the environment and gender separately is. This will help find out if there is any reason for the EU to be hesitant to connect the environment, human rights and gender. Second, research needs to be done on the implications identified in the existing body of literature on using human rights language versus merely implying human rights implications. Identifying the practical importance of actually using human rights language or merely implying human rights will help analysing the potential benefits and pitfalls of connecting the human rights and environment frameworks of the EU when it comes to gender.

7. It needs to be pointed out that this research will not become a comparison between the UN and the EU. While such a comparison can be made, and might be very useful, considering that the UN is much further advanced in linking human rights, gender and the environment, both from a legal and policy perspective, and thus would be excellent for a comparison, the scope of this research does not allow for such a comparison on top of the existing questions raised. This does not mean, however, that any research done already done on the UN regarding the environment, gender and human rights will be disregarded. Any existing literature discussing the topic that might have useful conclusions for the situation within the EU will naturally be used to substantiate the findings of this research.

8. The EU can be seen as both a political and a legal entity.³ Any random selection of research done on the EU will show that the EU is studied mostly in terms of politics and policy and legal concerns. While it could be argued that the EU can be identified as other entities as well, for the purposes of this research a decision has been made to analyse the EU as political and legal entity, because these two form the written basis of the EU's actions: any action the EU takes is derived from its legislation or its policies, which are in turn interrelated as well. In addition, because this thesis investigates the specific fields of human rights and the environment and both fields have interesting legal and policy frameworks, those perspectives are most interesting to study. Therefore, the separate frameworks of the EU on environment and on human rights will be analysed from both a political and a legal perspective.

9. To answer the research question, the research will be broken up into three parts. First, a literature review will be conducted to provide an academic background to substantiate the

³ Two working papers discussing respectively the EU as a legal entity (Phillippe de Schoutheete and Sami Andoura, "The Legal Personality of the European Union," *Studia Diplomatica* Vol, LX, No. 1 (2007), accessed May 22, 2017, <http://aei.pitt.edu/9083/1/Legal.Personality.EU-PDS-SA.pdf>) and as a political entity (European Union Center of North Carolina, "Europe as a Political Entity," *EU Briefings* (2013), accessed May 22, 2017, http://europe.unc.edu/wp-content/uploads/2013/08/Brief21_Political_Entity.pdf) demonstrate that the two are different and both relevant. In addition, looking at matters relating to the EU through both a legal and a political lens is not an uncommon methodology considering the literature on research done on the EU.

findings of this research. This review will include a review of existing research on the environment, gender and human rights taken together where possible, and on the individual issues in relation to the EU. Furthermore, literature on a gender-sensitive approach will be analysed to ensure the terminology of this research is appropriate and well-defined. Last, this section will include a review of literature discussing the practical use of using human rights language and possible reasons for avoiding to use this language. The subsequent sections will compare the legal and political frameworks on human rights and environment regarding gender, in their findings drawing on the literature reviewed in the first section.

1. Literature review on the importance of gender in the environment and human rights

1.1 Weak links in the discussion on the gender-environment-human rights nexus

10. Within the UN the nexus between gender, environment and human rights has been put into practice numerous times. Several of the UN Human Rights Council's resolutions on climate change of the environment include the notion of gender being a factor making people more vulnerable to climate change.⁴ In addition, the UN has issued various documents on the nexus, such as the fact sheet on Women, Gender Equality and Climate Change, including many links to documents and webpages dealing with gender, the environment and human rights.⁵ Remarkable is that the UN does not use human rights language very often in these documents, even though it discusses issues with clear human rights dimensions.

11. Nevertheless, the incorporation of gender within the field of the environment and particularly within the field of the environment and human rights is relatively new. The number of academic sources within these fields is therefore limited. To get a comprehensive understanding of the sources available, this section containing a literature review will start with a general overview analysing in what light gender, the environment and human rights are generally discussed in the literature that does exist on the topic, and it will also consider the

⁴ UNHRC, "Resolution 10/4: Human Rights and Climate Change," *Human Rights Council*, 10th Session (25 March 2009), accessed April 24, 2017, http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf; UNHRC, "Resolution 18/22: Human Rights and Climate Change," *Human Rights Council*, 18th Session (17 October 2011), accessed April 24, 2017, <http://www.ohchr.org/Documents/Issues/ClimateChange/A.HRC.RES.18.22.pdf>; UNHRC, "Resolution 32/33: Human Rights and Climate Change," *Human Rights Council*, 32nd Session (28 June 2016), accessed April 24, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/135/11/PDF/G1613511.pdf?OpenElement>.

⁵ "Women, Gender Equality and Climate Change," *United Nations* (website), accessed April 24, 2017, http://www.un.org/womenwatch/feature/climate_change/factsheet.html#humanrights

main topics considered by the literature on the gender-human rights-environment nexus. This will create a background in which to position the research conducted in this thesis and help situate the academic sources used for the next subsections. Considering the difficulties in finding sources that deal with gender, human rights and the environment on an equal level, the sources included here are those that deal with two out of the three issues, but also with the remaining issue, albeit to a lesser extent.

12. The body of literature on human rights and gender is the most extensive, as those topics go much more naturally together, under names as women's rights and LGBTQI+ rights. Nevertheless, this body of literature is much less likely to take into account environmental issues, as those articles that discuss environmental issues focus more on the relationship between the environment and gender or the environment and human rights, with the third issue as less prevalent, and those articles have already been discussed above. The reason behind this phenomenon is that it is more academically interesting to research the issues that intuitively do not go easily together, as it is to research issues that do, such as human rights and gender. Therefore, this section also focuses only on the literature treating gender and the environment (including human rights), and the literature on human rights and the environment (including gender).

1.1.1 Gender and the environment

13. While gender in the field of the environment is severely under-researched, gender does feature in various studies on a specific environmental problem: climate change. These studies on the link between gender and climate change are highly relevant for this overview of academic research, because first it proves that gender is studied predominantly in relation to climate change. Second, climate change is such a key environmental issue and exacerbates most environmental problems (such as water scarcity), that it can represent the existing body of literature on the link between gender and the environment. This is discussed in Dankelman's book on gender and climate change, where human rights are incorporated on occasion. The book deals with climate change because it is considered to be the main environmental challenge, having a detrimental influence on most other environmental challenges, such as water shortages and biodiversity loss.⁶

⁶ Irene Dankelman, ed., *Gender and Climate Change: An Introduction*, (Earthscan: London, 2010): 1, https://books.google.fr/books?hl=nl&lr=&id=7pr8xyafPi0C&oi=fnd&pg=PR3&dq=human+rights+gender+and+environment&ots=bR7tEcqaZr&sig=7kEybQmeJm_IW9xoL6-jQybneOY&redir_esc=y#v=onepage&q=human%20rights%20gender%20and%20environment&f=false.

14. According to Dankelman, the role of gender is pertinent not just in the way people are affected and cope differently, but also in their agency. Multiple case studies on the role of women's organisations in combatting climate change prove that differentiating gender in the agents combatting climate change is highly worthwhile to take into consideration. Human rights are included in the equation, not by name, but by including issues such as poverty, human security, sustainable development and health.⁷ Whether it is relevant that these problems are not framed as human rights issues will be discussed in section 1.2.

15. The pertinence of linking gender and the environment is proven by Goh. She provides a gender-differentiated approach on the impact of climate change in various areas such as food security, health and water, which relate to human rights.⁸ By citing numerous case studies, Goh establishes that gender plays a role in how people's well-being and assets are affected, and establishes further that, in general, women tend to be affected negatively more so than men by the effects of climate change, such as droughts, flooding, climate-related disasters in general and increased climate variability. Naturally this can differ in different contexts, and the reasons why women tend to be more negatively affected by men differ greatly by context. Generally speaking, cultural and social norms are an important cause for the gender-differentiated impact of climate change, as well as their lack of access to assets and control over them. The author stresses that the way climate change affects men and women differently has to be considered in each individual context, but nevertheless leaves no doubt that climate change affects men and women differently, and research on the topic is highly relevant and necessary.⁹

16. Goh's article treats many different ways in which women and their human rights can be affected differently by environmental concerns that men. Because this is such an understudied link, and it is important to understand the link between gender and the environment, a link most people find less intuitive, it is useful to treat a few examples. Goh cites a case study from Mexico, where climate change caused warmer temperatures and in turn water scarcity, which has led to certain fruits and vegetables being able to grow less. In particular women in this region use these products not only to earn and control income, but also to exchange as gifts. According to Goh, this is "a practice used to secure women's status in important social

⁷ Ibid.

⁸ Amelia H.X. Goh, "A Literature Review of the Gender-Differentiated Impacts of Climate Change on Women's and Men's Assets and Wellbeing in Developing Countries," *CAPRI Working Paper* No. 106 (2012), accessed March 12, 2017, <http://dx.doi.org/10.2499/CAPRIWP106>.

⁹ Ibid.

networks that act as safety nets and important social capital”.¹⁰ This is a clear example of women being influenced differently by climate change than men.

17. Additionally, Goh found several studies showing that women are more negatively affected by water scarcity than men, because in many cultures they are responsible for the collection of water. With water being scarcer, women had to spend more time traveling to find water and checking the availability of water at wells.¹¹ A final example related to migration and health, is that climate change can lead to an increased variability of the yield of crops, leading to increased seasonal migration by men. Several case studies show that men were more likely to have unprotected sex while they were away from home, contracting HIV/AIDS, thus contributing to the spread of HIV/AIDS and upon returning home, passing this disease on to their wives. This is an example of how climate change induced migration can affect public health, but moreover it is a pertinent example of why a gender-differentiated approach is so important for the enjoyment of human rights, in this case the right to health.¹²

18. Along with proving the relevance of studying the nexus between human rights, gender and the environment, these examples demonstrate the importance of considering the interconnectedness of issues. Just these three examples show the interconnections between gender, human rights, the environment, climate change, public health and the spread of disease, migration, agricultural production and social and economic safety nets. In brief, issues never stand alone and recognizing that they relate to other issues is the first step towards solving them.

1.1.2 Human rights and the environment

19. The subject of human rights and the environment is one that has gained more and more attention over recent years, marked by several developments such as the creation of a UN Special Rapporteur on Human Rights and the Environment in 2012.¹³ The body of literature dealing with this field of research is therefore more elaborate than that of gender and the environment, and several articles include gender dimensions.

¹⁰ Goh, “A Literature Review of the Gender-Differentiated Impacts of Climate,” 6.

¹¹ *Ibid.*, 12.

¹² *Ibid.*, 13.

¹³ “Special Rapporteur on Human Rights and the Environment (Former Independent Expert on Human Rights and the Environment),” *OHCHR* (website), accessed April 24, 2017, <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx>.

20. The first common theme in several articles concerns the discussion if there is and if there should be a right to environment. Glazebrook is one of the authors discussing this, and also if it makes sense to link human rights to the environment. She finds that although there is not a true human right specifically focused on the environment, such a right can be found implicit throughout the existing human rights instruments, such as in the right to life and the right to health. She also argues that there should be a specific “Right to a Quality Environment” recognized in international human rights standards.

21. The report on human rights and the environment of the Asia Pacific Forum of National Human Rights Institutions' Advisory Council of Jurists (ACJ) draws the same conclusion.¹⁴ It states that there is not yet such a thing as a human right to environment of a certain quality within international law. Additionally, it states that there are several existing rights of which the realisation depends on environmental factors, but those rights alone are not sufficient to address environmental concerns. States are under a certain obligation under human rights law and environmental law to deal with environmental threats to human rights, but the ACJ argues that this is not sufficient. In accordance with Glazebrook, they argue that a separate right to environment would provide additional benefits for the enjoyment of human rights threatened by environmental matters. Namely, a right to environment would advance “participation of individuals, communities and peoples”, it would ensure an improved recognition of the influence of the environment on human rights and it would allow for a more proactive instead of a reactive approach, thus preventing violations of the right.¹⁵

22. Clemson builds on this reasoning by applying the same logic to the existence of a right to energy. He discusses access to energy as a human right influenced by the environment, namely through the availability of energy resources. Clemens argues however, that like the right to water and the right to environment, the right to energy is also implicit from the obligations present in international human rights instruments, such as the obligations arising from the right to health (electricity is needed to provide adequate health care) as ruled by the African Commission.¹⁶

¹⁴ Asia Pacific Forum of National Human Rights Institutions' Advisory Council of Jurists, “Final Report: Reference on Human Rights and Environment,” *Asia-Pacific Journal on Human Rights and the Law* Vol. 9, No. 1 (2008), accessed March 12, 2017, http://heinonline.org/HOL/Page?handle=hein.journals/apjur9&div=8&start_page=51&collection=journals&set_as_cursor=8&men_tab=srchresults.

¹⁵ Advisory Council of Jurists, “Final Report: Reference on Human Rights and Environment.”

¹⁶ Marc Clemson, “Human Rights and the Environment: Access to Energy,” *New Zealand Journal of Environmental Law* Vol. 16 (2012), accessed March 13, 2017, http://heinonline.org/HOL/Page?handle=hein.journals/nzjel16&div=6&start_page=39&collection=journals&set_as_cursor=7&men_tab=srchresults.

23. All authors include gender issues. ACJ makes several explicit mentions of women separate from men and makes a note on a gender-approach. The ACJ report mentions a gender-sensitive approach in relation to the Hyogo Declaration and Framework, which deals with disaster risk and relief.¹⁷ The only gender-related mention in the Glazebrook article also concerns the Hyogo Declaration and Framework.¹⁸ The ACJ report further discusses women as part of a vulnerable group that can be caught up in a conflict between the right to environment and the right to culture. In addition, several treaty bodies have acknowledged the impact of the environment on human rights, under which the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The report also mentions the need for participation on environmental matters, in particularly of indigenous peoples and women.¹⁹

24. The gender dimension in Clemson's article comes from his taking into account of CEDAW. The only international human rights instrument making explicit mention of access to energy is CEDAW, so, taken literally, only women are entitled to access to energy. Of course, Clemson concludes that the right to energy is implicit in all international human rights instruments, but it highlights a point of concern apparent from these articles. Often the issue of gender within human rights and the environment is touched upon, but not discussed in light of their interlinkage. Some articles just use the issues as separate examples, such Clark et al., who provide an empirical assessment of civil society and transnational relations on the environment, human rights and women.²⁰ However, this just considers UN conferences on each individual issue without ever linking them, thus failing to see or acknowledge how women, human rights and the environment interconnect.

1.1.3 Prevalent issues within the gender-human rights-environment nexus

¹⁷ Advisory Council of Jurists, "Final Report: Reference on Human Rights and Environment."

¹⁸ Justice Susan Glazebrook, "Human Rights and the Environment," *Victoria University of Wellington Law Review* Vol. 40, No.1 (2009), accessed March 13, 2017

http://heinonline.org/HOL/Page?handle=hein.journals/vuwlr40&div=20&start_page=293&collection=journals&set_as_cursor=2&men_tab=srchresults.

¹⁹ Advisory Council of Jurists, "Final Report: Reference on Human Rights and Environment."

²⁰ Ann Marie Clark, Elisabeth J. Friedman, Kathryn Hochstetler, "The Sovereign Limits of Global Civil Society: A Comparison of NGO Participation in UN World Conferences on the Environment, Human Rights, and Women," *World Politics* Vol. 51, No. 1 (2011), accessed March 12, 2017,

<https://www.cambridge.org/core/journals/world-politics/article/div-classtitlethe-sovereign-limits-of-global-civil-society-a-comparison-of-ngo-participation-in-un-world-conferences-on-the-environment-human-rights-and-womendiv/8D43E61BAAC1EA35C04089BB9473817F>.

25. Throughout the articles there are two main issues that are used repeatedly in the demonstration of the nexus between gender, the environment and human rights. The first issue is environmental or climate change induced disasters. In Glazebrook's case study of the Pacific Small Island Developing States (SIDS) she discusses the fact that climate change will make these islands more prone to disasters, and in light of this she discusses the Hyogo Declaration and Framework dealing with this issue. The gender dimension is brought into the article only because it is part of the Hyogo Framework concerning vulnerable groups.²¹ The ACJ report mentions a gender-sensitive approach in relation to this very same declaration and framework.²²

26. The second issue is that of population growth. Boland discusses the environment, population and women's human rights, which are inherently a combination of gender and human rights.²³ Population growth is an interesting case of a problem where the environment and human rights overlap. Environmental limits call for a decrease in population growth. Boland argues that population growth causes environmental, economic, social and cultural stress, and the policies implemented to decrease population growth affect human rights and in particular those of women. Boland cites multiple cases of forced abortions and sterilization (India, China) and other forms of coercion such as (dis)incentives (monetary rewards, fines, imprisonment, psychological pressure). There is no doubt that these measures affect in particular women's right to health and physical integrity. Another gendered effect identified in the article is the practice of "son preference", meaning that the restrictions on the number of children people are allowed to have leads to a preference for a son, and an increased female mortality (female infanticide and foeticide), for various reasons.²⁴

27. Clemson discusses population growth in his article as well, as he argues that access to energy is a human right influenced by the environment through the availability of energy resources. He includes population growth in the sense that this puts a strain on the availability of resources.²⁵

²¹ Glazebrook, "Human Rights and the Environment."

²² Advisory Council of Jurists, "Final Report: Reference on Human Rights and Environment."

²³ Reed Boland, "The Environment, Population and Women's Human Rights," *Environmental Law* Vol. 27, No. 4 (1997), accessed March 13, 2017, http://heinonline.org/HOL/Page?handle=hein.journals/envlnw27&div=52&start_page=1137&collection=journal_s&set_as_cursor=5&men_tab=srchresults.

²⁴ Ibid.

²⁵ Clemson, "Access to Energy."

28. To conclude, the limited resources available have provided interesting insights. This leaves no doubt that while the research on the nexus between the environment, gender and human rights remains scarce, it is highly relevant.

1.2 The ambivalent importance of using human rights language

29. In section 1.1, questions have been raised about the use of human rights language. For instance, in Dankelman's book numerous issues are brought into the discussion on gender and climate change that have human rights implications, such as poverty and health.²⁶ Nevertheless, none of these issues are framed as human rights issues, using human rights terminology or just using the term 'human rights'. The question is whether this phenomenon matters, or whether it is enough to know that because something has human rights implications, it can be considered as a human rights issue.

30. Donnelly argues that framing an issue in human rights terminology is beneficial to this issue, which he discusses with the concept of democracy. His argument is that democracy is a rather broad concept and people tend to mean different things whenever they speak of it. In general, when people speak of democracy they have a regime in mind that protect human rights, but as this remains implicit in the word 'democracy', there is a risk of misunderstanding or misinterpreting what people exactly mean when they speak of 'democracy'. Therefore, speaking explicitly in human rights terms, for example by speaking of "rights-protective regimes", leaves no room for misinterpretations.²⁷ While he acknowledges that notions such as 'democracy' and 'development' are inherently a means to ensure human dignity and serve the same purpose as human rights, international human rights standards form the main current framework to protect human dignity. Consequently, Donnelly reasons that it is important to use human rights language because this is the main international framework and because it avoids "conceptual and practical hurdles in the pursuit of such policies that seek equal concern and respect for all".²⁸

31. Regardless of the international human rights framework truly being the main framework used by the international community, as opposed to development, for instance; his

²⁶ Dankelman, *Gender and Climate Change: An Introduction*.

²⁷ Jack Donnelly, "The Contemporary Language of Legitimacy," in *Universal Human Rights in Theory and Practice* (Cornell University Press: New York, 2013), Jack Donnelly, <https://books.google.nl/books?hl=nl&lr=&id=3gVCY1P7e4MC&oi=fnd&pg=PR5&dq=human+rights+language&ots=rW5CdeEV9L&sig=kvbqpoFoljyqvPE51Y2IrhRFck#v=onepage&q=human%20rights%20language&f=false>.

²⁸ Ibid.

argument has merit. International human rights standards are clear and qualified standards to uphold. Like democracy and development, other concepts such as poverty and health are broad concepts and leave room for interpretation. Hence, speaking in human rights language can help qualify these concepts. In this way, no time is wasted on what Donnelly calls the “conceptual and practical hurdles”, and the attention returns to the actual problems of human suffering and how to resolve them.

32. A similar argument is made by Horta, who discusses the role of human rights in the development mandate of the World Bank. She notes that on the one hand the World Bank has acknowledged the pivotal role of transparency and good governance for development, but on the other hand the Bank considers political and civil rights to be outside its mandate and focuses only on economic, social and cultural rights. Yet the World Bank’s Charter is flexible and its legal counsel has said that even though the Bank “may not openly advocate for a particular kind of government, if a borrowing government behaves in a fashion that undermines the Bank’s economic objectives, staff may be justified in calling for political changes or terminating lending.”²⁹ All the same, the World Bank shies away from anything to do with political and civil rights: it depoliticizes language, ignores the political context that causes or contributes to development problems and even funds “repressive and corrupt” regimes, such as the Democratic Republic of Congo.³⁰

33. The focus on only economic, social and cultural rights is simply not acceptable for an institution that is supposed to advance development, as multiple authors have proven that political and civil rights are pivotal to the fulfilment of economic, social and cultural rights. Horta argues that the use of a human rights rhetoric would have avoided this continued cooperation with corrupt regimes, because it would have been impossible to ignore the civil and political rights.³¹ This makes another argument why the use of human rights language is more useful than the use of broader concepts as development.

34. Nevertheless, several authors argue that the use of human rights language has its limits, limits that may not be outweighed by the benefits. Kennedy discusses the limits of human rights vocabulary, hypothesizing about many possible limits of this vocabulary and argues that at all times the advantages and disadvantages of using human rights language should be weighed. Although he mentions many possible limits without providing proof, there

²⁹ Korinna Horta, “Rhetoric and Reality: Human Rights and the World Bank,” *Harvard Human Rights Journal* Vol.15 (2002): 229, accessed April 25, 2017,

<http://heinonline.org/HOL/Page?handle=hein.journals/hhrj15&id=&page=&collection=journals&id=231>.

³⁰ *Ibid.*, 232.

³¹ *Ibid.*

are two arguments backed up by other sources. First of all, he argues that sometimes human rights language is counterproductive, and other vocabulary might achieve better results or can at least complement human rights language. He mentions the example of the right to environment, where it might actually be more useful to speak of a duty to work for the environment.³² Neumayer supports the proposition that the legal human rights framework alone is not sufficient to achieve improved support for human rights. His article proves that ratification of human rights treaties can sometimes lead to decreased respect for human rights, if other factors such as a democratic regime and a strong civil society are not present.³³

35. Second of all, Kennedy elaborates on the notion of development. According to him, aspects of development issues that cannot be translated into human rights terms go lost and do not receive the appropriate attention in the process of translating these issues into human rights problems. The notion of development is thus a more comprehensive concept.³⁴ Relating this back to Donnelly's argument that translating broad notions into human rights terms avoids confusion and misinterpretations, this might be because translating comprehensive notions into human rights is a simplification. His argument is therefore not necessarily at odds with Kennedy's, because notions as comprehensive as 'development' would not fit neatly within any given framework, also not the human rights framework. Aspects will get lost in the translation, and therefore it is so important that when using human rights language that this is acknowledged and the problems it deals with are not forgotten.

36. In addition, Kennedy argues that the effort of trying to transform concepts such as development into human rights language diverts attention away from efforts to deal with the actual problems of human suffering, instead leading to more 'talk' in the form of conference, reports, etc.³⁵ This reasoning is backed up by Odikalu, who argues that the reluctance of Africans to use human rights language stems from the disconnect between the human rights problems on the continent and the organizations promoting human rights. There is no doubt that there are many real and pressing human rights problems throughout Africa. The author argues however, that human rights organisations have distanced themselves from these realities, by excluding the participation of those affected. A reason for this is that human rights

³² David Kennedy, "The International Human Rights Movement: Part of the Problem?" *Harvard Human Rights Journal* Vol. 15 (2002): 9, accessed March 15, 2017, <http://heinonline.org/HOL/LandingPage?handle=hein.journals/hhrj15&div=7&id=&page=>.

³³ Eric Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?" *Journal of Conflict Resolution* (2005), accessed March 15, 2017, <http://journals.sagepub.com/doi/abs/10.1177/0022002705281667>.

³⁴ Kennedy, "The International Human Rights Movement," 9.

³⁵ Kennedy, "The International Human Rights Movement," 19.

institutions generally tend to be modelled after their so-called ‘Northern’ counterparts, “located in an urban area, run by a core management without a membership, and dependent solely on overseas funding.”³⁶ The management leads a comfortable life, thus disconnecting with the difficult daily life of the many people facing human rights problems. Added to the exclusion of participation of those affected in these organisations, human rights activism become rather an issue of privilege.³⁷

37. Another important reason for this disconnect is the reliance on ‘Northern’ funding. This shifts the focus of human rights organisations in Africa from working with local people on their human rights problems to fulfilling donor grant obligations. The local human rights problems are defined in terms of potential funding, taking the humanity out of these problems and thus “delegitimizing human rights language and robbing its ideas of popular appeal”.³⁸ While the fact that Odikalu speaks of Africa as a homogenous whole has to be regarded with caution, because the continent is not a homogenous whole, his argument is no less valid. It provides an interesting insight into the reason why a hesitance to speak of human rights exists: because it does not speak to the people suffering from the human rights problems, and does not reflect their suffering.

38. The authors cited may not agree whether human rights language is useful or not, but they do have one common line of thinking: whatever vocabulary is used, it can never be at a human cost. The use of human rights language can have benefits over the use of other terminologies, as proven by Horta. Yet, it is beyond question that development and comparable comprehensive notions (poverty, public health) have human rights implications. They should therefore be recognized as relevant within the human rights framework: discussions on the exact language used cannot distract from human suffering that the human right framework is ultimately meant to end. The problems matter more than the vocabulary. Nonetheless, language can provide valuable insights about the motivations of the actor using it. Therefore, it will be taken into account in this thesis to understand the motivations of the EU for speaking of human rights or not, all the while acknowledging that these analyses should never be at the cost of diverting attention away from the actual problems.

³⁶ Chidi Anselm Odinkalu, “Why More Africans Don’t Use Human Rights Language,” *Human Rights Dialogue* Vol. 2, no.1 (1998), accessed March 15, 2017,

https://www.carnegiecouncil.org/publications/archive/dialogue/2_01/articles/602.html:pf_printable.

³⁷ Ibid.

³⁸ Ibid.

1.3 The meaning of this body of literature for the research of this thesis

1.3.1 EU legal and political positions on gender, the environment and human rights

39. In the previous sections a general background has been composed on the gender-environment-human rights nexus and on the importance of using human rights language. However, this background did not include any literature regarding the EU, which does need to be taken into consideration since the question this thesis aims to resolve concerns the EU. That is why this section looks at the literature discussing the position of the EU when it comes to human rights and the environment, because the EU's position will inform its frameworks on both issues. In addition, this section will elaborate on the role of gender within the EU, to demonstrate the place of gender in the frameworks on human rights and the environment separately, according to existing literature.

40. First, several aspects of the EU's position on human rights will be discussed. A strong commitment to human rights is a foundational value of the EU, and the EU has a strong rhetoric.³⁹ Nevertheless, the organisation is often criticized that its rhetoric does not match its practice, and that there is actually not a coherent human rights policy.^{40;41} In addition, funding for human rights is only a very small part of the total EU budget. Generally speaking, the EU's human rights programme is nonetheless viewed to be an improvement for the human rights situation worldwide.⁴²

41. Concerning the EU's position that is the basis for the policy framework on human rights, a double standard can be identified, as human rights are much more present in the EU's external policy than in its internal policy. The EU uses its position to promote human rights, but often fails to implement these exact measures within its territory. Examples of such influence include the use of diplomatic sanctions to deal with human rights issues (Burma/Myanmar, Nigeria) and critical dialogue (Iran, China). While Alsten and Weiler speak

³⁹ Philip Alston and J.H.H. Weiler, "An 'Ever Closer Union' in Need of a Human Rights Policy: The European Union and Human Rights," in *The EU and Human Rights* (Oxford University Press: New York, 1999), ed.

Philip Alston, Mara Bustelo and James Heenan,

<https://books.google.nl/books?hl=nl&lr=&id=tk7qGSNMcd4C&oi=fnd&pg=PR13&dq=eu+position+on+human+rights&ots=IHxCrnmzYI&sig=B1tFIEC98fcSpdQ46iEyywmwLHY#v=onepage&q=eu%20position%20on%20human%20rights&f=false>.

⁴⁰ Ibid.

⁴¹ Karen Smith, "The EU, Human Rights and Relations with Third Countries: 'Foreign Policy' with an Ethical Dimension?" in *Ethics and Foreign Policy* (Cambridge University Press: Cambridge, 2001), ed. Karen Smith and Margot Light,

https://books.google.nl/books?hl=nl&lr=&id=9P7ILuHq7i4C&oi=fnd&pg=PA185&dq=eu+position+on+human+rights&ots=oJw8HeP_i&sig=c8mV2TNw1LUmc45P-52POpJJ-0E#v=onepage&q=eu%20position%20on%20human%20rights&f=false.

⁴² Ibid.

of a ‘double standard’,⁴³ this neglects the fact that this soft power towards the exterior of the EU is easier to harness than the power necessary to come to an agreement on human rights protection within the EU. In some areas, such as privacy and data protection, human rights protection within the EU is nonetheless quite solid.

42. Human rights are specifically often associated with conditionality in foreign policy, such as in the arms trade or the existence of the human rights clause in various agreements, that allows the suspension of said agreement if the other party does not respect human rights and democratic principles. The only case in which this has actually happened is in the case of foreign aid.⁴⁴ This brings attention to an often-voiced idea that human rights within the EU are meant to facilitate meeting economic objectives. Other proof Smith provides is that human rights are taken together with objectives of democratisation, which in turn benefits economic goals.⁴⁵ Since the articles cited were written, human rights within the EU have improved, specifically in regard to the legal framework. When analysing the policy framework on human rights in the following sections, it is nonetheless important to keep in mind what the intentions of the policies are: economic or otherwise.

43. In their chapter, Alston and Weiler identify at times the attitude presuming that being able to go to court to uphold human rights in case of a violation is sufficient. Still, measures preventing human rights from being violated need to be taken as well.⁴⁶ Hence the existing need for a more coherent internal human rights policy. However, since the chapter was written, dubious progress has been made. First, the process of accession of the EU to the European Convention on Human Rights (ECHR), as prescribed by the TEU, could be taken for a sign that the EU is taking seriously its human rights obligations, if it were not for the fact that this process has stalled. Likewise, the fact that the European Court of Justice (ECJ) is using jurisprudence of the Strasbourg court on human rights issues would be great if the ECJ had not made it very clear that it is autonomous in its dealings with human rights, and bases its decisions on the Charter of Fundamental Rights of the European Union (CFREU) instead of the ECHR, only after this looking at the jurisprudence of the Strasbourg court.⁴⁷ Considering the division between the internal and external policies of the European Union, the TEU and the

⁴³ Alston and Weiler, “An ‘Ever Closer Union’ in Need of a Human Rights Policy.” 15.

⁴⁴ Smith, “The EU, Human Rights and Relations with Third Countries.” 188-190.

⁴⁵ Ibid.

⁴⁶ Alston and Weiler, “An ‘Ever Closer Union’ in Need of a Human Rights Policy.” 15.

⁴⁷ “J.N. v Staatssecretaris voor Veiligheid en Justitie,” *Judgment of the Court (Grand Chamber)*, Case C-601/15 PPU (2016); 44-48, accessed May 23, 2017, <http://www.asylumlawdatabase.eu/en/content/cjeu-c%E2%80%9160115-ppu-j-n-v-staatssecretaris-van-veiligheid-en-justitie>.

TFEU explicitly include respect for human rights in their internal and external frameworks. Finally, the creation of the CFREU is a big step particularly for human rights within the EU.⁴⁸

44. The EU has a very strong position on matters of the environment, as it is a large focus area within the EU, in both the legal and policy framework of the EU.⁴⁹ Already in the 1990s the EU had a global leadership role on environmental issues and particularly climate change. For instance, the EU had a clear forerunner role in Kyoto, leading by example as it took on the highest targets for greenhouse gas emission reduction. After the failure of the European Constitution in 2005, climate policy has been an important motivator of integration.⁵⁰ This is particularly important as enlargement in the '00s is a threat to a unified climate policy, because the newly joining states are less enthusiastic about climate issues.⁵¹

45. Several treaties at the time EU leadership really picked up reiterate the environmental focus of the EU, such as the Single European Act (SEA) and the Maastricht Treaty. In the Treaty on the Establishment of the European Community, several policy objectives of the EU's environmental policy are identified. These objectives are protection of the environment on an internal, regional and worldwide level, smart use of resources and lastly the protection of human health. These two treaties also identify basic principles of the EU's policy framework, namely the precautionary principle, the principle of preventative action and the polluter pays principle. The treaties likewise require the integration of environmental requirements throughout EU's policies,⁵² although this lacks in multiple areas.⁵³ The Treaty of Amsterdam modifying the TEU (Treaty of Maastricht) further strengthens the place of the environment within the EU, and most importantly modifies "protection of environment" from

⁴⁸ "Respect for Fundamental Rights in the Union", *European Parliament* (website), accessed April 26, 2017, http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_2.1.2.html.

⁴⁹ Pavlos Z. Eleftheriadis, "The Future of Environmental Rights in the European Union," in *The EU and Human Rights* (Oxford University Press: New York, 1999), ed. Philip Alston, Mara Bustelo and James Heenan, <https://books.google.nl/books?hl=nl&lr=&id=tk7qGSNMcd4C&oi=fnd&pg=PR13&dq=eu+position+on+human+rights&ots=IHxCrnmzYI&sig=B1tFIEC98fcSpdQ46iEyywmwLHY#v=onepage&q=eu%20position%20on%20human%20rights&f=false>.

⁵⁰ Sebastian Oberthür and Claire Roche Kelly, "EU Leadership in International Climate Policy: Achievements and Challenges," *The International Spectator: Italian Journal of International Affairs* Vol. 43 (2008), accessed March 16, 2017. <http://www.tandfonline.com/doi/full/10.1080/03932720802280594?scroll=top&needAccess=true>.

⁵¹ *Ibid.*

⁵² Eleftheriadis, "The Future of Environmental Rights in the European Union."

⁵³ Oberthür and Kelly, "EU Leadership in International Climate Policy: Achievements and Challenges."

the TEU into “a high level of protection of the environment.”⁵⁴ This is further reinforced in the Lisbon treaty.⁵⁵

46. Like in the field of human rights, internal climate policy is lagging behind external policy, although it is catching up. Again, a discrepancy between EU rhetoric and action can thus be identified. Eleftheriadis argued in 1998 that this was due to different interest groups lobbying on all levels of decision-making, dividing the EU in their actual actions. Environmental lobby groups tend to be less strong than for instance industry lobby groups, which influences the EU budget in favour of other causes than environment, and creates a general preference towards voluntary commitments rather than obligations.⁵⁶ This is one of multiple examples of conflicts between working towards a common market and environmental requirements.⁵⁷ Nonetheless, in 2016 Boasson and Wettestad reiterate the pertinent influence of different lobbying groups on EU climate policy, but they discern that it is not as simple as industry lobbyists always being more hesitant towards environmental concerns. They mention an example of industry lobbyists inspiring EU policies on emission trading.⁵⁸

47. There has been an increase of legislation, particularly binding legislation, on environmental issues. The creation of binding law limits the dependency of policies on member states' positions. This is necessary, because the EU's external climate policy is a mixed competence of member states and the European Commission, and thus requires coordination of a common position and some flexibility to adapt to changing positions of member states. The internal legislative focus is predominantly on energy resources and the reduction of greenhouse gas emissions, as apparent from multiple directives and regulations. Many cases on environmental issues have been seen before the ECJ. More and more attention nowadays goes to future energy security, relating to the environment in terms of renewable energy.⁵⁹

⁵⁴ European Communities, “Treaty of Amsterdam Amending the Treaty on European Union, Treaties Establishing the European Communities and Certain Related Acts,” (1997), accessed May 1, 2017, <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf>.

⁵⁵ “Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community,” (2001/C 306/01), accessed May 22, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2007:306:FULL&from=EN>.

⁵⁶ Axel Michaelowa, “Impact of Interest Groups on EU Climate Policy,” *European Environment* 8 (1998), accessed March 16, 2017,

https://www.researchgate.net/profile/Axel_Michaelowa/publication/230264503_Impact_of_interest_groups_on_EU_climate_policy/links/02e7e53202bc98a8ef000000.pdf.

⁵⁷ Eleftheriadis, “The Future of Environmental Rights in the European Union.”

⁵⁸ Elin Lerum Boasson and Jorgen Wettestad, “Introduction,” in *EU Climate Policy: Industry, Policy Interaction and External Environment* (Ashgate Publishing: New York, 2016): 5-6, Elin Lerum Boasson and Jorgen Wettestad,

<https://books.google.nl/books?hl=nl&lr=&id=LD8HDAAAQBAJ&oi=fnd&pg=PP1&dq=eu+position+on+environment&ots=3AsFXAikwN&sig=atL2THOZg6uGXGnRVxmQXH2MwGg#v=onepage&q=eu%20position%20on%20environment&f=false>.

⁵⁹ Oberthür and Kelly, “EU Leadership in International Climate Policy: Achievements and Challenges.”

48. In addition to the EU's position on human rights and the environment separately, there is a small body of literature that discusses the EU's position on the combined field of the environment and human rights. The majority of literature discusses only the ECHR and the environment, some as early as 1991,⁶⁰ but some articles do include the EU. All three authors cited here argue that the overlap between the fields of human rights and the environment can be mutually beneficial.

49. As briefly named in the EU's position on environment, the Treaty on the Establishment of the European Community and the Nice Treaty include in the EU's policy objectives on the environment the protection of human health.⁶¹ This is clearly the inclusion of an element related to human rights, namely the right to health. Pederson mention that several 'vague' attempts of the EU to combine human rights and environment have been made, but without concrete results.⁶² Most of the progress made in the EU on this field is of a legal nature.

50. ECJ case law dictates that: "environment is an area where a human rights review of state action, either as implementation or as derogation, can be practised by the Court."⁶³ In addition, the Commissioner for Environment proposed in 1996/1997 the inclusion of a "right to a clean and healthy environment" in the TEU, but this never came to pass.⁶⁴

51. The most important developments are identified in the aftermath of the Aarhus Convention, which applies to the EU. Within the EU's environmental framework, a strong emphasis on procedural rights is in place, facilitating participation and access to environmental information, which stems from the obligations of the Aarhus Convention. Several directives on access to information have been passed, the first one preceding the Aarhus Convention in 1990 was Directive 90/313 on access to information on the environment, and in 2003 Directive 2003/4 on Public Access to Environmental Information was adopted, replacing the 1990 Directive.⁶⁵

⁶⁰ Dinah Shelton, "Human Rights, Environmental Rights and the Right to Environment," *Stanford Journal of International Law* Vol. 28, No. 1 (1991), accessed April 30, 2017, <http://heinonline.org/HOL/Page?handle=hein.journals/stanit28&collection=journals&id=111&startid=&end=146#>.

⁶¹ Eleftheriadis, "The Future of Environmental Rights in the European Union."

⁶² Ole W. Pederson, "European Environmental Human Rights and Environmental Rights: A Long Time Coming?" *Georgetown International Environmental Law Review* Vol. 21, No.1 (2008), accessed April 30, 2017, <http://heinonline.org/HOL/Page?handle=hein.journals/gintenlr21&collection=journals&id=75&startid=&end=114#>.

⁶³ Eleftheriadis, "The Future of Environmental Rights in the European Union." 540.

⁶⁴ Eleftheriadis, "The Future of Environmental Rights in the European Union." 544.

⁶⁵ Pederson, "European Environmental Human Rights and Environmental Rights." 104-105.

52. Considering the right to participation, in 2001 the Directive on the Assessment of the Effects of Certain Plans and Programs on the Environment was adopted to strengthen the right to participation.⁶⁶ Nevertheless, attempts to do the same for access to justice, as likewise required by the Aarhus Convention, have failed. This leads to the conclusion that at this moment the EU's focus in the field of human rights and environment concerns procedural rights more than anything else. According to Pederson, this as a step towards a right to environment in itself.⁶⁷ The right to access information and the right to participation can include many gendered aspects. These are however not considered by the literature, so section 2.3 will look at the directives mentioned to analyse whether any aspects of gender are included, and the reasons why or why not.

53. Having discussed the EU's position on environmental issues and on human rights issues, separately and together, this leaves the subject of the role of gender within the EU's legal framework and policy framework. Within the EU, the general approach regarding gender is gender mainstreaming. This means the "integration of a gender equality perspective throughout all levels and stages of policy-making."⁶⁸ The 1997 Treaty of Amsterdam reinforces the EU's gender mainstreaming approach towards gender equality multiple times throughout the treaty.⁶⁹ Both Stratigaki and Verloo mention this is a top-down approach, and lacks participation from below.⁷⁰ Interesting in relation to the topic of this thesis is that the EU's first actions were to mainstream gender in development cooperation and in the external human rights policy.⁷¹

54. The EU's position on gender in the policy framework has been gender mainstreaming since the Beijing Conference in 1995, but before that the common approach within the EU was that of positive action to achieve gender equality.⁷² The EU has implemented

⁶⁶ Pederson, "European Environmental Human Rights and Environmental Rights." 104-105.

⁶⁷ Pederson, "European Environmental Human Rights and Environmental Rights."

⁶⁸ Maria Stratigaki, "Gender Mainstreaming vs Positive Action: An Ongoing Conflict in EU Gender Equality Policy," *European Journal of Women's Studies* Vol. 12, No. 2 (2005), accessed March 18, 2017, <http://journals.sagepub.com/doi/abs/10.1177/1350506805051236>.

⁶⁹ European Communities, "Treaty of Amsterdam Amending the Treaty on European Union, Treaties Establishing the European Communities and Certain Related Acts," (1997), accessed May 1, 2017, <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf>.

⁷⁰ Stratigaki, "Gender Mainstreaming vs Positive Action." ; Mieke Verloo, "Mainstreaming Gender Equality in Europe: A Critical Frame Analysis Approach," *The Greek Review of Social Research* Vol. 117 (2005), accessed March 18, 2017, https://scholar.google.nl/scholar?q=eu+position+on+gender&btnG=&hl=nl&as_sdt=0%2C5.

⁷¹ Stratigaki, "Gender Mainstreaming vs Positive Action."

⁷² Ibid.

gender mainstreaming way beyond the aims of the Beijing Conference, promoting it within EU institutions and member states to the extent that it became difficult for these actors to avoid.⁷³

55. Nevertheless, Stratigaki finds that the approach of gender mainstreaming can sometimes be used as a motive to annul positive action policies aimed at gender equality, under the premise that both are not needed at the same time.⁷⁴ In a perfect world, this may be the case, but various problems with the gender mainstreaming approach can be identified. One problem lies within the implementation on member state and EU levels. This can be caused by a contradiction between gender-related policies and other EU policies or by the fact that each member state frames gender inequality differently. In addition, there is a problem that states or policy-makers try to “fit women into the existing status quo rather than transforming the status quo,” while gender mainstreaming requires a certain transformation of the status quo that takes gender equality as a basic assumption.⁷⁵

56. Building on the problem that each member states frames gender inequality differently, Lombardo and Meier find other problems with the framing that influence the success of the gender mainstreaming approach. They argue that often policies focus on women as both the victim and the solution, while discarding the role of men in the problem and solution entirely. This is not an approach of ‘gender’ mainstreaming, but rather one of ‘women’ mainstreaming, as it lacks a consideration of gender as a whole. Additionally, the authors find a lack of intersectionality in the framing of gender and women. This is important because it means that gender is not yet successfully mainstreamed throughout EU policies. Even when gender is incorporated in a policy, this is not nearly always in the spirit of gender equality and intersectionality, focusing just on women and excluding men from the equation. This means that gender can be officially mainstreamed in a policy, but this does not say anything about the actual impact on gender equality.⁷⁶

57. Regarding the position of the EU informing the legal framework, of main importance is the 1997 Treaty of Amsterdam. It includes the EU’s obligation to advance gender equality throughout “all tasks and activities mentioned in the treaty.” These include the activities of the court and the legislative power, and thus cover the legal framework in addition

⁷³ Verloo, “Mainstreaming Gender Equality in Europe.”

⁷⁴ Stratigaki, “Gender Mainstreaming vs Positive Action.”

⁷⁵ Ibid.

⁷⁶ E.L.P. Meier, “Gender Mainstreaming in the EU: Incorporating a Feminist Reading?” *European Journal of Women’s Studies* (2006), accessed March 18, 2017, <http://journals.sagepub.com/doi/abs/10.1177/1350506806062753>.

to the policy framework.⁷⁷ This is further confirmed in the TEU.⁷⁸ The specific framing of gender used in both treaties is literally “men and women”. In the entire treaty, the actual word ‘gender’ is not used once.⁷⁹ This excludes the criticism found by Lombardo and Meier that there tends to be a focus on women and not on men in regard to the treaty.

58. Overall, this means that gender should be evident in all policies, including environmental and human rights policies, and should be seen in the legal frameworks as well. Nevertheless, even if the next sections find that indeed gender is mainstreamed throughout the frameworks, specific attention needs to be paid to the framing of gender to look for the actual meaning of the inclusion of gender.

1.3.2 Pertinence of the literature, including the gender-sensitive approach

59. This thesis will compare the human rights and the environment framework of the EU on the basis of a gender-sensitive approach. While the role of gender for environment and human rights has already been discussed, the literature on a gender-sensitive approach still needs to be reviewed to get a good understanding of what this approach entails.

60. A gender-sensitive approach is based on the premise of gender as a social construct, with socially constructed expectations varying in each context.⁸⁰ Seeing gender as a social construct is important to see how seemingly gender-neutral problems are in fact embedded with gender aspects.⁸¹ Crucial for a gender-sensitive approach is to understand that it is not simply a matter of throwing gender in the mix and that is it, but to truly understand the gendered aspects throughout a phenomenon or a problem and its causes, consequences and solutions.⁸² There is also a notable distinction between “female-aware” and “gender-aware”. With this distinction is meant the difference between treating women as a special group that needs to be studied separately, while men experience the ‘normal’ problem (“female-aware”), as opposed

⁷⁷ Verloo, “Mainstreaming Gender Equality in Europe.”

⁷⁸ European Union, “Consolidated Version of the Treaty on the Functioning of the European Union,” *Official Journal of the European Union* C 326/47 (2012), accessed May 1, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT>

⁷⁹ “Treaty of Amsterdam.”

⁸⁰ Diana Auret and Stephanie Barrientos, “Participatory Social Auditing: A Practical Guide to Developing a Gender-Sensitive Approach,” *Working Paper Series* 237 (2004), accessed March 18, 2017, <https://opendocs.ids.ac.uk/opendocs/handle/123456789/4086>.

⁸¹ E.M. Grieco and M. Boyd, “Women and Migration: Incorporating Gender into International Migration Theory,” *Working Paper Series* 98-139 (1998): 9-10, accessed March 18, 2017, <http://www.popline.org/node/275195>.

⁸² *Ibid.*

to just recognizing the gender dimension in a problem, thus recognizing that the problem is different for men and women (“gender-aware”).⁸³

61. Another important distinction is the one between a gender-sensitive approach and a gender-differentiated approach. While there is no unanimity on the meaning of a gender-differentiated approach, as Lister defines gender-differentiation in terms of difference-feminism and comparing it to gender-neutral and gender-pluralist approaches,⁸⁴ the majority of authors seem to define a gender-differentiated approach as a more positivist step beyond a gender-sensitive approach.⁸⁵ That means, that having applied a gender-sensitive approach, it is possible to differentiate information and data for men and women, such as Goh has done in her assessment of the impacts of climate change.⁸⁶

62. Using a gender-sensitive approach is important for several reasons. Women often face problems particular for their gender, and methods of discovering and dealing with these problems need to be aware and sensitive to gender issues in order for them to pick up on the problems and to provide potential solutions. In Auret and Barrientos article they use the example of problems in the workplace being different per gender, and methods of detecting problems such as social auditing need to be aware of this.⁸⁷ Another essential reason to use a gender-sensitive approach is to shed light on the fact that seemingly gender-neutral phenomena are usually not so gender-neutral.⁸⁸

63. To provide an example, one could think that problems related to the environment and climate change are gender-neutral, as for instance a drought as a consequence of climate change does not discriminate. Indeed in itself it does not, however, in a case such as seen in section 1.1.1, of a culture where women are in charge of collecting water, a role that has been socially constructed, droughts clearly have gendered aspects.

⁸³ Ibid., 3-4.

⁸⁴ Ruth Lister, “Citizenship and Gender,” in *The Blackwell Companion to Political Sociology* (Blackwell Publishing: Malden, Oxford, Victoria, 2006), ed. Kate Nash and Alan Scott, https://books.google.fr/books?hl=nl&lr=&id=J95wVEMcjXkC&oi=fnd&pg=PA323&dq=gender-differentiated+approach&ots=ZgFFnaPWuh&sig=eiXue4MOKsanI4jMN85V_jcA4Qo&redir_esc=y#v=onepage&q=gender-differentiated%20approach&f=false.

⁸⁵ Goh, “A Literature Review of the Gender-Differentiated Impacts of Climate.” ; Michael Jones-Correa, “Different Paths: Gender, Immigration and Political Participation,” *International Migration Review* Vol.32, No. 2 (1998), accessed March 18, 2017, https://www.researchgate.net/publication/11128212_Different_Paths_Gender_Immigration_and_Political_Participation.

⁸⁶ Goh, “A Literature Review of the Gender-Differentiated Impacts of Climate.”

⁸⁷ Auret and Barrientos, “Participatory Social Auditing.”

⁸⁸ Grieco and Boyd, “Women and Migration.” 10-11.

64. This completes the full academic framework necessary to embark upon the comparison to the EU frameworks on human rights and the environment. The first sub-section has provided a review of literature dealing with the human rights-gender-environment nexus. In the absence of existing literature on the subject relating to the EU, this has provided a general academic background for this research and proved the relevance of the subject.

65. The second sub-section discussed the pertinence of speaking human rights language, concluding that using human rights vocabulary has its benefits, but there are also reasons not to use it, so what it comes down to in the end is that the human suffering that can be framed as a human rights problem is crucial. This will inform the discussion on the use of human rights language identified in the comparison in the upcoming sections.

66. The last sub-section discussed the position of the EU on the topics of the environment, human rights and gender, and the available literature discussing the EU's position on human rights and the environment taken together. These positions were discussed in a general sense as well as divided into the policy and the legal framework. As these positions inform the EU's frameworks on human rights and the environment, they provide great insights into these frameworks, but also for the motivations behind certain findings, such as the use or absence of human rights language.

67. Combining the sections on gender, one could speculate that a gender-sensitive approach could potentially improve the EU's approach of gender-mainstreaming. Questions like these will be analysed in the next sections.

2. Comparison of the role of gender in the EU legal framework on human rights and the EU legal framework on the environment

2.1 Remaining need to increase the role of gender in the EU legal framework on human rights

68. Established in the previous section is that the EU prescribes a gender-mainstreaming approach throughout the EU. Gender needs to be mainstreamed throughout all areas, including human rights. This section will look at the extent and the way in which gender is indeed incorporated into the EU legal framework on human rights. This will be done by analysing various legal documents such as regulations, directives, decisions, treaties and travaux préparatoires. While the CFREU is a key document setting the EU's legal human rights framework and has been selected for this reason, the other documents analysed have been

selected through the cross-referencing of all possible keywords relating to human rights, gender and/or the environment.

69. The most important legal document in the EU legal framework on human rights is the CFREU, the Charter on Fundamental Rights that has been adopted in 2000 and legally entered into force with the 2009 Lisbon Treaty. Even though it speaks about fundamental rights, it is generally accepted that this is a human rights charter. As Europe's Fundamental Rights Agency (FRA) explains on its website, fundamental rights are human rights, but the EU uses the former term when discussing human rights specifically in the internal EU context.⁸⁹ The Charter is an excellent representation of the way human rights are portrayed in EU legislation and the role of gender in this legislation. Therefore first, the Charter's article on gender will be extensively analysed. Article 23 of the Charter is about "equality between men and women". The article reads:

"Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex."⁹⁰

70. Like in the European treaties, there is no mention of 'gender', but of 'men and women'. While gender mainstreaming was already adopted as the approach to use within the EU at the time the Charter was drafted and adopted, this article only includes positive action policies. Looking at the travaux préparatoires of the Charter, earlier drafts have the principle of gender equality under the non-discrimination article. In the February 2002 draft, article 19(1) prohibits discrimination based on sex and sexual orientation, among other factors, which is maintained in the final version of the Charter. Article 19(2) however, reads:

"The Union shall seek to eliminate inequalities and to promote equality between men and women. [*The equality of the sexes shall be ensured in particular by the setting of pay and*

⁸⁹ "Frequently Asked Questions," *European Union Agency for Fundamental Rights* (website), accessed May 29, 2017, <http://fra.europa.eu/en/about-fundamental-rights/frequently-asked-questions#difference-human-fundamental-rights>.

⁹⁰ "Charter for Fundamental Rights of the European Union," *Official Journal of the European Communities* C 364/1 (18 December 2000), accessed May 22, 2017, http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

other working conditions in accordance with the Treaty and with the texts implementing it.]”⁹¹

71. Here there is no mention of positive action policies. The focus on equality on the labour market remains, although it is formulated differently. In addition, the wording of “eliminate inequalities and promote equality” is less strong than the final wording of “equality must be ensured.” The May draft of the Charter has the same wording as the February draft, only the focus on equality in pay and working conditions is formulated differently.

“The Union shall seek to eliminate inequalities and to promote equality between men and women in particular equality between the sexes shall be ensured when setting pay and other working conditions.”⁹²

72. In this draft, it concerns article 22(3). The comments in both the February and the May draft state that the paragraph on gender equality is intended to authorize positive action, even though this is not worded as such in the paragraph itself. Such a wording obviously does make it into the final version of the charter. Regarding the clause on gender equality there is no difference between the June and the May draft version of the Charter.⁹³

73. Only in the October version of the Charter equality between men and women gets its own article, article 23. The wording here is exactly the same as the final version. The explanation provided indicates the origin of these paragraphs. The objective of promoting equality stems from the EC Treaty, and the rest of the paragraph relating to the labour market stems from the European Social Charter (a Council of Europe treaty), the Community Charter on the Fundamental Social Rights of Workers, the EC Treaty and Council Directive 76/207/EEC. The second paragraph is a shorter formulation of Article 141(4) of the EC Treaty on positive action policies.⁹⁴

74. The most important aspect to take away from this analysis is that at no point in the Charter there has been mention of gender, only of “men and women”. The other highly curious

⁹¹ “Draft Charter for Fundamental Rights of the European Union,” CHARTE 4137/00, Convent 8 (24 February 2000), accessed May 27, 2017, http://www.europarl.europa.eu/charter/activities/docs/pdf/convent08_en.pdf.

⁹² “Draft Charter for Fundamental Rights of the European Union,” CHARTE 4284/00, Convent 28 (5 May 2000), accessed May 27, 2017, http://www.europarl.europa.eu/charter/activities/docs/pdf/convent28_en.pdf.

⁹³ “Draft Charter for Fundamental Rights of the European Union,” CHARTE 4333/00, Convent 36 (4 June 2000), accessed May 27, 2017, http://www.europarl.europa.eu/charter/activities/docs/pdf/convent36_en.pdf.

⁹⁴ “Draft Charter for Fundamental Rights of the European Union,” CHARTE 4473/00, Convent 49 (11 October 2000), accessed May 27, 2017, http://www.europarl.europa.eu/charter/pdf/04473_en.pdf.

aspect is the inclusion of positive action, while gender mainstreaming was already the adopted approach within the EU. A positive sign is the fact that throughout the development of the Charter the language regarding gender equality becomes stronger: from “eliminating and promoting” to “ensuring”. Promoting suggests an effort, regardless of the end result, while ensuring suggests that the end result has to be achieved, without giving importance to the how.

75. Finally, throughout the versions it is very clear that there is a focus on equality in the labour market. The choice of treaties that were drawn upon to create the article in the Charter on gender equality also reflect a focus on equality in the labour market. In the section outlining the EU’s position on human rights, economic motivations are highlighted more than once. The EU is in its roots an economic organisation. While the Charter as a whole is definitely not just about economic rights, there are a lot of fundamental rights mentioned relating to the labour market, and the article on gender equality is therefore no exception. The European Council decision on drawing the Charter explains this focus, as it indicates that the Charter should be drawn of general principles of community law and of economic and social rights as included in the aforementioned European Social Charter and Community Charter.⁹⁵

76. The explanation behind the focus on the labour market specifically in relation to the gender clause goes back to the Treaty of Rome, where indeed an economic motivation was responsible for the inclusion of equal pay, rather than considerations of gender equality. France was behind the inclusion of a clause of equal pay, because it had national regulations of equal remuneration between women and men. To avoid social dumping, France wanted to ensure that all countries within the European Community were bound to a regulation about equal pay between men and women.⁹⁶ This confirms that economics was the first and foremost concern of the EU at the time, and then inclusion of gender into its legislation was in origin, purely of economic concern.

77. The literature on gender in the EU and on a gender-sensitive approach lead to conclude that there are two main questions to ask in assessing the role of gender in the EU’s legal framework. First of all, to what extent is gender mainstreamed? And second of all, how is gender framed?

⁹⁵ “Annex 4- European Council Decision on the Drawing Up of a Charter of Fundamental Rights of the European Union,” *Conclusions of the Presidency* (Cologne European Council: 3-4 June 1999), accessed May 27, 2017, http://www.europarl.europa.eu/summits/kol2_en.htm.

⁹⁶ Marie-Thérèse Lanquetin, Jacqueline Laufer, Marie-Thérèse Letablier, “From Equality to Reconciliation in France?” In *Gendered Policies in Europe* (Palgrave Macmillan UK, 2000): 66-68, eds. Linda Hantrais and Jo Campling, https://link.springer.com/chapter/10.1057%2F9780230378056_4.

78. Starting with the first question, there are multiple legislative documents that prove a certain level of gender mainstreaming within the EU. In fact, these documents focus on gender mainstreaming and, contrary to the CFREU, which only mentions positive action, these documents do not focus on positive action policies at all. Regulation 1922/2006 on the establishment of European Institute for Gender Equality mentions gender mainstreaming in all Community policies, but does not mention human rights as such, nor for that matter the environment, as specific areas.⁹⁷

79. Regulation 1381/2013 likewise strongly promotes gender mainstreaming, here in particular in relation to the Rights, Equality and Citizenship Programme (2014-2020). The regulation mentions gender and equality between men and women multiple times, and even states that “where relevant, indicators shall be broken down by sex”. This is a gender-differentiated approach, and a powerful indicator that gender mainstreaming is not just a rhetoric but needs to be implemented well. The concepts of gender equality and gender mainstreaming feature prominently throughout the whole document, indicating its important place within the Rights, Equality and Citizenship Programme.⁹⁸

80. Regulation 235/2014 establishing a financing instrument for democracy and human rights and as such establishing the role of this instrument for human rights protecting and mostly promoting, incorporates gender as well. In §10, it considers gender equality and women’s rights as “fundamental human rights”, the promotion of which should be a “cross-cutting priority of this Regulation”.⁹⁹ It also states that gender equality should be promoted and mainstreamed in “all its activities” (§3).¹⁰⁰

81. Directive 2012/29/EU discusses the rights and protection of victims of crimes, and in doing so clearly advocates a gender sensitive approach. The directive cites human right principles and draws in several human rights treaties, namely CEDAW, the UN Convention on

⁹⁷ “Regulation (EC) No 1922/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a European Institute for Gender Equality,” *Official Journal of the European Union* L403/9 (20 December 2006), accessed March 19, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006R1922&rid=1>.

⁹⁸ “Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020,” *Official Journal of the European Union* L 354/62 (17 December 2013), accessed March 19, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R1381&rid=7>.

⁹⁹ “Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 Establishing a Financing Instrument for Democracy and *Human Rights* Worldwide,” *Official Journal of the European Union* L 77/85 (11 March 2014), accessed March 19, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0235&rid=2>.

¹⁰⁰ *Ibid.* §3

the Rights of the Child (UNCRC) and CFREU. Gender comes into the picture when the directive considers vulnerable groups, in the context of gender-based violence.¹⁰¹

82. Answering the question to what extent gender is mainstreamed in the EU's legal human rights framework, the first thing to be noted is that the limited amount of legislation fulfilling the search requirements of including terms related to human rights and gender is alarming. Having said that, the documents including gender do refer to the requirement of gender mainstreaming, in one way or another, and highlight its importance. The problem that is preventing a conclusion that gender has been mainstreamed to a great extent lies within the difficulty of finding more sources to back up such a conclusion. In the literature review all the authors discussed gender mainstreaming in policies rather than in the legal framework. Even though the mentioned treaties do indicate an obligation to mainstream gender in the legal framework, possibly there is more of a focus on gender mainstreaming in the policy framework. The third section of this thesis will have to provide an answer to that.

83. Regarding the second question on the framing of gender, it is interesting that the CFREU only speaks about equality between men and women, not gender. This reflects also the language used in EU treaties, as has been acknowledged in the previous section. In further legislation on human rights there is, however, mention of gender equality and references beyond the men/women gender binary. Regulation 1922/2006 for instance uses the term "equality between men and women" and the term "gender equality" interchangeably.¹⁰²

84. In an equal manner refers Regulation 235/2014 to the TEU and TFEU's mention of 'equality between men and women' when stating that gender equality should be promoted and mainstreamed in "all its activities" (§3).¹⁰³ In other words, the wording of this paragraph allows to clarify that 'gender equality' is considered by the ECJ to be equal to 'equality of men and women'.

85. Regulation 1381/2013, suggests a definition of gender beyond the men/women binary, as §8 of the regulation defines discrimination based on sex to include discrimination as a result of gender reassignment.¹⁰⁴ In addition, Directive 2012/29/EU takes the definition of gender also beyond this binary. §17 speaks of "violence that is directed against a person

¹⁰¹ "Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA," *Official Journal of the European Union* L 315/57 (25 October 2012), accessed March 19, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&from=EN>.

¹⁰² "Regulation (EC) No 1922/2006."

¹⁰³ *Ibid.* §3

¹⁰⁴ "Regulation (EU) No 1381/2013."

because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately".¹⁰⁵ This is a clear indicator that gender here is not taken to mean the 'men/women' gender binary.

86. Nonetheless, the following paragraph (§18) states that "women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or as regards her right to residence".¹⁰⁶ While this phrasing portrays the idea that women are more vulnerable when they are also part of another vulnerable group, focussing on the economic and social vulnerability only addresses a small part of the issue and demonstrates a limited understanding: women are more vulnerable when they are part of another vulnerable group in general, whatever nature this vulnerable group may have. This paragraph seems to be an attempt to improve intersectionality, however it is a poorly executed attempt.

87. Overall, gender seems to be framed in a way that focuses mostly on the men/women gender binary, but several sources nonetheless provide a definition of gender beyond this binary. Intersectionality is still very limited in the sources available, leaving a lot of room for improvement. Additionally, the abundance of explicit mention of "men and women" supports the conclusion made in the previous section that Lombardo and Meier's worry of there being focus on women and not on men, is unfounded in relation to the EU's legal framework on human rights.

88. The directives and legislation do not reflect, however, the focus on the labour market as can be identified in the CFREU. The further legislation considers gender more in relation to the approach of mainstreaming gender in all policy areas or activities, like Regulation 235/2014, thus also excluding the environment as an area where gender mainstreaming needs to be implemented. Only the judgment of 22 April 2015, concerning a dispute undermining human rights and rule of law in Zimbabwe, explicitly includes the environment. In listing the objectives of the Common Foreign and Security Policy (CFSP) it mentions both consolidating and supporting human rights and fostering the environmental development of developing countries. This is still very minimal and not yet quite linking human rights and environment, it does recognize that both are important for the development of a

¹⁰⁵ "Directive 2012/29/EU."

¹⁰⁶ Ibid.

country, thus acknowledging a ‘loose connection’. Unfortunately, this Judgment fails to take into account gender altogether.¹⁰⁷

89. In addition, article 37 of the CFREU also speaks of a “high level of environmental protection and the improvement of the quality of the environment [that] must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.”¹⁰⁸ While this is nowhere near a human right to environment, it is a definite link between human rights and environment recognized in the Charter. The discussion on whether there is or should be a (human) right to the environment is therefore highly relevant in the EU context.

2.2 Severely underestimated role of gender in the EU legal framework on the environment

90. This section will work along the same method of section 2.1, analysing the same kind of sources, but on the role of gender in relation to the EU legal framework on the environment. Unfortunately, there is no document similar to the CFREU as a key document, for the framework on the environment. The framework for environment is established through the treaties mentioned in the literature review section. These treaties however have no inclusion of gender within the sections on the environment.

91. The sources for this section are therefore directives, regulations and judgments. These sources of legislation have been found in the same way as the sources for the framework on human rights: by searching with key words related to the environment and gender, and/or with human rights. The quantity of sources found that relate the environment and gender is even more limited than the list found for human rights and gender. Nevertheless, they provide valuable insight in the role of gender in the EU legal framework on the environment. Relying on the same two questions as asked in the section on the EU’s human rights framework, this section will analyse to what extent gender is mainstreamed and how gender is framed.

92. There is only one directive with a direct, explicit, reference to gender, which is directive 2009/28/EC. The directive concerns renewable energy sources and includes mention of the “Convention concerning Equal Remuneration of Men and Women Workers for Work of

¹⁰⁷ “Johannes Tomana and Others v Council of the European Union and European Commission,” *Judgment of the General Court (Eighth Chamber)* Case T-190/12 (22 April 2015), accessed March 19, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62012TJ0190&rid=5>.

¹⁰⁸ “Charter of Fundamental Rights of the European Union.”

Equal Value” in relation to countries using biofuel. It is sparse, but it is still a sign that gender equality is taken into account.¹⁰⁹

93. Several judgments do take gender into account, but do not relate it to the environment. Regarding case law, the judgments of 11 June 2014 and of 23 October 2007 included mentions of the environment, gender and human rights or human rights related topic, but do not relate gender to the environment. Only the judgment of 2014 links human rights explicitly to the environment by introducing indigenous rights.¹¹⁰ The judgment of 2007 considers all as important aspects, without connecting them.¹¹¹ The opinion of 28 June 2007 equals priority of gender equality and environmental protection, but not yet quite links them. It also cites the ECHR, but does not link it with the environmental issue at stake.¹¹²

94. Gender mainstreaming using the actual term gender is thus very limited within the environmental framework. It will therefore be more interesting to look at how gender is framed, because perhaps gender is incorporated indirectly.

95. The regulation on the establishment of LIFE mentions “smart, sustainable and inclusive growth”.¹¹³ The “Smart, sustainable and inclusive growth strategy” is, as the name says, a strategy to create a better Europe by 2020 through both EU and member state efforts. The strategy includes environmental targets and several human rights related targets, such as increasing employment rates, improving education and reducing poverty, but the term ‘human rights’ is once again not mentioned at all. Fundamental rights and property rights are mentioned, fundamental rights referring to the CFREU and thus implicitly speaking of human rights. Gender is included into the strategy on multiple occasions, although not as part of the

¹⁰⁹ “Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the Promotion of the Use of Energy from Renewable Sources and Amending and Subsequently Repealing Directives 2001/77/EC and 2003/30/EC,” *Official Journal of the European Union* L 140/16 (23 April 2009), accessed March 19, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009L0028>.

¹¹⁰ “European Commission v Council of the European Union,” *Judgment of the Court (Grand Chamber)* Case C-377/12 (11 June 2014), accessed March 19, 2017 <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62012CJ0377&rid=1>.

¹¹¹ “European Parliament v Commission of the European Communities,” *Judgment of the Court (Grand Chamber)* Case C-403/05 (23 October 2007), accessed March 19, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62005CJ0403&rid=5>.

¹¹² “Commission of the European Communities v Council of the European Union,” *Opinion of Mr Advocate General Mazák* Case C-440/05 (28 June 2007), accessed March 19, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62005CC0440&rid=4>.

¹¹³ “Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the Establishment of a Programme for the Environment and Climate Action (LIFE) and Repealing Regulation (EC) No 614/2007,” *Official Journal of the European Union* L 347/185 (11 December 2013), accessed March 19, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013R1293>.

targets.¹¹⁴ The reference in the legislation to the strategy therefore is also an implicit reference to gender, however a very minimal one, displaying the very limited role of gender in the EU's legal framework on the environment.

96. Another piece of legislation referencing the Strategy for “Smart, sustainable and inclusive growth” is the regulation establishing the Copernicus Programme, which is the closest the regulation comes to incorporating gender.¹¹⁵ The decision on the General Union Environment Action Programme to 2020 once again cites the “smart, sustainable and inclusive growth” objective, but also speaks of ‘inclusive’ outside the context of this strategy.¹¹⁶

97. The most important indicator of the role of gender in the EU's legal framework is the limited number of sources available which combine the two issues, as this indicates that the role of gender within this framework is still very limited. Looking at the sources who do, somehow, combine the two topics, a similar conclusion can be reached. The directives, regulations and judgments all have the potential to include gender, as they speak of “inclusiveness” or other topics that could very easily include gender, but do not take the next step of actually mentioning the word gender. This shows a thorough underestimation of the role of gender in the environment within the EU's legal framework, far behind international efforts within the UN.

98. Telling as well, is that the analysed legislation has more references to human rights than to gender, while the reversely the framework on human rights barely had any references to the environment. The regulation establishing the Copernicus Programme incorporates a number of rights, mostly intellectual property rights and access rights, although never actually speaking of *human* rights.¹¹⁷ The decision on the General Union Environment Action Programme to 2020 speaks of the environment in relation to health and quality of life, and considers trends of population growth, of which section 1 has shown this is an issue heavily related to the environment, gender and human rights. Additionally, there is mention of intellectual property rights and reducing inequalities. This cannot be taken to refer to gender

¹¹⁴ European Commission, “Europe 2020: A European Strategy for Smart, Sustainable and Inclusive Growth,” *Communication from the Commission* (Brussels, 2010), accessed May 25, 2017, [http://ec.europa.eu/eu2020/pdf/COMPLET_EN_BARROSO_007 - Europe 2020 - EN version.pdf](http://ec.europa.eu/eu2020/pdf/COMPLET_EN_BARROSO_007_-_Europe_2020_-_EN_version.pdf).

¹¹⁵ “Regulation (EU) No 377/2014 Of the European Parliament and of the Council of 3 April 2014 Establishing the Copernicus Programme and Repealing Regulation (EU) No 911/2010,” *Official Journal of the European Union* L 122/44 (3 April 2014), accessed March 19, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0377&rid=1>.

¹¹⁶ “Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 ‘Living Well, Within the Limits of our Planet’,” *Official Journal of the European Union* L 354/171 (20 November 2013), accessed March 19, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013D1386&rid=2>.

¹¹⁷ “Regulation (EU) No 377/2014.”

inequalities: inequalities are much wider than just gender inequalities. Seeing this as an implicit reference to gender inequality would be a stretch.¹¹⁸ The regulation on the establishment of LIFE fails to mention human rights, but addresses multiple environmental issues that in section 1 have been proven to have human rights implications, such as environmental impact on health.¹¹⁹

99. Directive 2011/92/EU considers the environment in relation to human health and quality of life. In addition, this directive speaks of the rights to decision-making, access of information and access to justice as laid out in the Aarhus Convention and subsequent legislation. Nevertheless, there is nothing that even remotely can be linked to gender in this directive.¹²⁰

2.3 Roots for convergence between the two frameworks

2.3.1 Points of convergence and difference

100. To start with, there is one clear commonality between the two frameworks disregarding gender: within the framework on human rights, the environment is mentioned, albeit sparsely, and within the framework on the environment, multiple references have been made to human rights issues. As has been touched upon a couple of times in previous sections, there is actually a separate legal framework on human rights and the environment, with the Aarhus Convention and multiple related directives. The Aarhus Convention itself, otherwise known as the “Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters”, was adopted in 1998 in Aarhus, Denmark. It is a Convention of the United Nations Economic Commission for Europe (UNECE), and entered into force in 2001. It provides for certain rights regarding environmental matters, namely access to information on the environment, public participation in environmental decision-making and access to justice.¹²¹

101. The Preamble of the Convention acknowledges the impact of the environment on human rights enjoyment, and actually speaks of a right to live in a healthy environment, and

¹¹⁸ “Decision No 1386/2013/EU.”

¹¹⁹ “Regulation (EU) No 1293/2013.”

¹²⁰ “Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the Assessment of the Effects of Certain Public and Private Projects on the Environment (Codification),” *Official Journal of the European Union* L 122/44 (3 April 2014), accessed March 19, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0092&rid=4>.

¹²¹ “The Aarhus Convention,” *European Commission* (website), accessed May 11, 2017, <http://ec.europa.eu/environment/aarhus/>.

immediately follows this by a duty to protect the environment. These two sides of the coin are repeated throughout the preamble.¹²² In section 1.3.2 Kennedy was cited with his argument that it might be more useful to speak of a duty for the environment, rather than a right to an environment of some sort. The fact that the Convention reiterates both right and duty could suggest that it is not willing to limit itself to human rights language, or that it wants to stress, by pairing right with duty, that it is not speaking of *human* rights, thus avoiding bringing in the human rights framework and the legal repercussions of combining human rights with the environment. This is not defined in the list of definitions in the Convention.¹²³

102. The articles of the Convention concentrate on further outlining and defining the three previously mentioned rights regarding environmental matters. However, the Convention does not speak of gender, gender equality or any kind of differentiation between men and women.¹²⁴ This is interesting, because issues of public participation and access to information and justice have great potential for gendered aspects. Men and women do not tend to have equal access to information or justice, and gender inequality is a longstanding issue in public participation and decision-making: all one has to do is look at the balance between women and men in parliaments all over the EU. Failing to take this into account leaves room for inequalities in the extent the rights proposed in the Aarhus Convention are fulfilled.

103. Several directives have been adopted following up the Aarhus Convention: in 2001, the Directive on the Assessment of the Effects of Certain Plans and Programs on the Environment was adopted on the right to participate, and in 2003 Directive 2003/4 on Public Access to Environmental Information. Nothing relating to gender is mentioned in either directive: the only mention of inequality is in relation to inequality between member states if there are differences in national laws implementing the Aarhus Convention.¹²⁵

104. Despite the utter lack of consideration for potential gender inequalities in the directives and the Aarhus Convention, they remain nonetheless interesting because they do

¹²² “Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,” (Aarhus, Denmark: 25 June 1998): 2-3, accessed May 11, 2017, <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

¹²³ Ibid. 4

¹²⁴ Aarhus Convention.

¹²⁵ “Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on Public Access to Environmental Information and Repealing Council Directive 90/313/EEC,” *Official Journal of the European Union* L 41/26 (28 January 2003), accessed May 11, 2017, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDE>; “Directive 2001/41/EC of the European Parliament and of the Council of 27 June 2001 on the Assessment of the Effects of Certain Plans and Programmes on the Environment,” *Official Journal of the European Union* L 197 (27 June 2001), accessed May 11, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001L0042&from=EN>.

combine human rights and the environment, albeit without ever speaking of *human* rights, only about rights.

105. Considering gender, an important commonality between the role of gender within the legal framework of human rights and the legal framework on the environment is the limited amount of legislation including gender. Within the legislation on human rights and the environment, there is no mention of gender whatsoever. This is concerning, taking into account that gender mainstreaming has been adopted as the main approach within the EU since the Beijing Conference, and thus before any of the analysed documents have been adopted. A potential explanation for this is that gender mainstreaming is much more focused on policies than on the legal framework. This is something the last chapter analysing the policy framework will have to prove true or false.

106. While both frameworks have taken steps that make inclusion of gender possible, albeit in different extents, the basis is there in both frameworks. They just do not (yet) actually converge on the topic of gender, with the exception of the one inclusion of equal pay for men and women within the environmental framework, and the focus on equal pay and labour conditions in the gender clause of the CFREU. Other than that, gender is explicit in multiple human rights documents, and the basis to include gender is there in the legislation on the environment when speaking of inclusiveness. Explicitly including gender in the environmental framework would only be a small step from its current state. This is good news for the potential of further convergence.

107. Looking more into the differences between the legal framework on human rights and on the environment, two main aspects stand out, the first however not related to gender. First, human rights issues are more easily included in the framework on the environment than the reverse. The environment is much less incorporated within the human rights framework. An anthropocentric perspective could provide an explanation,¹²⁶ because while human rights are affected by many issues, the environment is merely one of them, and an inanimate one. From this perspective, highlighting the role of humans in the environment makes sense: it highlights the importance of the environment for humans' sake. Within human rights the focus is already on the human being, and the environment is merely a factor impacting human rights, among many others.

¹²⁶ Jonathan Symons and Rasmus Karlsson, "Green Political Theory in a Climate-Changed World: between Innovation and Restraint," *Environmental Politics* Vol 24, No.2 (2015), accessed May 29, 2017, <http://www.tandfonline.com.proxy-ub.rug.nl/doi/full/10.1080/09644016.2015.1008252#.VVmOrJM3RtQ>.

108. A difference in the role of gender between the two frameworks are the stages of including gender. Within the human rights framework gender is explicitly mentioned and well incorporated. Within the framework on the environment explicit mention of gender is sparse. What does exist is a basis that would make it an easy step to include gender, by speaking of ‘inclusiveness’, and ‘smart, sustainable and inclusive growth’.

109. Overall it is clear to say that the role of gender within the environmental framework is severely underestimated, while it is more prominent and comprehensive within the human rights framework. Links between all three issues, human rights, the environment and gender, are virtually non-existent in the legal frameworks, lagging behind developments on an international level. Nevertheless, it is perfectly logical that legislation will only be adopted when something is solidified in European thinking. That means that the EU needs to draw attention to the interconnectedness between the three issues to bring about further convergence between the legal frameworks and solidify the interconnectedness in the law.

2.3.2 Benefits of further convergence in the legal frameworks

110. Having established that the EU still has a long way to go before the frameworks on human rights and the environment intersect on the role of gender, the questions remains why the EU would embark on this journey.

111. An issue that came up in the legal frameworks as well as in the literature, is the act of mentioning the issues of gender, human rights and the environment, but failing to actually link them. This added step of acknowledging the interconnectedness of these issues is highly important to reinforce efforts for all three issues. Recognition of the role of gender in human rights and the environment can be instrumental to increase the interconnectedness, and the basis for this recognition is already present in the legal frameworks, it just has to be taken further. In addition, the framework to highlight the role of gender is already there with the adopted approach of gender mainstreaming, though it needs to be implemented further.

112. At the moment, the role of gender seems to be a case of what Stratigaki in section 1.3.1 calls “fitting gender into the existing status quo”, rather than transforming the status quo from a gender perspective. The creation of institutions dealing with gender is a good sign of gender mainstreaming, but many of the legislation analysed only include gender in a limited way, which is more consistent with the idea of fitting gender into the status quo. Applying gender mainstreaming to the topics of the environment and human rights is important because

this will improve efforts for the environment and human rights, but will also strengthen gender mainstreaming itself, creating a reinforcing wave or cycle where gender will get more and more attention within legislation and policy and reversely so will human rights and the environment. This is the very essence why it is so important to acknowledge the interconnectedness of the gender-environment-human rights nexus. Truly recognizing that these issues are interrelated will also benefit the effectiveness of including the issues in legislation.

113. In the literature, there is one issue that is very prominent in the gender-environment-human rights debate: climate change. Climate change features mostly in legislation that focuses on what to do about climate change in terms of renewable energy, greenhouse gasses and the impact of climate change. The first two sources that deal with climate change that can be found in the list with sources on the environment that has been used for the analysis on the legal framework on the environment, are Regulation 1005/2009 on substances that deplete the ozone layer,¹²⁷ and Directive 2007/60/EC on flood risks as a consequence of climate change.¹²⁸ Neither regulation mentions anything even remotely related to gender, such as ‘inclusiveness’ or even ‘vulnerable groups’. Nevertheless, there is one clear gender reference in the earlier assessed directive on renewable resources, so the EU does recognize a gender element within renewable energy sources, which has an environmental legal base. The lack of recognition for gender elements in the other regulations suggests that the EU just lags behind the UN and the academic world in terms of recognizing the role of gender in the environment.

114. There is a lot of overlap with climate change in the assessed documents, though, because the human health dimension is repeated multiple times. In section 1.1 it has been shown that human health is an issue that involves gender, human rights and climate change as an environmental challenge. This is another way in which explicitly including gender in the legal frameworks on human rights and the environment is merely a logical next step.

115. In the EU, especially internally, the common language is ‘rights’ or ‘fundamental rights’ rather than ‘human rights’. While the EU has also made it clear that it considers fundamental rights to be the exact same as human rights, the fact that the EU has

¹²⁷ “Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on Substances that Deplete the Ozone Layer,” *Official Journal of the European Union* L 286/1 (16 September 2009), accessed June 8, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R1005&qid=1490087107168&from=EN>.

¹²⁸ “Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the Assessment and Management of Flood Risks,” *Official Journal of the European Union* L 288/27 (23 October 2007), accessed June 8, 2017, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32007L0060&qid=1490087107168&from=EN>.

made the choice not to speak of human rights proves that it attaches some kind of meaning to the choice of terminology. The reason why the EU speaks of fundamental rights instead of human rights, according to Romain Tinière, lies in the influence of the national constitutions of Germany and Italy that speak of fundamental rights and liberties. This has made its way in the language used in the EU. While on several occasions ‘human rights’ instead of fundamental rights have been brought up, the EU has stuck with fundamental rights.¹²⁹ According to Tinière, on the one hand sticking to fundamental rights reflects a constitutionalisation of the European Community, reflecting the constitutional character of these rights. On the other hand, using the term of fundamental rights instead of human rights was seen to “complement and enrich” the existing system of human rights, including the human rights and social charters of the Council of Europe.¹³⁰

116. So the EU does not discard human rights language, it just prefers to stick with what the influence of its member states has brought, with the idea that this is beneficial for the protection of human rights as well. This reflects the intergovernmental side of the EU. Regardless of the question whether the EU is right and it improves efforts for human rights or not, which could be the subject of another thesis entirely, in this thesis it is more relevant to fall back on the conclusion of section 1.2, that regardless of the language used, it is particularly important that the issues at hand are still paid attention to. This is where increased interconnectedness can have real benefits: by reinforcing the efforts on human rights, the environment and gender through their interconnectedness, the focus remains on these issues and their potential solutions, and the language used becomes less important.

117. No matter the precise language used, there is no question that human rights play an important role in the EU, especially in its rhetoric, although this is stronger in the policy framework than in the legal framework. The environment is also an important part of the EU, although the legal and policy frameworks are both strong. The framework on human rights and environment together has developed in its early stages, but has since more or less stalled. The literature states that EU has taken gender mainstreaming beyond the Beijing requirements, giving the impression that the EU is really advanced when it comes to gender mainstreaming. Nevertheless, this is difficult to see in the legal framework. All in all, there are signs that the role of gender could very well be more profound in in the policy framework, which section 3 will have to prove or disprove.

¹²⁹ Romain Tinière, *L'Office du Juge Communautaire des Droits Fondamentaux* (Bruylant: Bruxelles, 2008): 11-56.

¹³⁰ *Ibid.*, 53-56.

118. Disregarding the possibility that the role of gender within the policy frameworks on the environment and on human rights is more developed, it is important that the legal frameworks develop as well. On the one hand policy is very important, possibly more important because to a certain extent policies are about implementing and executing legislation, and therefore have a more direct effect on gender equality. On the other hand, legal frameworks are literally the legal basis for EU action, and a more profound mainstreaming of gender in the legal frameworks will provide a more solid basis for the role of gender throughout the EU. In addition, the more present gender is in all corners of the EU, including its legal frameworks, the stronger the position of gender is within the EU. A more prominent role of gender in the legal frameworks can therefore also be important for the solidification of the interrelatedness between gender, human rights and the environment. If the policy framework has indeed progressed further in acknowledging this interconnectedness, this could perhaps provide lessons to be applied to the legal framework.

3. Comparison of the role of gender in the EU policy framework on human rights and the EU policy framework on the environment

3.1 Comprehensive gender mainstreaming in EU policy framework on human rights

119. Having established a limited role of gender within the legal frameworks on the environment and on human rights, this section will make a similar comparison by analysing the policy frameworks. Sources used to identify and compare the role of gender are policy documents such as action plans and speech acts on human rights and on the environment. These sources have been selected in a similar way as the previous section, by searching on a variety of key words related to human rights and gender. There is unfortunately no database for EU policy documents that could be used, so searching for relevant documents has required a bit more creativity and effort. Searching in many potential places has yielded various important policy documents to use for the analysis of the role of gender within the human rights policy framework. For the analysis of the role of gender in the EU policy framework on the environment, similar sources will be used, only these relating to the environment and, by extension, climate change. These sources together form the backbone of the EU policy framework on the environment.

120. Using the same method as in the previous section, the first question to be considered is to what extent gender has been mainstreamed.

121. In the EU Strategic Framework of 2012 gender is mentioned multiple times, in ways reflecting a solid mainstreaming of gender. Gender is mentioned as need to be systematically included in the mandates of EU missions on conflict prevention and crisis management. In the same vein, women are mentioned in reference to UN Security Council resolutions 1325 and 1820 on their inclusion in maintaining peace and security. Gender and empowerment of women is also included as a main EU human right's priority, with specific mention of the priority of gender-based violence. This priority of gender-based violence is repeated in the context of protection of women's rights. In addition, women are mentioned in relation to harmful traditional practices, early and forced marriages and matters of peace and security.¹³¹

122. A very strong sign of gender mainstreaming is the fact that also in contexts that do not directly target gender equality, there is mention of the distinction between genders. This is the case in the context of democracy, where the following sentence can be found: "Throughout the world, women and men demand to live lives of liberty, dignity and security in open and democratic societies underpinned by human rights and the rule of law."¹³²

123. In the EU Action Plan on Human Rights and Democracy of 2015 gender again features extensively. Gender equality and women empowerment are once again mentioned as important within the promotion of human rights. Women and gender are also mentioned in relation to women's organisations and CSOs who defend women's rights, both to have women and women's organisation be more present in decision-making and in dialogue with decision-makers, and to give gender equality and women's rights a more prominent place within these processes. Gender is also included in the context of external action and development cooperation, and again within issues of peace and security under UNSC resolutions 1325 and 1820.¹³³ In addition, women and gender are mentioned in reference to gender-based violence including harmful traditional practices, human rights defenders defending women's rights, economic, social and cultural rights in a gender context, political and civil rights including increased accountability.¹³⁴

¹³¹ "Human Rights and Democracy: EU Strategic Framework and EU Action Plan," *Council of the European Union* 11855/12 (June 2012), accessed March 20, 2017, <http://data.consilium.europa.eu/doc/document/ST-11855-2012-INIT/en/pdf>.

¹³² *Ibid.*

¹³³ "Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019," *Council of the European Union* 10897/15 (July 2015), accessed March 20, 2017, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/action-plan-on-human-rights-and-democracy-2015-2019_en.pdf.

¹³⁴ *Ibid.*

124. The 2017 EU guidelines on the Rights of the Child incorporate gender all throughout the document, in many different contexts. Recurring issues are gender-based violence, forced marriages and traditional harmful practices, as well as discrimination in various manifestations. Gender is also named to be an important consideration when it comes to national strategies and action plans, as well as data gathering, advocating a gender-differentiated approach. Gender in Development Cooperation is again repeated, and included throughout the Annex with the Sustainable Development Goals. In addition, there are references to the resolutions on women, peace and security and the empowerment of women in general. Gender is also explicitly included in external relations of the EU.¹³⁵

125. In a speech made by the EU Special Representative on Human Rights to the UN Human Rights Council in this same year, mention of gender is limited, compared to the other documents analysed here. There is one mention of gender-based violence in the context of South Sudan, and then there is one other instance of a small paragraph outlining the priority of promoting gender equality, mentioning implementation of the aforementioned UNSC resolutions on Women, Peace and Security and again gender-based violence. Considering that the entire speech consists of 15 paragraphs, this is actually not bad, and reflects a certain level of gender mainstreaming.¹³⁶

126. In the EU Annual Report on Human Rights and Democracy in the World in 2014 gender features very extensively – almost all sections include gender aspects. All of previously mentioned contexts in which gender is included, are also included in the Annual Report. In addition, there is an enormous focus on women’s organisations, female human rights defenders, participation and engagement with women’s rights leaders. In other words, there is a tremendous focus on agency by women unlike portrayed in any other document that has been analysed in this thesis. Within the country and regional issues gender features extensively as well. In addition, the section specifically on women’s rights includes the various efforts made within the EU to mainstream gender. These range from the work of an EEAS Gender Advisor to the provision of gender training to attention to gender in Electoral Observer Missions, and many more efforts. Efforts to include gender more prominently in the EU’s legal framework are not mentioned, but there is no doubt that gender is mainstreamed throughout this document

¹³⁵ “EU Guidelines for the Promotion and Protection of the Rights of the Child, EEAS (2017),” *European Union* (2017), accessed March 20, 2017, https://eeas.europa.eu/sites/eeas/files/eu_guidelines_rights_of_child_0.pdf.

¹³⁶ Stavros Lambrinidis, “EU Statement by EUSR Stavros Lambrinidis on behalf of HR/VP Federica Mogherini,” *34th Session of the Human Rights Council* (Geneva, March 2017), accessed March 20, 2017, https://eeas.europa.eu/delegations/un-geneva/21676/hrc-34-high-level-segment-eu-statement-eusr-stavros-lambrinidis-behalf-hrvp-federica-mogherini_en.

and that efforts to mainstream gender throughout the EU are widespread and very varied in nature.¹³⁷

127. In 2015 the Annual Report and the Country and Regional Issues have been separated, and will therefore be analysed as two different documents reflecting EU policy. In this year's Annual Report, gender has an equally prominent role as in the report of the previous year: gender features throughout the entire document, in almost every section. The contexts in which gender is mentioned are similar to those in the 2014 report. There is one difference, because in the 2015 report there is much less focus on the agency of women, compared to 2014. It is still present, but to a much lesser extent.¹³⁸ Turning to the 2015 report on Country and Regional Issues, gender is again present almost everywhere. Gender equality and gender-based violence are the contexts which feature most prominently, either as areas of concern within a country or areas of improvement. Women's empowerment and participation are mentioned numerous times as well. Important to note is that gender is a significant area of attention for each country's assessment. While in some cases there is just a brief mention of women's rights or gender equality without going into the actual problems for the country in this area, many country assessments do include a more in-depth assessment of the nature of gender-related problems for each particular country. This marks a genuine mainstreaming of gender throughout this document.¹³⁹

128. To answer the question to what extent gender has been mainstreamed, first to note is that there are more sources available that include gender. The most recent documents have been selected for analysis here, because they most accurately reflect the role gender currently holds within the EU human rights policy framework. The nature of the sources is quite varied as well, in the nature of a strategic framework, action plan, guidelines, speeches and annual reports. The Annual Reports are in itself a reflection of the EU policy framework, but also give an insight in the implementation of gender mainstreaming throughout its policy.

129. Apart from having more sources to choose from, the selected sources all contain a significant (although varying) degree of gender mainstreaming. With the exception of the speech by the EU Special Representative on Human Rights, all sources display a high degree

¹³⁷ "Annual Report on Human Rights and Democracy in the World in 2014," *Council of the European Union* (2015), accessed March 20, 2017 https://eeas.europa.eu/sites/eeas/files/2014-human-rights-annual-report_en.pdf.

¹³⁸ "Annual Report on Human Rights and Democracy in the World in 2015," *Council of the European Union* (2016), accessed March 20, 2017, https://eeas.europa.eu/sites/eeas/files/qc0216616enn_002.pdf.

¹³⁹ "Annual Report on Human Rights and Democracy in the World in 2015- Country and Regional Issues," *Council of the European Union* 12299/16 (2016), accessed March 20, 2017, <http://data.consilium.europa.eu/doc/document/ST-12299-2016-INIT/en/pdf>.

of gender mainstreaming, by not only including gender extensively throughout the documents, but also including them in many different contexts in many different ways. This leaves no doubt that gender has a very significant role in the EU policy framework on human rights, and compared to the legal framework, gender has a much more prominent role in the policy framework, confirming the suspicions raised in the section on the EU legal human rights framework.

130. Turning to the second question, the manner in which gender is framed will be considered. In the EU Strategic Framework gender is mentioned in multiple ways. Most references to gender explicitly state ‘gender’, ‘gender equality’ or ‘gender-based violence’. There is only one mention of ‘men and women’, and there are several mentions of ‘women’ separately.¹⁴⁰ In the 2015 EU Action Plan there are multiple mentions of both ‘gender’ and related terms and ‘women’, or ‘women and girls’, and one mention of ‘men and women’. Interesting in this document is that women and girls are mentioned separately on multiple occasions.¹⁴¹ In the 2017 guidelines on children’s rights there are many mentions of ‘gender’ as well as ‘women’, ‘women and girls’ and ‘women and men’.¹⁴²

131. In the 2014 Annual Report gender is framed in many different ways, as every previously mentioned way of framing gender is included. The report also includes references to gender identity and LGBTQI+, thus interpreting gender beyond the male/female binary. This is equally included throughout the country and regional issues.¹⁴³ In the 2015 report gender is again framed in a way that includes gender identity and LGBTQI+, and in addition, this document makes explicit mention of a gender-sensitive approach.¹⁴⁴ The Country and Regional Issues Report the framing is similar, including also numerous mentions of gender identity and LGBTQI+ rights.¹⁴⁵ All in all, gender is framed in quite varied manner throughout the documents.

132. A very welcome development that can be identified throughout the documents is the increased focus on the agency of women, instead of seeing women just in the victim role. This is a very positive development in the way of framing of gender. The Strategic Framework includes the role of women in “political and economic participation ... with special focus on countries in transition”, thus highlighting participation.¹⁴⁶ In the 2015 EU Action Plan women

¹⁴⁰ “Human Rights and Democracy: EU Strategic Framework and EU Action Plan.”

¹⁴¹ “Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019.”

¹⁴² “EU Guidelines for the Promotion and Protection of the Rights of the Child, EEAS (2017).”

¹⁴³ “Annual Report on Human Rights and Democracy in the World in 2014.”

¹⁴⁴ “Annual Report on Human Rights and Democracy in the World in 2015.”

¹⁴⁵ “Annual Report on Human Rights and Democracy in the World in 2015- Country and Regional Issues.”

¹⁴⁶ “Human Rights and Democracy: EU Strategic Framework and EU Action Plan,” 21.

are framed on multiple occasions in way that stresses the agency of women, such as their role in conflict prevention and peace building, decision-making processes and elections.¹⁴⁷ In the 2017 Guidelines on Children's Rights there is mention of risks specific for both boys and girls, this is important because it notes that there are risks for girls *and* boys and that this is recognized in the framing. There is also specific mention of the rights of women and girls in participation in solutions, once again framing women and girls not just as victims but as agents of change.¹⁴⁸

133. Considering the inclusion of intersectionality in the framing of gender, there are several degrees of doing so that can be recognized in the documents.

134. In the 2015 EU Action Plan there is nothing that suggests an intersectional approach to gender,¹⁴⁹ nor is there in the analysed speech act. In the Strategic Framework, fights against discrimination based on gender or sexual orientation is mentioned in sequence with the EU's efforts to fight discrimination with special attention to the poor and vulnerable, and mention of multiple vulnerable groups. While this is no explicit mention of intersectionality in gender, it does seem to suggest at least consideration of all different groups and a tendency to see the intersectionality between different vulnerable groups.¹⁵⁰ In the 2015 Annual Report a similar level of intersectionality is present.¹⁵¹ The Country and Regional Issues Report Intersectionality, like in the 2015 Annual report, is more implicit.¹⁵²

135. A more profound intersectional approach can be identified in the 2017 Guidelines on Children Rights. In the Operational Guidelines, a so-called "system-strengthening" approach is advocated for, because such an approach will protect "all children including – and especially – the most vulnerable and marginalised [...] It would also take into account the different gender- and age-based needs of girls and boys."¹⁵³ This indicates an approach where gender is considered a factor, but other factors of vulnerability are taken into account at the same time. Several such intersectional indicators can also be identified within the SDGs, but they are not as relevant as this framing is not chosen by the EU.¹⁵⁴

136. The most profound inclusion of intersectionality can be found in the 2014 Annual Report. Intersectionality is widely and explicitly included in this report, with explicit mentions

¹⁴⁷ "Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019."

¹⁴⁸ "EU Guidelines for the Promotion and Protection of the Rights of the Child, EEAS (2017)."

¹⁴⁹ "Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019."

¹⁵⁰ "Human Rights and Democracy: EU Strategic Framework and EU Action Plan."

¹⁵¹ "Annual Report on Human Rights and Democracy in the World in 2015."

¹⁵² "Annual Report on Human Rights and Democracy in the World in 2015- Country and Regional Issues."

¹⁵³ "EU Guidelines for the Promotion and Protection of the Rights of the Child, EEAS (2017)," 18.

¹⁵⁴ "EU Guidelines for the Promotion and Protection of the Rights of the Child, EEAS (2017)."

of for instance “indigenous women” and “women with disabilities”. In addition, gender is included on multiple occasions in an enumeration with other factors of vulnerability, sometimes cross-referenced, which means that gender is classified as a factor that can further increase the vulnerability of a group that is already vulnerable in another aspect, such as internally displaced people.¹⁵⁵ All in all, gender is framed in a rather comprehensive way throughout all the documents, consolidating the conclusion reached from the question to what extent gender is mainstreamed. In short, the role of gender within the EU policy framework on human rights is proven to be rather significant.

137. In terms of links to the environment, some developments can be seen that acknowledge a certain interconnectedness between not only human rights and the environment, but gender as well. This is not yet present in the 2012 EU Strategic Framework, where the environment is mentioned as one of the priority areas of integrating the promotion of human rights, but unfortunately, there is no link between gender and the environment.¹⁵⁶ Nor is there a link to gender in the EU Action Plan of 2015, which contains one mention of climate change in the context of human rights defenders working on “labour rights, land-related human rights issues and indigenous peoples.”¹⁵⁷ In the speech by the EU Special Representative the environment or concepts that are even remotely related to the environment are not mentioned at all, missing the brief of including this as a current human rights challenge altogether.¹⁵⁸

138. The other document that have been analysed are much more interesting in this respect. The most recent document providing guidelines on children’s rights (2017) explains the use of gender within a human rights approach, linking it to the 2030 Agenda for Sustainable Development, which is the closest link so far to environmental issues. Sustainable development is more encompassing than just environmental issues, so that still is not saying much. Nevertheless, the document continues to include many mentions of environmental issues and climate change, and when discussing the SDG on climate change relating to children’s rights, it mentions gender. While this is a literal copy of the wording of the targets and indicators of the SDGs, only two targets are included in the EU document, while SDG 13 on Climate Action has many more targets and indicators, only two of which include women.¹⁵⁹ In the EU

¹⁵⁵ “Annual Report on Human Rights and Democracy in the World in 2014.”

¹⁵⁶ “Human Rights and Democracy: EU Strategic Framework and EU Action Plan,” 5.

¹⁵⁷ “Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019,” 17.

¹⁵⁸ Lambridinis, “EU Statement by EUSR Stavros Lambrinidis on behalf of HR/VP Federica Mogherini.”

¹⁵⁹ “Sustainable Development Goal 13,” *Sustainable Development Knowledge Platform* (website), accessed June 4, 2017, <https://sustainabledevelopment.un.org/sdg13>.

document only two are mentioned, of which one includes women. This is therefore an excellent step towards recognizing the gender-environment-human rights nexus.¹⁶⁰

139. Earlier in the 2014 Annual Report there are some, however limited, mentions of the environment, speaking of the environmental context of human rights or of environmental rights, and one mention on climate change in relation to human rights. However, none of these mentions can be related to gender. The reference to climate change focused on indigenous rights, and since in this document the role of gender has been explicitly recognized in indigenous rights, this could be seen as an implicit inclusion of gender, but this is quite a stretch of the imagination, and most likely not the intention of this phrasing.¹⁶¹

140. In the 2015 report, environment is only mentioned once, stating that the European Commission “is committed” to include human rights in environmental matters. Climate change is mentioned once in relation to indigenous rights. Interesting is the statement that “The EU committed to embedding a strong gender dimension into the 2030 Agenda on Sustainable Development”. This Agenda includes goals on the environment and climate change, so this could be an argument for the EU to include gender also in the targets on these topics. The focus on the gendered targets that are included in the 2017 Guidelines on the Rights of the Child, as has been mentioned earlier in this section, seems to be a concrete manifestation of this commitment.¹⁶²

141. However, the most concrete acknowledgement of the interconnectedness between gender, human rights and the environment can be found in the Country and Regional Issues Report of 2015. This report includes a number of mentions of the environment and climate change as a factor impacting human rights. One of these mentions has the following phrasing “Climate change remains one of the biggest challenges for the Pacific Island States, which impacts on human rights, the prevailing violence and discrimination against women...” This is a very clear acknowledgement that the EU recognizes the link between climate change and gender, within the human rights policy framework. Any more explicit is not possible, and this proves unequivocally that the EU does recognize the link between climate change and gender – in a human rights document, no less.¹⁶³

¹⁶⁰ “EU Guidelines for the Promotion and Protection of the Rights of the Child, EEAS (2017),” 34.

¹⁶¹ “Annual Report on Human Rights and Democracy in the World in 2014.”

¹⁶² “Annual Report on Human Rights and Democracy in the World in 2015.”

¹⁶³ “Annual Report on Human Rights and Democracy in the World in 2015- Country and Regional Issues.”

3.2 Lack of gender mainstreaming in the EU policy framework on the environment

142. First, the extent to which gender is mainstreamed in the EU policy framework on the environment will be analysed.

143. In the 2015 EU Climate Funding for Developing Countries there are a few mentions of gender, all in relation to initiatives on climate change that have received EU funding. In one initiative, flooding is mentioned to impact the safety of women in labour, as flooding prevented them from going to a hospital. In another, the gender aspects of human rights are highlighted as a priority area in the context of coastal communities that are threatened by climate change. A third initiative supports in particular women in dealing with the “impacts of extreme climate events”. Out of sixteen initiatives funded, only three initiatives included references to gender and climate change, which does not display a great degree of gender mainstreaming.¹⁶⁴ Nonetheless, this seems to be already an improvement on the degree of gender mainstreaming as displayed in the legal framework.

144. Looking at the same document, but then from a year earlier, a very similar degree of mainstreaming can be seen. In the 2014 document on Climate Funding for Developing Countries two out fifteen case studies of projects supported include references to gender. One of these references concern Sweden’s support for two projects that helped “put resilience and the role of gender mainstreaming in tackling climate change on the national and sub-national policy-making agenda,” later referencing gender equality within these same projects. Another project in Bangladesh, supported by the Netherlands, aims to improve food security, taking into account the risks of climate change. Considerations of gender equality are included in these efforts to improve food security.¹⁶⁵

145. In the EU Communication Campaign on Climate Action any gender aspects, or even references to inclusiveness or vulnerable groups are ignored completely.¹⁶⁶ The same goes for the Consolidated Annual Activity Report of the European Environment Agency in 2015.¹⁶⁷

¹⁶⁴ European Commission and the Luxembourg Presidency of the Council of the EU, “European Union Climate Funding for Developing Countries in 2015,” *European Union* (2015), accessed March 20, 2017, https://ec.europa.eu/clima/sites/clima/files/docs/funding_developing_countries_2015_en.pdf.

¹⁶⁵ European Commission and the Italian Presidency of the Council of the EU, “European Union Climate Funding for Developing Countries in 2014,” *European Union* (2014), accessed March 20, 2017, https://ec.europa.eu/clima/sites/clima/files/docs/funding_developing_countries_2014_en.pdf.

¹⁶⁶ European Commission, “EU Communication Campaign on Climate Action,” *European Union* (2014), accessed March 20, 2017, https://ec.europa.eu/clima/sites/clima/files/docs/campaign_desktop.pdf.

¹⁶⁷ European Environmental Agency, “Consolidated Annual Activity Report 2015 (CAAR),” *European Environmental Agency* (June 2016), accessed March 20, 2017, <http://www.eea.europa.eu/publications/annual-activity-report-2015>.

In the Communication on the European Environment and Health Action Plan gender is not present, but there are multiple references to the environmental effects on vulnerable groups. The focus in the Communication is specifically on children, but cites vulnerable groups in general as well, which are generally accepted to include gender as a factor of vulnerability. There is one mention of ‘mothers’ and of ‘pregnant women’, but these have no relation to gender concerns, as these references are included for the sole purpose of the impact to the health of children.¹⁶⁸

146. In the General Union Environment Action Programme, there are no specific mentions of gender. There is one mention of pregnant women as a vulnerable group, but this again only concerns the environmental impact on the unborn child, and this reference is not included out of gender concerns. There are a number of mentions of vulnerable groups, without specifically mentioning gender. There are some inclusions of the SDGs, which include both gender and human rights problems, but this is a very implicit inclusion of gender and therefore barely relevant. In addition, there are multiple references to an ‘inclusive’ economy, referencing Rio+20 without explaining what is meant with ‘inclusive’ here.¹⁶⁹ Looking at the Rio+20 outcome document, inclusive is taken to include considerations of gender equality, women’s empowerment and women’s equal rights. Rio+20 is also mentioned many times outside the context of an inclusive economy, and throughout Rio+20 gender plays a significant role.¹⁷⁰ The continues inclusion of ‘inclusive economy’ in the Action Programme as well as the separate references to Rio+20 can therefore be seen as an implicit reference to gender.

147. In the Strategy for Smart, Sustainable and Inclusive Growth, which has been referred to multiple times in the analysis of the EU’s legal framework on the environment, there are a couple of references to gender equality. There are also a couple of mentions of women, mostly in relation to employment, but there is also one reference to women being at a particular risk of encountering poverty.¹⁷¹

¹⁶⁸ European Commission, “The European Environment and Health Action Plan 2004-2010”, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee* (2004), accessed March 20, 2017, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004DC0416:EN:HTML>.

¹⁶⁹ European Commission, *General Union Environment Action Programme to 2020: Living well, within the limits of our planet* (Publications Office of the European Union: Luxembourg, 2014), http://bookshop.europa.eu/en/general-union-environment-action-programme-to-2020-pbKH0113833/?pgid=GSPefJMEtXBSR0dT6jbGakZD00006TbSibhv;sid=NihAp_vBVA9ApKL67PveAJnkIOs891kCSng=?CatalogCategoryID=h2YKABstrXcAAAEjXJEY4e5L.

¹⁷⁰ “Future We Want – Outcome Document,” *Sustainable Development Knowledge Platform* (website), accessed June 10, 2017, <https://sustainabledevelopment.un.org/rio20/futurewewant>.

¹⁷¹ European Commission, “Europe 2020: A European Strategy for Smart, Sustainable and Inclusive Growth.”

148. It is clear that gender is not mainstreamed at all in the EU policy framework on the environment. Only three documents explicitly include gender, and two of these are the documents that summarize projects that are merely funded by the EU or its member states, these are not even EU projects. Of the other documents which do not include any explicit references to gender, some make implicit references by citing Rio+20, that has multiple gender references. The extent of gender mainstreaming within the EU policy framework on the environment can only be described as so limited that it is practically non-existent.

149. Next, the way gender is framed in those few sources making explicit mention of gender will be analysed, looking again at the specific terms used to refer to gender and if any attention is paid to intersectionality. Considering the framing of gender in the 2015 EU Climate Funding document, both ‘gender’ and ‘women’ are used.¹⁷² The same goes for the 2014 document on Climate Funding and the Strategy for Smart, Sustainable and Inclusive Growth.¹⁷³

150. Intersectionality is limited in the 2015 EU Climate Funding document. Two out of the three initiatives do speak about reducing poverty, and then about focusing on women or gender, thus suggesting an implicit cross-section between poverty and gender, but no clearer reference to intersectionality can be found.¹⁷⁴ Intersectionality can be found even less in the Strategy for Smart, Sustainable and Inclusive Growth, where there is one enumeration of vulnerable groups where women are included, but no cross-sections between the vulnerable groups.¹⁷⁵ In the 2014 EU Climate Funding document, in the same nature as all other documents analysed, no references to intersectionality can be recognized. Even the mentions of vulnerability concern vulnerable countries rather than groups vulnerable to the impacts of climate change.¹⁷⁶ All in all, the framing of gender supports the conclusion that there is no large degree of gender mainstreaming in the EU policy framework on the environment. The way it is framed shows nothing beyond the gender binary, only including terms of ‘gender’ and ‘women’, and there is only a very limited degree of intersectionality that can only be identified in one document, and even that is implicit.

¹⁷² European Commission and the Luxembourg Presidency of the Council of the EU, “European Union Climate Funding for Developing Countries in 2015.”

¹⁷³ European Commission and the Italian Presidency of the Council of the EU, “European Union Climate Funding for Developing Countries in 2014” ; European Commission, “Europe 2020: A European Strategy for Smart, Sustainable and Inclusive Growth.”

¹⁷⁴ European Commission and the Luxembourg Presidency of the Council of the EU, “European Union Climate Funding for Developing Countries in 2015.”

¹⁷⁵ European Commission, “Europe 2020: A European Strategy for Smart, Sustainable and Inclusive Growth.”

¹⁷⁶ European Commission and the Italian Presidency of the Council of the EU, “European Union Climate Funding for Developing Countries in 2014.”

151. In the same manner as in the previous section the links to the environment within the human rights framework has been analysed, here the links to human rights within the environmental framework will be analysed, where possibly also linking gender.

152. When it comes to linking climate change and human rights in the 2015 document on climate funding, only one initiative explicitly mentions human rights. There is one other reference to human health, but that is the extent of linking human rights and climate change. That is not to say to human rights problems are not taken into account, they are just not named human rights problems, because undoubtedly the issue of women not being able to get to hospitals because of flooding is an issue of right and access to healthcare. Concluding, the consequences of climate change to humans and human suffering are recognized, but there is no link drawn to human rights.¹⁷⁷ In the 2014 document, no links are made human rights whatsoever. The closest the document comes to including human rights, is by speaking of the dangers of climate change to humanity. Human rights related problems such as safe drinking water and sanitation, food security and access to energy are included, but are not linked to human rights.¹⁷⁸

153. In the 2014 Communication Campaign the few references to human beings, not even human rights, focus exclusively on the human causes of climate change and neglect the human consequences of climate change.¹⁷⁹ The Consolidated Annual Activity Report of the EEA makes several references to human health, but does not use human rights language.¹⁸⁰ In the Communication on the European Environment and Health Action Plan, it will be no surprise that there are multiple mentions of human health. Unfortunately, no links whatsoever are made to human rights. In fact, the only reference to human rights is made in the context of children's rights, discussing a child's right to "grow and live in healthy environments", and referencing the Convention on the Rights of the Child.¹⁸¹

154. In the General Union Environment Action Programmes, human rights are not mentioned. There are two mentions of intellectual property rights, and there are multiple mentions of human rights related terms such as human health, equality and poverty, but nothing directly stating human rights.¹⁸² Already established is that Rio+20 features many times

¹⁷⁷ European Commission and the Luxemburg Presidency of the Council of the EU, "European Union Climate Funding for Developing Countries in 2015."

¹⁷⁸ European Commission and the Italian Presidency of the Council of the EU, "European Union Climate Funding for Developing Countries in 2014."

¹⁷⁹ European Commission, "EU Communication Campaign on Climate Action."

¹⁸⁰ European Environment Agency, "Consolidated Annual Activity Report 2015."

¹⁸¹ European Commission, "The European Environment and Health Action Plan 2004-2010."

¹⁸² European Commission, *General Union Environment Action Programme to 2020*.

throughout the Action Plan. Human rights are prominent in the Rio+20 outcome document, suggesting that the references to Rio+20 in the Action Plan can be seen as an implicit reference to human rights. In addition, many problems that can be framed in terms of human rights are included in Rio+20 as well.¹⁸³

155. In the Strategy for Smart, Sustainable and Inclusive Growth there is one reference to fundamental rights, the human rights within the EU, and a few references to property rights. None of these human rights references can be tied to gender, however.¹⁸⁴ In brief, there is only very limited acknowledgement that human rights have a role to play in environmental issues and climate change, let alone tying this to gender. Quite interesting is the fact that the EU does cite several projects in its Climate Funding documents that tie climate change and human rights together, and on one occasion linking those two issues with gender, but does not acknowledge this interconnectedness in any other way.

3.3 Highly differing degree of gender mainstreaming in the two frameworks

3.3.1 Points of convergence and difference

156. First has to be noted the wide degree of divergence between the extent to which gender is mainstreamed in the EU policy framework on human rights and the framework on the environment. All of the important documents within the human rights framework that have been analysed show a large degree of gender mainstreaming, while the documents that the environmental framework is composed of barely show any consideration for gender, let alone a degree of gender mainstreaming. In the human rights framework gender is acknowledged in a wide variety of different contexts, from political participation to gender-based violence and to the role of women in peace and security. In the environmental framework gender is also displayed in varying contexts, but the amount of times gender is included is so limited that it is difficult to compare it with the human rights framework.

157. When it comes to the way in which gender is framed, a rather comprehensive understanding of gender is shown in the human rights policy framework. In the environmental framework only a very minimal understanding is shown, when referring to gender, using only the terms of ‘gender’ or ‘women’. There is no explicit inclusion of intersectionality in the framing of gender, and the implicit inclusion is also very limited. In the human rights policy

¹⁸³ “Future We Want – Outcome Document,” *Sustainable Development Knowledge Platform* (website).

¹⁸⁴ European Commission, “Europe 2020: A European Strategy for Smart, Sustainable and Inclusive Growth.”

framework, gender is framed using many different terms. These also include the basic ‘gender’ and ‘women’, but go beyond these as well by using terms as ‘gender identity’ that take the meaning of gender beyond the gender binary. In addition, gender is framed on many occasions with a prominent focus on agency, portraying women as agents of change and not just as victims of gender-related problems. A significant degree of attention to intersectionality can also be identified, seeing gender as a factor that exacerbates other factors of vulnerability, such as disability and indigeneity.

158. Concluding, gender is rarely included in the environmental framework, but is prevalent in the human rights framework. In the comparison analysing the legal frameworks, it was possible to show a commonality between the two frameworks on the basis that both frameworks had a certain extent, albeit to a different degree, of gender mainstreaming. In the comparison of policy frameworks, it is difficult to reach a similar conclusion that the two frameworks have this in common, because the extent to which gender is mainstreamed in both frameworks is much further apart than in the legal frameworks. Gender again has a very limited role in the environmental policy framework, and while the basis is there to move towards including gender more often and more profoundly, the human rights policy framework is so much further ahead in gender mainstreaming that concluding that this certain degree of gender mainstreaming is something both frameworks have in common, is almost impossible.

159. Turning to the links between human rights and the environment in both frameworks, some interesting results show. While the environmental policy documents clearly show that implications for human rights exists, human rights as such are sparsely mentioned. This is no surprise in terms that this is a logical extension of the role of human rights in the legal framework on the environment. While rarely speaking of human rights, human rights-related problems or terms of *rights* are included in both the legal and the policy documents on the environment. No additional steps are taken to include gender in this link between human rights and the environment in either framework. The human rights policy framework is a different story entirely. Contrary to the legal document, almost all human rights policy documents that have been analysed include references to either the environment or climate change, or both. In addition, there is one explicit reference tying gender with these two topics, and a couple of implicit references acknowledging the gender-human rights-environment nexus.

160. All in all, an extent of gender mainstreaming way beyond that in the legal framework can be identified in the EU’s policy framework on human rights. In addition, this policy framework shows that the EU does recognize a certain level of interconnectedness

between gender, human rights and the environment, even though it fails to demonstrate this understanding in its environmental policy framework. This brings forward the most surprising result of this comparison, which is the fact that the policy framework on the environment seems to equal or even fall behind the legal framework in the degree of gender mainstreaming. Reversely, the policy framework on human rights is much more advanced in the extent of gender mainstreaming than the legal framework on human rights.

3.3.2 Benefits of further convergence

161. In order to argue the benefits of further convergence between the frameworks, this section will tie the findings of this section with findings of the previous sections. In section 2.3.2 the hypothesis was named that gender mainstreaming is more profound in the policy framework than in the legal framework. This hypothesis has been proven only half true. While gender mainstreaming has indeed reached a highly advanced degree in the human rights framework, in the environmental framework there are barely differences in the degree of gender mainstreaming compared to the legal framework. In other words, the legal framework lags behind the policy framework when it comes to human rights, while the environmental policy framework seems to be a logical extension of the legal framework. The fact that these are different developments demonstrates that the way these frameworks influence each other is not clear, which shows the added value of developing both the legal and the policy framework. Just because one, the legal or the policy framework, is developed does not guarantee that the other framework will develop with it. With increased interconnectedness, such separate growth is going to be difficult. If the environmental and human rights frameworks are more linked, the development of one framework, be it legal or policy, will help develop the other framework.

162. Equally in section 2.3.2, it was found that gender mainstreaming in the legal frameworks had more of the characteristics of gender being fit into the existing status quo, rather than adjusting the status quo from a gender perspective. Gender mainstreaming in the case of the policy framework on human rights in the EU, on the other hand, does have more of the characteristics of the status quo being adjusted to incorporate gender rather than gender just being fit in, almost as an afterthought. Gender is such a big part of the human rights policy framework of the EU, being incorporated in so many different ways, in so many different contexts, that there is no doubt gender is integral to this policy framework.

163. A similar level of gender mainstreaming can unfortunately not be found when it comes to the environmental and climate policy framework of the EU. A better recognition of the role of gender in the environment can lead to improved gender mainstreaming in the environmental policy framework, and reversely improved gender mainstreaming can lead to better recognition of the role of gender in the environment.

164. Surprising is that the attention to population growth and disaster risk is also limited in both policy frameworks, while these issues are the most prominently discussed topics in the academic literature. The literature also mentions vulnerable groups in these contexts, but attention to vulnerable groups in the policy framework is separate from the topics of population growth and disaster risk. In sync with the role of gender, vulnerability features much more extensively in the policy framework on human rights than in the framework on the environment, while vulnerability is a factor that is widely recognized at an international level specifically in the context of climate change. Factors of vulnerability are naturally broader than gender alone, but do encompass gender. Increased attention to gender within the environmental framework, which the above paragraphs have demonstrated can be developed by increased interconnectedness, can also create an opening for the inclusion of other factors of vulnerability, and vice versa, because gender is considered a factor of vulnerability.

Conclusion

165. This thesis set out to answer the question: “How can a gender-sensitive approach to the EU’s framework on human rights and the EU’s framework on the environment be beneficial, both legally and from a political perspective?” In order to answer this, the thesis starts by reviewing existing academic literature on the links between gender, the environment and human rights, dubbed the ‘gender-environment-human rights nexus’. While mostly two of these topics are researched, and a third included in a minor way, the literature reviewed demonstrates beyond a shadow of a doubt that all three of these issues are connected. Analysing these topics is therefore highly relevant.

166. One important finding in this section is that often in the link between gender and the environment, human rights issues are included, but not by actually referring to ‘human rights’. Therefore, the thesis goes on to assess literature on the importance of using human rights language, concluding that while there are benefits to using human rights language, most important is (discussions on) the use of language does not distract from actual human suffering. While it is certainly interesting to look at the motivation to use human rights language or to

refrain from doing so, at the end of the day, if an issue concerns human suffering that can be translated into a human rights issue, it is important to recognize this as a human rights issue, while acknowledging it is not actually named a human rights issue. This proves to be important in the analysis of the legal and policy frameworks of the EU, where human rights issues are mentioned extensively, but the actual term 'human rights' is sparsely used.

167. The last section of the literature review is important to help answer the research question, because it looks at the position of the EU on human rights, the environment and gender separately, as well as the field on human rights and the environment taken together, to provide a background for the analysis of section 2 and 3. This section shows that the EU is an important actor in the field of human rights and the environment, but has also done a lot in the field of gender, having adopted an approach of gender mainstreaming throughout all its policies since the Beijing Conference in 1995, and EU treaties include gender equality in all activities listed in the treaties, thereby extending a gender approach beyond policies including also the EU's legal activities. All of this sounds very promising for the role of gender in the human rights and environmental frameworks of the EU. However, the analysis of these frameworks proves disappointing.

168. In the legal framework, the role of gender has been limited in both the human rights framework and the environmental framework. The role of gender is more profound and more explicit in the legal framework on human rights than in the environmental framework, which is to be expected as gender and human rights go intuitively more naturally together than gender and the environment, but nonetheless the role of gender within the legal framework on human rights is still limited. The EU's legal framework on human rights and the EU's legal framework on the environment can benefit each other through the use of a gender-sensitive approach, because recognition of the role of gender in both frameworks can be instrumental to increase interconnectedness between the three topics.

169. This interconnectedness, and above all acknowledging this interconnectedness, is highly important to reinforce efforts for all three issues at the EU level. This thesis has demonstrated that a basis for this acknowledgement is already present in both legal frameworks, it just has to be developed further. A further implementation of gender mainstreaming, the EU's chosen gender-sensitive approach, in the framework on environment and on human rights can strengthen efforts to these issues separately, but can also increase recognition of the interconnectedness between gender, human rights and the environment, because gender becomes a clear common ground between the two frameworks. In addition, by

incorporating gender as common ground, this development can kick-start the currently somewhat stalled progress of the framework on human rights and the environment combined.

170. Turning to the policy framework, a somewhat different result shows. While the role of gender in the environmental framework is limited in a manner similar to that in the legal framework, gender mainstreaming is paramount in the EU's policy framework on human rights. Gender is clearly an integral part of the EU's human rights framework. Additionally, the analysis of this framework shows a limited but unequivocal degree of EU acknowledgement of the interconnectedness between human rights, gender and climate change. Unfortunately, the environmental framework does so only implicitly, which makes it uncertain whether the EU actually means to refer to human rights and gender issues, or if it has other intentions by citing the sources in which human rights and gender have a significant role. As the role of gender is not developed as much in the environmental framework as it is in the human rights framework, it is important to incorporate gender mainstreaming into environmental policy and to develop the link between the topics and the frameworks, which are two developments that are mutually reinforcing.

171. Looking at the policy frameworks compared to the legal frameworks, different developments can be identified, with the role of gender developing immensely from the legal framework on human rights to the policy framework, while the role of gender barely changes from the legal framework to the policy framework on the environment. How exactly these frameworks influence each other is open for further research, but it does demonstrate that it is important that each framework develops individually. This is where improved interconnectedness can again be beneficial, as separate development will be more difficult if the frameworks are interlinked.

172. This thesis has started from a perspective that a gender-sensitive approach is about more than just distinguishing between men and women, incorporating a much broader view of gender, while at the same time expecting the majority of sources to focus on the gender binary of men and women. This has indeed proven true. However, specifically in the human rights policy framework, a rather comprehensive view of gender is portrayed. Men and women are still mentioned as such, but in addition terms as 'gender identity' and 'LGBTQI+' feature abundantly. Additionally, gender is incorporated in an inclusive and intersectional manner. These findings may prove to be an interesting starting point for gender studies, especially those studying the role and the portrayal of gender in the European Union.

173. In addition, this research has implications for several other fields of research. This thesis focuses on a field that has not been researched extensively or considered much in other

realms, because gender and human rights *and* the environment are still mostly considered to be different topics. Because this thesis researches interconnectedness between different issues and their different field of research, it challenges thinking in terms of more ‘traditional’ fields of research. Research in any of these fields can benefit from the premise of this thesis because it forces researchers to consider links they may otherwise not have thought of.

174. More concretely, the findings of this thesis can be of value for instance for social sciences. The focus on the labour market that has been found in the references on gender equality in the frameworks on human rights and on the environment, can be an interesting premise to work on for research focusing on the labour market and social conditions. Lastly, this thesis touches upon the subject of the use of human rights language, which surprisingly has not been researched extensively at all. This is a fascinating subject that this thesis has not been able to delve into to the extent the subject warrants, arguing that while the use of human rights language makes a difference, it is not what matters most. More specific research into this topic will be very interesting for studies of human rights. Overall, this thesis relates to many fields, and can therefore have implications also for those fields that are not immediately expected. For example, the environment, human rights and gender are often central issues to Corporate Social Responsibility of companies and organizations worldwide, thus relating directly to the business sector.

175. To clarify, this thesis is not aimed at arguing that a common framework on gender, human rights and the environment would be better than the current separate frameworks. Arguments can be made in favour and against such a line of arguing, and requires another study entirely. The argument of this thesis is that it is important to recognize the links between gender, the environment and human rights in the current separate frameworks, because such links exist: throughout this thesis it has been proven that the topics of gender, human rights and the environment are interconnected. Failing to recognize this interconnectedness will hamper EU’s efforts for these individual issues, simply because that does not reflect the reality and ignores aspects of the problem. Therefore, it has been argued throughout this thesis that increased recognition of the interconnectedness between gender, the environment and human rights will benefit efforts for each issue.

176. Currently, the EU is in a promising position because the basis for this recognition is there in both the legal and policy frameworks on human rights and the environment. While each framework displays a different degree to which the role of gender and the interlinkage between the three topics is recognized, they all recognize this to some degree. Nonetheless, there is still an effort to be made by the EU to increase recognition, and by the academic world,

member states and NGOs to bring this to the EU's attention – a development that has already started, as some of the most progressive acknowledgements of the gender-environment-human rights nexus have been brought into the EU framework by way of member states and NGO projects. It is therefore not only imperative, but also quite hopeful that this development will continue to bring increased recognition of the interconnectedness between gender, human rights and the environment in the EU.

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